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OTT PLATFORMS, CONTENT REGULATION AND LEGAL CHALLENGES IN INDIA

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ABSTRACT

The rapid growth of Over-the-Top (OTT) platforms has transformed the entertainment industry in India and across the world. OTT platforms refer to digital streaming services that provide movies, web series, documentaries, and other forms of entertainment directly through the internet without the involvement of traditional cable or satellite television operators. Platforms such as Netflix, Amazon Prime Video, Disney+ Hotstar, and Jio Cinema have revolutionized the way audiences consume content. The availability of affordable smartphones, cheaper internet services, and increasing digital literacy have significantly contributed to the rise of OTT platforms in India. However, with this rapid expansion, several legal and regulatory issues have emerged concerning censorship, freedom of speech, privacy, intellectual property rights, cyber laws, consumer protection, and obscenity. The legal framework governing OTT platforms in India is still evolving, making it an important area of discussion in media law and digital governance.

Keywords: OTT, Digital Streaming, Censor, Intellectual Property Rights, Cyber Laws, Privacy

INTRODUCTION

OTT platforms have left an indelible socio-cultural impact on India, profoundly shaping the media preferences of an ever-evolving audience. A significant aspect of this impact lies in the diverse representation of content, which transcends cultural, linguistic, and regional boundaries. These platforms act as inclusive spaces, providing a platform for narratives that resonate with the rich tapestry of Indian society, thereby fostering cultural pride and inclusiveness. Furthermore, the promotion of regional languages and content has become a hallmark of OTT platforms, preserving and promoting linguistic diversity. This emphasis on regional storytelling contributes to a

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strengthening of cultural identities and allows audiences to connect more deeply with content rooted in their linguistic and regional backgrounds.

OTT platforms have also played a pivotal role in challenging and breaking societal taboos. By exploring themes that were traditionally considered sensitive or controversial, these platforms spark important conversations around societal norms. Moreover, the personalized nature of content delivery on OTT platforms empowers individuals to curate their viewing experiences, contributing to a more individualized media landscape. This shift from traditional broadcasting to personalized content consumption has enabled consumers to actively participate in shaping their media environment, marking a departure from the one-size-fits-all approach.

Additionally, the impact of OTT platforms extends to traditional media, influencing how television networks and film industries approach content creation. In response to the on-demand and diversified offerings of OTT platforms, traditional media outlets have adapted their strategies, leading to a more dynamic and competitive media industry. In essence, the socio-cultural influence of OTT platforms in India goes beyond entertainment, contributing to societal conversations, challenging traditional norms, and ushering in a new era of diverse and inclusive storytelling.

Digital content providers that offer streaming services directly to consumers via the internet are the result of the exponential growth of internet and technology, which has completely transformed the global entertainment industry. In addition to revolutionising the way viewers consume media, Indian platforms like Netflix, Amazon Prime, Disney+ Hotstar, and Zee5 have also brought a variety of unique, on-demand visual content. However, the nature of some content, characterized by violence, obscenity, nudity, and vulgarity, as well as the seeming lack of strict legal oversight have generated a great deal of controversy at the same time as this digital explosion. The call for regulation has intensified as these platforms are incorporated more and more into family entertainment, especially in a socially conservative nation like India.

The Cinematograph Act of 1952 and the Central Board of Film Certification (CBFC) are in charge of traditional films. However, OTT platforms have mostly been in a legal grey area. The Government of India made the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in response to public concern and more and more cases of controversial content. These rules set up a three-tier system for regulating digital content. Publishers would be in charge of their own content, a self-regulatory body would keep an eye on it, and the Ministry of Information and Broadcasting would be the last line of defence.

Critics say that while this change in regulation has started oversight, the method is still not clear, especially when it comes to enforcement and the possibility of abuse. It has been said that people often see the government's attempts to regulate as oppressive, which leads to debates about the right to free speech and expression protected by Article 19(1)(a) of the Indian Constitution. Article 19(2) says that this right is not absolute, though. It allows for reasonable limits in the name of national security, public morality, and decency.

There is always a conflict between artistic freedom and public interest. Censorship is sometimes necessary to keep people safe, but it should be done carefully so that it does not stop people from being creative. OTT platforms are a sign of democratic participation in making and consuming content, which is an important part of cultural pluralism. There is a call for a conceptual framework that strikes a balance between the needs of the public and the needs of users. There is a stress in the need for censorship systems that protect audiences and uphold family values without lowering the value of storytelling. India's rules are yet to catch up with the digital age. Voluntary self-regulatory codes, like those supported by the Internet and Mobile Association of India (IAMAI), did not work because they did not have the standards that could be enforced. This means that stronger legal systems.

When it comes to content moderation, India's diverse and pluralistic society presents a special challenge. OTT content frequently walks a tightrope between being innovative and offensive. These platforms' open access model has made them very popular, particularly with young people, but it has also exposed users to content that could be harmful or polarising. In a nation with a large population of impressionable young users, this is particularly worrisome. The question of whether OTT content censorship is a necessary restriction or an infringement on creative autonomy is one of the areas debated. Censorship may restrict artistic expression, but it is also necessary to preserve social harmony and safeguard cultural values.

EVOLUTION OF OTT PLATFORMS

The evolution of Over-The-Top (OTT) platforms has redefined the landscape of content consumption. OTT refers to the delivery of audio, video, and other media content over the internet, bypassing traditional distribution channels. Characterized by on-demand accessibility, these platforms allow users to stream content at their convenience, offering a diverse range of movies, TV shows, documentaries, and original productions. The flexibility of content consumption,

personalized recommendations and the absence of a fixed broadcasting schedule distinguish OTT platforms from traditional media, marking a paradigm shift in how audiences engage with entertainment.

The growth and popularity of OTT platforms in India have been nothing short of exponential. Fueled by increasing internet penetration, affordability of data, and the widespread use of smartphones, these platforms have become integral to the daily lives of millions. The convenience of accessing a vast library of content in multiple languages, genres, and formats has resonated with diverse audiences across urban and rural India. Original productions by OTT platforms have garnered widespread acclaim, further contributing to their popularity.

The meteoric rise of Over-The-Top (OTT) platforms in India can be attributed to a complex interplay of factors that collectively underscore their cultural significance. A pivotal catalyst in this surge has been the widespread availability of affordable high-speed internet and data plans, ensuring seamless access to streaming services across diverse demographics. The ubiquity of smartphones has further fueled this growth, providing a convenient and portable means for users to engage with content. Notably, OTT platforms have responded to the diverse cultural landscape of India by offering a plethora of content in various languages, genres, and formats, catering to the unique preferences of a vast and varied audience.

Original productions and exclusive content have become a hallmark of OTT platforms, with high-quality storytelling and diverse narratives contributing not only to subscriber acquisition but also shaping cultural conversations and influencing popular culture. The flexibility afforded by OTT platforms in terms of viewing patterns has revolutionized content consumption, allowing users to dictate when and how they engage with media, a departure from the fixed schedules of traditional media. The platforms' emphasis on regional languages and content has addressed linguistic diversity, fostering a deeper connection with regional cultures.

Youth engagement, propelled by a tech-savvy demographic, and the ongoing trend of urbanization have further entrenched the role of OTT platforms as the primary source of entertainment, particularly among the younger population. Moreover, the global reach of OTT platforms facilitates cultural exchange, enabling Indian content to reach international audiences and vice versa, thereby contributing to cross-cultural understanding. In essence, the growth of OTT platforms in India is a dynamic phenomenon, shaped by technological advancements, evolving consumer preferences, and a commitment to providing a diverse and engaging array of content.

Beyond entertainment, these platforms have become instrumental in shaping societal conversations and influencing the cultural fabric of India's media landscape.

The ascent of OTT platforms has significantly impacted traditional media, challenging established norms and business models. Television networks and cinema, once dominant players, now find themselves adapting to the changing landscape shaped by OTT platforms. The ability of users to tailor their content consumption, the shift towards binge-watching, and the emergence of exclusive, high-quality productions on OTT platforms have compelled traditional media to innovate. This section delves into the transformative effect of OTT platforms on traditional media, examining how the competition has led to an elevation in content quality and a reevaluation of distribution strategies.

AVAILABILITY OF DIGITAL CONTENT TO VIEWERS

India being the biggest producer of motion pictures in the world, has a significant historical background of producing huge quantities of video content for its audience, and now the country is witnessing exponential growth in the audience demand for digital content within the country. These platforms are being increasingly used for varied tasks like- communication, video, and music streaming and so one. The OTT platform provides its users multiple advantages some of them are listed as follows:

- A variety of novel internet-based services, like e-commerce, social media, banking, and insurance, e-government, online education, among other things;
- OTT and VoD platforms like- Netflix, Amazon Prime, Hotstar and so on providing the audience with personalized video content which allows the users to modify and maximize their media consumption;
- Communication services are now available at significantly lower costs, and in some case without incurring any additional expense, essentially providing OTT, VoIP and messaging applications, such as Skype, WhatsApp messaging, voice and video, Facebook (now known as Meta) Messenger.

For a further and deeper analysis, the digital content available to users can also be divided into two categories based on the source of content generation namely:

- **User-generated content**: Refers to the content that is accessible on networking and social platforms like Snapchat, Facebook, YouTube, etc.

- **Commercial content:** Refers to the content provided by OTT platformers, online publishers/broadcasters like Netflix, Amazon Prime Videos, Hulu, ZEE5 and other national or regional platformers

OTT PLATFORMS PROVIDING VIDEO STREAMING IN INDIA

In India, earlier television had been one of the most preferred choices for entertainment, advertisement, and conveying information to the people in general. The utilization of video content has conventionally been through television or theatrical movies.

With technological advancement, it is now feasible to add additional convenience by web-based access or VoD services. OTT has changed the industry by presenting itself as a means of entertainment and information that runs parallel to the conventional mode of distribution like cable or broadcast television therefore challenging the same.

Several media outlets as of late have step by step moved towards releasing their content on streaming platforms such as Hulu, Netflix, Hotstar and Amazon Prime Video, the pandemic and increase being one of the most significant factors contributing to the shift. Trends and, consumer preferences revealed preference of the younger generation audience towards online streaming compared to cable TV. The overwhelming responses for series like Sacred Games and Mirzapur from critics and audiences is the evidence of the same and also points that quality of content is the key factor that is influencing the audience move towards streaming services.

During the initial stages of the digital industry, India saw rise of OTT platforms with few, yet big players; a majority of them are existing traditional players like Voot by Viacom18, Alt Balaji by Balaji Productions, etc. The busy schedule of the present generation, their desire for a convenient way of life and propensity and getting everything on their fingertips has brought extraordinary changes in their media devouring propensities as well. The entertainment industry is witnessing a massive development towards digital formats. Earlier, it was the television that saw the highest video consumption by viewers however, the faster-growing accessibility to cheap and free internet is providing a path for the emerging user segment that wants to consume customisable and on-demand multimedia content. This has led to a significant rise in video traffic consumption. Within its present structure, VoD refers to the browsing of video content through the Internet or through

applications normally alluded to as OTT platforms. In particular, the television-watching scenario has been changed forever by the OTT video streaming platforms.

Some of the attractive features of OTT video streaming services are:

- User accessibility towards a variety of national and international content at a faster rate and cheaper rate in comparison to the conventional mediums.
- In order to keep up with the current trends and to ensure survival in the industry, the conventional television giants like Star and Viacom18, Zee TV, Sony have extended their existing means of providing entertainment and ensuring viewer engagement by using OTTs as a tool and by showcasing their own national and international digital content.
- Independent artists and content creators are using several OTT platforms like- You tube, Instagram etc. to create quality and original content at a relatively lower budget and with negligible barriers of censorship as lay down by the CBFC.

FACTORS LEADING TO GROWTH OF OTT WITHIN INDIA

Factors contributing towards the infectious growth of OTT platforms in India are listed as follows:

- *Better internet access and connectivity and fall in data prices*: With increasing competition in the telecom sector, industry giants like Airtel, Vodafone- Idea, Jio, etc are constantly improving their services along with providing attractive packages at competitive rates to its user this has resulted in internet access being provided at a significantly cheaper rate to telecom users. Access to affordable online services has led to a huge rise in data usage and added towards the user movement to the digital content available in India. Jio is deemed to be the one that has led the movement and has brought everyone to this new era of affordable internet. If statistics are to be believed, post the introduction of Jio in 2016 in Indian market the quarterly consumption of data increased approximately ten times. The company's influence has made access to internet and the online content on OTT platforms relatively easy, effortless, straight-forward affordable to everybody, this led to the creation a latent demand for digital consumption by the Indian users.

  The telecom services providers like Vodafone-Idea, Jio, Airtel, employ aggregator-based models i.e., they assemble content from various platforms and offer the same on a payment interface. This also provides access to a number of OTT platforms by itself in order to achieve an improvement in consumer retention and acquisition of new ones. For example,

Jio offers an exclusive subscription of Disney Hotstar to its users on certain recharges; Airtel offers a one-year exclusive subscription to Amazon Prime Videos to its post-paid consumers, etc.

- *Introduction and rise in Smartphone usage*: With the introduction of smart-phones within the Indian economy and its availability to people belonging to varied economic backgrounds, online content consumption in India has dramatically risen. Though this rise was more of an international phenomenon, smart-phones now have become an important part of every individual's life. As of now, there are approximately four billion smart-phones across the world, of which the Indian market accounts for over 450 million.
- *Favourable Demographics*: India is witnessing noticeable changes in income distribution patterns with a rise in the 'elite' economic class. This along with availability of Internet in rural areas and with the youngest population in the world (75%) belong to the age group of less than 35 years[51],India has proven to be a potential market contributing to the growth of OTT platforms. These factors combined with growing telecom connectivity, along with improved networks, stronger internet access, with multimedia service supporting mobile handsets with application development systems have all together led to a steep rise in online content consumption.
- *Significant growth in supply of high-quality content*: Apart from the factors mentioned above the major reason behind the immense success and preference of OTT platforms in the country is the fact the give their paramount attention towards delivery of quality content. OTT platforms when initially entered the Indian market it started playing catch-up with the television shows. The penetration of Indian market by foreign competitors such as Netflix and Amazon Prime Video, which with them brought a variety of rich and original content, pushed further for the established Indian platforms to go beyond than just catchup, with syndicated and licensed content. India is an extremely diverse market and a one-size-fits-all approach would lead to inevitable failure for companies. Previously, YouTube has set a trend for Indians to watch online content. The role of personalized community content was recognized by foreign OTT providers such as Netflix and Amazon Prime. Therefore, to remain on the Indian market and compete with local players including Hotstar and Voot, who have access to the huge regional and domestic content library of their respective parent companies, the foreign OTT players created their own original and unique local content

such as Mirzapur, Sacred games, Inside Edge etc to attract the Indian viewers. A large variety and selection option of material offered was successful in drawing a significant number of users around the nation with differing backgrounds and preferences. Seeing this, nearly all of India's major and popular broadcasters have introduced their own OTT platforms, e.g., Hotstar, Voot, Zee5, Sony Liv, etc and started producing original contents for their own platforms. Also, these networks brought their vast collections of television content online, augmented by additional content by licenses and originals. These established broadcasters in India benefits from a powerful brand identity and audience recognition powered by their large collection of television content.

In response, the international OTT platforms like Netflix, Amazon Prime have expanded their services into India in the past few years and are significantly increasing their reach in terms of their user base. While some OTT companies are operating effectively in the local area, other global players are taking steps to invest in local content including, Netflix which is planning to release a minimum of ten original shows along with movies in India on an annual basis. Given its diversity in content, there is also a heavy demand for regional content in the country. OTT platformers have tapped into this aspect and have introduced shows and content to meet this demand and provide compelling content to their audience.

It is important to see here that the year 2020 proved to be a landmark success for the OTT industry. As the pandemic led to a worldwide shutdown, and theatres were also non-operational due to this move. In order for the entertainment industry to survive, they shifted their focus to OTT platforms, to avoid financially. Many big production houses and big-name celebrity took a huge risk by releasing their movies straight to OTT platforms like-Atrangi re and garnered huge audience response in return to the risk taken

NATURE OF OTT PLATFORMS

OTT platforms are online media services that distribute content through internet technology. Unlike traditional broadcasting, OTT platforms allow viewers to watch content on demand at their convenience. These platforms offer regional, national, and international content, often bypassing traditional censorship systems applicable to cinema and television.

The popularity of OTT platforms increased especially during the COVID-19 pandemic when theatres remained closed and people turned to online entertainment. OTT services also created opportunities for independent filmmakers, regional cinema, and experimental storytelling.
Despite these benefits, the unrestricted nature of online content raised concerns regarding morality, obscenity, hate speech, violence, political propaganda, and religious sensitivity.

EMERGING TRENDS IN OTT REGULATION

1. **Shift towards Self-Regulation:**

OTT platforms are increasingly adopting self-regulatory measures to address concerns over content censorship and user privacy. By implementing their own content moderation policies and privacy safeguards, OTT platforms aim to demonstrate accountability and responsiveness to user concerns without heavy-handed government intervention.

2. **Increased Collaboration for Standardized Regulations:**

Governments, industry stakeholders, and advocacy groups are recognizing the need for standardized regulations to govern OTT platforms effectively. There is a growing trend towards increased collaboration to develop common standards and guidelines that promote transparency, fairness, and consumer protection across jurisdictions.

3. **Rise of Content Localization Requirements:**

Content localization requirements are becoming more prevalent as governments seek to promote local content production and cultural diversity on OTT platforms. These requirements may include quotas for the distribution of locally produced content, language localization, and promotion of indigenous talent and stories. As a result, OTT platforms are adapting their content strategies to comply with these regulations while maintaining global reach.

4. **Efforts to Combat Piracy and Unauthorized Streaming:**

OTT platforms and regulatory bodies are stepping up efforts to combat piracy and unauthorized streaming through a combination of technological and legal means. This includes deploying advanced content protection technologies, implementing robust digital rights management (DRM) systems, and working with law enforcement agencies to prosecute piracy offenders. Additionally, there is a push for legislative measures to strengthen intellectual property rights and improve enforcement mechanisms to deter piracy effectively. Collaborative initiatives between industry

stakeholders, governments, and law enforcement agencies are essential to address the challenges posed by online piracy comprehensively.

These emerging trends reflect the evolving regulatory landscape surrounding OTT platforms, as stakeholders strive to balance innovation and growth with the need for accountability, consumer protection, and cultural preservation. As OTT platforms continue to shape the global media landscape, regulatory frameworks will need to adapt to ensure that they remain effective and responsive to the challenges and opportunities presented by the digital age.

LEGAL FRAMEWORK GOVERNING OTT PLATFORMS IN INDIA

India does not have a single comprehensive legislation exclusively governing OTT platforms. Instead, several laws and regulations indirectly regulate their functioning.

1. INFORMATION TECHNOLOGY ACT, 2000

The Information Technology Act, 2000 is the primary legislation governing digital platforms in India. It provides legal recognition to electronic communication and regulates cyber activities.

Section 69A of the Act empowers the government to block public access to online content in the interest of sovereignty, integrity, defense, and public order. OTT content may be blocked if it violates these grounds.

The Act also imposes obligations on intermediaries to exercise due diligence. Although OTT platforms are content publishers rather than intermediaries in the traditional sense, many compliance obligations are extended to them through subordinate legislation.

2. INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 marked a major development in regulating OTT platforms. These Rules introduced a three-tier grievance redressal mechanism for digital media publishers and OTT services.

The Rules require OTT platforms to:

- Classify content according to age groups
- Provide parental locks for mature content

- Display content descriptors related to violence, nudity, language, or substance abuse
- Establish grievance officers
- Ensure self-regulation

These Rules aim to balance creative freedom with public accountability.

3. FREEDOM OF SPEECH AND EXPRESSION

One of the most debated issues regarding OTT platforms is freedom of speech and expression under Article 19(1)(a) of the Constitution of India. OTT platforms provide creators greater artistic liberty compared to cinema and television, which are subject to stricter censorship.

Many filmmakers and artists argue that OTT platforms encourage creative expression by addressing sensitive topics such as politics, gender identity, caste discrimination, religion, and sexuality. Web series often portray realistic social conditions that may not pass traditional censorship standards.

However, freedom of speech is not absolute. Article 19(2) permits reasonable restrictions in the interests of:

- Public order
- Decency and morality
- Defamation
- Sovereignty and integrity of India
- Security of the State

Several controversies have arisen where OTT content allegedly hurt religious sentiments or promoted obscenity. Cases have been filed against web series for offensive dialogues, depiction of gods, or political narratives. Courts often face the challenge of balancing artistic freedom with societal interests.

4. CENSORSHIP AND CONTENT REGULATION

Unlike films certified under the Cinematograph Act, 1952, OTT content initially operated without pre-censorship. This freedom led to demands for regulation from political groups, religious organizations, and civil society.

Critics argue that unrestricted content may negatively influence children and promote vulgarity or violence. Others believe excessive censorship would suppress creativity and democratic discourse.

The Indian government has preferred a model of self-regulation rather than direct censorship. OTT platforms are expected to classify and monitor their own content responsibly.

5. OBSCENITY AND MORALITY

OTT platforms frequently face allegations regarding obscene or sexually explicit content. Indian obscenity laws are mainly governed by:

- Section 294 of the Indian Penal Code
- The Information Technology Act
- The Indecent Representation of Women (Prohibition) Act, 1986

The legal standard for obscenity has evolved through judicial decisions. Indian courts increasingly recognize contemporary community standards and artistic value while determining obscenity.

6. INTELLECTUAL PROPERTY RIGHTS (IPR)

Intellectual Property Rights are highly relevant in the OTT industry. OTT platforms invest heavily in original content, making copyright protection essential.

The Copyright Act, 1957 protects films, music, scripts, and digital content from unauthorized reproduction and piracy.

OTT platforms face several IPR-related challenges such as online piracy, unauthorized streaming, illegal downloading and copyright infringement

Piracy websites often leak movies and web series shortly after release, causing financial losses. Platforms use digital rights management systems and legal actions to combat piracy. OTT platforms also enter licensing agreements for distribution rights, regional rights, and adaptation rights. Contractual disputes regarding ownership and royalties are increasingly common in the entertainment industry.

7.PRIVACY AND DATA PROTECTION

OTT platforms collect large amounts of user data, including viewing habits, location, preferences, and payment information. This raises serious privacy concerns. The right to privacy was recognized as a fundamental right by the Supreme Court in the Justice K.S. Puttaswamy v. Union of India case.

The emerging data protection framework in India seeks to regulate how digital companies collect and process personal data. Unauthorized sharing or misuse of user information may attract legal liability.

8. CONSUMER PROTECTION ISSUES

Consumers subscribe to OTT platforms expecting quality services and transparent billing practices. Legal disputes may arise regarding Misleading advertisements, Subscription fraud, Hidden charges or any other reasons.

The Consumer Protection Act, 2019 protects consumers against unfair trade practices. OTT subscribers can approach consumer forums if services are deficient or misleading.

9. COMPETITION LAW ISSUES

The rapid growth of OTT platforms has created competition concerns in the digital market. Large corporations may dominate streaming markets through exclusive licensing and acquisitions.

The Competition Commission of India monitors anti-competitive practices such as: Abuse of dominant position, Predatory pricing or Market monopolization.

Competition law ensures fair opportunities for smaller streaming services and content creators.

JUDICIAL APPROACH TOWARDS OTT REGULATION

Indian courts have generally emphasized caution in imposing censorship on OTT platforms. Courts recognize the importance of creative freedom in a democratic society. At the same time, courts have also acknowledged the government's authority to regulate content in cases involving obscenity, hate speech, or threats to public order. The judiciary often encourages balanced regulation rather than blanket bans.

The Supreme Court of India, in the landmark judgment of Shreya Singhal v. Union of India (2015), struck down Section 66A of the IT Act, 2000, for being vague and overly broad, reaffirming that restrictions on online speech must pass the test of proportionality. At the same time, courts have acknowledged the harm that unregulated digital content can cause. In Justice for Rights Foundation v. Union of India (2018), the Supreme Court noted the unregulated nature of OTT platforms and recommended the establishment of a statutory regulatory mechanism to curb potential misuse. High Courts, too, have addressed this concern. In Faisal Khan v. State of U.P. (2021), the

Allahabad High Court held that the depiction of explicit sexual content and violent scenes on OTT platforms, available to audiences of all age groups, raises valid concerns regarding public decency and morality. Similarly, in Vivek Sheoran v. Union of India (2020), the Delhi High Court issued notices to the Ministry of Information and Broadcasting over a lack of regulation on OTT platforms, especially about offensive religious portrayals and content promoting stereotypes. These rulings indicate that the Indian judiciary recognises the potential threat posed by unregulated digital content, even as it upholds the sanctity of Article 19(1)(a). The courts have consistently advocated for a balanced approach—one that respects artistic freedom while safeguarding the public interest.

THE STATE'S DUTY TO PROTECT: CHILDREN AND VULNERABLE GROUPS

In addition to constitutional rights, India is a signatory to various international treaties and conventions, such as the United Nations Convention on the Rights of the Child (UNCRC), which obligates states to protect children from harmful media exposure. Under Article 17 of the UNCRC, States must ensure that children have access to appropriate information and are protected from content that may be injurious to their well-being. Domestically, several laws impose a legal and moral duty on the state to prevent the dissemination of harmful content, particularly when it affects children. These include:

- The Protection of Children from Sexual Offences Act (POCSO), 2012, which criminalises any content depicting sexual exploitation of minors.
- The Juvenile Justice (Care and Protection of Children) Act, 2015, includes provisions for shielding children from mental and moral harm.
- The Information Technology Act, 2000, penalises the publication or transmission of obscene or sexually explicit content in electronic form

OTT platforms, with their widespread reach and unfiltered nature, pose a unique risk to children. Most Indian households do not implement parental locks or content filters effectively. The self-declared age ratings by platforms are often either misleading or unenforced. Without state intervention, children are left vulnerable to psychological and emotional disturbances caused by exposure to unsuitable material. Therefore, the regulation of harmful OTT content is not merely a

legislative or policy choice; it is a constitutional obligation and legal mandate, particularly when it comes to safeguarding children and other impressionable sections of society.

MORALITY, PUBLIC INTEREST, AND THE EVOLVING STANDARDS TEST

Morality and decency, though considered vague concepts, have long been acknowledged as valid grounds for content regulation. Indian courts have often applied the "contemporary community standards" or "evolving standards" test while deciding what constitutes obscenity or immorality. In the classic case of Ranjit Udeshi v. State of Maharashtra (1965), the Supreme Court held that literary, artistic, or scientific value must be weighed against the likelihood of depriving or corrupting vulnerable minds. This approach has evolved. In Aveek Sarkar v. State of West Bengal (2014), the court adopted the "community tolerance test" and ruled in favour of liberal interpretation, noting that freedom of expression cannot be stifled by conservative moral codes. However, the judgment also reaffirmed that content must be evaluated in its full context and with reference to its potential impact on society. OTT platforms today represent a new media frontier, and it is logical to extend these jurisprudential tests to digital content. The regulation of harmful content should be based not on arbitrary censorship but on measurable public interest, such as the prevention of hate speech, protection of mental health, and preservation of communal harmony.

COMPARATIVE ANALYSIS OF GLOBAL OTT REGULATORY MODELS

This comparative section illustrates how different jurisdictions have created effective, enforceable, and culturally balanced OTT regulatory frameworks. The most successful models tend to blend self-regulation with enforceable oversight, include public grievance mechanisms, and protect freedom of expression within constitutional and moral boundaries. India, with its complex social fabric and rising OTT influence, requires a custom hybrid model that draws upon these international experiences without compromising democratic principles.

AUSTRALIA: CO-REGULATION WITH STRONG GOVERNMENT OVERSIGHT

Australia follows a co-regulatory model that combines industry-driven codes with statutory enforcement under the guidance of the Australian Communications and Media Authority (ACMA). OTT services are covered under the Broadcasting Services Act, 1992, and platforms must comply with a set of industry codes of practice developed by organizations such as Free TV Australia and the Australian Subscription Television and Radio Association (ASTRA). In 2022, the Online Safety Act was enacted, empowering the e-Safety Commissioner to demand the removal of content that incites violence, hate, or harm. The e-Safety Commissioner also runs education programs and content rating initiatives, especially targeting youth protection.

UNITED KINGDOM: INDEPENDENT REGULATOR WITH HYBRID AUTHORITY

The UK regulates OTT content through Ofcom (Office of Communications), under the Communications Act 2003. In 2021, the UK Government announced the Online Safety Bill, a landmark law aimed at making online content platforms—including OTTs—legally accountable for harmful material. OTT providers such as Netflix and Amazon Prime operating in the UK must adhere to the Video-onDemand (VOD) Code, which sets out expectations regarding content classification, protection of minors, hate speech, and factual accuracy.

GERMANY: STRICT STATUTORY REGULATION UNDER STATE MEDIA AUTHORITIES

Germany follows a decentralised but uniform statutory model. OTT platforms are regulated under the Interstate Media Treaty (MStV) and supervised by Landesmedienanstalten (State Media Authorities). Platforms must obtain licenses for operation and comply with age-rating regulations and content laws, including those concerning hate speech and misinformation. Germany has also enacted the Network Enforcement Act (NetzDG), which mandates content removal within 24 hours if it violates legal standards of hate speech, slander, or incitement.

THE ROAD AHEAD: STRIKING A BALANCE

India's OTT regulation of the future hinges on a careful balance between content moderation and building the freedom of expression. Need for safeguards against harmful content is clear, to that

end, there should be some rules and regulations, wherein while safeguarding the users, the creativity allowed by OTT platforms should also be kept in mind. Potential reforms could include:

1. **Transparent and Detailed Guidelines:**

The government should speak with industry stakeholders to draw up specific, specific (and, most importantly specific) outlines of what content is or is not allowable while ensuring that content creators still know the rules without stifling creative expression.

2. **Self-Regulation with Oversight:**

An effective hybrid model would be a model that allows for some self regulation by platforms with very little if any oversight from the government. Such a platform would offer the flexibility to the platforms to moderate the content as well as provide the users with a grievance redressal mechanism as per law.

3. **Content Classification and Parental Controls:**

User education, strengthening of content classification systems, offering better parental controls will ensure users can make better decisions about what is shown without losing the creative freedom behind that.

4. **Public Awareness and Digital Literacy:**

Public awareness campaigns should be marketed by the government and platforms to educate viewers on how to use and measure digital literacy, as well as ways to activate parental controls, or reporting, to keep kids safe on the internet.

FUTURE PROSPECTS

OTT platforms have become an integral part of modern entertainment and digital culture. They have democratized content creation, promoted regional storytelling, and expanded creative freedom. However, their rapid growth has also raised significant legal and ethical concerns relating to censorship, obscenity, privacy, intellectual property, consumer rights, and freedom of expression.

India's regulatory approach seeks to balance innovation and accountability through self-regulation and statutory oversight. A balanced regulatory mechanism is necessary to protect constitutional values, artistic freedom, consumer interests, and public morality. Effective regulation should encourage responsible content creation without unnecessarily restricting creativity and democratic expression.

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