

Regulation of OTT And Need of Censorship

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Abstract

Traditionally, televisions, films and other audio visuals platforms have been primary means of entertainment. However, with rapid technological advancement, the world has evolved from theatres and films to online streaming and video on demand (vod) services.

Internet and technology have become an inevitable part of our lives and therefore omnipresent. In this fast paced world, each one of us sits in front of an electronic gadget to pass time. The evolution of media and visual entertainment has witnessed a drastic change in the current decade due to the era of digitalization. The whole concept of visual entertainment started with few television channels and now it is easily available and accessible through the mobile phone, personal computers and Smart TVs. The current trend stands out to be the use of OTT platforms for which the number of users increases exponentially in our country. With regards to laws related to media and censorship, we are yet to upgrade ourselves to fit in the computerised world. This paper is an attempt to explore the grey area of OTT platforms and its evolution along with possible outcomes and suggestions that can be brought in the aspect of censorship and media laws.

Increased content consumption by the Indian audience led to a huge increase in the number of OTT Platforms tossed in India, serving the diverse sensibilities of the Indian audience. Unlike conventional media, streaming platforms have a diverse range of stories that are not constrained by censorship.¹

Keywords : OTT platforms , censorship , entertainment

What Are OTTs?

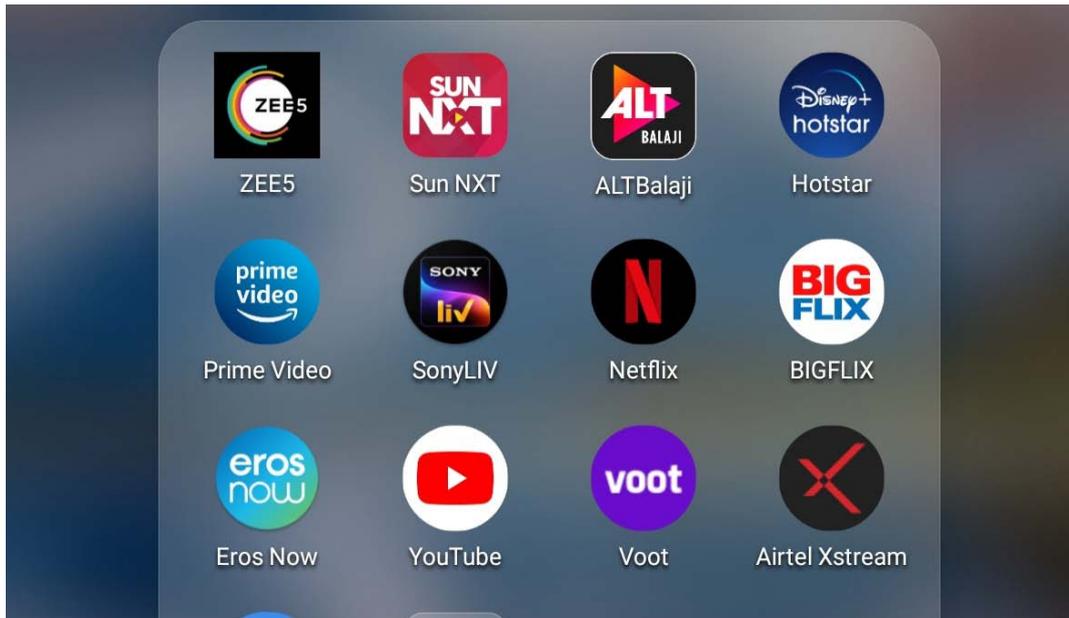
OTT stands for “Over The Top” and refers to any streaming service that delivers content over the internet. The service is delivered “over the top” of another platform. These services are known as over-the-top since it goes over a traditional cable box to provide a user access to content which otherwise is transmitted through customary medium.

OTT Platforms

An Over-the-top (OTT) Media Platform is a streaming media service offered through the internet to the watchers. It utilises broadcast, satellite TV platforms and acts as a distributor of such content. OTT platforms offer various categories of visual entertainment like films, television content and original web series to the audience. Examples of such Indian OTT platforms include Netflix, Hotstar, Amazon Prime, Voot, YouTube Premium, AltBalaji, etc. which enables visual entertainment. These services are easily available and accessible through the mobile phone, personal computers and Smart TVs.

¹“Consultation Paper on Regulatory Framework for OTT communication services”.

2. Research by McKinsey Global Institute.



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Background of OTT

In India OTT platforms started in India with BigFlix. Launched by Reliance Entertainment in 2008, BigFlix became India's first OTT platform. Eventually, OTT started thriving in India in 2013 after the launch of Zee TV and Sony Liv. Disney Hotstar came into the OTT world in 2015. Viewers of Disney Hotstar have been increasing since its launch. Today, it has become one of the most-watched OTT platforms. Later, Netflix began providing its service in India from the beginning of 2016 and competing with the platforms like Amazon-Prime Video and Disney+Hotstar.

How To Access OTT Platform

The user needs a strong internet connection and a device connected to OTT for using any OTT platform. These devices may include:

Smart TVs - Any smart TVs that support the OTT apps.

Mobile Devices - Mobile devices such as smart phones and tablets in which the OTT apps can be downloaded.

Personal Computers - Desktop devices like personal computers and laptops.

Types of OTTs

1. OTT TV generally called online TV or web TV remains the most familiar OTT content. This signal for online TV is received over the Internet or through a mobile phone network, rather than accepting the TV signal from a traditional terrestrial broadcast or satellite. Access to the visual content is controlled by the video distributor, through either an application or a different OTT dongle or box, associated with a Mobile phone, PC or Smart TV.

2. SVOD (Subscription Video on Demand) - It is a category of service that permits a user to access a whole library of movies, original series and videos for a fixed recurring expense. This subscription fee will be charged monthly or annually according to the customer's choice. As long as a user

²“Consultation Paper on Regulatory Framework for OTT communication services”.

2. Research by McKinsey Global Institute.

membership is valid, he can watch as many videos and movies as he wants to that particular subscribed channel. 3

Netflix, Hotstar, Zee 5, Amazon Prime Video can be cited as the examples of this SVOD OTT services.

3. TVOD (Transactional Video on Demand) - TVOD is something contrary to SVOD. In this type of OTT users purchase content on a pay-per - view basis. No subscription of any category is required here. The users will pay a certain amount for the specific content they intend to watch. iTunes and Google Play are well known examples of TVOD platforms.

4. AVOD (Ad-supported Video on Demand)-Ad-Supported Video on Demand (AVOD) is an ad-based digital video service that is free for its users. Ad revenue is used in this model to offset production and hosting costs and to monetize content. YouTube, Dailymotion Sling TV, Roku, and FuboTV can be stated as the examples for this type of OTT.

Emergence or Growth of OTT Platforms

It is apparent that OTT platforms have grown tremendously since their launch, but due to the pandemic, there has been an exponential increase in their popularity due to a shift in people's entertainment consumption habits across different media platforms. The pandemic has adversely affected the entertainment industry. Theatres and multiplexes were forced to shut down amid covid crisis. As a result, the production houses moved towards OTT platforms to release their content directly over the internet. People started preferring OTT platforms rather than traditional windowing because of the diversity of content available on these channels, the accessibility of global content, and the nearly endless number of programmes.

Concept of Censorship In India

“Censorship is the suppression of speech, public communication, or other information, on the basis that such material is considered objectionable, harmful, sensitive, or "inconvenient." Censorship involves the process of deletion or containment of such content which can cause an outrage in the society. Article 19 (1) (a) of the Indian Constitution gives the right to freedom of speech and expression and article 19 (2) reasonably restricts it. It states “Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence”. The first issue of Censorship in films reached the Supreme Court under Article 19(1) (a) of the Constitution of India, in the case of K.A. Abbas v. Union of India.

The evolution of censorship took place from time to time and our country has witnessed various outrages that took place due to the release of certain films. As far as censorship is concerned, there is no distinction made between theatre and television content. Some films had to cut various scenes in order to release in theatres and some were completely banned in India for its sensitive content.

³Deepa Bhatia “MORE THAN HALF OF INDIANS THINKS STREAMING PLATFORMS REQUIRE CONTENT CENSORSHIP”.

Need For Regulations

OTT services have become the most popular telecom service that created a large network of audiences across the world. However there are several aspects related to OTT services including economic aspects, competitive effect and regulatory framework.

The Supreme Court has also emphasised that categorization and censorship of films based on age and content is a valid classification based on public decency, morality and interest. Although the court stated that it was the responsibility of parliament to adopt policies and introduce standards for filmmakers, it decided that a list of rules on what may not be shown in cinema, had to be followed.

Prior Laws Regulating OTT Services

There were no such specific laws for regulating the content which is streaming online, however there are multiple provisions that regulate such content.

Sections 67A, 67B, and 67C make it illegal to publish or distribute pornographic or sexually explicit content, as well as material portraying children in sexually explicit acts, in electronic form. Selling and distributing child pornography is illegal under the POCSO (Protection of Children from Sexual Offences) Act. Art of the Indian Constitution guarantees the right to free speech, but under Article 19(2) of the Indian Constitution, the right can be revoked by enforcing fair restrictions if the content is harmful to the state's well-being.

The Indian Cinematograph Act of 1952 introduced censorship as a means of protecting audiences from immorality. Despite the lack of legislation, many OTT platforms signed the self-regulatory Code “Code of Best Practices for Online Curated Content Providers” prepared by Internet and Mobile Association of India (IAMAI). This code aims to build an open-source platform. The code contains a standardised grievance procedure, the removal of “prohibited content” list, and the imposition of penalties for code violations.

Requirement of Online Censorship In India

At a vulnerable time like the current Covid—19 pandemic, online platforms have taken over mainstream television and is being the most viewed platform for movies and series. Platforms such as Netflix, Amazon Prime, Zee5, Hotstar, etc are a market of growing content. Netflix and Amazon Prime together make up for more than 300 million consumers of OTT platforms.

We must remember that viewers of OTT platform belong to all age groups and thus content must be suitable to entertain a dynamic set of audience. Many people find OTT platforms filled with content that is not suitable for all age groups with many series being uncomfortable to watch with a family.

According to a survey conducted by You-Gov, an online market research firm, “Nine in 10 people in the country feel some form of censorship is required on platforms such as Voot, Netflix, and Hotstar. Over half of them, vouch for censorship to curb what they see as “unsuitable content” for public viewing”.

In a very recent case Gur Deepinder Singh Dhillon v. Union of India, a notice was issued in the High Court of Punjab and Haryana to censor the web series “PatalLok”. This petition was not a mere plea for censor cuts but it had requested the judiciary to bring in a regulation for the content available on OTT platform.

Also in the case of Justice for Rights Foundation v. Union of India²⁴, the petitioners stated that unregulated content was being aired on OTT platforms which were censored when released in

television media but the same is not followed in OTT platforms. The honourable Supreme Court demanded a response from the Ministry of Information and Broadcasting which in turn replied that sufficient regulations are provided under section 67 and 67A of the Information and Technology Act which deals with content showcasing obscene and sexually explicit act.

There are numerous web series and films that hurt religious sentiments, incite hate towards a nation and even glorify terror activities and the question that prevails among the general public is that, if provided regulations are sufficient then why do we still have content that violates various sentiments and creates a non family friendly environment to watch most of them? The answer is yet to come from the concerned authorities!

New Rules For Regulation of OTT Platforms

On 25th February, 2021 The Ministry of information and broadcasting (Guidelines for Intermediaries and Digital Media Ethics Code) Rules 2021 . The Government has released an official statement in response to the Rules, stating that “Amidst growing concerns around lack of transparency, accountability and rights of users related to digital media and after elaborate consultation with the public and stakeholders, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 has been framed in exercise of powers under section 87 (2) of the Information Technology Act, 2000 and in supersession of the earlier Information Technology (Intermediary Guidelines) Rules 2011”.

Conclusion

The state regulation has been justified in one way or another because films and media have been considered a powerful medium that can impact society in India. India’s huge population is an asset for any profit making organisation. With one of the largest users of online content, online regulatory mechanisms would increase the existing viewership to a bigger level. The speciality of our country is its unity in diversity and a family oriented culture, therefore producing family friendly content would do more good and no harm. Film makers must understand the impact their movies can make on young minds and must be held socially responsible for their actions. Censorship is not about suppression of truth but a mechanism that brings out the truth in a decorous manner.

Recommendations

Even though OTT platforms have voluntarily signed a self-regulatory code of best practices under the backing of Internet and Mobile Association of India (IAMAI), in reality they are not following these regulations. The legislation must be framed to ensure that all aspects in the IAMAI CODE are fulfilled and they must be followed strictly without any deviations.

The intended legislation must fulfill the main objectives of the IAMAI CODE: Empower consumers to make informed choices on age-appropriate content. Protect the interests of consumers in choosing and accessing the content they want to watch, at their own time and convenience. Safeguard and respect creative freedom of content creators and artists. Nurture creativity, create an ecosystem fostering innovation and abide by an individual’s freedom of speech and expression.

Provide a mechanism for complaints redressal in relation to content made available by respective OCCPs. Content which deliberately and maliciously disrespects the national emblem or national flag .Content which represents a child engaged in real or simulated sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. Content which deliberately and maliciously intends to outrage religious sentiments of any class, section or community. Content

which deliberately and maliciously promotes or encourages terrorism and other forms of violence against the State (of India) or its institutions.

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