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PUBLIC CONSULTATION SUBMISSION

Comments and Suggestions on the Draft Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules, 2026

Prefatory Note: *LexMentor Legal Research and Policy Advisory is a legal research and policy engagement platform committed to advancing evidence-based scholarship on constitutional law, digital rights, and regulatory governance in India. We welcome MeitY's initiative to invite public comments on the Draft IT Rules (Second Amendment), 2026, published on 30 March 2026, and commend the Ministry for conducting this consultative exercise. The following submissions are offered constructively, in support of the Ministry's stated objective of fostering a safe, accountable, and trusted digital ecosystem in India.*

I. Background and Legislative Context

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereinafter, 'IT Rules, 2021'), framed under Sections 79(2) and 87(2) of the Information Technology Act, 2000, constitute a foundational instrument for the regulation of online intermediaries and digital media in India. The Government's efforts to periodically update this framework in response to evolving technological developments and online harms are well-considered and reflect a responsible approach to digital governance.¹

The Draft IT Rules (Second Amendment), 2026 (hereinafter, 'Draft Second Amendment'), published by MeitY on 30 March 2026 with a consultation deadline extended to 29 April 2026, builds upon the IT (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, notified on 20 February 2026.² That earlier amendment introduced important measures relating to synthetically generated information and deepfake content. LexMentor recognises the Ministry's intent to

strengthen accountability mechanisms for digital intermediaries while protecting users from online harms, and endorses these objectives in principle.

The following suggestions are offered with a view to ensuring that the Draft Second Amendment is legally robust, operationally effective, and consistent with India's constitutional framework and international best practices in digital regulation.

II. On the Conditioning of Safe Harbour on Compliance with Executive Instruments (Draft Rule 3(4))

Observation: The insertion of Rule 3(4), which links the safe harbour protection available under Section 79 of the IT Act to compliance with MeitY's clarifications, advisories, and standard operating procedures, reflects a commendable intent to ensure that intermediaries remain responsive to government guidance. To ensure that this provision withstands judicial scrutiny, it may benefit from additional definitional precision and procedural clarity.³

Suggestions:

- The terms 'clarifications', 'advisories', 'directions', and 'codes of practice' used in Rule 3(4) should be defined under Rule 2 with clear descriptions of their legal character and binding force, so that intermediaries can comply with confidence and certainty.
- The Ministry may consider a structured tiering of instruments, distinguishing between binding directions that affect safe harbour and non-binding guidance that serves advisory purposes. This would prevent inadvertent legal uncertainty for smaller intermediaries with limited legal capacity.
- A reasonable notice period of not less than 30 days should be prescribed before compliance with a new instrument is treated as a condition for safe harbour, to allow intermediaries adequate time for implementation.

III. On the Extension of Part III to Individual Content Creators (Draft Rule 8(1))

Observation: The proposed amendment to the proviso to Rule 8(1), which seeks to bring individual users who publish news and current affairs content within the ambit of Part III of the IT Rules,

reflects a legitimate policy concern regarding the unregulated dissemination of misinformation by non-institutional actors on digital platforms. The Ministry's intent to bring accountability to this space is recognised and appreciated.⁴

Suggestions:

- The term 'news and current affairs content', as applied to individual users, should be precisely defined to ensure that ordinary citizens sharing personal opinions, satire, or commentary on public events are not inadvertently brought within the regulatory perimeter.
- A separate, lighter compliance framework may be considered for individual creators, distinct from the framework applicable to institutional publishers, with simplified grievance and appeal procedures proportionate to the capacity of individual users.
- Procedural safeguards, including prior notice, an opportunity to respond, and a reasoned written order, should be expressly incorporated into any proceedings initiated against individual users, consistent with established principles of natural justice.

IV. On the Expansion of IDC Jurisdiction (Draft Rules 14(2) and 14(5))

Observation: The substitution of the phrase 'complaints or grievances' with 'matters' in Rules 14(2) and 14(5) reflects the Ministry's intent to empower the Inter-Departmental Committee (IDC) with broader proactive oversight capacity, which is consistent with global trends toward stronger regulatory monitoring of digital content ecosystems. LexMentor supports the principle of strengthening the IDC's role in this regard.

Suggestions:

- To ensure that the IDC's expanded jurisdiction operates with transparency and predictability, the Ministry may consider prescribing specific categories of matters that the IDC may take up suo motu, rather than leaving this entirely to executive discretion.

- Regardless of whether a proceeding is complaint-driven or initiated suo motu, the affected party should be afforded prior notice and an opportunity to be heard before any adverse order is passed, consistent with established principles of administrative law.⁵
- The IDC's composition may be strengthened by the inclusion of a retired judicial officer as an independent member, which would lend additional credibility and impartiality to its proceedings.

V. On Data Retention Obligations (Draft Rules 3(1)(g) and 3(1)(h))

Observation: The amendment to Rules 3(1)(g) and 3(1)(h), making data retention obligations under the IT Rules additive to those prescribed under other applicable laws, strengthens the investigative and enforcement capacity of law enforcement agencies — a legitimate and important objective in the context of rising cybercrimes and national security imperatives.

Suggestions:

- To complement the strengthened retention framework, the Ministry may consider prescribing a maximum data retention cap, beyond which data should be deleted unless a judicial preservation order is in force. This would align the framework with the Digital Personal Data Protection Act, 2023, and reinforce India's constitutional commitment to the right to privacy.⁶
- A purpose limitation clause, specifying that retained data may be accessed only for defined law enforcement or national security purposes, would further strengthen the legal defensibility of the retention regime.
- Intermediaries may be required to publish annual transparency reports disclosing aggregate statistics on data retention requests, access, and compliance, enabling evidence-based policy review.

VI. On Takedown Timelines and Operational Feasibility

Observation: The Government's commitment to the rapid removal of harmful content, including deepfakes, child sexual abuse material, and content threatening national security, reflects a strong and necessary policy position. The reduced takedown timelines introduced by the IT (First Amendment)

Rules, 2026, and carried forward in the Draft Second Amendment, are well-intentioned and respond to genuine public concern about the adequacy of content moderation on large platforms.

Suggestions:

- To ensure operational feasibility across platforms of varying sizes, the Ministry may consider a differentiated timeline framework: the strictest timelines of three hours or less should apply to the most severe categories of content such as child sexual abuse material and credible incitement to imminent violence, while a longer window of 24 to 48 hours may be considered for other categories of unlawful content.
- A tiered compliance framework based on user threshold, similar to the approach adopted under the European Union Digital Services Act, 2022, would ensure that smaller intermediaries and Indian digital startups are not disproportionately burdened, while large global platforms remain the primary subject of the strictest obligations.
- The Ministry may also consider a 'good faith compliance' provision for intermediaries that maintain documented moderation systems and demonstrate reasonable efforts, even in cases where a deadline is marginally exceeded due to verifiable technical or operational constraints.

VII. On Strengthening the Regulatory Process

Observation: The Ministry's decision to invite public consultation on the Draft Second Amendment is a commendable exercise in participatory governance, and reflects the Government's commitment to an open and inclusive regulatory process. LexMentor encourages MeitY to further institutionalise this consultative approach as a standard feature of digital regulation in India.

Suggestions:

- A Regulatory Impact Assessment accompanying each major amendment round would enable evidence-based evaluation of the costs and benefits of proposed changes, and would strengthen the Ministry's position in the event of any future judicial challenge.

- A structured mechanism for periodic review of the IT Rules every two years, with a mandatory stakeholder consultation round, would ensure that the framework remains responsive to technological change without necessitating ad hoc amendments.
- Referral of major amendments to the IT Rules to the Parliamentary Standing Committee on Communications and Information Technology, prior to their final notification, would enhance democratic accountability and the legislative legitimacy of the framework.

VIII. Rule-Specific Drafting Suggestions

The following rule-specific drafting refinements are respectfully suggested:

Rule	Observation	Suggested Refinement
Rule 3(4)	Terms such as 'advisory', 'guideline', and 'code of practice' are undefined, creating uncertainty about the scope of mandatory compliance.	Define all categories of instruments under Rule 2 with clear descriptions of their legal force and binding character.
Rule 8(1) Proviso	'News and current affairs content', as applied to individual users, is undefined and may inadvertently capture personal opinion and satire.	Insert a definition limiting the scope to content that presents itself as factual reporting of verifiable public events.
Rule 14(2)	'Matters' is undefined and sets no threshold for IDC suo motu intervention, which may enable arbitrary referral.	Prescribe categories of matters eligible for suo motu referral, with a requirement for documented justification.
Rule 3(1)(g)/(h)	No maximum data retention period is prescribed despite the creation of additive retention obligations under multiple laws.	Insert a maximum retention cap of three years, extendable only by a judicial order in appropriate cases.

IX. Conclusion

LexMentor commends MeitY for the continued development of India's digital regulatory framework and supports the Government's broader objectives of a safe, accountable, and trusted internet for all citizens. The Draft IT Rules (Second Amendment), 2026, contain several provisions that advance these goals in meaningful and timely ways.

The suggestions set out in this submission are offered with a view to strengthening the legal robustness, operational workability, and constitutional defensibility of the Draft Second Amendment,

so that it may achieve its intended objectives effectively and durably. LexMentor remains available for any further engagement, clarification, or oral submissions before MeitY or any Parliamentary Committee examining this matter.

Respectfully submitted,

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Footnotes and References

1. *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, notified vide G.S.R. 139(E), Ministry of Electronics and Information Technology, 25 February 2021.*
2. *Khaitan & Co., 'MeitY notifies the IT Amendment Rules 2026' (16 February 2026). Available at: khaitanco.com/thought-leadership/MeitY-notifies-the-IT-Amendment-Rules-2026.*
3. *Shreya Singhal v. Union of India, (2015) 5 SCC 1. The Supreme Court read down Section 79 of the IT Act to require that any blocking or takedown direction be judicially sanctioned or issued under a constitutionally valid law.*
4. *Deccan Herald, 'IT Rules 2026: Draft norms tighten curbs on social media creators' (30 March 2026). Available at: deccanherald.com.*
5. *Anuradha Bhasin v. Union of India, (2020) 3 SCC 637. The Supreme Court held that any order restricting freedom of speech must be proportionate, based on cogent material, and subject to judicial review.*
6. *K.S. Puttaswamy (Privacy) v. Union of India, (2017) 10 SCC 1. The Supreme Court unanimously recognised the right to privacy as a fundamental right under Article 21 of the Constitution of India, with informational privacy as a core component.*
7. *MeitY, 'Extension of Time for Inviting Feedback on Draft IT Rules (Second Amendment)' (14 April 2026). Available at: meity.gov.in.*
8. *Editors Guild of India, Statement on the Draft IT Rules (Second Amendment), 2026 (4 April 2026).*

End of Submission