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Censorship of OTT Platforms: Freedom of Speech and Expression

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The censorship of OTT platforms and freedom of speech and expression are relevant aspects that are often considered topics for discussion in this changing modern society. The increase in the usage of OTT platforms has opened up a lot of doubts regarding freedom of speech and expression as the censorship of content can restrict the freedom to express our opinion and views. In this study, the researcher has focused on the need to have a regulatory body to balance censorship and freedom of speech and expression. The concept of OTT platforms and the need for censorship by considering the impact on freedom is discussed in this study with the help of legal provisions and case laws. The censorship of OTT content has to be carried out without interfering with the freedom of speech and expression of the other where a balance has to be established based on the nature of the circumstances.

Keywords: OTT platforms, censorship, regulation, speech, expression, rights.

INTRODUCTION

In this changing era, development has become an inevitable factor as it can be seen in every aspect of our lives. Technology has taken over most of the old methods and it has become an influencing sector that is tempting people towards it. The demand for OTT (over-the-top) has

also increased in recent times, due to the ongoing pandemic where people have become regular subscribers of the same.¹The introduction of OTT can be considered a significant development as it has made various contents available to the viewers with the click of a fingertip². While discussing the concept of OTT platforms, it can be seen that the issue of involvement of authorities in deciding whether the content is good enough for all ages has been raised a couple of times where the censorship of the OTT platforms is read with the freedom of speech and expression³. The increase in the controversial scenes in movies and other content has pointed toward the need to have a proper regulatory framework for OTT content for the smooth functioning of the entertainment sectors⁴. This regulation has to be carried out by considering the freedom of speech and expression of the others involved in it as it cannot be disturbed under any circumstances.

AN INSIGHT INTO OTT PLATFORMS

The search for a new mode of visual experience led to OTT platforms where the viewers were given the comfort of watching movies from their homes. In this modern era, the availability of online platforms and the usage of the same has increased at a greater rate and it has had an impact on the entertainment industry. OTT platforms have been receiving a lot of appreciation along with criticisms where the contents are being questioned based on the nature of the content being offensive and illegal.⁵Due to the increase in demand, there is a need to regulate the contents which are shown on the OTT platforms so as to prevent the display of any kind of offensive or illegal content. This has also enhanced the competition between the different platforms to come up with entertaining content for the betterment of the whole sector. The increase in the OTT platforms has made the lives of viewers much better as they are able to watch their favorite movies without much effort or issues. This privilege given to the viewers

¹ Onder Bakircioglu, 'Freedom of Expression and Hate Speech' (2008) 16 (1) Tulsa J Comp & Int'l L

² *Ibid*

³ Pascale Chapdelaine & Jaqueline McLeod Rogers, 'Contested Sovereignties: States, Media Platforms, Peoples, and the Regulation of Media Content and Big Data in the Networked Society' (2021) 10 (3) Laws

⁴ Nidhi Sinha, 'Regulating 'Films Released Online': A Critical Analysis of Film Certification and Censorship in the Digital Age' (2021) 8 GNLU L. REV., 46

⁵ Ionel Sandu, 'Freedom or Social Censorship' (2019) 5 (10) J.L. & PUB ADMIN., 163

has to be regulated well to ensure that the viewers are able to enjoy it in the best way without any other issues.

NEED FOR A REGULATORY BODY

The OTT platforms have become a great source of entertainment for all people as it is available easily. The increase in the demand for such platforms has also resulted in certain issues concerning the freedom of speech and expression and other related aspects. It is important to have a proper regulatory body to ensure the functioning of the sector and to make sure the objective behind the introduction of such platforms is fulfilled in the best way possible. Popular OTT platforms like Netflix, Amazon Prime, Video, and Disney Hotstar have been topics of discussion regarding content regulation as it is important to maintain the quality when there are more viewers.⁶If the legal background is analyzed, it can be seen that many public interest litigations were filed for the establishment of an autonomous body to regulate OTT platforms based on the contention that the online platforms dealing with media involve content that is unregulated and uncertified for the public view. This was raised as the main issue based on shows like Paatal Lok, Taandav, Mirzapur, etc stating that these series consisted of scenes that appeared to be offensive to certain communities where the religion was criticized. Some petitions were entertained whereas some others were rejected as they did not fall under the ambit of illegal or offensive content.⁷

OTT CENSORSHIP- IS IT A NECESSITY OR NOT?

The censorship of OTT platforms has become a topic of discussion in recent times due to the issues regarding the expression of opinion that has come in the entertainment industry⁸. There are varied opinions on this concept of censorship as some claim that it is essential to censor the content before making it available to the viewers and some others are of the view that this censorship will take away the essence of the content and it questions the freedom of speech and expression of those who are creating such contents. This difference in opinion has put the

⁶ Michael J Perry, 'Interpretivism, Freedom of Expression, and Equal Protection' (1981) 42 Ohio St LJ, 261

⁷ Robert Dawkins, 'Online Liberty: Freedom of Expression in the Information Age' (2001) 10 (1) Dalhousie J Legal Stud, 102

⁸ *Ibid*

question of whether the censorship of OTT platforms is a necessity or not? It is a complicated issue as the contents created by the people has a huge influence on the people and the opinion of each person vary from one another. In *Padmanabh Shankar v Union of India*,⁹ the court held that the content which comes on the OTT platforms cannot be treated as public exhibitions and hence it should not be subject to censorship. The contention made in this case was that the reasoning given in various instances where social interests are given importance over individual freedom is absurd and should not be considered in the censorship of OTT contents. It can be seen that OTT censorship ensures the quality of content and protect the rights of the service providers due to which it cannot be ignored or accepted entirely. In *Shreya Singhal v Union of India*¹⁰, the Supreme Court held that the content which was online user-generated cannot be censored unless there is any kind of direct provocation to the violation. Such issues of censorship of the contents have come up in various instances which focused on the need for censorship and prevention of the same based on the changing situations.

CONTENT REGULATION- A PEEP ACROSS THE GLOBE

The OTT contents which are created by people across the globe have a different impact based on the content, people, and the surrounding circumstance. Some content can become offensive to some people and others might not even consider the same. This can happen in most instances which can result in other problems and complications. OTT has become one of the best developing platforms where services are provided to customers through electronic communications. The accessibility of content without any restrictions of time, place, or individual is significant which attracts the people to use these services, especially in this modern era of technology. In India, the provisions mentioned under the Information Technology Act, 2000, and the Indian Penal Code, 1860, tell about the regulation and functioning of the OTT platforms.¹¹ Other special legislation also deals with OTT platforms which helps in proper regulation of the same but there are no particular laws that specifically

⁹ *Padmanabh Shankar v Union of India* (2019) Writ Petition No. 6050/2019

¹⁰ *Shreya Singhal v Union of India* AIR 2015, SC 1523

¹¹ Evelyn Mary Aswad, 'The Future of Freedom of Expression Online' (2018) 17 (1) Duke L & Tech Rev, 26

deal with content regulation of OTT platforms.¹² The regulation of content in the OTT platforms is mainly focused on those involving obscene material and sexually explicit materials.¹³ Countries across the world are focusing on this aspect of content regulation regarding the various ways in which it can be done. In Australia, the regulation of the OTT sector as a whole is done as per the provisions of the Broadcasting Services Act, 1992 where the complaints are registered and have mentioned the different ways to resolve the issues. The contents are certified based on the categories mentioned under the legal framework suggested by the authorities and if any kind of offensive or illegal content is found online, then a complaint can be filed and proper action will be taken by the Australian Communications and Media Authority (ACMA) based on the same. A similar procedure is adopted in Singapore also where the contents are categorized and regulated by Infocomm Media Development Authority (IMDA) to prevent any kind of offensive or illegal content from being online¹⁴. It mandates the service providers to get a license and the need to have a content code for OTT is also specified under the same.

IMPACT ON THE FREEDOM OF SPEECH AND EXPRESSION

In this society, every individual has the right to freedom of speech and expression where they have the right to raise their opinions in society on any matter including public issues. When OTT censorship is analyzed, it can be seen that the censoring of the content may have an impact on the freedom of the creator as his or her content is altered¹⁵ and changed to something else which they might not have had in mind. In such instances, it has to be seen that the regulation of OTT has to be done by following the guidelines which do not violate Article 19 (2) of the Constitution of India, 1950. In *Life Insurance Corporation of India v Prof. Manubhai D Shah*,¹⁶ the parties contended that halting the documentary broadcast will violate the freedom of the creators as they have the right to express their views and opinions. When

¹² Andras Koltay, 'The Concept of Media Freedom Today: New Media, New Editors and the Traditional Approach of the Law' (2015) 7 (1) J. MEDIA L., 36

¹³ *Justice for Rights Foundation v Union of India* (2020) Writ Petition (Civil) No. 3198/2020

¹⁴ Andras Koltay (n 12)

¹⁵ Poorva Pandey, 'Guidelines for OTT Platforms and Social Media, 2021: Regulation or Restriction?' (2021) 24 *Supremo Amicus*, 729

¹⁶ *Life Insurance Corporation of India v Prof. Manubhai D Shah* (1993), AIR 171

the significance of regulation is mentioned, it is important to categorize the contents in a reasonable manner where movies and other contents can be classified based on age where parental locks are present to avoid children from accessing the content which is unsuitable for them. UK and Australia have joined hands with Netflix to ensure such regulation in the contents without affecting the freedom of speech and expression of the creators. In this digital era, it can be seen that an effective regulatory body that is unbiased is required as the online contents cannot be managed properly with a self-regulatory body. The public interest has to be considered while dealing with the regulation of the contents as the objective of providing these contents is to ensure that the viewers are enjoying it without feeling offended in any way.¹⁷The laws put forward by the authorities have to be provided based on the facts and circumstances of the case where any kind of violation in this regard has to be dealt with seriously for better output. However, it does not mean that complete censorship is the only solution to regulate the content as it will have an impact on the rights of the service providers and the content creators. The creators should be given the right to express their opinions and views and it should not be taken away by any kind of unnecessary censoring of the content. While considering public opinion, it can be seen that most people agree to have censorship for the content to some extent as it ensures the quality of content along with controlling the entry of any kind of offensive content and other content which are unsuitable for the public viewing.

CONCLUSION

The significance of OTT platforms has increased in the past decade where people have become involved in technology and are getting influenced by the same. Due to the increased use of such platforms, it is important to regulate the contents and functions of such sectors to ensure their smooth functioning of the same. In such online platforms, any content which can create an issue in public will reach millions of people in one touch, and hence it is the need of the hour to ensure appropriate content in order to prevent any kind of misuse coming out of it. It is true that while content is censored, the whole content changes and it questions the freedom of the creator in terms of speech and expression. But at the same time, it is important to

¹⁷ Forum R Patel & Purvi Pokhariyal, 'Freedom of Speech and Expression with Special Reference to Freedom of Press' (2020) 10 (2) GNLU JL Dev & Pol., 102

regulate certain content which can become an issue in public, and censoring of the content gains importance in such instances. Hence it is essential to regulate the content and censor it without affecting the freedom of speech and expression of the creator. The content cannot be compromised just because of the fear of violating the rights of the creator. The public good and public interest have to be considered in such situations and it has to be carried out with the objective to function in the interest of the public in the best way possible.