

7 May 2026

Submission on the proposed amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“IT Rules, 2021”)

We thank the Ministry of Electronics and Information Technology (MeitY) for the opportunity to give feedback on the draft amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“IT Rules, 2021”).

About Access Now

Access Now is an international non-profit organisation which works to defend and extend the digital rights of users at risk globally. Through presence and expertise based in over 20 countries across six continents, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the internet’s continued openness and the protection of fundamental rights.¹

Access Now engages with a global community of individuals from over 162 countries in our annual RightsCon summit series, in addition to operating a 24/7 digital security helpline that provides real-time, direct technical assistance to users around the world. We helped found the Computer Incident Response Center for Civil Society (CiviCERT) network and are a member of the Forum for Incident Response (FIRST).² We have special consultative status at the United Nations.

In India and globally, Access Now has consistently engaged with stakeholders including governments and regulatory authorities on matters pertaining to digital rights,³ including

¹ Access Now, *About us*, <https://www.accessnow.org/about-us/>.

² CiviCERT, *About CiviCERT*, <https://www.civcert.org/about/>; Forum for Incident Response, *Vision and Mission Statement*, <https://www.first.org/about/mission>.

³ Access Now, *No liberty, no safety: Sri Lanka must withdraw the Online Safety Bill*, <https://www.accessnow.org/press-release/sri-lanka-must-withdraw-the-online-safety-bill/>.



data protection,⁴ cybersecurity,⁵ content governance,⁶ internet shutdowns,⁷ surveillance and digital security.

The proposed amendments are substantive, not clarificatory

The notice accompanying the draft states that the proposed amendments are “clarificatory and procedural in nature”. However, the amendments introduce substantive changes that significantly expand the scope, application, and enforceability of the Rules.

In particular, the introduction of binding compliance obligations with Ministry-issued advisories and directions, as well as the expansion of the content governance framework to new categories of users and content, go beyond mere clarification. These changes alter the underlying regulatory architecture governing intermediary liability and online content.

Such substantive changes should be introduced - if at all - through primary legislation, or at a minimum through a robust legislative process, rather than through executive rule-making.

Rule 3(4): Turning advisories into law

The introduction of Rule 3(4) raises serious concerns regarding legality, due process, and the separation between binding legal obligations and non-binding executive guidance.

By requiring intermediaries to comply with “clarifications, advisories, orders, directions, standard operating procedures, codes of practice or guidelines” issued by the Ministry - and by incorporating such compliance into due diligence obligations

⁴ Access Now, *Joint submission on the Bangladesh Draft Data Protection Act 2023*, <https://www.accessnow.org/wp-content/uploads/2023/10/Submission-on-the-Bangladesh-Data-Protection-Act-2023-Access-Now-and-Tech-Global-Institute.pdf>.

⁵ Access Now, *Discussion Paper on International Cybersecurity Norms* for the UN Open-ended Working Group on developments in the field of information and telecommunications in the context of international security, <https://www.accessnow.org/to-keep-us-safe-global-cybersecurity-norms-must-be-human-centered-and-protect-rights/>.

⁶ Access Now, *Submission on the draft Broadcasting Services (Regulation) Bill, 2023*, https://www.accessnow.org/wp-content/uploads/2024/01/Access-Now-Submission_Broadcasting-Services-Bill_January-2024.pdf.

⁷ Access Now, *Shrinking democracy, growing violence: Internet shutdowns in 2023*, <https://www.accessnow.org/wp-content/uploads/2024/05/2023-KIO-Report.pdf>.



under Section 79 - the amendment effectively transforms non-binding instruments into enforceable legal requirements.

This collapses an important legal distinction. Advisories and clarifications are, by definition, intended to guide or interpret existing law, not create new binding obligations. Allowing such instruments to carry the force of law through subordinate legislation creates a mechanism for expanding regulatory obligations without parliamentary scrutiny or procedural safeguards.

Recent practice illustrates the risks of this approach. In March 2024, the Ministry issued an advisory requiring prior approval before deployment of certain AI systems deemed “unreliable” or “under-tested.” The advisory was subsequently withdrawn following widespread concern regarding its legality and implications. This episode demonstrates the fluid and often reactive nature of executive advisories, and underscores why such instruments cannot be treated as binding obligations.

Embedding such advisories within the due diligence framework risks creating a moving target for compliance, where intermediaries are required to adhere to evolving executive directions without clear legal standards, safeguards, or avenues for challenge.

Circumvention of the *Shreya Singhal* judgment and due process

The amendment also risks undermining the procedural safeguards established by the Supreme Court in *Shreya Singhal v. Union of India*, which limited content takedown obligations to:

- court orders, or
- notifications issued by the government or its authorised agency in accordance with law.

By introducing a broad obligation to comply with Ministry-issued directions and advisories, the amendment creates a parallel pathway for content regulation that may not meet the procedural and constitutional safeguards required under *Shreya Singhal*.

This risks normalising content restriction through executive action rather than legally accountable processes, and deepens longstanding concerns with the IT Rules, 2021 regarding executive overreach.



Expansion of content control and chilling effect

The extension of Part III to include news and current affairs content hosted by non-publisher users significantly expands the scope of government oversight over online expression, and concretises the path to censorship.

This risks bringing a wide range of user-generated content - including commentary, satire, independent journalism, and informal analysis - within the ambit of content regulation mechanisms originally designed for publishers.

In practice, any form of expression that engages with current events could be construed as “news and current affairs content,” creating uncertainty for users and intermediaries alike. The absence of clear exemptions for satire, commentary, or journalistic expression exacerbates this risk.

Such ambiguity is likely to result in over-compliance by intermediaries, self-censorship by users, and a chilling effect on lawful speech, undermining the diversity of viewpoints and the role of the internet as a space for democratic participation.

Notably, this approach resembles elements of the draft Broadcasting Services Bill, which was withdrawn following significant concerns regarding its impact on free expression. Reintroducing similar regulatory approaches through amendments to the IT Rules raises concerns regarding regulatory consistency and transparency.

Expedited takedowns and global comparison

The continued trend toward expedited takedown timelines raises additional concerns. Recent amendments have reduced compliance timelines to as little as three hours in certain cases, which is unprecedented globally. Few, if any, countries have such a short window for content removal.

For instance, even Germany’s NetzDG law – now significantly replaced by or absorbed into the Digital Services Act – was often cited as strict, providing a 24-hour window only for “manifestly unlawful” content, with longer timelines for complex cases. However, this model was widely criticised for incentivising over-removal, with platforms erring on the side of caution to avoid significant penalties. Courts in Germany had to intervene in multiple instances to reinstate lawful content,



highlighting the risks of delegating legal determinations to private platforms under compressed timelines.

This experience demonstrates that even a 24-hour framework, when combined with liability pressures, can undermine due process and free expression. A three-hour compliance window significantly exacerbates these risks. Similar concerns have been raised in other jurisdictions experimenting with expedited takedown frameworks, where compressed timelines have been shown to undermine due process and increase reliance on automated moderation tools.

Extremely short compliance windows increase the likelihood of automated or precautionary removals, incentivising intermediaries to prioritise speed over accuracy and due process.

Privatisation of censorship / over-compliance

The combined effect of expanded obligations and strict timelines is likely to incentivise intermediaries to err on the side of removal, leading to systemic over-compliance.

This effectively shifts decision-making on the limits of lawful speech and fundamental rights in the Indian Constitution from courts and accountable public institutions to private corporations. Unlike government action, which is subject to constitutional standards, scrutiny, and judicial review, decisions taken by intermediaries often lack transparency, procedural safeguards, and accessible avenues for redress.

This trend towards the privatisation of speech regulation reduces accountability while simultaneously limiting users' ability to challenge both the process and substance of content moderation decisions. It should not be acceptable for the government to bypass constitutional scrutiny on speech matters by mandating that intermediaries systemically err towards censorship.

Opacity and lack of remedies

The opacity surrounding blocking orders and review processes remains a significant concern. The lack of transparency regarding the content of orders, the reasoning behind them, and the functioning of review mechanisms limits the ability of affected individuals to seek redress.



In practice, many affected users may lack the resources or capacity to challenge such actions, resulting in a cumulative impact on the diversity of online speech.

At a systemic level, this contributes to an increasing centralisation of control over online expression, while diminishing the role of judicial and parliamentary oversight.

Inter-Departmental Committee expansion

The proposed expansion of the powers and scope of the Inter-Departmental Committee, including the ability to consider matters referred by the Ministry beyond formal complaints, raises concerns regarding unchecked executive influence.

Allowing the Committee to initiate or act on matters without a formal grievance mechanism and judicial oversight risks enabling content regulation in the absence of clear triggers, procedural safeguards, or accountability.

In substance, this resembles earlier attempts to expand executive control over online content, including through mechanisms such as the proposed Fact Check Unit, which were subject to significant public criticism and blocked by courts.

Data retention and privacy

The insertion of language clarifying that retention obligations operate “without prejudice” to other legal requirements introduces ambiguity regarding the scope and duration of data retention.

This risks enabling overlapping or extended retention mandates without clear limits, safeguards, or purpose restrictions. Such an approach is inconsistent with established principles of necessity, proportionality, and data minimisation, and may have significant implications for users’ right to privacy.

Expanding data retention obligations through subordinate legislation, without clear statutory backing and safeguards, raises serious concerns regarding legality.



Rule 3(3)(a)(ii): Continuous and clearly visible display of label for synthetically generated information throughout the duration of the content in visual display

We welcome the initiative to address the possible harms of synthetically generated content and encourage increased awareness among users.

While well-intentioned, we believe that this proposed amendment is not the desired solution.⁸ Watermarking/labelling is by itself not a reliable or conclusive evidence of origin. The presence of a watermark, even if continuous, does not necessarily mean content is entirely AI-generated, and its absence does not mean that it is entirely human-designed, with no synthetic input. There is a real risk that people begin to treat this as definitive proof, when in reality it is at best a weak signal. It may end up serving as a blunt solution to a complex problem, especially in light of how easily watermarks can be altered by bad actors with sufficient technical know-how.

Further, while we must look for solutions to ascertain *how* a piece of content is generated, we must not insist on this being correlated with *who* created it.⁹ Labels should not be required to have embedded metadata or identifiers leading to the origin or the creator. In other words, people who use generative AI to create content, must not be required to relinquish their right to privacy.

Note on the consultation process

We appreciate that comments are invited on these proposed amendments. However, the spate of amendments, with extremely short deadlines and last minute extensions, make it very difficult for stakeholders to offer meaningful input. Further, it has been noted that the consultations will be held in a fiduciary capacity, and not made public. We sincerely urge the government to modify this approach, allowing for public, and open consultation, enabling people submitting feedback to build on each other's comments, making more information and perspectives available for the public at large, and ultimately facilitating the development of frameworks that are inclusive and well-informed. We also confirm that our comments can be made public.

⁸ Access Now, *Identifying Generative AI Content: When and How Watermarking Can Help Uphold Human Rights*, <https://www.accessnow.org/wp-content/uploads/2023/09/Identifying-generative-AI-content-when-and-how-watermarking-can-help-uphold-human-rights.pdf>

⁹ WITNESS, *Testimony of Sam Gregory, Executive Director, WITNESS Before the U.S. Senate Committee on Commerce, Science and Transportation* <https://www.commerce.senate.gov/wp-content/uploads/media/doc/Sam%20Gregory%20Testimony%20Senate%20Commerce%20SubCommittee%20Hearing%20Sept%202012.pdf>



Conclusion

These amendments must also be viewed in the broader context of the evolution of the IT Rules since 2021. The regulatory framework has been repeatedly expanded through executive rule-making, without necessary legislative debate or comprehensive review.

While the stated objective has been to enhance intermediary accountability, the cumulative effect has been to expand executive control over online speech and data, often at the expense of fundamental rights.

A more sustainable and rights-respecting approach would require a transparent, consultative, and legislatively grounded framework for regulating online intermediaries and content.

The IT Rules framework is in need of an overhaul in the interest of fundamental rights. This process must be anchored in inclusive consultations, and must be geared towards establishing restrictions on executive rule-making powers, independent judicial oversight, and meaningful access to remedies. Substantive amendments, as have been continuously introduced since the Rules came into force, but only be brought in through legislative processes and scrutiny.

We remain committed to continuing to engage with this important process to promote a rights respecting framework in India.

Yours sincerely,

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