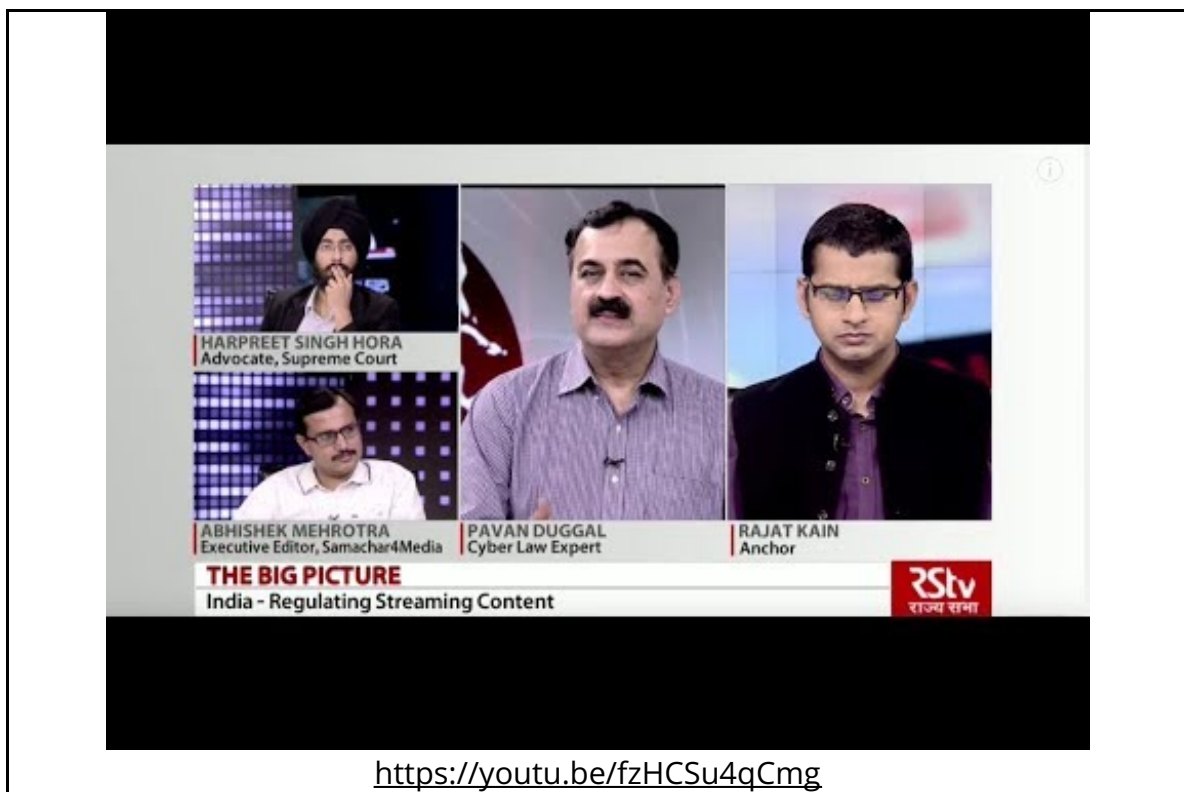




The Big Picture – Regulating Streaming Content

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The Supreme Court has issued notices to the ministries of Broadcasting, Law and Communications on an appeal challenging the 8th Feb, 2019 order of the Delhi High Court.

The Delhi High Court dismissed the **PIL seeking formulation of guidelines for the regulation of online video streaming platforms** like Netflix and Amazon Prime Video, after the Ministry of Information and Broadcasting had informed it that online platforms are not required to obtain any licence from it. The Ministry of Law and Justice stated that the matter is outside its domain.

Claims made in the appeal

- Online streaming platforms are not only displaying unlicensed, unregulated and

uncertified content, but also running without being governed by any guidelines.

- Due to lack or absence of any guidelines to govern the online platforms, government agencies are creating **a special class of broadcasters** and thus **discriminating against customers, Cable TV producers, and DTH operators**.

Present Regulation Mechanism for Online Streaming Platforms

- At present, India does not have any regulatory mechanism for online streaming platforms. However, all such platforms qualify as intermediaries as per **section 2(1)(w) of the Information Technology (IT) Act, 2000**.

As per section 2(1)(w) of the IT act, "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and also includes network service providers.

- **Under section 79(2)(c) of the IT act**, intermediaries are mandated to exercise due diligence while discharging their duties under the Act.
 - Parameters of due diligence have been defined by the Government of India in the Information Technology Rules, 2011.
 - The problem is that the **parameters have not been framed keeping in mind the peculiar business operations of online streaming platforms**.

Need for Regulations

- Indian citizens **do not enjoy absolute right of freedom of speech and expression** as there are certain reasonable restrictions under the Article 19(2) of the Constitution of India. **Regulations are necessary** to ensure that the content that gets featured on online streaming platforms remains within the scope of Article 19(2) of the constitution.
- **The regular movies are certified by the Central Board of Film Certification (CBFC)** and ultimately governed by the Cinematograph Act. Such certification is also necessary for the movies run by the online streaming platforms to avoid any sort of discrimination.
- As per the IT act, citizens can avail remedies if the content contravenes any of the provisions of the act. It would be better for India to have a precaution in the form of law governing the content on online streaming platforms.
- To stop such platforms from running any sexually explicit and vulgar content.
- **India's failure to exercise extraterritorial jurisdiction that flows from section 1 and section 75 of the IT act**. These two sections collectively make the IT act applicable to any person of any nationality anywhere in the world so long the impact of such services provided by him/her are felt on computers, computer systems or computer networks physically located in India.

Is it possible to regulate?

- Internet is beyond any regulation. It allows various platform providers and service providers to be in different jurisdictions while giving their services to other people located in other jurisdictions.
- It is difficult to regulate the content as something which is inappropriate for someone can be appropriate for the other.
- It is upto people whether they want to see, hear or read a particular thing on internet.
- However, more and more countries are now waking up to the need for regulating such kind of content within their physical geographical boundaries. For example, Russia and China has a law that states that the content needs to be in compliance with the local laws.

Way Forward

- Government needs to ensure that online streaming platforms comply with available parameters of local laws.
- Besides providing adequate enabling legal framework, specific parameters for due diligence for online streaming platforms should be framed by the government.
- Online Streaming Platforms, as a part of their services to countries, should come up with a self code of conduct.

*In the times of continuous changing technologies, **policymakers should frame broad, generic and futuristic looking legal provisions.** China has recently come up with the world's first law on Artificial Intelligence (AI). California has a law on cybersecurity with respect to Internet-of-Things (IoT). India needs to learn from these examples.*

Drishti Input:

Article 19(2) of the Constitution authorises the government to impose, by law, reasonable restrictions upon the freedom of speech and expression 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.

Central Board of Film Certification (CBFC)

- It is a statutory body under Ministry of Information and Broadcasting, regulating the public exhibition of films under the provisions of the Cinematograph Act 1952.
- The Board consists of non-official members and a Chairman (all of whom are appointed by Central Government) and functions with headquarters at Mumbai.
- **Films can be publicly exhibited in India (on cinema halls, T.V. channels) only after they have been certified by the Central Board of Film Certification.**

- **At present, films are certified under 4 categories: U, U/A, A& S.**

Category	Description
U	Unrestricted Public Exhibition
U/A	Unrestricted Public Exhibition - but with a word of caution that Parental discretion required for children below 12 years.
A	Restricted to adults
S	Restricted to any special class of persons

The Cinematograph Act lays down that a film shall not be certified if any part of it is against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or involves defamation or contempt of court or is likely to incite commission of any offence.

DTH services and cable T.V programs

- In India Direct-to-Home (DTH) licenses are issued to service providers by Ministry of Information and Broadcasting (MIB).
- **The Cable Television Network (Regulation) Act, 1995 content code / Advertisement code is there in India for programme and advertisements appearing in cable TV Network.**