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OTT Censorship

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ABSTRACT

Absolutism is the enemy of expression but what happens when this absolutism is used a watch guard of expression? It sounds ironical right! But this is what we are going to address in the paper. Freedom of expression is not just a right but a lifestyle and a livelihood. India has cosmopolitan population but we lack with our tolerance. The tolerance we are talking about is respect of viewership on OTT platforms. OTT platforms are audio and video hosting platforms, initially started as content hosting platforms but with the development of time have branched into production houses. E.g. we often hear that certain web series or movies are Netflix or prime originals. Censorship means severing or restricting the content recognized as offensive by government or other self regulating bodies. Censorship is a universal controversial issue as it poses threat to freedom of expression. In this paper we are seeking to address the state of affairs created through censorship on OTT platforms.

Keywords: *Absolutism, Censorship, OTT, Freedom of expression, Controversial issue, Tolerance.*

I. INTRODUCTION

We would like to introduce the constructive of this paper by explaining the opening assertion in the abstract. Absolutism means lack of restriction. History is the self-explanation of hazard caused by absolutism. For Example: in the garb of national sovereignty two nations i.e. North Korea and China are imminent example of absolute monarchy. The citizens of these nations often complain about their violation of right to freedom of expression as these nations heavily impose the restriction on expression by enacting censorship laws. But India is an example of contrary theory. In India it is so-called motioned that it is the absolutism created by OTT entertainment sector which needs to be restricted by Government through censorship. I hope the ironical role of Indian stakeholders is understood.

To understand a wrong first we shall through some light on chain of events leading the wrong. Various forms of media are regulated by distinct body in India. Here are some examples:

- Print Media regulated by Press Council of India
- News Broadcasters Association regulates television new channels

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- Advertising Standards Council of India regulates advertisement contents
- Central Board of Film Certification monitors films.

On October, 2020 OTT platforms signed **self-regulation code in India**. The code was based on three parameters, that is, age classification, content description and parental control. The platforms also provided a grievance redressal system.

Then what was the need for regulation by censorship under Information and Broadcasting Ministry?

Reason: A Public Interest Litigation in Supreme Court stated that digital content on these platforms is made available to public at large without any filter or screening. The Supreme Court sought Centre response on the following issue. In response the centre on Nov, 2020 by a notification in official gazette inserted both online platforms of content and news and current affairs under Government of India (Allocation of Business) Rules, 1961.

II. RAMIFICATIONS OF CENSORSHIP

Under the particular section we will ponder over the consequences of censorship on ott platforms. This can be broadly be categorized into 4 heads:

1. Artistic Paralysis
2. Duty Bound entertainment
3. Intolerance
4. Financial setback

(A)¹Artistic Paralysis

Psychological consequences can be defined as a threat to artistic freedom of an individual. If staging the research in Indian context, this outcome is not just limited to threat but a violation of citizens fundamental right i.e. Article 19(1)(a) : Right to freedom of expression.

Artistic paralysis is a kind of psychological consequence where overthinking and overanalysis cause decision making and reasoning 'paralysis'. Imposing censorship on content puts artists in a tough spot of continuous external and internal scrutiny. Their thoughts, expressions, ideas and concepts are hindered with the pressure of approval. The censorship imposed on different types of media, as aforementioned, is sufficient to create the environment of approval over assertion. Artistic paralysis is a serious personal and national ailment. It constrains development. Recently listening to a podcast I came across a one-liner stating "don't get ready, get started". This clearly explains the situation created by censorship on ott platforms. OTT freedom is important to kick-

start design thinking. Rather than applying mind to what is acceptable and so-called correct for mass display, artist/creators/directors shall apply their mind in execution and concept generation. Such a type of practice can be branched into a school of thought on digital media.

(B) Duty Bound Entertainment

A predominance of political stature is the second consequence of censorship going OTT. It is based on the theory of media law on Personality Influence. Controlling entertainment content is an innovative measure adopted by this ruling government to create influence and for carving public's opinion. Some of the instances are: City of Dreams, Taj Mahal, Maharani, Taali, Mom, Mukhbir and many more.

Often we sigh in relentless hope on varied online platforms to satisfy our quest of daily entertainment and by using this as an opportunity a feeling of nationalism is intrigued by delivering our viewers with what is called "nationalistic entertainment". Yes you read it right! Nationalistic entertainment is an amalgamation of national interest to entertainment. I think the content of films and web series nominated for Emmys and National Film Festival is enough and there is no dire need for the sheer conversion of the genre of content. Delhi Crime, released in 2019 is an anchoring example of freedom of expression leading to a beautiful creation and collation of realistic events into a thread of perfectionism. It also won 48th International Emmys Award for 'Best Drama'. The politically motivated series or movies corrupts the content purity and often as an outcome may lead to polarization of opinions. In India such polarization is often motivated on the lines of religion and region.

The interplay of diversity and dichotomization is often seen in our content. As it rightly explained in Geeta Chapter 2, Verse 63 (2.63) "Confusion is created by anger, intelligence is disturbed by confusion, logic is destroyed when the intellect is disturbed and the argument is destroyed then the person collapses"

(C) Intolerance

To understand social effects of censorship on OTT platforms we have to first familiarize with the concept of chain reaction. Putting it simply, chain reacts are those set of events which are connected and linked together in a series in a way that each one triggers the next. This exactly happens by applying censorship on digital content. By putting restriction, the ministry not only controls the content but also barges with the content experimentation. History has foreseen the power of experimentation in different fields such as medicine, astronomy, science, sociology, human behavior and many more. A simple analogy to befitting is "no experiment, no evolution". Hence, by restricting and censoring the experimentation of content, the government is playing

with the nature of human mind-set evolution.

Human mind evolution doesn't only have conceptual value but it is important for the peace and harmony too. As when human mind becomes stagnant it attracts the intolerance and intolerance of any nature is harmful for the society. Time and again India had witnessed religious and ethnic intolerance. This same is depicted in our laws and our content. 'The smaller the ego, the easier it gets hurt.' So, our public or viewer is turning into that puppet of bigotry which painlessly gets triggered. In medical science food intolerance is a well recognized ailment but in behavioral sciences, social intolerance is still unidentified. Then, who is responsible? We as a viewer or they as a creator/governing body!

Different stakeholders are responsible for this problem. As clearly aforementioned that in the beginning there was no such censorship imposed but it was after the PIL, mandatory changes were made. It holds "us" responsible. Brainless creation of series or movies lacking concept and vision holds "creator" responsible. And at last the unspecified degree of power given to impose censorship holds "concerned body" responsible. It is a matter of grave concern because intolerance is the root cause of communal violence. And communal violence in no time might take the position of civil war in a nature. Therefore, as this analogy seems vague today, it might become true tomorrow.

(D) Financial Setback

Censorship on OTT platforms hinders financial business of these platforms. ²The OTT industry accounts for 7-9 percent of the entertainment industry and owes much of its growth to the increasing popularity of short-form content and the affordability of data plans in India. The driving force of any business is profit and when choices get filtered out, so it cause damage to profit making. It is one of the simplest, yet the most dangerous ramification of censorship. In recent times India is gradually transforming into private economy from mixed economy. India's most powerful sectors such as telecom, electricity, are under profit making companies. The reason to compare is to make you understand how an economy turning private can hinder the growth of digital content platforms.

The 3Rs which upholds the financial goals for such platforms are: Revenue, Remuneration and Reserve. The goals are interdependent and, in such scenario, if any loss caused to revenue generation can seriously injure others.

Happiness is not in the mere possession of money; it lies in the joy of achievement, in the thrill of creative effort." —Franklin D. Roosevelt, former U.S. President. As the quote suggests that it are the creative efforts which give sheer enjoyment. The happiness doesn't lie in earning but

in recognition of work. A true artist will always wants to be recognized, either by their work or by the believes. This recognition decides the valuation of their work. The greater recognition, the higher value!

The effect of censorship on international content when released on OTT platform in Indian is solely at the discretion of makers. Hence, for now it is safe but the discussion censoring such content is still on the table.

III. JUDICIAL TRAJECTORY

1. ³Pranay Rai v Clean Slate Films Pvt ltd & Ors (W. P. No. 5441 (W) of 2020 with C.A.N. 3148 of 2020)

It is the famous “Patal lok case” where complaints were made against directors and OTT platform to hurt the sentiments of Sikh community u/s 153, 295A, 298 of Indian Penal Code.

Numerous arguments were brought up in this case as to why OTT services in India require censorship. The claim made was that section 67 of the Information Technology Act had been broken because violent, offensive, and anti-social material was shown without regard to the audience's age. The online series was also contested for depicting the gang rape case in violation of the Indecent Representation of Women (Prohibition) Act, 1986. Additionally, the petition claims that the event is illegal under Indian Penal Code sections 153A and 298. The petition's principal defence was that, in contrast to films seen in a theatre, where one may choose where to go and view them, films still require certification before being released, but the mechanism used by online platforms is ineffective and impractical because one has no control over the information that is being displayed. However, the petition was denied since there is no concrete evidence of a human rights violation in the claims.

OTT services like Netflix, Hotstar, and others are well aware of the consequences of continuing to operate in an unregulated environment. Due to this, these platforms have voluntarily joined the Code of Best Practises for Online Content, a self-regulatory document produced by providers and distributed by the Internet and Mobile Association of India who forbids them from displaying materials that offend religious sensibilities, encourage child pornography, advocate terrorism or acts of violence against the State, or disrespect the Indian Flag and are outlawed by Indian courts. The code is referred to as welcoming measures since it satisfies the demands of those who are pushing for control of OTT platforms and permits, with reasonable constraints, the freedom of opinion and expression guaranteed by Article 19(1).

Not all platforms, nevertheless, have the code signed. Amazon Prime is one of these services.

Only 5 out of the 30 members of the Digital Entertainment Committee signed the Tier 2 code, which IMAI lobbied for on February 5, 2020. The national government provided 100 days on March 5, 2020, the Digital Content Complaint Council (DCCC), a body established in February, has given orders to all OTT platforms to modify or update their policies in compliance with those directives. Even though the 100-day period is expired, the government has not yet made any comments.

2. Amazon Prime Video India Originals v. Union of India

Numerous legal proceedings have been initiated as regulatory intervention in India in recent years. It was argued in the case of Amazon Prime Video India Originals v. Union of India that the Information Technology Rules were invalid because they imposed restrictions that were arbitrary and unreasonable. It is hoped that the case's resolution will shed some light on this issue.

3. The Tandav Controversy: A case study

⁴On January 15, 2021, the "Tandav" web series was made available on Amazon Prime Video, an OTT service. It generated controversy as soon as it was published. Numerous segments of Indian society have attacked the series for offending Hindus' religious feelings. The Ministry of Information & Broadcasting intervened after receiving multiple complaints and brought up these issues with the series' creators. The creators removed the allegedly offending portions of the programme and issued unequivocal apologies. Dissatisfied with these actions, however, several FIRs were filed in various states against the actors, producers, and directors of the series as well as the India director of Amazon Prime Video's original programming.

⁵Demands for censorship and criminal sanctions for OTT platforms were also sparked by the incident. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (the "Intermediary Rules, 2021") were subsequently announced by the government on February 25, 2021. The Ministry of Information and Broadcasting is in charge of enforcing Part III of the Rules, which deals with the regulation of digital news media (although it is unclear exactly which news media these Rules apply to) and OTT services like Netflix, Amazon Prime, and Disney+Hotstar. The Intermediary Rules, 2021, which are antidemocratic and unlawful, are examined in light of these allegations in order to find out how they provide a heckler's veto and censor speech that is permitted on all OTT platforms in India.

- ⁶Heckler's Veto

When the government restricts a party's freedom of speech and expression to stop the other party from acting in antagonizing ways, this is known as a "heckler's veto." The government

has virtually established a situation of heckler's veto in India through the recently announced Intermediaries Rules, 2021, which has significantly reduced the country's ability to express oneself freely. Below are several justifications for it. In accordance with the Intermediaries Rules, 2021, OTT platforms are subject to Clause II (A)(c) of the Code of Ethics, which reads as follows:

When highlighting the activities, beliefs, practices, or opinions of any racial or religious group, a publisher must take into account the multiracial and multi religious setting of India and use appropriate caution and moderation. Therefore, this clause permits complaints to be submitted that go beyond the law as it stands now on freedom of speech and the legitimate limitations that can be placed on this fundamental right (as prior sections of the Intermediary Rules, 2021 explicitly declare that this provision is in addition to existing prohibitions of law). Additionally, anyone with a complaint against content published on an OTT platform may submit it to the platform's grievance officer, who is required to notice the complaint within 24 hours, address it, and reach a communicated conclusion within 15 days. In an environment where, for example, review bombing on app stores has resulted in the removal of multiple apps, it is simple to see how such a tool may be abused.

Tier 1 of a 3-tier system is where the aforementioned Grievance Officer falls. The complainant may appeal to the second tier if they do not find the Grievance Officer's response to be satisfactory. The second layer consists of a self-policing committee made up of up to six members who are authorities in the media, broadcasting, entertainment, child rights, human rights, etc. Although it is described as the second tier of self-regulation, this is essentially the first layer of governmental monitoring because the Ministry of Information & Broadcasting must ultimately approve the makeup of this body. So long as they don't get the desired outcome, the complainant can keep raising their complaint.

The government itself, in the form of an Inter-Departmental Committee led by the Joint Secretary of the Ministry of Information and Broadcasting, is the third tier. This committee is made up of officers from various government departments, including the Home Ministry, the Law Ministry, the Ministry of Defense, the Ministry of Women and Child Development, etc. According to the Intermediaries Rules, 2021, this Committee is qualified to hear appeals from the second tier and has broad punitive powers. As it sees fit, it may issue warnings, censure, admonishes, demand an apology, change content ratings (to A, U/A, U, etc.), or even block or censor information.

This structure was developed without a statutory foundation or open stakeholder input. The

freedom of speech and expression of content creators and publishers, as well as the right of open information access for content consumers, is gravely threatened by such broad powers that lack constitutional or parliamentary support.

The Intermediaries Rules, 2021, its scope, and the worries about how they will be applied will have a chilling impact on Indian individuals' fundamental rights, not just on the side of the creators but also on the side of the consumers. Platforms that are eager to avoid the broad discretion will over-comply and self-censor in response to executive authority over OTT material.

IV. CONCLUSION

In this section we would like to provide with some general measures to be taken by both creators and government in order manage the consequences of censorship.

The first measure is moral policing of oneself. Creators, production houses, produces and various other stakeholders must indulge in some self-moral policing. The content shall not be obscene or hurting the sentiments of various section. In this way it becomes easy to balance both national interest and freedom of expression. The second measure is to be adopted by authorities by setting boundaries to interference. A basic structure shall be interpreted by courts carving the powers of government in imposing censorship on OTT platforms. The last and the most interesting measure shall be to segregate different platforms on the basis of their content quality. Due to this a detail stats of audience preferences will be available. Using such information government can decide the intensity and need for censorship and the entertainment market will have various options for its audience.

Hence, we would like to conclude it by quoting a saying from Bhagwad Gita “A person can rise through the efforts of his own mind or draw himself down in the same manner because each person is his own friend and enemy.”

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