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EFFECTS OF OTT PLATFORM IN INDIAN SOCIETY & STEPS TAKEN TO REGULATE IT.

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ABSTRACT

This article focused at how OTT platforms have developed into a haven for content producers in the modern day. Additionally, the necessity of regulating OTT platforms was considered.

Using the data gathered from past research on the topic and online platform research. Employing the studies' results, conclusions, and data regarding Indian viewers. It was discovered that there isn't an ideal body to examine the contents and provide directives. Because of this, the content creators started creating their own stuff. The viewers' top desire is for these OTT sites to be regulated.

Some platforms only offer adult content without considering the viewership or target market.

INTRODUCTION-

OTT, Over Top Platform, is one of the widely used platforms that is being used currently for entertainment. The concept of OTT is not limited to Films, Web series, but gaming, Online News platforms, online libraries, and online music subscriptions. The OTT has been there in India, but its emergence or we can say that importance came into the picture during the period of Covid-19. During the Pandemic when the world was going through a crescent phase, many film producers & producers of online content were releasing their content through online platforms. It can be said as a blessing in

disguise, as a new form of entertainment that was cheaply available & was within the reach of the people. It was an alternate entertainment platform as many films, web series released their content on it.

During the pandemic, when the world is going through unexpected & uncertain lockdown, it acts as a boon not only for content creators but also for the viewers who could easily access the content in comfortable indoor settings

OTT platforms not only became a user-friendly source of new content but a cheap & one of the most widely acclaimed sources for old & new stuff.



1. HISTORY & GROWTH OF OTT PLATFORMS IN INDIA

The OTT platform came into existence in the year 2008 when the first OTT Platform Big fix was launched in the year 2008 & slowly moving further there were other platforms such as Ditto TV (zee) & Sony Live that were launched in the year 2013 If we look at the period of 2015-20 many OTT platforms were launched & had significance not only in India but also globally. There was stiff competition among various widely used OTT such as Amazon, Prime, Disney Hotstars, etc.

But the actual picture came into the scene during the period of Covid19 when many contents were released on this platform. There has been audiovisual technology all over the world. If we take the case of India there has been an increase in subscribers of OTT platforms by 30 %. Now India has the highest number of internet subscribers, the second after India. There is no doubt that there is a lot of internet-based content in India, but actual problem is that they are highly unregulated If we talk about traditional media such as News media, it is regulated by the Press Council of India, in the case of films it is the Censor Board, but when it comes to OTT platforms it is unregulated or self-regulated,

many OTT platforms claim that they are on-demand services so that they fall under the purview of private exhibition & exempted from IT Act.

As in Cinematographic Act 1952 which regulates the content to be used in movies or in the Cable television Act 1995 which basically investigates advertisements but no such action is applicable to OTT. If OTT is self-regulatory then there should be a provision of prohibited contents like obscene acts, vulgar language hurting religious sentiments, disrespect to the National flag or emblem & is an also seen a wrong message or information being shared about a particular place or source, which generally denigrates a particular thing or throws a wrong picture or idea of a particular thing.

2. CONTROVERSIES RELATED TO OTT PLATFORMS IN INDIA

There were a lot of controversies created through the medium of OTT Platforms and especially in the countries like India, where OTT platforms come into the picture then it will be followed by controversies. India has a lot of subscribers to OTT Platforms all over the world. Indians are more sensitive to some kind of content. India is a country where religious beliefs, patriotism, and sentiments are enshrined.

But in the past few years, there were a lot of web series and dramas which created controversies and conflicts in India. When "PK" with Amir Khan came out "When it was finally released, there was a lot of uproar and fear of violence. People believed that the movie mocked the Hindu gods. But the government provided cinemas showing the movie with police protection as a sign of tolerance and freedom of expression in a democratic system. Even those who objected to the material came to the theatres to see it, turning the movie into a smash hit! It happened in 2014. The degree of tolerance has changed.¹

"Gunjan Saxena: The Kargil Girl" was the first over-the-top movie to infuriate both members of the general public and the Indian Air Force. It was claimed that the content was false, had misrepresented the truth, and was disparaging of the Air Force. Unlike similar scandals, this one did not spread

¹ NEWS 18, <https://www.news18.com/news/movies/from-gunjan-saxena-to-tandav-a-look-at-ott-controversies-that-created-a-stir-3607235.html> (last visited Dec.1, 2022).

beyond TV debates or increase interest in the movie. After that in the year 2021, the “TANDAV” web series was introduced on the Amazon Prime Platform. The creators of "Tandav" were charged with disparaging both the Indian Prime Minister and Hindu deities. The problem was discussed at the ministerial level in addition to being the subject of a police FIR. The I&B ministry requested an explanation from the Amazon team. Apologies were requested and given. The scenes that offended people's feelings were taken out. There was also a web series of Ekta Kapoor in which she disrespects the Indian Army Uniform and later on the F.I.R was lodged by Vikas Pathak (Hindustani Bhau).

Later on, The Uttar Pradesh state is said to be portrayed negatively in the Mirzapur television series. According to a number of petitions, the series harms and degrades a Hindu holy site's culture and history. Conflicting views on the message had caused several factions to assault one another violently. The debate has now reached India's Supreme Court, and the creators of the series are compelled to participate in the proceedings.²

3. NEED FOR A OTT CONTENT REGULATION

OTT platform being an accessible & lucrative platform for both viewers & producers is mostly seen the content being highly unregulated as a result of which there is a high rate of the depiction of violence, sex & vulgar language which seems to affect society at large In order to ensure artistic freedom which is embedded & envisaged as a constitutional idea under Article 19(1)(a) the Government has proposed self-regulation & said that OTT entities should get together & evolve a mechanism to regulate the content. The OTT content producers should get together to develop guidelines & develop a mechanism to categorize different kinds of content. They can make a classification to categorize the content into an adult, Non-adult & also devise ways so that unwanted content is kept away There should be an inter-country analysis for regulating the content to ensure the classification & apart from that, there should be a detailed list of prohibited contents that should flout the norms that result in the withdrawal of content by the agency & imposition of penalties. The inter-country analysis is important from point of view of healthier relationships & regarding the implementation & strict adherence to the rules One more thing which arises is whether existing laws would be applicable in the digital arena of OTT as well, can it be feasible or a copy of existing rules are enough to save time & money? The answer to this could be a separate & different set of rules is

² "Ibid".

required to regulate this platform as a traditional set of regulatory rules won't be enough to regulate these platforms. The reason is the critical infrastructure & stiff competition among various OTT platforms. The reason is the critical infrastructure & stiff competition among various OTT platforms. The rising demand for High-Speed internet could severely threaten basic human rights including the freedom of speech & expression & traditional telecommunication services cannot surmount the pressure which is created by being inherently global in nature There is a broad guideline to regulate the intermediaries & Digital Media Ethics code 2021 under section 79(2) section 69A" section 87(1) 87(2) of the Information Technology Act 2000. The new act was unveiled under the information technology act (IT Act), 2000 at a press conference by information technology minister Ravi Shankar Prasad & Information & Broadcasting Minister Prakash Javedkar. There is a new three-tier grievance redressal framework. One at the OTT service provider level shall be resolved within fifteen days. If Complainant feels that the complaint is not sufficiently addressed the complainant can address it to the self-regulatory body headed by a retired judge of the Supreme court, High court, or any eminent person from Media, Broadcasting, Entertainment, Child rights, or Human rights or any relevant field. The self-regulatory mechanism in the final stage should take up the step of censoring the content in event of incriminating content. it should have the power to delete or modify the content for preventing any incitement regarding any cognizable offense, Over & the Government should have overriding powers with regulatory bodies to take action in case of emergency if it finds it necessary to block any information. The OTT platforms is required to classify content into the age group of U/A7, U/A13, U/A16, & A(Adult) so on & reliable age-related verification for content & age.

4. ROLE PLAYED BY JUDICIARY

The courts have generally resisted attempts by a variety of people and groups to use the legal system to impose regulation and a regulatory code for the OTT business in the lack of any specific rules, laws, or codes being developed.

Further, we can see that in the case of Nikhil Bhalla v. Union of India & Ors., which was heard by the Delhi High Court in the year 2018, was one of the early petitions calling for court intervention about OTT platforms. This lawsuit included the censorship of specific words and sequences from the Netflix series Sacred Games. The Court in this case adopted a liberal and expansive stance and denied the petition, stating that it does not wish to restrict anyone's rights.

One of the few prominent occasions where the government opposed censorship occurred in the case of Justice for Rights Foundation v. Union of India. The Delhi High Court also rejected the second petition that sought to restrict a web series for referring to lawyers as "thieves" in one episode.³

In addition, it is clear that numerous other high courts, like the Calcutta High Court and the Allahabad High Court, have rejected numerous petitions calling for the control or restriction of content on OTT platforms. Additionally, a split bench of the Karnataka High Court disregarded the Cinematograph Act, 1952's application to media found on OTT platforms.

5. INTERNATIONAL PERSPECTIVES OF OTT REGULATIONS

The global media and entertainment market is constantly expanding, and this expansion has been made possible by the recent trend of online media consumption. Today, a wide variety of online media platforms, also known as OTT platforms (OTT/OTT platforms), provide selected video content that is catered to the preferences and needs of each user. In India, the OTT business is less regulated than its offline competitors, such as television and movies. One of the key reasons why OTT platforms are well-liked by contemporary audiences, along with the ease of access to them anytime, anywhere, is the creative flexibility it gives content creators, enabling OTT platforms to cater to a wider audience. Some individuals believe that not everyone who can access it or who finds it problematic for other reasons will find the stuff that is available online to be appropriate. Due to this, the OTT business now needs regulation of some kind. As a result of a rise in legal disputes and police complaints over offensive content, India has begun to investigate various options for censoring content on OTT platforms. It is important to take into account how other countries control OTT material as India develops its own strategy.

UNITED KINGDOM

We can see that one of the most well-known media outlets in the UK is the BBC calling on the UK government not to regulate these OTT platforms Besides, the British Film Certification Board also

³ Aradhaya Singh, *Regulation Code for OTT content*, LEGAL SERVICE INDIA (Nov 29, 2022, 5:03 PM), <https://www.legalserviceindia.com/legal/article-8260-regulation-code-for-ott-content.html>

released an announcement, clearly mentioning that it will cooperate with Netflix. Since there is no direct regulation for these OTT platforms, as part of this partnership, the commission will help Netflix establish its own ratings for all content available on its platform.

Moreover, until today, there were no strict regulations governing these OTT platforms. The UK government is also said to be working on the rules.

SINGAPORE:

Next, let's talk about Singapore, the regulator called IMDA or we can fully say Infocomm Media Development Authority released the code to regulate this OTT platform. Content curation is quite simple.

Additionally, in Singapore, OTT platforms are now required to rate content on their platforms according to guidelines issued by the government, and they must also rate movies like offline movies. Specific guidelines have been mentioned in this code for content intended for an audience over 16, or we can say that 21 is the appropriate age. Also, platforms must ensure that they provide parental lock functionality, where appropriate, to content over 16 and that there must also be procedures in place to open such content after verified age of content which is 21+. The regulator also ensures that these OTT platforms are notified and that the codes prescribed to them are prohibited. In addition, according to the new guidelines, they must comply with the laws in force in Singapore.

Australia, Turkey, Indonesia, Kenya, and Saudi Arabia are a few other countries that directly regulate OTT platforms or have other laws to regulate OTT platforms and their content.”

INDIA

Regulation of online content in India is governed by the recently enacted Information Technology (Guidelines for Intermediaries and Code of Conduct in Digital Media) Rules 2021, which interprets the Information Technology Act 2000's information. Pursuant to Section 3(1)(b) of the 2021 Rules of the Act, online service providers are not permitted to provide content such as content that violates the national security of India or causes public disorder as defined in previous laws. If an online platform hosts such content, it loses its liability protections and could face criminal and civil lawsuits for offensive content.

Many of these platforms can be shown to have signed a self-regulatory code. IAMAI, or the Internet and Mobile Association of India, published a document with the working title "The Code of Best Practices for Online Curated Content Providers." Working toward an open disclosure framework is the sole and primary goal of this code.

6. LAWS USED TO REGULATE ONLINE CONTENT

BEFORE:

As you can see, there are no specific laws and ordinances governing content available online on OTT platforms, but the Constitution of India has different sections and different provisions of various laws governing content available online on OTT platforms.

Some of them are as follows:

(19)[1](3) The Constitution of India clearly states that liberties may be taken away by imposing various reasonable restrictions. This is the case if the content is contrary to national welfare, disturbs public order, or commits a crime against international relations.

2nd In addition, there is also the Indian Penal Code (IPC), as mentioned in (section 293) [5], designed to punish those who condone or are caught selling or distributing obscene literary works. Next comes the intent to arouse religious sentiments, deliberately and maliciously, as described in Section 295 A[6]. Slander under IPC Article 499[7] and posting content that insults the modesty of women under IPC Article 354(8).

3. Third, speaking of the various laws dealing with this subject, we have: The law emphasizes efforts to completely ban obscene depictions of women in advertisements, books, films, paintings, etc. It is a crime to sell child pornography and distribute child pornography.

5. There are also provisions such as Sections 67A, 67B, and 67C of the Information Technology (IT) Act, 2000, which specifically mention and provide for penalties and imprisonment for persons who transmit or publish obscene material. Depicting a child engaged in sexual activity

6. Also, on the other hand, the Central Government is also provided with the power to issue directives

7. LATEST UPDATES IN THE REGULATIONS:

It was also said that there should be public disclosure by maintaining clarification or content clarification and indicating the maturity rating. There are three versions of the code, and the most recent version will be released in September 2020. After hearing a case about the regulation of OTT platforms, the Supreme Court of India and the federal government provided IAMAI (Internet and Mobile Association of India) with an opinion in November 2020. Following this, a circular was also released announcing that the Ministry of Information and Broadcasting would henceforth be in charge of all Online Organized Content Providers, or OCCP, including OTT platforms.

More recently, an update was announced on February 25, 2021, in which the government issued guidelines titled Information Technology (Intermediary Guidelines and Code of Ethics for Digital Media) Rules 2021, which mentioned three media regulations information systems and OTT platforms: control mechanism level.

The three main characteristics of this code are:

First, file content in a separate category with a disclaimer for content inappropriate for certain age groups Second, age-sensitive definitions and prohibited content should be given. Last but not least, third, consumers should have appropriate redress mechanisms to discuss any complaints or concerns that consumers may have regarding any content offered on these platforms

Also, these platforms should provide age ratings such as "U" or we can say "Universal Rating" as well as other age ratings for safety purposes for children.

8. LATEST STATUTORY CODES:

You can see that many of these platforms have signed self-regulatory codes. The Indian Internet and Mobile Association (IAMAI) has published a code called "Code of Best Practices for Online

⁴ Khurana & Khurana Advocates and IP Attorneys, [https://www.khuranaandkhurana.com/2022/09/28/regulations-on-ott-platforms-a-perplexity/#:~:text=There%20is%20currently%20no%20such,Ethics%20Code\)%20Rules](https://www.khuranaandkhurana.com/2022/09/28/regulations-on-ott-platforms-a-perplexity/#:~:text=There%20is%20currently%20no%20such,Ethics%20Code)%20Rules) (last visited Dec.6, 2022).

Content Providers". This code's sole objective is to provide a system of open information dissemination. It is required that the disclosure be presented together with a description or example of the content and a notation of the intended audience's maturity level. There are three different versions of the code; the most recent one was added in September 2020. After hearing a petition calling for the regulation of OTT platforms, the Supreme Court of India and the central government sent or issued a notice to IMAI in November 2020. The Ministry of Information and Broadcasting, rather than Meity, which was the previous one, would now have jurisdiction over all online curators of content, including OTT platforms, according to a notification that was released following this. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, which reference a three-tier regulating structure for digital news media and OTT platforms, were recently updated and announced by the government on February 25, 2021.

RELEVANT FEATURES OF THE CODE:

1. The content is first divided into distinct categories, along with warnings about information that is improper for particular age groups.
2. The second need is that age-sensitive content and forbidden content be defined.
3. Last but not least, a competent grievance redressal system must be offered to customers so that they can voice any issues or concerns they may have regarding any content made available on these platforms. Additionally, for the safety of the children, these platforms must include age ratings such as "U" or "Universal Classifications" in addition to other ratings by age groups.

9. THE IT (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021

Online marketplaces, search engines, social media platforms, and telecom and internet service providers are examples of intermediaries. Intermediaries are organizations that store or transport data on behalf of other people.

[1] In 2008, the Information Technology Act (IT Act) was changed to protect intermediaries from accountability for any information belonging to third parties.

[2] As a result, the IT (Intermediary Guidelines) Rules, 2011 were created under the IT Act to outline the criteria for intermediaries to meet in order to be granted this exemption.

[3] On February 25, 2021, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which would replace the 2011 Rules, were announced.

[4] For certain social media intermediaries, the 2021 Rules include additional due diligence requirements, a framework for regulating the same.



CONCLUSION

The present civilization of the Digital Era is regarded as the Information Edge. OTT platform is often criticized as a platform for spreading vulgarity, obscenity & violence but it cannot be ignored because of these irregularly offenses, rather it should be made a strong platform by putting restrictions & regulations thus making it easily accessible for all. While formulating laws for OTT we must not forget is not only a platform for entertainment. It is also a platform to access E-Libraries Songs, Online news, etc. There should be an idea floated among the general public for OTT as a platform for the Right to Free speech (Article 19 (1) of the Indian Constitution which can be used as a tool needed by everyone. At the end of the day, it could act as an effective tool for everyone to express their thoughts, willingness & creative abilities in a cost-effective way.