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# Legal & Regulatory Framework Governing Entertainment & Media Industry in India

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## ABSTRACT

*The India's media and entertainment sector is one of the quickest growing sectors, driven by advances in technology and regulatory renewal. This dissertation carries out an analysis of the legal and regulatory environment that informs the industry, in terms of laws, rules, and intellectual property legislation that defines its operation. The research explores the evolutionary history of media laws, functions of influential governing bodies such as the Ministry of Information and Broadcasting (MIB), the Central Board of Film Certification (CBFC), and the Telecom Regulatory Authority of India (TRAI). It covers the principal legal issues involving regulation of content, freedom of speech, censorship, and intellectual property right protection for broadcasting, film, advertising, and other digital media platforms like OTT services. The study also assesses the effect of newer trends such as the emergence of digital platforms and their legal implications, such as regulation of online content, defamation, privacy, and freedom of expression. Besides, the dissertation considers the Indian law's interplay with global standards in terms of regulating the media, such as intellectual property rights, and safeguarding creative works in a globalized entertainment economy.*

*This dissertation tries to provide an extensive canvass of the contemporary regulatory scenario, pinpoint gaps in the existing structure, and provide recommendations towards enhancing legal structures to address issues of the information age. Through extensive examination of case law, legislation, and policy briefs, the research provides inputs towards framing the future of Indian media law.*

## KEYWORDS

*Entertainment industry, Media law, Regulatory framework, Intellectual property, Censorship, Film certification, Broadcasting, OTT platforms, Freedom of expression, Content regulation, Digital media, Media policy, Copyright, Defamation, Privacy, Online content, Indian law, Media regulation, Intellectual property rights, Technology and law, Film industry, Legal challenges, Media rights.*

## INTRODUCTION

The India's entertainment & media industry the biggest vibrant and fast-growing industries, with a major impact on society as well as the economy. The sector includes a vast array of activities such as motion pictures, television, print media, advertisement, internet media, and new technology such as virtual reality and online streaming. Consequently, not only is it a source of amusement per se but also a great socialization tool, political instrument, and vehicle of cultural exchange. Because it is so widely covered, the media and entertainment sector is best placed to mold public opinion, facilitate diversity, and reflect societal values.<sup>1</sup>

In recent years, the sector has experienced technology-driven change, growth in digital platforms, and increasing dominance of online content distribution, example (OTT) platforms. The explosive growth of streaming services, online news sites, and social networking platforms has resulted in business model disruption, which has created new legal and regulatory concerns. The growth of content on the internet has created issues of concern regarding privacy, regulation of content, defamation, IPR, and the role of the state in regulating digital media. They have necessitated it further that the legal framework be changed in such a way that regulation is effective but not fatal to creativity or innovation.

The Indian entertainment and media sector has a legal and regulatory environment comprising a mix of different statutes, regulations, and self-regulation mechanisms. Central laws like the Copyright Act, the Cinematograph Act, the Cable Television Networks (Regulation) Act, and the Information Technology Act regulate different aspects of the media business, ranging from intellectual property rights to management of online content. Apart from that, regulatory bodies like the Ministry of Information and Broadcasting (MIB), Central Board of Film Certification

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<sup>1</sup> Shyam Divan, *Environmental Law and Policy in India* (Oxford University Press 2001) 24.

(CBFC), and TRAI play a crucial role in implementing and monitoring compliance with these legislations.

Despite that, despite these regulations, the Indian legal framework governing the entertainment and media industry remains fragmented and oftentimes has a poor track record in keeping pace with the fast-evolving digital paradigm. Failure to coordinate among these regulatory bodies has been one of the reasons for this failing. Censorship, freedom of expression, control of content, intellectual property rights, and the inadequacy of data protection legislation are still concerns. The proliferation of online media and the growing convergence of old and new media demand more comprehensive and visionary regulation that can reconcile the interests of creators of content, users, and regulators.<sup>2</sup>

This dissertation seeks to critically analyze the existing legal and regulatory environment that regulates the entertainment and media sector in India. It will evaluate how the existing laws deal with emerging issues like regulation of online content, intellectual property protection, and the balance between freedom of expression and censorship. The research will also explore how fully such legislation has been implemented by the main regulatory authorities, and how effective self-regulatory processes within the industry have been. Finally, this dissertation aims to lay out areas of weakness in existing legal provision and make suggestions for reform to better enable the evolving nature of the entertainment and media business. Through examining the crossroads of technology, law, and media, this study will be able to give significant inputs towards the future of Indian media law and its contribution to a healthy, balanced, and innovative business.

## **BACKGROUND**

The India's media and entertainment sector become a giant industry, and this has made a serious contribution to the country's social, cultural, and economic structure. Cuts across various forms of media like cinema, TV, print, digital media, and even OTT platforms these days, the industry is amongst the largest and most diversified worldwide. India's media sector is not only a driving force in the economy but also a major tool of socialization, political communication, and cultural values' preservation and transmission.<sup>3</sup>

India's entertainment sector has its roots as far back as the 20th

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<sup>2</sup> Arvind Datar, 'Media Law in India: A Critical Appraisal', (2014) 45 Indian Journal of Legal Studies 200, 210.

<sup>3</sup> V. Krishna Ananth, India Since Independence: Making Sense of Indian Politics, 1<sup>st</sup> ed., Pearson Education (2011).

century with the establishment of the cinema industry as the most sought-after entertainment. The India's sector, popularly known as Bollywood, has now become the biggest producer of movies worldly. Millions of movies are produced every year based on all the regional languages. In the same way, television had gained popularity in India during the 1980s and altered the scene for entertainment by offering a low-cost platform to touch the lives of millions of homes, the internet has ruled the roost in recent times, especially with the digital media boom. The development of web and mobile technology, coupled with the spread of smart phones and other devices, has changed the way content is being seen, presented both new challenges and opportunities for the industry.<sup>4</sup>

arly media regulation in India was majorly affected by necessity to control content in terms of addressing concerns of public morality, national security, and social order. The Indian Constitution protects freedom of speech and expression under Article 19(1)(a), but this freedom with respect to logical barriers in the interest of sovereignty, integrity, security, public order, and morality. This built-in tension between freedom of expression and regulation of content has informed much of the nation's media laws and habits. The initial milestone regulatory action in the media industry was the C.A, 1952, which became the foundation of the Central Board of Film Certification (CBFC) certification of films and censorship of content. The Act has been amended countless times since it was first passed to include the growing needs of the industry.

The 1990s marked a turning point for India's entertainment and media industry. The post-1991 economic liberalization of the Indian economy saw the entry of satellite television as well as expansion in the cable television sector. It introduced a dawn of an opening up of a transition from state-led broadcasting to more privatized media and culminated during the boom experienced by the private news channels, entertainment television channels, and local networks. With the opening up of the telecommunication sector, the broadcast sector saw an explosive growth, and India became the biggest media markets overnight.<sup>5</sup>

With this, the internet started playing a larger role in the consumption of media. The coming of broadband, mobile internet, and digital platforms has revolutionized the space for media. The advent of OTT platforms such as Netflix, Amazon Prime Video, and Hotstar (now Disney+ Hotstar) has introduced consumers to a

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<sup>4</sup> Jitendra Kumar, *Media Laws in India: A Brief Insight*, 2<sup>nd</sup> ed., Universal Law Publishing (2020).

<sup>5</sup> Durga Das Basu, *Introduction to the Constitution of India*, 24<sup>th</sup> ed., LexisNexis (2019).

new option apart from traditional media formats, with on-demand content across a vast variety of genres. The novel regulatory issues that these platforms have created were not envisaged by the current laws and regulatory frameworks. The global and decentralized nature of the internet challenges the regulation of content because it is not localized to country borders, creating hurdles of jurisdiction, censorship, and controlling content on the internet.

At the same time, there has been an increase in user-generated content, particularly through social platforms like Facebook, Instagram, Twitter, YouTube, TikTok. These have made content creation accessible to ordinary citizens so that they can become broadcasters. This has increased diversity in the portrayal of media, but it has also created problems of misinformation, defamation, hate speech, and content moderation. The quick dissemination of false news and the possibility of its influence on election results and public opinion has elicited demands for stricter regulation of online media.

The legal regime that oversees India's entertainment and media sector has had to adapt to meet these new challenges. Groundbreaking legislations like the C.A, 1957, the C.A, 1952, the Cable Television Networks (Regulation) Act, 1995, and the Information Technology Act, 2000 make up the backbone of India's media legislations. They vary from safeguarding intellectual property rights and ensuring wholesome distribution of content to controlling what is telecast on television and cinema. But these laws have not been able to keep pace with the rapidly evolving digital world. These legislations were actually created to deal with problems in traditional media like print, radio, and TV and are not fully geared to deal with problems being brought up by streaming sites, social media, and other digital platforms.<sup>6</sup>

To address these issues, several regulatory authorities have been set up, ranging from the Ministry of Information and Broadcasting (MIB), Central Board of Film Certification (CBFC), Telecom Regulatory Authority of India (TRAI), and Directorate General of Civil Aviation (DGCA) for the use of drones in cinematography, among others. The MIB caters to television broadcasting, print media, and film, while TRAI deals with telecommunication and internet services. The CBFC has a responsibility to give certificates to films, checking them to ensure that they meet certain content guidelines. Although these organizations have significant roles to play, their jurisdiction is susceptible to conflict or overlap, and their regulatory powers are at times inconsistent

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<sup>6</sup> Pradeep S. Mehta, *Regulating the Digital Media Economy in India: Challenges and Opportunities*, 59(3) *Economic & Political Weekly* 12-14 (2024).

or out of date in relation to the digital shift in the media.

One of the biggest hurdles facing the regulatory system is that there is no overarching law that regulates digital platforms and internet content. While I.T Act, 2000 and the amendments thereof, including the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, do touch upon some of the issues of online content, they do not form a comprehensive regulatory regime for OTT services, digital news media, or social media. The lack of specific content regulation, particularly on issues such as fake news, hate speech, and child exploitation, poses a tremendous risk both to consumers and creators of content.<sup>7</sup>

The regulatory and legal loopholes coupled with the rapid rate of expansion of digital media have seen reforms become an urgent need. Regulatory bodies and policymakers must draw up new bills and modify existing bills to provide protection for intellectual property, consumer protection, and ethical content creation. A comprehensive and integrated scheme must also be framed to oversee digital platforms so that freedom of speech is facilitated but people are held accountable for objectionable content.

This background is the context in which the legal and regulatory regime that governs India's media and entertainment sector is critically evaluated. The dissertation will examine the efficacy of the current legislation and regulatory authorities, identify gaps, and suggest possible reforms for the industry to function in a way that promotes innovation, safeguards public interest, and addresses new emerging challenges.

## **IMPORTANCE OF THE STUDY**

The Indian media and entertainment Sector<sup>8</sup> is a vibrant and constantly changing industry that contributes significantly to the cultural, social, and economic life of the country. With the very high pace of technological developments and shifting consumer patterns, the industry has observed tremendous growth in terms of digital media, OTT platforms, and social media. But the current regulatory and legal environment, originally intended for traditional media platforms such as television, film, and print, is increasingly struggling to keep up with the rate of change in the digital economy<sup>9</sup>. This mismatch presents serious challenges towards regulating the industry effectively, safeguarding

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<sup>7</sup> Aparna Viswanathan, Law and Media: Regulating Content in the Digital Age, 13(2) Indian Journal of Law and Technology 35–67 (2023).

<sup>8</sup> Ursula Smartt, Media and Entertainment Law (3<sup>rd</sup> edn, Routledge 2017).

<sup>9</sup> Pavan Duggal, Cyberlaw: The Indian Perspective (2<sup>nd</sup> edn, Saakshar Publications 2022).

intellectual property rights, content moderation, and consumer protection.

This research is pertinent on a number of key grounds:

#### *Filling the Gaps in the Legal System*

The principal importance of this study is that it can reveal and examine gaps in the present legal and regulatory system that guides India's media and entertainment Sector. Through the critical analysis of the available legislations like the C.A, 1952, C.A, 1957, Cable Television Networks (Regulation) Act, 1995, and the Information Technology Act, 2000, this research seeks to point out the way these legislations have failed to counter the challenge created by digital media, OTT platforms, and user-generated content. This study will provide valuable insight into the requirement for new and comprehensive legislation that is more appropriate to the nature of the contemporary media environment.

#### *Industry Stakeholder Influence*

The impact of this study is essential to a variety of stakeholders in the media and entertainment sector, from producers and content creators through to distributors, broadcasters, and digital platform operators. By analyzing the present legal scenario, this research will enable the stakeholders to comprehend the legal issues confronting them better, and most importantly, the issues relating to intellectual property rights, content filtering, and consumer protection. Further, this research can act as a driver for formulating more effective compliance measures with the prevailing laws and negotiating the changing legal scenario.

#### *Informing Policymakers and Regulators*

The research contains an extremely important level of applicability to policymakers and regulatory bodies in India. As the media and entertainment sector expands and diversifies, effective regulation is more and more needed. Policymakers and regulators can learn from the analysis of existing loopholes in law and observation of best practice elsewhere. With a critical analysis of the loopholes and vulnerabilities in India's regulatory framework, the research will identify constructive recommendations for reform that would enable the establishment of a robust, transparent, and responsive legal system. Reforms can have the potential to enhance regulation over OTT platforms, digital media, and content-sharing services, which in turn will further support intellectual property protection and consumer protection.<sup>10</sup>

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<sup>10</sup> Kiran Prasad, "Media Regulation in India: A Review of Policies and Practices"



### *Intellectual Property Protection Strengthening*

IPR are critical to the media and entertainment industry. Creators of content depend on IPR to safeguard their work, but the advancement in digital media, internet piracy, and pirated content sharing has made it challenging to enforce their rights. This research will be responding to these issues by looking into the role played by existing IPR legislations and proposing enhancements that can be used to tighten up enforcement mechanisms, both for digital and traditional content. The research findings will provide useful recommendations on how the legal environment can be improved in a bid to protect the interests of content creators and counter the increasing threat of digital piracy.

### *Improving Content Moderation and Consumer Protection*

As OTT and social media industries expand, consumer protection and content moderation have become serious issues. The creation of objectionable or illegal content—hate speech, fake information, and obscene content—has created the demand for tightening up the rules. This research will critically analyze the effectiveness of current content moderation regulations in compliance with legislations such as the I.T (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021,<sup>11</sup> and analyze their effects on freedom of expression. To address the balance between regulation and freedom of expression, this study will provide evidence that will advance current debates surrounding India's regulation of content towards the creation of a safer and better web for consumers.

### *Contribution to Academic Literature*

point of reference, this study will serve to fill that gap and undertake an overall, country-level analysis of issues and potential solutions. In addition, the study will act as a handy resource for scholars, researchers, and students working at the nexus of law, media, and technology.

### *Encouraging Responsible Media Consumption*

The legal and regulatory environment has a significant part in encouraging responsible media consumption. By ensuring that content is of ethical quality and available within a controlled setting, citizens will be safeguarded from obscene or offensive material. The proposals of this research will contribute to more responsible use of media and ensure the entertainment and media sector continues to be a force for good within society, entertaining,

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(2016) 11(2) Journal of Media Law & Ethics 45.

<sup>11</sup> Sunil Abraham, "IT Rules and Free Speech in India" (2021) 25(1) NUJS Law Review 53.

educating, and being socially responsible.<sup>12</sup>

### *Impact on Global Media Environment*

India is a world player in the media industry, and its digital consumption of media, online content channels, and Bollywood film industry increasingly find themselves at the global fore. As Indian content finds itself spread across the globe, regulatory challenges it has will have global implications. The findings of this research on India's regulatory framework and suggested reforms could not only influence domestic policy but also have implications for how India interacts with global legal norms in the domains of content regulation, intellectual property rights, and regulation of digital media.<sup>13</sup>

Briefly, the research is significant because it tackles prominent gaps in India's regulatory and legal environment that governs the entertainment and media sector, offers suggestions for long-overdue reforms, and adds to the applied experience and academic literature on the subject. Through identification of viable solutions to existing regulatory challenges, this research is intended to ensure that the India's entertainment and media remains at the peak of prosperity in a just, safe, and progressive environment as it guards the rights of content creators, consumers, and other stakeholders.

## **RESEARCH OBJECTIVES**

1. To critically analyze the existing legal and regulatory framework governing India's entertainment and media industry.
2. To identify the gaps and shortcomings in the current legal and regulatory framework in addressing digital media, OTT platforms, and social media challenges.
3. To explore the challenges related to the enforcement of intellectual property rights (IPR) in digital media and OTT services and propose reforms.
4. To examine the effectiveness of content moderation mechanisms in balancing freedom of expression with consumer protection.

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<sup>12</sup> Telecom Regulatory Authority of India (TRAI), Recommendations on OTT Regulation, 2020.

<sup>13</sup> Parliamentary Standing Committee on Information Technology, Regulation of Digital Media, 2021.

5. To evaluate the role of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, in regulating OTT platforms and digital content.
6. To suggest policy reforms based on international models of media regulation to improve India's legal framework.

## **LITERATURE REVIEW**

### *Emergence of Media Law in India*

Regulation of media and entertainment in India came to be first through conventional media such as cinema and television broadcasting. Acts such as the Cinematograph Act, 1952<sup>14</sup> and the Cable Television Networks (Regulation) Act, 1995<sup>15</sup> have been significant in ushering in the first regulation of media content. But such legislations were written years back, long before the advent of internet-based content delivery, and hence do not have the mandate to regulate the dynamic digital world. Experts like Madhavi Goradia Divan have observed that although these legislations were sufficient to manage pre-digital content delivery, they are no longer sufficient in dealing with the specific challenges being posed by OTT platforms, online streaming, and user-generated content. The lack of legislative guidance on content regulation on the Internet has been a repeated source of legal criticism.

### *Intellectual Property Rights in Media*

IPR are the essence of protection of creative and artistic works in the media and entertainment industry. The Copyright Act, 1957 is the main enactment which regulates protection of such rights in India. But with the advent of content sharing on virtual realms, traditional enforcement was found wanting. Scholars have characterized increasing numbers of piracy, illicit downloading, and unauthorized streaming as a menace to creators' rights. Research by law journals indicates that the times demand a tightened digital copyright regime with tighter monitoring mechanisms, better redressal mechanisms, and platform liability. Without strict enforcement of IPRs, creators and media companies may lose significant economic benefits and erosion of creative rights.

### *Regulatory Challenges of Digital Media*

Digital media has brought unprecedented legal and ethical challenges, particularly regarding content regulation, platform

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<sup>14</sup> The Cinematograph Act, 1952.

<sup>15</sup> The Cable Television Networks (Regulation) Act, 1995.

responsibility, and balance between freedom of expression and social responsibility. India took its first step towards the regulation of the cyberspace with the I.T Act, 2000,<sup>16</sup> but the provisions within it are generic in nature and do not directly apply to the media and entertainment sector. The I.T (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021<sup>17</sup> were enacted in order to fill the gap created and to bring OTT media and digital news media under the scope of regulation. But academic criticism is that the regulations are plagued with ambiguity, tend to lead to over-regulation, and can be used to suppress dissent. The regulations have been tested in numerous courts, raising specters of breaches of Article 19(1)(a) of the Constitution, which enshrines freedom of speech and expression. Although a giant leap forward, the regulatory environment remains patchy and unclear in practice.

### *Comparative Approaches to Media Regulation*

Comparative legal observation reveals that states have used more open and more responsive media regulation systems. The United Kingdom, for example, uses the system of co-regulation under Ofcom and identifies content responsibility with no direct state control. Likewise, the European AVMS Directive tries to regulate on-demand content based on safeguarding user rights and promoting cultural diversity. Scholars have contended that India can learn from such hybrid models that bring together state regulation and independent regulation and industry engagement. These models seek not just to regulate content but also to promote media literacy, safeguard children, and create creative economies—domains yet to be fully charted in Indian legal discourse.

### *Gaps in the Literature*

While there is extensive research on individual statutes and challenges in isolation, there is a lack of integrated and holistic studies that analyze the entertainment and media industry as a unified legal domain. Most literature is fragmented, either focusing on copyright, censorship, or digital regulation independently. Moreover, there is limited empirical research evaluating the actual implementation and effectiveness of existing legal measures<sup>18</sup>. There is also a research gap in how India's legal responses align with international commitments and digital trade obligations. This study aims to bridge these gaps by offering a complete and comparative analysis of the Indian legal and

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<sup>16</sup> The Information Technology Act, 2000.

<sup>17</sup> Sunil Abraham, "IT Rules and Free Speech in India" (2021) 25(1) NUJS Law Review 53.

<sup>18</sup> Apar Gupta, "Free Speech and Internet Regulation in India" (2017) 10(3) Indian Journal of Constitutional Law 87.

regulatory framework governing the entertainment and media industry.

## **RESEARCH METHODOLOGY**

The current research employs a doctrinal (qualitative) legal research approach, with primary emphasis on analyzing the provisions of statutes, judicial rulings, constitutional requirements, and the regulatory schemes applicable to the Indian entertainment and media sector. The study is done on the secondary material, i.e., bare acts like the C.A , 1952; the C.A , 1957; the Cable Television Networks (Regulation) Act, 1995; the I.T Act, 2000; and the Press Council Act, 1978.<sup>19</sup> It also entails critical analysis of case laws, legal commentaries, research articles, official government notifications, and policy documents.

Comparative legal perspective has been absorbed through study of international regulatory systems like UK, USA, and EU for analyzing the points of strength and loopholes in Indian law. The research is based on descriptive as well as analytical methods of conceptualizing the origin, enforcement, and deficits in current laws and suggesting changes. Such a methodology enables the research to trace legal evolution, evaluate the effects of regulatory intervention, and analyze the equilibrium of media freedom and state control in the Indian paradigm.

## **HISTORICAL EVOLUTION OF MEDIA& ENTERTAINMENT LAWS IN INDIA**

The progression of laws governing media and entertainment in India is a continual blend of governmental oversight, cultural expectations, innovation in technology, and democratic ideals<sup>20</sup>. During the colonial period, British authorities perceived the press as a key political agitator and instituted various stringent laws to quell resistance. Laws such as the 1835 Press Act, the 1878 Vernacular Press Act, and the 1910 Indian Press Act were methodically utilized to monitor and restrain indigenous publications challenging imperial dominance. Enacted in that period, the Press and Registration of Books Act, 1867—still enforced today—was introduced to manage printing presses and register journals.

Following independence in 1947, India established a constitutional structure upholding the right to free speech and expression in Article 19(1)(a), albeit subject to reasonable limitations under Article 19(2). This essential liberty became the cornerstone of a progressively democratic media landscape. The

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<sup>19</sup> The Press Council Act, 1978.

<sup>20</sup> Ursula Smartt, *Media and Entertainment Law* (3<sup>rd</sup> edn, Routledge 2017).

enactment of the Cinematograph Act, 1952 marked a significant moment in post-independence India, authorizing the Central Board of Film Certification (CBFC) to classify films, thereby shaping film industry oversight. Government dominance over public broadcasting was retained through Doordarshan and All India Radio until economic reforms in the early 1990s initiated a transformative phase for media and entertainment.<sup>21</sup>

The 1991 economic liberalization facilitated the emergence of private satellite television, commercial radio, and significant foreign capital in the media sector. In response, the Cable Television Networks (Regulation) Act, 1995<sup>22</sup> was passed to monitor the influx of such content. This period also experienced a shift toward self-regulation by industry players and heightened emphasis on public accountability. The 2000s heralded the digital age, presenting regulatory difficulties for web content, social platforms, and OTT services. The Information Technology Act, 2000 laid the initial groundwork for cyberspace governance, though digital acceleration necessitated sharper laws. The 2021 Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules introduced a shared regulatory model for digital journalism and OTT providers, underscoring the state's intent to assert control while maintaining a balance with expressive freedoms.

Currently, media oversight remains disjointed and segmented, regulated by a mix of colonial statutes, post-independence acts, and evolving modern standards. Legal authorities and agencies continue to revisit and redefine the parameters of press liberty, censorship, and platform liability. With the merging of media platforms and seamless circulation of content across print, broadcast, and digital spheres, there is a growing necessity for a unified and contemporary regulatory architecture that respects democratic freedoms and public welfare alike.

### **EARLY LEGISLATIVE FRAMEWORK**

The foundations of India's media and entertainment legal regime were laid during the colonial period, reflecting the imperial government's aim to control information flow and suppress dissent. The early legislative instruments were largely reactionary and focused on censorship, press registration, and political control, rather than freedom of expression or creative liberty. This legacy of restrictive regulation persisted well into the post-colonial era, deeply influencing the structural framework of media law in

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<sup>21</sup> Ursula Smartt, *Media and Entertainment Law* (3<sup>rd</sup> edn, Routledge 2017).

<sup>22</sup> The Cable Television Networks (Regulation) Act, 1995.

India.<sup>23</sup>

### *Colonial Foundations: Censorship and Surveillance*

The colonial era saw the emergence of several key laws to regulate the press and curtail the influence of Indian-owned publications. One of the earliest such statutes was the Press Act of 1835, popularly known as Metcalfe's Act, which required all printers and publishers to give a precise declaration of the location of their printing presses. Though it was more liberal than its predecessors, it institutionalised state monitoring over the printed word. Over time, more draconian laws followed. The Vernacular Press Act of 1878, specifically targeted non-English Indian publications, granting magistrates the power to confiscate printing presses and publications that were deemed seditious or inciting disaffection toward the British government.<sup>24</sup>

This trajectory of repression continued with the Indian Press Act of 1910, which introduced mandatory security deposits for publishers and empowered the government to forfeit them upon violations. The law also gave wide latitude for search and seizure operations and shut down several nationalist publications. Although repealed after independence, these colonial laws established the principle that the press in India would operate under close governmental scrutiny—a notion that carried over into post-independence regulations.

The Press and Registration of Books Act, 1867, however, was one colonial statute that withstood time. Even today, it governs the registration of newspapers and periodicals, placing a statutory obligation on the printer and publisher to submit periodic declarations and reports to local authorities. This Act was not explicitly censorial but functioned as an administrative tool to control the media's operations.<sup>25</sup>

### **REGULATION OF FILMS: THE CINEMATOGRAPH ACT OF 1918**

Parallel to press regulation, the entertainment sector—especially films—also attracted legislative attention. With the rising popularity of motion pictures in the early 20th century, British India introduced the Cinematograph Act of 1918 to regulate film screenings and content. The Act empowered local governments to issue licenses to cinema exhibitors and to prohibit the exhibition of films deemed objectionable or offensive. The Act was rooted in

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<sup>23</sup> Vatsala Gaur, *Media Law and Ethics* (1<sup>st</sup> edn, LexisNexis 2021)

<sup>24</sup> Madhavi Goradia Divan, *Facets of Media Law*, 3<sup>rd</sup> edn., Eastern Book Company, Lucknow, 2022, p. 42.

<sup>25</sup> P.K. Majumdar, *Press Laws in India*, Orient Publishing, New Delhi, 1995, pp. 18–21.

the colonial mindset of moral and political control, ensuring that cinema did not become a tool for nationalist propaganda.

While the 1918 Act provided a basic regulatory scaffold, it lacked a centralized authority to certify or censor films, resulting in inconsistent practices across provinces. This gap later led to the framing of a more cohesive post-independence law—the Cinematograph Act of 1952, which institutionalised the Central Board of Film Certification (CBFC) as the apex censoring authority in India.

### *Broadcasting and the State Monopoly*

Early broadcasting in India began under the British regime, initially as a private experiment and later institutionalised as All India Radio (AIR) in 1936. Broadcasting remained a state monopoly, governed by administrative orders rather than a codified legislative framework. The absence of a formal statute regulating radio broadcasting until after independence reflects how the medium was treated more as a governmental mouthpiece than a public service. Even after independence, AIR and later Doordarshan, the state-run television broadcaster, functioned under the Ministry of Information and Broadcasting, without a statutory charter until much later. The monopoly persisted until the liberalisation of the economy in the 1990s.<sup>26</sup>

### *Press Laws After Independence*

Post-independence India inherited these colonial laws but began the process of aligning them with the constitutional ideals of democracy, particularly freedom of speech and expression under Article 19(1)(a) of the Constitution of India. However, the inclusion of reasonable restrictions under Article 19(2) provided the state with the legal basis to continue regulating media content. The Press (Objectionable Matters) Act, 1951 was one such law that tried to tackle seditious publications but was criticized for being vague and prone to misuse. It was ultimately repealed in 1977.

The role of the judiciary in this period became crucial. In cases like *Romesh Thappar v. State of Madras*, the Supreme Court held that the freedom of the press was inherent in the freedom of speech and expression. However, this judicial affirmation did not prevent the enactment of statutory and administrative mechanisms that allowed censorship under the garb of national interest, decency, and public order.

### *Cable Television and the Need for New Regulation*

The advent of satellite television in the early 1990s following

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<sup>26</sup> P.P. Singh, *Media Law and Ethics*, 2<sup>nd</sup> edn., Central Law Agency, Allahabad, 2019, pp. 67–70.



economic liberalisation created a legal vacuum, as the existing laws were ill-equipped to handle the complexity and speed of media proliferation. In response, the government enacted the Cable Television Networks (Regulation) Act, 1995, to bring cable operators under a licensing regime and to regulate the content being transmitted. The Act also enabled the government to prohibit transmission of programmes that offended morality, decency, or were likely to incite violence or disrupt public order.<sup>27</sup>

Even so, the Act largely focused on infrastructure and licensing, rather than editorial content. To fill this gap, the government issued the Programme and Advertising Codes under the Act, setting standards for both broadcasters and advertisers. These codes, though lacking the force of legislation, became the basis for routine government advisories and even penal action in some cases.

### *The Information Technology Act, 2000 and the Digital Era*

With the explosion of the internet and digital communication, new legal challenges emerged regarding the regulation of online media, user-generated content, and OTT platforms. The Information Technology Act, 2000, India's first legislation on cyberspace, aimed at regulating digital transactions and cybercrimes, but over time came to play a vital role in the governance of digital media as well.

Section 69A of the IT Act empowers the government to block public access to any online content in the interest of sovereignty, public order, or security. This provision has been frequently used to take down websites, apps, and digital content deemed problematic. The Intermediary Guidelines and Digital Media Ethics Code Rules, 2021 issued under the IT Act sought to regulate OTT platforms, news websites, and social media intermediaries through a co-regulatory mechanism.<sup>28</sup>

While these developments represent an effort to update the legislative framework, critics have argued that the IT Rules 2021 bypass Parliament and grant excessive power to the executive, raising serious concerns about the erosion of digital freedom.

## **DEVELOPMENT OF MEDIA LAWS**

The evolution of regulations governing media in India has been marked by a complex interplay of democratic ideals, government

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<sup>27</sup> V.S. Mani et al., *Handbook of Media Law*, LexisNexis Butterworths, New Delhi, 2014, pp. 80–82.

<sup>28</sup> P. Ishwara Bhat, *Law and Social Transformation*, 2<sup>nd</sup> edn., Eastern Book Company, Lucknow, 2021, pp. 388–390.

oversight, technological progress, and societal interest. Since independence, the Indian government has been faced with the challenge of crafting a legal framework that upholds the fundamental right to liberty of speech and expression while also ensuring the nation's security, social order, moral standards, and responsible journalism. From the early days of print and cinema to the digital boom of the 21st century, regulations governing media have evolved in response to changing political, social, and tech scenarios.<sup>29</sup>

### *Post-Constitutional Reforms and Press Laws*

With the enactment of the Constitution in 1950, India began a new era of democratic governance. Article 19(1)(a) of the Constitution guaranteed liberty of speech and expression to all citizens, which became the foundation in the Constitution for media operations in the country. However, this right was never absolute. Article 19(2) allowed the State to impose justified limitations to protect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, social order, decency or moral standards, contempt of court, defamation, or incitement to an offence.

In the early years, this balance between freedom and regulation was seen in laws like the Press (Objectionable Matters) Act, 1951<sup>30</sup>, which aimed to stop materials that incited violence or threatened societal peace. Though repealed later, the Act exemplified the government's careful stance to press freedom. The government also retained the colonial-era Press and Registration of Books Act, 1867,<sup>31</sup> which mandates the registration of newspapers and books and the disclosure of ownership, indicating continuity in regulating the print industry.

### *Film Certification and Cinematograph Regulation*

A major area of media regulation concerned cinema, an influential mass medium. The Cinematograph Act, 1952, became the primary legislation regulating the certification of films for public exhibition. The Act established the Central Board of Film Certification (CBFC), which was given powers to certify, refuse, or conditionally approve films based on their content. The CBFC categories included 'U' (Universal), 'A' (Adults only), and other classifications aimed at guiding viewers.<sup>32</sup> While the CBFC was

<sup>29</sup> B M Gandhi, *Constitutional Law of India* (Eastern Book Company 2020).

<sup>30</sup> Durga Das Basu, *Law of the Press* (5<sup>th</sup> edn, LexisNexis 2010).

<sup>31</sup> Content in India, available at <https://ascionline.in> Press Council of India, Norms of Journalistic Conduct, available at <https://presscouncil.nic.in>.

<sup>32</sup> Central Board of Film Certification (CBFC), Guidelines for Certification of Films, available at <https://cbfcindia.gov.in>.

initially envisioned as a certifying authority, in practice, it often functioned as a censorship body, requiring cuts or denying clearance to films that were seen as politically or morally sensitive. Over the years, debates around the CBFC's role intensified, with filmmakers, artists, and civil rights activists arguing for a more liberal and transparent certification process. Several court rulings underscored the need for balanced regulation, but the tension between creative freedom and regulatory authority remains unresolved.<sup>33</sup>

### *Regulation of Broadcasting: State Monopoly to Private Sector*

Broadcasting remained a state monopoly for decades after independence, with All India Radio and later Doordarshan operating under government control. In the absence of a statutory broadcasting law, these services were governed by executive policies. The liberalization of the Indian economy in the 1990s marked a turning point. With the entry of private players in television and radio broadcasting, the media landscape diversified rapidly, necessitating a more structured regulatory framework.<sup>34</sup>

The Cable Television Networks (Regulation) Act, 1995 was introduced to oversee the rapidly expanding cable sector. It set rules for operator registration, content regulation, and penalties for breaching programming or advertisement standards. Still, the Act focused largely on operational and regulatory matters, lacking a holistic legal structure for broadcasting. Despite various suggestions like the Broadcasting Services Regulation Bill, India has yet to establish a unified broadcast law. Thus, regulatory oversight remains scattered, with bodies such as the Ministry of Information and Broadcasting, TRAI, and industry-run regulators performing overlapping functions.

### *Self-Regulation and Industry Initiatives*

Because statutory regulation is limited, Indian media entities have increasingly opted for self-monitoring. The Press Council of India (PCI), created under the Press Council Act, 1978, is a key institution that promotes ethical journalism in print media. While it can reprimand or criticize unethical practices, the PCI lacks any binding authority.<sup>35</sup> In television, bodies like the News Broadcasters Association (NBA) and Indian Broadcasting Foundation (IBF) have developed self-regulatory frameworks such as the News Broadcasting Standards Authority (NBSA). These platforms manage internal complaint resolution and offer

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<sup>33</sup> The Cinematograph Act, 1952.

<sup>34</sup> Ministry of Information and Broadcasting, Annual Report 2022–23.

<sup>35</sup> Indian Broadcasting and Digital Foundation (IBDF), Voluntary Self-Regulation Code for OTT Platforms, available at <https://ibdfindia.com>.

programming and reporting standards. Yet, their jurisdiction is restricted to their affiliates, and compliance with decisions is generally optional. Although such initiatives have encouraged industry accountability, self-regulation has notable shortcomings.<sup>36</sup> There are instances of prejudice, inaction, and inadequate responses to offensive content. Amid rising concerns over false information, dramatization, and weak responsibility, experts contend that statutory regulation is needed to complement self-regulatory efforts in the public interest.

### *Rise of Digital Media and OTT Platforms*

A major transformation in the media and entertainment sphere is the ascent of digital media. Platforms like social media, web-based news, and OTT services have changed how content is created, shared, and consumed. Initially, these operated in a largely unregulated space with minimal oversight. To address this regulatory gap, the Indian government introduced the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules in 2021 under the IT Act, 2000.<sup>37</sup> These Rules cover digital news outlets, OTT services, and social media intermediaries. They require appointing compliance officials, setting up grievance handling systems, categorizing content, and allow the government to demand content removal. Although these Rules aim to enhance accountability and user safety, they have been met with criticism from media houses, civil society, and legal scholars who view them as a threat to press freedom and editorial independence. Critics argue that the Rules give excessive powers to the executive, lack judicial oversight, and could be misused for political censorship. Legal challenges have been filed in several courts questioning the constitutional validity of the Rules.

### *Emerging Issues and the Future of Media Laws*

With the convergence of media platforms, cross-ownership of news channels, algorithmic content curation, and the spread of misinformation, the media sector today faces complex regulatory challenges. There is growing demand for a unified media law that incorporates traditional and digital media, ensures editorial independence, prevents monopolies, and protects user rights.

In addition to content regulation, newer concerns such as data privacy, copyright in digital works, artificial intelligence-generated content, and platform liability are reshaping the media law discourse. The enactment of the Digital Personal Data Protection Act, 2023 signals a new regulatory approach to how media

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<sup>36</sup> Advertising Standards Council of India (ASCI), Code for Self-Regulation of Advertising.

<sup>37</sup> Internet Freedom Foundation (IFF), Analysis of IT Rules, 2021, available at <https://internetfreedom.in>.

companies handle user data. However, its interface with press freedom, whistleblower protection, and investigative journalism remains unclear.

Another area of concern is the increasing political and corporate control over media entities. The lack of effective laws to prevent cross-media ownership has raised questions about media pluralism and the independence of journalistic institutions. There is also an urgent need to ensure that regulatory authorities are independent, transparent, and free from political influence.<sup>38</sup>

The development of media laws in India reflects an ongoing struggle to balance freedom and regulation, innovation and accountability, and public interest with commercial imperatives. While the existing legal framework has evolved over decades, it remains fragmented and reactive. There is a pressing need to reimagine media regulation in India through a rights-based, transparent, and technologically updated framework that safeguards freedom of expression while upholding democratic values.

### **KEY MILESTONES AND LEGISLATIVE REFORMS**

The development of media and entertainment laws in India has been neither linear nor uniform. It has been influenced by colonial legacies, constitutional mandates, societal transformations, global technological advancements, and political ideologies. Over the decades, the Indian legal system has responded—sometimes progressively and other times conservatively—to the evolving nature of media through critical legislative and judicial interventions. This section identifies and analyzes key legislative milestones and reforms that have shaped the regulatory landscape of the Indian media and entertainment industry.<sup>39</sup>

#### *The Cinematograph Act, 1952 – Regulating Visual Content*

The Cinematograph Act, 1952 was a pivotal development in the Indian film industry, aimed at regulating the public exhibition of cinematographic films. It was introduced in the backdrop of growing concerns about the moral and social impact of films on Indian audiences, especially youth. The Act established the Central Board of Film Certification (CBFC), granting it the authority to certify films for public exhibition based on classifications like 'U', 'UA', 'A', and 'S'. It empowered the Board to suggest cuts or even deny certification to films deemed obscene,

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<sup>38</sup> Raghavan Committee Report on Competition Law and Policy, Government of India, 2000, pp. 134–137.

<sup>39</sup> Durga Das Basu, *Introduction to the Constitution of India*, 25th edn, LexisNexis, Haryana, 2021, p. 231.

sedition, or against national interest.

Over time, the Act was criticized for excessive censorship and arbitrary decisions, leading to multiple legal challenges. Filmmakers and free speech advocates have consistently argued for replacing censorship with certification, as seen in the landmark *K.A. Abbas v. Union of India*, where the Supreme Court upheld pre-censorship but called for fair procedures. The Act has remained largely unchanged, despite technological revolutions such as multiplexes, digital screening, and OTT platforms. This stagnancy has spurred demand for reforms, especially with the advent of streaming services, prompting the Draft Cinematograph (Amendment) Bill, 2021.

#### *The Press Council Act, 1978 – Institutionalizing Print Media Ethics*

The Press Council Act, 1978 revived the Press Council of India (PCI) as a statutory, quasi-judicial watchdog for the print media. Its mandate includes preserving press freedom and improving journalistic standards. It can inquire into complaints against newspapers and journalists for professional misconduct or violation of ethical norms.

While the PCI's establishment was a step towards media self-regulation, its limited punitive power has raised doubts about its efficacy. It cannot impose penalties or compel compliance with its recommendations. Moreover, its jurisdiction is limited to print media, excluding digital and broadcast platforms, thereby diluting its relevance in the digital era. Nonetheless, the PCI remains symbolic of India's commitment to a free and responsible press and plays a vital role in upholding ethical journalism.

#### *The Cable Television Networks (Regulation) Act, 1995 – A Response To Liberalization*

With the liberalization of the Indian economy in the 1990s and the boom in satellite television, the Cable Television Networks (Regulation) Act, 1995 became necessary to regulate the rapidly growing cable TV sector. It aimed to ensure that content disseminated through television adhered to basic norms of decency, national integration, and public morality.<sup>40</sup> The Act introduced a Program Code and Advertising Code, mandating all cable operators to comply with government norms. It authorized the government to ban or prohibit the transmission of any channel or content that violated these codes. However, the lack of a centralized and independent broadcasting authority has often led to politically motivated bans and inconsistent enforcement. The

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<sup>40</sup> Aparna Viswanathan, *Cyber Law: Indian and International Perspectives on Key Topics including Data Protection and Privacy*, LexisNexis, Gurgaon, 2012, pp. 97–113.

Act's inability to keep pace with digital convergence has necessitated calls for a comprehensive broadcasting law to cover TV, radio, and OTT content under a uniform regulatory regime.

### *The Information Technology Act, 2000 – Expanding the Regulatory Horizon*

The Information Technology Act, 2000 (IT Act) initially focused on promoting electronic commerce and addressing cybercrime but gradually evolved into a critical instrument for regulating digital media. Sections like 66A (now struck down for being vague and arbitrary in *Shreya Singhal v. Union of India*) and 69A (blocking powers) have had a profound effect on online freedom of expression.<sup>41</sup> More recently, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 brought OTT platforms and digital news media under regulatory oversight. These Rules introduced mandatory grievance redressal mechanisms, content classification systems, and self-regulatory bodies, marking the State's assertive entry into digital content governance. While these efforts aim to ensure accountability, critics argue that the Rules suffer from overbreadth and provide the executive with excessive powers, threatening editorial independence and freedom of speech.

### *Telecom Regulatory Authority of India (TRAI) – Broadcasting through Economic Regulation*

Though originally formed to regulate telecom services, the TRAI has played an increasingly central role in regulating the broadcast sector. Its interventions in pricing (e.g., New Tariff Order), licensing, content packages, and consumer choice have redefined the economics of television broadcasting. TRAI's 2014 recommendations on cross-media ownership and vertical integration aimed to prevent monopolistic practices and ensure media plurality.<sup>42</sup> However, TRAI's role in content-related matters has been controversial. Broadcasters have opposed its intrusion into editorial choices through economic instruments. While TRAI provides a regulatory model that ensures market competition and consumer protection, its lack of coordination with content regulators (like the CBFC or PCI) has often led to overlapping jurisdiction.

### *Personal Data Protection and Surveillance – Privacy and the Media*

The growing use of big data and algorithmic content

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<sup>41</sup> Telecom Regulatory Authority of India (TRAI), Regulation of OTT Services, available at <https://traigov.in/release-publication/recommendations/regulation-over-top-ott-services>.

<sup>42</sup> T.K. Viswanathan, Commentary on The Information Technology Act, 3rd edn, LexisNexis, Gurgaon, 2020, pp. 155–170.

dissemination by media platforms has created a need for strong data protection norms. The Digital Personal Data Protection Act, 2023, inspired by global models like the GDPR, lays down obligations for entities collecting personal data, including media houses and streaming services. Consent, purpose limitation, and transparency now form the backbone of lawful data processing.<sup>43</sup> This Act significantly impacts the entertainment and advertising sectors, particularly in the context of targeted ads, content recommendations, and personalized journalism. It compels media platforms to ensure privacy compliance while navigating the thin line between commercial interests and individual rights. Moreover, this Act is part of the broader attempt to create a Digital India Act that will comprehensively replace the IT Act and align India's cyber regulations with global best practices.<sup>44</sup>

### *The Cinematograph (Amendment) Bill, 2021 – A Double-Edged Sword*

The government's move to introduce the Draft Cinematograph (Amendment) Bill, 2021 was perceived both as progressive and regressive. On one hand, the Bill introduced new age-based certification categories like 'U/A 7+', 'U/A 13+', and 'U/A 16+', aligning with global standards and acknowledging evolving viewer sensibilities. It also proposed stricter anti-piracy measures. On the other hand, the Bill controversially proposed to grant the central government revisional powers to re-examine CBFC decisions, which critics viewed as a threat to artistic freedom and an unconstitutional expansion of executive control. The debate over the Bill reflects the ongoing tension between regulation and creativity in the Indian film industry.<sup>45</sup>

### *OTT, Streaming, and the Future of Content Regulation*

The exponential growth of OTT platforms like Netflix, Amazon Prime, and Disney+ Hotstar has challenged traditional models of censorship and licensing. Initially unregulated, these platforms adopted a self-regulatory code in 2019, which lacked enforcement powers. The 2021 IT Rules imposed a mandatory grievance redressal mechanism and a three-tier regulatory structure, with final oversight vested in the Ministry of Information and Broadcasting.<sup>46</sup>

## **LEGAL CHALLENGES AND CONCLUSION**

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<sup>43</sup> The Digital Personal Data Protection Act, 2023.

<sup>44</sup> Digital Personal Data Protection Act, 2023, available at <https://www.meity.gov.in/data-protection-framework>.

<sup>45</sup> Internet Freedom Foundation (IFF), Analysis of IT Rules, 2021, available at <https://internetfreedom.in>.

<sup>46</sup> Telecom Regulatory Authority of India (TRAI), Recommendations on OTT Regulation, 2020.



### *Legal Issues In Digital And Online Content (Ott Platforms)*

The rise of Over-The-Top (OTT) platforms has revolutionized the media and entertainment industry in India. With audiences increasingly turning to digital streaming services for movies, web series, documentaries, and live content, these platforms have challenged conventional regulatory frameworks. While this shift has enhanced content diversity and democratized content creation, it has also raised complex legal issues concerning regulation, content liability, data privacy, intellectual property, and consumer protection.

#### *Absence of a Dedicated Regulatory Framework*

Unlike traditional broadcasters governed by the Cable Television Networks (Regulation) Act, 1995 and the Indian Telegraph Act, 1885, OTT platforms operated for several years in a legal grey zone. Initially, there was no specific statute to regulate online content dissemination, which led to debates over self-regulation versus statutory control.

In February 2021, the Government enacted the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, pursuant to the Information Technology Act, 2000, thereby bringing OTT platforms under the purview of digital publishers. The Rules established a three-level grievance redress system, guidelines for content classification, and stressed publisher responsibility. Nonetheless, apprehensions persist about limitations on free speech, ambiguity in terminology, and the absence of thorough legislative discourse.

#### *Content Regulation and Censorship*

One of the most contentious legal issues surrounding OTT platforms is content regulation. Unlike films that are subject to certification by the Central Board of Film Certification (CBFC) under the Cinematograph Act, 1952, OTT content initially remained uncensored. With bold themes, profanity, and depictions of violence or sexuality, various stakeholders raised concerns over morality, religious sentiments, and public order.<sup>47</sup>

- The IT Rules, 2021,<sup>48</sup> now mandate OTT platforms to:
- Classify content into five age-based categories: U, U/A 7+, U/A 13+, U/A 16+, and A.
- Provide parental controls and age verification mechanisms.

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<sup>47</sup> Prashant Iyengar, "Media Censorship and OTT Platforms in India" (2022) 7(1) NLS Law Journal 29.

<sup>48</sup> Parliamentary Standing Committee on Information Technology, Regulation of Digital Media, 2021.

- Follow a Code of Ethics that aligns with constitutional values.

Despite these changes, several legal petitions have been filed in courts alleging that such rules may result in overregulation and violate Article 19(1)(a) (freedom of speech). The lack of a statutory body like CBFC for digital content has led to calls for a separate law tailored for OTT media.

### *Intellectual Property Concerns*

OTT platforms rely heavily on licensed content. However, unauthorized reproduction, piracy, and infringement remain rampant, particularly due to digital dissemination. Legal issues include:

- Ambiguities in licensing agreements for streaming rights.
- Disputes over territorial jurisdiction in cross-border content distribution.
- Unauthorized recording and circulation of subscription-based content.
- Challenges with deep-linking and torrent uploads.

Platforms must also ensure that they acquire valid rights before publishing content, as seen in multiple copyright infringement suits against streaming giants.<sup>49</sup> Enforcement mechanisms under the Copyright Act, 1957,<sup>50</sup> and relief through injunctions and damages play a critical role in protecting IPR in this domain.

### *Data Privacy and Surveillance*

OTT platforms collect massive volumes of user data, including viewing history, preferences, location, and payment details. This raises significant privacy concerns, especially in light of India's evolving data protection regime. The absence of a standalone Data Protection Act (at the time of writing) creates a regulatory vacuum, although the Digital Personal Data Protection Act, 2023<sup>51</sup> is expected to provide robust legal safeguards.

- Legal obligations include:
- Implementing user consent mechanisms.
- Avoiding data profiling and unauthorized sharing.
- Ensuring cybersecurity for stored information.

In cases of data breaches or profiling without consent, OTT platforms may face liabilities under the IT Act, 2000,<sup>52</sup> particularly

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<sup>49</sup> P. Narayan, *Intellectual Property Law* (6<sup>th</sup> edn, Eastern Law House 2017).

<sup>50</sup> Ministry of Law and Justice, *The Copyright Act, 1957*, available at <https://legislative.gov.in>.

<sup>51</sup> Digital Personal Data Protection Act, 2023, available at <https://www.meity.gov.in/data-protection-framework>.

<sup>52</sup> Sunil Abraham, "IT Rules and Free Speech in India" (2021) 25(1) NUJS Law

Sections 43A and 72.

### *Liability and Safe Harbour Protection*

OTT platforms often function as intermediaries under the IT Act<sup>53</sup>. As such, they have certain protections under Section 79, which provides safe harbour immunity for content published by users or third parties. However, this immunity is conditional, requiring:

- Due diligence,
- Prompt action on takedown requests, and
- Compliance with IT Rules, 2021.

The interpretation of “intermediary” and “publisher” is still being litigated, especially for platforms producing or commissioning their own content. As a result, OTT platforms must be cautious of civil and criminal liability for defamatory or unlawful content.

### *Jurisdictional Challenges*

OTT platforms operate transnationally, but legal disputes are often territory-specific. Courts in India have faced difficulties enforcing local laws against foreign-hosted content or platforms without local offices. Questions about:

- Which country’s law will apply,
- Where the contract is enforceable, and
- Whether Indian courts have extraterritorial jurisdiction<sup>54</sup>, remain unresolved in many cases.

Some Indian courts, however, have taken a proactive stance. In *Swami Ramdev v. Facebook, Inc.*, the Delhi High Court ruled that Indian courts can direct global takedown of content under certain conditions.<sup>55</sup>

### *Defamation, Hate Speech, and Obscenity*

OTT content may often touch on controversial socio-political themes<sup>56</sup>, leading to allegations of:

- Defamation under Sections 499–500 of the IPC (or equivalent provisions under BNS),
- Obscenity under Section 67 of the IT Act,

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Review 53.

<sup>53</sup> Internet Freedom Foundation (IFF), Analysis of IT Rules, 2021, available at <https://internetfreedom.in>.

<sup>54</sup> Kiran Prasad, “Media Regulation in India: A Review of Policies and Practices” (2016) 11(2) Journal of Media Law & Ethics 45.

<sup>55</sup> Ursula Smartt, Media and Entertainment Law (3rd edn, Routledge 2017).

<sup>56</sup> Law Commission of India, Report No. 267: Hate Speech, 2017.

- Hate speech<sup>57</sup> affecting religious sentiments under Sections 153A or 295A of the IPC.

Numerous shows and films have faced FIRs and court notices, including Tandav and Mirzapur, where courts had to balance artistic freedom with community sensitivities.

### **SUMMARY OF FINDINGS**

This paper has highlighted how the OTT ecosystem in India presents a unique convergence of constitutional law, intellectual property, consumer protection, and digital governance. The key findings include:

- The absence of pre-2021 regulation created ambiguity, allowing OTT platforms to self-regulate without legal accountability.
- The IT Rules, 2021, while attempting to bring uniformity, face criticism for their potential to curb free expression and invite executive overreach.
- Defamation and privacy litigation against OTT content is rising, making content creators and platforms more cautious about portrayals.
- Judicial pronouncements have often sided with the principle of freedom of expression, yet also emphasized responsibility and community sensitivity.
- The interplay between privacy rights and data collection continues to evolve with the coming into force of the Digital Personal Data Protection Act, 2023.

These findings point to the urgent need for a comprehensive media law framework that balances innovation and creative freedom with constitutional and statutory safeguards.

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<sup>57</sup> Law Commission of India, 267<sup>th</sup> Report on Hate Speech, available at <https://lawcommissionofindia.nic.in/reports/Report267.pdf>.