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Legislation Analysis: IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021

Since the onset of over-the-top platforms (“OTTs”), the growth of TV subscription has seen a downfall. Major market players like Netflix and Amazon, among others, continue to make place for themselves in the market and are [predicted to grow](#) at 21.8% from Rs. 4,464 crore to Rs. 11,976 crore between 2018 and 2023.

Amidst increasing concerns over lack of transparency, responsibility and accountability of digital and social media users and following elaborate discussions between public and concerned authorities, the Information Technology ([Intermediary Guidelines and Digital Media Ethics Code](#)) Rules 2021 (“Code”) have been framed under the powers derived from the Information Technology Act, 2000 (“IT Act”) and in supersession of the Information Technology (Intermediary Guidelines) Rules, 2011.

Levels of Regulation and Grievance Redressal

A three-tier structure has been set up vide Rule 9 of the Code in case of digital media publishers; news and OTT, to ensure observance and adherence to the Code by the Publishers operating in the territory of India. It would act as a redressal mechanism against Publishers violating the rules of the Code.

Level 1: Self- regulation by Publisher and Grievance Redressal Officer

As per Rule 11, the publisher shall establish a grievance redressal mechanism and appoint a Grievance Officer based in India who shall hold responsibility for redressing these grievances and reverting to the complainant within 15 days of communication of the respective grievance. The redressal shall be prominently published at the Grievance Portal or appropriate place on the website, as the case maybe. It shall be the obligation of the publisher to generate an acknowledgement of the particular grievance for the complainant within 24 hours of it being brought to record. It is also the duty of the publisher to classify online curated content into categories referred to in the first Schedule, paying due regard to the context, theme, tone, impact, target audience of such content.

Level 2: Self- regulation by the self- regulating bodies of Publisher

As per Rule 12 of the Code, there would be a self-regulating body formed to look into the matters and appeals left unaddressed by the Grievance Redressal Officer. The body has the power to exercise wide powers including; (a) issuance of warnings, (b) censoring, (c) reprimanding any publisher etc. It shall constitute a retired judge of the Supreme Court, High Court or an independent eminent person from the field of media, broadcasting, entertainment, child rights or other relevant fields, as its head. The panel shall consist of a total of six members. These members shall be appointed from a panel prepared by the Ministry under Rule 13.

Level 3: Oversight mechanism by the Central Government.

As per Rule 13, an Inter-Departmental Committee shall be constituted by the Ministry having representatives from various ministries, including domain experts. It shall look into complaints arising out of grievances addressed at Levels 1 and 2. The complaints referred to the Committee shall be in writing on the letterhead of the respective entity and may be sent through e-mail, mail or fax.

Blocking of Content

Rule 16 of the Code gives power to the Authorised Officer to examine the relevant content and block it for the time being in cases of emergency, requiring urgent action. The content needs to be viewed in light of section 69A sub-section (1) of the IT Act and it is the duty of the Authorised Officer to send a written recommendation to the Secretary, Ministry of Information and Broadcasting regarding the same.

The Authorised officer shall, at the earliest, but not later than 48 hours of issuance of direction, request the Committee for its recommendation. The Secretary shall, after receiving the recommendation, pass the final order. In case it is not approved, the interim direction shall be revoked and the content would have to be unblocked and made available again for public access.

Classification of Content

It is an undisputed fact that before the introduction of these rules, OTT platforms were functioning in a state of immense uncertainty. The reason behind this was the mere fact that films releasing in theatres are governed under the ambit of the Cinematograph Act, 1952 and programmes broadcasted on the television under the Cable Television Networks Rules, 1994.

There was no regulatory mechanism acting like a cushion to fall back on and this led to instances of distress between the makers and audience. Recently, a show called “Tandav” was released on

Amazon Prime Video, which was [alleged](#) to have created a ruckus amongst the audience due to its boldness hurting the sentiments of a lot of viewers. Since there was no grievance redressal mechanism in operation, there was an elaborate episode of public lodging complaints in various police stations and the makers fighting from strength to strength, in order to defend their portrayal. Even courts were of varied opinions.

The advent of the Code has made the makers more aware of what all their platter can offer to the public and where a line has to be drawn. As per Part III of the Code, classification of content is done as under:

1. “U” rating: Content which is suitable for people of all ages.
2. “U/A 7+” rating: Content which is suitable for people aged 7 years and above. Any person under the age of 7 years can watch the content under parental guidance.
3. “U/A 13+” rating: Content which is suitable for people aged 13 years and above. Any person under the age of 13 years can watch the content under parental guidance.
4. “U/A 16+” rating: Content which is suitable for people aged 16 years and above. Any person under the age of 16 years can watch the content under parental guidance.
5. “A” rating: Content suitable for adults.

The basis for classification of such online curated content is violence, nudity, sex, language, drugs and substance abuse, theme, horror and other modifications made by the Ministry of Information and Broadcasting, from time to time. The content rated “A” would have parental locks that can be used to exercise the right to restrict the content and make it inaccessible without verifying age of the person.

Due Diligence by Intermediaries

As per Rule 4 of the Code, it is the responsibility of the intermediary to update the website and application both, with the latest changes and amendments in the rules, regulations, user agreement and privacy policy for access or usage of its resources by any person. These should not be in violation to the laws of the land, not be defamatory, obscene, pornographic, paedophilic, harmful to minors etc as listed in the Rules.

Rule 5 mentions about the additional due diligence to be observed by intermediaries. It enumerates upon the appointment of a Chief Compliance Officer, Nodal Person of contact, Resident Grievance

Officer who shall bear the responsibility of ensuring compliance with the IT Act and its rules. He/she shall also be borne liable for any proceedings related to relevant third-party information, data or communication link made available or hosted by that intermediary. These officers shall be residents of India, holding a valid Indian passport. It is their imperative duty to publish a compliance report every 6 months, containing a detailed description of the complaints received by them and the actions taken thereof.

Conclusion

It is too soon to predict the fate of these guidelines as of now. In my opinion, it would be comfortable to say that the Code will play a crucial role in shaping the future of OTT platform usage and will also help in making the mechanism of content regulation more stringent by raising the standard set now.