

# Censorship on OTT: Infringement of Right To Freedom of Speech And Expression or Not?

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## Abstract

It is right saying about every living life in the earth is indulged with some kind of entertainment. Since ancient times our society has been experimenting with various forms of entertainment. In ancient era also people used different types of entertainments like Classical as well as folk music, dance and drama. The 20th century saw the dawn of innovations, growth of technology and with advancements in various sectors, made technology the symbol of development for a country. The Indian film and entertainment industry has shown a shift from conventional TV and big screen to Over-the-top media platforms. These platform systems make it simple to stream substance from anywhere and any-time on the internet. Now a days the most recent trends in entertainment and the film industry is development of Over-The-Top (OTT) media platforms, which allow users to stream audio and video content online. The Central Board of Film Certification CBFC and the Broadcasting Programming Complaints Council BCCC regulate cinema and television content, but OTT services have no such kind of regulation or body which control them. Thus, OTT platform enjoy full freedom in regard to streaming of any content, but it observed that many content streamed out through OTT platform is harmful to society, defamatory, obscene. In recent times it observed that there are many cases, where a number of complaints have been filed against some web series which hurting religious feelings, the content of which is immoral, obscene, and defamatory. Thus, to tighter the regime of OTT platform it is very necessary to form certain bodies, authority that watch and control the working of OTT platform.

In present paper researcher study that, for the proper regulation and tighter the regime of OTT platform Censorship is required or not? and whether such censorship amounts to infringement of freedom of speech and expression granted by the Indian Constitution.

**Keywords:** Censorship, OTT, Media, Regulation, Freedom of Speech and Expression,

## A. Meaning of OTT platform

Traditionally, mediums like theatre and television are used for consumption of movies and other audio and video content. Television was introduced in India in 1959 but for many years it was limited to state-owned broadcaster Doordarshan. Technological development in relation to T.V and media open new doors were watching T.V or movie through online streaming or Video on Demand become more convenient than traditional way due to which there has been a marked shift in the television entertainment options from traditional way to online streaming of program. In the year of 2016 the OTT platform was introduced in India. OTT content is defined as the "productized practice of streaming content to customers directly over the web". This marks a significant change away from traditional terrestrial, cable, or satellite dish television's traditional tune-in, "consume-what-you-are-fed" approach and toward a new on-demand era of choice.<sup>1</sup>

Over the past few years OTT platforms/streaming services have seen extreme growth in India as well as other parts of the world. When, any television content provided via high-speed Internet connection instead of traditional way through a cable or satellite it known as OTT. The providers of these contents are referred to as OTT platforms. Common examples of OTT platforms popular in India are Netflix, Amazon prime, Disney+ hot star, HBO now, Sony Liv, Zee5, Voot, and Hulu etc. In

<sup>1</sup> Available at: <https://www.ipsos.com/sites/default/files/ct/publication/documents/2020-01/evolution-of-entertainment-in-india.pdf>

Simple way OTT is the abbreviation of “Over-The-Top”, which has a meaning that audio-visual contents are delivered over the top of existing types of TV receivers such as cables, satellite dishes, and set-top boxes. OTT also called “non-linear (or on-demand) audiovisual media service” or “Video-On-Demand”.<sup>2</sup>

### **B. Rules and Regulations to Control OTT Platform**

OTT platform is a digital media which operated through high speed of internet connectivity. Films, programs which are streaming through OTT platform allowed complete creative freedom to connect creators and it has been largely unregulated. It was observed that during and after pandemic of Corona virus the rate of consumption of the content of T.V program through OTT platform also increased massively, which resulted in a huge growth in the number of OTT Platforms launched in India which fulfilling variety of needs of the Indian audience. As there are no tight legal regulations to control OTT platform and complete freedom given to the creator for streaming any content through OTT platform which caused rise of many cases and number of complaints have been filed against some web series which hurting religious feelings, the content of which is immoral, obscene, and defamatory.

The content offered by cinema or television is governed by the Central Board of Film Certification CBFC, Broadcasting Content Complaints Council BCCC, and in other hand OTT platforms have no such legislation or body which 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. These OTT platforms have certain self-regulation/censorship standards of their own like Netflix has self-imposed maturity ratings. There are certain examples of web series Netflix’s the Suitable Boy, Amazon Prime’s Tandav which create some controversies and led to the debate whether censorship and regulation of OTT platforms has become a necessity of present era.<sup>3</sup>

For governing the streaming content on OTT platform, 15 platforms signed a self-regulation code, drafted under the support of the Internet and Mobile Association of India. Actually, the platforms did so in order to avoid censorship. This code has gone through three revisions, the most recent of which was released in September 2020. But, the Ministry of Information and Broadcasting (MIB) decided to set aside the code as it had an extensive list of content that was prohibited and there were lacked adequate redress mechanisms. The Supreme Court issued a notice to the Internet and Mobile Association of India (IAMAI) in November 2020, notifying that all online curated content providers (OCCPs), including OTT platforms, now fall under the Ministry of Information and Broadcasting.<sup>4</sup>

Thus, to tighter the regime of OTT platform the Ministry of Information and Broadcast (MIB) has in the past year stressed on some form of regulation of OTT Platforms to streamline the sector and held consultations with several stakeholders. In this background, the MIB recently notified the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules 2021 (Rules).<sup>5</sup>

### **C. Censorship On OTT Platform – Is Restriction on Fundamental Right to Freedom of Speech and Expression**

Freedom of expression is the cornerstone of any democratic society. It is a basic human right to express oneself freely whether through words of mouth, literature, art, or any other medium of communication regardless of their cultural, religious, ethical, political, or other circumstances which provide under article 19 (1) (a) of Indian Constitution which is the foundation of modern democracies. The Internet and social media have become an important communication means through which

<sup>2</sup> Research on the Relationship between the Growth of OTT Service Market and the Change in the Structure of the Pay-TV Market, Sungwook Park, Youngsun Kwon, available at: <https://www.econstor.eu/bitstream/10419/205203/1/Park-Kwon.pdf>

<sup>3</sup> Regulation of the OTT platforms, available at: <https://blog.ipleaders.in/regulation-ott-platforms/>

<sup>4</sup> Ibid

<sup>5</sup> New Rules for OTT Platforms: Regulation or restriction? available at: <https://www.financialexpress.com>

individuals can exercise their right of freedom of expression and exchange ideas and views. The concept of fundamental right under Article 19(1)(a) is dynamic one, which provide that the freedom of communication and right to broadcast or publish one's views through any electronic media is fundamental right.

The term 'censorship' comes from the Latin word 'cernere' which means 'to estimate, rate, assess, or hold an opinion. The Oxford Dictionary defines a censor as 'an official who examines books, films, news, and other materials that are about to be published and suppresses any parts that are deemed obscene, politically unacceptable, or a security threat.<sup>6</sup> Thus, the censorship means certain rules, regulations use by organisational authority to control, suppress or prohibit speech, writing that is deemed subversive of the common good.

Constitution of India Article 19 1(a) guarantees the right to freedom of speech and expression, with some reasonable restriction mentioned under Article 19 (2) such as morality, decency, and public good and order. Indian Censorship is a combination of ethnicities, races, and religious bodies that have managed to live in peace. Some people said that Censorship hampers the very idea of freedom of speech and expression but as per government such censorship on OTT platform is necessary to combat any undesirable form of activity through media or OTT platform.

Under article 19(2) of the constitution, the state has the ability to impose restrictions on freedom of speech and expression if it is determined that the content exhibited is contrary to morals, public order, or other factors. If it is determined that the contend is against Indian sovereignty, the government has the authority to issue a notice for blocking of the contend under section 69 A of the IT Act.<sup>7</sup>

Presently everything going digital, everyone has a wide range of content just a click away. So, it becomes easy for any child or a teenager to access any content on OTT platform which is not for kids so to restrict and control such content is necessary. The government is of belief that the creative independence of these platforms needs to be under their purview and they need to tell these platforms what they can stream and cannot streamed on OTT platform. It actually means, content streamed through OTT Platform must be verified through Censorship.

The government has published regulations for over-the-top (OTT) streaming, digital news, and social media platforms, including processes for monitoring and blocking unwanted or inappropriate content. The new Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, which replace the preceding Information Technology (Intermediary Guidelines) Rules 2011, went into effect on January 1, 2021. A grievance procedure and a self-regulatory body led by a retired Supreme or High Court judge have been established by the government.<sup>8</sup>

Apart from the censor board, OTT platforms are required to use their own discretion when displaying content online. A regulation has been enacted that requires OTT platforms to have a parental lock so that parents can see what their children are watching and to have proper age verification to avoid any sort of illegal activity.<sup>9</sup>

**i. Censorship is not amount to infringement of freedom of Speech and Expression.**

In India, the growth of OTT services has changed video consumption in recent years, giving viewers more power over what they watch, when they watch it, and when they watch it at their leisure

<sup>6</sup>Censorship in the OTT platforms: A close look at the freedom of speech and expression, Available at : <https://www.legalserviceindia.com/legal/article-8387-censorship-in-the-ott-platforms-a-close-look-at-the-freedom-of-speech-and-expression.html>

<sup>7</sup>ANALYSING THE STATUS OF FREEDOM OF SPEECH VIS, A VIS NEW OTT RULES IN INDIA ,Saundraya Giri , available at <https://zenodo.org › record › files>

<sup>8</sup>OTT: Censorship vs Right to Freedom of Speech and Expression. Available at :<https://legaldesire.com/ott-censorship-vs-right-to-freedom-of-speech-and-expression/>

<sup>9</sup>Ibid 7.

time. Censorship helps to keep anti-social, hateful, and explicit information out of the public eye, hence maintaining social order. It is critical to ensure that all OTT sites provide accurate information and do not manipulate public opinion in a way that is harmful to society. This is not a violation of free speech because censorship helps society avoid unnecessary conflicts. Indian Constitution provided freedom of speech with certain restrictions, thus through OTT platform creators have freedom to stream their views, opinion but with some restrictions and the tool to restrict unnecessary and immoral content is Censorship.

Even though people make argument against censorship that subscription on Demand content is available on OTT services which allowing viewers to pay for and watch whatever they choose but, easy availability of internet this argument is not worth, thus for regulation of OTT content appropriate hold of authority is required which will be fulfil through censorship. OTT Platforms in India today have a strong foothold and a large fan base, including in rural areas. Censorship is not any kind of restriction but it is regulation which prevents any wrong doing which will maintain the dignity and decorum of digital media industry.

But other side of above contention is that, if we increased censorship on digital media, it would have a negative effect on the economy of the country, as India is not only a major user but also a major producer of online video content in today's world. It has established itself as a major player in the global market. So, if there OTT regime is tighter by censorship it may hamper the very purpose of fundamental right freedom of speech and expression.

With the increase in its popularity, it has also faced strong opposition. The move of regulating the digital media and the OTT platforms has had both positive as well as negative consequences. While on one hand, it has curbed the freedom of speech and creative expression of the content creators, it has made sure that there exists a framework for effective supervision and moderation as in other areas like print and electronic media. The necessary thing in present time is that there must be harmonious strike of balance between online stream content and freedom of speech and expression and protecting the dignity, confidentiality, and the rights of customers. Thus, it is necessary there must be effective control of digital content censorship while preserving the most fundamental right to freedom of speech and expression.

## Conclusion

Looking at the present scenario, OTT platform is emerging all over the globe, so the need for an unbiased regulatory body to control and regulation of OTT platform is a must. A self-regulatory authority will not be able to oversee Internet Content Streaming. OTT platforms and the government will collaborate to address the OTT Platform issue. When it comes to legislation, India must ensure that it meets the demands of the people. Censorship of OTT content is critical because, unlike the printed word, video motivates thinking and action while maintaining a high degree of attention and memory. The purpose of censorship is to prevent communal violence from spreading, not to limit freedom.