

Digital Media Content Regulatory Council (DMCRC)

1. Appeal No. DMCRC/0001/2021 dated 22 June 2021

OTT Platform: Disney+ Hotstar

Language: Hindi

Programme: Hotstar Specials web series '*Grahan*' (released on 24 June 2021)

Nature of Grievance: Against the **TRAILER** of web series '*Grahan*'

Duration of Content: 2 minutes and 24 seconds

Content Rating: "A" (Adult 18+)

Content Description: "Strong Violence, Strong Gore"

Background: The complainants had filed a grievance with Level-I (OTT Platform) on 18 June 2021. They received a Reply (Order) from the OTT Platform on 21 June 2021. Not being satisfied with the response, the complainants filed an Appeal with DMCRC (Level-II) on 22 June 2021.

SUMMARY OF APPEAL

* The Order of 21/06/2021 is illegal and passed without application of mind. It is based on incorrect application of provisions of law.

* The Order overlooks the provision of Article 19(2) which states that the freedom under Article 19(1)(a) is subject to reasonable restrictions.

* The **TRAILER** and the plot, as clearly decipherable from the **TRAILER**, is an artwork of a sinister mindset aimed at setting a false narrative of the 1984 anti-Sikh genocide.

* The makers of the show have attempted to show that a Turbaned/Sikh man had been involved in looting and arson which shows a deliberate attempt to hurt the sentiments of the Sikh community.

The Digital Media Content Regulatory Council (DMCRC) took up the Appeal at its first meeting on 6 July 2021, chaired by Justice Vikramajit Sen (Retd.) and attended by all Members of the Council, and viewed the complete TRAILER. One of the Members recused himself from the meeting.

DECISION

1. The **TRAILER** is for the web series '*Grahan*' that released on OTT Platform Disney+ Hotstar on 24 June 2021. The series is classified "A" (Adult 18+) and has eight episodes.

2. The **TRAILER** is a short glimpse of the upcoming series. After viewing it, the Council did not find any instance where it has been said, shown or implied that a turbaned/Sikh man has been involved in looting and arson, or that a false and sinister narrative of the 1984 anti-Sikh riots is being set.

3. The Council noted that the **TRAILER** categorically states that the upcoming series is a work of fiction and it has been inspired by the Hindi novel '*Chaurasi*' written by Satya Vyas. There has been no evident critique of the book.

4. The Council is of the unanimous opinion that it is unreasonable to judge such a long series, whose total length runs into a few hours over eight episodes, on the basis of a **TRAILER** that runs for 2 minutes and 24 seconds. A **TRAILER** is specifically meant to generate curiosity, and in the present instance, it does that – create a sense of intrigue and mystery about the story that would unfold.

5. The Council unanimously found that no community has been portrayed in a denigrating manner or in a bad light in the **TRAILER**. Moreover, there is no allusion or assumption of a Sikh person trying to engineer the riots as alleged by the appellants.

6. The Council is of the unanimous view that any artistic or creative work has to be viewed holistically to determine whether it is objectionable or offensive.

7. The Council is of the unanimous opinion that the **TRAILER** is within the framework of the law and therefore, the Appeal is not maintainable.

The Appeal was found to be without merit and hence dismissed.

2. Appeal No. DMCRC/0002/2022 dated 23 June 2022

OTT PLATFORM: Disney+ hotstar

LANGUAGE: English

PROGRAMME: '*The Time Traveler's Wife*' (a web series released on 15 May 2022)

NATURE OF GRIEVANCE: Against web series '*The Time Traveler's Wife*'

A grievance was filed with Level-I (OTT Platform) on 07 June 2022. They preferred an Appeal before DMCRC on 23 June as the limit of 15 days provided by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 had passed and no reply was received from the OCCP.

The OCCP, Disney+ hotstar, replied on 24 June, following which, the Appellant expressed their dissatisfaction with the reply and wanted to continue with the Appeal.

SUMMARY OF THE GRIEVANCE TO THE OCCP

- The Appellant alleged that “The show is gross in its depiction of a relationship between a little girl and an older man, who secretly appears naked in the woods behind her house no fewer than 152 times over 14 years. I understand that it makes some twisted sense in the context of the story – the fact that Henry is going to marry Clare at some point in the future. When they finally meet, she admits her entire libido has been formed around him and “everything you, personally, have conditioned me to want”. The one off-hand reference to grooming right before he proceeds to have sex with her AS SOON AS she turns 18, is gross.”
- The Appellant said that since the show’s rating is UA/16+, it will have an adverse impact on the minds of young girls for whom the story normalizes “grooming”.
- “This (series) is also categorised as ‘Romance’. This is not romance. It is sexual assault. The fact that Clare is a rape survivor, who, then, is groomed into having a relationship with a much older man, who trained her to become the person she is over the years, is in bad taste. Child sexual assault is a serious matter. I am attaching an article about grooming, and how dangerous it can be. Just because something is (barely) legal, does not make it right.” <https://bravehearts.org.au/what-is-grooming/>

SUMMARY OF OTT PLATFORM’S ORDER

- The OTT Platform denied the averments and allegations of the complainants *in toto*.
- It contended that the show is in the genre of ‘fantasy’ and ‘magical realism’. Protagonist Henry DeTamble has the ability to travel through time. He has little control over where he travels. Due to this ability of the protagonist, the show has various timelines. In the present, Henry DeTamble is 28 and Clare, his to-be wife, is 20.
- “As per the linear narrative of the series, Henry first meets Clare as an adult, falls in love and gets married to her after which he starts travelling back in time through no fault of his own, and is confronted with the childhood version of the woman he already loves. Therefore, when he does meet Clare at age six, there is nothing but compassion and care for the child Clare is. There is no inference of grooming whatsoever.”
- The OCCP also finds it pertinent to note that when minor, Clare is never exposed to any nudity or romantic or sexual advances from Henry DeTamble.
- “Henry doesn’t reveal to Clare that he is her future husband well into her late teens. In fact, as a curious and hormonal teenager, Clare tries to seduce Henry, but he vehemently rejects all her attempts at getting closer to him. The OCCP submits that the series portrays Henry as a responsible man with tremendously strict rules about how he interacts with Clare when he travels back in time and he is always seen exercising caution and maintaining his distance with Clare, while she is still a child.”
- The OCCP further notes, that Henry never makes sexual advances at Clare as a child. They get intimate, for the first time, on her 18th birthday. Clare is the one to initiate,

and Henry is shown to be unsettled. The OCCP further states that, in a separate incident, Clare attends a high school party where one of the boys sexually assaults her. They note that the two incidents are not connected.

- “The OCCP further submits that while Clare admits to forming her libido around Henry, he is always shown maintaining a distance with Clare, while she is still a child.”
- “The complainant has failed to appreciate the larger context of the storyline of the series and cherry-picked certain scenes in isolation. It is a settled position of law that content must be viewed in its entirety as an ordinary viewer would, and must not be judged on the basis of certain dialogues or scenes in isolation and without due context. In this regard, the Supreme Court has observed in *S. Rangarajan Etc vs P. Jagjivan Ram, 1989 SCC (2) 574* that the effect of presence of scenes or words in a film have to be adjudicated “from the standards of a reasonable and strong-minded man, and not from that of a weak, vacillating mind or from the standards of those ‘who scent danger in every hostile point of view’. Notably, the courts of India have also held that citizens may be relied on to comprehend intelligently the message in a film/series and react to it, and not to the possible titillation of a particular scene. The OCCP submits that the series, when viewed in its entirety and in context of the narrative, as a normal and reasonable man would view, reveals that the series does not in any way instigate or incite grooming or child sexual assault amongst any persons.”
- The OCCP further submits that it is within the creator’s freedom of expression to portray complex and controversial characters. It submits that the series portrays a morally ambiguous story and that with a concept like ‘time travel’, a certain amount of disbelief is to be expected of the viewer. They submit that the court has also laid down in *Bobby Art International & Ors. v. Om Pal Singh Hoon* that “Where theme of the film is to condemn degradation, violence and rape on women, scenes of nudity and rape and use of expletives to advance the message intended by the film by arousing a sense of revulsion against the perpetrators is permissible”.
- The OCCP also submits relevant portions of Prevention of Children from Sexual Offences Act, 2012 (POCSO Act) to state that Clare has not been shown to be sexually assaulted as a child, as there was neither sexual contact nor intention of sexual contact between Henry DeTamble and Clare when she was a minor.

DECISION OF THE OTT PLATFORM

The OTT Platform disposed-off the complaint citing the following:

“The series has to be seen from an overall perspective, and considering the creative freedom available to an author, as held by a plethora of judgements, I do not find that the OCCP has attempted to incite grooming or child sexual assault, and/or any sexual gratification of any kind, which may amount to any offence under any law for the time being. Accordingly, I find that the complaint is bereft of any merit.”

SUMMARY OF APPEAL FILED BY THE APPELLANT

- The Appellant is dissatisfied with the OCCP’s order, stating that the show has harmful messaging that allows for a higher rating under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 as under Part II(c) of the Schedule, “Imitable Behaviour”.
- The Appellant states that the OCCP’s reply depicts the show from the point of view of Henry DeTamble, while the show vacillates between the perspectives of Henry and Clare, with majority of the show being from Clare’s perspective as is evident from the name ‘*The Time Traveler’s Wife*’.
- The Appellant narrates the story as follows:

“Clare is a young girl of six. A naked man appears in the woods near her house and claims to be a time traveller and her friend from the future. She believes him. He tells her he has a wife named Clare also, and that he will appear to meet her 152 times. He instructs her to keep clothes for him in a box in the woods. For the next 12 years, he did meet her 152 times. Initially, it is innocent. As she grows up, she begins to develop a crush on this much older person. She expresses this very obviously from 15-16 years of age and the man doesn’t stop showing up in the woods. In one of these visits, he lets it slip that in the future, Clare will be his wife. When Clare turns 18, they have sexual relations. In the same scene, the man accepts that this will amount to grooming.”
- The Appellant also states that the OCCP calls this show to belong to the fantasy and magical realism genre when it is categorised and marketed as ‘Romance’ on the platform and elsewhere.
- The Appellant states that the OCCP’s reliance on the fact that the Appeal is a one-off opinion on the show and that no reasonable person will view it as grooming, is false because most online reviews by both common viewers and critics call the story a depiction of “grooming”.
- The Appellant accepts that the creators have the freedom to express and show controversial stories, but they should not expose such stories to impressionable minds. They state that with the spread of social media, older, perverted men have access to young girls. Depiction of a story with such a big age gap as romance will normalize this for young girls and put them in potentially dangerous situations.

PRAYER BEFORE DMCR

Change the show’s Rating from ‘U/A 16+’ to ‘Adult’, and the Category from ‘Romance’ to ‘Fantasy’.

DECISION OF THE COUNCIL

The Appellant and the OCCP both were called for a hearing.

The Appellant could not appear and requested the Council to rely on her previous detailed submission.

During the hearing, the OCCP submitted:

1. There is no frontal nudity in the show. Every scene of Henry's without clothes is shot from the back.
2. The show does not have explicit scenes of sexual nature and they are merely suggestive.
3. In the storyline, the relationship between Henry and Clare was fatherly till she was 16-18 years of age. The OCCP submitted that the show has been adapted from a book, and a movie of the same name was released in the past.

The Council discussed the matter. They accepted OCCP's submissions that there was no frontal nudity or explicit scenes of sexual nature

The Council discussed the nature of relationship between Clare and Henry. They noted that a relationship wherein a young girl has a sexual infatuation and fixation on a much older person and that older person tells the young girl that they will be married in the future after she turns 18 is not a depiction of fatherly relationship. The theme was more suited for mature audiences who would better appreciate the nature of the relationship as it evolved during time travel. The Council also noted the fact that the show is rated appropriate for Mature Audiences in other jurisdictions. It noted that a web series categorized as 'U/A 16+' allows younger audiences up to 16 years of age to watch it under parents' supervision, and that the presentation of a complex relationship with sexual overtones, such as the one in the show, is not thematically appropriate for young and impressionable minds.

The Council also discussed that along with the age-categorization, the audience relies on the genre, and content markers to decide what content to consume, and therefore these markers should be as descriptive as possible. A classification of 'U/A 16+' will suggest to parents that the content could be viewed by them with their children.

The Council also held that classification is a yardstick that should be more reliable and elaboration should always be appropriate. During the hearing, the OCCP made the submission that the intent was never to show any obscenity or nudity and that the series is not a straight-jacket show.

The Council found that the connotation of sex was prevalent in the show, although the depiction was only suggestive. However, the descriptor of 'Romance' was ambiguous in the context of the show as there were strong elements of fantasy as well as science fiction that run through the series.

Therefore, the Council directs that the show should be rated 'A' and categorized under genres: 'Romance, Fantasy and Sci-Fi'. The Council also directs that "nudity, mature content" be made clearly visible on the platform at the beginning of the content. The Appeal

was held maintainable and the OCCP was asked to accordingly modify the age categorization and classification of the series.

3. Appeal No. DMCRC/0003/2022 dated 30 June 2022

OTT PLATFORM: Disney+ hotstar

LANGUAGE: English

PROGRAMME: *'Under the Banner of Heaven'*

NATURE OF GRIEVANCE: Against the Age Rating of *'Under the Banner of Heaven'*

The Appellant had filed a verbal grievance with Level-I (OTT Platform) on 26 June 2022. They preferred an Appeal before DMCRC on 30 June 2022, after receiving a reply from the OCCP and being dissatisfied with the same.

SUMMARY OF THE GRIEVANCE TO THE OCCP

The Appellant complained that since the show was rated as **'U/A 7+'**, it led the Appellant to allow his nine-year-old son to watch it, only to discover that the very first episode has inappropriate scenes with people in the nude, which "traumatized his son" and led him to ask "uncomfortable questions".

SUMMARY OF OCCP'S ORDER

- The OCCP accepted the error as an "inadvertent mistake".
- They submitted that the content team had rated the series as 'U/A 16+' and the correct rating was not displayed due to "an error at its backend".
- They apologized to the Appellant for the inadvertent error, and have corrected it.

FURTHER SUBMISSION FROM OCCP ABOUT THE INADVERTENT MISTAKE

In response to the Appeal, the OCCP submitted on 5th July 2022 that the classification for the show published on the OCCP's platform was a manual activity due to which the error occurred. The OCCP further submitted that the moment it was brought to its notice, the error was rectified and since then, the show displays the appropriate rating of U/A 16+ on the Platform. The OCCP reiterated that this was an inadvertent error, their titles are otherwise appropriately rated, and this issue was an exception. The OCCP submitted that it has put in more stringent measures in place to ensure the content title ratings are checked at different levels before they are published in order to prevent any such error in the future.

DECISION OF THE OCCP

The Grievance Officer disposed-off the complaint citing the following:

"In view of the fact that OCCP has pointed out that the rating of U/A 7+ was an inadvertent error at its backend and on being notified, it has rectified the same, no further orders are required to be passed in the matter. However, the OCCP is

cautioned to exercise care and ensure that adequate measures are put in place so that similar instance is not repeated in the future.”

APPEAL

- The OCCP has said the rating was entered as ‘U/A 7+’ inadvertently. That is not an acceptable explanation. The basis of determining an inadvertent error may be elucidated.
- If this is taken as precedence, there can be a number of “inadvertent mistakes”. “Inadvertent mistakes” can become a norm.
- The inappropriate scenes appear in the first episode within first 10 minutes itself. The nude scenes are in the end of the first episode. What kind of checks are in place wherein such scenes are not seen/screened within the first episode and, that too, at the very beginning?
- What action has been taken apart from changing the “inadvertent error”? If termed and classified as “inadvertent”, we are trivialising an issue. The issue being, that parental controls are based on ratings. If due care is not exercised, children can be exposed to unsuitable images which have a deep impact on the psychological level.
- My son has watched the scenes and had uncomfortable questions that I did not have answer to. Thinking it an ‘U/A 7+’ series, I played it for him and left to do the chores. Therefore, he has seen unsuitable images throughout the first episode at least.

PRAYER BEFORE DMCRC

Compensation for the trauma suffered by the Appellant’s seven-year-old son due to the alleged gross negligence of the OCCP.

DECISION OF THE COUNCIL

The Appellant and the OCCP both were called for a hearing.

The Appellant could not appear and requested the Council to rely on his previous detailed submission.

During the hearing, the OCCP admitted to the inadvertent error on their part. They submitted that they have already apologised to the Appellant and at the beginning of the hearing, they apologised to the Council for the inadvertent error.

The Council noted that granting compensation to Appellants is not in their pre-defined powers and outside the Council’s remit. The Council accepted the OCCP’s submission, and cautioned them to be extremely mindful of the sensitivities of the audiences who tend to watch such shows due to the wrongful categorization. The Appeal was thus disposed of.