

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 5 | Issue 6

2022

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Regulation of OTT Platforms: Need for a Separate Legislation

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ABSTRACT

Technological advancement has revolutionised the entertainment industry. Where television and movie theatres were the norm, today audiences much prefer Over The Top platforms like Amazon Prime and Hotstar that allow them to enjoy the same and additional content available in the comfort of their homes. Even when Covid-19 pandemic adversely affected business in the service sector, the popularity of the OTT medium soared with its easy accessibility and unique global content. This however does not mean that the transition from traditional media to OTT has been as smooth as it has been fast paced. Given its distinctive structure, OTT content has escaped various censorship norms and this has led to numerous controversies relating to the nature of content displayed. Consequently, the judiciary has tried to bridge the gap through judgements, content providers have committed to self-regulation codes and recently the government passed the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Despite this, regulation of OTT platforms continues to be a hotly debated topic as these steps are not the conclusion, rather they are the first steps towards the making of a codified legislation competent in dealing with the unique challenges posed by this medium.

Keywords: Traditional Media , Covid-19, Over The Top Platforms, Censorship Norms, Codified Legislation.

I. INTRODUCTION

The past few decades have seen rapid growth in technology and its impact has been evident in almost all spheres of life. The entertainment industry is no stranger to such change. The broadcast/telecast media that began as a medium of sharing news gradually evolved to become a major source of entertainment airing various shows and movies on the television in the 20th century. In the 21st century, easy availability of internet has paved the way for new players in this arena. The media industry has witnessed a paradigm shift from conventional mediums such as television to modern and upcoming services provided by the Over The Top platforms which are slowly creating a niche for themselves.

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The term OTT stands for Over the Top services and OTT content normally describes broadband delivery of video and audio services without a multiple system operator being involved in the control or distribution of the content.³ This includes not only video-on-demand platforms, but also audio streaming, messaging services, or internet-based voice calling solutions. Simply put, it refers to content conveyed over an infrastructure of internet driven technology such as mobiles or tablets, placing it beyond the control of the service provider. Hence, all TV series, movies and documentaries provided through the internet rather than the traditional cable operating service or satellite service come under the scope of OTT content. Some popular examples of OTT platforms include- Netflix, Amazon Prime, Hotstar, Jio, Zee5 and ALT Balaji.

The video industry officially stepped into the digital world in 2007. Netflix became the first platform to introduce consumers to the concept of video delivery on the internet and gave birth to new media known as OTT. Reliance entertainment introduced the first ever OTT media platform in India in 2008, named as “Bigflix”, following which 8 years later Netflix and Amazon started operating in India as well. Since then, various digital platform companies have launched their own applications making entertainment more flexible and plentiful than ever before. The over-the-top (OTT) market has been expected to grow with a significant rate by 17.1% over the next decade, and to reach approximately used 3.49 billion by 2025.⁴

OTT platforms are consumer friendly and are undeniably gaining popularity, hence changing the television and film watching habits in many ways. Not only are they convenient and easy to access, but also allow for entertainment on a personal medium through mobile, computer, tablets, etc. Beyond this, these platforms provide both diversified international content and customised content based on geographical and personalized demographic information. A few of the OTT platforms, allow their users to opt for subscription plans and skip ads enabling them to enjoy a break free experience. Additionally, OTT platforms are cost effective since many applications operate free of cost for users and for several others, one subscription can be streamed on multiple devices.

The benefits of OTT are not being realised solely by consumers but also by content creators and media companies. These online platforms reduce reliance on movies, theatre performances and watching video programs on TV. Introduction of 4G services and the proliferation of smartphones offer opportunities the ability for film and television producers to monetize their

³ Grace Li, *Regulating over-the-top services in Australia – from universal service obligation scheme to OTT regulation*, Vol. 8, No. 1 Int. J. Private Law, (2015), [ijpl.2015.066715.pdf](#).

⁴ Aditya Baslas, Priyanka Deb, Nabeela Tareen, Shilpi Ghosh, Shweta Tated, *Over the Top Media and Regulations*, Part B, Legal Desire International Journal of Law (2020)

video content via digital media. These digital platforms are decreasing the risk of content producers through their inexpensive cost and low requirements.⁵

With the pandemic Covid-19 leading to a complete lock down, the movie industry suffered loss, but over-the-top (OTT) streaming platforms found a way to mitigate the impact. During this period, many movies were released over OTT as the theatres were non-operational. In April NBC universal took a great risk and released its movie “Trolls World Tour” over OTT before exhibiting it in the theatres. The movie surpassed all expectations and earned over 20 million dollars, giving NBC and many other productions an encouragement to release their movies over OTT.⁶

The viewership of OTT content has continually increased and has been much higher as compared to the pre-pandemic months. This trend is likely to continue and only grow in coming times. Owing to its widespread reach, the decision regarding regulation of Over The Top platforms has become crucial to review.

II. CONTROVERSIES IN THE OTT WORLD

In the year 2008, India’s first OTT platform was launched in India by the Reliance Entertainment and since then these online media platforms have truly been over the top in the entertainment industry. Currently, there are numerous OTT platforms in India and with the exponential rise in the usage of this media platform, it is expected that it will soon overtake South Korea, which is considered to be one of the most important and rising OTT industry in the world, by 2023 to become the eight biggest OTT industry in the world.⁷

There is no doubt to the fact that these OTT media streaming platforms have induced a change in the lives of the global citizens and particularly in India, post the introduction of low-cost internet connection. Today, with just a click on the device, we can access any show, movie, educational media, sports content and what not, from anywhere, anytime and anything.

In an interview of Mr. Peer Viqarulaslam, Kashmir based T.V debater and journalist, he opined that these OTT platforms are indeed an expression of their interests and dissents. These platforms actually led the way for the people of Kashmir to express their social, economic, political and entertainment-based needs.⁸

⁵ Dr. Paramveer Singh, *New Media as a Change Agent of Indian Television and Cinema: A study of over the top Platforms*, Vol. 9 Year 5, jccc june 2019 final-131-137.pdf, (2019)

⁶ Divya Samriti and Priyank Sharma, *OTT- Existing Censorship Laws and Recommendations*, SSRN-id3735027.pdf, (2020)

⁷ Manoj B A, *Regulation of OTT Content in India: An Analysis*, Journal of Xi’an University of Architecture & Technology, <http://www.xajzkjdx.cn/gallery/235-april2020.pdf>, (2020)

⁸ Aditya Baslas, Priyanka Deb, Nabeela Tareen, Shilpi Ghosh, Shweta Tated, *Over the Top Media and Regulations*,

These OTT platforms are not only a source of entertainment and education, they have also been a major contributor to the economy as well. They have been the source of employment to numerous people, actors, influencers, editors, just some among the few. Thus, there is no denying to the fact these OTT platforms have truly been of utter most importance, they have been constantly engaging in the fields of technology, education, entertainment and economy, for the good.

Despite all the advantageous aspects of these online media streaming platforms, there is a negative aspect attached to the emergence of the OTT platforms. Often, controversies related to the content, language, dialogues, scenes, context among many other things, rise up. In a country like India, where the entertainment industry is often the center of discussion, these controversies often turn into a center for political fights and religious fights. The Bollywood film, “*Padmaavat*”, is the most recent examples, of how a film can turn the things for the worst. The historical period film was alleged to denigrate the status of the Rajput caste. The controversy turned violent with the supporters of the protest giving threats to the actors and the director of the film.

The OTT world is not unfamiliar with the controversies related to the various shows, movies, songs, and other media content. There have been ample of controversies which highlights the current scenario and asserts that now there is an ever-increasing need of a codified legislation for the regulation of the OTT world.

Absence of a codified legislation often results in many filmmakers releasing controversial content to gain popularity or to make more profits. The controversial topics range from politics to anti-national content, from sexually explicit content to anti-religious content.

In India, there are various such topics on which a controversy could rise but there is no greater topic when it is concerned with content that hurts the religious and cultural sentiments of the people. Amazon Prime’s web series, “*Tandav*”, was at the center of the controversy when it was alleged that it intentionally hurts the religious feelings of a section of the audience. Complaints across the country were filed by different sections of the society, accusing the team of “*Tandav*” for portraying the Hindu Gods in a bad light. Tensions escalated to such a situation that the team had to seek protection from the Supreme Court of India against multiple potential arrests. Although, the matter was settled after an apology from the team of the web series, it really highlighted the lacunae in the regulation of the content that hurts the religious and cultural

sentiment of the people.⁹

In a similar controversy, Amazon Prime's web series, "*Paatallok*", faced the heat of the community after it was accused of hurting the sentiments of a religious community. The complaints filed were in contention to the scene of a man of a particular religion (Sikhism) raping a woman. The show was also accused of offending the Gorkha community in relation to usage of sexual slur. The show was not only in the middle of controversy for hurting the sentiments of various communities but was also accused of displaying anti-social, vulgar and violent content.¹⁰ Another show, "*Bulbbul*", that was released on Netflix, had hurt the religious feelings of the community when the denigrate scenes referring to Lord Krishna and Radha were clipped.

Content against the State and the Armed Forces is another topic which stirs up patriotism even in the most unpatriotic person, and what often follows is controversy. "*Gunjan Saxena: The Kargil Girl*", was one such OTT release that motioned controversy for portraying the Indian Armed Forces as extremely biased and discriminatory towards women. The team concerned were backlashed for putting, Indian Air Force, in particular, in the negative light. A similar controversy regarding the series "*Abhay2*" motioned up when it was alleged that it had portrayed the Indian freedom fighter Khudiram Bose as a criminal.

Politics is another topic which motions up controversies. "*Sacred Games*", which released on Netflix, was in the middle of the controversies when it was alleged that the series insulted the former Prime Minister of India, Mr. Rajiv Gandhi. Even an episode of "*Last Week Tonight*", had to be blocked by Disney Hotstar, which contained derogatory remarks regarding Prime Minister Narendra Modi.

OTT media content that explicitly clips unchecked sexual and vulgar scenes have been often caught in the controversies. India is a country, which rather prefers family shows over such bold shows and release of such shows is bound to be in the controversies.

Thus, there is no denying to the fact that in absenteeism of a well codified legislation, controversies in the OTT world have been on the rise. These controversies have definitely highlighted the difference between the theatrical releases and the OTT release. The theatrical releases are not often caught up in the controversies, due to strict rules, regulations and content

⁹ Entertainment Desk, *Tandav Controversy: Here's Everything you should know*, THE INDIAN EXPRESS (New Delhi, January 27, 2021) ,<https://indianexpress.com/article/entertainment/web-series/controversies-surrounding-tandav-heres-everything-you-should-know-7163727/>, last visited on January 28, 2022

¹⁰ Aditya Baslas, Priyanka Deb, Nabeela Tareen, Shilpi Ghosh, Shweta Tated, *Over the Top Media and Regulations*, Part B, Legal Desire International Journal of Law, (2020)

screening procedure in place, which the OTT media world lacks. These controversies have highlighted the need of a strict codified piece of legislation that does not curtail the creative liberty and the rights of the makers but places a set of guidelines so that content doesn't hurt the general public.

III. IMPORTANCE OF CODIFICATION

History has witnessed how entertainment and media have moulded cultures and beliefs. The content we view has a considerable influence on our thinking patterns and shapes our perspective. Several psychologists accept this notion and studies have proved that content viewed does have an impact on behaviour of individuals. As such the ascendancy of the media itself cannot be classified as positive or negative, but the nature of content featured plays a crucial role in this consideration.

Keeping this in mind, the Indian Cinematograph Act was introduced in 1918 in India which led to the establishment of censorship boards whose task was to ensure that the content being displayed met socially accepted standards of morality. Further, The Cinematograph Act of 1952, introduced a rating system for films that included the following categories: U (universal exhibition), A (adult exhibition), UA (with permission after 12 years of age) and S (for professionals).¹¹ Similar regulations are applicable to content aired on television that aim to ensure that violent or degrading content is not displayed as it could have an unfortunate impact on the minds of young children.

Unfortunately, there exists a policy vacuum in terms of content regulation when it comes to OTT platforms. Since, OTT content is not bound by inherent time restrictions and is available at any time as long as one is equipped with a working internet connection, content over this medium cannot be regulated by traditional means such as airing certain shows late at night, a technique used on television. Additionally, these days more and more children are gaining access to gadgets at a young age thus enabling them access to online and sometimes even mature content which may be difficult to supervise.

Apart from this there is also an issue regarding shows or movies being displayed on television in their censored form whereas OTT platforms are able to distribute an uncensored version of the same content. This however is not the only undue advantage given to OTT platforms. They are not required to pay any telecommunication sector regulatory fee as well as the taxes in order

¹¹ Shubhangi Heda, *How to Regulate in India*, Centre for Media, Data and Society, (2019), <https://cmds.ceu.edu/sites/cmcs.ceu.hu/files/attachment/article/1722/indiaottpaper.pdf>, last accessed on 1 February 2022

to provide their services which results in an unequal footing between traditional television and modern internet platforms.

Certain existing acts are applicable to OTT platforms, but there is no particular codified legal framework which regulates or seeks the monitoring of the content viewed online. Some such legislations include Indian Penal Code, Sec 295 A which addresses, deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs, Sec 499 which defines defamation as Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person and Sec 500 which punishes the same¹². Additionally, Sec 67 of The Information Technology Act, 2000, prescribes punishment for publishing or transmitting obscene material in electronic form¹³. These legislations however are not efficient in dealing with all the intricacies of the OTT platforms especially those which are new and unique to such platforms. They also lead to an issue of deciding whether the particular legislation can be applied to OTT platforms. For example, while the Ministry of Electronics and Information and Technology (MEITY) and the Telecom Regulatory Authority of India (TRAI) maintained that they do not have control over online content, the courts established the capacity of the IT Act to regulate this space.¹⁴

In September 2020, around 15 (fifteen) OTT platforms signed the Universal Self-Regulation Code for Online Curated Content Providers (Self-Regulation Code). All companies who signed the code essentially promised to work in good faith and cohesively aim to self-regulate their content in order to ensure authenticity and display material free from themes such as nudity, sexual exploitation and hate speech. The code sought to maintain freedom of speech and expression while also protecting the interests of consumers. The issue here is that this may just be a way to escape external control and censorship, in an attempt to self-regulate and by that means further their own interests. The code lacks participation of an objective third party which can rationally regulate the platforms.

The Ministry of Electronics and Information Technology of the Government of India has

¹² The Indian Penal Code, 1860, No.45, Acts of Parliament, 1860 (India)

¹³ The Information Technology Act, 2000, No.21, Acts of Parliament, 2000 (India)

¹⁴ Indumathy K Vishwanath, *Emergence of OTT (Over The Top) Platforms in India*, No.32/2021 LARDISS, (2021), http://164.100.47.193/Refinput/New_Reference_Notes/English/16072021_150800_102120526.pdf
http://164.100.47.193/Refinput/New_Reference_Notes/English/16072021_150800_102120526.pdf

notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 under section 87 of Information Technology Act, on 25 February 2021. Part III of the Rules deals with the code of ethics and procedure for digital news media and OTT platforms. OTT Platforms, having a physical presence in India or making their content available in India will come under the scope of The Intermediaries Rules. The rules also include a code of ethics for all publishers of news and current affairs content including OTT Platforms which will be administered by Ministry of Information and Broadcasting.¹⁵

The intermediary rules lay down various provisions in terms of content regulation, beginning with a requirement for self-classification of online content into five categories based on age i.e U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult). The Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television Networks Regulation Act, have also been made applicable to online content providers, thus ensuring that they do not have unfair advantage over traditional offline media platforms. The rules also include a three-level grievance redressal mechanism- Level-I: Self-regulation by the publishers; Level-II: Self-regulation by the self-regulating bodies of the publishers; Level-III: Oversight mechanism.

The intermediary rules notified by the government are a good beginning in the long journey towards regulation of online content but they are not efficient in meeting the fast-paced growth and creativity that is characteristic of OTT platforms. An example of such ultra-modern and innovative work is *Bandersnatch*, an episode of *Black Mirror* series, but also, Netflix's first-ever interactive movie for adults. It engages the audience by giving them choices that ultimately influence the manner of the story. The viewers are presented with choices and their decisions alter the story itself. The show has various unique permutations and up to five possible endings. This not only reflects the rapidly evolving scope of OTT platforms but also brings about the possibility of a shift towards a private viewing space.

Therefore, a straitjacket regulation may not be viable rather a well deliberated legislation bringing together provisions for self-regulation, co-regulation, and regulation by nation-states involving the participation of various civil society organisations as well as international agreements and commitments, may be required to meet the diverse and evolving needs of the OTT platforms.

IV. COMPARING REGULATED VS UNREGULATED

OTT Media platforms have truly revolutionized the entertainment industry. No one would have

¹⁵ *ibid*

ever experienced the joy of watching all such diverse entertainment media from the comfort of their homes, had OTT not been introduced. The pandemic may have disturbed all the sectors of the economy adversely, but OTT is among those sectors which have flourished in this pandemic. The OTT is a massive industry and in the upcoming years, it will only grow with the major technological advancements.

The OTT media platforms are channels of speech and expression for many people, but lately in the process of expressing their speech and expression, there have been many controversies and with the OTT industry only growing in the nearby future, it is of very much importance that a proper and well-articulated codified legislation is in place. The codified legislation should be such that it neither violates the right of speech and expression as enshrined in the Indian Constitution nor is incompetent to abort the condemned media from getting published.

The regulation of OTT media platforms is one of the highly debated topics, with the society divided into two sectors, with one sector favoring regulations to address the issues of unregulated child pornographic, violent, anti-religious and many other media clips and the other sector favoring minimal regulations. The latter sector includes people from the production houses, which favor full autonomy to get monetary gains. So, this is more of a balance that needs to be maintained between public interest and private interest by addressing the policy gaps.¹⁶

The level of controversies that the unregulated OTT media platforms can create is not something unknown. India is a home to multi-lingual and multi-religious community, thus controversies are quick to arise. Also, with growing influence of the western culture and the western OTT media platforms like Netflix, there have been many controversies due to scenes featuring intimate and sensuous scenes, often involving children. Any medium of speech and expression concerning the State, often, doesn't go well with many sections of the society and paves way for many controversies. Online movies and web series like "*Tandaav*", "*Sacred Games*", "*Pataal Lok*", "*Game of Thrones*", are just a few names in the world of controversies concerning the unregulated OTT media platforms.

Across the globe, there are many rich cultures and media industries. One such country is Singapore. Cinema is an extremely important to Singapore. In the heydays of 60's, it was often regarded, by many, as the 'Asian Mecca for film production', and the glitz and glamour of Asia. The very first Asian based film festival, 'The Asia-Pacific Film Festival' was organized and

¹⁶ Ashaawari Datta Chaudhari, *Do OTT Platforms Deserve A Separate Regulation*, Centre for Research & Analysis in Finance, Technology & Law, (2010, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3958678, last visited January 29, 2022

initiated by the Shaw Organisation, movie distributors in Singapore.¹⁷ The digital era of cinema hasn't been unknown to Singapore and it is among the few countries that has a dedicated piece of legislation for the OTT media platforms. The island nation has a regulatory body, Infocomm Media Development Authority, that has the responsibility of regulating content. As per the code released by the body, there must be responsible viewing choice, and for this reason parental guidance has been considered important. All the content must be rated according to the Film Classification Guidelines, categorizing the content among the six heads, mainly General (G), Parental Guidance (PG), Parental Guidance for Children below 13 (PG13), No Children Below 16 years of Age (NC16), Mature 18 (M18), Restricted to Persons 21 years and above (R21). Besides, the service providers can offer R 21 content only if they implement reliable age verification mechanism and such content should be locked by default and accessible by R21 PIN. Moreover, R21 content cannot be offered for free. Apart, from these, any content disallowed or prohibited under applicable laws, regulations, codes or license conditions in Singapore must not be offered.

The Code provided by the regulatory authority is very exhaustive in nature, from screening and categorizing the content to display for such categorization, from covering aspects related to advertisement of categorize content to mentioning of general principles that the content makers have to keep in mind, a lot has been covered. Moreover, Part 5 of the Code even entails seven major content concerns.¹⁸

Thus, the difference is evident between the two countries. India is often entertained with controversies rather than the original content because it doesn't have a regulatory body that can filter the controversial because it lacks the regulations. These regulations can filter out such content, as done in Singapore. The content in countries like Australia, Singapore, U.S.A, have a legislation pertaining to this platform of entertainment and can actually regulated the content for the better part of the society. These countries have indeed maintained a balance between the public interest and uprising OTT media's interest.

V. PRESENT SCENARIO AND WAY AHEAD

OTT has been constantly a source of medium for the past few years. Every source of media entertainment be it the televisions or the theatrically release films, all are governed by some codified laws and regulations. A regulatory body, Central Board of Film Certification (CBFC)

¹⁷ Kerrine Goh, *Why Is Singapore Important to Singapore*, (2004), <https://culture360.asef.org/magazine/why-cinema-important-singapore/>, last visited January 30, 2022.

¹⁸ Content Code for Over-The-Top, Video On Demand and Niche Services (Singapore)

is responsible for regulating the content in the films. The Cinematographic Act of 1952¹⁹ is also responsible for regulation of the content. Similarly, the television mode of entertainment is governed by the Broadcasting Content Complaints Council (BCCI). Thus, every mode of media entertainment is governed either by somebody or some Acts and it has been well established, that there is indeed a need of such regulations.

The importance and need for such regulations can be determined from the petitions that has been filed against the unregulated OTT media platforms. The OTT media platforms for long were governed by the Information Technology Act, 2000.²⁰ The Cinematographic Act of 1952 was also seen as a potential Act in governing the OTT platforms but in the case of ***Padmanabh Shankar v Union of India***, it was held that the OTT platforms aren't covered under the scope of this Act. Besides this, it was also recognized by the Court that there is lack of statutory authority to regulate the content and the Court should set up a authority for the same.²¹ Although, the Information Technology Act and Indian Penal Code are applicable in regulating the OTT media platforms, but it highly restricted to some provisions of the Acts and Code.

The inadequacy ultimately led to the formation of a Self-Regulation Code that was accepted by some of the major OTT media platforms. But this was considered to be insufficient for the regulatory framework of the OTT media platforms and was rejected by the government on the grounds that it lacked independent third-party monitoring, well-defined ethics code and doesn't enunciate prohibited content.²²

Finally, The Government of India (Allocation of Business) Rules, 1961, were amended in the year 2020 which brought digital and online media under the jurisdiction of the Ministry of Information and Broadcasting (MI&B). Digital and online media would include films and visual programs made available by online content providers besides the news and current affairs content on the online platform.

In 2021, Information Technology (Intermediary Guidelines and Digital Media Ethics Codes) Rules, 2021, also called IT Rules, 2021. The IT Rules, 2021 were notified under Section 87 of the Information Technology Act. Part III of the guidelines highlights the ethics code and procedure for digital news media and OTT platforms. The guidelines entail some code of ethics to be practiced by the Over The Top platforms, such as self-classification of content, into five

¹⁹ The Indian Cinematographic Act, 1952, No. 37, Acts of Parliament 1952 (India)

²⁰ The Information Technology Act 2000, No. 21, Acts of Parliament, 2000 (India)

²¹ Padmanabh Shankar v Union of India, High Court Karnataka write petition No. 6050 [2019]

²² Khaitan & Co., *OTT Platforms and Digital News Media- New Regulator (And Perhaps a Legal Regime Overhaul)*, (November 17, 2020) ,<https://www.khaitanco.com/thought-leaderships/OTT-Platforms-and-Digital-News-Media-New-regulator-and-perhaps-a-legal-regime-overhaul>, last visited on January 30 2022.

categories, parental locks for U/A 13+ content, age verification mechanism for 'A' content and three tier redressal mechanism but the guidelines also entails provisions for social media and digital news.²³

Guidelines for regulating OTT media platforms may have certainly come up with the IT Rules, 2021 but it also has provisions for Digital News and Social Media. OTT platforms are growing at an exponential rate with the boost that the pandemic has provided to these platforms. Thus, the need, in the nearby future, is of a dedicated and separate codified legislation that is exhaustive and comprehensive in nature and entails within itself all the provisions pertaining to the matter, only and only OTT platforms. It shouldn't be just some soft regulatory guidelines and concurrently, it should address the concerns of the expressed in these guidelines. The guidelines doesn't even incorporate the term 'Over the Top'.

Understanding the current scenario and in view of the upcoming rising OTT industry, some of the suggestions that could be incorporated in the legislation are as follows:

- **Separate Legislation:** The current guidelines borrow heavily from the Information Technology Act, 2000. They are actually a part of the of Act only, Part III. Thus, we suggest, as contemplated in the paper, that the first and foremost thing is to enact a separate legislation. Unlike the present guidelines it shouldn't include Social Media apps such as Twitter, WhatsApp, only to name a few.

It is also argued that the Information Technology Act, 2000 was introduced to provided legal recognition data and establish the broad parameters in which it could be used as an evidence. It is not at all the scheme of the Act to regulate the intermediaries. Thus, highlighting the need of separate codified legislation.²⁴

- **Content Classifying Body:** All the OTT media content should be screened by an independent body comprising members from the industry, government and other members as deemed fit by the policy makers. Just like, all the theatrical released go through a classifying content screening by Central Board of Film Certification, all the OTT media content, especially web shows and movies, should go classifying content screening with a designated body.

Although the guidelines have made provisions for screening, but they are self-classification of

²³ Indumathy K Vishwanath, *Supra* note 12

²⁴ Ritik Kumar Rath, *A Wolf in Sheep's Clothing – Critique of the 2021 OTT Guidelines* (May 10, 2021), <https://medium.com/the-opinion/a-wolf-in-sheeps-clothing-critique-of-the-2021-ott-guidelines-d2da5d2e9a5a>, last visited on February 1, 2022

content, which the authors think as a loose end, and such provisions could be used by the producers for meeting their goals.

- Presence of Independent Judicial stance: The guidelines have excessively delegated powers to the executive organ of the State, or it can said there is presence of 'Executive Judiciary'. In the grievance redressal mechanism of the guidelines, there must be a 'self-regulating' body and such body should have been scaled satisfactorily on its constitution by MI&B. Even the oversight mechanism, in tier 3, will comprise of representatives from different committee such as MI&B, Ministry of Women and Child Development, Ministry of Law and Justice among others. Apparently, there is executive exercise of the judicial powers

Thus, there should be an establishment of an independent judicial body that can carry out the true functions of the judiciary. Even establishment of a special court should be taken into consideration.

- Absence of absolute government control: It is evident in the redressal mechanism that, what has been enacted is not less than a government control over the OTT media content. It is true that regulation is needed but complete censorship is not the kind of regulation the industry needs.

Thus, a system that doesn't paramount the government with absolute hidden authorities should be constructed.

- Shouldn't curb Right to Speech: it has been debated that the guidelines will have adverse effects on speech, as it has given formal validation to the concerns expressed by some of the sections of the society against the artistic content, by inclusion of cautious notice pertaining to multi-racial and multi-religious groups in India.

Also, the Code of Ethics gives undue power to MI&B of blocking the content on emergency grounds without even granting a chance of hearing. Such a provision it definitely a strike on the freedom of speech as well as expression of the producers of the online content.²⁵

The OTT industry is the most important industry in the current times, impacting the economy as well in significant way and therefore it is essential that it is nurtured in the best possible way.

- Presence of articulate Code: There is a need of an articulate piece of legislation and not an ambiguous Code. For instance, there is no mention or definition of the word 'OTT'

²⁵ Internet Freedom Foundation, *Explainer: Why India's new rules for social media, new sites are anti-democratic, unconstitutional* (27 February 2021), <https://scroll.in/article/988105/explainer-how-indias-new-digital-media-rules-are-anti-democratic-and-unconstitutional>, last visited on February 1, 2022.

in the release guidelines.

There should be specific and articulate provisions in the matter concerning to the Indian Armed Forces and the State. Small cautious provisions that prohibit content against integrity and sovereignty of India and relations of India with other countries isn't just enough.

OTT is the new and emerging field that requires some dedicated legislation and these suggestions are in line with the expected legislation. The separate codified legislation should aim to address the prevalent concerns while simultaneously bring new additions keeping in mind the rising industry.

VI. CONCLUSION

Our society has been evolving in each and every field and the entertainment industry is no such exception. Society has experimented and is experimenting a lot in the entertainment industry. The industry has moved from the massive screen experience to the OTT platform released entertainment. This platform has been providing entertainment from the comfort of one's home and no doubt the industry is rising exponentially. Although, the OTT world has revolutionized the industry but it has also brought the concern of unregulated content to the forefront. Unregulated content that often exposes the audience to obscene and condemned scenes, has been the concerned aspect for the industry, especially in India, where entertainment is a highly debated topic. Attempts have been made by the judiciary, government and content producers to regulate the content but the various judgements, rules and codes have been somewhere unsuccessful in regulating the content in a way that addresses all the concerns. OTT has a wide-reaching impact on the society and this rising industry demands a separate codified legislation for addressing the concerns of the society. It should be such that it neither hurts the sentiments of the society nor does it curb the right to speech and expression. The codified legislation should solely be concerned regarding OTT platforms, dealing with the minute details of the industry.
