



By Email / Speed Post

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IFF/2022/067

Re: Comments on the, "Proposed draft amendment to the IT Rules, 2021"

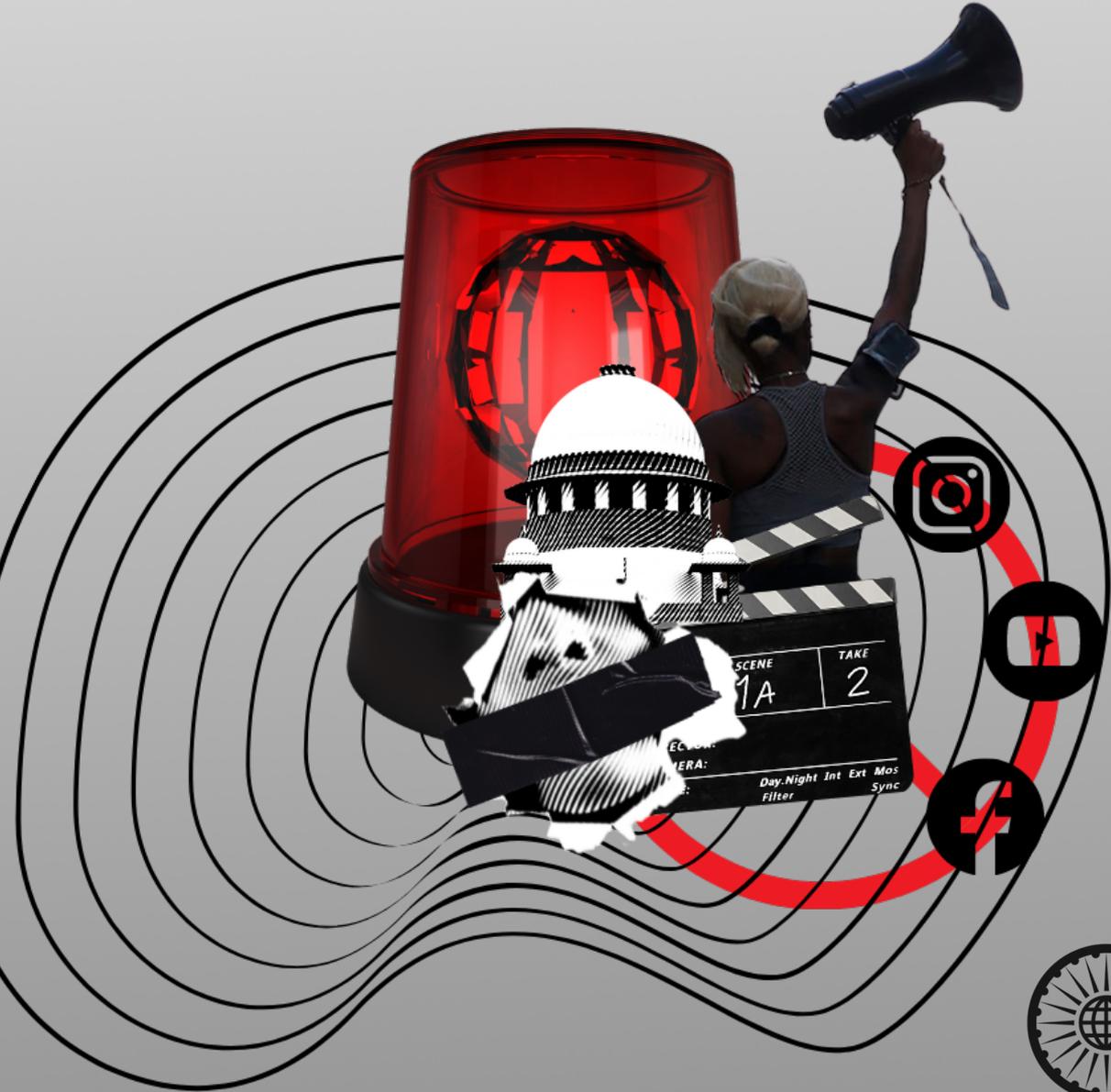
Dear sir,

1. Internet Freedom Foundation ("IFF") is a registered charitable trust on a mission to protect the digital rights of Indians. IFF's work ensures the growth of democratic rights with digitisation guaranteed under the Constitution of India. Our submission to the public consultation on the, "Proposed draft amendment to the IT Rules, 2021" (hereinafter, "Draft IT Rules Amendment, 2022"), which is attached to this covering letter, contains the following four sections:
 - a. Illegality of the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021" (hereinafter, "IT Rules, 2021");
 - b. Detailed submission on the Draft IT Rules Amendment, 2022;
 - c. Analysis and recommendations for rights respecting platform regulation; and
 - d. Clause-by-clause analysis of the Draft IT Rules Amendment, 2022
2. Beyond comments on the Draft IT Rules Amendment, 2022, IFF's principal recommendation is to withdraw the IT Rules, 2021 in their entirety and adopt a twin approach towards platform regulation. *First*, involve experts in an independent and public process to draft safe harbour requirements under Section 79 of the Information Technology Act, 2000 in compliance with the Supreme Court judgement in *Shreya Singhal v. Union of India [(2015) 5 SCC 1]*. *Second*, issues with social media platforms are broader (such as, "deplatforming") and flow outside the safe harbour framework under existing law. They require a long term constitutional approach. The Ministry of Electronics and Information Technology ("MEITY") must constitute a working group through a public notice of diverse, independent experts on platform regulation for drafting a rights respecting legislation.
3. This submission has been jointly drafted with my colleagues, Prateek Waghre, Krishnesh Bapat & Tejasi Panijar and all of us at IFF remain available for any support. We are hopeful to engage with MEITY to ensure a rights respecting framework for platform regulation.

Kind Regards,

Apar Gupta,
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Detailed Submission on the “Proposed draft amendment to the IT Rules, 2021”





**INTERNET
FREEDOM
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Internet Freedom Foundation (“IFF”) is a registered charitable trust which advocates for the digital rights of Indians. Our mission is to ensure the growth of digitisation with democratic rights guaranteed under the Constitution of India.

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Detailed Submission on the “Proposed draft amendment to the IT Rules, 2021”

As stated in the covering letter, our submission is branched into four sections for convenience and consideration. These are as follows:

1. Illegality of the IT Rules, 2021
2. Detailed submission on the Draft IT Rules Amendment, 2022
3. Analysis and recommendations for rights respecting platform regulation
4. Clause-by-clause analysis of the Draft IT Rules Amendment, 2022

Below we provide our comments and recommendations.

1. Illegality of the IT Rules, 2021

1.1. The IT Rules, 2021 are subordinate legislation made under Section 87 read with Section 79 of the Information Technology Act, 2000 (hereinafter, “IT Act, 2000”) which provides for safe-harbour immunities for intermediaries. It consists of three parts. Part I of the IT Rules, 2021 is preliminary and provides definitions. Part II imposes obligations on intermediaries such as social media companies, digital messaging platforms and other entities which technically facilitate information exchange for end users. Finally, Part III regulates publishers of news and current affairs (hereinafter, “Digital News Media”) and publishers of online curated content (hereinafter, “OTT platforms”). The IT Rules, 2021 hence, aim to regulate a large number of online service providers constituting the sum total of digital experiences of Indian internet users.

1.2. We are restating IFF’s detailed analysis,¹ and our letter dated March 23, 2021 to MEITY,² for a complete recall of the IT Rules, 2021. *Inter alia*, the IT Rules, 2021 suffer from grave illegality, undermine the fundamental right to freedom of speech and expression and privacy, being a blunt instrument for platform regulation.

a) Lack of public consultation

1.3. The IT Rules, 2021 as notified on February 25, 2021 in their final form were never put to public consultation.³ This is contrary to the Pre-Legislative Consultation Policy dated February 5th, 2014 issued by the Ministry of Law and

¹ Constitutional questions against unconstitutional Rules’ (*Internet Freedom Foundation*, 11 March 2021) <<https://internetfreedom.in/constitutional-questions-against-unconstitutional-rules/>>.

²Apar Gupta, Letter dated March 23, 2021 and numbered IFF/2021/016 (*Internet Freedom Foundation*, 23 March, 2021) <<https://drive.google.com/file/d/1elhs46khdMd2ITWTE4ReFCli2s8lYuAU/view?usp=sharing>>.

³Constitutional questions against unconstitutional Rules’ (*Internet Freedom Foundation*, 11 March 2021) <<https://internetfreedom.in/constitutional-questions-against-unconstitutional-rules/>> . See also, Deep dive: How the intermediaries’ rules are anti-democratic and unconstitutional’ (*Internet Freedom Foundation*, 27 February 2021) <<https://internetfreedom.in/intermediaries-rules-2021/>>.

Justice which required MEITY to publish a draft version of IT Rules, 2021.⁴ On December 24, 2018, MEITY did circulate a draft titled Information Technology [Intermediary Guidelines (Amendment)] Rules, 2018. This draft was entirely different in form and substance from IT Rules, 2021 prompting a unanimous call by civil society organisations and digital rights experts for a recall of the 2018 draft.⁵ Rather than recalling this draft version, MEITY introduced IT Rules, 2021 to make it more severe and deepening its illegality such as the insertion of additional portions in Part III that were never put to public consultation.⁶ Hence, the IT Rules, 2021 were a completely different version never being put to consultation and were notified without transparency.

b) Cross-sectoral criticism

- 1.4. Since their notification the IT Rules, 2021, have been unequivocally criticised by experts,⁷ civil society,⁸ digital rights groups,⁹ industry bodies,¹⁰ technology companies,¹¹ technical groups¹² and members of the press.¹³ The Editors Guild of India in their statement on IT Rules, 2021 pointed out how they “*fundamentally*

⁴ Pre-Legislative Consultation Policy numbered D.O. No. 11(35)/2013-L. (Ministry of Law and Justice, 05 February 2014) <<https://legislative.gov.in/sites/default/files/plcp.pdf>>.

⁵ Apar Gupta, 'We call on MEITY in our counter comments to withdraw the proposed changes to the Intermediary rules. They are unconstitutional and open to legal challenge' (Internet Freedom Foundation, February 16, 2019) <<https://internetfreedom.in/a16022019/>>.

⁶ Gyan Tripathi, 'Factcheck! The IT Rules 2021 FAQ' (Internet Freedom Foundation, 02 November 2021) <<https://internetfreedom.in/factcheck-of-the-it-rules-faq/>>.

⁷ Daphne Keller, 'Shreya Singhal case was one of the defining rulings of modern internet law' (The Indian Express, 17 January 2020) <<https://indianexpress.com/article/opinion/columns/filtering-out-free-speech-shreya-singhal-case-supreme-court-6220277/>>.

⁸ Archana Sivasubramaium, 'Unpacking IT Rules, 2021' (Centre for Policy Research, 23 April 2021) <<https://cprindia.org/unpacking-the-it-rules-2021/>>.

⁹ Rohin Garg, 'Dear MEITY, withdraw the new IT Rules' (Internet Freedom Foundation, 23 March 2021) <<https://drive.google.com/file/d/1elhs46khdMd2ITWTE4ReFCli2s8lYuAU/view>>; Also see 'Analysis of Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules' (Software Freedom Law Centre) <<https://sflc.in/analysis-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>>.

¹⁰ The Wire Staff, 'New IT Rules Against Fundamental Principle of News': Digipub Writes to Prakash Javadekar' (The Wire, 26 February, 2021) <<https://thewire.in/media/digipub-prakash-javadekar-it-rules-digital-media>>.

¹¹ 'What is traceability and why does WhatsApp oppose it?' (WhatsApp) <<https://faq.whatsapp.com/general/security-and-privacy/what-is-traceability-and-why-does-whatsapp-oppose-it>>.

¹² Neeti Biyani, 'Internet Impact Brief: 2021 Intermediary Guidelines and the Internet Experience in India' (Internet Society, 08 November 2021) <<https://www.internetsociety.org/resources/2021/internet-impact-brief-2021-indian-intermediary-guidelines-and-the-internet-experience-in-india/>>.

¹³ 'The Editors Guild of India [EGI] is deeply concerned about the notification of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021' (Editors Guild of India, 05 March, 2021) <<https://editorsguild.in/statements-issued/>>.



alter how publishers of news operate over the internet and have the potential to seriously undermine media freedom in India". They also stated that "various provisions in these rules place unreasonable restrictions on media at large."¹⁴ Similarly, the Internet Society in their analysis of IT Rules, 2021 have stated how many of its provisions, "contravene the openness, interoperability, reliability and trustworthiness of the Internet."¹⁵

- 1.5. The IT Rules, 2021 have also been condemned by international digital rights organisations who have an experience in a comparative view of global platform regulation practices and regulations. Here, Access Now states, "new rules expand on alarming human rights infringing measures"¹⁶ and the Electronic Frontier Foundation sounds alarm when it states, "[t]hese rules threaten the idea of a free and open internet built on a bedrock of international human rights standards."¹⁷ These statements demonstrate how IT Rules, 2021 have received criticism from all quarters.

c) Statements from UN Special Rapporteurs

- 1.6. Ms. Irene Khan, Mr. Clement Voule and Mr. Joseph Cannataci, three Special Rapporteurs of the United Nations, have jointly raised concerns about IT Rules, 2021.¹⁸ In their letter to the Union Government dated June 11, 2021 they have stated that several provisions of these rules do not, "meet the requirements of international law and standards related to the right to privacy and to freedom of opinion and expression" and thus, they need to be reviewed, reconsidered and withdrawn.

d) Court Orders

- 1.7. There are multiple court orders that recompose the legal deficiencies and constitutional injuries caused by the IT Rules, 2021. Here, IFF's work includes

¹⁴ Ibid.

¹⁵ Neeti Biyani, 'Internet Impact Brief: 2021 Intermediary Guidelines and the Internet Experience in India' (Internet Society, 08 November 2021)
<<https://www.internetsociety.org/resources/2021/internet-impact-brief-2021-indian-intermediary-guidelines-and-the-internet-experience-in-india/>>.

¹⁶ 'Indian authorities tighten control over online content' (Access Now, 25 February, 2021)
<<https://www.accessnow.org/indian-authorities-tighten-control-over-online-content/>>.

¹⁷ Katiza Rodriguez, Sasha Mathew & Christoph Schmonapril, 'India's Strict Rules For Online Intermediaries Undermine Freedom of Expression' (*Electronic Frontier Foundation*, 07 April 2021)
<<https://www.eff.org/deeplinks/2021/04/indias-strict-rules-online-intermediaries-undermine-freedom-expression>>.

¹⁸ Ms. Irene Khan, Mr. Clement Voule and Mr. Joseph Cannataci, Letter to the Union Government of India numbered OL Ind 8/2021,
<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26385>>.



strategic litigation where it has provided legal representation to LiveLaw Media Pvt. Ltd. before the Kerala High Court which by order dated March 10th, 2021 has directed the Union Government to not take coercive action against LiveLaw Media Pvt. Ltd. under Part III of the IT Rules, 2021.¹⁹ IFF is also representing Mr. T.M. Krishna in proceedings before the Madras High Court where a Division Bench of Court has stayed Rules 9(1) and 9(3) of the IT Rules, 2021²⁰ while observing that the oversight mechanism in the Rules may “rob the media of its independence”.²¹

- 1.8. On the Part II of the IT Rules, 2021 which require social media intermediaries to censor content, the Madras High Court, in the same case, stated that these platforms are used by one and sundry and there is a genuine apprehension that “a wink or a nod from appropriate quarters may result in the platform being inaccessible to a citizen.” Separately, the Bombay High Court in *Agij Promotion of Nineteen One Media Pvt. Ltd. & Ors. v. Union of India & Anr* has also stayed Rules 9(1) and 9(3) of IT Rules, 2021. The Bombay High Court has observed that as a result of these rules, “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.”²² While the Hon’ble Supreme Court has stayed the proceedings before the High Courts, the interim orders passed by the Kerala High Court, the Bombay High Court and the Madras High Court are still in force.²³ We have annexed a table summarising the challenges to IT Rules, 2021 along with these submissions (see Annexure 1).
- 1.9. Hence, on the basis of the clear evidence stated above, it is clear that the IT Rules, 2021 cause injury to the constitutional and democratic rights of Indian internet users. They are contrary to the mandate of the Supreme Court in *Shreya Singhal v. Union of India*²⁴ and deserve a complete recall.

¹⁹ Order dated 10 March, 2021 in *LiveLaw Media Pvt. Ltd. & Ors. v. Union of India & Anr*, WP(C) 6272 of 2021; Also see *News Broadcasters Association & Ors. v. Ministry of Information Technology & Anr*, 2021 SCC OnLine Ker 2735 <<https://drive.google.com/file/d/1Y4KO2PyGRPP99RPsNuRaAmzneSi4PYGI/view?usp=sharing>>.

²⁰ Order dated 16 September 2021 in *T.M. Krishna v. Union of India & Anr.*, WP(C) 12515 of 2021 <https://drive.google.com/file/d/1uaUYSD-0RZIO7AixvndPnwEGraq_4fNk/view?usp=sharing>.

²¹ Express News Service, ‘Madras HC stays key clause: ‘May rob media of its independence’ (The Indian Express, 17 September 2021) <<https://indianexpress.com/article/india/information-technology-rules-madras-high-court-stays-key-clause-may-rob-media-of-its-independence-7513901/>>.

²² Order dated August 14, 2021 in *Agij Promotion of Nineteen One Media Pvt. Ltd. & Ors. v. Union of India & Anr*, 2021 SCC OnLine Bom 2938 <<https://drive.google.com/file/d/1ONg6Ve2pXTf2G78UHBfGntwMndKpQLqj/view?usp=sharing>>.

²³ *Union of India v. LiveLaw Media Pvt. Ltd.*, SLP(C) 11163 of 2021.

²⁴ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, Para 122 <<https://indiankanoon.org/doc/110813550/>>.



2. Detailed submission on the Draft IT Rules Amendment, 2022

a) *Issues with the consultation process*

- 2.1. Before we list our concerns with the Draft IT Rules Amendment, 2022, it is important to bring attention to the inconsistency and lack of transparency around the consultation process for the proposed amendment. MEITY released a notice dated June 01, 2022, seeking comments on the proposed draft amendments to Part I and II of the IT Rules, 2021.²⁵ Astonishingly, on June 02, 2022, MEITY withdrew the proposal without any justification.²⁶ Finally, on June 06, 2022, MEITY issued and sought comments on the Draft IT Rules Amendment, 2022, which are identical to the draft published on June 02, 2022, along with a Press Note and/or Cover Note, which does not have any legal effect.
- 2.2. Unfortunately, in recent months MEITY has issued several documents only to withdraw it later. On May 30, 2022, the Unique Identification Authority of India (“UIDAI”) issued an advisory, on a MEITY letter-head, asking the public to not share photocopies of their Aadhaar card.²⁷ On the same day, MEITY withdrew the advisory, purportedly because it could be “*misinterpreted*”.²⁸ Earlier, in February 2022, MEITY published the “Draft India Data Accessibility & Use Policy, 2022” to which substantial changes were made during the consultation period without any public acknowledgement.²⁹ Such errors, hiccups and recalls during the consultation process significantly reduce the quality and sanctity of the consultation process.
- 2.3. We acknowledge and commend that there are positive efforts being made by MEITY to improve transparency and public participation by holding and giving members of civil society and digital rights groups such as us an opportunity to attend the open, public consultation on the Draft IT Rules Amendment, 2022. We would like to note that this only came after an email dated June 21, 2022 was proactively sent by IFF to MEITY and we were excluded from the in-person consultations on the CERT-In Directions and the Draft India Data Accessibility & Use Policy 2022 despite active engagement. Here, objective criticism can help

²⁵ ‘MEITY publishes and then withdraws a proposal to amend IT Rules, 2021’ (*Internet Freedom Foundation*, 03 June 2022) <<https://internetfreedom.in/meity-publishes-and-then-withdraws-a-proposal-to-amend-it-rules-2021/>>.

²⁶ Ibid.

²⁷ Aashish Aryan & K R Balasubramanyam, ‘MEITY withdraws advisory on Aadhaar Card photocopy’ (*The Economic Times*, 30 May 2022) <<https://economictimes.indiatimes.com/tech/technology/meity-withdraws-circular-advising-people-not-to-share-photocopies-of-aadhaar-cards/articleshow/91871032.cms>>.

²⁸ Ibid.

²⁹ Shivangani Misra, ‘The Change Game: MEITY Resorts To Quick Fixes To Silence Experts’ (*Internet Freedom Foundation*, 26 March 2022) <<https://internetfreedom.in/the-change-game-meity-resorts-to-quick-fixes-to-silence-experts/>>.

improve administrative foresight and public policy outcomes. Hence, the consultation, held on June 23, 2022, which saw participation from lawyers, IT experts, some members of the media as well as civil society organisations was a positive step that needs to be consistently practised. Hence, we urge MEITY to follow consistent procedures for open house discussions and publication of all stakeholder comments on its website which will increase stakeholder trust and engagement to everyone's benefit.

b) Colorable regulation against “de-platforming”

- 2.4. There is a brooding subtext to the Draft IT Rules Amendment, 2022 which does not find clear mention within the text of the proposals and the accompanying press note. Examining it is relevant and hence we are noting it formally with a view to explain the intent of the present proposal. Prior to introducing the Draft IT Rules Amendment, 2022, Ld. Minister of State for Electronics and Information Technology voiced his concern around “*deplatforming*”, stating that, “*de-platforming is a violation of the fundamental rights of the users.*”³⁰ He stressed on the need for a “*force of law*” to establish clear grounds for platforms to exercise their judgement in which they may terminate user accounts acting on their Terms of Use or content moderation policies and practices. MEITY has formally adopted this position in submissions before the Delhi High Court, which was hearing a plea by political satire handle Wokeflix challenging the decision made by Twitter and Instagram to suspend its accounts in November 2021 and January 2022 respectively.³¹ In an affidavit filed by MEITY before the court, it advocated for proportionate action by social media platforms against offending content and suspending accounts only as a last resort. These instances clearly provide a background to the proposed amendment to the Draft IT Rules Amendment, 2022.
- 2.5. The Press Note states that the proposed amendment will, “*provide additional avenues for grievance redressal apart from Courts and also ensure that the Constitutional rights of Indian citizens are not contravened by any Big-tech Platform by ensuring new accountability standards for SSMLs.*” Further, the Draft IT Rules Amendment, 2022 matches the statements of the Ld. Minister for State, when they seek to insert sub-rule 3(1)(m) that states, “*the intermediary shall take all reasonable measures to ensure accessibility of its services to users along with reasonable expectation of due diligence, privacy and transparency;*” and, sub-rule 3(1)(n) which states that, “*the intermediary shall respect the rights accorded to the citizens under the Constitution of India.*” Furthermore, sub-rule

³⁰ ANI, ‘Rajeev Chandrasekhar says de-platforming violation of fundamental rights of users’ (*The Print*, 11 May 2022) <<https://theprint.in/india/rajeev-chandrasekhar-says-de-platforming-violation-of-fundamental-rights-of-users/951138/>>.

³¹ *Wokeflix through Megha Choubay v. Union of India & Ors.* WP(C) 3899/2022; Also see Sarvesh Mathi, ‘Social Media Platforms Should Suspend Accounts Only As Last Resort And Not Arbitrarily: MEITY In Delhi HC’ (*Medianama*, 31 March 2022) <<https://www.medianama.com/2022/03/223-meity-social-media-account-suspension/>>.



3(2)(a)(i) states, that the grievance office of an intermediary shall, “(i) *acknowledge the complaint, including suspension, removal or blocking of any user or user account....*”. Hence, the proposed insertions in their totality now contemplate a recourse for users whose accounts are suspended, removed or blocked that will include, “de-platforming”.

- 2.6. We acknowledge the concerns that are arising due to deplatforming, where social media platforms and tech companies wield their power without adequately applying principles of natural justice.³² Conversely, this lack of transparency and accountability have led to documented instances of the partisan and biased enforcement of content moderation practices in India.³³ However, the present insertions as noted in Para 2.5, do not, “*provide a force of law*”, as they are ultra-vires the safe harbour framework under Section 79 of the IT Act, 2000. Section 79 cannot be extended to insert provisions for conditional immunity in which users can contest practices such as, “de-platforming”. The mechanism under Section 79 as per its letter and intent and as clarified in the Supreme Court judgement of *Shreya Singhal v. Union of India* envisages a notice (from a public authority to a platform) and takedown mechanism (content taken down by platform after notice), rather than a complain (by a user complaint to a platform) and restore (a platform has to determine the complaint and may be required to restore) mechanism.³⁴ Beyond illegality, the proposals quoted in para 2.5 of this submission are complex issues of platform regulation that require detailed deliberation given the high chances of their outcomes being counterproductive. Hence, we urge for proposed insertions in sub-rule 3(1)(m), 3(1)(n) and 3(2)(a)(i) to be withdrawn and a broader white paper be created for platform regulation drawing independent experts from diverse fields of academia, technology and digital rights that can create an actionable blueprint for a comprehensive legislative proposal.

c) GAC leads to a digital gag

- 2.7. That the Draft IT Rules Amendment, 2022 defines in Rule 2(1)(l) of Part I, a “Grievance Appellate Committee” (hereinafter, “GAC”) as, “*an appellate committee constituted to deal with appeals by users against the decision of the*

³² José Van Dijck, Tim de Winkel & Mirko Tobias Schäfer, ‘Deplatformization and the governance of the platform ecosystem’ (*Sage Journals*, 23 September 2021) <<https://journals.sagepub.com/doi/10.1177/14614448211045662>>. Also see Corynne Mcsherry, ‘EFFs response to Social Media Companies’ decision to block President Trump’s Accounts’ (*Electronic Frontier Foundation*, 07 January) 2021 <<https://www.eff.org/deeplinks/2021/01/eff-response-social-media-companies-decision-block-president-trumps-accounts>>.

³³ Letter to Standing Committee on IT on Facebook Whistleblower revelations numbered IFF_2021_097 sent by Internet Freedom Foundation on 25 October, 2021 <https://drive.google.com/file/d/1i_p9krX7AsnhD9ZF9mJ-4DKIq7MFIAXL/view>; See also: Letter to IT Standing Committee on Sophie Zhang revelations numbered IFF_2022_066 sent by Internet Freedom Foundation on 16 June, 2022 <https://drive.google.com/file/d/1WcXqhkjbJmBS_12_FZi8TUPJ_5BTivF/view>; See also: Newley Purnell and Jeff Horwitz, ‘Facebook’s Hate-Speech Rules Collide With Indian Politics’ (*The Wall Street Journal*, 14 August 2020) <<https://www.wsj.com/articles/facebook-hate-speech-india-politics-muslim-hindu-modi-zuckerberg-11597423346>>.

³⁴ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, Para 122 <<https://indiankanoon.org/doc/110813550/>>.

Grievance Officer". The GAC is once again introduced in Rule 3(3) which is titled "Appeal to Grievance Appellate Committee(s)". Through the introduction of a GAC, MEITY seeks to establish a Committee consisting of Union Government appointed public officials for adjudication of any appeals against the decision of social media platforms to remove or not remove content. However, any further details on their appointment process, qualifications and the quorum of the committee is absent.

- 2.8. Such a provision is concerning as this would make the Central Government (rather than an independent judicial or a regulatory body) the arbiter of permissible speech on the internet. It would incentivise social media platforms to suppress any speech that may not be palatable to the government, public officials or those who can exert political pressure.³⁵ Moreover, this proposal will also empower the government to censor speech on grounds not stated under Section 69A of the IT Act, 2000 or Article 19(2) of the Constitution thereby being a colorable power to restrict access to information.³⁶ Hence, the possibility of the executive-constituted committee delivering biased decisions is also highly likely.
- 2.9. The creation of the GAC also raises concerns around its legal basis. *Firstly*, it is a settled principle of law that adjudicatory bodies which settle disputes between parties can only be constituted by the legislature.³⁷ In absence of a law enacted by the Parliament empowering the executive, the GAC will be unconstitutional. Draft IT Rules Amendment, 2022 are an amendment to a delegated legislation and not a statute passed by the Parliament. *Secondly*, and in any case, any rule notified by the executive must be traceable to the parent act, which in this case is IT Act, 2000. However, the IT Act, 2000 does not contemplate appointment of any such committee. Without a legislative basis the Union Executive does not have the power to create bodies such as the GAC, which can have an immediate and far-reaching impact on citizens' fundamental rights, with little to no procedural safeguards built into the scheme of the IT Rules, 2021.³⁸ For instance, there is a complete silence on the public disclosure of appeals or the decisions taken by the GAC or whether content creators and users will have an opportunity to be heard before the GAC.

³⁵ 'MEITY publishes and then withdraws a proposal to amend IT Rules, 2021' (*Internet Freedom Foundation*, 03 June 2022) <<https://internetfreedom.in/meity-publishes-and-then-withdraws-a-proposal-to-amend-it-rules-2021/>>.

³⁶ Ibid.

³⁷ *State of Himachal Pradesh v. Raja Mahendra Pal & Ors.* (1999) 4 SCC 43 at Para 9 <<https://indiankanoon.org/doc/906698/>>. Also see *Union of India v. Madras High Court Bar Association*, (2010) 11 SCC 1 at Para 90 <https://main.sci.gov.in/pdf/SupremeCourtReport/2010_v%206_piv.pdf> and *L Chandra Kumar v. Union of India*, (1997) 3 SCC 261 <<https://indiankanoon.org/doc/1152518/>> .

³⁸ Ibid.



- 2.10. It is worth noting that the Bombay High Court³⁹ and the Madras High Court⁴⁰ have already stayed Rules 9(1) and 9(3) contained in Part III of IT Rules, 2021 which subjected any content published by publishers of digital news media or OTT platforms, to governmental oversight. These rules were stayed for the same reasons we have critiqued the proposed creation of GAC, i.e. they made government-appointed committee the arbiter of permissible speech and which could censor contents for grounds extraneous to Article 19(2) of the Constitution without providing any procedural safeguards to protect the fundamental rights of citizens. Hence, there exists the real possibility of ambiguity in enforcement and absence of regulatory clarity that will emerge due to court challenges to the constitution of the GAC following the reasoning of orders already passed on the IT Rules, 2021.
- 2.11. Further, the functioning of a GAC will also lead to arbitrary enforcement due to the sheer volume of appeals as even conservative estimates of social media users in India number beyond the hundreds of millions. Hence, even if a tiny fraction within them file complaints against content moderation decisions to a grievance officer, and then are dissatisfied with the result to further prefer appeals to the GAC -- such appeals will number in the thousands. Beyond issues of functional autonomy of the GAC, such a volume of determination will require a full fledged adjudicatory apparatus and human resources staffing with persons having judicial training. Given this is unlikely, the probable outcome will be a process of sub-selection of such appeals by the GAC from the thousands it will receive each month. Without any applicable, or legal framework for selection for appeals, there is likely an arbitrary “*pick and choose policy*”, leading to appearance, or the existence of bias.
- 2.12. The assertions in Para 2.11 above are supported by data. For instance, Compliance Reports published by intermediaries suggest that platforms such as Facebook remove/takedown more than 3 crore pieces of content on a monthly basis.⁴¹ Therefore, even if a small percentage to these decisions are appealed, it would have been impossible for the Committee to adjudicate, that too with a fair and just application of mind, to each of the disputes. Thus, the establishment of a GAC is not only undesirable, but also unfeasible. We strongly urge that, in the absence of statutory backing and rules which would ensure the independence of GAC, such an oversight mechanism must not be constituted. This is a further reason why there is the need for a wider consultation beyond the safe harbour

³⁹ Order dated August 14, 2021 in *Agij Promotion of Nineteen One Media Pvt. Ltd. & Ors. v. Union of India & Anr*, 2021 SCC OnLine BOM 2938 <<https://drive.google.com/file/d/10Ng6Ve2pXTf2G78UHBfGntwMndKpQLqj/view?usp=sharing>>.

⁴⁰ Order dated 16 September 2021 in *T.M. Krishna v. Union of India & Anr.*, WP(C) 12515 of 2021 <https://drive.google.com/file/d/1uaUYSD-0RZIO7AixvndPnwEGraq_4fNk/view?usp=sharing>.

⁴¹ ‘#SocialMediaComplianceWatch: analysis of Social Media Compliance Reports for the month of March 2022’ (*Internet Freedom Foundation*, 27 May 2022) <<https://internetfreedom.in/compliance-report-march-2022/>>.

framework under Section 79 of the IT Act, 2000 that may lead to a rights respecting framework and a legislative basis for the creation of a regulatory body.

d) Ambiguous phrasing and resulting arbitrariness

- 2.13. Rule 3(1)(a) of the IT Rules, 2021 required intermediaries to, “*prominently publish...the rules and regulations, privacy policy and user agreement...*”. The Draft IT Rules Amendment, 2022 inserts the phrase “*and ensure compliance of the same.*,” towards the end of Rule 3(1)(a), without actually specifying how social media platforms are expected to enforce such compliance. The phrasing also leads to ambiguity with respect to whether the intermediaries are expected to themselves comply or ensure user compliance of the privacy policy, rules, regulations and agreements. This gains significance as MEITY has also commenced issuing advisories to social media platforms requiring pro-active removal of content.⁴² Separately, privacy policies, rules and regulations and user agreements, are akin to private contracts between the intermediaries and their users. Mandating the intermediaries by threatening them with criminal prosecution, to ensure that their users comply with these contracts is an unwarranted interference with private enterprises.
- 2.14. Rule 3(1)(b) of IT Rules, 2021 require social media platforms to “*inform*” their users regarding not posting content which is “*ethnically objectionable*”, “*harmful to child*”, “*insulting another nation*”, “*is misleading in nature*”, etc. However, the Draft IT Rules Amendment, 2022 proposed changing Rule 3(1)(b) to state, “*the intermediary shall inform the user and shall cause the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that,*”. The proposed amendment, by inserting the phrase “*shall cause*”, increases the compliance burden of platforms to ensure removal of content, listed from (i) to (x) under Rules 3(1)(b), irrespective of a complaint from any user. This is worrying because the grounds mentioned in Rule 3(1)(b) are themselves vague, impossible to implement consistently and prone to misuse. Such vaguely worded phrases may cause social media platforms to become pro-active arbiters and quasi-judicial authorities of permissible speech which is already resulting in issues given existing lack of natural justice, transparency and accountability as noted by MEITY. It may also potentially lead to arbitrary censorship.
- 2.15. Most importantly, the obligation on intermediaries to ‘*cause*’ removal of content is in direct violation of the decision of the Hon’ble Supreme Court in *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.⁴³ In that case it was held that intermediaries

⁴² Letter by Ministry of Electronics and Information Technology numbered 20(5)/2022-CL dated 29 June, 2022 <https://www.meity.gov.in/writereaddata/files/advisory%20to%20social%20media%20platforms_removal%20of%20communal%20hatred%20content_june%202022%20.pdf>.

⁴³ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, Para 122 <<https://indiankanoon.org/doc/110813550/>>.

must takedown content only on the basis of ‘actual knowledge’ in the form of directions from the Union Government under Section 69A or orders from competent courts or public authorities acting under law. Contrary to the decision, the proposed amendment requires intermediaries to become arbiters of permissible speech and suppress speech based on vague grounds. We are concerned that this may lead to threats of criminal prosecution if they do not proactively takedown speech which according to the Union Government, violates the grounds stated in Rule 3(1)(b).

e) Promotion of a faulty model for self-regulation

- 2.16. We would also like to bring MEITY’s attention to a concerning recommendation in favour of a single, industry wide Self Regulatory Body (“SRB”) made during a consultation on the Draft IT Rules Amendment, 2022. This consultation was held on 23rd June, 2022 in which MEITY also to its credit invited several members of civil society including representatives of IFF.
- 2.17. During the meeting, as reported in the press subsequently a proposal for the creation of an industry wide SRB was mooted. As per a report in the Hindustan Times, the Ld. Minister of State, MEITY presiding over this consultation stated that “*the government would be open to such a [self-regulatory] mechanism and would also be amenable to changes in the rules in case they were found to be more effective*”.⁴⁴ Koo, a micro-blogging platform, voicing its full support for the Draft IT Rules Amendment, 2022, including the establishment for an Appellate Committee, offered a concerning alternative to the GAC in case of its non-establishment.⁴⁵ It recommended the creation of a “*single industry wide SRB working under a Code of Conduct set up by Meity*”.⁴⁶ Furthermore, Koo even volunteered to “*anchor and coordinate creation of the SRB and an Indian Code of Conduct*”.⁴⁷
- 2.18. We strongly oppose the creation of such an industry wide SRB as well as the proposal to create an “Indian Code of Conduct” (hereinafter, “ICOC”). Self-regulation will lead to SMIs establishing extra caution and discretion in the case of politically controversial content, ultimately resulting in self-censorship and

⁴⁴ Deeksha Bhardwaj, ‘New amendments to IT Rules: Govt holds consultation on grievance clause’ (*Hindustan Times*, 24 June 2022) <<https://www.hindustantimes.com/india-news/new-amendments-to-it-rules-govt-holds-consultation-on-grievance-clause-101656010151491.html>>.

⁴⁵ Aashish Aryan, ‘Open to changing IT rules in future: Rajeev Chandrasekhar’ (*The Economic Times*, 23 June, 2022) <<https://economictimes.indiatimes.com/tech/technology/open-to-changing-it-rules-in-future-rajeev-chandrasekhar/articleshow/92417660.cms>>.

⁴⁶ Ibid.

⁴⁷ Ibid.

a vast chilling effect. This has already been noticed with OTT platforms, where multiple shows on these on-demand video streaming platforms had been censored or cancelled in view of the IT Rules, 2021 before Constitutional Courts intervened.⁴⁸ Any such model of regulation will likely have a substantial impact on citizens' digital rights, result in economic harm, and also negatively impact freedom of speech and expression, and access to information.

3. Analysis and recommendations for rights respecting platform regulation

3.1. We recognise the market imbalance and information asymmetry resulting from big social media companies acting as gatekeepers. We also acknowledge that the goal to abolish gatekeeping and lower barriers to market entry may be achieved in more than one way.⁴⁹ Our foremost suggestion would be to view the issue with respect to social media intermediaries not only from a content distribution, moderation and safe harbour frameworks but also from an economic perspective. We advocate our support for a pro-competition regulatory framework, or regulatory interventions to ensure interoperability to maintain openness, wherein the power imbalance among social media platforms are reduced and space for plural, diverse voices are created. Simultaneously, the regulation framework must abide by internationally accepted human rights standards. The government must refrain from directly undertaking moderation of online content, while also establishing independent authorities as a check against concentration of power by a few social media platforms. Most importantly, the scope of regulation must be restricted to "*illegal content*" rather than "*legal but harmful content*" as it enables private entities to become arbiters of permissible speech.⁵⁰

3.2. While, in general we do not dispute the need to regulate the internet, they need to be based and follow democratic and constitutional principles. The IT Rules, 2021 continue to raise grave civil liberty concerns and also have serious implications on the freedom of speech and expression as well as the right to privacy of users of the internet. Thus, the above mentioned issues deserve further scrutiny, and so we request firstly for their recall and a fresh public consultation process in line with the Pre-Legislative Consultation Policy adopted on February 5th, 2014 (circular no. 11 (35)/ 2013-L.I.)⁵¹ on platform regulation.

⁴⁸ Lata Jha, 'OTTs tread cautiously, cancel shows' (*Mint*, 09 March 2021) <<https://www.livemint.com/industry/media/otts-tread-on-cautious-ground-axe-shows/amp-11615188592226.html>>.

⁴⁹ 'Taming Big Tech - Protecting freedom of expression through the unbundling of services, open markets, competition, and users' empowerment' (*Article 19*, 2021) <https://www.article19.org/wp-content/uploads/2021/12/Taming-big-tech_FINAL_8-Dec-1.pdf>.

⁵⁰ 'Watching the watchmen - Content moderation, governance, and freedom of expression' (*Article 19*, 2021) <https://www.article19.org/wp-content/uploads/2021/12/Watching-the-watchmen_FINAL_8-Dec.pdf>.

⁵¹ Legislative Department, Ministry of Law and Justice, Government of India, 'Pre Legislative Consultation Policy' (*Ministry of Law and Justice, Government of India*, 05 February 2014) <<https://legislative.gov.in/documents/pre-legislative-consultation-policy>>.

- 3.3. Given the significant and wide-ranging implications of the IT Rules, 2021, we believe the government must also publish a white paper underlining the government's intent with respect to intermediary liability and online content regulation. To this extent, we believe the MEITY must revive the erstwhile Cyber Regulations Advisory Committee ("CRAC") under Section 88 of the IT Act, 2000. IFF filed an RTI with MEITY dated February 13, 2019, seeking information on the dates and copies of minutes of each meeting held by the CRAC, the constitution of CRAC as of February, 2019, as well as all the policy decisions that the CRAC advised the Central Government on.⁵² Upon receiving incomplete information by MEITY we filed a first appeal without any meaningful response on the activities of the CRAC.⁵³ Hence, we request that the CRAC be re-constituted with an adequate amount of representation from experts, academics, technologists and civil society organisations. We stress this aspect only because earlier constitutions of the committee witnessed low amounts of participation from the aforementioned groups.⁵⁴
- 3.4. We further ask that any future version of the IT Rules, 2021 substantially engage with the recommendations put forth by the Standing Committee on Subordinate Legislation's report on the The Information Technology (Intermediaries Guidelines) Rules, 2011, which too had recommended making the CRAC functional again [Section F (Para 79)].⁵⁵ These recommendations also included:
- 3.4.1. Removing any definitional vagueness to prevent misuse [Section A (Para 25)].
 - 3.4.2. Ensuring that any decision to remove content is taken by an independent authority [Section B (Para 49)].
 - 3.4.3. Providing procedural safeguards when content is removed such as an obligation to provide reasoned order, a right to be heard to the content creator and the right to appeal the decision of the authority [Section B (Para 49)].

⁵² RTI filed with MEITY by Internet Freedom Foundation dated February 13, 2019
<https://drive.google.com/file/d/108nlwwCeJqzYhZ_ejP7_B2qpSGYbg8po/view>.

⁵³ RTI filed with MEITY by Internet Freedom Foundation dated April 15, 2019
<<https://drive.google.com/file/d/1LrfdEw4DEF8o36B6oXBLZRihwBeSxdb/view>>.

⁵⁴ Pranesh Prakash, 'No Civil Society Members in the Cyber Regulations Advisory Committee' (*The Centre for Internet & Society*, 09 January 2013) <<https://cis-india.org/internet-governance/blog/cyber-regulations-advisory-committee-no-civil-society>>.

⁵⁵ Committee On Subordinate Legislation (2012-2013), 'The Information Technology (Intermediaries Guidelines) Rules, 2011' (*Lok Sabha Secretariat*, 21 March 2013) <[https://eparlib.nic.in/bitstream/123456789/64846/1/15_Subordinate_Legislation_31.pdf#search=The%20Information%20Technology%20\(Intermediaries%20Guidelines\)%20Rules,%202011,%20Committee%20on%20Subordinate%20Legislation%2015](https://eparlib.nic.in/bitstream/123456789/64846/1/15_Subordinate_Legislation_31.pdf#search=The%20Information%20Technology%20(Intermediaries%20Guidelines)%20Rules,%202011,%20Committee%20on%20Subordinate%20Legislation%2015)>.

3.4.4. Creating a minimum requirement for any forthcoming regulatory framework, so that such provisions provide a basic level of operational transparency [Section B (Para 49)].

4. Clause-by-clause submission

Rules	Comments/Suggestions	Reasoning and Support
Rule 2(1)(l)	A GAC will act as an oversight mechanism against decisions of Grievance Redressal Officers (“GRO”), who were required to be appointed by all social media platforms under Rule 2(2) of the IT Rules, 2021. In the absence of rules which ensure the independence of the GAC, we strongly suggest that such a body not be constituted (Broad reasons and justifications are provided above).	The constitutional validity of the IT Rules, 2021 was challenged before several High Courts. The Bombay ⁵⁶ and Madras High Courts ⁵⁷ stayed Rules 9(1) and 9(3) under Part III that sought to establish an oversight mechanism over digital news publishers and OTT platforms, warning that it may ‘ <i>rob the media of its independence</i> ’. Instead of addressing these existing concerns, MEITY has sought to establish an oversight mechanism over social media intermediaries as well. Such a move will seriously threaten the free expression of millions of Indians and in effect have similar implications as the IT Rules, 2021, which have been stayed by constitutional courts.
Rule 3(1)(a)	The proposed amendment to this clause extends the compliance obligation of the intermediary by not only asking it to prominently publish the rules, regulations, privacy policy, etc., but also ensuring “ <i>compliance of the same</i> ”. These proposed amendments seek to overturn years of jurisprudence surrounding intermediary protections as well as the Supreme Court judgement in <i>Shreya Singhal</i>	The phrasing of the amendment is vague and lacks clarity over how such compliance is to be ensured by the intermediaries. Social media platforms may risk losing their intermediary protection under the IT Act if a Court determines that they failed to comply with the IT Rules, 2021. Since millions of content are generated on multiple social media platforms, in a variety of contextually different ways every day, it makes it almost impossible for intermediaries to exercise complete control over what users choose to

⁵⁶ Order dated August 14, 2021 in *Agji Promotion of Nineteen One Media Pvt. Ltd. & Ors. v. Union of India & Anr*, 2021 SCC OnLine Bom 2938 <<https://drive.google.com/file/d/10Ng6Ve2pXTf2G78UHBfGntwMndKpQLqj/view?usp=sharing>>.

⁵⁷ Order dated 16 September 2021 in *T.M. Krishna v. Union of India & Anr.*, WP(C) 12515 of 2021 <https://drive.google.com/file/d/1uaUYSD-0RZIO7AixvndPnwEGraq_4fNk/view?usp=sharing>.

	<p><i>vs Union of India</i>.⁵⁸ This is not permissible under the constitutional scheme of India. In the absence of clarity over how the intermediaries can ensure compliance, this amendment must be withdrawn.</p>	<p>say or do on their platforms. Thus, intermediary protections are necessary as they restrict content removal by social media platforms as a response to government orders or court directions for removal of content. This model is internationally recognised and was even set out by the Supreme Court in the landmark judgement of <i>Shreya Singhal vs Union of India</i>.⁵⁹</p>
<p>Rule 3(1)(b)</p>	<p>Amendment to Rule 3(1)(b) requires platforms to “<i>cause</i>” users not to post content that is “<i>ethnically objectionable</i>”, “<i>harmful to child</i>”, “<i>insulting another nation</i>” or is “<i>misleading in nature</i>”, etc. Prior to the proposed amendments, this Rule only required platforms to “<i>inform</i>” their users. This amendment must be withdrawn as it enables private entities to be an arbiter of permissible speech and is in violation of the directions of the Hon’ble Supreme Court in <i>Shreya Singhal vs Union of India</i>.</p>	<p>Up until now, social media platforms were only required to inform their users, <i>inter alia</i>, about the kind of content they could not host, display, publish, etc. The amended clause now requires that social media platforms “<i>shall cause</i>” their users not to do so. The vaguely worded phrase doesn’t provide clarity as to how the intermediaries will comply with these new obligations and whether this will translate into an obligation to proactively monitor and scan all user generated content. Practically, this could disproportionately affect politically inconvenient or controversial speech, and potentially lead to arbitrary censorship. It is also in violation of the <i>Shreya Singhal</i>, where the Court held that intermediaries cannot decide permissibility of any content without an order of a court or an order by the Government.</p>
<p>Rule 3(1)(m)</p>	<p>While we appreciate that the amendment requires platforms to take reasonable measures to ensure accessibility as well as privacy and due process, the term “<i>accessibility</i>” is vague and does not have a definition.</p>	<p>The term “<i>accessibility</i>” could also mean “<i>visual accessibility</i>” or even “<i>access to services</i>”. Hence, there is not much clarity around the term itself. It may be used as a basis to question the, “<i>de-platforming</i>” decisions of social media intermediaries.</p>

⁵⁸ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1, Para 122 <<https://indiankanoon.org/doc/110813550/>>.

⁵⁹ Ibid.



<p>Rule 3(1)(n)</p>	<p>We appreciate that the amendment requires platforms to respect the constitutional rights of Indians. However, the clause does not appear to be practically or judicially enforceable, and thus must be rephrased given that constitutional duties of state instrumentalities cannot be extended to private entities.</p>	<p>As a result of the phrasing of this amendment, there will inevitably be a lack of clarity with respect to its enforceability. The vagueness of the amendments doesn't clarify whether it proposes that fundamental rights can now be judicially enforced against private platforms. Further, there is little legal basis in statute, or justification provided rendering this insertion suspect.</p>
<p>Rule 3(2)(a)(i)</p>	<p>Rule 3(2)(a)(i) requires disposal of requests for content removal within 72 hours. This may potentially lead to arbitrary censorship by intermediaries and suppression of free speech, in an attempt to avoid the legal consequences of the IT Rules, 2021.</p>	<p>The obligation to address any user generated complaint within 72 hours is not only difficult to comply with but will inevitably lead to incorrect decision making, and as a result, arbitrary censorship of speech. An empirical study conducted by The Centre for Internet and Society points out that intermediaries tend to over-comply with such takedown requests to limit their liability and this has a chilling effect on free speech and expression of all users.⁶⁰</p>
<p>Rule 3(3)</p>	<p>The proposal, without any legislative basis, seeks to subject content on social media platforms to the direct scrutiny of the Government by permitting users to appeal decisions of the platforms to a GAC, constituted by MEITY. The constitution of such a Committee is neither feasible nor desirable. But in any scenario, if the GAC is constituted, the IT Rules, 2021 must provide the complainants/content creators a right of hearing before the GAC and state the procedure that the GAC will be obliged to follow. It must also state the minimum qualifications, composition and functions of the Committee members.</p>	<p>The creation of the GAC, through the proposed amendments, is without any legislative backing since the amendments will be issued by the Ministry to its own Rules, and not by the Parliament to a statutory legislation.</p> <p>Despite the concerns around its constitutionality, even if such a committee is constituted, the feasibility of it being able to deal with a large number of appeal requests and possibility of the executive-constituted committee delivering unbiased decisions is highly unlikely.</p> <p>Furthermore, the proposed amendment doesn't even provide a right of hearing before the Committee to complainants / content creators or state the procedure the</p>

⁶⁰ Rishabh Dara, 'Intermediary Liability in India: Chilling Effects on Free Expression on the Internet' (*The Centre for Internet & Society*, 27 April 2012) <<https://cis-india.org/internet-governance/chilling-effects-on-free-expression-on-internet>>.



		Committee will follow. It also fails to state the minimum qualifications to be on the Committee.
Rule 4(8)(b)	<p>The proposed amendment to this clause changes the erstwhile timeline of 15 days for disputing the action of removing or disabling access to any information, data or communication link by an intermediary. The amendment now requires the GRO to acknowledge a complaint within 24 hours and dispose of such complaint within 15 days. However, the amendment requires expeditious redressal within 72 hours of reporting in case “the complaint in the nature of request for removal of information relating to sub-clause (i) to (x) under sub-rule (1) or Rule 3”.</p> <p>Such a short timeline will create the possibility of disposal of grievances without application of mind and may lead to arbitrary restriction on speech.</p>	The amendment doesn't address the existing concern around the fact that GRO for intermediaries other than significant social media intermediaries are not required to furnish reasons for the decision taken regarding complaints received by them. They don't have to furnish reasons either to the complainant or even to the user whose content may have been removed.

- As firm believers in institutional processes, we are always available for any opportunities to provide any inputs which lead to informed and evidence based recommendations and outputs. We are contactable at policy@internetfreedom.in, and you can also reach out to Mr. Prateek Waghre, Policy Director at prateek@internetfreedom.in and director, Mr. Apar Gupta, Executive Director at apar@internetfreedom.in. We are hopeful to engage with MEITY to ensure a rights respecting framework for platform regulation.



Annexure 1: Table summarising challenges to IT Rules, 2021 pending before High Courts

Last Updated July 4, 2022

S No.	Name of case	Forum	Scope of challenge	Orders	Lawyers	Pleadings	Media coverage
1.	LiveLaw Media Private Limited and others vs Union of India and others WP(C) 6272/2021	High Court of Kerala at Ernakulam	Part II and Part III of the IT Rules, 2021	Notice issued. Respondents have been restrained from taking coercive actions against the Petitioner for non-compliance with Part III of the Rules. Copy of the order	Santhosh Mathew assisted by IFF	Copy of the Petition	https://www.liv elaw.in/top-stories/kerala-high-court-new-it-rules-orders-no-coercive-action-issues-notice-on-liv elaws-plea-170983
2.	Foundation for Independent Journalism and others vs Union of India and another WP(C) 3125/2021	Delhi High Court	Part III of the IT Rules, 2021	Notice issued and the Respondents have to file counter-affidavit. Copy of first order	Nitya Ramakrishnan Sr. Adv. with Mr. Prasanna S., Mr. Ashwath Sitaraman & Ms. Vinoothna Vinjam.	Copy of the Petition .	https://www.liv elaw.in/top-stories/delhi-high-court-information-technology-guidelines-for-intermediaries-and-digital-media-ethics-code-rules-2021-170916?infinite_scroll=1
3.	Quint Digital Media Limited and another vs Union of India and another WP(C) 3659/2021	Delhi High Court	Part III of the IT Rules, 2021	Copy of the first order .	Nitya Ramakrishnan Sr. Adv. with Mr. Prasanna S., and Ms. Vinoothna Vinjam.	Copy of the Petition .	https://www.liv elaw.in/top-stories/delhi-high-court-issues-notice-on-petition-filed-by-the-quint-against-new-it-rules-on-digital-news-media-171405
4.	Pravda Media Foundation (Alt News) vs	Delhi High Court	Part III of the IT Rules 2021	Notice issued on 28.06.2021 and listed along	Nitya Ramakrishnan Sr.	Copy of the Petition	Not available



	Union of India and Anr WP (C) 5973/2021			with <i>Foundation for Independent Journalism and Quint Digital Media Limited</i>	Adv. with Mr. Prasanna S		
5.	Press Trust of India Limited vs Union of India & Anr WP(C) 6188/2021	Delhi High Court	Part III of the IT Rules, 2021	Notice issued 07.07.2021. Returnable on 20.08.2021	Mr NB Joshi	Not available	Not available
6.	Sanjay Kumar Singh vs Union of India and others WP(C) 3483/2021	Delhi High Court	Part II of the IT Rules	Copy of the order .	Petitioner in person	Copy of the Petition	https://fpf.org/blog/indias-new-intermediary-digital-media-rules-expanding-the-boundaries-of-executive-power-in-digital-regulation/
7.	WhatsApp LLC v. Union of India WP(C) 7284/2021	Delhi High Court	Rule 4(2) of the IT Rules, 2021	Notice issued.	SAM for petitioners	Copy of the Petition	https://www.livemint.com/news/india/whatsapp-moves-delhi-high-court-challenging-traceability-clause-as-being-violative-of-right-to-privacy-174704
8.	Facebook Inc vs Union of India WP(C) 7281/2021	Delhi High Court	Rule 4(2) of the IT Rules, 2021	Notice issued.			
9.	Uday Bedi vs Union of India WP(C) 6844/2021	Delhi High Court	Rule 3 and Rule 4 of IT Rules	Notice issued			https://www.livemint.com/news/india/delhi-high-court-issues-notice-on-fresh-plea-challenging-it-rules-17



							7926
10.	Truth Pro Foundation of India vs Union of India and others WP(C) 6491/2021,	Karnataka High Court	Part III of the IT Rules, 2021		Rakesh B Bhatt	Copy of the Petition	https://thewire.in/media/kannada-news-portal-pratidhvani-challenges-new-it-rules-in-karnataka-high-court
11.	Praveen Arimbrathodiyil vs Union of India WP(C) 9647/2021	High Court of Kerala at Ernakulam	Part II of the Rules	HC has not uploaded the order yet. According to reports, notice was issued to the Respondent. On 22.09.2021, the Respondents filed a reply stating that they have sought a transfer to the SC.	Prasanth Sugathan (SFLC)	Copy of the Petition	https://twitter.com/SFLCin/status/1380808501274894343
12.	TM Krishna vs Union of India WP (C) No. 12515/2021	Madras High Court	Part II and Part III of the Rules	Court has issued an interim order affirming BHCs stay on Part III and subjecting any decision under rules 3 & 7 to the decision of the petition.	Suhrith Parthasarthi assisted by IFF	Copy of the Petition .	https://internetfreedom.in/madras-high-court-affirms-the-pan-india-stay-on-rule-9-3-of-the-it-rules-and-provides-relief-on-part-ii/
13.	Digital News Publishers Association and Anr v Union of India and ors	Madras High Court	Rules 12, 14 and 16 of the IT (Intermediary Guidelines and Digital Media	Court has issued an interim order affirming BHCs stay on Part III and subjecting any decision	PS Raman Sr. Adv. R. Parthasarathy Rangasaran	Copy of Petition .	https://www.bandbench.com/news/litigation/madras-high-court-it-rules-2021-digital-news-publishers-



	WP (C) No. 13055 of 2021		Ethics Code) Rules, 2021	under rules 3 & 7 to the decision of the petition.	Mohan, Vishnu Mohan, B. Madhan Babu, Rahul Balaji,		association-mukund-padmanabhan
14.	Indian Broadcasting & Digital Foundation v. Ministry of Electronics and Information Technology & Ors WP/25619/2021 (Gen. Misc.)	Madras High Court	Part III of the IT Rules	The respondents are restrained from taking any coercive action against the petitioners without seeking permission of the Court.	Not available	Not available	https://indianexpress.com/article/india/no-coercive-action-digital-media-app-oval-madras-hc-7663261/
15.	Sayanti Sengupta vs Union of India and Anr. WPA(P) No. 153 of 2021	Calcutta High Court	Part II of IT Rules, 2021	Notice issued, Union of India has been directed to file counter-affidavit on or before 19.07.2021	Senior Advocate Bikash Ranjan Bhattacharyya, Advocates Saptarshi Banerjee and Jamiruddin Khan.	Not available	https://www.livelihoods.in/newsletter/calcutta-high-court-it-intermediary-guidelines-and-digital-media-ethic-code-rules-2021-176591
16.	Nikhil Wagle vs Union of India PIL (L) /14204/2021 (with W.P.(L) No. 14172/2021)	Bombay High Court	Part II of the IT Rules	Interim order issued on 14.08.2021 staying the operation of Rule 9(1) and Rule 9(3) of IT Rules, 2021. Copy of the order	Abhay Navengi	Not available	https://www.livelihoods.in/news-updates/journalist-nikhil-wagle-challenges-it-rules-in-bombay-high-court-176669



17.	<i>The Leaflet (Nineteenone Media Private Limited) & Anr vs Union of India</i> WPL/14172/2021	Bombay High Court	Part III of the IT Rules	Interim order issued on 14.08.2021 staying the operation of Rule 9(1) and Rule 9(3) of IT Rules, 2021. Copy of the order .	Maneez Kakalia Darius Khambata, Sr. Adv.	Not available	https://www.newslaundry.com/2021/07/05/the-leaflet-move-s-high-court-against-vague-overbroad-unconstitutionally-arbitrary-it-rules
18.	<i>News Broadcasters Association vs Ministry of Electronics and Information Technology</i> WP(C) 13675/2021	Kerala High Court	Part III of the IT Rules	Notice issued. Respondents have been restrained from taking coercive actions against the Petitioner for non-compliance of Part III of the Rules.	Maninder Singh, Sr. Adv.	Copy of the Petition .	https://www.livelaaw.in/top-stories/kerala-high-court-it-rules-non-compliance-nba-news-broadcasters-association-coercive-action-177142?infinite-scroll=1



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Internet Freedom Foundation (“IFF”) is a registered charitable trust which advocates for the digital rights of Indians. Our mission is to ensure the growth of democratic rights with digitisation guaranteed under the Constitution of India.

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