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INTERMEDIARY LIABILITY: RECENT DEVELOPMENTS IN INDIA

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ABSTRACT

A comprehensive legal foundation for governing intermediary liability has become required because of the rapidly expanding nature of India's digital ecosystem. With a concentration on recent changes under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and its subsequent amendment in 2023. The present paper discusses the constantly evolving legal framework governing intermediaries. The concept of intermediary liability, defined in Section 79 of the Information Technology Act, 2000, went through major modification, in particular with the 2009 amendment, which specified a conditional safe harbor clause. Determining the extent of intermediary responsibility has been greatly aided by court rulings such as Google India v. Vishaka Industries and Jitendra Singh Yadav v. Union of India. The IT Rules, 2021, which impose more stringent due diligence requirements on intermediaries, such as removing content responsibilities and the appointment of grievance officers, have been introduced in response to growing concerns about false information, privacy of users, and rights in digital media. By preventing misleading information about government-related issues and regulating internet betting, the 2023 amendment significantly broadens intermediary obligations. Although these regulations seek to strike a balance between free speech and responsible digital management, they also create worries about possible misuse by the government and over censorship. The changing legal landscape highlights the need for a flexible regulatory framework that is consistent with India's constitutional principles and international standards, promoting a secure and accountable digital space.

Introduction

India and the world have changed as a result of the digital revolution. During the past decade, the internet user's percentage were grown dramatically in India, giving rise to a nexus digital ecosystem that includes social media platforms, search engines, online marketplaces, and other intermediaries. Although this expansion has aided in economic growth and connection, it has also sparked questions about the role and accountability of these intermediaries for the information that their users upload to the internet. Under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules; 2021, this article explores the idea of

intermediary accountability in India, taking into account both contemporary advancements and its historical background.

Definition of Intermediary

In simple words intermediaries is an entity who store, receive and disseminate the information of other person, they are just acting as a middleman who facilitate this service on their platform to their users. Section 2(w) The Information Technology Act, of 2000 defined an intermediary and some of the examples of intermediaries mentioned under the IT Act, 2000 are,

- telecom service providers (Reliance Jio Infocomm Ltd, Tata Communications Ltd ,)
- Network Service Providers (BSNL, MTNL, ,)
- Internet Service Providers (JIO FIBRE, AIRTEL, Vi, BSNL, ,)
- web- hosting service providers (Blue Host, Liquid Web, ,)
- search engines (Google, Yahoo, Microsoft EDGE, ,)
- online payment sites (GPay, Paytm, ,)
- online auction sites (olx, com, etc.,)
- online marketplaces (Flipkart, Amazon, ,)
- and
- cyber cafes (Net Center ,)

The 2008 amendment made a huge impact on intermediaries' liability and how they can escape from liability in the name safe harbour option mentioned under section 79. It also broadened the definition of intermediary. Case of Jitendra Singh Yadav

v. Union of India, the court explicitly said that, If the individuals or firms who accumulate information about individuals and they are storing and saving that information, then they are comes under the definition of intermediary.

The European Union and nations like India adopted the conditional liability approach, which grants intermediaries a safe harbour, in order to get this immunity, the intermediary must fulfill some obligations mentioned under section 79.

Safe Harbour Provision

First and foremost, thing is that the intermediary is not liable for any third-party information or communication.

The intermediary must act as a mere platform that provide service that temporarily store and disseminate the information of a third party. They should not be an in a position to initiated the information and should not modified the information of who created that information. They should follow the obligation proposed by the union government with respect to this. If the intermediary is also part of the criminal activity with the third party like helping or conspiring to commit an offence that against the law. And if the intermediary intentionally failing to remove the illegal material or intentionally delaying the process on their platforms, then they will not get the immunity or the privilege mentioned under section 79(1). **Section 79** of the IT Act 2000 deals with the Exemption from liability of intermediaries in certain cases and clarified when they will not get that exemption from liability.

Historical Position of Intermediary Liability in India

Before 27/10/2009

The intermediary doesn't provide any immunity for any third-party information stored and disseminated on their platforms. They are liable for any third-party information circulated on their platform, even if they have acted diligently. A prime example for this scenario is the case of Avnish Bajaj vs State of NCT of Delhi (2008), in this case an obscene video was circulated on the website of Baze.com, the CEO of the company was arrested because before 27/10/2009, there is immunity for the intermediary if they also acted due diligently.

The case against Google India Private Limited v. Vishakha Industry was the case that clarified intermediaries' liability prior to 2009. In the present situation, the above Article 79 went into force on October 27, 2009, after the respondent filed a complaint in January 2009. The Supreme

Court ultimately arrived at its position that Google was unable to claim any immunity from liability under the prior version of Section 79 because no mentioning immunity for the intermediary in the act.

After 27/10/2009

Following October 27, 2009, after the Amendment to Section 79 took effect, intermediaries have been safeguarded and provided a much more extended and broad immunity. The revised text of Section 79 explained that the hereafter the intermediary will not be liable for any third information or communication that the if the intermediary didn't start or conspired with third party or modified the information in hands with the third party. To avail this privilege the intermediary must follow or adhere the due diligence created by the Indian government. As per section 79(3)(b) if the intermediary done anything mentioned above like initiating, conspiring, modifying and failure to eliminate the content within reasonable time, they will be liable and punishable under the IT Act,2000.

Because of this amendment, the intermediaries are now enjoying far greater immunity following October 27, 2009, when the old article was amended with the new Section 79.

Need for New Intermediary Liability Rules

The Digital India program has become a public movement. The average person who are using the multiple social media platforms are increased in a very significant way. However, some disturbing developments are seen on social media platforms like,

1. Fake
2. Metamorphic images of women and
3. Content related to revenge
4. Crime of
5. The traitor
6. Inciting terrorist
7. The spread of hate in the
8. Financial fraud, ,
9. No strong mechanism for ordinary users of social media to file their grievances and lack of specified time to resolve the grievances.
10. Misuse of safe harbour provisions by the
11. Need for user protection and accountability of

Supreme Court's Reiteration for new guidelines

In the 2018 Prajjawala case, the Supreme Court advised the union government for the need for new rules. The Supreme Court has requested that the Union government create new standards for eliminating videos and scenes that promote crimes including rape, gang rape, and the exploitation of women and children. In the same year the Supreme Court reiterated in the case of Tehseen Poonawalla v. Union of India (2018) that the government should legislate a reasonable and rigorous laws to address irresponsible and fake posts, photos, and videos on the Internet. Court cautioned the government that the riots and chaos in society may result from these fake and

irresponsible posts being allowed to circulate unregulated on social networking sites with millions of followers.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

Intro to IT Rules,2021

On February 25, 2021, the Union government issued the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The Union government established these regulations in exercising the authority granted to it by Section 87 of the Information Technology Act of 2000. These guidelines can be classified into three

sections, specifically:

- Definition
- The intermediary's due
- A code of ethics, norms, and regulation

The due diligence standards for all social media intermediaries and complaints are outlined in Part II of the Rules (Rule 3-7) covering "Due Diligence by intermediaries and grievance redressal mechanism." Significant social media intermediaries are required to provide additional diligent activity in order to create safe and secure usage of internet.

1. **SSMI** - Significant Social media intermediaries
2. **SMI** - Social Media Intermediaries

SSMI	SMI
1. Section 2(1)(V)	1. Section 2(1)(W)
2. Registered users of social media intermediaries with 50 Lakhs or more.	2. Intermediary that basically allows two or more people to communicate online and create, upload, share, distribute, modify, trade, or access information using these kinds of services.
3. Rule 4 & 6 – Additional due diligence requirements	

With regard to Rule 7, if any intermediary breaks these rules, they will be excluded from liability under section 79(1) of the Information Technology Act and will be punishable by the penalties under the Indian Penal Code of 1860 and the Information Technology Act of 2000. The intermediary is bound to publish Rules and regulations, User Agreement and Privacy Policy on their website, mobile apps or both and also, they are obliged to remind these provisions to their users yearly.

Section 79(3)(b) of the IT Act, required the intermediaries to disable the access of

illegal content as soon as possible but not later than 36 hours from the receipt of the court or after the government order. And the IT rules mandated the intermediaries to store that illegal content information for 180 days for any future pursuit of the government. One of the significant provisions of IT Rules, 2021 is that the intermediaries to help the government investigative agencies with respect to any case of cyber-crime within 72 hours of the written order from the government.

The important provisions of this 2021 rule are that the complaints officer must acknowledge the complaint within 24

hours from receiving the same from the complainant. Not only that he has to take a decision or resolve the complaint within 15 days. It also mandated the intermediaries to disclose the name and contact of the complaint officer on their website.

The IT Rules 2021 provided a specific time period for any grievances put up by the users on these intermediaries.

If any content relating to sensitive personal information of an individual, it should be removed from their website within **24 hours** from receipt of the complaint from the victim or any person relating to the victim.

I have priorly mentioned about the additional due diligence of the significant social media intermediaries, one of the primary additional due diligences is that a SSMI should publish a **monthly report** to the government. The report contains how many complaints received and how many resolved and how many are pending. Other additional due diligence requirements of the SSMI are they should appoint a **Chief Compliance Officer**, basically he/she answerable for compliance of the rules by their intermediaries. A **Nodal Contact Person** should also be appointed to coordinate **24x7** with the law enforcement agencies. And additionally, the SSMI should establish a **Resident Complaints Officer** (should be a person residing in India), he/she is responsible for discharging the complaint mechanism under sub rule 2 of Rule 3. Moreover, the rules are concerned about to identify the first sender (the person who originally sends) of the information. Because we all know social media is easily misused because of its anonymous nature. The IT Rules 2021 intended to **find the actual wrongdoer** of the crime.

Guidelines for digital media and OTT platforms

For OTT

Self-categorization of content should be done by over-the-top platforms, they are

- ✓ U (Universal)
- ✓ U/A 7+
- ✓ U/A 13+
- ✓ U/A 16+ and
- ✓ A (Adult)

Digital media news

Digital media news publishers are required to follow the Press Council of India program code and journalistic conduct standards under the Cable Television Network Regulatory Act, 1995 thus providing the terms and conditions. Fair competition between offline media (print, television) and digital media.

Grievance Redressal

The IT Rules introduced a **three-level** grievance redressal system, level I is self-regulation by the publisher, Level II is about self-regulation by the self-regulating bodies of the publisher and finally Level III is all about the oversight mechanism typically done by the government.

IT (Amendment) Rules 2023

The Ministry of Electronics and Information Technology, Government of India notified amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, related to online gaming and the dissemination of false and misleading information regarding government activities. According to the revised regulations, intermediaries are now required not to host, publish, or share any online game that may harm users or are not given permission by an online gaming self-regulatory body/body authorized by the Union Government.

The amended rules now also make it obligatory on the intermediaries to not to publish, share or host fake, false or misleading information in respect of any business of the Central Government. These fake, false or misleading information will be identified by the **Fact Check Unit** (Public Information Bureau) of the Union Government. Meanwhile the Supreme Court ordered a no signal for the establishment of fact check unit on March 2024.

Conclusion

The recent developments in intermediary liability in India are a response to the changing digital landscape and the need to address harmful content circulating on digital platforms. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, represent a step towards greater accountability and transparency. However, the implementation of these guidelines raises important questions about user rights, privacy, and potential overreach. Striking the right balance between freedom of

expression, content

regulation, and user protection is a formidable task, and it requires a collective effort from all stakeholders to shape a dynamic and inclusive digital ecosystem.

END NOTES

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