

“Censorship in OTT Platforms: The Necessity”

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Internet and technology have become an inevitable part of our lives and therefore omnipresent. In this fast paced world, each one of us sits in front of an electronic gadget to pass time. The evolution of media and visual entertainment has witnessed a drastic change in the current decade due to the era of digitalization. The whole concept of visual entertainment started with few television channels and now it is easily available and accessible through the mobile phone, personal computers and Smart TVs. This research paper is centred on Over The Top (OTT) platforms which enables visual entertainment through the usage of internet. The current trend stands out to be the use of OTT platforms for which the number of users increases exponentially in our country. With regards to laws related to media and censorship, we are yet to upgrade ourselves to fit in the computerized world. This paper is an attempt to explore the grey area of OTT platforms and its evolution along with possible outcomes and suggestions that can be brought in the aspect of censorship and media laws.

Keywords: OTT (Over The Top) and Types, Censorship, Online Content regulation provisions in India.

What are OTTs:

OTT represents Over-the-top which is a term used to depict visual content (films, videos and original web series) suppliers through web. These services are known as over-the-top since it goes over a traditional cable box to provide a user access to content which otherwise is transmitted through customary medium.

OTT platforms:

An Over-the-top (OTT) Media Platform is a streaming media service offered through the internet to the watchers. It utilizes broadcast, satellite TV platforms and acts as a distributor of such content. OTT platforms offer various categories of visual entertainment like films, television content and original web series to the audience. Examples of such Indian OTT platforms include Netflix, Hotstar, Amazon Prime, Voot, YouTube Premium, AltBalaji, etc. which enables visual entertainment. These services are easily available and accessible through the mobile phone, personal computers and Smart TVs.

Evolution and Rise of OTTs:

The whole concept of visual entertainment started with few television channels and now it is easily available and accessible through the mobile phone, personal computers and Smart TVs.

With lives getting busier, everybody needs something convenient to go to rather than restricting themselves to a specific time before the TV sets. We all have been utilizing OTTs since long without acknowledging it. The most appealing element for an OTT is that it tends to be utilized and accessed at anytime and anyplace with a web connection. The wide variety of visual content available on these OTT platforms is another appealing attribute which convinces an ever increasing number of individuals to adapt to this new innovation. Moreover, this content variety is provided with access to information from customer data, meaning a user will get suggestions of the content based on his liking or previous movie interests such as Horror, Sci-Fi, and Action etc. which is an additional marvellous feature.

Types of OTTs

1. OTT TV generally called online TV or web TV remains the most familiar OTT content. This signal for online TV is received over the Internet or through a mobile phone network, rather than accepting the TV signal from a traditional terrestrial broadcast or satellite. Access to the visual content is controlled by the video distributor, through either an application or a different OTT dongle or box, associated with a Mobile phone, PC or Smart TV.
2. SVOD (Subscription Video on Demand) - It is a category of service that permits a user to access a whole library of movies, original series and videos for a fixed recurring expense. This subscription fee will be charged monthly or annually according to the customer's choice. As long as a user membership is valid, he can watch as many videos and movies as he wants to that particularly subscribed channel. Netflix, Hotstar, Zee 5, Amazon Prime Video can be cited as the examples of this SVOD OTT services.
3. TVOD (Transactional Video on Demand) - TVOD is something contrary to SVOD. In this type of OTT users purchase content on a pay-per - view basis.No subscription of any category is required here. The users will pay a certain amount for the specific content they intend to watch. iTunes and Google Play are well known examples of TVOD platforms.¹
4. AVOD (Ad-supported Video on Demand)-Ad-Supported Video on Demand (AVOD) is an ad-based digital video service that is free for its users. Ad revenue is used in this model to offset production and hosting costs and to monetize content. YouTube, Dailymotion Sling TV, Roku, and Fubo TV can be stated as the examples for this type of OTT.²

¹ Pay per view (TVOD) (visited on 14th July 2020) <https://www.vixyvideo.com/features/pay-per-view-tvod/>

² "THE ENTIRE OTT ECOSYSTEM IN A NUTSHELL": (visited on 14th July 2020) <https://blog.zypmedia.com/ott-vs-vod>

Concept of Censorship in India and its Evolution:

All of us would have seen blurred pictures of a victim in newspaper, a mute or a “beep” sound in certain film scenes, a book being banned, age restrictions in watching a film on theatre and an artwork being unpublished for hurting the sentiments of a particular community. All of these are nothing but examples of censorship. According to Merriam Webster “Censorship is the suppression of speech, public communication, or other information, on the basis that such material is considered objectionable, harmful, sensitive, or "inconvenient." Censorship involves the process of deletion or containment of such content which can cause an outrage in the society.

Films have always been a powerful piece of artwork that has helped to bring out a lot of information hidden in the dark to limelight. The film industry in India, is regarded as the most popular mode to connect with people due to its diversity where every language has its own representation. It has been a mode of conveying a message or ideology to the masses. Evolving from street dramas, to motion picture, colour pictures, TV channels, cassettes, DVDs, we have currently started online streaming and usage of OTTs.

Article 19 (1) (a) of the Indian Constitution gives the right to freedom of speech and expression and article 19 (2) reasonably restricts it.

It states “*Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence*”³ This was the pioneer element that assisted to bring in censorship regulations into our system.

The Supreme Court was in the opinion that censorship is essential due to its wide reach. The way a film is presented leaves an impact in the minds of the masses regardless of the age. Films work as a platform to express one’s idea as he likes which is permissible under Article 19 (1) (a) of our Constitution. This platform must not be treated in the same way as reading a magazine, book or newspaper. This makes films unique as the medium involved here is vast. So for the interest of the larger society and to protect the nation’s security and sentiments restrictions can be imposed under Article 19(2). “*The framers of our Constitution deemed it essential to permit such reasonable restriction as they intended to strike a proper balance between the liberty guaranteed and the social interests specified in Article 19 (2).*”⁴

³ Article 19 (2) The Constitution of India

⁴ Santokh Singh v. Delhi Administration, (1973) 1 SCC 659.

The first issue of Censorship in films reached the Supreme Court under Article 19(1) (a) of the Constitution of India, in the case of *K.A. Abbas v. Union of India*.⁵

The apex court stated that “a motion picture has the ability to stir up more emotions deeply than any other product of art. A film can therefore, be censored on the grounds mentioned in Article 19(2) of the Constitution.⁶ The Supreme Court was of the view that "censorship of films, their classification according to the age groups and their suitability for unrestricted exhibition with or without excisions is regarded as a valid exercise of power in the interest of public morality, decency etc. This is not to be construed as necessarily offending the freedom of speech and expression.”⁷

The judiciary was not always in the view of censoring every content that is alleged to be harmful. Movies are regarded a valid, understandable and a vital tool where issues and mindset of the society can be raised and treated. It understands that the makers of a movie may project a message that they want to convey. It is not necessary for everyone to approve such message. But this must not stop a person to express his/her views or provide a reason to promote it. A democracy must pave way and provide the right to think out of the box to which no one shall complain.

In the case of *S. Rangarajan v. P. Jagjivan Ram*, the Supreme Court held that

*“the standard to be applied by the Board or courts for judging the film should be that of an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive man”.*⁸

It observed that *“the anticipated danger should not be remote, conjectural or farfetched but should have proximate and direct nexus with the expression and equivalent of a spark in a powder keg”*⁹

Through such judgments, the judiciary stressed on the word “reasonability” to classify whether such expression is a mere opinion or is it a depiction glorifying violence, anti-national feelings, vulgarity or defamation of any person or community.

The evolution of censorship took place from time to time and our country has witnessed various outrages that took place due to the release of certain films. As far as censorship is concerned, there is no distinction made between theatre and television content. Some films had to cut various scenes in order to release in theatres and some were completely banned in India for its sensitive content. This made way for online streaming where we can choose the content that we wanted to. But currently, online platforms are misusing its freedom and the repercussions are turning huge. For a diverse country like India, one must understand and

⁵ *K.A. Abbas v. Union of India*, (1970) 2 SCC 780

⁶ (1970) 2 SCC 780

⁷ (1970) 2 SCC 780

⁸ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574, 592.

⁹ (1989) 2 SCC 574, 592.

appreciate the multifaceted culture we have and thus adhering to community guidelines becomes even the more important making a film.

Overview of Existing Content Regulation Provision in India:

According to the central board of film certification, India has the largest film industry in the world, making over 1250 feature films and larger number of short films every year. On an average, about 15 million people see films in India in a day, either in the 13,000 cinema houses or on the video players or on the television network. Thus, every two months, an audience as large as India's entire population flocks to its cinema houses.¹⁰

In India, we have a special legislation that has been introduced purely for the purpose of censorship of movies. This act is known as the Cinematograph act of 1952. Section 2 (c) of this act defines Cinematograph as the "any apparatus for the representation of moving pictures or series of pictures"¹¹

This act played a vital role in the formation of The Central Board of Film Corporation (CBFC)

Essential elements under the Cinematograph act are:

Board of Film Censor (Section 3) - This section gives authority to the Central Government to establish a Board of Film Certification. Such a board must consist of a chairman and other members. It must consist of minimum 12 members and a maximum of 25 members.

Examination of Films (Section 4) - It is the duty of the board to watch and examine films and sanction its release. There is a pre defined procedure which each film undergoes. The makers of a film must provide an application stating the intention to release the film after which an screening process is conducted and the film is certified.

A film is permitted to be released only when it gets through multiple stages of screening and after necessary cuts that were prescribed by the board. The sanction of the film for public exhibition can *be restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film*¹². Thus, the act gives the board, the authority to make modifications in the picture to suit the audience and community guidelines.

This, the board can restrict movies to adults only and it can even refuse public exhibition of a film (in common words 'ban' a film). It must be noted that, makers of the film gets a fair chance to make a representation and express the views and message that the film intends to convey before the board takes such action.

¹⁰ <https://www.cbfcindia.gov.in/main/certification.html>

¹¹ Section 2(c) of Cinematograph act 1952

¹² Section 4(ia) of Cinematograph act 1952

Advisory panels (Section 5) - To ensure that the Board to discharge its functions efficiently, the Central Government may establish at such regional centres and appoint regional officers to assess the impact the film will imprint in the society. Such boards shall follow the rules prescribed by the advisory panel with regards to matters relating to certification and make recommendations to the board as it thinks fit. Such officers are entitled to receive fees or allowance but no fee is prescribed to them.

Certification of Films (Section 5A) - Under the Cinematograph Act of 1952, certification of a film could be classified under 2 categories namely; “U” which stands for Unrestricted viewing and “A” which stands for adult only content. According to this act, *adult refers to a person who has completed the age of 18*¹³

Under the act of 1983, two new classifications were introduced, “UA” certificate for unrestricted viewing except to children below 12 and “S” certificate which restricted a films for a special class of audience such as doctors, scientists etc. With regards to certification of a film, the board had to publish every certificate in the Gazette of India.

We also have provisions under the Indian Penal Code (IPC), 1860 such as section 295A (criminalising acts intended to outrage religious feelings) Sections 499 and 500 (defamation), section 67 and 67A of the Information and Technology Act (which prohibits content showcasing obscene and sexually explicit act.) and the Indecent Representation of Women (Prohibition) Act, 1986 which can also regulate online content.

In the case of *Bobby Art International v. Om Pal Singh Hoon*,¹⁴, popularly known as the Bandit Queen case, which portrayed the life story of Phoolan Devi. The film was initially banned as it depicted the life of a bandit and tarnished the images of various communities and also picturized sexual violence. The Supreme Court upheld Article 19(1) and stated that “a film cannot be restricted simply because the content is obscene, indecent or immoral. The abusive language or nudity in the movie was to further the case regarding the depiction of the reality of the life story of Phoolan Devi”. The film was released with an “A” certificate

According to CBFC, the following are the major violations that agitate the minds of the public:¹⁵

- a. exhibition of an “A” certificate film to a non-adult.
- b. exhibition of an “S” certificate film to persons other than those for whom it is meant
- c. exhibition of a film in a form other than the one in which it was certified. Such violations are known as interpolations. Interpolations can be described as follows:
 - i. re-insertion in prints of a film for exhibition those portions which were deleted by the Board before certification of the film;

¹³ Section 2(b) of Cinematograph Act, 1952

¹⁴ Civil appeals 7522 of 1996

¹⁵ Violations guidelines <https://www.cbfcindia.gov.in/main/certification.html>

- ii. insertion in prints of a film portions which were never shown to the Board for certification;
- iii. exhibition of 'bits' unconnected with the certified film.
- d. exhibition of a film which was refused a certificate (or 'banned' in common parlance)
- e. exhibition of uncensored films with forged certificates of other films.
- f. exhibition of films without censor certificates

Similarly, the film *Gulaabi Aaina*, made in the year 2003 was banned for its non conventional and bold script portraying the lives of transmen and drag queens which continues to be banned in India even after bagging various international awards around the globe. The film was later available on Netflix in the year 2017.¹⁶

Thus, existing regulations have an effective mechanism to ensure appropriate content in cinema and TV media. There needs to be a clear distinction made between art and vulgarity; truth and opinions and; expression and mockery. But the issue here is that the system fails to adapt to upgraded systems such as OTT platforms and online streaming. Such websites brings in a self regulatory mechanism whose effectiveness is still a big question mark.

Content regulation provisions in other countries:

The United Kingdom – The United Kingdom keeps up a solid and sound pay TV market for both conventional and OTT TV services. It is viewed as a world head in anti-piracy enforcement and copyright protection. All domestic pay TV administrations are managed by Ofcom, an autonomous and independent controller. There is no differentiation between how conventional TV services and local OTT TV administrations are regulated, but linear and non-linear TV services are dependent upon various guidelines.

In September of 2018 the BBC called for a regulation on online video streaming services, so initially the British Board of Film Certification announced a partnership with Netflix, soon a working paper¹⁷ was released where a new regulatory body will be set up with regard to the regulation on online video streaming.

Singapore - The Infocomm Media Development Authority (IMDA), the media regulatory body of Singapore issued a code of practices for OTT. Service providers are required to classify their content on the same basis as offline films – a) G: for general, b) PG: for parental guidance, c) PG13: for parental guidance for children below 13, d) NC16: for no children below 16 years of age, e) M18 for mature audiences (18 and above) only, and f) R21 for content restricted to people of 21 years and above only. Service providers are allowed to offer content rated NC16 and above only if provide for a parental lock function on their platform.

¹⁶ Forum Gandhi “GULABI AAINA MAKES INTO NETFLIX AFTER 14 LONG YEARS” (January 11,2017), <https://www.dnaindia.com/lifestyle/report-gulabi-aaina-makes-it-to-netflix-after-14-long-years-2291270>

¹⁷Department for Digital, Culture, Media & Sport, Online Harms, Government of the United Kingdom, White Paper, 8 April 2019, (visited on 12th July 2020) <https://www.gov.uk/government/consultations/online-harms-white-paper>

Further, they are allowed to offer R21 content only if it is locked by default and the provider implements a reliable age verification mechanism. The code further requires service providers to display the ratings and the elements in the content, including theme, violence, nudity, sex, language, drug use and horror which led to the rating, to be displayed visually and prominently to the viewer before such viewer chooses to consume the content. The code also prescribes do's and don'ts for the service providers. They must ensure that the programs hosted by them comply with the prevailing laws of Singapore, do not undermine national or public interest and national or public security and do not undermine racial or religious harmony among others.¹⁸

Turkey - The radio and Television Supreme Council, which is a regulating body for the radio and TV in the country, is also responsible for the Online streaming content in the country. The operators have to obtain a license which is given for 10 years. The service providers have to also encrypt the audio and visual feeds and provide access to the council for remote monitoring.¹⁹

Requirement of Online Censorship in India:

“Over the top” suggests that there is no primary monitoring of the government over these platforms. These networks run “over the top” of other mainstream ones like cable and satellite media which is governed by specific laws. Thus releasing content in such platform becomes easier than other conventional platforms

At a vulnerable time like the current Covid—19 pandemic, online platforms have taken over mainstream television and is being the most viewed platform for movies and series. Platforms such as Netflix, Amazon Prime, Zee5, Hotstar, etc are a market of growing content. Netflix and Amazon Prime together make up for more than 300 million consumers of OTT platforms²⁰

We must remember that viewers of OTT platform belong to all age groups and thus content must be suitable to entertain a dynamic set of audience. Many people find OTT platforms filled with content that is not suitable for all age groups with many series being uncomfortable to watch with a family. The content aired contains the usage of expletives,

¹⁸Infocom Media Development Authority, Government of Republic of Singapore, CONTENT CODE FOR OVER-THE-TOP, VIDEO-ON-DEMAND AND NICHE, (visited on 12th July 2020) <https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/OTT-VOD-Niche-Services-Content-Code-updated-29-April-2019.pdf?la=en>

¹⁹ The Radio and Television Supreme Council and the Information and Communication Technologies Authority. Government of Republic of Turkey, Internet of Radio Television and optional publication regulation of the presentation from the environment, Regulation on the Presentation of Radio, Television and On-Demand Broadcasting on the Internet (Turkey Regulation), 1 August 2019. (visited on 10th July 2020) <https://www.resmigazete.gov.tr/eskiler/2019/08/20190801-5.htm>

²⁰ Sergei Klebnikov, STREAMING WARS CONTINUES: HERE'S HOW MUCH NETFLIX,AMAZON,DISNEY+ AND THEIR RIVALS ARE SPENDING ON NEW CONTENT, Forbes (May 22, 2020), <https://www.forbes.com/sites/sergeiklebnikov/2020/05/22/streaming-wars-continue-heres-how-much-netflix-amazon-disney-and-their-rivals-are-spending-on-new-content/#6a9b7e66623b>

promotion of alcohol and drug abuse, extreme violence and hate towards a particular community, class or nation and sexually inappropriate scenes.

According to a survey conducted by You-Gov, an online market research firm, “Nine in 10 people in the country feel some form of censorship is required on platforms such as Voot, Netflix, and Hotstar. Over half of them, vouch for censorship to curb what they see as “unsuitable content” for public viewing”²¹

Statistics show that out of the 91% of Indians affirming to content regulation, 40% feels that government must regulate content all the time and 51% feels that content regulation is required sometimes. This research also observed that the older audience affirms to regulation of content than the ‘GenZ’²²

In a very recent case *Gurdeepinder Singh Dhillon v. Union of India*²³, a notice was issued in the High Court of Punjab and Haryana to censor the web series “Paatal Lok”. This petition was not a mere plea for censor cuts but it had requested the judiciary to bring in a regulation for the content available on OTT platforms.

Also in the case of *Justice for Rights Foundation v. Union of India*²⁴, the petitioners stated that unregulated content was being aired on OTT platforms which were censored when released in television media but the same is not followed in OTT platform. The honourable Supreme Court demanded a response from the Ministry of Information and Broadcasting which in turn replied that sufficient regulations are provided under section 67 and 67A of the Information and Technology Act which deals with content showcasing obscene and sexually explicit act. Thus the Supreme Court assented with the Ministry and held that sufficient provisions were available under IT Act 2000.

There are numerous web series and films that hurt religious sentiments, incite hate towards a nation and even glorify terror activities and the question that prevails among the general public is that, if provided regulations are sufficient then why do we still have content that violates various sentiments and creates a non family friendly environment to watch most of them? The answer is yet to come from the concerned authorities!

Conclusion:

India’s huge population is an asset for any profit making organization. With one of the largest users of online content, online regulatory mechanisms would increase the existing viewership to a bigger level. The speciality of our country is its unity in diversity and a family oriented culture, therefore producing family friendly content would do more good and no harm. We

²¹ Deepa Bhatia “MORE THAN HALF OF INDIANS THINK STREAMING PLATFORMS REQUIRE CONTENT CENSORSHIP”, YouGov (30 October,2019), <https://in.yougov.com/en-hi/news/2019/10/30/more-half-indians-think-online-streaming-platforms/>

²² Id

²³ *Gurdeepinder Singh Dhillon v. Union of India*, CWP-8089-2020

²⁴ *Justice for Rights Foundation v. Union of India*, WP(C) 11164/2018

need to bring out a collaborative mechanism between the law makers and the content makers so that they would understand the nuances that exist in their respective field and bring legislations that would be beneficial to both the parties. Every right comes along with restrictions and these restrictions must not be ignored for the sake of displaying art or expressing an opinion. Film makers must understand the impact their movies can make on young minds and must be held socially responsible for their actions. Censorship is not about suppression of truth but a mechanism that brings out the truth in a decorous manner.

Recommendations:

The above discussion shows that many countries around the globe understand the necessity of a regulatory body for online web streaming services and OTTs since it is the most favoured and preferred type of visual entertainment at present and India needs to have a regulatory body in order to protect sensitive audience. Although the idea of censorship and censor board is seen as totalitarian, in a nation like India where there are different beliefs and each one of them being sensitive, it is important to ensure that these emotions and sentiments are not hurt and everyone is equally respected, hence the necessity arising for a regulatory body.

Even though OTT platforms have voluntarily signed a self-regulatory code of best practices under the backing of Internet and Mobile Association of India (IAMAI), in reality they are not following these regulations. In fact the said code failed to establish guiding principles for Online Curated Content (OCC) Providers “to conduct themselves in a responsible and transparent manner and at the same time ensures that consumer interests are protected.” Especially in the recent few weeks there have been a lot of controversies with certain media content on OTT platforms such as Amazon Prime, Netflix and ALTBalaji. It is absolutely necessary to have them regulated.

The legislation must be framed to ensure that all aspects in the IAMAI CODE are fulfilled and they must be followed strictly without any deviations.

The intended legislation must fulfil the main objectives of the IAMAI CODE:²⁵

- Empower consumers to make informed choices on age-appropriate content.
- Protect the interests of consumers in choosing and accessing the content they want to watch, at their own time and convenience.
- Safeguard and respect creative freedom of content creators and artists.
- Nurture creativity, create an ecosystem fostering innovation and abide by an individual’s freedom of speech and expression.
- Provide a mechanism for complaints redressal in relation to content made available by respective OCCPs.

²⁵CODE OF BEST PRACTICES FOR ONLINE CURATED CONTENT PROVIDERS: (visited on 12th July 2020) <https://www.medianama.com/wp-content/uploads/Consolidated-Draft-14012019.pdf>

The intended legislation must prohibit the content as stated in the IAMAI CODE:²⁶

- Content which deliberately and maliciously disrespects the national emblem or national flag.
- Content which represents a child engaged in real or simulated sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.
- Content which deliberately and maliciously intends to outrage religious sentiments of any class, section or community.
- Content which deliberately and maliciously promotes or encourages terrorism and other forms of violence against the State (of India) or its institutions.
- Content that has been banned for exhibition or distribution by online video service under applicable laws or by any court with competent jurisdiction.

²⁶ Id