

# Regulations of Online OTT Content

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*Abstract- The Constitution of India guarantees the fundamental right to freedom of thought, expression of ideas and creativity in a free manner. Article 19(1)(a) gives the fundamental right to freedom of speech and expression, which includes the right to publication of content. However, there are times when this right is not absolute and is subject to restrictions. The paper aims to propagate that when the State strives to control and regulate such content, it should show to be thoughtful in this approach. The State draws the authority from the Constitution of India, the Information Technology Act, The Data Protection Rules and regulations made there under. It also seeks to understand censorship on the grounds of public policy with respect to online content and the working of the relevant provisions across major jurisdictions of the world.*

## I. INTRODUCTION

The Constitution of India guarantees the fundamental right to freedom of thought, expression of ideas and creativity in a free manner. It is also related to democratic right to broadcast along with good governance and development. It is also indicative of development of culture as it depicts the diversity and choice of a particular nation. Article 19(1)(a) gives the fundamental right to freedom of speech and expression. The fundamental right to freedom of speech and expression also includes the right to publication of content. However, there are times when this is not an absolute right. It is subject to restrictions. Over the years, various reasoning has evolved for curtailment of this right in different legal contexts. The judiciary in most cases balances this right against restrictions imposed. However in certain situations the State's stand to restrict the content outweighs the fundamental right to freedom of speech and expression. The paper also aims to propagate that when the State strives to control and regulate such content, it should show to be thoughtful in this approach. The application of this interplay in

matters related to online content can be a little complex. It can lead to curtailing the freedom of speech and expression. The State draws the authority from the Constitution of India, the Information Technology Act, The Data Protection Rules and regulations made there under. The paper makes an attempt to understand censorship on the grounds of public policy with respect to online content. It also seeks to understand the working of the relevant provisions across major jurisdictions of the world. In this regard it becomes essential to understand and to establish that there is a growing need for a rationale in place for regulation of content.

## SIGNIFICANCE OF STUDY

The research study aims to understand the interplay between the freedom to broadcast content and possible restraint thereof. The researcher would undertake a jurisdictional wise analysis to understand how a similar situation is being dealt across the world. The research also attempts to understand the impact of regulation on the society at large. The researcher proceeds on the presumption that the research study would be helpful for policy decisions in this regard.

## OBJECTIVES OF STUDY

The researcher aims to study and analyze the viability of online content regulation in India. The study would help to understand a variety of issues in this regard. It includes but not limited to constitutional freedom and restrictions, data and privacy related issues, broadcasting rights and possible impact on the socio-economic situation in the country in case of regulation by the State.

## HYPOTHESES

The premise of the present study is on basis of the following:

- The right to broadcast content is an essential part to freedom of speech and expression.
- There have been concerns for regulation of such content.

- The regulation policies can impact the society at large.

#### RESEARCH QUESTIONS

The researcher shall be addressing the research problem and be including certain research questions for a systematic study to be undertaken. It shall include the following:

1. What is the nature of interplay between the freedom of speech and expression and the restrictions thereof?
2. How is online content being regulated across various jurisdictions?
3. What is the impact on socio-economic factors if regulation policies are enforced in India?

#### SCOPE AND LIMITATION OF STUDY

The present study is carried out to understand the nature of freedom of speech with respect to broadcasting rights. The specific reference is being made to content created and as published on the Internet or through its medium. The study attempts to understand the extent of regulation and restraint on such content and possible consequences thereof. The researcher has undertaken a jurisdiction wise study to understand how countries across the world have dealt with similar issues. The study will be restricted to give about a descriptive and analytical perspective in this regard.

#### RESEARCH METHODOLOGY

The researcher has followed a doctrinal and analytical method of research. The researcher will be relying on various primary and secondary sources. It includes but is not limited to legislations, parliamentary debates, judicial decisions, scholarly and literary articles etc. The researcher shall also be referring to blogs, articles published by journals, those on internet along with newspaper articles. The researcher is following a uniform style of citation for the purpose of this study.

#### CHAPTERIZATION SCHEME

##### Chapter 1: Introduction

This chapter summarizes the nature of the right to free speech and expression. It seeks to analyze the extent of such right as decided by the courts through judicial decisions. It also includes a study on right to

publish. It also address the conflict with reasonable restrictions as mentioned under article 19(2) of the constitution of India. This would help to understand and determine the extent of availability of such rights in the internet space too.

##### Chapter 2: Historical Development

This chapter seeks to understand the history for development of the issue. It also refers to creation of content which is later on publicized to the society at large. It includes the creation of intellectual property, possible overlaps with the Constitution of India and dealing with violent and objectionable content.

##### Chapter 3: Jurisdiction-wise analysis

This chapter seeks to identify the key considerations for this issue amongst various jurisdictions. It would include a review of legislations, debates, ethical-moral considerations, social outlook, judicial decisions, practical approach and impact. This jurisdiction wise analysis would serve as a guiding source to understand the problem in the Indian context and serve possible solutions to the underlying challenges.

##### Chapter 4: Contemporary challenges and solutions

This chapter seeks to identify and understand the position of the government and the private entities. It attempts to understand the possible conflict and how efforts can be made to reach at an optimum level of plausibility for both of them. It also includes a possible impact assessment due to policy regulations.

##### Chapter 5: Conclusion

This chapter gives about recommendations and guidelines for fruitful enforcement of the constitutional rights in case of restraint. It also draws about certain responsibilities and duties be undertaken by the entity. It also makes an attempt to draw about the extent of censorship and regulation by the Government.

#### REVIEW OF LITERATURE:

##### I - HISTORICAL DEVELOPMENT

The Constitution of India guarantees to secure the citizens of India, liberty of thought, expression and belief. The fundamental right to free speech and expression is granted to all citizens of the country.

However, article 19(2) gives an exception to the right guaranteed under article 19(1) (a). The media has similar rights to that of a citizen in the country. The freedom of speech and expression has multiple dimensions to it. These multiple dimensions include both the content of the speech as well as the medium which is used for propagation of the same. This concept is dynamic and it has evolved with changing times. Technological advancements have also led to the evolution of the concept. The content can be in the form of writing, printing, picture etc. The communication of expression can be through the electronic and audio visual media also.<sup>1</sup>

Freedom of speech is the one of the foundation of democracy. it is essential for enjoying other rights granted by the Constitution of India. It is said that it is the pre condition for the exercise of all other liberties.<sup>2</sup> It embarks the starting point for open discussion of issues pertaining to the society. Freedom of speech plays a crucial role in the formulating public opinion on social, political and economical matters.<sup>3</sup> Reasonable restrictions can be imposed by the government under Article 19(2)

The 3 main characteristics are:-

- (1) The restrictions under this can be imposed only by law. There cannot be any restriction by the virtue of an unauthorized decision. It has to be backed up by law.
- (2) The nature of restriction should be reasonable.
- (3) A restriction must be related to the purposes mentioned in the clause 19(2)<sup>4</sup>

The restriction imposed must not be arbitrary or excessive or beyond what is required in the situation in the interests of public.<sup>5</sup>

In a judgment, the Privy Council held that *“The freedom of journalist is of utmost importance. It is an extension of freedom of speech and expression. He is entitled to go at all lengths in general in accordance with the statute law and his privilege is equal. There are no additional privileges.”*<sup>6</sup>

The expression “freedom of speech and expression” in art.19 (1) (a) has been held to include the right to acquire information and disseminate the same. It includes the right to communicate through available

means of communication. It can be done print, electronic or even audio visual media. The freedom to receive and communicate information is a part of the freedom of speech and expression. It should be done without interference. It said that a person can only have an informed opinion if he has all relevant information pertaining to it. The SC has held that the art.19(1)(a) not only guarantees the freedom of speech and expression, it also ensures and comprehends the right of the citizens to know, the right to receive information which relates to matters of public importance. The Supreme Court has highlighted the importance of the right to know in a democracy in the following words:

*“We live in a democratic country. The legislature, executive and the judiciary are agents of the public. There is immense responsibility. Therefore the conduct should have minimum secrets. There citizens have a right to know every public act done in dispose of public functions. The citizens have a right to know about these functions. It is an extension of right to know which is a part of freedom of speech and expression. They are entitled to know the particulars of every public action in all its forms.”*<sup>7</sup> The right to free speech and expression includes the right not only to publish it but also circulate the same. The right to free speech and expression would not have an impact if the right to publish the same is not been given. Hence the freedom of circulation is crucial to freedom of speech and expression.<sup>8</sup> The Supreme Court has also held that no law can be made which regulates the circulation of a newspaper. If it is made, it will be considered to be a direct violation of fundamental right to free speech and expression. This right to circulation will also include the volume of circulation.<sup>9</sup>

The Supreme Court has also reiterated that the term ‘Freedom of Speech and Expression’ should be given a wider interpretation. It includes the right to circulate through audio-visual means also. It also includes the right to propagate through print media and other forms of media.<sup>10</sup>

The right to free speech and expression also includes the right to criticize. The right to criticize the government is an essential part of a healthy functioning democracy. However, Sedition is an

exception to right to criticize the government. However, the Supreme Court has held that criticism of the government will not be a ground to restrict the freedom of speech and expression.<sup>11</sup> The Supreme Court has also held that the freedom of speech entails in itself the tolerance of various viewpoints. It is one of the cardinal values and formation of a democracy. A democratic society cannot trample the views of minority as opposed to views of a majority. There should be a respect and a tolerance for diversity. A strong and a popular perception have to tolerate the views of minority. The tolerance for such diversity is a guarantee of freedom in free society.<sup>12</sup> The freedom of speech and expression includes not only the right to express, publish and circulate information but also the right to receive the same. This right to expression is across the national boundaries. With technological advancements, there are no limits to the reach of the Internet and the electronic media. Information can be to any part of the world in the blink of an eye. Even Article 13 of the Universal Declaration of Human Rights proposes a similar idea: Everyone has a freedom of opinion and expression. This exercise of right should be without interferences. It should include a right to access, receive and impart information through media and its forms regardless of frontiers.

The concept of free speech and expression also includes the right to broadcast. The Supreme Court has held that it is similar to the right of publication in newspapers, magazines, advertisements or other forms of media. It includes the right to disseminate information to the society at large.<sup>13</sup>

#### CONSTITUTIONAL RESTRICTIONS

Article 19(2) sets out the grounds for restriction of the fundamental right to free speech and expression. These restrictions have been clearly spelt. If any restriction doesn't fall within its purview, the same cannot be termed as a reasonable restriction and liable to be struck down. The following grounds are the reasonable restrictions which can be placed on the freedom of speech:

- Sovereignty and Integrity of India
- Security of state
- Friendly relations with foreign states

- Public order
- Decency and morality
- Contempt of court
- Defamation
- Incitement to an offence

An amendment was enacted to include sovereignty and integrity of the country as a ground to restrict freedom to free speech and expression. This was due to tension prevalent in various parts of the country. There was a political unrest in the country starting from the 1960s which led to introduction of the restriction.

The term public order pertains to peace amongst the public. It is a feeling of peace, safety, tranquility among the public. The Supreme Court has observed that unless an expression undermines the security of the country, the law prohibiting it cannot be a reasonable restriction within the meaning of Article 19(2) of the Constitution of India.

When it comes to friendly relations with foreign states, it includes restrictions related to foreign parties. It includes the libel of foreign dignitaries. It also includes foreign propaganda which affects peace of the foreign state with India. We don't have a particular act for this. However, we can draw references from the Cinematograph Act, 1952, the Cable Television Act, 1955 and the Right to Information Act, 2005.<sup>14</sup> The term offence has not been defined in the Constitution. However we draw reference from the General Clauses Act, 1897 for this purpose. The term incitement to an offence is in relation to a definite offence. The court has to look at facts and circumstances of the case in order to determine the reasonableness of the restriction in question.

#### Morality Obscenity and censorship

The restriction in the interest of morality and decency is a reasonable restriction on the exercise of freedom of speech and expression. The Indian Penal Code, 1860, the Cinematographic Act. 1952, the Dramatic Performances Act, 1876, the Customs Act, 1962, the Post Office Act, 1898, the Indecent Representation of Women (Prohibition) Act, 1986, the Young Persons (Harmful Publications) Act, 1956, the Information

Technology Act , 2000 , the Cable Television Networks (Regulation) Act, 1955 are the other legislations pertaining to it. If we look at the meaning of Decency and morality, they have evolved with time. They are elastic notions. Societal change has affected them. The Supreme Court has observed that these notions vary from country to country. They vary according to the standards of morals and values in the society.<sup>15</sup> Hence it is prone to subjectivity. Due to the changing nature of the concepts and changing parameters, it has become difficult to have a straight jacket formula pertaining to it. Hence the society must be cautious in its approach to impose restriction on free speech and expression. Due to the advent of technology and the onset of Internet, it has become difficult to impose a pre censorship on the exercise of free speech. It has rather become futile. The approach that better morals will prevail in society if the immoral expression is restricted is flawed in its logic. Therefore this issue has to be confronted in light of the changing times and the requirement to address the question as the need of the hour.

- Internet

The beginning of Internet age has revolutionized our communication. It is an instant medium for communication. It makes long distance communication possible. It connects billions of people across the world. Earlier it would take lots of time for a message to be sent across. But with the advent of the internet age, it has become instantaneous. It breaks down the traditional barriers. It facilitates free speech and free exchange of ideas. Internet facilitates exchange of ideas across geographical boundaries. It is not constrained across jurisdictions and hence plays as an important source of information generation and access thereof. It offers plethora of information on a large variety of subjects. The role of internet as a means to access right to information is important within the meaning of fundamental right to free speech and expression. However, there can also be misuse of the same. The internet in the recent years has been prone to large scale misuse. Due to its omnipresence, the damage has also multiplied manifold times.

There have been instances from the earlier times for regulating the online content on the internet. This can be explained in the form of waves. There have been

three ways to regulate the internet. The first wave started back in the days when the Internet had just been introduced. The countries decided to treat it alike with other forms of media. It has been especially observed in the Asian countries, that the incidents for regulation of Internet have been more.<sup>16</sup> The two countries Singapore and Malaysia have both permitted the usage of internet. However, Malaysia allowed it much before Singapore. This is in contrast with the fact that Singapore is more tech savvy than Malaysia. Singapore considered the Internet to be a new form of media and hence started its usage on experimental basis. It started off with introducing it first in colleges. Only after assessing the outcomes of its usage and the instances of other countries allowing it, Singapore then decided to make it available to the public at large. Another South Asian country to be varied of its usage is Vietnam. Earlier in 1996, it decided to not allow internet in the country. However the government has now changed its earlier stance and policy.<sup>17</sup> From the experience of these countries it can also be changed that they have changed their stances quite aggressively. Some of the best promotions of the internet have its origin in these two countries. Vietnam also organizes an Internet Day now. Singapore is also one of the first countries to legislate on the behavior of websites. It has developed a code of practice for website owners in the country. Moving from South Asia, there are also other countries that are deliberating on this issue. Canada had some discussions pertaining to the television content regulation. There were deliberations to increase domestic made television content on the internet. However, these attempts were futile.<sup>18</sup> There have also been concerns related to pornography on the Internet. But the countries – France and the United States of America were hasty in passing laws. The laws were put in place out of apprehension rather than prevention.<sup>19</sup> Therefore France struck down their Telecommunications Law and United States of America struck down certain parts of the Communications Decency Act.<sup>20</sup> When we look at conceptual understanding, there are certain scholars who stated that Internet needs a legal framework. These scholars are Post and Johnson. They are also often referred as “first-generation scholars.”<sup>21</sup> In the years 1995-1996, Internet was in its nascent form. Therefore it was not much regulated. The countries like Singapore and the

United States of America were trying to regulate it but failing in practice. At times, even the court didn't approve of these policies. Later on, John Parry made a remarkable statement at a conference. This conference was at the World Economic Forum. He said that cyberspace is independent of governments. This was before a huge audience attracting leaders from all over the world.<sup>22</sup>

This declaration is also known as Barlow's declaration. It was considered to be bold and visionary. However this statement had its own drawbacks because if the society at large is affected, the government has to take measures to ensure peace, stability and justice. The positive as well as negative repercussions of the internet as a medium have to be accounted for. Since internet is a platform for human interaction, the State always has an inherent interest to regulate it. One of such initial instances where the Government seeks to regulate the internet was in Operation Starburst. It was to remove child pornography. Here were arrests made across few countries. A similar operation was also carried out in the United States of America by the New York Attorney General.<sup>23</sup> Similar operations have been held across the world. Japan also passed laws against child pornography in the late 1990s. This was to be in line with the international norms. Before passing of law, there was no separate recognition of child pornography. But later on in line with international efforts, there were efforts across nations for this purpose. Australia also conducted an international operation in 1996. This was an internet based sweep. It was for consumer fraud. Since there was absence of new laws in place, Australia relied on the already existing laws. Following this, a lot of countries undertake sweeps of similar nature annually.<sup>24</sup>

The difference here is in the perspective. It is the different ideology of civil libertarians versus regulators. The civil libertarians question whether the users of Internet evade government policies. If we consider the answer from this perspective, the internet implies to lessen the enforcement of the law. It seems to weaken rules or make them difficult, if not impossible, to enforce. From the perspective of regulators, they question whether there can be effective deterrence amongst the people at large. If the effect of it is positive, the law can be passed.

However the different attitude here shows the two sides of the same story. The liberal activists feel that the internet cannot be regulated. Whereas the while regulating agencies ignore any such concerns aside and regulate the internet.

- From 2000

From the early 2000s, there was a trend for regulation of internet... This trend can be described in two categories. They are self-regulation and direct regulation. Both modes of regulation have their own pros and cons. The internet industry views self regulation as a better option. However the same has not been observed in practice. Therefore after granting several deadlines, an act was passed by the United States Government. The deadlines were granted so that the online content providers can self regulate for issues related to privacy of children. The same was not achieved. Hence the Children Online Privacy Protection Act was passed in 2000.<sup>25</sup> Similar is the case of Australia. However when it comes to Europe, they have a different outlook on this. They promote and show great interest in self regulation. There are associations in place which have developed certain code of conduct. The purpose of this code of conduct is to regulate business which takes place through the medium of the internet.<sup>26</sup> The United States however do not rely on industry based code of conduct. In Asia, the problem is a little different. Here there is no substantial collaboration amongst the industry. Due to this, in majority of the instances, self regulation cannot be made possible only due to lack of code of conduct.

There were also efforts being made to address the issue pertaining to content filtering at a global level. An association named Internet Content Rating Association (ICRA) was formed for this purpose. It is a platform to filter data and online content. The association has formulated certain tools. These tools will help to filter out the relevant content which supposes the imposition of pre censorship. These tools can help to filter out potential nudity and violence. Since then there have been constant efforts for sophistication of the software and the tools. There have also been instances whereby age verification has been adopted. This process enables the content to be accessed only by adults. This helps in preventing the abuse of the Internet.

## II. JURISDICTION-WISE ANALYSIS

The fundamental right to free speech and expression also finds its basis in the American Constitution. The First Amendment to the American Constitution is pertaining to the same. It provides that no law shall be made which abridges the freedom of speech and the freedom of press. Along with this, it also prohibits any law which affects the right of free assembly and the right to petition to the State for grievance redress.<sup>27</sup>

If we compare the American Constitution with the Indian Constitution, the former has made a different provision for freedom of the press.<sup>28</sup> When it comes to India, it is implicit in nature. There is no provision which separately spells out the freedom and restrictions of the press. The American jurisdiction has a more robust mechanism for protection of rights of the press. During the drafting of the Constitution, there were questions whether a separate provision to be inserted in the Constitution for the freedom of press. There were extensive debates on the same. Later on the constituent assembly held against the inclusion of such a provision. According to Dr. B.R. Ambedkar,

*“The press is merely another way of stating an individual or a citizen. It does not have any special privileges. It only exercises rights which are available to other citizens of the country. The editor of a press or the manager are citizens. Hence there are exercising their right to free speech and expression. Hence there is no need to mention the freedom of press separately.”*

The rationale for free speech and expression has been explained in the following American case as: *“The very consequence and function of free speech and expression is to invite difference of opinion. The democracy can truly function when there is dissatisfaction with the present situations. This can often be provocative and challenging. What it does is to strike prejudices. In spite of this, we should not vouch for a restrictive view. That would inevitably lead to standardization of ideas.”*<sup>29</sup>

- India: Overview of Regulation

There are mainly two bodies to regulate content. The first is the Ministry of Information and Broadcasting. The other authority is Telecom Regulatory of India (TRAI). Currently there is no specific legislation to address the regulation of Online Content. It is mainly done under the Information Technology Act of 2000. There is also certain industry based code of conduct. Apart from this we also have the Advertising Standards Council of India Code. In addition to this, certain copyright laws are also be adhered to. Currently there is a tendency of self regulation for dissemination of information on the internet.<sup>30</sup>

- Singapore: Overview of Regulation

Singapore has a centralized body which manages the communication and media interactions. It is called the Information Communication Media Development Authority. There has been wide scale development in presence of digital shows in Singapore in the recent past. Due to this there has been certain notifications ad also Internet based code of conduct to this effect. These platforms are also subject to certain subscription requirements under the law. The licenses are only granted upon fulfillment of certain subscriptions. The authority has discretion in such matters. Similar approvals are also required by local as well as foreign content providers. There is also an increasing need here to review these present policies and codify them into a law in the future.<sup>31</sup>

- United Kingdom: Overview of Regulation.

The United Kingdom has a strong presence of online content providers. There is a regulator which coordinates and regulates matters pertaining to it. There is also a public body to adjudicate disputes related to it. However at present, foreign content providers are not regulated under the act. They are also facing challenges due to the impact of Bruit on the economy. So that aspect has to also be included for policy formation.<sup>32</sup>

- European Union: Overview of Regulation.

Traditionally, media law was not recognized in any of the treaties in Europe. Later on due to technological advancement, there was creation of a new market space related to digital content. Article 10 of the European Convention on Human Rights

guarantees the freedom of expression. Most of the present day regulatory regime is based on case laws of the European Union.<sup>33</sup>

- Germany: Overview of Regulation

The main source of media law regulation is Article 5 of their Constitution. It guarantees freedom of speech, freedom of opinion and press. The Interstate Broadcasting Treaty is also important for broadcasting rights of the citizens. When it comes to online content, they have The Telemedia Act. It regulates online content along with the liability of service providers. There are agencies in every German state. These agencies are responsible for regulation related matters. These agencies are in turn supervised by state leveled authorities. The main aim of such councils is to see that it serves all interests and groups in a society.<sup>34</sup>

- Japan: Overview of Regulation

Japan is considered to be an advanced country in terms of digital content. They have industries which have sophisticated electronic presence. It is a progressive nation when it comes to software development. There is no single codified source for media related provisions. However, The Japanese constitution provides for 31 provisions. These provisions relate to the rights and duties of the citizens. It gives a right to freedom of thought and conscience. Article 21 relates to the provision for freedom of speech and expression. It also relates to the freedom of the press. However, it is subject to restrictions under Article 12 of the Constitution.<sup>35</sup>

### III. CONTEMPORARY CHALLENGES

All countries have some or the other form of regulation on its media. These regulations vary with the country. There are different grounds for regulation of such content. It can be national security, internal peace. It can also be racial and religious harmony. In the United States of America, the First Amendment gives wide power of speech and expression. However, there are certain norms which keep media in check. However, the editors in the United States are believed to be much more sensitive to public opinion unlike other countries. The problem with content on the internet and the censorship thereof is manifold.<sup>36</sup> Even if it is legal and according

to the norms in one country, it can be illegal in the other country. It can also be blasphemous and disrupt communal and religious harmony from the country of access.<sup>37</sup> The European Parliament has come up with a committee report to address this issue. This report suggests certain potentially harmful and illegal information the access of which ought to be censored. It includes matters of national security.<sup>38</sup> These matters can be related to bombs or even illegal drugs. Broadly it includes the subject which can be covered under the umbrella of terrorist activities. It also includes information for protection of children. This subject covers the abusive and violence appealing information and that related to pornography. The matters related to protection of human dignity were also identified as a subject.<sup>39</sup> It includes an act inciting race or religion based hatred or racial or religious discrimination. The subject of economic security was also identified. It includes the act of fraud, illegal activities pertaining to usage of credit or debit cards. The report also identified Information Security as an emerging aspect as a part of the report. The increasing instances of malicious hacking can be attributed to it. The list also includes protection of privacy. With the increased use of personal data, the risks associated to electronic harassment and data theft has been on a rise. The report also identified protection of reputation as a subject under the report. This broadly encompasses the laws and norms pertaining to libel, slander and unlawful advertising. The subject of intellectual propriety has also been a part of the report. This has been recognized in the light of unauthorized distribution of copyright works through the medium of internet. For example, as it is observed in cases of pirated software, music or even movies.<sup>40</sup> If we analyze the subjects of the list, it can be noticed that the material on the internet can be censored however it cannot be deleted completely. So the best possible methods available to curb access can be to deny or filter the access of the information. However, these attempts are not welcomed from the perspective of the society as well as from the perspective of the law.<sup>41</sup>

- Content: Meaning

It includes any sound, text, data or picture. It also includes any audio-visual representation or signal thereof. It is also data which can be created,



processed, stored, retrieved or communicated. It is done either electronically or by any other form.

- Internet censorship

Censorship has always been perceived with a negative outlook. The same case was even with traditional media. Censorship should be used as a means only as a last resort. The censorship of traditional media was comparatively easier as with the Internet. The internet has transgressed national boundaries. Therefore it is difficult for a single State to exercise control over it. It has a huge reach to various user groups. When it comes to internet, even a communication between 2 individuals can tend to have a chain reaction. Generally email is perceived for private communication. However we can also send out mass mails to multiple individuals. Therefore here it becomes media and steps in the shoes for mass communication. Censorship however desirable is a difficult task to achieve. It requires a lot of time, efforts and infrastructure.<sup>42</sup>

The question also arises as to which State can effectively exercise control. It should also be considered whether domestic or international standards have to be followed. Thus the regulation of online content can be tricky in the Internet space.<sup>43</sup> The determination of nature of content can also be tricky. The nature of content plays an important role in order to determine regulation thereof. The notion of censorship also faces the inherent abnormalities with the objective of Internet designation. Internet celebrates freedom and not censorship. This inherently different creates issues when regulation related questions come before the legislature and the judiciary.<sup>44</sup>

If we look at the structural outlook of the Internet, we do not have a definite organization which deals with it. Instead it is more of an association. The association is guided by certain principles and technical standards. Due to this, the issue arises in case there is something objectionable found on the Internet.<sup>45</sup> There is a class of libertarians who believe in the self regulation policy for the internet. It doesn't want to be bound by a formal consensus of rules and policy. It wishes to adhere to certain globally accepted policies and practices for the usage of Integraphic material.<sup>46</sup> There is yet another method

to filter content. It blacklists certain sites itself. These sites are connected to a server. If a user is using this server, he or she will not be able to get access to the content itself. Apart from this there are yet another ways for the government to regulate content. It controls the entry of Internet Service Providers in the state. By doing this, the content is effectively filtered at the initial stage itself. This is adopted by countries like China. Other ways to regulate users include licensing the equipment as in Myanmar or licensing users as in China. There is another issue pertaining to the access control of the internet. This is because the bits and bytes do not stop at borders. There are certain countries which want to exercise control over this.<sup>47</sup>

There are certain Middle Eastern countries which have been observed undertaking this practice. This approach is however against the very nature of Internet which is free spread and usage. In countries like China, subscribers of Internet have to show their identification proof frequently. This enables the regulation of access of internet. Even companies exercise restraint by blacklisting certain websites. These websites are blocked and then blacklisted.<sup>48</sup> Technology has been rapidly used to delete content from the Internet. It helps to censor and filter information. However, it is not always effective.<sup>49</sup>

- Filtering

There is yet another method for regulation of content. It is based on filters used by the end user. For example the filters put by parents to keep undesirable content out of reach of children. Ironically, this is the only group for which censorship is universally accepted. Therefore the filtering techniques are more or less similar across various jurisdictions. The peculiarity of these programs is their improvement with passage of time. Earlier there were generic filters. But with advent of technology and changing times, the software has become more sophisticated. However such filters need timely updating.<sup>50</sup>

- Passing law

There has been hesitation for expressly enacting a law censoring the online content due to conflict with the freedom of expression. This has been especially observed in the United States of America and France.

However there have been instances for to censor the internet.

The success of the law depends on its interplay with the internet. It also depends on the nature of the content viz. religious, political etc. In the European Union there are certain laws which provide immunity to the Internet Service Providers. This was so that they are not prosecuted for the content which is not created by them. Due to the trends of regulation, certain industries have developed self governing Code of Conduct. These codes are drafted specifically to address objectionable content. In the European Union it extends to the whole of the European Union. INHOPE is one such association. It monitors the regulation of internet in the European Union. This code is then backed by law to provide authority of being the law of the land.

If we look at recent trends, there is a need for minimum restrictions on the use of internet. There have been instances whereby Education is considered to be an exception for restriction of Internet space. Now it is also to be noted that the extent of censorship depends on the history and culture of the country. It should not be a blatant violation of free speech. The state should not be overzealous in its approach to censor the internet. It is also considered that internet regulation is more serious in nature. It is more severe when considered to its traditional counterparts. It is severe because it constitutes as pre censorship. Therefore it is a violation of Right to broadcast in effect. The future of the internet should be promising. The state should keep it open for public. The state does have a right to regulate it in interest of the public at large. Hence the debate for censorship of the Internet will always have emerging dimensions to it.

#### CONCLUSION AND SUGGESTIONS

The regulation of modern media has changed over the time. The phenomena of regulation have itself undergone a lot of changes. These changes have been mainly due to globalization and technological advancements. However we have to understand the ongoing a potential challenges. The liberty and democratic nature have to be protected in practice. The government ought to protect the rights conferred

upon the citizens by the rule of law. Media can be considered to be a core source of information. These sources influence the outlook of everything. The methods for regulation are constantly improvised and changed. However there are inherent irregularities in it. The appropriate methods well as the objective behind it have to be determined. The targets should be clearly set. If clear objectives are not being set out in the initial stages it, the legitimacy of the regulation comes into question. Most of the regulation of Media is done under the claim of public interest. But the concept of public interest has not been squarely defined. This definition has been contended. The lack of a proper definition has given rise to lack of proper meaning to be attached with the term. There have been attempts to give proper meaning to the term. However there are more in the nature of resolving anomalies between the competing versions of it.<sup>51</sup>

Television, radio and other forms of media are a medium of expression of opinion, information and knowledge. They help the participation in a truly democratic process. The case is similar when internet is used as a medium. It facilitates availability of multiple sources of information. When there are multiple sources available, it gives the right to citizens, the broadcasters and the society at large to participate in fruitful debates. This can only exist in a truly libertarian environment. There has been a huge onset of private players for internet now. Since the resources are now private in nature, there seems no necessary justification for the state to intervene in something which uses private information as a resource. This would create an environment which would affect the democratic process.<sup>52</sup> It is also proposed that Internet at present is comparatively unregulated. People do not have access or adequate means to access. In such nascent stage of development, the premise of regulating it should be something to rethink about. There are arguments in this regard that the advancement of technology would lead in huge scale increase in access to internet. However, this is still a distant dream to be achieved. At present, there are means to achieve it but they should be utilized to its truest and highest potential. Therefore the fact that regulation will duly affect the spread of information should be addressed. These concerns should not be undermined and be monitored. This is not just a regional or international

issue. But this is a global issue. There have to be measures to be taken for fruitful protection of broadcasting rights. The Supreme Court has held that the airwaves used in the internet are public property. They should serve the best interest of the society. This can be ensured by establishment of an authority to look over the allied functions. The court regarded media to be a powerful medium of communication. Internet helps media to reach a vast population and hence it also helps in regulation of monopoly. If there is a need for regulation in this area, it should be balanced in nature. The right to broadcast cannot be concentrated in the hands of a few. Therefore even if we have a central authority, it should not be able to influence the content.<sup>53</sup>

The right to receive information is a part of article 19(1) (a). A citizen has the right to receive as well as impart information. While exercising this right, there cannot be regulations by the state. The citizen uses the internet as a medium of communication this electronic medium of communication cannot be directly be called in for scrutiny.<sup>54</sup> He is effectively exercising his right of freedom of speech and expression guaranteed by the Constitution. The citizen is exercising his or her choice of privilege. It forms grounds for the core values of liberty and equality. The state intervention would in fact affect liberty of individuals and corporations. The digital technology and nature of the internet offers a huge potential market to choice. This market which facilitates right to choice cannot be effectively regulated in practice. If the state is arbitrary in its approach to regulate the internet, it can be a threat to the rightful exercise of free speech and expression. It hampers public scrutiny and leads to unavoidable tensions between the state and the public. Hence the state ought to be thoughtful in its approach to regulate the content available on the internet. If the state tries to arbitrarily use its power to regulate, it becomes an antithesis to the core democratic values. This in turn again affects the public interest concern of the state. Therefore the state should be thoughtful in its approach to exercise regulation over the internet. It should also take cues from global practices and understand the pros and cons of such regulation. More so, even before the regulation is put in place, the objectives and standard of regulation should be noted. The standards should be in

consonance with global practices. The state should also have proper reasoning for such bans and censorship on the internet. It should be accountable for such regulations which are made in public interest.

#### SUGGESTIONS:

- Technical aspects should be considered before passing the law
- There should be self filtering instead of filtering at source
- There should be a provision for filtering the content for child pornography.
- Efforts should be made for a universal model of regulation
- There should be an explicit provision for definition of public interest
- There should be a provision that the online content platforms are not responsible for the content hosted on the website.

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LIST OF ABBREVIATIONS

&	AND
AIR	ALL INDIA REPORTER
ANR.	ANOTHER
APPROX.	APPROXIMATELY
ART.	ARTICLE
ASSN.	ASSOCIATION
BOM.	BOMBAY
CO.	COMPANY
CONST.	CONSTITUTION
EDN	EDITION
EG.	EXAMPLE
HC	HIGH COURT
HON’BLE	HONOURABLE
I.E	THAT IS.
INC.	INCORPORATION
J.	JUSTICE
L.J	LAW JOURNAL
LJ	LAW JOURNAL
LTD.	LIMITED
ORS.	OTHERS
PARA	PARAGRAPH
SC	SUPREME COURT
SCC	SUPREME COURT CASES

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