

Fundamental Rights vs. Public Interest: A Challenge To The legality of OTT Censorship

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Abstract:

A growing OTT marketplace is a boon for consumers looking for content and an opportunity for advertisers to reach the right set of audiences.

- Akshay Modi, Modi Naturals

Over-the-Top media services is a mode through which the content which is available on internet can be easily viewed by the general audience. Other television oriented content like movies, songs, etc. are regulated by a Censor Body whereas the same is not practiced with regard to OTT Platform. Recently, even the Apex court had issued order to the central government regarding regulation of OTT platforms.

The fundamental right to speech and expression as enshrined under Article 19(1) (a) gives us the right to express our thoughts by speech, visuals, opinions, propagating our ideology through any other medium. But this rights is not absolute and therefore, certain reasonable restrictions are provided in Article 19(2) for preventing the citizens to use this right in an unqualified manner. Some of the reasonable restrictions included in the said Article is Public Order, decency or morality. On similar lines, this paper focusses on the aspect of conflict between fundamental right and public order when it comes to showcasing content on OTT platforms.

A petition was filed in the year 2016 in Delhi High Court to prevent Hotstar from broadcasting content which involved objectifying women, showing pornographic and unethical visuals, and was also promoting terrorism. It was contended that such content should be censored, restricted or prevented from these platforms. To our surprise the petition was dismissed by Delhi High Court and is pending in the Supreme Court. Earlier Union Ministry of Information and Broadcasting, Law and Justice, Electronics, Information and Technology and Central Board of Film Certification did not exercise any jurisdiction over OTT Platforms. We now have guidelines on regulation of OTT platforms called as the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules 2021 (Rules).

Introduction

The audio and video which is streamed online in the form of short film, motion picture, web series, documentaries, etc. for the entertainment of viewers are called as Over-the-Top Platforms. Recently the craze for OTT platforms have increased especially because of the Covid-19 pandemic it was feasible, reasonable, safe and cost-effective method to view the free content available on these platforms.

These platforms often use artificial intelligence built in the App itself, where they keep suggesting the viewers the kind of content they might be interested it. Some amount of membership fee is required to view these contents and then the consumers can watch their favourite shows and movies. The

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production houses who have invested their money on various films sell the copyright to these OTT platforms and then the content is easily distributed online to the viewers.

Advantages of OTT Platforms:

High-value content at low cost: Online streaming platforms are way cheaper than spending the money on buying movie tickets. Currently, the Netflix subscription for a single user is Rs199 per month. Similarly, amazon prime costs around Rs 399 for three months. The content which is available online on these OTT platforms are of good quality

Original content: The content which is shown on these OTT platforms are bought by the production houses and sometimes they make their own content for the viewers.

Streaming on multiple devices: The OTT platforms work through a specific App which can be installed on various devices like mobiles, laptops, desktops, television, etc. which makes it more user-friendly.

Meaning of Censorship:

It is a power given to a regulatory body to limit the ideologies of people or prevent them from showcasing books, films, movies, art work, or any other ways of communication which can hurt the public sentiment, or is against the moral principles of the society, or if it supports any section or group which is anti-social in nature. This is required to create sense of harmony and fraternity in the society. It aids to understand the social sentiments and accordingly it helps in preserving the social norms and order.

Censorship helps the individuals in safeguarding and securing the emotions of some tribal areas, particularly their culture by prohibiting information that they are incriminating or troubling them in some manner.

However, in this time of authorising censorship, the content creators are duty bound to fight for getting a certificate and agreement when the content is such which accuses the government and its framework often creating an atmosphere of suppression of diverse opinions, innovation, and creativity. Against this we have freedom of speech which will be targeted indirectly. Power and money may be able to manipulate the content in order to achieve their objectives and spread political propaganda. Every individual or group have different opinion with respect to a film or a show, some might feel that film is insulting, and there is a chance that others may find evolutionary. As a result, telling the audience what to watch and what not to watch is unfair to them. On OTT services, unlike television, users choose whatever they are interested to watch.

Concern of Fundamental Rights to speech and expression:

A thorough research of Indian Censorship can be ascribed as a series and combination of ethnicities, races, and religious bodies at the same platform together. They have similar means of expression, whether literary, artistic, or cinematic, and these expressions have been deemed objectionable to others at one time or another. The Indian Constitution guarantees the right to freedom of speech and expression, subject to certain limitations such as morality, decency, and public order. Furthermore, the Indian Penal Code (IPC) allows for restrictions on free speech if it offends religious sensitivities or makes assertions that create or promote animosity, hostility, or ill will amongst classes on the basis of caste, religion, language, or race. Because these prohibitions are so broadly categorized, it might be difficult for a judge to rule that some speech does not foster enmity between groups. The need for free speech is to have a healthy amount of free expression in order for a democracy to function properly. It also allows for the dissemination of ideas among the general public. It permits many individuals to express their opinion on public policy and governance.

The freedom of speech and expression comes with various limitations. We cannot promote indecency, hostility, or hurt the religious sentiments of people in our society. The requirement to enforce censorship is to prevent the spread of hate speech and communal violence. Even the judiciary is being criticised because of the freedom encompassed to us by Article 19(1)(a) of the

Constitution. The negativity has increased to promote scandalous remarks on the judgments issued by the Apex court of our nation.

The children and teenagers have a bad influence of these OTT platforms if violence, vulgarity and vulnerable strata of society is presented openly. It does not make them optimistic and intellectual, rather it can lead them to commit crime, spread indecency, promote and encourage violence in their vicinity, etc. Parental permission should be must while making their children watch certain shows or movies which can mentally affect them.

Reasonable restriction to Freedom of speech and expression:

Under Article 19 (2) some reasonable restrictions can be imposed on freedom of speech and expression in the interest of Security of the state. As it is of great importance and the government has the power to put restrictions on the activities which affect the security of the state.

There are certain grounds on which the Constitution of India introduces restrictions. Article 19 (2) of Indian Constitution empowers the State to in still reasonable restrictions on the following grounds:

1. Security of the State;
2. Friendly Relation with Foreign States;
3. Public Order;
4. Decency and morality;
5. Contempt of court;
6. Defamation;
7. Incitement to offence;
8. Integrity and Sovereignty of India.

Conflict with Public Interest/Public Policy:

In Black's Law Dictionary (Sixth Edition), "**public interest**" is **defined** as follows:

"**Public Interest** something in which the **public**, or some **interest** by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question.

Legal Framework related to OTT platforms:

Last year in February, the government had notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 to regulate OTT platforms. The rules inculcated a self-regulatory design with a Code of morals and three-tier grievance redressal mechanism for OTT platforms. They provide for self-classification of the content without any involvement of Central Board of Film Certification. Certain rules of the law are crucial for OTT platforms. Every publisher should appoint a Grievance Officer based in India for receiving and redressing grievances in 15 days. Every publisher needs to become a member of a self-regulating body. Such a body will have to register with the Ministry of Information and Broadcasting and address grievances that have not been resolved by the publisher within 15 days. The Ministry of Information Broadcasting and the Inter-Departmental Committee constituted by the Ministry constitute the third-tier Oversight Mechanism.

Conclusion and Recommendations

India with its huge population and other problems has still a long way to go in reforming the structure and controlling digital media platforms without violating the sanctity of the entire entertainment organization. The only way to find a solution is by deliberation between the actors and the consumers and individual choice. A deliberate consensus among the different players can be amicably reached. Regulation has its counterproductive aspects such as the rise in piracy and illicit websites on the internet which would not harm the producers of such movies but also harm the self-interest of the consumer in the long run. But at the same time regulating these platforms is important for public policy and moral interests of the society.

Article 19(2) and the reasonable restrictions enshrined thereunder gives us a legality to prevent these OTT Platforms from showcasing any content which can cause incitement, hatred or risks the national security and sovereignty of India. This also includes the societal sentiment of the public in its purview. After an overall analysis this is concluded by the researchers that censorship is important for the OTT platforms and as we have a legal framework for the same, regulation on the content shown is an affirmative action.

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