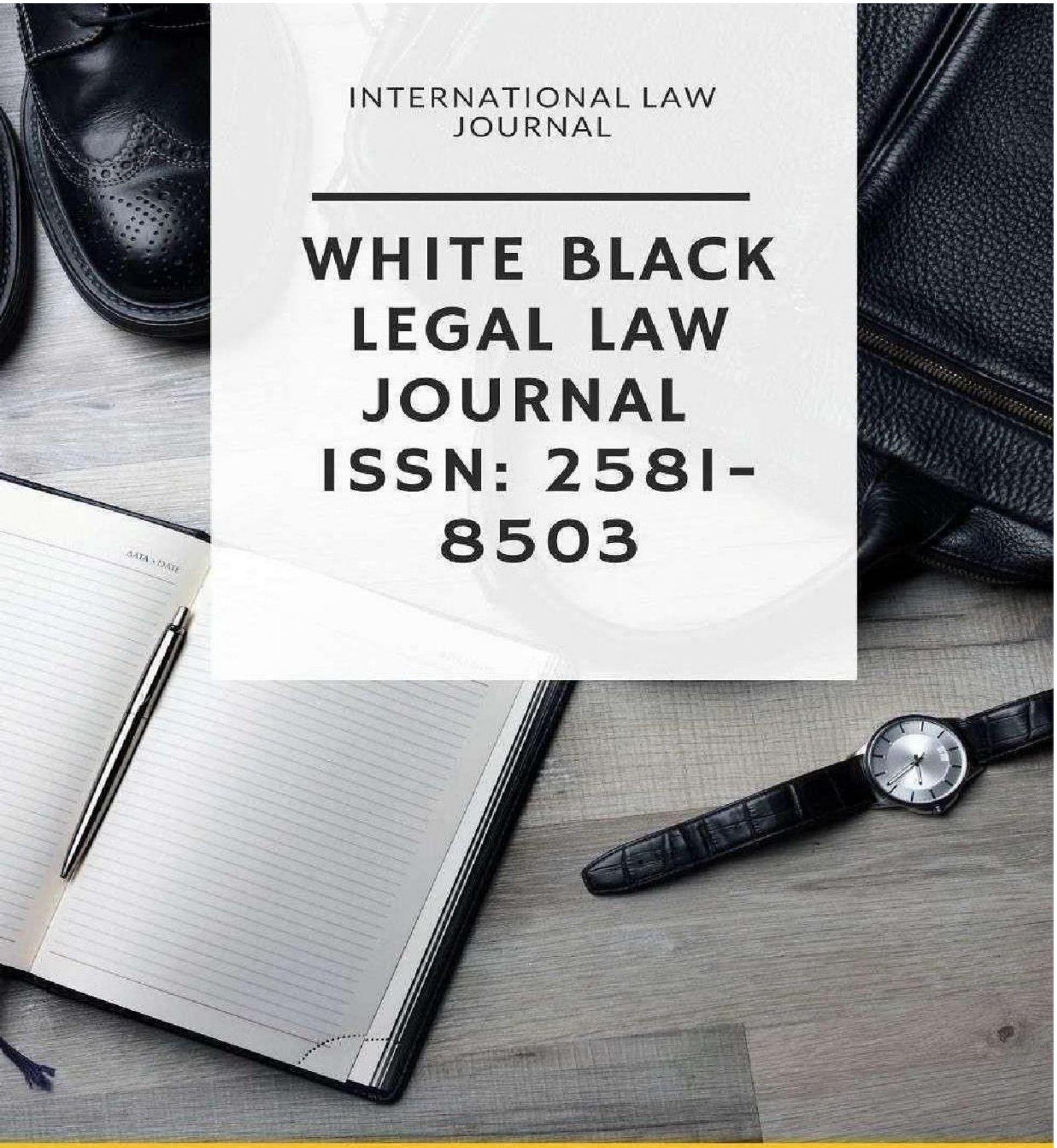


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THREE HOURS TO COMPLY: EXECUTIVE TAKEDOWNS AND DUE PROCESS UNDER INDIA'S 2026 INTERMEDIARY RULES

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Introduction:

Imagine a book seller is ordered to withdraw a political book within three hours or they risk losing their protection. A month later the directions were found to be unjustified, the book returns to the shelf but the election it intended to inform us about, has already passed. This is the concern raised by the executive's take down mechanism under India's amended intermediary rules.

On February 10th, 2026 the Ministry of Electronics and Information Technology (MeitY) notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026. The 2026 amendments replaced the former thirty-six-hour removal period with a three-hour dead line once an intermediary receives legally defined actual knowledge. The three-hour compliance window may sound reasonable when the content of the posts is indisputably illegal and dangerous, but the principle falls short when the content being challenged falls under the category of satire, political criticism, or a report requiring context. Can a platform make a fair legal decision within this short span of time?

This article examines the risks created by excessive executive discretion over the constitutionally protected speech. It does not comment or allege misconduct by any government official.

From Thirty-Six Hours to Three: What Changed?

Understanding this shift begins with a simple question: what is an "intermediary"?

Under Section 2(1)(w) of India's Information Technology Act, 2000 an intermediary is an entity that store or transmit data on behalf of other persons. These include telecom providers, internet service providers, online marketplaces, search engines, and social media platforms. Under Section 79 of The Information Technology Act, 2000, these intermediaries are provided with a conditional 'safe harbour' protection. According to Section 79, "an intermediary shall not be liable for any third-party information, data, or communication link made available or

hosted by him", provided that the intermediary satisfies the conditions further prescribed under this section that the intermediary merely hosts third party communication without initiating, directing, or modifying it, and complies with the prescribed due diligence as required.

On February 10th 2026, the Central Government amended the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) rules, 2021. Under these updated rules, the rule 3(1)(d) requires an intermediary to remove or block access to specified unlawful information within the three hours of receiving legally recognised "actual knowledge".

The term "actual knowledge" carries a special meaning here. The three-hour compliance window does not begin when the user reports a post. The time frame begins when the platform receives "an order of a court of competent jurisdiction" or "by the Appropriate Government or its agency" (3(1)(d)). The notice must identify the law being used, explain the alleged unlawful act and identify the exact URL or electronic location.

The rule 3(2)(b) contains a separate two-hour-deadline for individuals involved in private or sexual material on online impersonation, including deepfakes and artificially morphed images. These requirements matter, because they preserve the principles laid down in *Shreya Singhal v Union of India*.

What Shreya Singhal actually protected?

Shreya Singhal v Union of India is one of India's paramount judgments on online speech. The Supreme Court of India, struck down Section 66A of the IT Act because its vague terminology could punish lawful expression and create a chilling effect (occurs when people fear lawful speech due to the fear of punishment or removal). The Supreme Court of India also upheld the Section 79 of the Information Technology Act, 2000 after the adopting a narrow construction of the term "actual knowledge" under Section 79(3)(b). the court observed that requiring intermediaries to decide over countless complaints regarding unlawful expression would be legally and practically unworkable. Hence limiting the term "actual knowledge" for take down purposes to a court order or a valid government notification connected to the grounds listed in Article 19(2) of the Constitution. This reduced the power of online platforms to self-adjudicate every user's content, therefore making them less likely to take down lawful material, merely because somebody objected to it. However, *Shreya Singhal v Union of India* did not exclude the executive from the take down process. The Supreme Court recognises a valid government notification as a source of actual knowledge.

Hence the present concern is whether the three-hour compliance window introduced in 2026

provides an adequate safeguard when the removal is triggered by an executive intimation without prior judicial scrutiny.

Executive take down powers: Risk of political intimidation and Chilling Effect on free speech:

While the order issued by a court after multiple hearings and proper judicial procedure to check whether the content is unlawful and falls within the grounds of Article 19(2) assures transparency and trust, rule 3(1)(d) on the other hand raises some serious concerns regarding executive overreach. Rule 3(1)(d) permits an authorised government officer to issue a written intimation directly to an intermediary. The rule does not require a prior court hearing, notice to the creator or an opportunity for the creator to defend the contents of the post before it is taken down. On receiving such intimation, the intermediary has no choice other than the stated 3-hours to remove or disable access to the identified material.

Yes, the requirement of written reasons and identification of the statutory provision does impose some restraint, but the legality of the content is still not being examined by an independent judicial authority. Hence tampering the transparency of the procedure in turn making the executive the complainant, the initial decision maker, and through its monthly review, its own reviewer.

Risk of Arbitrary or Politically motivated removal:

This concentration of authority may in turn risk of creating arbitrary enforcements. A person with such authoritative power may invoke broad grounds such as public order, defamation or incitement against content that is purely critical or satirical in nature. The risk includes political pressure, institutional bias, selective enforcement and use of regulatory powers to intimidate journalist, activists, creators and ordinary users. The three-hour deadline can amplify this risk as delayed compliance to the given time limit may endanger an intermediaries safe-harbour protection. Therefore, making immediate removal, a commercially rational decision. Following this, an executive intimation may suppress speech almost immediately, even when the legal grounds of the complaint are found inadequate.

The limitation of Retrospective review:

The 2026 rules also state for a monthly review of government intimation by senior officer to determine whether they were necessary or proportionate. However, the review takes place after

the removal of the content and remain within the executive branch.

Situation (1)

Person *A* posts a satirical video criticizing the ruling political party is published two days prior an election. The authority may direct its removal on grounds of public order; the platform also complies over the risk of losing their protection. If during the monthly review, the intimation is found to lack evidence of any possible threat to the public order, then by the time the contents of the post will be restored, the election would already be concluded and the intended contribution to public debate will be lost forever.

Situation (2)

Journalist *A*, uploads a video showing police involvement in a public protest. A government intimation asks for its removal on public order grounds, and the platform complies within three hours. Later in the review meeting it is found that the post merely documented the incident and not encouraging violence. The restoration of the content weeks later cannot repair the loss of public scrutiny when protest was taking place.

Situation (3)

A doctor posts a video questioning the safety of a government approved medicine. The content is removed and flagged as false information capable of causing public disorder. In later reviews it is found that the doctor was correct and had credible medical evidence. By then the warning has lost its immediate reach and an important public health discussion has been interrupted.

Situation (4)

A comedian uploads a satirical video criticising a government. The video is removed after being labelled as a threat to public order. The monthly review later finds no ties between the satire and any anticipated violence. Although the content returns online, the public debate surrounding the policy has already moved on.

Situation (5)

A user publishes a real time location of a security personnel during an on-going operation. In this situation a three-hour window or even a faster action would be justified because the danger is specific, serious and imminent.

The issue is not that rapid takedowns are always unjustified. It is that rule 3(1)(d) applies the same three-hour deadline to both immediate security threats and complex disputes involving journalism, satire and political criticism.

The rules also do not expressly provide, within this route, an automatic mechanism for:

- Notify the creator before removal.

- Obtaining independent review before compliance.
- Immediately restoring wrongfully removed content.
- Compensating the affected parties.
- Suspending the directions while its challenged.

Hence retrospective review may identify an improper takedown without providing an effective remedy for the already lost speech.

A judicially supervised alternative:

In order to establish a more transparent model, it would require the authorised government officer to place the identified content, statutory ground and supporting reasons before a competent court. The court could then hear the claims from both the parties wherever practicable, examine the complete context and determine whether removal of that particular piece of content is justified under Article 19(2). Only after the determination would the platform become subject to the three-hour compliance period.

This would separate the functions of identifying potentially unlawful content and conclusively authorising its removal. The executive would continue to investigate and bring unlawful material to the court's attention, while an independent judicial authority would determine whether restricting the speech is legally justified.

Conclusion:

The challenge is not to choose between controlling online harm and protecting free speech but to find balance and build a system that respects both. A three-hour compliance window may be reasonable where a court has already examined the content or where an immediate and serious threat demands an urgent intervention. It becomes a challenge to justify every executive intimation under rule 3(1)(d), especially when the affected party has not been informed. In such cases the removal should be temporary and followed by a prompt in dependent review, a notice to the creator, and restoration of the contents if the directions are not confirmed. Rule 16 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 therefore recognises that the emergency action may sometimes be taken without prior hearing, but it does not allow that action to remain unexamined. Ultimately, the state's responsibility to respond quickly must not come at the cost of meaningful scrutiny, because speed must not come at the cost of due process.