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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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THE ONE WE TALK ABOUT OTTS

AUTHORED BY – ATHUL A K

The One where we do The Introduction

More than a decade passed since the OTTs entered the Indian markets, it revolutionized the way we watch content. It steamrolled the traditional cable channels, which we relied on for much of this 21st century. With the advent of OTTs, what we wanted was right at our fingertips. Never before did humans have this much amount of information at their command. As it is with everything in life - every rose has its thorn. Its thorn would create potential damage to the delicate fabrics of social life. This article explores the delicate balance the government strives to maintain, by taming the thorns without diminishing the rose's beauty.

The one where OTTs take Center Stage

Before the advent of OTTs, people generally relied on traditional broadcast or cable services, to get to their favorite movies or programs. All these hassles were reduced by the OTTs, by offering this streaming media directly to the users. This coupled with the access to multiple quality content at the fingertips of the users made a myriad of users switch from traditional services to OTTs.

Additionally, the growing use of smartphones and tablets, personal computers, and smart TVs are also a few reasons that the Indian audience swayed massively towards OTT consumption. Furthermore, social media to digital media platform overnight became a buzz for entertainment, as consumers would like to discuss enthusiastically what is served by OTT players on regular basis. In fact there are number of advantages of OTT platform over the other mediums such as control over the content, add free content, direct to consumer with diverse content and consumer freedom etc. Therefore, the accessibility of OTT content is very popular gradually because of the above reasons.¹

The COVID pandemic added further impetus to this rise in the usage of OTTs. According to a

¹ Biranchi Narayan P. Panda, et al.,(2021) 'Binge watching to binge serving in India: Revolution, regulations and restrictions of over-the-top (OTT) platforms', *Rupkatha Journal on Interdisciplinary Studies in Humanities*, 13(4), pp. 1-15. doi:10.21659/rupkatha.v13n4.14.

survey by mobile marketing platform InMobi, 46% of viewers are watching more content online. Another consumer survey conducted by Hammerkopf has found that OTT consumption primetime has moved to 7 pm onwards, as opposed to 10 pm-12 am before.²

According to the Ormax OTT Audience Report(2024), India has 547 million OTT users and 99.6 million active paid subscription users.³

The growing user base of OTTs brought with it an array of challenges. When the lid of OTTs was finally lifted, a swarm of issues emerged, with the most troubling of them being that of disinformation. According to the World Economic Forum, misinformation and disinformation pose the greatest threat to India, according to its Global Risk Report.⁴

The One with Disinformation

The rise of OTTs coincided with the rise of Artificial Intelligence. During election phases in various countries, deep fakes have been used to spread disinformation. The minimal regulation of OTT services makes them a primary target for disinformation. The COVID pandemic saw a foray into disinformation pertaining to the virus, the methods of treatment, and various other topics, that compromised public health. The horrific violence that occurred in Manipur, and the further spreading of disinformation which added further fuel to the fire and exacerbated the peace efforts were another example in which disinformation led to the breach of public peace. Justice Viswanathan (Judge, Supreme Court of India), said regarding disinformation, in one of his speeches. He said that, “ *How do you check this with the media explosion? On one hand you have guaranteed free speech and it is completely non-negotiable right subject to reasonable restrictions...deliberate disinformation has serious impact on rule of law.* ”⁵⁶

Furthermore, alternative media found its stage on various OTT platforms, where the careful distortion of truth and the blurring of facts have woven a web of confusion, making it nearly impossible for the average person to distinguish between truth and misinformation.. The media

² <https://www.financialexpress.com/business/brandwagon-how-is-coronavirus-impacting-the-streamingplatforms-with-an-increasing-appetite-of-viewers-1919916/>

³ <https://www.livemint.com/industry/ott-active-paid-subscriptions-avod-svod-11724226880222.html>

⁴ Standard, B. (2024) *Fake news biggest immediate risk, extreme weather top long-term threat: WEF, Business Standard*. Available at: https://www.business-standard.com/india-news/fake-news-biggest-immediate-risk-extreme-weather-top-long-term-threat-wef-124011000538_1.html (Accessed: 04 September 2024).

⁵ (2021) *Brief information note on India's Information Technology* (... Available at: <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/jun/doc202162411.pdf> (Accessed: 04 September 2024).

⁶ 997 (8) SCC 386

trials in these forums have resulted in undermining judicial independence, which is quintessential of the Rule of Law. These alt-media trials are conducted in blatant disregard to judicial precedents set by various cases. In the State of Maharashtra vs. Rajendra Jawanmal Gandhi⁶, the Supreme Court observed:

“There is a procedure established by the law governing the conduct of trial of a person accused of an offense. A trial by press, electronic media, or public agitation is very antithesis of the rule of law. It can well lead to a miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. If he finds the person guilty of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law.”

In the case of Y.V. Hanumantha Rao v. K.R. Pattabhiram and Anr⁷, wherein it was observed by the learned judge of Andhra Pradesh HC, that: “ When litigation is pending before a Court, no one shall comment on it in such a way there is a real and substantial danger of prejudice to the trial of the action, as for instance by influence on the Judge, the witnesses, or by prejudicing mankind in general against a party to the cause. Even if the person making the comment honestly believes it to be true, still it is a contempt of Court if he prejudices the truth before it is ascertained in the proceedings ”

To deal with this intricate array of problems posed by the OTTs, various governments around the world have brought in certain regulations to fetter these OTTs.

The One where Govt makes Rules

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 was the first serious attempt by the Union Government to foray into realms of OTTs. Further, IT Amendment Rules, 2023, propose to have a fact-checking unit, in order to curb the menace of disinformation.

Self-Classification of Content: The OTT platforms, called as the publishers of online curated content in the Rules, should self-classify the content into five age-based categories U (Universal), IJ/A 7+, U/A 13+, IJ/A 16+, and A (Adult) and required to implement parental locks for content classified as U/A 13+ or higher, and reliable age verification mechanisms for content classified as "A"⁸.

⁷ AIR1975 AP 30

⁸ (2021) *Brief information note on India's Information Technology* (... Available at: <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/jun/doc202162411.pdf> (Accessed: 04 September 2024)).

Moreover, the publishers of news on digital media would be required to observe the Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television Networks Regulation Act thereby providing a level playing field between the offline (Print, TV) and digital media. A three-level grievance redressal mechanism has been established under the rules with different levels of self-regulation. Such as self-regulation by the publisher, Self-regulation by the self-regulating bodies of the publisher, and the oversight mechanism⁹.

The recently withdrawn draft Broadcasting Services (Regulation) Bill was yet another effort to weed out disinformation from the world of online content creators. This Bill specifically targeted the alternative media that had surged in recent years. Notably, it was within this Bill that the term OTT was defined for the very first time.

The One where OTT crosses the line

A recent controversy surrounding a web series depicting the infamous Kadhahar Hijacking again brought forth the need for the government to have oversight over the OTTs and their contents. In this instance, the real names of the perpetrators of this Hijacking were concealed, and only the code names used during this particular terrorist operation were revealed. This choice sparked widespread public outrage, as many felt it deeply offended their religious sentiments. Following the controversy OTT platform Netflix India announced that it has updated the series' opening disclaimer to include both the real and code names of the hijackers.¹⁰

A notable example of government action occurred in January 2021 with the web series "Tandav", which faced severe criticism for allegedly mocking Hindu deities. The series, which featured a star-studded cast, including Saif Ali Khan and Dimple Kapadia, had to edit two controversial scenes following multiple complaints and an FIR lodged in Lucknow. The creators of "Tandav" also issued an unconditional apology, and officials of the streaming platform, Amazon Prime Video, were summoned by the I&B Ministry on January 18, 2021.¹¹

⁹ (2021) *Brief information note on India's Information Technology* (... Available at: <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/jun/doc202162411.pdf> (Accessed: 04 September 2024).

¹⁰ *Netflix India changes 'IC-814: The Kandahar Hijack' disclaimer amid controversy* (2024) *Hindustan Times*. Available at: <https://www.hindustantimes.com/india-news/netflix-updates-ic-814-the-kandahar-hijackdisclaimer-amid-controversy-101725361840421.html> (Accessed: 04 September 2024).

¹¹ *ibid*.

In another incident that happened this year, The Ministry of Information & Broadcasting (I&B) banned 18 OTT (over-the-top) platforms for publishing obscene, vulgar, and, in some cases, pornographic content. The move followed mounting concern regarding the accessibility of explicit material on digital platforms¹².

The government's firm stance on OTT platforms has compelled them to become more vigilant and proactive, carefully scrutinizing their content and filtering out anything that distorts the truth.

The One where we do Conclusion

The rise of OTT platforms in recent years has been nothing short of explosive, with a vibrant young population, more of these platforms will inevitably flood the Indian market, and with each increasing year, the need for thoughtful regulation becomes increasingly apparent. While these platforms offer unprecedented creative freedom and access to diverse content, they also present certain challenges that cannot be ignored. Striking a delicate balance between creative freedom and regulatory oversight is imperative for providing diverse content for the users without compromising the truthfulness of the content and not being derogatory of societal values.

¹² *ETtech explainer: The Govt's ban on OTT platforms* (no date) *The Economic Times*. Available at: <https://economictimes.indiatimes.com/tech/technology/ettech-explainer-the-govts-ban-on-ottplatforms/articleshow/108522136.cms?from=mdr> (Accessed: 04 September 2024).