

OTT COMMITTED SELF REGULATION IN INDIA: EXCEEDING THE LIMITS OF SPEECH AND EXPRESSION IN THE NAME OF CREATIVE FREEDOM

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ABSTRACT

Today the Over The Top (OTT) media service is a streaming media service offered directly to viewers via internet. This platform has overtaken the task done by television through cable, satellite, etc. There are a large number of OTT platforms working in India such as Netflix, Amazon Prime, Hotstar, Voot, etc. Unlike the content provided by cinema or television that is regulated by CBFC, BCCC, etc., the OTT platforms have no regulatory body over them to control the content streamed, and consequently enjoy their freedom. The content provided on such platforms though in violation of various laws of the nation is still under Supreme Court's observation. Whether the platform shall be under a self-regulatory body or there shall be a proper legislation which provides for a statutory body to control and censor the content streaming on such platforms is an important question.

Keywords: OTT, Media, Censorship, Regulation, Policy, Platform, censor Laws ETC.

INTRODUCTION

Many times, it is contended that- Govt. of India do not like us to have fun and personal choices. It is reflected that from the various restrictions like bizarre bans in *public interest*, but who is to decide what is in public interest? The new area of control being looked into is “over-the-top” or OTT services- the increasing popularity of streaming platforms like Netflix, Amazon Prime and Hotstar has not gone unnoticed. In July, 2020 Commerce and Industry Minister Piyush Goyal asked- the entertainment industry to self-regulate their programs on OTT platforms, claiming that many of them portray India and Indian society poorly. If the minister was really concerned, there are hundreds of other real events taking place across the country which really portray Indian society as still living in a medieval era. But matters have quickly gathered steam since then. Recently, after hearing a petition filed in public interest to regulate OTT platforms, the Supreme Court issued notice to the Centre and Internet and Mobile Association of India (IAMAI). And last week, a gazette notification brought all streaming platforms under the ambit of the ministry of information and broadcasting (I&B), sparking fears of a new censorship regime. In particular, the ministry may try to justify that the existing laws to cope with objectionable content (particularly, under Section 67 of the Information Technology Act and the Indian Penal Code) are not adequate.

The purpose of censorship and certification of audio-visual entertainment in India is not to restrict freedom of speech but to ensure that children do not get exposed to material that may be psychologically damaging.

The Information and Broadcasting (I&B) Ministry’s move to govern the Over-The-Top (OTT) platforms such as Netflix, Amazon Prime, Disney Plus Hotstar, etc. has been met with criticism from the champions of freedom of expression. While speculations indicate that the proposed censorship might be a restriction on the creative freedom of filmmakers, Rightantra highlights the importance of the regulation of OTT Platforms and suggests solutions to strike a balance between creative freedom and the well-being of children.

Uncertainty lingers around the infamous circular of the I&B Ministry since it does not lay down the details surrounding the regulation of OTT Platforms. Many experts believe that it would be similar to the Central Board of Film Certification’s (CBFC) model of censoring and certifying

films. Let's keep aside the shop talk and think of this situation from the perspective of the consumers. Screen addiction and over-use of the internet has been linked to several psychological conditions. Based on age, consumers can be divided into two basic groups: Children (below 18 years of age) and Adults (18+). Whether in theatres or at the comfort of home, adults are allowed to access all publicly released material in India. Children, on the other hand, are not allowed to watch films certified 'A' and are not allowed to watch, without parental guidance, films certified 'U/A' in theatres. It is important to note that children above the age of 12 years are full of curiosity about the world of adults and thus, are the main focus of this article. An OTT Platform is a Pandora's Box for them. But is opening this box a curse for them?

TREMENDOUS HIKE OF OTT IN COVID-19 PERIOD

While a majority of households still use DTH cable services, OTT platforms are rapidly becoming the go-to source of entertainment for many. The year 2020 saw a record 30% increase in the number of OTT platform subscribers following the outbreak of COVID-19. However, unlike TV which is regulated by the Cable TV Act, OTT platforms function as a liberal library of content and anything can be accessed by any user at any given time. As a result, kids can now readily access mature or age-inappropriate content which poses psychological harm.

Many parents express concern about screen addiction but often neglect the reasons behind it. Free access to content which is generally a taboo in many households and societies can now be enjoyed by the child in privacy. Unfortunately, children do not understand the consequences of watching extremely violent or hyper sexualized content.

According to studies, overuse of the internet by the youth has been linked with several psychological conditions including anxiety, depression, and insomnia amongst others. Further, children who watch adult-targeted content are more likely to become sexually active at a young age (in their adolescence). It is important to understand that in most countries, including India, persons below the age of 18 years are not capable of giving sexual consent.

IRRESPONSIBILITY OF THE CREATORS

Seeing that teenagers make a devoted audience of inaccurate sex lives of the characters of many teen dramas; creators have been shooting their shots at increasing storylines with teen protagonists who live carefree and ‘happening’ lives. This has led to overexposure to content that could potentially hamper a minor’s psychological growth and even go as far as mentally scar them. Studies show that the digital diet of children could actually desensitize them to violence and crime. Dr. Justin Coulson is of the opinion that children fail to see consequences while imitating the actions they viewed on such shows and films. He goes on to say, “empathy is reduced. Objectification is increased. Morality erodes.”

WHAT ARE OTT PLATFORMS?

The OTT, or Over-The-Top platforms, are audio and video hosting and streaming services which started out as content hosting platforms, but soon branched out into the production and release of short movies, feature films, documentaries and web-series themselves. These platforms offer a range of content and use artificial intelligence to suggest users the content they are likely to view based on their past viewership on the platform. Most OTT platforms generally offer some content for free and charge a monthly subscription fee for premium content which is generally unavailable elsewhere. The premium content is usually produced and marketed by the OTT platform themselves, in association with established production houses which historically have made feature films.

RECENT AGGRAVATED CONTROVERSIES

Whether it’s ‘voluntary’ cuts by the makers of Amazon Prime Video’s latest political drama series *Tandav*, or an apology to the armed forces by actor Anil Kapoor and Netflix India for “unintentionally hurting the sentiments” in the film *AK vs. AK*, , there is now a rush among OTT platforms to self-regulate and apologize as a way to tackle public furores and FIRs. A precedent has been set. The line between regulation and censorship has been blurred. Ironically, the makers of *Tandav* were not mandated to make any such cuts, in the absence of any

regulation governing the OTT industry. But they did so fearing arrest in connection with an FIR filed in Uttar Pradesh. The FIR listed grave charges- promoting enmity between different groups, injuring or defiling a place of worship, public mischief, forgery, and charges under the Information Technology Act.

Although the information and broadcasting ministry brought all OTT platforms and digital news websites under its ambit in November 2020, there is no legislation or regulatory mechanism as yet that governs the content streamed by them in India. A self-regulatory framework brought in last year by the Internet and Mobile Association of India (IAMAI) and signed by 15 platform members is currently in place for OTT channels to abide by, but it has failed to garner government support. Perhaps this is the reason that the Govt. of India took it upon itself to act when multiple parties, including Bharatiya Janata Party (BJP) leaders, approached it with complaints, calling for a ban on the Saif Ali Khan-starrer web series.

After the Information and Broadcasting Ministry summoned Amazon Prime officials and held at least two meetings with them, the makers decided to cut two scenes from the nine-part series. In a statement issued subsequently, the makers thanked the ministry for “guidance and support” and apologized for “*unintentionally hurting anybody’s sentiments*”. While theatrical releases such as *Padmavat* and *Udta Punjab* had also attracted controversies, they were first cleared by the Central Board of Film Certification (CBFC).

But content produced and streamed by OTT platforms remained out of the regulatory purview. In fact, several filmmakers shifted to these platforms because of the freedom and the variety of content on offer. But that freedom of content often invites criticism. *Tandav* is just one example. Popular series such as *Sacred Games*, *Leila*, *A Suitable Boy* and *Mirzapur* among several others have invited complaints in the past. Most have ended up in court cases. But rarely did an incident invite such prompt action on the part of the makers or even the government’s direct intervention- all in the absence of any governing law or regulatory mechanism. For this reason, regulation of OTT content and platforms is The Print’s Newsmaker of the Week.

INDIAN COURT'S VIEWPOINT OF CENSORSHIP

In India, the Central Board of Film Certification (Censor Board) was set up under the Cinematographic Act, 1952 (the Act). The Act along with Rules (1983) and guidelines (1991), set out the manner in which films are to be certified for exhibition in India by the Censor Board. The Act states that “a film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of, inter alia, decency”. In addition, the guidelines stipulated that film certification must ensure that “artistic expression and creative freedom are not unduly curbed” and that “certification is responsive to social change”. India has exceptionally lively media on varied platforms- newspapers, periodicals, TV channels, online media, radio stations and more, in more than 20 languages. These platforms voice varied opinions that are protected by the constitution. The media jurisprudence has developed over a period of time through cases touching upon press, arts, books, motion pictures, social media and advertisements. In these decisions, the court has struck a balance between the interest of freedom of expression and social interests.

The constitution of India guarantees, right to free speech and expression to all the citizens (Article 19(1)(a)). However, ‘reasonable restriction’ can be imposed on the enjoyment of this freedom by the state under Article 19(2) on certain grounds, particularly public order, decency or morality, the most frequently invoked. For censorship (under Article 19(2)), the standard of judging a 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”. In 1970, the constitutionality of censorship under the 1952 Act was challenged for the first time before the Supreme Court in the case of *K.A Abbas vs. Union of India*. The apex court upheld the constitutionality within the ambit of Article 19(2) of the constitution and added that films have to be treated separately from other forms of art and expression because a motion picture is “able to stir up emotions more deeply than any other product of art”. At the same time, it cautioned that it should be “in the interests of society”. The Court setting aside the ban on the movie *Bandit Queen*, pictures the true story of a woman, who was raped and brutalized before taking revenge on her attackers, the Supreme Court held that- the screening of a film cannot be prohibited merely because it depicts obscene and graphic events.

On producers seeking the reinstatement of the classification of the film as “adult only”, the court held that the scenes featuring nudity and expletives served the purpose of telling the important story and that the producers’ right to freedom of expression could not be restricted simply because of the content of the scenes. The court referred to the Supreme Court’s view (in *Abbas v. Union of India*) where the-then Chief Justice Mohammad Hidayatullah held that- “the standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good”.

In that case, the chief justice had noted that it would be an error to conflate sex and obscenity as “it is wrong to classify sex as essentially obscene or even indecent or immoral.” He had noted that it was not the “elements of rape, leprosy, sexual immorality” that should be censored but rather that “how the theme is handled by the producer” determines the need for restriction. Later Supreme Court decisions also emphasized that vulgar writing is not necessarily obscene and that consideration must be given to the writing as a whole, rather than isolated passages or scenes. Accordingly, *Bandit Queen* was considered to be “a powerful human story” where “[r]ape and sex are not being glorified” but are used to focus on the “trauma and emotional turmoil of the victim to evoke sympathy for her and disgust for the rapist”.

IS ONLY INDIA REGULATING ONLINE CONTENT?

In the past few years, the OTT industry has grown as a business with multiple streaming platforms ushering in a new era of entertainment across the world. But their growing popularity and the ‘unfiltered’ content has left governments concerned, pushing many countries to introduce a regulatory oversight. For instance, the Radio and Television Supreme Council (RTUK) of Turkey and the Infocomm Media Development Authority (IMDA) in Singapore now keep a close eye on the OTT content. Australia regulates online content under the Broadcasting Services Act 1992 through a complaints-based mechanism. The UK does not have specific regulations on online streaming content, while Indonesia may soon come up with

a regulatory framework. Saudi Arabia's anti-cybercrime law acts as the overarching framework for regulating all online content.

According to a 2019 report, Netflix, since its launch, has taken down nine pieces of content following demands from various governments. Majority of them (five) come from the Singapore Govt. In January 2019, the streaming platform pulled an episode of web series Patriot Act following complaints from Saudi Arabia over the criticism of its crown prince, Mohammed bin Salman, in the show. These countries will now be joined by India, which is looking at ways to regulate online streaming content. While the Modi government is still contemplating on the possible structure, its intervention in *Tandav*'s case shows that the government is unlikely to leave it upon the OTT platforms to act as per their self-regulatory mechanism.

IS REGULATION IS REQUIRED FOR OTT PLATFORM CENSORSHIP?

Under the 2019 principles of the self-regulation code, OTT platforms resolved to ensure there is no such content that breaks the laws of the land, disrespects the national emblem and flag, promotes terrorism or violence against the State, shows children in sexual acts, or "promotes and encourages disrespect to the sovereignty and integrity of India". This is different from censorship where abuse, nudity or politically sensitive content is bleeped out by the platform, either voluntarily or under some external pressure. But cutting out scenes from *Tandav* has changed the game.

For a long time, the I&B ministry maintained that OTT players coming together on "a self-regulatory model without the government's intervention" is good enough. But of late, that stance seems to have changed, most clear in the ministry's rejection of the self-regulatory code signed by 15 major platforms. Given that OTT is still an evolving industry, the Modi government could have allowed it time to come up with a robust self-regulatory code with a solid complaint redressal mechanism even if the content stretches the boundaries of creative freedom.

However, the government's point remains that while major OTT platforms are largely compliant to the basics — such as providing age rating and content descriptions — many other smaller platforms remain non-compliant. There are about 40 video streaming platforms in India. Some of the smaller platforms include Ullu and regional language platforms such as Aha.

It is not just about the fear of FIRs and arrests. OTT platforms are increasingly turning apprehensive of antagonizing the government. In February 2020, Hotstar proactively blocked an episode of Last Week Tonight with John Oliver, which was critical of PM Modi.

As OTT platforms move from self-regulation to perhaps self-censorship to avoid future apologies, what remains to be seen is who will dictate what content is fine for streaming and what is not, because some or the other group may end up feeling antagonized.

INDIAN GOVT.'S CONSCIOUSNESS

The Ministry of Information and Broadcasting has suggested that it will soon start meeting representatives from OTT platforms, members of civil society, technical community, media, ISPs and legal experts regarding the regulation of content on streaming websites such as Netflix, Hotstar, Amazon Prime etc. As of now, these streaming platforms don't require a go-ahead from the Central Board of Film Certification (CFBC); but that might change since Prakash Javadekar is going to speak to the stakeholders of many websites.

According to *Times of India*, this is being done due to a plethora of complaints received by the Ministry. Most of these report “anti-Hindu” content. The negative feedback was received from the right-wing organisations post the release of *Leila*, a Netflix series directed by Deepa Mehta. This series showed a woman's struggle to find her child and to be free. There are claims that the web series maligned “Hindu symbols” “showcasing suspicion and distrust towards Hindus”.

Members of RSS-led Sanskar Bharti earlier this year held a discussion on ‘anti-Hindu’ content on the web and many members of the RSS alleged that “hinduphobic” sentiments were on the rise. “It represents ancient Hindu concepts such as Aryavarta and Shuddhikaran as oppressive and dictatorial, suppressing women and restricting their reproductive rights. Nowhere in Hindu

scriptures will you find such an occurrence, which is why we raised concerns about the series being defamatory and insulting,” a member of the *Sangh Parivar* said to *The Times of India*. After at least 7 PILs in the previous year alone, the ministry has decided to regulate this. Apart from *Leila*, shows such as *Kafir*, *Hasan Minhaj: Patriot Act* and *The Final Call* have also been flagged. The model of Broadcasting Content Complaints Council (BCCC), an independent self-regulatory body to address TV complaints is what we are looking forward to discuss with stakeholders,” an official said.

The Times of India quoted Arun Anand, an author who has extensively written on RSS as saying, what was demanded of the law right now is an “indicative law” that would increase accountability in the online space, particularly “to address the overwhelming portrayal of violence and sex on online platforms.”

CENSORING OTT PLATFORMS: WHO STANDS TO GAIN?

After days of shrill cries of *#BoycottNetflix* on social media, the storm of self-fulfilling outrage over a kissing scene in the streaming platform’s web series *A Suitable Boy*, has found its desired outcome. On Monday, the Madhya Pradesh police filed an FIR under Section 295A of the Indian Penal Code, 1860 against two senior executives of Netflix, on the charge that the series had hurt the religious sentiments of a community by showing its lead character Lata, a Hindu girl, kissing her Muslim boyfriend against the backdrop of a temple.

The Union Ministry of Information and Broadcasting, Law and Justice, Electronics, Information and Technology, Telecom and CBFC do not exercise any sort of jurisdiction over such platforms. The Government considers such platform to be intermediaries where they cannot exercise jurisdiction.

Although, as per Rule 3(2)(b), (c), (e), of Information Technology (Intermediaries guidelines) Rules, 2011, due diligence shall be observed by the intermediaries in displaying, hosting, publishing any obscene, pornographic or unlawful content and shall not harm minors. As per Rule 3(3) the intermediary shall not knowingly host, initiate transmission of such content. In 2016, Justice for Rights, an NGO filed a petition [**W.P. (C) 11164/2018**] before the Delhi High Court, alleging that Hotstar displayed soft-pornographic, unethical and religiously inadequate content and this promotes disrespect to the country, objectifies women, engages

children in criminal activities, and somewhere promotes terrorism. They urged that the platforms shall be regulated and censored or licensed and the vulgar and legally restricted content shall be removed. However, the petition was dismissed and is currently pending in Supreme Court [SLP (C) 10937/2018].

Previously the need for legislation was not felt. But in the current situation there is requirement of a body that regulates the content provided by OTT platforms. However, in a recent report, *MeITY* has refused to introduce censorship but they plan on making a self-regulatory body. Last year Digital Curated Content Complaint Council (DCCCC), an adjudicatory body was formed by Hotstar, SonyLiv, Jio and Eros, to deal with the content provided by such platforms and to avoid imposition of Government's own rules on them.

But to our surprise, most of the OTT platforms such as Netflix, Amazon Prime, Alt Balaji, Mx Player, Zee, etc. don't support this move as it is similar to the Broadcast Content Complaints Council (BCCC), a self-regulatory body for non-news entertainment channels. They think that the thin line difference between a broadcasting channel and an OTT platform will get null and their Right to Free Speech under Article 19(1)(a) (Freedom of Speech and Expression) will be violated.

However, the said OTT platforms contravene Article 19(2) of Constitution, which provides for reasonable restriction on Freedom of Speech and Expression in the interests of sovereignty and integrity of India, security of State, public order, decency or morality, etc. The Government has power to remove any content that is objectionable and/or harms India's sovereign interests under Section 69A of IT Act, 2000 i.e., Power to issue directions for blocking for public access of any information through any computer resource, the said section is considered to be Internet Kill Switch.

REASON FOR THE AROUSAL OF THIS NECESSITY

The most recent issue surrounding OTT's was the John Oliver show on Hotstar, where he actively criticized Narendra Modi and CAA and the show was further blocked on Hotstar. A similar incident occurred on *Hasan Minaj's* show that dealt with Lok-Sabha Elections, 2019 and was highly criticized later.

However, Netflix didn't succumb to the pressure. Shows such as Sacred Games was criticized as it mentioned some speculative lines on Rajeev Gandhi and also mentioned about the Bofors scam. Leila was criticized as it hurt the feeling of Hindus by promoting Hindu phobia. It was highly criticized by viewers.

Other than Netflix, Amazon Prime also deleted an entire episode of CBS Political Drama "Madam Secretary" in its Indian version. The show was said to hurt the sentiments of various people as it deals with Hindu Nationalism, India occupied Kashmir, violence on Muslims by majoritarian society, etc.

Recently the Madhya Pradesh High Court dealt with the situation in a PIL filed by an NGO, Maatr Foundation (W.P. No. 18801/2019).

The plea was filed to deal with the regulations against alleged streaming of obscene and sexually explicit content. They alleged that these media content streamers are broadcasting content that is unregulated, un-certified, vulgar and legally restricted. The platforms portray women indecently and shall be punished under sections 3, 4 and 7 of Indecent Representation of Women (Prohibition) Act, 1986. The streamers shall also be punished under Sections 292-294 of Indian Penal Code, 1860 for publicly exhibiting, distributing and portraying obscene acts, pamphlets, representation, figures, etc. The content can also be viewed by children under 18 years of age which exposes them to sexual acts, terrorist activities and vulgar content.

LEGAL FRAMEWORK FOR REGULATION OF OTT PLATFORMS AND CENSORSHIP

So far in India, there are no laws or rules regulating OTT platforms as it is a relatively new medium of entertainment. Unlike television, print or radio, which follow guidelines released by governments, OTT platforms, classified as digital media or social media, had little to no regulation on the choice of content they offered, the subscription rates, certification for adult movies and others.

In India, the regulation of such platforms has been widely debated and discussed. Following pressure to regulate the content being made available on these streaming platforms, the Internet and Mobile Association of India (IAMAI), a representative body of the OTT platforms had

proposed a self-regulatory model. The Online Cured Content Providers or OCCPs had also proposed a Digital Cured Content Complaints Council along with the self-regulatory mechanism as a part of its proposed two-tier structure. The proposal, however, was shot down by the Ministry of Information and Broadcasting, which will now oversee these platforms.

As per a survey by YouGov, 57% of people (1005, approximately.), support partial censorship for online streaming. They think that a lot of offensive content i.e., unsuitable for public viewing is put up on such platforms. Majority of the people supporting censorship are adults of the age above 40s. However, the strongest arguments against such censorship are that the content on OTT platforms are Subscription on Demand, where viewers have choice to pay and select what to watch. Apart from this, the piracy of movies is another factor why filmmakers take the route of OTT. There are a large number of artists who don't have enough money to portray their creative thoughts through cinema, OTT comes as a great breakthrough for them. Perhaps it provides a worthy pedestal to build gripping story lines. And this is the reason why most of the viewers get attracted to the content provided by such platforms. They are fearless of the involvement of political parties and hence stream bold narratives and plots. They portray various socio-political issues which due to one or the other reason is not included in mainstream cinema. And even after censorship in cinema, time and gain there have been huge disputes with regard to various movies like Padmavat, PK, My Name is Khan, etc. So there exists no reason that after censorship on OTT platforms, the content will not face any opposition. Also, the content available on such platforms are affordable, belongs to the native language, deals with regional content, provides free-trial facilities to users and most importantly is convenient. In the current pandemic like situation, there is a huge rise in viewers of OTT platforms. As per a report by Secretary of MIB, the rise in viewers of the OTT media providers shall increase 21.8% annually.

INTERNATIONAL PERSPECTIVE

Countries like Singapore, UK have regulatory bodies to keep a check on the OTT platforms. In Singapore, the service providers have to display the elements such as nudity, drugs, sex, violence, etc. in the content.

However, in UK, the OTT platforms face the same scrutiny as any public service broadcaster. Australia has a principal legislation BSA, 1992 that governs the OTT sector. While in Turkey, there is a licensing regime under which the OTT platforms are given a license for 10 years. Countries like Indonesia, Turkey and Saudi Arabia have strict regulations. They want total control in the hands of Government. Many OTT platforms including Netflix has been blocked.

GOVT.'S GUIDELINES FOR OTT CENSORSHIP IN INDIA

The Information and Broadcasting Ministry, which had rejected the self-regulation framework proposed by IAMAI in September last year, is working on specific legislative changes for OTT censorship in India. The government is gearing up to introduce broad content guidelines for video-streaming platforms- commonly known as over-the-top (OTT) players- even as controversy rages on around Amazon Prime Video's recent Indian original '*Tandav*', putting under spotlight the self-regulation versus censorship debate once again.

The Ministry of Information & Broadcasting, which had rejected the self-regulation framework proposed by the Internet and Mobile Association of India (IAMAI) in September last year, is working on specific legislative changes for which it has already set-in motion consultations at the highest levels involving officials from at least three ministries. The process has been consultative so far, but repeated controversies around content shown on streaming platforms have forced the government to *reassert* its position on some control over the sector that has been completely unregulated till now.

News about the Indian Government's moderation of Over the Top (OTT) platforms and online content have been abuzz in recent times due to the notification released by the Central Government of India aimed at bringing digital/online media platforms, films release on OTT and audio-visual programmes, provided by content providers, within the ambit of the Ministry of Information and Broadcasting (**MIB**). Union Minister for Information and Broadcasting Prakash Javdekar on asserted that he has received suggestions to make a code of conduct to hold the news channels accountable. Further he said- "TV media should have its own self-regulatory body. An agency headed by Justice AK Sikri has been made to regulate news channels but many of them aren't its members. Suggestions have come in to make code of conduct holding news channel accountable. Speaking about the regulation of OTT platforms,

he said that neither do they come under any regulatory body nor any listed process for self-regulation. "There's a variety of content on these platforms ranging from good to bad. The media fraternity should themselves take initiative to set an example of responsible freedom. Earlier, Union Law Minister Ravi Shankar Prasad had also stated that calls from within the industry have been made for the regulation of OTT platforms. Javadekar was giving his greetings to the media fraternity on the occasion of National Press Day when he spoke on how freedom of the press is the soul of our Democracy. Last week, the Govt. announced bringing films, audiovisuals, news and current affairs content on online platforms under the domain of the Ministry of Information and Broadcasting. According to a notification issued by the Cabinet Secretariat on Tuesday night, content made available by online providers such as Netflix will also come under the ministry.

"In the Government of India (Allocation of Business, 1961, in The Second Schedule, Under The Heading 'Ministry Of Information And Broadcasting (Soochana Aur Prasaran Mantralaya)' after entry 22, the following sub-heading and entries shall be inserted, namely: - VA. DIGITAL/ONLINE MEDIA. 22A. Films and Audio-Visual programmes made available by online content providers. 22B. News and current affairs content on online platforms," it said. The notification as issued by the Cabinet Secretariat on November 9, 2020 has made amends to the Government of India (Allocation of Business) Rules, 1961 by including two new entries - 22A and 22B - to the Second Schedule of the Rules.

The two new entries are as follows:

1. *Films and Audio-Visual programmes made available by online content providers;*
2. *News and Current Affairs on online platforms;*

By way of this inclusion, online content released in India is hereafter regulated. This includes content not only from OTT platforms but also news platforms, social media platforms and current affairs available online.

The reasoning for this regulation is believed to be, the vast expanse of unregulated content made available online amidst the lack of any proper regulatory mechanism that can offer protection to its viewers.

According to a national survey, the online content industry has an estimated value of INR 4,000 Crores, with a current viewership of more than 17+ Crores from OTT platforms alone, and all

of this is currently unregulated with little to no scrutiny². The information and content portrayed on such platforms can impact its viewers, which includes minors.

It is noteworthy to mention that many governments over the world including Singapore, UK and the United States, have either already implemented online content regulations or are in the process of doing so. This has finally added a modicum of clarity and regulatory framework to a major grey area. Furthermore, there is a need for a level playing field among other online content providers. For instance,

- Print media is regulated by the Press Council of India;
- News regulations were offered by the News Broadcasters Association (NBA,);
- Advertisements are regulated by the Advertising Standards Council of India;
- Films are regulated by the Central Board of Film Certification (CBFC); and
- Television, both News and Entertainment, are being regulated by the Cable Networks Regulation Act (2005) respectively.

However, online content was in dire need of a regulatory architecture; more so to offer a protective measure to its audience, than to curb the freedom of content providers.

Prior Measures:

Anticipating the government's intervention, in January 2019, video streaming service providers had signed a self-regulatory code that laid down a set of guiding principles for regulating and prohibiting five types of content:

1. Content that deliberately and maliciously disrespects the national emblem or national flag.
2. Any visual or storyline that promotes child pornography
3. Any content that "maliciously" intends to outrage religious sentiments
4. Content that "deliberately and maliciously" promotes or encourages terrorism, and
5. Any content that has been banned for exhibition or distribution by law or court

The current regulation does not come as a surprise. The Apex court sought the centre's response on a Public Interest Litigation (**PIL**) last month, for the regulation of OTT platforms by an autonomous body. The PIL alleged that no regulation was imposed on these platforms wherein the digital content is made available to the general public without any form of filter or screening. Following which the bench comprising of Chief Justice SA Bobde and Justices AS

Bopanna and V Ramasubramanian, issued notices to the central government, Ministry of Information and Broadcasting (MIB) and Internet and Mobile Association of India (IAMAI)³.

Current Implementation:

There is very scarce information on how the MIB is proposing to regulate online content. A possibility is that the Programme Code that governs content portrayed on television networks, would be considered as a template for this purpose. Another deliberation is that the Programme Code may be amended to include OTT platforms and online content within its ambit.

The Road Ahead

- The regulatory authority needs to throw more light on whether it plans to induce licensing, guidelines or curbs in the monitoring of digital content.
- Distinction between digital media content providers and aggregators is not clear.
- Online content unlike other media so far regulated has a 24x7 content structure. More clarity is required as to how the regulatory authorities are planning on monitoring such a load of content and associated complaints.

CONCLUSION

Looking at the present scenario, the need for an unbiased regulatory body is must. The Internet Content Streaming cannot be controlled by a self-regulatory body. The body shall distinguish responsible content for regulation. The OTT platforms and the Government shall work together on this and end this issue once and for all. At this point of time OTT platform is at a nascent stage across the globe. India needs to make sure that they cope up with the needs of the people while making a legislation. The basic purpose behind the law shall be clear; whether it is made to protect the audience or to bridge the regulatory gap. The Intermediary Rules, 2011 shall also be kept in mind as violation of the Rules shall lead to cancellation of their license. Total censorship on the platform will transform it into nothing more than a television show or mainstream cinema. Also, it would lead to increasing cases of piracy. The public today is looking for content that brings out the truth of the society, deals with socio-political issues, provides us regional varieties and utmost importantly doesn't hurt the sentiments of a single class of people. Hence, these regulatory gaps and grey areas are alarming.

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