

REGULATORY FRAMEWORK OF OTT PLATFORMS UNDER THE INDIAN LEGAL SYSTEM

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INTRODUCTION

Over-the-top (OTT) platforms have become a refuge for content producers in today's times, and this was particularly true during the epidemic when many online creative artists chose to push their material to run on these OTTs and received an enormous reaction. OTTs are internet-based streaming services that provide users access to audio and video material stored on their platform. They used to exclusively broadcast material that had already been shown in cinemas after buying the rights from the distributor. Still, recently they've started making their own, such as feature films and documentaries, as well as web series and other things. Around March to July 2020, the figure of paid OTT customers in this country grew by 30%, from 22.2 million to 29.0 million. Netflix had been considered a stranglehold on the OTT industry until Amazon Prime Video, Amazon's OTT service, entered the fray. There are several local rivals in this country, including Amazon Prime Video, Disney+ Hotstar, Netflix, and international players like Alt Balaji, Voot, and Sony Liv. These platforms, it might be argued, often get themselves in legal problems as they tend to self-inspect the material hosted. A new modification to the Government of India (Allocation of Business) Rules, 1961, states that the Ministry of Information and Broadcasting would supervise OTT platforms, the material on current events, and digital news.

BACKGROUND

It was revealed that the MIB had previously indicated that it lacked the power to monitor or control online material and was not looking for a standardize framework for OTT platforms in answer to a request made under the 2005 Right to Information Act. An NGO launched public interest litigation ("PIL") in October 2018 to demand distinct rules for regulating internet streaming platform material. Regarding MIB's position that digital platforms were not needed to acquire any license from it to exhibition its material, the Delhi High Court said that the it had not been controlled by MIB while dismissing the petition. "*Ministry of Electronics and Information Technology*" ("*MeitY*") further said that they do not control online material and that there is no mechanism for licensing or regulating any entity that posts internet content. It would still be possible to take action under "*Section 69 of Information Technology Act, 2000* ["IT Act"]"²³, which

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²³ The Information Technology Act 2000, s 69.

incorporates directions for the interception, observing, or decoding of data, as well as obstructing material if the IT Act is suitable and the relevant statutory body exercising jurisdiction under IT Act.

Further, "*Sections 66A²⁴ and 67B of the Indian Penal Code²⁵*" directs penalties for offences like conveying "*obscene messages via communication service, publishing or transmitting obscene material in any electronic form, publishing or transmitting material containing sexually explicit material, publishing or transmitting material offensively depicting children, etc.*" Since the court ruled that no authority to regulate the internet platform exists, if the digital platform is abused to convey any data prohibited by law, the sections of the Information Technology Act make sure that serious actions are done on receipt of grievances. When the IT Act already had strict standards and regulations, the court ruled that it could not issue a mandamus for its creation. When broadcasters or organizations using the digital platform engage in any illegal activity, the IT Act provides sufficient procedural protections to allow for enforcement action.

The petitioners had asked the Apex Court to create a self-regulatory mechanism for internet material in a PIL, and the notice was sent to the Centre in October 2020. Many judicial precedents from previous years have ruled the Cinematography Act, 1952 does not apply to internet material and have often rejected broad requests for restriction of online streaming services in such cases. Several over-the-top (OTT) service providers were also establishing self-regulatory rules at the same time. Netflix, Hotstar, and other major OTT companies signed a self-inspection code of best practices last year with the support of the "*Internet and Mobile Association of India (IAMAI)*". The code's goal was to offer content producers rules for safeguarding customers' interests and behaving responsibly.²⁶

DO OTT PLATFORMS NEED REGULATION OR CENSORSHIP?

Regulating over-the-top (OTT) services is undoubtedly necessary, but censorship seems like a drastic step. Self-censorship and creative freedom may be curtailed if platforms are controlled by an external agency established under MIB Ministry. Demonstrations, processions, or violence cannot be used as justification for restricting free speech. "*Since freedom of speech is a right protected against the state, it is the responsibility of the state to protect it. The hostile audience issue cannot be blamed on the government.*"

Depending on who is regulating, it may entail making sure that no material is illegal, disrespect the national symbol and flag, supports terrorism, or fosters disrespect for India's sovereignty and integrity.

²⁴ The Indian Penal Code 1860, s 66A.

²⁵ The Indian Penal Code 1860, s 67B.

²⁶ Ashima Obhan, *OTT Platforms Brought Under Government Regulation*, MONDAQ (Oct.2, 2021, 10:00 AM), <https://www.mondaq.com/india/broadcasting-film-tv-radio/1007300/ott-platforms-brought-under-government-regulation>.

On the other hand, censorship implies something quite different: the blurring or removal of politically sensitive material, abuse, and nudity, either willingly or in response to external pressure. Self-censorship and creative freedom may be curtailed if platforms are controlled by an external agency established under MIB Ministry. Demonstrations, processions, or violence cannot be used as justification for restricting freedom of speech. Given that freedom of speech is a constitutional right, the State owes it to its citizens to keep it safe. There is no way for the government to claim that it cannot deal with the hostile audience issue.

That's why age grading and telling viewers whether the material contains nudity, harsh language, violence, or any other element is the only appropriate kind of control. It should be up to the viewer to determine if they're interested in watching or not. Additionally, parental controls should be included to keep youngsters safe from harmful material.²⁷

LAWS REGULATING ONLINE PLATFORMS PRIOR TO THE AMEDMENT

While no explicit enactments have been passed to control Internet material, several articles and sections from several statutes combine to restrict what is accessible on the internet.

"Freedom of Speech is guaranteed by Article 19(1) of the Indian Constitution²⁸". Still, it may be curtailed by imposing reasonable limitations if the material is harmful to the State's well-being, disrupts public order, harms foreign relations, or is intended to incite criminal activity.

People who engage in obscene book sales or distribution face criminal penalties under the Indian Penal Code ("*Section 293*")²⁹. Intentionally and deliberately offends religious sensibilities by its very nature ("*Section 295 A*")³⁰. Anyone who publishes libelous material ("*Section 499*")³¹ or who insults a woman's modesty faces criminal penalties ("*Section 354*").³²

It is the goal of the Indecent Representation of Women (Prohibition) Act, 1986 to ensure that indecent depictions of women are entirely prohibited in advertising, literature, films, and other media. Child pornography is illegal under the "*POCSO (Protection of Children from Sexual Offences) Act.*"

Under "*Sections 67A-C of the Information Technology Act, 2000³³*", anybody who transmits or publishes

²⁷ Shivika Gupta, *Regulation of the OTT platforms*, IPLEADERS (Oct.2, 2021, 12:10 PM), <https://blog.ipleaders.in/regulation-ott-platforms/>.

²⁸ The Constitution of India 1950, art19(1).

²⁹ The Indian Penal Code 1860, s 293.

³⁰ The Indian Penal Code 1860, s 295A.

³¹ The Indian Penal Code 1860, s 499.

³² The Indian Penal Code 1860, s 354.

³³ The Information Technology Act 2000, s 67A-C.

obscene content, including sexually explicit material depicting minors in sexual activities, faces a fine and imprisonment. "*Section 69A of this Act*³⁴" gives the Central Government the authority to make directives prohibiting the release of certain types of information.

Although it is not a law, the Internet and Mobile Association of India published a self-regulatory code signed by several OTT platforms, the *Code for Best Practices for Online Curated Content Providers'* (IAMAI). The goal of this code is to create an open-source framework. The following are the code's three most important features:

- Separation of content into subcategories, as well providing the provision of disclaimers for material that is unsuitable for specific age groups.
- Defining what material is deemed age-sensitive and what is not.
- Working to provide a suitable grievance resolution process for its customers to resolve any concerns or complaints about the material accessible on these platforms that the customers have expressed.

In the case of Padmanabh Shankar³⁵, the petitioner requested that the court takes into account four different issues. To govern OTT platforms, the appellant asked to establish a competent regulatory body. He asked the court to bring them within the jurisdiction of the Central Board of Film Certification (CBFC) and the Cinematograph Act of 1952 until such an entity is established. According to the petition, OTT platforms should be held accountable and should not be allowed to benefit from the safety net provided by "*Section 79 of the IT Act.*"³⁶ According to the petitioner's final request, "public display" should include reading material accessible on the net in the office or at home.

Because it may not be feasible to appreciate the argument that transmission of movies, theatres, series, etc. via the net, would fall within the scope of "*Section 2 (C) of the Cinematograph Act,*"³⁷ the court, in this case, found it impossible to provide relief to the first petitioner. The same cannot be dealt with since the second request was reliant on the first decision. The court also said that they took his concerns seriously and wanted the State to investigate them despite their inability to grant the petitioner's request.³⁸

GOVERNMENT OF INDIA (ALLOCATION OF BUSINESS) RULES, 1961 – NEW

³⁴ The Information Technology Act 2000, s 69A.

³⁵ Padmanabh Shankar v. Union of India, WRIT PETITION NO.6050 OF 2019 (C) PIL.

³⁶ The Information Technology Act 2000, s 79.

³⁷ The Cinematograph Act 1952, s 2(c).

³⁸ Diganth Raj Sehgal, *OTT platforms and their regulation*, IPLEADERS (Oct. 2, 2021, 12:15 PM), <https://blog.ipleaders.in/ott-platforms-regulation/>.

AMENDMENT

Cable Television Networks Rules, 1994, Program and Advertising Codes are presumed to provide the regulatory framework for material accessible on these platforms. However, no formal comments have been made about such restrictions. The Electronic Media Monitoring Centre, for example, keeps tabs on what's shown on television.³⁹

THE AMENDMENT BROUGHT BY THE NOTIFICATION

Following the announcement, two new entries have been added to the Government of India (Allocation of Business) Rules, 1961 ("Rules") under the category "Digital/Online Media.": (1) Online content providers' films and audio-visual programs; (2) online platforms' news and current affairs material. According to the second schedule of the Rules, there are nine classifications within the MIB, all of which deals with broadcasting and administration policy and administration of cable television policy and radio. The new VA sub-category has been included in the notice. This notice gives the MIB the authority to control OTT platform rules.⁴⁰

THE LAW AND STEP AHEAD

The IT Act, as previously mentioned, imposes stiff fines and even jail time for anyone found guilty of sending pornographic content over the internet. It also provides Central Government authority to make instructions to restrict public access to any online material under "*Section 69A of the IT Act*⁴¹". Information stored or published on an intermediary's computer resources is subject to "*the Information Technology (Intermediaries Guidelines) Rules, 2011*", that give a due diligence structure for intermediaries to adhere to. Based on these criteria, they may also apply to OTT platforms that constitute mediators under IT Act. Additionally, OTT platforms are governed by sections of the IPC, 1860, so that those disseminate libelous material, intentionally inflaming religious sentiment, and more unlawful. There has been a transition from cable television to online platforms since COVID - 19, which compelled regulators to create more specific rules for digital broadcasting, even though Indian courts have recognized the ability of the IT Act to control online content without external laws. It's still unclear how and to what degree the government plans to control internet material since broadcasters and consumers are wary of too strict regulations or outright

³⁹ *Ibid.*

⁴⁰ Ashima Obhan, *OTT Platforms Brought Under Government Regulation*, MONDAQ (Oct.2, 2021, 10:00 AM), <https://www.mondaq.com/india/broadcasting-film-tv-radio/1007300/ott-platforms-brought-under-government-regulation>.

⁴¹ The Information Technology Act 2000, s 69A.

copyright.⁴²

CONCLUSION

Some believe these new rules will serve as regulations, while others believe they will serve as the first step toward moral policing in the virtual world. For Indian content producers, the battles over movie censorship on the big screen are nothing new. Films like “Udta Punjab”, “Bandit Queen”, and “Lipstick beneath my Burkha” have all been the subject of fierce legal disputes with censor boards. A notable example of an increase in the creative freedom of content producers on Indian OTT platforms is the Emmy Award victory for a Netflix Original called "Delhi Crime" in 2020. However, the State must consider and draw inspiration from other nations and a few country-centered restrictions on these platforms to ensure that they are not examined for every other piece of material and continue to cherish their freedom of expression

⁴² *Ibid.*