



# FACULTY OF JURIDICAL SCIENCES

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**NAME OF FACULTY:** Ms. Anjali Dixit

# Lecture-29



## **PROGRAM AND ADVERTISING CODE FOR TELEVISION**

The operation of television networks, television broadcasters and related matters are governed by the Cable Television Networks (Regulation) Act, 1995 and Cable Television Networks Rules, 1994 (the "**Cable Television Laws**"), which among other things, restrict transmission through a cable service, of any program that is not in conformity with the program code (the "**Program Code**"), and of any advertisement that is not in conformity with the advertising code (the "**Advertising Code**") set out in the Cable Television Networks Rules, 1994.

The Program Code lays down a list of criteria for programs that can be transmitted through cable services. For instance, it provides that a program being carried through a cable service should not offend good taste or decency, contain criticism of friendly countries, contain any attack on religions or communities, contain anything obscene, defamatory, deliberate, false or suggestive innuendos.

Significantly, it also restricts broadcasters and cable service providers from transmitting any film, whether produced in India or abroad, unless it has been certified by the CBFC under the "U" category, being suitable for unrestricted public exhibition in India.

Furthermore, cable operators are also entrusted with additional responsibilities such as striving to carry programs which project women positively and ensuring children's programs do not contain bad language or violence.

With respect to advertisements, the Advertising Code (which is largely similar to the Program Code) among other things, provides that all advertisements should be in conformity with applicable law and should not offend morality, decency and religious sentiments of subscribers.

Accordingly, even though there are no pre-censorship requirements for content transmitted through television, as in the case of films, broadcasters and cable operators are required to adhere to the requirements set out under the Cable Television Laws with respect to the nature of content and advertisements that can be made available to the public through cable services.

## **THE SCOPE OF INFORMATION TECHNOLOGY RELATED LAW**

It is pertinent to highlight that Sections 67A, 67B and 67C of the Information Technology Act, 2000 (the "**IT Act**") provide for penalty and imprisonment for publishing or transmitting obscene material, sexually explicit material and also material depicting children in sexually explicit acts, in electronic form. Further, under Section 69A of the IT Act, the Central Government is empowered to issue directions to block public access of any information. In this context, it is relevant to highlight that the Department of Telecommunications (the "**DoT**") in 2015 had directed<sup>6</sup> intermediaries to disable over 800 websites containing pornographic material and later clarified that intermediaries were not required to disable such websites which did not have child pornographic content. The Uttarakhand High Court in a recent order<sup>7</sup> referred to the DoT's earlier notification in this regard and directed that ISPs should be required to block the publication or transmission of obscene and sexually explicit material and material depicting children in any sexually explicit act or conduct. Following this order, the DoT directed intermediaries to take immediate action in blocking such websites.

The Information Technology (Intermediary Guidelines) Rules, 2011 (the "**Intermediary Guidelines**") notified by the Department of Electronics and Information Technology, provide a due diligence framework to be observed by intermediaries in respect of the information being hosted or published on any computer resource of the intermediary. The framework and provisions under the Intermediary Guidelines may also be applicable to OTT platforms, which qualify as intermediaries under the IT Act.

## **REGULATION OF ONLINE CONTENT**

While films are subjected to certification rules and broadcasters of programs on television are required to adhere to the Program Code and the Advertising Code, the rights owners of web series, films and other content exhibited only online or on digital platforms (such as Netflix, Amazon Prime, Hotstar) are currently free from the hassle of censorship or any code, subject of course, to provisions of the IT Act, discussed above. This position was confirmed by the MIB in a response to a query filed under the RTI Act, 2005, wherein the MIB stated the CBFC only certifies films for theatrical release and has no control over content appearing on the internet.

Given the rising popularity and demand for online content in comparison to television and films, the MIB set up a committee early this year to suggest a regulatory framework for digital media companies, including online media, news portals and infotainment sites.

The committee was later dissolved. since the 'committee on national investment in critical national infrastructure and digital broadcasting' set up by the Ministry of Electronics and Information Technology (the "**MeitY**") was also tasked with addressing similar issues and also matters which were beyond the scope of the MIB. The details of the committee and their activities are currently not available on MeitY's official website.

In addition to the above, there have also been suggestions to include online content explicitly within the ambit of the Indecent Representation of Women (Prohibition) Act, 1986, which currently prohibits indecent representation of women in advertisements, books, films, paintings, and writings. An amendment has been proposed in the Indecent Representation of Women (Prohibition) Amendment Bill, 2012, which among other things, seeks to widen the scope of the legislation to include new forms of media.

Interestingly, certain OTT players have considered self-regulation of content on their respective platforms by way of a voluntary code for online content, specifically in relation to language, violence and sex. In fact, some OTT players on their own account display censorship certificates before a film begins, provide disclaimers in scenes depicting consumption of tobacco products and alcohol, provide details for user discretion based on the age and the nature of the content, though they are not currently mandated by any law for online content.

This need for self-regulation stems from various factors, which include suiting local and regional sensibilities in India, avoiding legal action arising from offensive content and also pre-empting any other form of regulation which could potentially curb the creative freedom that online content providers enjoy.

However, the digital content industry appears to be divided in its view on the need for a voluntary code. This is because most OTT players do not want to self-impose any code or regulation on their operations and maintain their freedom of creating content for their online platforms. It therefore appears that certification or any form of censorship norms for online content may see a backlash from stakeholders.

Generally, online content, as it stands today, appears to be unbridled and the creators of such content are exercising their creative liberties to the fullest. The likes of Angry Indian Goddess, Romil and Jugal, Sacred Games and Lust Stories may have otherwise never made it to a big or small screen in India. However, it may not be accurate to conclude that OTT platforms are completely unregulated or free from any form of censorship, solely on the ground that there is no regulatory framework specifically setting out the manner of censorship or certification of the online content or guidelines outlining dos and don'ts for the creators of online content.

Also, in terms of the IT Act, while the intent of the provisions is to ensure that sexually explicit and obscene content is not published online, its extension and applicability to OTT media platforms is arguably a form of censorship. However, it may be a challenge for OTT media platforms to weed out sexually explicit and obscene content given the varied audience they cater to and the subjective standards of morality. This also raises questions on the different treatment of films in the context of censorship based on the mode of exhibition – certification for exhibition of films in theatres and, self-regulation and censorship under the IT Act for films made available only on digital platforms.

There are mixed trends from industry stakeholders as well as the general public in terms of the censorship of both online content and films. There are arguments for freedom of speech and expression on the one hand and petitions seeking pre-censorship of online content and the removal of content for violating some sentiment or sensibility, or another, on the other hand.

Given the increasing viewership of content on digital platforms and the corresponding impact on revenues, not only for owners of digital platforms, but also telecom operators providing internet data services, a regulatory framework for the operation of the OTT platforms does seem to be on the horizon. Also, in the event that OTT platforms qualify as intermediaries under the IT Act, they will also be required to comply with the Intermediary Guidelines.

## SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	The term 'censorship' comes from the Latin 'censere' meaning to give one's opinion, or to assess.	True	False
2.	In ancient Rome the censors, two Roman magistrates, conducted the census and regulated the manners and morals of the citizens.	True	False
3.	Censorship's may be applied to both written and oral communications. Its span encompasses books, magazines, newspapers, radio, TV, movies, dramas, paintings, plays, speeches, dance, music, art, literature, photographs, mails, emails, websites etc. deemed to be offensive, indecent, obscene and sexually explicit.	True	False
4.	Films are considered as a great medium of communication with the people.	True	False
5.	we have the Cinematograph Act, 1952 to see the films fulfill the norms prescribed by the law	True	False

**Answers: 1-(b),2-(a), 3-(a),4-(a),5-(a)**