

## IT RULES 2021: REGULATIONS ON OTT PLATFORMS

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“Recently, on February 25, 2021, the government of India notified Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021, to regulate OTT platforms, online news, social media intermediaries, and current affairs websites.” This piece attempts to focus on OTT platforms by elucidating their definition, how these rules are concerned with it, how different nations regulate OTT, and why such rules are need of the hour to regulate the Indian OTT market. Indian courts have also taken cognizance of looking at the gravity of the matter.

### WHAT ARE OTT PLATFORMS?

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In this evolving world, the realms of entertainment have changed from wired television connections to free or paid wireless audio and video hosting and streaming services. Such services are known as OTT (i.e., over-the-top) services that provide users with a range of content like short-movies, web-series, feature films, documentaries, etc., for entertainment purposes. Unlike the content provided by film or television that is managed by CBFC, BCCC, and so on, the OTT platforms have no administrative body over them to control the content streamed and consequently enjoy their freedom. These services reach their targeted audience through the internet on platforms like Netflix, Amazon Prime, Hotstar, etc., which might be accessed through any digital source or gadget.

With the help of Artificial Intelligence, these platforms also suggest users the content that he/she likes to view. These platforms provide some content for free while charging a monthly amount for the premium content not available elsewhere on the internet. It is a well-known fact that the content that one watches have a lasting effect on his/her mind. Content streamed by these platforms has a global outreach. Thus, play a crucial role in affecting and shaping the mindset or opinion of an individual.

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## COMPLEXITIES OF UNREGULATED OTT PLATFORMS: NEED FOR IMPLEMENTING SUCH RULES

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Although the individuals also evolved with the technology and accepted OTT platforms with open arms, it doesn't mean that they also accept the vulgar, abusive, and derogatory content streamed on such platforms. The unchecked functioning of these platforms led to an increase in obscenity (even some web-series termed as 'soft-porn'), use of abusive and defamatory language, and showing violence. Shows like *Gandi Baat*, *Four More Shots Please!*, *Sacred Games*, *Mirzapur*, etc., depicting women vulgar violated the "Indecent Representation of Women (Prohibition) Act, 1986 under the garb of freedom of speech and expression, In the case of *Justice for Rights Foundation vs. Union of India*,<sup>1</sup> it was urged to regulate the OTT platforms as they are displaying 'soft pornographic' content that is against the dignity of women and children enshrined in Article 21."

The requirement for OTT guidelines additionally emerges from the way that previous laws have demonstrated inadequate in managing matters concerning OTT content. OTT platforms qualify as 'intermediaries' (mediators) **under 2(1)(w) of the IT Act, 2000**. Consequently, on the off chance that they are managing third-party information, intermediaries do not have the responsibility for the content published on the stage and are generally subject to the rules set by the platforms themselves. In any case, in actuality, large numbers of the OTT stages enjoy making their substance, subsequently getting away from risk under this arrangement. Furthermore, the increase in the use of abusive and defamatory language against religions in various web-series like *Pataal Lok*, *Leila*, *Aashram*, *Mirzapur*, etc. that is freely accessible to the children made the society realize that there is an immediate need to impose stringent regulations on such platforms. Recently released web-series *Tandav* acted as the last straw that made the overlaid camel of the patience of society collapse.

### INDIAN COURTS IN THIS REGARD

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On December 20, 2020, the Information & Broadcasting Ministry, along with IT Ministry through their secretaries, filed a transfer petition in the apex court to bring all the pending cases to the Supreme Court. Already by December, various courts have heard nearly 23 petitions regarding the regulation of OTT Content.

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<sup>1</sup> 2019 SCC OnLine Del 10962.

In the case of the Justice for Rights Foundation,<sup>2</sup> the Supreme Court ruled that to deal with objectionable content already, there are stringent provisions mentioned in the IT Act. Hence, there is no need for the court to create new guidelines. Furthermore, citing this case, the Delhi High Court dismissed the petition filed by Congress lawyer Nikhil Bhalla to censor certain dialogues showing former PM Rajeev Gandhi negatively. Later the petition was amended, requesting the Hon'ble court to frame guidelines for OTT platforms regulation.<sup>3</sup>

However, the Supreme Court, in a PIL filed by Shashank Shekhar Jha and Apurva Arhatia while taking the cognizance of the gravity of matter said “mere contemplation” on the issue is not sufficient. *“This is an important issue. It is not adversarial at all. The government should tell us what it is doing about the OTTs. What is it you are doing, legislation or what?”* Hence, this shows that even though the Supreme Court rejected to formulate any guidelines, taking the matter seriously, it urged the government to come up with something “concrete” to tame the unruly horse of OTT.

### **WHAT ARE THESE RULES?**

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*“The Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021, was notified under the two-decades-old Information Technology Act, 2000 and will supersede the 2011 guidelines for internet intermediaries.”* The rules introduce a code of ethics to be followed by online curated content and intermediaries stating that the platform will take due caution while featuring any content related to (a) Content that affects the sovereignty and integrity of India; (b) Content that threatens, endangers or jeopardizes the security of the State; (c) Content which is detrimental to India's friendly relations with foreign countries; (d) India's multi-racial and multi-religious context; (e) Activities, beliefs, practices, or views of any racial or religious group in India.

Furthermore, the rule categorizes content into five different categories based on violence, nudity, sex, etc.:

- “U” would be suitable for everyone irrespective of their age.
- “U/A 7+” would be suitable for those who are above seven years and can be watched by children below seven years with parental guidelines.

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<sup>2</sup> Justice for Rights Foundation v. Union of India, WP(C) 11164/2018

<sup>3</sup> Nikhil Bhalla v. Union of India, W.P. (C) No. 7123/2018

- “U/A 13+” would be suitable for those who are above 13 years and can be watched by children below 13 years with parental guidelines.
- “U/A 16+” would be suitable for those who are above 16 years and can be watched by children below 16 years with parental guidelines.
- “A” that would be restricted to adults only.

The rules not only categorized the content but also taken its effective implementation into account and suggested platforms that access control mechanisms, including parental locks, should be made available for content that classify as U/A 13+ or higher. The rules also suggest applying all efforts to restrict a child from accessing content classified as “A” and implement a reliable age verification mechanism for the viewers of such content.

To ensure adherence to these rules and for the redressal of grievances, the rules further lay down a three-tier mechanism (i.e. “Self-Regulating Mechanism Level I, Self-Regulating Mechanism Level II, and at last Oversight Mechanism Level III. Moreover, rule 4 of the draft contains 16-due diligence rules that should be followed by these intermediaries”). At last, the rules suggest that if these rules get violated, then provision of the IT Act including Section 45 shall apply.

### **GLOBAL PERSPECTIVE OF OTT REGULATION**

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The rules are said to be inspired by the OTT regulation procedures in the UK, as in the UK, the OTT platform faces similar scrutiny as any open service broadcaster. “Nations like Singapore, UK have regulatory bodies to keep a check on the OTT platforms. In September 2018, the Director-General of the British Broadcasting Corporation (BBC) required a guideline on video real-time features like Netflix and Amazon. Following this, the UK culture secretary indicated that video web-based features should confront similar examination as other public help telecasters.”

From there on, the UK government delivered a white paper on the danger that unregulated online substance presented and looked for shut discussion on how it very well may be managed. The white paper is concerned uniquely with client-produced content right now. It proposes another controller and an administrative structure to guarantee the online wellbeing of British residents. The elements of the controller will incorporate – a) to manage and

implement the administrative system, b) to set-out codes of training, c) to regulate client redressal instruments, d) to advance instruction and mindfulness about online wellbeing, and e) to commission and attempt examination to improve principles of online security among others. The proposed administrative structure will incorporate – a) an obligation of care on the organizations to find sensible ways to protect their clients, b) an order on the organizations to handle unlawful and destructive movement on their administration, c) a prerequisite of delivering a yearly straightforwardness report by the organization, and d) a command on the organization to have a viable and simple to get to client grievances work among others.

*“In Singapore, the Infocomm Media Development Authority (IMDA), the media administrative collection of Singapore gave a code of practices for OTT and video-on-request administrations to follow from 1 March 2018.”* Specialist organizations are needed to order their substance on a similar premise as disconnected movies – a) G: for general, b) PG: for parental direction, c) PG13: for parental direction for youngsters under 13, d) NC16: for no kids under 16 years old, e) M18 for developing crowds (18 or more) in particular, and f) R21 for content confined to individuals of 21 years or more as it were. Specialist organizations are permitted to offer substance evaluated NC16 or more just if accommodate a parental lock work on their foundation. Further, they are permitted to offer R21 content just if it is bolted of course and the supplier carries out a solid age check system. The code further requires specialist co-ops to show the appraisals and the components in the substance, including topic, viciousness, bareness, sex, language, drug use, and frightfulness which prompted the rating, to be shown outwardly and conspicuously to the watcher before such watcher decides to devour the substance.

Australia has a central enactment Broadcasting Services Act (BSA), 1992 that governs the OTT sector. While in Turkey, there is an authorizing system under which the OTT stages are given a permit for ten years. Nations like Indonesia and Saudi Arabia also have strict guidelines to check and balance the content circulated by such platforms.

### **ARE THESE RULES A BOON OR A BANE?**

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The rules dividing content into five different categories along with parental control is a much-needed move as various OTT platforms like Ullu, Kooku, Alt Balaji, etc., stream mostly explicitly erotic content as well as various other platforms showing violent and derogatory

content are easily accessible to small children. Thus, playing a crucial role in adulterating their mindset.

Though the rules and implementation procedure mentioned in the draft seems good, the Internet Freedom Foundation has said *“It is a concern that oversight mechanism [ethics code] is being created without any clear legislative backing and will now increasingly perform functions similar to those played by the Ministry of Information and Broadcasting for TV regulation.”* Thus, it might lessen the enjoyment of the Freedom of Speech and Expression.

Various filmmakers, producers, including Ekta Kapoor, Nila Madhab Panda, Girish Johan, and lyricist Prasoon Joshi welcomed the regulations by writing their views on social media platforms. However, filmmaker Onir stated these rules as “death of good content.” However, the guidelines seem perfect theoretically; real issues will get visible after the implementation. Whether these rules come out as a boon or bane for the digital platforms remains to be seen.

## **SUGGESTION & CONCLUSION**

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The public authority ought to talk with suitable stakeholders. This will improve the inclusivity and adequacy of the enhanced IT rules. The attention ought to be on reinforcing citizen's privileges by gaining experience from effective worldwide models like (OFCOM is a correspondence controller in the UK). The public authority should have an attitude of adaptability and readiness to help the guidelines satisfactorily. OTT stages while directing the substance need to find some kind of harmony. Particularly between the different Indian cultures and the belief of viewers in India.

The establishment of new IT rules 2021 is a turning point that will change the advanced data nature in India. A fine harmony between the right to speak freely and the need to control the misuse in digital platforms must be kept up. Both the public authority and digital platforms should cooperate and satisfy this obligation.