
NAVIGATING DIGITAL GATEWAYS: INTERMEDIARY LIABILITY AND THE QUEST FOR A BALANCED LEGAL REGIME

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INTRODUCTION

The Intermediaries like social media platforms, e-commerce places, search engines and app stores are the connective tissues of India's online economy. This rapid development of these intermediaries has made it necessary for development of the legal frameworks to address the problems and complexities which arise in the online platforms. The urge to restrict speech in India isn't limited to the government. At times, individuals petition the courts, seeking protection for the public from what they see as harmful or immoral speech. For example, Kamlesh Vaswani filed a plea with the Supreme Court of India, requesting that the government take steps to block access to online pornography in the country.¹ In India, the Information Technology Act, 2000 (hereinafter **IT Act**) supplied the backbone and **Section 79 of the same**² creates a safe harbor for these intermediaries and third-party content. In addition to these, the **2021 intermediary rules**³ and amendments of the same elaborated the legal regime of Intermediary Liabilities including the due-diligence duties and other special obligations. These intermediaries are those actors involved in the internet transactions who have no pre legal relationship with other actors.⁴

RESEARCH QUESTIONS

1. How does Section 79 of the IT Act, 2000 and the Intermediary Guidelines (2011 & 2021) define and regulate intermediary liability in India?

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² Information Technology Act, No. 21 of 2000, § 79 (India), <https://www.indiacode.nic.in> (official PDF).

³ Information Technology (Intermediary Guidelines & Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E) (Feb. 25, 2021) (India) (as updated Apr. 6, 2023)

⁴ Chris Reed, Internet Law 89 (2005)."

2. To what extent are intermediary liability laws in India consistent with the constitutional guarantees in Article 19(1)(a) and any restrictions that may be imposed under Article 19(2)?
3. What are the empirical studies that provide evidence of the chilling effect of India's notice-and-takedown and monitoring regime?
4. What reforms are necessary to balance intermediary accountability with digital freedom and innovation in India?

LITERATURE REVIEW

1. "Intermediary Liability in India" by Pritika Rai Advani⁵

"Advani examines the intermediary liability regime in India as established under **Section 79 of the IT Act** ⁶ and the **2011 Guidelines**. In doing so, she shows how vague obligations and heavy due diligence requirement create pressure on intermediaries to self-censor and stifle free speech. Advani illustrates this point persuasively through case law examples, such as **Avnish Bajaj v. State**⁷ and **Super Cassettes v. Myspace**⁸, and by showing how courts continue to develop the standards of liability in ways that courts extend liability standards beyond what was intended by legislators."

2. "Liability of Online Intermediaries: Emerging Trends" by Talat Fatima⁹

Fatima offers an early exploration of intermediary liability online, focusing primarily on ISPs (Internet Service Providers), who function as conduits, hosts, and access providers. Specifically, she analyzes civil and criminal liability, including defamation and copyright liabilities, and contrasts Indian law with the EU (European Union) E-Commerce Directive and the U.S. (United States) DMCA (Digital Millennium Copyright Act).

⁵ Pritika Rai Advani, *Intermediary Liability in India*, 48 Econ. & Pol. Wkly. 120 (Dec. 14, 2013)

⁶ Information Technology Act, 2000, § 79, No. 21, Acts of Parliament, 2000 (India)

⁷ Avnish Bajaj v. State (NCT of Delhi), 116 (2005) DLT 427 (Del.).

⁸ Super Cassettes Indus. Ltd. v. Myspace Inc., 2011 SCC OnLine Del 4276.

⁹ Talat Fatima, *Liability of Online Intermediaries: Emerging Trends*, 49 J. Indian L. Inst. 155 (2007).

3. Censoring the Internet in the name of Democracy by Rishab Bailey ¹⁰

Bailey provides a critical review of the IT Rules, 2011 in India, claiming it undermines the principles of democracy by establishing a regime of private censorship. The article draws attention to terms like “grossly harmful” and “blasphemous” which are vague enough to push intermediaries to comply overly well by removing content entirely in the absence of any judicial mechanics.

4. From Intermediary Liability to Responsibility ¹¹ by Lavanya Bhagra

This paper traces the evolution of intermediary liability in India from *Ranjit Udeshi v. State of Maharashtra*¹², showing how laws impose strict monitoring duties on platforms. It critiques opaque, arbitrary takedown rules that chill free expression and concludes that a balanced, transparent framework is needed to protect both users and intermediaries.

RESEARCH METHODOLOGY

This research has used **doctrinal** legal analysis of the IT Laws, Case laws, and law on intermediary liability. We had critically examined the Provisions of IT Act and *Intermediary Guidelines Rules of 2011 and 2021*. By analysing the qualitative legal material in conjunction with a wider quantitative dispersion, the research critically examines the extent to which India's regulatory have struck a reasonable balance between digital freedom and accountability.

CRITICAL ANALYSIS

Section 2(1) (w) defines ‘Intermediary’ as “any person who on behalf of another person receives, stores, transmits that record or provides any service with respect to electronic record and include all providers¹³” **Section 79 of IT Act, 2000 states about the intermediary liability** and how they are exempted in certain cases. It provides safe-harbor rule for them. It states that

¹⁰ Rishab Bailey, *Censoring the Internet: The New Intermediary Guidelines*, 47 Econ. & Pol. Wkly. 15 (Feb. 4, 2012).”

¹¹ Bhagra, Lavanya, *From Intermediary Liability to Responsibility* (December 01, 2023). Available at SSRN: <https://ssrn.com/abstract=5061443> or <http://dx.doi.org/10.2139/ssrn.5061443>

¹² *Ranjit D. Udeshi v. State of Maharashtra*, AIR 1965 SC 881

¹³ Information Technology Act, 2000, § 2(1)(w), No. 21, Acts of Parliament, 2000 (India).”

an intermediary “will not be liable for any third-party information, data, or communication link made available or hosted by it”¹⁴.

The majority of these regulations serve one common purpose: protecting intermediaries from liability arising from the content posted by users as this protection extends to assuring immunity to all online platforms from the legal liability for content posted by its users.¹⁵

WHEN IS LIABILITY IMPOSED ON AN INTERMEDIARY?

“Intermediary may be held liable if it is found to have received actual knowledge of the illegal or unlawful content, and failed to remove it expeditiously. This is called **notice and takedown approach** which is in line with the EU approach of taking down the content quickly to retain their immunity¹⁶. However, apart from the IT act, Section 51(a) (ii) (b)¹⁷ and Section 63 of Copyright Act, 1957¹⁸ and Section 104 of the Trademarks act, 1999¹⁹ also apply to these intermediaries.”

INTERMEDIARY GUIDELINES RULES 2011

“The Intermediary Guideline Rules of 2011²⁰ further elaborated the due diligence requirements for the intermediaries. These rules required intermediaries to publish agreements for users which prohibits certain categories of content and also to remove them from the website within 36 hours of knowledge of it. Rule 3(4) established a private notice-and-take-down mechanism, in which any person may flag content, and require the intermediary to remove it within 36 hours to retain safe harbor protection.”

EXAMPLES OF TAKEDOWN REQUESTS

1. “India has seen dramatic increase in the demand by government to remove illicit content in

¹⁴ Ibid.

¹⁵ Malavika Raghavan, *India's New Intermediary & Digital Media Rules: Expanding the Boundaries of Executive Power*, FUTURE OF PRIVACY F. BLOG (June 10, 2021), <https://fpf.org/blog/indias-new-intermediary-digital-media-rules-expanding-the-boundaries-of-executive-power/> (last visited Aug 18, 2025)

¹⁶ Ashyana-J. Kachra et al., *Online Safety and the Digital Services Act: An Overview*, TECHUK (July 10, 2023), <https://www.techuk.org/resource/online-safety-and-the-digital-services-act-an-overview.html>. (last visited Aug 19, 2025)

¹⁷ Copyright Act, 1957, § 51(a)(ii)(b), No. 14, Acts of Parliament, 1957 (India).

¹⁸ Copyright Act, 1957, § 63, No. 14, Acts of Parliament, 1957 (India).

¹⁹ Trade Marks Act, 1999, § 104, No. 47, Acts of Parliament, 1999 (India).

²⁰ Information Technology (Intermediary Guidelines) Rules, 2011, Gazette of India, G.S.R. 314(E) (Apr. 11, 2011) (India).

recent years. For example, these demands from India to twitter **has grown by 480% between 2014 and 2020.** ²¹ Similarly, Content blocking under **section 69A** of IT Act, 2000²² has been spike since 2014, as there is a drastic increase seen in the same.”

2. From 2014 to 2020, the government of India has escalated its request for takedowns on Twitter, rising from 248 in 2017, to almost 10,000 in 2020, largely due to the farmers' protests and COVID-19. It also made 74,684 removal requests to Facebook (24% of global requests), which was also the most by any country.²³

MAJOR CASE LAWS OF INTERMEDIARY LIABILITY

1. In *Sanjay Kumar Kedia v Narcotics Control*²⁴, The Petitioner's Petition was rejected in view of the company's actual knowledge of the malafide action of sale of ‘illegal substance’ through its website in violation of the provisions of Narcotics Drugs and Psychotropic Substances Act, 1985.²⁵
2. One of the most significant cases of IT law was *Shreya Singhal v Union of India* ²⁶ which was best known for striking down section 66A of the IT Act. The same case was also referred to clarify the interpretation of Section 79.
3. In *Christian Louboutin SAS v. Nakul Bajaj* ²⁷(2018), the DHC found that safe **harbor protections** apply only to passive intermediaries that fail to play active roles in the transactions, thus the e-commerce website was an “active participant” in the transaction even though it merely hosted the product and facilitated the transaction, and so it was denied safe harbor immunity. Simply labelling as an intermediary does not qualify for protection.
4. In the case of *Avnish Bajaj v State*²⁸, court held that the website was negligent as a result of it not utilizing filters to the pornographic content, and their was not even a policy or

²¹ Google Transparency Rpt., *Government Removal Requests* (2014–2021), <https://transparencyreport.google.com/government-removals/overview> (last visited Aug. 20, 2025).

²² Information Technology Act, 2000, § 69A, No. 21, Acts of Parliament, 2000 (India).”

²³ Over 4400 Facebook, Twitter URLs Blocked in 2020: Govt., TIMES OF INDIA (Mar. 10, 2021), <https://timesofindia.indiatimes.com/india/over-4400-facebook-twitter-urls-blocked-in-2020-govt/articleshow/81445409.cms> (last visited Aug. 20 2025)

²⁴ *Sanjay Kumar Kedia v. Narcotics Control Bureau & Anr.*, Criminal Appeal No. 1659 of 2007 (S.C. Dec. 3, 2007), reported as (2009) 17 SCC 631

²⁵ Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61, Acts of Parliament, 1985 (India)

²⁶ *Shreya Singhal v. Union of India*, (2015) 5 SCC 110

²⁷ *Christian Louboutin SAS v. Nakul Bajaj & Ors*, AIR ONLINE 2018 DEL 1962

²⁸ *Avnish Bajaj v. State*, 2006 3 Compl. J. 364 (Del.)”

regulation that prevented the sale of the content on the website. The ruling was met with some backlash across India and other parts of the world because it exposed the weakness of the intermediaries in India.

5. In the case of *Google v Vishakha Industries*²⁹, SC held that Google had been notified by the party which was suffering, and it was deemed to have knowledge of the illicit act, still Google did not removed or prevented the dissemination of the same content.

AMBIGUITY IN THE DEFINITION OF INTERMEDIARY

The new definition of "**intermediary**" found under **Section 2(w)** expanded registration in immunity of non-network service providers, but without clarification³⁰. Whereas other jurisdictions classify intermediaries, India treats all intermediaries uniformly and ignores functional differences, such as ISPs permitting only access, whereas search engines permit indexing of content. This could potentially limit the ambit of **Section 79** as an immunity provision, leaving intermediaries exposed to liability. Section 79(2)(c) made due diligence mandatory, as discussed above, and specification can also be found in the 2011 Intermediary Guidelines.³¹

INTERMEDIARY GUIDELINES 2021

"In 2021, Government had introduced the *Information Technology Rules, 2021* which replaced the 2011 rules. These rules expanded the obligations of keeping in mind the exponential growth of the social media after covid-19 and misuses of the same. Key features of the rules are: **Due Diligence Requirements, Grievance Redressal, Traceability of the Encrypted Messages etc.** KKEYK

CHILLING EFFECT OF THIS ON FREEDOM OF SPEECH

"Intermediary liability laws in India directly threaten free speech under Article 19(1)(a).³² Most importantly, platforms must comply with a takedown request within 36 hours or they lose safe-harbour protection. The vast majority of takedown requests do not fit within the reasonable

²⁹ *Google India Pvt. Ltd. v. Vishakha Industries Ltd.*, Criminal Petition No. 7207 of 2009 (S.C. Dec. 10, 2019)

³⁰ Consilience 2010, Background Papers, "Inter net Service Providers", viewed on 20 November 2011 (http://consilience.org/kurl.c0m/c0ns2010/dheeraj/?page=Conference_material)

³¹ Sudhir Krishnaswamy's "Internet Regulation in India" in NLSIU (2010).

³² INDIA CONST. art. 19, cl. 1(a).

restrictions detailed in Article 19(2), but intermediaries are submitted to requests, thus creating a chilling effect on speech. The Bombay High Court case of *Janhit Manch*³³ upheld the principles of free speech, but political misuse that consists of government directed takedowns for critical speech demonstrates the potential for abuse under the current legal system.”

RECOMMENDATIONS

1. ***Tiered Liability Framework:*** Enact differentiated liabilities consistent with international best practices among passive conduits, hosting services, and active e-commerce platforms.
2. ***Judicial Oversight on Takedowns:*** Require judicial authorization for blocking orders under Section 69A and requests for removal in compliance with Article 19(2).
3. ***Due Diligence:*** Provide statutory clarity around due diligence standards to curb arbitrary enforcement and extreme censorship from intermediaries.

CONCLUSION

To conclude, it can be said by above article that intermediary liability in India stands at an crossroad as on one hand, government pushes for the accountability by saying that internet cannot be a space devoid of law, platforms had to ensure accountability in the cases of illicit activities, child pornography etc. On **other hand**, stricter regulations and imposition of the laws impose burdens which is negative and stifle smaller companies and start-ups. In India, the regulation of intermediary liability represents a classic case of the tension between protecting digital freedom and ensuring accountability. Although the Regulations and Section 79 of the IT³⁴ Act provide a "safe-harbor," it has been narrowed by judicial interpretation and the ramping demands of state regulation. As a case in point, in landmark cases such as *Shreya Singhal v. Union of India* and *Christian Louboutin v. Nakul Bajaj* courts have increasingly drawn a distinction between passive and active intermediaries and placed increased burdens on the latter. The 2021 Intermediary Guidelines further ramped-up responsibility for intermediaries by requiring due diligence obligations, traceability obligations, and prescribed timeframes and obligations for takedown compliance. Such obligations have the potential of undermining constitutional guarantees under Article 19(1)(a), and can encourage private censorship and chill

³³ *Janhit Manch v. Union of India*, Writ Petition (PIL) No. 36 of 2010 (Bom. H.C. Mar. 14, 2013).”

³⁴ *Ibid*

free expression. **It is clear that current approach establishes a more state-controlled system of governance rather than the required balance. A robust legal framework should sit between user rights, intermediately immunity and state oversight within constitutional bounds.**

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