

Governing Structure of OTT Platforms Under The Indian Legal System

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Abstract

Over-the-top (OTT) platforms have become a harbour for content producers in today's times, and this was particularly true during the sweeping of pandemic when many online creative artists chose to use the online material to run on these OTTs and received an enormous squelch. OTTs are internet-based flooding services that provide consumers to access to audio and video material stored on their platform. Around March to July 2020, the figure of paid OTT customers in this country grew by 30%, from 22.2 million to 29.0 million.¹ Netflix had been a dominion on the OTT industry until Amazon Prime Video, Amazon's OTT service, entered the fray. There are several in this country, including Amazon Prime Video, Disney+ Hotstar, and worldwide players like Alt Balaji, Voot, and Sony Live. There is always a hurdle between the above platforms as to legal problems as they be apt to self-inspect the material hosted. The Government of India (Allocation of Business) Rules, 1961, ceremonials the Ministry of Information and Broadcasting would supervise OTT podia, the contents on events, and broad cast.

Keywords : OTT, Platform, Government of India Rules, 1961.

1. INTRODUCTION:

OTT is Over –the- Top media which offers unswervingly to viewers via the Internet. The introduction of OTT platforms in preceding decades. Is because of the advancement in technologies, as an effect audio-visual development has taken all o all over the world has taken place at a fast pace. Not only in India but also in the world these streaming has reached very high viewership. This is due to the progression of online streaming During to Covid -19 pandemic situation. Shutting down of only media production and theatres this paced for the using online platforms for launching web series, movies, shows etc. OTT platforms has saw increase of 30% subscriber over a period of year. These includes Amazon Prime, Netflix, Sony Live etc. they provide for various features like movies, online library, music subscriptions at very affordable price. OTT is used to describe emerging business models, such as OTT apps and devices, utilizing the internet to bypass traditional infrastructure.² The society needs to adapt by changing its rules and regulations as and when the technology changes. From this flows the theory of “media determinism” by Marshall McLuhan which says that “it is the medium through which content is communicated that impacts people rather than the content itself”³.

¹ REGULATORY FRAMEWORK OF OTT PLATFORMS UNDER THE INDIAN LEGAL SYSTEM; by Pratishtha Malhotra and Mishika Ruhil Amity Law School, Noida; Legal Desire International Journal on Law Vol. 8 Edition 27 ISSN: 2347 – 3525; <https://legaldesire.com/wp-content/uploads/2021/11/Regulatory-framework-of-OTT-platforms-under-the-Indian-legal-system.pdf>; visited on 5th april 2022 at 21.30pm

² OTT REGULATORY LAWS: MYTH OR REALITY BY- NIDHI SINHA, Chanakya National Law University, article published in Burnishedlawjournal.in, VOLUME 2 ISSUE 2 ; 2582-5534; <http://burnishedlawjournal.in/wp-content/uploads/2021/05/OTT-REGULATORY-LAWS-MYTH-OR-REALITY-BY-NIDHI-SINHA.pdf>; visited on 5th april 2022 at 21: 35pm.

³ Self-Regulation by Over-the-Top Platforms: A Study in Context of Video Streaming Services in India, by HIMI SINGLA; Advocate at Punjab and Haryana High Court, Chandigarh, India, article published in 2020. International Journal of Law Management & Humanities [ISSN 2581-5369] ; <https://www.ijlmh.com/wp-content/uploads/Self-Regulation-by-Over-the-Top-Platforms-A-Study-in-Context-of-Video-Streaming-Services-in-India.pdf> visited on 5th april 2022 at 21: 40pm .

2. WHAT ARE OTT PLATFORMS:

The Internet Telecommunication Union (ITU) defines OTT service as: “An internet application that may substitute or supplement traditional telecommunication services, from voice calls and text messaging to video and broadcast services.” The Indian communications regulator, Telecom Regulatory Authority of India (TRAI), appropriates the same definition though various stakeholders believe it to be limited in nature. As public internet that started in the 1980s has grown in scope over the last three decades, the OTT services have created a “parallel medium” to disseminate content. It refers to applications and services which are accessible over the internet and ride on operators’ networks offering internet access services e.g. social networks, search engines.⁴ The important point is that Carriage is separated from content in internet networks, enabling OTT content and application service providers to deal directly with end users. The telecom service providers (TSPs) are excluded from the said transactions, with no control over the content or the application. The characteristics of OTT services are such that TSPs realise revenues solely from the increased data usage of the internet-connected customers for various applications (henceforth, apps).⁵ OTT benefactors make use of the TSPs’ set-up to reach their customers and offer products/services that not only make money for them but also compete with the old-fashioned services offered by TSPs.

3. CATEGORIES 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 membership is valid, he can watch as many videos and movies as he wants to that particularly subscribed channel.
3. Netflix, Hotstar, Zee 5, Amazon Prime Video can be cited as the examples of this SVOD OTT services. TVOD (Transactional Video on Demand) - TVOD is something contrary to SVOD. 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 Fubo TV can be stated as the examples for this type of OTT.⁶

4. PERCEPTION BY-LAW

Regulation in the original sense refers to the indiscriminate process of the State, usually centred in a (more or less) independent regulatory body established and governed by a state regulation. The matters of broadcasting regulation are very complex, these bodies are soon overloaded with work and usually encourage self-regulation of the industry. It leads to urging the actors to solve the problems among themselves, before turning to the state regulator. Such model of regulation is then called self regulation. As it usually reflects the interests of the industry to keep the State out of its affairs, it accepts this obligation. If the State and the private regulators co-operate in joint institutions,

⁴TRAI, Consultation paper on Regulatory framework for over-the-top (OTT) services.

⁵Ibid supra footnote-4

⁶“Censorship in OTT Platforms: The Necessity” *Bhagavatula Naga SaiSriram School of Law, SASTRA University; ACCLAIMS; Volume 11, July 2020 ISSN 2581-5504; www.penacclaims.com. <http://www.penacclaims.com/wp-content/uploads/2020/07/Sriram.pdf>

this is called 'COREGULATION'. If this type of self- regulation is structured by the State but the State is no involved the appropriate term is regulated self-regulation.

5. CONTROL BY STATE :

The Ministry of information and broadcasting had beforehand indicated that it lacked the power to monitor or control online material and was not looking for a standardize framework for OTT platforms in answer to a request made under the 2005 Right to Information Act.

"Ministry of Electronics and Information Technology auxiliary provided they do not control online material and that there is no mechanism for licensing or regulating any entity that posts internet content. It would still be possible to take action under "Section 69 of Information Technology Act, 2000 ["IT Act"]].

"Sections 66A and 67B of the Indian Penal Code⁷" aims penalties for offences like conveying" obscene messages via communication service, publishing or transmitting obscene material in any electronic form, publishing or transmitting material containing sexually explicit material, publishing or transmitting material offensively depicting children, etc." The sections of the Information Technology Act make sure that serious actions are done on receipt of grievances. The Information and Technology Act provides sufficient procedural protections to allow for enforcement action. Several over-the-top (OTT) service providers were also establishing self-regulatory rules at the same time. The companies like Netflix, Hotstar, and other major OTT companies signed a self-inspection code of best practices last year with the support of the "Internet and Mobile Association of India (IAMAI)". The code's goal was to offer content producers rules for safeguarding customers' interests and behaving responsibly.⁸

6. REGULATING ONLINE PLATFORMS:

As of now there are not any specific laws to regulate those contents available online. They can be governed by multiple articles and sections of different acts.

- Article 19(1)4 of Indian Constitution, gives everybody the Freedom of Speech but on the other hand as we know that no rights can be absolute in nature. Every Rights comes with its limitation. Article 19(2) on Indian Constitution talked about the reasonable restriction to be imposed by government. If any such content which is against the wellbeing of the state, leads to hamper in the public order, international relations or aims towards in committing crime.
- Not only constitution of India, but Indian Penal Code also regulate the Freedom of Expression via Section 293, under which any person who has been indulged in the selling or distribution of work of literature which is obscene may be punished by court. Also, section 295A says that if any person with the intention of outraging religious sentiments done maliciously can be punished. Another important law upon this is Section 499 which attracts any act of publishing defamatory content and last one is Section 354, under which punishment can be given to anyone who insults any women's modesty. Also, under Indecent Representation of Women (Prevention) Act 1986 restricts the publication of indecent things about women in advertisements, books, movies, painting etc. As decided by Court in Padmanabh Shankar⁹, the petitioner requested that the court takes into account four different issues. To govern OTT platforms, the appellant asked to establish a competent regulatory body. He asked the court to bring them within the jurisdiction of the Central Board of Film

⁷The Indian Penal Code 1860, s 66A. and The Indian Penal Code 1860, s 67B

⁸Ashima Obhan, OTT Platforms Brought Under Government Regulation, MONDAQ (Oct.2, 2021, 10:00 AM), <https://www.mondaq.com/india/broadcasting-film-tv-radio/1007300/ott-platforms-brought-under-government-regulation>. Visited on 6th April 2022 at 15.31pm

⁹WRIT PETITION NO.6050 OF 2019 (C) PIL

Tilak, G. (2020). The study and importance of media ethics.

Certification (CBFC) and the Cinematograph Act of 1952 until such an entity is established. According to the petition, OTT platforms should be held accountable and should not be allowed to benefit from the safety net provided by "Section 79 of the IT Act."¹⁰ petitioner's final request, "public display" should include reading material accessible on the net in the office or at home. Because it may not be feasible to appreciate the argument that transmission of movies, theatres, series, etc. via the net, would fall within the scope of "Section 2 (C) of the Cinematograph Act, the court, in this case, found it impossible to provide relief to the first petitioner.¹¹ The same cannot be dealt with since the second request was reliant on the first decision. The court also held that it require serious and require the State to investigate them despite their inability to grant the petitioner's request.

7. GOVERNMENT OF INDIA (ALLOCATION OF BUSINESS) RULES, 1961 – NEW

Cable Television Networks Rules, 1994, Program and Advertising Codes are presumed to provide theregulatory framework for material accessible on these platforms. However, no formal comments have been

made about such restrictions. The Electronic Media Monitoring Centre, for example, keeps tabs on what'sshown on television.¹²

Changes brought by the amendment :-after the new law was announced new entries have been added to the Government of India (Allocation of Business) Rules, 1961 ("Rules") under the category "Digital/Online Media.":

- (1) Online content providers' films and audio-visual programs;
- (2) online platforms' news and current affairs material.

According to thesecond schedule of the Rules, there are nine classifications within the Ministry of Information Broadcasting , all of which deals with broadcasting and administration policy and administration of cable television policy and radio. The newVA sub-category has been included in the notice. Total control by Ministry Of Information And Broadcasting¹³.

8. THE LAW AND STEP INTO THE FUTURE

The IT Act, as previously mentioned, imposes stiff fines and even jail time for anyone found guilty of sending pornographic content over the internet. It also provides Central Government authority to make instructions to restrict public access to any online material under "Section 69A of the IT Act ". Information stored or published on an intermediary's computer resources is subject to "the Information Technology (Intermediaries Guidelines) Rules, 2011", that give a due diligence structure for intermediaries to adhere to.

Based on these criteria, they may also apply to OTT platforms that constitute mediators under IT Act.¹⁴

Additionally, OTT platforms are governed by sections of the IPC, 1860, so that those disseminate libelous material, intentionally inflaming religious sentiment, and more unlawful. There has been a transition from cable television to online platforms since COVID - 19, which compelled regulators to create more specific rules for digital broadcasting, even though Indian courts have recognized the ability of the IT Act to control online content without external laws.¹⁵

¹⁰The Information Technology Act 2000, s 79.

¹¹Diganth Raj Sehgal, OTT platforms and their regulation, IPLEADERS (Oct. 2, 2021, 12:15 PM), <https://blog.ipleaders.in/ottplatforms-regulation>; visited on 6th April 2022 at 14:32pm

¹²Ibid –supra note 11

¹³AshimaObhan, OTT Platforms Brought Under Government Regulation, MONDAQ,

<https://www.mondaq.com/india/broadcasting-film-tv-radio/1007300/ott-platforms-brought-under-government-regulation>. Visited on 6th April 2022 on 14.50pm

¹⁴Ibid –supra foot note 13

¹⁵REGULATORY FRAMEWORK OF OTT PLATFORMS UNDER THE INDIAN LEGAL SYSTEM;byPratishtha Malhotra and MishikaRuhil Amity Law School, Noida;Legal Desire International Journal on Law Vol. 8 Edition 27 ISSN: 2347 – 3525;

9. SOLUTION TO THIS CAN BE:

Shifting from 'liability approach' to a 'responsibility approach' to a responsibility approach.

Introduction of a good clause to take voluntary active measures to moderate harmful contents.

Move towards a more vertical approach of 'notice and action'.

Establish a social media council. As the public authority may not be prepared to confirm enforcement of content moderation and may needs some help from private bodies.

10. CONCLUSION

The new law and regulations will help us to move a head and think towards regulating the virtual world with law protecting the intrest of common people as well as step toward moral policing in the virtual world. In Indian content it will help us to censor the creativity on the ground of right to freedom where the content being in conflict with the public policy or over exercise of right to freedom of speech and expression to bring under umbrella of law. the State must consider and draw inspiration from other nations and a few country-centered restrictions on these platforms to ensure that they are no texamined for every other piece of material and continue to cherish their freedom of expression.