



International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

India Intermediary Liability and Accountability of Social Media Platforms in India: Navigating Freedom of Expression and Online Abuse

Dipanshu

LLM, SRM University, Delhi-NCR, Sonapat

ABSTRACT

The intersection of technological advancements and the legal landscape framing the governance paradigm of intermediary liability and accountability of social media platforms in India is deep. These platforms act as intermediaries connecting the user with digital communication, where the user generates the content as well as freedom of expression.

Yet there is a different and challenging role they must play when the information served is one of falsehoods, hate speech, or cyber harassment. The mainstay of intermediary liability discourse is how to strike the right balance between the protection of fundamental rights under Article 19(1)(a) ¹vis-à-vis its regulatory imperative to mitigate online harm. This domain has been influenced by legislative and judicial development.

IT Act 2000 ²being the statutory foundation. The focus of this section is on defining intermediary liability, particularly its scope, and regulatory aspects counting on safe harbors, due diligence requirements, and loss of immunity. This study seeks to explore the demystifying realm of Intermediary liability and accountability of social media platforms and aims to highlight the extent of freedom of speech and expression under the garb of online abuse.

Key Words: IT Act 2000, Article 19 (1)(a), Due Diligence, Intermediaries

INTRODUCTION

The digital era, however, has completely revolutionized the interaction and communication patterns of people and the way information is being consumed so social media programs have become the main intermediaries in the shift. As a result of this evolution, social media platforms have gone from enabling communication to becoming major players in shaping the discourse of society, governance and exercising fundamental rights like freedom of expression. Yet, this change has brought with it major legal and ethical issues in finding the equilibrium between these rights and the imperative to control things like misinformation, hate speech, and cybercrimes. The concept of intermediary liability has become a cornerstone of digital governance in India, establishing norms of how social media entities must discharge their obligations and towards which they are accountable, as it strives to achieve this balance. Issues of intermediary liability are inextricably linked to guarantees under "Article 19(1)(a)," and restrictions that are reasonable under "Article 19(2)," and require careful study of how these interact in the web regulation regime. The interpretation of intermediary liability and intermediary accountability discourse in the Indian context requires that we understand some of the key terms that frame the labyrinthine legal framework. As social media becomes both a tool for expression and a risk for harm, the dualistic nature of intermediary liability continues to persist. The purpose of the IT Act and its subsequent amendments reveals this reality as it infers that this is an issue that they are becoming more responsible for and that intermediary liability is increasingly becoming a dynamic evolving area of law, within a broader discourse of digital governance. Platforms hold unprecedented power to moderate content and set the narrative for the world, if misused, moderation operations could impact users' rights and order.

STATEMENT OF PROBLEM

In India, the problem of intermediary liability and social media accountability is of significant challenge in finding the right balance between the fundamental right to freedom of speech and the inevitable interference in curbing the spread of online harms. As intermediaries under "Section 2(1)(w)" of the Information Technology Act, 2000" social media platforms have emerged as potent if not discriminatory arbiters of public discourse, with their capacity to pervert the communication of hate speech, misinformation, and cyber harassment trenches deep into areas of their accountability vis a vis not

¹ CONSTITUTION OF INDIA, 1950

² INFORMATION TECHNOLOGY ACT, 2000

just the social but legal domain. The "Section 79" safe harbor provision provides for conditional immunity, but the conditions in its enforcement and the possible conflicts that might arise between Section 79 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 are sure to tempt naysayers.

OBJECTIVE OF STUDY

This study is important since the complex interplay of intermediary liability, social media accountability, and fundamental rights of individuals needs to be solved in the Indian digital ecosystem. Social media platforms have become very powerful intermediaries of public discourse and associated societal narratives. However, their popular use has led to the eruption of many concerns such as harmful content, hate speech, misinformation, and a threat to privacy. This existing regulatory framework under the 'Information Technology Act, 2000' along with its amendments, most significantly including the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 has been introduced to ensure the rights to freedom of expression under "Article 19(1)(a)" while keeping the reasonable restrictions under "Article 19(2)". However, it is challenging to enforce practically, as it has the potential to create jurisdictional conflicts, lacks transparency and algorithmic bias, as well as conflict between the privacy requirements of 'Digital Personal Data Protection Act, 2023' and traceability.

INTERMEDIARY LIABILITY AND FREEDOM OF EXPRESSION IN INDIA

Under the IT Act, an intermediary means any person who, on behalf of another person, receives, stores, or transmits that person's electronic records in an electronic form. In this expansive definition, we emphasize that intermediaries are not the same as content creators, but they facilitate digital communication. The main legislative framework is provided under section 79³ of the IT Act which gives safe harbor to the intermediaries instilling protection from any third-party content.

The provision was greatly elaborated in the case of "*Shreya Singhal v. Union of India*"⁴, the Supreme Court struck down "Section 66A" of the IT Act for being vague and with a chilling effect on free speech, while also holding innocuous the notice and takedown regime under "Section 79". The judiciary is sending a message that it aims to protect freedom of expression while making sure that platforms don't become an anti-safe haven for harmful content.

Usually, intermediaries are not liable for the user-generated content, if they do not act when they gain knowledge about the illegal content. What is becoming known as 'actual knowledge' in this case requires intermediaries to act expediently on notice to retain their immunity under section 79. The notice-based takedown mechanism relies too much on intermediaries to choose between content moderation and the protection of free speech.

Article 19(1)(a) is a cornerstone of Indian democracy especially because it allows individuals to participate in public discourse and narrative regarding the society. While much has been said about this right in the context of the digital world, the judiciary has interpreted this right when applying it to online platforms and has been aware that these online platforms face more specific difficulties. Through striking down the "Information Technology Act, 2000, "Section 66A," the Supreme Court, in the aforementioned case, emphasized the necessity to afford a free and open expression in cyberspace.

"Article 19(1)(a)" establishes the principle of freedom of expression while "Article 19(2)" makes provision for reasonable restrictions should the freedom be inconsistent with another or other social and State interests. The expansion of this digital space has expanded the complexity of applying these restrictions with its wide reach and real-time communication. Suppose content that stirs up violence or propagates disinformation poses a danger to public order; in this case, regulatory action is required as quickly as possible. A foremost Gem in this regard is that of the Supreme Court "*S. Rangarajan V. P. Jagjivan Ram*"⁵ which was able to establish that regulations must be proportional and narrowly designed as that still guides judicial oversight of laws limiting free speech.

SHIFT IN LEGAL OBLIGATIONS: THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021

Framed under Section 87(2) of the IT Act, these rules emphasize accountability and due diligence for intermediaries:

Due Diligence Requirements for Intermediaries

- Publish privacy policies, terms of use, and user agreements.
- Remove unlawful content within 36 hours of receiving a government or court order.

Significant Social Media Intermediaries Platforms with a large user base (e.g., Facebook, Twitter, WhatsApp) are subject to additional obligations, including:

- Appointment of Chief Compliance Officer, Nodal Contact Person, and Resident Grievance Officer.

³ INFORMATION TECHNOLOGY ACT, 2000

⁴ AIR 2015 SC 1523

⁵ 1989 2 SCC 574

- Enable traceability of the originator of information upon legal request.

Code of Ethics for Digital Media⁶

- Applicable to curate online content and news platforms, ensuring compliance with journalistic standards and government oversight.

These rules aim to impose a rather stricter regime on the social media intermediaries as they intend to eradicate online abuse and dissemination of misinformation, the rules have been questioned on the pretext of the user privacy and potential censorship. Even the tech experts doubted the credibility of the rules as in their opinion it threatens end-to-end encryption.

OTHER EXISTING LAWS TO GRAPPLE WITH THE UNDERLYING ISSUE

Digital Personal Data Protection Act, 2023

This Act addresses privacy concerns arising from data usage by social media platforms. The provisions ensure that social media platforms must implement security measures, notify breaches, and safeguard personal data to prevent misuse and online abuse. It makes sure that Platforms must comply with restrictions on transferring personal data to specific foreign jurisdictions to protect user data. Users can access, correct, or erase their data, while platforms are required to provide robust grievance redressal mechanisms. State entities and research purposes may process data under certain conditions, balancing data protection with public interest. Non-compliance can attract penalties up to ₹250 crore, holding platforms accountable for data breaches and violations. The Data Protection Board ensures compliance, investigates breaches, and enforces accountability in data handling. The government can order platforms to block harmful content in the public interest, addressing misuse while preserving freedom of expression. Encourages mediation to resolve disputes involving online harm and data misuse efficiently.

Penal Provisions Under Bharatiya Nyaya Sanhita, 2023

While addressing online abuse, social media platforms must consider liabilities under the Bharatiya Nyaya Sanhita Penalizes acts promoting enmity between different groups on grounds such as religion, race, place of birth, residence, language, etc., and actions prejudicial to maintaining harmony. Prohibits the sale, distribution, and exhibition of obscene materials. Defines defamation and prescribes penalties for harming an individual's reputation. Penalizes acts caused by inducing a person to believe they will be rendered an object of divine displeasure, which can incite public mischief.⁷

JUDICIAL INTERVENTION: LANDMARK CASES

The legal landscape of intermediary liability in India has seen significant developments, particularly concerning platforms like WhatsApp. These cases address the interplay between freedom of expression, user privacy, and online abuse, highlighting the responsibilities and limitations of intermediaries in the digital age.

Karmanya Singh Sareen v. Union of India⁸

This case challenged WhatsApp's data-sharing policy with Facebook. It underscored the fundamental right to privacy and emphasized the need for user consent in data processing.

WhatsApp LLC v. Competition Commission of India⁹

The Delhi High Court upheld the CCI's authority to investigate WhatsApp's privacy policy for potential competitive practices, signaling the importance of consumer rights in data-sharing agreements.

S. Rangrajan Etc v. P. Jagjivan Ram¹⁰

The Supreme Court observed that a balance should be struck between the right to free expression and the protection of national interests. These two considerations, though both important, cannot always be treated as equally weighted, and the appropriate resolution will vary depending on the specific context and circumstances of each case. The Court emphasized that freedom of expression should not be restricted unless allowing it poses a genuine threat to public welfare or community safety. Moreover, the perceived threat should be imminent and real, not based on distant possibilities or hypothetical concerns. There should be a clear and direct link between the expression in question and the potential harm.

WhatsApp's Challenge to the Intermediary Guidelines¹¹

WhatsApp contested the IT Rules, 2021, arguing that the mandate to trace the origin of messages compromises end-to-end encryption and violates user privacy.

WhatsApp LLC v. Union of India¹²

⁶ Kriti Patel, "Impact of the IT Rules, 2021 on Intermediaries", 7 *Journal of Media Law and Policy* 70 (2022).

⁷ Pooja Reddy, "Penal Provisions for Social Media Misuse under BNS", 3 *Journal of Criminal Cyber Law* 58 (2023).

⁸ WP (C) No. 7663/2016

⁹ AIR ONLINE 2021 DEL 547

¹⁰ 1989 2 SCC 574

¹¹ [WhatsApp LLC v. Union of India, W.P. (C) NO. 9647 of 2021, dated 25-05-2021.

¹² WP(CRL.) NO. 186 OF 2024(S)

This case highlighted the tension between law enforcement demands and privacy concerns, as WhatsApp resisted providing information due to its encryption policies under Section 91 of the CrPC.

*Indian Express Newspapers (Bombay) Pvt. Ltd. v. UOI*¹³

The events of this case unfolded in 1973, centering on the broader issue of freedom of the press and the extent of government interference in media operations. The conflict began when the Indian government imposed limitations on the quantity of newsprint available to Bennett Coleman & Co., a major newspaper publisher. These restrictions were widely perceived as an indirect means of censorship, intended to suppress dissent and control the editorial direction of newspapers that had been openly critical of government policies. Challenging these limitations, the publishers took the matter to court, arguing that the government's actions have their constitutional right to freedom of speech and expression, as enshrined in Article 19(1)(a). The dispute escalated to the SCI, where a constitutional bench was tasked with examining the legality of the government's move. In its historic verdict, the Supreme Court firmly held freedom of the press is an essential aspect of the broader right to free speech and expression. The Court asserted that any governmental action seeking to interfere with press operations should be justified by strong, legitimate reasons, and should not go beyond what is necessary to protect public interest. The Bennett Coleman ruling thus reinforced the idea that a free and independent press is fundamental to the health of a democracy. In addition, the judgment reaffirmed the judiciary's critical role in upholding fundamental rights and acting as a check on executive overreach.

MAJOR ISSUES AND CHALLENGES

Striking a Balance Between Freedom of Expression and Regulation

Overzealous regulation, particularly around content moderation, can lead to the suppression of political criticism, satire, or dissent. For instance, during the farmers' protests or the COVID-19 pandemic, there were instances where social media content critical of the government was taken down, leading to concerns about misuse of authority.

Jurisdictional and Enforcement Challenges

Most of the leading social media platforms like Facebook, Twitter, and YouTube are based in the United States, which complicates the enforcement of Indian laws. This geographical disconnect makes it difficult for Indian authorities to implement regulations or request data from these platforms quickly. The process of cross-border legal requests, such as data sharing or content removal, is slow and often bogged down in bureaucratic procedures.

Spread of Misinformation and Fake News

The rapid spread of misleading information and false narratives is one of the most significant issues arising from the use of social media platforms. Platforms like WhatsApp, Facebook, and Twitter have been used to propagate rumors that result in physical harm or violence, including incidents of lynchings. The viral nature of social media, fueled by algorithms that prioritize sensational content, exacerbates the spread of misinformation.

Content Moderation and Political Bias Concerns

Social media platforms typically rely on their own community standards and automated algorithms to monitor content. However, these guidelines can be opaque, inconsistent, and fail to reflect India's cultural and legal context. This has led to accusations of ideological bias. For example, the removal of content seen as critical of the government while leaving other potentially harmful posts untouched raises questions about the impartiality of these platforms.

The Outdated Legal Framework

India's primary law regulating online content, the Information Technology Act, 2000, was introduced before the proliferation of modern social media platforms. While the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 were created to address some of these issues, they are still under judicial scrutiny. Many critics argue that the rules are overly broad, infringe on privacy rights, and impose unreasonable obligations on platforms. In addition, India still lacks a robust and comprehensive data protection law, although the Personal Data Protection Bill, 2023 is an important step toward improving privacy safeguards.

CONCLUSION AND SUGGESTIONS

Regulating social media platforms in India presents a unique challenge that requires a balanced approach, considering the country's diverse population while upholding fundamental rights like freedom of expression and privacy. A primary focus should be on improving accountability for harmful content, such as misinformation, hate speech, and cyberbullying, which are widespread on these platforms. While the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, provide a foundation, there is room to strengthen enforcement measures and clarify content moderation standards, transparency in algorithmic decisions, and effective grievance redressal mechanisms. A cooperative effort involving the government, tech companies, and civil society will be necessary to strike a balance between regulation and protecting user freedoms. Looking to the future, India should engage in global dialogues on social media regulation, given the international nature of these platforms. Collaborating with other countries and international organizations can help establish unified standards for regulating social media while respecting local cultural and legal contexts.

¹³ (1973) 2 SCR 757

Furthermore, regular engagement with technology companies will be essential to ensure that regulations remain flexible and can adapt to rapid technological developments, such as the rise of artificial intelligence and deepfake technology.