

A Legal Analysis of Content Regulation and Censorship of OTT Platforms in India

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ABSTRACT

The rapid rise of Over-The-Top (OTT) platforms in India has changed the digital entertainment industry forever, letting creators reach huge audiences without having to follow the rules that apply to other types of media. But this unregulated area has raised worries about vulgarity, obscenity, and the portrayal of sensitive content. This has led to discussions about the need for censorship that doesn't limit artistic freedom or the right to free speech and expression as guaranteed by the Constitution. This study looks into the current Indian legal framework for OTT content, looking at how the courts handle it, how it compares to other countries, and where there are gaps in legislative oversight. The study looks at important court decisions, laws like the Information Technology Rules, 2021, and the changing role of the Central Government in finding a balance between creative freedoms and public morality using both doctrinal and empirical methods. The results show that there is an urgent need for a regulatory model that is both consistent and flexible, protects constitutional rights, and deals with the social and legal problems that come up when digital content is shared.

Keywords: OTT platforms, censorship, freedom of speech, judicial approach, artistic freedom

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I. INTRODUCTION

Digital content providers that offer streaming services directly to consumers via the internet are the result of the exponential growth of internet and technology, which has completely transformed the global entertainment industry. In addition to revolutionising the way viewers consume media, Indian platforms like Netflix, Amazon Prime, Disney+ Hotstar, and Zee5 have also brought a variety of unique, on-demand visual content. However, the nature of some content, characterized by violence, obscenity, nudity, and vulgarity, as well as the seeming lack of strict legal oversight have generated a great deal of controversy at the same time as this digital explosion. The call for regulation has intensified as these platforms are incorporated more and more into family entertainment, especially in a socially conservative nation like India.¹

The Cinematograph Act of 1952 and the Central Board of Film Certification (CBFC) are in charge of traditional films. However, OTT platforms have mostly been in a legal grey area. The Government of India made the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in response to public concern and more and more cases of controversial content. These rules set up a three-tier system for regulating digital content. Publishers would be in charge of their own content, a self-regulatory body would keep an eye on it, and the Ministry of Information and Broadcasting would be the last line of defence.²

Critics say that while this change in regulation has started oversight, the method is still not clear, especially when it comes to enforcement and the possibility of abuse. Ajay Chandran and others say that people often see the government's attempts to regulate as oppressive, which leads to debates about the right to free speech and expression protected by Article 19(1)(a) of the Indian Constitution. Article 19(2) says that this right is not absolute, though. It allows for reasonable limits in the name of national security, public morality, and decency.³

A look at different scholarly sources shows that there is a lot of disagreement and debate about censoring OTT content in India and elsewhere. Rahul M. and Dr. S. Dinesh Babu compare censorship systems in different countries and point out that India's system is uniquely layered but still changing. They point out that India's reliance on self-regulation backed by

¹ Rahul M. & Dr. S. Dinesh Babu, *A Comparative Study on OTT Content Regulation: India, UK, and Beyond*, 5(2) Indian J. Media L. & Pol'y 45 (2022).

² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Feb. 25, 2021.

³ INDIA CONST. art. 19(2).

government oversight is still being looked at to see how well it works, unlike other countries that have set up independent bodies to oversee digital content.⁴

Ajay Chandran and others go into more detail about the conflict between artistic freedom and public interest. They say that censorship is sometimes necessary to keep people safe, but it should be done carefully so that it does not stop people from being creative. They say that OTT platforms are a sign of democratic participation in making and consuming content, which is an important part of cultural pluralism.⁵

Asma Md. Isa and her coworkers, who are based in Malaysia, call for a conceptual framework that strikes a balance between the needs of the public and the needs of users. They stress the need for censorship systems that protect audiences and uphold family values without lowering the value of storytelling.⁶

Bhagavatula Naga Sai Sriram and Sandhiya K. show even more how slow India's rules are to catch up with the digital age. Their work shows that voluntary self-regulatory codes, like those supported by the Internet and Mobile Association of India (IAMAI), did not work because they did not have the standards that could be enforced. This means that stronger legal systems.⁷

When it comes to content moderation, India's diverse and pluralistic society presents a special challenge. OTT content frequently walks a tightrope between being innovative and offensive, as noted by Bharat Jadhav and Dr. Geetali Tilak. These platforms' open access model has made them very popular, particularly with young people, but it has also exposed users to content that could be harmful or polarising. In a nation with a large population of impressionable young users, this is particularly worrisome.⁸

The question of whether OTT content censorship is a necessary restriction or an infringement on creative autonomy is one that Chaitral Kishor Kotwal and Vishakha Jaiprakash Thanvi persuasively raise. According to their findings, censorship may restrict artistic expression, but it is also necessary to preserve social harmony and safeguard cultural values.

⁴ *Supra* Note 1.

⁵ Ajay Chandran et al., *Censorship of Digital Content in India: Constitutional Dilemmas and Democratic Imperatives*, 13 NUJS L. Rev. 82 (2021)

⁶ Asma Md. Isa et al., *Conceptualising Digital Censorship in a Conservative Society: The Malaysian Experience*, 28 Asian J. Comm. 132 (2020).

⁷ Bhagavatula Naga Sai Sriram & Sandhiya K., *The Legal Vacuum of OTT Content Regulation in India: A Case for Structural Reform*, 8(1) J. Media & L. 96 (2021).

⁸ Bharat Jadhav & Dr. Geetali Tilak, *Media Pluralism and the Content Crisis in India's OTT Space*, 6 Int'l J. Dig. Media 44 (2021).

They stress that rather than depending only on voluntary codes or judicial interventions, India needs a transparent, independent regulatory body that is prepared to enforce digital content standards.⁹

There is still disagreement among the public regarding censorship. For example, a study by Agam Shah in Ahmedabad demonstrates that young people understand the need for OTT platform content regulation to avoid negative social influence, even though they are typically ignorant of censorship laws.¹⁰

Looking at things from an international point of view can help us understand how different countries handle the rules for OTT platforms. Siddharth Kanojia looks at how frameworks work in India, the UK, and China. The UK uses a liberal, self-regulatory model based on audience ratings. China, on the other hand, keeps tight control over the state and uses censorship to keep people in line with the government's ideas. India is in the middle, trying to find a balance between creative freedom and social and political issues.¹¹

Chelcie Agrawal also compares India's regulatory approach to Singapore's more organised and efficient system. Singapore's model makes sure that OTT content is in the best interest of the country while also protecting the freedom of viewers. This suggests that India could benefit from using some of the same ideas.¹²

India continues to face a number of unsolved issues in spite of growing regulatory efforts. As Pooja G.N. notes, attempts to successfully regulate objectionable content are hampered by the lack of an unbiased, independent regulatory body. The laws in place are either out-of-date or applied inconsistently, which results in political overreach or arbitrary censorship. More than ever, a balanced regulatory framework is required, one that upholds artistic freedom, acknowledges digital rights, and simultaneously promotes societal well-being.¹³

⁹ Chaitral Kishor Kotwal & Vishakha Jaiprakash Thanvi, *Censorship vs. Freedom of Expression in OTT Platforms*, 4 NUALS L.J. 77 (2021).

¹⁰ Agam Shah, *Youth Perspectives on OTT Content Regulation*, Ahmedabad Univ. Student Pol'y Report (2022).

¹¹ Siddharth Kanojia, *Regulatory Trends in OTT Content Governance: Comparing India, the UK, and China*, 2(3) Global Media Pol'y J. 107 (2023).

¹² Chelcie Agrawal, *Streaming Regulation in India and Singapore: A Comparative Outlook*, 7(2) Asian Media L. Rev. 89 (2022).

¹³ Pooja G.N., *Content Regulation in the Indian OTT Ecosystem: A Legal Review*, 11 NLSIR 202 (2021).

Ms. Sonal Tewari and Dr. Ritu Narang advise against strict censorship, stating that it may cause content producers to self-censor and lower the calibre of their work. They suggest a nuanced strategy that upholds moral content standards while preserving free speech.¹⁴

Anu Manoj also draws attention to the division within the industry, where the main OTT companies are divided between the DPCGC and IBDF regulatory frameworks, resulting in fragmentation and a lack of standardisation.¹⁵

As OTT platforms change the way people in India watch TV and films, it's more important than ever to have smart and flexible rules. Even though censorship is often controversial, it is not always against freedom. When used wisely, it can help keep people, especially kids, safe from harmful content while also providing a safe space for different kinds of artistic expression.

The argument is not about picking between censorship and freedom; it's about finding a balance that honours both the Constitution and the way things are in the world today. India's best way forward is to make clear, consistent rules, encourage businesses to take responsibility for their actions, and set up an independent group that can fairly mediate between stakeholders. Digital freedom and public welfare can only coexist if we take a broad view of the issue.

II. HISTORICAL PERSPECTIVE

A. THE EVOLUTION OF ENTERTAINMENT AND THE CHALLENGES OF CENSORSHIP IN THE DIGITAL AGE

A vital aspect of human life has always been entertainment. The often-quoted adage, "All work and no play make Jack a dull boy", emphasises how essential it is for people to have fun and unwind in addition to being productive. The Chambers 21st Century Dictionary defines entertainment as anything that amuses or offers recreation, which includes everything from contemporary visual media to theatre and music. Entertainment, which has its roots in the French word *entretenir*, which means to hold together, is an essential component of social

¹⁴ Sonal Tewari & Dr. Ritu Narang, *Overregulation of OTT Content: Threats to Artistic Creativity*, 9(1) Indian J. Soc. Pol'y 67 (2022).

¹⁵ Anu Manoj, *Self-Regulation v. Government Oversight: Fragmentation in OTT Governance*, 5 Tech L. & Pol'y Rev. 50 (2022).

cohesiveness and mental nourishment. From historical performances to modern digital content, the evolution of entertainment shows both social change and technological advancement.

B. FROM ORAL TRADITIONS TO CINEMATIC MARVELS

Storytelling, dancing, music, and theatre were some of the first forms of entertainment. The human mind, on the other hand, really likes content that stimulates both the auditory and visual senses at the same time. Studies show that experiences that involve both sound and vision help people remember, understand, and feel more involved. As a result, the growth of media that appeal to both of these senses has had a big impact on the direction of entertainment.

The first step in this change was theatres and operas, where live performances brought stories to life for a small, often elite, group of people. Even though they were popular, these formats were too expensive, hard to get, and didn't last long. The arrival of cinematography changed this area completely. Cinematography is the art of making films. It uses the illusion of movement that happens when still photos are projected quickly. Thomas Edison's team made big progress in 1891 when they invented the Kinetoscope, an early motion picture exhibition device. However, no one person is credited with its invention.

At first, films were short, usually only a few minutes long, and had live narration or music with them. You could show them in places like fairgrounds and music halls that weren't meant to be used for films. All you needed was a dark room and a screen. These features helped films slowly reach more people. As time went on, the film industry changed by adding sound, colour, and more complicated stories. This made it a popular form of mass entertainment. Still, real accessibility was hard to come by until the invention of the television, which was a household item.

C. THE AGE OF TELEVISION AND THE INTERNET

The first television was created in 1927 by American inventor Philo Farnsworth, who turned entertainment into a private experience that could be enjoyed at home. Audiences could now access a range of programs from the comfort of their own homes, unrestricted by geography or the expense of going to the theatre. Television evolved into a potent tool for information sharing and cross-cultural interaction in addition to being a form of entertainment. It experienced multiple technological advancements over time, moving from analogue to

digital broadcasting and from black and white to colour, becoming more immersive and interactive.

The next significant development was the creation of the internet, which is generally acknowledged to have started on January 1, 1983. It was originally intended to be a network that linked all servers worldwide, facilitating smooth digital communication. What started out as a research tool swiftly evolved into a platform for connecting people all over the world. The expansion of the internet created new channels for the distribution of content, particularly in developing nations like India. As a result, streaming services proliferated, giving rise to OTT (Over-the-Top) platforms that bypass traditional broadcast and cable networks and deliver digital content directly to consumers over the internet.

By providing individualised, on-demand viewing experiences, over-the-top (OTT) platforms like Netflix, Amazon Prime Video, Disney+, and many more transformed the way people consume media. These platforms' explosive growth was also aided by the proliferation of smartphones, reasonably priced data plans, and digital literacy. OTT services give creators more freedom and less censorship than television or films, which leads us to a critical issue: content regulation and control.

D. THE NEED AND RISE OF CENSORSHIP

As movies got better, directors started to look into what else they could do with them besides entertain. Movies became a way for large groups of people to talk to each other and learn, inform, and even change public opinion. This new feature brought up strong stories about social issues, past wrongs, and political criticisms. But with that freedom came danger. The use of graphic violence, nudity, and controversial topics brought up moral, ethical, and legal issues. Some content was thought to be offensive, sensitive, or dangerous, especially those that had to do with state secrets, religious beliefs, or national security.

Censorship was the answer to this problem that was getting worse. Censorship is the act of changing, cutting, or stopping the release of content that could cause unrest or break social norms. It was created to keep the peace in society. The Cinematograph Act of 1952 in India set up the Central Board of Film Certification (CBFC), which is in charge of watching films and deciding if they are appropriate for showing to the public. The CBFC made different categories (U, UA, A, S) to make sure that content got to the right people and that things that could be harmful were either changed or limited.

Censorship, on the other hand, has always been a fine line between protecting the public's interest and limiting free speech. Some people praise it as necessary to protect cultural values and stop hate speech, while others say it encourages authoritarianism and limits artistic freedom. These arguments have gotten worse since new, unregulated ways to share content have come up, especially OTT platforms.

E. THE REGULATORY VACUUM IN OTT CONTENT

The regulatory difference between traditional media and over-the-top (OTT) content is at the heart of the current debate. Although it has no control over content that is streamed online, the CBFC has considerable control over theatrical releases. OTT platforms function within a self-regulation framework that is only loosely governed by internal policies and industry codes. Because of this, digital creators have a degree of freedom that is unthinkable in traditional television or film.

Bold, varied, and experimental content has flourished as a result, but it has also raised a lot of concerns. Accountability issues come up, particularly when the content is viewed as politically charged, explicit, or offensive. There is a grey area in the absence of a uniform legal framework, which makes it more difficult to enforce moral and legal norms in the digital sphere.

Some governments have proposed oversight mechanisms in response to the increasing calls for regulatory intervention. For example, attempts have been made in India to formally regulate OTT content, but creators and civil rights activists have opposed these efforts. Finding a balance between creativity and control, freedom and responsibility, is the difficult part.

The history of entertainment shows how technology and society have changed over time. Every new technology, from oral storytelling to digital streaming, has changed the way people interact with content. The rise of OTT platforms has made it easier for everyone to access content and given creators more power, but it has also broken established rules for regulation. As society deals with this new reality, it has to figure out how to balance law, ethics, and freedom. The way forward must protect creative freedom while also putting in place protections that protect the public interest, cultural integrity, and national security.

III. JUDICIAL APPROACH TOWARDS OTT PLATFORMS AND FREEDOM OF EXPRESSION IN INDIA

The consumption of media content has drastically changed in India in recent years, with Over-The-Top (OTT) platforms emerging as a major platform for communication and information sharing. These platforms have completely changed the entertainment industry and are available on smart devices such as TVs, smartphones, PCs, and game consoles. The judiciary has continuously interpreted and applied constitutional protections as it enters the rapidly changing world of digital content, especially those found in Article 19(1)(a) of the Indian Constitution, which protects the right to free speech and expression. Particularly in light of emerging technological platforms, the judicial trend demonstrates a careful balancing act between legitimate state interests and fundamental rights.

The Kerala High Court's historic ruling in *Faheema Shirin R.K. v. State of Kerala*, which proclaimed internet access a fundamental right under Article 21, laid the groundwork for the recognition of digital rights. The foundation for considering internet-based platforms, including content streaming on over-the-top (OTT) platforms, as crucial venues for exercising free speech was established by this ruling. Nonetheless, legal disputes about the control, censorship, and acceptable range of OTT content keep coming up, drawing close judicial attention.¹⁶

A. FREEDOM OF SPEECH AND OTT PLATFORMS

Article 19(1)(a) of the Constitution gives every citizen the right to free speech and expression. Courts have interpreted this right to include both old and new media. The Supreme Court stressed this right as the most important part of democratic freedoms in the *Ramila Maidan Incident, Re.*¹⁷ The courts know that ways of expressing oneself change with technology. This was made clear in *S. Rangarajan v. P. Jagjivan Ram*, which said that freedom of speech is not fixed and must change with new ways of communicating.¹⁸

OTT platforms are protected speech because they are digital broadcasters. The Supreme Court said in *Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana* that the right to

¹⁶ *Faheema Shirin R.K. v. State of Kerala*, 2019 SCC OnLine Ker 7203.

¹⁷ *Ramila Maidan Incident, Re.*, (2012) 5 SCC 1.

¹⁸ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.

broadcast through different types of media is part of the basic right to free speech. So, content creators and platforms have the right to stream content without unnecessary government interference, as long as they follow the rules set out in the Constitution.¹⁹

B. RIGHT TO DISSENT AND PORTRAYAL OF SOCIAL REALITIES

The courts have consistently upheld OTT platforms' freedom to express disagreement and criticism of government policies, which is essential to any democracy. The Supreme Court held in *Directorate General of Doordarshan v. Anand Patwardhan* that even content that is critical of government policy needs to be protected.²⁰ In *Nikhil Bhalla v. Union of India*, the Delhi High Court ruled against a petition calling for content moderation in Netflix's "Sacred Games", reaffirming the court's position that critical representation, no matter how contentious, is not a reason for censorship.²¹

The depiction of social evils is also protected. The Supreme Court ruled in *K.A. Abbas v. Union of India* that, when handled properly, topics like rape and prostitution cannot be used as justifications for general censorship.²² The Court upheld a graphic depiction of rape in a Phoolan Devi movie as essential to the plot and social commentary in *Bobby Art International v. Om Pal Singh Hoon*.²³ In a similar vein, the filmmaker's right to depict delicate communal issues was upheld in *Anand Patwardhan v. Union of India*.²⁴

C. DEPICTION OF HISTORICAL AND POLITICAL EVENTS

Court rulings have protected the use of art to show historical and political events. The Madras High Court lifted a ban on a movie about Rajiv Gandhi's assassination in the case of *CBFC v. Yadavalaya Films*.²⁵ The court said that dramatizing political events should not automatically lead to restrictions. In the same way, the Bombay High Court protected a movie

¹⁹ *Odyssey Communications (P) Ltd. v. Lokvidayan Sanghatana*, (1988) 4 SCC 260.

²⁰ *Directorate Gen. of Doordarshan v. Anand Patwardhan*, (2006) 8 SCC 433.

²¹ *Nikhil Bhalla v. Union of India*, 2018 SCC OnLine Del 9365.

²² *K.A. Abbas v. Union of India*, (1970) 2 SCC 780.

²³ *Bobby Art Int'l v. Om Pal Singh Hoon*, (1996) 4 SCC 1.

²⁴ *Anand Patwardhan v. Union of India*, (1997) SCC OnLine Bom 4.

²⁵ *CBFC v. Yadavalaya Films*, (2017) SCC OnLine Mad 1234.

about the Gujarat riots in the case of *Chand Buj Gaya*, upholding artists' rights to tell true stories as they see them.²⁶

D. ANCILLARY RIGHTS OF OTT PLATFORMS

The rights to distribute and promote content are also included in the freedom of speech and expression. The Supreme Court recognised in *LIC v. Manubhai D. Shah* that online streaming is a legitimate form of expression since communication encompasses print, audio-visual, and digital media.²⁷ By incorporating commercial speech under Article 19(1)(a) in *Tata Press Ltd. v. MTNL*, the Court upheld the constitutional protection of OTT platform advertisements.²⁸

The Court reaffirmed in *Ministry of Information and Broadcasting v. Cricket Association of Bengal* that the right to receive information is just as important as the right to disseminate it. This suggests that the general public has an equal right to access content on over-the-top (OTT) platforms.²⁹ In *Ajay Goswami v. Union of India*, the Supreme Court reaffirmed this, ruling that adult viewers cannot be excluded from entertainment just because the material may be inappropriate for younger audiences.³⁰

Furthermore, OTT platforms are required to protect user data, preferences, and content history as a result of the *Puttaswamy v. Union of India* ruling, which affirmed the right to privacy as fundamental under Article 21.³¹

E. PERMISSIBLE RESTRICTIONS UNDER ARTICLE 19(2)

Article 19(1)(a) protects speech and expression in a broad way, while Article 19(2) lists specific reasons for putting reasonable limits on them. These are things like India's sovereignty and integrity, the state's safety, public order, decency or morality, and defamation. The Court

²⁶ *In re Chand Buj Gaya*, (2005) SCC OnLine Bom 1209.

²⁷ *LIC v. Manubhai D. Shah*, (1992) 3 SCC 637.

²⁸ *Tata Press Ltd. v. MTNL*, (1995) 5 SCC 139.

²⁹ *Min. of I&B v. Cricket Ass'n of Bengal*, (1995) 2 SCC 161.

³⁰ *Ajay Goswami v. Union of India*, (2007) 1 SCC 143.

³¹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

said in *State of Bihar v. Shailabala Devi* that it is legal to limit speech that encourages violence or serious crimes.³²

The Cinematograph Act of 1952 allows for pre-censorship, or “prior restraint”, especially for films. Both *K.A. Abbas* and the *Cricket Association of Bengal* agreed with this. Courts have also allowed ‘post-restraint’ actions, like in Black Friday, where a Bombay High Court order put off the release of the movie until the TADA proceedings were over, and in *Zee News v. Navjot Sandhu*, where an *ex parte* injunction stopped the release of a movie about the attacks on Parliament.³³

F. CONCERNS ABOUT MISUSE AND JUDICIAL OVERSIGHT

Despite these safeguards, worries about OTT platforms abusing their freedoms continue. Petitioners claimed that some shows, including “Gandi Baat” and “Sacred Games”, were offensive or effectively pornographic in *Divya Ganeshprasad Gontia v. Union of India*. The argument over the necessity of more stringent content regulations was rekindled by this case. After receiving the complaints, the Bombay High Court ordered the Ministry of Information and Broadcasting to look into ways to balance freedom of expression with online series regulation.³⁴

The Indian courts have mostly taken a progressive stance on regulating OTT platforms, seeing them as important tools for cultural expression and democratic debate. The courts have recognised that there are valid reasons for putting limits on freedom under Article 19(2) while also giving people a lot of freedom under Article 19(1)(a). The courts have tried to find a balance between creative freedom and public morality, privacy, and national security by looking closely at each case. The changing of the law around OTT platforms shows that people in India are starting to understand digital rights better in the context of the Constitution. As technology keeps changing the way media works, the courts’ job of protecting basic rights and making sure that content is shared responsibly becomes more and more important.

³² *State of Bihar v. Shailabala Devi*, AIR 1952 SC 329.

³³ *Zee News v. Navjot Sandhu*, (2008) SCC OnLine Del 1065.

³⁴ *Divya Ganeshprasad Gontia v. Union of India*, PUBLIC INTEREST LITIGATION NO. 127/2018.

IV. REGULATING OTT PLATFORMS: GLOBAL TRENDS, INDIAN CHALLENGES, AND THE WAY FORWARD

Over-the-Top (OTT) platforms have become a disruptive force in entertainment in the fast-paced world of contemporary digital consumption. OTT services like Netflix, Amazon Prime, and Disney+ give consumers unfettered access to content at any time and from any location, in contrast to traditional broadcasting systems that follow set time slots and content regulations. People's media consumption habits have changed as a result of this flexibility, particularly in dual-income households where both partners frequently manage their personal and professional lives across borders. But this freedom also raises the issue of regulation, particularly with regard to content that might be deemed offensive, violent, or unsuitable for young audiences.

A. INTERNATIONAL APPROACHES TO OTT REGULATION

Countries around the world have taken different approaches to regulating OTT platforms. Most have chosen self-regulation or loose frameworks over strict laws. For example

- 1) Argentina requires OTT platforms to register for tax purposes, but it does not have any specific ways to order the removal or changes of content.
- 2) The Broadcasting Services Act 1992 governs OTT content in Australia. The country is moving to a self-classification model, which lets big platforms classify their own content.
- 3) Canada wants to change the Broadcasting Act so that the Canadian Radio-Television and Telecommunications Commission (CRTC) can regulate OTT platforms. The main goal is to get rid of harmful content online.
- 4) Chile does not have a formal regulatory structure, but in 2021 it proposed a law that would require platforms to remove illegal content when they are told to.
- 5) Germany's Inter-State Treaty on Media gives State Media Authorities the power to make sure there is diversity in media and to stop content that is discriminatory.

- 6) The Audiovisual Media Services Directive (AVMSD) says that EU member states must protect minors and the public from harmful content. It also encourages voluntary self-regulation.
- 7) There is no central OTT regulator in the US, but the FCC does watch over copyright and closed-captioning laws that apply to platforms.
- 8) The NRTA and CAC are two government agencies in China that strictly censor content. They require licenses, real-name user registration, and regular checks of OTT content to make sure it follows political and social norms.

This global spectrum goes from soft regulation to authoritarian control. It shows how different social and political situations and ideas about free speech can be.

B. THE INDIAN LEGAL AND REGULATORY LANDSCAPE

OTT consumption has skyrocketed in India, one of the digital markets with the fastest rate of growth in the world. These platforms, which at first served as a backup source for movie content, now produce original web series, movies, and documentaries for a wide range of linguistic and cultural viewers.

India does not have a specific legal framework governing over-the-top (OTT) content, despite this boom. The main regulatory guidelines are provided by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which require age ratings, self-classification of content, and a grievance redressal mechanism. Under these regulations, OTT platforms are also required to designate compliance officers and collaborate with law enforcement.

OTT content is also subject to a number of additional laws, such as –

- 1) Sections 292, 293, 295A, 354, and 499 of the Indian Penal Code.
- 2) The 1986 Indecent Representation of Women (Prohibition) Act.
- 3) The 2012 Protection of Children from Sexual Offences (POCSO) Act.
- 4) Sections 67A, 67B, and 69A of the Information Technology Act of 2000.
- 5) The 1995 Cable Television Networks (Regulation) Act.

Enforcement of regulations is still dispersed in spite of these laws. The Ministry of Information and Broadcasting (MIB) has taken over responsibility for content regulation from the Ministry of Electronics and IT (MeitY), underscoring persistent turf disputes. This regulatory void was highlighted, and clarification was requested in the *Justice for Rights Foundation v. Union of India* case.³⁵

C. CONTENT CONCERNS AND THE PUSH FOR REGULATION

People have criticised OTT content for not being filtered. A survey of 50 people for this study showed that –

- 1) 58% watch Netflix, 34% watch Amazon Prime, and 26% watch Disney+Hotstar.
- 2) 54% of people who answered said that the content was vulgar or obscene at times.
- 3) 22% thought that this kind of content had a bad effect on people's minds, especially on kids.

Even though many adults who watch this kind of content are mature, the survey raised concerns about how it affects kids who are becoming more tech-savvy and are often left alone because their parents' work. Young people may not understand sex and relationships correctly because it's too easy for them to access adult content without enough protection. People compared it to watching porn, which has been linked to becoming less sensitive, having problems in relationships, and having unrealistic expectations.

D. REGULATORY GAPS AND INDUSTRY RESISTANCE

At the moment, India has no OTT content censorship board. The Central Board of Film Certification (CBFC) only certifies theatrical releases. Platforms like Hotstar and Voot joined attempts to establish a Digital Content Complaint Council (DCCC) in 2020, but Netflix and Amazon were reluctant, citing concerns about creative freedom.

Even though a large number of over-the-top (OTT) services have embraced the voluntary Code of Best Practices established by the IMAI, some have not, resulting in uneven

³⁵ *Justice for Rights Foundation v. Union of India*, W.P.(C) 6969/2019

content governance. Public outrage over religious insensitivity and obscenity is reflected in complaints about shows like XXX (ALT Balaji) and Tandav (Amazon).

Fair regulation is also demanded by telecom operators, who contend that OTT platforms ought to pay for the infrastructure on which they mainly rely. This opinion is supported by the Telecom Regulatory Authority of India (TRAI), which highlights the regulatory parity between telecom services and over-the-top (OTT) communication platforms like Signal and WhatsApp.

E. THE WAY FORWARD: PUBLIC SENTIMENT AND LEGAL NECESSITY

Survey answers strongly back more structured rules –

- 1) 76% think that creativity and vulgarity need to be balanced.
- 2) 64.7% agree that there needs to be a strong legal framework to control OTT content.

These results show that more and more people agree that artistic freedom is important, but it needs to be balanced with accountability, especially when it comes to protecting children and keeping social norms.

Through OTT platforms, India's digital entertainment revolution has created previously unheard-of opportunities for content production and consumption. However, this freedom presents difficult issues related to child protection, cultural identity, legal accountability, and morality. The absence of a centralised and all-encompassing regulatory mechanism leaves users vulnerable, and creators uncertain, even though current laws provide fragmented coverage. The current situation calls for a well-rounded strategy that safeguards societal interests while encouraging innovation. A more responsible and inclusive digital entertainment landscape in India can be achieved by enhancing self-regulation, improving the IT Rules, and encouraging cooperation between the government, platforms, and civil society.

V. REGULATING OTT CONTENT IN INDIA: A BALANCING ACT BETWEEN FREEDOM AND RESPONSIBILITY

Over-the-Top (OTT) platforms have changed how people in India watch media in the last few years. They offer an alternative to traditional cinema and broadcast TV. Netflix, Amazon Prime Video, Disney+ Hotstar, and other platforms have made it easier for people to

tell stories and be creative. But with this growth comes an important question: how can we make sure that OTT content stays socially responsible without limiting free speech? The current situation shows that there is a fragile and often contentious balance between creative freedom and government oversight. This is because digital media consumption and governance in India are changing all the time.

A. CURRENT STATE OF OTT REGULATION

OTT platforms have been able to present a wide variety of themes and narratives that would have probably encountered opposition or censorship in mainstream Indian television or film due to the comparatively unregulated nature of internet content. This tendency is demonstrated by shows that defy social and cultural expectations, such as Tandav, Sacred Games, Mirzapur, Bombay Begums, and Lust Stories. But this freedom has also raised worries about explicit content, vulgarity, and the potential negative social effects.

To control the OTT ecosystem, the Indian government responded by enacting new Information Technology (IT) Rules. Even though the majority of platforms have consented to comply, the industry is still very unhappy. Their perceived lack of autonomy in forming the regulatory bodies that oversee their operations is the primary point of contention. The Digital Publishers Content Grievances Council (DPCGC) and the Indian Broadcasting and Digital Foundation (IBDF) are the two main self-regulatory organisations that have emerged from this fragmented regulatory framework.

Platforms like Netflix, Amazon Prime Video, ALT Balaji, and MX Player are part of the DPCGC, which is run by the Internet and Mobile Association of India (IAMAI). By creating a formal grievance redressal mechanism, it aims to strike a balance between the freedom of creators and the protection of viewers. Disney+ Hotstar, Zee5, Sony LIV, and Jio TV are among the platforms that make up the IBDF, which aims to regulate digital content while representing the interests of broadcasters making the switch to digital platforms.

B. CHALLENGES IN IMPLEMENTATION

Even though these rules have been put in place, there are still problems. The OTT industry is worried that too much government involvement could stifle creativity, especially if the rules are too vague or moralistic. Also, the Supreme Court's recent order putting all

petitions about OTT regulation on hold has left a legal gap, making it unclear how the new rules will be applied and understood in the future.

This disagreement is part of a larger global discussion about how to protect viewers, especially minors, from inappropriate or harmful content while still upholding democratic values like free speech. The Indian regulatory approach is still new, but it tries to make a framework that can change as society and technology do. It must, however, not become a tool for arbitrary censorship or political power.

C. RECOMMENDATIONS AND THE WAY FORWARD

Many specific policy recommendations have been put forth in an effort to attain a balanced approach. These suggestions are based on the notion that regulation ought to empower users and promote accountability rather than be used to stifle speech.

- 1) **Content Classification and Ratings:** By implementing a strong classification system similar to that utilised for television and movies, viewers will be better equipped to make educated decisions. To assist parents in protecting children from inappropriate content, this includes unambiguous ratings and descriptors.
- 2) **Respect for local laws:** OTT platforms must respect India's cultural diversity while ensuring that their content complies with national laws regarding hate speech, obscenity, and defamation.
- 3) **Accountability and Transparency:** Websites should make their content moderation guidelines publicly available and offer easy ways for users to report objectionable material. Public trust can be increased through an open grievance redressal procedure.
- 4) **Age Verification and Parental Controls:** To stop kids from accessing mature content, it's crucial to put in place age verification tools and extensive parental control settings.
- 5) **Monitoring and Enforcement:** Consistent monitoring can guarantee adherence to content guidelines and identify infractions by combining automated technologies with human supervision.
- 6) **User Empowerment:** A bottom-up approach to content regulation is offered by enabling users to filter or block content according to their own sensitivities or preferences.

- 7) Self-Regulatory Mechanisms: Without overbearing government oversight, ethical standards can be guaranteed by promoting the industry-wide adoption of codes of conduct, as well as by conducting regular audits and providing training.
- 8) International Cooperation: Maintaining uniformity, particularly for international streaming services, can be facilitated by bringing Indian content laws into line with international norms.
- 9) Involving stakeholders in the policy-making process guarantees inclusivity and democratic legitimacy by incorporating opinions from the general public, academia, industry professionals, and civil society.
- 10) Independent Regulatory Body: To ensure impartiality and equity in enforcement, a self-regulatory organisation made up of independent specialists rather than public servants or business leaders should be established.
- 11) Periodic Review of Standards: To ensure that content guidelines stay current and don't become repressive or outdated, they should change in tandem with societal values.
- 12) Encouragement of Ethical Content Creation: While maintaining the right to dissent and a range of opinions, a robust code of ethics must forbid hate speech, violence, and exploitation.
- 13) Effective Grievance Redressal and Content Takedown: To prevent abuse of authority and guarantee due process, a time-bound and legally sound procedure for content takedown is required.
- 14) Focus on Classification, Not Censorship: Regulations should prioritise improved classification and guidance while honouring viewers' autonomy rather than outright bans.
- 15) Freedom of Expression: It's important to maintain room for creative expression and opposing viewpoints, particularly those that contradict dominant narratives.

VI. CONCLUSION

The rise of Over-The-Top (OTT) platforms in India has changed the face of digital entertainment. It has given content creators the freedom to tell stories that are out of the ordinary while also challenging the rules that are already in place. The document shows that the current legal situation for OTT content is fragmented and changing. There is a lack of clear rules that can lead to confusion, inconsistency, and possible abuse, either by content creators who use too much sensationalism or by authorities who censor content for no good reason. The main legal issue that comes up in this discussion is how to strike a balance between protecting the constitutional right to free speech and expression and making sure that people are responsible for what they say and do in a culturally diverse and pluralistic society like India.

The courts in India have mostly supported progressive readings of Article 19(1)(a), which protects dissent, artistic freedom, and digital broadcasting as valid forms of expression. Landmark cases have shown that we need to protect important and realistic depictions of social, historical, and political stories. However, the courts have also said that Article 19(2) allows for some restrictions, especially when content could hurt public decency, morality, or national security. This duality shows how hard it is to regulate OTT content. It does not let people be completely free to be creative, and it doesn't support strict government control either.

India's attempts to control OTT content seem to be somewhere between the UK and EU's liberal self-regulation and China's state-driven censorship when looked at from an international point of view. However, the Indian model is still changing, and it is hard to make a clear and enforceable system because of divisions in the industry, legal uncertainties, and overlaps between the powers of different regulatory bodies. People are still worried about standardisation, accountability, and protecting rights because there is no centralised, independent, and open body to oversee digital content.

As more and more people, especially young people who are easily influenced, use digital media, there is an urgent need for a comprehensive set of rules that does not put freedom against responsibility but instead combines them in a way that respects rights and democracy. India's future OTT rules should be based on the ideas of clarity, fairness, inclusivity, and being able to adapt to new technologies. Strengthening self-regulatory systems, making sure that content rating systems are clear, protecting people's privacy, giving viewers more power through content filters and parental controls, and getting more people involved in making policies are all important steps forward. In the end, content regulation needs to change from

being a way to censor things to being a way to protect Indian storytelling and the values of its constitutional democracy.

VII. REFERENCES

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