

Jurisdictional Challenges in Legal Disputes Involving Digital Platforms Operating Globally Vis A Vis Enforcement of Legal Approaches Across Different Jurisdictions

Ms. Neha Khanna*

*Research Scholar, Department of Laws, Panjab University, Chandigarh, neha.khanna1312@gmail.com, 9026383859.

ABSTRACT

Every country around the globe is now host of multiple digital platforms and after years of denial, now the governments are inclined towards regulation of diverse digital platforms to maintain social order, national security and protection of individual rights. Today one of the greatest and the difficult goal is to preserve “digital sovereignty”. It is well evident that there is diversity in the international regime with respect to the approaches to regulate the digital platforms. Hence this research paper will take a tour at divergent approaches of regulation of different states with an attempt to identify the basic trends across the global database related to conflicting jurisdictional approaches and to explore how these approaches diverge and interact in a global setting. Also, research paper will explore the five global regulatory approaches. Finally, the paper will provide a deep insight to a potential model approach for regulation of these online platforms.

1. INTRODUCTION

Due to the increase in the use of technology and internet the online OTT curated content platforms like Amazon prime video, Facebook, hotstar, Instagram, Zee5, Voot, TikTok and WeChat etc. have found their niche in India and consequentially, become a ubiquitous presence in everyone's daily life. The reasons for the spur in usage of these platform are very obvious i.e. firstly the outbreak of COVID-19 pandemic and secondly that these platforms provide their users the freedom to view what they want without any restrictions as such. Since these platforms do not require any sort of license nor do they need to have pre-screening rounds, hence they used to experiment with the type of content which they want to create knowing the taste of their viewers which cannot be any way possible to experiment via existing mediums like cinema and satellite television etc.

The governments have time to time took note of the difference between OTT platforms and other traditional mediums of entertainment like cinema or satellite television platforms but they were seen very slow at the uptake. But now its high time to govern the digital platforms and services as a central priority.

National governments across globe have shown different set of ambitions with respect to digital platforms. Some of them have experienced the hegemony of these platforms over the people and creating a rift between citizens expectations and government capacity thus effecting the social contract of the state. Others thought their emergence as an unwelcome challenge to central. Therefore, different national governments have different frameworks according to the differences in their societal patterns, cultural and political ideas. For eg. USA is greatly known for the freedom of speech and free market. The US government is hesitant to set limits for these platforms as they are the great contributors in the economy. Hence, they are themselves making their own set of rules and liabilities, thus free from any involvement of an intermediary.¹ But, on the other hand, there are countries like Nigeria and Singapore that are constantly making new enactments to create state control over these platforms. Under such governance, OTT platforms are instructed to proactively monitor and broadly create categories of online content. Hence, striking a balance between the freedom of these platforms and state control is definitely a challenge for the future regulation for these platforms. There are so much diversity in the style of governance, that it is a budding question that whether the diverse approaches to deal with these platforms could co-exist. The various international organisations and group of countries are trying to get commonality so as to address this growing issue globally but it is no wrong to say that they are in their infancy. It is difficult to harmonize global internet related approaches. One- fit approach thus have failed with respect to diverse local social contexts, sometimes end up with catastrophic results like in Myanmar, Somalia and most recently in Israel- Hamas conflict.

Web and the social media platforms have done a great job as a powerful tool for freedom of expression, right to access information and to coordinate globally on challenges like climate change, ozone layer depletion and sustainable development. But the new digital age and advent of new digital platforms have created new challenges for the sovereign states to respect the freedom of speech and expression of their citizens and at the same time set rules and regulations to protect them.

2. GLOBAL REGULATORY TREND-

There is no doubt an international consensus around the globe with respect to the idea that there is a dire need to take action to tackle the problems produced from of digital platforms. But the adoption of diverse approaches so far threatens the future of the sovereign power as well as to the global web. There is no such common regulatory mechanism to deal with these platforms. the different countries can't be clubbed together because of their regional, linguistic and other major differences.

¹ This tension is particularly evident at present, with the upcoming entry into force of the EU Digital Services Act. The act marks a shift away from the model of the EU E-Commerce Act, which exempted platforms for intermediary liability.

But there are some of the features that are sure in common i.e. imposing fines on platforms for illegal and obscene content or deterring them with blocking of their services or blocking those platforms altogether. Hence, it is mostly seen that Global approaches show much coherence to identify and to deal with sanctioned content rather than tackling systems so as to prevent or mitigate the spread of such illegal content. There are some governances with more holistic approaches that consider regulatory approaches with respect to “business practices, data privacy and antitrust that go beyond questions of content like EU Digital Services Act (DSA).”²

Undoubtedly, there is absence of ‘multi-stakeholder participation’ in regulatory mechanism and is of great concern because of the fact that who to include and when, where to converge the participation into policy making processes, and how to maintain a good balance between flexibility and fairness.”³

The overview of the global regulatory trend have given a holistic view upon the types of the regulatory approaches applicable globally.

There are five approaches to the same.

Regulatory Approach	Main characteristics
1. Strict regulatory approach	Strict Prison sentences for non-compliance of the regulations; legal but harmful content in scope; little regulation
2. Independent regulatory approach	More emphasis on freedom of expression, independent oversight
3. User’s rights approach	Little monitoring, transparency, re-addressal and appeal system
4. Extensive platform monitoring approach	Extensive monitoring required; legal but harmful content is under scope too
5. Content moderation with data localization	No independent check, powers blocking the access to platforms, data localization

Approach 1: Strict regulation

Countries like Indonesia, Russia, china, Iran, Nigeria, Singapore, south Korea, Tanzania, Syria and Philippines adopt the strict method approach. Regulatory mechanism in this type of approach includes-

- Imprisonment of the platform’s employees for non-compliance with content moderation, like requirements or orders
- Platforms are required to remove or deal with the content that is not illegal but is harmful in some way or the other.
- No difference in the regulatory code between types of online platforms
- No requirements on platforms to localize data or to implement appeals mechanisms.

Hence, strict custody regimes governance are inclined towards strengthening their state control and judicial power over online platforms by reducing freedom and to maintain social order.

Approach 2: Independent regulation system

Countries like Ireland, European union, UK, Austria, Germany, France and Canada follows independent regulation method. Regulatory mechanism in this type of approach includes-

- Constitution of independent regulatory authority.⁴
- Guaranteed freedom of expression along with limitations and restrictions. Hence, maintaining a balance.
- Different types of platforms having different regulatory code too.
- Content that is legal but is harmful for social control is under scope but does not require data localization and extensive monitoring.

This type of approach is mainly possible in liberal democracies that tend to create a balance between freedom of speech and expression and state control by limiting the roles of regulator at a certain level. For instance, the Australian e-Safety Commissioner’s powers are not absolute if it will “ ‘infringe any constitutional doctrine of implied freedom of political communication’.”⁵ Also, “Ireland’s Online Safety and Media Regulation Bill provides that platforms have right to notify the regulator if, according to them, any particular regulation causing infringement of users’ freedom of expression.”⁶ Hence, independent regulatory approach guarantees the freedom of expression and on the other hand have state control too by making

² EU Digital Services Act (DSA), EU Digital Markets and European AI Acts.

³ Chatham House Director’s Office and International Law Programme (2021), *Reflections on building more inclusive global governance: Ten insights into emerging practice*, Synthesis Paper, London: Royal Institute of International Affairs, available at: <https://www.chathamhouse.org>.

⁴ OECD (2019), ‘Independent sector regulators and competition’, December 2, 2019, available at: <https://www.oecd.org/daf/competition/independent-sector-regulators.htm>.(last visited on June 15, 2021)

⁵ Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019, 16/233 and 474.38

⁶ Online Safety and Media Regulation Bill, Part 12.

“not illegal but harmful” content under the ambit of the scope too. But the phrase “legal but harmful” has created a lot of debate around the globe because of the “UN Special Rapporteur on the Protection and Promotion of Freedom of Expression and the UN Human Rights Committee” that provides “states shall not in any way force the companies and platforms to remove speech that is not explicitly illegal.”⁷

Approach 3: User rights and capacities i.e. self- regulation system

countries like India, Bangladesh, Russia, Poland, Brazil, New-Zealand, Indonesia, China, Austria, UK, Australia, Israel and France adopt the most common approach i.e. user rights and capacities approach. Regulatory mechanism for such type of approach is-

- i. Illegal content to be removed after notification rather than making requirements for monitoring.
- ii. Empowering platform users with mandatory transparency, redress and appeal.
- iii. No imprisonments, sanction like fines are levied from platforms in case of non- compliance.
- iv. No requirement of data localization

These category regimes follows a diverse combination of regulatory approaches with mandatory processes and mechanisms which aim to strengthen the tools available to users and civil society while interacting with online platforms. The four commonly used tools are- transparency, complaints procedures, tenure for service and appeal. The user's rights and capacities method of approach puts the burden on the online platforms themselves to how to improve and what to improve. This can also be referred as self- regulation method leaving the execution of the same to the platforms but within the domain of set boundaries. “These tools are often called as ‘middleware’ which could sit independently of major platforms.”⁸ but it is to be noted that here that now legislatures are thinking them to give proper regulatory mechanisms with codified legislation instead of self-regulatory code to have proper control over it.

Approach 4: Extensive platform monitoring

Countries like Iran, Albania, China, Nigeria, Belarus, Russia, Mali and South Korea adopt the method i.e. extensive monitoring by platforms. Regulations under this approach are-

- i. Content moderation required.
- ii. Content moderation reports is mandatory.
- iii. Legal but content that is against the maintenance of social order is under scope.
- iv. No prison sentences.
- v. Sanctions include, restriction access to platforms or blocking etc.

The regimes under the approach of platform monitoring provides not a clear definition of sanctioned content and hence, it is always a matter of confusion in such cases. “This approach basically mandates the proactive content moderation by the platforms itself so as to remove what is against the regulated behaviour or content.”⁹ Proactive content moderation means, that the platform will remove the content before it is posted in social media. Many governance have this feature of proactive content moderation, but is highly restricted to CSAM (Child sexual abuse material), copyright and terrorism. Hence, the decisions made at both state and platform level will be unclear to the users and thus create the state of confusion.

Approach 5: Data localization as part of content moderation regulation

Countries like Vietnam, Turkey, Pakistan, Venezuela, and Kazakhstan adopted the method of content moderation but with localizing data as well. Regulatory code under this approach is-

- i. Data localization mandatory.
- ii. Little consideration on freedom of speech and expression
- iii. Little proactive content moderation
- iv. Illegal content to be removed on notification.
- v. No independent regulatory authority
- vi. No imprisonment, sanctions include only blocking and restriction on access to the platforms.

The EU's data protection legislation provides a provision to restrict the transfer of data, on the other hand some countries have made the provision of data localization mandatory for certain types of data, including financial or medical.”¹⁰ This approach to content regulation generally requires platforms to store, and likely provide access to, data on territory over which

⁷ UN Office of the High Commissioner for Human Rights (2018), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, available at: <https://ap.ohchr.org/> (last visited on May 23, 2021)

⁸ Fukuyama, F. et al. (undated), *Middleware for Dominant Digital Platforms, A Technological Solution to a Threat to Democracy*, Stanford, CA: Stanford University Cyber Policy Centre, available at: <https://fsi-live.s3.us-west-1.amazonaws> (last visited on May 19, 2021).

⁹ The Protection from Internet Falsehood and Manipulation Bill 2019, C770, ii, vi.

¹⁰ Pfeifele, S. (2017), ‘Is the GDPR a data localization law?’, IAPP, available on: <https://iapp.org/news/>. (last visited on April 23, 2021)

a state has legislative authority.”¹¹ Data localization welcomes risks too as centralizing the data infrastructure cause threat to that infrastructure as well.

Hence, after analysing separately all the approaches of regulatory regime with respect to online platforms, it can be rightly said that there is no single “one size fit to all” approach that can be adopted unanimously. It is also unrealistic to think so.

3. THE BENCH MARK PATHWAYS

Because of title of great digital powers, the decisions made by the EU, China, UK, US with respect to online platforms regulation may play significant role in influencing and shaping the future of platform governance.

➤ EU’S Approach-

- i. EU has blended mode of regulatory approaches with an aim to balance with state control and the protection of its citizens.
- ii. EU’s core agenda is human rights which give undisputed legitimacy to the other residencies to incline towards it.
- iii. “European regulation is both values-driven – reflecting the EU’s democratic values, human rights and the plurality of opinions among EU member states – and strategies.”¹²
- iv. EU’s e-Commerce Act (2000) provides Protections from intermediary liability.
- v. They started their initiatives in 2018 via voluntary Code of Practice on Disinformation; the world wide-reaching Digital Service Act along with Digital Markets Act, begins its application in 2023; and, recently provisions are made to address CSAM online.
- vi. The DSA in particular obligate the digital platforms to be transparent with regulators and users both and to briefly discuss about their practices related to content moderation and policies to deal with illegal content after being notified.
- vii. Other additional obligations like mandatory risk assessment is also included.

➤ China’s Approach-

- i. China’s main political agenda is to maintain the political stability by the Communist party of China, hence the domestic regulatory laws for digital platform are framed accordingly. Hence, any material that is “political harmful” is censored in China in a very strict sense.
- ii. The user’s right to have access to the digital platforms required extensive information i.e. name, age, profession, gender, address, phone no.etc.
- iii. Improved user capabilities, transparency, data protection, extensive state surveillance, control of online space etc. comes under the ambit of State alone, and it is undoubtedly said that china do not follow human rights approach and hence, is a non-complaint of human rights agenda.
- iv. Domestic internet greatly controlled by state but it can’t be replicated by other small countries because of the lack of resources and domination of US companies entire globe. Also, china has the greater control on technology than any other governments.
- v. Chinese government, on one hand is dependent on the digital platforms to cooperate so as to have effective control on digital content. On the other hand, this government keeps an eagle eye on the influence by larger platforms and limit them with their strict codes.
- vi. Chinese focus has shifted from punishing the content up-loaders to making those liable who host that particular harmful content.
- vii. Platform companies operating domestically have to abide by the prescribed regulatory code requirements. In addition to this, these platforms are empowered to formulate and modify their own rules systematically with time so as to ensure that their platforms are risk- free from any governmental action.

➤ UK’s APPROACH-

- i. The UK’s approach is somewhat different which is mostly driven by a public conversation between the citizens and the decision- makers about online harms and is heavily dependent on the criminal legal norms.
- ii. “With respect to the regulatory mechanism of the digital platforms in UK, it is not inclined towards standard human rights approaches but the main focus is on maintaining social order and scrutinizing the control on large platforms by other global approaches.”¹³ The human rights approach is mainly seen in US and EU based models. But the shift is seen from EU’s model to Chinese model.”¹⁴
- iii. The spur of online harms in UK gave birth to the Online Safety Bill. The bill became law in October, 2023.

¹¹ Internet Society (2020), ‘Internet Way of Networking Use Case: Data Localization: How mandatory data localization impacts the Internet Way of Networking’, September 30, 2020, available at: <https://www.internetsociety.org/> (last visited on Jan 12, 2021)

¹² European Commission, ‘The Digital Services Act package’, available at: <https://digital-strategy.ec.europa.eu/en/> (last visited on May 23, 2021)

¹³ UK Parliament (2019), ‘Emerging trend in economic crime affecting consumers: Martin Lewis fake adverts scamming vulnerable consumers out of £1000s’, written parliamentary evidence submitted to the House of Commons Treasury Select Committee by MoneySavingExpert.com, available at: <https://committees.parliament.uk/> (last visited on May 23, 2021)

¹⁴ Schlesinger, P. (2022), ‘The neo-regulation of Internet platforms in the United Kingdom’, *Policy & Internet*, 14(1), p no. 47–62, available at: <https://doi.org/10.1002/poi3.288>.

- iv. "Due to this, dispute occurred and this led to the formation of the two groups- one that holds views in favour of mechanisms that are basically, issue- specific. Second, hold the opinion in favour of liberty, freedom of expression, privacy, Article 19 etc."¹⁵
- v. Platform regulation in UK have strong consonance with criminal law frameworks. Example- criminalization of particular type of user behaviour and digital content.

Disinformation is now covered under a new criminal offence of foreign interference, established in the National Security Act of July 2023¹⁶. Tackling cyber flashing also required a new criminal offence.¹⁷ Legal but harmful content was dropped from the Online Safety Bill before its approval.¹⁸

- vi. UK approach to regulation of digital platforms is considered to be the best practice and is accepted by Australia, Fiji and Ireland.

➤ US APPROACH-

- i. US approach towards content and online platforms regulation is the balance between the state power to maintain social order and at the same time guarantees the individuals their right to freedom and speech, right to promote business, etc. thus human rights-based approach is followed largely based on US constitution (1st Amendment) and Bill of rights Declaration.
- ii. USA have different states. So, different states adopt different models of regulation. Example- California and Florida take different approach with respect to purpose.
- iii. US is the host of almost every social media platform i.e. twitter, facebook, snapchat, whatsapp, instagram, pinterest etc. but the advent of the OTT platforms i.e. digital platforms have failed in regulation globally."
- iv. "The both groups, democrats and republics in US, are against the full autonomy on the digital platforms with respect to content moderation."^{19,20}
- v. "The EU-US Trade and Technology Council does act as a forum for debate and exchange on digital transformation and cooperation."²¹

NEED FOR CONSENSUS AND COORDINATION-

After analysing the types of approaches in detail and the current global trends (EU, China, UK AND US) in regulation of digital platforms, it can be said that despite having differences in approaches and opinions, the countries are inclining towards greater alignment with coordination. "Research argues that by 2030, the concept of global internet will make its place in US Sustainable Development Goals."²²

4. ESTABLISHING POTENTIAL GLOBAL FRAMEWORK VIS A VIS HUMAN RIGHTS BASED APPROACH-

Human rights approach could be the potential and best fitted global approach which strikes balance respecting the constitutional freedoms and the statutory powers. But it can't be said that it is the easiest approach to be followed universally because it is complicated and is avoided by states continuously. Even domestically too, the policies and legislations need to be renovated. The collaborative international approach based on Human rights approach is a hope in regulation of OTT Platforms. The problem with this approach –

- a. In defining the principles governing the digital platforms, the human rights approach was greatly overlooked except EU's and US approaches.
- b. Converting the human rights framework into digital platforms regulation is itself a challenge.

Reason why human rights approach is the best approach- Generally, the human rights framework embodies the idea of protection of the citizens from the violation of their fundamental rights by their own state, individuals as well as private entities."²³ International human rights law is now the part of every legislation across globe which has proper set of rules and

¹⁵ UK Parliament (2022), 'Make verified ID a requirement for opening a social media account', available at: <https://petition.parliament.uk/petitions/57583>.

¹⁶ Home Office (2022), 'Foreign interference: National Security Bill factsheet', available at: <https://www.gov.uk/government/publications/national-security-bill-factsheets/foreign-interference-national-security-bill-factsheet>.

¹⁷ Milmo, D. (2022), 'New law banning cyber flashing to be included in online safety bill', *Guardian*, available at : <https://www.theguardian.com/society/2022/mar/13/new-law-banning-cyber-flashing-to-be-included-in-online-safety-bill>.

¹⁸ MacCarthy (2022), 'U.K. government purges "legal but harmful" provisions from its revised Online Safety Bill', 2022.

¹⁹ Kern, R. (2022), 'White House renews call to 'remove' s.230 liability shield', *Politico*

²⁰ Ramseyer Draft Legislative Reforms to s.230 of the 1996 Communications Decency Act, 2020.

²¹ Schneider-Petsinger, M. (2022), *Strengthening US-EU cooperation on trade and technology*, Briefing Paper, London: Royal Institute of International Affairs, available at: <https://www.chathamhouse.org/2022/12/> (last visited on April 12, 2022)

²² United Nations Office of the Secretary-General's Envoy on Technology (undated), 'Global Connectivity', available at: <https://www.un.org/techenvoy/content/global-connectivity> (last visited on April 11, 2021)

²³ Klabbers, J., *International Law* 120 (Cambridge University press, Cambridge, 2nd edn. , 2017).

regulations in a prescribed manner so as to protect the violation of the basic human rights of the individuals. Human rights approach in all sense, provides a sound governance in all sense. Hence, it is nothing wrong in stating that this approach will provide a well-defined “²⁴sound governance of technology too.” In case of OTT and various other digital platforms involving technology and the internet as the medium, IHRL²⁵ is regarded by many countries, as the means to address the regulatory issue and loopholes. It can rightly be said that though the interpretations and the implementation in different jurisdiction is at nuance state but human rights approach is gaining prevalence among the governments as it ensures binding obligations on the state to protect and to respect the basic fundamental rights, and at the same time, provides no rights to be absolute but relative, hence ensuring strict monitoring and maintenance of social order and security.”²⁶

Assumptions and misconceptions regarding human rights approach- we have seen while discussing at global level approaches, one in five regimes taking the human rights based approach as the centre for the regulation of the digital content. “Online content regimes largely focus instead on other concepts, most commonly that of harm and its prevention.”²⁷ “Discussions on platform regulation also tend to ignore the idea of human rights.”²⁸ This omission is often misunderstood as human rights are best for the state governance but not for the companies, which is just an ethical consideration and not legally binding.” “The non-acceptance of human rights approach to digital platform regulation and governance contrasts with the rich extensive existing literature discussing the importance of freedom of speech and expression in digital platforms.”²⁹ “It is also having a contrast from the context of council of Europe, united nations human rights council, UNESCO and IHRL etc.”³⁰ The human rights based approach must not be recognized as the sole remedy to illegal, harmful and abusive online platforms. Rather, it should be applied in consonance with the other relevant legislations (e.g. criminal law, IT Laws etc.).”³¹ This is because the IHRL is generally binding on the state and the governments not the private holder of large digital platforms. But this in no way meant that they are free from any boundaries and restrictions. “For example, in various domestic governance, companies have duty to identify, mitigate and remedy human rights risks, and may be held liable for failing to do so.”³²

In order to deal with the regulation of digital platforms, including all types of social media platforms and search engines, three significant implications must be taken consideration.

²⁴ Jones, K. (2022), ‘*AI governance and human rights: Resetting the relationship*’, London: Royal Institute of International Affairs, available at : <https://doi.org/10.55317/9781784135492>. (last visited on April 13, 2022)

²⁵ International Human Rights Law.

²⁶ McGregor, L., Murray, D., Ng, V. et.al., ‘*International Human Rights Law as a Framework for Algorithmic Accountability*’, *International & Comparative Law Quarterly* 43-309, 68(2) 2019, available at : <https://doi.org/10.1017/> (last visited on January 30, 2021)

²⁷ These areas of focus in regulating digital platforms were discussed during Chatham House’s workshop at the 2022 Internet Governance Forum held on December 1, 2022 in Addis Ababa, Ethiopia. For a summary of the discussions, see Internet Governance Forum (2022), ‘IGF 2022 WS #458 Do Diverging Platform Regulations Risk an Open Internet?’, meeting summary, December 1, 2022, available at : <https://www.intgovforum.org/en/content/igf-2022> (last visited on June 12, 2021)

²⁸ Jones (2022), *AI governance and human rights*.

²⁹ See, for example, Sander, B. (2020), ‘Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation’, *Fordham International Law Journal*, 43(4), pp. 939–1006, available at : <https://dx.doi.org/10.2139/ssrn.3434972> ; Kaye, D. and Shaffer, G. C. (2021), ‘Transnational Legal Ordering of Data, Disinformation, Privacy, and Speech’, *UC Irvine International, Transnational & Comparative Law*, 6(1), available at : <https://scholarship.law.uci.edu/ucijil/vol6/iss1/2> ; Kaye, D. (2022), ‘Human rights standards should guide company decisions’, research paper, Irvine, CA: University of California, Irvine – School of Law, available at : <https://papers.ssrn.com/sol3/papers> and Pasquale, F. (2016), ‘Platform neutrality: enhancing freedom of expression in spheres of private power’, *Theoretical Inquiries in Law*, 17(2), available at : <https://doi.org/10.1515/til-2016-0018> .

³⁰ In the context of the Council of Europe, for example, a formal motion for a resolution on the public regulation of the freedom of expression in digital platforms was submitted by a number of members of the Parliamentary Assembly, see Katrougalos, G. (2022), ‘Public regulation of the freedom of expression in digital platforms’, Parliamentary Assembly of the Council of Europe, June 21, 2021, available at : <https://pace.coe.int/en/fles/30118> (last visited on Jan 22, 2022) UNESCO explicitly works to promoting freedom of expression online, while advocating for ‘greater transparency and accountability of digital platforms’ in the light of the Windhoek +30 Declaration: see UNESCO (undated), ‘Freedom of Expression Online’, available at : <https://www.unesco.org/en/freedom-expression-online>. (last visited on January 30, 2022). In the context of the UN Human Rights Council, the then Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, presented a report specifically on the regulation of user-generated online content, see UN Office of the High Commissioner for Human Rights (2018), *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*.

³¹ Jørgensen, R. F. (2017), ‘What Platforms Mean When They Talk About Human Rights’, *Policy & Internet*, 9(3), pp. 280–96, available at : <https://doi.org/10.1002/poi3.152.3>. (last visited on February 23, 2021)

³² Jones (2023), *AI governance and human rights*.

- ✓ First, states must enact a general regulatory code and companies should adopt policies that are clear, exhaustive and accessible³³ stating :
 - i) what kinds of online content may be limited;
 - ii) purpose for the limitation; and
 - iii) how they can be limited.³⁴
- ✓ Secondly, the freedom and rights guaranteed by the legislations should be relative enough that it is not abused i.e. the reasonable restrictions should be there in order to maintain the social order, morality, national security, public health and right to reputation etc.”³⁵ “Content that may be restricted should not be simply taken down or left in place. Other measures should be available, such as labelling or deprioritizing content, or directing users to other sources of information.”³⁶
- ✓ Finally, states must ensure that the platforms should provide the uniform re-addressal system in case of wrongful content moderation or any other issue as such, that should be speedy and impart justice.”³⁷

Despite being omitted in the technology regime, human rights framework will always play a crucial role as a well-established international and national model. Human rights is universal concept, even in the regulation of digital world.

5. CONCLUSION AND RECOMMENDATIONS-

The laissez faire characteristic causing the growth of online platforms are giving way to the state intervention. Undoubtedly, never before the people, communities, economies, countries and different organisations are knitted so closely with each other. Consequently, it welcomes necessary benefits to the world at large i.e. spread of information, economic and employment opportunities and everything from business to the activism of all types. This global coordination comes up with both pros and cons. But the advent of the new digital jurisdictions i.e. OTT platforms conflicted with poor existing legislations and incapacity of the legal institutions challenging state power to protect and to respect the rights of their citizens. Therefore, its need of an hour that the states are now willing to have national platform regulation system to address this loophole. So, the future of global internet and global platform is definitely possible when there is a compromise and the settlement within the global states and their economies giving equal respect to respective sovereignty, interdependency and inter-operability. Hence, it could be said that though US plays a dominant role in influx of the technology and the online platforms, but the EU’s approach to regulate these platforms is the best potential method which could be adopted as a global trend. Human rights approach is the best suitable method which maintain the balance between the two pillars of democracy, power of the government to maintain social order and the protection of fundamental rights of the citizens. Human rights approach alone is not going to help. The governments therefore have to adopt various other tools to have a convergent approach rather than being divergent in views. It is the need of an hour that the digital sovereignty must be looked upon and the harms caused by these online platforms including the OTT i.e. Over The Top content and all types of social media platforms hold be over viewed, analysed and judged upon to give a proper potential method to regulate them at all levels.

This research paper analysed the challenges faced by the different jurisdictions to regulate the digital platforms. the consensus to be taken is quite difficult at this point of time. But there are various recommendations that this paper will portray so as to wipe off the difficulty and to bring consensus on the table with respect to regulation of online platforms and to preserve the global net.

Respective Governments must ask their regulatory bodies to seek international consensus on:

- i. Identifying the major approaches to deal with the regulatory mechanism and to articulate the values on which basis these regulations to be framed.

³³ UN Human Rights Committee (2011), ‘General comment No. 34 – art.19: Freedoms of opinion and expression’, September 12, 2011, available at :<https://daccess-ods.un.org/tmp/>. (last visited on April 22, 2022) para 25, 33–36; UN General Assembly (2019), ‘Promotion and protection of the right to freedom of opinion and expression’, para 6(a), 20, 31–33.

³⁴ Dias, T. (2022), ‘Tackling Online Hate Speech through Content Moderation: The Legal Framework Under the International Covenant on Civil and Political Rights’, in Bahador, B., Hammer, C. and Livingston, L. (eds.) (forthcoming), *Countering online hate and its offline consequences in conflict-fragile settings*, SSRN, p. 17, available at :<https://ssrn.com/abstract>; Dias, T. (2021), ‘Hate Speech and the Online Safety Bill: Ensuring Consistency with Core International Human Rights Instruments’, Evidence Submission to the House of Commons Digital, Culture, Media and Sport Sub-committee on Online Harms and Disinformation, September 2021, pp. 6–8, 9–15, available at :<https://committees.parliament.uk/writtenevidence/38393/pd>. (last visited on June 1, 2021) . See also UN Human Rights Council (2021), ‘Disinformation and freedom of opinion and expression Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan’, para 40–41; UN General Assembly (2019), ‘Promotion and protection of the right to freedom of opinion and expression: Note by the Secretary-General’, available at :<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/308/13/PDF/>, para 31–32.

³⁵ UN Human Rights Committee (2011), ‘General Comment No. 34’, para 33–36.

³⁶ Dias (2022), ‘Tackling Online Hate Speech through Content Moderation’, p. 18.

³⁷ Ibid, pp. 15, 22–24 and 27; UN General Assembly (2019), ‘Promotion and protection of the right to freedom of opinion and expression’, para 7, 35, 55 and 57(e).

- ii. Sharing the resources, technical transparency and technical expertise both formally and informally at international level.
- iii. Regulatory approaches must be in consonance with the principles of human rights.
- iv. States must frame their policies and bills with full transparency respecting the citizens interest and rights but at the same time restricting those rights with certain reasonable restrictions.
- v. Supporting global internet standards and to work with the partners at both national and international level.
- vi. Encourage national participation and awareness among the general public.
- vii. Significantly increase investment in bilateral and multilateral software cooperation.
- viii. Strengthening formal and informal networks of digital collaboration across national governments to support the development of, and cooperation on, multilateral technology programming.
- ix. Countries should have a common language code when addressing the issues related to digital platforms, especially, in mitigating and preserving harm, security and the protection of rights of users.
- x. Common consensus should be there in the list marking the “illegal content” and “legal but harmful content”. “Inculcating a potential modular approach to create a cross-border collaboration on common codes of practice.”³⁸
- xi. Domestic legislation should be separately made for the digital platforms and the social media platforms in accordance with the international trend so that the execution of the same by the regulatory bodies could be done within the bounds of domestic laws. For the framing of the domestics bills, the governments are required to ensure sufficient expertise within to support the technical understanding.
- xii. Consistent regulatory approaches should be adopted by allowing technical transparency. A single project should be made with joint funding to technology at international level in order to identify different domestic needs.
- xiii. All the digital and online platforms companies should be made liable at the first place for the systems they have used, the processes they have applied and intention of the same and should be made aware about the consequences of the same.
- xiv. User behaviour and choices should be kept as a last model of approach. The host platforms should be made liable and accountable for their acts and intention and types of their systems used. User behaviour and their liability will be considered when the utmost care and caution is taken by the respective platform company.
- xv. Content moderation policy should be extensively used by the platform companies so as to remove the illegal as well as the “legal but harmful” content before being uploaded on their respective platforms including OTT Contents. Over The Top platforms should have a prior pre- screening and licensing system in order to publish their content on any platforms.
- xvi. A separate regulatory body should be set up at all domestic levels which will co-ordinate with the international standards. The global internet governance forum i.e. IGF is already present but this regulatory body could be able to help only when the policies and the regulatory codes should be consistent across borders too.
- xvii. During the international meetings with multi-lateral bodies like EU-US Trade and technological council, G7, G20 summits etc. the matter related to the importance of digital trade and the influence of the online platforms should be made as a part of discussion.
- xviii. Hostile nations or the nations that want to be in monopoly for the same, should be analysed and to be made to understand about the harmonization at international level.
- xix. A single project should be made with joint funding to technology at international level in order to identify different domestic needs.

³⁸ Riley and Ness (2022), ‘Modularity for International Internet Governance’, The Lawfare Institute available at :<https://www.lawfaremedia.org/article/modularity-international-internet-governance#postContributors>.