

Selective Banning of OTT Services

Why in news?

Recently, Telecom Regulatory Authority of India (TRAI) released a consultation paper on 'Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services'.

What is OTT?

- OTTs are Over-The-Top media services that provides audio-visual streaming services directly to customers over the web/internet.
- Examples- Disney+, Hulu, HBO Max, Amazon Prime Video, etc.

Significance of OTT

- **No pauses** - OTT technology will adjust to the network performance of the entire chain in real-time so that the video and audio are delivered without pauses caused by buffering.
- **Multitude of options** - With OTT video delivery technology, people have the ability to view content on a variety of platforms such as: Smart TVs, Roku, computers, tablets, mobile phones, or gaming consoles.
- **Control over choosing the content** - They also have the option to access multiple distributors for specialized programs and view channels by "app switching".
- **Overcomes the limitations of STB** - OTT systems overcome the limitations of the single operator set top box (STB) technology required by IPTV.

What is the legality of internet shutdowns in India?

Selective Banning is the concept of blocking certain OTT services in specific regions or geographies during times, such as that of public unrest or public disorder.

- **Section 144 of CrPC** - Till 2017, shutdowns were imposed largely under Section 144 of the Code of Criminal Procedure (CrPC).
- It gave the *police and the District Magistrate* the powers in order to prevent unlawful gathering of people and also to direct any person to abstain from a certain activity.
- **The Telegraph Act** - The method to suspend telecom services in case of *public emergency or public safety* and the suspension of Internet services in India was notified under Section 7 of The Telegraph Act, 1855, in 2017.
- The rules were named *Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.*

- The efficient authority who are able to order such directions are:
 - The Secretary in the Ministry of Home Affairs (Central Government)
 - The Secretary of the Home Department to the concerned State Government (State Government)
- The rules mandate that the order passed by the efficient authority must contain reasons for such direction and a copy of the order must be forwarded to a Review Committee by the next day.
- *The Review Committee* is bound to meet *within next 5 working days* of the issuance of order and make a record that whether the suspension has been made conforming with the provisions under section 5(2) of the Indian Telegraph Act.
- **Section 69 of the IT Act, 2008** - It allows the government to issue content-blocking orders to online intermediaries such as Internet Service Providers (ISPs), telecom service providers, etc.

What are the issues with selective banning?

- **Effect on fundamental right** - Selective banning of OTTs impinges on the right to speech and trade under *Article 19*.
- **Technical issues** - OTT service providers often use dynamic IP addresses to thwart cyber-attacks and may even host multiple apps or OTT services on a single IP.
- Blocking of any such specific IP address may lead to unintended blocking of other apps which are using the same IP address as well.
- **Fake information/ misinformation**- Without access to familiar apps, the affected populace may fall prey to disinformation/misinformation or rumours.
- **Disruption of commercial operations** - It would severely disrupt commercial operations of MSMEs, entrepreneurs, exporters, etc. as they often rely on OTT apps for orders, logistics, taxation, and payments.
- **Unsuccessful** - Selective banning is not likely to be a successful policy tool to counter malicious actors at times of public unrest because the banned apps can be accessed using proxy servers or 'virtual private networks'.
- This may lead to copycat versions of popular apps which may not have any local presence within India and might be non-compliant with Indian regulations.

What about the constitutional validity of selective banning?

- **Anuradha Bhasin case 2020**- The court declared the internet to be essential in today's life and thereby freedom of speech and expression and freedom to practice any profession, occupation or trade on the internet is a part of fundamental right under Part III of the Constitution.
- The apex Court further stated that imposition of *Section 144 can not be used as a mechanism to avoid genuine protest* which is permitted under the Constitution.
- **Proportionality principle** - The court ordered to follow the test of Proportionality to satisfy that no kind of violation of natural justice exists.
- **Supreme Court's triple test** - Lawfulness, necessity, and proportionality are to be analysed to qualify as a 'reasonable restriction' under Article 19 (2) of the Constitution.

What steps can be taken?

- A more balanced and nuanced approach favouring minimal interventions may be adopted by the government.
- The government under *Section 69A of the IT Act* can direct OTT services to remove specific pieces of content from their platforms than selectively banning entire app or services.

Quick facts

The Telecom Regulatory Authority of India (TRAI)

- It is a statutory body established by the *Telecom Regulatory Authority of India Act, 1997*.
- **Aim** - To regulate telecom services, including fixation/revision of tariffs for telecom services which were earlier vested in the Central Government.
- The TRAI Act was amended in 2000 to establish *Telecommunications Dispute Settlement and Appellate Tribunal (TDSAT)*.
- TDSAT adjudicates any dispute between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers, and hear and dispose of appeals against any direction, decision or order of TRAI.

References

1. [The Hindu Business Line| Selective ban on OTT](#)
2. [IE| Regulating OTT Services](#)