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# CROSS-BORDER MEDIA ACCESSIBILITY UNDER GATS: A STRUCTURAL IMBALANCE PERSPECTIVE

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Valli S P<sup>1</sup>

## I. ABSTRACT

*This paper analyses cross-border media accessibility within the framework of the General Agreement on Trade in Services (GATS), with particular focus on the structural conditions that shape participation in global media markets. While GATS establishes a system of liberalisation through principles such as market access and national treatment, its reliance on negotiated commitments produces differentiated outcomes among member states. These outcomes are often shaped by disparities in economic capacity and bargaining power, which influence the extent to which countries are able to secure favourable commitments and effectively participate in global trade in services. The paper further examines how the classification of media as a tradable service creates a tension between its commercial character and its role as a carrier of cultural expression. This tension becomes more pronounced in the context of global media flows, where dominant industries are better positioned to expand their reach, often at the expense of diverse cultural representation. In addition, the study considers the growing role of digital platforms in shaping content distribution and visibility, highlighting how control over access increasingly shifts from regulatory frameworks to platform-based systems that operate beyond traditional trade disciplines. By analysing these interconnected dimensions, the paper argues that cross-border media access is shaped by a combination of legal, economic, and technological factors that operate unevenly across countries. It demonstrates that the GATS framework, while facilitating liberalisation, functions within existing structural constraints that limit equitable participation. These findings underscore the need to situate trade-based regulation within the broader context of global economic disparities and evolving digital infrastructures.*

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## II. KEYWORDS

GATS; Audiovisual Services; Cross-Border Media Accessibility; Structural Inequality in Trade; Global Media Markets.

## III. INTRODUCTION

From the colonial era to the post-World War II period, international relations have been significantly shaped, where the rules and regulatory frameworks have often been structured in a manner that allows developed countries to exercise dominance over the developing or least developed countries. To overcome such imbalances, recognition of the fundamental rights through international instruments, such as the Universal Declaration of Human Rights (1948)<sup>2</sup> and the International Covenant on Civil and Political Rights (1966)<sup>3</sup> established the right of freedom of speech and expression that extended the freedom to seek, receive, and impart information through any media of choice, either orally or in printed form.

Despite the formal recognition of freedom of speech and expression, the media operated within national boundaries that restricted the free flow of information. The Liberalisation, Privatisation, and Globalisation (LPG) reforms<sup>4</sup> introduced under India's New Economic Policy of 1991 enabled the expansion of global markets, including the media and broadcasting sector. The policy enabled foreign media entities to enter India through satellite broadcasting, licensing frameworks, and regional alliances or joint ventures. The rapid expansion of web usage during the pandemic led to the acceleration of digital broadcasting. This shift has impacted India both positively and negatively.

While the advancement of these platforms has transformed India from a content-consuming economy towards a content-producing economy. On the other hand, it increases India's dependence on publishing its contents through the gatekeepers, who are the Western countries, to reach the global audience. Although the regulatory

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<sup>2</sup> United Nations, *Universal Declaration of Human Rights* (1948) <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 25 April 2026.

<sup>3</sup> *International Covenant on Civil and Political Rights* (1966).

<sup>4</sup> Government of India, Ministry of Finance, *Economic Survey 1991-92* (Government of India 1992) <https://www.indiabudget.gov.in/budget1991-92/es1991-92-contents.htm> accessed 7 May 2026.

measures provide cross-border media access to India, they are given a junior partnership with limited decision-making power and impose control over distribution. Therefore, restricting India's global reach primarily to diaspora audiences hinders the ability of Indian media to operate as equal participants in the global space. This lack of reciprocity highlights deeper structural inequalities and raises important questions regarding fairness, representation, and the principle of national treatment in the global media ecosystem. Accordingly, this paper examines these structural disparities and analyses the regulatory and institutional mechanisms that sustain them.

### **A. Research Problem**

The international trade in media services is governed under the General Agreement on Trade in Services (GATS). The said agreement allows for selective commitments to be implemented through strategic negotiations between the contracting states. Such negotiations are often imbalanced when the contracting parties are developed and developing countries due to asymmetric power. This exists because developing countries like India are largely dependent on foreign direct investment, which contributes to the development and optimisation of human resources. Therefore, it creates mutual economic benefits, particularly for developing economies.

Whereas the circumstances change when India is the contracting party to enter into the foreign media sector in a developed economy, especially in Western countries. They restrict market accessibility by imposing strategic limitations, such as cultural exceptions, thereby resulting in a lack of reciprocity.

Accordingly, the central research problem addressed in this paper is whether the existing regulatory frameworks governing cross-border media access operate on the principle of reciprocity, or whether it perpetuates structural inequality that disproportionately favours dominant global media entities.

## **B. Research Objectives**

1. To examine the existing legal framework governing cross-border media access, particularly under the General Agreement on Trade in Services (GATS).
2. To analyse structural inequalities and lack of reciprocity in cross-border media access between developed and developing countries.
3. To suggest measures to address the power imbalance and achieve an equitable framework for cross-border media access.

## **C. Research Questions**

1. Does the existing legal framework governing cross-border media access ensure equitable market access among countries?
2. Does the structure of selective commitments under the General Agreement on Trade in Services (GATS) contribute to the structural inequalities in the media sector?
3. To what degree is the principle of reciprocity reflected in cross-border media access between the developed and developing countries?
4. What measures can be adopted to address asymmetric power in cross-border media access?

## **D. Hypothesis**

The existing regulatory framework governing cross-border media access, particularly the General Agreement on Trade in Services (GATS), contributes to the structural inequalities by facilitating selective commitments and failing to ensure equitable market access between developed and developing countries.

## **E. Research Methodology**

This research adopts a doctrinal method of study, primarily relying on secondary sources such as books, international instruments, journal articles, and relevant reports. The study examines the existing regulatory framework governing cross-border media access with particular emphasis on the General Agreement on Trade in Services (GATS). Further, an analytical approach is employed to critically

evaluate the structural inequalities arising from selective commitments and the lack of reciprocity between developed and developing countries embedded within the existing legal framework. The study also incorporates a comparative perspective to understand differences in market access and regulatory approaches across jurisdictions.

## F. Literature Review

1. The existing literature on the General Agreement on Trade in Services (GATS) emphasizes promoting progressive liberalisation, improving market access, and extending national treatment to foreign services.<sup>5</sup> However, the opening towards the specific commitments determines the level of market access and national treatment. Despite the framework providing an equal platform by extending national treatment, there may be instances of de facto discrimination against foreign services, leading to concerns regarding structural inequality.
2. Media is governed under the GATS sectoral coverage as the Audiovisual Services. It is considered a tradeable service which allows for commercialisation, whereas the United Nations Educational, Scientific, and Cultural Organisation (UNESCO) identifies media as a medium that reflects cultural, social, and political values.<sup>6</sup> Therefore, this tension contributes to the dominance of global media entities and the marginalisation of cultural values.
3. Studies on global trade and development highlight the persistent inequalities and asymmetries in international trade, particularly with reference to the dominance of global trade entities by means of multinational corporations.<sup>7</sup> While global trade contributes to economic development, it also shapes market conditions in ways that favour

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<sup>5</sup> Pascal Lamy, 'Overview of Services and GATS' (World Trade Organisation) [https://www.wto.org/english/news\\_e/sppl\\_e/sppl14\\_e.htm](https://www.wto.org/english/news_e/sppl_e/sppl14_e.htm) accessed 29 April 2026.

<sup>6</sup> UNESCO, 'Media Diversity' (15 March 2024) <https://www.unesco.org/en/media-pluralism-diversity/media-diversity> accessed 29 April 2026.

<sup>7</sup> UNCTAD, *Inequality: Major Trends, Policy Challenges and the Need for Global Economic Compact*, UNCTAD/GDS/2024/1 (UN Trade and Development 2024).

developed economies. Consequently, this strengthens the bargaining capacity of the developed countries compared to the developing countries, which reinforces the unequal market access leading to a power imbalance.

While existing literature has examined GATS, media as a tradeable service, and global trade inequalities, limited attention has been given to how these intersect to shape structural imbalance in cross-border media accessibility. This gap necessitates a focused analysis of media within the GATS framework.

In addition to these perspectives, existing scholarship also points to the increasing concentration of media ownership and control in the hands of a few global actors. This concentration is closely linked to broader patterns of economic inequality, where dominant economies possess the resources and institutional capacity to shape both production and distribution of media content. Such concentration not only affects market competition but also influences the diversity of voices represented in global media flows. As a result, access to international media markets is not determined solely by regulatory frameworks but also by the structural advantages enjoyed by established media industries, further reinforcing existing disparities.

#### **IV. MEDIA AS A SERVICE**

The General Agreement on Trade in Services (GATS) is a multilateral agreement that governs international trade in services through four modes of supply, namely cross-border supply, consumption abroad, commercial presence, and movement of natural persons.<sup>8</sup> Within this framework, cross-border media access primarily operates through the cross-border supply and commercial presence, enabling communication services to facilitate global content distribution. However, the extent of access to the market is largely determined by the national policies and strategic negotiations. While the regulation of media under GATS remains structured, it results in unequal market access between developed and developing countries.

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<sup>8</sup> 'World Trade Organisation, 'GATS: Fact and Fiction - Structure of the GATS'  
[https://www.wto.org/english/tratop\\_e/serv\\_e/gats\\_factfiction4\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/gats_factfiction4_e.htm) accessed 24 April 2026.

The said framework consists of two key components: general rules governing trade in services and specific commitments undertaken by member states. Based on services committed, the concerned governments regulate trade by imposing limitations on market access and national treatment.<sup>9</sup> However, these commitments are not uniformly determined as the framework allows for strategic negotiation between member states. Such negotiations often result in commitments that favour stronger economies due to unequal bargaining power. This, in turn, reinforces asymmetrical access to global media markets.

This structural imbalance is further reinforced by the classification of media as a service rather than a cultural good, thereby subjecting it to trade liberalisation principles. In this context, media is classified under “Audiovisual services,” classified under Sector 2, Sub-Sector D of the WTO Services Sectoral Classification, which includes radio, television broadcasting, and sound recording.<sup>10</sup> This shift prioritises market access and economic exchange over cultural considerations. Although such negotiated commitments remain formally consistent with the principle of national treatment, they operate within conditions of unequal economic capacity and bargaining power. Consequently, this framework results in limited participation in the global media market.

## V. UNEQUAL ACCESS IN GLOBAL MEDIA MARKETS

Despite liberalisation and regulatory frameworks, cross-border media access remains uneven due to various reasons, particularly for developing countries. Historical economic inequalities, partly rooted in colonial structures, continue to affect the capacity of developing nations to effectively compete in global media markets. While the developed countries expand their global media presence, the developing countries are more determined to attract foreign direct investment for national development due to economic constraints. This creates a power imbalance.

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<sup>9</sup> *ibid.*

<sup>10</sup> United Nations Statistics Division, 'Classification Visualization'  
<https://unstats.un.org/unsd/classifications/Econ/w120> accessed 24 April 2026.

Further, it is important to understand the power dynamics of the developed countries when it comes to regulatory control, negotiating power, and economic capacity. The bargaining power of the developed countries is strengthened due to their purchasing power and technological advancements. This facilitates their control over distribution and the level of market access. Moreover, the developed countries are the dominant stakeholders and key decision-makers of the media industry or sector. Their economic and institutional influence allows them to shape negotiation outcomes more effectively. Above all, even though the WTO is collectively funded by the member states, their larger share in global trade contributes to greater influence in negotiations. Consequently, this sustains unequal negotiation power in the global media landscape.

For instance, India, being a developing economy, permits the entry of foreign media entities from developed economies like the United States, the United Kingdom, and Singapore for Foreign Direct Investment (FDI). Such investments may be made through the automatic route or the government approval route. These investments and joint ventures are duly regulated by the Ministry of Information and Broadcasting (MIB) by fixing threshold limitations. It reflects a relatively liberalised environment for the expansion of the global media entities. Conversely, the entry of Indian media entities into the United States is subject to regulatory oversight by the Federal Communications Commission (FCC)<sup>11</sup>, and the Committee on Foreign Investments in the United States (CFIUS).<sup>12</sup> They issue licenses, review foreign investments, and reject applications where such investments pose a threat to national security. Here, the extent of market access provided to India is subject to practical barriers such as strict licensing requirements, investment scrutiny, and limited representations.

This comparison illustrates that, despite the global media markets being duly regulated, the presence of structural inequality raises the question of equitable cross-border media access. The issue lies in the conditional nature of market access, which

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<sup>11</sup> Federal Communications Commission, 'About the FCC' <https://www.fcc.gov/about/overview> accessed 25 April 2026.

<sup>12</sup> U.S. Department of the Treasury, 'CFIUS Overview' (13 February 2026) <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-overview> accessed 25 April 2026.

is shaped by negotiated commitments and often results in content being confined to diaspora audiences.

## **VI. FROM MARKET ACCESS TO MARKET VISIBILITY: PLATFORM CONTROL IN GLOBAL MEDIA FLOWS**

The global media entities had undergone a pragmatic shift after digitalisation. Before digitalisation, the power imbalance between developed and developing economies was subject to the extent of market accessibility. Whereas currently, the concern shifts from market access towards market visibility and the impact of control over distribution. Presently, social media and digital streaming platforms are the prominent players of the global media industry. The platforms, such as Netflix, Amazon Prime Video, and YouTube, have expanded their global digital presence.

These platforms are predominantly owned and operated by corporations based in advanced economies. In this instance, when content is produced in developing countries, it is distributed globally through the platforms controlled by entities in developed economies. This results in a form of Platform dominance, where control over distribution enables indirect influence over global media flows. Further, the algorithmic systems employed by these platforms tend to prioritise already popular and widely consumed content, thereby reinforcing the dominance of established media industries.

These are not merely theoretical but operate in substantial ways within the structure of international trade relations. Developing countries often enter negotiations based on their position shaped by economic dependency, limited institutional capacity, and the need to attract foreign direct investment. As a result, their commitments may reflect external economic pressure rather than domestic priorities. This dynamic perspective reinforces a pattern where developed economies are better positioned to shape the terms of participation, thereby influencing not only market access but also the broader direction of global media flows.

In addition, structural inequalities are further reinforced through disparities in technological capacity and access to global distribution networks. Developed

economies possess advanced infrastructure, established media industries, and greater integration with global platforms, enabling them to expand their cultural and commercial reach more effectively. In contrast, developing countries often face limitations in technological resources and international visibility, restricting their ability to compete on equal terms. This imbalance is not solely economic but also institutional, as regulatory frameworks and market structures tend to favour actors with pre-existing advantages. As a result, the global media landscape increasingly expresses patterns of concentration, where a limited number of dominant players shape both content circulation and audience engagement across borders.

Consequently, media from developing countries often remain limited in global visibility, frequently confined to niche markets and diaspora audiences. This shift from state-based regulation to platform-based control further entrenches structural inequalities in global media distribution.

## VII. LIMITATIONS OF THE GATS FRAMEWORK IN ADDRESSING MEDIA INEQUALITY

While the GATS regulates the international trade in media services, it fails to address the existing practical barriers to cross-border media access. This sustains inequality and hinders the visibility and accessibility of the developing countries.

Despite Articles XVI and XVII of GATS,<sup>13</sup> governing the market access and national treatment, the framework, which allows for negotiated commitments under Article XIX,<sup>14</sup> contributes to structural inequality due to asymmetries in bargaining power. Further, the treatment of media as a tradable service prioritises commercial value over cultural expression, reinforcing the dominance of established media industries. In this context, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) becomes particularly relevant, as it recognises the sovereign right of states to adopt cultural measures intended to preserve and promote cultural diversity. Articles 2(2), 5, and 6 of the Convention affirm that cultural goods

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<sup>13</sup> World Trade Organisation, *General Agreement on Trade in Services*  
[https://www.wto.org/english/docs\\_e/legal\\_e/gats\\_e.htm](https://www.wto.org/english/docs_e/legal_e/gats_e.htm) accessed 24 April 2026.

<sup>14</sup> *ibid.*

and services possess both economic and cultural value, thereby permitting states to implement policies supporting domestic cultural expression. Additionally, Article 21 encourages the integration of cultural diversity considerations into international trade negotiations. The Convention emerged largely in response to concerns regarding the limited recognition of cultural exceptions during the Uruguay Round negotiations under GATS.

However, despite providing an important normative framework, the Convention has not fully resolved the structural imbalance in global media markets, as economically dominant states and digital platforms continue to exercise greater influence over global distribution networks and visibility. Consequently, the system itself continues to reinforce imbalance by marginalising cultural expressions. The advancement of digital technologies further intensifies this imbalance by shifting control over distribution from state-based regulation to platform-based systems.

Furthermore, the commitments-based structure of GATS, while designed to provide flexibility, often results in fragmented and uneven obligations across member states. This selective approach allows countries to tailor their commitments based on strategic interests, which may inadvertently reinforce disparities rather than mitigate them. In practice, several states, including members of the European Union and Canada, have relied upon cultural policy considerations and audio-visual exceptions alongside the UNESCO Convention framework to justify protective measures relating to media services and audio-visual sectors. Nevertheless, the absence of a binding mechanism reconciling trade liberalisation with cultural protection under GATS limits the practical effectiveness of such measures in addressing unequal participation within global media markets.

In the context of media services, this leads to varying levels of openness and regulatory control, creating an inconsistent global framework. When combined with the growing influence of digital intermediaries, the limitations of GATS become more pronounced, as the framework does not sufficiently address issues such as cross-border data flows, platform governance, and algorithmic transparency.

Moreover, the regulatory architecture of GATS originated in a pre-digital context, primarily addressing traditional forms of service delivery. The rapid transformation of media distribution through digital platforms has introduced new dimensions of control, particularly in relation to content visibility and algorithmic prioritisation. These developments fall outside the explicit scope of GATS, creating a regulatory gap wherein platform-based power operates with limited international oversight. Therefore, the GATS regulatory framework fails to address the unequal structural conditions under which such liberalisation operates, thereby perpetuating existing disparities in global media access.

## **VIII. SUGGESTIONS AND RECOMMENDATIONS**

The foregoing analysis highlights that while the GATS framework aims to promote liberalisation in international trade, it does not adequately address the structural inequalities that exist in the global media market. These limitations indicate the need for a more balanced approach that reduces unequal market access and cultural marginalisation. It further highlights the need for a regulatory framework to address the evolving digital landscape.

1. Negotiation/bargaining power, the provision of specific commitments facilitates flexible trading while simultaneously reflecting the limited bargaining power of the developing countries, thereby reinforcing the position of developed economies. In this regard, greater attention could be given to ensure more equitable participation in global media markets.
2. In addition, the media being predominantly viewed as a tradeable service ignores cultural expression. In this respect, greater recognition of the cultural dimension of media services alongside their commercial character becomes crucial to prevent the marginalisation of diverse cultural expressions. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) already provides an important normative basis for recognising this dual commercial and cultural character of media services. Therefore, future regulatory approaches may draw upon the principles

embodied in the Convention to strengthen cultural diversity protections within international trade governance.

3. Further, the increasing dominance of digital platforms necessitates regulatory considerations beyond the traditional scope of GATS. As distribution shifts from market access to visibility, greater attention is required to address control over content dissemination. Such an approach becomes essential in ensuring more inclusive and equitable participation in cross-border media markets.

These observations further emphasise that addressing such imbalances requires a holistic understanding of both legal and structural factors influencing global media systems. While these measures do not provide exhaustive solutions, they underscore the need to re-evaluate existing frameworks to address the structural imbalances affecting cross-border media accessibility.

## **IX. CONCLUSION**

This paper examined cross-border media accessibility through the framework of the General Agreement on Trade in Services (GATS). While GATS provides a liberalised framework by regulating market access and ensuring national treatment, the reliance on the negotiated commitments results in asymmetries, particularly between the developed and developing countries. This reflects the unequal bargaining power of the developing countries arising from economic disparities. Therefore, it limits the equitable participation in global media markets.

At a broader level, these findings highlight deeper structural disparities embedded within the global economic system, where access to markets is often mediated by unequal capacities and historical advantages. The case of cross-border media accessibility illustrates how formal commitments to liberalisation may coexist with substantive inequalities in participation and visibility. This underscores the need to view regulatory frameworks such as GATS not in isolation, but as a part of a wider landscape shaped by economic power, technological change, and cultural dynamics.

This analysis further demonstrates that this structural imbalance is intensified with the advancement of digitalisation, which has shifted control over distribution from state-based regulation to platform-based systems, along with the prioritization of

media as a tradable commodity over cultural expression. Consequently, cross-border media access remains uneven, with developing countries continuing to face constraints in visibility and participation. Accordingly, the GATS framework operates within and perpetuates structural inequalities rather than resolving them.

In this context, it becomes evident that cross-border media access is shaped by an interplay of legal frameworks, economic power, and technological structures. The persistence of such imbalances highlights that formal commitments to liberalisation do not necessarily translate into equitable outcomes. Instead, the effectiveness of these frameworks depends on the conditions under which they operate, which remain uneven across countries.

This also suggests that the challenges of cross-border media access cannot be understood solely within the framework of trade law but must be viewed in light of broader economic and technological transformations. The interaction between regulatory limitations and market-driven forces continues to shape unequal patterns of participation in global media systems.

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