

A Critical Analysis on Denial of Equality and Social Justice of Transgender in India

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Abstract

The word OTT which commonly used in world stands for “Over the Top”. It is the service that delivers the content over the internet. Through another platform this service is delivered “over the top”. This platform got popular in India mainly during COVID 19 Pandemic situation. It actually overshadowed the popular platforms such as Television. In India there are many popular OTT platforms such as Netflix, Amazon Prime, Hotstar , voot, Max player etc.

The OTT platforms are not regulated the way Indian cinema or television shows are regulated by CBFC, BCCC etc. Currently there is no regulatory body for OTT platforms to keep eye on content streamed by them and because of this they have absolute freedom and they take liberty while streaming. Recently all over the world this platform has become popular to such extent that big banners from the television industry are investing and wanted to feature their creation on such huge platform.

The major concern is that the content which is currently showed on this platform is violating Indian law or not is to be settled by Supreme Court. The question is whether OTT platform should be controlled and regulated by appropriate law or there should be self regulatory body to control and censor the content screened thereon.

This article will throw light on problems and prospects regarding censorship of OTT platform in India.

Keywords: OTT, Censorship, Social media, Content liberty

Introduction

Now the concept of entertainment like going to theater and watching movies with family and friends is out fashioned. Now people have other options such as Smart phones, Tabs to see the television shows and movies on their phones through various internet platforms.

Over the Top platform (OTT) is the alternative option that has replaced the old entertainment platforms like Television and theaters.

OTT is content hosting platform but in very short span started the production as well as distribution of short films, documentaries and web series.

In India BIGFlix was first Indian OTT platform introduced in Indian Market by Reliance Entertainment in 2008

As per Survey OTT subscribers has reached beyond 29.0 million in July 2020. As per researchers and experts this count will go high in coming time. India is second biggest OTT platform consumer after China.¹

OTT platforms are popular because of its some phenomenal features such as quality content at an economical rate, Unique content, Adaptability with various gadgets. But irrespective of the popularity and other aspects one fact we can't deny that some platforms are broadcasting the bold content,

¹ <https://blog.ksom.ac.in/2021/07/ott-and-its-evolution-in-the-indian-market>

content with slangs etc which is affecting the children also because there is no control over the content streaming on these platforms.

OTT platforms don't come under the preview of any censorship laws in India. In India, other media platform than OTT are regulated under Cinematograph Act, 1952, and Cinematograph Rules, 1983, governs the public exhibition of films, and the Programme and Advertising Code prescribed under the Cable Television Network Rules, 1994, governs the broadcast of films on television.

In Addition to that Information Technology Act , attracts certain provision which provides punishments for offences when offensive messages are sent by using any electronic service or electronic platform.² The offensive messages include any messages which may contain sexually explicit material also. Further Section 69 Also IT Act can do monitoring or decryption of information, blocking of content etc.³

Indian Penal Code controls certain activities such as circulation of obscene content or crimes such as sedition and it is applicable to these popular online streaming platforms too. Though some sections are there in Indian Penal Code to regulate the activities of social platforms but exclusively there is no law or legal guideline to control the content available on various popular social platforms like Netflix. Amazon Disney Hotstar etc⁴

Therefore now in India the controversy is over the censorship of OTT platform in India. The controversy is about whether Legislature should make exclusive law to regulate the content streamed on the OTT platform in India or all these platforms should have Self-Regulation Code to regulate their activities.

Controversy over the censorship of OTT Platforms in India

On October 2018 Delhi High Court witnessed the first case in India regarding censorship of OTT platforms. The case was filed by Justice for Rights Foundation requesting court to prepare guidelines for content created and streamed by the Social Media platforms such as Netflix, Amazon Prime, ZEE5 etc.

Accordingly central Government was served notice by Delhi high court asking reply on the laws created to control the OTT platforms. In reply the Ministry of Information and Broadcasting said that no regulation is formed yet and there is no need to apply to us for the license to stream any content on social media platform. Therefore Delhi High Court stated in its judgment that IT Act is sufficient to provide safeguard and to take action for any prohibited act against broadcaster or organizer and dismissed the petition.

One more petition was filed in Karnataka High Court by Padmanabh Shankar in the case of Padmanabh Shankar V/s Union of India⁵ In the said Petition following things were prayed the first one was to set up Authority to keep watch on content streamed, second one was until the Authority is set up it should be regulated by Cinematography Act, 1952 and its content be certified Central Board of Film Certification.

Further it is important to note that when there is a question of authenticity of any content uploaded on online platform, OTT takes shelter under section 79 of the IT Act 2008, which is wrong and OTT platforms should not be allowed to control all over the content uploaded and streamed in their site.

In this one more question was raised by the petitioner that, when anyone watches the content by using internet in house or office will be considered as public exhibition as per Cinematography Act, 1952 or not?

² Sections 66A and 67B OF Information Technology Act

³ <https://www.lawinsider.in/columns/what-is-ott-platforms-and-regulations-governing-in-india>

⁴ <https://law.asia/india-censorship-laws-streaming>

⁵ Padmanabh Shankar vs Union of India, W.P. No. 6050/2019

Court gave decision on the basis of *Super Cassettes Ltd. V Board of film Certification*⁶ and gave the verdict that irrespective of the fact if a person is watching content within the four walls of his house then also content needs to be certified by CBFC.

Irrespective of these judgments constant concern are raised that the content streamed on the OTT Platforms are weakening culture, language used is very abusive which is affecting mind set of the children. Thereafter many suits were filed in Court against popular shows named as *Mirzapur*, highlighting that filmmakers creative freedom should be restricted so that children will not get affected.

Other than this many controversial issues were seen regarding various web series like 'SACRED GAMES' from Netflix's was criticized on the grounds of shaming the political history of India.⁷ One popular series 'PAATAL LOK' was streamed on Amazon Prime Videos which faced the controversy and several FIRs were filed because of the content of the series. People criticized the series and felt that the content and scenes from the series had hurt the sentiments of people. Another popular web series 'Mirzapur' also faced criticism for misrepresenting the city and hurting social, religious, and regional feelings.

The popular web series 'ASHRAM' streamed on MX Player also faced the issues for promoting discrimination and the content was hurting the feelings of saints and specific Schedule caste and schedule tribes.⁸ Recently 'TANDAV' web series from Amazon Prime Videos that provoked political sentiments of the politicians and many demanded ban on the series.⁹

Particularly prior to all these cases filed in court about the content broadcasted in India the judicial discourse on the issue of regulation of OTT platforms began in 2018. The case was regarding "Blue Whale game" wherein Madras High Court took suo Motu cognizance and sought regulation of OTT services, after the suicide of 19 year-old due to blue whale game. Court While emphasizing the responsibility of online platforms regarding content moderation in the public interest, the High Court directed the Central Government to formulate a framework for OTT services¹⁰

The other side of argument by the Broadcasters or the content writers is that these regulations will limit our creativity in writing the content and bringing innovative concepts before the world.

The directors and content writers of short films and other work took a plea that constitution of India has guaranteed the freedom of speech and expression under Art. 19 of Indian Constitution. These government regulation will bring limitation on their creativity.

Therefore one draft of a Self-Regulation Code drawn up by fifteen (15) significant OTT Platforms including Netflix, Disney Hotstar and Prime by which content creators may not be able to remain completely out of the regulatory purview in the years to come, self-regulation might be the way forward. Recently, seventeen leading OTT streaming services, under the aegis of the Internet and Mobile Association of India (IAMAI), released a self-regulatory code titled "Universal Self-Regulation Code for Online Curated Content Providers".

Thereafter, Government issued notification on November 9, 2020 (the Notification)¹¹ some type of digital internet content were brought within the scope of the Ministry of Information and Broadcasting (I&B Ministry):

- Films and audio-visual programmes made available by online content providers; and
- News and current affairs on online platforms.

⁶ Super Cassette Ltd. Vs Board of Film Certificate, W.P. © No. 10552/200

⁷ Osama Manzar Hate Speech and Role of Social Media LIVE MINT

<https://www.livemint.com/Opinion/ZAHBp4YDLp1BcNlIuwFON/Hate-speech-and-the-role-of-social-media.html>

⁸ From Tandav to Ashram to Paatal Lok, 5 Webseries that Faced Legal Trouble ENGLISH JAGRAN NEWS
<https://english.jagran.com/entertainment/from-tandav-to-ashram-to-paatal-lok-5-webseries-that-faced-legal-trouble-10022455>

⁹ <https://www.latestlaws.com/articles/censorship-and-ott-platforms-critical-analysis>

¹⁰ Shashank Shekhar Jha & Ors. v Union of India & Ors., Order dated 15 October 2020 in WP (Civil) No. 1080/2020.

¹¹ Cabinet Secretariat, Notification dated 9 November 2020, https://www.livelaw.in/pdf_upload/pdf_upload-384486.pdf.

The actual effect of the Notification will be seen once the Information and Broadcasting Ministry frames and implement the regulations for all these platforms.

Constitution of India and Censorship of OTT platform

Over the period of time lot of changes are been seen in society. Different types of art forms are immerged. The creators and inventors of these art forms can protect their creation under article 19 of the Indian Constitution. Under this Article they can legally express their views, opinions while exhibiting their creation. It's their constitutional right. Definitely it's not absolute they can exercise their right if it's within ambit of prohibitions mentioned under article 19(2) of the Indian Constitution. These art forms do contain topics like history, violence, sex, nudity all of which are considered forbidden in our Indian culture and society. But it is the fact that now a days all the topics are considered as vital or integral while making progressive-minded content. Many series can be mentioned such as Game of thrones, House of Cards which were having bold content.

When we are thinking of safeguarding the interest of society, culture by banning such bold and forward thinking content streamed on OTT simultaneously the content writers have their opinion and objection too on the censorship laws. Because their concern is that if any censorship laws are implemented on OTT, then they cannot stream the bold content and which will restrict their creativity and visualization. Every time the content is not about sex and nudity. Rather there are other social issues, political history, historical content which is required to broadcast for public to know. One more aspect is if we restrict its streaming in India for Indian Audience then there is threat of piracy too. Therefore the content writers, owners of OTT platforms are raising concern and objection regarding censorship laws for OTT Platforms in India.¹²

Conclusion

In the light of above referred events of controversies over the OTT platforms the need of an hour is of an independent regulating authority. One thing is sure that A self-regulatory mechanism will not be effective to mange internet material streaming.

It is a fact that currently audience is interested in information which reveals the truth about the society, political scams rather diverse content which will not affect the sentiments of the any community.

It is amazing to get the platform wherein you will be getting massive material to watch in small cost. It is responsibility of Broadcaster as well as Government to safeguard the interest of public at large. But simultaneously we have to accept this fact also that the creativity of the content writers should not be curtailed to such extent that they will fail to bring diverse content before the society.

Government and Broadcasters are required to draw the midway to solve this issue. Because it is the fact that controlling the creativity of the content writers is against their freedom of expression and speech and which is necessary also because Public wants to read hear and see the out of box content which may be sometimes broad minded or based on forward thinking. But we can't overlook effect of such content on the children and young generation for which some regulatory measures are required.

The Authority if created to keep check on contents then it must distinguish between accountability for the content on whole platforms.

¹² <https://law.asia/india-censorship-laws-streaming/>

¹²Tilak, G., & Singh, D. (2019). A Study of represent of transgender community in media industry.