

Binge Watching to Binge Serving in India: Revolution, Regulation and Restriction of Over-the-Top (OTT) Platform

Dr. Biranchi Narayan P. Panda¹, Dr. Swayampabha Satpathy² & Isha Sharma³

Assistant Professor (Law), Xavier Law School, XIM University. Email: biranchi@xim.edu.in

Associate Professor (English), Department of Humanities and Social Sciences, ITER, SOA. Email: swayamsatpathy@soa.ac.in

Ph.D. Scholar (English), Department of Humanities and Social Sciences, ITER, SOA. Email:

Ishaasharma25@gmail.com

Abstract:

The information technology has changed the living style of the people in last couple of decades by its evolution and revolution. Hence the 'digital revolution' is considered as very imperative in human history especially after the 'industrial revolution'. Through this changing paradigm, the digitalisation has provided enormous space for the entertainment of Individuals through the Over-the-Top (OTT) platform on demand. In India, the significant growths of OTT platform have been noticed particularly during last decade with increased number of consumers. Further, with such massive demand of consumers in India, the OTT became a commodity rather than a luxury. Additionally, the surge of consumers and internationalisation open-up its OTT market for domestic as well as international OTT players. The OTT players like Hotstar and Jio Cinema has expanded a stouter position, whereas global players like Netflix and Amazon Prime have also extended progressively their market share in India. Therefore, the huge demand of online content brought the concept of 'Binge Watching' in India as this platform provides on demand, anywhere access, without commercial break and unlimited access. However, this growing OTT players and online content recently faced many controversies and fought legal battles in India due to lack of regulatory and legislative mechanism. Therefore in this paper we intend to understand the revolution and growth of OTT platform with its recent trends in India. Further, the paper also tries to sketch upon the existing regulatory regime for OTT platform and its reform for future accomplishment.

Keywords: Over-the-top (OTT), Binge Watching, Digitalization, Video on Demand (VoD), Regulations and Legislations.

Promulgation

The internet has broken every barrier to provide information to millions of users across India. This helps migration of people from traditional pattern to digital medium rapidly. According to a recent data of Press Bureau of India (PBI), there are WhatsApp users (530 million), YouTube users (448 million), Facebook users (410 million) and Instagram users (210 million) in India. Similarly, the 'Over the top' (OTT) video consumption in India has rapidly evolved in last few years, due to numerous reason such as internet connectivity, dynamic content, digital devices, pocket friendly

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and convenience use. Additionally, growing use of smart phones and tablets, personal computers, and smart TVs are also few reasons that Indian audience swayed massively towards OTT consumption. Furthermore, social media to digital media platform overnight became a buzz for entertainment, as consumers would like to discuss enthusiastically what is served by OTT players on regular basis. In fact there are number of advantages of OTT platform over the other mediums such as control over the content, add free content, direct to consumer with diverse content and consumer freedom etc. Therefore, the accessibility of OTT content is very popular gradually because of the above reasons.

In 21st century, with the evolution of 'Binge Watching', the concept of traditional pattern of 'Television watching' has changed due to extensive use of internet. This major transition breaks the rules of traditional way of watching TV like advertisements, long breaks, fixed slots, fixed days and so on. On other hand, with the advancement of technology, binge watching provides a unique experience to the customers or viewers such as anytime and anywhere whether at desk, living room or transportation without any commercial interruptions. Other additional feature of binge watching is subscribers glued to their screens in order to watch multiple episodes of their favourite series in one sitting for longer hours. According to Rajib Basu, "India is the fastest-growing entertainment and media market globally and is expected to keep that momentum" (PwC India, 2019).

In the words of Wheeler (2015), watching of back-to-back programmes of the same series in a single sitting is known as 'binge watching'. Moreover, it is a new habit of the viewers to watch the full season of their choice at once. Similarly, Oxford defined 'binge watch' as "to watch multiple episodes of a television program in rapid succession typically by mean of DVDs or Digital Streaming". Interestingly, these video streaming platforms are expanding their wings day by day at higher pace because of availability, affordability and accessibility of Internet. The Companies like Netflix, Amazon Prime, HBO GO, Disney+, Hotstar and Hulu, have taken advantage of all such above facilities and established online streaming platform and provide content twenty-four seven for their viewers. Additionally, this binge watching is not only restricted at home devices but also easily accessible in other devices such as computers, tablets, smart phones and other gadgets. *For instance*, the Netflix binge watching subscribers were 5 million in 2012 whereas it reaches 167 million in 2020 (Jolanta A. Starosta and Bernadetta Izydorczyk 2020). With the adoption of new technology, binge watching at individual homes has received a special place in human's mind and soul especially during the pandemic period.

Bury and Li (2015), discussed that the world of watching TV had undergone the three phases in the last few decades such as; *Firstly*, recorded programming by 'using DVD, CD' was famous until the period of 1990s; *Secondly*, online viewing with the help of internet and other developing technology until the early 2000s; *Thirdly*, mobile viewing is the most popular mode to watch or to download online content. Similarly, Pittman & Steiner, (2019) pointed out that 'Binge watching' is led by the motivation in order to know more about their favorite shows with cognizant approach and captivated heart and soul, users travel in imaginative world. In the study of Merikivi et al, (2018) binge watching, considered as a favourite pastime activity, raising inquisitiveness among users, however, when it is associated with loneliness gives vexed and irked results. Further, the study by Pena (2015) revealed that binge watching delivers a completely different experience in terms of pleasure and satisfaction of a show. Similarly, it is mentioned by Shim&Kim (2018) that

people are driven by entertainment and later indulged in unrestricted access of binge watching for pleasure.

In this article we spell out the growing concern of binge watching to binge serving in India through OTT platform. Ahead of the introduction, the article also lays down the revolution, regulation, legislation and restriction to this online content with future strategy.

Decoding the Binge Watching

The concept and term 'binge watching' generally refers to a negative connotation, as it often relates to corrupt consuming of drinking and eating. Merriam - Webster, defined binge as, "an act of excessive or compulsive consumption". A study done by Pierce- Grove (2017) discloses that many a time journalists depict binge watching in a negative mode, due to the wastage of time which disturbs the social life of humans. Similarly, Devasagayam (2014) described that bingeing is related to consuming excessive food which leads to obesity in a short span of time. The similar notion applied by Matthew and Kim (2015) in the context of Television, it is an experience of watching many shows simultaneously in at once and emerging as a growing habit of the viewers. Nevertheless, the behaviour itself is very famous, according to Veterlaus et al (2018) and Lzydorczyk et al (2020), it is difficult to define binge watching by using few terms to bind a definition or to reach a common consensus. However, the concept of binge watching used during the DVD age and subsequently followed in the last decade with growing television serial and series (Thompson, 2015). Thus, the binge watching was existed before the OTT platform and a long back concept can be traced by in 80s and 90s.

Traditionally, the people have to wait to watch their favourite series for the same medium to broadcast or depend on the DVDs for the favourite movies, audio and video contents. However, with the development of technology, people have started depending on the cable television, Direct-to-home (DTH) and movie theatre for their entertainment purpose. But now, the days have gone when people were waiting for their favourite serials and series. Now, internet and technology has made it possible through digitalisation, that is easily accessible at home, office and from anywhere on demand content (Thompson, 2015).

The concept of 'binge watching' phenomena observed science 2013 in India. However, many developed countries have already adopted such phenomena long back. This phenomenon has removed the traditional pattern of TV watching as this platform provides commercial-free, variety of series, movies at any time. A study revealed that a major portion of the people in America love to binge-watching and often finish a series less than a week. It is also found that people prefer and enjoy watching the multiple episodes of a series in a short span of time (Schweidel and Moe, 2016).

Even session like "Stranger Things, Season 2" was watched by 361,000 people on the first day when it was released and finished all nine episodes. This approach is defined as impulsive behaviour to consume one after another episode to curb curiosity and anxiety to know more about the series (Dhanuka and Bohra, 2019). An interesting study exposed in 2013 that almost 62% of the American population watch binge regularly and now it has almost reached to maturity stage in America. However, many developing countries including India is shifting its traditional

pattern of watching to OTT platform recently as it is emerging as a prominent medium of entertainment and marketing. Another factor of spontaneous adaptation of OTT is consumers are highly satisfied with the new experience of OTT and wish to watch more movies rather than going and purchasing expensive tickets of Multiplexes.

With the growth of digitalisation in India, the VoD services expanded with the demand from users. The same online content/videos easily accessed by the users in different devices such as smartphone, smart TV, tablet, desktop computer, laptop, etc. With the growing demand of such medium of binge watching, the OTT platforms started streamed diverse content with significantly upgraded audio and video quality to attract the consumers and market. Slowly, there are competitions among the OTT players to capture the market and consumers primarily, as a result content being served without censor and proper regulation.

Recent Trends of Binge Watching

Recently, the paradigm shift of traditional pattern of watching through OTT platform accepted by every age of audience in India. There are number of factors behind this growth of binge watching in India such as growing speed internet connection, broadband penetration, declining data charges, smart phones, affordable pricing, digitalization, and personalization of content. There is a continuous tussle between the indigenous and global player to capture the Indian OTT market. Therefore, it is expected that the aggressive rate of VoD springing up would reach 100 by 2023. In 2012, there were only 9 OTT players existed in India whereas by 2018 that reached to 32 players. Likewise, the OTT users in 2016 noted as 63 million whereas in 2017 it recorded as 164 million (Rajat kathuria, 2019). According to Media and Entertainment Report 2019, KPMG in India "The Indian OTT industry's overall size was 17,300 crores in fiscal 2019. With a compounded annual growth rate of 29.1 per cent, it is projected to reach 62,100 crores by the end of fiscal 2024".

In India, the streaming services include both the indigenous and global players. These players have number of subscribers such as; Prime Videos stands with Over 10 million subscribers all over world where as in India approximately 5.83 million subscribers; Hotstar, stands with 28 million paid subscribers all over world whereas around 28 million paid subscribers in India; Netflix, 203.6 million subscriber all over world whereas 4.6 million paid subscribers in India; Similarly ZEE5 had 72.6 million global monthly active users (MAUs) and 6.1 million global daily active users (DAUs) in March 2021 (exchange4media); Reliance's Jio TV stands at forefront, best streaming apps across India recorded an amazing 84 million unique visitors in March 2020 (Statista.com).

Amongst the above factors, the digitalization is also considered as one of the important factors for the growth of 'binge watching' in India. The growth of smart mobile phones, internet users and excess circulation of Wi-Fi facility by telecom companies made it possible for Indian to watch binge. According to a report, India is in the second position in the world in terms of Internet users second to China and will reach around 666.4 million by 2023 (Statista.com). One of the reasons is due to the availability of the cheap mobiles Internet users above the expensive landline. Further, still India has a vast market for OTT platform as only 30 to 40 percent people live in urban areas and 60 to 70 percent rural areas segment of people are away from such facility. Therefore,

India has still enormous opportunity to lead in terms of internet users and which may also support OTT players to spread their branches (Li, 2015).

According to the Indian Brand Equity Foundation, as at March 31, 2019, "India's total telephone subscriber base stood at approximately 1,200,000,000 and broadband subscriber base increased from 412,600,000 in the year before to 581,510,000 as at March 31, 2019." Further, the Telecom Regulatory Authority of India ("TRAI") noted that "the gross revenue of the telecom sector stood at approximately USD 3,400,000,000." In June 2019, the Department for Promotion of Industry and Internal Trade ("DIPP") in its fact sheet on Foreign Direct Investment ("FDI") stated that globally there was an investment of around USD 37,000,000,000 in the telecommunication sector whereas in India around USD 8,400,000,000.

Additionally, discussing about the India's TV subscription market, it stands second as the number of subscriptions of TV in Asia Pacific region that reached 154.3 million in 2016. It is expected the growth at 1.6% CAGR to reach 166.9 million by 2021 (alpana kakkar, 2019). By 2025, the numbers of connected smart televisions are expected to reach 40-50 million. Out of which 30% of the content viewed on these screens will be gaming, social media, short video and content items produced exclusively for this audience by television, print and radio brands.

Similarly, another report stated that "the Indian media and entertainment (M&E) sector stood at Rs. 1.38 trillion (US\$ 18 billion) in 2020 and is estimated at Rs. 1.79 trillion (US\$ 24 billion) in 2021. Further, it is projected that grow to Rs. 2.23 trillion (US\$ 29 billion) by 2023, due to acceleration of digital adoption among users across geographies" (EY report). According to the FICCI-EY media and entertainment industry survey, those who watch online videos through bundled packages (online video services bundled with mobile and broadband connections) will account for half of all online video viewers (399 million) by 2023. As of 2020, India registered 803 million online video viewers, including streaming services and videos on free platforms such as YouTube (Indian Media and Entertainment Industry Report April, 2021).

Other factors are the aggressive entry of 40 VoD companies in short duration of three years shows consumer demand and massive potential of the industry supply. Apart, four out of five smartphone owners in India watches OTT content regularly (New18.com, 2019). Further, the OTT apps turns to be the most downloaded app and one step ahead of social networking apps like Facebook, messaging apps like WhatsApp, and e-commerce apps like Amazon and Flipkart. The streaming market will collectively account for 46% of the overall growth in the Indian entertainment and media industry from 2017 to 2022 (PwC India, 2018).

In India, major players those dominates telecom sector are Bharat Sanchar Nigam Limited, Bharti Airtel, Vodafone Idea Limited and Reliance Jio Infocomm. Similarly, in media sector few major players who dominate media industry include Star India, Zee Entertainment Industries, Sony Entertainment and Disney India. Finally, few OTT platforms that dominate Indian web and application media are Netflix, Amazon Prime and Hotstar etc.

Table 1: India and Major Market share of OTT

OTT Platform	Amazon Videos	Prime	Hotstar	Netflix	SonyLIV	Zee5	Eros Now
Usage Share (%)	20		20	15	5	5	5

Binge Watching during Covid 19

The recent Covid 19, novel corona virus has forced everyone to standstill starting from the business world to the entertainment world. In this period there was a complete shutdown and advisory of complete isolation of movie theaters, musical festivals, different entertainment parks, restaurants, sports, and business houses and the entire country. Suddenly, the moving crowd started living and restricted themselves at respective home with limited resources of recreation during this period of lockdown. These above reasons of isolations lead people towards watch web-series than traditional TV and that's how 'binge watching' got commonly accepted for its easy availability, accessibility and affordability (Umesh and Bose, 2019). The binge watching and binge serving turn to be a safe place for every set of people during this pandemic for both the content creators to binge followers. In the word of Starosta et al. (2019) that binge watching is considered as an escape from the real situation. Therefore, during this pandemic the significant growth of 30% viewership increased during the initial phase of lockdown in 2020. Similarly, with the growing demand and overwhelming response from audience during this pandemic, several content creators also chosen OTT platform to run their business. This content includes feature films, documentaries, and web-series in different languages. Before the Covid 19, in India there were only few players running the OTT platform and the entire market to be believed as monopoly. In the later stage, other players like Amazon Prime Video, Disney+ Hotstar and Netflix dominate the OTT market in India and self-regulated their own content.

The Covid 19 forced everyone to stay at home, the social distancing and interactions were at bay, people slowly adopted this medium to their daily life cycle. This way binge watching became a most preferred way of reduce stress, avoid boredom and overcome loneliness. The common thought of 'loneliness' that hovers the minds of people and missing their buddies, life partners, parents. The act of binge watching filled colours in their solitary and introvert moments during the pandemic (Starosta et al. 2019). It is also found that the Southeast Asian countries like India, Bangladesh and Indonesia were few countries that adopted binge-watching culture during Covid 19 period massively. This adoption significantly increased binge watching in the above countries and as a result OTT players captured the entertainment market easily through variety of online content. These numerous online contents invite regulatory issues for these payers as they neglected self-regulations and censor to their content.

The penetration of such digitalisation and Covid 19 has enforced consumers a variety of ways to watch movie or TV through online streaming. In such situation, the OTT player had compromised with online content and the issues of transparency, accountability, abuse in social media, censoring digital content, and rights of users related to digital media have cropped up. Significantly, the issues became more serious because of several factors; *firstly*, the government

opened up new media platforms to do business in India; *secondly*, the social & digital media platform dependency of people during Covid-19; and *thirdly*, no proper mechanism to control such digital contents. Additionally, other issues that gave space to OTT platforms were allow consumers to watch their favourite shows at their convenient time, without commercial breaks, easily accessible, spending free time among young adults etc. These above factors have a significant impact on the frequency and the amount of time spent on binge-watching. *For instance*, the popularity and the number of subscribers of such Netflix increased significantly which were 5 million in 2012 to 167 million in 2020 (Jolanta A. Starosta and Bernadetta Izydorczyk 2020).

Regulatory and Legislative Mechanism: Offline & Online Content

It was all started with the invention of Television in 1934 & Colour TV in 1940 of the 20th centuries that slowly became the luxury to a household necessity (Kafka, 2012). There was a quick shift from Radio industry to TV industry with no time (Rutika Raikar, 2017). After the post war of WW II, the TV production and programmes expanded, and saw a boom in television in 1950s and 1960s (Kafka, 2012). This time another significant development took place in the cable industry, the evolution of cable player competes with local TV stations. However, due to some regulatory issues, it took many years to expand its market. Whereas, the TV industry expanded continuously and there were many channels were entered in the TV industry with the growing demand for entertainment. In 70s & 80s again the cable television favoured by audience as this brought many new series of violence and obscene scene in their platform but audience loved it (Rutika Raikar, 2017).

During this phase, the cable television programming accepted by consumers hugely due to two reasons. First, because of its shows like "The Sopranos" and "Sex in the City" and many more show like this; second, these series were exempted from standard FCC regulations. Therefore, taking the advantage of such situation producers started broadcasting graphic violence, vulgarity, gratuitous sex and foul languages to attract the audience (Rutika Raikar, 2017).

The internet penetration initially started in 1980s and expanded its arms slowly through the telecom services that cover information, education to entertainment. Slowly this growth of internet brought new changes in the entertainment world such as watching television through network, on demand entertainment and unlimited sources through internet via television and telecom. This fundamental shift forced; the television industry to evolve with the evolution of technology. However, the appointment television viewing is seen to be fading away with every passing day due to the rapid proliferation of voice, video and OTT application services being delivered over networks with open choice of watching series at their own time (Ashima Obhan & Akanksha Dua 2020). These changes of digital medium content by OTT players demand specific law to regulate the said platform and its content served.

Legislations that regulate Online Content: *Before the Amendment*

In India until now there was no law that regulate directly the online information, content, distribution, safety and regulation upon the violation. *For instance*, the *Cable Networks Television (Regulation) Act, 1995*, *Programme Code 1994 ('Code')* and '*Television Broadcasting of India*' controls the cable operators and all contents displayed in television and cinema industry etc. These legislations invite strict action against the cable operators anything that break the peace, harmony, contains anything obscene, defamatory, deliberate false and suggestive innuendos and half-truths, anti-national attitudes and incite violence and contains etc. Similarly, the *Cinematograph Act 1952* and the rules under this act regulate the public exhibition films in India. Further, the *Central Board for Film Certification ('Board')*, issued certifies to the public films under the Act. This ensures principles such as friendly relations with other states, public order, decency and morality while issuing certificate. However, there is no specific legislation until last year on OTT platform.

Table 2: Legislations on Online Content - Before the Amendment

Indian Constitution Article 19 (1) Article 19 (2)	Article 19 (1) provides everyone the Freedom of Speech. However, the Article 19 (2) imposes certain reasonable restrictions given in Article 19 (1) that should not lead to hamper the public order and should always with the ambit of wellbeing of the state and international relations.
Indian Penal Code 1860 Section 293 Section 295 A Section 499 Section 354	Under the Section 293 of IPC, anyone who "indulged in the selling or distribution of work of literature that is obscene in nature"; under the Section 295 A, anyone who "intentionally outraging religious sentiments that is done maliciously"; under section 499, any act of publishing defamatory content and section 354, who insults any woman's modesty would be punishable under the IPC.
The Indecent Representation of Women (Prevention) Act, 1986	It provides women dignity by representation of women prohibiting indecent in advertisements, books, painting and movies etc.
The POCSO (Protection of Children from Sexual Offences) Act	It prohibits all kinds of selling and distributing of child pornography
The Information Technology Act, 2000	Sections 67A, 67B and 67C if the IT Act, 2000 prohibits "transmission or publication of any kind of obscene material, any sexually explicit material including those where children are depicted in sexual acts". Section 69 A of the IT Act provides, the Central Government sufficient powers to issue directives to block certain information to be in public access,

Table 3: Important Legislations relating to Telecoms, Internet and Audio-Visual Media

SI No	Important Legislation
1	Indian Telegraph Act, 1885 ("Telegraph Act") and the rules framed thereunder
2	Wireless Telegraphy Act, 1933 ("Wireless Act") and the rules framed thereunder
3	Telecom Regulatory Authority of India Act, 1997 ("TRAI Act"), and regulations, orders and directions issued by TRAI
4	Circulars and Directions issued by the Department of Telecommunications ("DoT")
5	Cable Television Networks (Regulation) Act, 1995 ("Cable TV Act") and the rules framed thereunder
6	Cinematograph Act, 1952 and the rules framed thereunder;
7	circulars, directions and guidelines issued by the Ministry of Information and Broadcasting ("MIB") and TRAI

Table 4: Regulatory Authority of Media, Telecoms, Internet & Audio-Visuals in India

Major Regulatory Bodies: Telecom sector	Major Regulatory Agencies: Audio-visual media distribution sector
Department of Telecommunications ("DoT")	<i>Telecom Regulatory Authority of India ("TRAI")</i>
<i>Telecom Regulatory Authority of India ("TRAI")</i>	Ministry of Information and Broadcasting ("MIB")
Wireless Planning and Coordination Wing of the DoT ("WPC")	Wireless Planning and Coordination Wing of the DoT ("WPC")
Telecom Disputes Settlement and Appellate Tribunal ("TDSAT")	Central Board of Film Certification ("CBFC")
Self-regulatory industry bodies and associations such as: <ul style="list-style-type: none"> Cellular Operators Association of India the Infrastructure Providers Association. 	Self-regulatory industry bodies such as: <ul style="list-style-type: none"> Advertising Standards Council of India ("ASCI") News Broadcasters Association ("NBA") Indian Broadcasting Foundation ("IBF")

Self-regulatory Code in OTT Platform: *Not Enough*

Many of these OTT payers before the new amendment were running their content through various 'self-regulatory code' which is known as 'Code of Best Practices for Online Curated Content Providers'. In 2019, most of the OTT players have signed this code to maintain best practices with an objective to provide information relating to categorization of content into separate categories, age sensitive and prohibited content, disclaimer system for content that is unsuitable for certain age groups (Business Line 2021). Additionally, this code also facilitates a 'grievance redressal mechanism' for consumer to listen their concerns and complaints regarding the online content. However, like other existing media laws in India such as tv contents, film contents and certifications, the self-regulatory code did not serve the purpose. Therefore, the self-regulatory mechanism by OTT players failed due to absence of proper censorship and regulatory mechanism. A huge demand across the country was felt to bring a separate legislation to online content.

OTT Platform & Recent Regulatory Developments

Despite of the entire above legal & judicial framework on electronic & print media, the digital/online media have been left with unregulated and neglected. At one instance, replied to a query filled under Right to Information Act, 2005, the Ministry of Information and Broadcasting ("MIB") stated that the Ministry has limited control and regulation over the online materials. However, with the development of OTT platform, several attempts have been taken by OTT players to self-regulate in more transparent way under MIB (Ashima Obhan and Bambi Bhalla, 2020). After few controversies, the court has ordered to establish a control mechanism to regulate such platforms through the IT Act. Recently, the Government of India (GoI) issued notification to bring the digital/online media platform under the ambit of the Ministry of Information and Broadcasting ("MIB"). This notification clarifies that OTT providers will have now on the direct control under the MIB (Ashima Obhan and Bambi Bhalla, 2020).

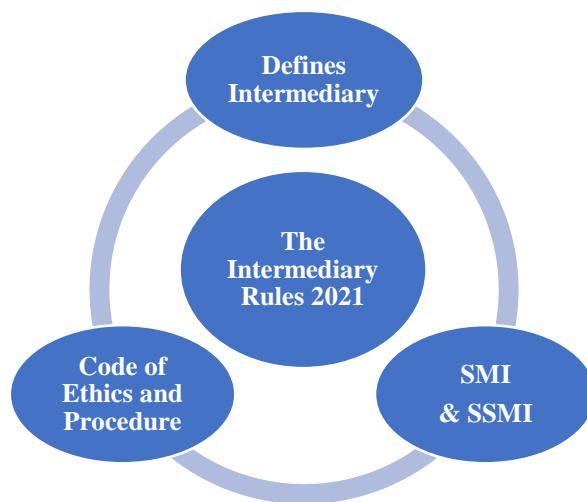
In 2018, dismissing public interest litigation ("PIL") by an NGO, the Delhi High Court on *Justice for Rights Foundation v. Union of India* stated that "MIB was of the view that online platforms were not required to obtain any license from it for displaying its content and that the same was not regulated by it". Then, it went to the Ministry of Electronics and Information Technology ("MeitY"), where it had denied about any regulation of internet content and any issuance of license to any organization or permission them to flout online content. Further, the court explored the jurisdiction of IT Act under Section 69, in order to monitoring and blocking of content etc. The court further expressed the prescribed punishment under Section 66A and 67B for "sending offensive messages through communication service, publishing or transmitting obscene material in any electronic form, publishing or transmitting material containing sexually explicit material, publishing or transmitting material depicting children in bad taste" (IT Act 2000). Therefore, the court has come to a conclusion that hence there is no any specific regulation for internet platform, the same can be considered under the provision of IT Act whenever any complaint received and hence stringent provisions already in place under this act.

OTT Platform and the Intermediary Rules 2021

The OTT platform until now was a free run site despite the self-regulated codes and existing legislation for the online content. The race of digital content slowly unregulated and this allowed free hand to the content creator. Further, the huge demand of diverse people in India allowed these players to provide diverse content according to their demand and choice. However, with the growing trends of OTT platform lunched in India, numerous controversies pup-up relating to obscenity, defamation, hurting of religious sentiments, etc. And these controversies, turns into dispute with no time and reached several Indian courts including Apex Court. The growing controversies and disputes forced the Indian government to bring regulations and policies to control such online content. As a result, the Ministry of Electronics and Information Technology and the Ministry of Information and Broadcasting (MIB) with the consultations with several stakeholders last year has notified the "Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules 2021 (Rules) (Intermediary Rules 2021) under Section 87 of the Information Technology Act, 2000 (IT Act 2000)" (Saksham Kumar, 2021).

The primary goal of the 'Intermediary Rules 2021' is in many folds to regulate the social media platforms along with OTT platform. The said rules further divided into three parts; "(a) Part I, deals with all the terms used in the rules; (b) Part II, deals with the due diligence requirements on social media intermediary (SMI) and a significant social media intermediary (SSMI); (c) Part III, deals with the code ethics and procedure and safeguard in relation to digital media" (Intermediary Rules 2021).

Table 5: Three-tier of 'The Intermediary Rules 2021'



Source: Intermediary Rules 2021

The Section 2(w) of the IT Act defines intermediary as "intermediary", with respect to "any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes". The Intermediary Rules 2021 introduce the concept of a "SMI" and define it to mean

"an intermediary which primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services". Based on the number of users on the social media platform, intermediaries have been divided into "SMI" and "SSMI" (number of registered users in India should be above 50 lakhs as notified by the Central Government).

The SMI and SSMI under the Intermediary Rules 2021, have to follow certain due diligence while discharging their duties in terms of publish, remove, protect, access, grievances etc.

Table 6: Due Diligence & Intermediary Rules 2021

<p>Social Media Intermediary (SMI)</p>	<ul style="list-style-type: none"> • Publish: It should maintain confidentiality on user's data received through Users Agreement and Rules, and should not encourage obscene, pornographics, harmful to a child. Also should not hamper and threatens the sovereignty & integrity of India. • Remove: Any objectionable content should be removed within 36 hours • Protect: It should compliance with the procedure laid down in the Information Technology Security Procedure Rules 2011. • Report: It should report the Government India's Computer Emergency Response Team in case of any cyber security incident • Grievances: It should display and maintain transparency on the contact details of Grievance Redressal Officer (GRO). A mechanism need to be developed and maintained to lodge complaint against the online content . The GRO has to take complaint seriously on receipt and act instantly.
<p>Sgnificant Social Media Intermediary (SSMI)</p>	<ul style="list-style-type: none"> • Appoint: In order to compliance with IT Act and corresponding rules, it shall appoint Chief Compliance Officer (CCO) and a Nodal Contact Person to help the law enforcement agencies. • Physical Address: A physical address is must in India and published on website for easy communication • Objectionable contents: A technology-based measure shall be established to identify and remove any sexually explicit content. This also warn users with a notice who is attempting to access such objectionable information. • Complaints: Must develop a mechanism to receive and process complaints with a unique ticket number. It must also provide required information to the complainant about the result of complaint made. • Safe harbour: It must adhere the 'Intermediary Rules 2021'. Upon non-compliance 'Intermediary Rules 2021', the protection under Section 79(1) of IT Act, is meaning less. • Compliance Reports: It must publish every month the compliance report relating to received complaint and action taken on that
<p>Code of Ethics and Procedure</p>	<ul style="list-style-type: none"> • The Intermediary Rules 2021, through the code of ethics regulate OTT platforms and digital media platform. Further, this code classified the OTT platform content into several categories, such as "U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult)". • Additionally, the platform required to maintain and regulate parental locks for content classified as U/A 13+ or higher. The OTT platform also required to display content descriptors informing the users at the begin of every programme in details. • It also prescribes classification of content based on viewer's age, themes, content, tone and impact, and target audience; and requires OTT platforms to give due consideration to sovereignty, security, friendly relations of India, etc.

Source: Intermediary Rules 2021

Conclusion

The changing paradigm of information technology in last few decades has brought digital revolution in India. This revolution accepted by every set of people as well as by the government of India. However, few grey areas such as social media and OTT platform that became unregulated from the beginning and taken advantages of non-regulations. With the growth of pandemic, the OTT platforms flourishes its business with compromising the self-regulatory mechanism to reach

out people by providing the content on demand without bothering the social, cultural and mental impact on society and people. The unscrutinised contents brought the concerns of content regulation and as a result there was a common pressure from different stakeholders to establish for an institutional mechanism to regulate such platforms. No doubt, the timely action of government to bring the 'Intermediary Rules 2021' is surely a win-win situation and to control these platforms from nudity, absences, vulgarity, and to play with the religious sentiment of people. Further, this mechanism will surely help the OTT players and diverse users in India.

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