

**Feedback on the Draft Information Technology
(Intermediary Guidelines and Digital Media Ethics Code)
Second Amendment Rules, 2026¹**

Submitted to the Ministry of Electronics and Information Technology,
Government of India

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Introduction

The Ministry of Electronics and Information Technology (MeitY) published the Draft Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules, 2026 (“Draft Amendments”) on 30 March 2026, inviting stakeholder feedback, with the consultation period subsequently extended to 7 May 2026 following additional changes introduced on 21 April 2026. We welcome the extension, though we note that the original 15-day window was inadequate for public engagement with amendments of this constitutional significance.

We submit at the outset that the Draft Amendments should be withdrawn in their entirety. Several of the proposed provisions, in particular the insertion of Rule 3(3)(a)(ii) imposing prohibitions and technical obligations on synthetically generated information, the insertion of Rule 3(4) creating binding ministerial instruments, and the amendments to Rule 8(1) and Rule 14 extending executive content oversight to individual users, create substantive legal obligations, impose quasi-penal sanctions, and establish new regulatory jurisdictions over classes of persons not previously within the statutory scheme. These are matters that require amendment of the Information Technology Act, 2000 (“IT Act”) by Parliament. They are not within the scope of the rule-making power delegated to the Central Government under Section 87 of the IT Act. If the government considers these provisions necessary, the appropriate course is to introduce amending legislation before Parliament, not to legislate through subordinate instruments. Our submissions below address the rule-wise concerns in detail.

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Rule-wise Submissions

Rule 3(3): Due Diligence in Relation to Synthetically Generated Information

Rule 3(3) raises concerns about both its statutory foundation and its substantive content. We address the prohibition provisions in Rule 3(3)(a)(i) and the labelling and provenance requirements in Rule 3(3)(a)(ii).

(i) The prohibition provisions in Rule 3(3)(a)(i)

Rule 3(3)(a)(i) requires intermediaries to deploy technical measures to prevent users from creating, generating, modifying, or disseminating synthetically generated information that falls within four enumerated categories.

Sub-clause (IV) prohibits synthetically generated information that “falsely depicts or portrays a natural person or real-world event by misrepresenting, in a manner that is likely to deceive, such person’s identity, voice, conduct, action, statement, or such event as having occurred, with or without the involvement of natural person.” This provision is drafted without any carve-out for political satire, parody, mimicry, or artistic expression. The comedic impersonation of public figures such as politicians, business leaders, and celebrities, has a long and constitutionally protected history in India. A voice impression or facial likeness used in satire necessarily “depicts” a natural person and, in one sense, misrepresents their conduct, since the satirical character says things the real person did not say. The provision does not distinguish between deceptive impersonation intended to mislead, which is a legitimate regulatory concern, and satirical mimicry which the audience understands to be fictional, which is protected expression. Because an intermediary deploying automated detection cannot reliably distinguish satirical from deceptive intent at scale, the rational compliance response is to block both. This creates precisely the automated censorship regime that Article 19(1)(a) requires the State to avoid constructing.

Sub-clause (I) prohibits content that is “obscene, pornographic, paedophilic, invasive of another person’s privacy, including bodily privacy, vulgar, indecent or sexually explicit.” The terms “vulgar” and “indecent” are not defined and do not appear in Article 19(2)’s enumeration of permissible grounds for restricting speech. Article 19(2) permits restrictions on “decency or morality,” but the Supreme Court has consistently held that restrictions on speech must be traceable to one of Article 19(2)’s specified grounds. The inclusion of these terms like “vulgar” and “indecent” in a prohibition backed by the threat of safe harbour loss extends the compliance obligation of intermediaries beyond constitutionally permissible ground.

(ii) The labelling and provenance requirements in Rule 3(3)(a)(ii)

Rule 3(3)(a)(ii), as amended on 21 April 2026, requires that synthetically generated information not covered by the prohibitions in Rule 3(3)(a)(i) be “continuously and clearly visible” with an appropriate label “throughout the duration of the content in a visual display.” It further requires that the information be “embedded with a permanent metadata or other appropriate technical provenance mechanisms, to the extent technically feasible, including a unique identifier, to identify the computer resource of the intermediary used to create, generate, modify or alter such information.”

The continuous labelling requirement is technically unspecified. It does not define minimum parameters for proportions, size, or permissible label positions without which compliance would be entirely subjective. The regulatory uncertainty this creates is compounded for short-form vertical video which is the most prevalent content format on Instagram, YouTube Shorts, and similar platforms, where a persistent label throughout the full duration may obscure a sizeable per cent of the visible frame depending on label size. For audio content, the rule requires a “prominently prefixed audio disclosure.” For a 15-second audio clip, even a 2-second prefix disclosure might distort the user experience for short-form audio.

The continuous labelling obligation also raises a question of asymmetric treatment between technical and visual labelling. The metadata embedding requirement in Rule 3(3)(a)(ii) includes a technical feasibility qualifier: “to the extent technically feasible.” The continuous visual display requirement contains no equivalent feasibility carve-out. This asymmetry appears inadvertent and should be corrected: both requirements should be subject to a technical feasibility qualifier, or technical minimum standards should be published as a separate specification developed in consultation with industry.

The provenance mechanism requirement deserves separate examination. The rule requires a “unique identifier to identify the computer resource of the intermediary” used to create or modify the content. The term “computer resource” in this context is undefined: it could mean the AI model, the server cluster, the API endpoint, or some other technical layer. This ambiguity makes compliance impossible to operationalize consistently. Moreover, the provenance requirement, however implemented, does not achieve its apparent objective of traceability because any user can download labelled content from one platform and re-upload it to another that strips the metadata, breaking the provenance chain without violating any obligation that the rule imposes on the original platform. The technical architecture of the requirement does not match its stated purpose.

Recommendation on Rule 3(3): The prohibition provisions in Rule 3(3)(a)(i) that extend beyond the established grounds in Article 19(2) and the misrepresentation provision in sub-

clause (IV) should either be withdrawn or substantially narrowed to exclude clearly protected expressive activities including satire, parody, and mimicry. The continuous labelling requirement in Rule 3(3)(a)(ii) should either be accompanied by published minimum technical specifications or be subject to the same technical feasibility qualifier as the metadata requirement.

Rule 3(4): Compliance with Clarifications, Advisories, and Directions Issued by the Ministry

Rule 3(4) requires intermediaries to comply with any “clarification, advisory, order, direction, standard operating procedure, code of practice or guideline” issued by MeitY in relation to Part II of the IT Rules and designates such compliance as part of the due diligence obligations of the intermediary under Section 79 of the IT Act. Non-compliance thus carries the consequence of Section 79 safe harbour loss.

Rule 3(4) creates a secondary tier of binding instruments, including advisories, SOPs, codes of practice, and clarifications, that are not rules within the meaning of Section 87 of the IT Act which authorises the Central Government to make them. By attaching Section 79 safe harbour consequences to non-compliance with these instruments, Rule 3(4) renders them as consequential as formally notified rules without subjecting them to any equivalent scrutiny.

Rule 3(4)(c) designates compliance with ministerial advisories as a Section 79 due diligence obligation, producing exactly the compliance dynamic that *Shreya Singhal v. Union of India (2015) 5 SCC 1* was designed to prevent. An intermediary facing the permanent prospect of safe harbour loss will not assess the legal merits of a given advisory and would rather comply unconditionally. Content presenting even marginal regulatory risk, as in political satire, critical journalism, opposition commentary, will be removed because its retention creates compliance exposure and not because it is not in accordance with the law.

Finally, Rule 3(4) does not require that the instruments issued under it be made public. They may be issued directly to intermediaries as private communications. Users of the internet have no way of knowing what ministerial instruments their platforms are complying with, or what content-related decisions those instruments require. The relationship between the State and intermediary platforms cannot become a matter of private governance with public consequences. This is antithetical to the rule-of-law principles that require law to be accessible, clear, and prospective.

Recommendation on Rule 3(4): This provision should be withdrawn in its entirety. If the government’s objective is to ensure that intermediaries give effect to legitimate regulatory directions, this is better achieved by clarifying the existing procedural framework under Sections 69A and 79(3)(b) of the IT Act than by creating a parallel sub-legislative track. Any framework that ties safe harbour consequences to executive instruments must at minimum be

enacted by Parliament, require mandatory public disclosure of all instruments issued, and include a pre-compliance judicial review mechanism.

Rule 8(1) Proviso and Rules 14, 15, and 16: Extension of Executive Content Oversight to Individual Users

The amended proviso to Rule 8(1) extends Part III of the IT Rules (the Code of Ethics and its three-tier oversight mechanism) to intermediaries and to “news and current affairs content hosted, displayed, uploaded, modified, published, transmitted, stored, updated or shared on the computer resources of the intermediaries by users who are not publishers.” This extension applies specifically for the purposes of Rules 14, 15, and 16, bringing ordinary user-generated news content within the jurisdiction of the Inter-Departmental Committee (IDC) within the Ministry of Information and Broadcasting (MIB). The amendments to Rules 14(2) and 14(5) then expand the IDC’s mandate and remove its last minimal adjudicatory threshold.

Rule 2(1)(m) defines “news and current affairs content” as “newly received or noteworthy content, including analysis, especially about recent events primarily of socio-political, economic or cultural nature” made available over the internet. The definition is context-dependent and makes the regulatory jurisdiction contingent on an assessment of the “context, substance, purpose, import and meaning” of the content. An intermediary hosting hundreds of millions of user posts cannot make this assessment in real time. The Rule 2(1)(t) definition of “publisher of news and current affairs content” explicitly excludes individuals not transmitting content in the course of systematic business or commercial activity, a limitation that was evidently designed to confine the publisher framework to institutional actors. The Rule 8(1) amendment captures precisely the class of users that Rule 2(1)(t) sought to exclude. The definitional architecture of the IT Rules does not support the extension the amendment proposes.

The more serious problem concerns the quasi-penal character of the IDC’s powers under the expanded jurisdiction. Under Rule 14(5), as amended, the IDC may recommend warnings, censure, admonishment, reprimand, compelled apologies, and deletion or modification of content. These are not mere administrative acts of a routine character but sanctions on expressive conduct. Under the amended Rule 14(2), any such sanction may now be initiated by the Ministry’s own referral, without any complaint from a member of the public, without any requirement that the “matter” relate to a Code of Ethics violation, and without any prior notice or hearing for the user whose content is being examined. The IDC itself is not an independent body: it is composed of representatives from multiple government ministries and is chaired by an officer of the Ministry of Information and Broadcasting. The Ministry is thus empowered to refer matters concerning users’ social media posts to a committee composed of its own representatives, which may then recommend that those users issue compelled apologies or delete their posts, without any judicial involvement at any stage. This is constitutionally

indefensible. The imposition of sanctions on citizens for their expressive acts requires at minimum: independent adjudication, prior notice, a right to be heard, and judicial review. The IDC mechanism as amended provides none of these. More fundamentally, the power to impose such sanctions on citizens must be conferred by Parliament in primary legislation, not by the Central Government in subordinate rules.

Recommendation on Rule 8(1) and Rules 14, 15, 16: The amended proviso to Rule 8(1) should be withdrawn. Any future framework that vests quasi-penal powers over citizens' expressive conduct in an executive body must be established by Parliament through primary legislation, not by the Central Government through subordinate rules.

Concluding Observations

The Draft Amendments, taken together, represent an attempt to accomplish through subordinate legislation what requires parliamentary enactment. Rule 3(3) creates substantive content prohibitions and imposes open-ended technical compliance obligations on intermediaries and, ultimately, on users. Rule 3(4) creates a mechanism for executive governance of online speech without parliamentary oversight or judicial review. The amended Rule 8(1) and Rule 14 empower an executive committee to impose sanctions on individual citizens for their expressive acts, without independence, without natural justice guarantees, and without statutory authority from Parliament for this purpose.

Provisions that create new legal obligations, expand executive jurisdiction, remove procedural safeguards, and extend regulatory frameworks to new classes of persons are substantive changes to the law. Section 87 of the IT Act does not authorise the Central Government to make such changes by subordinate instrument. If these provisions are considered necessary to address genuine regulatory problems such as deepfakes, misinformation, or inadequate oversight of digital news content, the appropriate mechanism is legislation.

We urge MeitY to withdraw the Draft Amendments and, if it considers legislative reform necessary, to introduce appropriate amendments to the IT Act before Parliament. We remain available for further consultation and welcome the opportunity to engage with the Ministry's regulatory objectives through a process that is proportionate to their constitutional significance.