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**OTT & SOCIAL MEDIA**

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**ABSTRACT**

The internet revolution has generated a massive online market in all industries. The new platforms have established themselves as a source of entertainment for the general public. The availability of a wide range of services at the touch of a finger has had a bigger influence on society. It has risen to prominence as a source of opportunity and employment, but it also intrigues and influences others. It made individuals astute which is necessary for the twenty-first century. According to statistics from 2020, there has been significant growth in the number of paid OTT platform customers, which has reached over 29 million, as well as an increase in social media users. WhatsApp has 53 crores users, Facebook has 41 crores, Instagram has 21 crores, Twitter has 1.75 crores, and Youtube has 44.8 crores. With the growing number of users, it's more important than ever to have a clear rule in place to prevent abuse. The “Ministry of Electronics and Information Technology (MEITY)” will be in charge of social media, while the “Ministry of Information and Broadcasting” will be in charge of the OTT platform. The self-regulation and redress mechanisms are represented by the specified guidelines. The government welcomes foreign firms to work in India on the condition that they adhere to the Indian constitution. This paper critically analyses the guidelines along with the pros and cons of the implication of the new rules.

**Keywords:** guidelines; OTT platform; social media platform; intermediaries; social media intermediary; significant social media intermediary

**INTRODUCTION**

The development of social media has changed society, while on the other hand, the OTT (over the top) platform has supplanted television as a source of entertainment. There has been a detrimental impact of the same in society. In recent years, social media platforms have become a venue for false news and harsh criticism, with OTT platforms putting forward unpleasant content. It has a contemptuous gaze in society because of its detest influence. On the OTT

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platform, the government has claimed that filtering and government control is required. New rules for governing social media and OTT platforms were released in 2021.

The Indian government has established guidelines to control both OTT and social media sites. The “Ministry of Electronics and Information Technology (MEITY) and the Ministry of Information and Broadcasting” are the two ministries in charge of overseeing the platforms. There are three sections to the guidelines: Part I consists of preliminary provisions; Part II consists of intermediary due diligence and grievance redressal mechanisms, which will be monitored by the “Ministry of Electronics and Information Technology”; and “Part III consists of a Code of Ethics and Procedure safeguard in relation to digital media, which will be monitored by the Ministry of Information and Broadcasting.”

The Government of India issued a notification under General Statutory Rules 139(E) exercising its power under section 87(1)<sup>2</sup>, section 87(2)(z)<sup>3</sup> and section 87(2)(zg)<sup>4</sup> by providing new guidelines, under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, for the regulation of social media and OTT platform.

## **DEVELOPMENTS THAT LED TO THE FRAMEWORK OF NEW GUIDELINES**

The developments that lead to the formation of social media rules are as follows:

- In the case of in **Re: Prajjawala**<sup>5</sup> the Supreme Court issued a suo-moto writ petition in 2018, stating that the government of India has the authority to create appropriate guidelines to limit the growing pictures, visuals, and sites of rape and porn related to children.
- In the case of **Tehseen S. Poonawalla**, the Supreme Court stated that the government should be allowed total discretion in order to limit the dissemination of information on social media platforms that generate disorder and have the potential to incite violence and lynching of any kind.<sup>6</sup>
- In 2018 **Janani Krishnamurthy**<sup>7</sup> and **Antony Clement Rubin**<sup>8</sup> filed a writ case in the Madras High Court, requesting that the Aadhar Card be connected to social media

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<sup>2</sup> Information Technology Act, 2000

<sup>3</sup> Information Technology Act, 2000

<sup>4</sup> Information Technology Act, 2000

<sup>5</sup> In Re: v. Prajjwala Letter Dated 18.2.2015 Videos of Sexual Violence and Recommendations; 2018 SCC OnLine SC 775

<sup>6</sup> Tehseen S. Poonawalla case vs. Union of India; 2018 SCC OnLine SC 1639

<sup>7</sup> *Janani Krishnamurthy v. Union of India* (W.P. No. 20214/2018)

<sup>8</sup> *Antony Clement Rubin v. Union of India & Ors* (W.P. No. 20774/2018)

accounts so that unlawful actions can be discovered. However, after the Puttaswamy decision from 2018, the court ruled that Aadhar linkage could not be made mandatory, and therefore the petition was rejected. Though the issue of social media platform misuse has not been resolved.

- Members of parliament have also demanded that remedial steps be taken and that social media be held accountable under the law for the dissemination of fake news. The aim of the important sitting in Rajya Sabha by Calling Attention Motion was to examine the growing abuse of social media platforms and urge the government to adopt strong restrictions surrounding their regulations.
- In 2020, the Rajya Sabha established an ad-hoc committee to recommend the "identification of the first originator" of news, communication links, or any other content that is outrageous in nature and has spread through social media, in response to the rising issue of pornography, which endangers women's safety and has a negative impact on children and society.
- In *Justice for Rights Foundation v. Union of India*<sup>9</sup>, the NGO has filed a writ case with the Delhi High Court, alleging that OTT services are unregulated and uncensored. The aim was to argue that if traditional DTH services are controlled and regulated, why shouldn't OTT platforms, which have a large number of registered users? The Supreme Court took up the case and ordered the Indian government to provide explanations for the lack of censorship and control of OTT services. According to the Ministry of Information and Broadcasting, there is no need for OTT platforms to be regulated separately because they are currently covered under the Information Technology Act of 2000.
- While there are no explicit regulations to control online material, there are a few articles and parts from several statutes that regulate online content, such as Sections 67A<sup>10</sup>, 67B<sup>11</sup>, and 67C<sup>12</sup>. It stipulates that anybody who transmits or publishes any obscene or sexually explicit content, particularly those depicting children in sexual actions, would face punishment as well as imprisonment. Section 69A of the IT Act also gives the Central Government the authority to make instructions prohibiting the release of certain information to the public.
- In 2019, numerous OTT platforms signed the self-regulatory and self-censorship mechanism after determining that they needed to continue working in India. The "Internet and Mobile

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<sup>9</sup> WP(C) 11164/2018.

<sup>10</sup> Information Technology Act, 2000

<sup>11</sup> Information Technology Act, 2000

<sup>12</sup> Information Technology Act, 2000

Association of India” a self-regulatory mechanism prohibited certain content which disrespect the national emblem and flag; or that offends religious sentiments; or depicts child pornography; or depicts terrorism; or against country’s law and order.

- The government did not accept the OTT platform's code of conduct, which was developed by the “Internet and Mobile Association of India (IAMAI) and the Digital Curated Content Complaints Council (DCCC)”, because no suitable guidelines were framed.

There are certain clauses which is framed in order to avoid any ambiguity. The privacy of users is given paramount importance to ensure users safety.

### **SALIENT FEATURES**

- The government has set a limit of fifty lakhs registered users which will mark a difference between social media intermediary and significant social media intermediary. The registered users more than fifty lakhs will be considered under significant social media intermediary else it is under social media intermediary.
- Due diligence by intermediaries: The users shall be informed about the framework and privacy policies and agreement by the intermediaries before getting access. The non-compliance would lead to immediate termination of the user’s access which shall be reminded to the users every year and also inform users regarding change in policy. Intermediaries shall take all reasonable steps to protect their computer resources and the information stored on them, by the Rules, 2021<sup>13</sup>. For the purpose of investigation, the government agencies shall be provided with the related content or document by the intermediaries to identity or the prevention, detection, investigation, or prosecution of offenses as soon as possible, but no later than 72 hours after receipt of an order from the appropriate authority. After a user's registration has been cancelled or withdrawn, the information gathered for that user's registration is kept for 180 days.
- Grievance redress: The personal details of the Grievance Officer shall be published on website, mobile-based application, or both, by an intermediary so that a user or a victim may file a complaint. The complaint must be acknowledged by the Grievance Officer within 24 hours of its receipt and shall be disposed within 15 days from acknowledgement of complaint.

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<sup>13</sup> Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules, 2011

- **Additional due diligence for significant social media intermediaries:** the additional due diligence clause is provided where a significant social media intermediary within three months of receiving notification of the threshold, make an appointment of a Chief Compliance Officer to ensure adherence with the Information Technology Act and the Rules and an Nodal Contact Officer who 24x7 remain in contact with law enforcement agencies to ensure compliance and Resident Grievance Officer who keeps a check on grievance redressal mechanism. The monthly compliance report needs to be published consisting of every detail.
- **Identification of the first originator:** the guidelines provides that any content that is inappropriate or affecting integrity, security or sovereignty of country the originator of the same shall be identified by the intermediaries so that the appropriate government can take action against such originator of information. In case the content originator is from outside India. If the initial source is outside India, it is considered the first creator of this knowledge in India.
- **Three-tier system:** the three tier system established which would consist of Grievance Redressal Officer that publisher will appoint and also a Self-Regulatory Mechanism that shall be formed by the association of publishers, and Oversight Mechanism which shall be established by the ministry. To the plaintiff in the stipulated amount of time. The “Minister of Information and Broadcasting will create an Inter-Departmental Committee” as part of the supervisory system to receive complaints from non-self-regulatory institutions and also to monitor compliance with the code of ethics.
- **Code of Ethics:** the existing codes will apply to news and current events. The Press Council of India has developed journalistic behavior rules, as well as a programme code under Section 5<sup>14</sup>. Content unauthorized by any legislation should not be published or transmitted for the time being. For OTT platforms, inter-alia requirements include classification of content in accordance with age, and access control measures such as parental inspections, and limiting children's access to specifically curated content. Also the content should be given ratings and certification. Also viewers can make comments.
- **Classification of curated content:** The following sets of standards will be used to classify any curated content. The content is classified as:

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<sup>14</sup> Cable Television Networks Regulation Act, 1995

- “U for universal”
- “U/A 7+ for the content which is for age group of seven and above”
- “U/A 13+ for the content which is for age group of thirteen and above”
- “U/A 16+ for the content which is for age group of sixteen and above”
- “A stands for content for adults”

#### PROS AND CONS OF IMPLEMENTING NEW GUIDELINES

The guidelines help in making choices to the consumers regarding the appropriate content with respect to age group. It protects the creative freedom of creators and artists; and also providing age and content classification; and parenting and access control; and provide a remedial complaints mechanism for content made available by the respective online curated content providers.

Rule 3(1)(d)<sup>15</sup> requires the intermediary, following receipt of the real information, to erase or deactivate within thirty-six hours the access to the material saved, hosted, disseminated for the illicit activity by the competent court or the competent authority. Although it contains the term "no more than thirty-six hours as quickly as feasible," the period should be less than three days adequate to distribute the information across a broader period.

Rule 4(1)(a)<sup>16</sup> states that the Chief Compliance Officer; the Nodal Contact Person; the Resident Grievance Officer who solely resides in India and may cause difficulties and difficulties for organizations should be appointed.

The requirement for traceability of the perpetrator i.e. the first originator of the content is the positive aspect of these guidelines but this might violate Article 19 of the Constitution's privacy and freedom of speech and expression. The validity of the end-to-end encryption method would also be raised. A financial burden would apply to a multinational organisation in connection with establishing a physical contact address that is local offices under Rule 4(5)<sup>17</sup>.

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<sup>15</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021

<sup>16</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021

<sup>17</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021

After the filing of the complaint it is required that the complaint should be accepted within twenty-four hours and solved within 15 days would appear to be demanding. The notion of an automatic content screening tool appears useful, but smaller businesses cannot afford it.

These guidelines cannot be stated as restriction because it is not curbing any right of the either intermediaries or the users. Moreover, it is providing a secured platform which is open for comments and criticism until it hinders the sovereignty, integrity and security of the India. It provides free space to the intermediary, who can take actions without getting itself restriction from the provision of the safe harbour. The monitoring is required to curb the misuse and ensure safety of children, women.

### **CONCLUSION**

These rules cannot be declared as limitations since either the intermediaries or the users have no rights. It also provides a safe forum that is open to criticism and opinion until it impairs Indian sovereignty, integrity and security. It gives the intermediary the free space to take action without the offer of a safe haven being restricted. The surveillance is necessary to prevent abuse and to protect the safety of women and children. The government's regulatory framework for social media monitoring and OTT or digital media platforms has brought the middleman and users together. The rule was necessary since the number of more registered users was taken into account.