

---

# EVALUATION OF THE CONTENT SURVEILLANCE: REGULATORY METHODOLOGIES TO OTT MEDIA PLATFORMS IN INDIA

---

Mridu Jain & Ishita Gupta, Vivekananda Institute of Professional Studies, GGSIPU

## ABSTRACT

A burgeoning and transformative change is underway in the landscape of online media in India. Web series, commonly known as shows exclusively tailored for internet streaming, have garnered significant attention from Indian audiences, content producers, and advertisers alike. Initially, many Over-the-top (OTT) media platforms primarily functioned as repositories for movies. However, there has been a notable shift towards producing original content tailored to resonate with the young, internet-savvy Indian demographic. These curated online content platforms are reshaping the traditional cable TV experience and prompting discussions on the need for regulations to govern online content. Governments worldwide grapple with decisions concerning the extent of censorship, which can range from allowing unrestricted information flow to imposing complete internet prohibition. In light of recent controversies surrounding these platforms in India, the authors of this article advocate for content regulation grounded in considerations of morality, public order, and health. They argue that, given India's diverse linguistic and populous landscape, content regulation is crucial for balancing the interests of all groups, as in Article 19(2) of the Constitution of India. The current surge in the OTT market in India has led to a consumer-centric media experience tailored to individual preferences, contexts, and schedules. Given the dominance of OTT platforms in the market, there is a growing need for content regulation and oversight by an independent body. Furthermore, the authors emphasize the necessity of establishing an independent statutory body authorized to take appropriate actions in cases of non-compliance, in addition to promoting self-regulation within the industry.

**Keywords:** OTT, Censorship, Content Regulation

## **1. INTRODUCTION**

Over the past decade, the utilization of Over-The-Top (OTT) platforms has significantly surged in India, establishing themselves as popular mediums for entertainment, news, and information among millions of Indians. However, this upsurge in usage has sparked concerns regarding the regulatory framework governing these platforms. This article endeavors to furnish an overview of the legal framework overseeing OTT platforms in India, encompassing the laws, regulations, and guidelines instituted by the Indian government.

OTT platforms have emerged as indispensable avenues for content creators in the 21st century, particularly accentuated during the pandemic outbreak, where numerous media artists capitalized on these channels to showcase their videos, resulting in substantial viewer engagement. These platforms, essentially web-based services, offer access to video and audio files stored on their servers. Initially featuring content already screened in theaters, OTT platforms have diversified to produce their own original content, including movies, documentaries, and web series.

Over-The-Top services are referred to by the term OTT. Media services that are delivered straight to consumers via the Internet are known as over-the-top, or OTT, services. Using computers, desktop software, mobile devices, and tablets to access internet video providers is not too difficult. Current estimates show that by 2023, the number of net customers in the nation will increase by about 40% to reach 750 million and 800 million, while the total number of cell phones will double to reach 650 million and 700 million.

The proportion of persons adjusting to the shift is steadily rising. Global companies like Amazon Video and Netflix Prime are gaining market share even if regional video-on-demand services like Jio and Hotstar are becoming more popular. One important factor in encouraging the usage of over-the-top, or OTT, platforms to access a vast array of international content is the Digital India programmers. It is clear that over-the-top (OTT) services have come a long way from their modest beginnings, but after a global pandemic, their significance has grown significantly due to a change in how individuals consume entertainment across all media.

## **2. LAWS GOVERNING OTT PLATFORMS IN INDIA**

OTT (Over-The-Top) services, which are online platforms that provide audio, video, and other

types of media content over the internet, are overseen by the Ministry of Information and Broadcasting (MIB) and the Telecom Regulatory Authority of India (TRAI) in India. The primary guidelines and rules that apply to content on OTT services in India include:

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021: These guidelines were enacted by the Indian government in February 2021 and set the standards for how OTT services operate in India. They outline a set of ethical standards for OTT services, including the need to categorize content, set up a system for addressing complaints, and adhere to Indian laws and regulations.

The Cinematograph Act, 1952: This legislation governs the screening of films in India and mandates that filmmakers secure a certification from the Central Board of Film Certification (CBFC) prior to the film's release in India. Additionally, the act grants the government the authority to halt or cancel a film's certification if it breaches any of the act's provisions.

The Cable Television Networks (Regulation) Act, 1995: This legislation gives the government the power to oversee the functioning of cable television networks in India and grants the TRAI the authority to manage the content and pricing of cable television services. This act also applies to OTT services

### **3. IMPACT ON FUNDAMENTAL RIGHTS**

People are entitled to freedom of speech and expression, which includes the ability to voice their thoughts on matters of public concern. OTT censorship, however, has the potential to restrict creators' freedom by changing their work. Regulation of Over-the-Top (OTT) services must adhere to rules that do not contravene Article 19(2) of the Indian Constitution. Parties contended in *Life Insurance Corporation of India v. Prof. Manubhai D Shah* that stopping the airing of documentaries would infringe upon the rights of the artists. Parental locks should be used in conjunction with sensible regulations to classify content according to age and keep kids away from inappropriate material.

Netflix has cooperated with nations like the UK and Australia to ensure content control without compromising the freedom of speech of creators. In the digital age, self-regulatory organizations are unable to adequately oversee online information, necessitating the need for an impartial, efficient regulatory authority. When regulating content, the public interest must

be taken into account since the goal is to guarantee that viewers will enjoy the material without taking offense. The facts and circumstances of the case should inform the laws made by the authorities. Total censorship, however, is not a solution in and of itself because it can affect the rights of creators and service providers. Creators should be given the right to express opinions without unnecessary censorship. Most people agree to some extent of content censorship to ensure quality and control offensive content.

#### **4. BALANCING REGULATION AND EXPRESSION**

The earlier opinion was that the industry is working on setting up a body that will help in resolving complaints about OTT platforms quickly. The industry is opposed to having such body as they see it as a form of censorship. As OTT platforms are increasing day by day, it is becoming a point of concern for many as to whether or not content has to be available in India without any regulation or certification. Currently, the most watched and managed platform is online streaming which is not under the control of any regulator for content regulation. As there is no regulator to control and certify the content of these platforms, the content is not subject to any censorship. OTT platforms are streaming without any license and a large portion of the content streaming on these platforms have not been cleared by the CBFC. Therefore, in view of the lack of regulatory guidelines and certifications, the authorities will find it difficult to control the adult and obscenity content streaming by the online platforms.

The authors argue that the manner in which the content is regulated should be cognizant of the creators' freedom to express their point of view and their freedom to conduct business. Mere fear of a threat or an outdated ideology should not serve as a reason to restrict and shape content. It is worth noting that there is a lot of hard work, time and money put into the creation of content, and thousands of people earn a living from it. The web series available on OTTs undoubtedly reflect the country's changing social consciousness. The blunt nature of this content, consisting of unpleasant truths and sad social realities, is what makes them so attractive. Some examples include the exclusivity of the elite and the perception of their lifestyle by other classes, Ragging, Toxic Masculinity and Gender Dynamics at College, or the stereotyping of a Muslim character.

However, it is also important to ensure that the content is strictly regulated in terms of morality and decency.

## **5. SELF REGULATORY CODE OF BEST PRACTICES**

The over-the-top (OTT) providers have signed a voluntary self-regulation code of best practice and have strongly opposed government intervention. The main aim of the code is to protect the interests of consumers while preserving the freedom of the content providers to innovate. The code also aims to give consumers the power to make informed decisions regarding age-appropriate content. The code also advocates for complaints and redressal mechanisms regarding the content provided by the various online curated content providers.

Video on demand (VoD) platforms are concerned about the manner in which their content ownership is being regulated, and some of them have come together to create a self-regulation code. The internet and mobile association of India released the best practices code of conduct for online curated content provider in January 2019, which has been accepted by the players such as: Netflix, Hotstar, Reliance, Jio, Zee5, Alt Balaji, Sony-Liv, Viacom 18.

However, a few platforms such as Amazon and Google have not yet adopted the code. This has led to a split opinion on the usefulness of the voluntary code. Streaming platforms like to keep their freedom of speech without being bound by a code. A code in any form establishes obligatory standards and duties for the content transmitted on these platforms, and any limits may be rejected by these media platforms. The Code prohibits disseminating content that disrespects the national flag, depicts children engaging in sexual activities, offends religious beliefs, or promotes violence against the state. Furthermore, it categorizes content into separate categories such as general/universal watching, parental advisory, and content intended specifically for age-appropriate audiences, limiting the consumption of particular content to mature audiences. However, the difficulty with such a voluntary code is that it does not exclude the creation of similar rules by other entities. Multiple standards on the same issue cause confusion and inconsistency, lowering the standard of information suitable for distribution. Such a situation neither benefits the audience nor serves the interests of the stakeholders. There is an institution philosophy that feels censorship would have a detrimental effect on India's OTT business.

Traditional television broadcasting is heavily controlled, and if OTT media services are subjected to similar restrictions, they would limit the last remaining channel of free expression. Subscription numbers and, as a result, income streams for businesses will suffer instantly since

the allure of an OTT subscription is typically the ability to access certain content that is otherwise banned and restricted in regular movie and television exhibitions. However, it is argued that the public interest must outweigh consumer choice.

Undoubtedly, OTT platforms continuously deliver unique and innovative content, thanks to the creative freedom they offer. However, there's a growing need to regulate this content. While the idea of a redressal mechanism is commendable, its practical implementation seems ineffective. Creating an ideal self-regulatory mechanism is subjective and may involve multiple stages of regulation. Recently, several streaming platforms opposed the idea of adopting an institutional self-regulatory model similar to traditional media, citing the existence of various laws in the country already governing content. These laws encompass areas such as obscenity, indecent portrayal of women, or anything that might be construed as anti-national. In the ongoing proceedings regarding the JRF case, the Government has admitted its inability to regulate internet content. Instead, it proposed an institutional self-regulatory model akin to traditional media, suggesting the establishment of a Digital Content Complaint Council (DCCC) chaired by a retired judge and featuring representatives from both industry and government. However, a significant portion of video streaming platforms have declined to participate in this new body, citing concerns that it lacks full industry representation. Despite numerous rounds of discussions among industry players and with the Government, the inability to reach a consensus has raised concerns that the Government might intervene in online content regulation.

## **6. IT ACT 2021 GUIDELINES**

The information technology (intermediary guidelines) and digital media ethics code (digital media code) rules 2021 were issued by the Indian government in February 2021 to regulate social networking networks and online media. The guidelines cover all types of electronic media, including OTT (over-the-top) platforms. These rules aim to create a set of rules for OTT services in India.

In order to comply with the Rules, OTT platforms must meet certain obligations, including:

- The Rules require that OTT providers appoint a Chief Compliance Officer (CCO) who is responsible for ensuring compliance with the Guidelines. It is essential for businesses to appoint a head of compliance (CCO) if they want to establish and maintain a strong

safety program. A CCO has to oversee and manage the company's compliance initiatives and ensure that they comply with all applicable laws, regulations, and internal policies.

- The CCO may be responsible for setting and implementing safety guidelines and procedures, conducting risk assessments, monitoring compliance with legislation and rules, providing training, and advising employees on compliance-related matters.
- A CCO may also act as an intermediary between the organization and regulatory authorities, guaranteeing that the organization is compliant with all regulatory requirements. Appointing a CCO shows an organization's dedication to compliance and helps create a culture of compliance. It also helps the organization be proactive in identifying and responding to compliance risks before they escalate into serious issues.

1. Code of Ethics: The Rules of Engagement mandate that OTT platforms adhere to a code, which is a set of expectations for employees to conduct their business truthfully. This code of conduct establishes a standard of fairness, trust, and confidence among stakeholders, protects the company from legal action and negative media coverage, and ensures ethical business practices, ultimately protecting the brand.

2. Grievance Redressal Mechanism: In order to demonstrate responsible administration and effective public service productivity, the Rules of Engagement require OTT platforms to set up a complaint resolution system for content-related issues. This is an essential component of any presidency's infrastructure.

3. Compliance with Indian Laws: They mandate that OTT providers abide by all Indian regulations, including the Indian Civil Procedure and the Computer Act of 2000. India has put in place a rigorous framework to ensure that labor laws are followed to the letter. In order to accelerate the filing of returns to regulatory authorities in compliance with labor regulations, the Indian government condensed nineteen labor laws into four Wage Acts, which are currently awaiting implementation.

## **7. CHALLENGES FACED BY OTT**

- Content Overload and Regulation: The extensive amount of content available on over-

the-top (OTT) platforms, along with their instant availability, complicates the process of monitoring and enforcing rules. India currently has 43 million viewers of OTT services, with this number expected to grow to 50 million by the year 2023.

- **Concerns about Media Freedom:** The push for regulations has encountered opposition, particularly due to worries about the impact on media freedom, with critics concerned it might limit free speech and the exchange of ideas.
- **Distinctiveness from Traditional Media:** Digital content is markedly different from traditional media, exploring a wider range of themes and challenging established norms of censorship.
- **Regulating Content from Abroad:** The task of regulating content from foreign nations is complicated, raising issues related to piracy.
- **Growing Legal Issues:** Creators of online series and movies are dealing with legal disputes and requests for content to be removed, further complicating the regulatory process.

For instance, the creators of the online series *Tandav* faced legal action under the Indian Penal Code (IPC) and the Information Technology Act.

- **Combined Authority Structure:** A potential approach could involve a combined authority structure that includes self-regulation by industry players. This approach would encompass:
- **Independent Oversight Entity:** The creation of an independent oversight entity made up of industry players to handle complaints and issues related to Over-The-Top (OTT) content.
- **Approval Process:** Complaints could be reviewed by an independent panel from the oversight entity.
- **Judicial Entity:** The ultimate authority could be a judicial entity with experts from the industry and legal members, whose rulings would be final.



- **Quick Issue Resolution:** This framework is designed to ensure prompt resolution of issues related to content and lessen the workload on higher courts.
- **Fair Authority for OTT Content:** Given the current situation, there's an urgent need for a fair authority to manage content on OTT platforms.
- **Proposed Indian Telecommunication Bill, 2022:**

**Broadening OTT Communication Services:** The initial version of the Bill suggests broadening the definition of "telecommunication services" to include OTT communication services.

- **Equal Licensing Standards with TSPs:** This broadening would mean that OTT communication services could face the same licensing standards as Telecom Service Providers (TSPs).
- **Unified License for Telecom Services:** Telecom Service Providers (TSPs) are obligated to hold a Unified License for Telecom Services (UASL) to offer telecom services in India.

## **8. OTT CENSORSHIP - IS IT A NECESSITY OR NOT?**

The censorship of OTT platforms has emerged as a prominent subject of conversation recently, primarily centered concerns related to the expression of opinions within the entertainment industry. Divergent viewpoints exist regarding the necessity of censoring content before its release to viewers. While some argue for the essentiality of such censorship, others contend that it could compromise the essence of the content and raise questions about the freedom of speech and expression for those involved in its creation.

The debate about censorship of OTT platforms raises the question of whether it is necessary. Content creation has a significant impact on people's opinions, making it a complex topic to address. In *Padmanabh Shankar v. Union of India*, the court ruled that content on OTT platforms cannot be considered public exhibits and so cannot be subject to restriction. This case argues that prioritizing societal interests over individual freedom is nonsensical and should not be considered for censoring OTT material. OTT filtering safeguards service providers' rights and maintains content quality, making it a necessary measure that should not be overlooked.

In *Shreya Singhal v. Union of India*, the Supreme Court ruled that online user-generated information cannot be prohibited without direct provocation. Censorship of material has been discussed in numerous contexts, emphasizing the necessity for preventive and adaptability to changing conditions.

## **9. JUDICIAL PRECEDENTS**

Several Public Interest Litigations (referred to as 'PIL') have been brought before the Delhi High Court, urging the establishment of guidelines to oversee OTT platforms. The first instance involved a PIL filed by an NGO called Justice for Rights Foundation, asserting that unregulated and uncertified content on OTT platforms is sexually explicit, vulgar, inappropriate, religiously prohibited, and legally restricted.<sup>1</sup> This case, known as the 'JRF case,' was addressed by the Delhi Court, which acknowledged the absence of a general regulatory power over internet platforms but highlighted the relevance of provisions within the IT Act. The Court dismissed the petition, stating that if the internet platform is misused to disseminate impermissible information or material, actions outlined in the IT Act could be taken by the competent authority. The petitioners, dissatisfied with the dismissal, appealed to the Supreme Court, prompting the issuance of a notice to the Government. Despite the notice issued in May 2019, there has been no significant progress in this case, indicating a lack of judicial consensus regarding the status of streaming platforms as OTT service providers.

In *Life Insurance Corporation of India v. Prof. Manubhai D Shah*<sup>2</sup>, the parties contended that halting the documentary broadcast will violate the freedom of the creators as they have the right to express their views and opinions. When the significance of regulation is mentioned, it is important to categorize the contents in a reasonable manner where movies and other contents can be classified based on age where parental locks are present to avoid children from accessing the content which is unsuitable for them. UK and Australia have joined hands with Netflix to ensure such regulation in the contents without affecting the freedom of speech and expression of the creators. In this digital era, it can be seen that an effective regulatory body that is unbiased is required as the online contents cannot be managed properly with a self-regulatory body.

In case of *Divya v. Union of India*<sup>3</sup>, In the present case petition was filed against certain web

---

<sup>1</sup> Justice for Rights Foundation v. Union of India, 2019 SCC Online Del 10962.

<sup>2</sup> Life Insurance Corporation of India v. Prof. Manubhai D Shah, (1992) 3 SCC 637: AIR 1993 SC 171

<sup>3</sup> Divya v. Union of India PIL No 127 of 2018 (Bom) (Pending)

series having highly vulgar language and sexually inappropriate scenes, depicting women in bad light and further violating women's right to lead a dignified life under Article 21 of the Indian Constitution. The Bombay High Court has issued directions to the Information and Broadcasting Ministry to initiate effective steps to curb nudity and for setting up a pre-screening body for curbing crudity, sexual or unsavory language, vulgar actions, nudity, sex and immodesty on web series. In this case, a petition was filed against the depiction of women in an objectifying manner by the content available on OTT.

In the case of *Nikhil Bhalla vs. Union of India*<sup>4</sup>, a petition was filed against Netflix and Phantom, alleging that derogatory language has been used against former Prime Minister Rajiv Gandhi and demanded the exclusion of two 'offensive' scenes, and three 'objectionable remarks' (including subtitles) against the former Prime Minister and his family. The Petition further stated that the show incorrectly depicts historical events of the country which include the Bofors case, case of Shah Bano, Babri Masjid case and communal riots. The Delhi High Court dismissed the petition, citing the existing provisions under the IT Act, 2000, and the Constitution of India. The court held that actors could not be held accountable for enacting their characters and that a person was entitled to express their views, which might be right or wrong. The Centre defended the Constitution and IT Act, stating that freedom of thought and expression is paramount.

## **10. CONCLUSION**

In India, the regulatory landscape overseeing online video platforms is undergoing development. While the IT Act of 2000 and the Regulation of Cable TV Networks Act of 1995 serve as the primary legal foundation for regulating online streaming services, recent legislation has brought necessary transparency and accountability to the internet media sector. Striking a balance between overseeing Over-The-Top (OTT) platforms and upholding freedom of speech is crucial for the Indian government. To address stakeholder concerns and prevent infringement on fundamental rights, a revision of the Rules is essential. Additionally, there is a requirement for increased clarity and specificity in the Rules to prevent potential ambiguity and misuse by the government. The legal framework for governing OTT platforms in India is still in its early stages, and as the use of these platforms continues to grow, it is imperative for the government

---

<sup>4</sup> *Nikhil Bhalla vs. Union of India*, W.P.(C) 7123/2018 & CM APPL. 27132/2018

to consistently update and refine the legal framework to ensure its relevance and effectiveness in regulating the digital media space.