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Regulation of OTT Platform: Censoring Issue & Limitation

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ABSTRACT

The OTT platforms are now in trend in India. During the covid 19 lockdown, when all the source of entertainment was banned, at that point of time the OTT platforms get opportunity to become more popular. As a result of such lockdown in our country, it expanded its market more than any broadcasting agencies. But the rights of freedom of speech and expression also has some restriction in it. Thus, the OTT platforms should also come under the same restrictions. The lack of regulation policies with reference to these OTT industries, have made it more liberal towards the content. The time has arrived when we should seriously think about the lacunas prevailing in the existing rules and regulations for such platforms.

I. INTRODUCTION

OTT means over the top. It is made of media services which are streaming online these days. The OTT have gained lot of popularity these days. Specially after the covid-19 lockdown it became more popular. The basic reason of its popularity is the locking down of whole world during the pandemic situation. During the pandemic the OTT platforms like Amazon, Hotstar, Netflix and so many other get the hike in the numbers of their paid customers. The paid endorses for the OTT platforms have been hiked around 30 percent since march to July 2020. They also have their own competitors in this field. For example – Netflix, Amazon, Hotstar etc. have previously ruled the market but in these days, there are many local competitors like Alt

Balaji, Zee5 etc. On the regular basis these OTT platforms faces many legal complications.

The OTT platform has a huge library which contains Novel, Stories, movies & many more diverse contents. They are totally different from the regular box stories. The best part of these platforms is that they are affordable too. But the great ideas always find a way for its criticism. As we all know that the theatrical releases have always been faces these controversies related to their content. In which they got criticism regarding the content which is either obscene or affecting the religions sentiments of certain group of people in the society. But there is a Board named; Central Board of Film Certification (CBFC) which deals with these aforesaid criticisms and there is also an act

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named; Cinematographic Act, 1952 which provides the guidelines and rules for the theatrical releases. On the other hand, in the cases of broadcasting media in television are regulated by the Broadcasting Content Complaints Council (BCCC). For the purpose of OTT platforms, they do not have any rules and regulations. Even though the legislation has not even created any legislation to regulate them. They are only governed by Ministry of Electronics & information technology (Meity) and The IT Act 2000. The OTT platforms on the other hand have some self-imposed regulations for e.g.: - Netflix has maturity ratings. There fore now the time has arrived where there should be proper legal framework for the purpose of regulating the OTT platforms but it should not affect the originality of its creative content.

II. EXISTING RULES FOR REGULATING THE OTT PLATFORM

As per the Current scenario, there is no proper regulation is in existence to regulate the OTT platforms. the cabinet minister Piyush Goyal has asked the entertainment industry to self-regulate their OTT platforms and also claiming that, they may portray the Indian society poorly. After the statement of Goyal ji 15 platforms signed a self-regulation code is framed by the aegis of the Internet and Mobile Association of India (IAMAI), to govern and regulate their streaming content. For regulation of the content, they specify it, in the description & maturity ratings. these OTT platforms are doing so because of

copyright related issues. they have three modes of this regulation. the current one is being launched in September 2020. Although there are many codes have been made and amended time to time, but the Ministry of Information and Broadcasting (MIB) have decided to set aside these rules and regulations because the list as of content is so exhaustive and no proper redressal mechanism is provided in that. In November 2020, the honorable Supreme Court has issued a notice, in a petition for regulating OTT platforms to Internet and Mobile Association of India (IAMAI) in which a notification was released. According to the Notification, all Online Curated Content providers (OCCPs) including OTT platforms will come under the jurisdiction of the Ministry of Information and Broadcasting (MIB) instead of Ministry of Electronics & information technology (Meity)³.

This decision can change the administrative authority and Ministry of Information and Broadcasting (MIB) would be able to restrain and regulate the OTT platforms more efficiently. The government would be able to regulate and bring out a proper list of prohibited content. After such judgment, the government has issued new guidelines in February 2021 that is named as IT (Intermediary Guidelines and digital Media ethics code) Rules, 2021. it contains three level regulatory mechanism for Digital News media and OTT platforms. This code is having giddiness for OTT platforms which states that, they have to comply with the laws of India and anything which is against the Integrity &

³ Shashank Shekhar Jha & Ors. v. Union of India & Ors, (W.P. (civil) 1080/2020).

Sovereignty of India, should be prohibited for broadcasting. It also had the norms for maintaining public order and ensuring the security of nation. the code also has the provisions for not disturbing the friendly relations with the foreign countries they should have to be more cautious for racial, religious beliefs and practices.

For proper utilization of this code, the regulations should be more particular about the execution of these rules under the code. for that purpose, they need to divide it into three levels.

First will be for grievances redressal mechanism, which would be set by OTT platforms itself. The second layer will be for making a self-regulatory body. The regulatory body would be headed by any Supreme Court or High Court judge or any other eminent person having knowledge of the rules and regulation related to these platforms and the last level will be for government to set up an Inter-ministerial committee (IMC) for “oversight mechanism”. This committee must have framed alike BCCC for television industries. These platforms should also provide the age certificates like U, A or U/A asper the universal ratings or age groups.

The OTT platforms are very famous these days and the benefits and reasons for it to become popular are: -

- **Economical** – any person who wants to watch the OTT content can easily register into it and they can also pay the amount for yearly or monthly subscription which is more economical and cost effective.
- **Easy to Access** – anyone who is aware of the internet access can easily use the OTT platforms via their mobiles, televisions, laptops, etc. the only thing which is required for the access is the Internet connection.
- **Unusual and creative content** – various creative and uncommon ideas, which could not be brought because of the censorship issues, have come to the front foot through the OTT platforms.
- **An Open and Creative platform for the Entertainment Industry** – the OTT platforms have generated a new medium for the new talent to get more opportunities. Therefore, the actual talent has come to forefront. The number of projects is also very huge in comparison to television and films, so that the people are getting more opportunities in the OTT platforms with new unseen ideas.
- **Globalization of OTT platforms** - the contents uploaded online can be seen any part of the world. So, the Indian contents have also been viewing internationally. It gives the broader outreach of the content and talent
- Apart from the advantages, the OTT platforms have various issues and challenges which they need to resolve: -
 - **No regulatory body** – this is the most concerned challenge before the government of the country. There is no proper organization, department or any board for the content regulation.
 - **Affect the political and social harmony** - there is no proper censor board for the review of the contents shown in OTT

platform, hence there is always a possibility for affecting the social and political harmony.

- **Cultural and traditional threat** – the Indian society is still not very broad minded to accept every unique content, hence the government needs to be accountable to the people as well. There are many contents in OTT as well, which can be considered as a threat by the people in our society, therefore it needs to be reviewed.

III. CAN IT BE REGULATED LIKE TELEVISION AND CINEMAS?

Although the OTT Platforms are for different from television & cinemas, therefore the audience has their own choice to select the contents they want to see in the OTT platforms, unlike TV & cinemas. In OTT streaming the contents are not for the broadcasting purpose, which means it not for the public exhibition. They are only for private viewing therefore it cannot be regulated under the Cinematographic Act, 1952⁴. Hence it cannot be treated same as cinema. Therefore, the formation IMC is not a great decision for regulation. The MIB ministry is having a statutory body that is Central Board of Film Certification (CBFC). This body is all about controlling the censorship related matters. Now as per the above discussion the OTT is now coming under the ambit of MIB ministry, hence CBFC can get indulge into the censorship matters related to OTT Platforms too. If It will happen then, the OTT will have the same fate like TV and cinemas and it would be judged on the grounds like obscenity, morality, religious

sentiment etc.. These terms and regulations are open ended and vague, therefore it will curtail the freedom of creativity. As per previous records, CBFC can misuse or overreach their powers on the name of unnecessary censorship. As they have done it with some famous cinemas like Bandit Queen, Uda Punjab, NH 10 etc... Therefore, the issues related to censorship is a big task to deal with, especially with the matters of OTT Platform. There is a need for proper regulation and a separate regulation authority which can only deal separately with the OTT platforms.

IV. NECESSITY TO REGULATE THE OTT PLATFORMS

Although every content related to Broadcasting needs a regulation, but with the matters of OTT Platform, the censorship should be measure with extreme caution. For regulating the OTT censorship, the MIB Ministry should form a separate body which may lead to self-censorship and not waive the creative freedom. The term freedom of expression cannot be affected on the matters of threat of violence & demonstration. Since the freedom of speech expression granted by constitution Under Article 19 and it is guaranteed against the state, therefore it should be the duty of state to protect and ensure the freedom of expression. The state cannot escape from its duty and cannot give any excuse regarding the inability to handle the hostile audience.

It can be regulated in two ways. One is where regulation is either self or by another body, which

⁴ *Padmanabh Shankar v. Union of India & Ors*, (W.P.

6050/2019)

means, it will ensure the removal of unlawful contents, anything which disrespect the thing related to nations importance and respect. It will also ensure that the content should not contain the promotions of terrorism or disrespecting the Integrity and Sovereignty of India. It can also regulate the shows related to children in sexual activity. On the other hand, the censorship is a far way different in which the sensitive content, abusive content, the nudity is being blurred or totally removed, either by way of external pressure or by way of voluntarily. Therefore, the platforms should get regulated by the external body formed under MIB ministry, that may resolve the issue of unnecessary encroachment of CBFC or any other existing body. Hence it can be said that, the most acceptable methods for regulating the OTT platforms could be self-regulation. It would include the information related to the content like obscenity, nudity, abuse, violence etc., to the viewer and also provide the age rating. Now rest will be up to the viewer to decide whether to watch it or not. The protection of children to watch age-inappropriate content and parental control would also be added. By the above said methods, the OTT Platforms can be regulated easily. But according to the terms, situations and conditions of our society, it can be amended accordingly.

V. CONCLUSION

Although the OTT Platforms have got popularity in these days, but it does not mean that one can use this popularity in absolute ways. Hence the government has issued many guidelines time to

time. The current guidelines have been issued for regulating the OTT Platforms are still in execution and the Hon'ble Supreme Court has passed an order of stay on all petitions regarding the OTT regulations and also awaited for the proper implementation of such guidelines.⁵ These guidelines will affect the type of content streamed on the OTT platforms and the grievance of public will be dealt with the redressal mechanism formulated under these guidelines. It will surely help the issues without the help of courts. Therefore, the matter is still the under the observation of Supreme Court and the OTT platform are still following the guidelines and there are no statutory rules in existence.

With the mattes of regulating the OTT platforms, India needs to learn from other nations, where regulations have already got the acceptance. As previously, India has borrowed many things from different countries in our Indian Constitution, it should also accept the same methodology for the regulation of the OTT platforms. There is also a need for authentic sanctions followed by some guidelines. The sanctions will ensure the compliance with the guidelines. This sanction will also include such code which can govern the OTT service industries. Apart from the sanction, there should also be an authority or body which can give license to these OTT platforms. These players should also be taxable according to the reasonable and justified taxation rate. Indian OTT platforms which provide its services in other countries should have to be regulated as well.

⁵ UOI and ors. etc. v. Sudesh kumar Singh and ors etc.

(SLP civil no. 10937/2019)