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# Legal Framework of Over the Top (OTT) Platforms in India

# Akkiraju Akhila

School of Legal Studies, Reva University, Bengaluru, Karnataka, India

Abstract: The Indian government has been working on creating a legal framework for Over-The-Top (OTT) platforms in the country. OTT platforms refer to online streaming services like Netflix, Amazon Prime, and Hotstar which deliver content directly to viewers over the internet. The aim of this legal framework is to regulate and monitor the content available on these platforms to ensure that it does not offend cultural or religious sensibilities and does not promote hate speech methodology. The government has formed a committee to study the issue and make recommendations for a regulatory framework. The committee has held consultations with stakeholders from the OTT industry, traditional media companies, civil society, and other interested parties. Findings: The committee has recommended the creation of a self-regulatory body for the OTT industry, which will be responsible for ensuring compliance with the new guidelines. The guidelines require platforms to classify their content into appropriate age categories and to ensure that it does not promote terrorism, violence, or other forms of hate speech. Conclusion: The legal framework for OTT platforms in India is still a work in progress, but the government's efforts are a step towards creating a more transparent and accountable online content ecosystem. The self-regulatory body and guidelines proposed by the committee will help ensure that the OTT industry operates within reasonable bounds and respects the cultural and religious diversity of the country.

Keywords: OTT platforms, Legal framework, India, Regulation, Monitoring, Cultural sensitivity, Hate speech, Consumers

## 1. Introduction

Over the past decade, the usage of Over-The-Top (OTT) platforms has increased drastically in India. OTT platforms have become a go-to medium for entertainment, news, and information for millions of Indians. However, with this increase in usage, there have been concerns over the legal framework governing these platforms. This article aims to provide an overview of the legal framework governing OTT platforms in India, including the laws, regulations, and guidelines issued by the Indian government<sup>1</sup>.

Over-the-top (OTT) channels are now a haven for creators of content in the 21st century. This was especially true throughout the outbreak, as several media artists pushed their videos to broadcast through such Over-the-top and received a tremendous response. OTTs are web-based service providers that offer consumers a link to video and audio files held on their server. After purchasing permission through the supplier, they begin to solely air content that was previously screened in theaters. However, they are now creating material of their own, such as motion pictures, documentaries, and web series. The number of paid OTT subscribers in the United States increased thirty percent between February and July 2020 from 22.2 million to 29.0 million. Before Prime Video, which is Alexa's OTT customer service invaded the fight, Netflix was thought to have an overwhelming grip on the OTT market. Prime Video, Disney+Hotstar, Netflix, or rivals abroad like Alt Balaji, Voot, or Sony Pictures Entertainment are among those that compete in the nation of India. It could be argued that these types of platforms frequently find themselves involved in legal trouble due to their tendency to self-police the shared content.

# 2. Background

OTT is an acronym to earn Over-The-Top services. Overthe-top (OTT) media services are those that are transmitted directly to users throughout the World Wide Web. Access to online video services is relatively simple via laptops, desktop applications, or mobile phones and tablets. The present statistics indicate that the country's population of net consumers is going to rise by around forty percent to across 750 million individuals and 800 million by 2023, while the total amount of cell phones will double to 650 million individuals and 700 million. There's a progressive increase in the percentage of people adapting to the change. Despite the rise of local video-on-demand services like Hotstar and Jio, multinational corporations like Amazon Video and Netflix Prime continue to expand their share of the market. The Digital India initiative plays a pivotal role in promoting the use of over-the-top, or OTT platforms to access a wide variety of global content. It is evident that OTT services have advanced substantially since their humble beginnings, but subsequent to a worldwide epidemic, their prominence has increased exponentially as a result of a shift in individual amusement consumption patterns through all kinds of media. A worldwide epidemic has impacted the film and television industry negatively. Due to the covid crisis, movie theaters and multiplex cinemas had to close. As a consequence, production companies have shifted to online streaming services to distribute their work immediately across the internet. People began to favor OTT platforms over standard glazing due to the variety of offerings accessible via these networks, their availability of worldwide written material, and the virtually infinite variety of programming options.

## Laws governing OTT platforms in India:

In India, there are many rules that control OTT platforms. The technological advances Act of 2000 and the Act regulating cable television networks of 1995 govern OTT services in India. The Information Technologies Act of 2000

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<sup>&</sup>lt;sup>1</sup> Raghavi Bohra @ Raghavi. (2021). *Impact of OTT on traditional mode of entertainment*. https://timesofindia.indiatimes.com/readersblog/raghavi/impact-of-ott-on-traditional-mode-of-entertainment-39292/

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governs communication over the internet, like OTT services. In contrast, the regulation of cable networks of 1995 oversees the transmission of TV networks.

## The laws which regulated the online content before:

We can see, no particular laws or rules have been carried out that govern the content accessible via OTT platforms; however, different parts of the Constitution in India or portions from different operations govern the material offered on OTT platforms. Among them are the following:

- Firstly, Article 19 (1) (a) of the Indian Constitution, states that every citizen has the "freedom of speech and expression", however under Article 19 (2) of the Indian Constitution, states that one's liberty is to be utilized off by implementing various acceptable limits.
- In accordance with Section 294 of the Indian Penal Code (IPC), it designs a punishment for anyone who has sold or distributed indecent literature. In addition, the intent to offend religious sentiments that are intentional and malevolent, is stated in Section 295A. Anyone guilty of disseminating defamatory satisfied, or defamation pursuant to Article 499 of the Indian Penal Code, as well as any act that abuses a woman's modesty, per Section
- The Indecent Display of Women (Prohibition) Act, enacted in 1986, is the third piece of legislation that addresses this issue. This act emphasizes ensuring a complete restriction of lewd depictions of women in commercials, novels, movies, and other forms of art.
- Additionally, the Child Protection Rights (safeguarding of Kids in Professional Offenses) Bill of 2011 makes the sale and distribution of child pornography unlawful. Also, 67A, 67B, along with 67C under the Technology Act (IT), 2000 clearly say and provide to feed consequences and jail time for anybody who conveys or presents any type of inappropriate content, as well as any materials that are sexually explicit, like images depicting children engaging in sexual conduct.
- Additionally, Section 69A of the Information Technology Act of 2000 grants the Indian government the power to publish instructions preventing public utilization of certain data.

# **Current Regulatory Regime for OTT Platforms in India**

Currently, OTT platforms in India are not subject to any specific legal framework. The platforms operate under The IT Act that governs e-commerce, usage of computers along with computer networks. However, there have been attempts to regulate these platforms through various mechanisms, which we will discuss below.

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#### **Self-Regulation**

Self-control within India is governed by the Standards of Recommended Practices for Web Edited Content Providers, and these are created by the Web and mobile device Alliance of the Countryi. e. (IAMAI) in India.

The software needs networks to categorize their materials in accordance with older-appropriateness and material type. The distribution channels are additionally obligated to supply a content summary to feed each piece of material. detailing its type, themes, and age-appropriateness.

The guidelines also include an appeal relief method through which users can file protests on inappropriate material. Within a specified time frame, social media sites need to initiate the necessary steps in response to grievances.

A few streaming services have implemented the code, as its adoption is voluntary. In addition, the code has been criticized as having been ineffectual and lacking sufficient safeguards.

# **Judicial Intervention**

The Indian judiciary has also played a significant role in regulating OTT platforms. The Supreme Court of India, in a recent judgment, observed that OTT platforms cannot be allowed to show anything and everything under the guise of creative freedom. The court called for a self-regulatory mechanism to be put in place to regulate the content of these platforms.

The court also observed that the government should consider framing laws to regulate the content of these platforms if the self-regulatory mechanism fails.

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

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021 were issued by the Indian government in February of 2021 in order to govern social networking networks as well as online media. The guidelines pertain to all forms of electronic media, including over-the-top (OTT) platforms. These regulations seek to establish an umbrella of regulations for OTT (overthe-top) services in India.

# The Rules require OTT platforms to comply with certain obligations, including the following:

The Rules mandate that OTT providers name the chief compliance officer who is accountable for ensuring accordance with the Guidelines. Appointing a head of compliance (CCO) is crucial for businesses seeking to create and keep up a robust safety initiative. A CCO is accountable

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<sup>&</sup>lt;sup>3</sup> Maneenop, S., & Kotcharin, S. (2020). Journal of Air Transport Management The impacts of COVID-19 on the global airline industry: An event study approach. Journal of Air Transport 89(August), Management, 101920. https://doi.org/10.1016/j.jairtraman.2020.101920

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for supervising and managing the company's compliance initiatives and maintaining that they meet every relevant law, restrictions, and internal guidelines. The CCO may be responsible for establishing and carrying out safety guidelines and processes, completing risk evaluations, tracking adherence to legislation and rules, offering instruction, and advising workers on compliance-related issues. The CCO may also serve as a liaison between the organization and regulatory authorities, ensuring that the organization is in compliance with all regulatory requirements. The appointment of a CCO demonstrates an organization's commitment to compliance and helps to establish a culture of compliance within the organization. It also helps to ensure that the organization is proactive in identifying and addressing compliance risks before they escalate into serious problems.

Compliance with the Code of Ethics: The Rules of Engagement mandate that (over-the-top) OTT platforms adhere to an Act of Moral conduct, including instructions on barred material, material classification, and access controls. The code of conduct is a documented set of expectations for workers within a company to run their company in a truthful way. Morals and values the fact that govern activity as well as conduct constitute ethics. A business's rules about ethics are essential in a business setting because it establishes a standard that employees will be fair and just. This instills an aura of trust and confidence in everyone associated with the company. Stakeholders are any individual or organization with an interest in a business. In addition, it protects the company from responsibility and legal action and prevents negative media coverage. A code of conduct serves to maintain the integrity of a business's interactions with society and ensures that they engage in ethical business practices, thereby protecting its brand.

Grievance Redressal Mechanism: The Rules Engagement mandate that OTT platforms must construct a complaint resolution system to handle content-related issues. A dispute resolution system is an essential component of any presidency's apparatus. A procedure for redressing grievances that is effective and productive reflects a responsible, responsive, and intuitive admin.

For instance, the Ministry of Finance prioritizes the prompt resolution of public complaints and the improvement of public service productivity in the insurance, financial services, and salary areas.

Compliance with Indian Laws: They mandate that OTT services adhere to all Indian laws, such as the Indian Civil Procedure and the Computer Act of 2000. In accordance with its labor laws, India has a stringent framework for ensuring legal fulfillment. Therefore, the Indian authority has merged nineteen labor laws into four Wage Acts (yet to be implemented) and implemented steps that will streamline the submission of returns with regulatory organizations beneath labor laws. 5

# **Challenges Faced By OTT Platforms**

The Mobile organizations face numerous legal or financial obstacles mandating an edge over their competitors. The competition for these streaming platforms is to compete with one another and earn adequate profits.

#### **IP Rights and Enforcement**

Users are refusing to pony up a fee to acquire viewer's rights ethically, especially when a stolen file that included identical content is able to get for free through different illicit devices. uTorrent, likely the largest app in the world for illicitly obtaining copyrighted content, is an example of a platform for illegal content. uTorrent enables users to unlawfully acquire unauthorized content. The cyber group lacks sufficient funds and technical know-how to monitor every device within its jurisdiction that acts in the usage, retention, and distribution of fraudulently obtained content and to prosecute violators in accordance with applicable laws. Moreover, nobody has the ability to obtain the personal information of a person by entering the device they are using without sufficient proof or by observing the usage acts of a single person, as such is an expectation innate to all people.

#### **Statutory Contestations**

The purpose of the Information Technology Rules proved to set up a progressive institution with equal opportunities, an Act of Morals, and a three-tier complaints remedy structure for newspapers and OTT services. However, the IT Rules have created obstacles for digital media and online video platforms in India. 6

- 1) Financial and Legal Compliance: Compliance burdens on both OTT companies and digital producers of content are one of the most significant problems. As producers have a duty to evaluate the content and decide if it jeopardizes the sovereignty of the Indian subcontinent, the safety of the state, etc., they may place the responsibility of making certain its content does not break any laws on those who made it. Thus, the work of the creator needs to assess each of the Code's enumerated factors. The formulation of the issue resolution, the system, the right to file complaints by anyone who believes something defies the Code, the obligation to keep up frequent legal conformity, etc., impose unnecessary compliance expenses on OTT providers.
- Innovative Inspiration-The criteria applied in assessing the message on the premises that it shouldn't negatively impact the State's interests, jeopardize India's liberty,

<sup>4</sup>What is OTT platform? Which regulations govern it? (n.d.). Retrieved April 21, 2023, from https://www.businessstandard.com/podcast/current-affairs/what-is-ott-platform-whichregulations-govern-it-122021500049\_1.html

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<sup>&</sup>lt;sup>6</sup>Over The Top (OTT) Platforms Legal Compliances and Challenges in India-Part II. (n.d.). Retrieved April 21, 2023, from https://amlegals.com/over-the-top-ott-platforms-legal-compliancesand-challenges-in-india-part-ii/

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- disrupt public safety, etc., have become broad and ambiguous and may stifle free speech and opinion.
- 3) Administrative Interdepartmental Group-Under Rule 14 of the IT Rules, the interdepartmental boards, which serve as an adjudicatory body, are granted broad authority.
- 4) Issue Officer-The Commissioner (tier 1) is given a limited amount of time to decide the grievance, and an appeal can be filed with the interdepartmental panel.
- 5) Competitive Obstacles-There are right now over 12 streaming websites that require a subscription in India, each offering an assortment of television programs and films. A viewer has limited availability and limited funds for subscribing to and watching his favorite television programs and films. The few difficulties that arise regarding the OTT Program are as follows:
  - Some consumers purchase multiple subscriptions in order to have access to a broad variety of viewable content. As a cost-saving measure, some consumers are prepared to join to their own OTT platforms and employ them on an end up sharing-and-receive basis with loved ones.
  - The prominence of the content and the show's or movie's relevance in the present/historical and its context is what motivates the viewer to watch the program.
  - Since OTT services act as a communicating control for a great deal of content releases, the lack of an enormous amount of earnings in contrast to the costs associated with respective expenses and maintaining the platform, unless you enter a collaboration arrangement to produce content.

## **Case Study: Content on the OTT Platform**

- One of the latest scandals concerning OTT platforms involves the Amazon Premiere series Tandav. In Uttar Pradesh and a few additional states, FIRs were lodged against the series' creators and the director of Prime Video India's video branch. A complaint was filed because the films insulted Hindu beliefs and depicted Hindu deities in an offensive manner.
- 2) Province about UP ((2021) 3 All LJ 634), the Supreme Court of Allahabad was presented with a request for Anticipatory Bail. The High Court denied the requested relief by noting that the offensive representation of the divinity had offended the religious sensibilities of the Hindus, so that the defendant cannot be absolved by just eliminating the offensive images and filing an appeal. Despite denying protection, the most powerful body in the land subsequently granted the person who complained temporary immunity. Nonetheless, the Court of Appeals emphasized the necessity of parental control on streaming sites.
- 3) Movies and television series such as Mirzapur, Pakistan Paatal Lok, Leila, etc., have also sparked controversy regarding regulation and the problems faced by online streaming services. Several lawmakers lodged an FIR against the producers of Leila and Facebook on the grounds that the film defames India and portrays it in a negative light. There area few instances in which an FIR or charges were filed with the chief of the production company for OTT websites along with the creators of the

- content. Numerous OTT platforms are hesitant to produce web series as well as films with religious or political themes. This has resulted in the restriction on producers' liberty to create and self-censorship.
- 4) Important aspects regarding the rules for information technology 2021-Diligence on the part of middlemen: The due careful planning to be witnessed by agents (both outgoing media outlets a conduit and vital outgoing media outlets intermediary) notably involve:
  - a) Telling individuals about Regulations and laws and the display of its privacy policies and user agreement for access to and use of its machinery's goods by anyone.
  - b) At least once per year, alerting the mediation provider's clients of any changes to the legislation and rules, protection restrictions, or user agreement governing access and usage of the computer system. The core of such an intermediary shall have the right to prevent access or utilization benefits of users to computing substance immediately or eliminate inconsistent knowledge, whichever is applicable.
  - c) Withdraw or eradicate access to criminal history information within 36 minutes of receiving notice in the court or in accordance with the Awareness Methods (Reasonable safety Techniques or the directions and Highly susceptible Secret Data) Rules, 2011, the government or its authority shall.
  - d) Take any necessary steps to protect its machine resources and understanding stated therein, adhering to the proper security adheres and techniques.
  - e) Supply, as soon as possible, but not later than 72 hours after receiving notice of a summons, information pertaining to its custody or the football, or help to a federal section that's securely approved for studying or secure as well as computer security actions, for the purpose of personal authorization, or to serve the reason of steering clear of the being determined, assessment, or prosecution of breaches under the law for while it's in effect, or for instances involving these sorts of infractions.
- 5) Grievance dispute resolution: The third party shall strongly publish on its web page, its cellphone-based application, or either, as it may be, the name of the person in charge of grievances and their own address, and also the way through which a client or victim may file an appeal with a violation of the conditions of this regulation as well as any other issues pertaining the system made available from it. Also, the Grievance Sergeant shall understand the claim within 24 hours and investigate the same.
- 6) Additional investigations to significant internet intermediaries: A significant social network middleman shall, in a period of thirty days from its receipt of notification concerning the thresholds, find the following extra precautions while discharging its duties: selecting a head of compliance in order to guarantee that it follows the IT Act or the Rules, and naming a nodal liaison to 24x7 cooperation with police departments.
- 7) Middlemen that provide texting as their main support: In this case, middlemen must facilitate the identification of the information's first originator on their platform. The author needs to be divulged if a court or government directive so specifies. This order will be

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issued for particular objectives, such as the investigation of crimes relating to the safety and sovereignty of the state, safety, or domestic violence. No such directive shall be issued if the person who created the knowledge can be identified through less intrusive means. The middleman shall not be forced to reveal any interaction information. If the original source happens to be beyond India, the highest source of the details within India will have to be considered the first creator.

- 8) In the case of media that is dominated by buyers (news or OTT), a three-tiered critiques conclusion procedure will be implemented for handling complaints on content. The writer and editor of the book will pick an issue mediation the head based in the capital of the country and ensure that the grievances officer provides a choice on any complaint it acquires throughout 15 days and notifies the complaining party within the specified timeframe. As part of the structure of governance, the Ministry of Information and Media ("MIB") will establish an Interdepartmental Commission to take in reports neglected by voluntary groups and monitor adherence to the codes of conduct.
- 9) Standards of Duty for Creators of Digital Media: The IT Rules 2021 stipulate a code of standards that must be obeyed by purveyors of digital media, such as producers of current events and news, and electronically curated content participants (also known as OTT platforms).
- 10) The following protocols are applicable to news along with current events:
  - a) The principles of journalist conduct defined by the Journalism Council of India.
  - b) Code of conduct pertaining to sub-section 5 of the Digital Media Network Regulatory Act, 1995, and
  - c) Information that is illegal according to any current law may not be disseminated or communicated.
- 11) For streaming services available online, the requirements include, among others,
  - a) Classifying content in accordance with the specified age divisions,
  - Establishing an age verification system and restricting using adult content and measures to control access such as control by parents, and
  - c) The restriction on access to specially selected material by a child, and
  - d) Expanding being accessibility of material for disabled individuals.
- 12) Content blocking in the event of a disaster: In cases of a pressing nature where no postponement is appropriate, the Authorized Officer will review the pertinent data and decide whether it falls within the grounds specified by sub-section 69A (1) of the Information Technologies Act and if so, whether it has needed, practical and reasonable for blocking that data or some of them, and submit particular written suggestions to the Secretary of State, MIB. Moreover, if the head of the MIB believes that it is suitable and reasonable to block the general public from having access to any knowledge or any portion of it with any technological material, and upon documenting causes in the written word, the Secretary, MIB can, as a temporary measure, issue such orders as he/she deems needed to such determined or discernible people, media outlets, or intermediaries in control of

- any computer facility hosting that data or a portion of it, not the need for a court order.
- 13) **Guidelines for curated content:** The labeling of every specially selected material must adhere to one of the following series of recommendations:
  - a) Broad requirements to feed a class of films as well as other recreational programming, involving online serials; and
  - b) Issue-specific instructions as the broad recommendations are broad terms and variables that can affect the categorization choices at every level, concern-related regulations form the issues and worries that utilize to various extents to all sorting, groupings, and describe the broad perspective that could possibly be taken in regard to them.

#### The Cable Television Networks (Regulation) Act, 1995:

The Cable Television Networks (Regulation) Act, of 1995, regulates the broadcasting of television channels, including those on OTT platforms. Under the Act, all television channels, including those on OTT platforms, must comply with the program and advertising codes. The program code prohibits the broadcast of content that is obscene, defamatory, and against the sovereignty and integrity of India.

# 2003-Amendment to the Cable Television Networks (Regulation) Act, 1995 (Amendment Act)

Several inquiries came in by authorities alleging that cable television providers have imposed unfair price increases. In addition, the telecommunications operator did not pay the proper taxes by withholding their earnings or understating them. Cable managers are excused personally by claiming that the media business is unchecked and thus they are compelled to raise prices for cable television services because they are free to do so.

In its study, a special task force determined that consumers do not have the option to choose the expensive programs they wish to view, but rather receive them as part of a package, regardless of whether they want to pay for access to such stations or not. In order to provide consumers with options, it was suggested that limited access procedures (CAS) be implemented.

This task force recommendation was incorporated into the Act via an amendment in 2003. The primary purpose of the amended law was to deal with the ongoing and arbitrary increase in cable fees. Section 4A authorized operators to deliver pay programs via a locally responsive infrastructure in addition to the fundamental suite of free-to-air channels.

# Impact of the Rules on OTT Platforms:

The Rules have had a significant impact on OTT platforms in India. The Rules have brought in much-needed transparency and accountability in the digital media space. The Rules have also resulted in the removal of certain controversial content from OTT platforms. <sup>7</sup>

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<sup>&</sup>lt;sup>7</sup>How India Regulates Social Media And The OTT Platforms-Information Technology (Intermediary Guidelines And Digital Media Ethics Code) Rules, 2021-Social Media-India. (n.d.).

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However, the Rules have also been criticized for being overly broad and vague. Some critics have argued that the Rules infringe on the right to freedom of speech and expression guaranteed by the Indian Constitution.

Since the worldwide epidemic, OTT or Over-The-Top systems have acquired fame across the world. Internet-based OTT offerings provide access to all content, involving television shows, television programs, and other types of leisure.

The introduction of over-the-top (OTT) services has eliminated the need for satellite or cable services for viewing. Presently, these amenities are accessible via any internet-connected technology, such as laptops, television sets, smart televisions, etc.

Producing material on streaming services was largely immune from control for a considerable length of time. Consequently, these platforms are allowed to showcase controversial and innovative content.

The government chose to step in as the prominence of OTT platforms and the amount of content they received grew. The Indian authorities issued the Information Technology (Intermediate Guidelines along with the Code of Ethics for Digital Media) Rules 2021 in February of that year in order to regulate the material of these websites.

The self-regulatory framework and the three-tier complaints resolution scheme were incorporated into the rules. Their initial step is the autonomy enjoyed by their anticipated individuals, backed by the kind of self-control performed by the governing entities for those organizations, followed by an administrative supervision device.

#### 3. Conclusion

In India, the regulatory structure regulating online video platforms is still developing. The IT Act of 2000 and the Regulation of Cable TV Networks Act of 1995 give the main legal basis for regulating online streaming services in India. However, more recent laws have introduced muchneeded openness and responsibility to the Internet media sector. The Indian government must find an appropriate equilibrium in controlling OTT platforms and safeguarding free speech. The Rules must be revised to address the concerns of stakeholders and ensure that they do not infringe on fundamental rights. Furthermore, there is a need for more clarity and specificity in the Rules to avoid ambiguity and potential misuse by the government. The legal framework governing OTT platforms in India is still in its nascent stage. As the usage of OTT platforms continues to increase, there is a need for the Indian government to constantly update and evolve the legal framework to ensure that it remains relevant and effective in regulating the digital media space.

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