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Incompetence of Self-Regulatory Laws for the Regulation of OTT Platforms in India

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ABSTRACT

The digital age in India is characterised, among others, by the emergence of OTT platforms as one of the most significant cultural and technological development. The introduction of such over-the-top (OTT) applications, including Netflix, Amazon Prime Video, Disney+ Hotstar, among others, has remarkably influenced content consumption pattern of people in India. Such rapid expansion, however, has raised concerns regarding the efficacy of self-regulation and restriction of content. In the absence of an adequately defined legal framework, India has had to rely on the self-regulatory codes formulated by the OTT platforms to supervise and control content available. This article evaluates the advantages and shortcomings of self-regulation in India with a specific emphasis on over-the-top (OTT) platforms by analyzing the legal order and the implementation of the order with respect to the protection and restriction of freedom of expression and the regulation of the content.

Keywords: OTT Platforms, Self- Regulation, Freedom of Expression, Content regulation, Legal framework.

I. INTRODUCTION

In India, OTT (over-the-top) services have revolutionised the media and entertainment sector. In a rapidly growing industry, India's OTT platforms cater to a myriad of customers by means of music and video streaming services on demand. OTT platforms do not fall under India's content regulation provisions as traditional broadcast and cable television. Instead, the content on these platforms is usually controlled through self-regulatory codes formulated by industry organizations or the platforms themselves.

The Indian government has largely depended upon self-regulatory protocols so as to not stifle innovation and empower these platforms to regulate their content. That said, there are questions about the efficacy of these self-regulatory codes and the absence of an effective legal framework. As the consumption of OTT content continues to skyrocket, especially among the youth, worries about regulation for disturbing or harmful content, privacy issues, and misinformation are growing.

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II. EVOLUTION AND GROWTH OF OTT PLATFORMS IN INDIA

Digitized content consumption in India has shot up hugely thanks to the digital transformation that the country has experienced which has been enabled by increased internet access, cheap smartphones, and inexpensive data. Out of this revolution the OTT sector is perhaps one of the most visible ones. In a report prepared by PwC it estimates that the Indian OTT market will be worth ₹12,000 crore by the year 2025, thereby registering a CAGR of 28 percent. The growth of this trend has been nurtured by the presence of local players such as Disney+ Hotstar and MX Player alongside worldwide services like Netflix and Amazon Prime Video.

However, while the consumers are reaping the benefits from the growth of the OTT industry, there are also concerns with the content moderation practices in place, raising questions regarding their appropriateness. Content regulation is provided by the Ministry of Information and Broadcasting (MIB) and is subject to such requirements as licensing and compliance monitoring that are more strict and pronounced in nature than the requirements that are associated with the OTT service delivery. However, since these services are offered online and do not use traditional broadcasting methods, they are available globally, OTT platforms were not applicable to the same law initially and were not included into the regulatory framework.

The inability to have active OTT re-regulation led to the emergence of voluntary self-regulatory codes. Such codes have been formed by both professional organizations and individual platforms to guarantee that the material meets certain standards and requirements.

III. SELF-REGULATION OF OTT PLATFORMS: MECHANISM AND CODES

The self-regulation structure bases itself on the idea that OTT platforms are in the best position to deal with and control the material which they interface because they are private entities. This idea tends to try to balance between the right to free expression and the responsibility to prevent the dissemination of harmful or illegal materials.

(A) The Digital Media Code of Best Practices

The Indian Broadcasting Foundation, which later came to be known as the Indian Broadcasting and Digital Foundation, released a Code of Best Practices for Digital Media in 2019. This was one of the first attempts at self-regulation. The code was designed to provide OTT platforms with a framework that would ensure material did not violate community standards. The IBDF Rule suggests the production of age-based content classification schemes, discouraging violent content, and ensuring respect for national sovereignty.

(B) The Grievance Redressal Mechanism for Digital Publishers' Content

The Ministry of Information and Broadcasting (MIB) came up with Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, popularly known as the IT Rules 2021, for addressing the increasing issues due to hazardous content. The law formulated a Digital Media Ethics Code and required OTT channels to establish a three-tier redressal mechanism of grievances supervised by the government, an officer within the organization, and a self-regulated body.

Rules have been placed that involve classifying according to age ratings such as "U," "U/A 7+," "U/A 13+," "U/A 16+," and "A" for adults. However, the criticisms of this rule include them being vague, which leads to undue power for the government, while monitoring at the platforms remains wanting.

(C) OTT Platforms' Industry Self-Regulation

Internal to the OTT services is their own methods of monitoring content, but they operate within the bounds of rules set by IBDF. For example, Netflix follows a very rigid rating scale for content and allows customers to report whatever they may find objectionable. On similar grounds, Amazon Prime Video has a policy for the same content, mentioning hate speech, violence, and explicit content among many others.

These sites comply with regional content laws regarding the sites. They ensure all content is aligned with sociocultural standards in the Indian region. These controlling mechanisms, however, may differ from platform to another, leading to inconsistencies while classifying and monitoring of content.

IV. CONSTITUTIONAL AND LEGAL CHALLENGES TO SELF-REGULATION

While flexibility might be offered by self-regulation, it has faced several legal and constitutional implications that have put the competence of self-regulation in question. According to critics, self-regulation often lacks responsibility, transparency, and consistency. A lot of flexibility is there in platforms to avoid or disregard content requirements in case of the absence of defined and binding standards that would eventually lead to the proliferation of offensive or dangerous content.

(A) Self-regulation alone would be insufficient to prevent harmful content

Industry rules and internal policies have not been enough to adequately address the concerns related to harmful content, including hate speech, child pornography, and misinformation. Self-regulation, by definition, is a voluntary process, and platforms are often not incentivized to

abide by their own content policies in the strongest possible manner.

If regulation is left solely to the discretion of platforms, they will prioritize the generation of revenue over the societal obligation to screen out offensive material.

The producers of Udda Punjab, which was an online movie streaming, had to make a series of adjustments after facing governmental pressure. In this example, one can find how difficult it is to find a middle ground between social norms and content liberty through self-regulation.

(B) Weak Legal Structure

Lack of a proper legal framework designed specifically for OTT material has caused confusion. The Information Technology Act, 2000 (IT Act), primarily drafted for internet intermediaries and not media companies, applies to OTT platforms. The government, in this legal lacuna, often resorts to indirect regulation, like directing platforms to censor content or issuing orders that do so.

For instance, according to the 2016 report of Shyam Benegal Committee on Broadcasting Regulation, an OTT platform should go through the same rules and regulation as traditional broadcasters. The need to shield viewers from offensive material especially in this context was stressed within the report of the act of 1995 in Cable Television Networks (regulation). Unfortunately, this has not been followed.

(C) Freedom of Speech and Expression: Constitutional Challenges

Such issues are also raised in connection with the Right to Freedom of Speech and Expression under Article 19(1)(a) of the Indian Constitution regarding the regulation of content on OTT platforms. This basic right can be contravened by any attempt at placing stern regulation over OTT services on the content front. This makes article 19(2) permitting reasonable restrictions on free speech with the view of morality, decency, and public order subject to abuse in terms of the interpretation because no legislative standards are indicated therein.

Cases like *Ranjit D. Udeshi v. State of Maharashtra* in(1965) , by which the Supreme Court, while admitting the necessity to balance freedom of speech against the need for preventing harm, show that the courts frequently warn against too much in content regulation. Defining what really constitutes harm in the digital space remains hard.

V. SUGGESTIONS FOR AN IMPROVED REGULATORY STRUCTURE

Given the inadequacies of the current self-regulation model, a stronger, more open, and binding legal framework is required. Following are some of the propositions that may help solve content regulation-related issues:

(A) Comprehensive Law for OTT Control

There is an imperative need for well-defined comprehensive legislation specially designed for OTT platforms. It must establish an effective grievance redressal system, compliance mechanism, and codified rules of content classification. The self-regulatory as well as the regulatory approach should find place under this law, with an enabling authority to implement the standards on content.

(B) Strengthening Monitoring Mechanisms

The supervision process of IT Rules, 2021 should be enhanced. For OTT services, an integrated regulatory authority may be introduced, like the BCCC for television. Such authority can monitor content, accept complaints, and enforce punitive measures.

(C) Harmonizing Content Regulation with Freedom of Expression

It holds that every citizen has under Article 19(1)(a) of the Indian Constitution the fundamental right of freedom of speech and expression extended to any forms of media, digital or otherwise, indispensable for the democratic ethos of the country. The right brings an open society where ideas are expressed, exchanged, and in creative expressions, free of retribution.

But, Article 19(2) of the Constitution reasonably puts some limitations on exercising the said right for interests including national security, public order, decency, morality, or for upholding the sovereignty and integrity of India. The restriction shall only serve as a precaution for those harmful speech expressions in which hatred speeches, defamation, or raising people to violence against their brethren may risk the common welfare and social order.

One of the most contentious issues in the content regulation, especially relating to OTT platforms, is the definition of "objectionable content." The term remains obscure in most of the available regulatory frameworks, leaving tremendous room for interpretation. That may result in inconsistent and arbitrary enforcement, which leads to consumer distrust and undermines freedom of expression.

It would define unacceptable content better and more contextually, in the sense that it makes sure regulations are reasonable and respect constitutional rights. Lawmakers, authorities, and platforms would then have to devise specific and uniform standards about what is considered offensive or dangerous content.

(D) Engaging the Stakeholders

This policy making should be made more inclusive by incorporating wide-ranging stakeholders like OTT platforms, consumer rights organization, civil society, and legal experts. Involvement

of such diverse organizations will ensure that any new legislation that comes out will be fair, open, and will represent the interests of all the stakeholders. There must be regular discussions and feedback mechanisms that should be established to keep the law current and flexible enough to cope with the ever-changing digital media industry. Moreover, by accommodating the approach, the regulating measures shall be in line with changing social norms and public expectations.

(E) Technology-Based Content Moderation Solutions

With the free flow of information across national borders in this digital age, the need for content moderation has increased. Social media networking sites, streaming services, as well as other user-centric platforms are examples of online arenas that have become effective vehicles for expression and communication. The same openness, however may also lead to the dispersal of offensive, criminal, or harmful content. This has resulted in technology-based content moderation solutions becoming advanced instruments for preserving a more secure and accountable online environment.

The content moderation system these days is based on ML and AI. That means by scanning large data sets and picking up patterns they are helping platforms automate flagging and filtering out objectionable content. In addition to this, by training an algorithm on a set parameter like hate speech, violence, nudity, or false information, a platform can review this content in real-time. In addition, by spending more time, the AI models begin to become even more sensitive toward discriminating between harm and acceptable speech.

NLP tools can filter out hate speech, propaganda, and other objectionable language in written content. The NLP tools support the ability of a web site to monitor content which is in a different than the native language, of course. In this setting, it may prove indispensable. NLP-based Sentiment analysis can further elucidate context, tone and intent that would make an occurrence less likely for the false positives or negatives.

Image and Video Recognition tools should be used. Nowadays, more and more visuals are involved in the content management process. Technologies like deep learning algorithms may be used by algorithms for graphic violence detection, explicit content, or copyright. Video-matching technology is used by online sharing sites like YouTube to block the illegal uploads of the copyrighted material.

Challenges in adopting modern technologies-

Bias in AI Models: The AI model can be biased since its inception, so moderation may sometime come wrong or even discriminatory. To counter this challenge, monitoring of the AI

model should be also there.

Over-Censorship and Moderation: The automatic system might ban or censor acceptable content. This would reduce free expression and innovation. The balance between expression and moderation is hard to strike.

Understanding deeply as of satire or any form of parody of different kinds, cultural referencing by human so that none fails to achieve the requirement correctly.

Privacy Issues: Since the moderation systems usually depend on accessing individual information, the abuse of the data is rampant with spying. Therefore, the processes must therefore be open and compliant to the privacy law.

VI. CONCLUSION

The growth of the over-the-top platforms is an interesting prospect for innovation and democratization in media; however, it does throw up some serious difficulties pertaining to consumer protection, content regulation, and ultimately, defending constitutional rights about freedom of speech and expression. Good move to start with self-regulation, but this has not come to terms with the complexity that content governance needs in an increasingly fast-changing digital world.

The current regulatory system, largely left to self-regulation, lacks consistency, transparency, and strong enforcement measures. This has made it difficult for people to really avoid harmful content, and very soon enough, the needless interference in their free expression rights, denoting a government approach, will become more and more controversial. India must clear the:

- The integrated strategy that allows full-scale protection of free speech while ensuring consumer safety.

A very strong and well-formed body of monitoring, a very clear legislative framework for OTT services, and quite a comprehensive strategy to enforce consumer rights vis-a-vis content creation by freedoms of creative liberties would have to be the most important components of a better regulatory system. Of course, it involves technology, as artificial intelligence and machine learning algorithms would complement a human review in assuring compliance in content.

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