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GUIDELINES FOR OTT PLATFORMS AND SOCIAL MEDIA, 2021: REGULATION OR RESTRICTION?

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INTRODUCTION

The revolution in the internet facility have created colossal market online, irrespective of the fields. The new platforms have emerged as an entertainment source for the masses. The availability of any sort of services on the fingertip have made a greater impact on the society. It has emerged as an opportunity and employment source, but it also fascinates and influence the others. It made people shrewd and new-fangled which is required in the 21st century.

On the one hand the emergence of the social media has revolutionized the society and on the other side the OTT (over the top) platform has replaced the television in providing entertainment facilities. The social media like Instagram, Twitter, Facebook, Youtube, WhatsApp and many more act as a medium for presenting individual views, and larger source of connectivity whereas the content that OTT platforms provide engrossed the people at large because the content is uncensored and realistic to an extent.

But contrary, there has been a negative influence of the same in the society. The misuse of the same is no more hidden. The social media platforms from the past years have become a medium for fake news and negative criticisms where OTT platform have put forth obnoxious contents. It has the loathing effect in the society causing disdainful glare. The government has stated about the need for censorship and governmental control on the OTT platform. In 2021, new guidelines have been issued for regulating social media and OTT platform.

According to 2020 data, there have been tremendous increased in the paid subscribers of OTT platform which is nearly about 29 million whereas there is also increased in social media users. The user of WhatsApp has reached to 53 crores; Facebook users are 41 crores; Instagram users are 21 crores; Twitter users are 1.75 crores and that of Youtube it is 44.8 crores.[1] With the increased in the number of users it is pertinent to have a prominent regulation to curb the misuse.

The government has framed **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021** which has superseded **Information Technology (Intermediary Guidelines) 2011** in order to monitor the OTT and social media platform empowered under **Section 87(2) of the Information Technology Act, 2000**. The guidelines provided by the government in regard to the OTT and social media platform has set a grievances redressal and self- regulation mechanism. The government state it as progressive and liberal framework. The government also affirmed that the regulation is not meant for curbing the creativity and infringing freedom of speech and expression.

[1] Government notifies Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, Ministry of Electronics & IT, Press Information Bureau, Government of India, (Updated on February 25, 2021); https://pib.gov.in/PressReleseDetailm.aspx?PRID=1700749

This paper critically analysis the guidelines along with the comparative analysis with other countries having set of rules for regulating OTT and social media platform.

BACKGROUND

1. OTT – OVER THE TOP

The OTT started as a medium of "content hosting" platform which eventually expanded its scope with the releasing of short films, feature films, web-series, other entertainment content and also indulged in production. It is managed through Artificial Intelligence (AI) which identifies the interest of the public on the basis of search history and then recommend the content based on that search. The OTT conduct its business on the basis of TRAIL and FREEMIUM basis where the common content which is available on the other sites can be availed for free of cost and exclusive content of the platform is chargeable.

The OTT came in India in 2008 when the Reliance Entertainment launched the first OTT platform, **BigFlix.** Later in 2013 Ditto(TV) and Sony Liv was launched which was a propulsion in OTT media. Consequently, in 2015 Disney Hotstar and 2016 Netflix took over the market with large number of subscribers, increasing every year.

2. SOCIAL MEDIA

The emergence of social media can be viewed as one of the example of technical advancement in modern day. The social media platforms have emerged nearly in 1960s but it got boomed in the year 2004 when **Facebook** was launched. This is also because till then the internet facility got bit advanced compared to late nineties. It was a platform where people can share content, upload picture, and communicate with anyone just with a click. It overwhelmed society, with the idea of connectivity and entertainment. Before that the more generic way of communication was emails, though there were certain platforms but they had less popularity.

After that in 2005 **Youtube** was launched where the original content was created by the people for the purpose of entertainment and can be accessed by the viewers. Lately, many other platforms like Twitter, Instagram, WhatsApp was launched, which is now not only medium of entertainment but also a source of information in and out the country. It frequently updates itself with other features increasing the number of users.

Being it OTT or Social media their existence is solely based on the internet connectivity. After 2016 when India witnessed the revolution in availability of internet facility, the number of user in both the platform have incredibly increased. The easy and cheap access to internet increased the business of both the platform in India. The OTT platform known for its uncensored content likely to influence the masses and connectivity through social media emerged as a platform of self-expression.

Though the idea was noble and was to aware the people around the world, the misuse of the same arose the need for the governmental regulations. The social media being used for sensationalizing the fake news through fake account and also making negative comments where the uncensored content of the OTT platform became the concern for the government with the increased number of subscribers.

GUIDELINES 2021

The government of India issued guidelines pertaining to regulate both OTT and Social media platforms. The two ministry involved in the monitoring of the platforms are:

- Ministry of Electronics and Information Technology (MEITY)
- Ministry of Information and Broadcasting

The social media will be administered by Ministry of Electronics and Information Technology (MEITY) whereas the administration of OTT platform will be made Ministry of Information and Broadcasting. The guidelines stated signify the self-regulation and redressal mechanism. The government encourages the companies outside to work in India, only condition is they have to abide by the constitution of India.

The Government of India issued notification on 25th February, 2021 under **General Statutory Rules 139(E**) exercising its power under **section 87(1), section 87(2)(z) and section 87(2)(zg) of the Information technology Act, 2000** by providing new guidelines i.e. the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021** for the regulation of social media and OTT (digital media) platforms.

The guidelines are divide into three parts the **first part consist of preliminary provisions**; the **Part II** consist of the **due diligence by intermediaries and grievance redressal mechanism** which shall be monitored by the Ministry of Electronics and Information Technology; whereas the **Part III** consist of **Code of Ethics and Procedure safeguard in relation to digital media** which shall be monitored by the Ministry of Information and Broadcasting.

1. SOCIAL MEDIA

The rules laid down have a liberal and self-regulatory framework approach. It has not only empowered the intermediary but has also eliminated the ambiguity that was in respect to the liability of the intermediaries. These rules also empower the users to seek redressal for the grievances and impose liability in case users does not comply with the given rules. The rules framed is an outcome of certain developments where the misuse of the social media was highlighted. These developments are also marked by the government in the press release:

- **In Re: Prajjawala Case**[2] in year 2018, Supreme Court propounded a suo-moto writ petition observing that government of India is empowered to frame necessary guidelines in order to restrict the increased images, visuals and sites of child pornography, rape and gang-rape.
- The Supreme Court observe that government should be given complete freedom in order to curb the spread of the messages in social media platform that causes chaos and have tendency to cause violence and lynching of any sort- in case of **Tehseen S. Poonawalla case**[3] in July 2018.

[2] In Re: v. Prajwala Letter Dated 18.2.2015 Videos of Sexual Violence and Recommendations; 2018 SCC OnLine SC 775

[3] Tehseen S. Poonawalla case vs. Union of India; 2018 SCC OnLine SC 1639

- **Janani Krishnamurthy[4] and Antony Clement Rubin[5]** in 2018 filed a writ petition in the Madras High Court stating that the Aadhar Card should be linked with the accounts of social media users so that the illegal activities can be identified. But the court following the **Puttaswamy** judgement dated 2018[6] stated that the Aadhar linking cannot be made mandatory and therefore the petition was dismissed. Though the issue with respect to misuse of social media platform remained unsolved.
- In 2019 Supreme Court issued directions to the Ministry of Electronics and Information Technology to inform the time for notifying the new rules with respect to regulate the intermediaries.
- There was also a continuous demand by the members of parliament in order to take corrective measures and make social media liable under the law for spread of fake news. There was prominent sitting in Rajya Sabha by Calling Attention Motion, the purpose of sitting was to discuss the rising misuse of social media platform and urging government to make strict rules regarding its regulations.
- The Rajya Sabha in 2020 called for an ad-hoc committee which recommended for the "identification of the first originator" of news, communication link or any other content which is outrageous in nature and has spread through the social media, concerning the increased pornography issue which hinders the women safety and have negative impact on the children and society.

The guidelines issued have made relevant changes in order to trace and curb the misuse of social media platform. The **intermediary** under **clause (w) of sub-section (1) section 2[7]** also include **social media intermediaries** under **clause (v) sub-rule (1) Rule (2)[8] and significant social media intermediaries** under **clause (w) sub-rule (1) Rule (2)[9].** The government has set a threshold of fifty lakhs registered users which mark the 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 otherwise it is under social media intermediary.

The guidelines notified have certain specific features which highlights the administration mechanism and relevant changes that are required to be imposed. The salient features are:

1. The guidelines states about **due diligence** that has to be adhered by "intermediaries"[10] which also includes "social intermediaries" and "significant social media intermediary" under **sub- rule (1) of Rule 3[11]** of the prescribed guidelines. There are certain clauses which is framed in order to avoid any ambiguity.

- The government made it necessary for the intermediaries to publish either on website or mobile based application or on both the rules and regulations; the privacy policy and user agreement which shall consist of guidelines that user of this platform shall not publish,

[4] *Janani Krishnamurthy v. Union of India* (W.P. No. 20214/2018)
[5] *Antony Clement Rubin v. Union of India & Ors* (W.P. No. 20774/2018)
[6] 2017 (10) SCC 1
[7] Information Technology Act,2000
[8] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021
[9] ibdi
[10] Subs. by s. 4, ibid., for clause (w) (w.e.f. 27-10-2009) of Information Technology Act,2000
[11] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021

upload, store, modify, display or host any sort of information that hinders the sovereignty, integrity and security of India or destruct the friendly relation with foreign state and public orders. The information shall not infringe the private space of other individuals and the content should not consist of any offensive and obscene images or videos. The impersonation of another person and any defamatory statement shall be considered as an offence under this rule.

- The intermediaries are also bound to remind the users atleast once in a year that non-compliance of policies of the rule would lead to termination of access or removal or disabling of non-compliant information or both. Also under given clauses the intermediaries have to inform the users about any changes in the respective rules and regulation or privacy policy or user agreement. The intermediary shall not deploy or install any technical configuration that circumvent the law.
- In case any information or communication link connected with the computer resource of intermediary use for illegal means by the users by hosting, storing, publishing, modifying it; the intermediary upon receiving the actual knowledge of the same by competent court or appropriate authority shall remove or disable the access of the information within **thirty-six hours**[12] of receiving actual knowledge. The rule also does not impose any liability on the intermediary for the violation of **clause (a) and (b) of sub-section 2 of section 79** of Information Technology Act, 2000.
- The intermediary after receiving order which should be in writing specifying the purpose of the obtaining information shall provide information within **seventy-two hours**[13] for the purpose of investigation and retain that information for a period of **hundred and eighty days**[14] or as long as competent court or appropriate authority orders so that it can be provided to the cyber security in case when required.
- The rules also provide that in case the registered user cancel the registration or withdraws it the information provided at the time of registration shall be retained for the period of **hundred and eighty days**[15] after the cancellation of the registration.

2. The rule provides for the establishment of Grievance Redressal Mechanism under **sub-rule (2) of Rule 3**[16]. It led to the appointment of Grievance Officer who would acknowledge the complaints within twenty-four hours and shall dispose it within fifteen days. He should receive and response the orders made by the competent court or appropriate authority. His details shall be published on the website or mobile based application or both so that the victims can easily contact the officer. The intermediary is bound to implement the mechanism through with the complaint filed can be traced like by providing token number. The intermediary shall remove or disable the access within twenty-four hours of receiving the complaints in order to ensure the safety of

[12] Clause (d)sub-rule (1) Rule 3 of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021

[13] Clause (j)sub-rule (1) Rule 3 of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021

[14] Clause (g)sub-rule (1) Rule 3 of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021

[15] Clause (h)sub-rule (1) Rule 3 of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021

[16] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021

women if the content consist of any obscene or derogatory substance.

3. There is also a framework of **additional due diligence rules which shall be observed by the significant social media intermediary** under **Rule 4**[17]**.** It led to the appointment of three officers who shall be responsible for ensuring managerial function.

- **Chief Compliance Officer-** he shall be a resident of India. The officer should ensure that there is compliance with the provisions of the Rules and also made responsible if the intermediary fails to follow due diligence. But he is given a fair opportunity of being heard adhering to the principles of natural justice.
- **Nodal Contact Person-** he shall be a resident of India and shall be in contact with law enforcement agency for twenty-four hours throughout the week in order to endure the compliance.
- **Resident Grievance Officer-** the officer shall be the resident of India. He would be responsible to check the functioning of the grievance redressal mechanism.
- The monthly compliance report shall be published monthly stating the number complaints registered along with the details such as the communication link, information or any content and action taken against such compliant and also the removal or termination or disabling of access done by the intermediary due to the non-compliance.
- The most significant clause that has been included in the Rules is the "**identification of the first originator of the information"**[18]**.** The significant social media intermediary that primarily enables the services of the messaging shall for the purpose of preventing, detecting, investigating, prosecuting or punishing the offender **identify the first originator of the information** who hinders the sovereignty, integrity and security of India, disrupt the friendly relations with foreign States, or public order or depicts the content relating to rape, sexually behaviour or pornography material. The offender shall be punished for the term of imprisonment not less than five years. The intermediary can be directed through the judicial order passed or through the **section 69 Information Technology (Procedure and Safeguards for interception, monitoring and decryption of information) Rules, 2009** by the appropriate authority. In case if there is availability of less intrusive method then in that case no order shall be passed. Moreover, the significant social media intermediary is not entitled to disclose the content shared by the first originator. In case the first originator of the information is outside the India then in that case the person within the territory entitled for that would be considered as the first originator.
- The significant social media intermediary shall have a physical resident in India.
- The another key aspect of the Rule is the **voluntary user verification** given under **Rule 7**[19]**.** The significant social media intermediary would allow the user to register themselves voluntarily through their registered mobile number in India, which would give the user the verification sign that is publically visible.
- The significant social media intermediary on disabling and removing the access shall provide reasonable opportunity to the user to

[17] ibid

[18] Sub-rule (2) Rule 4 of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021

[19] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021

put forth his contention- i.e. **fair chance of hearing.** The ministry could order any other intermediary apart from the social media intermediary to comply with the Rule 4 in case it hinders the sovereignty, integrity and security of India, disrupt the friendly relations with foreign States, or public order. The **Rule 7[20],** provides that the Intermediaries in case does not abide by the Rules provided they would not be given protection under "**safe harbour provision**"[21]. The safe harbour provisions act as a safeguard to the intermediaries which protect them from the liabilities occurring due to the third party who uses the for personal information use.

- The additional due diligence that has to be observed by the significant social media intermediary shall after three months from the publication of the rules in the official gazette. The organisation is given reasonable time to set up an authority and make appointment given under **Rule 4.**

2. OTT- OVER THE TOP PLATFORM

The Part III of the Rules has to be dealt by the Ministry of Information and Broadcasting. The censorship of the OTT content has been a challenging task for the government. The rise in concern with respect to the content by the civil society, various film makers and political leaders highlighted the need for appropriate institution for regulating the digital content.

There are various instances where the need for regulating OTT platforms have aroused. In **Justice for Rights Foundation v. Union of India[22]**, the NGO file a writ petition in the Delhi High Court stating that OTT platforms are unregulated and not censored. The idea was to put forth that when the normal DTH service is censored and regulated why not OTT platforms as they also have a huge number of registered users. The Supreme Court took the matters and directed the Government of India to give reasons for the non-censorship and no regulation of the OTT platforms. The Ministry of Information and Broadcasting stated that there is no need for separate regulation of the OTT platform as they are already governed under the Information Technology Act, 2000.

- The **Section 67** [23]of the Act imposed punishment of imprisonment of three years at first conviction which may extend to five years at second conviction and also fine of five lakhs at first conviction which may extent to ten lakhs at second or subsequent conviction on publishing or transmitting a lascivious content on electronic medium.
- **Section 67A**[24] provides that any person who publishes or transmit the sexual explicit content shall be punished with imprisonment of five years at first conviction which may extend to seven years at second conviction and also fine of ten lakhs at both first conviction and second or subsequent conviction, on electronic medium.
- **Section 67B**[25] states that any person publishes or transmit the content showing children under sexual explicit on electronic medium shall be punished for imprisonment of five years at first conviction which may extend to seven years at second conviction also fine of ten lakhs at both first conviction and second or subsequent conviction.

[20] ibid
[21] Section 79 of Information Technology Act, 2000
[22] WP(C) 11164/2018.
[23] Information Technology Act, 2000.
[24] Information Technology Act, 2000.
[25] Information Technology Act, 2000.

- **Section 67C** [26]provides that the intermediary shall retain such information as per the manner prescribed by the appropriate authority and in case intermediary internationally violates the provision shall be punished for a term of three years with fine.
- Other than Information Technology Act, the Indian Penal Code also provide provision where OTT platform can be held liable. Under **section 295A**[27] it is provided that whosoever deliberately hurt the religious feeling by any means such as words written or spoken or by means of visual representation shall be punished for period of three years and fine.
- Also **section 499**[28] **and 500**[29] can be charged for defamation which is for a period which may extend to two years along with fine.
- The platform can also be made entitled under the **Indecent Representation of Women (Prohibition) Act, 1986.**
- In case of **Gurdeepinder Singh Dhillon v. Union of India**[30]**,** the petitioner drew an argument for banning the Amazon Prime show **PAATAL LOK** which not only section 67 of the IT Act, 2000 but also hinders the **Indecent Representation of Women (Prohibition) Act, 1986** by showing raping scenes. It also violates the provisions of IPC section 153A and 298. The petitioner also stated that the contention that the watching movie is personal choice and can be avoided is vague. If the movie has to pass the Central Board of Film Certification, then OTT platform also should not be given any liberty.

There were several OTT platforms that signed the self-regulatory and self-censorship mechanism in 2019, after they felt the need, to proceed with their work in India. It was termed as the Code of Best Practices for online curated content providers, and was published by the **Internet and Mobile Association of India (IAMAI**). This self-regulatory mechanism disallowed certain content such as:

- No content should be published which showcase the disrespect of the national emblem and national flag;
- No content should be displayed that hurts religious sentiments;
- child pornography cannot be published or displayed in any manner;
- there shall be no content aired which is prohibited by the law or order of the country;
- content depicting terrorism cannot be shown.

The code of conduct established by the OTT platform through the **Internet and Mobile Association of India (IAMAI),** and **Digital Curated Content Complaints Council (DCCC)** was not approved by the government because no proper rules framed. In 2020 the Supreme court directed the government to overtake the platform and now it shall be governed by the Ministry of Information and Broadcasting.

The new rules have classified the category of the content according to the age group for the OTT publisher of online curated content. The classification made are as follows:

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

[26] Information Technology Act, 2000.
[27] Indian Penal Code, 1860
[28] ibid
[29] ibid
[30] CWP-8089-2020

- U/A 16+- stands for the content which is for age group of sixteen and above
- A stands for content for adults

The platform will have to provide a parental guidance or lock for the content that is U/A 13+ and other respectively and would also monitor it through the verification process for the access of the content with is classifies under category 'A'.

The rating of the content published shall be given on the screen for the viewers' decision and if possible the comments made shall also be made visible.

The Rule established under Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021 is three tier rule and is mostly self-regulatory.

Rule 8[31] states about the two entities which shall be governed by the Ministry of Information and Broadcasting that are:

a. **publisher**[32] **of the news and current affair content** is described under the Rule 2(1)(t)
b. **publisher of the online curated content** is described under the Rule 2(1)(u)

Rule 9[33] states about the three tier mechanism where **Level I** is related to the Self-regulation by the publishers; **Level II** is with respect to the Self-regulation by the self-regulating bodies of the publishers; **Level III** is Oversight mechanism by the Central Government.

Rule 10[34] states about the **Grievance Redressal Mechanism** where within twenty four hours of receiving the complaint the publisher shall give an acknowledgement of the complaint to the complainant. The publisher within he fifteen days from the registration of the complaint shall provide the decision to the complainant and in case he fails to do so the complaint shall be escalated to the level II for the redressal of the grievance.

Within the period of twenty-four the publisher has to give an acknowledgment to the complainant regarding the grievance that is registered. The publisher within the span of fifteen days shall address the grievance and shall provide decision to the complainant. In case the grievance remained unaddressed even after fifteen days then it will be escalated to the self-regulating body at level two of the three tier grievance redressal mechanism.

The online curated content and news and current affairs shall be regulated in three tier level:

1. **Level I**- given under **Rule 11** which provides for the grievance redressal mechanism. The publisher shall appoint a **Grievance Redressal Officer**, who should be resident of India. The officer is responsible to handle the grievance and take decision within the period of fifteen days from the receiving of the complaint. He shall communicate the decision of the grievance to the complainant within given time. The officer shall act as a preserver of

[31] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021
[32] Clause (s)sub-rule (1) Rule 2 of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule, 2021
[33] ibid
[34] ibid

Code of Ethics and the common point of interaction between complainant, the self-regulating body and the Ministry of Information and Broadcasting.

2. **Level 2-** given under **Rule 12** states about the **Self-Regulatory Mechanism.** There shall be self-regulatory body which would be independent and formulated by the association of the publisher. There can be more than one self-regulatory body and shall be registered with Ministry of Information and Broadcasting. It shall consist of retired judges of high court and supreme court and eminent person which are specialist in various fields like media, broadcasting, child right. The body is responsible for addressing the grievance that has not been resolved in fifteen days. In case the body is constituted before the notification shall be registered within the thirty days or in case it has not been constituted so it shall register within thirty days after it is constituted.

- **Level III** is stated under the **Rule 13** talking about the **Oversight Mechanism.** The oversight mechanism established by the ministry shall ensure the code of ethics. The ministry can appoint the officer not below the rank of Joint Secretary to the Central Government to delete, block or modify the content of the publisher. An Inter-Departmental Committee shall be established which would guide, advice and direct the publisher also has the upper hand in hearing case received from Level I or II and also the one which the ministry refer to the committee.

- **Rule 18(1) and Rule 18(2)** provides that the ministry shall be informed with the details of the entity by the publisher of news and current affairs content as well as a publisher of online curated content. The ministry shall be provided with the required documents for the purpose of coordination and communication.

- **Under Rule 18(3)** every publisher is bound to provide the compliance report every month about the complaint received and the action taken.
The **Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television Networks Regulation Act 1995** should be followed by the Publishers of news on digital media in order to provide a balance between the Television, print media and digital media.

COMPARATIVE ANALYSIS

The Ministry of Information and Broadcasting made several meeting in Delhi, Chennai and Mumbai previous in years urging the platform to develop a self-regulating mechanism. The Ministry also studied the model for regulating the media in UK, Singapore and Australia. They have tried to frame institutional as well as self-regulatory mechanism looking at the functionality and success of the law in the various nation.

- **UNITED KINGDOM**

The British Board of Film Certification in 2018 stated that there is no need for regulating the OTT platform in the UK. Later they partnered with the Netflix that allowed the Netflix to setup the rating for the content available on the platform. the UK government issued a notification in 2020 for the adherence to EU Electronic Communications Code (EECC). The UK was bound to adopt the EECC under the Brexit framework. There is no strict regulatory

mechanism in UK in order to regulate the OTT platform till date.

- **SINGAPORE**

In Singapore the content is regulated by the regulatory body Infocomm Media Development Authority (IMDA) which issues a code of conduct for regulating the OTT platform. The body provides that the content in the OTT platform shall be given ratings as they are rated in offline content. Moreover, the body provides the parental code for the content made available to the age group of 16 and 21. In case the content is made only for the age group of 16 and above the proper parental code shall be provided whereas the content is made for the age group of 21 and above it shall only be unlocked after proper verification. Beyond this the platform has to adhere by the existing laws of the nation.

- ***AUSTRALIA***

The Broadcasting Service Act is responsible to monitor the content which is classified or not classified. The content which is not classified gets classified through ratings mostly. The classification of the content that cannot sold or published or advertised or imported in Australia is given Refused classification or RC. The content restricted to the adults for the showcase of the sexual explicit material is given X 18+ classification. The content given R 18+ classification is also restricted to the section of adult community as it may have high impact on that section. MA 15+ classification is given to the content that is restricted for the age group till 15 years. X 18+, R 18+ or MA 15+ is also given to certain other contents restricting the considerable age from its viewership.

The recent laws framed by the Australian President News Media and Digital Platforms Mandatory Bargaining Code Bill 2020 for charging the platforms for publishing the content of the Australian media has been one of the most debatable topic. It has set a precedent for the regulation of the social media which have huge number of users along with large scale of profit. Though the company like google accepted the law whereas Facebook has retaliated by blocking the sites for publication of the Australian news.

CONCLUSION AND SUGGESTIONS

The regulatory framework enforced by the government with respect to the monitoring of the social media and OTT or digital media platforms have set the intermediary and the users in the same footing. There was the need for the regulation considering the number of increased registered users. Analysing the rule framed there are some positive rules that are imposed through these rules the first one is Rule 3(2)(a) which enables the intermediary to remove the content within twenty-four hours which would prevent spread of the content; also Rule 4(1)(d) which enables the publication of the compliance report every month which would lead to transparency; Rule 4(8) provides for the dispute resolution mechanism where significant social media intermediary shall give the reason for the removal of the content and also equal opportunity of being heard; also Rule 4(3) which requires the labelling of the content that which is advertised, marketed, sponsored or exclusively controlled.

The highlight of the rules framed is the **identification of the first originator and verification of the users** which would help in curbing the issue of misuse of the social

media platform. There is also setting up of the grievance redressal mechanism which would dispose of the complaints within fifteen days. In case of OTT platform through the classification of the content depending on the age group and compulsory verification and parental lock mechanism would mark a change, because all content that are available on the OTT platform is not meant for the children of certain age. The obnoxious content available would impact the mind of child. Also the Rules framed has cleared the ambiguity with respect to the liability of the intermediaries.

Suggestions:

Though the Rules framed seems to be nearly perfect for the regulation of the social media and OTT platform. But there are still certain Rules that could have been framed for the resolution of the grievance in the lesser time:

- Rule 3(1)(d) provides that the intermediary upon receiving the actual knowledge of the information stored, hosted, published for the unlawful activity shall on the order by competent court or appropriate authority remove or disable the access of the information within **thirty-six hours.** Though the provision contains the phrase "as soon as possible not more than thirty-six hours" the time span should have been made less as three days are sufficient enough for the spread of the information at the larger span.
- Rule 4(1)(a) provides for the appointment of **Chief Compliance Officer; Nodal Contact Person; Resident Grievance Officer,** who shall only be the resident of India which may cause difficulty and hardship for entities.
- Under Rule 4(2) the provision is set for the tracing of the offender. This might be infringing the privacy rule and freedom of speech and expression under Article 19 of the Constitution. Also it would raise question on the veracity of the end-to-end encryption mechanism.
- The requirement to setup a physical contact address i.e. local office under Rule 4(5) would have a financial burden on multinational institution.
- the three tier system along with the Inter-Departmental Committee have upper hand setup by the Ministry of Information and Broadcasting seems to unnecessary when the grievances are referred to the Ministry itself.
- The rule set for the acknowledgement of the complaint within twenty-four hours also solving it in fifteen days seem to be burdensome also would fail to provide justice to the complainant.
- The idea of automated tool for filtering the content seems to be effective but smaller companies may not afford it.
- The Ministry also should have taken the suggestions of the public before the framing of the Rules. The comments received by the Ministry was 171 along with the 80 counter comments in the population of hundred and thirty-three crores approximately.

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.

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