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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **OTT PLATFORM REGULATION IN INDIA: BALANCING CONTENT MODERATION AND FREEDOM OF EXPRESSION**

AUTHORED BY - R. DHIVYA<sup>1</sup>

## **Abstract**

With the availability of a large number of movies Netflix, amazon prime video hotstarDisney plus have revolutionized the media scenario of India with the undubbed content they provide. However, this has resulted in new debates in content moderation or regulation particularly to voluntary citizens with the main issue in raised questions on speech and culture, religion besides society. This paper analyzes the cases where OTT platforms fall under Indian Law by referring to Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 with grievances redressal mechanism and content certification. Beyond that, it goes on with its discussion on the basic liberal approach towards the freedom of speech and expression under Article 19(1)(a) of the Indian constitution And the aspect of restriction in the Constitution under Article 19(2) spells out restrictions on contents that are against public order, decency and morality. The paper focuses on the challenges observed when regulating OTT content, in regard to culture, primarily because all of these are international platforms and conclusion is made to urge for improving the balance between the attitude to the regulation of the Indian OTT market and the defense of creativity which has to be set against the societal concerns regarding the content offered.

**Keywords:** Information Technology, OTT Platform, Reasonable restrictions, Freedom of Speech

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<sup>1</sup>.Assistant Professor, SRM School of Law, SRMIST, Kattankulathur, TamilNadu. Email Id dhivyarajan1991@gmail.com.

## **Introduction**

OTT platforms that have come up as the media and entertainment industry in India has changed drastically, it seems that one has access to raw material and it is not a lie if it is said that a lot of it is unconventional. At the same time, this growing liberalization was followed by very justified concerns about control over content and possible overregulation or vice versa. Today's availability of such platforms poses a question to the Indian regulations both on the question when an OTT content has to obey to community standards or ethical norms of decency of the public on the one hand and when such regulations infringe on the freedom of speech and expression, a fundamental right under the constitution of India under Article 19(1)(a). OTT platform regulation in India has emerged as an area of intense regulatory growth. Initially, they were operating in a relatively liberal context that raised concerns of the public and governance that how much loosely these content can go viral on behalf of the hate speech, misinformation, or contents against the societal norms. The Government of India responded by placing OTT platforms under a regulation which is called Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These rules set themselves up thus on one side as being about delivering responsibility, transparency and accountability over content regulation, and on the other as admitting to the task of identifying a correct working ratio between content control and artistic and creative freedom. But this sort of regulation has been neither without some change. Super-regulation is condemned especially in terms of improper imposition of creativity and free-speech censorship, and violation of human rights. However, the regulation advocates seem to be from a different angle pointing to the fact that there is a need to regulate certain matters in order to protect decency, protect the society from undesirables, and also protect the sovereignty of a nation. The major issues of concern in the current global regulation of OTT platforms, especially in India, revolve around the question of what the next form of media regulation would be and how free speech would be treated in the digital new media environment.

## **Growth of OTT Platforms in India**

India has seen the growth of OTT (Over The Top) platforms have been unbelievable with rapid internet penetration, affordable data plans and growing adoption of smartphones.

In the last decade or so, online players like Netflix, Amazon Prime Video, Hotstar and local players such as Zee5 and Voot have completely disrupted the consumer patterns from

traditional televisions to on demand streaming platforms. But home bound viewers caught up on pandemic growth, with viewers leaning heavily on digital content. India is home to a vast collection of OTT platforms which provide literary works such as movies, web series, regional content to its large audience base. All the while, however, this rapid expansion has also made its way into debates on content regulation, censorship, balancing creative freedom with cultural sensitivities; debates that have led to discussion both around self regulation and government oversight. Millions of people have subscribed to platforms like Netflix, Amazon Prime Video, Disney+ Hotstar, local players like Zee5, and ALTBalaji. These have been enhanced even further by the courtesy of increased internet speed and cheap data.. OTT platforms operate largely on the internet, but in various jurisdictions, and initially fell out of the scope of traditional broadcasting laws, creating an industry regulatory vacuum.

### **Legal Framework Governing OTT Platforms**

The regulation of OTT platforms in India is primarily governed by two legislative frameworks:

1. Information Technology Act, 2000 (IT Act): Therefore, the IT act 2000 and rest of the amendments included in it continue as the main legal framework for the internet in Indian territory. However according to the Section 69A, it has been for the government to take down content in question from public domain accessing sovereignty, defense and public order. The rules or the Code that came into existence in the year 2011 and later again in the year 2021 are intrinsically an effort to compel some amount of responsibility out of the OTT platforms and others who were running content hosting websites.
2. Cinematograph Act, 1952: While this Act governs the certification of film in India which lacks provision for the content on the Digital platform of OTT. However, calls for censoring of OTT content in the same fashion as the cinema as has been aforementioned has often been made. In the same year, new guidelines named as Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules were framed to provide an encapsulation of legal provisions with regard to OTT platforms. The rules set up self regulation by the OTT platforms teamed with regulation from a government controlled authority and the guideline has a three tier complaint handling mechanism.

## **Content Moderation on OTT Platforms**

By their very nature, however, OTT platforms operate largely free of the many limitations traditionally enforced by traditional television and film. censorship boards are not a problem, and in a lot of cases they use self regulation or content advisories. The freedom offered us by this currently allows for a wide assortment of content to thrive on OTT services, from independent films to hard hitting documentaries. This, however, has also kicked up some controversies due to the fears by some sections of the society that content that is cited to be offensive, blasphemous or viscerally adverse to community sentiment. Content classification and moderation are the main focus in The 2021 Rules. Content is age classified according to the rules — and platforms are to adopt robust parental controls. The rules also direct platforms to ensure that they respect India's heterogeneity of culture, religion and social rigidities and prevent content causing disharmony to the society or person or community or offense to any person or section or intermediary individually or take down such content.

## **Freedom of Expression and OTT Platforms**

Article 19(1)(a) Indian Constitution guarantees the freedom of expression, a vital right to protect the ability of an individual and a creator to express her or his ideas without interference. But this right is not absolute. Article 19(2) continues to permit the imposition of 'reasonable restrictions' for reasons of sovereignty, public order and decency, morality and more generally for the protection of public health and the rights and reputations of others. In OTT platforms, the government is in a tightrope walk where it has to ensure that these platforms give a platform to the creative expressions but also make sure that the content on these platforms is conformed to the society norms and laws. The 2021 Rules, however, burden fundamental freedom of expression by tucking in extremely vague 'good taste and decency' language as content constraints, critics say, risking an institutionalized system of self censorship.

1. **Lack of Clear Guidelines:** One of the biggest challenges of OTT regulation in India is the lack of clear and precise dictate as to what is not acceptable and what is doable. This ambiguity in words like “decency” and “morality” can cause people to interpret things differently and enforcement is arbitrary, or content is taken down.
2. **Cultural Sensitivities:** The first is that India boasts a very rich variety of cultural and religious content that OTT platforms have to moderate. In some parts of the country, content that may be acceptable could actually offend sentiments in another, making platforms' efforts on navigating a one size fits all policy difficult.

3. **Overregulation and Chilling Effect:** This can be used to leverage stringent content controls that can kill creativity and result in a chilling effect (also sometimes referred to as 'self censorship') where creators and platforms warn each other to censor content off of their platform out of fear of legal repercussions. This can constrict India's creative ecosystem that has hugely derived benefit from OTT platforms that were relatively open.
4. **Public Morality vs. Artistic Freedom:** Central to regulation of OTT platforms is the debate about whether to strike the balance between public morality and artistic freedom. There are those who argue that OTT media are serving as a boon to the freedom of artistic expression which questions society's norm and criticize it; and those who argue that the content of OTT media is detrimental to public morality.

### **The Road Ahead: Striking a Balance**

India's OTT regulation of the future hinges on a careful balance between content moderation and building the freedom of expression. Need for safeguards against harmful content is clear, to that end, there should be some rules and regulations, wherein while safeguarding the users, the creativity allowed by OTT platforms should also be kept in mind. Potential reforms could include:

1. **Transparent and Detailed Guidelines:** The government should speak with industry stakeholders to draw up specific, specific (and, most importantly specific) outlines of what content is or is not allowable while ensuring that content creators still know the rules without stifling creative expression.
2. **Self-Regulation with Oversight:** An effective hybrid model would be a model that allows for some self regulation by platforms with very little if any oversight from the government.  
Such a platform would offer the flexibility to the platforms to moderate the content as well as provide the users with a grievance redressal mechanism as per law.
3. **Content Classification and Parental Controls:** User education, strengthening of content classification systems, offering better parental controls will ensure users can make better decisions about what is shown without losing the creative freedom behind that.
4. **Public Awareness and Digital Literacy:** Public awareness campaigns should be marketed by the government and platforms to educate viewers on how to use and

measure digital literacy, as well as ways to activate parental controls, or reporting, to keep kids safe on the internet.

## **Conclusion**

India's regulation of OTT platforms is neither black and white nor is it simple, as found out, it needs to strike a fine balance. Keeping freedom of expression, while maintaining the quality and the law and ethics of the digital media is important for the future of digital media in the country. A well defined, nuanced approach involving considerable self regulation, clear guidelines and transparent enforcement, can guide an Indian environment in which creativity can flourish without sacrificing the values and laws that restrain Indian society.

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