



## LIABILITY OF SOCIAL MEDIA PLATFORMS: DECODING INTERMEDIARY RESPONSIBILITY UNDER INDIAN LAW

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### ABSTRACT

*The rise of social media platforms has recently increased a lot. It has transformed communication and brought the world closer through its network; however, it has also created complex legal challenges concerning accountability for user-generated content. It raises an important question as to who holds the responsibility for user-generated content – the user or the platform on which the user has created or posted the content. This paper analyses the liability of these social media platforms in India. Social Media Platforms are legally recognised as intermediaries in India and are defined under section 2(w) of the Information Technology Act. This paper also analyses the evolving framework of intermediary liability under Indian law, including the Information Technology Act 2000 and Information Technology (Intermediary Guidelines) Rules, 2011, to the Information Technology (Intermediary Guidelines and Digital Media Ethics) Code, 2021. It provides an in-depth analysis of Section 79 of the Information Technology Act, 2000. Moreover, it explores the balance between the freedom of expression, state regulations, and platform responsibilities supported by key judicial interpretations such as *Shreya Singhal v. Union of India*, *Google India Pvt. Ltd v. Visaka Industries*, *X Corp (formerly Twitter Inc) v. Union of India*, etc. Furthermore, this article compares the laws related to intermediary liability in the US and the EU, to India. It analyses section 230 of the Communications Decency Act in the USA and the Digital Services Act by the EU, and compares it to the regulations for intermediaries in India. It also clarifies the difference between safe harbour and conditional immunity. It provides a critical evaluation of the topic and also suggests some measures to ensure to maintenance of the balance between freedom of speech and intermediary liability in India. Later in the end, the study concludes that India's conditional safe harbour model, though evolving, remains the most suitable mechanism*

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*for ensuring operational freedom with accountability in the digital era, while also emphasising the need for clearer procedural safeguards and transparency while regulating the content.*

**Keywords:** Intermediary, Social Media Platform, Information Technology Act, Safe Harbour, Intermediary Liability.

## INTRODUCTION

India has the second-largest social media user base in the world<sup>1</sup>. People in India use social media platforms like WhatsApp, Instagram, Facebook, and X(Twitter). Most of these platforms are either a source of news to all these people or a platform for free speech. However, these platforms can also be a source of spreading misinformation and hate speech. Politicians can shift public opinion with the help of these platforms. For instance, 2016 US elections, Facebook shifted the public's opinion in the presidential election. It enabled politicians to micro-target users and address voters from a particular group with a degree of precision which was not possible before.<sup>2</sup>

Article 19(1)(a) of the Constitution of India guarantees the right to freedom of speech and expression to the citizens of India, and it is subject to reasonable restrictions under Article 19(2), such as Defamation, Decency and Morality, Friendly relations with foreign states, etc. These social media platforms give people access to free speech. Anyone can speak their mind on such platforms. If it is misinformation or hate speech, it can lead to some bad consequences. The person who spreads such information is held accountable for spreading misinformation. However, the platform through which such a person spreads the misinformation or hate speech is also somewhat responsible. In 2021, a bench of Justices S.K. Kaul, Dinesh Maheshwari, and Hrishikesh Roy of the Supreme Court held that such social media platforms must be held accountable for spreading disruptive messages and hate speech through their platform.<sup>3</sup>

As per section 2(1)(w) of the Information Technology Act, the term 'intermediary', with respect to any particular electronic records, means any person who, on behalf of another person, receives, stores, or transmits that record or provides any service with respect to that record. A

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<sup>1</sup> World Population Review, 'Social media users by Country 2025' (2025)

<https://worldpopulationreview.com/country-rankings/social-media-users-by-country> accessed 17 October 25.

<sup>2</sup> Federica Liberini and others, 'Politics in the Facebook era. Evidence from the 2016 US presidential elections (2025) <https://www.sciencedirect.com/science/article/pii/S0176268025000011> accessed 17 October 2025.

<sup>3</sup> Dhananjay Mahapatra, 'Social media platforms must be accountable: Supreme Court' Times of India (New Delhi, 9 July 2021).

social media platform is legally recognised as one of the intermediaries under the said section.<sup>4</sup> Liabilities of intermediaries are described in Section 79 of the Information Technology Act, 2000. Intermediaries are not always held liable unless they have ignored the hate speech on the platform.

It is essential to balance the freedom of speech and regulate the intermediaries at the same time. To tackle the hate speech and misinformation, while not suppressing the freedom of speech and expression, is like serving two masters at the same time. As mentioned earlier, the intermediaries cannot be held liable for third parties' actions except for some restrictions. Then the real question arises, and that is "to what extent can social media platforms be held liable for user-generated content under Indian law?"

## **LEGAL FRAMEWORK IN INDIA**

**Section 79, Information Technology Act 2000:**<sup>5</sup> This section of the IT Act provides a safe harbour to intermediaries for liability of third-party information in certain cases. Section 79(1) grants immunity to the intermediaries from any third-party information, data, or communication link made available or hosted by them. This section 79(1) is subjected to the provisions of section 79(2) and 79(3).

Section 79(2) provides the conditions for exemption. The intermediary must act as a neutral host, must not initiate the transmission, select the receiver of the transmission, or select and modify the information contained in the transmission and must observe due diligence.

Section 79(3) provides that the exemptions shall not apply if the intermediary actively participates in illegal activities or fails to remove the content even after being notified by the government.

If an intermediary fulfils all the above conditions, it cannot be held liable for third-party information. Furthermore, the validity of this section was challenged before the Supreme Court in the case of *Shreya Singhal v. Union of India*.

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<sup>4</sup> Information Technology Act (India) 2000.

<sup>5</sup> Information Technology Act (India) 2000.

**The Information Technology (Intermediaries Guidelines) Rules, 2011:**<sup>6</sup> These 2011 rules laid down the due diligence requirements to be complied with by the intermediaries. They were as follows:

1. The intermediaries must publish the rules & regulations, privacy policy, and user agreements for access and usage of their platform.
2. It must remove unlawful content within 36 hours of receiving actual knowledge of illegal content.
3. It must cooperate with government agencies for lawful investigation upon request.
4. It must use reasonable security procedures to protect users' data.
5. Every intermediary must appoint a grievance officer to hear the complaints.

### **THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE), 2021<sup>7</sup>**

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) 2021 replaced the 2011 rules. These rules are the same as the 2011 rules; however, they introduced some new categories, such as Social Media Intermediaries (Hereinafter referred to as SMI) and Significant Social Media Intermediaries (Hereinafter referred to as SSMI).

1. Due diligence must be followed (expanded the provisions of the 2011 rules).
2. SMI is a platform that allows online interactions, while SSMI is a platform that has more than 50 lakh registered users in India.
3. Additional due diligence must be observed by SSMI. Appoint a Chief Commissioner Officer responsible for ensuring compliance with the act, a Nodal contact person for 24x7 coordination, and a Resident Grievance Officer to address user complaints.
4. Additional due diligence to be observed by an intermediary in relation to news and current affairs content.
5. If an intermediary fails to observe these rules, it will lose the protection of section 79 (1) of the Information Technology Act and will be held liable.

These rules tightened the social media platforms as compared to the 2011 rules. The Social Media Platforms were regulated by these rules.

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<sup>6</sup> Information Technology (Intermediaries Guidelines) Rules 2011(India) (GSR 314(E), 11 April 2011).

<sup>7</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (India) (G.S.R. 139(E), 25 February 2021)

## JUDICIAL INTERPRETATION

**Shreya Singhal v. Union of India (2015):** The Supreme Court struck down Section 66A of the Information Technology Act, declaring it as unconstitutional and vague. The court held that it violated the fundamental rights of the citizens, which guarantees the right to freedom of speech and expression under Article 19(1)(a) of the Constitution.

Moreover, the court read down section 79(3)(b) of the Information Technology Act and held that the intermediary will be liable for the third-party information, only if it fails to remove or disable certain content even after being notified by the government or receiving an order from the court to remove or disable the same. This judgment clarified that intermediaries will not be held liable for user-generated content unless they ignore the directives given by the government.

**Google India Pvt. Ltd v. Visaka Industries (2020):** The Supreme Court delved into the applicability of Section 79 of the IT Act, distinguishing its provisions before and after the 2008 amendment. Originally, Section 79 exempted intermediaries from liability only if they could prove that they were not aware of the defamatory content and had exercised due diligence to prevent its dissemination. Post-amendment, the scope expanded, introducing stricter criteria where intermediaries cannot claim exemption if they fail to remove content after receiving actual knowledge or a court order.<sup>8</sup> The Supreme Court clarified that the intermediaries could only claim safe harbour under section 79 of the Information Technology Act if they observe due diligence.

**Myspace Inc v. Super Cassettes Industries Ltd.:<sup>9</sup>** The court stated that sections 79 and 81 must be read harmoniously. Section 79 has an overriding effect and states that regardless of other laws there shall be safe harbour granted to intermediaries subject to them following the terms of this section, while section 81 states that the act shall a person's right under the copyright must not be infringed. Intermediaries are held liable only when they fail to take down the content after having knowledge of such infringing content.

<sup>8</sup> 'Intermediary Liability and Defamation: Insights from Google India Pvt. Ltd. v. Visaka Industries (2019 INSC 1352)' (Casemine 11 December 2019) [https://www.casemine.com/commentary/in/intermediary-liability-and-defamation:-insights-from-google-india-pvt.-ltd.-v.-visakha-industries-\(2019-insc-1352\)/view](https://www.casemine.com/commentary/in/intermediary-liability-and-defamation:-insights-from-google-india-pvt.-ltd.-v.-visakha-industries-(2019-insc-1352)/view) accessed on 18 October 2025.

<sup>9</sup> Dhitia Dokania, 'Super Cassettes Industries v. Myspace Inc. & ANR' (2025) 1(1) IJIRL <https://ijirl.com/wp-content/uploads/2025/01/SUPER-CASSETTES-INDUSTRIES-V-MYSPACE-INC-ANR.pdf> accessed 18 October 2025

**X Corp. (Formerly Twitter Inc.) v. Union of India (2023):**<sup>10</sup> This is a very recent case related to the powers of an intermediary. In this case, Twitter (now known as X Corp) challenged the blocking orders of certain tweets, accounts, and URLs issued by the Ministry of Electronics and Information Technology. It pleaded that these orders violated freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. Moreover, as per section 69A (1) of the Information Technology Act, the government is required to give reasons in writing while directing an order to the Social Media Intermediary to take down certain content. In this case, it did not give any written reasons to Twitter.

However, the Union of India, on the other side, argued that the orders were issued in the interest of national security and public order and that Twitter is bound under Section 69A to comply with the directions to block access to content.

The Karnataka High Court dismissed Twitter's petition and upheld the government's blocking orders. It held that Twitter, as an intermediary, is not allowed to question the necessity of the government's orders once they are lawfully issued. It also held that section 69A is constitutionally valid and non-compliance with the orders of the government directives may lead to loss of safe harbour protection given under section 79 of the Information Technology Act.

This judgment reaffirmed the government's legal power against the intermediaries. It also clarified the limits of the intermediary's rights. It highlighted that the social media intermediaries may lose the protection of safe harbour given under section 79 of the Information Technology Act, if they do not comply with the blocking orders of the government.

## COMPARATIVE PERSPECTIVE

**US: Section 230 of the Communications Decency Act:** Section 230 of the 1996 Communications Decency Act states that 'no provider or user of an interactive computer service shall be treated as a publisher or speaker of any information provided by another information content provider.'<sup>11</sup> It protects the intermediaries from being held liable for the user-generated content. That means these social media intermediaries cannot be held

<sup>10</sup> X Corp (formerly Twitter Inc.) v Union of India 2023 SCC OnLine Kar 1201 (Karnataka HC).

<sup>11</sup> Barbara Ortutay, 'What you should know about section 230, the rule that shaped today's internet' (PBS News, 21 February 2023) <https://www.pbs.org/newshour/politics/what-you-should-know-about-section-230-the-rule-that-shaped-todays-internet> accessed 18 October 2025.

accountable for the content posted by their users. Although there are some exceptions to this act, it provides a conditional immunity to the Social Media Platforms compared to Section 79 of the Information Technology Act 2000 in India.

**EU: Digital Services Act 2022:** This act regulates social media intermediaries to prevent illegal and harmful activities online and the spread of disinformation. It aims to protect the users from illegal content, ensure transparency in online advertising, and hold platforms accountable for algorithmic decisions.<sup>12</sup> The Digital Services Act is strict and holds the intermediaries accountable for illegal content posted by users. However, it has some limits to hold an intermediary accountable, too.

**India:** India's approach to holding the intermediaries accountable for the user-generated content is somewhat balanced. The Information Technology Act protects the intermediaries as well as regulates them. That means if an intermediary fails to comply with the orders of the court or directives of the government, it can be held liable; however, if an intermediary follows due diligence, it will get the protection under section 79 of the Information Technology Act.

## CRITICAL EVALUATION

While some may argue that India's rules for the intermediaries are too strict and may suppress free speech, it also needs to take into consideration that slight misinformation or hate speech may lead to harmful consequences. It is more important to balance both, that is, free speech and intermediary liability. It is essential to regulate the intermediaries while not suppressing the freedom of speech.

The Information Technology Act provides a safe harbour to the intermediaries under section 79 of the act. Safe harbour focuses on compliance with duties and due diligence, which means the law will protect such intermediaries as long as they act as a neutral host and comply with certain conditions. However, there is an even broader concept for safe harbour known as conditional immunity. In the US, Section 230 of the Communications Decency Act provides conditional immunity to the intermediaries. It focuses on conduct and good faith adherence to legal standards. Conditional immunity grants temporary protection to the intermediaries based on certain conditions and conduct. The immunity can be lost if intermediaries engage with illegal content or violate good faith moderation. In the safe harbour model, there is a risk of

<sup>12</sup> Penny Naas and others, 'The EU's Digital Markets Act and Digital Service Act' (GMF, 15 October 2025) <https://www.gmfus.org/news/eus-digital-markets-act-and-digital-services-act> accessed 18 October 2025.

government control over free speech, while in the conditional immunity model, free speech is highly valued but at the cost of less control over harmful content. Therefore, it can be said that safe harbour is more balanced and conditional immunity is broader.

In a country like India, which is a developing democracy, a safe harbour ensures that intermediaries enjoy personal freedom with responsibility. It helps the government to have a balanced approach while regulating the intermediaries and protecting the freedom of speech and expression of its citizens.

## SUGGESTIONS

**Stronger transparency in content moderation:** The government can issue a written order to the intermediaries to remove or disable certain content on its platform under section 69A. However, the government should maintain transparency while directing the intermediaries to remove the content.

**Co-regulation rather than direct government control:** The government should encourage the social media intermediaries to co-regulate and cooperate rather than take over control. The intermediaries should assist the government in regulating fake news, hate speech, and misinformation on their platforms, too. This will help to protect free speech as well.

**Renewal of outdated laws:** The Information Technology Act of 2000 has become outdated. After 25 years of its implementation, there is a need to review it. Nowadays, there is so much AI content, and Deepfakes are generated on these social media platforms. It needs to be considered whether these platforms should be held accountable for misdirected AI-generated content or not.

**Integration of Directive Principles of State Policy:** Although the DPSP is not enforceable by any court, the government should integrate them while formulating future policies or taking legislative measures.

## CONCLUSION

India's regime of intermediary liability has shifted from freedom to accountability. While the government moderately restricts free speech on social media platforms, it is more important to balance free speech while regulating the intermediaries, and it is easy to balance both as long as the intermediaries and the government cooperate rather than being against. The Information

Technology Act has provided enough protection to the intermediaries as long as they follow due diligence. The intermediaries will not be held accountable for the user-generated content. Therefore, the intermediaries are regulated to ensure that they are responsible and neutral hosts. Hence, a balanced approach is taken by the government. It protects users' rights while ensuring responsibility, and it is a need of the hour.