

Censorship of OTT Platforms in India: A Bliss or A Bane?

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Abstract

Media has generally been regarded as a resource of data & broadcast for the entire population in a country. They have a wide scope of information and stand out data that is any other way concealed from the general public. We now have OTT platforms to keep us informed and entertained, from road shows to movies, feature films, TV slots, tapes, and DVDs. The streaming stage, regularly alluded to as Over The Top Platform (“OTT stages”), has been under the legislative focal point for some time now. The public authority is vocal about their goal to control this industry which as of not long ago had been working openly without numerous legal regulations overseeing these.

The Censorship of OTT Platforms is something which is being talked about since quite a while now. Censorship helps with the avoidance of against social, antagonistic, and express content which is shown to the general population, in this manner saving cultural harmony. It additionally safeguards individuals' sentiments by disallowing data that is hostile to specific societies or clans. There are differentiating views with regards to the Censorship of OTT Platforms as at one side, government leans toward the oversight of OTT Platforms in India whereas at other point, Judiciary of the country oddballs PIL and petitions requesting Censorship of OTT Platforms in India. This paper is consequently pointed towards examining if control & censorship of OTT stages in India is the need of hour.

Keywords: Censorship, OTT Platforms, CBFC, DCCCC, IMAI

History of OTT Platforms in India

OTT means “over the top”, OTT platforms began in India with BigFlix, started by Reliance Entertainment in 2008. After the launch of Zee TV and Sony Liv in 2013, OTT platforms began to thrive in India. Disney Hotstar arrived into the OTT world in 2015. Netflix began delivering services in India at the beginning of 2016, competing with other OTT platforms such as Amazon Prime Video and Disney+Hotstar. OTT platforms offer freshly brewed and brand new contents in a number of languages and genres. OTT platforms are quite affordable as compared to going to theatres or purchasing DVD at home as these platforms presents creativity that is reasonable and low-cost. Nowadays Films are also being announced on various web sites well in advance of their television premieres. As a result, OTT is certainly the future of tomorrow.¹

Mobile data is most economical in India which prompts depicting a significant job with regards to OTT stage. As the OTTs thrived, the province of Indian Cinema to from battling absolute bottom. During this Pandemic, the OTT stages has gained the greatest level of watchers, and a new elaboration in day to day public express that around forty providers of Over the Top specialist providers, disseminating media all around the web 24×7. OTTs was the best elective to view films and web series during the pandemic as going to theatres could give unavoidable risk to one's wellbeing, and thereby OTTs got the greatest consideration from watchers as the whole world was under lockdown. OTT platforms turned out to be productive for producers too, since it gave them

¹ OTT And Its Evolution In The Indian Market by Abhimanyu Mukherjee published on KSOM BLOG dated 18th July 2021. <https://blog.ksom.ac.in/2021/07/ott-and-its-evolution-in-the-indian-market/>

incomes from the survey of the crowd by means of their homes in any event, when the movie theatres and other centers were shut during pandemic. Accordingly watching shows and different series on these Platforms, inside homes, saved a great deal of time and money and ultimately people got engaged in something which was the best thing that happened in Pandemic and which became possible only because of OTT Platforms and digital media. In July 2020, Disney Hotstar had its greatest opening by means of the film 'Dil Bechara' featuring Sushant Singh Rajput. Alongside this came numerous other effective motion pictures and series including *Sacred Games*, *Squid Games*, *TVF Aspirants* etc that were gushed while pandemic and became an overnight sensation among the people.

Censorship

"Censorship is nothing but forestalling a correspondence or some other data or conduct from being seen by people, on the premise that such material is viewed as frightful, hurtful, sensitive or inconvenient. Censorship even incorporates the idea of removal of any such material or content which can prompt anger in the general public. Censorship is every now and again saw adversely and is characterized as the suppression of thoughts, pictures, or expressions that certain individuals track down offensive in some way."

The constitutionality of Censorship was tested before the Supreme Court in the case of *K. A. Abbas vs The Union Of India & Anr*,². In this case, the Apex Court maintained the constitutionality inside the extent of Art 19(2), and held that movies ought to be dealt with uniquely in contrast to other type of discourse and articulation. Adding on to it should be for the interest of society.³

Censorship of OTT Platforms

Over the Top (OTT) media services and contents are offered straightforwardly to watchers with the assistance of the web and has surpassed stages like satellite, DTH, link, and so forth. The content shown by OTT stages running in India like Netflix, Voot, Hotstar, Amazon Prime, and so on has no administrative body to control the streaming of movies and series, thus the audience and producers are partaking in the opportunity and thereby enjoying their freedom.

We have a large section of people who enjoy different kinds of content on OTT Platforms. However, many a times it happens that the content which is shown on these platforms hurts the religious, political sentiments of people & sensibility of sections and therefore because of such circumstances, the Government of India felt an extreme need and was compelled to make certain modifications and remove some unsuitable segments from movies and series streaming on over-the-top (OTT) platforms as recently many FIR's and cases were filed against several Indian web series including *Paatal Lok*, *A Suitable Boy*, *Ashram*, *Mirzapur* and even *Tandav* too as it was believed that the content shown by these series was highly inappropriate and was promoting irrelevant thoughts and ideas in the general public.

Pros and Cons of Censorship

Pros of Censorship

As the OTT platforms are of wide reach, the content which is shown in web series and on digital media is easily accessible to all and because of this, youth and children in the society are at major disadvantage when they are exposed to such a content that is related to violence, abusive language and sex.

In the past years many people have taken legal action by filing PILs and lodging complaints regarding the harsh content that is being made available on digital platform and therefore have been

² AIR 481, 1971 SCR (2) 446

³ Available at <https://indiankanoon.org/doc/1719619/?type=print> accessed on 30/03/2022

arguing for censorship on series and movies released on OTT platforms that have strong potential to create bad influence on younger generation of the country.

The Central Board of Film Certification (CBFC) has reported that the casual usage of sex and abusive language in web series that are available on OTT platforms is definitely going to attract the audiences. This brings up an issue on the off chance that if internet based media outlet ought to be kept regulation free then what influences this would have on youngsters of the country?

Parents feel worried about increasing foreign culture influence on their children that web series and movies on OTT platforms promote which more or less involve concept of casual sex and abusive language but censorship of OTT Platforms will surely control this to a very larger extent.⁴

Cons of Censorship

Producer Ritesh Sidhwani, producer of series like “Inside Edge” and “Mirzapur”, strongly believes in the fact that censorship of OTT platforms in India will definitely hamper the originality of the content shown in web series on digital media. He further added that it is the responsibility of the makers & producers to take care of their content and depict only the real facts and not obscene scenes thereby promoting the cultural harmony prevailing in the society.⁵

The censorship norm is also being criticized on the ground that the people feel that it is violating the freedom of speech and expression and creativity of Indian filmmakers, who are more or less already at a disadvantaged position because of the constraints on their movie content due to existing current Indian laws.

Further it is also believed that rather than censoring the content, due importance should be given to the ratings of the series that are provided. Most importantly it is also moral responsibility of audience out there to perceive the content shown on OTT platforms in a respected manner.

Government’s stand on the Censorship of OTT Platforms in India

The Union Ministry of Information and Broadcasting, Law and Justice, Electronics, Information and Technology, Telecom and CBFC practice control over OTT Platforms. The Government believes these platforms to be such intermediaries where they can’t exercise their jurisdiction.

In 2016, Justice for Rights, a non-governmental organisation, filed a petition [W.P. © 11164/2018] in the Delhi High Court, alleging that Hotstar broadcasted soft-pornographic, unethical content, which promoted disrespect for the entire country as it objectified women, displayed scenes showing engagement of children in different criminal activities, and even promoted terrorism. Thereafter, it was demanded that these OTT platforms be regulated, filtered, or licensed, and that vulgar and legally prohibited information and ideas be removed from the series & movies but the said petition was however dismissed by the Hon’ble High Court and the matter is now pending before the Hon’ble Supreme Court of India [SLP © 10937/2018].

MEITY has recently stated in one of their new reports that they are not going to impose any kind of constraints or restrictions on OTT Platforms but they did emphasize on creation of a self-administrative organisation for these platforms. Recently several OTT Platforms like Hotstar, Sony Liv, and Eros formed the Digital Curated Content Complaint Council (DCCCC), an administrative organisation, which shall monitor the content that is being provided by such these Platforms to avoid the inconvenience of the government’s rules on them. These platforms are strictly against introduction of any legislation towards OTT Platforms in India further it is believed by these OTT

⁴ Censorship of Web series – Pros & Cons by Garima Mittal published on GD Ideas dated Jan 29th, 2019. Available at <https://www.groupdiscussionideas.com/censorship-of-web-series-pros-cons/> accessed on 30/03/2022

⁵ CENSORSHIP OF OTT PLATFORMS – PROS & CONS by Karan Kandpal published on Eduindex News available at <https://www.google.com/amp/s/eduindex.org/2021/07/10/censorship-of-ott-platforms-pros-cons/amp/> accessed on 30/03/2022

Platforms that tenuous line distinction between a telecom station and an OTT stage will become obsolete and that their Right to Free speech under Article 19(1)(a) (Freedom of Speech and Expression) will be completely ignored and destructed.⁶

Be that as it may, the said OTT stages repudiate Article 19(2) of Constitution, which accommodates sensible limitation on Freedom of Speech and Expression in light of a legitimate concern for sway and uprightness of India, security of State, public request, respectability or profound quality, and so on.

Laws that are currently regulating OTT Platforms in India

Section 69A of the IT Act 2000

It manages the powers to give directions to hindering data by community through any computer assets.

Sub Section 1: It allows the Central Government of India and any official appointed for this purpose to feel to make swift decisions if they fall under the preceding conditions: In light of a legitimate concern for the Integrity & Sovereignty of India, Defence of India, Security of the State, Friendly relationship with Foreign States, Public orders, To forestall impelling to the commission of any cognizable offences relating with above conditions.

Sub Section 2: The system and protections regarding hindering of data by community will be as might be recommended.

Sub Section 3: The intermediary who neglects to follow the heading given under sub section 1 will be rebuffed with detainment which might be broadened upto seven years alongside fine.⁷

The Cinematographic Act of 1952

The Cinematographic Act of 1952 establishes a thorough strategy for confirming movies for public utilization- business films showed in theatres and other public viewings. It is likewise answerable for the presence of the Central Board of Film Certification (CBFC). The Union government has set up specific rules that decide the accreditations and alters or cuts given by the CBFC. There are four classes of order 1.) unlimited review (U); 2.) unhindered, however with parental direction for kids beneath the age of 12 (U/A); 3) limited to grown-ups (A); and 4.) Confined to a class or a calling (S).

Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules

On 25th February 2021, the Government of India issued the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, which applies to social media intermediaries as well as online news publications and online content providers also known as OTTs. These rules are nothing but a set of guidelines which provides for a code a conduct for OTT Platforms. However, it's implementation is still a tough task.

These guidelines also encourage the use of new rating categories such as U/A 13+ and U/A 16+ to depart from the established ones already existing. Indian culture is trying to break away from the confines of being labelled as a conservative country with these guidelines. Finally, these guidelines reflect the understanding and maturity of Indian youths and adults in the country.⁸

⁶ Censorship of OTT platforms: Will it affect the young spectators? By Saadqa Sultan published on buzzpedia. Available at <https://buzzpedia.in/censorship-ott-platforms/amp/> accessed on 30/03/2022

⁷ Information Technology (Blocking Rules), 2009 and Section 69a of the IT Act, 2000 by Rachit Garg published on ipleaders. Available at <https://www.google.com/amp/s/blog.ipleaders.in/information-technology-blocking-rules-2009-and-section-69a-of-the-it-act-2000/%3famp=1> accessed on 30/03/2022

⁸ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 by Ministry of Electronics and Information Technology published on PrsIndia dated 25th February 2021, Available at <https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021> accessed on 30/03/2022

Concept of Self Regulation Code: Need And Why It Was Signed?

OTT platforms in India were not regulated until September 2020, so IAMAI (Internet and Mobile Association of India), an organisation that represents OTT, proposed a self-regulatory mechanism and henceforth these OTT platforms also thereafter signed a self-regulation code in India on September 7th, 2020 that established a set of guiding principles for content on digital platforms, prohibiting five sorts of content: 1) desecration of the national flag and insignia, 2) child pornography, 3) terrorist promotion, 4) religious intolerance, and 5) content which is expressly prohibited by law or court. It must be noted here that this self regulation code has been rejected by the government and they have denied to give any support to it.⁹

This self regulation code has been adopted by 17 OTT platforms in India out of which some of them are :ZEE5, Viacom 18 (Voot), Disney+Hotstar, Amazon Prime Video Netflix, SonyLiv, MX Player, Jio Cinema, Eros Now & Alt Balaji and few more.

Position of Legal Statute For Censorship of OTT Platforms in Other Countries

When we look at other countries in the world, it is observed that some countries have developed uttermost strict guidelines towards OTT Platforms in their country whereassome other countries like Singapore, UK have established administrative bodies so as to keep a track on the content that is shown on OTT platforms. In Singapore, the service providers have been provided with codes that mandates disclosures on displaying elements such as nudity, drugs, sex, violence, etc in the content. The code has also prescribed do's and don'ts for all the service providers in the country which includes all shows, series hosted by OTT platforms complying with existing laws of Singapore. The code further mandates service providers to "ensure a balance between the viewpoints expressed in news and current affairs."

Nonetheless, in the United Kingdom, OTT stages are subject to the same scrutiny as any other open assistance telecaster. The OTT Platforms in Australia are governed by the BSA, 1992, which is Australia's main regulator. While in Turkey, there is an enabling structure in place that grants OTT phases a long-term permit. Indonesia, Turkey, and Saudi Arabia, for example, have strict regulations for OTT Platforms. They require complete control in the hands of the government. Several OTT platforms, including Netflix, have also been hampered in these countries.

Conclusion & Suggestions

Previously the need for legislation or regulation for OTT Platforms was not felt. But in the current scenario there is a strong requirement of a body that regulates the content which is provided by OTTplatforms as there is no such specific legislation in Indian Law when it comes to OTT Platforms. There's no denying that OTT Platforms are rapidly expanding not only in India but around the world, with the reasons being that OTT Platforms first and foremost provide content that is distinct from that found in regular movies or TV shows, and secondly, they do so at a very reasonable cost, and when both of these factors are taken into account, OTT Platforms can unquestionably be described as future of digital media but when it comes to censorship of the content of OTT Platforms then it is no wrong because many a times it happens that the content that is shown by these platforms favours one section of the society and at the same time hurt religious, political sentiments of a large amount of another section of the society which creates disruption in harmony. Censorship of OTT Platforms in India will lead to control on the creativity and content shown by the makers but it is essential too, freedom

⁹Self-Regulation of Over-The-Top (OTT) Content under the Indian Regime: A Missed Opportunity? By Vishwajeet Deshmukh and Mustafa Rajkotwala published on Jurist, Legal News & Commentary dated 8th March 2021 available at <https://www.jurist.org/commentary/2021/03/%E2%80%8Bdeshmukh-rajkotwala-self-regulation-of-ott-content/#:~:text=In%20January%202019%2C%20eight%20video,emblem%20and%20flag%2C%20child%20pornography%2C> accessed on 30/03/2022

Tilak, G. (2019). Freedom of Expression in the Digital Age.

of speech and expression under Article 19(a) is also not an absolute right, but "reasonable restrictions" are imposed thus censorship of ott platforms nowhere goes against the Constitution of India. Further alongwith Censorship of OTT Platforms, effective implementation of existing laws with regards to digital media in our country is also of utmost importance as currently there are more than 75 legislations in India with respect to media but effective & constructive implementation of not even a single law is seen in our country. Therefore implementation of already existing laws shall also be taken into consideration while executing new laws as effective implementation of laws is something which our country is demanding for since a long time now.

Mahratta