
LEGAL CHALLENGES AND REGULATORY FRAMEWORKS GOVERNING OTT PLATFORMS: A CRITICAL STUDY

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ABSTRACT

The rapid expansion of Over-The-Top (OTT) platforms has fundamentally transformed the landscape of audio-visual media consumption, challenging traditional regulatory frameworks that were designed for cinema and broadcast television. OTT platforms operate by internet-based delivery mechanisms, enabling cross-border dissemination of content and creating complex legal questions relating to jurisdiction, regulation, accountability, and enforcement. This paper undertakes a critical study of the legal challenges and regulatory frameworks controlling OTT platforms, with particular focus on the Indian legal regime and relevant comparative perspectives.

In India, the regulatory vacuum that once characterized OTT services has gradually been filled via executive and statutory interventions, most notably the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These rules introduce obligations concerning classification of content, grievance redressal mechanisms, due diligence requirements and intermediary liability. However, the evolving regulatory approach has raised significant constitutional and policy concerns, especially regarding freedom of speech and expression, censorship, proportionality of restrictions, and the chilling consequences of excessive state control. The paper critically examines whether the current framework achieves an appropriate balance between regulatory oversight and creative freedom.

The study also explores intersecting legal domains affecting OTT platforms, including intellectual property rights, data protection and privacy, consumer protection, and competition law. Particular attention is paid to challenges arising from data collection practices, content piracy, misleading subscription models, and market concentration by dominant platforms. A comparative analysis with regulatory models in the European Union and the

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United States highlights divergent approaches to content regulation and platform liability, offering valuable insights for reform.

The paper concludes that while regulation of OTT platforms is necessary to address legitimate state and societal interests, India's existing framework requires greater clarity, transparency, and statutory backing. It recommends a balanced, rights-oriented, and technology-neutral regulatory model that promotes innovation while safeguarding constitutional values, consumer interests, and public morality in the digital media ecosystem.

Keywords: OTT Platforms, Digital Media Regulation, Content Moderation, Intermediary Liability, Freedom of Expression

I Introduction

The digital revolution has profoundly altered the manner in which audio-visual content is created, distributed, and consumed. Over-The-Top (OTT) platforms, which deliver content directly to users through the internet without reliance on traditional cable or satellite networks, have emerged as a dominant force in the media and entertainment industry. Services such as video-on-demand streaming, web series, short-form content, and original digital productions have reshaped audience preferences, particularly among younger and urban populations. The accessibility, affordability, and diversity of content offered by OTT platforms have contributed to their exponential growth, positioning them as powerful cultural, economic, and technological actors in contemporary society.³

Unlike traditional media such as cinema and television, OTT platforms initially operated in a greatly uncontrolled legal environment. This regulatory vacuum allowed for greater creative freedom and innovation but in the meantime raised concerns relating to public morality, national security, misinformation, hate speech, obscenity, and protection of children. As OTT content often crosses territorial boundaries and is accessible on-demand, conventional regulatory mechanisms based on prior censorship or geographical jurisdiction has proven insufficient. In consequence, governments across the world have started re-evaluating existing legal frameworks to address the unique challenges instituted by OTT services.⁴

In India, the explosion of OTT platforms coincided with increasing public discourse on the

³ Over-The-Top (OTT) platforms refer to digital services that deliver audio-visual content directly to users through the internet, bypassing traditional cable or satellite television networks.

⁴ Telecom Regulatory Authority of India (TRAI), Consultation Paper on Regulatory Framework for Over-the-Top (OTT) Services, TRAI, New Delhi (2015)

need for regulation. While traditional films are regulated under the Cinematograph Act and television content is governed by programme and advertising codes, OTT platforms initially fell outside these regimes. The absence of a comprehensive legal statutory framework led to judicial interventions, public interest litigations, and executive action. This culminated in the introduction of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which brought OTT platforms within a standardized regulatory mechanism under the Information Technology Act, 2000. These rules impose obligations relating to content classification, grievance redressal, due diligence, and intermediary liability, thereby notably altering the legal landscape for digital media platforms.⁵

However, the regulation of OTT platforms presents complex constitutional and policy issues. Any legal framework governing digital content must strike a delicate balance between protection of freedom of speech and expression and addressing legitimate state interests such as public order, decency, morality, and national security. Excessive regulation risks chilling creative expression and innovation, while inadequate oversight may result in societal harm and erosion of consumer trust. Additionally, OTT platforms devide with multiple branches of law, including intellectual property rights, data protection and privacy, consumer protection, and competition law, making regulation multifaceted and dynamic.⁶

Against this backdrop, this paper undertakes a critical study of the legal issues and regulatory frameworks governing OTT platforms. It seeks to examine the adequacy, effectiveness, and constitutional validity of existing laws, with a particular focus on the Indian regulatory model.⁷ By engaging in a comparative analysis with international prospective, the study aims to identify regulatory best practices and highlight areas requiring reform. Ultimately, the research aspires to contribute to the evolving discourse on developing a balanced, transparent, and rights-oriented regulatory framework that range technological advancement with democratic and constitutional values.

II Objectives of the Study

1. To examine the concept, growth, and functioning of Over-The-Top (OTT) platforms

⁵ Ministry of Electronics and Information Technology, Government of India, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, notified under the Information Technology Act, 2000

⁶Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

⁷ European Union, Directive (EU) 2018

and their significance in the digital media ecosystem

2. To analyze the existing legal and regulatory framework governing OTT platforms in India, with particular reference to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.
3. To identify and critically evaluate the major legal challenges associated with OTT platforms, including content regulation, freedom of expression, data protection, and intermediary liability.
4. To undertake a comparative assessment of international regulatory approaches to OTT platforms and suggest reforms for developing a balanced and effective regulatory framework in India.

III Research Questions

1. What are OTT platforms, and how do they differ from traditional broadcast and cinema media in terms of regulation and content dissemination?
2. What are the key laws and regulatory mechanisms currently governing OTT platforms in India?
3. What legal and constitutional challenges arise from the regulation of OTT platforms, particularly concerning freedom of speech and expression?
4. How do international regulatory models for OTT platforms compare with the Indian framework, and what best practices can be adopted?

IV Hypotheses

- i. The existing regulatory framework governing OTT platforms in India is fragmented and lacks comprehensive statutory clarity, leading to uncertainty in enforcement and compliance.
- ii. Excessive governmental control over OTT content poses a potential threat to creative freedom and freedom of speech and expression guaranteed under the Constitution of India.

V Research Methodology

The present study adopts a doctrinal and analytical research methodology. Primary sources include statutory provisions, rules, government notifications, policy documents, and judicial decisions relating to digital media and OTT platforms. Secondary sources consist of books, journal articles, research papers, reports published by regulatory bodies, and credible online resources. A comparative method is employed to examine regulatory frameworks governing OTT platforms in selected foreign jurisdictions such as the United States and the European Union. The research is qualitative in nature and is based on critical analysis aimed at identifying gaps in the existing legal framework and proposing suitable legal and policy reforms.

VI Media law on OTT

Media law governs the functioning, regulation, and liability or responsibility of various forms of media, including print, broadcast, and digital platforms. With the rapid growth of Over-The-Top (OTT) platforms such as Netflix, Amazon Prime Video, and Disney+ Hotstar, the relationship between media law and OTT services has become a subject of significant legal and constitutional debate. OTT platforms have transformed content consumption by providing on-demand, internet-based audio-visual content, thereby challenging traditional media regulation frameworks.

Evolution of OTT Platforms and Media Law

Traditional media such as television and cinema are regulated through strict statutory mechanisms, including licensing, certification, and content censorship. In contrast, OTT platforms initially operated in a regulatory vacuum, claiming protection under freedom of speech and expression. Their digital nature allowed them to bypass conventional censorship regimes applicable to films and television broadcasts. However, the increasing reach and influence of OTT content prompted the need for legal oversight to balance creative freedom with public morality, decency, and national interest.⁸

In India, OTT platforms are regulated primarily under the Information Technology Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These rules bring OTT platforms within the ambit of digital media regulation and

⁸Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

impose due diligence obligations. A three-tier grievance redressal mechanism has been introduced, requiring self-regulation by platforms, oversight by self-regulatory bodies, and ultimate supervision by the Central Government. This framework represents a shift from absolute autonomy to controlled self-regulation.⁹

A critical aspect of media law and OTT relations is the balance between freedom of speech under Article 19(1)(a) of the Indian Constitution and reasonable restrictions under Article 19(2). OTT platforms argue that excessive regulation stifles creativity and innovation, while the State emphasizes the need to protect societal values and public order. Media law thus plays a crucial role in harmonizing these competing interests.¹⁰

The relationship between media law and OTT platforms reflects the evolving nature of digital media governance. While OTT platforms have expanded creative and expressive freedoms, their influence necessitates a structured regulatory framework. Media law must continue to adapt to technological advancements, ensuring accountability without undermining constitutional freedoms. A balanced, transparent, and rights-oriented regulatory approach is essential for sustaining both creative expression and public interest in the digital age.

VII Obscenity challenge in of OTT Platforms

The issue of obscenity has emerged as one of the most contentious legal challenges in the regulation of Over-The-Top (OTT) platforms. With the rapid proliferation of digital streaming services and the increasing production of bold and experimental content, questions regarding what constitutes “obscene” material have gained renewed significance. Unlike traditional cinema and television, which are subject to prior censorship and strict content codes, OTT platforms offer on-demand access to content with minimal pre-screening, thereby intensifying concerns related to public morality, cultural values, and protection of vulnerable audiences.

In India, the concept of obscenity is primarily governed by the Indian Penal Code, 1860, particularly Sections 292 to 294 new criminal laws BNS¹¹ which criminalize the sale, distribution, and public exhibition of obscene material. These provisions were drafted in a pre-digital era and were not designed to address internet-based content dissemination.

⁹ Shreya Singhal v. Union of India, (2015) 5 SCC 1

¹⁰ Constitution of India, Article 19(1)(a) and Article 19(2)

¹¹ Shailender Malik, BNS, 2023, 1st edn, Allahabad law agency p11

Nevertheless, courts have extended their application to digital platforms, including OTT services, leading to interpretative challenges. The lack of a precise statutory definition of obscenity has resulted in judicial reliance on evolving community standards rather than rigid moral benchmarks.

OTT platforms face unique challenges in regulating obscene content due to their global reach and diverse audience base. Content deemed acceptable in one jurisdiction may be considered obscene in another, creating cross-border regulatory. Moreover, excessive regulation or censorship of OTT content raises constitutional concerns under Article 19(1)(a) of the Constitution of India, which guarantees freedom of speech and expression. Any restriction imposed on grounds of obscenity must satisfy the test of reasonableness under Article 19(2), ensuring proportionality and necessity.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, attempt to address obscenity by prescribing content classification, parental controls, and grievance redressal mechanisms for OTT platforms. While these measures aim to protect minors and public morality, critics argue that vague standards and executive control may lead to self-censorship and chilling effects on creative expression. Thus, obscenity regulation in the OTT context requires a balanced approach that respects artistic freedom while safeguarding societal interests. A nuanced, context-based interpretation supported by clear guidelines is essential to address obscenity without undermining constitutional values in the digital era.

The judicial approach to obscenity in India has evolved significantly over time. In *Ranjit D. Udeshi v. State of Maharashtra*, the Supreme Court adopted the Hicklin test, which assessed obscenity based on whether the content tended to deprave or corrupt susceptible minds. However, this rigid standard was later relaxed in *Aveek Sarkar v. State of West Bengal*,¹² where the Court endorsed the “contemporary community standards” test, emphasizing context, artistic merit, and social purpose. This progressive interpretation is particularly relevant for OTT platforms, which often portray realistic themes involving sexuality, relationships, and social issues as part of narrative storytelling rather than for prurient

¹²(2014) 4 SCC 257

interests.¹³

VIII Role of the Ministry of Information and Broadcasting in Regulating OTT Platforms

The Ministry of Information and Broadcasting (MIB) plays a central role in shaping and enforcing the regulatory framework governing media and entertainment in India, including Over-The-Top (OTT) platforms. The Ministry has been responsible for regulating print media, films, television broadcasting, and advertising through various statutory and executive mechanisms. With the rapid growth of digital media and OTT platforms, the scope of the Ministry's functions has expanded to address challenges posed by internet-based content dissemination.¹⁴

Initially, OTT platforms operated outside the direct regulatory oversight of the MIB, as they were neither covered under the Cinematograph Act, 1952 nor subject to programme and advertising codes applicable to television broadcasters. However, increasing public concerns regarding obscenity, hate speech, misinformation, and national security led to demands for regulatory intervention. Recognizing the growing influence of OTT platforms on public opinion and culture, the Government of India brought digital news media and OTT platforms under the administrative purview of the Ministry of Information and Broadcasting in 2020.¹⁵

Under these rules, the MIB has been entrusted with supervisory and oversight responsibilities over OTT platforms. The Ministry oversees the implementation of a three-tier grievance redressal mechanism, where unresolved complaints at the platform and self-regulatory body levels may be escalated to an Inter-Departmental Committee constituted by the MIB. This committee has the authority to issue advisories, warnings, and directions for content modification or removal, thereby placing the Ministry at the apex of OTT content regulation.

The MIB also plays a policy-making role by issuing guidelines, advisories, and notifications to OTT platforms to ensure compliance with content classification norms, age ratings, and parental control measures. Through these actions, the Ministry seeks to strike a balance

¹³ Ministry of Electronics and Information Technology, Government of India, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (content classification, parental controls, and grievance redressal mechanism for digital media)

¹⁴ Ministry of Information and Broadcasting, Government of India, Draft Broadcasting Services (Regulation) Bill, 2023

¹⁵ United Nations Office on Drugs and Crime (UNODC), Policy Paper on the Criminal Misuse of Deepfake Technologies and Artificial Intelligence (2022)

between creative freedom and societal interests such as decency, morality, and protection of minors. However, critics argue that the extensive powers vested in the Ministry raise concerns about executive overreach, lack of transparency, and potential infringement of freedom of speech and expression under Article 19(1)(a) of the Constitution.¹⁶

The Ministry is actively involved in shaping future legislative frameworks for digital broadcasting. The proposed Broadcasting Services (Regulation) Bill aims to bring OTT platforms, digital news, and traditional broadcasters under a unified regulatory regime, further strengthening the Ministry's role in the digital media ecosystem. While such consolidation may enhance regulatory clarity, it also necessitates safeguards to prevent arbitrary censorship and ensure independent decision-making.¹⁷

IX Problems of OTT Platforms

▪ Absence of a Comprehensive Statutory Framework

OTT platforms in India are primarily regulated through executive rules rather than a dedicated parliamentary statute, leading to ambiguity, inconsistency, and uncertainty in legal enforcement.

▪ Threat to Freedom of Speech and Expression

Excessive control over OTT content may result in censorship and self-regulation driven by fear of government action, thereby creating a chilling effect on creative and artistic freedom protected under Article 19(1)(a).

▪ Vague and Subjective Content Standards

Terms such as “obscenity,” “morality,” and “public order” lack precise definitions, allowing arbitrary interpretation and inconsistent application across platforms and authorities.

▪ Jurisdictional and Cross-Border Challenges

OTT platforms operate across national boundaries, making it difficult to enforce domestic laws

¹⁶ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

¹⁷ United Kingdom, Office of Communications (Ofcom), Regulation of On-Demand Programme Services under the Audiovisual Media Services Directive (as amended, 2018)

on foreign-based service providers and regulate content hosted on overseas servers.

- **Intermediary Liability Uncertainty**

The scope of intermediary liability remains unclear, especially regarding user-generated content, resulting in confusion about the extent of responsibility and compliance obligations of OTT platforms.

- **Data Protection and Privacy Risks**

OTT platforms collect vast amounts of user data, raising concerns about consent, profiling, data security, and misuse, particularly in the absence of a fully matured data protection enforcement mechanism.

- **Weak Consumer Protection Mechanisms**

Issues such as opaque subscription terms, auto-renewal practices, misleading advertisements, and lack of effective grievance redressal continue to affect consumer rights.

- **Over-Centralization of Regulatory Power**

Concentration of regulatory authority within executive bodies, such as the Ministry of Information and Broadcasting, raises concerns regarding transparency, accountability, and independence in decision-making.

X Suggestions

- **Enact a Comprehensive OTT-Specific Legislation**

There is an urgent need for a dedicated parliamentary statute governing OTT platforms that clearly defines regulatory standards, platform obligations, and enforcement mechanisms, rather than reliance on fragmented executive rules.

- **AI-Based Content Moderation with Human Oversight**

OTT platforms should be encouraged to deploy Artificial Intelligence tools for content moderation to identify harmful content, hate speech, and unlawful material. However, such AI

systems must be supplemented by human review to prevent algorithmic bias and wrongful censorship.

- **Clear Legal Framework to Address Online Pornographic Content**

Instead of blanket bans, the law should clearly distinguish between illegal pornographic content and lawful adult content. Strict measures must be adopted for blocking unlawful pornography, especially content involving exploitation, while ensuring compliance with constitutional standards of proportionality.

- **Strong Regulation against Deep fakes and Synthetic Media**

Specific legal provisions should be introduced to criminalize malicious deep fakes, particularly those created using artificial intelligence to impersonate individuals, spread misinformation, or violate privacy and dignity. OTT platforms must be mandated to promptly remove such content.

- **Mandatory Disclosure and Labelling of AI-Generated Content**

OTT platforms should be required to label AI-generated or synthetically altered content to ensure transparency and protect viewers from deception, particularly in news, documentaries, and realistic fictional portrayals.

- **Protection of Minors through Robust Age-Verification Mechanisms**

Effective and privacy-respecting age-verification systems should be mandated to prevent minors from accessing adult or harmful content, including explicit material and violent content on OTT platforms.

XI Conclusion

The emergence and rapid expansion of Over-The-Top (OTT) platforms have fundamentally altered the media and entertainment landscape, presenting complex legal, constitutional, and technological challenges. As this study demonstrates, the regulation of OTT platforms can no longer be approached through traditional media laws alone, especially in an era increasingly shaped by artificial intelligence (AI), algorithm-driven content distribution, and cross-border digital dissemination.

One of the most pressing concerns in OTT regulation is the management of obscene and pornographic content. While the State has a legitimate interest in protecting public morality and minors, vague and subjective standards of obscenity risk arbitrary enforcement and excessive censorship. The judicial shift towards the “contemporary community standards” test underscores the need for contextual and proportionate regulation rather than blanket restrictions. OTT platforms, therefore, must be regulated in a manner that respects artistic expression while effectively curbing unlawful and harmful content.

The growing use of Artificial Intelligence introduces both opportunities and risks. AI-driven recommendation systems and content moderation tools can enhance user experience and platform safety, but they also raise concerns relating to bias, over-censorship, and lack of transparency. More alarmingly, the rise of deepfakes and synthetic media poses serious threats to privacy, dignity, and democratic discourse. These AI-generated manipulations necessitate specific legal recognition and swift regulatory responses to prevent misuse and safeguard individual rights.

The Supreme Court’s decision in Justice K.S. Puttaswamy (Retd.) v. Union of India is particularly significant in the OTT context. The judgment firmly establishes privacy as a fundamental right and mandates that any restriction on personal data or digital autonomy must satisfy the tests of legality, necessity, and proportionality. This constitutional framework must guide OTT regulation, especially in matters involving data collection, profiling, and surveillance.

In effective OTT regulation must strike a careful balance between innovation and accountability, freedom and restraint. A transparent, rights-oriented, and technology-sensitive legal framework capable of addressing AI misuse, deep fakes, obscene content, and privacy concerns is essential to ensure that OTT platforms evolve in harmony with constitutional values and societal interests in the digital age.