



Obscenity on Over-The-Top (OTT) Platforms and Censorship: A Study of Issues and Regulatory Laws

Dr. Raghuvinder Singh, Professor, Faculty of Law, Himachal Pradesh University, Shimla-05,

Mr. Sudhir, Research Scholar, Faculty of Law, Himachal Pradesh University, Shimla-05

Abstract

OTT platforms are a swiftly expanding and constantly changing segment of the entertainment business. There is widespread criticism over the OTT Platforms for presenting highly explicit content to the general public in India. One perspective argues that censorship is essential to save society from deterioration and to foster a harmonious and wholesome environment overall. From an alternative perspective, the notion of censorship can potentially jeopardise the fundamental rights of freedom of speech and expression. There are fears that censorship may primarily serve as a tool for state meddling, being established and controlled by the law. Some of the platforms offer unnecessarily and excessive explicit content, while others do so to present an accurate representation. Therefore, it is imperative to categorise which content should be subjected to censorship and which should not, and to what degree. An excessive level of censorship on the material would not produce the desired outcomes. This study aims to comprehend the matter of obscenity in the content showcased on the OTT Platform and to assess the necessity of censorship. The researcher will analyse the pertinent legal rules that govern the material on OTT platforms to determine if these provisions offer an efficient approach for addressing the problem of obscenity on OTT. The article will also examine the influence of censorship on the principles of freedom of speech and expression. This article aims to assess if the control and censorship of OTT platforms in India are necessary at present and whether the current method is adequate to address this matter.

Keywords: *Censorship of OTT, OTT Platforms, Freedom of Speech and Expression, OTT Content Regulation, Digital Media Regulations.*

Introduction

Technology and the internet have become universal and indispensable in our daily lives. The advent of digitalization has brought about a groundbreaking shift in the field of internet media and visual entertainment. Originally confined to a small number of television channels, visual entertainment is now readily accessible on smart phones, personal computers, and smart televisions. The advancement of digital technology has led to the emergence of a new visual experience, ultimately giving rise to over-the-top (OTT) platforms. OTT platforms have exerted a substantial impact on the entertainment sector. Nowadays, several individuals utilise various over-the-top (OTT) services, including Hotstar, Netflix, Zee5, Sony Liv, Amazon Prime, and others.¹ Online

¹B. Panda, K. Kishore, *et.al.*, "Over-The-Top (OTT) Platforms in the Indian Entertainment Industry: A Comprehensive Study of Digital Streaming Services" 4(12) *International Journal of Research Publication and Reviews* 2418–2422 (2023). Available at: <https://doi.org/10.55248/gengpi.4.1223.123450> (Last visited on June 15 2024)

tailored content platforms have drastically revolutionised the traditional cable television viewing experience. Due to the exceptional COVID-19 circumstances, the growth of these platforms was further increased. In the recent years, India has had a significant rise in the OTT industry, which has grown alongside the traditional cinema sector. The emergence of the OTT platforms can be attributed to its provision of innovative and cost-effective content. At contemporary times, films are released on digital platforms rather than at traditional cinema houses.² The reason for this is the widespread availability, affordability, and accessibility of technology. It is also advantageous for individuals who prefer not to personally visit movie theatres.

Over-the-top (OTT) platforms emerged in the past two decades. "Over the Top" (OTT) refers to programmes and services that can be accessed online using search engines, social media networks, video aggregation websites, and similar platforms. It pertains to the internet material that is streamed without requiring customers to subscribe to a conventional cable network. OTTs refer to digital platforms that offer hosting and streaming services. They are known as subscription-based Video-On-Demand (SVoD) services that grant users access to a wide range of content, including films, short films, feature films, documentaries, web series, and television shows, all accessible through the internet. In addition to providing hosting services, these platforms have also begun to actively engage in the production, development, creation, and distribution of digital content. The platform provides a diverse range of content and using artificial intelligence to suggest content depending on individual user interests.

The growing utilisation of over-the-top (OTT) platforms by individuals in the past decade necessitated the establishment of legislation to regulate these platforms and address the associated concerns. There has been a strong public reaction to the presence of explicit content being provided on the OTT Platforms. Several petitions were submitted to the courts in the recent years regarding the regulation of content streamed on Over-The-Top (OTT) platforms. Previously, there was a lack of explicit legislation regarding the censoring or regulation of content on over-the-top (OTT) services. They were streaming content online without any censorship restrictions or licence obligations. While the constitutional requirements and certain statutes were usually relevant to the OTT platforms, they were also subject to the provisions outlined in the Information Technology Act, 2000. In 2021, precise guidelines were established under the Information Technology Act, 2000. Currently, the discussion mostly centres on the regulatory system outlined in the Information Technology Act, 2000 and the rules there under.

Definition and Evolution of Over-the-Top (OTT) Platforms

OTT platforms are online services that offer streaming of media content directly to the users via the internet. The term "over-the-top" refers to the way of delivering content that bypasses conventional internet services. The platforms include several types of services, such as video on demand (VOD) platforms like Netflix and Hot star, live streaming platforms like YouTube TV and Sling TV. OTT services are different from the conventional media distribution techniques such as cable, broadcast and satellite television because OTT services directly distribute material to consumers through the internet and a suitable device. They can be accessed on a range of devices, such as smart phones, tablets, smart TVs and personal computers. OTT systems commonly function based on models such as Subscription Video on Demand (SVOD), Ad-Supported Video on Demand (AVOD) or a combination of these models known as Hybrid Models. OTT platforms have fundamentally transformed the manner in which content is provided and consumed. It offers a wide range of entertainment, news and educational content through the internet.

The emergence of streaming media was started by early endeavours to transmit video material over the internet. Real Networks and YouTube, both established in 2005, were among the early innovations in their respective

²E. Sundaravel, and N. Elangovan, "Emergence and Future of Over-The-Top (OTT) Video Services in India: An Analytical Research" 8(2) *International Journal of Business, Management and Social Research* 489–499 (2020). Available at: <https://doi.org/10.18801/ijbmsr.080220.50> (Last visited on June 15 2024)

industries. YouTube transformed the creation and distribution of content by allowing people to upload and share videos, which paved the way for the increasing popularity of video streaming. Netflix underwent a transformation in 2007, shifting from a service that rented out DVDs to one that streamed media. This change had a deep impact on how people consumed entertainment. These platforms started to prioritise original material, as shown by Netflix's "House of Cards" in 2013, which highlighted the ability of OTT services to create top-notch unique content. The success of initial adopters led to the introduction of multiple competitors, such as Amazon Prime Video, Disney+ and HBO Max. The intensifying competition resulted in development of the calibre and variety of information. It further inspired the development of the more advanced recommendation algorithms and user interfaces. The COVID-19 pandemic expedited the utilisation of OTT platforms due to the implementation of lockdowns and social distancing measures which subsequently increased the desire for home entertainment. OTT services are incorporating technological developments like 4K streaming, virtual reality (VR), and augmented reality (AR) to improve the experiences of viewers. The increasing number of smart gadgets and higher internet connections are still increasing the expansion and availability of over-the-top (OTT) platforms.³

Regulatory Laws on OTT Platforms

Due to their recent emergence, OTT platforms previously lacked particular legal regulations. However, the content on digital platforms was subject to regulation by various legislation that applied to all types of content, regardless of whether it was on a digital platform or not. The regulation of cinema and theatre in India is governed by specific laws; however, prior to 2021, OTT platforms were much less subject to censorship compared to motion pictures. The OTT platforms are not subject to the provisions of the Cinematography Act 1952.⁴ It claimed that the Central Board of Film Certification is responsible for certifying films released for theatres alone and does not have any authority over online content.⁵ The regulations provided distinct treatment to "films released online" as the CBFC was alone responsible for reviewing, categorising, and censoring content intended for theatrical release nationwide. Regarding the examination of content in the form of 'Video on Demand' on the internet, there were no particular regulations in place, and the responsibility for regulating fell solely on the content-transmitting platforms themselves.⁶ The films exhibited in cinemas were subjected to rigorous review and were subject to the board's discretion for approval, however no such scrutiny was necessary for films released on OTT platforms, despite having similar content. The disparate treatment of these two sorts of media became a source of conflict. It was purportedly in violation of the constitutional principle established in Article 14. The provisions of the Constitution of India and some widely applicable statutes have been clearly applicable to OTT platforms from the beginning. Article 19 (1)(a) of the Indian Constitution pertains to the right to freedom of speech and expression. It is an inherent entitlement accessible to all individuals. Freedom of expression refers to the unrestricted ability to articulate one's thoughts, perspectives, and viewpoints. The right in question is not without limitations, and it is possible to establish constraints that are rational and justifiable. OTT platforms are subject to several provisions of the Indian Penal Code, 1860, such as Sections 295A, 298, 153A, 499, and 500, as well as some provisions of the Indecent Representation of Women (Prevention) Act 1986. These laws, which have broad application, also apply to OTT platforms.

³ The Modern Media Streaming Landscape and the rise of on-demand AR/VR Streaming Services, available at: <https://www.travancoreanalytics.com/ott-modern-media-landscape-and-ar-vr-streaming-services/> (Last visited on June 15 2024)

⁴ "Online Content Can't Be Regulated Under Cinematograph Act", *The Hindu*, Aug. 08, 2019, available at: <https://www.thehindu.com/news/cities/bangalore/online-content-cant-be-regulated-under-cinematograph-act-hc/article28864629.ece> (last visited on June 16, 2024).

⁵ V. B. A. Priya, Overview of Over-the-Top (OTT) Platforms in India- Analysis of IT Rules 2021, Judicial Battles, the Balancing Act of Artistic Freedom of Speech and Expression, and Challenges for Regulation in India, available at: <https://legalresearchandanalysis.com/overview-of-over-the-top-ott-platforms-in-india-analysis-of-it-rules-2021-judicial-battles-the-balancing-act-of-artisticfreedom-of-speech-and-expression-and-challenges-for-regulation-in-india/> (Last visited on June 15 2024)

⁶G. Yasmeen, A. Khanam, *et.al.*, "Unstoppable Over-The-Top -An Overview of OTT Platform and Regulation in India." *ResearchGate* (2023). available at: https://www.researchgate.net/publication/372588457_Unstoppable_Over-The-Top_An (last visited on June 16, 2024).

OTT operators voluntarily developed 'Code of Self-Regulation' to govern the content posted on their networks. The Internet and Mobile Association of India (IAMAI), a representative body for Over-The-Top (OTT) platforms, has put out a proposal for a self-regulatory framework.⁷ Subsequently, these over-the-top (OTT) platforms in India entered into a self-regulation agreement in the year 2020. This agreement laid down a set of guiding principles for digital material, which included the betterment of content rating system to address the problem of pornographic and other explicit content.⁸ The Internet and Mobile Association of India (IAMA) has established a self-regulatory entity known as the Digital Publishers Content Grievances Council (DPCGC) specifically for video streaming platforms or over-the-top (OTT) players.⁹ The purpose of this code seemed to be to promote informed decision-making among consumers over age-appropriate content and to safeguard their interests in choosing and accessing the desired content at their own convenience. It was in line with the regulations proposed for the OTT platforms.

The Information Technology Act, 2000 has several provision having some relevance regarding the control of material on OTT platforms. Section 66A of the Act deals with punishment for sending offensive messages using a communication service. Sections 67, 67A, 67B, and 67C of the Act provide penalties and imprisonment for the dissemination or transmission of obscene material, sexually explicit material and any content depicting children engaged in sexually explicit acts respectively in electronic form. Section 69A of the Act grants the central government power to direct monitoring or decryption or interception or all of them at any computer resource if there is due reason on the basis of certain grounds mentioned in the section one of which is investigation of any offence. There are safe harbour provisions for the intermediaries. They are granted Immunity from legal responsibility of an intermediary under specific circumstances.¹⁰ Although these regulations do not explicitly address OTT platforms, they have been utilised in specific instances to govern OTT platforms.

The Ministry of Information and Broadcasting (MIB) recently issued the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules 2021 (IT Rules, 2021). These rules have brought about a significant change in the governance of OTT platforms in India. Prior to the implementation of the IT Rules, 2021, OTT platforms were under the jurisdiction of the Ministry of Electronics and Information Technology. However, with the introduction of these rules, they will now be regulated by the same central authority that oversees print media, broadcasting, and FM radio players in India. The primary goal of this regulation was to establish a unified and regulatory framework for the digital media intermediaries, which includes Over-The-Top (OTT) platforms, in accordance with the IT Act.¹¹ The rules became effective upon their publication in the official gazette. The rules are categorised into three parts. Part-I has definitions and preliminaries, Part-II is about Intermediaries' Due Diligence and Grievance Redressal Mechanism and Part-III is about the Code of Ethics, Procedure and Safeguards for Digital Media. According to these rules, the OTT platforms are required to establish a strong three-tier system for addressing complaints.¹²

- Tier 1- OTT Platforms are required to bring self-regulation by appointing a grievance officer.¹³

⁷ R. Suri, "OTT Platforms Sign Self Regulation Code in India: Here's What the Platforms and Experts Have to Say About It", *Hindustan Times*, Sept. 07, 2020, available at: <https://www.hindustantimes.com/bollywood/ott-platforms-sign-self-regulation-code-in-india-here-s-what-the-platforms-and-experts-have-to-say-about-it/story-> (last visited on June 28, 2024).

⁸ A Deep, "IAMAI's self-regulation code for Online Curated Content Platforms", *Medianama*, September 5, 2020, available at: <https://www.medianama.com/2020/09/223-iamai-occp-self-regulation-summary/> (last visited on June 28, 2024)

⁹G. Laghate, "IAMAI forms self-regulatory body for OTT players", *The Economic Times*, (May 29, 2021), available at: <https://economictimes.indiatimes.com/industry/media/entertainment/media/iamai-forms-self-regulatory-body-for-ott-players/articleshow/83036159.cms?from=mdr> (last visited on June 28, 2024)

¹⁰ The Information Technology Act, 2000; Section 79

¹¹*Ibid*, Section 2(1)W

¹²Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, Rule 9

¹³ *Ibid*, Rule 11

- Tier 2- A regulatory body should be established by content publishers and their associations. This group should consist of industry specialists, led by a former Supreme Court/High Court judge or a eminent person in the relevant field.¹⁴
- Tier 3- the Ministry of Information and Broadcasting (MIB) should establish an inter-department committee to supervise and take appeals against decisions made at level of tier two. This committee would also handle the matters referred to it by MIB.¹⁵

In addition to the above mentioned provisions, there is a strict set of ethical guidelines outlined in the new Rules. The content will be categorised according to the viewer's age, themes, content, tone, impact, and target demographic. OTT platforms are required to carefully prioritise India's sovereignty, security, and cordial relations with foreign countries when providing their streaming services. The compulsory content classification is largely analogous to that supplied under the Cinematograph Act.

The main features of the Rules are:

- Intermediaries are required to publish on their website the rules, privacy policy and user agreements for usage and access to its computer resources.¹⁶
- Complaints are required to be acknowledged within a period of twenty-four hours¹⁷ and resolved within a period of fifteen days from the date of receiving.¹⁸
- Intermediaries are required to remove or disable access to the contents which expose private areas of a person, full or partial nudity, sexual acts, impersonated or morphed images within twenty-four hours of complaint.¹⁹
- Intermediaries are required to remove or prevent access to any content that is obscene, pornographic, insulting on the basis of gender, violating bodily privacy, against decency or morality promptly but in not later than thirty six hours of receiving a notice or order from the appropriate authority.²⁰
- The OTT platforms will categorise the content into five age-based categories: 'U' (suitable for all ages), U/A 7+ (suitable for ages 7 and above), U/A 13+ (suitable for ages 13 and above), U/A 16+ (suitable for ages 16 and above), and 'A' (restricted to adults exclusively, i.e., 18 years and above).²¹
- OTT Platforms must provide robust age verification techniques for adults and access control systems to manage content categorised as U/A 13+ or higher.²²
- Each show's categorization rating will be displayed at the beginning. The viewer description should include a content advisory that accurately reflects the nature of the content, allowing viewers to make an informed decision about whether or not to watch.²³

Issues of Obscenity and Censorship of OTT Platforms

The rapid growth of Over-the-Top (OTT) platforms and digital media in India has transformed content consumption, offering a vast range of material that is easily accessible. However, this has also raised concerns about obscenity and the regulation of content to ensure it adheres to societal standards and legal requirements.

¹⁴ *Ibid*, Rule 12.

¹⁵ *Ibid*, Rules 13 and 14.

¹⁶ *Ibid*, Rule3(1)

¹⁷ Rule 10

¹⁸ Rule11

¹⁹ *Ibid*, Rule3(2)

²⁰ *Ibid*, Rule3

²¹ *Ibid*, Chapter VI, Code of Ethics, Clause II(B)

²² *Ibid*, cl. II(C)

²³ *Ibid*.

With the rise in the viewership involving diverse audience, it felt very widely that a line between creativity and in decency should be drawn. The use of violence, sex, nudity and obscenity on these platforms have raised frequent controversies in the last decade.

A number of web series released on different OTT platforms have been in controversy for obscenity. The Netflix series "Sacred Games" (2018) was criticized for its derogatory and inappropriate language. Multiple complaints were filed but no legal action led to a ban, however, it sparked a debate on the need for regulation of OTT platforms.²⁴ The series "Mirzapur" (2018) faced criticism for its violent content and explicit language, which some viewers deemed excessive. While it gained popularity, it also attracted complaints and calls for stricter regulation of violent and adult-themed content. The Amazon Prime series "Paatal Lok" (2020) faced legal challenges for its portrayal of violence, explicit scenes, and allegedly defamatory content. Court cases and FIRs were filed but the show was not banned and continued to be available on the platform. The political drama series "Tandav" (2021) on Amazon Prime Video faced controversy for allegedly hurting religious sentiments and portraying Hindu deities in a manner deemed offensive by some groups. Legal complaints were filed against the creators and platform leading to the removal of controversial scenes and a public apology.²⁵ Recently Ministry of Information and broadcasting had to ban eighteen OTT platform for vulgarity and obscenity in their content without any relevance in spite of various warnings.²⁶

There are numerous instances of filing petitions before the courts to curb obscenity on these platforms.²⁷ In 2018, the Supreme Court said that there is need of content regulation. It was held by the court that the necessary guidelines and standard operating procedure may be framed by the Government of India to remove the child pornographic content, rape and gang rape images and videos from the content hosting platforms. The court ordered that the guidelines must be enforced within a period of fourteen days from the date of the judgement passed.²⁸ A PIL (public interest litigation) was filed in the year 2019 seeking guidelines to regulate vulgar and sexually explicit content served on the major online platforms such as Amazon Prime, Netflix and others. The petitioner stated that such platforms operate with profit motives only and they are not careful about the cultural and moral sensitivities of the society in the country.²⁹

While dealing with the concept of obscenity the court in a leading case set the precedent for defining obscenity in India. It involved the publication and distribution of a book called "Lady Chatterley's Lover," which was considered obscene by authorities. The Supreme Court adopted the "Hicklin Test" to determine obscenity. It focused on whether the material is such that it corrupts to deprave those whose minds are likely to be affected or vulnerable. The judgment emphasized that artistic and literary merit could mitigate charges of obscenity.³⁰ The Supreme court deciding the scope of obscenity under Section 292 of the Indian Penal Code (IPC) in the context of artistic and literary works observed that obscenity must be judged from the standards of contemporary society and further held that mere presence of vulgarity or explicit content does not necessarily constitute

²⁴ "How are Indie Makers Reacting to the 'Sacred Games' Complain", *Times of India*, June 12, 2018, available at: <https://timesofindia.indiatimes.com/city/kolkata/how-are-indie-makers-reacting-to-the-sacred-games-complaints/articleshow/64955974.cms> (last visited on June 22, 2024).

²⁵"Netflix's 15 Most Controversial Movies, Shows and Documentaries", *The Indian Express*, Sept. 04, 2020, available at: <https://indianexpress.com/photos/entertainment-gallery/netflix-most-controversial-series-movies-documentaries-6580238/> (last visited on July 1, 2024).

²⁶ "Centre Bans 18 OTT Platforms for Obscene Content", *Times of India*, Mar. 14, 2024, available at: <https://timesofindia.indiatimes.com/web-series/news/hindi/centre-bans-18-ott-platforms-for-obscene-content/articleshow/108491303.cms> (last visited on June 22, 2024).

²⁷ October 06, 2018 <https://www.thehindu.com/news/cities/mumbai/pil-wants-online-shows-to-be-regulated/article25139023.ece>

²⁸ *Prajwala v. Union of India*, (2018) 15 SCC 551

²⁹ *Justice For Rights Foundation v. Union of India*, 2019 SCC online Del 11902.

³⁰*Ranjit D. Udeshi vs. State of Maharashtra* (1965) 1 SCR 65

obscenity if it has literary or artistic merit in it.³¹ The Supreme Court struck down Section 66A of the Information Technology Act 2000, holding it unconstitutional as it violated the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. The case involved a challenge to the constitutionality of Section 66A of the Information Technology Act, which was used in alleged cases of online speech deemed offensive or obscene.³² Thus, Indian courts have played a considerable role in interpreting laws related to obscenity and balancing the same with the right to freedom of speech and expression through various landmark judgments.

Conclusion

OTT (Over-the-Top) platforms have significantly altered the media consumption landscape in India, offering a vast array of content directly to viewers via the internet. These platforms have democratized access to entertainment and education. However, the liberal nature of OTT content has also sparked debates about censorship and content regulation. In response to concerns the Indian government introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. This framework has to balance the need for creative freedom with societal and cultural norms and interests of the adolescent and young population of this country. In spite of these regulations it cannot be denied that the content streamed on the OTT platforms contains excessive obscenity and vulgarity in comparison to the traditional cinema which is governed by censorship norms under the cinematograph act. Given the access and spread of digital media a very efficient system is required to save the society from being degraded and to save the young ones from being exposed to the content which is not suitable for them. Self-regulatory system has not worked up to the expectations. We need to make sufficient provisions for more efficient employment of the Technological advancements to filter the inappropriate content on these platforms. Moreover, due to digital divide and lack of awareness and education in a large section of population pro-active mechanism of officials and technology is required to deal with the issue of obscenity on the OTT platforms. There is concern that excessive regulation could limit access to diverse and thought-provoking content. Striking the right balance is crucial to ensure that viewers have access to a wide range of perspectives while safeguarding public decency and cultural values. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, represent a significant step towards structuring this balance. As the OTT landscape continues to evolve, ongoing dialogue between regulators, content creators, platforms, and consumers will be essential to refine these regulations and address emerging challenges. The goal is to create an environment that fosters innovation and creativity while ensuring content remains respectful of cultural and moral standards.



³¹ *Ajay Goswami v. Union of India* (2007) 1 SCC 143

³² *Shreya Singhal v. Union of India* (2015) 5 SCC I: (2015) 2 SCC (Cri) 449