

## **Understanding the Regulatory Landscape of Over-The-Top (OTT) Platforms and Apps in India: A Legal Perception**

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### **Abstract**

India's Over-The-Top (OTT) business has emerged as a replacement to the conventional broadcasters because of its terrific on-demand services. Despite the fact that these platforms deliver diverse content types and ease of use to the users, they pose various legal and regulatory concerns. This paper to analyze the current and emerging changes in the regulatory framework in India regarding the OTT platforms in terms of content regulation, data privacy, and protection and competition law. This brief looks into the current legal frameworks for the regulation of OTT ecosystem including the Information Technology Act, 2000, the Personal Data Protection Bill, 2019 and Consumer Protection Act, 2019. Further, the study also examines various regulatory bodies such as Ministry of Information and Broadcasting, TRAI and MeitY in addition to judicial system through varieties of cases. The paper also assesses international regulatory frameworks for learning and comparison as well. Hence, this research helps the paper discover areas of law shortfall in addressing the growing concerns of digital content in India and proposes extensive reforms as suitable for the unprecedented growth of India's digital content market without compromising on innovation and consumers' rights alike.

**Keywords:** Over-The-Top (OTT) Platforms, Content Regulation, Data Privacy, Consumer Protection, Competition Law, Net Neutrality, Regulatory Framework, Personal Data Protection Bill, Information Technology Act, India

## **1. Introduction**

### **1.1 Context:**

Multi-System Operators (MSO) otherwise called Over-The-Top (OTT) platforms have disrupted the market in India turning out to be service providers that deliver content directly to the market skipping traditional broadcasters and Telecom operators. In this generation, OTT players such as Netflix, Amazon Prime Video, Disney+ Hotstar have garnered much traffic and offers diverse content to the consumer. This shift has changed the traditional broadcasting models and raised pertinent questions on the legal and regulatory satisfaction for handling such new entrants in Indian context.

### **1.2 Problem Statement:**

As much as OTT platforms ensures flexibility and choice for consumers they have legal and regulatory complexities. Quagmires like censorship of content, privacy of data and consumer rights, as well as regulation of monopolistic conduct have emerged hence the need for a good legal structure. The current system of regulation does not appear to be very efficient in catering with fast-moving pace of technological change in delivering digital content which calls for change.

### **1.3 Research Questions:**

- What has been done in India in terms of the current regulatory environment to work towards providing a solutions to these problems with the context of OTT platforms?
- What measures are in place for consumer protection in OTT space and are they proper?
- What is the impact of judicial decision and expressions regarding net neutrality along the thinking of the regulation?

### **1.4 Objective:**

1. This study aims at examining and assessing the laws regulating OTT platforms with the principal focus on the situation in India. The paper will focus on the areas such as the content regulation, consumer protectionism and competition law and seek to establish frailties in the present laws to propose future reforms that would fit in the new media environment.

## **2. Literature Review**

### **2.1 OTT Platforms in India**

The emergence of Over-The-Top (OTT) platforms in current Indian media market is best explained by the enhanced availability of the internet, availability and affordability of smart phones, and a massive shift in customer choice to video content that's readily available through digital modes. Currently, India ranks among the top five largest markets for OTT players with over 500 Million internet users and this is estimated to grow in the next years (KPMG. Nov 2021). OTT services like Netflix, Amazon Prime Video, Disney+ Hotstar, Zee5, and Voot and many more are available and can be accessed by anyone with entertainment programs and other programs that are educational. OTT platforms presented a major shift from the conventional broadcasting networks where they tend to negate the universality of Cable or Satellite TV service providers and give the viewers an open-end selection with flexibility (Deloitte, 2020). Research done to estimate the Indian growth of OTT has depicted it as growing at an exponential rate due to factors including improvement of internet connection, localization, and regional language plays (PwC, 2020). Although this has been a growth, it comes with considerable issues as to content control, privacy, and ownership of information. The impact of OTT platforms in generation and delivery of content, advertisement and consumer behaviour has been a subject of discussion. Studies show that OTT platforms have been shaping the audience choice and accelerating the tendency of binge-watching and generating new chances for advertising (Saxena & Srivastava, 2021).

### **2.2 Regulatory Landscape**

OTT platforms in India are regulated by the Information Technology Act, 2000 which deals with the digital intermediaries and the Intermediary Guidelines and Digital Media Ethics Code Rules, 2021. These guidelines address the matters of intermediary censorship, data protection and privacy, and content regulation of which offer a certain degree of control for OTT applications. However, the critics complain that these rules are quite primitive and no longer adequate to meet the challenging task of controlling the content development in the information space. The guidelines mandate the OTT platforms to self-censor content, abide by code of ethics, and have adequate number of grievance officers to address the grievances (Dutta, 2021). One of the major issues in the OTT regulation efforts is that the OTT platforms cannot be compared to the traditional broadcasters which they regulate. Yet there is vagueness regarding the governing of

such platforms in comparison to television broadcasters that strictly roll by the rules of the Cinematograph Act, 1952 and Cable Television Networks (Regulation) Act, 1995 (Tandon, 2020). Moreover, since content of OTT players comprises of user generated content, localized content and foreign shows, it is quite challenging for the regulator. Thus, while Indian digital ecosystem expands, the demand for the more detailed and stringent OTT regulations rises.

### **2. 3 Judicial Influence**

Indian courts have been actively involved in influencing the OTT regulatory discourse especially when it comes to freedom of speech and intermediary liability as well as content regulation. Among this brand of applications, a unique case is the ‘SHREYA SINGHAL versus UNION OF INDIA 2015’ where the supreme court of India nullified Article 66 A of the Information Technology Act, 2000 as it was violating the Right to Freedom of Speech and Expression (Chandrachud, 2017). This case helped in establishing a point that intermediaries cannot be held responsible for third-party content especially OTT platforms as they do not have any direct involvement. Moreover, in case of recently arisen ‘Padmanabh Shankar v. Union of India (2021)’ did serves the question of regulation of OTT content into better focus. The court responded to the threats of censorship and stated that, while OTT platforms have little creative control, they are governed by India’s general legal code that contains rules designed to protect public decency and morality in the country. The judicial impact in this area therefore focuses on accommodation of the freedom of communication with cautious distribution of content.

### **2. 4 International Perspectives**

On comparing the concept of regulatory framework in the Indian context with other countries several aspects comes into light. The European Union’s General Data Protection Regulation or more commonly known as GDPR has been instrumental in data privacy and comprehensive digital governance around the globe. GDPR covers almost all the aspects of personal data protection and makes OTT platforms operating in EU countries to collect users’ data only with their consent and make sure the platform is safe from hackers and others who want to steal users’ data (Voigt & Bussche, 2017). This is however different from India’s emerging data protection legal framework that is yet to get the ‘Personal Data Protection Bill, 2019’. Likewise, the regulation of such OTT platforms in the US is still in the grey area as some legal policies are still

being made at the federal level while others at the state level with major legal concerns being Intellectual Property rights, Data protection/privacy and Antitrust. In the UK, debate about regulating the OTT services has emerged in the form of the 'Online Safety Bill', which sets new rules for controlling undesirable content that harms the user; the process calls attention to the content moderation and child protection debates (Department for Digital, Culture, Media & Sport, 2021). These arguments are useful as reference when India aims at changing its legal structure to adapt the developing new-age, advanced solutions for its regulating and protecting customers.

### **3. Legal Framework Governing OTT Platforms**

#### **3.1 Content Regulation**

OTT players in India continue to function in a legal ambivalence as far as content censorship is concerned. While traditional 'Tele Broadcasting' Television Broadcasters or Film Makers are bound under Cable Television Networks (Regulation) Act, 1995 & Cinematograph Act, 1952 individually Online Streaming Platform have been relatively free in terms of content regulation. While traditional broadcasters are bound by content regulation, censorship, and certification from the Central Board of Film Certification (CBFC), digital media platforms or OTT Players, until lately, had minimal regulation and could, therefore, provide first, unedited content to the consumers. This has raised a lot of concern in regard to licensable content regulation especially in a diverse and sensitive society like India (Tandon, 2020). Therefore, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 promulgated by the Ministry of Electronics and Information Technology (MeitY) are the first shot at regulating over-the-top (OTT) content. Such rules recognise OTT platforms as Internet intermediaries and obligate them to adhere to channel-specific three-tier grievance redressal mechanism in case of complaints related to content. They also intend the OTT platforms to divide the content into different genres and ensure that they self-classify according to age suitability which include U, U/A 7+, U/A 13+ and A and ensure the Platforms have filter controls (Ghosh, 2021).

However, these guidelines have not been well enforced and practiced as many have noted that the self-regulation form of operating lacks adequate monitoring and coercive authority. Also, controversy in the area of censorship exclusively and freedom of expression emerged since the

guidelines allow the government to exercise an option to block any content, which it considers fit for children. This has prompted a disagreement on whether such regulations violate freedom of creation and user's right to information diversity (Nayyar, 2021).

### **3.2 Data Privacy and Security**

Data privacy and security is another major legal concern issues that OTT platforms are facing currently. Since most of these platforms exist in an environment that is almost entirely digital, they heavily depend on users' data for content customization, advertising, and boosting the overall user experience. But the absence of an appropriate law that addresses data protection in India has become a cause of concern for personal data privacy of users accessing OTT platforms. At the moment, the processing and protection of user data is performed with the help of the 'Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011' that define the minimum level of protection of personal data (Kamalasabapathy & Godishala, 2020). But these rules are regarded as insufficient and no longer effective to meet the emerging challenges in the OTT ecosystem due to the recent high profile data leakage and unauthorized data sharing issues. The Personal Data Protection Bill, 2019 which is currently pending the parliamentary approval seeks to address these concerns by presenting a legal framework regarding to the collection, processing and storage of personal data. After enactment, the bill will allow OTT platforms to collect users' sensitive personal data only with the users' prior consent and will make these platforms liable for data breaches or misuse of the information (Venkataraman & Prasad, 2020). Until the Personal Data Protection Bill becomes enforceable law, operation of OTT platforms is governed by a patchwork of legal provisions thus exposing users to infringement of their right to privacy. People consider passing this bill necessary to make OTT platforms take measures and follow the proper policies for users' data processing.

### **3.3 Consumer Protection**

OTT platforms mostly rely on a 'pay per view system' whereby there is cost implication of accessing the content. Thus they are governed by the 'Consumer Protection Act, 2019' meant for the protection of the consumers against false advertisement, unsupplied services, and unfair and unfavourable terms and conditions in the contract. In regard to this act, OTT platforms are

mandated to make necessary disclosure on the nature of services offered, pricing of services, quality and even the cancellation policies in a bid to fully protect the consumer from being subjected to surprises after making a purchase (Sharma & Kumar, 2021). However, it can be also noted that the stakeholders have not done enough to develop enforcement mechanism in the area of digital content even though the Consumer Protection Act provisions exist. For instance, if a consumer is unhappy about aspects related to service quality in an OTT platform; for example, bad stream quality, wrong portrayal of contents, or unfair billing policy, then the available redressal mechanisms are very restricted. Under the Consumer Protection Act, consumers can approach the consumer courts to file their complaints and these are not without their own problems but are tiresome since the platforms at operation here are digital in nature. In addition, consumer protection laws are applicable nowadays to digital content and guidelines for service quality standards for the OTT platforms are still vague (Saxena & Srivastava, 2021). With the rise of cord-cutting or cord-nevers, who are those consumers who never subscribe to cable services and directly access video content over the top or OTT services, the need for the government to step up its consumer protection law in the digital content sector and make sure that these OTT players display high service quality and Standard Operating Procedures.

### **3.5 Competition Law**

The rapid growth in OTT platforms in India has brought forth issues about monopolistic practice and anti-competitive behavior in the market. Growing fear of market concentration and reduced competition is there in the few major players, including Netflix, Amazon Prime Video and Disney+ Hotstar, which dominate the current market. ‘The Competition Commission of India (CCI)’ is one of the most crucial regulatory bodies checking these monopolistic trends and making sure that playing fields are leveled for the smaller platforms too (Rao & Reddy, 2021). Although the OTT market is relatively young and still growing, the dominance of such prominent players may lead to challenges within competition. Their dominance over exclusive content and intellectual property rights may handicap smaller platforms from competing effectively. Moreover, the enormous financial resources of such companies make it possible for them to provide deep discounts and aggressive price models, which might be compelling enough to push more competition out of the market (Gupta, 2020). Risk can be minimized only if the CCI vigilantly monitors anti-competitive practices in the OTT sector. In this direction, mergers

and acquisitions leading to concentration in the market have to be investigated and monitored aggressive price practices likely to distort competition. Guidelines should be drafted on how the competition law applies to a business involving digital content so that it remains open and well-levelled for everyone.

In other words, the regulatory architecture in India for OTTs is still at its infant stage. While the recent regulatory measures, such as 'Information Technology Rules, 2021' and proposed 'Personal Data Protection Bill, 2019', are promising regulatory measures to control the OTT ecosystem, there are still several gaps left in the various domains. Issues in the domain of content regulation, data privacy, consumer protection, and competition law require explicit legal statutes to assure fair and transparent functioning of the OTT platforms. The OTT industry will grow, and the Indian regulatory framework needs to respond to that. The challenge is that the Indian market does not face similar situations of digital content, so it will have to balance innovation with protection for the interests of consumers.

#### **4. Key Regulatory Authorities**

##### **4.1 Ministry of Information & Broadcasting (MIB)**

The MIB plays an important role in the governance of India's media landscape; its regulatory reach has recently extended to Over-The-Top (OTT) platforms. Over its history, it has regulated content on televisions and radio and films. Today, it regulates content online, ensuring that it follows 'good morals, culture, and ethics' in India. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 brought OTT platforms within the ambit of the MIB in a formal manner; thus permission was granted to the ministry to keep track of digital content through a three-tier grievance redressal mechanism (Mohan, 2021). Although it is considered a move to bring governance to the paradigm by adding the OTT platforms within the purview of the MIB, it has created fear of censorship and curbing freedom of speech since the government now has control over content to be put up on those platforms. According to research, such regulatory interference may seem likely to restrain creative liberty and limit accessibility to an enormous amount of viewpoints, thereby creating self-censorship among the creators of the content (Rajagopal, 2021).



#### **4.2 Telecom Regulatory Authority of India (TRAI)**

Traditionally, the Telecom Regulatory Authority of India, or TRAI, has overseen and regulated telecommunications services, which would include internet service providers or ISPs, and further ensured adherence to principles of net neutrality. And in the case of OTT platforms, the role of TRAI has now extended into checking and regulating how these platforms access the internet. In this regard, the main focus of TRAI has been such that internet services must not discriminate against any content provider while granting equal access (Bhatnagar, 2020). One of the key regulatory functions of TRAI is to ensure net neutrality so that OTT platforms could grow well. In its '2018 recommendations on Net Neutrality', TRAI reiterated that all internet traffic must be treated as equals, meaning no policy or procedure should empower or allow ISPs to block or provide preferential treatment to content from one OTT platform at the expense of another. It, therefore, brings both a large and new OTT player into a level playing field and safeguards consumers from unfair practices of throttling or preferential treatment.

#### **4.3 Ministry of Electronics and Information Technology (MeitY)**

The 'Ministry of Electronics and Information Technology (MeitY)' is one of the most important governance bodies for digital policy decisions related to data governance and cyber security. As the growth of digitalization of services became sharp along with the massive uptake of over-the-top platforms, MeitY has played an increased role in ensuring that OTT follows standards for the protection of information and cyber security. Currently under review, the 'Personal Data Protection Bill, 2019' can be regarded as a landmark initiative undertaken by MeitY in an effort to develop a structured framework for India regarding personal data protection (Venkataraman, 2020). OTT platforms-guising their massive collection of user data-will need to bear stringent norms of data protection once the proposed bill becomes law. Meanwhile, MeitY is very actively trying to combat the common cyber threats and data breaches seen in the OTT ecosystem by developing policies that insist on good practice regarding data security (Sundaram, 2021).

### **5. Consumerism and OTT Platforms**

#### **5.1 Changing Consumption Patterns**

Indian media consumers have been thoroughly revolutionized by the Over-The-Top platforms. Scheduled programming has with time become a more old-fashioned notion as digital platforms

came out showing off their hand of giving on-demand content that is personalized and varied. According to several studies, more Indian consumers are choosing OTT services, which offer flexibility, convenience, and diversity similar to those of Netflix, Amazon Prime, and Disney+ Hotstar, compared to any traditional services offered by television (Jain & Roy, 2020). The growth of low-cost smartphones and the increase in internet coverage has further increased this trend. Further, the growth in regional content with the availability of worldwide programming has increased the population viewing OTT platforms (Sharma, 2021). In short, this change in consumption patterns raises questions about OTT accountability towards customers, their satisfaction levels, delivery of promised content, and transparency in their subscription model. Above all, most OTTs work off subscription schemes, where different types of access to content are all bundled into different tiers of pricing. However, these usually end up confusing the consumer about what they are subscribing for and when it is denied, or when unaccounted for charges appear. These pose a significant problem in terms of pricing and services from OTTs, respectively.

## **5.2 Consumer Challenges**

OTT is quite convenient and flexible, but it creates a number of challenges to the consumer. The most primary concern here would be that the subscription models are not more transparent. Most OTT platforms have "free trials" which automatically turn to paid subscriptions in case nothing is done to cancel them, a surprise many consumers do not welcome, indicates Verma (2020). Moreover, OTT platforms typically have different collections of content in different regions, which prevents spectators from accessing certain series or films there. This can make consumers upset because they expect the same quality of service everywhere. Another major challenge that arises in OTT platforms is data privacy. OTT platforms collect users' vast amounts of personal data, such as the viewers' habits, payment details, and location information, among others. The biggest concern about the consumers is how that data is being utilized, as several cases of misuse and breaches of data have thrown light on the increased requirement to ensure stringent regulations in preventing misuse of the user's information (Goswami, 2021). Even though the platforms have enacted an exhaustive privacy policy, users are unaware of how much third parties receive their data for the purpose of targeted advertisement or other purposes, which increases distrust in their data-handling practices on the platforms.

### **5.3 Consumer Protection Laws**

The 'Consumer Protection Act, 2019' would apply to OTT services and aims to safeguard the consumer from unfair trade practices, misleading advertisement, or shoddy quality of service; however, this legislation is still in its infancy on the implementation of the same. The act has provided mechanisms for filers by consumers on shortcomings with the service or unfair trade practices, but the OTT platforms are digital, and therefore enforcement will be cumbersome. There is an overwhelming need for more detailed consumer protection provisions taking into consideration the subtle nature of digital content services (Agarwal & Sen, 2020). The Consumer Protection (E-commerce) Rules, 2020 make great efforts to deal with some of these problems by making clear transparency in pricing, subscription renewals, and terms of service. However, much remains to be enforced, and most of the consumers are ignorant of their rights while dealing with OTT platforms (Patel, 2021). As the OTT industry continues to grow, there is a call for regulatory bodies to ensure that platforms are kept accountable to fair practices while at the same time ensuring these services disclose information about them. Furthermore, the regulation of appropriate safeguarding of consumer data will help to establish trust and protect consumers in the digital economy.

## **6. Net Neutrality and OTT Platforms**

### **6.1 Definition and Importance**

Net neutrality refers to the principle which points to the idea that all internet traffic must be equal, free from discrimination or differential pricing from the Internet Service Providers. The standards therefore negate any tendency that an Internet Service Provider may have to favor or block specific websites, applications, or services. The concept is especially crucial for Over-The-Top platforms because it ensures that users have access to all content available on the internet without ISPs interfering (Belli, 2017). For instance, Netflix, Amazon Prime Video, and Disney+ Hotstar-all are OTT platforms. Net neutrality will help the same OTT platform have a level playing ground as they can compete without ISPs slowing down their services or making them pay more to access on their own speeds. This, therefore, makes small or even new platforms competitive with established giants that make innovation and competition accelerate this way. Without net neutrality, the ISPs may prefer certain services more than others, create a "fast lane" for OTT platforms that can afford better access, relegating others to slower connections; this

could severely undermine consumer choice and stifle competition on smaller OTT platforms. For this reason, net neutrality is crucial to maintaining the features of an open and decentralized internet that have formed the backbone of the success in the digital content ecosystem (Marsden, 2017).

## **6.2 Regulatory Debate**

India has always been a keen supporter of net neutrality. Recently, in 2018, the Telecom Regulatory Authority of India (TRAI) delivered path-breaking recommendations to reaffirm the need for an unaltered internet. These regulations clearly bar ISPs from unjust practices, including throttling or blocking content and charging different rates to access various websites or services. Much applauded for creating an open Internet, it is beneficial for both consumers and creators of content alike. This has raised questions about whether OTT should be regulated in the same way as old-fashioned media companies, or not. Traditional broadcasters and telecom companies argue that OTT takes advantage of loopholes and does not have the same content regulations and licensing rules placed upon them. There's the question of whether these over-the-top platforms, who rely so heavily on internet infrastructure, pay their share for building and upholding this infrastructure, especially now that their data consumption is growing exponentially (Chaturvedi, 2020). The other issue is regarding exemption of OTT platforms from certain regulations applicable to traditional media; even content censorship. Critics argue that the differential applicability of such regulatory requirements may undermine the principles of net neutrality by creating a scale imbalance (Sharma, 2021).

## **6.3 Impact on Consumers**

Changes in laws on net neutrality often result in broad implications for consumers. Such changes undermine the principles of net neutrality, leading to restrictions in access to specific content by ISPs. Furthermore, it might even introduce paid-access tiers to premium content, thereby increasing the cost for consumers (Davidson, 2021). For example, consumers might have to pay an extra fee for high definition streaming on services like Netflix or some of the throttled sites unless the consumers have signed up for more expensive internet plans that offer faster access. This would reduce consumer choice and create a situation whereby only a few willing people would be able to enjoy premium services from certain carriers, and this goes against the

principles of net neutrality based on equal access to the internet (Srivastava, 2020). Furthermore, net neutrality ensures nondiscriminatory access to digital content without speed and quality discrimination in terms of geographical location or economic status. Those losses may disproportionately affect users in the rural or lower-income group, and it would exacerbate the electronic divide in India (Jain, 2021). It will, therefore, be essential that future regulatory changes pay more attention to consumer rights and ensure equal access to online content.

## **7. Judicial Pronouncements and Impact on OTT Regulation**

### **7.1 Important Cases**

Indian courts, in contemporary times, have played an important role in creating the check and balance framework that governs the regulation of OTT platforms in regard to liability for objectionable content, freedom of expression, and consumer protection. One such significant case includes the judgment of ‘Madras High Court in Padmanabh Shankar v. Union of India (2021)’, which indirectly dealt with the question of whether OTT platforms should be held liable for objectionable or illegal content broadcasted on their platforms. The judgment of the case did state that though OTT has some creative liberty, they are yet to be bound by the existing laws governing obscenity, defamation, and hate speech (Menon, 2021). This judgment emphasized the fact that these technologies must not become exceptions to the rule of law, even if they are exempt from the regulatory regimes of legacy media.

The other important case is ‘Shreya Singhal v. Union of India (2015)’ Supreme Court struck down section 66A of the Information Technology Act, under which online content was punished for being offending. This, although a case not of OTT platforms as such was instrumental in altering the face of online freedom of expression and intermediary liability going forward, even among OTT content providers. Of course, the courts would then standardize the fact that intermediaries-again, OTT platforms notwithstanding-could not be held liable unless and until they had actually participated in the creation and or distribution process of the very content whose liability they were being held for (Chandrachud, 2017).

These judgments encapsulate the delicate tightrope that courts must walk between promoting freedom of expression and ensuring responsibility regarding damaging or illegal speech. Indian courts have specifically been seen to respect free speech rights but in their verdicts,

simultaneously found OTT streaming services required to adhere to relevant legal requirements applicable to content moderation practices.

## **7.2 Emerging Trends**

As more OTT platforms began to gain importance, the Indian courts started to increasingly interpret and frame precedents that would shape digital content regulation in the future. One trend is the increasing interest by judges in consumer protection. For instance, courts have begun to ask whether OTT platforms are sufficiently transparent on subscription models and data privacy policies. For instance, in the case of 'Ramanathan v. Netflix India (2020)', it emerges that consumer complaints related to misleading advertisements and lack of clarity in terms relating to auto-renewal subscriptions have surfaced, for which more transparent functioning of OTT sites has become necessary by the courts (Krishna, 2020). Another trend is that consumers have raised issues of great importance to freedom of expression in digital space. This results in noting how Indian courts are increasingly hesitant even to impose traditional media regulations on the platter of OTT platforms that could construe as limiting the content diversity that it would make available to the viewer. This was precisely what the Supreme Court was trying to convey in its judgment in the case of 'Faheema Shirin v. State of Kerala (2019)' it reasserted the fact that access to the internet is a fundamental right and underscored the importance of digital freedom in the contemporary society (Ranjan, 2020). The legal interpretations by courts will be very significant for the present regulatory environment of OTT platforms as judicial pronouncements in all these diverse areas will also continue to contour the four corners of law.

Digital content space is going to offer a lot more scope for possible litigations before courts on content censorship, issues related to privacy, and monopolistic practices. Courts' rulings would determine the legal boundaries keeping in view the interests of both the creators of content and consumers, and of the regulators also.

## **8. Policy Considerations and Legal Reforms**

### **8.1 Lack in the Current Legislation**

After this recent set of regulations, including Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 have been enforced upon the country, with regard to the balance in the statutory provisions of the law of India related to the OTT platforms, several

lackings have been found. Especially, among them, structural regulatory mechanism with regard to content censorship, not being well-defined, is an important one. Unlike traditional media, OTT platforms generally enjoy far greater creative freedom, as the statute books do not regulate them. Instead, akin to social media, they fall under the loosely worded ambiguity of the Information Technology Act, 2000 - laws that have been at the centre of debates regarding whether censorship standards applicable to films and television should extend to OTT content due to the tension between freedom of expression versus societal norms (Mishra, 2021). Another gap exists in the sphere of data privacy. The use of the OTT platform earns the creator a revenue share, without proper guarding of its users' data, including viewing history, preferences, and payment information. Presently, data privacy is governed by laws like Information Technology Act, 2000, and fragmented regulations. The country awaits the passage of Personal Data Protection Bill, 2019, which ensures stringent data protection and privacy rights with respect to personal data, leaving users vulnerable to misuse of their data (Srivastava, 2021). Consumer protection on OTT remains in its nascent stage and has very few mechanisms to address issues like false or misleading advertisement, less transparent charges, or inconsistencies in accessing available content.

## **8.2 Recommendations for Reform**

Specific regulations for OTT are needed urgently to clarify the bases of content moderation, data protection, and consumer rights. A balanced approach towards content regulation should be established, with creative freedom on one side and not allowing the spread of harmful or illegal content. It can be achieved by applying age-appropriate classification, along with a grievance redressal mechanism, to enable the users to report objectionable content without imposing arbitrary censorship.

The Personal Data Protection Bill must be implemented so that OTT platforms use the data of its users responsibly. It would have to involve explicit consent for collecting data, transparency about using such data, and security over such data. More, consumer rights should be made more robust on subscription models, refunds, and service quality. The Consumer Protection Act, 2019, must be further amended to include digital content platforms with transparency and fair practices.

### **Future Consequences**

In the future, when India's digital economy is growing, the regulatory structure of OTT will have to keep changing continuously. When advanced technologies such as artificial intelligence and blockchain are emerging and most likely to impact the OTT sector, legal reform also has to be dynamic in the face of challenges. If regulations do not go through a process of modernization, this would severely stifle innovation and always keep India from being competitive in the global OTT market. Balancing the innovation with consumer protection along with strict legal accountability will help foster a sustainable and fair OTT ecosystem. International best practices would amalgamate into India's unique cultural context to make a balanced forward-looking regulatory framework for future reforms (Goswami, 2021).

This paper has discussed the ever-changing nature of legal and regulatory frameworks on Over-The-Top (OTT) platforms in India with special regard for content regulation, data privacy, consumer protection, and a competition law approach. While there are government initiatives toward regulating the fast-growing sector, much needs to be achieved. The current framework fails to adequately address the intricacies of the OTT ecosystem in terms of digital content usage, the use of consumer data, and the question of fair competition.

There is a strong need to embrace more wide-scale legal reforms, which should be manifested by explicit guidelines on content moderation that respect freedom of speech without public morals being compromised. In addition, the swift implementation of data privacy laws would be essential to safeguard users' personal information in this emerging age of growing cybersecurity risks. Further, strengthening consumer protection measures would mean transparency in pricing and subscription models as well as fair delivery of services can be crucial in sustaining the trust and fairness dimension of OTT.

To achieve a great regulatory environment that encourages innovation while ensuring the rights of consumers, there should be a balanced approach for a country like India; future reforms should look into updating outdated laws and incorporating best practices all over the globe to be enforced consistently to create sustainable growth of OTT platforms where the interests of content creators, consumers, and regulators all have an equal bearing on the digital landscape.



## References

- Agarwal, S., & Sen, R. (2020). 'Consumer protection in the digital age: Challenges for OTT platforms'. *Indian Journal of Consumer Law*, 5(2), 67-82.
- Bailey, J. (2018). 'Internet governance and net neutrality in India: The role of regulation'. *Telecommunications Journal*, 7(3), 121-134.
- Belli, L. (2017). 'Net neutrality: A global debate on internet regulation'. Springer.
- Bhatia, A. (2019). The case for net neutrality in India: Consumer rights and digital content. 'Indian Journal of Media Law', 9(1), 33-47.
- Bhatia, A. (2022). OTT platform regulations: Balancing creative freedom and accountability. 'Journal of Digital Media Law', 10(3), 15-32.
- Bhatnagar, A. (2020). 'OTT Platforms and Net Neutrality: Challenges for TRAI'. *Journal of Digital Media Studies*, 7(2), 24-32.
- Chandrachud, A. (2017). 'Republic of Rhetoric: Free Speech and the Constitution of India'. Penguin Random House India.
- Chaturvedi, S. (2020). 'OTT platforms and the regulatory conundrum in India'. *Journal of Media Law & Policy*, 10(2), 21-34.
- Davidson, A. (2021). Net neutrality and consumer protection in the OTT era. 'Journal of Consumer Law', 6(2), 45-60.
- Deloitte. (2020). 'Digital media: The rise of on-demand content'. Deloitte Insights. <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/in-tmt-ott-platforms-noexp.pdf>
- Department for Digital, Culture, Media & Sport. (2021). 'Online Safety Bill: Tackling online harm and abuse'. UK Government. <https://www.gov.uk/government/publications/draft-online-safety-bill>
- Dutta, A. (2021). OTT platforms and digital media rules in India. 'Journal of Media Law & Ethics', 12(1), 102-120.
- Ghosh, S. (2021). Regulating OTT content in India: Balancing freedom of expression and state control. 'Journal of Media Law & Ethics', 12(1), 45-67.
- Gopalakrishnan, R., & Sinha, M. (2020). Data protection laws in the digital age: A comparative analysis of India and the European Union. 'Indian Journal of Law & Technology', 16(1), 24-38.

- Goswami, D. (2021). 'Data privacy concerns in the OTT space: A critical review'. *Journal of Cyber Law*, 9(1), 33-47.
- Goswami, D. (2021). The future of OTT regulation in India: A legal perspective. *Indian Journal of Law and Policy*, 8(4), 47-63.
- Gupta, A. (2020). Competition concerns in India's OTT market. *Economic and Political Weekly*, 55(44), 10-15.
- Jain, V. (2021). The impact of net neutrality on digital equality in India. *Journal of Digital Media Studies*, 9(1), 56-69.
- Jain, V., & Roy, A. (2020). 'The changing landscape of media consumption: The rise of OTT platforms in India'. *Media and Entertainment Review*, 8(3), 22-31.
- KPMG. (2021). *India's Media and Entertainment Industry Report 2021*. KPMG International.
- Krishna, A. (2020). Consumer rights in the digital age: Legal recourse for OTT subscribers. *Journal of Consumer Law and Policy*, 7(2), 45-60.
- Marsden, C. (2017). *Net neutrality: From policy to law to regulation*. Cambridge University Press.
- Menon, R. (2021). OTT platforms and liability for content: Judicial interventions in India. *Indian Journal of Media Law*, 9(3), 12-25.
- Mishra, R. (2021). Content censorship on OTT platforms: Legal challenges and implications. *Media Law Journal*, 6(2), 28-44.
- Mohan, V. (2021). 'OTT Regulation in India: Censorship vs Creative Freedom'. *Economic and Political Weekly*, 56(21), 18-21.
- Nayyar, A. (2021). The evolving regulatory landscape for OTT platforms in India. *Journal of Digital Media Studies*, 5(2), 12-19.
- Patel, A. (2021). 'Consumer protection laws in India: Addressing the OTT challenge'. *Journal of Consumer Rights and Protection*, 10(1), 45-56.
- PwC. (2020). *Global entertainment & media outlook 2020–2024*. PwC.
- Rajagopal, S. (2021). 'The Impacts of OTT Regulation by MIB in India: A Critical Analysis'. *Media and Law Review*, 4(1), 45-59.
- Ranjan, P. (2020). Internet as a fundamental right: Implications for digital platforms. *Indian Law Review*, 6(4), 56-73
- Rao, R., & Reddy, V. (2021). The role of competition law in regulating OTT platforms in India.

- 'Indian Competition Law Review', 9(3), 77-92.
- Saxena, A., & Srivastava, N. (2021). OTT platforms and the future of consumer protection in India. 'Consumer Law Journal', 8(1), 89-101.
- Saxena, A., & Srivastava, N. (2021). The OTT revolution in India: Impacts on content creation and consumption. 'Indian Journal of Media Studies', 5(2), 89-112.
- Sharma, P. (2021). 'OTT platforms and the future of Indian entertainment'. Journal of Digital Media Studies, 12(2), 89-101.
- Sharma, P., & Kumar, S. (2021). Understanding consumer protection laws in the OTT space: Challenges and opportunities. 'Journal of Consumer Protection Studies', 6(1), 34-47.
- Sharma, R. (2021). The OTT regulation debate: Should OTT platforms be subject to traditional media rules? 'Media Law Review', 5(3), 29-43.
- Singh, A., & Gupta, N. (2021). 'Consumer satisfaction in the OTT industry: Transparency and accountability'. Journal of Media Law & Ethics, 6(3), 28-41.
- Srivastava, P. (2020). 'The digital divide in India: How net neutrality protects vulnerable consumers'. Journal of Digital Policy, 8(2), 91-104.
- Srivastava, P. (2021). Data privacy in the OTT era: The need for robust legal reforms. 'Indian Journal of Cyber Law', 9(1), 38-55.
- Sundaram, K. (2021). 'Cybersecurity and OTT Platforms: A Legal Framework'. Journal of Information Security and Data Privacy, 9(1), 33-42.
- Tandon, P. (2020). Regulating digital platforms in India: The rise of OTT content. 'Economic and Political Weekly', 55(43), 12-15.
- Telecom Regulatory Authority of India. (2018). 'Recommendations on Net Neutrality'. TRAI.
- Venkataraman, A. (2020). 'Personal Data Protection Bill, 2019: A Step Forward in Digital Governance'. Indian Journal of Law & Technology, 16(2), 14-27.
- Venkataraman, A., & Prasad, R. (2020). The future of data protection in India: An analysis of the Personal Data Protection Bill, 2019. 'Journal of Law and Cyber Security', 12(1), 29-41.
- Verma, K. (2020). 'The pitfalls of free trials and automatic subscription renewals on OTT platforms'. Consumer Law Journal, 7(4), 15-24.
- Voigt, P., & Bussche, A. V. D. (2017). 'The EU General Data Protection Regulation (GDPR): A Practical Guide'. Springer International Publishing.