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**CENSORSHIP OF OTT PLATFORMS: THE CONUNDRUM IN THE  
REGULATION AND THE WAY FORWARD**

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**ABSTRACT**

*Our constitution recognises freedom of speech and expression as one of the fundamental human rights and the Indian courts have also discussed the notion of creative freedom within the realms of artistic works and cinematography a lot. Hence, the debate on the aspect of censorship is bound to be point of contention in the society where different sects have different perspectives. India saw a massive growth of OTT industry parallel to the traditional cinema in the last few years. OTT or Over-the-top, services refer to the content that is streamed online without the users having to subscribe to a traditional cable network. This may include, Netflix, Amazon Prime, for instance. With the unprecedented COVID-19 situation, the growth of these platforms was at an even accelerated rate and now with the whole issue revolving around intermediary liabilities, the question of regulation of the content being uploaded and broadcasted through these platforms have started emerging with various petitions being filed for the formulation of government guidelines regulating the content streamed on OTTs. As far the legality of the issue is concerned, presently, the debate around the topic revolves around the regulatory provisions within the Information Technology Act, 2000 and the Constitutional freedom of expression under Article 19. The aim of this present article is to delve into the factors influencing the need for censorship of OTT platforms and peruse the existing regulations pertaining to censorship in the industry as a whole and what makes OTT different from the 'traditional cinema censorship' concept. The article shall include an in-depth analysis of the laws pertaining to OTT censorship in other jurisdictions as well with the aim to provide recommendations for the seamless regulation of the OTT framework within India.*

**Key Words:** OTT, Censorship, framework, Speech, and Films.

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## INTRODUCTION

‘OTT’, or over-the-top platforms may be defined as those digital landscapes that provide hosting and streaming services. OTT is most often also recognised as subscription-based video-on-demand (SVoD) service that provides access to a plethora of film and television, as and when the user wishes to watch. Despite being for hosting services essentially, these platforms have actively started undertaking the task of production and development of digital content as well. In 2020, because of the Coronavirus pandemic, lockdowns were imposed in India. This augmented the reach of OTT platforms in every household and ushered the wave of digital content viewership in India. With the massive growth in the industry, more and more content creators came forward to cater to the diverse interest of the Indian audience but simultaneously also brought in numerous controversies, since the interest of one sect became a cause of concern for the other. This paved the way for the existing conundrum between the need to regulate the OTT content or not. The present paper is therefore a careful attempt to study the OTT framework in India by examining the prevailing and the proposed laws, while simultaneously carrying out a cross jurisdictional analysis to understand the plausible way forward for India. Further, efforts have been put to understand the reason behind the growth of OTT as well the impetus for the deliberations in relation to censorship in order to gaze as to what shall lie after the regulation get the requisite judicial assent.

### I. LEGAL FRAMEWORK CONCERNING DIGITAL CONTENT IN INDIA

The content delivery is not just limited to the internet but involves theatrical demonstration of films as well as the broadcast of shows and films through television. The present legal framework does not have a myriad of legislations in place that govern the broadcasting of content in all these areas and the same is mainly under the purview of the Cinematograph Act, 1952.

#### Cinematograph Act, 1952

1. The films exhibited in theatres come under the ambit of Cinematograph Act, 1952. According to this, each film has to undergo a meticulous examination by the Central Board of Film Certification ('CBFC') that involves careful perusal of the film including its trailers, dialogues, songs and lyrics so as to categorise the same as per the certifications; U, U/A, A and S. The CBFC is also endowed with the power to order the

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makers of the film to remove any part/scene/song/dialogue that it deems to be against the public interest or in some cases to even refuse to give certification to the film.<sup>2</sup> The parameters based on which CBFC makes an inspection and categorise the film is provided under the Film Certification Guidelines, 1991. Undergoing a certification process is a mandatory criterion for every film aiming for theatrical release and in case a filmmaker surpasses exhibition of a movie without having a requisite Board's certification or approval by CBFC, then he may be held liable for committing a punishable offense that can attract imprisonment for a term which may extend to three years.<sup>3</sup>

2. Similarly, even in order to telecast films, the cable TV operators have to undergo an examination by the CBFC as per the Cinematograph Act, 1952 and only those films or shows would be allowed that have got a requisite certification from the Board.<sup>4</sup> As per the laws, telecasting shows that have not been certified or films rated A, i.e., appropriate for Adults on television would tantamount as an offence.<sup>5</sup> According to the Cable Network Rules and the Uplinking and Downlinking Guidelines, the cable operators and broadcasters are meant to act in accordance with the Cinematograph Act to choose the appropriateness of the content they intend to show.<sup>6</sup>
3. Though the CBFC has been given wide-ranging powers as the regulatory authority, people can still approach courts in case, they have reasons to believe that they have been acted against unreasonably, illegally or arbitrarily by the CBFC or the Appellate Board during the certification process. The courts have the power to review in such a situation and to overturn decisions of the CBFC and Film Certificate Appellate Tribunal ('FCAT').<sup>7</sup>

### **Loopholes in the existing law with respect to online content delivery in India**

- 1. Regulations gave the 'films released online' a differential treatment:** There existed a lacuna in law since the CBFC was only mandated to examine, classify and censor those content that were to be released in theatres across the country. As far as the scrutiny of content in nature of VOD was concerned, there happened to be no

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<sup>2</sup> The Cinematograph Act, 1952, §4, No. 37, Acts of Parliament, 1952. (India) ('The Cinematograph Act, 1950')

<sup>3</sup> The Cinematograph Act, 1952, §7.

<sup>4</sup> The Cinematograph Act, 1952, § 4(1).

<sup>5</sup> Central Board of Film Certification, FAQs, (2017). Accessed at <https://www.cbfccindia.gov.in/main/faqs.html>

<sup>6</sup> Ministry of Information and Broadcasting, Circular No. F. No. 1503/21/2017-TV(I) (Issued on May 15, 2020).

<sup>7</sup> Srishti School of Art, Design and Technology v. Chairperson, Central Board of Film Certification, (2011) SCC OnLine Del 1234.

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regulation except self-regulation by the content-transmitting platform itself. The films released in theatres had to undergo meticulous scrutiny and were left at the discretion of the board to sanction their release while no such examination was required to be done on the films released online despite being of the same nature. This became a bone of contention and treatment of both the type of media so differently was rather alleged to be violating the principles of Article 14 enshrined under the Constitution.<sup>8</sup> Further, lack of any regulation and not subjecting 'films released online' to any regulation was designated to be an unreasonable exercise of freedom and thus violative of Article 19 of the constitution too.<sup>9</sup>

2. *Self-regulatory without any independent authority as the redressal forum:* OTT platforms were basically self-regulated and followed the 'Code of Best Practices for Online Curated Content Providers' released by Internet and Mobile Association of India (IAMA).<sup>10</sup> It was argued that since no legislative restrictions existed on the content that the OTT supplied, most of the content shared was contentious to different sects of society and thus was an unreasonable and unfettered exercise of Article 19 of the constitution.<sup>11</sup>

### **The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**

The Ministry of Information and Broadcasting ('MIB') recently notified the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules 2021 ('IT Rules, 2021') which accorded a whole new tangent to the regulation of OTT Platforms in India. Before the IT Rules, 2021 came into existence, the OTT platforms (such as Netflix, Amazon's Prime, voot, and etc) came under the ambit of the Ministry of Electronics and Information Technology but post the advent of the rules, they will be governed by the same nodal authority that governs the print media, broadcasting and FM radio players in India.<sup>12</sup> As

<sup>8</sup> Amol Palekar v. Union of India, WP (C) No. 187 of 2017.

<sup>9</sup> Soumyarendra Barik, *OTT Content has to be Regulated: BJP Spokesperson Hitesh Jain at MIB Seminar on Regulation of Online Content*, MEDIANAMA (Oct. 14, 2019), <https://www.medianama.com/2019/10/223-online-content-regulation-mib-seminar/>.

<sup>10</sup> Internet and Mobile Association of India (IAMA), Code of Best Practices for online Curated Content Providers, (2019). <https://pib.gov.in/newsite/PrintRelease.aspx?relid=189494>

<sup>11</sup> Nidhi Sinha, *Regulating 'Films Released Online': A Critical Analysis of Film Certification and Censorship in the Digital Age*, 8 GNLUL REV. 46 (2021).

<sup>12</sup> Sarthak Sarin and Siddharth Marwah, OTT Platforms And Digital News Media – New Regulator (And Perhaps A Legal Regime Overhaul), MONDAQ, (Nov. 23, 2020), For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in)

per these Rules, the OTT platforms is supposed to come up with a robust three-tier grievance redressal mechanism.

- At level-I, the OTT Platforms are supposed to regulate themself through a grievance officer.<sup>13</sup>
- At level-II, there needs to be an institutional self-regulatory body, comprising of industry experts headed by a retired Supreme Court/ High Court judge /eminent personality in the relevant field, formed by publishers of content and their associations.<sup>14</sup>
- At level-III, there needs to be an inter-department committee constituted by the MIB to oversee and hear appeals for decisions taken at level two or if a complaint is referred to the inter-department committee by MIB.<sup>15</sup>

Apart from the aforesaid, there is a stringent code of ethics set forth under the new Rules. The content would now be classified based on viewer's age, themes, content, tone and impact, and target audience. It further makes it obligatory for the OTT platforms to duly consider India's sovereignty, security, friendly relations whilst carrying out their streaming services.<sup>16</sup> The classification mandated is quite similar to what the Cinematograph Act provided. For instance, categories like 'U' (for all ages), U/A 7+ (for the 7 years and above), U/A 13+ (for aged 13 and above), U/A 16+ (for aged 16 and above) and 'A' (limited to adults only, i.e., 18 years and above). As per these rules, the OTT Platforms are required to arrange for access control system in order to regulate content classified as U/A 13+ or higher.<sup>17</sup>

### **The big debate on the IT Rules, 2021: to introduce or to not introduce?**

#### ***Arguments in favour of IT Rules, 2021.***

There have been a plethora of complaints that are being registered against the content delivery administered by the OTT platforms. There are averments that the OTT/platforms are not only becoming pivotal points of Hindu phobic content by blatantly disregarding and

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[https://www.mondaq.com/india/broadcasting-film-tv-radio/1008586/ott-platforms-and-digital-news-media-new-regulator-and-perhaps-a-legal-regime-overhaul.](https://www.mondaq.com/india/broadcasting-film-tv-radio/1008586/ott-platforms-and-digital-news-media-new-regulator-and-perhaps-a-legal-regime-overhaul)

<sup>13</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, §11 (Issued on Feb. 25, 2021). ('Information Technology Rules, 2021')

<sup>14</sup> Information Technology Rules, 2021, §12.

<sup>15</sup> Information Technology Rules, 2021, §13, 14.

<sup>16</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, Code of Ethics, ¶II(A). (Issued on Feb. 25, 2021).

<sup>17</sup> Ibid, ¶II(B).

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disrespecting the Hindu sentiments, its customs, culture, and ritual,<sup>18</sup> but are also actively showcasing a distorted version of historical events with an aim to glorify a particular person/character.<sup>19</sup> The petition filed in the Supreme Court points that in the absence of any regulation, the OTTs have started exhibiting content that contains vulgar language, barbaric visuals, and exceedingly objectionable scenes so as to benefit commercially.

It has been contended that the value system of the country is rather being attacked at by showcasing unacceptable content to the public, that is vulnerable and can be easily influenced. The popularity of shows like *Mirzapur* and *Sacred Games* that depict copious consumption of cigarettes, alcohol, and drugs is believed to be a matter of serious concern and certain regulation is needed to stop the OTT platform from turning into domains that sell censored porn and visual sex.<sup>20</sup> It is further believed that the OTT platforms were given the opportunity to come up with a self-regulatory code back in 2016. However, upon failing to come up with one that could address the issue of grievance redressal, the MIB put forth a version that contained a two-tier two appellate mechanism. This version was refused by various OTT giants like Netflix, Facebook, Amazon Prime, TVF Play, YouTube, etc on the ground that content monitoring, management by the MIB version of the regulatory framework, would not allow them to be accountable for the content shared on their platform.<sup>21</sup>

### ***Arguments against the IT Rules, 2021.***

While the yearning in favour of regulation of OTT bolstered confidence in the Government as well as Judiciary, there is also a faction that believes otherwise. After the IT Rules, 2021 were notified, petitions were filed at the Apex Court challenging the constitutional validity of the same.<sup>22</sup>

It is asserted that the rules lack any guideline pertaining to bases on which complaint shall be made against these platforms. Furthermore, since content delivered is usually subjective and contains prejudices based on the understanding, susceptibilities of the audience, the

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<sup>18</sup> Shashank Shekhar Jha v. Union of India, WP. (Cr.) No. 196 of 2020.

<sup>19</sup> *Ibid*, ¶ 23

<sup>20</sup> *Supra* note 14.

<sup>21</sup> *Supra* note 14.

<sup>22</sup> Live Law Media Pvt. Ltd. and ors. v. Union of India and anr., W.P (C) 6272 of 2021; *See also*, Foundation for Independent Journalism and ors. v. Union of India, W.P.(C) 3125/2021; *See also*, Sanjay Kumar Singh v. Union of India, W.P.(C) 3483 of 2021.

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complaints made may be exceedingly high. From a legal perspective, it is believed that the rules are in blatant violation of the Rule of Law since Part III of the IT Rules, 2021 do not have any provision pertaining to judicial outreach or challenge from the decision of the Inter-departmental committee, which sits at tier 3 regulatory stage. Furthermore, even the review of the orders of the Review Committee under Rule 17 is contrary to the due process. The adversaries of the IT Rules, 2021 believe that the content on the OTT platform should not be equated with the traditional telecommunication spectrum since the nature, features, as well as objective of both these service providers, is very unique from each other. Therefore, any sort of overbearing regulation like those on traditional mediums would prevent them from producing unconventional, thought-provoking, and innovative content. Furthermore, the provision mandating the OTT on ‘taking into consideration’ India’s diverse racial and religious features and thereby employing due caution while exhibiting the content is difficult to determinate. It is believed that not only would it lead to a ‘chilling effect’ on the free expression of thoughts over the OTT landscape but would make it extremely difficult for the OTT to manage their services. Further, such mandate is also in violation of the observation in the case of *Shreya Singhal v. Union of India*, that the basis of exclusion of a speech should not be on the basis that it is offensive to various groups.<sup>23</sup>

### ***Impartial gaze on the existing quandary***

It is to be noted that with the growing disharmony in the society, the regulation may be the need of the hour. Upon the order of the court directing the government to come up with a regulatory framework or some guidelines so as to exercise control over the OTT platforms and monitor the contents broadcasted on the same,<sup>24</sup> the IT Rules 2021 were brought in. With the Apex court understanding the problems arising due to the gap in the law pertaining to the regulation of OTT Platform, the question with respect to whether regulation of OTT is required or not, nearly settled. However, one of the fundamental issues to be addressed herein is that of the legality of the Redressal mechanism. In the case of *Union of India v. K.M. Shankarappa*,<sup>25</sup> the Supreme Court observed that when a quasi-judicial body like the Appellate Tribunal, (in the *Shankarappa* case, being the FCAT) consisting of a retired Judge of a High Court or a person qualified to be a Judge of a High Court and other experts in the field, renders a decision, it should be deemed final and binding as far as the executive and the

<sup>23</sup> *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

<sup>24</sup> *Justice for Rights Foundation v. Union of India*, W.P.(C) 11164/2018

<sup>25</sup> *Union of India v. K. M. Shankarappa* (2001) 1 SCC 582.

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Government is concerned. It was observed that the Executive cannot sit in an appeal or review or revise a judicial order.<sup>26</sup> The perusal of the redressal mechanism enumerated in section 13 of the IT Rules, 2021 stipulates a similar issue. Herein as well, an oversight mechanism is designated to hear the grievances arising out of level I and II,<sup>27</sup> i.e., being the appeals from decisions of Grievance officer and independent body headed by a retired judge of Supreme Court, High Court or any expert from the entertainment industry, respectively.

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#### JURISPRUDENCE PERTAINING TO OTT REGULATIONS IN OTHER JURISDICTIONS

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The Government while notifying about the IT Rule, 2021 apprised that a study was conducted to understand the models in other countries based on OTT Platform regulation. The countries for the said purpose included UK, Singapore, Australia, and European Union since all these countries seem to have taken a step forward in order to get a recognized mechanism to regulate digital content.

#### 1. United Kingdom

In the United Kingdom, it is the Office of Communications (Ofcom) and the Communications Act, 2003 that regulate the online content sector. In the year 2018, the Director-General of the British Broadcasting Corporation (BBC) expressed the need to have regulation of video streaming services like Netflix and Amazon in place.<sup>28</sup> Subsequent to this, the UK culture secretary put forth that video streaming services should be scrutinised in the same way that other public service broadcasters were being monitored.<sup>29</sup>

In absence of a special regulation that governed online videos, the British Board of Film Certification announced a partnership with Netflix, pursuant to which, this platform could set its own ratings for film and television programs.<sup>30</sup> Subsequently, a white paper was released by the UK government detailing that the unregulated online content posed certain threats to

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<sup>26</sup> *Ibid.*

<sup>27</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, §13. (Issued on Feb. 25, 2021).

<sup>28</sup> Jim Waterson, Tony Hall: regulate video streaming services or risk ‘killing off’ UK content, THE GUARDIAN. (Sept. 16, 2018). <https://www.theguardian.com/media/2018/sep/16/tony-hall-regulate-video-streaming-services-or-risk-killing-off-uk-content>

<sup>29</sup> Max Goldbart, Netflix and Amazon could face more regulation in UK, hints culture secretary, SCREEN DAILY. (Mar. 8 2019). <https://www.screendaily.com/news/netflix-and-amazon-could-face-more-regulation-in-uk-hints-culture-secretary/5137492.article>

<sup>30</sup> Jim Waterson, Netflix to set its own age ratings for film and television programmes, THE GUARDIAN, (Mar. 14, 2019). <https://www.theguardian.com/media/2019/mar/14/netflix-to-set-its-own-age-ratings-for-film-and-television-programmes>

society and that there was a need to watch out for the same. Even though the white paper pertains to only the user-generated content, it recommends an introduction of a regulatory framework as a watchdog for the online safety of British citizens. The paper puts forth the function of the regulator to include, overseeing and enforcing the regulatory framework, carving out a code of practice, supervising and regulating the user redressal mechanisms; promoting education and awareness about online safety; undertaking research to alleviate standards of online safety among others.<sup>31</sup> The aim of the regulatory framework has been to mandatorily assume the duty of care for the user safety, tackle illegal and harmful activity on their service, release an annual transparency report by the company, among others.<sup>32</sup>

## 2. Singapore

The Infocomm Media Development Authority (IMDA), which was established under the Broadcasting Act of 1994 is Singapore's common media regulating authority. In order to operate, the broadcasters need to get a requisite license from the authorities. In the year 2018, the IMDA came up with a code of practices for OTT and video-on-demand services,<sup>33</sup> which required the service providers to categorize their content in similar lines with that of the offline films, i.e., categorize the content on parameters like G (for general); PG (parental guidance); PG13: (parental guidance for children below 13); NC16: (for no children below the age 16); M18 for mature audiences (18 and above only), and R21 (content limited to people of 21 years and above only).<sup>34</sup> In addition to this, the service providers are also mandated to make known the ratings and what lies in the content, including theme, violence, nudity, language, and horror.<sup>35</sup>

## 3. Australia

The legal framework in Australia is that the content on online media is regulated through the Broadcasting Services Act, 1992 read in consonance with the Enhancing Online Safety Act 2015. The office of the e-Safety Commissioner acts as the regulatory authority for issues pertaining to online safety. Under the Broadcasting Services Act of 1992, certain provisions

<sup>31</sup> Online Harms White Paper, the Secretary of State for Digital, Culture, Media & Sport and the Secretary of State for the Home Department by Command of Her Majesty, pg. 54, Chapter 5.2 (Apr. 2019).

<sup>32</sup> *Ibid*, pg. 41 Chapter 3.

<sup>33</sup> Content Code for Over-The-Top, Video-On-Demand and Niche Services, The Info-communications Media Development Authority of Singapore. Accessed at <https://www.imda.gov.sg/regulations-and-licensing-listing/content-code-for-over-the-top--video-on-demand-and-niche-services>.

<sup>34</sup> *Ibid*, Part 1.

<sup>35</sup> *Ibid*, Part 5.

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have enlisted that talk about classifying the content as per general (G), parental guidance (PG) and mature (M) parameters, prohibiting access to certain kinds of content, industry codes and industry standards, complaint mechanism, etc. The framework also restricts the hosting access to RC content and calls for classification as X 18+, R 18+ or MA 15+. The guidance pertaining to classification is, however, advisory in nature and thus no legal restrictions arise in viewing or playing these categories. The Australian Classification Board has classified both online and offline content up to this point. Netflix, on the other hand, recently received authority's assent to self-classify its material using its own tools, following a two-year experiment.<sup>36</sup>

#### 4. United States of America

In the year 2019, there was a proposal in United States calling for a novel regulatory framework to understand and keep a check on the unregulated content on the internet that had the potential of causing harm to the society. Subsequent to this, a new regulatory framework was proposed by the Online Harms White Paper in May 2019. Not only this but also an 'Online safety Bill' was brought in place that also included an independent regulator. Even though the US Federal Communications Commission (FCC) remarked that the regulations intending to be introduced were "unnecessary and heavy-handed" but nevertheless sought to introduce the same so as incentivise investment.

Freedom of speech is given utmost importance in the US. for that matter, in the case of *Joseph Burstyn Inc. v. Wilson*,<sup>37</sup> the US Supreme court recognised movies to be a significant and an important means for the exchange of expressions that deserved to be protected by the First Amendment. Further, in the case, *Reno v. American Civil Liberties Union*,<sup>38</sup> the Court discussed the reason for according the same protection of first amendment to the 'films released online' and observed that internet content providers are technologically advanced to incorporate features that can enable parents to control the content that their child can watch and hence there is no specific need to accord such regulations on them.

<sup>36</sup> Ikigai Law, Online content regulation: how is it done in other parts of the world? (Nov. 30, 2019) <https://www.ikigailaw.com/online-content-regulation-how-is-it-done-in-other-parts-of-the-world/#acceptLicense>

<sup>37</sup> Joseph Burstyn Inc. v. Wilson, 343 US 495 (1952).

<sup>38</sup> Reno v. American Civil Liberties Union, 521 US 844 (1997).

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## OTT LANDSCAPE AFTER THE REGULATORY FRAMEWORK

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Creative freedom is based on the notion of free and diverse thinking and one of the effects of the same is the wide range of thoughts and expressions. From the standpoint of media or entertainment, it may be understood as the liberty of creators to convey their tales in whichever way they intend to, resulting in an environment that provides for a far-reaching spectrum of content opportunities.<sup>39</sup> However, the pertinent question to note here is whether creative freedom is absolute. It is imperative to note that films are believed to be distinct from other types of art since a motion picture has the capability of leaving a much deeper impact than any other form of art. For similar reasons, censoring of film found its place as a reasonable restriction under Article 19 of the Indian Constitution.<sup>40</sup> The Hon'ble Supreme Court herein discerned that censorship of films by means of age-restricted classification is, therefore, a lawful exercise of power, in the interest of public morality, decency, etc.<sup>41</sup>

The regulation of OTT Platforms is sought in the light of objectionable and offensive content being shown but it can also be said that the OTT is indeed dealing with the actual issues that plague the Indian society. Be it showing the dark side of the wedding industry in India ('*Made in Heaven*' on Amazon Prime), prison conditions like overcrowding of jails, poor hygiene, sexual assault on the inmates ('*Criminal Justice*' on Disney+ Hotstar). The traditional theatrical industry is mostly driven by commercial movies set on similar storylines, boasting of celebrated actors and unrealistic scenarios that make the world of films dreamy and fanciful. For similar reasons, often the movies that try to narrate unusual stories lose in the race of '100 crores club'.

It is believed that OTT platforms in India made Rs. 2019 crore in the year 2017, which is further projected to grow to Rs. 5595 crores by 2022. Not only this but the Digital streaming platforms surpassed the film industry and stand to be the third-largest Indian entertainment

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<sup>39</sup> Shekhar Kapur, Vani Tripathi Tikoo, Akshat Agarwal, and Vivan Sharan, *Embracing Nonlinearity: The Future of India's Entertainment Industry*, 5, (Nov. 2020).

<sup>40</sup> K.A. Abbas v. Union of India, (1970) 2 SCC 780; *see also*, Bobby Art International & Ors. v Om Pal Singh Hoon & Ors (1996) 4 SCC 1.

<sup>41</sup> *Ibid.*

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sector in 2019.<sup>42</sup> It is estimated that the subscriptions on the OTT platforms crossed 50 million for the first time in 2020.<sup>43</sup> Now the real question that lies is the reason behind these numbers?

Upon a close perusal of the aforementioned statistics, it is crucial to note that there are certain very prominent reasons for the success of OTT in the Indian landscape. In an environment where mainstream media thrived, the OTT gave space to both creators and viewers to experience unconventional films with much more realistic and relatable characters and storylines. In a society where the issues like infidelity, infertility, sexual/emotional abuse within families are often equated with western households, OTT normalised the notion and showed that these are the real problem that even an Indian couple may be facing behind the doors. It accelerated the deliberations on the themes like LGBTQ, mental health, superstitions, and even blind faith in our society. Capable of narrating a story longer than 120-180 minutes, the OTT gave a fresh perspective on storytelling. Apart from this, it made for the content to reach even lower tiers cities, helped in the absorption of foreign content in India and Indian content abroad at greater ease.

The Hon'ble Supreme Court in a recent judgement observed that the Indian constitution does recognise the expression of an idea from the cinematic perspective in the public sphere and further reflected on the thought that “when creativity dies, values of civilization corrode”.<sup>44</sup> It can therefore be said that even if the regulatory framework on the OTT platform is held constitutionally valid, the judiciary must step forward to give a little leverage in the functioning of these platforms so as to not take away the right of a user to watch what he/she wish to watch. It is crucial that the judiciary demarcates the line between traditional film exhibitions and the ‘films released online’. After all, the cinema is meant to be enjoyed and not wrought.

<sup>42</sup> Federation of Indian Chambers of Commerce & Industry, Ernst & Young, *A billion screens of opportunity, India's Media & Entertainment sector in 2019.* (Mar, 2020). <http://www.ioaa.co.in/images/EY-a-billion-screens-of-opportunity.pdf>

<sup>43</sup> Federation of Indian Chambers of Commerce & Industry, Ernst & Young, *Playing by new rules, India's Media & Entertainment sector reboots in 2020.* (Mar, 2021). [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_in/topics/media-and-entertainment/2021/ey-india-media-and-entertainment-sector-reboots.pdf](https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2021/ey-india-media-and-entertainment-sector-reboots.pdf)

<sup>44</sup> Viacom 18 Media Private Limited and Ors. vs. Union of India and Ors. MANU/SCOR/12331/2018.

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## CONCLUSION

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In recent years, digitalization has accelerated. The pandemic, on its own, resulted in a large spike in OTT audience in India, with the consumer base being the highest among the 15-35 age groups. For the government to be sure that any obstacles like applicability issues and the likelihood of statutory misuse is prevented, legislators and the involved stakeholders should have collaborated in coming up with an inclusive regulatory framework that catered to the country's need and values. But now that the regulation is in place, it becomes the responsibility of these involved parties to undertake such efforts that do not sabotage the new wave dyed with creative freedom and artistic impressions. There should be careful attempts made to live up to the principles of liberal democracy that our country abides by and give utmost respect to expression and art.

