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+91 70421 48991
editor@ijlar.com
www.ijlar.com

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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

THE LEGAL ARCHITECTURE OF OTT REGULATION **2023: AN INVESTIGATIVE STUDY**

AUTHORED BY - ANISHA KASHYAP

ABSTRACT

The sudden growth of the Over-the-Top platform, which is known as the OTT Platform, after the COVID-19 pandemic, has resulted in the conversion of the traditional broadcast television network into a digital platform. Currently, viewers are increasingly accessing content through Ott services such as Netflix, Amazon Prime, Zee5, SonyLIV, and other platforms, with many options available for home viewing. This research paper conducts an investigative analysis of the legal framework that regulates OTT services in 2023, exploring its structural framework, regulatory goals, and the transformative changes of that year.

This paper reviews the jurisprudential tenets, the Constitutional framework and the broader Indian Legal system, encompassing the Information Technology Act, 2000, Intermediary Guidelines and Digital Media Ethics Codes and rules, 2021, Digital Personal Data Protection Act 2023 and Digital Personal Data Rules 2025 and compliance with the Broadcasting Services (Regulation) Bill 2023. The paradigm shift reflects an attempt to bring media regulation systems up to date with technological advancements; yet, there are still areas of concern regarding the lack of transparency, proportionality, and accountability.

This study employs an analytical, doctrinal, and comparative approach to examine the relationship and legislative development of the legal framework in conjunction with international regulatory frameworks. Despite the development of a regulatory framework, issues persist, including data privacy within the Digital Personal Data Protection, freedom of speech, reasonable restrictions, and the current controversy surrounding the “fair share” payment between OTT platforms and telecom service providers.

Keywords: OTT Regulation, Intermediary Liability, Digital Content Governance, Freedom of Expression, Fair Share Debate

INTRODUCTION

The Over -The- Top platform has widely used for the purpose of entertainment in our daily lives. There has been rapid growth of OTT platform after 2020 pandemic which people used to spend their time by seeing old and new movies, serial. The OTT stands for Over-The-Top platform means and include “it is a content delivery service that allows users to stream media content (video, audio or messaging) directly over the internet, without the need for a traditional cable, TV, Satellite, or telecom provider”.¹ It supply on demand video streaming such as Netflix , Hulu , jiohotstar , live sports and even broadcasting , music streaming and VOIP and message services. With Compound Annual Growth Rate (CAGR) of 14.3% of the global industry projected to reach 86.80 billion by 2026.² This platform has taken this opportunity from connecting a massive consumer to targeting the micro audience from urban or rural area, offer the minimum cost of subscription. In order to draw in viewers and win their loyalty, OTT platform implemented structural changes in the production, delivery and presentation of content.³ The jurisprudential essence of OTT regulation lie in balancing freedom of expression under Article 19(1)(a) of the India Constitution with reasonable restriction under Article 19(2) of the Indian Constitution.⁴ The existing regulatory environment of OTT reveals a number of loopholes in legislative clarity, constitutional protection, and efficient governance of Article 19(1)(a) of the Indian Constitution and Article 19(2) of the Indian Constitution. This requires a balanced, transparent and right-based regulatory environment that matches the realities of technology with the provisions of the Indian Constitution.

¹ Motive: Device Management Solutions That Move the World Forward, Motive.com (2025), <https://motive.com> (last visited Apr 2, 2026).

² Nithin Kalorth, The Rise of Over-the-Top (OTT) Media and Implications for Media Consumption and Production(2024).

³ Chhaya Santosh Gosavi et al., Interactive Media with Next-Gen Technologies and Their Usability Evaluation (2024).

⁴Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta, The Oxford Handbook of the Indian Constitution (2016).).

EVOLUTION OF OTT PLATFORM

The OTT is not an emerging concept; it is an old but growth of OTT platform raised in the era of 2020s. In India first OTT was launched by Reliance Entertainment was BIGFlix in 2008.⁵ OTT platform originating in the early 1990s with initial web-based streaming technology like RealNetworks' RealPlayer allowed for video delivery over the internet, although limitations due to internet connection speeds at that time (slow), lack of adequate compression, and insufficient digital infrastructure have limited how much could be delivered and viewed via these early services, but nonetheless, provided a foundation to develop on for all future development of web-based video formats.⁶ The first mobile OTT application to be launched in India was nexGTV by Digvive in Gurugram in 2010, offering both live television as well as video-on-demand.⁷ In 2013 and 2014, it was the first application to stream Indian Premier League cricket matches on a mobile device.⁸ The first phase of digital streaming included user-generated content available through video platforms such as YouTube (December 2005).⁹ The emergence of professionally curated, binge-watchable digital content began in the second phase of OTT development when the subscription-based service Netflix moved from physical DVD rental to online streaming in 2007.¹⁰ The development of the OTT marketplace subsequently dwarfed previous mass media types, this was facilitated by the massive decrease in data costs resulting from Reliance Jio launching in 2016 and increasing internet use.¹¹ This change enabled broad access to digital content, especially among rural and semi-urban populations. As a result of this change, there has been rapid rise of both foreign (Netflix and Amazon Prime Video) and Indian (Hotstar, zee5 and SonyLIV) OTT platforms operating in India. Phase three of OTT development has added to its evolution with more localized and varied content offerings. OTT platform has made a concerted effort to create a mix of original and popular regional content across many language and different cultures.¹² The effectiveness of such an offering was made clear the pandemic lockdowns in 2020-2021 when

⁵ Srestha Sarkar, 'Streaming Revolution: The Rise of OTT Platforms in India' 2024.

⁶ Sonali Srivastava and Rakhee Pushparaj Singh, 'An Analytical Study of Growth, Trends and Market Share of OTT Platforms in India' (2024).

⁷ Yashodhara Singh, Sempiternal (2015).

⁸ Shreya Uppal & Dr. Anamika Rana, The Booming Trend of Digital Learning in India, IITM Journal of Management and IT 26 (2023).

⁹ Youtube, YouTube, YouTube (2025), <https://www.youtube.com>.

¹⁰ Netflix - Homepage, Netflix, <https://about.netflix.com>.

¹¹ Maruthi P Tangirala, Telecom Sector Regulation in India (2019).

¹² Srestha Sarkar, 'Streaming Revolution: The Rise of OTT Platforms in India' (2022).

everyone turned to their devices to consume entertainment digitally and there was also a big increase in OTT subscriptions.¹³ Variety in the monetization model for OTT is another important characteristic of the evolution of OTT. Monetization models include subscription video on demand (SVOD), advertising video on demand (AVOD) and transactional video on demand (TVOD).¹⁴ The growth of OTT platforms has changed due in part to changes in regulations and laws. Governments around the world, including India, have established regulatory frameworks that deal with content regulations, data privacy, and accountability on OTT platforms. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 mark a major milestone in digital streaming services in India.¹⁵

CONSTITUTIONAL AND JURISPRUDENTIAL ESSENCE

In India, controlling OTT (over the top) services involves balancing both fundamental rights for free speech and expression, and the state's ability to put reasonable regulations for public order, public morals and public sovereignty. According to Article 19(1)(a) of the Constitution of India, citizens enjoy their constitutionally guaranteed right to freedom of speech and expression including matters pertaining to digital and audiovisual content, hence this provisions also extends to online OTT platforms.¹⁶ The court have always found that this right include more than just the right to know and right to share your thoughts with others using whatever mean you wish, including by using the internet.¹⁷ Therefore, many OTT applications serve as vehicles for artistic creation, expression and distribution of concepts in a democracy. Although this freedom is granted without exception. The state is now allowed to impose restrictions on this freedom with reasonable justification. These restrictions can be imposed under specific circumstances grounded on decency, morality, public order, defamation and national security.¹⁸ The case law regarding these restrictions have developed from the major cases decided in the courts. The Supreme Court has stated that restrictions on the internet must be tightly drafted and not generalized or overly board,

¹³ FICCI and EY, Media and Entertainment Report 2021 (FICCI 2021).

¹⁴ Mira K. Desai, Regional Language Television in India Profiles and Perspectives (2021).

¹⁵ Jagannadha Rao, Ethics Code for Social Media, OTT and Digital Media (2021).

¹⁶ India & V V Chitale, The Constitution of India: Articles 1-109 (1954).

¹⁷ Udai Raj Rai, Fundamental Rights and Their Enforcement (2011).

¹⁸ Durga Das Basu, Cases on the Constitution of India (1950-54): (1950-51) (1952).

as held in *Shreya Singhal V Union of India*.¹⁹ The liberal-individualistic model favors as little state interference as possible and upholding an individual's right to make their own decisions and express themselves creatively. On the other hand, the communitarian model argues that regulation is justified as a means of protecting society's values and cultural norms and upholding standards of a public morality. OTT regulation can be seen in India to be a combination of these two models, where the state attempts to find a balance between protecting individual liberty and promoting the collective interests of a society. The advent of the Information Technology (Intermediary Guidelines and digital media ethics code rules 2021) is a major new regulatory development.²⁰ These rules established a three-tiered grievance redressal system and require content categorization, so they create at least some level of structured self-regulation. Moreover, the judicial framework includes the principle of proportionality means any limit on fundamental right must be required by law, consistent with the law's purposes and least restricting of right (including free expression).²¹

REGULATING FRAMEWORK OF OTT (OVER -THE -TOP)

The current state of the law regulating Over-The-Top (OTT) service delivery in India is an evolving legal framework that is no longer a vacuum, but is now becoming a comprehensive, although still developing, legal and regulatory-framework. The main reference point for establishing that legal framework is the "Information Technology Act 2000" and will be supplemented by the new regulations under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, Digital Personal Data Protection Act 2023 and Digital Personal Data Rules 2025 and compliance with Broadcasting service (Regulation) Bill 2023". This framework will be overseen by MIB, which is the principal institutional authority responsible for regulating OTT service delivery in India.²² This framework is made up of statutory, delegated and regulatory provision as well as a multi-tiered grievance mechanism. All of this mechanism will work together to regulate the service and its end-users.

¹⁹ D Thakkar, Legal Responses to Online Hate Speech in India: Evaluating Section 66A and the Supreme Court's Judgment in *Shreya Singhal v. Union of India*, 4 *Studies in Law and Justice* 26 (2025).

²⁰ Jagannadha Rao, *Ethics Code for Social Media, OTT and Digital Media* (2021).

²¹ *Modern Dental College v State of Madhya Pradesh* (2016) 7 SCC 353.

²² Ministry of Information and Broadcasting, *Annual Report 2023-24* (Government of India 2024)

The Information Technology Act, 2000 is the primary statute that regulates the digital ecosystem in India. While the Act does not directly deal with the OTCs, the provisions have interpreted liberally to cover digital intermediaries and content distributors. Intermediary per Section 2(1)(w) means any person who, on behalf of another person, receives, stores or transmits electronic record.²³ While OTT platforms are mainly curators and publishers of content, yet once they host a user-generated content or an interactive element, they would become an intermediary as defined. This duality creates doctrinal uncertainty for fixing liability. Section 79 of the Act grant intermediaries safe harbor protection, but this is conditional on an intermediary observing due diligence and not creating any content actively.²⁴ Nonetheless, jurisprudence has consistently narrowed the scope of safe Harbour protection In the Supreme Court, judgment in *Shreya Singhal v Union of India*, it was held that intermediaries must remove unlawful content only upon receiving actual knowledge in the form of a court order or government notification, as a safeguard against arbitrary censorship.²⁵ The above interpretation, while beneficial in protecting freedom of speech, makes it difficult to apply to particular cases like the OTT platforms that have editorial control, thus making the distinction of intermediary and publisher liability blurred. In addition, Section 67, 67A and 67B of the IT Act make a person liable for committing specific criminal offences for transmission of obscene, sexually explicit and child sexual abuse material in electronic form.²⁶ In this respect, these provisions impose substantive content- based restrictions on OTT platforms, which frequently lead to controversies with respect to the creative content. Artistic freedom and state restrictions have always been a continuing battle between the artist and the law. Further, it also raises broader constitutional problems under Article 19(1) (a) of the Constitution which guarantee freedom of speech and expression. However, the restriction must be reasonable under Article 19(2).²⁷ The Supreme Court has reiterated in many cases that the restrictions must pass the proportionality test. In the case of *Modern Dental College v state of Madhya Pradesh*, it was held that any regulation which is necessary, suitable and least restrictive must pass the test of proportionality.²⁸

²³ Information Technology Act 2000, s 2(1)(w).

²⁴ *ibid* s 79.

²⁵ *Shreya Singhal v Union of India* (2015) 5 SCC 1.

²⁶ Information Technology Act 2000, ss 67–67B.

²⁷ Constitution of India, arts 19(1)(a), 19(2).

²⁸ *Modern Dental College v State of Madhya Pradesh* (2016) 7 SCC 353.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 constitute an inflection point in the regulation of OTT in terms of the explicit recognition of digital publishers in a formal regulatory structure.²⁹ Part III of the Rules provides for a three-tier grievance redressal mechanism which institutionalizes co-regulation.³⁰ At the first level, publishers must set up an internal grievance redressal system under Rule 10 which must resolve complaints in a time bound manner.³¹ The second-level complaint will lie with self-regulatory bodies which will act like quasi-adjudicatory authorities and finally at the third-level the ultimate oversight vests with the Central Government through inter-departmental committee under Rule 14.³² While this seems to be an appropriate balance between self-regulation and oversight by the State it has been criticised for enabling indirect executive control over the digital content and consequently resulting in regulatory overreach.

Under Rule 9 of the Code of ethics, OTT platforms have substantive obligations not to allow content that is detrimental to the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, “decency” or “morality”.³³ These principles are similar to the programme code under the Cable Television Network regulation act, 1995 and essentially mirror the broadcast regulation to the digital space.³⁴ Despite the general acceptance of these ideological complexes, these two themes have an element of uncertainty which can lead to arbitrary operation because certain terms like decency, morality do not have precise boundary expressions. The judgment *K.A Abbas v Union of India* upheld pre-censorships in the films on the ground of their massive impact, However, such reasoning may not directly transposable to OTT platforms, which work on an-demand, subscription-based model.³⁵

The introduction of content categorization requirement under Rule 11 is a departure towards consumer regulation, which mandates age-wise categorization and parental controls.³⁶ This is in

²⁹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021.

³⁰ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 8

³¹ *ibid* r 10

³² *ibid* r 14.

³³ *ibid* r 9.

³⁴ Cable Television Networks (Regulation) Act 1995; Cable Television Networks Rules 1994, r 6 (Programme Code); Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 9.

³⁵ *K.A. Abbas v Union of India* (1971) 2 SCC 446

³⁶ IT Rules 2021, r 11

line with global practices. However, there are doubts regarding the sufficiency of self-classification and absence of an independent certification agency.

The Ministry of Information and Broadcasting acts as the apex regulatory agency that supervises exercise of power under IT Rules.³⁷ The ministry's role at giving advisories and referring cases to the inter-departmental committee demonstrated widening centralization of regulatory power. In *Anuradha Bhasin v Union of India*, the constitutional validity of the internet shutdown was examined, the court cautioned against impossibility of "no access" in certain situations.³⁸

The broadcasting services (Regulation) Bill 2023 has been proposed to further cover OTT platforms under its regulation.³⁹ The bill seeks to impose a registration mechanism, content evaluation committee among other compliance requirements of the OTT players. This goes on to show the trend of centralizing regulation.

Judicial discourse plays a crucial role in OTT regulation. In *Justice for Rights foundation v Union of India*, the High Court of Delhi refused to impose pre-censorship on OTT platform noting the technical and functional differences.⁴⁰ In *Aveek Sarkar v State of West Bengal*, the supreme court applied "community standards test" to verify obscenity, following the contextual approach instead of rigid moral standards.⁴¹ These judgements show a program evolution in the judicial understanding of obscenity and proliferation of tests in specific contexts. India's regulatory framework, from a comparative perspective, is consistent with the global trend toward a system of co-regulation such as the European Union's audiovisual media services Directive and the United Kingdom's regulatory framework under Ofcom.⁴² However, India's framework is characterized by a higher degree of executive involvement that can pose issues of independence and accountability of institutions. Further, OTT regulation is likely to intersect with data protection laws-which includes the Digital Personal Data Protection Act, 2023.⁴³ There are a new compliance

³⁷ *ibid r 14*

³⁸ *Anuradha Bhasin v Union of India* (2020) 3 SCC 637

³⁹ Broadcasting Services (Regulation) Bill 2023 (Draft)

⁴⁰ *Justice for Rights Foundation v Union of India* WP(C) 11164/2018

⁴¹ *Aveek Sarkar v State of West Bengal* (2014) 4 SCC 257.

⁴² Audiovisual Media Services Directive 2010/13/EU; Ofcom Guidance (2021)

⁴³ Digital Personal Data Protection Act 2023.

obligation placed in OTT platforms, in relation to Data protect. OTT platform utilizes a large amount of consumer data protection principles includes those of consent, purpose limitation and data minimization. The principle of proportionality, has been endorsed recently in *Puttaswamy v Union of India*, which states that every restriction of any fundamental right must be justified for a legitimate aim and through least intrusive means.⁴⁴ Thus, it can be seen, that OTT regulation must not incursion upon creative expression unduly.

CONCLUSION

The Government of India wants to regulate OTT platform that serve Indian Audiences. The OTT platforms reference is being made under the Information Technology act, 2000. Also, its regulation will take place through the intermediaries Guideline & code of ethics Rules of 2021. With the regulation of OTT platforms, it would create future accountability. Furthermore, the availability of a formal legal structure will decrease the arbitrariness of the OTT platforms. Besides, working under the guidance of the Ministry of Information and Broadcasting will increase the accountability of the OTT platform. Analysis above indicates that framework faced with doctrinal uncertainties and enforcement issues, besides the constitutional problem of free speech and whether it compliant with the requirement of proportionality. A core issue is the classification issue of OTT platforms as intermediaries or publishers as well as imposing full publisher liability that is not backed by the law may lead to over-regulation. Hence, it is essential to give a separate legislative classification to the OTT platforms to avoid ambiguity and ensure doctrinal coherence. The Broadcasting Services (Regulation) Bill 2023, on the table, is a beginning in this direction, but requires modification with clearer definitions and to guard against overreach by the executive. One more issue is the scope and vagueness of content regulation standards under the IT Rules, 2021. Terms such as “decency”, “morality”, and “public order” are not new and are recognised in the Constitution but are nonetheless subjective and open to inconsistent interpretation.

There’s a risk of arbitrary enforcement and potential chilling effects on creative expression. In terms of constitutional law, the regulatory standards must be narrowly tailored and defined. There must also be safeguards in place, such as reasoned orders, transparency, due process, and

⁴⁴ K.S. Puttaswamy v Union of India (2017) 10 SCC 1.

independent appellate processes as per the principle of proportionality. By reinforcing the autonomy of self-regulatory bodies and limiting direct executive interference, the legitimacy of the framework could be further enhanced. An equally important component of OTT regulation is the “fair share” dispute, which is gaining prominence in global and Indian policy discourse. This debate revolves around whether or not OTT platforms should pay for digital infrastructure telecom networks. Digital infrastructure enables the delivery of large amounts of data. According to telecom service providers, massive OTT platforms create network congestion and do not make a network investment in response to subscribers. On the other hand, the OTT platforms argue that they are already contributing to the digital economy by innovating, generating demand from consumers, and investing in content production. In India, there have been regulatory discussions led by bodies such as the Telecom Regulatory Authority of India (TRAI) on the possibility of a fair share contribution from OTT platforms. Nevertheless, these measures need to be adopted carefully.

Making OTT platforms pay certain financial obligations may violate the principle of net neutrality. Such measures may distort market competition and limit consumer choice. Likewise, there is an intersection between data protection and OTT regulation under the Digital Personal Data Protection Act 2023. This calls for a holistic regulatory framework. Due to the dependence of OTT platforms on user data to make algorithmic content recommendations, they are key players in the data ecosystem.

The OTT regulation in India in the future must follow a principle-based and technology-neutral approach. The quick evolution of digital technologies, such as artificial intelligence and personalized content algorithms, needs a flexible regulatory framework that will be able to adapt to new issues. It is important that policymakers consult with stakeholders such as industry, civil society and law practitioners so that regulation will be effective. In sum, although India has made considerable headway in laying the ground of a regulatory regime for OTT platforms, the current regime is in a working draft. The difficulty is to strike the right balance between regulation and creativity, capital and consumer welfare, national interests and international integration in the digital age. India can build a robust, forward-looking OTT regulatory apparatus by clarifying existing ambiguities, strengthening institutional mechanisms, and taking a collaborative approach

to upcoming issues such as the fair share dispute. It would enable innovation while respecting constitutional values.

