

“Harnessing And Tightening the Legal Noose Around The Media And OTT Platforms.”

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“Technological progress is like an axe in the hands of pathological criminals, and have we already opened Pandora’s Box and let out our self created Frankenstein’s monster ?”

Abstract

OTT platforms analogous to parallel media for entertainment, currently have no legislation or body, regulating them. Though a very powerful democratic tool, to promote independent, responsible and healthy journalism and online OTT content, it has proved to also have a darker side and prove to be a bane, due to no regulation. Several benefits associated have led this platform to become the first choice of many producers and directors, very cost effective, opportunity to produce original work unhampered with fear of censorship. Furthermore it being an accessible inexpensive medium makes it even more appealing to the viewers.

We need to weigh the proposed merits and probable drawbacks of the regulatory controls in the light of the fundamental rights of the media and the right to privacy of citizens. However if regulated the OTT will lose its edge if censored.

OTT is yielding more unique and out-of-the-box content every day, “Censorship also sets a dangerous precedent for limiting expression of viewpoints, both creatively and politically.” A code of ethics and Government controls balanced with each other is the only way forward.

Keywords: OTT, censorship, darker side self-regulation, Governmental controls, Code of ethics.

The Media Council Bill, of 2010, was introduced in the Rajya Sabha, on the 5th of August 2011, has still to see the light of the day as a statute, to regulate the media and various other forums like the OTT (Over The Top) platforms. Today in this new millennium the electronic and print media have invaded every sphere of not only our public lives but our very private lives too.

OTT platforms being considered analogous to parallel media for entertainment, also have no legislation or body, regulating them, except they are **governed by the Ministry of Electronics and Information Technology (MeitY) and Information Technology Act, 2000**, like any other online content medium.

Though a very powerful democratic tool, to promote independent, responsible and healthy journalism and online OTT content, it has proved to also have a darker side and a bane to countries like India with very little or practically no control or censorship over the cyber space and the omnipresent hounding media.

The OTT media service space has empowered many persons creating the fine arts, actors and directors too, as a powerful platform for showcasing artistic work by filmmakers and actors who are allured to this intermediary. The main advantage is the freedom of creativity with little or no restrictions. OTT bypasses cable, broadcast, and satellite television platforms, and companies that were the conventional medium to air such content. OTT thus transformed this traditional path and became is the decisive *platform* to reach the target audience in the comfort of their homes directly.

There is a major shift in the entertainment industry’s attitude towards streaming content. Renowned directors who earlier scoffed at these platforms are now claiming their share of attention with sole online non-theatrical releases.

Since hours of consumption of content have gone up, so has the supply through several such platforms. It is the logical increase in demand providing the users with a variety of choices. that has

led to the supply. Many stalwart actors feel that the OTT vs. traditional cinema debate is now redundant as is the supremacy of any medium, and it is about co-existence of both these mediums. Several benefits associated with this platform have added to this becoming the first choice of many producers and directors particularly being very cost effective, and an opportunity to produce original work unhampered with fear of censorship. Furthermore it being an accessible medium and choice based in terms of being a subscription based service, to get easy access to international programs makes it even more appealing to the viewers.

The ever mounting viewership that has appreciated the services provided by these platforms in the comfort of their homes at a very reasonable cost, Nevertheless a close scrutiny affirms the fact that since it has the potential to permeate every nook and corner, the content is offensive and unlawful, and such content moreover cannot be filtered out.

The Darker Side:

Disadvantages to the average viewer is mainly in the lack of security, but the insatiable appetite for new and bold content, make them ready to take this risk without really understanding the threats posed to their psychological wellbeing..

The most serious threat is posed due the fact that Parental locks for grown-up content, and steadfast age authentication devices for adult-only content, are not yet developed in a foolproof manner, leaving very little guardian control over viewing by children. The OTT platforms were also required to set up a self regulatory mechanisms, which are not yet put into place.

This leads to the very pertinent question, whether then are OTT self regulated?

The Digital Media Content Regulatory Council (DMCRC) a self regulatory organization, for digital OTT platforms, is the second-tier machinery at the appellate level, similar to the Broadcast Content Complaint Council (BCCC), which the IBF had set up for the linear broadcasting sector in 2011.

The lack of active measures taken by this Council makes it absolutely pertinent and necessary at this juncture, that certain stringent measures be taken to regulate the print and electronic media, and check this menace before it goes out of control.

The media today in all its multifarious forms is the most powerful entity on earth. They have displayed the power to set trends and change the mindset of society and particularly influence the habits of the youth population in India.

The Media Council Bill, aims to formulate a body and lay down a Code of Conduct for all related journalistic and electronic mediums. Its main object is to ensure that the various forms of media do not cross the *lakshman rekha and maintain certain dignity and parameters*, so far as its editorial or journalistic contents are concerned.

Though the fundamental right guaranteed by the Constitution of India, under Article 19 (1) (a), namely freedom of speech and expression, no doubt extends to the press, we need to examine the felt necessities of time, and consider that whether the Act, when passed will be fruitful in **“Harnessing the Media and Tightening the Legal Noose.”** We definitely need to weigh the proposed merits and probable drawbacks of the regulatory controls in the light of the fundamental rights of the media and the right to privacy of citizens.

Need for regulation of Digital content in India on OTT platforms in India

- With the escalating use of the internet, in the current millennium, and multiple genres being streamed, there is an urgent need for the Government to lay down clear cut directives for maintaining the standards of traditional and digital/online content
- Multiple complaints and issues had been raised by the viewers, concerning the things being shown online.

- In India, OTT is the only platform that was self-regulatory, thus to make it equivalent to similar platforms like television and radio, the Government shifted the administration of this sector to the Ministry of Information & Broadcasting (MIB)
- No fixed entity in India has ever been specifically assigned to control the OTT platforms. By 2019, due to numerous grievances and questions raised against the digital content on these online mediums, the Government decided to take action against the same.
- *The content and language of OTT releases pose a serious threat to the cultural and ethical values of our country.*
- Behavioral changes have been systematically noticed in youth, leading to severe long-term influences on their behavior and formulation of ideologies and way of thinking having adverse ramifications for the society.
- Deviation from socially accepted norms by the youth is a fallout.
- Mental health of the youth is affected as evident from increase in disorders like insomnia, depression, obesity, and eye disorders .
- The academic performance of the youth has also been adversely affected.
- Graphically sexual content is disturbing and mislead the youth to experiment without regard to consequences like sexually transmitted infections and unwanted pregnancies, and also leads to sexual assaults, rapes etc.
- Anti-social and health hazards like consumption of alcohol, smoking, tobacco, drug and substance abuse, are regularly featured in web shows aired on the OTT to gain popularity, without warning the youth of their adverse effects.

A surfeit of incidents where youth have committed crime after getting inspired by the programs of such platforms registered recently, clearly establish the deep impact on youth. They admit that they were inspired and motivated and that they tried to replicate the crimes after watching the web dramas. Serious offences like murders, chain snatching, extortion, kidnappings and demands for ransom, have been committed by youth who admitted to being inspired by the web series streamed on OTT. It is pertinent to note that these Streaming platforms have business interests across the world, but India's huge population provides an enormous consumer base. Popular OTT platforms such as Netflix and Amazon have its huge market in our country along with other platforms such as Prime video, Disney Hotstar, Zee5, MX player, Alt Balaji etc. to name a few, and the easy access has multiplied manifold during the lockdown period.

The Supreme Court in October 2020 directed the Central Government to take up the various charges against digital content aired on these mediums and finally, the OTT platforms will now be administered by the Ministry of Information and Broadcasting (MIB).

Self regulation the Way Forward:

The Self Regulatory Code **applies to any online content source, who work in India**, and is developed by them. Its members agree to take up “reasonable efforts in good faith” to implement its principles.

Salient features of the current draft of the self-regulatory code

1. The signatories to this Code will not make available the following categories of content through their services to users:
 - a) Content which promotes and encourages disrespect to the sovereignty and integrity of India;
 - b) 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;
 - c) Content which promotes and encourages terrorism and other forms of violence against the State (of India) or its institutions; and
 - d) Content that has been banned for exhibition or distribution by online video service under applicable laws or by any court of competent jurisdiction.

2. The signatories to this Code seek to protect the consumers' ability to choose content that they may deem to be appropriate for their viewing. The objective is to use information to equip consumers with requisite knowledge and awareness, to enable consumers to make informed decisions on the consumption of content. A key component of empowering consumers to make such informed decisions lies in providing them with information about the types of content available, themes contained within, age classification, etc.

3. The signatories will also classify content for age, and specify the language, violence and sex depicted in each product.

These regulations will make almost more than half the content currently streaming liable to be removed from their platforms

On the basis of these guidelines, by January 2019, eight OTT platforms had developed self-regulatory codes that stated a set of guiding principles for the content which can be displayed online. Mandatory terms and conditions were:

- No content shall display any disrespect to the national emblem or national flag
- No content which can hurt religious sentiments
- Child pornography to be strictly prohibited
- Content which is banned by the law or order of the country could not be streamed
- Terrorism in any form cannot be streamed.

However, the Union Government disapproved of this code formed by the Internet and Mobile Association of India (IAMAI), and Digital Curated Content Complaints Council (DCCC) as no specific and elaborate set of rules were released. Thus, finally, the Government decided to undertake OTT platforms and their censorship rights under the Ministry of Information and Broadcasting In W.P.(C) 11164/2018 JUSTICE FOR RIGHTS FOUNDATION Versus UNION OF INDIA ... A writ nature of writ of mandamus was sought to be issued to the Respondents to frame legal provisions/guidelines in order to regulate the said online platforms and contents broadcasted on the online platforms,

Primarily, the grievance was that there are no guidelines to regulate the contents which are broadcast on the online platform by establishments like Netflix, Amazon Prime Video etc. The Ministry of Information and Broadcasting filed an affidavit, contending that the online platform are not required to obtain any license from the Ministry of Information or Broadcasting for displaying their contents and the same is not regulated by the said Ministry. They further stated that the Ministry of Electronics and Information Technology has informed that they do not regulate the content on internet and there is no provision for regulating or licensing for an organization or establishment for putting up content on the internet.

However, it was stated that the provisions of the Information and Technology Act, 2000, are applicable and the concerned statutory authority exercising jurisdiction under the said Act can take action by virtue of the powers available to them under Section 69 of the Act which includes direction for interception, monitoring or decryption of information, blocking of content etc. It is further stated that under Section 66A punishments have been provided for sending offensive messages through communication service etc. Punishments are also provided for publishing or transmitting obscene material in any electronic form under Section 67. Section 67A prescribes punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form. Section 67B further provides for punishment for publishing or transmitting material depicting children in a bad taste and further power is conferred under Section 68 to the Controller to give directions in such cases.

The court was of the view that in light of the existing provisions of the Information and Technology Act and the Rules framed there under, that in a public interest litigation, the Court cannot issue a mandamus for framing general guidelines or provisions when there are stringent provisions already in place under the Information and Technology Act. In case the platforms violates the statutory

provisions of the Information and Technology Act or the Rules and contains prohibitory material the authorities shall look into the matter. The Court found no reason to issue any mandamus for bringing into place any guidelines or statutory regulation for the said purpose when the Information and Technology Act itself provides for enough procedural safeguards for taking action in the event of any prohibited act being undertaken by the broadcasters or organizations in the internet/online platform.. The writ petition was, accordingly, dismissed.

Ministry of Information and Broadcasting (MIB) Directives to OTT Platforms

Since the Supreme Court passed the judgment no decisions have been notified as yet by the Union Government regarding the measures which will be taken to regulate the digital content. On February 2021, a new set of regulations were released by the Ministry of Information and Broadcasting. Guidelines for Intermediaries and Digital Media Ethics Code, announced in February 2021, are just rules not a legislation which is binding, which say self classification into 5 categories and provide for mechanism for parental locks.

Conclusion

The OTT platforms though currently in the nascent stage, are here to stay, and it is very true that if regulated the OTT will lose its edge if censored.

OTT is yielding more unique and out-of-the-box content every day, and such original ideas are a result of the freedom of creation inherent with OTT. Curbing and controlling that creativity will hold back the extensiveness of content on OTT, which is on the path to completely overtake conventional television within the next decade.

“Censorship also sets a dangerous precedent for limiting expression of viewpoints, both creatively and politically.”

One of the main concerns is whether the code will generate an atmosphere of fearless creativity?

Since the OTT platforms have been in the crosshairs of the government it is pondered that whether the new regulations protect producers of such well-researched and hard-hitting content? Will the self-regulation or censorship bring any relief to the content providers in matters like these? Possibly not.

Nevertheless, Online platforms need proper regulations and should be censored in order to protect the cultural values among the youth and create a positive and healthy environment. The present government has shown the readiness on several instances to preserve and protect Indian culture and values.

The ministry of Information and Broadcast (MIB) has called attention to regulation of OTT Platforms, and the MIB recently notified the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules 2021 (Rules). The new rules seek to preserve a equilibrium between self-regulation and government control. The OTT platforms are obligated to set up a robust three-tier grievance redressal mechanism.

- The first level will include regulation by the OTT Platform itself through a grievance officer.
- The second level will be an institutional self-regulatory body formed by publishers of content and their associations. This self-regulatory body will consist of experts from industry headed by a retired Supreme Court/ High Court judge /eminent personality in the relevant field.
- The third level is an inter-department committee constituted by the Ministry of Information and Broadcast which will give oversight and listen to appeals for decisions taken at level two or if a complaint is referred to the inter-department committee by MIB.

The code of ethics announced under the Rules, must lay down guidelines for classification of content based on viewer’s age, themes, content, tone and impact, and target audience. In addition to the regulations and guidelines by the government, it is the responsibility of each citizen to avoid the use

of any such content at any level which pollutes the mind of youths, create adverse behavioral changes, and pose a serious threat to the moral and cultural values of the community. Today when the physical world is being transferred to a virtual world which has assumed overwhelmingly dynamic proportions, and we are witnessing an unprecedented evolution and revolutionary change in our cyberspace journey, we need to have a well defined trajectory, to steer the new generations on the right chartered course to avoid any future catastrophe.

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