



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



learning.

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

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

THE LEGAL FRAMEWORK FOR REGULATING CONTENT ON OTT (OVER-THE-TOP) PLATFORMS: AN ANALYSIS

AUTHORED BY - DR. VIKAS POONIA

Assistant Professor

Department of Law,

Ch. Devi Lal University, Sirsa

dr.vikaspoonias0007@gmail.com

ABSTRACT

This research paper investigates the legal framework governing content on Over-The-Top (OTT) platforms in India. The introduction contextualizes the study by highlighting the growing significance of OTT platforms in India and articulating the research's purpose. Examining the evolution of OTT platforms, the paper covers their definition, characteristics, and impact on traditional media, emphasizing their growth and popularity in India. A thorough analysis of the regulatory landscape follows, delving into the Cinematograph Act, 1952, the Cable Television Networks (Regulation) Act, 1995, and the roles of regulatory bodies like the Central Board of Film Certification (CBFC), Ministry of Information and Broadcasting, and the Telecom Regulatory Authority of India (TRAI). Challenges in the digital era, including the impact of globalization on cross-border content, technological advancements in content delivery, and the delicate balance between freedom of expression and regulation, are examined. Recent developments, such as the introduction of self-regulation mechanisms, proposed amendments, and international comparisons, are explored to understand the dynamic regulatory environment. The paper critically evaluates the current framework, assessing its effectiveness, identifying potential loopholes, and gauging public reception and criticisms. It concludes with recommendations for reform, proposing measures to strengthen existing regulations, introduce new laws, and incorporate international best practices. The abstract summarizes key findings and provides insights into the future outlook for content regulation on OTT platforms in India.

Keywords: OTT Platforms, Content Regulation, Cinematograph Act, Digital Media, Cross-Border Content

I. Introduction

The rapid proliferation of Over-The-Top (OTT) platforms in India has heralded a transformative era in the media and entertainment landscape, redefining how content is produced, distributed, and consumed.¹ The convergence of high-speed internet accessibility, technological advancements, and evolving consumer preferences has catapulted OTT platforms into the forefront of the Indian media industry. Against the backdrop of a dynamic and diverse population, the significance of OTT platforms in India is multifaceted. These platforms have emerged as major sources of entertainment, information, and cultural expression, catering to a wide spectrum of audiences. Factors such as personalized content recommendations, flexible viewing schedules, and the availability of regional and international content have fueled the exponential growth of OTT platforms across urban and rural India.²

OTT platforms have left an indelible sociocultural impact on India, profoundly shaping the media preferences of an ever-evolving audience. A significant aspect of this impact lies in the diverse representation of content, which transcends cultural, linguistic, and regional boundaries. These platforms act as inclusive spaces, providing a platform for narratives that resonate with the rich tapestry of Indian society, thereby fostering cultural pride and inclusiveness. Furthermore, the promotion of regional languages and content has become a hallmark of OTT platforms, preserving and promoting linguistic diversity. This emphasis on regional storytelling contributes to a strengthening of cultural identities and allows audiences to connect more deeply with content rooted in their linguistic and regional backgrounds.

OTT platforms have also played a pivotal role in challenging and breaking societal taboos. By exploring themes that were traditionally considered sensitive or controversial, these platforms spark important conversations around societal norms. This cultural shift has led to increased social awareness and acceptance, addressing issues such as mental health, gender roles, and LGBTQ+ representation. Moreover, the personalized nature of content delivery on OTT platforms empowers individuals to curate their viewing experiences, contributing to a more individualized media landscape. This shift from traditional broadcasting to personalized content

¹ Vivek Koka, *The Shift towards Digital: A Thriving OTT Market*, THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/blogs/voices/the-shift-towards-digital-a-thriving-ott-market/> (last visited Jan 12, 2024).

² Suman Kumar, Rajendra Meena, *The Rise of OTT Platform: Changing Consumer Preferences*, 15 INTERNATIONAL JOURNAL OF MANAGEMENT 70 (2023).

consumption has enabled consumers to actively participate in shaping their media environment, marking a departure from the one-size-fits-all approach.³

Additionally, the impact of OTT platforms extends to traditional media, influencing how television networks and film industries approach content creation. In response to the on-demand and diversified offerings of OTT platforms, traditional media outlets have adapted their strategies, leading to a more dynamic and competitive media industry. In essence, the sociocultural influence of OTT platforms in India goes beyond entertainment, contributing to societal conversations, challenging traditional norms, and ushering in a new era of diverse and inclusive storytelling.

In light of the transformative impact of OTT platforms, this research paper aims to provide a nuanced analysis of the legal framework that governs content on these platforms in India. By navigating through the existing legal structures, regulatory bodies, and their functions, the study seeks to unravel the complexities inherent in balancing freedom of expression, cultural sensitivities, and regulatory imperatives. Furthermore, the paper scrutinizes the challenges posed by globalization, technological advancements, and evolving content delivery methods. Recent developments, including the introduction of self-regulation mechanisms, proposed legal amendments, and international comparisons, will be dissected to present a comprehensive overview. The ultimate objective is to offer informed recommendations for reform, fostering a regulatory environment that accommodates the dynamic nature of content consumption on OTT platforms while upholding legal and ethical standards.

II. Evolution of OTT Platforms

The evolution of Over-The-Top (OTT) platforms has redefined the landscape of content consumption. OTT refers to the delivery of audio, video, and other media content over the internet, bypassing traditional distribution channels. Characterized by on-demand accessibility, these platforms allow users to stream content at their convenience, offering a diverse range of movies, TV shows, documentaries, and original productions. The flexibility of content consumption, personalized recommendations, and the absence of a fixed broadcasting schedule distinguish OTT platforms from traditional media, marking a paradigm shift in how audiences

³ ETBrandEquity, *Are OTT Platforms Taking over Theatrical Experience?* - ET BrandEquity, ETBRANDEQUITY.COM, <https://brandequity.economicstimes.indiatimes.com/news/media/are-ott-platforms-taking-over-theatrical-experience/73887372> (last visited Jan 12, 2024).

engage with entertainment.⁴

The growth and popularity of OTT platforms in India have been nothing short of exponential. Fueled by increasing internet penetration, affordability of data, and the widespread use of smartphones, these platforms have become integral to the daily lives of millions. The convenience of accessing a vast library of content in multiple languages, genres, and formats has resonated with diverse audiences across urban and rural India. Original productions by OTT platforms have garnered widespread acclaim, further contributing to their popularity.⁵

The meteoric rise of Over-The-Top (OTT) platforms in India can be attributed to a complex interplay of factors that collectively underscore their cultural significance. A pivotal catalyst in this surge has been the widespread availability of affordable high-speed internet and data plans, ensuring seamless access to streaming services across diverse demographics. The ubiquity of smartphones has further fueled this growth, providing a convenient and portable means for users to engage with content. Notably, OTT platforms have responded to the diverse cultural landscape of India by offering a plethora of content in various languages, genres, and formats, catering to the unique preferences of a vast and varied audience.

Original productions and exclusive content have become a hallmark of OTT platforms, with high-quality storytelling and diverse narratives contributing not only to subscriber acquisition but also shaping cultural conversations and influencing popular culture.⁶ The flexibility afforded by OTT platforms in terms of viewing patterns has revolutionized content consumption, allowing users to dictate when and how they engage with media, a departure from the fixed schedules of traditional media. The platforms' emphasis on regional languages and content has addressed linguistic diversity, fostering a deeper connection with regional cultures.

Youth engagement, propelled by a tech-savvy demographic, and the ongoing trend of urbanization have further entrenched the role of OTT platforms as the primary source of

⁴ Tausif Mulla, *Assessing the Factors Influencing the Adoption of Over-the-Top Streaming Platforms: A Literature Review from 2007 to 2021*, 69 *TELEMATICS AND INFORMATICS* 101797 (2022), <https://www.sciencedirect.com/science/article/pii/S0736585322000302> (last visited Jan 12, 2024).

⁵ BHARAT DHIMAN, *DIVERSITY OF INDIAN REGIONAL CONTENT ON OTT PLATFORMS: A CRITICAL REVIEW* (2023).

⁶ Viveck Vaswani, *How Inclusion And Diversity Are Redefining The Art Of Storytelling Through OTT Platforms*, GUS GLOBAL SERVICES, <https://www.gusindia.global/media/how-inclusion-and-diversity-are-redefining-the-art-of-storytelling-through-ott-platforms> (last visited Jan 12, 2024).

entertainment, particularly among the younger population. Moreover, the global reach of OTT platforms facilitates cultural exchange, enabling Indian content to reach international audiences and vice versa, thereby contributing to cross-cultural understanding. In essence, the growth of OTT platforms in India is a dynamic phenomenon, shaped by technological advancements, evolving consumer preferences, and a commitment to providing a diverse and engaging array of content. Beyond entertainment, these platforms have become instrumental in shaping societal conversations and influencing the cultural fabric of India's media landscape.⁷

The ascent of OTT platforms has significantly impacted traditional media, challenging established norms and business models. Television networks and cinema, once dominant players, now find themselves adapting to the changing landscape shaped by OTT platforms. The ability of users to tailor their content consumption, the shift towards binge-watching, and the emergence of exclusive, high-quality productions on OTT platforms have compelled traditional media to innovate. This section delves into the transformative effect of OTT platforms on traditional media, examining how the competition has led to an elevation in content quality and a reevaluation of distribution strategies.

III. Regulatory Landscape

The regulatory landscape governing Over-The-Top (OTT) platforms in India is characterized by a combination of existing legal frameworks and regulatory bodies. These mechanisms are designed to oversee and regulate the content disseminated through digital platforms.

“The Cinematograph Act of 1952⁸,” a seminal legislation in the Indian film industry, has evolved to encompass digital content, including that of OTT platforms. The act empowers the Central Board of Film Certification (CBFC) to classify and certify films and digital content for public exhibition. While primarily designed for traditional cinema, its adaptation to the digital sphere underscores its foundational role in regulating content for broader audience consumption.

Enacted to regulate cable television services, “the Cable Television Networks (Regulation) Act of 1995⁹” has become relevant to the digital realm, particularly for OTT platforms. This

⁷ Mulla, *supra* note 4.

⁸ The Cinematograph Act, 1952, No. 37, Acts of Parliament, 1952 (India).

⁹ The Cable Television Networks (Regulation) Act, 1995, No. 7, Acts of Parliament, 1995 (India).

legislation ensures that content transmitted through cable networks adheres to specific standards, playing a role in shaping content regulations and norms in the evolving landscape of digital media.

Operating under the aegis of the Ministry of Information and Broadcasting, the CBFC¹⁰ is a crucial regulatory body responsible for certifying films and digital content. As the digital content landscape expands, the CBFC's role has adapted to include the certification of content on OTT platforms. It determines classifications and ensures compliance with established guidelines, contributing significantly to the regulatory framework in the digital space.

While not a regulatory body in itself, the Ministry of Information and Broadcasting holds a central position in formulating policies related to media and entertainment. It collaborates with regulatory bodies, influences policy decisions, and shapes the overall direction of content regulation in the digital domain. The ministry's role is crucial in ensuring that regulations align with broader government policies and societal expectations.

TRAI, established to regulate the telecommunications and broadcasting sectors, plays a crucial role in shaping the regulatory landscape. While its primary focus is on telecommunications, TRAI's recommendations and interventions extend to broadcasting services. In the context of OTT platforms, TRAI's involvement may influence regulatory decisions related to issues such as tariffs, quality of service, and industry practices.¹¹

The intricate interplay between these legal frameworks and regulatory bodies reflects the dynamic nature of content regulation for OTT platforms in India. The ongoing evolution of these frameworks is a response to the shifting dynamics of the digital media landscape, where OTT platforms have emerged as major content providers, requiring adaptive and nuanced regulatory oversight.

¹⁰ CBFC | About Us, CENTRAL BOARD OF FILM CERTIFICATION, <https://cbfcindia.gov.in/cbfcAdmin/about.php> (last visited Jan 12, 2024).

¹¹ Regulation of OTT Platforms, ENSURE IAS, <https://ensureias.com> (last visited Jan 12, 2024).

IV. Challenges in the Digital Era

The digital era has ushered in a multitude of challenges for the regulation of content on Over-The-Top (OTT) platforms in India. These challenges reflect the dynamic nature of the digital landscape, presenting complexities that traditional regulatory frameworks may struggle to address adequately.

A. Globalization and Cross-Border Content:

In the digital era, one of the foremost challenges confronting the regulation of content on Over-The-Top (OTT) platforms in India is the surge in globalization and the seamless flow of cross-border content. With the ability of OTT platforms to offer a vast array of international content, the challenge lies in harmonizing regulatory frameworks to address cultural sensitivities, uphold national values, and ensure compliance with local regulations. Striking a balance between promoting diverse content and safeguarding cultural integrity poses a significant challenge as content transcends geographical boundaries, requiring nuanced approaches to regulation.¹²

B. Technological Advancements and Content Delivery:

The rapid pace of technological advancements in content creation, distribution, and consumption presents a multifaceted challenge for content regulation. Innovations such as virtual reality, augmented reality, and artificial intelligence have reshaped the landscape, introducing novel content formats and interactive experiences. Regulators must grapple with staying abreast of these technological shifts to effectively address potential ethical concerns, misinformation, and the impact of emerging content delivery methods. The challenge lies in devising adaptive regulatory frameworks capable of responding to the evolving technological landscape while safeguarding public interests and ethical standards.¹³

C. Balancing Freedom of Expression and Regulation:

A critical challenge in the digital era is striking a delicate balance between preserving freedom of expression and implementing necessary regulations. The vast and diverse nature of content available on OTT platforms demands a nuanced approach that upholds democratic values while

¹² Divya Dixit, *Is Global OTT Content on Decline with Rise of Regional Content*, DECCAN CHRONICLE, <https://www.deccanchronicle.com/entertainment/ott/120923/is-global-ott-content-on-decline-with-rise-of-regional-content.html> (last visited Jan 12, 2024).

¹³ Divya Samriti & Priyank Sharma, *OTT- Existing Censorship Laws and Recommendations*, (2020), <https://papers.ssrn.com/abstract=3735027> (last visited Jan 12, 2024).

addressing concerns related to hate speech, misinformation, and potential societal harm. As digital platforms become primary avenues for public discourse, the challenge is to establish frameworks that foster creativity, diversity of thought, and expression, while concurrently mitigating the risks associated with unbridled content dissemination.¹⁴

V. Critique of the Current Framework

The existing regulatory framework governing content on Over-The-Top (OTT) platforms in India has been a subject of scrutiny, prompting a critical evaluation of its strengths and weaknesses.

A. Effectiveness of Current Regulations:

The effectiveness of the current regulations, anchored in legislations such as the Cinematograph Act and the Cable Television Networks (Regulation) Act, is a point of contention. While these regulations were initially designed for traditional media, their adaptation to the digital realm, particularly OTT platforms, raises questions about their efficacy. The evolving nature of content consumption, the diversity of content formats, and the challenges posed by globalized content distribution underscore the need for a more dynamic regulatory approach. The extent to which the current regulations can keep pace with the rapidly changing digital landscape and effectively govern content on OTT platforms remains a central concern.

B. Identification of Loopholes:

The regulatory framework is not without its loopholes. Emerging challenges such as jurisdictional ambiguities, the absence of specific guidelines for new content formats, and potential gaps in cross-border content regulation need attention. Loopholes in the current framework may impede its ability to comprehensively address issues related to content moderation, user protection, and ethical considerations.

C. Public Reception and Criticisms:

Public reception and criticisms play a pivotal role in evaluating the impact of current regulations. While there is recognition of the need for content regulation to maintain societal standards,

¹⁴ V. B. Archana 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.*, LEGAL RESEARCH & ANALYSIS (2023), <https://legalresearchandanalysis.com/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/> (last visited Jan 12, 2024).

concerns have been raised about potential censorship, stifling of creative expression, and the subjective nature of content classification. The public's expectations regarding transparency, inclusivity, and responsiveness in the regulatory process are essential considerations.

In summary, the critique of the current regulatory framework for OTT platforms in India revolves around its adaptability to the digital landscape, identification of loopholes that may hinder effective governance, and an understanding of public sentiments and criticisms. The evolving nature of the digital content ecosystem necessitates a continuous evaluation and refinement of regulations to ensure they remain effective, fair, and aligned with the expectations of both the industry and the public.

VI. Conclusion

In summary, the analysis of the legal framework for regulating content on Over-The-Top (OTT) platforms in India has revealed both strengths and challenges. The existing regulations, primarily rooted in the Cinematograph Act and the Cable Television Networks (Regulation) Act, provide a foundational structure but raise concerns about their adaptability to the rapidly evolving digital landscape. The critique has highlighted potential loopholes in addressing emerging challenges such as cross-border content, technological advancements, and the delicate balance between freedom of expression and regulation. The effectiveness of the current framework is contingent upon its ability to evolve alongside the dynamic nature of content consumption on OTT platforms.

Looking ahead, the future outlook for content regulation on OTT platforms in India necessitates a proactive and adaptive approach. Recommendations for reform should consider strengthening existing regulations to address emerging challenges, introducing new laws where needed, and drawing insights from international best practices. Balancing freedom of expression with regulatory imperatives will require continuous dialogue between regulatory bodies, content creators, and the public. As technological advancements continue to reshape content creation and delivery, the regulatory framework must remain agile, incorporating safeguards against potential pitfalls such as misinformation and data privacy concerns.

Moreover, fostering collaboration between regulatory bodies, the industry, and other stakeholders will be crucial for developing a regulatory environment that not only protects public interests but also supports the growth and innovation of the digital content ecosystem. The future of content

regulation on OTT platforms in India lies in a harmonious balance between regulatory control and the promotion of creative expression, diversity, and responsible content consumption.

In conclusion, addressing the identified challenges, building upon the strengths of the current framework, and anticipating future trends will be essential for shaping a regulatory landscape that facilitates the responsible and ethical growth of OTT platforms in India's dynamic media environment.

