

## Ott Streaming – A Conceptual Frame Work And Regulatory Approach

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### Abstract –

The concept of On the Top (OTT) streaming under controlled or uncontrolled environment is gaining speedy momentum across the world. India is also no exception to it. The issue of regulating the OTT streaming in some or the other form of government regulated censorship or certification has been intensely researched in international internet online, media and communication domains. The pitfalls of the legalities associated with it have also been discussed in numerous studies. Through traditional mediums, a lot of content is being released which raises the question mark about it to be sponsored. Today, it also raises the question and at the same time doubt about the sanctity of traditional print, audio and visual communication which if indirectly sponsored by regulation enforcers would yield undue and undeserved gains to them. There is a dire need that there should be some platform to ethically behave in release of content. OTT streaming obviously provides the solution to present state of affairs. But, then if OTT is also bought under strict regulatory mechanism then again the story would not be much different than what it is. In this paper, the focus is laid on the comparative functioning of government regulated and self regulated release of content in public domain specifically in light of the freedom of speech and expression protected under Article 19 in Constitution of India. In this paper it has been concluded that in fact the self regulated environment with ethical legitimate responsibilities would promote the spirit of the right to freedom of speech and expression in India. Besides, it has become crucial to premeditate upon this issue mainly considering the pandemic gripped Indian community as content is being released online rather than on traditional mediums under the scope of regulations.

**Keywords:** Censorship, ethical responsibility, regulatory mechanism, OTT streaming, self regulated, traditional mediums.

### 1. INTRODUCTION

The technology progress in the audio-visual field have taken place at a speedily in the last century. The world has advanced from films as the only means of broadcasting of moving pictures to TV and in modern era to the internet. Shubhangi Heda in her paper titled “How to regulate OTT streaming services in India” [1], has stated about the informal connection between the transforms in the medium used to broadcast audio-visual substance and the transforms in the social order. The consequence that a medium has on the social order forms the root of its directive by the state. American Sociologist laid claim to the term, “Technology determinism” and said that makeover in the social order is sparked off by change in technological know-how. The society needs to adapt by changing its rules and regulations as and when the technology changes. From this flows the theory of “media determinism” by Marshall McLuhan which says that “it is the medium through which content is communicated that impacts people rather than the content itself”.

Films and audio-visual content have always been regarded as constituting a powerful medium of expression. It is judicially recognized that cinema is a form of speech and expression. Justice Clark of the United States’ Supreme Court said: “It cannot be doubted that motion pictures are significant medium for the communication of ideas. They may affect public attitudes and behavior in a variety of ways”. Furthermore, In the case of Brij Bhushan v. State of Delhi, the Delhi high court made the grand presumption: “The treatment of motion pictures must be different from that of other forms of art and expression...the instant appeal of the motion picture, its versatility, realism (often surrealism), and its coordination of the visual and aural senses...the motion picture is able to stir up emotions more deeply than any other product...” [2].

#### 1.1 MOTIVATION FOR THE RESEARCH

The world has moved from films as a sole medium of dissemination of information to television & radios and now to the internet. Over-the-top (OTT) platforms have formed an equivalent medium to broadcast content. This has made a empty space in regulation as India does not have any course of action

for content directive on the detrimental and prohibited or illegitimate content pushed online, leaving aside the Information Technology Act 2000 that has provisions regarding the intermediaries involved [4]. Taking advantage of the gap in policy, the creators have been releasing their content online without any pre-censorship by the State. This work sheds a light on content regulation and how the emerging content on OTT video streaming platforms should not be brought under state censorship as such model of regulation has proved to be a hindrance to the progress and development of the society. Rather, the recent step taken by the OTT streaming platforms to self regulate themselves should be encouraged by the government.

The OTT promotion has been envisaged to get bigger with a noteworthy rate by 17.1% over the subsequent decade. The growth of the OTT market conveyed the need for the discussion on the best possible and most appropriate regulatory approach that should be undertaken [8].

### **1.2 OTT STREAMING – A CONCEPTUAL FRAMEWORK**

OTT services don't seem to have any unanimously accepted definition across the world. The Internet Telecommunication Union (ITU) defines OTT service as: "An internet application that may substitute or supplement traditional telecommunication services, from voice calls and text messaging to video and broadcast services." The Indian broadcasting authority, Telecom Regulatory Authority of India (TRAI), make use of the identical definition although numerous stakeholders believe it to be limited in nature. As public internet that started in the 1980s has grown in scope over the last three decades, the OTT services have created a "parallel medium" to disseminate content. It refers to applications and services which are accessible over the internet and ride on operators' networks offering internet access services e.g. social networks, search engines. A major point to be noted is that Carriage is separated from content in internet networks, enabling OTT content and application service providers to deal directly with end users. Thus, telecom service providers (TSPs) are excluded from the said transactions, with no control over the content or the application. The characteristics of OTT services are such that TSPs realise revenues solely from the increased data usage of the internet-connected customers for various applications (henceforth, apps). On the other hand, OTT providers make use of the TSPs' infrastructure to reach their customers and offer products/services that not only make money for them but also compete with the traditional services offered by TSPs [3].

### **1.3 OTT REGULATORY APPROACH**

"Regulation in the original sense refers to the arbitrary process of the State, usually centered in a more or less independent regulatory body established and governed by a State Regulation". As issues of dissemination directive tend to be very complex, these groups are soon congested with work and frequently persuade self-regulation of the industriousness. It channels that the players are pleaded to solve tribulations among themselves, before heading to the state watchdog. Such model of regulation is then called SELF REGULATION. It typically signals the benefits of the industry and wish to hold the State out of its dealings, and hence it accepts this responsibility. If the State and the private regulators cooperate in joint institutions, this is called 'COREGULATION'. If this type of self-regulation is structured by the State but the State is not involved the appropriate term is regulated self-regulation.

## **2. OTT STREAMING PLATFORM AND SELF REGULATION**

### **2.1 OTT STREAMING PLATFORM**

There are several OTT platforms in India which are popular and originated in India and multinational as well viz. Netflix, Amazon Prime, Hotstar, Voot, MX Player, Zee 5, Times Prime, Jio TV, Alt Balaji, Big Flix, Sun NXT, Sony Liv, Hochoi, Manorama Max, Lyca TV, Spuul, Ullu, News 18 etc. MX Player and Hotstar are rated as the top two entertainment apps of 2019 according to the FICCI 2020 report. OTT platforms provide a variety of contents like web series, cinema, documentaries, TV serials, reality shows, news, live coverage of sports and events, music etc. Many films are now being released only on OTT platforms. The language of the program ranges from English, Hindi to the regional language. Initially Netflix and Amazon Prime were providing programs in English. Later, they started dubbing the English

programs into Hindi. Now, they are looking to reach even the regional languages. Many platforms like Voot, Sun NXT etc. are providing the services in various regional languages as they stream the episodes of popular TV serials of their TV counterparts which are spread into various states and languages. Hoichoi is a platform which streams only in Bengali. Hotstar and Sony provide sports content live and recorded. According to the FICCI E&M Report 2020, no less than 300 million spectators hooked on Hotstar to view the 2019 edition of the IPL, which amounts to a substantial rise of nearly 74% in logged in time from 2019. The information categorically pinpoints that Amazon Prime obtained the digital rights for 12 out of the 30 mainly pushing Hindi films of 2019, and obviously then closely tagged along by 9 films on Netflix, 8 films on Zee5, 3 films on Hotstar. Since the distribution and exhibition in India is a cumbersome process, the producers and directors of small budget cinema find it a suitable platform to make it available for the audience.

## 2.2 SELF REGULATED STREAMING

According to the Inter institutional agreement on better law-making, “Self-regulation is defined as the possibility for economic operators, the social partners, non-governmental organizations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements)” [6].

Self-regulation as per the AVMSD, amounts to a type of intended inventiveness which enables economic interveners, community associates, and non-governmental organizations or associations to accept conventional course of action amongst themselves and for themselves [6].

The NGO dynamic in the field of opportunity of articulation Article 19 thinks about that "Self-guideline in any calling or area involves the turn of events and requirement of rules by those whose direct is to be represented, with a definitive point of improving the help offered to buyers, inquirers or – on account of the media – people in general on the loose. It expects guidelines to be set and conceded to by the people and organizations to which they will apply and the improvement of strategies and instruments for upholding them. Central to self-guideline is the standard of deliberate consistence. Law courts assume no part in arbitrating or upholding the principles set and the individuals who focus on them do so not under danger of lawful approval, but rather for positive reasons, like the craving to additional the turn of events and believability of their calling. Self-guideline depends as a matter of first importance on a typical comprehension by individuals from the qualities and morals at the core of their expertise [6].

## 3. REVIEW OF EARLIER WORKS

In the paper [2], light has been shed on content regulation and how the emerging content on OTT video streaming platforms should not be brought under state censorship as such model of regulation has proved to be a hindrance to the progress and development of the society. The paper concludes that the recent step taken by the OTT streaming platforms to self regulate themselves should be encouraged by the government.

Hans J. Kleinstüber in his paper [5] has discussed the concept of self regulation. He says “As matters of broadcasting regulation tend to be very complex, these bodies are soon overloaded with work and usually encourage self-regulation of the industry. This means that the actors are urged to solve problems among themselves, before turning to the state regulator. As it usually reflects the interests of the industry to keep the State out of its affairs, it accepts this obligation. A new field of industry self-regulation has emerged in relation to the Internet. This is based on codes of practice that regulate issues like respect for privacy, public decency, protection of minors, accuracy or the application of filtering software” [2][5].

As per the conclusions drawn in paper [6], OTT administrations in significant nations having the colossal TV market normally use restriction procedure, organization system, content separation technique, income upgrade methodology, and administration advancement system. Add to these systems, pay-TV officeholders use envelopment procedure and enhancement technique also. Also, OTT administration incomes and fixed broadband memberships by significant nations are set as free factors, and the herfindahl-hirschman file of pay-TV market, which estimates the market fixation, and the proportion of families buying in to pay-TV administrations by significant nations are set as contingent factors.

Therefore, incidentally, the increment in fixed broadband memberships fundamentally affects the expansion in the compensation TV market focus and the line cutting marvel, yet OTT administration incomes don't influence.

The study presented in paper [7] tries to analyze the need for the regulation of content of Over the Top platforms in India and also the efforts made by the OTT platforms and the government to regulate the content. Surveys have revealed that the people are concerned about the explicit and adult content on OTT platforms and hence this research finds its importance. This paper employs the qualitative Meta analysis of the secondary data available with regarding the censorship and regulation of OTT platforms. The different options that are proposed by the different scholars is analyzed and it is concluded that the moderate blend of statutory regulation and self regulation will bring the good results in controlling the OTT content. For the minors it helps in reducing the risk of exposure to adult content [7].

This study presented in [8], emphasizes the importance of a multi-dimensional outlook for OTT regulation in order to uncover different types of OTT services. This outlook includes the diverse forms of relationship between new and current influential factors (i.e., market model, business impact, infrastructure requirements) and area of regulation. This paper describes a balanced regulatory framework based on a cooperative approach that is more effective for OTTs. Similarly, the OTT regulation has not been included in the regulatory agenda in Turkey due to low penetration rates and cooperative approach between OTT service providers and telco companies. As a result, this work proposes a multi-dimensional methodology for this emerging new area that requires regulation.

#### **4. OBJECTIVES**

The main objectives of the study are presented below: -

- To discuss the need for regulating the content of the OTT Platforms in India.
- Analyzing the alternatives available for the Government of India to regulate the content of the OTT platforms
- To discuss the advantages and disadvantages of those alternatives.

#### **5. METHODOLOGY**

In this paper exploratory research method has been adopted for relative comparison and discussions, and drawing the useful conclusions whether the OTT streaming should be under existing strict governmental regulatory mechanism or responsibility borne ethically drafted self regulatory mechanism through which the legitimate and genuine content must reach to public including the most sought entertainment domain.

Only the secondary data available on the topic of censorship and regulation of OTT has been content wise analyzed appropriately. Existing various means and modes of regulating the OTT content has been studied by the researcher using the above narrated methodology. Owing to the topic of research being of recent origin, there isn't much literature available in this regards.

Given that OTT content regulation is relatively prominent domain of research which is going to be decisive for the most envisaged development of the society in the future, this paper finds its relative worth.

The secondary data for this ambitious work has been procured from sources like research publication by Center for Media, the Annual Report on Media and Entertainment Sector 2019 jointly published by FICCI, Sensor Board Data and the reports published by various mediums of repute.

#### **6. DISCUSSIONS AND CONCLUSIONS**

While scrolling through various published/unpublished secondary data from various sources as narrated above, the researcher found a very interesting outcome that a couple of them have strongly favored the regulation free environment for OTT streaming. They contended that the future course of development in release of content and ensuring the pace of wanted societal development strongly depends to a significant amount on such freedom. However, the most of the critics of such freedom have opined that if OTT streaming is left un-regulated or relaxed regulated, then it will become extremely harmful to

the young generation and counter-productive to the most wanted societal development in upcoming era. Finally, the researcher to reach to useful conclusions and discussion has resorted to collection of the advantages and disadvantages narrated in some pointed studies. The advantages and disadvantages so collected are presented below as a matter of discussions prior to jotting down the conclusions. They have been analyzed in light of discussions which the researcher has done with a number of media and content management agencies and researchers, for finally arriving at the conclusions.

### **6.1 ADVANTAGES OF OTT SERVICES [8]**

- High reception pace of OTT administrations by end clients.
- Benefits from overall inclusion by means of the Internet, and furthermore speedy to convey.
- Exploits diverse conservative scales, and less expensive with expanded use.
- Broadband availability backing, and pushes the interest for broadband (information use) administrations Benefits from exposure incomes, and offers cost effective approaches to showcase an item/business
- High exchange power with providers as far as producing incomes Increasing interest for information Increasing information income for administrators
- Dynamic client base Low exchanging costs
- Rise in shopper interest in online media substance open over multi-screen stage

### **1.1 DISADVANTAGES OF OTT SERVICES [8]**

- Low client maintenance
- Lack of a solid and fast organization
- Declining interest for conventional voice and text informing administrations
- Increasing traffic load Increasing the speculation need of ISPs and administrators to satisfy expanding information need
- Despite the conversations on expanding rivalry with new contenders coming into the market, there is additionally another discussion regarding whether OTT administrations and organization administrators can together work inside a similar market
- Difficulties in guaranteeing start to finish quality control, and in keeping up QoS across various areas Proximity issues, and shopper experience related prerequisites
- Lower ability for public ward administrations, and powerlessness to contain an operational model inside a locale
- Lack of commitment to the USF, and trouble in producing OTT income towards USF
- Revenue misfortune in voice and informing administrations notwithstanding selection of versatile handsets and SIM cards Problem of OTT tax avoidance in non house purviews Personal information assurance and protection issues scarcely addressable by public guideline
- Security worries, as clients have no power over information gathered
- The absence of immediate and clear guideline on OTT

Many countries across the world except a few do not regulate the content of OTT. That does not mean that India should allow these platforms to work independently. In the name of freedom of creativity, the OTT platforms are opposing any regulation by the government. But, in India, most of the media is under one or the other form of regulation. Hence, it should become imperative for the government of India to regulate the OTT platforms. But, as the Indian Government claimed that it doesn't have any authority to regulate the Internet content, the discussion about how to regulate the OTT which is unregulated even now has become an important issue [7].

Looking to the advantages and disadvantages of online content delivery, it seems that the suitable option available is that the OTT platforms should come together and form a self-regulatory body in the lines of Indian Broadcasting Federation (IBF). The Federation is set up voluntarily by the Indian

television entertainment channels in order to get away from the legal clutches of the government. As per the report by The Quint – a website news portal of India, Netflix and Hotstar have voluntarily signed a self-regulatory code of best practices under the aegis of Internet and Mobile Association of India (IAMAI). But, Amazon Prime has denied to be the part of this code. It is also very important to note that the IBF has set up a complaints council – Broadcasting Contents Complaint Council (BCCC) which looks into the complaints sent by the audience regarding the content and its presentation. The Council is headed by a former Chief Justice of India which will go through the complaints, conduct a trail if necessary and takes suitable action. But, the Council does not have strong punitive powers. Also, those whoever gets punishment threaten the Federation that they will walk out of it. During those times IBF has succumbed to the pressure and has withdrawn the punishments. It is evident that the IBF is considered to be non-effective in controlling the channels and the content they broadcast [7].

Finally, the researcher is of the opinion that there should not be complete autonomy to the OTT streaming as it is likely to yield counter-productive results. However, it is concluded that the OTT streaming interveners in the form of a legal body should have its own self regulatory mechanism. Such self regulatory mechanism must ensure ethical issues and responsibilities in delivering content through OTT streaming.

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