PLATFORM BLOCKING AND THE PROPORTIONALITY DEFICIT SECTION 69A AFTER THE TELEGRAM ORDER

by

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Abstract

The judgment in Telegram FZ LLC v. Union of India exposes a structural gap in the necessity stage of proportionality doctrine under Anuradha Bhasin v. Union of India.[1] *This paper argues that the Delhi High Court collapsed two analytically distinct propositions: (1) that narrower measures were tried and failed, and (2) that no narrower measures were structurally available to the government. The court treated these as equivalent without accounting for the jurisdictional reality that Telegram, as an undomiciled foreign platform, could not structurally comply with targeted takedown orders. This distinction is decisive.*[2] *Foreign platforms without domestic presence in India have no corporate entity to serve, no assets to attach, and no representative to mandate compliance through. The necessity stage of proportionality doctrine cannot simply ignore this reality by asserting that the government exhausted all available tools. It must instead examine whether the regulatory architecture itself precludes certain measures. This paper proposes a statutory independent review body operating pre-enforcement to examine this distinction explicitly, supplemented by a graduated response ladder and bilateral treaty mechanisms with the jurisdictions where foreign platforms are domiciled. Without these reforms, Section 69A becomes a blunt instrument whenever foreign platforms are involved, and proportionality doctrine becomes a post-hoc ratification of executive action rather than a principled constraint upon it.*

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[1] *Telegram FZ LLC v. Union of India, 2026 SCC OnLine Del 4750 (Delhi H.C. June 19, 2026), W.P. (C) No. 8259 of 2026.*

[2] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

Keywords: Platform blocking, Proportionality doctrine, Telegram case, Section 69A, Information Technology Act 2000, Necessity stage

I. Introduction

The regulation of digital platforms in India has undergone a doctrinal shift over the past six years. Where once the government invoked Section 69A of the Information Technology Act, 2000[3] to block specific content, it now blocks entire platforms. Three episodes mark this trajectory. In June 2020, the Ministry of Electronics and Information Technology (MeitY) blocked TikTok and 58 other Chinese applications citing threats to national sovereignty and defence.[4] The order was swift, issued under Section 69A, and was not challenged in court. In June 2023, the Karnataka High Court upheld government blocking orders targeting 1,474 accounts and 175 tweets on the social media platform X (formerly Twitter), ruling that Section 69A permits account-level blocking and not merely content-specific removal.[5] The third episode, the subject of this paper, occurred in June 2026 when the Delhi High Court dismissed Telegram's writ petition challenging a temporary platform-wide ban ordered by the government following alleged misuse of the platform to distribute copies of the NEET examination.

The Telegram judgment warranted careful scrutiny because it represented the first appellate endorsement of temporary platform-wide blocking under Section 69A.[6] The case arose in the context of a security breach of the National Eligibility cum Entrance Test (NEET) examination in May 2026. On 12 May, the National Testing Agency (NTA) cancelled NEET UG 2026 after paper leak allegations affected 22.8 lakh students. By 21 May, NTA wrote to MeitY reporting that fraudsters were using Telegram to distribute copies of the examination paper through false

[3] Information Technology Act, 2000, No. 21 of 2000, §§ 2(1)(v), 69A (India).

[4] Ministry of Electronics & Information Technology, Government of India, Press Release, Government Blocks 59 Mobile Apps Which Are Prejudicial to Sovereignty and Integrity of India, Defence of India, Security of State and Public Order (June 29, 2020).

[5] X Corp v. Union of India, W.P. (C) No. 13710 of 2022 (Karnataka H.C. June 30, 2023).

[6] *Telegram FZ LLC*, W.P. (C) No. 8259 of 2026.

channels. Two Rajasthan men were arrested for running fraudulent Telegram channels that falsely advertised the sale of NEET papers, generating approximately 1.5 crore in transactions across twelve bank accounts and six separate complaints. By 1 June, MeitY convened a meeting with Telegram and the NTA to discuss the misuse. Six days later, on 16 June, MeitY issued an interim blocking order directing access restriction to Telegram in India until 22 June and disabling the message-editing feature until 30 June. The Delhi High Court noticed the petition on 17 June, heard arguments on 18 June, reserved judgment, and pronounced its decision on 19 June upholding both orders.[7] The ban was lifted on schedule on 22 June, and the feature restriction was removed on 30 June.

The practical scale of the restriction gave the proportionality question its urgency. The blocking order affected approximately 150 million Indian users, making it the most expansive platform restriction ever imposed under Section 69A by reference to user reach. The Internet Freedom Foundation described the order as a ‘band-aid solution’ that was both disproportionate and ineffective, and specifically noted that the MeitY blocking direction had not been published, raising a further concern about the transparency mandate that flows directly from Anuradha Bhasin v. Union of India.[8]

Justice Tejas Karia's judgment upheld the government's action on proportionality grounds. The court held that the government's attempt to seek targeted takedowns through repeated requests had failed, that Telegram's platform-wide infrastructure enabled rapid re-emergence of mirror channels and bots, and that platform-wide blocking therefore constituted the least restrictive measure available in the circumstances.[9] The court stated: "The government's measures are the least restrictive. It cannot be held that the order is disproportionate.[10]"

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[7] Information Technology (Procedure and Safeguards for Blocking of Access of Information by Public) Rules, 2009, G.S.R. 781(E), rr. 3–16 (India).

[8] Internet Freedom Foundation, ‘Shutting Down Telegram is a Band Aid Solution and is a Disproportionate Answer to Exam Fraud’ (The Print, 16 June 2026) <https://theprint.in/india/disproportionate-band-aid-solution-iff-on-centres-curbs-on-telegram-ahead-of-neet-re-exam/2961232/> accessed 26 September 2026; ‘Blocking Telegram Won’t Fix Leak’ LiveLaw (8 July 2026) <https://www.livelaw.in/lawschool/articles/blocking-telegram-leak-540286> accessed 26 September 2026.

[9] *Telegram FZ LLC*, W.P. (C) No. 8259 of 2026.

[10] *Telegram FZ LLC*, W.P. (C) No. 8259 of 2026 (Delhi H.C. June 19, 2026).

This paper contends that the court's reasoning, while facially persuasive, rests on an error of logical inference. The court examined whether narrower measures had been tried and failed. It found they had. From this, the court concluded that the blocking order satisfied the necessity stage of the proportionality test established in Anuradha Bhasin v. Union of India.[11] But this inference conflates two distinct propositions. The first is empirical: "We tried narrower measures and they did not succeed." The second is structural: "Narrower measures were not available to us, given the regulated entity's jurisdictional status." The Telegram court proved the first without examining the second. And the second, not the first, is decisive when the regulated platform has no domestic presence in India.[12]

This paper uses a doctrinal method supplemented by comparative analysis. It examines how Indian courts have applied the proportionality framework established in Anuradha Bhasin[13] and K.S. Puttaswamy.[14] It then compares how the European Union's Digital Services Act regulates platform conduct through a graduated framework of obligations, where suspension of service is reserved as a last resort for systemic non-compliance rather than invoked for isolated incidents. Finally, it proposes statutory and procedural reforms to ensure that the necessity stage of proportionality doctrine genuinely constrains executive action when foreign, undomiciled platforms are involved.

II. The Necessity Stage and the Jurisdictional Collapse

The Supreme Court's judgment in Anuradha Bhasin v. Union of India established a four-part proportionality framework for restrictions on fundamental rights. Any action by the state that interferes with a fundamental right must satisfy four conditions: legality, legitimate objective, necessity, and proportionality (least restrictive measure).[15] This framework derives from K.S. Puttaswamy (Retd.) v. Union of India, where the nine-judge bench recognized the right to privacy as a fundamental right under Article 21 and clarified that any invasion of privacy must be justified through a law that stipulates a procedure which is fair, just and reasonable. An invasion of life or

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[11] *Telegram FZ LLC*, W.P. (C) No. 8259 of 2026.

[12] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

[13] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

[14] *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

[15] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

personal liberty must meet three requirements: first, legality, which postulates the existence of law; second, need, defined in terms of a legitimate state aim; and third, proportionality, which ensures a rational nexus between the objects and the means adopted to achieve them.[16]

Anuradha Bhasin applied this framework to internet shutdowns. The Supreme Court held that access to the internet is closely linked to the fundamental rights of freedom of speech and expression under Article 19(1)(a) and freedom of trade and profession under Article 19(1)(g). While the court did not declare internet access itself a separate fundamental right, it held that freedom of speech and expression through the internet and freedom to carry on trade or business through the internet are constitutionally protected.[17] Any restriction on these rights must be backed by law, pursue a legitimate objective, be necessary and proportionate, and adopt the least restrictive measure. The court emphasized that indefinite internet shutdowns are impermissible and that any order requiring judicial review within five working days by a multi-member Review Committee was mandatory.[18]

The necessity stage is the most demanding. It requires the state to demonstrate that the measure chosen is necessary to achieve the legitimate objective and that no less intrusive alternative exists. Rishika Sahgal has argued that the necessity stage demands rigorous testing of less restrictive alternatives and that Indian courts have not always applied this standard with the required rigour.[19] The judiciary in Anuradha Bhasin announced a demanding standard but did not apply it strictly enough in subsequent shutdowns, permitting governments to invoke emergency measures under Rule 9 of the Blocking Rules without pre-enforcement review.[20]

The empirical record of Section 69A use provides important context for this analysis. According to Freedom House's Freedom on the Net 2024 report, content restricted under Section 69A reached 7,502 blocked websites and accounts in 2023, compared to 6,935 the preceding year, with India consistently ranked as the world's leading country for internet shutdowns for five

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[16] *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

[17] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

[18] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

[19] Rishika Sahgal, Proportionality Review and Economic and Social Rights in India, 8 Indian L. Rev. 207 (2024).

[20] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

consecutive years. This trajectory indicates that emergency blocking under Rule 9 is exercised with increasing regularity, making the absence of pre-enforcement independent scrutiny at the necessity stage a structural concern extending well beyond the Telegram case.[21]

Rule 9 of the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 is the procedural mechanism by which emergency blocking occurs.[22] In cases of emergency where no delay is acceptable, the designated officer may submit a request directly to the Secretary, Department of Information Technology, bypassing the normal examination committee process. If the Secretary is satisfied that it is necessary or expedient and justifiable to block information, the Secretary may issue an interim blocking direction without giving the affected intermediary an opportunity to be heard. The designated officer must then bring the request before the examination committee within 48 hours for post-decisional review.[23] Rule 9 thus creates a regime where emergency blocking occurs first, followed by administrative scrutiny, followed (if at all) by court challenge.

Mitali Mishra has identified a structural deficit in this framework.[24] Rule 9 and Rule 16 (which addresses confidentiality) operate without pre-enforcement independent review.[25] No external body examines whether the claimed emergency is genuine, whether narrower measures genuinely failed, or whether the measure is proportionate before it is implemented. The Secretary's satisfaction is the sole gate, and the Secretary is an executive official. This structure places heavy reliance on the integrity of administrative decision-making while simultaneously depriving the affected party of notice and hearing at the moment the decision is made.

Sunil Abraham has argued that the constitutional durability of Section 69A rested on the promise of procedural fairness.[26] The blocking power is extraordinary and broad, but it is coupled

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[21] Freedom House, *Freedom on the Net 2024: India Country Report* (Freedom House 2024) <https://freedomhouse.org/country/india/freedom-net/2024> accessed 26 September 2026.

[22] Information Technology (Procedure and Safeguards for Blocking of Access of Information by Public) Rules, 2009, r. 9 (India).

[23] Blocking Rules, 2009, rr. 3–16.

[24] Mitali Mishra, Administrative Necessity or Executive Overreach: Decoding the Constitutional Mechanics of Section 69A of the Information Technology Act, 2000, Indian Journal of Law and Legal Research (2026).

[25] Id. r. 9.

[26] Sunil Abraham, Shreya Singhal and 66A: A Cup Half Full and Half Empty, 50(15) Econ. & Pol. Wkly. 12 (2015).

with procedural safeguards including examination by a multi-member committee, written reasons, and judicial review. Yet this promise has not been kept in practice. Emergency blocking now occurs as a matter of routine, and post-decisional review by courts is cumbersome and often futile once the emergency has passed.[27] Abraham identifies this as a gap between constitutional design and constitutional practice.

The Telegram judgment must be understood in this procedural context. The government invoked Rule 9 and issued an interim blocking order on 16 June 2026.[28] Telegram was given notice but no opportunity to be heard before the order was implemented.[29] The Delhi High Court noticed the petition on 17 June and heard arguments on 18 June. The court proceeded to evaluate the government's justification for the blocking order using the proportionality framework. The court's core holding was that platform-wide blocking was necessary because "narrower measures were tried and failed." Specifically, the court noted that the government had repeatedly requested targeted takedowns of the channels involved, but these requests were ineffective because mirror channels and bots enabled rapid re-emergence of substantially identical networks.

Here emerges the paper's critical objection. The Telegram court examined whether the government had exhausted all available tools in its regulatory arsenal. It found that it had.[30] The government tried specific channel takedowns. They did not work because the platform's architecture permits rapid duplication. Therefore, the court reasoned, platform-wide blocking was the least restrictive measure remaining.[31] But this reasoning assumes a counterfactual that the court never examined: Could Telegram have complied with targeted takedown requests if the government had issued them differently?

Telegram FZ LLC, the entity that operates Telegram, is domiciled in Dubai, United Arab Emirates.[32] It has no corporate registration in India, no office in India, no employees on Indian

[27] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

[28] *Telegram FZ LLC*, W.P. (C) No. 8259 of 2026.

[29] Id. r. 9.

[30] *Telegram FZ LLC*, W.P. (C) No. 8259 of 2026.

[31] Rishika Sahgal, Proportionality Review and Economic and Social Rights in India, 8 Indian L. Rev. 207 (2024).

[32] *Telegram FZ LLC*, W.P. (C) No. 8259 of 2026.

soil, and no assets on Indian soil.[33] Under Indian law, MeitY issues blocking orders to "identified or identifiable persons or intermediary in control of such computer resource" under Rule 3(1) of the Blocking Rules.[34] When Telegram receives such an order, compliance requires the company to implement blocking measures on its global servers. But Telegram cannot be compelled to do so without the cooperation of the United Arab Emirates, where it is incorporated. Indian courts have no jurisdiction over Telegram's corporate officers. The courts cannot attach its assets. The government cannot institute criminal proceedings against the company directly because the company has no presence in India and cannot be arrested.

A further dimension of the jurisdictional picture requires attention. Following the arrest of Telegram's chief executive by French authorities in August 2024, Telegram substantially increased its cooperation with global law enforcement agencies. According to Telegram's own transparency data, India was the largest recipient of user data disclosures globally in 2024, with Telegram providing phone numbers and IP addresses to Indian authorities on 14,641 occasions affecting 23,535 users. This pattern of cooperation was driven by legal pressure exerted in the platform's home jurisdiction, not by Indian domestic mechanisms. It therefore confirms rather than undermines the paper's central argument: meaningful compliance from a foreign, undomiciled platform depends on bilateral engagement with the jurisdiction where it is incorporated, precisely the reform mechanism proposed in Section IV below.[35]

This jurisdictional reality renders certain measures structurally unavailable. For example, a graduated response ladder that begins with notice, followed by demand for specific compliance, followed by threat of criminal proceedings against company officers, presupposes a company with a domestic presence that can be regulated through domestic institutions.[36] But Telegram has no

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[33] Telegram, Privacy Policy § 8.2 (noting Telegram FZ-LLC as a group company located in Dubai).

[34] Blocking Rules, 2009, rr. 3–16.

[35] Jagmeet Singh and Carly Page, 'Telegram Reports Spike in Sharing User Data with Law Enforcement' (TechCrunch, 7 January 2025) <https://techcrunch.com/2025/01/07/telegram-reports-spike-in-sharing-user-data-with-law-enforcement/> accessed 26 September 2026; TechPolicy.Press, 'India's Telegram Ban Was Temporary. The Power Behind It Is Not' (TechPolicy.Press, 26 June 2026) <https://www.techpolicy.press/indias-telegram-ban-was-temporary-the-power-behind-it-is-not/> accessed 26 September 2026.

[36] Chinmayi Arun & Sarvjeet Singh, NOC Online Intermediaries Case Studies Series: Online Intermediaries in India (Ctr. for Commc'n Governance, Nat'l L. Univ. Delhi 2015).

such presence.[37] When the government issues a blocking order directing Telegram to comply, Telegram's only recourse is either to comply globally or to refuse and face legal consequences it cannot be made to suffer because it is not subject to Indian jurisdiction. This is not a case of a company choosing to disobey a lawful order. It is a case where the order's enforceability depends on cooperation from the foreign sovereign where the company is incorporated.

Chinmayi Arun and Sarvjeet Singh have documented how Indian intermediary regulation assumes the regulated entity is domestically registered.[38] The framework of safe harbour under Section 79, the requirement to appoint a nodal officer in India, and the ability to issue directions under Section 69A all rest on this assumption.[39] When the assumption fails because the intermediary is foreign and undomiciled, the regulatory framework itself becomes incoherent. A measure that would be reasonable if the intermediary could be compelled to comply becomes necessary and proportionate by default because no alternative is available. This is the jurisdictional collapse that the Telegram court did not examine.

The court's language suggested it did consider this issue. The judgment notes: "The petitioner (Telegram) is not a domestically registered entity and does not have any presence in India. Yet it was given a hearing opportunity before the Rule 7 Committee and the final order considered its objections.[40]" This observation correctly identifies the jurisdictional status but then treats it as irrelevant to the proportionality analysis. The fact that Telegram was

given a hearing opportunity does not address the structural problem: Telegram has no capacity to unilaterally comply with targeted takedown orders because it has no presence in India and no ability to be coerced into compliance through domestic legal mechanisms.[41]

Ipshita Gupta and Lakshmi Srinivasan have noted that the expansion of safe harbour provisions under Section 79 occurred without settling the question of what happens when an

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[37] Ipshita Gupta & Lakshmi Srinivasan, Evolving Scope of Intermediary Liability in India, Info. & Commc'ns Tech. L. (2022).

[38] Chinmayi Arun & Sarvjeet Singh, NOC Online Intermediaries Case Studies Series: Online Intermediaries in India (Ctr. for Commc'n Governance, Nat'l L. Univ. Delhi 2015).

[39] Ipshita Gupta & Lakshmi Srinivasan, Evolving Scope of Intermediary Liability in India, Info. & Commc'ns Tech. L. (2022).

[40] *Telegram FZ LLC*, W.P. (C) No. 8259 of 2026..

[41] *Telegram FZ LLC*, W.P. (C) No. 8259 of 2026.

intermediary refuses to comply or when compliance becomes impossible.[42] The current regime assumes that intermediaries are integrated into the Indian regulatory space such that threats of losing safe harbour, criminal prosecution, or civil liability can compel compliance.[43] But this assumes a level of jurisdiction that India does not have over foreign, undomiciled platforms.

The necessity stage of proportionality doctrine must distinguish between two questions: (1) Have narrower measures been tried? (2) Are narrower measures structurally available?[44] The Telegram court answered the first affirmatively. But it never asked the second. And the second is the question that proportionality doctrine must answer. If narrower measures are structurally unavailable because the regulated entity is a foreign, undomiciled platform, then blocking that platform may be the only measure available, but it is not the least restrictive measure available.[45] It is the only measure available. These are different propositions. The necessity stage requires that the measure chosen be necessary, not merely the only option remaining when jurisdiction and corporate structure are accepted as fixed constraints.

Devdutta Mukhopadhyay and Apar Gupta have documented that the pattern of invoking Anuradha Bhasin's demanding proportionality standard while ultimately permitting broad executive action has recurred in subsequent cases.[46] The internet shutdown cases in Jammu and Kashmir, the X Corp account-level blocking case, and now Telegram all show a pattern where courts acknowledge the necessity stage and then decline to apply it with actual rigour, instead deferring to executive characterization of which measures have been tried.

III. Comparative Perspective: The Digital Services Act

The European Union's Digital Services Act (DSA), which came into force on 16 November 2022[47], provides a useful comparative baseline for understanding how graduated regulation might

[42] Ipshita Gupta & Lakshmi Srinivasan, Evolving Scope of Intermediary Liability in India, Info. & Commc'ns Tech. L. (2022).

[43] Ctr. for Commc'n Governance, Nat'l L. Univ. Delhi, Report on Intermediary Liability in India (2023).

[44] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

[45] Rishika Sahgal, Proportionality Review and Economic and Social Rights in India, 8 Indian L. Rev. 207 (2024).

[46] Devdutta Mukhopadhyay & Apar Gupta, Jammu and Kashmir Internet Restrictions Cases: A Missed Opportunity to Redefine Fundamental Rights in the Digital Age, 9 Indian J. Const. L. 207 (2020).

[47] Regulation (EU) 2022/2065 of the European Parliament and of the Council of Oct. 19, 2022 on a Single Market for Digital Services (Digital Services Act), arts. 51, 82, 2022 O.J. (L 277) 1.

function when intermediary platforms are involved. The DSA establishes a comprehensive legal framework for digital services accountability, content moderation, and platform transparency. Unlike India's binary framework where a platform is either permitted or blocked, the DSA introduces graduated obligations based on service size and demonstrated risk.

The DSA applies to all digital intermediary services, including social networks, online marketplaces, and search engines. Its central innovation is the distinction between different categories of platforms based on their systemic risk. Very large online platforms designated by the European Commission face enhanced due diligence requirements including algorithmic transparency, content moderation documentation, and systematic risk assessments.[48] The DSA does not grant governments the power to block entire platforms for single incidents of misuse. Rather, it creates obligations on platforms to address illegal content and harmful behaviour through transparent systems, and it subjects government action against platforms to strict procedural safeguards including independent judicial oversight.

Critically, the DSA provides that temporary suspension or restriction of access to a service should be viewed as a last resort measure[49] reserved for the most far-reaching situations, such as direct threats to people's life or safety, systemic non-compliance with statutory obligations, or incitement to violence. Even then, suspension requires independent judicial oversight. The European Court of Human Rights has emphasized the instrumental role of independent judicial review in deciding whether last resort measures are necessary and justified. This creates a structural constraint that prevents emergency action without contemporaneous or near-contemporaneous judicial scrutiny.

Ioanna Tourkochoriti has characterized the DSA as a global regulatory benchmark that will likely influence how other jurisdictions approach digital regulation. The EU's approach rests on several foundational principles: proportionality (measures must be proportionate to the objective), necessity (narrower measures must be exhausted first), and transparency (decisions and their

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[48] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act), 2022 O.J. (L 277) 1.

[49] *Id.*

grounds must be publicly stated).[50] These principles are not merely procedural niceties. They reflect a judgment that binary blocking power is not inevitable given the threat landscape, and that platforms can be held to account through graduated obligations that escalate in response to demonstrated non-compliance.

Leonie Maria Tanczer and colleagues have documented that examination-period blocking[51] (temporary platform restriction while compliance measures are assessed) is globally attested but is typically narrow in scope and temporary in duration. They note that the practice has expanded in countries without robust procedural safeguards, where executive officials can invoke emergency powers without pre-enforcement independent review. The DSA's requirement that even emergency restrictions face judicial scrutiny represents an attempt to constrain this expansion.

The Telegram case occurred within a framework where, absent international cooperation mechanisms, India could not compel targeted compliance from a foreign platform.[52] But this is not inevitable. The DSA offers a model where graduated obligations are enforceable even against large foreign platforms. The EU's regulatory power rests partly on the market scale: foreign platforms that wish to operate in Europe must comply with EU standards or face fines of up to 6 percent of global annual turnover. India could pursue a similar approach by making compliance with graduated content moderation obligations a condition of operating in the Indian market.

However, India cannot directly adopt the DSA because Telegram FZ LLC is not an EU-regulated platform and is not subject to EU oversight. Rather, the DSA illustrates a principle: that binary blocking power (full access versus full denial) is not the only available regulatory tool.[53] It is simply the tool that is available when the regulated platform has no domestic presence and when no international cooperation mechanism exists. The necessity stage of proportionality doctrine must account for this fact. When narrower measures are structurally unavailable because the regulatory architecture itself does not permit them, the necessity stage requires considering

[50] Ioanna Tourkochoriti, The Digital Services Act and the EU as the Global Regulator of the Internet, 24(1) Chi. J. Int'l L. 129 (2023).

[51] Leonie Maria Tanczer et al., Online Surveillance, Censorship, and Encryption in Academia, 21(1) Int'l Stud. Persps. 1 (2020).

[52] *Telegram FZ LLC*, W.P. (C) No. 8259 of 2026.

[53] DSA, supra note 44.

whether that architecture should be changed, not simply accepting it as a constraint and then proceeding with the only measure available under that architecture.

India's domestic regulatory architecture has itself moved partially towards a graduated compliance model, though without resolving the jurisdictional difficulty. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 established a tiered framework, imposing enhanced obligations on significant social media intermediaries including the appointment of India-resident compliance officers and nodal contact persons for law enforcement coordination. Commentators have observed, however, that this framework was designed to function through the threat of losing safe harbour protection, a coercive tool effective only against platforms with sufficient domestic corporate exposure to bear that consequence. For foreign, undomiciled platforms without assets or employees in India, the 2021 Rules cannot substitute for the bilateral enforcement cooperation that the DSA model demonstrates is institutionally achievable.[54]

The DSA's graduated obligations framework demonstrates that proportionality in digital regulation is achievable. Proportionality does not require that every restriction be avoided. Rather, it requires that the measure chosen be the least restrictive among those that are actually available, and that the availability of measures itself be subject to ongoing review and reform. India's framework for content blocking has not undergone such review since 2009. The Blocking Rules predate the emergence of giant platforms like Telegram, and they predate any serious consideration of how to regulate foreign, undomiciled intermediaries.[55] The Telegram judgment applied an old framework to a new problem and treated the absence of tools as proof that the only remaining tool was necessary.

IV. Reforming the Blocking Rules

Three reforms are needed to ensure that the necessity stage of proportionality doctrine genuinely constrains executive action in the context of foreign, undomiciled platforms.[56] First, a

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[54] PRS Legislative Research, 'The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021' (PRS India, 2021) <https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021> accessed 26 September 2026.

[55] DSA, supra note 44.

[56] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

statutory independent review body must operate at the pre-enforcement stage to examine whether less restrictive measures are structurally available. Second, a graduated response ladder must force the government to exhaust narrower measures before resorting to platform-wide blocking. Third, bilateral cooperation mechanisms must be established with jurisdictions where major platforms are incorporated.

The independent review body should be modelled on the committee structure mandated in Anuradha Bhasin.[57] However, unlike the current Rule 7 Committee, which operates post-decisionally for urgent matters, the reformed body would operate pre-enforcement in all cases. Its composition should include a retired judge, a digital rights expert, an industry representative, and a public interest advocate. Its mandate should be to examine whether the blocking is necessary and whether less restrictive measures are structurally available to achieve the government's legitimate objective.

For foreign platforms specifically, the review body should have the duty to examine whether targeted content takedown is structurally possible. This requires asking not whether the government has tried such measures, but whether the regulated platform could comply if such measures were mandated.[58] If the platform has no presence in India and cannot be coerced into compliance through domestic legal mechanisms, the review body must then consider whether international cooperation mechanisms might make targeted compliance possible before clearing platform-wide blocking.

Rule 9 emergency powers should be reformed to remove the exception from this requirement. Currently, Rule 9 permits the Secretary to satisfy themselves as to the need for emergency blocking without pre-enforcement review.[59] This creates a structural incentive to invoke emergency procedures even when the circumstances do not genuinely warrant it. The reformed rule should require that even emergency blocking directions be reviewed

[57] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

[58] Chinmayi Arun & Sarvjeet Singh, NOC Online Intermediaries Case Studies Series: Online Intermediaries in India (Ctr. for Commc'n Governance, Nat'l L. Univ. Delhi 2015).

[59] Id. r. 9.

within 24 hours by the independent review body, with the body's finding published and challengeable in court.[60] This maintains the emergency character of the procedure while introducing a constraint that emergency powers are not routinely invoked.

Second, a graduated response ladder must be enacted as a statutory requirement. The ladder should operate as follows:[61] (1) Notice to the platform of the concern and opportunity to respond. (2) Demand for specific targeted takedown of identified content with measurable compliance expectations and timeline. (3) Demand for disabling of specific features that enable misuse (such as message editing, channel creation, or forwarding). (4) Blocking of specific channels, accounts, or user cohorts identified as the source of the misuse. (5) Only after these steps have been attempted and failed, platform-wide blocking. Each rung should require measurable evidence that the prior rung was ineffective. This forces the government to demonstrate that narrower measures genuinely cannot achieve the objective rather than simply that they are more cumbersome to implement.

The graduated response ladder also protects platforms. Under the current regime, a platform receives a blocking order with little notice and little opportunity to demonstrate its willingness and ability to comply. The ladder gives platforms multiple opportunities to cure the underlying problem.[62] It also creates a record of compliance and non-compliance that can be examined in court. When a platform is finally subjected to blocking, courts reviewing the decision can examine the full record of graduated responses and their effectiveness.

Third, bilateral Memoranda of Understanding should be negotiated with the jurisdictions where major platforms are incorporated. Telegram FZ LLC is incorporated in the UAE.[63] For foreign platforms, the independent review body should have the duty to examine whether emergency disclosure and cooperation mechanisms can be activated before resorting to blocking. These mechanisms would permit the government to request urgent information from the platform's home jurisdiction authority, with expedited review timelines. For instance, the Indian government could request that the UAE Financial Intelligence Unit or the Telecommunications Regulatory

[60] Mitali Mishra, Administrative Necessity or Executive Overreach: Decoding the Constitutional Mechanics of Section 69A of the Information Technology Act, 2000, Indian J. L. & Legal Rsch. (2026).

[61] DSA, supra note 44.

[62] DSA, supra note 44.

[63] Chinmayi Arun & Sarvjeet Singh, NOC Online Intermediaries Case Studies Series: Online Intermediaries in India (Ctr. for Commc'n Governance, Nat'l L. Univ. Delhi 2015).

Authority of the UAE direct Telegram to comply with specific Indian government orders within a defined period. This is analogous to mutual legal assistance treaties (MLATs) but adapted for emergency content governance.

These bilateral mechanisms are not a substitute for domestic regulation, nor are they a substitute for the graduated response ladder. Rather, they are an additional tool that makes targeted compliance more feasible when a foreign platform is involved.[64] They embed a reciprocal enforcement framework: India cooperates with other jurisdictions to help regulate Indian users' behaviour on foreign platforms, and other jurisdictions cooperate with India to help regulate foreign users' behaviour on Indian platforms. Longer-term, this could evolve into a multilateral framework for emergency content cooperation modelled on existing international frameworks for mutual legal assistance but with faster timelines suited to the urgency of digital threats.

A further practical consideration supports the bilateral mechanism proposed here. India already maintains an operational Mutual Legal Assistance Treaty with the United Arab Emirates, the jurisdiction in which Telegram FZ LLC is incorporated. According to the Ministry of External Affairs, India has operational MLATs in criminal matters with over forty countries including the UAE, processed through the Ministry of Home Affairs as the Central Authority. The existence of this treaty infrastructure means that the bilateral cooperation mechanisms proposed in this paper do not require building new diplomatic relationships from scratch; they require adapting existing treaty channels to the specific problem of expedited content governance in digital emergencies, with timelines calibrated to the pace at which online harms propagate.[65]

These reforms are not novel in their individual components. Pre-enforcement independent review exists under Anuradha Bhasin.[66] Graduated response ladders are employed in many international regulatory regimes including the GDPR and the NetzDG in Germany. Bilateral cooperation on digital matters is commonplace through law enforcement channels. What is novel

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[64] Chinmayi Arun & Sarvjeet Singh, NOC Online Intermediaries Case Studies Series: Online Intermediaries in India (Ctr. for Commc'n Governance, Nat'l L. Univ. Delhi 2015).

[65] Ministry of External Affairs, Government of India, 'Mutual Legal Assistance in Criminal Matters' (MEA) <https://www.mea.gov.in/mutual-legal-assistance-in-criminal-matters.htm> accessed 26 September 2026; Ministry of Home Affairs, Government of India, 'Comprehensive Guidelines on Mutual Legal Assistance in Criminal Matters' (MHA, December 2019) <https://www.mha.gov.in/sites/default/files/2022-08/ISII_ComprehensiveGuidelines_17122019[1].pdf> accessed 26 September 2026.

[66] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

is their combination and their specific application to the problem of necessity in proportionality doctrine when foreign, undomiciled platforms are involved. The reforms would not eliminate blocking. Rather, they would ensure that blocking occurs only after narrower measures have genuinely been exhausted, either through the graduated response ladder or through international cooperation mechanisms, and that this exhaustion is validated by an independent body before the executive acts.

V. Conclusion

The Telegram judgment exposed a structural gap in the necessity stage of proportionality doctrine.[67] The court held that because the government had tried narrower measures and they had failed, platform-wide blocking was necessary. But this reasoning collapsed two distinct questions: whether narrower measures had been tried, and whether narrower measures were structurally available. For foreign, undomiciled platforms, these are not the same question. Telegram has no presence in India and cannot be coerced into compliance through domestic legal mechanisms. This jurisdictional fact does not make blocking necessary. It makes blocking the only measure available under the current regulatory architecture. Proportionality doctrine must distinguish between these propositions.

The reforms proposed in this paper are designed to ensure that this distinction is rigorously examined. A pre-enforcement independent review body would force explicit evaluation of whether narrower measures are structurally available.[68] A graduated response ladder would ensure that narrower measures are genuinely

exhausted before blocking is invoked. Bilateral cooperation mechanisms would expand the set of available measures by making international coordination possible.[69] Together, these reforms would subject the necessity stage to the rigorous scrutiny that the Anuradha Bhasin judgment promised but that subsequent cases have not delivered.

The stakes are substantial. Digital regulation of borderless platforms requires borderless procedural safeguards. India cannot regulate Telegram through domestic mechanisms alone. But

[67] *Telegram FZ LLC*, W.P. (C) No. 8259 of 2026.

[68] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

[69] DSA, supra note 44.

it can regulate Telegram through a combination of graduated domestic obligations, international cooperation, and proportionality constraints on blocking. The current framework treats blocking as a measure of last resort invoked when all else fails.[70] The proposed reforms would make it genuinely the last resort invoked only when narrower measures have been exhausted, independently reviewed, and found to be structurally unavailable. This is not a restriction on state power. It is an insistence that state power be exercised proportionately.

Digital freedoms depend on proportionate regulation. The Telegram judgment represents a step backward in this direction. The reforms proposed here offer a path forward. Proportionality doctrine is not anti-state. It is state-constraining. It requires that when the state acts, it does so in a manner that is rational, transparent, and minimally invasive. The necessity stage is the stage at which proportionality doctrine does most of its work.[71] It is where courts ask whether the measure chosen is actually necessary or whether it simply appears necessary because the state has accepted certain constraints as fixed. The Telegram judgment accepted the jurisdictional constraints as fixed and then concluded that blocking was necessary. The reforms proposed here would have forced examination of whether those constraints could be modified through international cooperation before blocking was invoked. That examination is overdue.

[70] DSA, supra note 44.

[71] *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.