

IN THE SUPREME COURT OF INDIA  
ORIGINAL JURISDICTION  
EXTRAORDINARY CIVIL WRIT JURISDICTION  
WRIT PETITION (CIVIL) NO.: 1080 OF 2020  
[In the Matter of Public Interest Litigation]

IN THE MATTER OF:

1. SHASHANK SHEKHAR JHA

2. APURVA ARHATIA

VERSUS

1. **UNION OF INDIA**  
**THROUGH CABINET SECRETARIAT**  
MINISTRY OF HOME AFFAIRS,  
32, SOUTH BLOCK,  
PRITHVIRAJ ROAD  
NEW DELHI- 110001 ...RESPONDENT NO. 1
2. MINISTRY OF INFORMATION AND BROADCASTING,  
**THROUGH SECRETARY**  
A-WING, SHASTRI BHAWAN  
NEW DELHI- 110001 ... RESPONDENT NO. 2
3. INTERNET AND MOBILE ASSOCIATION OF INDIA  
THROUGH ITS VICE PRESIDENT  
406, READYMONEY TERRACE, 167  
Dr. ANNIE BESANT ROAD,

WORLI NAKA, MUMBAI,  
MAHARASTRA- 400018

...RESPONDENT NO. 3

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TO,  
THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF  
THE SUPREME COURT OF INDIA  
THE HUMBLE PETITION OF THE  
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHEWETH:

1. The present Writ Petition under Article 32 of the Constitution of India is filed by the Petitioners to stop the abuse of fundamental rights of expression (Article 19), thus protecting Right to life of people at large (Article 21).

1A. The petition pertains to the requirement of a board/ association/ institution for monitoring and management of Over The Top (hereinafter referred to as "OTT/ STREAMING") and other video streaming platforms in India. There are many OTT and video streaming platforms which are operating without or a partial a code of conduct. Currently, there are over 40 (Forty) OTT and video streaming platforms providing paid, ad-inclusive, and free content to approximately 130 cr. (One Hundred and Thirty

Cröre) people across India. The OTT platforms in India abuses the right to expression granted in Article 19, thus is against Right to life of people at large (Article 21). WP (Crl.) No. 233 of 2020 and WP (Crl.) No. 196 of 2020 are Public Interest Litigation filed by Petitioner No. 1 on different subject issue with different prayers and has no relation with the current petition and both the matter have been taken up by this Hon'ble court. WP (Crl.) No. 192 of 2020 was a Public Interest Litigation filed by Petitioner No. 1 on different subject issue with different prayers and has no relation with the current petition. Case was taken up on 07.08.2020 and dismissed as withdrawn.

That the Respondent No. 3 though a private party has been added as a party in the instant petition because it is the appropriate party responsible in dealing with Internet based OTT platforms on regular basis and works under the directions of the Respondent No. 2.

#### ARRAY OF PARTIES

2. That, the present writ petition is filed under Article 32 of the Constitution of India and is being filed by way of a

Public Interest Litigation by the petitioners who does not have any personal interest over the subject-matter.

3.

4.

5. That the petitioners are filing the present petition on his own and not at the instance of anyone else. Petitioner doesn't have any personal interest or any personal gain or private motive or any other oblique reason in filing this Writ Petitioner in Public Interest.
6. That the petitioners are not involved in any other civil or criminal or revenue litigation, which could have legal nexus with the issues involved in the present Petition.
7. The Respondent No. 1 is the Union of India, represented by Cabinet Secretary, Ministry of Home Affairs which is the appropriate party responsible in dealing with safeguarding the fundamental rights of all the Indians.
8. The Respondent No. 2 is the Ministry of Information and Broadcasting represented by Secretary which is the appropriate party responsible to deal with broadcasting of content on various platforms across India.
9. The Respondent No. 3 is the Internet and Mobile Association of India, represented by Vice- President which is the appropriate party responsible in dealing with Internet based OTT platforms on regular basis.

10. That the concerned government authorities were not moved for any relief sought in this Petition, since India is under the attack of Pandemic named Covid-19 and it would have been difficult to approach the concerned government authorities in such time. The viewers of the contents on the OTT/Streaming Platform have significantly increased during the time of pandemic. Therefore, it wasn't logical & feasible to move the concerned governments for immediate & effective relief.

#### FACTS OF THE CASE:

11. The brief facts that give rise to the present Writ Petition is the requirement of board/institution/association to monitor and manage the contents available on internet across India.

12. That the Petitioners firmly believe that the Indian constitution will provide a means to monitor and manage these contents across all online platforms. Therefore, this Writ Petition has been moved under Article 32 of the Constitution of India, which seeks to direct the respondents for establishment of a proper board/institution/association for the monitoring and

management of content on different OTT/Streaming and digital media platform. With cinemas theatres unlikely to open anytime soon in the country, OTT/Streaming and different digital media platforms have surely given a way out for filmmakers and artists to release their content without being worried about getting clearance certificates for their films and series from the censor board.

13. That the petition pertains for the requirement of a board/ association/ institution for monitoring, management and regularizing of OTT/Streaming and digital media platform across India.
14. That currently, there is no law or autonomous body governing the digital content to monitor and manage these digital contents and it is made available to the public at large without any filter or screening.
15. The Respondent No. 2 was supposed to issue a negative list – a list of some non-negotiable prohibited content to OTT/Streaming service providers by the end of 2019. Respondent No. 2 had also urged the OTT/Streaming Platforms to come up with a self-regulatory body.

“The Information and Broadcasting Ministry is likely to issue a “negative” list of don’ts for video streaming services or Over-The-Top platforms like Netflix and Hotstar by the end of this year. The ministry is also nudging the platforms to come up with a self-regulatory body on the lines of the News Broadcasting Standards Authority.”

Copy of the News report of The Hindu dated 16.10.2019 annexed herewith as Annexure P-1 (Page No. 37-39)

16. That the Respondent No. 3 had announced the formation of its Digital Content Complaints Council (hereinafter referred to as “DCCC”) to address government and user complaints related to content on streaming platforms. That several content providers registered their dissent with Respondents No.2, asking it to recall the code. The Self-regulatory code had two tiers, wherein tier one had ambiguity and scope of modification, so the Respondent No. 3 came up with tier two version of the of the code. Thereafter, Several OTT/streaming platform like



Netflix, Amazon Prime, TVF Play, Yupp TV, Hungama Play, YouTube (which has YouTube Red) and Facebook (which has Facebook Watch) ( hereinafter referred to as "Objectors") had addressed their dissent to sign the self-regulatory code (tier two version). It is evident that the Objectors had clearly provided their dissent to sign the self-regulatory code (Tier Two version) owing to the fact that the code required the Objector's content to be monitored, managed, and let them be accountable for the streaming content on their platform.

"Netflix, AltBalaji, Arre, MX Player and Zee5 have written to the Internet and Mobile Association of India (IAMAI) — an industry lobby group that helped draft the code — against DCCC,"

Copy of the News report of The Economic Times dated 05.02.2020 annexed herewith as Annexure P-2 (Page No. 40-41)

17. That as per the reports published on various media portals, that the Respondent No. 2 gave OTT/Streaming

platforms 100 (hundred) days to put a self-regulatory code in place.

“Over The Top (OTT) platforms feel the heat as the Ministry of Information and Broadcasting gives these players 100 days to set up an adjudicatory body along with finalising a standard code of conduct.”

Copy of the News report of The Hindu BusinessLine dated 03.03.2020 annexed herewith as Annexure P-3 (Page No. 42-44)

18. That Respondent No 1 & 2 gave a reasonable window of 100 (hundred) days to come up with a mechanism to deal with the adult and political content posted on various OTT/Streaming platform.

“Government gives 100 days to put mechanism in place to self-regulate adult entertainment and politically sensitive content”

Copy of the News report the Pune Mirror/India Times dated 03.03.2020 annexed herewith as Annexure P-4 (Page No. 45-47)

19. That the Respondent No. 3 pushed through the Self-regulatory code (Tier Two Version), which would lead to the setting up of DCCC for regulating/monitoring content on OTT/Streaming Platforms across India, without much deliberation and consensus. The Respondent no. 2's Digital Entertainment committee was informed about the Self-regulatory code (Tier Two Version) on 31.01.2020; a copy of the new code was shared with them on the 03.02.2020; and the code was released at the Respondent No. 3's flagship India Digital Summit event with only five signatories, on the 05.02.2020. Several OTT/Streaming Platforms like Netflix, AltBalaji, Arre, MX Player and Zee5 wrote to Respondent No. 3 and recorded their dissent to the code and asked the Respondent no. 3 to reconsider the code.

"As per MediaNama's sources, IMAI's Digital Entertainment committee was informed about the Tier-2 code on

January 31<sup>th</sup> 2020; a copy of the new code was shared with them on the February 3<sup>rd</sup>; and the code was released at the IAMAI's flagship India Digital Summit event with only five signatories, on the February 5<sup>th</sup>"

Copy of the News report of The Medianama dated 31.03.2020 annexed herewith as Annexure P-5 (Page No. 48-50)

20. That despite Respondent no. 2 repeated reminder, the OTT/Streaming platforms failed to comply by the 100 (Hundred) days ultimatum. Information and Broadcasting Minister Prakash Javdekar himself met the group of OTT/Streaming companies to finalize a self-regulatory code.

"Despite MIB's constant pushing and prodding so far, the OTT platforms failed to meet the 100 days deadline given in March by the I&B Minister, Prakash Javadekar, under whose chairmanship the

Ministry met with a group of OTT companies under the aegis of IAMA.”

Copy of the News report of the Best Media Info dated 22.07.2020 annexed herewith as Annexure P-6 (Page No. 51-56)

21. That the Defense Ministry had formally written to the Central Board of Film Certification (CBFC) urging that production houses may be advised to obtain an NOC from it before the telecast of any film, documentary or web series on Army theme in public domain

“It has been brought to the notice of this Ministry that some production houses, making films on Army theme are using contents which are distorting the image of the Indian Army. Therefore, the producers of movies/web series etc. based on Army theme may be advised the ‘NOC’ from Ministry of Defence before the telecast of any movie documentary on Army theme in public

domain. They may also be advised to ensure that any incident which distorts the image of Defence Forces or hurts their sentiment may be prevented.”

True Copy and True typed copy of the letter issued by Ministry of Defense to Censor Board of Film Certification for obtaining NOC dated 27.07.2020 annexed herewith as Annexure P-7 (Page No.57-59)

22. That the Ministry of Defense had written a letter questioning the government for requirement of a no-objection certificate for content in the “public domain” that features the armed forces. The Tribune a famous news reporter first covered the letter on 31.07.2020. The letter cited an episode of the ALT Balaij/Zee5 show XXX Uncensored which led to backlash months after the episode came out. Both streaming services censored the scene in June 2020 that caused the outrage amongst the public due to portrayal of Indian Army personnel and military uniform in an insulting manner.

“The Ministry of Defence has asked the Central Board of Film Certification,

Ministry of Information and Broadcasting and the Ministry of Electronics and Information Technology to advice production houses to obtain a no objection certificate (NOC) before the telecast of any film, documentary or web series based on Army theme.”

Copy of the News report of The Tribune dated 01.08.2020 annexed herewith as Annexure P-8 (Page No. 60)

23. That the recently released movie “Gunjan Saxena: The Kargil Girl” negatively portrayed the Indian Air Force (hereinafter referred to as “IAF”) by pedaling lies by taking the shelter of creative liberty. The IAF has written to the Central Board of Film Certification complaining against its “undue negative portrayal” in the movie, which was released on OTT/Streaming platform i.e. Netflix. The letter written by the IAF and accessed by ANI, read:

“In the aim to glorify the screen character of ‘Ex-Fit Lt Gunjan Saxena’,

M/s Dharma Productions presented some situations that are misleading and portray an inappropriate work culture especially against women in the IAF."

IAF in its letter stated that:

"that the organisation is gender neutral and has always provided an equal opportunity to both male and women personnel."

Copy of the News report of ANI news dated 12.08.2020 annexed herewith as Annexure P-9 (Page No. 61-63)

24. It is pertinent to mention that IAF's one of the retired wing commanders namely "Namrita Chandi (Retd.)" stated in her statement about the movie to Outlook India that:

"The entire narrative is skewed and as far from the truth as chalk and cheese. If this film attempted at infusing patriotism in the country's women, and I was a young woman, I would run as far away



from the Indian Air Force as possible! The film shows misogyny at its worst”

Copy of the Opinion report of Namrita Chandi (Rted.) in India Defence News dated 16.08.2020 annexed herewith as Annexure P-10 (Page No. 64-67)

25. That it is evident that content regulation/monitoring is the need of the hour, given that despite the fact that the Respondent no. 3 only has 294 members (as of 2018). It is also pertinent to mention that the Respondent No. 2 as being representative of the Indian Internet ecosystem. The Respondent no. 1 & 2 is inclined towards the self-regulation of OTT/Streaming platform across India, and Respondent no. 1 & 2 are engaging with the Respondent No. 3 for the finalization of a code.

Copy of the Respondent no. 3 member statistics published on their official website annexed herewith as Annexure P-11 (Page no. 68)

26. That the Respondent no. 1 & 2 has law and regulation for broadcasting Films, TV Serial, Sports, Parliamentary proceeding, and press. But evidently there is no such law or regularization of OTT/Streaming platforms.

Copy of the list of Act and codes available on official website of Respondent No. 2 annexed herewith as Annexure P-12 (Page No. 69)

27. In light of the aforesaid facts, the following issues have arisen:

- A. Whether the Right to freedom of expression could be absolute and without any restriction?
- B. Whether the petitioners had their Fundamental Duties under Article 51A to come before this court for seeking a regulation on the contents being published on OTT/Streaming Platforms?
- C. Whether there is any requirement of a board/institution/association to regulate and manage the contents on OTT/Streaming Platforms?
- D. Whether Apex Court being guardian of the Constitution is responsible to put obligation on OTT/Streaming Platforms to maintain social justice and trust upon judicial system?
- E. Whether OTT/Streaming Platforms should be obligated to take a No Objection Certificate before producing movies/series/trailers?



anything significant to regularize these OTT/Streaming Platforms.

- ii. That almost none of the OTT/Streaming platforms including Netflix, Amazon Prime, Zee5, and Hotstar have signed the self-regulation provided by Respondent No. 2 since February 2020.
- iii. That in the time of pandemic, the population consuming the contents on these OTT/Streaming Platforms has significantly increased and there is an urgent need for regularization and management of contents on these Platforms.
- iv. That it is pertinent to note that institution like Center Board of Film Certification and Broadcasting Content Complaint Councils have been monitoring & managing contents provided through movie release and television. However, contents are now available to OTT/Streaming Platform and it is going un-monitored due lack of regulatory body for these platforms.
- v. That no censoring allows exploitation of creative liberty and pushes for more ideas to get incorporated which in turn let writers, directors, and producers to

experiment limitless due to which there have been more violence, sex scenes, obscene languages & even characters smoking on screen- that would normally be cut or displayed alongside health warnings.

- vi. That due to no monitoring body, the language of the contents has become more colloquial. Visuals and dialogues are crueller and more barbaric. It is pertinent to note that this artistic liberty with no checks and balances also gets highly misused for commercial benefits of the OTT/Platforms.
- vii. That the age group watching OTT/Platforms are from no significant age and includes people from every age group, which makes it even important for the contents to be monitored and regularized.
- viii. That it is for the first time that the internet users in rural India have crossed that of urban India. In such a scenario, it is even more important to monitor such contents so to keep the value system intact.
- ix. That the OTT/Platforms are the future of the digital industry and will be the mode of entertainment in the coming years.

- x. That the movies/series/documentary from different countries is available on different platforms without any modification for the people of India which is making the situation worse for our society.
- xi. That Hotstar is airing foreign series like Game of Thrones, Amazon airing movies like The Wolf of Wall Street, Netflix airing movies like 365 Days etc in India which are having various scenes inappropriate for the households including nudity, sex, drugs, smoke, crime etc.
- xii. That even the Indian series and movies like Mirzapur and Paatal Lok on Amazon, Sacred Games on Netflix, Coffee with Karan on Hotstar are full of inappropriate contents for common households including obscene language, violence, sex, crime and adult talks and are not having any moderation by any government body which is harmful for society at large.
- xiii. In a case filed by Mehul Chowksi seeking postponement and preview of docuseries 'Bad Boy Billioners' before release, Delhi High Court while dismissing the plea refused to grant him a preview

stating that there are no regulations to control the content on OTT platforms.

- xiv. That OTT/platforms have become a hub of anti-Indian shows by disrespecting Defense forces including Army, Air Force, Navy and other forces protecting the nation from internal and external aggression.
- xv. That a movie named Gunzan Saxena: The Kargil Girl aired on Netflix is mostly based on the real life of veteran MsGunzan Saxena. However the movie have shown Indian Defense Forces in bad light in such a way that have forces Indian Air Force (IAF) to write a letter to Central Board of Film Certification, Dharma Production and the Netflix objecting to some scenes they felt showing Air Force in negative light and being discriminatory towards women officer.
- xvi. That there are numerous instances and example wherein these Platforms have taken the liberty to stream derogatory and negative content which disturbs the harmony amongst the people of India.
- xvii. That in a web series on ALT Balaji streaming platform, a woman (in the web series) has an illegal

extramarital affair with a man and forces him to wear the uniform of the Indian Army, which has the Indian emblem on the shoulder flap. The woman, then, can be seen tearing the uniform.

- xviii. That it must be noted that it is a complete abuse of liberty granted to the content creator. Defense Institutions are important pillar of India and disrespecting such institution shall be in violation to our constitution and poulder adverse affect on the moral of the defense forces and their families.
- xix. That obtaining no objection certificate from Ministry of Defense for producing the movies related to Defense Forces viz. Arm, Marine, Air forces and other security forces is necessary to protect the integrity of India.
- xx. That OTT/platforms have became a hub of Hinduphobic shows by disrespecting Hindus, its customs, rituals and other things which form the majority of the nation.
- xxi. That the Netflix aired Krishna & his Leela showing Krishna has sexual affairs with many women & one of them names as Radha. This audacity to openly target



Hinduism with lies, deceit, propaganda and insult to Hindu Gods and divines is dangerous for society.

- xxii. That the movies, series, etc. and their trailers and teasers are also releasing on video streaming platforms like YouTube which is directly available to every household due to OTT/Streaming Platforms and internet facilities.
- xxiii. That the trailer of Virgin Bhaskar Season 2 released on YouTube by AltBalaji dated 16.08.2020 is a prime example of censored porn and is selling Visual Sex in public domain.
- xxiv. That it is pertinent here to note that on 16.07.2018, a petition was filed in the Delhi High Court against the producers of the critically acclaimed series Sacred Games and Netflix alleging that the show maligns the reputation of former Prime Minister Mr. Rajiv Gandhi. Later, the counsel representing Netflix informed the Division Bench comprising of Justice Sanjiv Khanna and Justice Chander Shekhar that Netflix changed the word in the English subtitles in the fourth episode of the show that was alleged derogatory.

- xxv. That various countries including Singapore, United Kingdom, Australia, Indonesia has regulations to monitor contents available on OTT/Platforms in their respective nations.
29. That the petitioner is moving this Petition for directions to protect and safeguard the social fabric of the society at large and uplift the fundamental rights of all which is being violated in the name of freedom and creativity, since the Petitioner has no alternate efficacious remedy but to approach this Hon'ble Court under Article 32 of the Constitution of India for the reliefs prayed for herein.
30. That the petitioner due to their duty prescribed by the Constitution has moved this petition for the first time in respect of the subject-matter, i.e., for issuance of directive in respect of safeguarding fundamental rights of people at large as against the aforesaid Respondents.
31. That this Hon'ble Court has the jurisdiction to entertain and try this Petition.
32. That the petitioner craves for leave to alter, amend or add to this Petition.

33. That the petitioner seeks leave to rely on documents, a list of which, along with true typed copies has been annexed to this Petition.
34. That this Petition has been made bona fide and in the interest of justice.
35. That the petitioner has not filed any other Petition before this Hon'ble Court or before any other Court seeking the same relief.

P R A Y E R

THEREFORE, in the light of the aforementioned factual and legal position, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- i. Issue a Writ, Order, or Direction in the nature of Mandamus or any other directing Respondent No. 1 & 2 to constitute an autonomous body/board namely Central Board for Regulation and Monitoring of Online Video Contents (Hereinafter referred to as "CBRMOVC") to monitor and filter the contents and regulate the videos on various platforms for viewers in India.
- ii. The above mentioned board must be headed by an IAS officer of secretary level and shall further have members

from varied fields including movie, cinematographic, media, defense forces, legal field and field of education.

- iii. Issue a Writ, Order, or Direction in the nature of Mandamus or any other appointing an Amicus Curie to assist the court in this instant petition.
- iv. Issue a Writ, Order, or Direction in the nature of Mandamus or any other directing Respondent No. 3 to comply with the regulations made by CBRMOVC.
- v. Pass such other order(s) as this Hon'ble Court may deem fit in the interest of justice and equity.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:

Manju Jetley Sharma,