

## SCHOOL OF LAW

presents

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**Mode: Virtual** 

## MOOT PROPOSITION

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- 1. The Democratic Republic of Kromlic is a country with 1.6 billion population. The elected government at Kromlic opened its economy for foreign players in various fields which led to technological revolution in the past 5 years. Consequently, smartphone reached the hands of maximum citizens of Kromlic and the telecom operators also started providing bulk internet data to its users at cheap rates in the highly competitive market.
- 2. The scope of public internet grew over the decades. It allowed a telecom subscriber to access almost all the services required for information, education, and entertainment etc. It altogether redefined the conventional marketplace. Even personalized services, such as a taxi ride could be accessed on a person's fingertips. This growth also brought about a fundamental shift in other spheres including telecom and TV. Earlier, networks used to be built around specific applications, say voice, internet, or Pay TV. But what followed technological revolution in Kromlic was a rapid proliferation of voice, video and Over-the-top ("OTT") application services being delivered over networks.
- 3. Based on the kind of service which were provided in Kromlic, there were basically three types of OTT applications:
  - (i) Messaging and voice services (Communication services);
  - (ii) Application eco-systems (mainly non-real time), linked to social networks, ecommerce; and
  - (iii) Video / audio content.
- 4. While films in Kromlic were required to follow certification rules under the Cinematography Act 1952 and broadcasters of programs on television at Kromlic are required to adhere to the Program Code and the Advertising Code, the owners of web series, films and other content exhibited only online or on digital OTT platforms (such as Coldmoon, Amflix, Netazon etc) were free from the hassles of censorship or any code, subject to provisions of the Information Technology Act, 2000 (the "IT Act") of Kromlic. This position was confirmed by the Ministry of Information and Broadcasting of Kromlic wherein it stated that the Central Board of Film Certification of Kromlic solely certifies films for theatrical release and has no control over online content. This allowed OTT Platforms in Kromlic to showcase any kind of content which was earlier either not approved by the Censor Board of Kromlic or approved only with age-appropriate certification due to various reservations. On the one hand, Producers enjoyed the unrestricted creative freedom guaranteed through OTT Platforms and it generated a lot of viewership but on the other

- hand, there were mixed reviews about the content being overtly indulgent in violence, obscenity and seditious content.
- 5. Due to outbreak of COVID-19, all the cinema halls and amusement centres such as parks, auditoriums, theatres, sports stadiums etc. in every state of Kromlic were shut down to prevent the spread of pandemic. The citizens of Kromlic in search of entertainment were not left with any other option but to watch movies, web series, stand-up comedy gigs on internet and mostly on OTT platforms. This increased the popularity and viewership of content at OTT platforms to such a level that every OTT platform registered huge increase in subscription by people of Kromlic thereby generating huge revenues. This encouraged OTT platforms in Kromlic and they started production of original content at Kromlic investing huge sums of money.
- 6. The popular OTT Platform ColdMoon came up with a unique idea of one of its kind of a reality show in the form of web series whereby the lifestyle of 12 influential elite families of Omaxe, the national capital of Kromlic were to be shown and the entire shooting was to be done via drones. The show was decided to be produced by Coldmoon itself. A contract was entered into by each and every member of the 12 participating families whereby the consent to shoot everyday events of their life was granted to the producers at Coldmoon. The contract also provided that the entire content arising out of shooting shall belong to the producers and the producers shall have the sole liberty to showcase the web series in the cinematographic set which they deem fit for the storyline they wish to create and showcase to the audience.
- 7. After commencement of shooting, the shooting went on for 6 months and recorded various events, outings, discussions, interactions, and opinions of the families in their day-to-day life. The promotional trailer of the web series was released before the premiere of the show, one Mr Yuzi realized that some shots in the promo are from a private bachelor's party organized on his terrace and the guests at his party did not have the knowledge that they were on camera.
- 8. The bachelor party was privately hosted by Mr. Yuzi for his friend and it was attended by around 50 guests, all adult men and some female provocative dancers were also invited to entertain guests at the party. The drone captured the entire party and Mr Yuzi realized that some private moments of a few guests could be a part of the finally edited show which is likely to air on screen of the OTT Platform next week.
- 9. Mr Yuzi also realized that if his private party is showcased on screen to public at large then it would hamper his reputation because a lot of dirty language, curses, language that objectified women etc. was being used at the party. Mr Yuzi wanted to maintain his image

- as that of a 'Family Man' and feels that the 'party' was outside the scope of the contract signed with the producers wherein he had agreed for shooting his 'family time' and the party was his private event.
- 10. The fact that the drone had been shooting the families and their actions even outside their knowledge, alerted the rest of the families as well. One Mr. Bizi, who owns the biggest export house in the country realized that his only son who is 15 years old has been in the habit of consumption of herbal and synthetic drugs and it is possible that this has been caught on camera as well. He must not take any risks with the reputation of his son as he is the sole heir to his business empire.
- 11. Mrs. Ponri and Mrs. Wedy have thrown parties and organized religious gatherings wherein they have made personal remarks attacking the only family following Sorti Religion in the show- The Sortikars, a very politically connected and influential family residing at the capital. They feel that if such content is aired, it will hurt the religious sentiments of the Sortikars and other members of the religious community and could potentially lead to communal hatred and riots.
- 12. In the meanwhile, people shot clips from the portion showing the party in the promo wherein Mr. Yuzi is seen in an objectionable position with a woman and started circulating it and creating memes on social media such as Bookface, WhyApp etc., thus attacking his reputation and defaming him.
- 13. A famous stand-up comedian Ms Xo with a fan following of more than 1 million on social media platform claimed that she had performed a private stand-up comedy gig at the terrace of Mr Yuzi on that night and the theatrical trailer showcases a punchline of one of her jokes on which she claims her copyright as her entire content is her brainchild. Ms Xo approaches Mr Yuzi to ensure that Coldmoon does not use her content.
- 14. Mr Yuzi approached the producer OTT Platform Coldmoon seeking removal of party scenes from the promo and, also demanded complete exclusion of party scenes from the web series stating reasons of privacy apart from written apology. However, Coldmoon rejected the suggestion of Mr Yuzi on behest of the contract signed by Mr Yuzi. Coldmoon also stated that the content shot by drone belonged entirely to producers and Mr Yuzi had no rights over the same.
- 15. Mr Yuzi, miffed at the decision of Coldmoon approached the High Court of Omaxe seeking interim stay on the further circulation of the promo of web series; permanent injunction on release of the web series until the dispute is resolved; regulation of content of the OTT platforms by the government of Kromlic thereby framing appropriate laws for the same;

- Coldmoon be held liable for defamation caused to the image of Mr Yuzi and compensation for infringement of his privacy accosted with written apology. At this stage, the other families along with Ms Xo approach him to join as parties against the Producers, also praying that the show should be shelved as it has violated their privacy.
- 16. The Government of Kromlic stated before the High Court that it has received unofficial complaints from numerous citizens that a lot of obscene and uncivilised culture is depicted on the OTT platforms, but the government cannot censor the content of the OTT Platforms. The Government pleader also stated that the online content, as it stands today, appears to be unbridled and the creators of such content are exercising their creative liberties to the fullest only because there exists no regulatory framework categorically setting out the manner of censorship or certification of the online content or guidelines outlining dos and don'ts for the creators of online content. The Government of Kromlic apprised the High Court that Sections 67A, 67B and 67C of the Information Technology Act of Kromlic provided for penalty and imprisonment for publishing or transmitting obscene material, sexually explicit material and also material depicting children in sexually explicit acts, in electronic form. Additionally, provisions of the Kromlic Penal Code, 1860 ("IPC") are also applicable to the OTT platforms which criminalizes dissemination of defamatory content.
- 17. In addition to the above, the counsel for the Government of Kromlic also made suggestions to include online content explicitly within the ambit of the Indecent Representation of Women (Prohibition) Act, 1986, which currently prohibits indecent representation of women in advertisements, books, films, paintings, and writings etc.
- 18. The OTT platform Coldmoon vehemently denied all the averments of Mr Yuzi and the Government of Kromlic in the entirety. Coldmoon contented that Presently in Kromlic, the Central Board of Film Certification (CBFC), as per the Cinematograph Act, 1952, is a body for certification of films only for public theatre audience. Also known as the Censor Board, it certifies a movie for public viewing based on the content and whether it is in contrary to the national interest, morality, and decency. In complete contrast to films and other traditional mediums, there is no regulation of digital content and thus Coldmoon cannot be prevented from showcasing the web series as per its content and the entire copyright of the content also belonged to Coldmoon being the producers. Coldmoon being an OTT service provider does not fall under the ambit of intermediaries under the IT Act, and therefore did not require a licence from the Ministry was also a ground raised before the High Court. The reliance on Article 19 of Constitution of Kromlic was placed by counsel for OTT platform.
- 19. The High Court of Judicature at Omaxe passed a landmark verdict in itself regarding the OTT Platforms with far reaching impact on all the operating existing OTT platforms in

Kromlic as well. The High Court held that prima facie such content related to the party of Mr Yuzi showing female dancers in bachelor party objectifies women and portrays them in a bad light, hence making them susceptible to indecent thoughts and hampering their fundamental right to life and therefore the available content is uncertified, obscene, vulgar, sexually explicit, and legally restricted. They remarked that the show could potentially have more content which is likely to spread communal hatred, influence children into taking drugs and other content which may also be seditious.

- 20. The High Court held that films, serials, and other multimedia content being transmitted, broadcasted, or exhibited through internet platforms and online streaming platforms like Coldmoon, Amflix, Netazon can be regulated under the Cinematograph Act, 1952.
- 21. The High Court also held that these OTT players should be brought under the definition of intermediaries of Ministry of Information and Broadcasting and be held liable for offences under Sections 67, 67A, and 67B of the Information Technology Act, 2000.
- 22. The High Court also recommended for setting up of pre-screening committees before the content is put up on digital OTT platforms.
- 23. The High Court ordered the government to consider constituting an interdisciplinary committee to scrutinize the regulatory frameworks for online broadcasting and content on OTT Platforms.
- 24. The judgment had far reaching impact on all the other OTT platforms as well. All the OTT platform players made a consortium and decided to challenge the High Court's impugned order in a Special Leave Petition before the Hon'ble Supreme Court of Kromlic under Article 136 of Constitution of Kromlic read with Article 142 of Constitution of Kromlic.
- 25. The major question of law made by the Consortium of OTT Platforms of Kromlic is that whether the broadcasting of content on such digital streaming platforms exceeds the reasonable restrictions under Article 19. The other questions of law being the ownership of copyright of the content of the OTT Platforms, how much interference can be provided by the Government of Kromlic etc.
- 26. In an attempt to avert censorship concerns, the online streaming platforms contended that in February 2021 after the impugned judgment of the High Court, the OTT platforms have signed a code of best practice and adhered to this self-regulatory code regarding non-exhibition of any sort of content which they believe depicts hatred or disrespect towards religious sentiments and national interests. The objective of this code is to empower consumers to make informed choices on age-appropriate content and protect the interests of consumers in choosing and accessing the content they want to watch, at their own time and convenience.

- 27. The OTT platforms have also mentioned in their Special Leave Petition before the Supreme Court that the constitutional conventions are deviating towards a liberal establishment, and in lieu of offences related to the content, with Article 19 being principally active, these reasonable restrictions are being seen as extraordinary constraints.
- 28. The Government of Kromlic also added further questions of law before the Supreme Court that whether the OTT platforms have led to the creation of another class of broadcasters and if the same rules as cable operators shall be applicable to them in terms of display of content? The other question of law being that if the OTT platforms' content can be brought under regulation, on the lines applicable for print and electronic media?
- 29. The Supreme Court of Kromlic has granted leave to appeal on the Special Leave Petition filed by the Association of OTT Platforms of Kromlic against the Union of Kromlic & Mr Yuzi leaving open all the questions of law and contentions to be advanced by the contesting parties at the time of final arguments.
- 30. Note: The Democratic Republic of Kromlic has adopted the Constitution of India verbatim and all the laws and regulations including the prevailing circumstances as in India shall be squarely applicable to Kromlic verbatim. All the statutes cited for Kromlic may be read and applied verbatim as per the Indian statutes and all the sections of every law in India are open inter alia ambit of question of law.

NOTE: THE MOOT PROPOSITION HAS BEEN DRAFTED BY ADV. PULKIT AGARWAL, ADVOCATE ON RECORD, SUPREME COURT OF INDIA, WHO OFTEN DEALS WITH THE INTERFACE BETWEEN TECHNOLOGY AND LAW.

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