

OTT REGULATORY LAWS: MYTH OR REALITY

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Abstract

This article examined how OTT platforms in today's age had become paradise for content creators. Also examined about the needs to regulate the OTT platforms.

Using data collected from online platform research work and previous research upon the same. By using those research works, findings, and statistics upon viewership in India. It was found that there is not any perfect body to review the contents and give regulatory orders. As a result of which the content writers had begun the production of their own content. Regulating these OTT platforms is the most preferred demand by the viewers.

Some of the platforms only provide with the adult contents without looking into the viewership and audience. There was a time when OTT video platforms were luxury but now has turned into commodity.

Indian people have also become dependent upon those platforms for their recreational activities. Not just the working groups but now a day's kids and teenagers are more prone to those screens. Previously they were very expensive but now easily accessible and cheaply available, some of those are even free of cost. This paper explores the emergence advent and future of streaming services in India through an analytical research. Also about regulatory law upon OTT is myth or reality.

Also, this paper talked about the new amendment in the Govt. of India Rules, 1961 which is to be regulated by the ministry of Information and broadcasting. Also, this paper contains the comparative analysis of different country and their rules and regulation, also how is the online content being regulated in countries outside India?

Keywords: OTT Future, Network Policy, Regulation, Amendment, Platforms, Government of India Rules,1961, TRAI.

INTRODUCTION

The full form of OTT is Over the Top media which provides directly to viewers via the Internet. We all are very aware about the introduction of OTT platforms in the last two to three decades. Due to the advancement in the technologies, as a result audio-visual development all over the world has taken place at a fast pace. Not only in India but also in the world these streaming has reached very high viewership. One of the major reason responsible for the growth of online streaming is due to Covid -19 pandemic situation. As theaters are shutdown thus media production house is using online platforms for launching web series, movies, shows etc. OTT platforms has saw increase of 30% subscriber over a period of year. These includes Amazon Prime, Netflix, Sonlyetc. They are not limited with the contents like movies and all but many of them are offering online library, music subscriptions at very affordable price.

OTT is used to describe emerging business models, such as OTT apps and devices, utilizing the internet to bypass traditional infrastructure. Example of OTT-

Majority of them are content based and message based like Netflix, Skype, WhatsApp, Voot etc. But it is not just only these apps, OTT means the service based whose e.g., can be Robinhood, Uber, Venmo.

Apart from this they also use devices like Apple TV, Roku, Solar Panels.

History and Growth of OTT platform in India:

The first Indian OTT platform was BigFix, which was launched by Reliance Entertainment in 2008. OTT gained momentum in Indian in 2013 when Ditto TV (Zee) and Sony Liv were launched.

Disney Hot star was launched in the year 2015. And it is one of the highest watched OTT platforms in India. As of July 2020, it has more than 300 million active users. Soon after, Netflix began its operations in India in the year 2016 (January). It is one of the most recognized and prominent global OTT segment players. Netflix faces stiff competition in India from players like Amazon Prime, Disney+Hot star etc¹

India now has second highest numbers of internet subscriber, second highest no of mobile subscriber after China. So, there is a lot of Internet based content in India also and it is highly unregulated.

¹<https://tech.hindustantimes.com/tech/news/indias-new-rules-for-social-media-ott-platforms-7-important-things-to-know-71614260212306.html>

But if you talk about the other media Platform, we know that traditional news media are regulated by Press Council in India.

Why the regulation requires?

Because there is an allegation that these platforms are producing the contents which are religiously impermissible. It cannot be permitted. There are vulgar contents also some immoral content. As a result, we have end number of FIR, cases in the courts, PILs regarding this, where it is being alleged that they are using such kind of contents which cannot be permitted.

For e.g., 'Mirzapur' one of the Netflix very controversial web series. If we investigate the history of this place, then we must be knowing about the production of 'carpets' the city is famous for the production but what actually the show has depicted is all about the city image of goons there. This has happened because of the content they are having.

We are having Cinematographic Act 1952², basically this act regulates the contents to be used in the movies. If we investigate the Cabal Television Regulation Act 1995. This Act basically investigates the advertisement. They are regulating the contents which are uses in the television.

But these two acts cannot apply upon OTT platform. Adding to the same we can say that, whether Information Technology Act 2000, must be applied upon it? Basically, the ministry of Electronics and Information Technology has said we have the power under IT Act to regulate this OTT platform or not?

But as an argument in favor of OTT Platform's they have said that 'we are on demand services', which is very clear by its name means they are providing services on its demand only. Therefore, they fall under the purview of private exhibition and thus exempted from IT Act.

There is case in the court upon the same which says that if they are not governed by any of the above-mentioned law then there must be separate autonomous body to look after the contents. Currently we do nothave any laws to regulate the over-the-top platforms.

Can there be anything like self-regulation?

Yes, there is certain parameters fixed in case of self-regulation where the provisions like prohibited contents are given. In case the contents which are sexually abusive, the content hurting the religious sentiments, the content hurting the National Flag or Emblem. In short, all these kinds of contents can be removed. This is the kind of self-regulation, about what they are talking.

²Cinematograph Act, 1952

Another provision regarding the same is given about age inappropriate or sensitive content. They will investigate that the content available on this platform whether it should be available to the age group or not. For e.g., in the movies, we have A+, we have the adult movies, basically we are pointing it that these are the adult movies and only to be viewed by the adults.

This is not any law or legal remedy but a kind of self-regulation only.

Last one is 'complaint redressal forum' where if you think that the content which is being used streaming videos are not appropriate then they will elect a nodal officer who will investigate the grievances.

So, these were the different parameters for the self-regulation of OTT platform.

Regulation in other countries

There are no countries in the world who are having any certain laws upon the streaming of OTT. However there are certain countries who are having an authority or a body to investigate the contents which in used.

For e.g. – In Australia there is Australian Communication and Media Authority.

Likewise in Singapore they have there is Information Communication and Media Development Authority.

This can be a model for all other countries who do not have any Laws, nor any authority to check the contents.

Perspective of courts on OTT Regulation

Delhi High Court – It was said by the Delhi High Court that the OTT Platforms do not require any kind of license and none of the laws applies which we have upon the OTT platforms.

In October 2020, the Supreme Court of India last month had issued notice to the center and the Internet and Mobile Association of India on a petition to regulate OTT platforms such as Netflix, Amazon Prime etc.

Now, the Union government has brought OTT platforms or videos streaming service providers such as Netflix, Amazon Prime and others, under the ambit of the Ministry of Information and Broadcasting.

In case of *Viacom 18 Media (P) Ltd v. Union of India*³ wherein it was stated that “if intellectual prowess and natural or cultivated power of creation is interfered without the permissible facet of law, the concept of creativity paves the path of extinction; and when creativity dies, values of civilization corrode.”

Why do we need to regulate?

Press media is regulated by the Press Council of India.

T.V both News Entertainment are regulated by the Cable Networks Regulation Act (2005)

³<https://indiankanoon.org/doc/86850376/>

Online content lacks regulation with no oversight. When we talk about online content, it does not have any control over a period of times we have seen so many controversies emerged because they have no of objectionable contents.

This has led to several controversies and swatches of objectionable content online without any sort of control.

Now the question arises that what exactly has been planned by government to govern it. If we investigate the decision then it is very simple that ministry of Information and Broadcasting now going to regulate this, but no details have emerged as of now, on how does the Ministry propose to regulate news and OTT online.

However, it is learnt that the Programmed Code that governs content on TV and which found an outlet in the Cable Television Network Regulation Act, 1995 may serve as template to frame rules for online contents.

The Programmed Code lists several don'ts that channels are required to observe and follow. If they do not follow them, they would be fined or would be close. And the main body which governs this is Electronic Media Monitoring Centre is entrusted with the work of monitoring content on Tv it puts out reports on violations of the Programmed Code. The findings to go on inter-ministerial committee where they take some decisions. Then it is believed that similar kind of things for OTT Platforms should come soon by the ministry to regulate the contents, so the plan is still in development.

Indian laws to regulate OTT, prior to the New Amendment.

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

- Article 19(1)⁴ of Indian Constitution, gives everybody the Freedom of Speech but on the other hand as we know that no rights can be absolute in nature. Every Rights comes with its limitation. Article 19(2) on Indian Constitution talked about the reasonable restriction to be imposed by government. If any such content which is against the wellbeing of the state, leads to hamper in the public order, international relations or aims towards inciting any crime.
- Not only constitution of India, but Indian Penal Code⁵ also regulate the Freedom of Expression via Section 293, under which any person who has been indulged in the selling or distribution of work of literature which is obscene may be punished by court.
- Also, section 295A says that if any person with the intention of outraging religious sentiments done maliciously can be punished.
- Another important law upon this is Section 499 which attracts any act of publishing defamatory content and last one is Section 354, under which punishment can be given to anyone who insults any women's modesty.
- Also, under Indecent Representation of Women (Prevention) Act 1986⁶ restricts the publication of indecent things about women in advertisements, books, movies, painting etc.

⁴ Constitution of India

⁵The Indian Penal Code, 1860

- Sections 67A, 67B and 67C of the Information Technology Act, 2000⁷ says that anybody who has transmitted or published any kind of obscene material, any sexually explicit material then penalty as well as imprisonment can be imposed. Also, under Section 69A of the act says that the Central Government is having the powers to issue directives to block certain information to be in public access.

The Challenge

Because Internet is a huge sea perhaps it a bottomless ocean and restricting internet would be a huge problem. Internet has become part and partial of our life specially since the covid pandemic has begun, we all see that there is a lot and lot of promotion of online education, e- medicine etc. all these things are developing. So, controlling internet would be huge task for the government.

What are the challenges in general?

When we talk about regulation then there is a natural barrier in regulation. Now natural Barrier means, In India there is natural barrier to the other language content. Do we follow the content from other countries say the content from countries which have very different language or complex language? So, a natural Barrie is already their but with the development of internet, technology, subtitles we do see that this barrier is weakening a lot. This is again added to challenge.

When it comes to regulation there can be manual regulation. But it is not possible. As one cannot regulate himself. The concept is diluting because not any person can control or regulate the contents for continuously twenty-four into seven.

Manual would be very difficult, and the Natural Barrier regulation is also diluting so we do need to come out with some solutions and perhaps some solutions can be Technical Regulation.

Technical Regulations which mean where we put certain limitation with respect to banning the internet or using the routers or changing the passwords, I.P address etc. from where objectionable contents are coming. So, that can be done but technical expertise which is still in development.

Apart from that, A Legal and Policy Route is always an option but when we talk about India then, is this concept is sound in India?

Here is the problem; we have an Information and Technology Act which is two decades old. It was brought in 2000 but in the last two decades there has been huge development in the Information and communication are legal and policy route in lined with those development. Then answer to this would be 'No', so we need to develop this. Apart from that the best solution for any kind of media would be 'self-regulation' by OTT provider would be best solution where they adhere to such regulation that would be a very sound idea.

⁶THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986 (NO. 60 OF 1986)

⁷Information Technology Act, 2000

So, these are some of the challenges we need to overcome and let us see how the ministry of Information and Broadcasting will take up this challenge and bring plan to regulate these OTT Platforms.⁸

International experience of how exactly Internet is regulated?

If we see worldwide then the developed countries like U.S, Canada, Australia, South Africa, The European Union they do not regulate the Internet content. When we talk about Russia, China, or Islamic Countries they are not free, they are highly regulated contents. But when we investigate the countries like India then they have mixed content as they have partly free and partly regulated contents.

Why it is bad idea to regulate?

First reason is the lack of clarity on plan itself. The government has said that they will regulate but, they themselves do not have any plan for the same. There is not yet any detailed law to govern or regulate internet content. Here what government has said is that what they want to regulate is misconceptions, all those disorderly information's, objectionable content. But there is not any full-fledged plan with the government. Thus, no details have emerged as of now, on how does the Ministry Propose to regulate news and OTT online.

Another reason responsible is Ambiguity in definitions. News and current affairs are not terms with clearly laid out definitions. It is still not clear as whether the statements of fact will be subject to the given notice or the importance will be given upon the application of opinion and analysis.⁹

Solution to this can be.

- European Union is leading the discourse on how platforms and technical companies should be regulated.
- It has proposed some interesting reforms in the new Digital Services Act Package ("DSA")
- DSA is a reassessment of the E- Commerce Directive necessary because digital technologies and business models have evolved rapidly.
- EU Policy Department for Economic Scientific and Quality of Life Policies has suggested that DSA can incorporate.
- Shifting from 'liability approach' to a 'responsibility approach' to a responsibility approach.
- Introduction of a good Samaritan clause to take voluntary active measures to moderate harmful contents.
- Use of AI algorithms to bring Platform neutrality.
- Move towards a more vertical approach of 'notice and action'.
- Establish a social media council. As the public authority may not be prepared to confirm enforcement of content moderation and may needs some help from private bodies.

⁸<https://globalfreedomofexpression.columbia.edu/updates/2021/01/government-of-india-to-regulate-ott-platforms/>

⁹<https://takshashila.org.in/why-it-is-a-bad-idea-for-the-mib-to-moderate-online-content/>

Conclusion

Criticism is part of every great ideas. Ott platform contents are not exception to this. As a conclusion to this paper, we can say that Legislature must come up with flexible guidelines to regulate OTT platform and those laws must be in harmony with Article 19(2)¹⁰ of the Indian Constitution.

TRAI in its consultation paper¹¹ has highlighted some of its issues with the regulation of OTT and the paper has said that there is not any licensing regulation which applies on them, there is not any regulation to investigate the quality parameters of these OTT platforms. There is not any regulation in relation to spectrum charges.

Yes, there is need of regulation of OTT Platforms. Previously there was blanket censorship upon these OTT Platform.

Moving further let us investigate the fact that how important is to regulate OTT?

This is acceptable fact that these platforms have given voice to the common people in this country. Thus, the government has recognized that this is very important for the free flow of ideas in the country as well as for the democracy.

As per the constitutional mandate every citizen has the right to express himself/herself. Also, these platforms were doing a great job. But some were down the line utilizing that freedom and the constitutional guarantee. Some people within that organization has taken a very biased approach and have suppressed certain important point of view. Although certain people may not like any content or point of view politically or socially, but it does not mean it should be suppressed. It should be made available to the informed citizens of the country. As citizens of country make a collective opinion. Thus, a balanced approach which helps to develop and is very important for freedom of expression. Adding to it, legislation of a Law, Regulations, Bye Law etc. are not enough but their implementation is more important.

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¹⁰ Constitution of India

¹¹<https://www.trai.gov.in/sites/default/files/OTT-CP-27032015.pdf>

BIBLIOGRAPHY

1. Jain, M.P(2018), “Indian Constitutional Law”, Lexis Nexis
2. Pandey, J.N, “Constitution of India”, Eastern Book Company, Lucknow
3. Legal Services Times

WEBLIOGRAPHY

- 1 <https://blog.ipleaders.in/ott-platforms-regulation/>
- 2 <https://lawschoolpolicyreview.com/2020/12/23/censorship-of-ott-media-services-restraining-freedom-of-expression/>
- 3 <https://globalfreedomofexpression.columbia.edu/updates/2021/01/government-of-india-to-regulate-ott-platforms/>
- 4 <https://www.thehindubusinessline.com/opinion/why-ott-services-need-to-be-regulated/article32791521.ece>
- 5 <https://tech.hindustantimes.com/tech/news/indias-new-rules-for-social-media-ott-platforms-7-important-things-to-know-71614260212306.html>
- 6 <https://www.trai.gov.in/sites/default/files/OTT-CP-27032015.pdf>
- 7 <https://indiankanoon.org/doc/86850376/>
- 8 <http://www.legalserviceindia.com/legal/article-426-social-media-and-freedom-of-speech-and-expression.html>

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