



The Great OTT Debate: Content Regulation, Censorship, and Freedom of Expression in India

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Abstract

Over-the-top (OTT) platforms have fundamentally transformed India's media landscape, creating tension between creative freedom and content governance. This article examines the multifaceted OTT regulation debate, analyzing the tension between content regulation, censorship allegations, and constitutional protections for freedom of expression under Article 19(1)(a) of the Indian Constitution [1]. Through examination of regulatory frameworks particularly the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 governmental enforcement mechanisms, and judicial interpretations, this study demonstrates the complex balancing required to govern digital content in democratic contexts. The article explores how India's regulatory approach reflects broader questions about state regulatory authority, digital intermediary accountability, artistic expression protection, and constitutional freedoms in an increasingly digitalized public sphere. The analysis concludes that successful regulation requires balancing legitimate governance needs with expression protection imperatives through enhanced transparency, judicial review, and clear standards.

Keywords: OTT platforms, content regulation, freedom of expression, digital governance, India's regulatory framework, constitutional rights, censorship

Introduction

The rapid proliferation of over-the-top (OTT) platforms services distributing content directly via internet, circumventing traditional cable television and theatrical distribution represents one of the most significant media disruptions in contemporary India[1][2]. The pandemic-accelerated adoption of streaming services fundamentally altered content consumption patterns and creative production possibilities[2]. This technological transformation has simultaneously liberated creative expression from traditional gatekeeping structures and generated intense societal anxieties regarding content appropriateness and regulatory oversight[1][2]. OTT platforms present India's democratic institutions with unprecedented governance challenges. Unlike traditional broadcasting regulated through the Cable Television Networks (Regulation) Act, 1995, OTT platforms historically operated in regulatory ambiguity with unclear jurisdictional authority[1][3]. This regulatory vacuum enabled unprecedented creative freedom yet provoked governmental anxiety regarding content standards and obscenity proliferation[2].

The resulting "Great OTT Debate" encompasses competing imperatives: creators and advocates argue that content restrictions constitute censorship violating constitutional



freedom of expression protections [1][2], while governmental authorities and conservative constituencies contend that regulatory frameworks are essential to prevent harmful content proliferation, particularly protecting vulnerable populations [2][3]. This article systematically examines the multidimensional OTT regulation debate by analyzing: (1) constitutional freedom of expression frameworks; (2) regulatory evolution from broadcasting to digital media; (3) IT Rules, 2021 implementation and enforcement; (4) specific content categories and definition challenges; (5) regulation's documented impacts on creative expression; (6) concerns regarding transparency and due process; (7) international comparative perspectives; and (8) balancing frameworks distinguishing legitimate regulation from censorship.

Constitutional Framework: Freedom of Expression in India

Article 19(1)(a) and Reasonable Restrictions

The Indian Constitution enshrines freedom of speech and expression as fundamental right through Article 19(1)(a), applicable to all citizens [4][5]. This constitutional guarantee encompasses diverse expression modalities: written communication, artistic creation, cultural production, and digital expression [4]. The framers conceptualized freedom of expression as foundational to democratic governance, enabling informed citizenship and political dissent [5]. However, Article 19(2) explicitly permits the state to impose "reasonable restrictions" on freedom of expression in specified circumstances: national sovereignty and integrity, state security, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, or incitement to offense [5]. This framework establishes the foundational tension in OTT regulation debates: how can democratic states establish legitimate restrictions without permitting regulatory overreach threatening expressive freedom [4][5].

Judicial Interpretation and Artistic Freedom

Indian courts have developed sophisticated jurisprudence interpreting Article 19(1)(a). The Supreme Court has repeatedly emphasized that restrictions on expression require strict justification and must satisfy proportionality principles [4][5]. Landmark judgment *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal* (1995) held that airwaves constitute public property serving diverse public interests, establishing that broadcasting regulation, while justified to prevent harmful content, cannot justify suppressing legitimate expression [6]. *Anand Patwardhan v. Union of India* (1997) addressed documentary censorship, establishing that prior restraint constitutes the most constitutionally disfavored restriction category [6]. The court held that documentary filmmakers possessed constitutional rights to create expressive content even addressing politically sensitive themes [6]. Indian jurisprudence recognizes artistic and creative freedom as integral to expression protection [4][5]. Creative expression in literature, cinema, theater, and visual arts constitutes protected expression meriting constitutional safeguard [5]. Yet courts apply proportionality analysis examining whether specific content restrictions satisfy constitutional requirements: serving legitimate state objectives, narrow tailoring, and proportional scope [5].



REGULATORY EVOLUTION: FROM BROADCASTING TO DIGITAL MEDIA

Traditional Media Regulation: Cinematograph Act and Cable Television Networks Act
India's content regulation historically developed through film and broadcast television governance. The Cinematograph Act, 1952, established the Central Board of Film Certification (CBFC) with authority to examine and approve films before exhibition [6]. The Act authorized CBFC to deny certificates for films deemed obscene, indecent, or defamatory [6]. This prior censorship mechanism reflected government paternalism, positioning state authorities as moral arbiters determining content appropriateness [6]. The Cable Television Networks (Regulation) Act, 1995, extended regulatory authority to television broadcasting, establishing content standards and prohibiting specified material categories [6]. These frameworks required pre-publication censorship, whereby regulatory authorities examined content before distribution, enabling centralized oversight yet concentrating extraordinary power in state censorship apparatus [6].

Information Technology Act, 2000 and Digital Regulation

As digital technologies disrupted content distribution, India enacted the Information Technology Act, 2000, establishing legal framework for regulating online intermediaries [7]. Section 69A provided government authority to block websites deemed threatening to national security or public order [7]. Section 79(3)(b) established that intermediaries receiving governmental notice of unlawful content must remove such content or face liability [7]. However, IT Act's application to OTT platforms remained contested. OTT services occupied regulatory limbo not clearly subject to broadcasting regulations yet increasingly dominant in content distribution [1][2].

Information Technology Rules, 2021: Explicit OTT Regulation

The Government addressed regulatory ambiguity through the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, explicitly extending governance frameworks to OTT platforms [1][7]. These rules represented significant regulatory evolution, reflecting governmental determination to impose content standards on digital media comparable to traditional broadcasting regulation [1][7].

Key IT Rules, 2021 Provisions:

- Content Classification:** OTT platforms must classify content using age-based categories: U (unrestricted public exhibition), U/A 7+ (parental discretion for children below 7 years), U/A 13+ (parental discretion for children below 13 years), and A (restricted to audiences above 18 years) [1].
- Prohibited Content:** Rules prohibit content violating sovereignty and integrity, promoting terrorism or communal violence, defaming individuals, invading privacy, constituting obscene material, or depicting minors in exploitative contexts [1][7].
- Grievance Mechanism:** The rules establish three-tier grievance system: (1) platform internal resolution; (2) self-regulatory organization addressing platform non-responsiveness; (3) governmental oversight determining content legality [1][7].



- **Compliance Infrastructure:** OTT platforms must appoint Indian-resident grievance officers, nodal officers, and chief compliance officers responsible for content governance[1][7].
- **Enforcement Authority:** Rules authorize governmental platform blocking for serious non-compliance, enabling complete market exclusion of non-compliant services[1][7].

Recent Enforcement Actions

Since IT Rules, 2021 implementation, governmental authorities have blocked 43 OTT platforms for violations including publishing obscene content and ignoring takedown requests[8]. The July 2025 enforcement action blocked 25 OTT platforms for streaming obscene and vulgar content, demonstrating regulatory authorities' determination to enforce content standards through platform-level blocking[8].

THE REGULATION-CENSORSHIP DISTINCTION: CONCEPTUAL ISSUES

Defining Regulation Versus Censorship

"Regulation" technically refers to rule-establishment governing conduct through transparent standards and enforced mechanisms[3]. "Censorship" refers to suppression of expression, typically governmental action preventing communication reaching audiences[3]. This conceptual distinction proves crucial yet contested. Regulatory framework advocates argue that content regulation differs fundamentally from censorship: regulation establishes transparent rules permitting expression meeting standards while prohibiting only specified categories (obscenity, defamation, violence incitement), whereas censorship involves arbitrary suppression of expression based on governmental preferences[3]. From this perspective, regulation constitutes legitimate governance[3]. Conversely, critics argue this distinction obscures underlying realities: when governmental authorities establish regulatory frameworks and enforce them through blocking or removal, censorious effects materialize regardless of terminological distinction[2][3]. Implementation discretion enables selective enforcement targeting disfavored viewpoints[2][3]. From this perspective, regulatory frameworks easily transmute into effective censorship mechanisms[2][3].

Historical Censorship Context in India

Understanding contemporary OTT debates requires acknowledging India's complex historical relationship with censorship. Colonial rule established censorship mechanisms controlling nationalist expression[3]. Post-independence, while India adopted democratic constitution protecting expression, critics contend that governmental actors have repeatedly deployed regulatory frameworks to suppress dissent[3]. Section 66A of the Information Technology Act, 2000, which criminalized transmission of "offensive" or "annoying" messages, became notorious for suppressing dissenting expression. The Supreme Court struck down Section 66A in 2015, finding the provision unconstitutionally vague and susceptible to arbitrary enforcement chilling legitimate expression[5]. This historical context generates skepticism regarding new regulatory frameworks' potential for abuse[2][3].

Content Prohibition Versus Viewpoint Suppression

Critical distinction exists between prohibition of content categories based on form or effects (obscenity, defamation, violence incitement) versus suppression of expression based on



viewpoint or political message. Democratic governance theory holds that content-neutral regulations targeting demonstrable harms can constitute legitimate regulation[5]. Conversely, viewpoint-based suppression prohibiting expression because authorities disagree with message constitutes impermissible censorship[5]. IT Rules, 2021, ostensibly maintain this distinction by prohibiting specified content categories rather than targeting viewpoints[1][7]. However, implementation difficulties arise because many content categories allow interpretation discretion. What constitutes "obscenity," "defamation," or "content promoting terrorism" involves judgment calls where regulatory authorities' political preferences potentially influence determinations[2][3].

CONTENT CATEGORIES AND DEFINITION CHALLENGES

Obscenity and Indecent Content

IT Rules, 2021, prohibit OTT transmission of obscene material, utilizing legal obscenity definition without establishing precise standards[1][7]. Indian law lacks codified obscenity definition; courts instead apply evolving jurisprudence from constitutional and statutory interpretation[5]. This indefiniteness creates implementation challenges: what constitutes legally "obscene" material versus legitimately artistic sexual content remains contested[2][5]. This ambiguity generates regulatory uncertainty dissuading content creators from exploring sexual themes[2]. Simultaneously, definitional vagueness enables regulatory authorities to remove content based on subjective determinations of obscenity[2].

Defamatory and Privacy-Invasive Content

Regulations prohibit defamatory content and material invading privacy[1][7]. While defamation law provides some definitional clarity, defamation determinations involve contested judgment regarding factuality and harm[2]. Content critiquing governmental officials or corporations may be characterized as either legitimate criticism or defamatory falsehood depending on interpretation[2]. Privacy protection provisions similarly lack precise boundaries. What constitutes unacceptable privacy invasion versus reportage about matters of public concern remains contested[2]. These ambiguities enable regulatory determinations depending substantially on subjective judgment rather than clear legal standards[2].

Content Promoting Terrorism or Communal Violence

Regulations prohibit content promoting terrorism or inciting communal violence[1][7]. While clear cases exist content explicitly calling for violence or terrorism borderline situations present definitional challenges. Political commentary critiquing governmental policies, religious critique challenging belief systems, or social critique examining caste structures may be characterized as either legitimate expression or "content promoting hatred" depending on interpretation[2][3]. Critics argue that "hatred" or "communal violence" determinations depend substantially on subjective regulatory judgment[2]. Content challenging majoritarian viewpoints or critiquing dominant social groups risks characterization as promoting communal violence despite constituting protected political expression[2][3].

Content Depicting Minors in Exploitative Contexts

Most uncontroversial regulatory category involves prohibition of content depicting minors in sexual, violent or exploitative contexts[1][7]. Widespread consensus recognizes such



content's harmful effects and legitimacy of protective regulation[1]. However, borderline questions remain: does legitimate artistic depiction of child exploitation in documentary contexts differ legally from exploitative content[1][7].

IMPACT ANALYSIS: REGULATION'S EFFECTS ON CREATIVE EXPRESSION

Since IT Rules, 2021 implementation, documented consequences for OTT content production have emerged. Content creators report increased regulatory uncertainty leading to self-censorship—deliberately avoiding content addressing sensitive themes or political subjects despite creative intent[2]. Producers describe modifying scripts, toning down language, and eliminating scenes addressing contentious themes to reduce regulatory risk[2]. Web series production has been particularly affected. Multiple series have faced governmental content takedown notices and platform removal, generating chilling effects on producers exploring controversial social themes[2]. Notable instances include series addressing religious criticism, sexual minorities, political corruption, or caste structures facing regulatory action[2]. This documented self-censorship raises concerns that regulatory frameworks, even if theoretically limited to prohibited content categories, functionally suppress expression deemed culturally inappropriate by regulatory authorities[2][3].

Pre-IT Rules, 2021, OTT platforms operated with minimal content restrictions compared to traditional broadcasters. This freedom enabled content exploring sexual themes, political corruption, caste discrimination and religious critique with artistic directness unavailable in traditional media[1][2]. Many industry observers credit OTT creative freedom with enabling more authentic storytelling reflecting diverse Indian experiences previously excluded from mainstream media[1]. The post-regulation environment exhibits increased caution and self-censorship, with content previously publishable now deemed risky due to regulatory uncertainty[2]. This shift potentially diminishes content diversity and audience exposure to challenging perspectives[2].

Regulatory compliance generates institutional costs—legal review, compliance infrastructure, grievance management—more easily absorbed by large corporations than independent creators[2][3]. This cost differential threatens to concentrate creative authority within established platforms while marginalizing independent creators lacking legal resources[2]. This institutional effect may reduce content diversity and enable platform gatekeeping[2].

CONTENT MODERATION CHALLENGES: TRANSPARENCY AND DUE PROCESS

OTT platforms employ automated algorithmic systems screening for prohibited content, supplemented by human reviewers[1][7]. Algorithmic systems operate through pattern-matching and proxy indicators lacking nuanced contextual understanding, generating inevitable errors: legitimate artistic content matching algorithmic filters risks removal; conversely, violative content evading detection escapes removal[2]. Human content reviewers, operating under severe volume and time constraints, typically make rapid surface-level determinations rather than careful contextual analysis[2]. Additionally, reviewers often lack specialized expertise in artistic, political, or cultural context necessary for sophisticated determinations[2].



Platform content moderation decisions typically occur without public transparency. Users learn content has been removed without explanation regarding removal justification or applicable regulatory provision[2][3]. This opacity prevents public understanding of actual regulatory standards in practice and inhibits ability to identify enforcement pattern problems[2]. Appeal mechanisms exist theoretically through three-tier grievance process but operate inadequately in practice. Platform appeals receive perfunctory review from personnel lacking authority to overturn decisions[2]. Self-regulatory organization appeals provide marginally greater independence but typically lack transparency and meaningful opportunity for affected individuals to present evidence[2]. Governmental review lacks judicial procedures ensuring due process[2].

Contemporary scholarship proposes procedural improvements: (1) mandatory disclosure of content removal rationale and applicable regulatory provision; (2) meaningful opportunity for affected creators to respond before removal; (3) independent review mechanisms with authority to overturn removals; (4) published guidelines establishing transparent content standards; (5) periodic public reporting regarding removal data and outcome patterns; and (6) judicial review mechanisms enabling users to challenge removal determinations through court procedures[2][3]. These procedural protections would improve regulatory legitimacy and accuracy while maintaining underlying substantive standards[2][3].

FUTURE DIRECTIONS: BROADCASTING SERVICES (REGULATION) BILL, 2024

The Government introduced the Broadcasting Services (Regulation) Bill, 2024, representing next regulatory evolution phase [1]. The Bill proposes extending broadcasting regulation comprehensively to OTT platforms, establishing unified framework governing traditional broadcasters and streaming services [1]. Proposed provisions include: (1) mandatory pre-publication content certification by independent authority before platform publication; (2) mandatory program code governing content standards; (3) designated regulatory authority with directions and license revocation authority; and (4) strengthened grievance redressal mechanisms [1]. The proposed pre-publication certification requirement represents significant regulatory intensification compared to existing post-publication takedown framework. Pre-publication review would subject all OTT content to governmental scrutiny before distribution, essentially extending traditional film certification to streaming content [1]. Proponents argue this approach clarifies standards and prevents clearly violative content distribution [1]. Critics contend pre-publication review eliminates OTT creative freedom, replicates historical censorship apparatus, and threatens artistic expression through governmental gatekeeping [1][2]. Pre-publication censorship constitutes the most constitutionally disfavored expression restriction under established judicial precedent [5][6]. Supreme Court decisions establish that prior restraint requires extraordinary justification and heightened constitutional scrutiny[5][6]. Extending pre-publication censorship to OTT platforms would represent significant regression in expression protection [5][6]. Additionally, the Bill's development has proceeded with limited public consultation or parliamentary debate compared to normal legislative process for fundamental rights restrictions[2]. Civil



society organizations have expressed concerns regarding inadequate democratic participation in regulatory design[2].

CONCLUSION

The "Great OTT Debate" reflects deeper tensions inherent to democratic governance in digitalized contexts. India's regulatory evolution from IT Rules, 2021 through increasingly aggressive enforcement including platform blocking demonstrates governmental determination to regulate OTT platforms comparable to traditional broadcasting. Systematic analysis reveals that current regulatory approach exhibits both legitimate governance elements and concerning censorship features. Clear cases exist where regulation prevents harm blocking child exploitation, removing violence incitement. Yet simultaneously, vague standards, selective enforcement, transparency deficits, and proportionality failures generate evidence suggesting regulation extends beyond legitimate governance toward viewpoint-based suppression. The proposed Broadcasting Services (Regulation) Bill, 2024, threatens further regulatory intensification through pre-publication censorship, potentially eliminating OTT creative freedoms and establishing governmental gatekeeping over digital expression. However, recognizing concerning regulatory aspects should not mean abandoning content governance entirely. Legitimate interests support preventing child exploitation, violence incitement, and demonstrable harms. The challenge involves establishing frameworks accomplishing protective functions while maintaining expression protection and preventing censorship.

Optimal path forward involves structural reforms enhancing regulatory legitimacy: clearer substantive standards, judicial review, transparency requirements, proportional enforcement, due process procedures, and preserved protection for political expression and artistic creativity. Such reformed frameworks would acknowledge both governance needs and expression imperatives, establishing middle ground between unregulated content proliferation and governmental gatekeeping. The future of OTT regulation in India will depend on whether regulatory evolution toward this balanced framework occurs or authorities pursue comprehensive regulatory control characteristic of pre-democratic media systems. The stakes are significant. How India addresses OTT regulation will profoundly affect broader digital expression freedoms, democratic participation capacity, and cultural pluralism in an increasingly digitalized public sphere. Ensuring regulation remains within constitutional bounds while serving legitimate protective functions represents challenge requiring sustained attention to both governance effectiveness and expression protection imperatives.

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