
***Regulation of OTT platforms under the
Information Technology (Intermediary
Guidelines and Digital Media Ethics Code) Rules,
2021***

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Overview

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 - ❖ Recent Controversies surrounding OTT
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 - ❖ Three Level Grievance Redressal Mechanism
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What are OTT Platforms

- ❖ OTT (Over The Top) service is a media service offered directly to viewers via the Internet. OTT bypasses the traditional means of cable, broadcast, and satellite television platforms.
- ❖ In the recent years increased consumption of content by the Indian audience has resulted in a massive growth in the number of OTT Platforms launched in India.
- ❖ Viewers are able to exercise content on their devices with a mere internet connection.
- ❖ Examples of OTT platforms include Netflix, Amazon Prime, Voot, Sony Liv, Voot, Hotstar, MX Player, Zee5, Alt Balaji.



Recent Controversies surrounding OTT

- ❖ The lack of regulations on OTT platforms (unlike TV and Films) resulted in umpteen controversies, with several shows being dragged into disputes on questions of *obscenity, defamation, hurting of religious sentiments*, etc.
 - ❖ The National Commission for Protection of Child Rights directed Netflix to immediately remove certain "objectionable" scenes involving minors in "Bombay Begums,".
 - ❖ Controversy over scenes in "Tandav" released on Prime, on a Hindi word meaning "fury," which allegedly insulted Hindus by portraying the faith's deities in a derogatory manner.
 - ❖ Criticism of "Mirzapur" and "Patal Lok" on Prime for use of abusive language and depiction of violence.
 - ❖ Cries to boycott Netflix's "A Suitable Boy" for showing intimate scenes between a Muslim man and a Hindu woman against the backdrop of a temple
 - ❖ MX Player's "Aashram," faced legal troubles over the controversial portrayal of Hindu saints.
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Release of Rules for OTT Platforms

- ❖ Because of these frequent controversies in relation to OTTs, the Government of India enacted the ***Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules)*** on February 25, 2021.
 - ❖ These Rules have been notified under the Information Technology Act, 2000, which provides for the regulation of electronic transactions and cybercrime. The
 - ❖ IT Rules replace the Information Technology (Intermediaries Guidelines) Rules, 2011.
 - ❖ The IT Rules, 2021 regulate bodies including the Intermediaries (such as social media platforms and messaging services), *OTT* platforms and news portals, however this presentation limits its scope to analyzing the regulation of OTT under the said Rules.
 - ❖ The Rules have been notified under section 87 of Information Technology Act which empowers the Central Government to make Rules.
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Self-Classification of Content

- ❖ The OTT platforms have to self-classify the content into five age based categories-
 - “U” (suitable for all ages),
 - U/A 7+ (suitable for person aged 7 years and above),
 - U/A 13+ (suitable for persons aged 13 and above),
 - U/A 16+ (suitable for persons aged 16 and above)²
 - ‘A’ (restricted to adults).
 - ❖ These content classifications are not novel and have existed as part of the Cinematograph Act 1952 and are also similar to the rating criteria proposed under the self-regulatory codes released by the Internet and Mobile Association of India.
 - ❖ OTT Platforms would be required to implement parental locks for content classified as U/A 13+ or higher, and reliable age verification mechanisms for content classified as “A”.
 - ❖ OTT platforms have to prominently display the classification rating specific to each programme together with a content descriptor informing the user about the nature of the content, and advising on viewer description at the beginning of every programme. It will enable the user to make an informed decision, prior to watching the programme.
 - ❖ The very premise of self regulation to categorize content age appropriately can be faulty because they say Age 10 is the new TEEN age so therefore what might be appropriate to one might be in-appropriate to other and vice versa too.
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Three Level Grievance Redressal Mechanism

- ❖ A three-level Grievance Redressal Mechanism has been established under the Rules with different levels of self-regulation.

Level-I: Self-regulation by the publishers;

Level-II: Self-regulation by the self-regulating bodies of the publishers;

Level-III: Oversight mechanism.

- ❖ [Level I] Self-regulation by the Publisher: Publisher (the OTT platform) will appoint a Grievance Redressal Officer based in India, who will be responsible for the redressal of grievances. He will have to take decision on complaints in 15 days.
 - ❖ [Level II] Self-Regulatory Body: There may be one or more self-regulatory bodies of publishers. Such a body will be headed by a retired judge of the Supreme Court or a High Court or independent eminent person. It will have maximum six members. Such a body will have to register with the MIB and it will oversee the adherence by OTT to the Code of Ethics. It will also address grievances in 15 days that have not been resolved by Level I.
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Three Level Grievance Redressal Mechanism

- ❖ [Level III] Oversight Mechanism: MIB will formulate an oversight mechanism. It will publish a charter for self-regulating bodies, including Codes of Practices. It will establish an Inter-Departmental Committee for hearing grievances.

Problems associated with the Grievance Redressal Mechanism

- ❖ More power has been provided to the Third Level i.e. the government. The registration of the self-regulatory body is subject to the MIB's satisfaction, which shows that the control lies with the government.
 - ❖ The inter-department committee at level three has the power to hear complaints referred to it by the MIB, thus skipping the first two levels of self-regulation and taking away their powers.
 - ❖ Placing such greater powers in the hands of government reduces the scope of powers of OTT platforms and self regulatory authorities.
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Problems associated with the IT Rules

- ❖ The IT Rules do not provide any grounds as to what type of content has to be removed. Because of the lack of clear guidelines, there exists a possibility of misuse of the powers by the authorities to curb the creativity of OTT platforms.
 - ❖ Arbitrary use of powers by the authorities raises concerns over OTT platforms having Fundamental Right to Freedom of Speech and Expression under Article 19 of the Constitution.
 - ❖ The IT Rules do not provide for specific grounds on which grievances can be made. Given the subjective nature of the content and diverse sensibilities of viewers, there are likely to be a multitude of complaints.
 - ❖ The Grievance Redressal Mechanism does not provide for a balance of power between the three levels and places wide powers with the Third Level.
 - ❖ The IT Rules pose implementation challenges because nothing has been provided as to what shall be punishment for OTT platforms in case they fail to follow the IT Rules.
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Reducing OTT to TV Standards?

- ❖ The IT rules feature a Code of Ethics, which states that all content would be judged against existing laws such as the Press Council Act, 1978 and Programme Code under section 5 of the Cable Television Networks Regulation Act, 1995, (*TV Code*) besides other relevant laws.
 - ❖ The TV Code states that no programme should be carried in the cable service that offends good taste or decency, or contains criticism of friendly countries or contains an attack on religions or communities or visuals or words contemptuous of religious groups or that promotes communal attitudes.
 - ❖ OTT platforms have been an escape for content creators / film makers/ TV production houses to make content that could not have been aired on TV/Cinema, thus allowing creativity.
 - ❖ But an overly restrictive regime might render scope of creativity in OTT similar to that in TV/Films.
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Long term Impact on Content Creators

- ❖ Given the diversity and subjective sensitiveness in India, OTT platforms will get a plethora of grievances from different viewers with varied social sensibilities. Accordingly there will be demand for different types of content and the OTT platforms will have to work on their “on-demand” service models from the perspective of a wide audience base.
 - ❖ In the past, all kinds of content has continued to be created despite the classifications or rating mechanisms takedowns due to grievances. Such films/content could not be aired without removing the controversial parts but the same were available to the audience on websites working illegally. So, the overly restrictive regime in the OTT sphere as well might result in content piracy.
 - ❖ In India the demand for foreign content has also increased. Netflix and Prime provide a plethora of content made outside India. Because of lack of clarity on jurisdictional limits in the digital sphere, it is to be seen if foreign content on OTT platforms will have to be curtailed.
 - ❖ Big foreign OTT platforms such as Netflix have made an advent in the Indian market and have invested in it. Such a curb on content autonomy may lead them to take a step back.
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