

Censorship of OTT Platforms And The Right To Freedom of Speech And Expression

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Abstract

OTT is new technology popular among a large population and it has transformed the entertainment industry. Today, OTT platforms are not limited to local or national investors, but with increased revenue in the OTT industry, international investments are also capturing the market. With an increase in revenue control of OTT platforms is now a majorly discussed topic. The growth of technology comes with drawbacks and the solution to these issues in digital progress are to be discussed in multi-dimensional aspects. OTT has a major influence on behavioral and social changes, especially in teenagers and youth. With the regulation of OTT platforms, OTT service providers have taken a stand against censorship addressing their right to freedom of speech and expression. This research aims to discuss the regulatory framework and its impact on the right to freedom of speech and expression. The researcher also wants to highlight the need for censorship in terms of the impact of content on OTT. The study is purposed to put the view for restrictions and discuss if it affects creativity. Furthermore, the content is discussed for its impact on society, and the self-regulation system that is promoted as a middle way to prevent harmful content and protect the rights of OTT creators.

Keywords: OTT platforms, freedom of speech, freedom of expression, censorship

Introduction

In the modern digital era, the emergence of new technologies in the audio-visual sector has transformed the world of entertainment. Films and Moving pictures have now moved the world to the internet and today, Over-The-Top (OTT) is a popular platform for streaming videos. The rapid change in the pandemic period has increased the demand and popularity of the OTT platform in youth as well as adult populations. Streaming content has been found a great impact on society and the need on the basis of regulation of OTT raised accordingly. With emerging technology, there is always transformation in society that needs to be adapted with the change in rules and regulations of society. According to Marshall McLuhan, in media determinism, the audio-visual content communicated through medium impacts people and is acknowledged as a powerful form of speech and expression. Thus OTT can be recognized as a significant medium for the communication of ideas that might be affecting public attitudes as well as behavior in different ways. It is able to stir up emotions with appealing versatility and realism with a different form of expression and art.¹

The most recent trend OTT platform is leading in Media and Entertainment Industry with the buzzword content. The Indian television industry is one of the topmost sources of revenue and OTT is the new individual digital multi-media platform where content is not controlled. It leads to media and user independence of consumption to choose desired content. It has not only increased the number of OTT supporting devices but also the number of viewers demanding content tending to raise subscribers of internet and mobile data. Even due to the fact of bigger artistic and creative freedom,

and wide scope, many production houses as well as the media cinema community are moving to OTT platforms that are not regulated. For instance, persons with disabilities are impotent of enjoying entertainment due to challenges in vision, hearing, or comprehension. Technology development in assistive devices facilitates access to these recreational activities for a disabled person and OTT is available with the recommendation of media and entertainment under the right of a person with disabilities. However, relaxation is observed to leading sensitive aspects like watching content by immature viewers where content is accessible to all. The rapid increase in OTT services led to regulatory and security concerns with day-by-day increasing viewership necessitating content filtration. ²

Right to freedom of speech and expression

In a democracy, freedom of speech and expression is the fundamental right of each individual to speak or express their views, ideas, and thoughts through any medium. However, the right comes with responsibility and thus restrictions imposed by the constitution are justified in the interest of the public. So many OTT platforms are available anywhere and anytime that provide an extensive range of uncensored shows and movies restricted to telecast on television under regulatory censorship rules to prevent violence, obscenity, and distribution in society. On the other hand, it has been seen to restrict the creator's works. Freedom of speech and expression is purposed to access the right without hurting any religious feeling or morality. Any kind of violence against the general public is not reinforced under the right of expressing views or opinions by anyone. Thus, censorship regulation is purposed for content that can be objectionable, hurting any religious feeling, harmful, inconvenient, or sensitive that is easily available on the OTT platform to access on demand. The major problem is accessing such content by people who are not well competent with the content and need to be regulation of content. ³

Censorship of OTT platforms

Censorship is restrictions on audio-visual content that is judicially accepted as a part of freedom of speech and expression. The act to censor and regulate the audio-visual content majorly prevents issues of decency, morality, and obscenity as visualized in the Constitution of India. OTT platform is neither regulated through censorship act nor IT act. In consequence, it is still hassle-free to release any content on the OTT platform without censorship or certification. It has led to the issues of the same content censored on other streaming platforms and complaints about restrictions suppressing the right to freedom of speech and expression. However, self-regulatory actions are put to overcome such issues. ⁴

This paper is aimed to discuss the censorship in OTT platforms, its need, and its impact on the right of expression of creators as well as the right of viewers to choose the content they want to watch. It has different aspects than a restriction on freedom of expression including the impact of content that is easily available to access on the OTT platform regardless of age, knowledge, and understanding of viewers. The study also highlights the censorship purpose in addition to protecting the right of freedom of speech and expression. OTT is modern entertainment media that needs to be discussed for the effect of content on society since it is a powerful form of expression that can transform the attitudes and behavior of society. Therefore, censorship of OTT is a vital part of regulation and prevention of rights in democracy at the same time.

Research Review

OTT as a modern technology spread across the world is studied for fundamental rights to express and communicate ideas, thoughts, and opinions through audio-visual content. It can be easily reached viewers without regulations and control over the content. Several studies are performed on the censorship of these contents some of which have supported restriction whereas some others explain the need for protecting rights to freedom of expression and speech. Despite the human rights of freedom of speech and expression are important, it is quite difficult to control the spread of inconvenient content that can hurt any community, religious belief, and mortality. Thus, it has a critical aspect of censorship without affecting the rights of creators to freedom of expression and speech.

The term OTT arises from the words 'Over the Top' that takes account of all service providers making content accessible to everybody through internet services. OTT has an easy access structure to provide more choice and power to the viewers. OTT platform has grown significantly with easy availability of high-speed internet and became the most profitable business among other global businesses. OTT platforms have changed the entertainment industry in terms of consumer content as well as transformed revenue to new heights. OTT platforms like Netflix, Big-Flix, Amazon Prime, and Disney+ Hotstar are major players that also encouraged other national broadcasts to jump into this lucrative revenue model, and Alt-Balaji, ZEE5, Voot, and other regional platforms are introduced to viewers making them easier in choosing desired content. It has enhanced OTT's share in the market which is considerably high. It has promoted accessibility across the nation as well as worldwide encouraging knowledge, tolerance, and respect for diverse people and practices. It is a free expression of ideas, knowledge, and views making global unity through silent influencing content. OTT has been enhanced access to other cultures sensing the borderless mechanism through audio-visual content.⁵

According to the study on OTT censorship laws, free exchange of ideas is important for the healthy development of society. It allows the free flow of ideas, views, and information with freedom of speech and expression given by democracy. Its value is maintained with the assurance of self-fulfillment, including social, and political participation and decision-making. India as a democratic country provides special attention to protect these rights to freedom of expression without interference to pursue, receive and convey information and thoughts through any media. Every citizen secures their fundamental rights in democracy and OTT is a crucial part of implementing these rights. Audio visual content on OTT not only expresses the views of an individual but also influences the people to make their own views. In the modern digital age of entertainment, OTT content is incorporated with social, historical, cultural as well as historical content which has become an inspiration with a sense of humanity in people. However, some of the content is too sensitive to create hatred among society against thoughts, people of a particular community, or categorize. The study highlights the role of OTT in society with increasing cases of demands against content released which results in the possibility of revolt in the society.⁶

A study highlights the need for protecting the rights of OTT to freedom of expression accounting benefits of the platform. The increasing popularity of the OTT platform highlights these benefits in terms of conveying information and the availability of content. It also includes a high reception pace and commendable speed over the internet. OTT services are widely accepted with less expensive and exposure to income without affecting time and place. Demanding OTT services have transformed the business of entertainment with dynamic content, low exchanging cost benefits that have been providing a higher exchange of information with cumulative interest. With these benefits, the OTT platform has attracted producers to develop the content of viewers' interest increased scope of income, and great turnover is observed through OTT subscription. However, OTT tends to have low client maintenance and lacks compact and fast organization. Higher traffic loads affect the content reach and require speculation of ISPs. Quality control is difficult with lower power ability as well as lack of commitment troubling OTT income are drawbacks of OTT platform. OTT platform tends to security worries due to no immediate and clear guidelines available on OTT. Considering these issues, the study explains the need for regulating the OTT platform for secure content distribution and maintenance of quality. Despite several countries denying the regulation of OTT platforms to secure freedom of creativity and expression, India has regulations under some other forms while it is difficult to regulate internet content. Self-regulatory bodies can sign a code of best practices with OTT service providers. The study looks into the OTT practices of regulating the content and concludes the self-regulation of OTT content is the way to ensure ethical issues and responsibilities in conveying the content.⁷

Another study on OTT explains the need for censorship and states that content causing an outrage in the society is involved in the censorship process of deletion of content. It is denoted in various ways in different media such as blurred image, beep or mute sound, age restrictions, etc. The concept of censorship is based on restricting harmful or inconvenient material or content that can be

objectionable or sensitive where one can feel suppression of rights to freedom of speech, and expression. Films have been a powerful medium to highlight several hidden pieces of information and are too popular to influence people's views by conveying messages among them. It is not limited to street dramas, motion/color pictures, television channels, and furthermore to cassettes, DVDs, etc. but recently people turned to online streaming and the use of OTTs. Indian Constitution Article 19 (1) protects our right to freedom of speech and expression, but it should not affect existing law and thus these rights are constrained through reasonable restrictions. Censorship is important to prevent incorrect or harmful impacts on society with respect to integrity, security, mortality, decency, and public order. It should not affect friendly relations among people, states, or foreign states or the right of expression should not be used in relation to contempt of court, or defamation, or provocation to an offense. Audio visual content is more influential than other platforms like a magazine, book, or newspaper making it a unique medium. The study implies that reasonable restrictions properly balance liberty and social interests and hence censorship is reinforced to maintain this balance.⁸

An Overview of Indian Censorship is studied in terms of races, civilizations, and religious figures to live in peace. They can express in mythical, artistic, or cinematic form while it is supposed disagreeable to others at one time or another. Despite the right to freedom of speech and expression being the basis of Indian democracy, it is subject to certain limitations. If these expressions offend any religious feelings or create or promote animosity, hostility, or unkind determination amongst a community of different caste, religions, language, or race, then the Indian Penal Code (IPC) consents to restrictions on freedom of speech and expression. The study found these prohibitions largely categorized, and difficult to judge if it does not foster hatred between communities. However, freedom of speech in significant expression empowers democracy to function properly allowing the spread of ideas among the citizens for the purpose of awakening thoughts, and proper exchange of ideas. Thus anyone can express views on public policy or provide feedback to legislators. But the censorship is an essential part of protecting a community from offense to their sensibilities.

The study explains the limitations of Freedom of speech and expression for enmity, indecency, or upset religious sentiments highlighting the need for censorship to avoid cases of spread of communal violence. Though it feels but is not to inhibit freedom of expression. It is important in the digital era where negative expression is spread over the various platforms to stimulate hostility among teenagers and youth against the nation. It is easily reaching youth through the access of inconvenient and adult content on the OTT platform though it requires parental permission. OTT content is not restricted to watching by immature age viewers including teenagers or children. However, OTT content has access on subscription on-demand allowing anyone to watch whatever is selected. This is the biggest dispute to raise the need for censoring the content on OTT with another perception that rural viewers are not aware of regulating the content that should not be accessed by children. Thus the study points out the censorship of content on OTT platforms to protect the young population from accessing inconvenient and harmful content that is spread easily on OTT platforms in the name of freedom of speech and expression. It will help the young population to watch controlled and regulated content.⁹

Various studies on OTT have explained regulations for streaming on OTT platforms in India which are also preventing the rights of creators to express their views freely without affecting peace in the community. Censorship on the OTT platform is having more scope to explain its impact on Freedom of speech and expression but they are mainly focused on regulations and the need for censorship highlighting the age concerns of content spread over the platform. Thus, a detailed study is essential to explain the relationship between censorship and the rights of creators to express their views. Moreover, the right of expression has its own benefits and drawbacks in the digital age, while censorship on the OTT platform is also a difficult task to regulate and maintain the quality of the content. Thus study explains the suppression of rights in some cases of content that cannot be easy to judge as inconvenient. Content broadcasters, as well as producers, also are not satisfied with the restrictions and it has raised the issue to censor content from different perspective. These studies explain the censorship and regulations under the act of cinematography and IT act with examples of some cases filed in court. Whereas, the content is restricted to avoid social or communal clashes

among people from a different communities. Court has also supported restrictions if content hurts any group of community on the basis of religion, caste, political view, or mortality. It is highlighted in several studies to reinforce the need for censorship. Therefore, censorship in a democratic country like India which involves a variety of communities with different religions, castes, views, languages, etc. is accepted over the freedom of expression.

Methodology

The researcher studied several kinds of research, articles, and available data to analyze censorship on the OTT platform and its need. The researcher focused on regulations and the role of regulatory bodies to censor the content and views behind the regulation of content. The purpose of the study to check whether the right to freedom of expression is suppressed with censorship is also focused on while analyzing the content types and drawbacks of the OTT platform.

OTT is an emerging technology, especially spread during the pandemic period due to the availability of high-speed internet and time. With the increased quantity of mobile and internet uses, OTT platforms are made easily accessible to a mass audience with less cost in India. While it is widely spread across the world without any restrictions. Increasing revenue benefits have led to a surge in OTT content including local and regional content. Thus discussions to control the content started with some cases that are widely opposed to streaming on OTT. The study is therefore important to showcase the role of OTT and its impact on society, either positive or negative, in terms of social issues. The researcher reviewed several studies that explain OTT platforms and their content. These studies are further evaluated for regulations and restrictions with respect to censorship and its purpose. The study discusses the protection of the right to freedom of expression in terms of the creation of OTT content and the benefits of the OTT platform. The increase in OTT users has also raised some issues of knowledge of the regulation of content and drawbacks of easy access to troublesome content. The global OTT platform is also restricted by some countries except a few countries. The study explains the different contents and their restrictions without suppressing the fundamental rights. Therefore, the researcher has also studied different OTT platforms and their impact on the entertainment industry other than OTT.

Findings/Discussion

Today, the internet has transformed the technology uses with huge transformation in several business sectors and almost captured high market value with commendable revenue. OTT platform is one of the biggest entertainment sectors getting enormous success. Reliance Jio is one of the major promoters of Internet and OTT platforms. India has observed to have surged consumption of smartphones and several telecom providers like Vodafone and Airtel dropped their internet service costs with easy access to affordable data plans. This has introduced an increase in internet users, even in rural areas which is the basic requirement of OTT spread. With the increased burden of higher data traffic and maintenance costs, Quality of Experience on OTT is also the major factor in better service. The study found that smartphones are the major reason for the widespread online video consumption through the OTT platform. It is also observed that Smartphone has been supported to a higher time span that is spent on the internet and video streaming on OTT. Also, the easier investment facilities attracted foreign investments in India while the major revenue-collecting entertainment industry is the best choice for such investments. The researcher found that large youth in India spending their time on the OTT platform has attracted greater national and international service providers including regional service providers.¹⁰

Modern technology is easily available with several types of content and the basic need is to educate the users about the guidelines for using the technology. Some studies analyzed the online survey results to showcase OTT utilization in a significant population. It is observed that OTT platforms are widely spread and users of OTT are increased, preferably using OTT on TV. A large population uses shared connections and more than half of users confirm the content for censor certification before watching. Many users prefer renewal of subscription due to inappropriate laws of content regulation

and it is found that many users want certain changes to regulate the content on OTT. Since it is still not clarified that OTT comes under which area and the present laws and regulations like the IT act are not sufficient to regulate them. Thus, here the need for a clear definition of OTT platforms and relevant acts are recommended by some studies.¹¹

OTT platform regulations are conducted in some online surveys and viewers reinforced censorship of OTT content. The opinion of viewers in the support of the regulation of OTT platforms indicates the biggest concern about content, especially viewers are more worried about ease of adult or obscene content access to children and teenagers. As the large population in India representing several districts is involved in the survey, it reflects the expectations of people in regulating such content. OTT content including several web series, music, cinemas, reality shows, TV serials as well as live sports and other events is available on the OTT platform in not only English and Hindi but also in regional languages. Thus the impact of the content can be analyzed to evaluate the censorship in terms of the right of freedom to speech and expression of creators as well as the right of viewers to watch desired content. The regulation of other audio-visual content comes under censorship regulation provisions, but internet content regulation is not included in the power of government and thus the self-regulatory body of Digital Content Complaint Council (DCCC) is proposed for OTT content which is rejected by several OTT platforms like Netflix.¹²

It is essential to regulate online content to restrict obnoxious content to preserve constitutional values. Freedom of expression is a core value limiting the content promoting violence and vulgarity. The balancing of rights with constitutional values is formulated in new rules regarding modern online media like OTT platforms that create a level playing field with other media like print and television. A Code of ethics is introduced to regulate the content for media and certification for films while OTT platforms have none. Artistic freedom is accepted with responsible self-regulation and OTT entities should classify the content and evolve code. Several countries like Australia have taken action with a code of practice against digital content or disinformation and digital platforms also agreed to a self-regulatory code that prevents serious harm through content. India is also bound to democratic values that influence the policies. Considering freedom of speech and expression, OTT must follow the law of land as freedom comes with reasonable restrictions. As a vibrant democracy composed of several communities with different social, economic, political, and religious complexities, the internal peace of India is a major concern. That is why constitutional freedom of expression is combined with restrictions. Several cases in courts also specify the need for regulation and like other countries, India has its own rules and international companies cannot assume their own views over freedom of expression.¹³

The new IT act has expanded the OTT regulation scope of self-regulation with the three-level framework. The grievances are powered by the interdepartmental committee and non-judiciary adjudicatory body. But the digital OTT platforms like The Wire, Quint Digital Media, and others claimed the regulations are enforced with an unclear Code of conduct. For the multi-religious and multi-racial community, India has proposed a Code of ethics for OTT platforms. OTT platforms must exercise discretion and due caution in case of presenting sensitive content, especially related to religious or racial beliefs and community practices or views. But to protect artistic freedom, investors opposed the censorships with substantial condemnation. On the other side, recent issues of OTT content point out cultural and religious feelings and protests raised against depictions of sexuality. Cumulative demands for the restriction against OTT platforms for communal, religious beliefs, and cultural ethics are rising and monitoring and control with censorship are proposed against the freedom of OTT platforms.

IT rule is focused on the digital platform including social media and OTT platforms for discretion and domestic security concerns. It is aimed to tackle false, hatred, and illegitimate content in addition to unwanted and offensive content on new-age media and video streaming platforms. New rule guidelines work on the regulation of rapidly growing and powerful internet companies to protect the public sphere. However, freedom of speech, access, and privacy are major concerns in combination with contending online deception due to insufficient efforts by internet companies. The regulation

emphasizes content instead of deeper essential addressing. Addressing such issues with new IT rules balances privacy versus nation's security and prior to civil independence and economic welfare, national security is considered an important aspect. The study recognized the need for a wider approach to a legislative regulatory context which should be discussed in the public sphere and accepted by investors. The legislative process is expected to recognize the ills of civil liberties in addition to comprehending different technical aspects as well as their public impressions. While considering constitutional rights, a new regulatory regime needs to promote the provisions with clarification of ambiguous provisions. **14**

The researcher studied OTT regulation and its complex nature in different classes. It includes several OTT services like communication, education, health, and finance in addition to entertainment. This categorization further shows local and global service providers which are therefore proposed for a combination of such services. This multidimensional perceptive is a vital factor in the OTT regulation framework. The study also found that analysis of each service, business strategy, and competitive interaction with investors with requirements of services is the proposed model for categorization of OTT regulation to cover a wider group of services. It may need to involve entertainment and media with real-time communication and other services like gaming. In the case of OTT platforms, service providers facilitating transactions are also considered as part of a business model with one-sided and two-sided business models like iTunes, and AppStore. OTT platform providing communication and videos impacts data transmission network traffic as well as infrastructure with diverse media content and different capability of transmission.

The study highlights the multi-dimensional approach which is important in complex OTT structure standardization. The factors challenging the process involve internet maintenance, regulatory balance, and traffic management with the assurance of privacy and data security. OTT content with price control, taxes, and healthy competition encourages the platform for better service to customers. OTT platforms encouraged innovation and new services that can affect the telecom industry and hence the need for a regulatory framework should take into account. New ways are expected to establish a better OTT market increasing the scope of a wider perspective. OTT is further discussed for restructuring and power balancing of the market which inspires cooperative relations in investors to hold open communication for policy-making process and create an initiative in regulation and self-regulation of the content with multidimensional regulatory attitude. **15**

The OTT platform is supposed private ownership that allows personal selection of viewing content. Democracy respects the individual choice of watching desired content or not to watch inconvenient content as per the right of every person to freedom of choice. The creators are also free to express their views through content on the basis of their right to freedom of expression and speech. Barring the content is a temporary solution to filter the content that further lead to the increasing number of incognito sites of obscene content. OTT platforms initiate security provisions like child lock systems or they can offer authentication processes to recognize the appropriate viewer. It helps to restrict the content for children or teenagers. Over the restrictions, guidelines are also put to avoid disrespecting national symbols or any sensitive signs. While considering censorship, it is always criticized for conquering the fundamental rights of creators to express their views freely and the freedom of viewers of selecting the content they desired to watch. It is observed that creators are more focused on their rights to freedom of writing or creating content and showing them freely. They are aware of kids' concerns and the government taking initiative to regulate content should not go beyond the restriction of age or allow any content without their parent's consent. People in a democracy should decide their individual choice of selecting content and it cannot be controlled.

Another view of selecting the OTT platform by the makers is artistic freedom. According to their rights to form art and creativity, banning or obstacles to the content is incorrect affecting the rights. Creativity is severely crumbled by content restrictions. Thus, a self-regulating framework in optimistic technical improvement helps in the prevention of harmful content like violence, terrorism, child obscene, etc. without disturbing the aspect of content and creativity. Initiatives taken by some OTT platforms to accept these contentions to avoid screening content endorsing immoral or hate

culture. Also, categorizing content according to the norms is another step to protect underage viewers from troublesome content like segregating viewership age-wise. But the major role of the parent in protecting their children from watching harmful content is the most important and they should not allow children to watch such content. **16**

Conclusion

OTT is an emerging technology that has captured a high portion of the entertainment market. Democratic rights of creators and viewers to select content is not the issue but the impact of content should be taken into account. OTT has joined global communities with different cultures, rituals, and beliefs of communities and also shared their views worldwide with the support of OTT platforms. Several benefits of OTT have encouraged the local and regional service providers to enhance their business to the high. Regulation of OTT has come up with issues created by content on OTT platforms that hurts any community or their beliefs. Also the content is said to be inconvenient for society or children is opposed by people and demand of regulating content and censorship has been supported which restricts the content by limiting rights of the creator to freedom of expression. The necessity of regulation of OTT platform is justified by several bad impacts of the unregulated and objectionable content. It has been proven that such content spreads hatred in communities against a specific community, individual, or nation and the rights always come with a responsibility to avoid any circumstances affecting society. These rights are restricted for national security, disrespect of national symbols, and social disturbance. Censorship on the OTT platform is not an easy task in the age of widespread internet facilities. The guidelines are to be followed with some self-regulation provisions by the OTT platforms that help to regulate and categorised content properly without affecting the rights of viewers to select the desired content. It will also keep the children and teenagers safe and protect them from harmful content.

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