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## REGULATION ON OTT PLATFORMS: A DETAILED ANALYSIS

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### ABSTRACT:

*As compared to the traditional mode of entertainment, 'Over the Top Platforms' (OTT platforms) have become much popular especially among youth in the recent past. On one hand, they offer multiplicity of choices to the viewers, provides employment, and has emerged as an important element of digital media. On other hand, the sensuous, cross cultural content and abusive language offered through these platforms have put them under scrutiny. This article is an attempt to give a deeper view regarding the issue of regularization of OTT platforms. The study will try to decode not only the reasons for the rising popularity of OTT platforms in India but will also dwell into the arguments for and against any such governmental regulations. The article will also analyse the merits and demerits of new IT Rules 2021 regarding OTT platforms and will also include suggestions regarding the same.*



**KEYWORDS:** OTT platforms, creative demand driven active players, freedom of choice, IT rules 2021.

### INTRODUCTION

The issue of 'Over the Top Platforms' (OTT platforms) and its regularization has been much in news in the recent past. Though the issue was debatable since long, it attracted societal discourse since the release of a web series named 'A Suitable Boy' on online streaming giant Netflix on 23rd October 2020. This was a six-episode series based on the backdrop of newly independent India and showcases a family who was searching a suitable boy for their daughter's marriage. A scene in this series created controversy and it was alleged that it has hurt the religious sentiments and faith of Hindu community. However, this was not a new incident where religious sentiments and faith of majority was breached through web series in these OTT platforms.

With a wide genre of contents, these platforms are gaining new heights of viewership and popularity, especially amidst COVID mandated lockdown, largely among youngsters. As a result, these platforms have transformed into a 'next big industry of entertainment' or 'giant entertainment industry'. However, it is alleged that these platforms are serving adult content with unjustified language thereby abridging public decency. Within this backdrop of associated pros and cons the debate arises – Are some sort of regulation or restrictions on OTT platforms justified or not?

## WHAT ARE OTT PLATFORMS?

OTT is a platform, which provides television and film content with the help of internet (Telestream).“It provides audio and video hosting or streaming services including releasing or producing short movies, films, documentaries and web-series. With the help of ‘Artificial Intelligence’ (AI) including past viewership, search etc. it suggests and provides diverse contents” (The Indian Express, 2020). The modern era seems to be the era of such platforms since they are capable of fulfilling the diverse requirement of individual consumers.

Initially, majority of these platforms provide some free content to the viewers. Later on, they charge a monthly subscription to watch premium content which is generally unavailable elsewhere. In this way they promote the idea of ‘Captive Audience’. Some popular OTT platforms include Amazon Prime, Netflix, hotstar, SONY Live, VOOT, ALT Balaji etc.

## UNIQUENESS OF OTT PLATFORMS AND ARGUMENTS AGAINST REGULATION

OTT platforms are gaining popularity because of their unique features and therefore, there are arguments against any kind of governmental regulations on them. These platforms are unique in many sense:

First, OTT platforms are compatible with multiple devices. Their content can be watched over diverse devices like TV, computer, palmtop, mobile etc. Also, the consumer gets the same experience while watching the content on any of these devices. This unique feature of OTT makes it different from all other traditional mode of entertainment which requires television set and cable.

Second, it fulfills consumer’s expectations and choices by providing a variety of contents and programme. This includes not only kids’ corner, cartoons, thriller, horror, romance, comedy, science fiction etc. but also Bollywood and Hollywood content at a single platform. These ‘different genre of contents at one place’ is really a new experiment and a successful management technique to attract viewers. In this way these platforms can rightly be called ‘diversified mode of entertainment’.

Third, the variety of content served through these platforms, that too at a lesser price makes them cost effective and different from other mode of entertainment.

Fourth, as compared to traditional mode of entertainment like cinema, the contents on OTT platforms are safe from the danger of piracy. Infact, there were various incidents where before release of a movie or within few days after release of a particular movie its pirated version were available in the market. This results in the loss of revenue from the producer point of view. In this regard, OTT platforms appear economically safe for producers and makers. Because of this piracy-safe-probability, critics are opposing any kind of regulation on these platforms.

Fifth, another uniqueness of OTT platforms is that it leads to ‘creative demand driven active players. These OTT platforms are demand driven having hybrid character. This means, they try to combine the passive consumption mode of TV with demand driven active consumption mode of the web. In this way they create active players.

Sixth, OTT platforms provide diversified content simultaneously, thereby providing viewers the freedom of choice. This is in sharp contrast to the traditional mode of entertainment which broadcasts content at fixed time coupled with the compulsion to watch advertisements in between. At the same time, news channels in TV/ cable network, often serve repeated and overlapping information, resulting in waste of viewer’s time. This is not the case with the OTT platform. Therefore, critics argue that any kind of governmental regulation will restrict freedom of choice of viewers.

Seventh, it is also argued that OTT platforms lead to democratization of media, in terms of multiple opportunities it provides not only to artists, producers but also to viewers in terms of freedom of choice. Thus, the aspects of freedom and democratization are another unique feature of this platform. This appears to be one of the reasons why objections are raised on the regulation of OTT platforms.

Eighth, it is also a reality that many of these platforms have replaced the traditional and functional modes of entertainment. Viewership have shifted from conventional cinema, theaters, typical family and saas-bahu drama serials to OTT platform-based web series/ documentaries/ contents. As a result, not just newcomers, but many established giants of entertainment industries are entering into

these platforms, whether they are actors, dancers, singers, producers, or directors. With so much content being published in these online streaming giants; OTT platforms generate employment among thousands of people.

Ninth, India is the world's second largest state in-terms of population. All around the world and especially in countries like India, OTT has emerged as the 'next big industry of entertainment' or 'giant entertainment industry'. According to The Indian Express, "By the end of 2019, there were 17 Crore OTT platforms users" (The Indian Express, 2020). With so many users, OTT platforms are very vast in India. As stated in the Indian Express, "By the end of March 2019, the size of online video streaming platforms was 500 crore and it will become around 4000 crore by 2025" (The Indian Express, 2020). With such a huge user base, critics believe that any governmental regulation will give a serious setback to the country's economy and especially to the entertainment industry.

Critics have often argued that from the government side, any regulation on OTT platforms is done in the interest of the public. However, opponents of such regulation opine that public interest is subjective in nature. They believe such regulations are government-sponsored attempts at moral policing. Critics further argue that such moral policing or 'state regulated value system' is arbitrary and not a sign of a 'liberal society'. Objecting to such regulations, critics also opine that who will decide what is public interest? In the case of morality or rationality, who will decide what is correct? Infact, individuality, interest, circumstances, needs and many other such factors could be a barrier in defining and adopting an 'all acceptable rule of rationality and morality'. Therefore, fixing an 'all-acceptable norm of public interest, morality and rationality' is a real problem.

### ARGUMENTS FOR REGULATION OF OTT PLATFORMS

There are various arguments in favour of regulation on OTT platforms. Some of them are:

First, many web series on these platforms show adult and sensuous content. Since these OTT platforms are compatible with multiple devices, contents served in the name of entertainment can be easily accessed by anyone including children. This adversely affects the formative minds of children and youngsters.

Second, the language used in these platforms and especially in web series is very abusive and vulgar. Double meaning jokes, bad language and slang used in these platforms are of very serious concern. Such language and slang are becoming trendy and are considered a style statement among youths. Therefore, watching such content within a family atmosphere is not suitable.

Third, the content shown in many of the web series are unacceptable in a healthy and civic society. Drug consumption, drinking, smoking, live in relationships, adultery etc. are practices which are not at all admissible in any healthy civilized society.

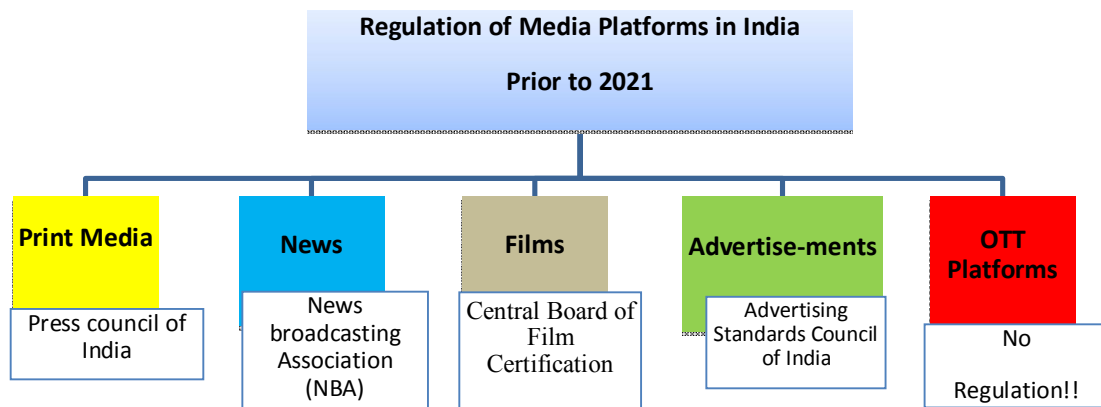
Fourth, it could be counter argued that regularization on such platforms is not a violation of freedom of choice and expression. The reason is that true freedom comes with some amount of restrictions. The regulation does not restrict freedom of expression since this freedom is itself restricted on grounds of public order and decency by the Constitution of India. Therefore, such restrictions and regularization are not arbitrary, rather lead towards a greater sense of responsibility.

Fifth, many contents shown on these OTT platforms can disturb communal harmony and destroy the social fabric of the country. Thus, any such regulations appear totally justified.

Sixth, it could again be counter argued that this kind of government regulation is neither an anti-liberal move nor is it taking India towards a new censorship regime. Even the idea of liberalism argues that liberty is never absolute. It comes with some amount of riders, restrictions and responsibility towards fellow beings. Also, liberalism if on one hand upholds the idea of liberty, freedom of choice; on the other hand, endorses the idea of rationality. Rationality guides us what values, belief will help us accommodate into our unique societal and cultural niche. Thus, we can say that in a liberal society, freedom of choices is coupled with rationality and a responsibility of maintaining public order and decency. Therefore, any government regulations on OTT platforms for maintaining public order and decency cannot be considered an anti-liberal move.

Seventh, it has often been seen that many web series in these OTT platforms serve cross-cultural content. Serving cross-cultural content is not bad, infact, it is a move towards cosmopolitanism. Cosmopolitanism is not a western imported concept. Infact, it finds resonance in Bhartiya tradition of ‘VasudhaivaKutumbakam’, ‘Sarve BhavantuSukhinah’ and in the belief of ‘acceptance’ and ‘toleration’. But at the same time, cosmopolitanism should not lead to cultural homogenization. Critics argue that attempts of cultural homogenization lead to cultural imperialism which is not acceptable for a rich and diverse culture like India. Cultural imperialism means controlling a country not by force but by dismantling its cultural uniqueness - A historic example is of French cultural colonization in Algeria. Critics argue that India being the second largest online video-viewing audience base in 2020 could be the latest target of ‘Cultural Imperialism’. Therefore, effective regulation on these platforms appears important for restoring cultural uniqueness and sovereignty of our nation.

**CURRENT ORDER OF OTT PLATFORMS IN INDIA**



Source:

<https://youtu.be/sEQ8uZUvWl0> in <https://www.youtube.com/c/AaradhyaTheGatewayofKnowledge>.

In India, there exists separate authorities for regulating different media platforms. Print media is regulated by Press Council of India; News is regulated by the News broadcasting association (NBA). Similarly, Central Board of Film Certification is regulating films in India and advertisements are regulated by Advertising Standards Council of India. However, prior to 2021, there were no such regulations on OTT platforms. It is argued that if all other media platforms are regulated, OTT platforms should also come under some kind of governmental regulations.

Within this backdrop, in January 2019, a self-regulatory code was signed by eight video streaming services. They formulated a set of self-guiding principles. But these sets were rejected by the government. This code prohibited five types of content (Global Tribune, 2020). These were: (i) Content that deliberately and maliciously disrespects the national emblem or national flag (ii) Any visual or storyline that promotes child pornography (Global Tribune, 2020; The Hindu, 2020). (iii) Any content that ‘maliciously’ intends to outrage religious sentiments (Global Tribune, 2020; The Hindu, 2020). (iv) Content that ‘deliberately and maliciously’ promotes or encourages terrorism (Global Tribune, 2020; The Hindu, 2020). (v) Any content that has been banned for exhibition or distribution by law or court (Global Tribune, 2020; The Hindu, 2020).

In October 2020 “while directing on a PIL the Supreme Court issued a notice to the Government to intervene in the matter of digital content by establishing an autonomous body for the regulation of such platforms” (The Tribune, 2020). Subsequently the government decided to regulate these OTT platforms.

As stated in the Economic Times, "In July 2021, Commerce and Industry minister Piyush Goyal also requested these OTT platforms to regulate themselves since many of them portray India poorly" (The Economic Times, 2020) and presented India and Indians in an unhealthy manner.

Earlier in "November 2020, Government by amending rules of business allocation, brought OTT platforms like Netflix, Amazon Prime Video, Disney + Hotstar under Ministry of Information and Broadcasting" (Outlook, 2020).

Finally in February 2021, The Government of India came up with the 'Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021' to regulate social media, digital news media, and OTT content providers (PIB, 2021).

### According to the PIB "the new rules cover three distinct sectors of the digital media are:

- a. 'Social media' include platforms like WhatsApp, Twitter and Instagram (PIB, 2021)
- b. 'Online curated content' like web serials, movies etc. that are streamed through OTT players (PIB, 2021).
- c. 'Digital online news' (PIB, 2021).

This article will analyze only OTT related government regulations.

### For OTT a Code of Ethics has been prescribed, which could be explained in five following points.

1. The general principles to be observed by the OTT platforms as part of the Code of Ethics include -
  - ✓ Not showcasing a content prohibited under any law or court jurisdiction (PIB, 2021).
  - ✓ Due caution in respect of the content influencing integrity and sovereignty of India, security of the State, India's friendly relations with other states, and violence or disturb the maintenance of public order (PIB, 2021).
  - ✓ Taking care of India's multi-racial and multi-religious context and taking caution while dealing with their beliefs and practices (PIB, 2021).
2. Self-clarification by age-wise categories, i.e., U means universal, U/A7+, U/A13+, U/A 16+, and A which means adult (PIB, 2021).
3. Parents lock mechanism for the content of 13+ and a robust age verification system for accessing adult content (PIB, 2021).
4. Display Rating including classification rating together with a content descriptor of the programme so that users would take an informed decision, before going through such content. (PIB, 2021).
5. Three-level grievance redressal mechanism has also been established.
  - Level-I (Self-regulation by the publishers): Here, the grievance redressal system will be at the level of each OTT provider, wherein a 'Grievance Redressal Officer' will be appointed. Each complaint will have to be addressed within 15 days (PIB, 2021).
  - Level-II (Self-regulating body): If the complaint is not satisfactorily addressed, then the complainant can scale it up to a self-regulatory body collectively established by the OTTs (PIB, 2021). It will be headed by a retired judge of the Supreme Court, a High Court, or an independent eminent person from the field of media, broadcasting, entertainment, child rights, human rights, or other relevant fields. This self-regulatory body also has 'censuring' powers in case of any incriminating content (PIB, 2021).
  - Level-III (Oversight mechanism): At the third tier, the government has equipped itself with overriding powers in the form of 'oversight mechanism' (PIB, 2021). An inter-departmental committee will perform this function. It shall consist of representatives from the Ministry of I&B, Ministry of Women and Child Development, Ministry of Law and Justice, Ministry of Home Affairs, Ministry of Electronics and Information Technology, Ministry of External Affairs, Ministry of Defence, and such other Ministries and Organizations, including domain experts (PIB, 2021).

### MERITS OF THE NEW IT RULES 2021

IT Rules 2021 could be considered a watershed initiative in the digital ecosystem of the country.

- It would help in increasing accountability in digital platforms.

- The new rules would empower citizens as customers since it involves a mechanism for redressal and timely resolution of grievances.
- It would help controlling fake and wrong information or data, thereby maintain public order.
- The new rules would possibly prevent arbitrary removal of content since there is a provision of giving due notice before removing any content.
- It would further strengthen India's position in digital policy.

### CRITICISMS OF THE NEW IT RULES 2021 REGARDING OTT PLATFORMS

However, the new rules involve certain loopholes as well.

- Public feedback was not taken while framing the new IT rules. Even IAMAI (Internet and Mobile Association of India) was kept out of consultation on proposed digital regulations.
- There is a lack of legislative backup or powers, which is generally given to other regulators. For example: TRAI (Telecom Authority of India) draws its powers from TRAI Act. However, under the new IT guidelines, regulations are supposed to be formulated by a body of bureaucrats, which might not only invite discretionary restrictions but also arbitrary political interference.
- Restrictive regulations could also promote black-marketing, which could harm smaller OTT players.

### SUGGESTIONS FOR SMOOTH IMPLEMENTATION OF NEW IT RULES

- In order to garner inclusivity and acceptability of new regulations, the government should involve a consultation with appropriate stakeholders.
- The focus should be on strengthening citizen's rights by learning from successful global examples like OFCOM (a communication regulator in UK), which adopts the policy of consultation with public and associated industry.
- The government must have a mindset of flexibility and agility to support the rules adequately.
- Most importantly, OTT platforms while regulating their content must strike a balance between the unique societal fabric of India and the rising aspirations/ choices of new generation.

### CONCLUSION

The enactment of new IT rules 2021 is a welcome initiative, which will transform the digital information ecology in India. A fine balance between freedom of choice and public order and decency has to be maintained. Both the government and the digital platforms will have to work together and fulfill this responsibility. OTT regulation laden with sense of responsibility by government, digital platform and citizen will be a positive step towards presenting India as a modern liberal nation.

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  - Watch video link <https://youtu.be/sEQ8uZUvW10> in youtube channel at <https://www.youtube.com/c/AaradhyaTheGatewayofKnowledge>.