

IN THE HIGH COURT OF DELHI AT NEW DELHI
(IN THE MATTER OF PUBLIC INTEREST LITIGATION)

W.P. (C) No. _____ of 2018

IN THE MATTER OF: -

Justice for Rights Foundation

...Petitioner

Vs.

Union of India

...Respondent

SYNOPSIS AND LIST OF DATES

The present Petition is filed for seeking guidelines in order to regulate the hitherto unregulated, uncertified, sexually explicit, vulgar, profane and legally restricted contents broadcasted on the online platforms including (but not limited to) Netflix, Amazon Prime Video etc., or in the alternative; seeking a writ/order/direction in the nature of writ of mandamus or any other writ/order/direction in the similar nature to the respondents to frame legal provisions/guidelines in order to regulate the said online platforms and contents broadcasted on the online platforms, and; direct the respondents to pass necessary directions to all online platforms to remove such contents with immediate effect.

That the said online platforms broadcast content which must carry reasonable restrictions as enshrined under Article 19(2) of the Constitution of India and be granted certificate specifically dealing with such web-exclusive content so that it complies with certain standards and regulations in order to not adversely affect the population in general and children/minors/students/youth in specific.

The issue seeks urgent intervention of this Hon'ble Courts due to the apathy and inaction of the authorities as despite making representations to the Ministries, no reply has been furnished and no efforts have been made to remove the said content or to regulate the said online platforms.

LIST OF DATES & EVENTS

Date	Event
21.03.1952	The Cinematograph Act, 1952 Act came into effect to regulate the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs
--.--.1952	The Central Board of Film Certification has been established with power to grant Certificate for exhibition after the examination the films.
17.10.2000	The Information Technology Act, came into effect on 17/10/2000
06.01.2016	Online platform Netflix launched in India
15.12.2016	Online platform Amazon Prime launched in India
23.08.2018	RTI application in Ministry of Information and Broadcasting, filed by the Petitioner on 23.08.2018 seeking rules/regulations which govern the online platform and its contents
15.09.2018	Reply furnished by the Ministry of Information and Broadcasting to the Petitioner's RTI application stating that -----
28.09.2018	On the receipt of the RTI reply dated 15.09.2018, the Representations sent to the Respondents to bring the issue to their notice
--.10.2018	Present Writ Petition

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WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA SEEKING GUIDELINES IN ORDER TO REGULATE THE HITHERTO UNREGULATED, UNCERTIFIED, SEXUALLY EXPLICIT, VULGAR, PORNOGRAPHIC, PROFANE AND LEGALLY RESTRICTED CONTENTS BROADCASTED ON THE ONLINE PLATFORMS INCLUDING (BUT NOT LIMITED TO) NETFLIX, AMAZON PRIME VIDEO ETC., OR IN THE ALTERNATIVE; SEEKING A WRIT/ORDER/DIRECTION IN THE NATURE OF WRIT OF MANDAMUS OR ANY OTHER WRIT/ORDER/DIRECTION IN THE SIMILAR NATURE TO THE RESPONDENTS TO FRAME LEGAL PROVISIONS/GUIDELINES IN ORDER TO REGULATE THE SAID ONLINE PLATFORMS AND CONTENTS BROADCASTED ON THE ONLINE PLATFORMS, AND; DIRECT THE RESPONDENTS TO PASS NECESSARY DIRECTIONS TO ALL ONLINE PLATFORMS TO REMOVE SUCH CONTENTS WITH IMMEDIATE EFFECT.

TO,

The Hon'ble Chief Justice of Delhi High Court

And to the Companion Justices of the said Court

The humble Petitioner of this Petition

MOST RESPECTFULLY SHOWETH AS UNDER:

1. That the Petitioner is a Non-Governmental Organization constituted as per the provision contained in the Societies

Registration Act, 1860 with aim to serve for the welfare of the society with the objective of becoming a helping hand for the those in need. The Petitioner with one of its objectives 'To work for Protecting Human Rights and Fundamental Rights' has taken up this issue affecting people at large. The Petitioner believes that it is its duty to set into motion the legal process when grave issues which affect the society at large are brought to his notice which, in its opinion, cause a miscarriage of justice. It is this duty that it seeks to perform in the instant case.

2. The present Petition is filed before this Hon'ble Court for seeking guidelines in order to regulate the hitherto unregulated, uncertified, pornographic, sexually explicit, vulgar, profane and legally restricted contents broadcasted on the online platforms including (but not limited to) Netflix, Amazon etc., or in the alternative; seeking a writ/order/direction in the nature of writ of mandamus or any other writ/order/direction in the similar nature to the respondents to frame legal provisions/guidelines in order to regulate the said online platforms and contents broadcasted on the online platforms, and; direct the respondents to pass necessary directions to all online platforms to remove such contents with immediate effect.

3. The writ petition to the effect of the writ petitioner has no malafide/personal interest in the litigation and the petition is not guided by self-gain or for gains of any other person/institution/body and that there is no motive other than of public interest in filing the writ petition.
4. The Petitioner herein are concerned about the rising amount of vulgar, pornographic, sexually explicit content, profane, legally restricted, religiously forbidden content being broadcasted without any certification and in the absence of regulations/laws on web-based platforms (hereinafter called as “online platforms”) including (but not limited to) Netflix, Amazon Prime Video (also referred to as “Amazon” hereinafter), Hotstar etc.
5. That the said online platforms are broadcasting content which is self-generated and also stream third party content in form of Internet/Web-series, movies, videos, episodes etc. and the said streaming is not regulated; thereby giving them a virtual license to stream web-series, movies, videos and episodes without any certification by any certifying authority, not regulated by law and devoid of any guidelines by the Courts.

6. That the content broadcasted on web based shows including (but not limited to) *Sacred Games*, *Vikings*, *Game of Thrones*, *Spartacus* etc. contains content which is full of vulgarity, sexually explicit, pornographic, profane, virulent, religiously forbidden, morally unethical, depictive of women in objectifying manner, content which is deliberately created with scenes of nudity, scripts containing abusive language in order to attract more subscribers and generate profit. An instance can be taken from “*Charlie and the Chocolate Factory*” where the scene depicting animal (the holy ‘Cow’) abuse is available for view (for viewers of age 7 years and above) on Amazon Prime Video. A true copy of the few screenshots from various shows, videos available for unrestricted and unregulated view is marked and annexed herewith as ANNEXURE P-1 (colly.)
7. That the content is violate of provisions of Indian Penal Code, 1860 (hereinafter called as “IPC”), Information technology Act, 2000 (hereinafter called as “IT Act”), The Indecent Representation of Women (Prohibition) Act, 1986 etc.
8. The facts stated in the present Petition have been gained from the personal experiences of the Petitioner herein, online articles, audio-videos available on the internet. For further investigation, an RTI dated 23.08.2018 had been filed, seeking information

about the name and details of the Licensing authority which give license for the content promoted/transmitted/telecasted on online web streaming platforms like Netflix, Amazon Prime, Hulu etc. and also the Act(s), Laws, Bye-Laws, Rules and Standing Orders which govern and regulate the content on online web streaming platforms. A true copy of the RTI dated 23.08.2018 filed in Ministry of Information and Broadcasting and the reply dated 15.09.2018 and its true typed copy is marked and annexed herewith as ANNEXURE P-2 (colly).

9. That the present Petition has been filed in the interest of citizens in general and children/minors/students/youth in specific. The above-mentioned citizens are incapable of accessing the Court themselves due to lack of awareness, paucity of time and resources among other reasons.
10. The present Petition may affect the viewer's viewing such unregulated and restricted content, subscribers who have subscribed to the channel/online platforms etc.

BRIEF FACTS OF THE CASE: -

11. That the instant Writ Petition seeks permission from this Hon'ble Court for seeking guidelines in order to regulate the

hitherto unregulated, uncertified, sexually explicit, pornographic, vulgar, profane and legally restricted contents broadcasted on the online platforms including (but not limited to) Netflix, Amazon etc., or in the alternative; seeking a writ/order/direction in the nature of writ of mandamus or any other writ/order/direction in the similar nature to the respondents to frame legal provisions/guidelines in order to regulate the said online platforms and contents broadcasted on the online platforms, and; direct the respondents to pass necessary directions to all online platforms to remove such contents with immediate effect.

12. That RTI dated 23.08.2018 filed in Ministry of Information and Broadcasting seeking information about the name and details of the Licensing authority which give license for the content promoted/transmitted/telecasted on online web streaming platforms like Netflix, Amazon Prime, Hulu etc. and also the Act(s), Laws, Bye-Laws, Rules and Standing Orders which govern and regulate the content on online web streaming platforms and the reply dated 15.09.2018 wherein the Respondent had stated that *“intermediaries are regulated under the IT Act,2000 and the Rules made thereunder. Section 79 of the IT Act puts onus on the intermediaries to observe due*

diligence while discharging their duties under the Act and observe guidelines as prescribed by the Central Government”.

13. That the representations dated 28.09.2018 regarding the issue, that the *“content that is been broadcasted on multiple online platforms has been violative of established legal code and public morals. Such platform include (however not restricted to) Netflix.com, Prime Videos (by amazon.com). Some of the content on these websites is sexually explicit, violent and vile.”*

14. That the Petitioner also prayed in the representation that the Respondent may kindly reply with the sanctions or Regulations that the Ministry has or is planning to bring to curb such content on these websites and online video portals. Also, provide us with the date of application of any regulation that has been enforced by the Ministry on these websites, with the Ordinance No./Resolution No. have been sent by Petitioner herein to the Respondents and those were not replied till date. Thereafter, the petitioner is placing this writ petition before the hon’ble Delhi High Court under Art. 226 of the Constitution of India. The representations are herewith marked and annexed as ANNEXURE P-3 (colly).

15. That it is submitted the Petitioner have no personal/vested interest in the present Petition, expect for getting this to the notice before this Hon'ble Court that the respondents herein have failed to address the issue so far.
16. That section 79 of the IT Act does not apply to all the online platforms in the present case as a blanket provision as the platforms stream third party content and also give self-generated content.
17. That no efforts are made to regulate the said online platforms or to remove such legally restricted content to put an end to the problem and thus, such platforms virtually get another opportunity to perpetuate the illegality.
18. That such online platforms operate unregulated and unchecked which needs to be tackled on urgent basis.
19. In the light of above stated facts it is submitted before this Hon'ble Court that there remains no reason to continue with the broadcasting of content on the said online platforms without guidelines, regulations and certifications.

20. That this writ petition is, therefore, being filed on the following, amongst other, GROUNDS: -

A. BECAUSE as per Article 19(2) of the Constitution of India, the said media is bound by reasonable restrictions 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.

B. BECAUSE the said online platforms stream content which is full of vulgarity, sexually explicit, pornographic, profane, virulent, religiously forbidden, morally unethical, depictive of women in objectifying manner, content which is deliberately created with scenes of nudity, scripts containing abusive language in order to attract more subscribers and generate profit.

C. BECAUSE the said online platforms are not regulated and due to lack of specific certifications, such web-exclusive content goes unchecked due to lack of legislation, guidelines or provisions of laws specifically dealing with such content on the said online platforms.

D. BECAUSE as per the reply dated 28.09.2018 to the RTI filed by the Petitioner, even if section 79 of the IT Act were to apply on the

online platform as stated by the Respondents; the online platforms have still failed to exercise due diligence as specified under s. 79(2)(c) of the IT Act.

E. BECAUSE if section 79(3)(b) as per the RTI reply dated 28.09.2018 is the governing provision to platforms in all circumstances, the Central government has failed to notify the online platforms of the restrictions which must be applicable on such platforms and to direct the removal of restricted content.

F. BECAUSE this Hon'ble Court has time and again tried to fill in the gap till suitable laws are enacted by legislature and this Court's most basic duty is called for and the Court with effective jurisdiction can step in.

G. BECAUSE in Vishaka v. State of Rajasthan (1997) 6 SCC 241 the Court gave detailed guidelines and laid down as:

“18. Accordingly, we direct that the above guidelines and norms would be strictly observed in all workplaces for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy this field ...”

H. BECAUSE in Vineet Narain v. Union of India (1998) 1 SCC 226

the Court ruled,

“49. There are ample powers conferred by Art. 32 read with Art. 142 to make orders which have effect of law by virtue of Art. 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Art. 144 of the Constitution. In a catena of decisions of this Court, this power has been recognized and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role.”

I. BECAUSE in Union of India v. ADR (2002) 5 SCC 294 this

Hon’ble Court said,

“20. However it is equally settled that in case the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted.”

J. BECAUSE the said online platforms are running unregulated devoid of any checks and balances established by the law of the land and thus, needs to be banned with immediate effect till the laws are put in place or the guidelines are framed by this Court.

K. BECAUSE even if an online platform exercise self-regulation, it still has to comply with established legal procedure and provisions of relevant laws in order to broadcast content on its streaming platform.

L. BECAUSE the fundamental right to carry on trade or business does not extend to carry on trade or business of products or equipment which would interfere with the safety, health or peace of the citizens.

M. BECAUSE the said content on such online platforms shows women in bad light and merely as an object which is also violative of their Fundamental Right to live with dignity as enshrined under Article 21.

21. That the Petitioner has not filed any writ petition in any other court or any other petition of similar nature in any court of law apart from the instant writ petition before this Hon'ble Court.

22. That the Petitioner herein has the means and is in a position to pay the costs, if any, imposed by the Hon'ble Court.
23. That the present Petition under Article 226 of the Constitution of India is the appropriate remedy and no other equally efficacious remedy is available to the Petitioner given the far-reaching public interest.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

1. Frame guidelines in order to regulate the said online platforms and contents broadcasted on the online platforms,

Or in the alternative;
2. Issue a writ/order/direction in the nature of writ of mandamus or any other writ/order/direction in the similar nature to the Respondents to frame legal provisions/guidelines in order to regulate the said online platforms and contents broadcasted on the online platforms, and;
3. Direct the respondents to pass necessary directions to all online platforms to remove legally restricted contents with immediate effect, and;
4. Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.