

# **MURKY WATERS IN CONTENT REGULATION: THE EMERGENCE OF OVER THE TOP VIDEO STREAMING SERVICES IN INDIA**

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## AUTHOR'S DECLARATION

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I, the undersigned **Shubhangi Heda** hereby declare that I am the sole author of this thesis. To the best of my knowledge this thesis contains no material previously published by any other person except where due acknowledgement has been made. This thesis contains no material which has been accepted as part of the requirements of any other academic degree or non-degree program, in English or in any other language.

This is a true copy of the thesis, including final revisions.

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# ABSTRACT

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The behaviour and culture shifts created by the internet has been visible in all aspects of our lives. The time we spent looking at our screens has increased immensely. This technological shift created by the internet has created a new kind of viewing experience that has characters of both television and films through Over the Top (OTT) video streaming services such as Netflix, Amazon Prime, and Hulu etc. This change in viewing experience created by technology has led the content regulation policy at crossroads.

In India, which has one of the largest film industry and ever-increasing population that consumes video content through television. Although this content consumption is now moving from television to OTTs because of the advantages of accessibility and portability provided by them. However, it has created a policy vacuum within the content regulation policy of the government. This thesis explores tries to analyse the impact of technology and changing medium on content regulation to assess the future of content regulation in India. It frames the attitude of the government towards censorship through assessing different vantage points that mark shift in medium of dissemination. At the end it gives, recommendation contextualized the internet environment and its resultants effects on free speech in India.

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# I. Introduction

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*The law has rested on a perception of technology that is sometimes accurate, often inaccurate, and which changes slowly as technology changes fast.*(Ihriel de Sola Pool 1984)

The transition in visual medium of dissemination has grown at a fast pace in the last century. We have moved from films as a sole medium of dissemination of moving pictures to television and now to the internet. There exists a causal link between change in the medium of exhibition and changes in the society. The effect a medium creates on a society forms the basis of its regulation by the state. With the ongoing digital disruption in the media landscape, the effect that it has on the society are unequivocal, creating a change in how we perceive time and space. It has brought about new habits of consumption of content due to the increase in accessibility, portability and freedom of choice. Specifically, TV watching experience is being revolutionized with the Over the Top (OTT) video streaming services (Tryon 2015). Although this revolution in the case of India as created a policy vacuum for the government. India currently does not have any guidelines or policy framework for the content regulation on OTT video streaming services. The policy vacuum has led to complaints in the courts and self-regulatory action by the industry players.

Media landscape has always been very dynamic in India. With a diverse population in terms of religion, economic status, caste and language the issue of content regulation becomes important. Government in India have tried to censor content on grounds of public morality, communal harmony, protecting history etc.(Sarkar 2009). OTT services have created parallel medium for similar content. The same content might be censored in cinemas and television but because of lack of framework, there is no regulation of such content on paid OTT video streaming services. This brings into question the how government perceives the significance

of content regulation and whether the digital disruption has the capability to dilute the censorship framework in India.

Historical framing of the government attitudes towards new technology and content regulation suggests that it has a tendency to have an offhand attitude towards pacing the policy in tandem with technology, although it always tends to maintain its paternalistic role over the medium. The focus of thesis has been to explore the pattern of the content regulation regime in India with change in technology to ascertain its attitude towards disruption through digital technology.

The first chapter of the thesis analyses the existing literature and theory on establishing a causal link between mediums and its effect on the attitude of society. It shows the transition from films to television to the OTTs with a changing attitude towards content regulation. The next section presents the findings in the form of document analysis to present the evidence of the behaviour of the government and the judiciary towards content regulation. The thesis then discusses the results of the findings and its basis within the theory of soft technological determinism. This work provides recommendations to have multi-stakeholder approach to the uncertain future of content regulation bases on underlying changes in accessibility, portability, cultural disruption and freedom of speech.

# I. Theory and Literature Review

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*There is no binary division to be made between what one says and what one does not say; we must try to determine the different ways of not saying such things, how those who can and those who cannot speak of them are distributed, which type of discourse is authorized, or which form of discretion is required in either case (Foucault 1978).*

The theory and literature review analyse the evolving concept of content regulation in the context of moving pictures and understanding the theoretical basis of such evolution. It relies on the theory of technological determinism and its critiques to understand the influence of the medium of exhibition on people and thereby the emergence of new frameworks for content regulation. The literature focuses on exploring the impact of mediums on content regulation through primarily relying on the concept of ‘medium is the message’ by Marshall McLuhan, but it also takes into the impact of politics, economic and sociological factors that facilitated in the evolution of the concept of censorship.

## 2.1 Content Regulation as an Evolving Concept

Content regulation as a concept has constantly evolved due to rapid modernization and advancement in technology along with changes in economy, politics, culture and institutions. The concept of content regulation or censorship comes from the word ‘censors’ used during Roman times in 443 BC, when the censor was responsible for assessing the morale of the citizens (Irum and Laila 2015). Censorship in a modern society, where there are technical means of communication for reaching a mass audience is a practice of prescribing regulations



or determining based on political, economic, religious and cultural circumstances the content that should or should not be disseminated. Censorship may also involve modifying the content so that its' effect can be limited or to ensure the content is according to prescribed guidelines. Content regulation was developed with the aim of protecting the masses from harm in the interest of public welfare (Marx 2001). The meaning of censorship also depends upon the context of the case to which it is applied. The construction of its meaning and purpose relies on three factors – the reasons for censorship, the medium or parties subjected to it and the means used for enforcing it (Pranesh Prakash, Nagla Rizk, and Carlos Afonso Souza 2016). Hence, in most cases, censorship either involves the state actor prescribing laws and rules for content exhibition thereby creating a framework for content dissemination,(Fiss 1991) or in other cases it might be self-censorship wherein the provider of the content put limitations on the content to be circulated based on certain factors (Bar-Tal 2017). Another form of censorship is societal censorship, wherein the societal norms prescribe the nature of the content being disseminated. Censorship as a concept cannot be reduced within the meaning of one set of institutions, as the practice of censorship constantly shifts within different narratives creating new dynamics and power relations amongst the actors (Kuhn 2016). Censorship is perceived as a threat to free speech regime and as the technologies change, it brings different variation in the concept of content regulation. With the change in technology and upcoming of new medium of communication, a new of form censorship has developed in form of architectural censorship. Architectural censorship constraints speech as result of the medium or the technology used for the dissemination of the speech (Lessig 1999).

With the emergence of new ways of dissemination, there is need to rethink the dynamics and power relation between the state, public and the media, due to the change in perception of society and culture. Within the framework of regulation, laws are just one way to regulate behaviour, norms are the other and within economics prices regulate behaviour but with the

change in technologies, the basis of regulation has changed to a physical medium. As Lessig claims technology as an architecture introduces a new way, in which the physical medium could be regulated through an emphasis on context and environment. The regulatory framework should consist of laws, norms, price and architecture. Especially within cyberspace, the role of technology as an architecture of regulation is becoming increasingly pertinent (Lawerence Lessig 2000). Although there has been critique of the technology determinist approach followed by Lessig in formulating the architectural model of regulation. While technology plays a major role in forming the basis of regulation it cannot be the sole factor, as different technologies are perceived and responded to in different ways in different societies. Therefore, in order to understand the policy habitat of regulation both technological and sociological factors need to be understood (Hosein, Tsiavos, and Whitley 2003). Hence, in understanding the framework for the future of content regulation it is important to take into consideration the role of technology in determining the relations between the regulatory regime and the society.

## 2.2. Basis of Content Regulation - Technology and Media Determinism or Beyond

‘Technological Determinism’ is the term coined by American sociologist, Thorstien Veblen, which states that transformation in the society is brought by the change in technology. As technology develops and new mediums appear, the society needs to adapt itself to such technology. The adaption in this case, might mean changing the way regulation, rules or the norms govern the society. The theory establishes a causal link between the changes in the society with the changes in the technology. Technology determinism functions in varying degrees depending upon the strength of the causal link between the change in technology and

change in society. Soft technology determinism accepts the technology as a major driver for change but also recognises the role of other factors (Bimber 1990). There is a third wave of technology determinism that has emerged in the 21<sup>st</sup> century with coming up of internet which has changed the pace of life (Alvin Toffler 1980). The critiques of technology determinism theory state that technology cannot be the only force that can drive change in society. Technology itself emerges from the environment that is determined by politics and economics. To save the technology from the social constructivist critique and to understand the autonomous effects of technology it is important to accommodate both the views in a framework of understanding (Lawson 2004). From the theory of technology determinism flows the theory of media determinism. Marshall McMullan established the theory of media determinism from his famous theory of ‘medium is the message’. The theory of ‘medium is the message’ places heavy reliance on the medium through which content is communicated which impacts’ people rather than the content itself. He considers media as the extension of human sense and personal energies and a force that alters our perception of social realities. In order to study a particular form of media, the history where that medium did not exist can be explored in order to understand the consequences of the change in the medium (Marshall McLuhan 1964). Hence, a medium can be understood as the driving force for policy changes but at the same time, it is also important to explore the political, cultural and economic tipping points in the context of change in medium. It is important to establish the effects of change not just determined by the medium but also by the other factors that affect human behaviour. Hence, in order to study media in any context it is important to look at the medium in the context of socio-cultural realities (Shaw 1999). In order to understand the relation between media and society there are two questions which need to be answered: “ *What new technology does to people and what people do with new technology*” (David Croteau and William Hoynes 1997).

## 1.3. Changing Mediums and Sociological Factors Affecting Content Regulation

Marshall McLuhan categorises media into two broad categories of hot and cold medium. Hot media refers to high definition media like that of radio and films which provides many details within one frame. Since hot media provides a lot of detail it leaves little room for audience imagination, and in such scenarios audience is more a receiver of the information. While in soft media which is a low definition gives less information and it increases the imaginative scope of the audience to fill in the missing details (Marshall McLuhan 1964). Defining the mediums within the category of hot and cold is related to the kind of effect it has on the audience. The effects such medium on the audience is related to kind of regulation such medium will be subjected to.

### 1.3.1. Films as a Medium and Beyond

In 1895, Lumiere brothers invented cinematograph that led to the creation of moving pictures. The film as a medium exhibits the process of change in an entertaining format to the audience. It could transport the viewer from his reality to the world that is created through moving images. Sometimes this experience is innate that the audience does not realize this process of transportation. Often these realities are constructed in moving images in the form of dreams which are desirable to the audience, which makes the impact of the movies on the audience compelling. This compelling effect it has on the audience has created the demand for it (Marshall McLuhan 1964). The demand that movies create has led it to become a billion-dollar industry in the 20<sup>th</sup> century. Its uses have not been only limited for entertainment but it has

also been used for propaganda, raising awareness about societal issues and education (Geoffrey Nowell-Smith 1996).

Within the Indian context, the films have been a powerful medium of communication. Since the introduction of films in India, it has grown in its reach and its impact. Films were introduced in India by Lumeire brothers in 1896. Indian film industry grew at a large scale during the post-independence era with the introduction of new technologies in film production and distribution. The scale of growth of Indian films have resonated its effect at the global scale (Dr. B.P.Mahesh Chandra Guru et al. 2015). British colonizers in India realized that cinema as a medium has a different effect on people compared to print media. Also, there was an inherent idea within the censorship policy of the colonizers which considered the colonized as less rationale and hence more vulnerable to the effect of moving images. Hence, it reflects the dynamics of power struggles during that time. The British brought in their conflicting ideas of cinema control or censorship to India (Sharma 2009). During the advent of cinema in India, the policy of content regulation was largely based on the aim of the British to control the spread of nationalist fervour, to control the spread of socialist ideas as spreading around in the other parts of the world (Bhowmik 2003a). But these inherent intentions of censorship policy were garbed by the idea of public interest and morality.

Although even in the post – colonial context many of these archaic ideas of censorship policy regarding protecting public morality have been taken forward in future of legislations and policies (Priya Jaikumar 2006). William Mazzarella provides a different approach to the understanding of film censorship in India. He states that the effect that cinema has created as a medium in India is such that it has created the need for its censorship. The advent of cinema in India saw concerns regarding the exhibition of Hollywood films in Indian Cinema, which Mazzarella describes as the period of cultural emergency. He relies on the concept of

performative dispensation which states cinema as a medium created the need for censorship but censorship also reflects the reality of the society itself (William Mazzarella 2013).The censorship policy for films is currently stipulated within the Cinematograph Act of 1952.

### 1.3.2. Television as a Medium and Beyond

Television is defined as a low definition medium as it offers little details within one frame and hence increases the scope of the involvement of the audience. It is more consumer oriented. While elaborating on TV as a medium McLuhan makes an interesting argument that the censors are not familiar with the concept of ‘medium is the message’ and hence their efforts have always been to control content rather than media. And once censors will be aware of the potential of a medium they will suppress the medium itself (Marshall McLuhan 1964). The emergence of television and radio together created broadcasting as a social institution and their initial uses were manipulative and controlled by the state. The main benefit of the technology was that households were now connected to it and hence developed the term ‘mass communication’(Williams and Williams 1990).

Television as a medium of mass communication was introduced in India in 1959.It was introduced in India with an educational agenda and as the government realized its potential public broadcasting systems with the aim of educating and entertaining people were expanded (Shitak 2011). Broadcasting was recognized as a powerful medium of communication of speech and content and it was recognized by the judiciary that the government should not have a monopoly over its use (Girish Kumar R and Relfi Paul 2009.). There were technological developments within the broadcasting sector from the 1990s with the coming of cable television and then satellite television (Singh 2016). The influence of television as a medium grew with the liberalisation policies and the introduction of satellite television in India. Satellite television brought with it range of new content and the television came to be a

personal entertainment device in the households. Hence, there was shift in the way in which television broadcasting was operated from public to private. It opened up the telecommunications market to foreign distributors and imported content (Thussu 1999).

The broadcasting sector in India was subjected to power struggles for content between the government and private sector trying to claim their dominance (Victoria L. Farmer 2009). Hence, the television as a medium affected the policies by the government but at the same time, policies of liberalisation influenced the technological advancement of broadcasting sector in India. With the increasing influence of television on the lives of people and proliferation of the content over television the government introduced range of policies with the advent of cable television, satellite television and Direct to Home service (DTH). Within these policy debates, there were concerns raised that liberalisation and introduction of foreign content through these medium is not sensitive to cultural values of the Indian society. Hence, even after the liberalisation policy the government drafted a code of conduct for all the distributors of content. The debate regarding the content regulation in the India takes a new fervour with a technological development in the broadcasting sectors. Although, it is always influenced by the ideals of public morality and cultural sensitivity within the Indian context (Narayan 2013).

### 1.3.3. Internet as a medium of digital content and beyond

The coming up of Web 2.0 has revolutionized media from several aspects. The reception of information through the digital medium has expanded manifold in recent years. Internet is seen as a new liberation force driving ideas, thoughts and content across border and societies. It has led to the emergence of new actors and has made consumers incharge of selecting the content they want to receive and view (Taylor 2014). Mr Powell claimed that the internet is a well of information and it cannot be controlled, the time of black and white television sets are gone. It

has revolutionized the means of communication and exchange of information and has brought to the forefront new medium of expression (Umphlett,2006). Rethinking the argument of the earlier media theorists including Mcluahn, digitisation has created a new social order which has blurred the differences of time and space. It has converged the different mediums that earlier existed in the form of library, films and television on our computer screens. The force of internet as a medium has led governments and policymakers all around the world to rethink the way content can be regulated (Cooper 2007). There has been a proliferation of user-generated content across online video portals. In the context of broadcasting there has been emergence of Internet Protocol Television (IPTV) and Over the Top Video Streaming Services (OTTs). The Internet has brought about a new wave of content, providing consumers the freedom to choose the time and space for the reception of the content. One of the most famous video streaming OTT service, Netflix was developed on a movie rental format, but it has now developed in a new form of television. Even though the media has changed but it continues to affect the culture in significant ways in the post- network era. Many theorists view this shift as the death of television but it resembles the transition in the way in the way of storytelling through a new medium. (Lotz 2007). The coming of video streaming services creates a more engaging environment. The trends show that there has been a growing shift from cable television to OTT platforms. In such a scenario, it has forced the regulators to think about the way they want to perceive the new kind of broadcasting.

Over the Top media services do not have one acceptable definition. The Internet Telecommunication Union defines OTT services as “*Internet application that may substitute or supplement traditional telecommunication services, from voice calls and text messaging to video and broadcast services*”(“ICT Regulation Toolkit” n.d.). The Indian regulatory body, Telecom Regulatory Authority of India (TRAI) borrows the same definition. There has been an immense increase in the internet and mobile penetration in India , which has increased the



availability of OTT services to the masses (Sujata et al. 2015). The Indian media landscape has seen a tremendous rise the digital subscription on the OTT services and the penetration of the audio and video traffic was expected grow to 82% of the total digital traffic (“Digital Media: Rise of On-Demand Content” 2015). In 2017 the user base of Netflix and Amazon prime grew by 5.37 million and 12.64 million respectively (“Technology, Media and Telecommunications Predictions” 2018).

The Indian government and other regulatory bodies have not tried to reconcile their policies with the change in technologies. In the context of content regulation over the internet, the debate has been oscillating between concepts of state censorship to self- regulation (Rajkhowa 2015). There are on-going consultations regarding understanding the nature of OTT media services and policy for content regulation for the same. The dilemma that authorities face is regarding subjecting the OTT media platform within the framework of broadcasting policy or films or within broader contours of internet regulation. The post-network era that is set to revolutionize the medium of visual viewing in India is marred with debates in the context of economy, institutions and free speech regime in India (Grewal 2016).

## II. Methodology and Research Design

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The corner of the argument of this thesis is based on the theory of path dependence within the public-policy research. The aim of the thesis is to understand the response of the institutions to the content regulation the policy in context of different period in history. It puts emphasis on the window of opportunities opened by technological change in the medium of dissemination and underlying changes in sociological factors. Within the public policy research, path dependence is based on the claim that the present policy adopted by an institution is based on choices made in the past. It perceives the policy problem from a historical lens which determines the attitude and the nature of the institution in dealing with a similar kind problem in the past. It basis its arguments on the ‘efficacy of history’ (Torfing 2009). Many theorists have criticized the application of the theory of path dependency within policy research, but Torfing has critically analysed the path dependency re-establishing its relevance within the context of public policy.

While studying technology and its effect on the society the notion of path dependence becomes important. As technology opens new avenues of thinking and perception but at the same time, they tend to be influenced by the past behaviour and notions. Asa Briggs, emphasises on similar argument stating that technology leads to different outcomes in different societies and it can be useful to assess change in technologies within the historical context. His argument strongly relies on the concept that the word ‘history’ not only connotes the past but also the present and future. Within her work ‘man made the past and man-made the future’ he relies on understanding the history of British broadcasting to answer the questions that will be posed by digital technology and its impact on mass communication (Sturken, Thomas, and Ball-Rokeach 2004).

Relying on a combination of path dependence and the importance of historiography in the study of technology and its relation to the society this thesis basis its arguments on change in the medium as vantage points to look into the content regulation policy. The aim is to understand the behaviour of the government and society to understand the future of policy habitat with the digital disruption caused by the paid Over the Top video streaming services in the way visual content is perceived and regulated in India.

### 3.1. Research Question

This thesis explores the changes in the content regulation policy with the changes in the medium of dissemination. It will explore the impact of history of content regulation policy on the new policy environment created in the post-network era by paid Over the Top video streaming services such as Netflix, Amazon Prime, Hotstar etc. using India as a case study. Currently, India does not have a specific content regulation policy for the OTT video streaming services but with its increasing demand and reach this becomes a significant area of policy research. The primary research question can be divided within following avenues of exploration

- Whether the content regulation policy derives its basis within the technology determinism theory, or it goes beyond and relies on the critique of the theory and is also affected by other sociological factors.
- What does change in mediums as vantage points suggest regarding the behaviour of regulating institutions for the content regulation?
- Through looking at the path dependence and historiography of technological change and institutional behaviour what will be the inclination of the new content regulation policy.

## 3.2. Research Design

This is qualitative research using document analysis of the content regulation policies with the changes in the medium of dissemination. Document analysis is a procedure for evaluating documents both electronic and physical to develop an understanding of a particular phenomenon or an issue. It provides a rich analysis of a particular phenomenon and it often times is useful as a standalone method of research. (Bowen 2009) The aim of the document analysis is to assess the response of the government and institutions to technological change accompanied by other sociological factors determined by the political and economic environment of the country. The document analysis will include policy documents including white papers, consultation papers and reports by relevant government institutions and other bodies involved in content regulation in India. It will also include journal articles, books and other academic literature that has traced the content regulation policy across different points of time in India. The document analysis will also include the legislation and case laws with a specific focus on the provisions related to content regulation guidelines relating to visual medium and case laws regarding the content regulation at the time when there was an emergence of new medium of dissemination.

The key aim of the document analysis is to understand the drivers of change in content regulation policy and the arguments made by the government in justifying these regulations. The analysis of case laws will determine free speech jurisprudence in India and the role played by the judiciary in influencing content regulation policy in India. Relevant case laws reflect the perception held by society regarding the content regulation policy of the government. With a change in technology, the study of relevant legal perspectives become important (Cockfield and Pridmore 2007). The analysis of case laws and legislation reflect on technology as an agency for legal change or vice a versa.

### 3.3. Case Study Selection

For the purposes of the present thesis, India has been taken as a case study as it one of the emerging market for the OTT video streaming services. Asia Pacific seen has the steepest growth of 24% within OTT video market compared to other regions.(Kanchan Samtani And Gaurav Jindal 2018) There also has been ongoing debate surrounding the content regulation on these platforms in India. India has a vibrant and dynamic industry for visual mediums. The overall media consumption in the country is growing at a rate of 9 % over the last six years which is one of the highest in the world. Media consumption through digital media is growing as broadband users have increased to 480 million. Internet users in India have growth by 13.91 % from 2016 to 2017 (Telecom Regulatory Authority of India 2018a). People in India consume 190 minutes of video content per day on different platforms. The rate of consumption of video content has grown by 8% in the last 7 years. There has also been growth in the kind of platforms available for viewing including OTT services and apps on different devices, apart from already existing traditional TV channels (Kanchan Samtani and Karishma Bhalla 2018).

There also has been an expansion in the investment in the OTT sector in India because of growing demand. The revenue from OTT platforms is expected to grow by 20% in the period of 2017-2023 that is much higher compared to traditional TV. The online video audience in India will grow by around 50 % by 2013 from 2018.(“Media Ecosystems: The Walls Fall Down” 2018) India has seen a surge in the OTT platform with traditional broadcaster launching their own platform seeing the trends of its growth. For example, Star in India launched Hotstar, Sony has launched SonyLiv and Zee has launched Zee 5. They have transferred their content libraries traditionally available on TV to these OTT platforms now. At the same time multinational OTT players like Netflix and Amazon Prime have expanded their reach in India and have started investing in local content. (Kanchan Samtani And Gaurav Jindal 2018)

Hence, with growth in the OTT video streaming services, the question of content regulation becomes important. TRAI recently released a consultation paper on the regulation of OTT services. Through the consultation paper suggestions were invited for understanding the circumstances under which regulation could be applied to OTT like traditional media (Telecom Regulatory Authority of India 2018b). With coming up of consultation paper and the government's attempt to regulate the OTT media space a Code of Best of Practice was released by the Internet and Mobile Association of India (IAMAI), which signed by some of the OTT platforms but not all ("Code Of Best Practices For Online Curated Content Providers" 2019; Namita Singh 2019). Looking at the ongoing scenario and the content regulation policy is at crossroads in India, it becomes pertinent to explore the dynamics of medium and other sociological factors in affecting the future of content regulation in India.

### III. Analysis

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#### 4.1. Findings

##### 4.1.1. Advent of Cinema and Emergence of Content Regulation in India

First films that were exhibited in India were during 1896, after the Indian film industry took to the rapid expansion with exhibition of imported films and as well as indigenous films and cinema as a medium affected a mass audience. This document analysis explores the effect of the cinema as a medium for the construction of regulatory framework when it was first introduced in India. It tries to explore its relation to the political and economic factors during the framing of these policies. In 1928 during the British rule, the government commissioned the first report to look into the framework of censorship and the issues of distribution and exhibition of films in India. The need for an inquiry was stipulated by the government as there were concerns raised regarding the effect of cinema on the Indian audience and the complexity of the issues raised. The report presents a detailed account of the censorship practices and the influence of cinema as a medium on the Indian population. It also closely explores the dynamics of influence between western and indigenous content. The report states that the necessity of censorship lies in the fact that cinema as a medium has a much larger effect on the audience than other mediums. Films have a special appeal that results in physical expression and suggestive action that creates a vivid impression on the spectator. The committee at the outset stated the public opinion in India is not formalised and developed which necessitates censorship because the public cannot be left the task of deciding what is appropriate for the society and what is not.

The Indian Cinematograph Act was introduced in 1918 in India under which board of censors was set up in different provinces which decided the question of morality of the public and granted certificates. The main concerns explored in the report were regarding the western content which might lead the Indian youth to delineate the Indian cultural values and customs. Although the committee felt otherwise stating that the western content in-fact increased the exposure of Indian audience and made them more educated. The committee encouraged the exhibition of more Indian content by introducing a quota system. Regarding the institutional framework the Committee was of the view that the current censorship framework under the Indian Cinematograph 1919 was enough but is capable of improvement. It realized the need for the centralized body like a cinema department rather than the provincial censors. Although while analysing the guidelines for censorship it was felt that sexually explicit content should be cut and films that have intentional propaganda by other countries should be censored ("Report of The Indian Cinematograph Committee" 1928). During the colonial period films with nationalist ideas were subjected to censorship like *Bhakta Vidur*, which had nationalist protagonist like Gandhi, was the first film to be banned in India. Other films such as *Battleship Potemkin* and *Orphans of the Storm* which portrayed ideas of fraternity, liberty and freedom from French revolution were also banned (Arpan Banerjee 2010). It was also noted that after 1930, with coming up of sound within films the demand for Indian films took over the western films.

While the ICC report of 1928 presents one vantage point, which was the introduction of cinema as a medium but it is essential to look at the post-colonial era. Another film enquiry committee submitted its report in 1951 after independence and before the enactment of The Cinematograph Act. The reported stated that the films in India have coverage of about 16 lakh people which is equal to the daily press and it was claimed as important for the economy and art industry. Within its recommendations, it considered the fact that the content regulation is



an evolving concept and the certification of films should be renewed every five years considering the change in the social and moral fabric of the society although this recommendation was not included within the act. It also broadly illustrated the basis of content regulation which was followed from the colonial legislation like that of sexually explicit content, content against religion and faith, scenes of brothels or prostitution, heinous crimes, travesties of justice and administration, portrayal of white slaves etc. The committee also interestingly notes that the producers in the film industry are guided by the shallow motives of entertainment and they should use cinema for public interest (K.S Patil 1951).

The Indian Cinematograph Act of 1952 continues to adapt many of these provisions related to the conservative idea of public morality and redefines the paternalistic role of the state (Bhowmik 2003b). In the constitutional debates, at the time of consideration of the exhibition of the cinematograph films as a state or union subject, it was claimed that films were considered to be an important medium of education and building a national character. Apart from that, it was considered an important of expression and hence it was justified that the central government must play an active role in controlling it . Henceforth the exhibition films was considered as a union subject wherein only the body at the centre has the power to put sanctions on the films (Government of India 1949).

The Cinematograph Act of 1952 (Ministry of Information and Broadcasting 1952) introduced the rating system, prescribing the categories to the film of U ( universal exhibition), A ( adult exhibition), UA( with permission after 12 years of age) and S ( for professional (Ministry of Information and Broadcasting 1952). There was also a pull from the industry for having a centralised system of certification and some of the independent producers lobbied for it so that once a central authority is established passage of films would be easier. Industry wanted a change in the philosophy of censorship (Bhowmik 2002).

One of the first cases of censorship in the post-independence era was *K.A Abbas vs Union of India* in which the courts considered the justification for censorship and the importance of films as a medium in India. The issue before the courts was regarding the film 'tale of four cities' which was censored prior to its exhibition. The petitioner contested that censorship violated his fundamental right of free speech and claims that the Indian Cinematograph Act 1952 which powers to censors is unconstitutional. The basis of censorship in this film was that it showed an exchange between a prostitute and a customer and a shows woman in short dress. While examining the subject matter the court relied on the report of Khosla Committee, appointed in 1968 to assess the model of censorship in India. The committee had pointed out that India has one of the strictest model of censorship and there is need for more liberal form of content regulation. The court observed that motion pictures could not be considered at par with other medium of expression as it serves the lowest denominator of the society and stirs emotions and sensitivities in a different way.

The court held that categorisation and censorship of films based on age and content is valid classification based on public decency, morality and interest. Although the court states that it is the responsibility of the parliament to make policies and they must specify a directive and standards for filmmakers, such that it promotes films expressing a dissatisfaction with the existing framework. Hence, the court specified within its judgements the standards for censors on which they can judge the content for indecency and immorality (M Hidayatullah 1971). Although the act was to be amended thereafter the bill is still pending in the parliament. Films since their first exhibition in Indian was considered as powerful medium and since then the state control in one or the other form is considered justifiable. As the film industry grew there were considerations regarding liberal form of censorship and censor board being free of government control, but that objective is still not being achieved.(Noorani 1990)

### 4.1.2. Transition to Television in India and Evolution of Content Regulation

While the coming of films as a medium for the first time stipulated the need for government to act as a content regulator with regard to motion pictures, another powerful medium which made its advent in India was Television in 1959. Television was introduced in India as an educational project which was supported by the UNESCO and Ford Foundation. Television as much as radio was largely controlled by the government. In order to assess the use of television as a medium in India, the government appointed Chanda Committee to stipulate guidelines through which broadcasting sector could help the government (Shitak 2011). The report states that there was an increasing expectation regarding the use of television as the government had allocated Rs. 100 crore for the development of television over a period of twenty-five years. The report of the committee was presented in 1965. The committee starts with stating the speculations which have been raised for television as a medium for dissemination are similar to those for sound broadcasting. But these speculations have a tendency of fading away as they did with sound broadcasting so will they with television. It enumerated arguments made, that television is a luxury that serves the entertainment interest of the elites in the society. But the committee in its view concluded that television can be directed to serve public interest as a medium of education disseminating relevant information.

Although the committee observes that television can have an adverse impact on young minds, but if controlled properly such adverse impact through the showing of violent images, degrading characters etc. can be curbed. This observation by the committee indicates of the inherent idea of content regulation on television. The committee appealed to the government that it should aim for expansion of television and bring in more foreign exchange to acquire the necessary equipment. It listed down that the aim of the government should be to bring in

113 towns, 21 lakh villages which would cover 47 % of the total area of India. The committee hugely favoured the use of television for promoting development programmes related to health and hygiene, agriculture, family planning, techniques of industrial production etc. (“Chanda Committee Report” 1964).

One of the first major education programme on television came about as a cooperation between Department of Atomic Energy, India and NASA in USA in 1975. The aim was to provide informal education to rural population in India related to agriculture, family planning, health, educational programmes for children, recreational programmes etc. The programmes were designed in a way that it can reach to even the illiterate adult population. The programme was initially launched in 2400 villages in India (Luthra 1986). It was one of the first experiments to assess the power of satellite communication through TV as medium. Planning commission undertook a study to find the impact of the experiment to assess the effect of television as a medium. It observed that television through the programmes shown made people more engaged and aware about the government efforts in various development programmes (Planning Commission of India 1981). Till the 1980s only content distributor on television in India was ‘Doordarshan’.

While television since its advent was completely controlled by the government, the emergency imposed in India during the time of Indira Gandhi in 1975 brought some of the major concerns of content regulation on the table. The period highlighted the exploitative potential of government through its control of mass media. After the emergency was over government published white paper highlighting the misuse of mass media in India. Television at that time was still at its nascent stage and it was highly manipulated by the government because of its monopoly over broadcasting. One of the few instances that reflected this monopoly was when film Bobby was telecasted on television instead of ‘waqt’ so that people will be diverted to

watching the film bobby that was very popular film instead of going to public gathering being held against the government by a political leader. During the same period, Doordarshan exhibited more films that propagated Mrs. Indira Gandhi as great political leader with progressive ideas. Some of the films that were shown by Doordarshan was Indus Valley to Indira Gandhi, New Students, Giton Bhari Sham. At the same time there was large coverage of the events organised by the government (Parliamentary Committee 1977).

As television since its advent and until this point was seen as a influencer of people was largely controlled by the government but considering the political upheaval this umbrella control began to be questioned. It raised demand for autonomy of television broadcasting. After the emergency B.G Varghese Committee was formulated to suggest policy guidelines and framework for autonomy in broadcasting . The committee suggested the formulation National Broadcasting Trust which would have independent control over the broadcasting sector. Parasar Bharati Bill of 1979 was moved in the parliament although it was never passed and the government fell before that. When Indira Gandhi came to power again, the government did not support the bill (Madhavi Goradia Divan 2006) . Another technological tipping came into the broadcasting sector through the launch of INSAT-1 A and B by NASA in 1983. The satellites expanded the broadcasting reach of television in India and at the same time colour television was launched in India. On the suggestion of SS Gill for the first time Asiad games were telecasted on television since India was hosting the games, this directly affected the public appeal of television (Narayan 2013). This also led to variation in content in the form of soap operas and mythological drama.

In 1980, the discussion held in the parliament regarding the working of the information and broadcasting ministry in which Syed Shahabuddin mentions that through putting a hold on the recommendation of B.G Varghese committee the government is trying to take complete control

of broadcasting in India and want to introduce backdoor censorship. The parliament also discussed the influence of colour television and mentions that such strong medium are not meant for a poor and developing country. While other members felt that there are many states in India which are out of the reach of the Television and government needs to expand its efforts (Parliament of India 1980). The government set up working group to look into the software development plan for Doordarshan. A working group was established in 1985 on the premise that television has advanced at much faster pace and the society is not able to utilise it in an efficient way. While making recommendation to improve television as medium for education, public awareness and development it also explored the issues of content regulation in certain scenarios. The working group explore the image of the women on the content on television and recommends that the heavy reliance of television on content from cinema degrades the character of women through objectifying them.

Hence, recommendations were made to develop guidelines, which are sensitive towards the image of women. It recommended against importing foreign films and programmes that negatively affect the image of women through constituting a programme advisory and monitoring committee. The working group expressed its discontent over the working of selection committee which was unable to censor content imported from foreign television shows. The working group made similar recommendations with the B.G Varghese Committee on the establishment of autonomous body to manage the television broadcasting (Working Group on Software for Doordarshan 1985). By 1988 about 12% of the Indian population watched television regularly.

As the viewership increased, the Doordarshan came to be increasingly scrutinised by the courts as it was considered as medium for not only promoting public interest but also showing content that was critical of the government. One of the first controversial cases was *Ramesh vs Union*

of *India* in which appellant demanded that the telecast of a serial ‘Tamas’ must be halted because it shows communal riots between different religious groups. Although the court concluded that serial has already been scrutinised by the Censor board and Doordarshan authorities and it suitable for public viewing (S Mukharji 1988). Further in the case of *Odyessey Communication Pvt . Ltd vs. Lokvidyan Sanghtan* ,the telecast of the serial ‘Honi Anthoni’ was question. It was claimed that it creates a fear in the mind of people and spread blind faith and the authorities of Doordarshan have failed in their capacity by allowing the telecast of the serial. The court in this case established that the content was not prejudicial to the community and did not hinder public morality. It concluded that the producer has right under freedom of expression to exhibit films on Doordarshan without any bias (Mukharji, Sabyasachi et al. 1988). Another case was regarding the telecast of the documentary related to Bhopal gas tragedy called ‘Beyond Genocide’ came into controversy and a petition was filed in the Delhi High court as Doordarshan refused to telecast the documentary, despite it being an award-winning documentary. After the unfavourable ruling of the High Court, the government appealed to the Supreme Court. Both courts held the view that Doordarshan does not have the right to halt the telecast of the documentary based on its guidelines as it curtails the right of freedom of speech and expression (Ahmadi 1992).

In 1989 when the new government re- introduced the Prasar Bharati Bill for giving autonomy to the broadcasting agency and for the first time defined broadcasting as ‘dissemination of content through any form of wireless transmission.’ Although this time the bill was diluted and the clause regarding the protection of freedom of speech and expression was removed. Another major difference was the latter bill dropped the clause regarding the upholding of integrity and autonomy of the broadcasting sector and proposed to constitute a parliamentary committee consisting of members from both the houses to oversee the function of Prasar Bharati (Ministry of Information and Broadcasting 1989). While television as a medium television was highly

regulated by the government but due the economic liberalisation policies, broadcasting opened up to private players and foreign content. Many corporations saw India as a growing market, Star TV was one of the first foreign corporation which Televised content in India. This marked the entry of diverse content and increase in number of channels in India. By 1996, 14.2 million households had cable television. (Thussu 1999).

As the market of broadcasting expanded and foreign content gained momentum the concerns related to content regulation also grew. In 1995, in a landmark judgement the court ruled that *“Most people obtain the bulk of their information on matters of contemporary interest from the broadcasting medium. The television is unique in a way in which intrudes into our homes. The combination of picture and voice makes it an irresistibly attractive medium of presentation. It has tremendous appeal and influence over millions of people. Television is shaping the food habits, cultural values, social mores and what not of the society in a manner no other medium has done so far.”* Further, it held that airwaves are public property and government must establish an autonomous body regulate the transmission of airwaves. The court remarked that the Indian Telegraph Act was obsolete and not adequate for the impact broadcasting medium creates (P Sawant 1995). Thereafter the government passed the Cable Television Networks (Regualtion) Act 1995. The objects and reasons of the act state that the aim of the legislation is curb the cultural invasion caused due to emergence of western content in India through proliferation of satellite channels. The act stipulated the guidelines as followed for regulation films through Cinematograph Act 1952 must be followed for television as well. The act stipulates a programme code which gives guidelines to producers regarding prohibited content and only if the content adhered to these guidelines is the licence to broadcast granted (Ministry of Information and Broadcasting 1995).



Further a Broadcasting Bill was introduced in the parliament in 1997 and Prasar Bharati Bill which was passed earlier was notified (Madhavi Goradia Divan 2006). Seeing introduction of television as a vantage point the government has shown high tendency of regulating the content as the media space became more liberalised. At the same time as the viewership increase, the cultural sensitivities of people came to the forefront. The government tried to make television its own mouthpiece although it took disruptive turn due to technological advancement and liberalization policies which changed the television landscape from government monopoly over broadcasting to comparative deregulation. The government in India controls the content on television through the programme code and has its own interpretation of public order and morality which it derives from the earlier legislation relating to regulation of films. Hence, while the medium of television became popular in India, regulators still felt that foreign content and actors are overtaking the media landscape.

#### 4.1.3. Shift to OTT Video Streaming Services-Architectural Censorship?

OTT services have dual characters which combines the passivity of television and the consumer choice of the web which has created a tremendous demand for it (Tryon 2015). One of the first OTT video service launched in India was BigFliX by Reliance Entertainment in 2008 (Dangwal 2017). After which Netflix and Amazon started their operations in 2016 (Supantha Mukherjee 2016). There have been emergence of other players within the OTT space, many tradition channel broadcasters have started their OTT services. The OTT market in India is supposed to grow to the value \$218 million by the year 2020. The content on OTT services since accessible over the internet and censorship rules related to online space should be applicable here.

While in the case *Shreya Singhal vs. Union of India* the supreme court ruled that user-generated content cannot be censored online but left the question of on-demand video content like on OTT services to the Information Technology Act 2000 (*Shreya Singhal vs. Union of India* 2015). The act provides a provision for regulation of content by giving the power to the government to regulate intermediaries in this case the OTT platforms (Government of India 2000). In one of the first cases regarding the release of censored content online the court directed the Ministry of Information and Broadcasting(MIB) to formulate a policy to regulate content which is otherwise censored for other medium but released online because of the lack of regulatory framework (*Raksha Jyoti Foundation vs. Union of India and others* 2016). In 2015 , TRAI released a consultation paper for regulating OTT services in 2015 and 2018 to prescribe guidelines for getting license but no consensus on the framework has been reached yet (Telecom Regulatory Authority of India 2018b). Currently, the legislature is under the process of amending the Cinematograph Act 1952 and it has taken recommendation from the Mukul Mudgal Committee and Shyam Benegal Committee respectively. The suggestions from the public in the report by these committees stated that it is important to look at the relevance of CBFC in the digital age and universal rating system is necessary as producers can now release their films through online platforms (Shyam Benegal 2016; Mukul Mudgal 2013).

Because of the current policy vacuum people have resorted to the judiciary for raising their concerns regarding the vulgarity of content on online media. The similar scenario has been reflected in the case in USA wherein it was stated that if the government maintains its paternalistic role over technology the technological development can never be imbibed with the society. The brief submitted by the Electronic Freedom Foundation in this case states that same content cannot be government by different laws , this makes the purpose of the law obsolete (*FCC V. Fox Television Stations, Inc.* 2012). Similar concerns are now being raised in India with increase in viewership of OTT video streaming service.

A public interest legislation has been filed in the Supreme Court against the OTT services such as Netflix, Amazon Prime, Hotstar etc. The petitioner claims that currently the government does not have any policy or law to regulate online content this leads to them showing of sexually explicit and vulgar content. The claims were raised based on the broadcast of shows like Scared Games, Vikings, Game of Thrones etc. The petitioner stated that these platforms are profit motivates and not consider cultural sensitivity and moral fabric prevalent in the society (Justice for Rights Foundation vs Union of India 2019). The matter is sub-judice and the court has asked the reply of the government in this regard (Ahaskar 2019). Earlier in the same matter the Delhi High Court after the submission of the Ministry of Broadcasting and Information and Technology , concluded that there is no provision for obtaining licenses by the OTT platforms and hence government cannot censor them and if the petitioner has specific complaints that were to be considered under the Information and Technology Act (Justice for Rights Foundation vs Union of India 2019). The same ruling was followed in another petition that was filed for the TV series Sacred Games (Nikhil Bhalla vs. Union of India & Ors. 2019).

Because of these rising concerns, the India Mobile and Internet Association of India came up with voluntary code of ethics for the regulation of content on OTT services. Although this code has not found support from all the OTT services, while Netflix has already signed the code Amazon and few others are still not on board. (Namita Singh 2019). In 2018, MIB had also set up committee to frame regulations for all kinds of online content although no output been produced until now. A Communication convergence was also proposed in 2011 which was attempt to have uniform model of content regulation but the bill was not discussed in the parliament.

## 4.2. Discussion

The document analysis highlights three important actors which have dealt with shifts in technology in a way that emphasizes the paternalistic role of the state and a policy lag. The attitude of the government, courts and industry players have brought to forefront the importance of medium and their influence on the lives of people. The popularity and engagement of films with the audience led the government to contain its effect and with television the accessibility potential took a new turn as transmission could now be made from one place to multiple places. The government saw this medium as a powerful mode to spread propaganda and publicise government led initiatives. Television was initially controlled by the government but with the liberalisation policy it came to be deregulated. Private players disrupted the broadcasting landscape then and led the policy to tilt towards de-regulation. Although the government still influences the content regulation policy through the programme code specified within the statute.

Advent of OTTs have brought considerable change in the viewing habits but the most significant concern is the infrastructure within which these OTTs function. The open internet infrastructure makes it difficult for the government to have a regulation. Internet has made it possible for anybody having an access to digital device to have access to content. The government can no longer regulate the timing of the shows being telecasted or provide classification to categories of content. Hence, the accessibility and portability brought by this technology has made similar content made available on different medium the only difference being regulation. Netflix itself has created its brand as 'TV got better' (Grant McCracken, 2014). With every technological tipping point, the state institutions have struggled to save themselves from dilution. India will become the second largest video viewing population by 2020. The internet has immensely changed the viewing habits of people in India. Once upon a

time watching meant sitting in front of the TV but OTTs as medium has brought portability and accessibility to the consumers (Chirag Dagli 2018). The CEO of Netflix commented on the content regulation scenario in India and said that self-regulation might be key forward because nobody wants government regulation. He emphasized on the fact that internet as a medium provided the freedom to users to choose the content for themselves (Jagmeet Singh 2019). The historical framing of the attitude of government point towards crossroad between state censorship and self-regulation. OTT content regulation tend to be influenced both by the film regulation and Cable TV regulation because it brings in curated content from both the medium along with original content. While Central Board of Film Certification regulate films in India, television is moving towards self-regulation. The introduction of films in India established the effect motion pictures on people, which continues until today. The effect of the medium highlighted the need for regulation. In the post-independence era when the film industry grew at much larger scale the government justified its paternalistic role for film regulation to protect the ideals of public morality considering cinema to be powerful medium of exhibition having a large appeal. Judiciary played a pivotal role in formation of policy framework for content regulation of films and pointing out that India needs a liberal form of censorship to promote artistic expression.

Exploring content regulation in India for television highlights the shift of control of medium from public to private sphere. The government tried to control television completely as it served the political interest due its accessibility to households and ability of the government to have complete control over the content. The different approach to content regulation for films and television as medium lies in the fact that while cinema was introduced by individuals as a source of entertainment, television as medium was brought by the state as mode of education and public awareness. An individual by using a camera could make the films and the government was not involved with its advent in India. However, the government controlled

television since its inception because the technology used for signal transmission and the government itself through collaboration with UNESCO and Ford Foundation provided accessibility to the television sets. It was observed in the committee reports that motion pictures through television has the potential of harmful effects through exhibition of vulgar and violent content. The view was same as that of film exhibition.

At the same time, the government wanted to promote the viewership of television and most of the controversial content which was halted for exhibition was related to adverse image of the government and religiously sensitive matters. Although the economic liberalization policy and the launch of INSAT marked, the start of television deregulation in India. The government introduced the legislation in 1995 which prescribed the guidelines for private TV channels, which were already functioning since 1983. This shows the policy framework was lagging behind the technological development.

For content regulation on television judiciary played an important role making the government aware about policy vacuum through. The courts left their judgments open-ended and directed the parliament to perform its role of policy maker. One of the significant step in this regard was freeing television from the monopoly of the state through airwaves judgement (Jariwala 1996). The television regulation in India has moved towards self-regulatory approach by setting up of Indian Broadcasting Association because of the discontent felt with existing framework which was enforced through Inter Ministerial Committee (Kasturika 2016). One of the major concerns for content regulation in both television and films was regarding the influence of foreign content. Initially the committee assessing the film censorship had observed that the foreign content was beneficial for Indian audience but the committee exploring content regulation for television repeatedly presented the concern regarding cultural insensitivities of foreign content and TV channels. This concern is now aggravated with OTTs bringing in content from all around the world.

The theory of media determinism seemed to have its application in assessing the content regulation policy of the government but at the same time, the political ideology of the ruling government and liberalization policies also had significant effect on the regulation policy. The medium of dissemination and its resulting effect determined the attitude of the government in formulating a policy framework which can be regarded as the effect of 'soft technological determinism' (Ithiel de Sola Pool 2006). Changes in medium from films to television to transmission through satellites expanded the reach of technology in the lives of people and effect it had triggered the government to have a paternalistic influence over the medium. The way this paternalistic attitude percolated within the content regulation policy was then determined by the sociological factors. It includes cultural sensitivities in form of concerns raised regarding the portrayal sexually explicit, vulgar content and showing of communal riots; economic policies such as allocating budget amount for expansion of television, liberalization policy with foreign TV channels making their advent in India; political environment like that of emergency where the government exploited mass media.

The paternal attitude of the Indian government might lead it to frame a statutory basis for regulating content, but it might rely on the existing regulatory model and might be willing to tilt towards self-regulation as they did with the television broadcasting. The courts have pushed the government towards a policy framework aligning the need for policy with technological change.

Hence, with current policy vacuum created through venture of OTT services, wherein courts are already pushing the government to address the effect created by OTT services. While TRAI has floated a consultation paper and committee has been set up to look into regulation of online content, the government has no concrete measure in this regard, but the industry players have themselves attempted to have draft code of ethics. However, this brings into the issue of enforcement. The historical record shows that the government will float a legislation expanding

the ambit of content control when a tipping point is reached, and the OTT market is overshadowed by the complete control by industry players. Hence, while the self-regulation attempt might be in the right direction it leaves the government to formulate a policy for convergence of media regulation.

Looking at it optimistically, it opens a window opportunity for the government to formulate a convergence model, which has the scope of aligning policy with technological change, and to assess the power of medium on lives of people. Although the ideological tilt of such a policy is very uncertain. The realization of government regarding the freedom of choice given to consumers through internet might tilt the model toward a more liberal paradigm.



## IV. Conclusion and Recommendation

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The analysis presented above highlights the importance of new environment and parameters that is created by new technologies. Few parameters that have come out of the analysis is related to accessibility, portability, cultural disruption and freedom of choice. The below mentioned recommendations must be considered in the light of these parameters.

1. One of the major concerns that could be traced within evolution of content regulation policy and resulting policy vacuums from time to time is lack of technology centric approach towards policy formulation. It has been observed that the internet as medium makes it significant to formulate policy taking technology as an architecture of regulation. The effect of the medium on a listener must be a primary consideration framing laws for content regulation over the internet. The right of freedom of speech and expression must be enforced in the light of medium through which expression disseminated to avoid inconsistency in its application (Bambauer 2015). A technology centric approach to technology leads the policy makers to evaluate the new business model, consumer behavior and channel advertisement and distribution related different modes of dissemination
2. The growing reach of OTTs presents the question of self- regulation as a strong alternative to state censorship. Although reasons for the adoption of self- regulation model must be assessed. Self-censorship models are adopted due dissatisfaction in the existing legal framework and t might lead to suppression of critical content creating a chilling effect for artistic expression, discourse and public exhibition (Bar-Tal 2017). While the code of ethics adopted by some of the OTT players, might be a start towards private censorship, but it directly puts their private policies having an effect on the audience in India. Considering the attitude of the government in the past, this might

trigger the implementation of state censorship. Hence, a multi-partnership approach to self-regulatory model could be beneficial. The result must come out of a stakeholder discussion that should involve the representatives of the ministry but must be initiated by the private actors, as that tends to balance the interest.

3. Another alternative that the government might adopt is the convergence model, to have single framework for content regulation over different medium, as there is considerable overlap of content. Communication Convergence Bill was introduced in India in 2001 but the bill was not passed. The government can speed up the process of communication convergence, but the bill must be completely overhauled in the light of technological shift. As has been already said the power of technology has a medium of liberation must not curbed. Hence there is need to move away from the aim of content regulation content enabler. The drafting of the bill should be in collaboration with industry players. Although TRAI is in the process of consultation but the discussion by TRAI is more concentrated towards communication environment rather than media. Hence there is a need for the state regulators and industry regulators to come together to have a multi stakeholder approach to content regulation. Although such convergence must not be aimed at creating new institutions but coordination between existing frameworks.(Steingröver, Cardozo Larrea, and Zhelev 2019) Hence, there is need to bring together pending legislations, and policy consultation within one arena to development of policy in tandem with technology.
4. Global OTT players tend to bring foreign content within Indian territory which further heightens the red flags that have been raised since 1928 with advent of films. Although this proliferation of foreign content must be contextualized, the cultural sensitivities of people have become more diluted with internet exposing us to world at large on our screens. There has been a proposal at international level to have global rating system for

content and have quotas for indigenous content on these platforms. Although Netflix has expressed concern that it directly affect the choices presented to the consumers. Hence such change in content should be more consumer driven rather than government imposed (Mr Scott W Minehane 2017). Although with continuing such multi-stakeholder discussion the government should have uniform guidelines for certain kind of content like child pornography.

5. Another important factor that needs to be contextualised is the future of free speech regime in India. Any kind of content regulation on OTT video platforms will directly affect the states' power to regulate other content online. It might create a snowball effect for other OTT services. Internet as a medium is linked with one another and it works on dependence and the regulation must be contextualised. Hence, any kind of content regulation must be carefully thought through with futuristic approach (Taufick 2015).

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