

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 3 | Issue 4

2021

© 2021 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at editor.ijlsi@gmail.com.

Classification of Content, Content Regulation and Ethics - OTT platforms in India

SEPHALI SVATI¹

ABSTRACT

The research paper covers the subject area of the classification of Content, Content Regulation and Ethics. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 were framed under Section 87 of the IT Act, 2000 after much debate of regulating these platforms. There was much outcry by nationalists who are against showcasing the harsh realities of Indian society. The issue of regulation of online platforms came in limelight in the year 2018. In the case of Prajwala v. Union of India, the Supreme Court felt the need of content regulation. The main objective of regulating it was to avoid sharing of inappropriate content which spread hate, disharmony and affect the public tranquility. The author has dealt with this in further detail ahead. The paper focuses majorly on the blanket censorship being provided to all the contents. This would not yield the actual aim. Few platforms share exclusive explicit content and some put up the true picture. It thus becomes necessary to classify what should be censored and what not. The role of such contents in shaping the society has also been discussed. The author further discusses Artificial Intelligence (AI) biasness that exists in the realm of social media.

The research gaps that would be dealt with by researcher are:

- i. Is need for regulation actually being met?*
- ii. Is government trying to curb the freedom of speech and expression under the blanket of regulating Over The Top (hereinafter referred to as OTT) platforms?*
- iii. Is there existence of Data Biasness in the Artificial Intelligence (AI) machinery?*

PURPOSE: Main objective of this paper is to shed light upon the type of contents, content regulation and whether such contents are a threat to societal ethics especially in Indian context or they portray the prevailing societal conditions and do not need any regulation.

RESEARCH METHOD: Doctrinal method of research has been used in this paper. It involves case studies, literature reviews, scholarly articles, journals. The Media and Constitutional laws of India have been dealt in detail.

¹ Author is a student at Symbiosis Law School, Pune, India.

OUTCOME: The author, by adopting the research method aims to achieve a crystal-clear idea of what regulation of content is and whether it is fit to restrict the content within the periphery of ethics.

IMPLICATION: It would affect the society- in order to explain the need for not restricting content, OTT platforms- that sometimes go overboard for profit, Government- to ensure that within the blanket of regulation, the fundamental right of Freedom of speech and expression is not denied.

LIMITATIONS: The work is restricted only to audio-visual online streaming platforms.

NOVELTY: This paper diligently seeks to explore the AI biasness and governments agenda on censoring OTT platforms.

KEYWORDS: AI, IT Act, IPR, OTT, Shreya Singhal case, Social Media, Taandav case.

I. CLASSIFICATION OF CONTENT

(A) Development of OTT Platforms

The Telecom Regulatory Authority of India, TRAI, in its 2015 consultation paper on *Regulatory Framework for Over The Top (OTT) services*, identified three types of OTT applications (hereinafter, apps) in Indian market:

- a) Communication Services
- b) Application ecosystems, linked to social networks and e-commerce
- c) Video/Audio content.

For the purpose of this paper, only Video/Audio content has been taken into account. It is termed as ‘Over The Top’ platforms because it allows the viewers access over the cable box. With the continuous evolving technological advancements, the current world has also shifted from just one medium of entertainment to umpteen accessibility of other sources. This has been possible only due to the development of OTT platforms. “There is a casual link between the changes in the medium used to disseminate audio visual content and the changes in society. The effect that a medium has on society forms the basis of its regulation by the state”². In order to understand why this classification of content has become a burning issue in current times, we need to gather a clear picture of what OTT platforms are. Though there is no universally accepted single definition of OTT services, but, according to the Internet Telecommunication Union, an OTT service is defined as, “An internet application that may

² Shubhangi Heda, how to regulate OTT streaming services in India (2019)

substitute or supplement traditional telecommunication services, from voice calls and text messaging to video and broadcast services”³. They can be termed as internet distributed video. The OTT services have created a parallel medium for dissemination but amongst the major section of Indian population, it has gained immense popularity, reason being easy and cheaper availability of internet. In simple terms, it can be said that OTT services refer to those applications and services which are accessible over the internet and works on operator’s network offering internet access services.⁴ Its development marks a disruptive intervention in the audio-visual content market throughout the country, which is the second largest global market for tech companies. India is home to 460 million internet users, only second to China which is over 721 million. According to PwC’s report, India’s video streaming industry is expected to grow at the annual growth rate of 21.82%, to reach Rs.11,977 crores by the year 2023⁵. India can also safely be termed as beehive of local content producers, instances of critic-acclaimed documentaries, commendable short films such as Ahaalya, Interior Café Night to name a few.

(B) Types of Content

The various OTT video streaming services in India are- Amazon Prime, Hotstar, Voot, Netflix, SonyLiv, MX Player, Zee5 etc. The development of these platforms has witnessed increased investment in contents. In the recent past, the media and entertainment industry has seen a paradigm shift in the volume and demand for comprehensive contents. Since the viewers community is too large in India and has people from diversified age groups, social conditions, educational, economical, ethical backgrounds, thus, there were contents being provided for each category. The range of content produced is vast; from web series dealing with Science Fiction- The Vampire Diaries, Mythology-Ramyug, Comedy- TVF Bachelors, Violence- Mirzapur, Taandav, Real Life Incidents-Bhaukaal, Delhi Crimes, Scam 1992, Legal Issues- The Verdict(State v Nanavati), Adventurous- Bulbul, Family Shows- Chintu ka Birthday, Yeh Meri Family, Defence- The Family Man, Depiction of Rural Stories- Panchayat, Thriller- Money Heist, Asur, Sports- The Test, Education- Kota Factory, The Good Doctor, Sexual Violence and Obscenity- Sacred Games, Mirzapur, Freedom Struggle- The Forgotten Army, and so on and so forth, to release of actual motion pictures like Gulaabo Sitaabo, Gunjan Saxena, Dil Bechaara, these are only a few instances to present the picture of vividness of contents being disseminated through OTT platforms. Thus, it is

³ ITU, same definition adopted by Telecom Regulatory Authority of India (TRAI)

⁴ Himi Singla, Self-Regulation by Over The Top platforms: A study in context of video streaming services in India, IJLMH, Vol.3 Issue 4, 2020

⁵ PwC Report, JUNE 6, 2019

evident that diverse contents are being provided for the viewers. Since all the viewers cannot be judged at the same pedestal, therefore, it becomes important to analyse the type of contents. The following paragraph analyses few of these web series and movies to understand the impact of such series on the society, whether there exists an actual problem in the content which creates the mandate for regulation?

1. **Mirzapur**: This web series launched on amazon prime, two seasons of the same has been premiered. It had an outstanding set of actors -Pankaj Tripathi, Divyendu Sharma, Vikrant Massey, Ali Fazal, Rasika Duggal, Shweta Tripathi and many others. Directed by Anurag Kashyap, the story is set in the backdrop of Uttar Pradesh and the main plot is fight for authority to rule 'Mirzapur' within the current ruling family as well as with another common family. It falls in the genre of crimes though the makers have tried to project the reality that existed few years ago in the concerned state. The show has been termed as "a show without moral centre," as it was filled with scenes depicting inhuman violence, excessively abusive language which included derogatory remarks on caste and women – "*Jaatpratha kaahe banayi gayi, isliye hi na ki power humesha hum brahmano ke haath mein rahe*", "*mata ji yahan hain, behen ji yahan hain, Maa-Behen ek karne mein aasani hogi*". There were numerous scenes depicting sexual violence of grave nature.

2. A case was filed in Allahabad High Court against the writers of the show on grounds of indecent portrayal of the district of Mirzapur, outraging religious beliefs. FIR was registered against them under Sections 295A (deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs), 504 (intentional insult with intent to provoke breach of the peace) and 505 (statements conducing to public mischief) of the Indian Penal Code.

3. **Chintu ka Birthday**: A short film, released on Zee5, it dealt with the issue of Indian migrant families stuck in terrorist attacks prone country. It is centred around a six-year-old child who is unable to celebrate his birthday due to terrorist attacks since last one year. Even when they plan the celebration in the current year, on the specific day, there is an attack and few officers enter their house too and enquire about their stay, beat-up the father of child. A very thought-provoking sentence by one of the school friends of Chintu, who come to his house unaware about the situation, when questioned by police officer, says, "*we study in the same school which you blew up this morning*". It presented the plight of Indian migrants in disputed countries which in some cases, is the actual scenario, thus tried to create awareness amongst the viewers.

4. **Taandav**: One of the most controversial web series of 2020, which also had the gems of Indian cinema industry, has been at the receiving end of numerous controversy and complaints. It had many controversial scenes which portrayed a picture of being inspired by the incidents of Jawahar Lal Nehru University, CAA protests, political disputes, hate speeches- a scene where Mohd Zeeshan Ayyub, shouted slogans of ‘*aazadi*’ in the college. It was accused of hurting religious sentiments, demeaning Hindu Gods, provoking communal tensions, casteist remarks, excessive usage of abusive language. They were booked by the Lucknow police for hurting religious sentiments, various scenes were censored, the makers issued public apologies as well as statements clarifying that there was no intention to hurt the sentiments of public. Cases were filed against them in Maharashtra, Uttar Pradesh, Madhya Pradesh as well as in Haryana. The actors were threatened too and the Supreme Court declined them interim protection after actors approached it due to apprehensions of arrest. Statement was issued by Haryana home minister to ban the series as it attacked our system, politics, social fabric, young generation and the prime minister’s office. He also proposed that web series should be released only after passing the screen test conducted by the censor board.

5. **Delhi Crimes**: A crime drama, released on Netflix, this series is based on the Delhi gang rape case, it follows the Delhi police investigation into the finding of the men who perpetrated the crime. It was also awarded with the International Emmy Awards for Best Drama Series, the first Indian series to win this award. The writer took six years in researching about the matter, getting in touch with family of the victim, former Commissioner of Delhi police and other cops to bring authenticity. This series received enough laurels by the viewers as well as critics.

6. **Hasmukh**: The Delhi High Court refused to grant an interim injunction against this Netflix show. It was alleged that in a monologue, the show defames lawyers and shows them in bad light. The court denied the allegations and refused to censor it, stating that the creative liberty of an artist is an essence of democracy.

7. **Paatal Lok**: A very controversial show, Paatal lok, too was taken in the court on the basis of violation of Section 67 of the IT Act,2000, displaying anti-social, vulgar and violent content. It was also challenged under several other laws; the Indecent Representation of Women (Prohibition) Act,1986 for explicitly showing scenes of gang-rape, violation of Section 153A and 298 of the Indian Penal Code, which provides punishment for promoting enmity on the basis of religion, race and language between groups and for uttering words specifically with an intent to hurt a person’s religious sentiments respectively.

Thus, it is evident that most of the web-series are either packed with obscenity and abuses or belittle the backward classes of society. Though the reason that makers give is that they are presenting the authentic picture of what actually happens in the society but under the blanket of showing the reality, they cannot compromise with their responsibility towards society. Only a handful of web series can actually be watched by the whole family together and have been appraised without much row. Thus, there is certainly a need for regulation so that the platforms do not release contents with unnecessary violent scenes.

II. IMPACT ON SOCIETY

The purpose of discussing few web-series in the previous paragraph was to discuss the types of contents being released on OTT platforms. Since it is mostly accepted connotation that media is the strongest medium of mass communication, hence its massive impact cannot be denied on the society. In Anand Patwardhan case, it was held that not just newspapers but films, cinemas, social media too are a source of disseminating information amongst the public. Considering the Indian scenario, wherein, film stars are idolized by the common man, most of the youth look up to them as their role models, follow them and their works blindly. Simultaneously, it is also the duty of actors to put out correct message in the society, which does not deviate the youth or convey any such messages which hurt their sentiments. Creative liberty can be taken but its scope is not unlimited. Hence, this analysis on the impact of web series on society.

Since India is home to diverse cultures, traditions, religions, language, belief, educational, social, political and economic backgrounds, therefore, concept of media is very dynamic here. It is also not possible for the makers to provide contents which fits all and satisfies every person. No straight-jacket formula can be applied in order to quench everyone's thirst for good content. Hence, some disagreements are bound to happen but there also exists other side of the coin which is the existence of some prohibited material which should not be broadcasted. Though the author agrees that "certain prohibited material" is a subjective term but excessive usage, filming and broadcasting of unnecessary explicit, obscene and sexually violent scenes, foul, abusive languages, belittling of certain caste or religion, should not be encouraged at any stage. Portrayal of such content may lead to increase in cases of rape, group-fights turning into criminal cases, shoot in intolerance, ill-treatment or discrimination in various strata, sexist and racist remarks. Though few of these are in practice in real life as we are yet to achieve the goal of egalitarian society but during normal days, controlling or reporting of such cases is easier and the police can take actions sooner too. In situations

where there is sudden surge in public riots, rallies against any shows are taken out, wherein the mob turns violent leading to mass violence and destruction, it becomes impossible for the administration to take strict action. On the other hand, they are also under some kind of political and authoritative pressure due to which they take action against certain individuals only. There have been incidents of the same in past. Such massive outrage wears out the social fabric of the country.

On an individual level, it also affects the psychological well-being of the persons, both positively and negatively. There have been cases where the youth are suffering from insomnia, depression, obesity and other health damages too. It leads to increase in aggressive and violent behaviour since the shows have created unclear images of good and evil, consequently, the ones who consume such shows, become immune to such acts and easily imitate them. The youth is the major consumer of such contents, prolific users of technologies and inexperienced too hence they are unaware of differentiating good from bad, real from reel and they tend to take the presentations too seriously, as a threat to their community.

The impact cannot be completely done away with but it has to be balanced both ways. Only curbing and stopping the relay of such series is not the solution. Since media has the right to portray social evils, show what is actually going on in the society, its reality so as to create awareness amongst the viewers. It is considered as the fourth pillar of democracy and their duty of presenting the moulded form reality with which the common man connects, shall not be denied. The youth and viewers should be educated and awareness must be created about the difference in real life scenario and those shown in series, cinema, shows. They must be made to understand that the makers do not make the shows according to their perspective of a particular incident but try to present a balanced and unbiased picture. They should also be made aware of their rights so that they do not consume, get affected by such contents. The freedom to raise voice against the ethical, moral, legal code of conduct shall not be taken away but correct identification of those who try to successfully achieve their political propaganda is necessary and such people shall be severely punished for spreading hate and violence.

III. NEED FOR REGULATION

‘Regulation’, as a concept, is constantly evolving due to several factors- social changes, technological and science advancements, development of the economy, modernization, globalization and others. Regulation refers to the arbitrary process of the State, usually

centred in an independent regulatory body established and governed by a State Regulation⁶. In cases of media and broadcasting, regulations tend to take a complex turn, thereby regulatory bodies being overloaded. To avoid this, 'self-regulation' is encouraged. There is a presumption that self-regulation terms reflect the interest of keeping the State away from its affairs. Self-regulation could be broadly of three categories- SELF-REGULATION- actors and makers solve the disputes internally without involving the State, CO-REGULATION- co-operated efforts of the State and private regulators, REGULATED SELF-REGULATION- structured by the State but State is not involved⁷.

CENSORSHIP: The word 'censor' is a roman term, used in Roman times in 443BC, where censor was responsible for assessing the morale of citizens⁸. As already stated in the previous paragraph, the need for censorship, too, changes and modifies with time. In the present scenario, censorship is the process of regulating contents, determining whether the content should be disseminated or not based on political, cultural and religious circumstances. It also involves modification of content- which is removal of certain scenes from the movie, web series so as to limit its impact and also to ensure that the shared content does not breach the guidelines of regulation. Censorship majorly involves laws and rules prescribed by the State, for exhibiting the content and designing the framework of content determination. The aim of censorship can be categorized into- reason of censorship, medium and parties subjected, mechanism of enforcement⁹.

Since novel methods of dissemination has come up, therefore it is necessary to rethink the dynamics of regulation. The power relation between State, Authorities and Media. With the emergence of Internet, there has been huge expansion of platform all over the world. It has given control in the hands of the viewer to select what content they would want to watch, they also have the freedom to choose the time, medium and space for accepting the content and viewing it. It is a more engaging platform than the archaic ones such as television, radio and also theatres. OTT services have dual characteristics of both, television passivity and consumer choice. The debate for censoring contents of the OTT platforms oscillated for a long time between whether they should be treated within the framework of policy for films or within broader aspects of internet.

The need for regulation of content was felt couple of years ago, in 2018, wherein the Supreme Court felt the need of content regulation, in the case of *Prajwala v. Union of*

⁶ Supra, note 3

⁷ Ibid

⁸ Irum and Laila,2015

⁹ Pranesh Prakash, Nagla Rizk and Carlos Afonso Souza,2016

*India*¹⁰, it was held by the court that the Government of India may frame the necessary guidelines and standard operating procedure to eliminate child pornography, rape and gang rape images, videos and sites in content hosting platforms. These guidelines must be implemented within two weeks of the judgement passed. In the year 2019, a public interest litigation was filed in the Supreme Court against the major OTT players, such as Amazon Prime, Netflix and others, in the case of *Justice For Rights Foundation v Union of India, 2018*¹¹. The petitioner stated that such platforms only have profit motives and do not care about the cultural sensitivity and moral fabric of the country. It was held by the Delhi High Court in the same case that since there is no provision for OTT platforms to obtain licenses, hence the government cannot censor them. In case if the plaintiff has specific issues, they would be dealt under the Information Technology Act. The same decision was followed in the case of *Nikhil Bhalla v Union of India, 2019*¹², which was filed against the series, Sacred Games. In the case of *Padmanabh Shankar v. Union of India*¹³, petition was filed in Kerala High Court, which stated that, since there is a lack of statutory framework for regulation of online content, therefore the court should set up an authority to keep a check on content, till the setup of authority, the content should be regulated by the norms of Cinematography Act, 1952 and in case of question of authenticity, Section 79 of the IT Act, 2000¹⁴ shall be applicable. This case also raised a significant question of whether watching content over the internet within the four walls of the house would amount to public exhibition according to the Cinematography Act, 1952. To this, the court laid emphasis on the judgement of *Super Cassettes Ltd. V Board of Film Certification*, wherein it was laid down that the content needs to be certified by the CBFC even if it is being viewed within the four walls of the house. Due to the lack of existence of a proper policy and gaps that existed in few which were in place, the makers took undue advantage of it and released contents without censoring them. Apart from these reasons which are always in limelight whenever the question of content regulation is raised, there are several other reasons too. Few of them are as under:

- Authentic Content
- Depiction of Self-injury or Suicide scenes without any actual need
- Child nudity
- Sexual exploitation of adults as well as children

¹⁰ Prajwala v Union of India, 2018

¹¹ WP (C) No. 11164/2018

¹² WP (C) No. 7123/2018

¹³ W.P. 6050/2019 (India)

¹⁴ Exemption from Liability of intermediary in Certain cases.

- Harassment
- Hate speeches

IV. EXISTING LAWS

Contents shown in India is regulated by several codes but the OTT platforms are comparatively less censored than the motion pictures.

i) **Voluntary Code of Self-Regulation:** The OTT operators have started implementing voluntary codes of self-regulation, with respect to the contents shared. Various leading OTT players- Netflix, Amazon Prime, Disney-hotstar, Viacom 18, SonyLIV, Zee5 and Reliance Jio, signed a Code of Best Practices for Online Curated Content Providers in January,2019. It was released by the Internet and Mobile Association of India (IAMAI). It aims to encourage consumers to make informed choices about age-appropriate content and to protect consumer interests in selecting and viewing the content that they want to watch at their own time and convenience. The preamble of the code states that the organizations that sign on to this code, commit to making reasonable efforts and acting in good faith to ensure that content offered on their respective services in India is in line with the principles laid out in the code. This code has been framed with the objective to abolish the problematic content, shows banned by Indian courts¹⁵. The various criteria taken into account for this are:

- Age
- Interest
- Freedom of Content Creation
- Complaint Redressal Forum.

It prohibits the following contents:

- Malicious Disrespect of the National Flag or National Emblem
- Child engaged in sexual acts or display of child's organs
- Outraging religious sentiments of any class, community or section
- Promotion of Terrorism
- Banned by the court of competent jurisdiction.¹⁶

¹⁵ Meghna Mandavia, Netflix, Hotstar and others sign a self-censorship code, IndiaTimes (Jan 18, 2019)

¹⁶ Code of Best Practices for online curated content providers.

ii) Information Technology Act,2000: With respect to the regulation of content, the IT Act,2000 provides for various sections; Section 66A-Punishment for sending offensive messages through communication service, etc Section 67-punishment for publishing or transmitting obscene material in electronic form, Section 67A- punishment for publishing or transmitting material depicting material containing sexually explicit act, etc in electronic form, Section 79 Exemption from liability of intermediary in certain cases¹⁷.

Though these provisions do not expressly provide for OTT platforms but they have been used in certain cases to regulate. One of the most famous case being that of *Shreya Singhal v. Union of India,2015*. In this case, the police arrested two women under Section 66A for posting allegedly offensive and objectionable comments on facebook after the death of political leader, shiv sena's chief, Bal Thackeray. The women filed a petition challenging the constitutional validity of Section 66A, 69A and 79 on the grounds that it violates the right to freedom of speech and expression under Article 19(1)(a). The court struck down this section and declared it unconstitutional. The court stated that the concerned section curtailed the freedom provided under Article 19(1)(a) and it does not fall under the exceptions stated in Article 19(2), it does not have any proximate relationship with public order. The expressions are open ended and undefined in the section. Section 66A was thus struck down in its entirety, Section 69A was held to be constitutionally valid and Section 79 too was held valid but clause (b) of the same was removed. It was held that online intermediaries would only be obligated to take down the content on receiving an order from a court or government authority. Further, in the year 2008, the IT Act was amended and Section 66A was re-introduced and it penalized sending offensive messages.

iii) Intellectual property Rights: The key statutes which provide protection to the intellectual property in Indian media and broadcasting industry are: Copyrights Act, 1957 and the Trademarks Act, 1999. These acts exhaustively provide protection in terms of original content, owners' rights, remedies for infringement, fair use and defences, broadcasting moral and performance rights and border measures against the import of infringing copies and materials. In the case of *Tips v Wynn, 2019*, the issue that came up before the court was, whether internet streaming services qualify as broadcasters? The Bombay High Court held that the online streaming services cannot avail the benefit of the statutory licensing regime as Section 31D is applicable only on radio and television broadcasters. The matter is sub-judice. The issue of media and broadcasting industry does not just settle here, questions were raised earlier also with respect to various other aspects of online streaming of matches which

¹⁷ Sections 67, 67A, 67B and 69, Information Technology Act,2000, Acts of Parliament,2000 (India).

provided simultaneous coverage. In the year 2013, the Delhi High Court passed an injunction order in the case of *Star India v. Piyush Agarwal (2013)* which restrained the defendants from dissemination of live match information in the form of minute-by-minute score updates and match alerts, without the permission of Board of Control for Cricket in India (BCCI). They held that such applications/apps can show the live score with a 15-minute time lag from the actual broadcast so that the investor can reap the benefits. It was appealed and the Appellate Bench overturned the judgement stating that match scores are facts and are not protected under Copyrights Act. It was again appealed in the Supreme Court which has, as of now, upheld the previous decision but final decision is awaited. It was also set as a judicial precedent in few cases that the creative liberty of makers must be protected.

iv) Indian Penal Code,1860: The IPC also provides for certain clauses which can regulate the OTT platforms. Section 295A- criminalisation of Acts intended to outrage religious feelings. Section 499 and 500 – criminalization of dissemination of defamatory content.

v) Article 19 (1)(a) of the Constitution of India: The article provided in the constitution of India talks about freedom of speech and expression given to the Indian citizens as a fundamental right. It is the liberty to express one's thoughts, views and opinions freely. This right is not absolute and reasonable restrictions are imposed. But what is seen in cases concerning content regulation is, whether the ultimate effect of such regulation violates this fundamental right. If so, such regulations would not be allowed.

vi) Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021: After a lot of debates and discussions, finally, the IT Rules,2021, was brought into existence. Since the OTT industry is the fastest growing industry globally, reason being excessive demand for online contents and a “not-so-clear” regulatory framework which allowed innovations and release of contents as according to the makers without any ifs and buts. But the new IT Rules,2021, notified on 25th February,2021, has added heavy mandates on the OTT sector. The main objective of this rule was to create a single, regulatory framework for OTT platforms under the IT Act,2000. Surprisingly, its clauses came into force since the date of publication in the official gazette. The Act is divided into three parts; Part I- Preliminary, Part II- Due Diligence by Intermediaries and Grievance Redressal Mechanism and Part III- Code of Ethics and Procedure and Safeguards in Relation to Digital media. The key features of the Rules are:

- In case due diligence is not complied with by the intermediary, safe harbour provisions will not be applicable on them.
- Intermediaries shall appoint a grievance officer to deal with complaints and the name and contacts of such officers must be shared.
- The complaint shall be acknowledged within twenty-four hours and it shall be resolved within fifteen days from the day of receipt of complaint.
- Intermediaries shall remove or disable access within twenty-four hours of complaint such contents which expose private areas of the individual, full or partial nudity, sexual act, impersonation including morphed images.
- The complaint can be filed either by the individual himself or by any other person on his/her behalf.
- The OTT platforms would self-classify the content into five age groups- U (universal), U/A 7+, U/A 13+, U/A 16+ and A(adult).
- Parental locks must be implemented by the platforms for content classified as U/A 13+ or higher and reliable age verification mechanisms shall be implemented for adult contents.
- The classification rating of each show shall be displayed at the beginning. It must contain the nature of content, advisory on viewer description so that the viewer makes an informed decision of whether to watch or not.

Though the intention of the Rules were to provide regulation on contents of OTT platforms, but the clauses are quite disputable and gives rise to many concerns including that of privacy, freedom of speech and expression. The mechanism created is without any clear legislative backing as a consequence of which its functions would majorly resemble to those of the Ministry of Information and Broadcasting for TV regulation. Such restrictive regulations would lead to a boom and incentivising of the black market. The laws are highly ambiguous and prohibitive for the OTT players and consumers. India is no more only the consumer market; it has also become a prominent player in the field of releasing quality original contents. The implementation of these rules is also a challenge. The rules state that in order to curb online harassment and fake news the platforms must track original creator of any messages; this directly impacts those organisations which work on the value of encryption. Hence, there are chances of compromise with privacy, threat of cyber-crimes, hacks, illegal surveillance.

V. ROLE AND IMPACT OF GOVERNMENT

In the situation where it's the need of nation to come together and solve the issue of content regulation, the role of government plays an important role. The government must take a balanced approach which would solve the persisting issues and would not make the people in that business suffer. Instead of imposing a blanket ban on each category of shows on OTT platforms does not seem to solve the issues. It is an era of online revolution, where the policy formation clearly shows lack of technology centric approach. It is very clear that the existing legislations are not in consonance with the changing times and technology.

The government should have passed the rules after proper judicial and social analysis of the impact of rules. The regulations must not be mechanical in nature but a thoughtful and careful decision¹⁸. The essence of content in televisions and radio is lost due to censorship grip on them, this has also led to decrease in viewership and shift to other platforms. Under the garb of "saving our tradition, culture, morality" the actual rights of free speech must not be compromised. A lot has been said and done in the name of public sentiments. Content creators disseminating shows which actually put forth a thought -provoking scenario of the society shall not be banned. Imposing of blanket ban on each kind of content would not serve the purpose. the author agrees that some explicit contents must be regulated and a ban should be imposed on those series or pictures which present a totally tarnished perspective of an issue in order to just fulfil the propaganda. Under the Media rights, it is important and has also been held as precedents in many cases that the media has the right to show the history, the present scenario of the society since it is a medium to disseminate information. Simultaneously, government shall remember that these platforms are also a source of boosting economy hence any actions which would compromise with their ease of doing business can result in huge loss.

There have been cases where the question of regulation was raised most loudly and significantly by few political leaders; instances being, Bihar's Chief Minister, on June 22nd, 2020, wrote to the Prime Minister to regulate the contents and allegations of inciting violence, promotion of crimes against children and women and exhibition of inappropriate content. He also requested to bring the OTT shows under the purview of Cinematograph Act, 1962.

VI. ANALYSIS OF DATA BIASNESS IN ARTIFICIAL INTELLIGENCE

The Artificial Intelligence is a technological revolution but major concerns are being raised

¹⁸ Yet Another Call to Regulate OTT platforms, Yashwardhan Singh, Symbiosis Law School, Pune

with certain issues in it; major one being data biasness. It is an underlying prejudice in data, used to create algorithms which might ultimately result in discrimination and other harmful social impacts¹⁹. Since the data is transferred by a human being itself, therefore, the chances of biasness and classification of what is disputable and what is not becomes subjective and lies in the hands of man sitting on the other side. An hypothetical example of data biasness would be, creation of algorithm for deciding applicant's admission in a university and while creating the algorithm, one input is that of geographical location. Hence, if the location of an individual was excessively co-related with ethnicity, then the algorithm would indirectly favour certain ones above another. Other example could be usage of hashtags on social media. It automatically presents the required information on screen²⁰.

AI biasness leads to discrimination and oppression, it undermines equal opportunities for all which is fatal for the social fabric. It is difficult to have an absolutely non-biased algorithm but few steps can be taken to curb it to a certain extent. The creators shall not introduce their personal biasness while creating it. The creation must be based on what should be and not what is, futuristic goals and setups might reduce the biasness. There must be a mandatory governance which would invoke a sense of responsibility on the individuals as well as companies. Technically, AI can be absolutely unbiased and equivalent to the input data reliability quality. But practically, this is a dream far from reality mainly because there is no human on earth who is not biased. Removal of all kind of conscious and unconscious assumptions on gender, race, caste, ideological differences might lead to creation of unbiased system which practically is not possible. A far-fetched solution to this could include the following suggestions:

- Complete understanding of algorithms and data to assess high risks of unfairness.
- Strategy of removal of bias, which would include Technical- usage of tools that help in identification of potential sources of bias and reveal the traits in the data affecting accuracy, Organizational- transparent presentation of metrics and processes at the workplace and Operational strategies- improving data collection process through internal red teams and third-party auditors.
- Model building and evaluation
- Clear requirements of where automated decision making can be used and where humans are required.

¹⁹ When Algorithms Decide Whose Voices Will be heard, Theodora Lau and Uday Akkaraju, Harvard Business Review.

²⁰ Real Life Examples of Discriminating Artificial Intelligence, Terence Shin

- Constant research and development
- Diverse community of AI.

These algorithms affect us in ways more than just what we watch on the screen, there is a conception that negative emotions; such as hate, anger and others gain much popularity. In case of content platforms, the owners have of OTT have the absolute right and liberty to remove contents which they feel are inappropriate. The term “they feel” construes that instead of presenting unbiased picture, the creators are imposing their perspective on the society. In the present conditions, a lot of fake news, wrong information, fake face videos are being released to establish certain propaganda amongst the public, hence, such incidents can be stopped only through data algorithms. There have been cases of taking down of certain URLs if they were against the public order or found to incite violence through hate speeches and such messages.

VII. CONCLUSION

Thus, from the analysis and research conducted, the author is of the view that there is of course a need for regulation of content since presenting anything which is not of substantial value and simply does the job of adding ‘spice’ in the show shall not be encouraged. In the present times, access to internet is not a tough nut to crack, little children have access to it and there is no means to regulate their viewership. Violent contents create numerous problems ranging from psychological, emotional, physical, impact on relations to unrealistic expectations, false beauty standards, social acceptance, peer pressure in the life of common man irrespective of their age.

The content creators, too, must understand their duty. They are responsible for giving a perspective to the society at large and must ensure that they do not send across such messages which leads to violence, hatred, communal tensions. The shows, may be critical or in support of an incident or another but due diligence must be taken by the makers that negative impact is minimised.

The other side of the coin focuses completely on general public. They must understand that the medium of disseminating information has huge responsibility on themselves and it is not within human powers to provide a “perfect” content loved and appreciated by all. The audience must make their judgements as a reasonable and prudent man and should opine about contents as a whole and not judge it in pieces, thereby creating an issue. Most of the contents might be criticised but it should be within the nature of constructive criticism and not violent rallies, death threats to the actors and makers. There will always exist a difference

between how each content is viewed by each person. For some, portrayal of a particular scene may be problematic and for others it might be necessary to put the real picture in front of the whole world instead of animations and pure imaginations, as was the case in televisions where most of the daily soaps had characters playing larger than life roles, as well as in a lot of movies.

The degree of regulation determines how far it would be beneficial in order to curb the disputes that arose due to lack of regulation or it would give rise to another set of issues. Rigid censorship laws have always suppressed dissenting thoughts, progressive and rational thinking in the blanket of promoting decency and morality. The law which is not at par with the societal changes, it becomes more of a roadblock in the path of progress rather than supporting development. Contents which have a serious message to convey that the society must consider cannot be banned. This was held in the case of Director General, Directorate General of Doordarshan v. Anand Patwardhan & Anr. 2006. The issue here was that the doordarshan denied broadcast of a film, Father, Son and Holy War. The film dealt with social realities and issues of patriarchy, violence, fundamentalism, suppression of women, communal violence, Sati being celebrated by young men, sexual violence against women and other common issues. Doordarshan denied telecasting the film on the grounds that the concerned film has violence and hatred, wrongful idea of male hood, male chauvinism which would have an adverse effect on the minds of viewers. This explanation was given by the Special Committee that was made by court's order. Huge debates went on for a long time, but finally, the Court held that the film in its entirety has a serious message to convey and is relevant in the present context hence the broadcasting cannot be banned. Though this is an old judgement and related to a movie but the judgement given holds importance even in case of OTT contents. The contents that do not unnecessarily depict obscenity, vulgarity, nudity, abuses and present a true picture about which the society must be made aware, must be encouraged.

In conclusion, the author would like to say that it is the responsibility of every person and not just government to regulate the content. Narrow and conservative approach shall not be taken as the decency and morality is not a static concept; it keeps on evolving from time to time. Instead of completely banning and stomping out the so called "bad things" is not a solution rather a larger problem as it would not rule out the practices from society. Hence, a proper balanced regulation should be brought in. The new technologies and advancements are necessary for social development and without compromising on the development aspect, an amicable solution must be reached.