

New Guidelines to Define Obscenity in Online Content

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Online Content Latest News

- The Union government has proposed new guidelines defining “obscurity” and other prohibited content for digital platforms under the **Information Technology Rules, 2021**.
- The proposal aims to introduce explicit definitions and expand the Code of Ethics to cover social media platforms, OTT streaming services, and digital news platforms.

Background of the Proposed Amendment

- The Supreme Court, while hearing a case arising from a controversy surrounding comedian Samay Raina and content featuring an explicit joke, had asked the government to devise guidelines that balance **free speech under Article 19(1)(a)** with reasonable restrictions under Article 19(2).
- In response, the Ministry of Information and Broadcasting submitted a detailed note proposing new regulatory measures.
- These proposals come amid rising concerns over sexual content, deepfakes, harmful speech, and digital misinformation, prompting the government to strengthen oversight of online platforms.

Key Features of the Proposed Obscenity Guidelines

- **Introducing a New Definition of “Obscene Digital Content”**

- The amendment seeks to explicitly define obscenity for the first time within the IT Rules. The definition incorporates elements from:
 - Section 67 of the IT Act,
 - Cable TV Programme Code,
 - Indian Penal Code (now Bharatiya Nyaya Sanhita).
- This would mark one of the most sweeping shifts in online content regulation, extending traditional broadcast-like restrictions to digital spaces.

- **Expansion of the Code of Ethics**

- The proposal adds a comprehensive “Obscenity” chapter under the Code of Ethics applicable to curated content (OTT platforms) and digital news platforms. Online platforms would be required to avoid content that:
 - Offends “good taste or decency”,
 - Depicts indecent, vulgar, suggestive, repulsive, or offensive themes,
 - Presents criminality as appealing,
 - Shows visuals or words reflecting a snobbish or slandering attitude toward regional, ethnic, or linguistic groups.
- A total of **17 such restrictions** are proposed.

- **Alignment with Cable Television Standards**

- Digital rights advocates note that the government has transposed the Cable TV Programme Code, originally meant for regulated broadcast TV, onto digital platforms.

- **Requirement for OTT Compliance with the Cinematograph Act**

- OTT platforms may be required to ensure content is fit for “public exhibition”, similar to films certified under the Cinematograph Act, 1952.
- Although officials claim this applies only to OTTs, the draft amendment does not explicitly make this distinction.

- **Revival of IT Rules 9(1) and 9(3)**

- Rules 9(1) and 9(3), which enforce the Code of Ethics, were stayed by the Bombay High Court.
- Despite this, the note seeks to revive and expand these rules, raising constitutional concerns.

- **Application of the “Community Standards Test”**

- The Supreme Court’s test from ***Aveek Sarkar v. State of West Bengal*** would be used to assess obscenity. Content would pass this test if:
 - A reasonable person with contemporary community standards does not find that it appeals to lustful or voyeuristic interests, and
 - The content has literary, scientific, artistic, or political value.
- Digital rights advocates, however, warn that the broad nature of the proposed rules could lead to overreach and arbitrary censorship.

Criticism

- Digital rights organisations have flagged several risks:
 - **Overbroad Definitions:** The proposed language could classify a wide range of content as obscenity.
 - **Executive Overreach:** Critics argue that the government is attempting to expand its regulatory powers through the IT Rules rather than parliamentary amendments.
 - **Impact on Free Speech:** Ambiguous standards like “good taste” may violate free speech protections.
 - **Overlap with Pending Court Cases:** Several parts of the IT Rules are already stayed or under judicial scrutiny.

Implications for Digital Platforms

- If approved by the Court:
 - Platforms will need stricter content moderation and compliance processes.
 - OTT platforms may face film-like certification requirements.
 - Social media platforms may need to filter content deemed indecent, vulgar, or objectionable proactively.
 - Digital publishers could face increased regulatory oversight affecting news and commentary.
- The amendment could sharply reshape India’s digital content ecosystem, bringing it closer to a broadcast-style regulatory framework.

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