
O.T.T. REGULATION IN INDIA: THE CHALLENGES FACED BY TODAY'S JUDICIARY

Aadithya Aravindh, Jindal Global Law School, O.P. Jindal Global University

Nandana Menon, Law Centre II - Faculty of Law, Delhi University

Introduction

The market of Over the Top (OTT) India was opened in 2008 when the entry of 'BIGFlix', a platform launched by the Reliance Entertainment Group which provided Pay-per-view services for Bollywood Movies. The market was later expanded by the entry of several other players such as "nexGTV" which streamed Live Television Channels to your Mobile Phone and the big three, i.e., Netflix, Amazon Prime and Disney+ Hotstar ("JioHotstar"). At present India has a booming OTT Market with 57 Companies¹ offering a varied and diversified content base to a wide range of consumers from the average smartphone user to the Home Smart TV consumer.

India is one of the more liberal countries when it comes to OTT content regulation. The primary reason for this is that the jurisprudence with regards to regulation of OTT Content is still at its natal stages as far as India is concerned.

Understanding Regulators

The Indian Legal System is currently in the process of deciding the precise adjudicating authority with regards to OTT Content Regulation. This is due to the fact that the specifics of Broadcasters are not yet set out by any legislation or executive decree. At present, there is no defined Regulator with regards to OTT contents. As of this moment, the preliminary governing body with regards to OTT Content is the Ministry of Information and Broadcasting which has, at present, provided for a placeholder legislation titled the "Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021".² These rules provide for a rather broad framework governing Digital Content Creators and Online Gaming Platforms along with a regulatory requirement to provide for Greivance Redressal Mechanisms for the

¹ Ministry of Information & Broadcasting, Government of India, "Digital Media", <https://mib.gov.in/index.php/ministry/our-wings/digital-media>.

² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

purposes of addressing consumer disputes. On rare occasions, there have been Parliamentary Panels which have issued advisories for content regulation.³ However, there is no provision with regards to content regulation in terms of obscenity or censorship of the content so released online.

Legal Challenges to Regulation

Regulatory Confusion – The ‘Who?’ question

For the longest time, the Indian Film industry and the Media industry have always found themselves crossing paths with the Courts with regards to Content Regulation. The industry has always maintained a stance that excessive content regulation through censorship in any form stifles the creative aspect of a producer or director or any content creator. While the court itself has, with regards to censorship, retained its stance taken in cases such as *Ranjit Udeshi*⁴ & *Aveek Sarkar*⁵, that it is paramount for the court to intervene inasmuch to protect public morality and decency. While traditional content generators such as Filmmakers and Media Houses come within the ambit of the Ministry of Information and Broadcasting and the Central Board for Film Certification, OTT creators have categorically been placed in a special position where they benefit from the “grey area” of the law as there is no regulator specified for the content so generated. Hence, the court’s interference with regards to OTT Content has often been more challenging, at times, even facing backlash from the public.

At present, there are two significant judicial proceedings which currently concern OTT Regulations in India. Firstly, the 2023 ruling of the Telecom Disputes Settlement & Appellate Tribunal (TDSAT) where the Tribunal ruled that neither the Tribunal nor the Telecom Regulatory Authority of India (TRAI) have any jurisdiction whatsoever under the Telecom Regulatory Authority of India Act (TRAI Act) over OTT Content providers and as such it lies beyond the scope of the Act⁶. The Tribunal further enlarged that OTT Platforms would fall within the scope of the Information Technology Act, 2000 (IT Act) and thus, any disputes

³ "No obscene content, please: Parliamentary panel tells Netflix, Amazon Prime, Disney Hotstar, Zee5, other OTT platforms". *Business Today* (in Hindi). 16 May 2023, <https://www.businesstoday.in/latest/in-focus/story/no-obscene-content-please-parliamentary-panel-tells-netflix-amazon-prime-disney-hotstar-zee5-other-ott-platforms-381410-2023-05-16>.

⁴ *Ranjit D. Udeshi v. Union of India*, AIR 1965 SC 881.

⁵ *Aveek Sarkar v. State of West Bengal*, (2014) 4 SCC 257.

⁶ *All India Digital Cable Federation v. Star India Pvt. Ltd.*, BP/217/2023.

including that of regulation would be addressed by the provisions of the IT Act.

Recently, the Supreme Court of India admitted a Writ Petition⁷ aimed towards addressing the lack of any regulations whatsoever in OTT Contents thereby leading to obscene content being accessible to an unsupervised viewership. The Court, issuing notice to the Central Government, observed that the Petitioner's stance that a lack of regulation has led to the display of not just obscene content, but at times, content amounting to perversity, is true and further noted that while there does exist, a level of regulation, a more comprehensive measure is in contemplation.

Balancing (Social) Expectations

The recent controversies involving digital content creators on platforms such as Netflix and YouTube have led to the courts being dragged in to intervene in keeping with the Community Standards Test of obscenity and public tolerance to content. However, this is a tricky area because of the various societal forces at play which lead to the Court intervening and the method and extent of such an intervention. To illustrate, one need only look at the fairly fresh controversy surrounding the show "India's Got Latent". The Supreme Court intervenes with regards to the specific comments made on the show and with regards to the creators involved with regards to the show, the commentators, the producers and the crew of that show. This was followed by an immediate public debate with regards to whether this was in fact the best use of judicial resources and that too of the Apex Court of the country, especially considering the backlog of cases plaguing the judiciary. In the interest of balancing perceptions of the various societal forces involved, including that of concerned citizens who felt that the impugned statements were morally degrading, the court rules on a lighter note while analyzing the various provisions with regards to obscenity, concluding their analysis on the oral note that the impugned statement evokes nothing but a sense of 'disgust' in the viewer⁸.

The 'Right to Freedom' Argument

Unlike traditional arguments on a broadcaster's right to freedom of expression, individual viewers also hold the unique right to freedom of consuming content. While this is not an express right provided under the constitution or any other statutory law, it is derivative of the

⁷ *Uday Mahurkar & Ors. v. Union of India & Ors.*, WP(C) 313 of 2025.

⁸ *Ranveer Gautam Allahbadia v. Union of India & Ors.*, W.P. (CrI.) 83 of 2025.

fundamental right to information and privacy⁹. Factoring in the test of proportionality and the larger test of weighing state morality and peace in mind, this is, at its essence, a fundamental right that cannot be easily breached insofar as state regulation is concerned. Hence, apart from a Media House's right to broadcast information, the individual viewer also has the right to be or not to be exposed to such content. Thus, the outlying factor herein becomes one of individual rights vs. the larger interests of the society. Therefore, the only ethical considerations of an individual while consuming content is to ensure that they do so in an ethical and responsible manner and practice the art of self-restraint rather than state intervention.¹⁰ Thus, individuals are rather encouraged to safeguard their right to explore all the various forms of content available to them, however, it must not be borne with the cost of degrading social morality and decency and further, a breakdown of the state's functionality and rudimentary ability to govern. Therefore, it is as much an individual's responsibility of self-governance compared to statutory regulation.¹¹

Conclusion

The legal framework surrounding content regulation on OTT platforms is presently at an undeniable natal stage. Considering the fact that even 'developed countries' such as the US and the whole of Europe have not been able to provide a satisfactory governance policy when it comes to OTT Content, it is therefore admirable that Indian Jurisprudence has still evolved to a certain degree as to be able to distinguish and recognize the governable aspects of the content so produced so as to be able to provide governance policies down the line. While there is a long way to go, Media Law Tribunals or other similar dedicated forums would provide for not just speedy resolution, but a more focused approach with regards Media Regulation in general and thereby preserve the interests of all stakeholders involved without upsetting the existing fragility of the legal bundle presently governing such cases. As such, there is an immediate need for a better equipped and more importantly, better understanding body that can not only

⁹ Lee S., "Media Law Essentials: Understanding the Foundations of Professional Standards in Media", *Numberanalytics.com*, (May 26, 2025) <https://www.numberanalytics.com/blog/media-law-essentials#:~:text=How%20do%20media%20professionals%20balance%20freedom%20of,weighing%20the%20public%20interest%20against%20potential%20harm.>

¹⁰ Orsonneau P. & Coppin, P., "Defence Handbook for Journalists and Bloggers: On freedom of expression and freedom of information principles in International Law", *Reporters sans frontières*.

¹¹ "Communication Rights in Theory and Practice", *WACC Global*, (Feb. 13, 2016), <https://waccglobal.org/communication-rights-in-theory-and-practice/#:~:text=Most%20people%20believe%20they%20understand%20the%20basic,formulations%2C%20in%20virtually%20national%20constitution%20and%20legislation.>

meet the expectations of the stakeholders but also provide for regulatory framework that safeguards their rights to consume content while at the same time maintaining the intersectionality of public morality, decency and state order.