

ANALYSING THE STATUS OF FREEDOM OF SPEECH VIS, A VIS NEW OTT RULES IN INDIA

by

Saundraya Giri

LLM, Christ (Deemed To Be University), Delhi NCR Campus

ABSTRACT

India is a democratic country and unlike some other countries where the citizens are not allowed to express their views and expression. In India the citizens are guaranteed of freedom of speech and expression under Article 19 (1)(a) of the Indian constitution under which people are free to express their views but this right is not absolute there are some restrictions mentioned in the constitution.

Journal of Multi-Disciplinary
Legal Research

Introduction:

In India one can speak their heart out without any fear that they might not be executed by someone if they say something or express their views and opinions. In a country like India where every citizen has equal rights without any discrimination, it is important that every citizen is given the right to speech and expression.¹

Now let's understand but is Article 19(1)(a) of the Indian Constitution. Under the said Article any person who is the citizen of India has the fundamental right of freedom of speech and expression, the people of the country can express their views through mouth, words, gestures, etc., to express their opinions. But the right given under this article is not completely absolute but there are certain reasonable restrictions that State can put upon this fundamental right. But such a restriction must be in the interest of the general public and there must be some reasonable justification in relation to the restriction imposed by the State under Article 19(2) of the constitution of India.

OTT Platforms have in so much in trends in the current world. There are so many OTT platforms there out and people can watch over these platform anywhere and anytime. And because of the increase in demand due to the on demand services by these platforms the cable television has been eclipsed.²

These platforms provides with a wide range of shows and movies that cannot be telecasted on the television due the censorship rules prevailing in India and that's the reason they are called as OTT i.e. Over The Top. Article 19(1)(a) guarantees every citizen to express their views but with some restrictions. Censorship is kind of a restrict that is put on the creators to avoid any kind of violent work, obscenity, etc. which might bring some sort of distribution in the society.

But in recent years it has been evident that censorship has been used as a tool to put restricts on the creators works. The OTT platforms under the purview of the Ministry of Information and Broadcasting ("MIB") on November 9th vide an amendment to the Government of India

¹ <https://www.legalserviceindia.com/legal/article-572-constitution-of-india-freedom-of-speech-and-expression.html>

² <https://www.legaleraonline.com/within-the-circle/tandav-controversy-and-right-to-freedom-of-speech-on-ott-platforms-730148>

(Allocation of Business) Rules, 1961 in exercise of his power provided in Article 77(3) of the Constitution by the President of India.

The main purpose of this article is to analyze that how the exercise of administrative actions are trying to put restrictions on the contents displayed by the OTT platforms through the help of censorship.

For example: A web series released on one the OTT platform i.e. Amazon Prime Videos a series called Tandav casting Saif Ali Khan was brought up in the Supreme Court of India as it was contended that it portrayed the UP police improperly, it was against the sentiments of some religions and that it misrepresented the Prime Minister Of India. And so it was appealed that the particular web series i.e. Tandav must be removed from the OTT platform.

³There are a number of series that has been criticized like the Scared Games which is on the Netflix. Number of petitions has been filed against a number of web series that are there on the OTT platforms.⁴

So the main question here arises is that whether these OTT platforms really enjoin freedom of speech and expression or not?

CENSORSHIP IN INDIA : AN OVERVIEW

In India the citizens enjoys freedom of speech and expression but it is limited to a level of degree where it does not hurt any religious feeling or is against the morality. The main reason behind the establishment of censorship regulation was not to curtail anyone's views or opinions but to curb the spread of any kind of violence which is against the interest of general public at large.

In today's world where everything is easily available on the internet and these OTT platforms it is every easy for the children and for the young citizens to have access to adult content which is clearly not for the children's.⁵

The main problem is that this service is available on demand so who ever pays for the service has the access but the people residing in the rural areas are not well versed with contents showed on the OTT platforms so it is necessary that there are some regulations on the OTT platforms.

³ <https://internetfreedom.in/tandav-case-study/>

⁴ <https://legaldesire.com/ott-censorship-vs-right-to-freedom-of-speech-and-expression>

⁵ <http://www.legalserviceindia.com/legal/article-3418-censorship-of-ott-platforms-a-boon-or-bane.html>

Government Rules and Regulations:

The India government to have a proper control on the contents shown by the OTT platform issued laws to regulate over-the-top (OTT) broadcasts, digital news, and social media, including procedures for monitoring and blocking unwanted or inappropriate content.

Apart for the censor board it is required by the OTT platforms to use their own discretion while displaying the contents online . There has been a law made that makes it mandatory of the OTT platforms to provide with a parental lock so that the parents can have access to what their children's are watching and to have a proper age verification to avoid any sort of malpractice by anyone to comply with the law.⁶

Although, according to Rule 3(2)(b), (c), and (e) of the Information Technology (Intermediaries Guidelines) Rules, 2011, it is the duty of each intermediaries to take due diligence on the contents that they are displaying that such a content is not promoting any kind of pornography , obscenity or any unlawful content.

Many cases were filed against the web series that are there on the various OTT platforms as it was held that they were spreading unethical and inappropriate pornography which will destroy the minds of the young citizens.

But the OTT platforms like Netflix, Hotstar , Prime videos , etc. contended that if the OTT platforms will also be regulated under the the Broadcast Content Complaints Council (BCCC). The very fine line that draws a difference between the televisions and OTT would be erased and their fundamental right of freedom of speech and expression would be violated.

But however the State has the power to put certain restrictions on the freedom of speech and expression under article 19(2) of the constitution if it is found out that content so displayed is against the morality , public order and so on. Under section 69 A of the IT Act the government has the power to issue a notice regarding blocking of the contend if it is found that it is against the Indian sovereignty .

Article 19 (1) (a) and OTT Platforms:

⁶ <https://www.thehindu.com/entertainment/movies/new-information-technology-rules-threaten-the-creative-freedom-enjoyed-by-ott-platforms/article34051111.ece>

In the case of Divya D/O Ganeshprasad Gontia vs Union Of India⁷, Ministry the court attempted to regulate the control over the contents displayed by the online series . It was held that shows like Scared Games showed on Netflix and some other series that were show on Alt Balaji were containing nude , vulgar and obscene scenes which were almost similar to pornography and thus was punishable under the Cinematograph Act, Indian Penal Code, Indecent Representation of Women (Prohibition) Act, and Information Technology Act. So in this regard a notice was issued by the Bombay High Court demanding regulation on such online series by MIB.

Conclusion:

The rights available to the OTT broadcaster's is just the same and they also have the freedom of speech and expression but the Indian Constitution in providing with this right also lays down some restrictions to protect the public interest at large. And so censorship is one the such tool that lays a restriction on the contents displayed by the OTT platforms so that it does not destroys peace of the society .

OTT platforms are created so that the shows which can't be showed on televisions can be showed on this online platform but that doesn't means that these platforms shows content which is against some religion , cast , or a political group or which clearly depicts nudity and is against the morality. For this reason right to freedom of speech and expression is not completely absolute but certain restrictions are there so that no one in the name of their fundamental right do any act which is not appropriate . New rules and regulations were made to put a control on the contents that are displayed by the online series and a proper age verification is mandatory to avoid in kind of malpractice and there must be parental control on each OTT platforms so that the parents of the children's have the idea that what their children are watching.

⁷ <https://indiankanoon.org/doc/156905244/>



Journal of Multi-Disciplinary
Legal Research