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Digital Code Rules 2026: The New Frontier of OTT Regulation and the Constitutional Limits of Digital Censorship

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With the adoption of the Draft Information Technology (Digital Code) Rules, 2026, India's digital landscape is experiencing a significant structural change. This regulation change represents a move away from the 'light-touch' oversight that once defined the Over-the-Top (OTT) industry and toward a highly prescriptive framework that aims to align online programming with conventional broadcast standards. The Union administration intends to address growing legal and public concerns about obscenity, communal discord, and the protection of vulnerable audiences by enacting strict age-based classifications and clear 'red lines' addressing language and topics. However, the constitutionality of using guidelines from the 1994 Cable Television Networks Rules, a framework, is at the centre of the present policy discussion created for linear broadcasting and transferring them to the 'pull' model of on-demand digital streaming, which is intrinsically autonomous.

Keywords: *information technology, digital landscape, union administration, television.*

INTRODUCTION

India's media environment is at a crossroads as state control tightens and content creation becomes more democratic. The Draft Information Technology (Digital Code) Rules 2026 are at the centre of this conflict. These draft regulations, which were put forth by the Ministry of Information and Broadcasting, seek to create a thorough framework to regulate the quickly growing digital media and Over-The-Top (OTT) ecosystems. The Draft Rules establish defined 'red lines' for language and thematic expressions as well as an obligatory age-based classification system in response to growing concerns about unregulated online obscenity. However, a heated constitutional controversy has been sparked by the regulatory approach of applying broadcast-era standards more precisely, the 1994 Cable Television Networks Rules to on-demand, digital programming. This strategy, according to critics, puts the basic right to freedom of speech and expression protected by Article 19(1)(a) of the Indian Constitution in jeopardy and could lead to a shift from justifiable limitation to digital censorship. The Draft IT (Digital Code) Rules 2026 are critically examined in this article, along with the structural changes they bring about, the legal fallacy of broadcast equivalency, and the significant ramifications for India's digital creator economy and democratic debate.

The Development of Media Governance and the Digital Disruption: India's media and entertainment industry is going through a significant structural transformation, moving from a localised, linear broadcasting paradigm to a decentralised, digital-first environment propelled by widespread smartphone adoption and high-speed internet access. In the past, Indian media were subject to a highly segmented regulatory framework that operated through separate statutory silos with dedicated gatekeepers. Under the Press Council Act of 1978¹, the Press Council of India was in charge of print media. The Central Board of Film Certification was in control of film displays under the Cinematograph Act 1952², and the Ministry of Information and broadcasts used the Cable Television Networks (Regulation) Act of 1995³ to control linear television broadcasts. This heritage paradigm was based on the idea that media consumption was a mass-distributed, geographically limited phenomenon that needed proactive state control to uphold morality and public order. This conventional gatekeeping paradigm was totally

¹ Press Council Act 1978

² Cinematograph Act 1952

³ Cable Television Networks (Regulation) Act 1995

upended by the emergence of over-the-top streaming services. A borderless, on-demand video delivery strategy that eschewed traditional licensed broadcasters and cable networks was offered by platforms like Netflix, Amazon Prime Video, Disney+ Hotstar, and several regional services. These digital platforms were shielded from the strict pre-censorship procedures used for film releases and the prescriptive programming regulations enforced on television broadcasters, allowing them to function in a comparatively regulatory vacuum for years. The Information Technology Act of 2000's⁴ fundamental provisions and broad criminal regulations pertaining to hate speech, obscenity, and defamation were the main sources of early digital regulation.⁵

However, the digital economy's rapid expansion, which is expected to propel the Indian media and entertainment industry to a \$100 billion valuation by 2030, was followed by an increasing quantity of sophisticated, culturally challenging, and politically expressive content. The State's first attempt to establish a systematic, three-tier grievance redressal procedure for digital news publishers and over-the-top (OTT) platforms was the introduction of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021⁶. However, significant judicial interventions, public outcry over purported cultural insensitivities, and growing political scrutiny sparked a call for more coercive monitoring, which resulted in the extremely contentious Draft IT (Digital Code) Rules, 2026.

The Judicial Catalyst: From Supreme Court orders to platform autonomy: Judicial instructions greatly expedited the shift from a platform self-regulation concept to strict executive control. Following several disputes in which digital content was said to violate social standards, the Supreme Court of India became more involved in determining the limits of digital free expression. The susceptibility of OTT executives to criminal prosecution and coerced anticipatory compliance was brought to light by past disagreements, such as the scandals surrounding the political drama series *Tandav*. However, the 2026 Rules were created as a direct result of recent incidents. The controversy surrounding comedian Samay Raina's YouTube show *India's Got Latent* served as a crucial motivator.⁷ A sexually explicit remark made by social media

⁴ Information Technology Act 2000

⁵ *Ibid*

⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021

⁷ 'Amid Ranveer Allahbadia & Samay Raina's 'India's Got Latent' controversy, Centre warns OTT platforms against obscene & vulgar content: 'Anything which is prohibited by law...' *Firstpost* (21 February 2025)

<<https://www.firstpost.com/entertainment/amid-ranveer-allahbadia-samay-rainas-indias-got-latent-controversy-centre-warns-ott-platforms-against-obscene-vulgar-content-anything-which-is-prohibited-by-law-13865280.html>> accessed 02 May 2026

star Ranveer Allahbadia during an episode quickly went online and caused a great deal of public indignation. The difficulties of controlling digital obscenity in a time of viral dispersion were highlighted when the Maharashtra Cyber Police filed First Information Reports against the producers for allegedly sending pornographic material.⁸ When the case made its way to the Supreme Court in late 2024 and early 2025, the judiciary expressed serious worries about the potential for OTT programming and user-generated content to harm a company's reputation and expose children to pornographic or adult content. The Supreme Court stressed the necessity for an unbiased system to screen content and specifically ordered the Ministry of Information and Broadcasting to develop detailed rules to control internet obscenity. The Court emphasised that although the right to free expression is fundamental, it is subject to the 'reasonable restrictions' specified in Article 19(2)⁹, especially about morality, decency and public order. The executive branch was motivated to propose the Draft IT (Digital Code) Rules 2026 by this particular judicial order, seeking to achieve a compromise between protecting artistic expression and upholding legal red lines.¹⁰

THE DRAFT IT (DIGITAL CODE) REGULATIONS' STRUCTURAL FRAMEWORK, 2026

The Draft IT (Digital Code) Rules 2026 represent the most comprehensive regulatory change ever proposed for the Indian digital ecosystem. They are framed under Section 87(1) of the Information Technology Act 2000 and read in conjunction with Sections 67, 67A, and 67B, which penalise the electronic transmission of obscene and sexually explicit material¹¹. Mandatory age classification, strict parental access controls, and the codification of clear banned themes form the foundation of these draft regulations' design.¹² The guidelines make a significant structural change by transitioning from voluntary self-classification to a mandatory, uniform age-rating system for all digital content, establishing a structure that is very similar to traditional cinema certification. To increase audience knowledge and facilitate parental control, the guidelines need a detailed classification taxonomy.

⁸ Draft Information Technology (Digital Code) Rules 2026

⁹ The Constitution of India 1950, art 19(2)

¹⁰ Cable Television Networks Rules 1994

¹¹ Information Technology Act 2000, ss 67, 67A, 67B and 87(1)

¹² 'Draft IT (Digital Code) Rules, 2026: Key Provisions & Concerns' (PMF IAS) <<https://www.pmfias.com/draft-it-digital-code-rules-2026/#:~:text=Age%20Classification%3A%20The%20draft%20proposes,nudity%20before%20each%20programme%20begins.>> accessed 02 May 2026

Classification Tier	Audience Suitability Profile	Access Control and Compliance Mandates
U (Universal)	Suitable for audiences of all ages; devoid of explicit material.	Standard availability without access restrictions.
U/A 7+	Suitable for children aged 7 and above; parental guidance advised.	Mandatory display of age rating and content descriptors.
U/A 13+	Suitable for teenagers aged 13 and above; may feature mild mature themes.	Mandatory implementation of technological parental control mechanisms.
U/A 16+	Suitable for mature audiences; may contain strong language or moderate violence.	Robust parental locks and pre-program content warnings detailing specific themes.
A (Adult Only)	Restricted exclusively to adults; features explicit language, sexual content, or intense violence.	Compulsory deployment of reliable, robust age-verification systems to prevent minor access.
Professional	Specialized content intended strictly for academic, medical, or scientific audiences.	Exempted from general public classification norms; distributed through targeted gating.

The operational ramifications of this classification scheme are considerable. Before the program begins, every piece of digital content must prominently display its assigned age rating, as well as specific ‘Content Descriptors,’ which explicitly warn the viewer of the presence of violence, nudity, sexual situations, substance abuse, horror elements, or explicit language.¹³

Crucially, the requirement for ‘reliable age verification systems’ for adult-only content places the regulatory responsibility squarely on the technological infrastructure of online curators and social media intermediaries. This requirement implies a shift from passive ‘click-to-confirm’ warnings to active, verifiable technology interventions, which raises serious questions about user privacy, data retention, and financial viability for smaller platforms.

THE ‘RED LINES’: RESURRECTING THE 1994 CABLE TELEVISION NETWORKS’ RULES

The most highly researched and legally problematic aspect of the Draft IT (Digital Code) Rules, 2026, is the broad redefining of ‘obscenity’ and the imposition of rigorous ‘red lines’ restricting allowed language and subject exploration. The regulatory verbiage used in the 2026 Draft Rules is not totally unique; rather, it is lifted almost identically from the Programme Code (Rule 6) and the Advertising Code (Rule 7) of the Cable Television Networks Rules, 1994¹⁴.

Rule 6, developed over three decades ago for the control of linear, family-oriented cable television, created an ethical boundary that prohibited shows that affront ‘good taste or decency’¹⁵, contained criticism of friendly nations, or promoted community ideas. It expressly forbade content containing libellous, misleading, or provocative innuendos, as well as material disparaging women or children. Similarly, Rule 7 established an Advertising Code that prohibits content that offends religious sensibilities, exploits social ills, or glorifies violence.¹⁶

The Draft Rules 2026¹⁷ introduce a wide range of forbidden content for OTT platforms by transferring these historical broadcast codes to the digital medium. According to the proposed digital Code of Ethics, platforms are legally prohibited from hosting lascivious or sexually explicit content. Furthermore, the framework outright prohibits information that disparages, insults, or

¹³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021

¹⁴ Programme and Advertising Codes prescribed under the Cable Television Network Rules 1994, rr 6 and 7

¹⁵ Programme and Advertising Codes prescribed under the Cable Television Network Rules 1994, r 6

¹⁶ Programme and Advertising Codes prescribed under the Cable Television Network Rules 1994, r 7

¹⁷ Draft Rules 2026

mocks any religion, community, caste, or nationality. It outlaws the promotion of criminality or obscenity, the use of defamatory or intentionally misleading half-truths, and the use of explicit scenes or bad language in content aimed at kids.

The extension of these principles to the internet sphere essentially offers governmental authorities considerable authority to assess whether nuanced, on-demand content meets the subjective standards of ‘decency’ originally meant for continuous television broadcasts. This regulatory policy seeks to achieve total parity between broadcast and online material, establishing what the government refers to as a ‘One Nation, One Regulatory Philosophy.’

THE BROADCAST EQUIVALENCE FALLACY: PUSH VS PULL-BASED MEDIA

The failure to grasp the basic distinction between ‘push-based’ and ‘pull-based’ media transmission is crucial to the legal, technological, and functional critiques of retrofitting the 1994 Cable TV rules onto modern streaming platforms.

Traditional broadcasting services, such as cable television and radio networks, follow a ‘push-based’ paradigm. In this architectural format, content is mass-distributed to an audience at the same time, with the broadcaster or network operator completely controlling the timing, sequencing, and type of programming. The viewer has relatively little control; they can change the channel or switch off the gadget, but they cannot set the timetable or skip certain scenes. Because linear television is ubiquitous, intrudes into the domestic sphere uninvited, and provides little user control, the judiciary and regulatory bodies have historically justified stricter content regulations, such as the Cable TV Programme Code, to protect captive audiences, particularly children, from unintentional exposure to inappropriate content.

Over-The-Top streaming services, on the other hand, rely exclusively on a ‘pull-based’ or ‘narrowcast’ approach. In the digital on-demand ecosystem, the user has complete and granular control over what content to consume, when it is consumed, and the device used. Users actively seek out, select, and frequently pay for specific programming from a large, categorised library. They have the technological ability to skip scenes, pause playback, read comprehensive synopses, and access content that is protected behind age-gated paywalls. Applying push-based legislative norms to pull-based digital media presents serious constitutional issues. Equals must be treated alike, according to Article 14 of the Indian Constitution, which guarantees equality before the law, and portraying essentially unequal things as equals violates the equality principle. Legal

scholars and industry players say that the level of control a user has over the sequence and selection of material serves as an ‘intelligible differentia’ that legally distinguishes OTT platforms from traditional cable television into two distinct regulatory classes.¹⁸ Eliminating the distinction between push and pull media places unnecessary and severe limits on platforms that rely on user-driven selection, resulting in a basic misunderstanding of the nature of digital autonomy. While supporters of the new regulation advocate for an ‘Effect Test,’ claiming that digital content has the same potential to harm public morality and societal fabric as linear television, regardless of user control mechanisms, critics argue that a tailored, context-sensitive regulatory framework that recognises on-demand viewing autonomy is both legally and practically required.

CONSTITUTIONAL FRICTION: ARTICLE 19(1)(A) AND THE DOCTRINE OF REASONABLE RESTRICTIONS

The principal constitutional battleground for the Draft IT (Digital Code) Rules, 2026 is the protection of artistic freedom, creative expression, and the fundamental right to free speech protected by Article 19(1)(a)¹⁹ of the Constitution. In India's democratic structure, the media serves as the ‘fourth estate,’ and Article 19(1)(a)²⁰ is judicially read directly into it. This right isn't absolute. Any legislative or executive framework limiting this right must strictly adhere to the exhaustive grounds specified in Article 19(2)²¹, which allows ‘reasonable restrictions’ only in the interests of India's sovereignty and integrity, the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation, or incitement to an offence. The Draft Rules for 2026²² try to operationalise the Article 19(2)²³ exceptions, particularly those about ‘decency,’ ‘morality,’ and ‘public order’ by codifying the digital red lines for obscenity. To assess the legitimacy of these prohibitions, one must look at the extensive history of Indian jurisprudence on the limits of artistic expression. Historically, the Supreme Court has stressed the importance of delicately balancing the right to free speech against society's interests, but it has consistently protected creative expression from overly sensitive moral policing. The Indian judiciary has gradually moved away from rigorous, outdated

¹⁸ Press Council Act 1978

¹⁹ The Constitution of India 1950, art 19(1)(a)

²⁰ *Ibid*

²¹ The Constitution of India 1950, art 19(2)

²² Draft Rules 2026

²³ The Constitution of India 1950, art 19(2)

Victorian standards (such as the Hicklin test) and toward a more current and contextual ‘Community Standards Test’ when examining content for obscenity.²⁴ In the landmark decision *Aveek Sarkar v State of West Bengal*²⁵, the Supreme Court established that content involving nudity, explicit language, or mature themes must be evaluated holistically, taking into account its overarching artistic, social, or political intent, rather than isolating specific scenes or extracting words out of context. Furthermore, in the key case of *S. Rangarajan v P. Jagjivan Ram*,²⁶ the Court stated categorically that freedom of expression cannot be prohibited just because it is offensive to a specific portion of society or contradicts orthodox ideas.²⁷ The expected threat to public order or morals must be immediate, direct, and factual, analogous to a ‘spark in a powder keg,’ rather than speculative or far-fetched.

The Draft IT Rules, 2026²⁸, effectively avoid this extremely sophisticated, context-driven judicial approach by enacting broad, subjective executive orders. The laws offer administrative authorities excessive, unfettered discretionary power by defining allowed digital content using amorphous concepts like ‘good taste’ and ‘decency’, which lack exact statutory definitions. The assessment of what constitutes an ‘attack on religions,’ a ‘half-truth,’ or a violation of ‘good taste’ is essentially subjective, largely dependent on individual sensibilities, and hence highly vulnerable to political weaponisation. Vagueness, Overbreadth, and the Threat of the ‘Chilling Effect.’

A fundamental tenet of Indian constitutional law, solidified in cases such as *Maneka Gandhi v Union of India*, is the doctrine of reasonability, which dictates that laws limiting fundamental rights must be precisely focused, procedurally fair, and not overly broad. When legislation employs ambiguous and subjective criteria to regulate speech, it creates profound regulatory uncertainty, rendering it constitutionally vulnerable. Constitutional experts have harshly condemned the Draft Rules 2026 for failing the vagueness test. This precise constitutional weakness was the focus of the Supreme Court's landmark 2015 decision in *Shreya Singhal v Union of India*.²⁹ In that case, the Court completely invalidated Section 66A of the Information Technology Act, reasoning that the statute's undefined terms, such as ‘grossly offensive,’

²⁴ Cable Television Networks (Regulation) Act 1995

²⁵ *Aveek Sarkar & Anr v State of West Bengal & Anr* (2014) 4 SCC 257

²⁶ *S Rangarajan Etc v P Jagjivan Ram* (1989) SCC 2 574

²⁷ Information Technology Act 2000

²⁸ Draft IT Rules 2026

²⁹ *Shreya Singhal v Union of India* (2015) 5 SCC 1

menacing, and annoying, made it unconstitutionally vague and prone to arbitrary, draconian enforcement by law enforcement agencies. Legal academics believe that directly importing the amorphous predicates of the 1994 Cable TV Programme Code³⁰, such as ‘good taste’ and ‘decency’ into the 2026 Rules duplicates the exact constitutional problem that rendered Section 66A³¹ illegal. This widespread ambiguity invariably has a significant ‘chilling effect’ on free expression across the digital world. While the Draft Rules do not require pre-censorship or prior restriction in the conventional cinematic sense, the imposition of strict intermediary accountability and high legal penalties for non-compliance serves as an insidious sort of indirect, outsourced censorship.³² Faced with the persistent fear of expensive penalties, reputational harm, platform blockage, or criminal prosecution of corporate executives, Online Curated Content Providers are strongly encouraged to engage in anticipatory compliance and algorithmic over-censorship. Platforms are required to proactively filter content, erase politically sensitive moments, or reject socially meaningful storytelling that tackles complex political realities, caste dynamics, or mature themes to avoid generating arbitrary complaints or punitive punishment. This environment of extreme regulatory fear effectively silences dissenting voices, independent artists, and investigative journalism, profoundly limiting democratic discourse and nullifying the promise of digital democracy.

THE EROSION OF DUE PROCESS: THE THREE-HOUR TAKEDOWN MANDATE AND THE SAHYOG PORTAL

The substantive red lines established by the Draft IT (Digital Code) Rules, 2026, cannot be analysed in isolation from the procedural architecture through which the government enforces these codes. To withstand constitutional scrutiny, any restriction on fundamental rights must satisfy the ‘Proportionality Test,’ a doctrine primarily outlined in the landmark privacy judgment *K.S. Puttuswamy v Union of India*³³. The proportionality doctrine requires that any state action restricting rights serve a legitimate state goal, be a suitable means of furthering that goal, have no less restrictive alternatives available, and be carefully balanced against the extent of the fundamental right's infringement.

³⁰ Cable TV Programme Code 1994

³¹ Information Technology Act 2000, s 66A

³² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021

³³ *Justice K S Puttaswamy (Retd) v Union of India* (2019) 1 SCC 1

While the government's stated goals of protecting minors from explicit content, preventing digital harm, and mitigating the spread of disinformation are unquestionably legitimate, the enforcement mechanisms recently implemented by the State frequently fail the proportionality metric, particularly in terms of the erosion of due process. Shrinking Timelines and Algorithmic Gatekeeping.

The Union Government issued the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, in February 2026, significantly altering the temporal landscape of digital content management.³⁴ In response to the rapid global proliferation of deep fakes, synthetically generated information (SGI), and sophisticated misinformation campaigns, the government mandated that digital platforms execute takedowns within three hours of receiving a valid order regarding content deemed illegal under sovereignty, public order, or morality laws.³⁵ Furthermore, the compliance window for very sensitive categories, such as non-consensual personal imagery or deep fakes with nudity, is limited to two hours.³⁶ While the government justifies these extreme timelines by citing global tech giants' technical ability to act quickly to prevent harmful content from gaining viral traction, the mandate creates serious due process vulnerabilities. A three-hour window effectively eliminates the possibility of meaningful human legal review or contextual analysis. As a result, social media intermediaries and OTT platforms are forced to use aggressive, automated algorithmic filters to remove massive amounts of content proactively, solely to maintain their 'safe harbour' protections under Section 79³⁷ of the IT Act. This rate of regulation transforms platforms from neutral technological conduits to active, terrified gatekeepers who favour absolute liability avoidance over the protection of lawful, constitutional speech.

SAHYOG PORTAL: CENTRALIZING DIGITAL CENSORSHIP

The Indian Cybercrime Coordination Centre (I4C) of the Ministry of Home Affairs launched the Sahyog Portal, a centralised digital mechanism that speeds up and facilitates the operationalisation of this rapid-censorship infrastructure. The Sahyog Portal was developed

³⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2026

³⁵ *Aparna Purohit v State of Uttar Pradesh* (2021) SCC OnLine All 179

³⁶ Gautam Bhatia, *OFFEND, SHOCK, OR DISTURB: Free Speech under the Indian Constitution* (OUP 2016)

³⁷ Information Technology Act 2000, s 79

with the purported objective of making it easier for state and federal authorities, including local police officers, to issue takedown notices to intermediaries under Section 79(3)(b).

However, an analysis of the Sahyog portal's user manual reveals a filtering mechanism that lacks independent assessment or natural justice.³⁸ The targeted content providers are not informed or given the chance to defend their views; rather, the takedown orders are transmitted as private, direct contacts from law enforcement authorities to digital platforms. Legal analysts and civil liberties campaigners say that the Sahyog portal works outside of the scope of the limited blocking powers granted by Section 69A of the IT Act, which include procedural protections. The government has established a highly effective, censorial rubber stamp that circumvents court review by making this site available to police personnel around the country. This allows for the widespread, unrestricted removal of dissenting digital voices, political opposition accounts, and independent media.³⁹

INDUSTRY BACKLASH AND THE REGIONAL PARADIGM: THE CREATOR ECONOMY IN DANGER

The Draft IT (Digital Code) Rules, 2026⁴⁰ and the related IT Act modifications' broad, broadcast-style directives have sparked strong, coordinated opposition from a wide range of parties. While major multinational OTT platforms have the immense financial and legal resources needed to navigate difficult compliance landscapes, the Draft Rules pose an existential danger to individual producers, digital journalists, and the fast-expanding regional media economy.

The media and entertainment industry in India has seen a significant demographic shift in favour of regional language programming. Regional cinema and digital content currently account for more than 65% of total production, with substantial penetration in areas such as Jharkhand, Uttarakhand, Rajasthan, and the Northeast, where over 95% of people watch digital material in local languages. The economic viability of these localised digital ecosystems is mainly based on low entry barriers and creative flexibility.

³⁸ Abhinav Chandrachud, *Republic of Rhetoric: Free Speech and the Constitution of India* (Penguin Viking 2017)

³⁹ Yashraj Sharma, 'India expands censorship powers, lets lower officials demand takedowns' *Aljazeera* (08 September 2025) <<https://www.aljazeera.com/features/2025/9/8/india-expands-censorship-powers-lets-lower-officials-demand-takedowns>> accessed 02 May 2026

⁴⁰ Draft IT (Digital Code) Rules 2026

As a result, national journalist consortiums and regional media organisations, such as the Delhi Union of Journalists, the Press Club of India, Digi Pub, the Editors' Guild of India, and the Indian Women's Press Corps, have strongly called for the Draft IT Second Amendment Rules 2026 to be completely repealed. These organisations warn that the compliance framework is 'financially terminal' for smaller platforms and freelance journalists. The extension of the Code of Ethics to include not only registered publishers, but also individual social media users who share or comment on news, places solo commentators, video explainers, and casual users within the direct, penal jurisdiction of the Inter-Departmental Committee.⁴¹

The mandate to invest in highly sophisticated, 'reliable age-verification systems,' the requirement to employ India-based Chief Compliance Officers, and the need to build infrastructure capable of responding to three-hour takedown requests all impose prohibitively high operational costs on regional creators. This tremendous cost burden, along with the continual possibility of criminal prosecution for algorithmic misidentification, threatens to completely inhibit regional digital innovation, limiting content development to a small number of well-capitalised corporate entities.

Advocacy groups for digital rights, including the Internet Freedom Foundation (IFF) and the Software Freedom Law Centre (SFLC), have described the Draft Rules as instruments of 'digital authoritarianism.' The IFF emphasises that the draft amendments give the executive branch broad, unchecked authority to remove and block 'news and current affairs content,' subjecting casual discussions, satirical posts, and independent commentary to the same stringent legal standards as formal, institutional news agencies. The SFLC expressly claims that transferring the Cable TV Programme Code to the internet media is the broadest, most dangerous regulatory change ever suggested in India, dramatically expanding government control over online political speech in the name of protecting public decency.

THE REMAINS OF THE BROADCASTING SERVICES (REGULATION) BILL 2024

The current legislative history on media regulation exacerbates concerns about the Draft IT (Digital Code) Rules, 2026. The Ministry of Information and Broadcasting introduced the very contentious Broadcasting Services (Regulation) Bill, 2024, in mid-2024, which was later withdrawn. This Bill aimed to amend the 1995 Cable TV Act and aggressively broaden the

⁴¹ Draft Information Technology (Digital Code) Rules 2026

government's mandate to cover major OTT providers, digital news platforms, and, most crucially, individual social media accounts and online video creators.

The 2024 Bill suggested designating YouTubers, Instagrammers, and podcasters as 'Digital News Broadcasters,' which would require mandatory government registration, the formation of internal Content Evaluation Committees to pre-screen all content, and criminal penalties for violators. The Bill faced tremendous public opposition, legal ambiguity problems, and intense industry opposition to treating independent creators as official broadcasting corporations, causing the government to withdraw the proposal for additional deliberation.

However, media stakeholders and legal experts are concerned that the Draft IT (Digital Code) Rules 2026 will function as a strategic backdoor tool to impose the same rigorous controls that were defeated in the Broadcast Bill. The government effectively achieves the regulatory overreach intended by the withdrawn Bill by amending the IT Rules to require compliance with ministerial advisories and extending the broadcast-era Code of Ethics to individual digital users, avoiding parliamentary scrutiny through the use of delegated, subordinate legislation.

SYNTHESIZING A PATH FORWARD: CO-REGULATION AND CONSTITUTIONAL INTEGRITY

The Draft IT (Digital Code) Rules, 2026, constitute a watershed moment in the governance of India's digital environment. The Union Government's fundamental intention to protect vulnerable audiences from unregulated obscenity, combat the weaponised proliferation of deepfakes, and establish standardised, reliable age-classification systems addresses highly legitimate public policy concerns in a digitally transformed society. As the digital ecosystem has a greater impact on public morality, civic discourse, and child psychology, the need for an organised, accountable framework becomes increasingly clear.

However, the Draft Rules' methodology is mainly based on retrofitted, broadcast-era standards that are physically and constitutionally incompatible with the mechanics of today's internet. The straight application of the 1994 Cable Television Networks Rules to the OTT sector is a significant broadcast equivalence fallacy, as it fails to recognise the basic legal distinction between push-based mass broadcasting and pull-based, user-driven digital sovereignty. By employing ambiguous, highly subjective standards such as 'decency' and 'good taste,' the rules cross the line from reasonable restriction to systemic digital censorship, risking severe conflict

with the constitutional protections afforded by Article 19(1)(a) and replicating the precise legal flaws that led the Supreme Court to invalidate Section 66A of the IT Act.

Furthermore, the related enforcement measures, particularly the automation of unconfirmed censorship via the Sahyog portal and the draconian three-hour removal limit, circumvent critical judicial oversight and procedural fairness. This design forces platforms to engage in algorithmic over-censorship, which disproportionately harms independent producers, investigative journalism, and the thriving regional media economy. This trend is progressively shifting the digital ecosystem away from a democratized space of conversation and toward an environment marked by regulatory dread and anticipatory self-censorship.

To move forward without suffocating India's massive Media and Entertainment industry, policymakers must shift from executive centralisation to a context-sensitive, constitutionally sound co-regulatory model.

First, the regulatory framework must clearly disavow the myth of broadcast equivalence. It must create tailored, digital-native norms that respect the 'pull-based' character of OTT platforms, with an emphasis on empowering users and parents through advanced, privacy-preserving age-gating technology rather than depending on state-led moral policing.⁴²

Second, subjective terminology must be eliminated from the digital codes. It must be replaced by specific, legally defined thresholds for obscenity and injury that fully adhere to the Supreme Court's established Community Standards Test, removing regulatory ambiguity and preventing the law from being weaponised.

Third, any system for removing or restricting digital content must have stringent and clear procedural safeguards.

To meet the constitutional proportionality requirement, takedown orders must be subject to independent court or quasi-judicial review, ensuring that natural justice principles are followed and creators have the right to defend their expression.

Finally, strong digital governance must realise that democratic liberty can only be sustained through the ability to question, critique, and examine complex narratives. A sustainable regulatory architecture for India's digital future would successfully protect society from actual,

⁴² Cable Television Networks Rules 1994, rs 6 and 7

proven harm while maintaining the Constitution's guarantees of creative freedom, digital autonomy and pluralistic speech.⁴³

FINDINGS

The Broadcast Equivalence Fallacy: The Draft Rules attempt to transplant the 1994 Cable Television Networks Rules onto modern digital platforms, failing to legally distinguish between 'push-based' linear television and 'pull-based' on-demand streaming. This creates direct friction with Article 14 of the Constitution by treating structurally unequal media delivery formats as equals, fundamentally misapprehending digital autonomy.

Erosion of Procedural Safeguards and Proportionality: The introduction of a 3-hour takedown window for specific content under the IT Rules Amendment 2026 effectively eliminates the possibility of meaningful human legal review. Coupled with the Ministry of Home Affairs' Sahyog portal, which facilitates automated, confidential takedown notices from law enforcement to intermediaries, the framework severely lacks independent judicial oversight, failing the constitutional 'proportionality test' established in *K.S. Puttaswamy v Union of India*.

Disproportionate Economic Burden on Regional Ecosystems: The mandates for strict age-verification systems and rapid algorithmic takedowns impose prohibitive financial costs on smaller platforms. With regional language content now contributing 56% of the OTT market, this heavy compliance framework threatens to decimate India's independent, regional creator economy, centralising media power.

Vagueness and the 'Chilling Effect': The reliance on subjective terms like 'decency' and 'good taste,' borrowed directly from archaic broadcast codes, grants unchecked executive discretion. This ambiguity incentivises digital platforms to engage in anticipatory, algorithmic over-censorship, suppressing legitimate artistic expression, political commentary, and social discourse protected under Article 19(1)(a).

SUGGESTIONS

Adopt a Digital-Native Regulatory Taxonomy: Policymakers must explicitly abandon the broadcast-equivalence model. Instead, regulations should reflect a 'pull-based' framework that respects user autonomy. The focus should shift toward 'Safety-by-Design', emphasising user-

⁴³ Cable Television Networks Rules 1994, r 4

empowerment tools such as privacy-preserving age-gating and granular parental controls rather than state-led moral policing.

Enforce the Proportionality Test in Content Moderation: Any restriction on digital content must strictly adhere to the four-part proportionality test (legality, legitimate aim, necessity, and balancing). The 3-hour takedown mandate must be revised to ensure adequate time for procedural fairness and nuanced human legal review, preventing automated over-removal.

Decentralise and Democratize Oversight: The opaque operations of the Sahyog portal require immediate structural reform. To prevent arbitrary executive censorship, all content takedown directives must be subjected to independent judicial or quasi-judicial review, ensuring transparency and preserving the principles of natural justice.

Codify Precise Legal Thresholds: The Draft Rules must excise nebulous terminology. Concepts of ‘obscenity’ and ‘harm’ must be defined using precise, statutory language that strictly aligns with the Supreme Court's contemporary ‘Community Standards Test.’ This ensures that the social, political, or artistic intent of a work is evaluated holistically, protecting creative freedoms.

CONCLUSION

The Draft IT (Digital Code) Rules 2026 represent a watershed moment in the governance of India's digital ecosystem. While the government's objective to shield vulnerable demographics from digital obscenity, misinformation, and deepfakes constitutes a legitimate state interest, the currently proposed mechanisms risk fundamentally altering the democratic nature of the internet.

By resurrecting the rigid, push-based broadcast codes of 1994 for a pull-based, on-demand medium, and by deploying rapid, algorithmic censorship tools like the Sahyog portal, the State borders on systemic regulatory overreach. The inherent tension between the fundamental right to free speech under Article 19(1)(a) and the reasonable restrictions of Article 19(2) cannot be resolved through executive maximalism or vague ethical predicates.

As the Indian media ecosystem continues its exponential expansion, particularly within diverse regional markets, it necessitates a nuanced, co-regulatory architecture. A future-ready framework must successfully balance the imperative of digital safety and child protection with

the steadfast preservation of creative liberty. As noted by the judiciary, ‘liberty survives in the ability to question’; thus, the ultimate regulatory goal must ensure that the drive to sanitise the digital space does not inadvertently extinguish the vibrant, pluralistic discourse that defines India's modern democracy.⁴⁴

⁴⁴ ‘SFLC.in’s Comments on the Draft IT Second Amendment Rules, 2026’ (*Software Freedom Law Center*, 05 May 2026) <<https://sflc.in/sflc-ins-comments-on-the-draft-it-second-amendment-rules-2026/>> accessed 02 May 2026