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## A COMPREHENSIVE ANALYSIS OF OTT PLATFORM REGULATIONS IN INDIA

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### Abstract

OTT platforms have changed how people in India consume entertainment by providing easy access to a wide variety of content. However, their rapid growth has brought challenges. Unlike traditional media like TV and movies, which are strictly regulated, OTT platforms have little oversight. This allows for creative freedom but also exposes viewers, especially children, to harmful content like extreme violence, nudity, and controversial themes.

India has started addressing these issues through rules like the IT Rules 2021 and the proposed Broadcasting Services Regulation Bill, 2023. These introduce measures like content classification, self-regulation by platforms, and penalties for violations. However, challenges like unclear jurisdiction between government bodies and the lack of a proper certification system remain.

This article explores how OTT platforms have grown, the problems they bring, and the steps needed to regulate them without stifling creativity. Striking the right balance between freedom and accountability is key to ensuring that these platforms continue to thrive while respecting cultural and societal values.

**Keywords:** OTT Platforms, Content, Regulation, Certification, IT rules 2021, Broadcasting Bill 2023.

### INTRODUCTION

“OTT” stands for “over-the-top,” and refers to the delivery of film and television content via the internet, without the need for a traditional cable or satellite television subscription.

The only entertainment options available to the public prior to the rise of OTT platforms were television, movies, and movie theaters. The definition of entertainment underwent a radical shift with the advent of mobile phones and the internet. High-speed internet and touch-screen mobile phones quickly became popular together. More people had access to OTT services as a result of rising smartphone usage and internet consumption. This change was made easier by the rise in reasonably priced data plans and the accessibility of inexpensive cellphones. According to the

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Telecom Regulatory Authority of India (TRAI), the number of Cable TV subscribers has been steadily declining, from 69.57 million in March, 2021 to 61.17 million in March, 2024.<sup>3</sup>

The introduction of internet-based video streaming services like YouTube, which became well-known for user-generated content, marked the beginning of the first wave of OTT platforms in India. But instead of full-length films or TV series, these sites mostly featured short videos. One of the first significant Indian platforms to provide a broad variety of content, such as sports, films, and TV series, was Hotstar (now Disney + Hotstar), which is owned by Star India, which debuted in 2015. The American streaming service Netflix made its debut in India in 2016 with a subscription-based plan that allowed users to access videos indefinitely. In order to satisfy the wide range of interests of Indian viewers, other platforms such as Voot, SonyLIV, and ZEE5 also entered the market during this time.

In 2016, Reliance Jio introduced its 4G services in India at a lower cost than other providers. Its launch of reasonably priced data plans transformed internet use in India, resulting in a sharp rise in internet users and, in turn, an increase in demand for over-the-top (OTT) services. The expansion of platforms was fueled by the availability of high-speed internet at reasonable prices.

When the COVID-19 pandemic struck India, it was a game-changer for OTT platforms. Consequently, the nation was placed under lockdown, and citizens were compelled to remain inside their homes. Theaters, public gathering places, and other entertainment facilities were subject to restrictions. People had no other options for entertainment except their phones and several OTT platforms. Since OTT platforms offered a practical and easily available means to experience media from the comfort of home, they eventually emerged as a major supplier of films, TV series, and other types of material. Additionally, binge watching was made easier by the content's on-demand availability. This is exactly what people desired in today's hectic world. It served a wide variety of content for every age group, thereby making it even more demandable.

Because of the current environment, over-the-top (OTT) platforms have become increasingly popular, making traditional TV a decorative item in many homes.

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<sup>3</sup> Kar, B. A. (2024, August 18). *DTH industry has lost nearly 8 million subscribers in the last 3 years*. BusinessLine. <https://www.thehindubusinessline.com/info-tech/dth-industry-has-lost-nearly-8-million-subscribers-in-the-last-3-years/article68539696.ece>



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## **THE TYPE OF CONTENT BEING SERVED ON OTT**

OTT serves its viewers with all types of content that one is willing to watch. Its viewers range from adults to children of all ages. Meaning thereby, that every type of content is accessible by all. As far as adults are concerned, they can make decisions for themselves as to the type of content that they want to watch. But, it is a serious matter of concern for our youngsters. They get exposed to obscenity, nudity, violence and very harsh themes and subjects which might have a negative effect on them because of their inability to decide what is right and what is wrong. Indian society is not yet ready for this sudden exposure which was not there on television or even films.

Internet has become a necessity in our lives and without which it has become difficult to run our lives smoothly. Same goes with children also. They have to be given access to internet for studying or entertainment, whatsoever it be. It is not always possible to keep an eye on them as to what they are watching. Not only for children, is some content difficult to watch even for adults like the intensity of violence shown in various web series.

Before 2020, OTT platforms in India faced no formal censorship. Content creators enjoyed considerable freedom, offering diverse stories, often featuring mature themes and languages that were not feasible with traditional Indian television or cinema. Problem started when this freedom soon clashed with the societal norms with the release of series like Sacred Games, Taandav, Paatal Lok, Mirzapur etc. portraying openly sensitive issues like politics, religion, violence thereby promoting vulgarity, encouraging anti social behavior and hurting religious sentiments.<sup>4</sup>

Activist Uday Mahurkar, speaking with India Today, stressed the urgent need to curb pornographic content on OTT platforms, citing its harmful impact on society. He shared data with the government, pointing to rising crime rates and instances of sexual violence linked to the easy availability of explicit material online. "If we don't act now, the situation will worsen," Mahurkar warned, highlighting cases of minors being involved in sexual crimes after exposure to such content.<sup>5</sup>

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<sup>4</sup> (2021). Censorship requirements for OTT content in India: A comprehensive overview.[Journal-article]. <https://utkrishthalaw.com/wp-content/uploads/2024/09/Censorship-on-OTT-Content-in-India.pdf>

<sup>5</sup> Paliwal, A. (2024, October 7). Government planning rules to regulate OTT content before release: Sources. *India Today*. <https://www.indiatoday.in/india/story/government-plans-new-rules-to-regulate-ott-content-guidelines-to-be-released-soon-2612669-2024-10-07>



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## **THE PROBLEM OF REGULATION OF OTT PLATFORM**

The Cinematograph Act of 1952 provides the legal basis for film certification and exhibition in India. It established the Central Board of Film Certification. Therefore, the CBFC is the regulating agency that certifies movies and decides if they are appropriate for public release. Similarly, television is regulated by the Cable Television Networks (Regulation) Act, 1995.

In India, the government has set censorship norms and limitations on television programs. The Ministry of Information and Broadcasting (MIB) and its offshoot, the Broadcasting Content Complaints Council (BCCC), are the regulatory bodies in charge of monitoring television content in India. To adhere to content rules, the Indian television business uses a self-regulation approach. To examine and keep an eye on material, industry associations such as the News Broadcasting Association (NBA) and the Indian Broadcasting Foundation (IBF) have their own self-regulatory systems in place. If there are serious infractions or non-compliance with regulations, the MIB has the power to suspend broadcasting licenses or issue penalties and fines. If content is judged to be against the public interest or national security, the government may also step in.

Concerns about content regulation have surfaced as OTT platforms have grown in popularity. Since their inception, they have operated with little oversight or intervention. Additionally, they have not needed a license in order to broadcast their programming. As a result of their growing popularity, the government is now working hard to control online content before it is released. This becomes a crucial problem as well in order to prevent legal disputes after the video is released. The Information Technology Act, 2000 (IT Act), which contains regulations pertaining to content control, data protection, privacy, and other general compliances, must be followed by OTT service providers operating in India. Legal repercussions for noncompliance may include fines, limitations on services and content, and other repercussions.

OTT platforms in India face a number of regulatory issues, including:

### **Lack of regulation**

OTT platforms are largely unregulated, unlike television, print, and radio, which follow government guidelines. This allows OTT platforms to bypass content restrictions and operate in an unlevel playing field with traditional media.



### **Conflict of interest**

The integration of broadcast and information technology has led to a conflict of interest between the Ministry of Information and Broadcasting (MIB) and the Ministry of Electronics and Information Technology (MEITY).

### **Content issues**

There are concerns about the glorification of anti-India elements and inaccuracies in content on streaming platforms. There is also a need to curb pornographic content, which some say has a harmful impact on society.

In the case of *Prajwala v. Union of India*, the Supreme Court felt the need of content regulation. The main objective of regulating it was to avoid sharing of inappropriate content which spread hate, disharmony and affect the public tranquility.<sup>6</sup>

### **Pricing and taxes**

OTT service providers are not subject to the same pricing and tax regulations as telecom operators and network owners.

### **Certification**

There is no certification board for OTT platforms, which creates an unlevel playing field with traditional media.

The government is preparing new guidelines for OTT platforms, which may include: Beeping profanity, Blurring explicit scenes, and Suggesting alternative portrayals of intimate scenes and profanity. Several court cases have led to the debate over formal censorship of OTT. Many FIRs were filed against “Tandav” web series which had scenes that hurt religious sentiments. The popular series “Mirzapur” also faced backlash for its portrayal of violence and negative portrayal of the city of Mirzapur. These cases highlighted the lack of a clear, structured approach to managing content complaints, furthering the push for formal regulation.

## **REGULATORY FRAMEWORK IN INDIA**

Consultations with major stakeholders have started already including Netflix, Reliance Jio, Amazon etc. to gather their input on the proposed rules. The proposed rules will place the

<sup>6</sup> Sephali Svati, *Classification of Content, Content Regulation and Ethics – OTT platforms in India*, 3 (4) IJLSI Page 509 - 525 (2021), DOI: <https://doij.org/10.10000/IJLSI.11918>



responsibility on the content creators and broadcasters to see whether their content adheres to the rules or not.

Currently, the primary regulatory framework guiding the digital media space in India is the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereinafter 'IT Rules 2021') under the Information Technology Act, 2000 (hereinafter, 'IT Act'). The IT Rules 2021 focus on content classification, user complaint redressal mechanisms, the establishment of self-regulating bodies, etc.

Earlier, the Ministry of Information and Broadcasting (MIB) introduced the Broadcasting Services Regulation Bill, 2023, to provide a legal framework for all the broadcasting services including the OTTs. The Broadcasting Bill, once enacted, seeks to replace the primary existing law in the broadcasting sphere – the Cable Television Networks (Regulation) Act, 1995.

### **IT Rules, 2021<sup>7</sup>**

The Ministry of Information & Technology released the IT Rules 2021. Nonetheless, the MIB is in charge of and has jurisdiction over provisions pertaining to online media, including movies and audio-visual programs and content. These regulations establish phrases like "digital media," "online curated content," "publisher of online curated content," and so forth. These categories may be sufficiently general to encompass OTT streaming services and platforms without explicitly mentioning OTT.

Some of the key compliances under the IT Rules 2021, applicable to the OTTs, are mentioned below.

- Forming a **three-tier regulatory mechanism**, including 'self-regulation'.
  - At **Level 1**, the rules mandate that all OTT platforms must classify their content based on age suitability, including categories such as U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult). Also, platforms are required to provide content descriptors (such as for nudity, violence, drug use) and parental locks for certain categories to ensure that viewers can make informed choices. **Self-regulation** requires OTTs to appoint grievance officers with an Indian base, whose contact information must be clearly visible on the platform's website or user interface. Additionally, the OTTs are required to make sure that the grievance officer they have designated makes a decision on each grievance within 15 days of receiving it.

<sup>7</sup> [www.meity.gov.in](http://www.meity.gov.in), Ministry of Electronics and Information Technology



- OTT is required to join an industry group, known as a self-regulatory body, as part of **Level 2** self-regulation. Self-regulatory organizations are promoted as autonomous entities established by publishers or their affiliates. Digital Media Content Regulatory Council (DMCRC) is one such self regulatory body.<sup>8</sup>
- The regulatory mechanism at **Level 3** entails the MIB creating an Inter-Departmental Committee as an Oversight Mechanism. This committee functions similarly to an "appellate" body for the decisions made by OTTs at Levels 1 and 2 previously mentioned.
- Adherence to the **code of ethics**: This includes compliance on OTTs such as content classification; exercising caution in relation to content which may hurt religious/racial sentiments, sovereignty and integrity of the nation, etc.

### **Broadcasting Services (Regulation) Bill, 2023<sup>9</sup>**

The Bill, for the first time, provides a statutory definition for ‘OTT broadcasting service’, the broad understanding of which since the IT Rules 2021 was from the meanings of the terms ‘publisher’ and ‘online curated content’ thereunder.

The Bill also brings new compliances to OTT streaming in India. Apart from some common parts (applicable to broadcasting services in general), Part C of the Bill specifically addresses some of the compliances of internet broadcasting networks, including OTTs. The Bill clarifies that the responsibility of complying with the requirements under the Bill would be those of the operator, who makes available the programme/content and not the network operator or the internet service provider.

Some of the key compliances under the Bill in respect of OTT platforms are as follows:

- OTT service providers would need to provide an ‘intimation’ to the Central Government (likely through the MIB) about their services in India. The obligation here on the OTTs appears to be much lower than that of traditional broadcasters, who require a license to operate.
- Adherence with a ‘Program Code’ and an ‘Advertising Code’, both of which have not been released yet.

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<sup>8</sup> [www.mib.gov.in](http://www.mib.gov.in) Ministry of Information and Broadcasting

<sup>9</sup> Prsindia.org



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- Content classification, which may take the same shape as the one already prevalent under the IT Rules 2021.
  - Setting up content evaluation committees consisting of members who are eminent individuals representing different social groups.
  - A three-tier regulatory mechanism, which includes self-regulation by the broadcasters, establishing self-regulatory organisations, the appointment of a grievance redressal officer, etc.
  - Introduction of newer and detailed statutory penalties covering different violations. The penalties include censure, heavy monetary penalties, imprisonment and/or fines, etc.

### **INTERNATIONAL PERSPECTIVE**

In the US, OTT platforms operate under self regulation with minimal government oversight. In 2019, a proposal was made to create a regulatory framework to monitor and understand unregulated content that could be harmful to society. In the European Union, traditional broadcasters and OTT platforms are governed by the Audiovisual Media Services Directive (AVMSD) which ensures a level playing field between the two. In China, there is an extremely strict regulation under the National Radio and Television Administration. In the UK, the Office of Communications (Ofcom) and the Communications Act, 2003 regulate online content. In Singapore and Indonesia, OTTs must comply with the local laws. Countries like Saudi Arabia and the UAE impose strict censorship on OTT content to align with Islamic values.

### **CONCLUSION**

Other factors like user privacy, data security, and the creation of moral content are equally crucial, even though OTT platforms must still abide by the law in order to operate in the Indian digital market. By focusing on robust security measures and transparent privacy policies, OTT service providers can win over the audience's trust and create long-lasting relationships. As the digital media ecosystem grows, OTT platforms have a special opportunity to promote diversity and inclusion, social change, and the development of a more inclusive society.

It is important to note that online content currently appears to enjoy a state of minimal legal or censorship barriers, allowing creators of online content to fully exercise their creative freedom. This is demonstrated by web series such as Tandav, Sacred Games, Mirzapur,





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Bombay Begums, Leila, and Lust Stories, which under different circumstances might never have made it to India's theaters or television.

Regulation of Over-The-Top (OTT) services in India is required due to several reasons, including consumer protection and national security. OTT platforms have rapidly grown in India, offering users a wide variety of digital entertainment, news, and other content directly over the internet. As a result, the digital economy has expanded and innovated significantly, but it has also raised several issues that need to be managed.

OTT platforms often offer content that is unregulated compared to traditional television or cinema, which are subject to strict censorship laws. Some content may include explicit violence, nudity, hate speech, or offensive themes, leading to public backlash and demands for oversight. India is a culturally and religiously diverse nation, and content on OTT platforms sometimes sparks controversies due to perceived disrespect to religious sentiments or cultural traditions. This has led to calls for regulation to prevent societal unrest.

OTT platforms are also increasingly used for documentaries or dramatizations that might spread misinformation, skewed narratives, or propaganda. Regulation can help ensure factual accuracy and balanced representation. The lack of content rating enforcement can expose children to inappropriate content, leading to the demand for stricter parental controls and age-based restrictions. Traditional media such as television and cinema are regulated under the Cable Television Networks Regulation Act and the Cinematograph Act. A lack of equivalent regulation for OTT platforms creates an uneven playing field. Ensuring similar accountability for OTT platforms maintains fair competition across the media landscape.

Some OTT platforms collect extensive user data, which raises privacy concerns. Regulations can ensure that user data is handled responsibly and securely. Countries like the UK, Australia, and Singapore have frameworks for regulating digital and OTT content. India seeks to align with global best practices to protect its citizens while promoting creativity and innovation. Concerns raised by law enforcement agencies, civil society groups, and even some consumer advocacy groups underline the need for a regulatory framework that balances creative freedom with social responsibility.

Unregulated OTT content can influence public opinion, affect mental health, or incite violence, especially in the absence of oversight mechanisms to curb sensationalism or manipulative narratives.



While the need for regulation is evident, there are challenges, such as:

- **Balancing Freedom and Control:** Maintaining creative freedom while ensuring accountability.
- **Avoiding Overreach:** Preventing excessive government control that might stifle innovation or expression.
- **Implementation:** Enforcing regulations uniformly across global and local platforms.

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