

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

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Anatomization of Online Content Censorship in India

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ABSTRACT

When the Constitution of India came into force in the year 1950, it guaranteed the freedom of speech and expression. However, this right is subjected to exception as provided under Article 19(2). Censorship of the media comes under the ambit of this “reasonable restrictions”. On the basis of Information Technology Rules of 2011, anything that is considered as a threat the unity, integrity, defense, security or sovereignty of India, friendly relations with foreign states or public order, constitutes objectionable content. In this era whereby the world has become a global village, internet has become an integral part of our day to day life. Once it was considered as a luxury, now has become a necessity. The physical world has been turned into a virtual world which has also been witnessed during Covid-19 pandemic. This form of online media has both pros and cons. Despite of all the potentials, there are numerous factors which if not controlled, may threaten the peace in the society, since these online contents have the potential to affect the society and the young generation, if not controlled, in a malicious manner. Online entertainment, which is just one click away, people from all the age groups are exposed to it. It becomes interesting to look into the details with regard to how reasonable and feasible it is, to restrict the “objectionable” content available on the online media.

Keywords: Online Entertainment, Censorship, Free Speech.

I. INTRODUCTION

“Who is more to be pitied, a writer bound and gagged by policemen or one living in perfect freedom who has nothing more to say?”

-Kurt Vonnegut (1922-2007)

The constitution of India guarantees freedom of speech and expression but places with a view towards maintaining communal and religious harmony. On the basis of Information Technology Rules of 2011, anything that is considered as a threat the unity, integrity, defense, security or sovereignty of India, friendly relations with foreign states or public order,

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constitutes objectionable content.

The democratic nature of our nation has included it in those countries where one can speak without any threat to being shot by someone. However, the situation changed after the enactment and amendment of Information Technology Act, 2000 as far as media is concerned.

The term “Censorship” was first originated in 443 BC in Rome, where office of the censor where established. These censors where the magistrates in ancient Rome, responsible to supervise public morals.

The most significant development of the contemporary times is the online media or internet. Online media is the wide terminology which includes all the forms through which information, entertainment and social media can be disseminated. It has become routine life of an individual where he feels unenthusiastic and lifeless creature without it.

Article 19(1)(a) of the Constitution of India is with regard to freedom of speech and expression, which is however guaranteed to all the citizens but it comes along with “reasonable restrictions” under Article 19(2) on the basis of certain grounds. The enactment of Information and technology Act, 2000 and various subsidiary rules gave the government another tool to suppress any obscene content available on online platform.

Censorship is also the process of stiking checks, directly or indirectly exercise of right to free speech. Allegedly, this incident can be recognized as abrupt curb on one’s basic right to liberty but on the other hand, it can be looked as a form of an evil- a bar on one’s human right in order to endorse the community’s human rights.

Various enacted laws are there, besides that the government has also directed the online media services providers the concept of self-censorship. The drafted 2018 Information Technology (Intermediaries Guidelines) Rules very categorically state that intermediaries must warn users of computer services about the rules and regulations and privacy policy in order not to host, view, upload, alter, post, send, upgrade or exchange any material that could impact public health and safety and sensitive material.² Rule 3 of the said rules very specifically states that the intermediaries should observed a strict due diligence before uploading any online content. Online multimedia websites like Netflix, Hotstar etc. will be having strict arrangements by the virtue of these rules. These rules are very harsh.

² S.S. Rana & Co. Advocates, ‘India: Analysis of the Information Technology [Intermediaries Guidelines (Amendment) Rules] MONDAQ (Last visited 4 September 2020, 3:00 PM) <https://www.mondaq.com/india/social-media/794624/analysis-of-the-information-technology-intermediaries-guidelines-amendment-rules-2018>

Hence, this dissertation is about anatomization of online content censorship, the necessity of doing so and analyzing various statutes and rules in this regard in India as well as outside.

(A) Research Problem

This is an era of global village, whereby internet has become an integral part of our day to day life. Once it was considered as a luxury, now has become a necessity. The physical world has been turned into a virtual world which has also been witnessed during Covid-19 pandemic. This form of online media has both pros and cons. Despite of all the potentials, there are numerous factors which if not controlled, may threaten the peace in the society, since these online contents have the potential to affect the society and the young generation, if not controlled, in a malicious manner.

Though the Constitution of India guarantees a fundamental right of freedom of speech and expression, it comes with “reasonable restriction”. By the virtue of this provision regarding “reasonable restriction”, government has the weapon to scrap off any content which might have the potential to affect the peace of the society. However, in a democratic country like India, laws must be enacted very carefully, specially regarding the censorship laws to maintain the morality of the society. Therefore, this paper examines the current laws regarding censorship. Furthermore, this paper is an attempt to find a neutral mechanism for online content censorship in India.

(B) Significance of the Study

When it comes to restricting a fundamental right, the laws and the scenario must be properly examined. On one hand, online content censorship creates an ethical balance in the society and on the other hand, it creates hardship for online media companies. Therefore, the significance of this study is to analyse the existing provisions regarding censorship and online content censorship, it also studies the power vested in the hands of government by the virtue of Information Technology Act, 2000 and the related rules and regulations enacted.

Since online media is not just used by persons of legal fraternity, well versed with the laws, this study would also go to include the perception of various persons from non-legal background, for online content censorship.

(C) Review of Literature

1. Books

i. M P Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018)

This book is considered as one of the good books to understand the aspects of The Constitution

of India. Since implementation of censorship is hindered because of the fundamental rights guaranteed by the constitution, the researcher found it important to cover up the aspects of constitution. M P Jain gives comparative provisions of the American, Canadian and Australian Constitutions and also refers the debates of the constituent assembly wherever necessary, therefore the motive of the drafting committee gets clearer. Apart from the textual analysis and the judicial pronouncements, the books has also provided the author's own evaluation and suggestions.

ii. M. Neelamalar, *Media Law and Ethics* (Eastern Economy Edition, PHI Learning Pvt. Ltd. 2010)

The researcher referred this book to understand the basics regarding Media law in India. This book very categorically deals with History regarding media law in India, specific provisions of the constitution regarding media, media ethics etc. The researcher found this book very useful to build the stepping stones regarding media law.

2. ONLINE ARTICLES/ REPORTS

i. IOSR Journal Of Humanities And Social Science, 'Digital Age 2.0 and its challenges on media ethics' (2016) <<http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2021%20Issue1/Version-1/C021111824.pdf>> accessed 4 September 2020

In this article, the author has very specifically mentioned about digital media. The author has further mentioned about ethics and media ethics. Challenges to media laws and ethics has also been mentioned by the author. This study would be relevant to understand the aspects and challenges on the modern digital era when read together with media ethics.

ii. Open Society Foundation, 'Mapping Digital Media: India' (2012) <<https://www.opensocietyfoundations.org/uploads/48c331d2-2b05-4287-b703-9c54771b28b0/mapping-digital-media-india-20130326.pdf>> accessed 4 September 2020

This is a report by Open Society Foundation, gives an overview of how digital media works and various laws related. There is separate sub head regarding policies, laws and regulations, which gives a complete overview.

(D) Objectives of the Study

The following are the main objectives of the paper-

- To study the background and legislative history of censorship.

- To discuss the aspects of censorship and digital media censorship in India and other countries like United States of America and United Kingdom.
- To promulgate the aspects of censorship in online media and its effects of media companies
- To analyse if the paradigm shift in the digital age brings new ethical problems related to issues concerning media laws.
- To critically evaluate the proposed changes in different laws and the hardship caused to the media companies by resolving the ethical issues of censorship in India.

(E) Hypothesis

In order to control unwanted events or riots, and to preserve democratic values, social stability and peace, Internet censorship a.k.a. Online content censorship is the need of the hour.

(F) Research Questions

This Research Paper will answer the following questions:-

- What is the legislative history and aspects of censorship and digital media censorship?
- Whether laws in existence for online media censorship is competent to fulfil the ethical requirements or not?
- What is the need to censor online media in India?
- If any new law for censorship is created, whether it would create any hardship for the online content provider or not?
- Whether the mechanism of self-censorship should be retained or is there a need for some new mechanism?

(G) Scope and Limitation of the Study

The main focus of the study will be looking into the matter whether internet is fully censored or not. The proposed rules are still pending in the parliament, however, the scope of the rules and hardship faced by the media houses has been tried to be identified by the virtue of this research.

Since there is very limited literature available and the law has very strict provision with regard to online content censorship, the author would also conduct an empirical research to get views of persons from non-legal background on this issue.

(H) Research Methodology

The present study will be based on two research methodology, which are as follows:-

1. Doctrinal Approach

This includes various primary and secondary sources like articles, books, newspaper reports, judicial decisions etc. The idea of the study is to review the available literature on the subject.

2. Empirical Study Approach

Since there is very limited literature available with regard to online content censorship, and the laws are very strict, the author aims to collect the views of the persons from non-legal background, like students of non-legal courses, parents of those children of those age group who are exposed to internet and might be vulnerable, businessmen etc. since they are also the stake holder of online media, and they might not be aware about the laws, hence their non-prejudiced view would help to maintain the balance in the morals of the society.

(I) Scheme of Chapterization

Chapter 1: Introduction

This chapter would be in regard to brief overview of the research that would be undertaken. This would cover significance of the study, objectives of the study, hypothesis, research questions, scope of the study, methodology. This chapter would cover all the points in brief, that would be discussed at length.

Chapter 2: Background and legislative History of Censorship

This chapter will be in regarding brief background and legislative history of censorship. The author would also briefly look into the laws of other countries like USA and UK with regard to censorship.

Chapter 3: Constitution and Censorship

This chapter will very specifically deal with the relation between Article 19(1)(a) and censorship, along with the concept of reasonable restriction as mentioned under Article 19(2). This chapter will also discuss various related judicial pronouncements.

Chapter 4: Online Media Censorship

This chapter will be regarding basic understanding of online media censorship. It will also include various laws in this regard. Further, this chapter will deal with pros and cons of having online media censorship. Furthermore, this chapter will include the challenges to media houses, and the concept of self-censorship. The findings of Empirical Research will also be dealt in this chapter.

Chapter 5: Conclusion and Suggestions

This will be the concluding chapter whereby the author will also give some recommendations with regard to mechanism of online content censorship.

II. BACKGROUND AND LEGISLATIVE HISTORY OF CENSORSHIP

(A) Background

Censorship is an instrument that limits the facts and opinions that are shared in society. Censorship was accomplished in older periods by reviewing novels, scripts, movies, tv, radio, newspapers in order to change or remove offensive ideas. To understand what censorship exactly is, it is necessary to strip away the shock epithet value that is attached to the world at first utterance. The principle of censorship extends back to ancient times. Any culture has traditions, taboos, or rules controlled by speech, clothes, religious observance, and sexual expression. Censorship was a well-known phenomenon back in Athens, where democracy had appeared before the world.

In the global context, governments have used a powerful assortment of techniques and arguments to marshal support for their censorship efforts. Religious argument is one of the oldest concern. It is noted that certain things are treated as offensive in the eyes of the deity as far as religious perception is concerned. However, these things varies from country to country, society to society, religion to religion. After religion, comes National security and defense. While nowhere near as old as religious impulse to censor, National security and defense is more modern reason. Recently, Indian government banned various Chinese apps in India as it was a threat to national security.

Hence, censorship is like a prior restraint to any kind of that that might have an adverse effect on the society.

In India, as far as film censorship is concerned, the film censor board has scrutinized films a lot before their release. This scrutiny was either based on religious sentiments, bold scenes, abusive language etc. A film name “India’s Daughter” was a television documentary which was banned due to negative public support.³ If we talk about Gujarat, films like Padmavat and Fanna was banned by Gujarat government. Because of the role of Aamir Khan, the lead star, in the Narmada Bachao Andolan, Supreme Court of India, it faced an unofficial restriction that theatres wishing to screen the film should be provided with police protection. But the rest of theatre owners choose not to broadcast it.⁴ As far as the movie Padmavat is concerned, the

³ Independent, India's Daughter: How India attempted to suppress the BBC Delhi gang-rape documentary INDEPENDENT (Last visited 3 October 2020, 2:05 AM) <https://www.independent.co.uk/news/world/asia/india-s-daughter-how-india-tried-suppress-bbc-delhi-gang-rape-documentary-10088890.html>

⁴ The Times of India, Gujarat unwilling to screen ‘Fanna’ THE TIMES OF INDIA (Last visited 3 October 2020,

board asked them to remove an “I” from the original title which was “Padmavati”.⁵ The Cinematograph Act, 1952, very specifically gives power to lay down threshold when films can be rejected or some scenes can be asked to be deleted if not deemed fit to be screened in the society.⁶

In these changing times, cinema is not restricted to movie theatres. Especially now, where we are experiencing a global pandemic, several shows and movies have been launch on online platform such as Amazon Prime, Netflix, Hotstar etc, which has almost no restrictions for censorship. Censoring the content of these online series is quite difficult and the online option is self-censoring mechanism. Last year, Netflix's first original Indian series, "Sacred Games," faced a legal dispute over "offensive scenes" and insulting statements regarding a former Indian prime minister, but the case was ultimately denied.⁷

However, recently Netflix has started censoring Hollywood movies before releasing them in India. They will censor any content that is banned by Indian courts, disrespects the national emblem, outrages religious sentiments, promotes violence against the state, or indulges into child pornography.⁸ Recently they have done a heavy censorship on the Hollywood movie, Mission Impossible: Fallout, before releasing it on the Indian platform.

The concept of democracy has evolved a lot with this changing times. Even in India, it has been witnessed that the concept of democracy has widen its scope from where we began in 1950, adopting the constitution. The massive use and vital change in technology has given birth to a new concept of e-democracy, whereby citizens participate in proposing, enacting and developing laws. All this is possible because of Internet, which was not present back then when the Indian Constitution was adopted.

In India, censoring the online content has always been a problem for the government. However Indian courts have accepted this stand of the government under the ambit of Article 19(2) of the Indian Constitution. Recently, Indian government banned about 223 Chinese Internet services, websites and apps including TikTok, WeChat, PlayerUnknown's Battleground

5:00 PM), http://articles.timesofindia.indiatimes.com/2006-06-05/india/27823182_1_multiplex-owners-association-fanaa-anti-narmada

⁵ The Indian Express, With a history edit, Censor has its 'I', Padmavati its release THE INDIAN EXPRESS (Last visited 3 October 2020, 3:00 PM), <https://indianexpress.com/article/entertainment/bollywood/padmavati-release-cbfc-censor-board-deepika-padukone-sanjay-leela-bhansali-cuts-5005520/>

⁶ Cinematograph Act, 1952, s. 5(b) No. 37, Act of Parliament, 1952 (India)

⁷ Aditya Kalra, Shilpa Jamkhandikar, Netflix and Amazon face censorship threat in India: source REUTER (Last visited 4 October 2020, 4:15 PM), <https://in.reuters.com/article/us-india-streaming-regulation/netflix-and-amazon-face-censorship-threat-in-india-source-idINKBN1WW1RX>

⁸ Malvika Gurung, Netflix Starts Censoring Hollywood Movies In India; These Scenes Were Censored Silently TRAK (Last visited 5 October 2020, 3:00 PM) <https://trak.in/tags/business/2020/07/01/netflix-start-censoring-hollywood-movies-in-india-these-scenes-were-censored-silently/>

(PUBG).⁹ The Indian government stated that "prejudicial to sovereignty and integrity of India, defense of India, security of state and public order"¹⁰ Indian Government also banned several Pornographic websites recently. But Internet is a wide platform, whereby imposing such restrictions are not easy. Several proxy websites and fake servers are just a click away where these restricted contents can be accessed quite easily. Hence, there are numerous challenges faced by the Government with regard to online content censorship firstly because of the right of freedom of speech and expression which is guaranteed to all the citizens and secondly the wide ambit and nature of internet where humans have minimum personal control.

(B) Legislative History

Legislations with regard to Cinema and film are dated back in 1876 when Dramatic Performance Act, 1876 was enacted. In 1918, initially government wanted to amend the 1876 legislation and include the provisions for censoring films and other related aspects but the home ministry thought that India, films are a very sensitive subject matter and hence a special legislation is need of an hour. Hence, a new legislation was enacted which is Cinematograph Act, 1918. By the virtue of this 1918 legislation, license from the local civil authorities and compulsory pre-censorship was made mandatory. This was very specifically mention in the Act itself.¹¹ These mandates were for every film whether from India or imported from abroad. Drawbacks of this mechanism were not less. There were no organized associations of film industry who can collectively work upon regulating the film industry. Secondly there were no such local regulatory bodies established.

British wanted to make the law more practical and hence, there was an amendment in the year 1920. By the virtue of this amendment, censor boards were established in Bombay, Calcutta, Madras and Rangoon, to examine the essence of Films and certify them.¹²

When Indian Penal Code (IPC) was enacted in the year 1860, it introduced a concept of Sedition. Originally, the punishment for Sedition was transportation for life or for the shorter duration. Though the mode punishment has changed now but the essence of enactment is the same.

⁹ Surbhi Sabat, 'Full List Of 224 Chinese Apps Banned In India Till Date; Including PUBG, TikTok And Shein' *REPUBLIC WORLD* (Last visited 3 October 2020, 10:00 PM) (RepublicWorld, 2 September 2020) republicworld.com/technology-news/apps/how-many-chinese-apps-banned-in-india-till-now-see-the-full-list.html

¹⁰ BBC News, India bans TikTok, WeChat and dozens more Chinese apps BBC (Last visited 4 October 2020, 5:15 PM), <https://www.bbc.com/news/technology-53225720>

¹¹ Cinematograph Act, 1918, s. 4 No. 2, 1918 (India)

¹² MEHTA MONICA., *CENSORSHIP & SEXUALITY IN BOMBAY CINEMA* (University of Texas Press, 2012)

India got independence in the year 1947. When the constitution was adopted, right to freedom of speech and expression became a constitution right guaranteed under Part III of the constitution.¹³ However, 'reasonable' restrictions were also attached to this fundamental right.¹⁴ Hence, this right is not an absolute right unlike rights. This is because International Law poses certain restrictions on free speech and expression. According to which three-part test has to be carried on i.e., firstly they must be provided by law, secondly pursue an aim recognized as legitimate, thirdly by necessary i.e., proportionate for the accomplishment of that aim.

International Covenant on Civil and Political Rights (ICCPR) has also extended this freedom of speech and expression in the form of art, which includes films. In India, power has been vested with the central government to sanction cinematograph films for exhibition.¹⁵ However, State Legislature can enact laws regarding theatres and dramatic performance.¹⁶ By the Virtue of Entry 60 of List I, Cinematograph Act, 1952 and Cinematograph (Certification) Rules, 1983. The 1952 Act was enacted and the object was to provide certification of cinematograph films and their exhibition. By the virtue of this Act, the government is empowered for the constitution of a Censor board of 25 members for the attainment of the objects of the legislation. The Act very specifically gives power that after examining, the board can either restrict or pass public exhibition of the film or can ask for some modifications. Can also refuse to sanction license for its exhibition.¹⁷ Mandates for the central government to issue necessary notification and the grounds for the restriction of film for public exhibition which is in consonance with the provisions laid down under Article 19(2) of the constitution is provided under this Act.¹⁸ The Act has also provided the mechanism for appellate tribunal.¹⁹

The Rules of 1983 have been framed by the virtue of powers given by s. 8 of the Act. The rules are mainly regarding the procedural aspects of the board. The rules also impose a duty on the board to look into the reaction of the public at large or people of a specific region or community with regard to the film.²⁰

Hence, it can be said that as far as film censorship in India is concerned, the laws are well organized.

¹³ The Constitution of India, 1950 Art. 19(1)(a)

¹⁴ The Constitution of India, 1950 Art. 19(2)

¹⁵ The Constitution of India, 1950, Schedule VII, List I, Entry 60

¹⁶ The Constitution of India, 1950, Schedule VII, List II, Entry 33

¹⁷ Cinematograph Act, 1952, No. 37, s.4 Act of Parliament, 1952 (India)

¹⁸ Cinematograph Act, 1952, No. 37, s. 5(b) Act of Parliament, 1952 (India)

¹⁹ Cinematograph Act, 1952, No. 37, s. 5D Act of Parliament, 1952 (India)

²⁰ Cinematograph (Certification) Rules, 1983, r. 11

(C) Position in United States of America (USA)

The Federal Court in the year 1915 very specifically said that movies were entertainment and as such not vehicles of protected speech.²¹ A few years later, in the name of violation of public policy, most of the American States created their own censorship highlighting about refusing exhibition of films. In the year 1964, a movie named *The Pawnbroker* described outlay of “unacceptable sex suggestive and lustful”, some scenes were removed. This set a precedent in the US.²²

As far as online content is concerned, US has several laws in different aspects and subject matters to regulate the same. To regulate indecency and obscenity in the cyber space, Communications Decency Act, 1996 was enacted by the American Parliament. The Federal court very specifically declared Child Online Protection Act, 1998 as unconstitutional in the case of *ACLU v. Mukasey*²³ that the main intention of the enactment of Child Online Protection Act, 1998 is to restrict the access to any material by the minor which is harmful for them. The court gave a reason that it would hinder protected speech among adults.

(D) Position in United Kingdom (UK)

When we talk about specific laws for regulating films solely, United Kingdom was the first country to legislate a specific law. England enacted Cinematograph Act in the year 1909. The main motive of this legislation was to provide rules and regulations for the exhibition of films in public. In the year 1912, the UK government amended the 1909 Act to establish British Board of film censors (BBFC) to regulate and grant them license to exhibit films. For first time an authority in Britain was established to censor films.²⁴ In Norway, the government set up the similar censoring body for examining and certifying films in the year 1913.

BBFC was given additional power with the enactment of Video Recording Act, 1984. This legislation mandated that British Board of Film Censors must certify all the videos which are for sale in the United Kingdom. In the year 2011, BBFC rejected the film name *THE BUNNY GAME* in which a female prostitute hitches a lift from a truck driver and then this truck driver

²¹ Mutual Film Corporation v. Industrial Commission litigation 236 US 230 (1915)

²² 10) Pranesh Prakash, Nagla Rizk, Carlos Affonso Souza, Global Censorship Shifting Mode, Persisting Paradigms (Last visited 7 October 2020, 3:10 PM) https://law.yale.edu/sites/default/files/area/center/isp/documents/a2k_global-censorship_2.pdf

²³ *ACLU v. Mukasey* 534 F. 3d 181 (3rd Circuit. 2008)

²⁴ Francesca Klug, The three pillars of liberty” *Political rights and freedoms in the United Kingdom* (Routledge, 1 ed. 1996)

kidnaps her, rapes her and tortures her.²⁵

III. CONSTITUTION AND CENSORSHIP

India got Independence in the year 1947 from the colonial rule but The Republic of India was born in 1950, when the Indian Constitution came into effect. Part III of The Constitution of India guaranteed 'fundamental rights' to all the citizens. Under Article 32 and 226, the Supreme court of India²⁶ and various High Courts²⁷ can respectively issue writs for the enforcement of these fundamental rights. Article 19(1)(a) of the constitution is with regard to "Freedom of Speech and expression guaranteed to all the citizens". Whereby exception has been laid down in Art. 19(2), which reads as- "Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence"²⁸ With the commencement of the constitution of India, some changes occurred in the powers of state and central governments with regard to cinema. The center became the competent authority in the matter of sanctioning of the films for exhibition to public.²⁹ The power of the state with regard to cinemas was subjected to the power of the centre.³⁰ B. Shiva Rao in his book has very precisely said that the constituent assembly has made severe criticism against the inclusion of such restriction to an absolute right of freedom of speech and expression.³¹ In the case of *Maneka Gandhi v. Union of India*,³² the court mentioned that Film are just a medium of "open discussion" and "free debates" and in a democratic country like India, these are the integral part. However, it is believed that Movies, or any sort of art for that matter, are very important medium through which a lot of issues of general concern can be treated. When we talk about press media, in the case of *Indian Express Newspapers (Bombay) Pvt. Ltd. V Union of India*³³ the court held that it is the right of the people to be informed with regard to what is going on in the society.

The constitution of India also guarantees the right to practice any profession, or to carry on any

²⁵ BBFC, The Bunny Game BBFC (Last visited 7 October 2020, 8:12 PM) <https://www.bbfc.co.uk/release/bunny-game-1970>.

²⁶ The Constitution of India, 1950 Art. 32(2)

²⁷ The Constitution of India, 1950 Art. 226(1)

²⁸ The Constitution of India, 1950 Art. 19(2)

²⁹ The Constitution of India, 1950, Schedule VII, List I, Entry 60

³⁰ The Constitution of India, 1950, Schedule VII, List II, Entry 3

³¹ SHIVA RAO B., FRAMING OF INDIA'S CONSTITUTION, (Universal Law Publishing, Vol IV)

³² Maneka Gandhi v Union of India AIR 1978 SC 597

³³ Indian Express Newspapers (Bombay) Pvt. Ltd. V Union of India AIR 1986 SC 515

occupation, trade or business.³⁴ Banning movies does not only have an impact on the right of viewers but also have a significant effect on the economic aspects of many stakeholders. Hence, when a movie is banned, it must take into consideration all the social, religious, moral and economical aspects as well.

K.A. Abbas v. Union of India³⁵ is a case whereby the constitutional validity of film censorship laws were challenged. The appellants were the producer of a documentary film. They applied for 'U' certificate, and wanted the film to be available for everyone. But the censor board granted 'A' certificate and hence the film was available only for adults. In the appeal, it was in appellant's favour however, was required to make certain cuts in the film. Hence, he preferred the said writ petition. It was contended that censorship cannot be tolerated since the fundamental right of freedom of speech and expression has been guaranteed. The court very categorically held that "censorship of films, their classification according to the age groups and their suitability for unrestricted exhibition with or without excisions is regarded as a valid exercise of power in the interest of public morality, decency etc. This is not to be construed as necessarily offending the freedom of speech and expression."³⁶ In the case of **Odyssey Communications Pvt. Ltd v. Lokvidayan Sanghatana & ors.**,³⁷ the Supreme Court made a explicit that a citizen's right to show films on TV is a part of the fundamental right under Art. 19(1)(a) which can be curtailed only under circumstances set out in Art. 19(2). This case was regard to one TV serial- 'Honi-Anhoni' where a petition was filed that this serial must not be telecasted because it is confirming bad faith, superstitious beliefs in ghost, etc.

When we talk about Constitution and Censorship, the classic case study is of the film *Bandit Queen*, as discussed in the case of **Bobby Art International v. Om Pal Singh Hoon**.³⁸ In 1994, Bobby Art International produced a film titles as "Bandit Queen" Based on a true account of a sexually abused and brutalised village girl who eventually became a member of a vicious crime gang as a way of getting vengeance on society. Explicit scenes of rape and nudity occur in the film. 'A' certificate was granted to the film and the film was released publicly. One Om Pal Singh Hoon, who was a member of a particular community filed a petition in Delhi High Court for quashing the 'A' certificate and a restrain on the exhibition of the film in India. He claimed that the film portrayed his community in a depraved way and lowered his self-respect. Also the portrayal of the main character was abhorrent and unconscionable and a slur upon the

³⁴ The Constitution of India, 1950 Art. 19(1)(g)

³⁵ K.A. Abbas v. Union of India (1971) AIR SC 481

³⁶ *ibid*

³⁷ Odyssey Communications Pvt. Ltd v. Lokvidayan Sanghatana & ors 1988 AIR 1642

³⁸ Bobby Art International v. Om Pal Singh Hoon (1996) 4 SCC 1.

womanhood of India. Hoon submitted his rights under Article 19, Article 14, and Article 21 of the Constitution has been infringed. The High Court gave the judgement in the favour of Hoon. Bobby Art then filed a petition in the Supreme Court. Bharucha J. delivered the judgement. “In applying the jurisprudence and guidelines to the case Bharucha commented that ‘Bandit Queen’ tells a powerful human story. He held that the scene in which main character was humiliated by being stripped and paraded could not have had its intended effect in any manner other than by explicitly showing the scene despite her humiliation. He added that in this film rape and sex are not glorified but are used to focus on trauma and emotional turmoil of the victim to evoke sympathy for her and disgust for the rapist. In addition Bharucha noted that the expletives used in the movie were commonly used and no adult would be tempted to use them because they were used in the film”.

To understand the ambit of ‘reasonability’ in the term ‘reasonable restriction’ as far as Film Censorship is concerned, Section 5B(1) of the Cinematographic Act, 1952 and Article 19(2) of the Indian Constitution are to be read together. The grounds are as follows:-

(A) Sovereignty and Integrity of India

By the virtue of the Sixteenth Amendment of The Constitution, in the year 1963, these words were added. It was never intended for cinema to affect the sovereignty and Integrity of the nation. But the drafters of the 1952 Act were under the threat by the power of film industry and hence these words were added under the said section.

(B) Security of state and public order

*Brij Bhushan v. State of Delhi*³⁹ is the case whereby ‘public order’ has been defined a wide term which includes public safety and public morality. In the case of *Romesh Thappar v. State of Madras*⁴⁰ it is very specifically mentioned that the scope of public order is wider than the phrase security of state although these two terms overlaps at a very less number of instances. Hence, while censoring the films, the board can ban a film or can order for removing some scenes, if they feel that such can either harm the internal or external security of the country.

(C) Friendly relations with foreign states

The film would be subjected for censorship if it has a willful attempt to tarnish the reputation of any foreign country which has a friendly relation with India.

(D) Incitement to an offence

³⁹ Brij Bhushan v. State of Delhi (1950) AIR SC 129

⁴⁰ Romesh Thappar v State of Madras (1950) AIR SC 124

If a movie shows any scene which may harm the security of the state and public order may amount to Incitement to an offence.

(E) Morality and Decency

In India, Cases like *Ranjit Udeshi v. State of Maharashtra*⁴¹ and *K.A. Abbas v. Union of India*⁴² have laid down tests for decency and obscene in India as far as films are concerned.

(F) Contempt of court

The Government of India in the year 1971 enacted the Contempt of court Act. Any film which on the opinion of the board tarnishes the image and dignity of the judiciary or legal system and it wrongfully opposes any court's decision or interfere of obstruct in the justice delivering process, can be censored by the virtue of this provision.

(G) Defamation

“Every man has a right to have his reputation preserve inviolate. This right of reputation is acknowledge as an inherent personal right of every person as part of the right of personal security.”⁴³ It has been defined in the book of Ratanlal & Dhirajlal as “A defamatory statement is a statement calculated to expose a person to hatred, contempt or ridicule, or to injure him in his trade, business, profession, calling or office, or to cause him to be shunned or avoided in society”.⁴⁴ It is the duty of the censor board to look into the matter that the film is does not have any such content.

IV. ONLINE MEDIA CENSORSHIP

The world has become a global village nowadays. And this is not just restricted to the west but India like any other country has depend on the internet a lot. Internet, social media and online content is not restricted to any one age group. People of all the age groups have been exposed to internet and online content on sone or the other way. Not just for information, Internet has now became a huge source for TV series as well on the platforms like Netflix, Amazon Prime, Hotstar etc. With the change in time and lifestyle of the people, we expect that law also must be dynamic and reforms should also evolve with the same pace of that of the societal evolution.

The question arises that what exactly is online media, what exactly constitutes online media. The answer for such question is in our pocket, purses or college bags. The online contents like Netfilx, Amazon prime and Youtube is exactly what online media is. Along with the TV shows,

⁴¹ *Ranjit Udeshi v State of Maharashtra* (1965) SCR (1) 65.

⁴² *K.A. Abbas v. Union of India* (1971) AIR 481.

⁴³ BLACKSTONES COMMENTARY OF THE LAWS OF ENGLAND, Vol. 1 (4th ed.) 101

⁴⁴ RATANLAL & DHIRAJLAL, THE LAW OF TORTS, (LexisNexis 26th ed. 2015) 266

movies are also uploaded on these online platforms. The films that are uploaded are now being censored by the board concerned, but no authority is debating the original TV series and the media house enjoys total independence when making these programmes.⁴⁵ Some of the contents of these platforms are for free, however these work on monthly or yearly subscription. On paying these subscription amount, anyone can access these series, which are not censored. The main issue with such online platforms is the content uploaded by these media houses are not subjected to any form of censorship. TV series like Moneyheist, Mirzapur, Sacred Games, Sex Education, How to get away with murder? etc. of these platform might have a lot of explicit material, obscene material, violence, nudity, a.k.a. '18+' Content. However these media platforms are like free birds to upload anything due to the lack of any limitations and regulations and encourage viewers to watch anything either by paying a minimum subscription amount or through accessing the content via any proxy servers.⁴⁶

Few months back, when Sacred Game 2 was released, there were a lot of protests with regard to it. Several petitions were brought against the censorial elements of the Holy Games, as this reveals that there is a large amount of violence, nudity and explicit/intimate scenes that are intended to be portrayed as a family drama.⁴⁷ The petitions were filed because when youth are exposed to such uncensored contents constantly, it has a adverse impact on them. Netflix and Hotstar will prohibit content that shows a child 'engaged in real or simulated sexual activities', is disrespectful of India's national flag or encourages 'terrorism'.⁴⁸

If such content was there in a film, censorship board would have complete banned the film or would have ordered for heavily deleting the scenes. During these times of Global Pandemic where theatres cinema halls are closed, these online platforms are more popular than cinema culture these days. We already have a lot of regulations with regard to censoring the movies then why such regulations are not implemented on online media.

(A) Laws Governing Online Media

If we talk about films, a specific legislation has been enactment for censorship and other related

⁴⁵ Mehal Jain, Misuse Of Social Media Has Become Dangerous' : SC Directs Centre To File Affidavit On Guidelines To Prevent Misuse LIVE LAW (Last visited 7 October 2020, 6:00 PM) <https://www.livelaw.in/top-stories/sc-directs-centre-to-file-affidavit-on-guidelines-to-prevent-misuse-148397>

⁴⁶ Prakash Gowda, "Can films really be held responsible for increasing Rape in Indian society?" INDIAN EXPONENT (Last visited 7 October 2020, 7:00 PM) <http://www.indianexponent.com/2013/03/can-films-really-be-held-responsible-for-increasing-rape-in-indian-society.html>

⁴⁷ SHANKAR P., CENSORSHIP IN THE WORLD'S LARGEST DEMOCRACY, (Silicon India, Vol. 15 Issue 2 2012)

⁴⁸ Sankalp Phartiyal & Aditya Kalra, Reuters, Netflix, Hotstar said to start censoring content in India LIVEMINT (Last visited 8 October 2020, 9:00 AM) <https://www.livemint.com/Consumer/8Y5oMwEe1sRiLvIwBZcF1K/Netflix-Hotstar-to-censor-content-in-India-sources.html>

aspects. However, In India, there is no such specific legislations with regard to online content. In the last section we saw how censorship is linked to the Provisions of the Constitution. There are various cybers laws in India which we can link with online content censorship.

(B) The Information Technology Act, 2000

1. CHAPTER XI- This chapter is with regard to punishments for any digital related offences which are likely to be committed through online media.
 - 1.1) Section 66A- This section sets punishment for sending offensive messages through communication services etc. ⁴⁹
 - 1.2) Section 66B- This section sets punishment for dishonestly receiving stolen computer resources or communication device. ⁵⁰
 - 1.3) Section 66C- This section deals with the punishment for the offence related to identity theft.⁵¹
 - 1.4) Section 66D- Punishment for cheating by personation by using computer resources are dealt by the virtue of this section. ⁵²
 - 1.5) Section 66E- Punishment for violate of privacy are dealt by the virtue of this section.⁵³
 - 1.6) Section 66F- This section sets punishment for Cyber terrorism.⁵⁴
 - 1.7) Section 67A- This section sets punishment for Publishing or Transmitting sexually explicit material in electronic form. ⁵⁵
 - 1.8) Section 67B- This section sets punishment for publishing or Transmitting material depicting children in sexually explicit act in electronic form. ⁵⁶
2. Section 69- By the virtue of this section, power has been giving to the union government to issue certain directions for interception or decryption or monitoring of any information through any computer resource in the interest of integrity or sovereignty, defense & security of the state and other grounds mentioned under Article 19(2) of the Constitution under the term “reasonable restriction”⁵⁷

⁴⁹ The Information Technology Act, 2000, s. 66A

⁵⁰ The Information Technology Act, 2000, s. 66B

⁵¹ The Information Technology Act, 2000, s. 66C

⁵² The Information Technology Act, 2000, s. 66D

⁵³ The Information Technology Act, 2000, s. 66E

⁵⁴ The Information Technology Act, 2000, s. 66F

⁵⁵ The Information Technology Act, 2000, s. 67A

⁵⁶ The Information Technology Act, 2000, s. 67B

⁵⁷ The Information Technology Act, 2000, s. 69

3. Section 69A- This section grants power to the government to issue directions to block public access of any information through any source (computer resource or similar grounds) on similar grounds.⁵⁸
4. Section 69B- By the virtue of this section, government has been given power to issue directions to any agency by authorizing it to monitor and collect information through any computer information for issues cyber security.⁵⁹
5. Section 79- This section very specifically deals with situations when the intermediaries will be and will not be held liable for the third party information, data or communication which made available or hosted by the intermediary.⁶⁰

In the following cases, Intermediaries shall not be liable :-

- i) Situations where the intermediary's function is limited to providing access to a communication system over which the information is transmitted, hosted or sorted.
- ii) The information which is contained in the transmission is not initiated, selected, received or modified by the intermediary.
- iii) Due diligence and other directions as directed by the government has been followed by the intermediary.

In the following cases intermediary can be held liable:-

- i) If the intermediary has conspired, or abetted any commission of any unlawful act.
- ii) Even after the government notifies, the intermediary fails to remove that particular content or block the access to that content

(C) Draft Information Technology [Intermediaries Guidelines] (Amendment) Rules, 2018

The term "Intermediary" has been mentioned in the 2000 Act.⁶¹ The earlier rules of 2011 required intermediaries to prohibit any one to upload any obscene content on its platform. The Information Technology [Intermediaries Guidelines] (Amendment) Rules of 2018 is still at the table of the Parliament. There are 13 rules. By the virtue of these draft rules, a new category of information is prohibited i.e. content which threatens 'public health and safety'.

Intermediaries must within 72 hrs, provide assistance to any govt. agency.⁶² Further, if any

⁵⁸ The Information Technology Act, 2000, s. 69A

⁵⁹ The Information Technology Act, 2000, s. 67B

⁶⁰ The Information Technology Act, 2000, No. 21, s. 79 Act of Parliament, 2000 (India)⁹

⁶¹ The Information Technology Act, 2000, No. 21, s. 2(w) Act of Parliament, 2000 (India)

⁶² Draft Information Technology (intermediaries) rules, 2018, r. 5

information is originated on their platform, the intermediaries must be able to trace the originator of the said information.⁶³ Further, to identify and remove public access to unlawful information, the intermediaries must deploy technology-base automated mechanism. if there are more than 50 lacs users of an intermediary, it must be incorporated as a company in India.⁶⁴

“Intermediaries are entities that store or transmit data on behalf of other persons, and include internet or telecom service providers, and online market places.”⁶⁵ In the year 2008, there was an amendment to The Act, 2000, whereby these intermediaries were exempted from the liability of any third party information. However, in the Information Technology (Intermediary Guidelines) Rule 2011, there was a requirement to prove due diligence to claim such exemption from the liability. This was clarified in the notification.⁶⁶ The recent rule also requires to "disable access" within 24 hours to content deemed defamatory or against national security and other clauses under Article 19 (2) of the Constitution.⁶⁷

(D) The Concept of Self- Regulation

Self-regulation is a concept where by these intermediaries themselves follow strict due diligence and adhere to the rules and regulations laid down by the government. In India these media houses mention specific content as 18+ or 13+. But this now depend on the viewers whether they follow this or not.

By the virtue of Cable Television Network Rules, 1994, contained shown on TV is regularized. Only Films and movie songs that that been certified by CBFC as being suitable unrestricted public exhibition can be telecasted on TV.⁶⁸ In July 2011, a self-regulatory body for entertainment channels, the IBF introduced the IBF guidelines. These guidelines provides for programme classification based on whether the content is suitable for unrestricted viewing or under parental guidance or whether it is unsuitable for children. Programmes which fall in the latter category may be viewed only between 11 p.m. and 5 a.m. Complaints against objectionable content shown on TV may be filed before the BCCI constituted by the broadcasters under the self-regulatory regime. In September 2012, at a meeting held by the

⁶³ *ibid*

⁶⁴ Draft Information Technology (intermediaries) rules, 2018, r. 7

⁶⁵ PRS Legislative Research, Draft Information Technology [Intermediaries Guidelines (Amendment) Rules] 2018, PRS (Last visited 10 October 2020, 9:00 PM) <https://www.prsindia.org/billtrack/draft-information-technology-intermediaries-guidelines-amendment-rules-2018>

⁶⁶G.S.R. 314(E)., The Gazette of India, April 11, 2011, <http://meity.gov.in/writereaddata/files/GSR314E_10511%281%29_0.pdf. > accessed 10 October 2020

⁶⁷ 13) S.S. Rana & Co. Advocates, ‘India: Analysis of the Information Technology [Intermediaries Guidelines (Amendment) Rules] MONDAQ (Last visited 4 September 2020, 3:00 PM) <https://www.mondaq.com/india/social-media/794624/analysis-of-the-information-technology-intermediaries-guidelines-amendment-rules-2018>

⁶⁸ Cable Television Network Rules, 1994, r.6

CBFC and the BCCI in Mumbai, the idea of self-regulatory body was mooted for the purpose of vetting films for exhibiting on TV. In the meantime, in February 2013, the Central Government constituted the panel headed by the retired judge Justice Mukul Mudgal to suggest amendments to the law on certification of films and the need for certification for television channels. A controversy had arisen in 2012 over the screening on television of the film *The Dirty Picture* based on the life of a soft porn actress. The film clearly unsuitable for unrestricted exhibition was allowed to be screened only after about 59 cuts. Such proper regulatory framework is not present till date as far as Online content is concerned.

(E) Shreya Singhal v. Union of India⁶⁹

In this case, two women were arrested by police for uploading on Facebook allegedly insulting and objectionable remarks about the propriety of closing down the city of Mumbai after the death of a political leader. The police made the arrests under Section 66A of the Information Technology Act, 2000, "which punishes any person who sends any information that is grossly offensive via a computer resource or communication system, or with the knowledge of its falsity, for the purpose of causing annoyance, inconvenience, danger, insult, injury, hate, or ill will."

While the police later released the women and dropped their prosecution, considerable public coverage and criticism was invoked by the incident. The women then filed a petition calling into question Section 66A's procedural legitimacy on the basis that it violates the right to freedom of speech.

The petitioners argued that Section 66A was unconstitutional because it falls beyond the scope of Article 19(2) for its intended defence against annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, or ill-will. They also argued that the enactment was unconstitutionally ambiguous because it refused to describe the prohibitions clearly. In addition, they argued that the right to freedom of speech has a "chilling effect" on the law.

On the other hand, the government argued that the legislation is in the strongest place to address the interests of persons and that courts should only intervene with the democratic process if a law is explicitly breaching the rights guaranteed on citizens under Section III of the Constitution. The government argued that the very existence of an abuse of a provision should not constitute a basis for making the provision unconstitutional. The government was also of the opinion that the loose wording of the legislation should not be a basis for invalidity because the law deals with new ways of disturbing the rights of citizens through the internet. According

⁶⁹ Shreya Singhal v. Union of India AIR 2015 SC 1523

to the government, if the law is otherwise constitutionally competent and non-arbitrary, vagueness should not be a basis for making a statute unconstitutional.

As applicable to the case in hand, the Court found that Section 66A is capable of restricting all modes of internet communications because it makes no distinction between a mere debate or advocacy of a particular point of view that may be unpleasant or inconvenient or grossly offensive to some and the incitement by which such words lead to an imminent causal link with public disorder, the security of the State.

The Court also ruled that the statute does not create a strong proximate connection with the security of public order. According to the Court in order to inflict annoyance or insult, the commission of an offence pursuant to Section 66A is accomplished by transmitting a letter. As a consequence, without forcing the message to have a strong propensity to disturb public order, the statute does not differentiate between mass transmission and delivery to any one user.

The Supreme Court agreed with the petitioners that none of the grounds contained in Section 19(2) were capable of being invoked as legitimate defences to the validity of Section 66A of the IT Act. “Any law seeking to impose a restriction on the freedom of speech can only pass muster,” wrote Justice Nariman, “if it is proximately related to any of the eight subject matters set out in Article 19(2).”

(F) Challenges for the Media Houses

The new proposed amendment Rules of 2018 has introduced concepts like encryption of information, strict due diligence, strict policies regarding privacy.

The amendment to the current 2011 Information Technology (Intermediary Guidelines) Regulations aims to stem and keep accountable the abuse of social networks. It gives government agencies wide powers of monitoring, requires platforms to allow decryption, implements tougher enforcement criteria, and assigns powers to platforms unnecessarily. The two most important issues resulting from these reforms are discussed, i.e. the need to allow information to be decrypted and the chilling impact induced by undue delegation.⁷⁰

The government scrutinizes WhatsApp, Facebook and other major media to counter hate speech and fake news. WhatsApp launched end-to-end message encryption in 2016, immunising itself against state demands for information. In the interests of data defence, Rule 3(5) of the proposed Information Technology (Intermediary Guidelines) Rules 2018 empowers

⁷⁰Purushotham Kittane, Under India’s New Intermediary Rules, Fundamental Rights Take Backstage ORHR (Last visited 16 October 2020, 1:00 PM) <https://ohrh.law.ox.ac.uk/under-indias-new-intermediary-rules-fundamental-rights-take-backstage/0>

"any government agency" to call for assistance.

By the virtue of these draft guidelines, the intermediaries are mandated to employ appropriate controls for identifying and acting on unlawful content.⁷¹ The difficulties that these intermediaries might face is the term “appropriate” is very vague and secondly, it has not been taken into consideration whether these intermediaries are well-equipped to decide upon the unlawfulness of the content. With regard to the concern of deciding legality of speech, it would be not justified for the state to delegate such power to these intermediaries, since it is the look out of the courts to decide the legality of speech.

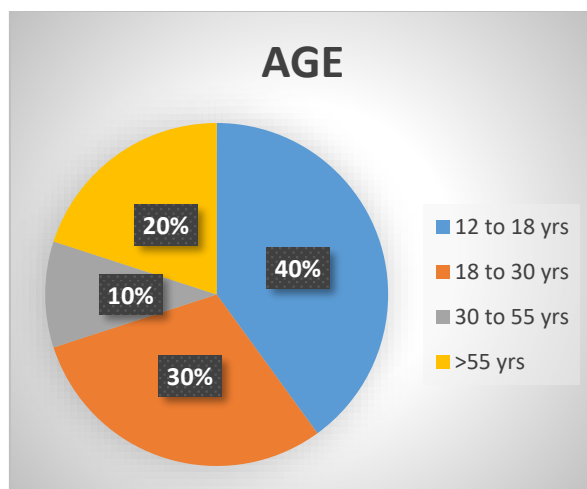
The OHCHR has observed that “excessive delegation leads to unwarranted self-regulation and the probability of censorship encompassing even legitimate speech multiplies. Constant monitoring of content by private organizations too restricts one’s right to privacy as held by the Supreme Court of India.”⁷²

(G) Empirical Survey

To obtain the view and to check the awareness of the people from the non-legal background, the author took this empirical research of 10 people, of different age group. The questions and the result of the survey as below. The medium of this Survey of mainly telephonic and personal interview.

Question 1- Age Group

The first question was a with regard to the age group of the respondent. The author divided the age groups as (12yrs to 18 yrs), (18 yrs to 30 yrs), (30 yrs to 55 yrs), (>55 yrs). The answers were as below.



⁷¹ Draft Information Technology (intermediaries) rules, 2018, r. 3(9)

⁷² *Supra note 69*

4 of the respondents were in the age group (**12yrs to 18 yrs**)

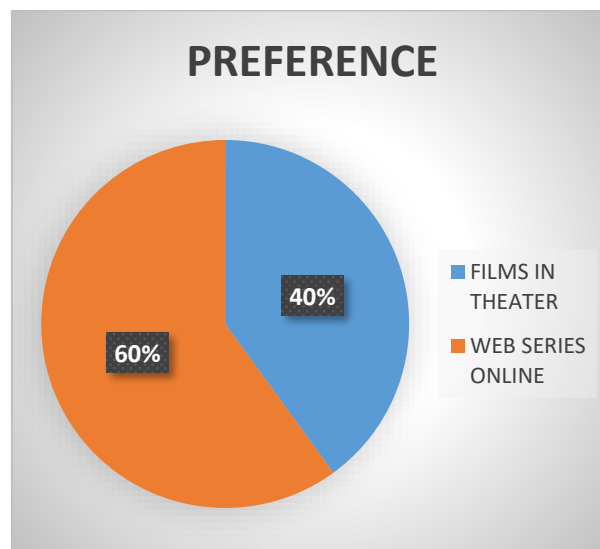
3 of the respondents were in the age group (**18yrs to 30 yrs**)

1 of the respondents were in the age group (**30 to 55 yrs**)

4 of the respondents were in the age group (**>55 yrs**)

Question 2- Broad Preference

The second question was regarding the broad preference. The author asked the respondents about their preference between *films on theatre* or *web series online*. The results were as below.



As far as numbers are concerned, **4 out of 10** preferred films in theatre where as **6 out of 10** preferred **Web series online**.

As far as age group is concerned, all the **4 respondents for age group (12 to 18 yrs)** selected **web series online**.

2 out of 3 respondents from age group (**18 to 30 yrs**) selected webseries whereas **1** selected **films in theatre**.

The respondent from age group **30 to 55** selected **film in theatre**.

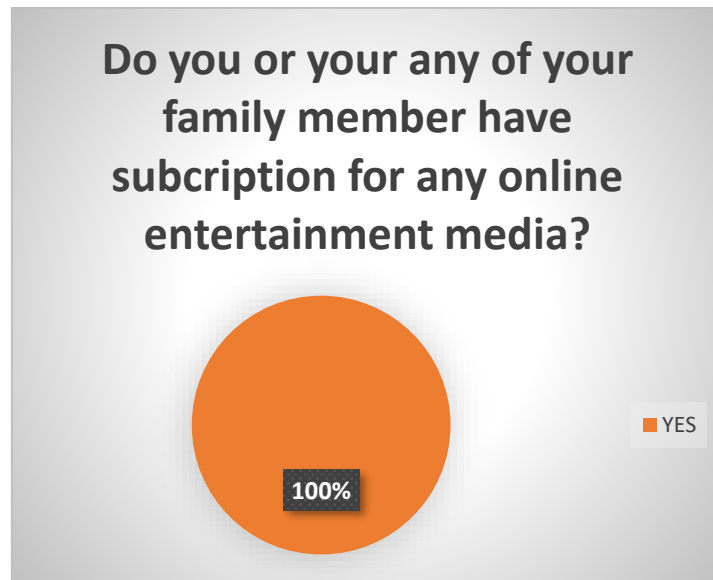
Both the respondents for age group (**>55 yrs**) selected **web series online**.

Question 3- Interests quantified

The third question which the author put was "*Do you or any of your family member have subscription for online platforms like Hotstar premium, Netflix or Amazon prime?*"

By the virtue of this question, the author made an attempt to quantify the interests of the respondents. The author wanted to study whether their interest is to the extend that they are willing to pay from their monthly or yearly entertainment budget?

It was found that **all the respondents or their family members had one or the other subscription** for various online entertainment platforms.

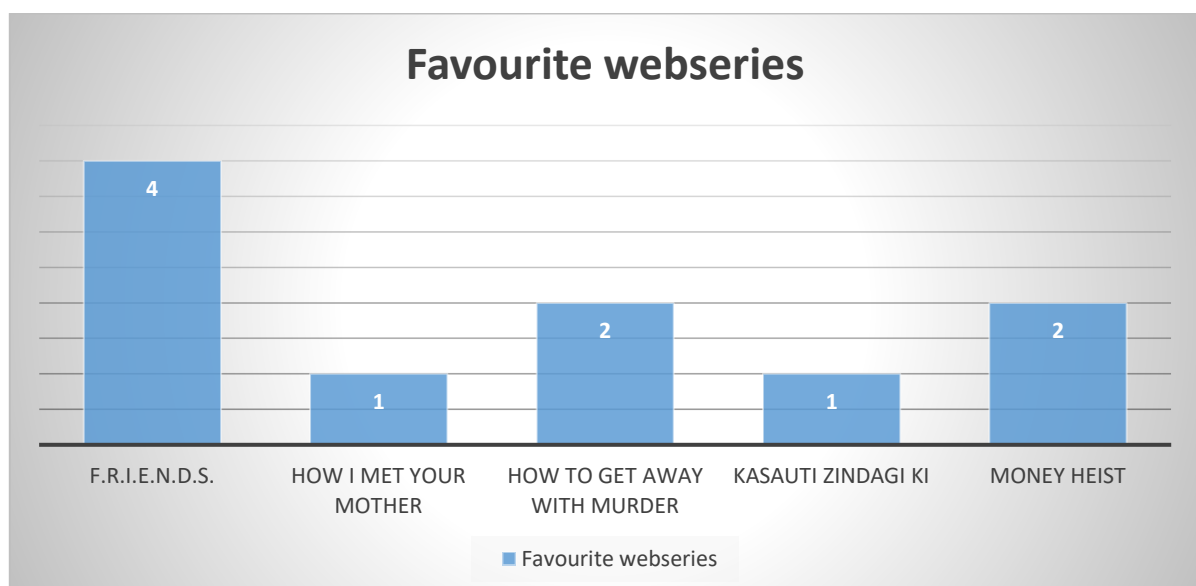


Question 4- Favourite Webseries

The question which the author put was “*What is your favourite webseries that you like to watch online?*”

The author wanted to understand what type of shows the respondents are interested in.

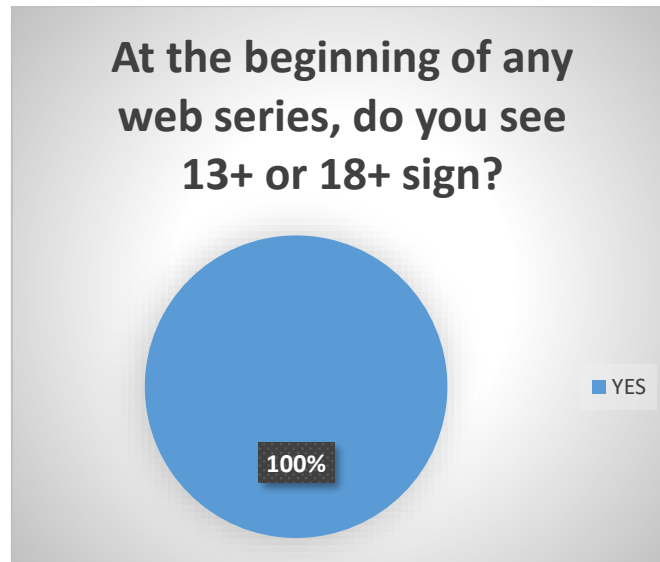
After receiving the list of the shows, the author also searched online and read about the genre/content of the shows.



Question 5- Respondents' Observation

The question put by the author was “*At the beginning of any web series, do you see anything like 13+ or 18+ content?*”

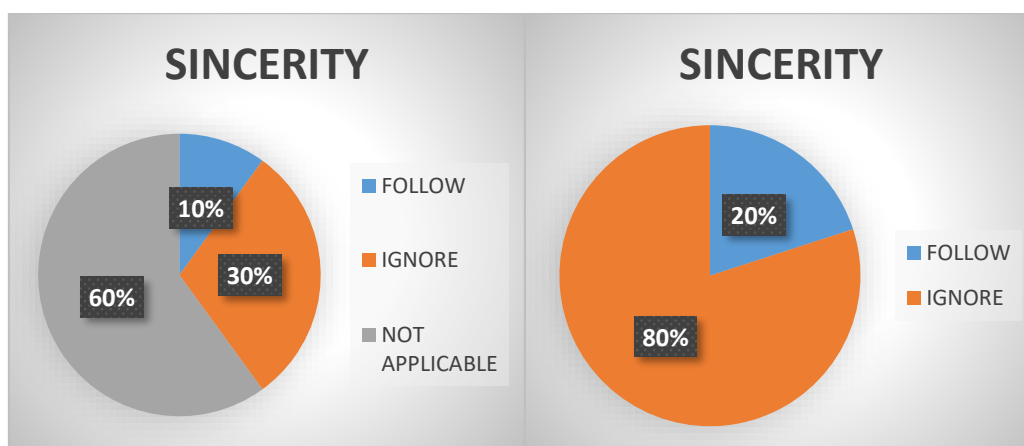
It was found that all the respondents observe the age restriction signs are the beginning of the show.



Question 6- Sincerity

The author put the question to the respondents of age group (12 to 18 yrs) “*Do you follow what these guidelines say or you ignore it?*”

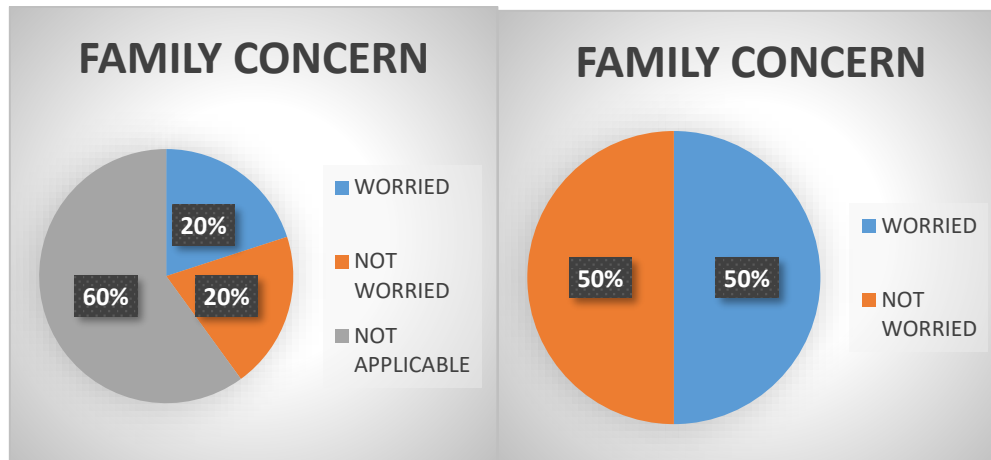
Much to the author’s surprise, 3 out of the 4 respondents said they **ignore** the guidelines of age restrictions when it comes to online shows.



Question 7- Family Concern

The author asked “*Are you worried about what type of content your son or daughter is exposed to while watching online content?*”

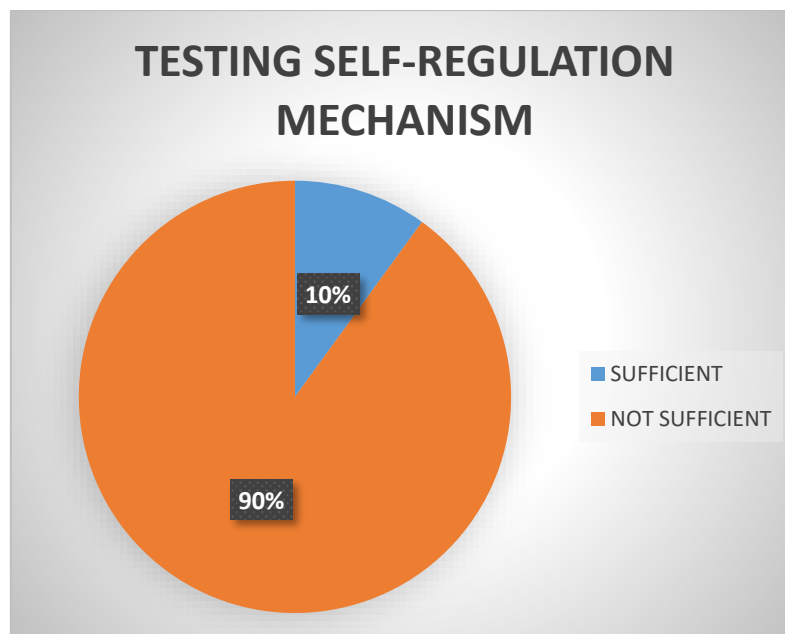
Out of 10, 4 respondents were parents. The author asked this question to these 4 respondents. Out of which, 2 were worried and 2 were not that worried.



Question 8- Testing Self-Regulation Mechanism

The author put a question to test the existing self-censorship mechanism. The question was *“Do you think putting age guidelines mechanism is sufficient?”*

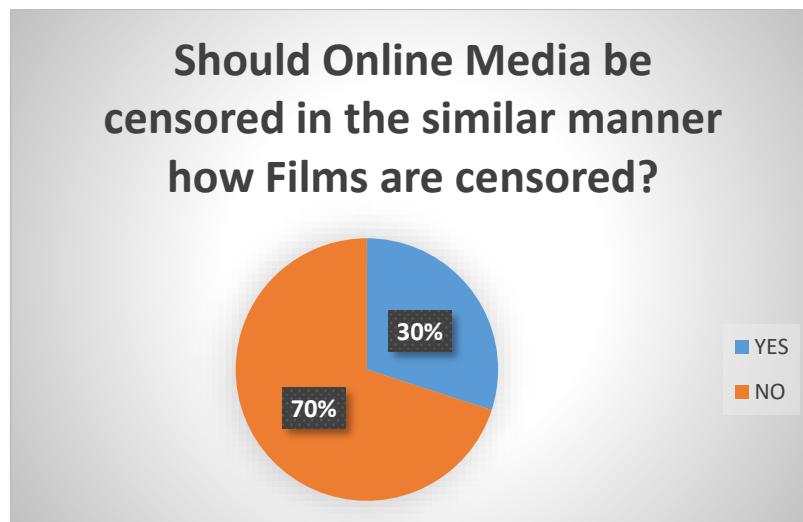
9 out of 10 respondents said it is not sufficient where as 1 said it is sufficient. When the author asked him what made him think it is sufficient? It is the duty of the parents to see what content the child is exposed to on the internet.



Question 9- Comparing Online Content Censorship with Film Censorship

The question put was *“Do you think Online Media Should be censored in the Similar way how films are censored?”*

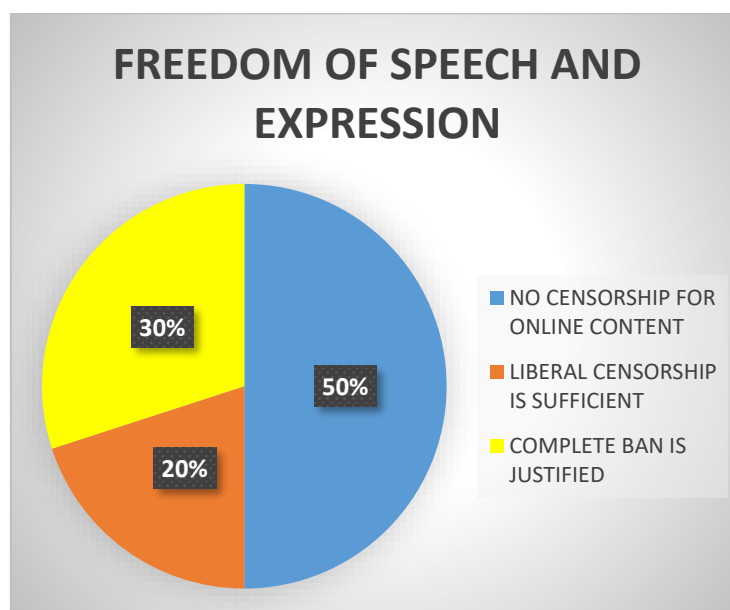
Out of 10 respondents 7 said “no” while the remaining 3 said “yes”



Question 10- Freedom of Speech and Expression

The question asked was “*Do you think censoring content of completely banning them is just? Or do you think this is against the fundamental Right to free speech?*”

Out of 10, 5 respondents said that no censorship should be there since it is a fundamental right. 3 said complete ban is also justified, and the remaining two said liberal censorship is sufficient for online content.



(H) Research Findings

- Because of the Covid-19 pandemic situation, where all the theatres and cinema halls are closed, almost all the households have subscription for one or the other online entertainment portals.
- Most of the common lay man does not understand how censorship differs when the show is re-run on an online portal or is the original online portal series. The shows

which are re-run on the online portal are already scrutinized by the censorship authority of the television.

- Whenever someone watches any show or even movies on these online portals, the age restriction sign is visible and observed by everyone. However, most of them tend to ignore these signs.
- Almost 50% of the parents are worried with regard to what type of content their children are exposed to on these online platforms.
- The current practice of self-regulation is NOT sufficient.
- Some respondents from age group (12 to 18yrs) said their favourite shows are like How to get away with murder, or Money Heist, which are 18+ shows because of the language, nudity, drug use etc.
- After the empirical survey was concluded, two famous Indian shows were released on the online portals. These shows were *Mirzapur 2* and *SCAM-1992*. Both of the shows are 18+ rating, because of strong language and violent scenes in the former. The author informally took interviews of 8 respondents from the age group of (15 to 18 yrs) and much to the author's surprise, all the 8 watched or were watching Scam-1992 and 2 of the 8 were watching or have watched Mirzapur 2.

V. CONCLUSION AND SUGGESTION

The world has become a global village. In this fast-moving world, lifestyle, thought process and tolerance level is also changing. The dimensions of censorship is completely different now than it was when originated in 443 BC in Rome.

Freedom of speech & expression is guaranteed by the Constitution of India by the virtue of Art. 19(1)(a). However, this guarantee is not absolute. It comes along with "reasonable restrictions" as mentioned under Art. 19(2). Further, the enactment of Information Technology Act, 2000 and other subsidiary rules gave government additional tool for censorship.

By the medium of this research paper, the author has tried to answer the research questions. The hypothesis framed by the researcher was " In order to control unwanted events or riots, and to preserve democratic values, social stability and peace, Internet Censorship a.k.a. Online content censorship is the need of the hour." After analysing various laws, cases and obtaining the view of general public, the author came to the conclusion that the hypothesis is proved to the extend Online content censorship can control the unwanted events and preserve the democratic value of the society. However, online content censorship should not be weighed similar to film censorship. If the online content is censored in the similar manner television or

films are censored, then its charm will be lost in the transition, which the public at large might not like, since they have accepted it in one or the other way.

Further, the proposed rules of 2018 will create a lot of hurdles for the online service providers. The current practice of self-regulation is not sufficient and the same has been clearly reflected in the empirical survey.

In the case of *Shreya Singhal v. Union of India*⁷³ the Supreme Court very specifically said that a restriction on speech, in order to be reasonable, must be narrowly tailored so as to restrict only what is absolute necessary. Further, the court said that the online intermediaries would only be obligated to take down content on receiving an order from a court or government authority.⁷⁴

The Author's suggestions with regard to censoring online content is as under:-

- There should a statutory body established for the online content moderation and censorship.
- Licenses should be made mandatory by this board, hence the board will know the details of the publications and about the content of even smallest and unpopular online platform.
- This board should be easily approachable by the public, hence any content that is offensive can be brought up by the public to the board's notice.
- As far as censoring online content is considered, it should not be as strict as the television and the films are.
- There must be proper mechanism for age verification like linking the Aadhar Card So the lacuna present in the practice of self- regulation can be eliminated.
- Parents should be made aware that there is an option for creating kid's profile on such online platforms. This facility is unknown to most of the parents.

⁷³ *Shreya Singhal v. Union of India* AIR 2015 SC 1523

⁷⁴ *id*