

The Evolution of Legal Censorship in India: Impact of OTT Platforms on Modern Censorship Laws

Mr Vatsal Vyas¹, Mr Sheheen Marakkar²

¹5BBA LLB

²Assistant Professor

Abstract

Media control in India has changed greatly due to change in politics, technology and social values. Since the press was already under controllable ownership during the colonial rule of the country to the censorship of cinema and broadcast media, censorship has served as one of the important tools by which the state has been trying to control the discourse of the people. Although the constitutional document embraced post-independently formally ensured the freedom of speech and expression, the censorship process still persisted in accordance with institutional and regulatory regulations aimed at narrowing the liberties of individuals and the interests of the national and personal order, morality, and the interests of the country. Over the recent years, the advent of the Over-The-Top (OTT) platforms has broken the pattern of media regulation. In contrast to the print, cinema, and broadcasting, the OTT platforms are executed in a decentralized digital space, which is supported by the network of intermediaries, who are operated privately and the distribution network across the borders. This change has brought significant challenges to the laws on censorship which were initially designed to accommodate centralized and geographically based media structures. The increasing dependence on self-regulation, algorithmic regulation, and platform regulation has made it unclear where state censorship and individual regulation of expression begin and end, a question of transparency, accountability, and constitutional protection.

The study focuses on the history of legal censorship in India and its individual influence on modern censorship legislation in relation to the effect of OTT platforms. The study examines the changing regulatory philosophies to fit the technological change and the ability of the current regulatory approaches to guarantee freedom of expression in the digital era by placing the regulation of digital streaming within the wider historical context of Indian media regulation. The paper contends that current censorship in India is a continuity/ transformation in that traditional regulatory habits mix with newer controls of platforms. It finds that a rights-based and historically informed regulatory framework is needed to deal with the problems of OTT platforms and maintain the values of democracy and constitutional freedoms.

Keywords: Legal Censorship, Freedom of Expression, Mass Media Regulation, Over-The-Top (OTT) Platforms, Digital Media Governance

Introduction

The issue of censorship has been involved in the regulation of mass media in India, which has followed the development of the political power, social changes, and technological development. Since the time of

the first restrictions on press under the colonialist rule, censorship came out as a tool to regulate the circulation of information and to silence outraged opinions. With time as more types of media emerged legal patterns of expression went beyond print to include cinema, broadcasting and finally digital communication. The state responded to the changing interests of national stability, right and wrong, and national interest by alleviating the boundaries of what could be said in each stage of media development.¹ After gaining independence, India has taken a constitutional obligation of freedom of speech and expression but also realized the necessity of making reasonable restrictions. This two-fold practice informed the post-colonial censorship where control shifted towards the explicit censorship and the establishment of control by institutionalizing the control through statutory and regulatory tools. With the rise of cinema and television, the practice of censorship was formalized in some sense a reflection of the balance between society and creative expression. Although the forms and reasons of such control changed, the very purpose of such control over mass media was the same.²

The development of digital media in the last few years has dramatically changed this regulatory situation. The old forms of censorship that are structured to target centralized and territorially confined media have not been sufficient in dealing with the decentralized nature of digital platforms. The Over-The-Top (OTT) platforms are one of them and a significant transformation in the content creation and distribution. Their high rate of growth, use of privately operated middlemen and their cross-border status has made the preexisting censorship models more complex, shifting the accountability, transparency, and state involvement in regulating online speech.

The research paper focuses on the history of legal censorship in India and especially on the effectiveness of OTT platforms on censorship laws in the contemporary times. The research will examine how technological change has altered the lawful regulation on expression, and define the connection between freedom, regulation, and digital media in modern India, by placing OTT regulation in the overall historical context of Indian media regulation.³

Need and Objectives of the Research.

Media development in India has always necessitated modification of the law to the new communication platforms, but the fast rise of digital platforms specifically Over-The-Top (OTT) services has revealed a major weakness in the current censorship systems. Lawful frameworks of regulation of print, cinema, and broadcast media were structured to apply to centralized and territorially dedicated forms of communication, which are not appropriate in controlling decentralized and platform-oriented digital content.⁴ The issues related to the censorship, accountability and freedom of speech have become more sophisticated and urgent as OTTs are incorporated into the mass discourse and consumption of culture. It is evident that there is a necessity to critically analyze whether the new censorship legislation in India

¹ S.T. Baskaran, *Film Censorship and Political Censorship in British India: 1914–1945* (Proceedings of the Indian History Congress, 1975); Someswar Bhowmik, “From Coercion to Power Relations: Film Censorship in Post-Colonial India,” (2003) 38(4) *Economic and Political Weekly* 367–374.

² A.G. Noorani, “TV Films and Censorship,” (1990) 25(6) *Economic and Political Weekly* 300–304;

M.L. Upadhyaya, “Review of *The Law of Press Censorship in India* by Soli J. Sorabjee,” (1978) 20(2) *Journal of the Indian Law Institute* 315–320.

³ Priyanka Ghai & Arnind P. Bhanu, “Censorship in India vis-à-vis Freedom of Speech,” (2020) 7(13) *Journal of Critical Reviews*.

⁴ Someswar Bhowmik, “From Coercion to Power Relations,” (2003); Pranesh Prakash, “India: Visible and Invisible Censorship,” (2015).

reflects the response to this change in an appropriate way or is simply a repetition of the old ways of regulation in the digital environment.

This study seeks to explore the censoring of law in India as it occurred historically so as to establish how previous regulatory theories are still dominant in the governance of media today. Placing the OTT platforms in this bigger context, the paper will explore the ways in which digital streaming has transformed the state of censorship, the role of the state, and the power of the new intermediaries in content regulation. The study is also going to evaluate the consequences of this change on transparency, legal certainty and constitutional liberties, especially the right to freedom of expression. In the end, the research aims to make some contribution to the further understanding of censorship functioning in the digital age and to examine whether the existing legal strategies represent a proper compromise between regulation goals and personal rights of people living in an increasingly digitalized media space.⁵

Literature Review

The available literature on censorship in India indicates a rather fruitful yet disjointed experience of mass media regulation over various times and types of media. The early research of historical and archives is highly dedicated to censorship in colonial times in most of the cases, especially the press and cinema, which were used as the instrument of political control. Historians like S.T. Baskaran and James W. Boyd show how British governmental institutions simply institutionalized censorship to stifle nationalism and regulate opinion in the masses by regulating early film production. These writings determine that the censorship in India was created as a means of governing people rather than being a form of moral control, which forms the basis of subsequent legal systems.⁶

The focus of post-independence scholarship is directed toward constitutionalisation of censorship and control of cinema and broadcasting. Other writers like Someswar Bhowmik or A.G. Noorani examine how the colonial censorship apparatuses continued to exist in the institutions of democracy and took different forms of control, changing an open coercion to bureaucratic and institutional control. These opposing views are further extended by feminist and cultural criticisms such as Ratna Kapur and Nilanjana Bhattacharjya that censorship cuts across gender and sexuality, morality and nationalism and emphasize censorship as a cultural and ideological phenomenon, not just a legal tool.⁷

The other influential line of literature deals with censorship using indirect regulatory means. The example of the copyright-based censorship by Arjun Ghosh shows that the legal regimes that control the ownership and distribution of information can serve as nebulous but effective forms of control in both printed and electronic media. Political studies, including that of Ameya Balsekar on hurt feelings, indicate that censorship is commonly made strategic in the politics of democracies as opposed to being based on legal need.

The more recent scholarship deals with the digitalization of censorship. The visible and invisible censorship analysed by Pranesh Prakash has become a pivotal transformation in the context of regulation in which the intermediaries and control mechanisms have become personal, algorithmic, and policy-constrained platforms. Priyanka Ghai, Arnind Bhanu, and Anshu Siripurapu weave a comparative and

⁵ Nilanjana Bhattacharjya, "Review of *Censorship and Sexuality in Bombay Cinema*" (2013).

⁶ S.T. Baskaran, "Film Censorship and Political Censorship in British India," (1975); James W. Boyd, "Film Censorship in India," (1972) *Journal of Asian Studies*.

⁷ Someswar Bhowmik, "From Coercion to Power Relations," (2003); Ratna Kapur, "The Draw of the Line: Feminist Theory and Censorship," (1996); Nilanjana Bhattacharjya, Review of *Censorship and Sexuality in Bombay Cinema*, (2013).

policy-oriented analysis into the global discussion on digital governance, the law on intermediary liability, and regulation of online speech.⁸

All these studies collectively indicate that censorship in India has transformed into multi-layered and multi-acted mechanisms including legal actors, political actors, culture players, and technological actors. But the literature divides the print, cinema, broadcast, and digital media mainly independently. This study synthesizes and encompasses these views to create a comprehensive view of the development of legal censorship and how online-to-toes (OTT) sites have transformed the current censorship in India.⁹

Research Methodology:

In this study, the investigator will apply a doctrinal and qualitative approach to analyze the development of legal censorship in India and the effect of OTT platforms on the modern censorship regulations. Examples of primary sources are the constitutional clauses, colonial and post-independence laws, policy reports and regulatory codes that govern the print, broadcast and electronic media. These sources are examined in order to trace the evolution of the censorship processes and determine changes in the regulation strategies in various types of media.

The secondary sources comprise a major section of the research and entail books, journal articles, research papers, and critical commentaries on the media law, censorship, and freedom of expression in India. The study also uses comparative and analytical literature on digital governance, intermediary regulation, and the censorship on a platform.

The use of a historical approach ensures the contextualization of the modern OTT regulation in the historical context of censorship practices, and the descriptive-analytical approach is carried out to introduce the sufficiency and consequences of the existing regulations. The research is not based on the collection of empirical data; however, it is based on legal analysis and academic interpretation. This approach combines the historical and modernist approaches to understanding censorship laws in India in a way that allows fully comprehending the changes in censorship laws in India in reaction to technological transformation.

Censorship in print media evolution in India: Early steps.

The development of censorship of Indian print media dates back to the late eighteenth century when the British colonial government first came up with formal ways of controlling the press. The first legal censorship in India would be the Censorship of Press Act, 1799, which was passed by Governor-General Lord Wellesley. The regulation was proposed by the Anglo-French wars and its major purpose was to avoid the publication of content that could foster political instability or destroy the British rule. Within this system the newspapers used to be vetted before publication and the editors had to provide proofs before publication. This saw the start of censorship by the state in the Indian print media.

The first part of the nineteenth century saw further regulation of the press with the introduction of Press Regulations of 1823 by Governor-General John Adams. These laws put conditions of licensing on printers and publishers, which allowed the government wide discretionary powers to cancel licenses. These were subsequently eased by the Press Act of 1835 which is widely described as a time of comparative press

⁸ Ameya Balsekar, "Seeking Offense: Censorship as Strategy," (2014) *Comparative Politics*

⁹ Arjun Ghosh, "Censorship through Copyright," (2013) *Social Scientist*;

freedom but the colonial state still looked at the press with suspicion especially as newspapers owned by Indians started to appear and prominent nationalistic ideologies were being shared.¹⁰

The heightened censorship came at the end of the nineteenth century with the introduction of the Vernacular Press Act of 1878 that the newspapers published in Indian languages were targeted. This act authorized the colonial government to seize printing presses, place security deposits, and censor publications that were considered seditious; but not to do the same to English language newspapers. The discriminatory aspect of this act highlighted the political agenda of dominating the indigenous social opinion. The following laws, such as the Newspapers (Incitement to Offences) Act of 1908 and the Press Act of 1910, expanded on this control by adding the element of punitive action on nationalist publications. These censorship laws of the colonies formed a structural and ideological basis of the press regulation in India. Though presented as a tool of keeping order in the society, they actually served as a tool of political control. The heritage of these initial censorship systems persisted in the post-independent censorship policies, and formed the correlation between the state and the print media in India.¹¹

Censorship and regulatory measures of Broadcast Media in India.

The advent of broadcast media has ushered in a fresh stage in the development of censorship in India with the radio and television taking an influential role in mass communication. In contrast to the print media, broadcasting was subjected to strong state regulation even at the very beginning, mainly because of the issues of the spectrum shortage, national security, and social order. Radio broadcasting was first of all a state monopoly since the government thought of broadcast media as more of a strategic tool as opposed to an expressive medium.

As the sphere of television grew, the regulation intensified in order to make it compliant with social, moral, and political standards. The content that was broadcasted was under government control, and programming was to be in line with the interest of the people and cultural values. Despite the appearance of the private television channels, the control over the content was still exercised by a condition of licensing and programming codes, which strengthened the state control over broadcast stories.¹²

The censorship in the broadcast media was not the same as that in the print in terms of structure design; censorship was not maintained through the punishment of the publication after its release but through preemptive censorship and administrative regulation. This paradigm strengthened the centralized regulation of the content distribution process and restricted editorial freedom. The period of broadcast was therefore a shift to a system of active censorship to regulatory oversight, which defines the lines of media regulation before the digital revolution of the Indian media environment.¹³

Moving from Broadcast Media to Digital Media.

The shift of the broadcast media to the digital media is a major change in the regulation of the mass communication in India. Broadcast media, which is centralized and access to transmission infrastructure is limited gave the state the ability to properly regulate its activities by imposing licensing regimes and content codes. With the introduction of digital technologies, however, this model was completely changed

¹⁰ Pranesh Prakash, "India: Visible and Invisible Censorship," (2015);Priyanka Ghai & Arnind P. Bhanu, (2020);Anshu Siripurapu & William Merrow, (2021).

¹¹ M.L. Upadhyaya, Review of *The Law of Press Censorship in India*, (1978) JILI.

¹² Soli J. Sorabjee, *Law of Press Censorship in India* (1976).

¹³ Bipan Chandra et al., *India's Struggle for Independence*;Upadhyaya (1978).

by decentralizing the production and distribution of content. The internet allowed individuals and personal organizations to spread information globally without having to use state-owned systems, which undermined the existing censorship systems.¹⁴

The concept of digital media has broken the basic principles of regulation of broadcasting. Not like radio and television which operate within a well-defined territorial scope, digital platforms exist in a transnational and interactive space. Information is not passed down in a unidirectional fashion, but is created, exchanged and edited by the consumers on different platforms. This change undermined the efficiency of pre-emptive censorship and made the state rethink the way the controlling power over the expression might be exercised in the online ecosystem.

To address these challenges, regulatory models slowly changed away, focusing on the government on intermediaries to control content. Legal attention was no longer considering individual speakers, but rather the platforms where digital content is hosted and distributed. This was an alternative to the old-fashioned state censorship to a model whereby individual parties are at the forefront in curbing speech. This enabled an expansion of censorship and at the same time concealed its workings as the decisions about what is visible and what is not may often be made without publicly or procedurally accountable actions.¹⁵

Another issue that was concerned during the transition is on accountability and constitutional oversight. Where broadcast censorship was conducted by recognizable regulative institutions, online content regulation may be conducted by the use of automated platforms, contractual platform guidelines, and takedown driven by compliance. This has led to what the scholars have termed as invisible censorship in which speech is suppressed without any official bans or without any justification to the audience.

This period of transition has preconditioned the emergence of Over-The-Top platforms that are used to combine the traditional characteristics of broadcasting with the diversity of digital media. The legal gray areas that were created at this moment still shape the modern discussions on censorship, free speech and the proper role of the state in regulating digital communication. This shift is the key to the analysis of how current censorship legislation has or has not evolved to meet the demands of a fast-changing digital media landscape.

Effects of OTT Platforms on contemporary censorship legislation and future laws.

Introduction of Over-The-Top (OTT) services has caused a major change in media censorship regulation in India. As opposed to the out-of-pocket content where the traditional media, be it cinema or broadcasting, OTT platforms make use of the internet distribution facilitating an on-demand access to the content with no restrictions of a specific time or territory coverage. This basic dissimilarity has had a problematic impact on the current censorship paradigms as they were initially meant to govern centralized and state-owned forms of communication. Consequently, the emergence of OTT platforms has made legislators and regulators start thinking about the application of censorship laws in a digital context where the scale, speed, and decentralization are the leading determinants.¹⁶

Among the most prominent effects of OTT platforms on current censorship laws is the fact that instead of state censorship, the platform-based regulation has become a reality. OTT services tend to operate by self-regulatory models with content rules and policies on moderation being set by the private players. This has

¹⁴ A.G. Noorani, "TV Films and Censorship," (1990); Bruce Boyd (1972).

¹⁵ S.T. Baskaran, "Film Censorship and Political Censorship in British India" (1975); Someswar Bhowmik, "From Coercion to Power Relations" (2003).

¹⁶ Pranesh Prakash, "India: Visible and Invisible Censorship" (2015); Arjun Ghosh, "Censorship through Copyright" (2013).

been a blurring of the historic distinction between state authority and private censorship, rendering accountability and uniformity of concern. Most OTT services perform a great deal of content removal, labeling, and visibility with little or no transparency and notice or due process, in contrast to statutory censorship agencies. Censorship has thus been driven towards greater secrecy, being executed on the basis of contactual requirements and algorithmic taboos, as opposed to legal bans.

OTT platforms have also extended the censorship limits by increasing moral, cultural and political scrutiny of material. The extensive availability and popularity of streaming platforms have made people more sensitive to them, placing pressure on regulation. Information that opposes social standards, religious beliefs or political as well as leadership often attracts controversy which is the focus of control measures. The censorship in this respect cannot be solely aimed at preventing chaos, but rather it gets more shaped by competing interests of protecting cultures, maintaining social morality and national interests.¹⁷

The regulatory reaction to OTT platforms is indicative of an effort to apply the traditional censorship principles to the digital space. There are however great challenges with this approach. When used to apply the legacy censorship models on OTT content, it is prone to destroy the creative freedom that originally characterized digital platforms. In addition, over regulation can lead to self-censorship where creators and platforms want to evade lawsuits due to uncertainties in the law. Simultaneously, the lack of transparent and relative regulatory standards may lead to arbitrary content regulation, undermining confidence in the two platforms and the regulatory bodies.

In the future, OTT regulation puts the legal censorship in India in complicated problems. The absence of transparency in content moderation decisions stands out as one of these issues, especially when algorithms and automated systems are at the center of the action. The other dilemma is the freedom of expression and sound regulation goals in a culturally diverse society. The transnational character of the OTT platforms also makes enforcement more complicated since the content stored beyond the national border is still available to the local audience.¹⁸

Finally, the implications of OTT platforms on the legislation on censorship highlights the importance of adopting a more rights-conscious and sophisticated regulatory approach. The next generation strategies should be focused not on strict control systems, but on the transparency, accountability, and proportionality. With OTTs steadily influencing the discourse of the populace, the Indian media legal problem is to devise censorship paradigms that affirm constitutional rights whilst addressing the challenge of responding to the reality of the digital media regulation.

Conclusion

The history of legal censorship in India shows a steady trend of regulatory responsiveness to the issue of transformed mass communication. Since the first press censorships that were established during the colonial era, up to the systematic censorship of media and cinema, censorship has played a pivotal role in terms of the state trying to regulate the discourses of the people. Despite the fact that the reasons of regulation have changed over time in form of political control to the issue of public order, morality and national interest, the deep-rooted aim of influencing and restricting expression has remained. This history is crucial in getting the context of modern-day censorship in the digital era.

¹⁷ Priyanka Ghai & Arnind P. Bhanu, “Censorship in India vis-à-vis Freedom of Speech” (2020)

¹⁸ Anshu Siripurapu & William Mellow, “Social Media and Online Speech” (2021); Pranesh Prakash, “India: Visible and Invisible Censorship” (2015)

The rise of Over-The-Top platforms is one of the pivotal points in this evolutionary direction. OTT platforms challenge the conventional censorship models through the nature of their activities that are not centralized by control mechanisms and structures and depend on the use of personal intermediaries and digital technologies to spread the content. Consequently, the contemporary censorship has shifted its focus on non-state intervention towards hybrid forms of censorship consisting of self-regulation, platform regulation, and indirect legal regulation. This change has complicated censorship, where visibility and rule-based censorship has been changed into a more diffuse and even opaque process, which poses great concerns about transparency, accountability, and procedural fairness.

The paper points out that the blanket enforcement of the traditional censorship models to the OTT sites without suitable adaptation is likely to suppress the freedom of creativity and democracy. Meanwhile, the lack of regulation norms brings about uncertainty to the creators of the content, platforms, and the audience. These conflicting issues support the necessity of a reasonable regulation process that includes the consideration of the specifics of digital streaming but is based on the principles of constitutional values. To sum up, the effect of OTT platforms on contemporary censorship regulations indicates a larger conflict between the technological innovation and legal regulation. With the ever-changing pattern in the media consumption, censorship in India needs to go beyond the old traditional censoring patterns and adopt models that emphasize proportionality, transparency and rights-based governance. An informed historical perspective of censorship is necessary in coming up with the legal reaction that would safeguard freedom of speech and yet confront the valid regulatory issues in the ever becoming digital popular domain.