



RSTV Big Picture: Regulating Over-The-Top (OTT) Content

- **Context:** Within weeks of Union I&B Minister promising wide-ranging consultations to regulate online content, the I&B ministry held its first meeting with stakeholders related to certification of the same on streaming platforms.
- I&B secretary Amit Khare: norms, self-regulation or any other system of regulations on Online Curated Content that is devised should be implementable, widely acceptable and easily enforceable.
- Earlier this year, several OTT players joined hands to set up a self-regulatory content code under the aegis of Internet and Mobile Association of India (IAMAI) but not everyone in the industry has agreed with it.
- Organisations affiliated to the RSS have also been exerting pressure on the ministry to take a decision. Also, there are over 14 court cases for which the ministry has to keep appearing which is why this issue is a priority.
- Members of the Central Board of Film Certification (CBFC) that is primarily responsible for certification of films in India, however was originally part of the meeting but kept away from it.
- **Views of stakeholders at the meet:**
 - Any new regulation has to come only in the form of advisories, not laws, and that one needed to use reasoning and objectivity to decide on these matters.
 - Certifying authorities should focus on the certification guidelines, without getting carried away by their personal biases, views and prejudices.
 - Self-regulation was not enough in the online space.
 - There is no question of banning any content but there is no absolute freedom. If a member who has signed the self-regulatory code violates, there should be a body that can address it.
 - Some experts also feel any kind of government intervention could kill the barely five-year-old OTT industry.
- **Views of IB Minister:**
 - Fake news is more dangerous than paid news and there is need for the government and the media to combat it jointly.
 - Fake news has to be stopped and that is our joint work. It is not just the government's job, it is everybody's job. Those who are in the business of genuine news, they all must strive hard to combat it.
 - The government will not take any step that may curb media freedom but there should be some kind of regulation on over-the-top platforms (OTT), as there is for the print and electronic media as well as films.
 - Several mainstream media outlets have conveyed to the government that there was no level-playing field with OTT platforms being completely unregulated.
- Supreme Court of India directed the Centre to regulate the content featured on over-the-top (OTT) media platforms. The three-judge bench of the Supreme Court issued a notice while hearing the public interest litigation (PIL) filed by the NGO, Justice for Rights.
 - The plea filed by the NGO in the Supreme Court has said that these OTT platforms are not only displaying unlicensed, unregulated and uncertified content, but also running without being governed by any guidelines.
 - The petitioners have claimed that due to lack or absence of any guidelines to govern the online platforms, government agencies are creating a special class of broadcasters and discriminating against customers, cable TV producers and D2H operators.
 - The case was dismissed by the Delhi High Court in February 2018. The Delhi HC bench had been informed by the Central Government that the online platforms were neither required to obtain a license from the Ministry of Information and Broadcasting, nor was its content regulated by it.
 - The Ministry of Law and Justice had also stated that the matter was outside its domain.
 - While dismissing the plea, the High Court had observed that since the law did not require such platforms to acquire a license, it cannot direct them to get one. Instead, the High Court had suggested that the petitioner pursue the FIR route.
- OTT platforms include news portals and also streaming services such as Hotstar, Netflix and Amazon Prime Video, which are accessible over the internet or ride on an operator's network.
- The Press Council of India takes care of the print media, the News Broadcasters Association (NBA) monitors news channels, the Advertising Standards Council of India is for advertising while the Central Board of Film Certification (CBFC) takes care of films. However, there is nothing for the OTT platforms.
- There has been a spurt in news portals in India with several of them seeing a rise in the number of online subscribers.
- According to industry data India is the tenth largest market for OTT in the world with an overall revenue of more than 4000 crore rupees.
- The CAGR growth for the subscription based video on demand platforms is expected to be 23.33 % in next five years.
- There are currently about 40 providers of over-the-top media services (OTT) in India, which distribute streaming media over the Internet.
- In fiscal year 2018, the OTT market in India was worth ₹2,150 crore and its value grew to ₹35 billion in 2019.
- According to a KPMG report, the average time spent by Indian subscribers on various OTT platforms is 30-50 minutes.
- **History and growth:**



- The first dependent Indian OTT platform was BigFlix, launched by Reliance Entertainment in 2008.
- In 2010, Digivive launched India's first OTT mobile app called nexGTV.
- OTT gained significant momentum in India when both DittoTV (Zee) and Sony Liv were launched in the Indian market around 2013.
- Hotstar is the most subscribed-to OTT platform in India, owned by Star India as of 2018, with around 150 million active users and over 350 million downloads.
- American streaming service Netflix entered India in January 2016. Netflix had the highest average watch time of more than 120 minutes but viewer counts of around 20 million in July 2018.
- Netflix faces tough competition with other OTT platforms in India such as Amazon Prime, Hotstar, Voot and Eros Now.
- Eros Now has the most content among the OTT providers in India.
- Hoichoi is the first dedicated regional-language OTT service in India.
- According to KPMG Media and Entertainment Report 2018, the Indian OTT market is expected to grow 45 percent to reach ₹138 billion by the end of fiscal 2023.
- According to a report by Ernst & Young, the number of OTT users in the country will reach 500 million by 2020, making India the second-biggest market after the US.
- With the aim to provide a regulatory code for video streaming platforms, the Internet and Mobile Association of India (IAMA) released a document called *"Code of best practices for online curated content providers."*
 - OTT platforms such as Netflix, Hotstar, Voot, Zee5, Arre, SonyLIV, ALT Balaji and Eros Now have signed the code, while Amazon Prime, TVF Play, Yupp TV, Hungama Play were missing from the list of signatories.
 - The document aims to provide a guiding principle for Online Curated Content Providers, and outlines the kind of content that should be prohibited on video streaming platforms.
 - It also calls for the setting up of a grievance redressal mechanism to ensure compliance of the code, and address complaints by the consumers.
 - This should be seen in the backdrop of a discussion by the Observer Research Foundation held in September 2018, when some of the participating Video-on-Demand companies held that they should create a self-regulatory code for content before the government does.
 - The code puts a responsibility on the signatories of this code against putting certain kind of content on their platforms.
 - The nature of content covered is as follows:
 - Content which disrespects the national emblem or national flag.
 - Representing a child engaged in real or simulated activities or any representation of the sexual parts of a child for sexual purposes.
 - Content which deliberately and maliciously promotes or encourages terrorism and other forms of violence against the State or its institutions.
 - Content that has been banned for exhibition or distribution by online video service under applicable laws or by any court with competent jurisdiction.
 - Transparent disclosure about the nature of content.
 - The code also puts an onus on the video streaming platforms to inform the viewer about the nature of content.
 - What it does not cover:
 - The code does not specify the penalty or punishment to the grievance redressal department if it does not respond to the complainant within the specified period.
 - It also does not specify the qualifications of a person who would be deemed fit to be a part of the grievance redressal department.
 - The code does not give any power to the department to ensure the compliance of code.
- The IT Act and the rules framed under it place certain regulatory obligations on body corporates or intermediaries which includes Telecom Service Providers (TSPs) and OTT services that can be regarded as same/similar to the services provides by TSPs. They are as follows:
 - Lawful Interception obligations
 - Takedown obligations
 - Privacy and cyber security obligation
 - Encryption obligations
- OTT players may, without license, provide the same services as provided by TSPs. They do not require permissions from any regulatory body or from TSPs.
- There is no requirement of interconnection or for any commercial agreements between OTT providers and TSPs.
- They are also not bound by any regulatory obligations to address consumer concerns such as quality of service, interconnection and unsolicited communication, etc.
- **Issues that need to be addressed:**
 - Which services when provided by the OTT service providers should be regarded as the same or similar to services being provided by the TSPs?



- Should substitutability be treated as the primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT service providers?
- Whether regulatory or licensing imbalance is impacting infusion of investments in the telecom networks?
- Are there issues related to lawful interception of OTT communication that are required to be resolved in the interest of national security or any other safeguards that need to be instituted?
- Should the responsibilities of OTT service providers and TSPs be separated?
- Is there an issue of non-level playing field between OTT providers and TSPs providing same or similar services?

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