

ANATOMY OF SOCIAL MEDIA INTERMEDIARIES IN INDIA - A LEGAL PERSPECTIVE

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Abstract

Social media was the only way for us to communicate with one other throughout the epidemic during 2020. Although the widespread usage of these platforms during this time period improved relationships, it also made a number of drawbacks connected with them apparent. The ability for anyone to virtually share information with people anywhere in the world and the fact that social media is a platform where no one is referred to as a producer or a consumer have both contributed to the recent rise in cybercrimes. The swift expansion of social media platforms in India has brought about a substantial shift in the dissemination of information, impacting public opinion and forming societal viewpoints. This research explores the roles, functions, and legal issues pertaining to the social media intermediaries in India, delving into the complex legal environment surrounding them. With a focus on the Information Technology (IT) Act of 2000 and the Intermediary Guidelines and Digital Media Ethics Code Rules of 2021, the research offers a thorough examination of the current legal environment. This research explores the nuances of user privacy, content control, and platform responsibility through a thorough analysis.

Keywords: *Social Media, IT Act, User Privacy, Data Protection, Digital Media Ethics, Data Security*

Introduction

India has seen an unheard-of surge in social media usage over the last ten years, with millions of Indians relying on Facebook, Instagram, WhatsApp, and Twitter as essential parts of their everyday lives. The way individuals engage with their surroundings, share information, and communicate has changed dramatically as a result of the digital revolution. But in addition to revolutionizing interpersonal communication, the widespread use of social media has also given birth to a number of legal and ethical issues that need to be carefully considered and resolved.

Social media middlemen have become influential in forming public opinion, political discourse, and social standards because they provide as essential channels for the transmission of information. These platforms have allowed news, ideas, and cultural trends to spread quickly throughout a variety of communities, despite geographical limitations. Legislators, lawyers, and the general public all now find it essential to comprehend the complex inner workings of these social media middlemen.

Online privacy and data security is one of the core concerns that have emerged during this digital revolution. Millions of users share videos, images, and personal information on these sites, raising worries about identity theft, data breaches, and cybercrimes. As a result, extensive laws and strict rules are desperately needed to protect users' digital privacy and make social media companies responsible for maintaining user data security.

Furthermore, there are now legitimate worries about how internet material may affect democratic principles and social peace due to the quick dissemination of false information, fake news, and hate speech on social media platforms. False information's propensity to spread quickly endangers public discourse by distorting the truth, dividing society, and undermining confidence in the mainstream media. In order to effectively address these issues, social media corporations, governmental organizations, and civil society organizations must work together to devise policies for content moderation, fact-checking, and combatting hate speech on the internet.

Furthermore, it is impossible to ignore how social media affects elections and political processes. Propaganda, microtargeting of political communications, and targeted advertising have all become key concerns for election authorities and democratic institutions when it comes to manipulating public opinion. In the digital era, maintaining the integrity of election processes necessitates creative solutions, openness in political advertising, and strong defences against misinformation campaigns.

Social media platforms have emerged as the mainstay of information sharing quite quickly. Their widespread impact extends to a wide range of geographic and demographic contexts. Because of this, they have unmatched ability to change social viewpoints, political narratives, and public opinion. These platforms are not only informational sources but also opinion-shaping organizations in today's linked society, thus it is critical to evaluate their activities from a legal perspective. The speed at which information is exchanged on social media platforms begs urgent questions about the veracity of the shared content. Fake news, misinformation, and disinformation have the ability to spread quickly and widely, perhaps resulting in societal instability, confusion, and mass fear. Establishing legal frameworks that hold social media intermediaries responsible for the material produced on their networks is crucial. This accountability entails putting strict policies in place to stop the dissemination of misleading information, maintaining trust, and defending the public against misleading narratives.¹

Personal data has become a valuable commodity in the era of the digital age. Due to the massive volumes of user data that social media platforms acquire, serious worries regarding privacy violations and illegal data usage are raised. Establishing strong data privacy laws that shield user information from misuse is vital from a legal standpoint. Furthermore, it is critical to protect users from online threats, harassment, and cyberbullying. Legislative frameworks that hold social media companies accountable for promoting safe user experiences must be created to establish a secure online environment. At its core, the problem is finding a fine balance between promoting free speech and maintaining social cohesion. Although it is essential to democratic society, the right to

¹ Dornala Sai Mahitha, "Social Media and It's Regulations in India" (2021), 4, International Journal of Law, Management & Humanities, 1560.

free speech must be used properly. When it comes to determining the parameters of expression on social media platforms, legal viewpoints might be crucial. The law can maintain peace and cohesiveness among communities by defining clear limits and restrictions that guarantee users' freedom of expression while staying within the bounds of ethical and cultural norms.²

Legal Framework in lieu of Social Media

The IT Act, 2000, and the Intermediary Guidelines and Digital Media Ethics Code Rules, 2021, are the two main pillars that govern social media intermediaries within the complex legal framework of India. The foundation of legislation governing the operations and obligations of social media platforms that operate under Indian jurisdiction is formed by these acts. The IT Act, which was passed at the start of the new millennium, is a key piece of legislation that established India's digital legal system. It outlines the obligations and legal requirements with regard to cybercrimes and electronic governance. Within its purview, social media middlemen play the roles of both communication facilitators and organizations responsible for the material that is shared on their networks. The implementation of the Digital Media Ethics Code Rules and Intermediary Guidelines in 2021 marked a turning point in the regulation of social media intermediaries. These rules established norms for user privacy, content regulation, and intermediary responsibility, laying forth a complete framework. It was noteworthy because it brought in a new age of accountability for digital platforms by emphasizing self-regulation, data protection, and the hiring of compliance officers.

The Ministry of Electronics and Information Technology (MeitY) published the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in February 2021, marking a significant advance in India's digital ecosystem. The IT Act of 2000 gave rise to the introduction of these regulations. In accordance with this all-inclusive structure, organizations labelled as intermediaries, which include social media behemoths, ISPs, cloud service providers, telecom providers, and e-commerce sites, must comply with the guidelines in order to take advantage of the safe harbour provisions found in the IT Act.

On June 6, 2022, the MeitY took a proactive move by issuing an important press notice, building upon this foundation. The public was urged to provide input on suggested changes to the current Guidelines in this correspondence. These revisions had two main goals: first, they improved the channels through which the public may voice concerns and provided new channels for resolving complaints. Second, and perhaps most importantly, these changes attempted to protect Indian individuals' fundamental rights from any infringement by large digital companies. This was to be accomplished by enacting strong and new accountability guidelines that specifically targeted important social media middlemen.

The proposed revisions were painstakingly reworked following a lengthy period of debate and the incorporation of comments from many stakeholders and the general public. The interests of citizens and digital platforms were carefully balanced during the creation of these changes. The IT (Intermediary rules and Digital Media Ethics Code) Amendment Rules, 2022 served as formal

² *Ibid.*

notice of the revised rules on October 29, 2022. These regulations brought subtle adjustments to handle new issues in the digital realm, all the while maintaining the fundamental principles of the original Guidelines.³

This development represents a turning point in India's digital regulatory environment and the government's resolve to providing its citizens with a digital environment that is secure, accountable, and morally sound. The Amendment Rules demonstrate not just India's ability to adjust to changing technology paradigms but also the country's commitment to protecting the rights and interests of its citizens in the digital era.

Policies and Communication in Local Languages - The Amendment Rules substantially improved the current Guidelines in an effort to meet India's enormous linguistic variety. It is now required of intermediaries, which include different online platforms, to prominently post their privacy policy and terms of use in any recognized Indian national language in addition to English. This criterion, which acknowledges the linguistic fabric of the country, is a critical step towards inclusiveness. Although the Amendment Rules do not mandate intermediaries to exclusively communicate in Indian languages, this particular clause represents a revolutionary move in the direction of accessibility. It creates opportunities for a sizable user base whose primary language is not English, promoting an inclusive online community.

Due Diligence Obligations and Hate Speech Prevention - The Amendment Rules have significantly increased intermediaries' responsibility to do due diligence. The Amendment Rules require intermediaries to actively monitor user adherence to the standards, whereas the previous standards focused on notifying users about service usage and limits. This is a proactive approach, whereby intermediaries are now obligated to take reasonable steps to prevent users from breaching these standards, rather than merely stating limits in their terms of use. It is also notable that hate speech is being addressed. It is now mandatory for intermediaries to make significant steps to stop users from posting or disseminating any information that incites violence by inciting animosity amongst various caste or religious groups. This clause emphasizes the Amendment Rules' dedication to preventing hate speech online and promoting a safer online environment for all users.⁴

Principles of Accessibility, Due Diligence, Privacy, and Transparency - The Amendment Rules, a significant legislative milestone in India, highlight the fundamental ideas that guide intermediaries doing business there. These values, which are fundamental to justice and inclusion, are fundamental in forming the digital environment. Accessibility must now be given priority by

³ Chacko M and Misra A, "New Amendments to India's Guidelines for Intermediaries: An Update" (*Spice Route Legal*) <<https://spiceroutelegal.com/publications/new-amendments-to-indias-guidelines-for-intermediaries-an-update/>> accessed October 28, 2023.

⁴ Khaitan & Co. LLP, "Intermediaries And Digital Media Rules 2021" (*Mondaq*, March 8, 2021) <<https://www.mondaq.com/india/social-media/1044060/intermediaries-and-digital-media-rules-2021>> accessed October 28, 2023.

intermediaries, while the precise guidelines are still being worked out. This implies that online services ought to be designed so that users with a range of needs, including those who are disabled, may easily use them. It is anticipated that the government would supply thorough instructions outlining the precise actions intermediaries need to take to improve accessibility through MeitY. The Amendment Rules are significant because they restate the intermediaries' duty to protect the basic rights guaranteed by the Indian Constitution. These include the freedoms of expression, association, equality, and life and liberty. Although, historically, the government could only enforce basic rights against state actors, in order to protect these rights for Indian citizens, the government is increasingly looking to intermediaries for assistance. This is a cooperative strategy in which the government and middlemen cooperate to safeguard the nation's constitution, even when it comes to the digital sphere.⁵

Reduced Timelines for Content Take-Down Requests - Intermediaries had to recognize customer complaints within 24 hours and remedy them within 15 days under the prior Guidelines. The Amendment Rules have tightened these deadlines considerably, exhibiting a proactive approach against harmful or non-compliant content. With a maximum response time of 72 hours, intermediaries are now required to accelerate the fulfilment of material take-down requests. This prompt response helps to promote a safer online environment by slowing the rapid spread of hazardous information. Because the grievance redressal procedure might be abused, the Amendment Rules provide intermediaries the power to create suitable protections. But the existing legal system does not specify the details of these protections. MeitY is expected to release more guidelines soon, including the doable steps that middlemen can take to guard against improper use of the content filtering system. This proactive strategy supports the overarching objective of guaranteeing responsible content management in the digital domain by motivating intermediaries to develop and deploy strong procedures.⁶

Grievance Appellate Committee (GAC) - The Amendment Rules, which were implemented to improve digital realm accountability and efficiency, include a strong mechanism called GAC. The Indian government requires that one or more GACs be established within three months of the regulations' adoption. Each GAC must have three carefully chosen members. The crucial duty of handling complaints resulting from choices made by an intermediary's grievance officer has been placed on these committees. An appeal to the GAC is available to anybody who feels wronged by a judgment made by the grievance officer of an intermediary. This right of appeal must be used within the allotted 30-day period after the intermediary's ruling.⁷ Most importantly, the GAC is subject to a rigid schedule under the Amendment Rules. The committee will undoubtedly proceed expeditiously with these appeals, attempting to arrive at a definitive decision in a timely manner, thirty calendar days. This accelerated procedure accomplishes two goals: it guarantees prompt

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Supra note 3.*

compensation for the harmed parties and, at the same time, relieves the strain on the traditional legal system, demonstrating the government's dedication to effective conflict settlement. The GAC is required to implement an online dispute settlement system in a creative modernization step. This digital strategy reflects the government's emphasis on using technology for effective administration, as well as the worldwide trend towards dispute resolution mediated by technology. Furthermore, the Amendment Rules reaffirm the GAC's power with decisiveness. Any decision made by the Grievance Appellate Committee is legally obligatory on the relevant intermediary. Intermediaries are expected to provide thorough reports outlining their compliance with the GAC's instructions on their individual websites in order to further improve accountability and transparency. By guaranteeing transparency into the settlement process, this strategy promotes confidence between users of digital platforms and those platforms themselves.

Challenges and Controversies

Issues Related to Content Moderation and Censorship

It is extremely difficult to strike a careful balance between protecting the basic right to free speech and preventing the spread of false information. Social media companies frequently struggle with the moral conundrum of letting different points of view exist while protecting users from offensive or misleading information. Achieving this balance calls for complex regulations that safeguard free speech while avoiding acting as distribution channels for damaging disinformation operations.⁸

It is difficult to apply content moderation rules consistently in a variety of circumstances, languages, and cultural backgrounds. In certain cultures, anything that is deemed insulting or deceptive may be accepted. The creation of international content rules is made more difficult by this cultural variance. The difficult challenge of creating standards that take into account regional variations while upholding a uniform worldwide standard falls on social media intermediaries.

User Privacy and Data Protection Concerns

India's data protection regulations/ laws of 2023 are complex, as can be seen by looking at them. Since the passage of the Digital Personal Data Protection Act 2023, a thorough framework for protecting user data has been built. Examining these rules' complexities helps to clarify how India's data protection laws are changing. It is essential to assess how these regulations conform to international norms in order to protect Indian users' privacy and security.⁹

The vulnerability of user data on social media sites has been highlighted by the increase in data breaches. It is crucial to comprehend the legal ramifications of these violations. Examining well-known incidents sheds light on the risks that intermediaries confront and emphasizes the importance of strong cybersecurity defences. These instances highlight the legal responsibility of social media sites to secure user data and act as cautionary stories.

⁸ Akash Chatterjee & Moulinath Moitra, "Intermediary Liability Issues in India - How Social Is Social Media?" (2022), 4, *Indian Journal of Law & Legal Research*, 1.

⁹ *Digital Personal Data Protection Act, 2023, No. 22 (2023)*.

Liability of Social Media Intermediaries for User-Generated Content

Social media intermediaries have emerged as hot topics in the legal community. The field of intermediary liability has been moulded by significant court rulings that established guidelines for similar situations in the future. Examining these court cases clarifies the developing body of legal precedent on the obligations of intermediaries. It offers insightful information on how courts now interpret rules pertaining to user-generated content and internet content.¹⁰

Comparing oneself to global models provides a more comprehensive viewpoint. Studying successful strategies from other legal systems teaches India important things. India might enhance its legal structure by studying the approaches taken by other nations in managing intermediary responsibility. International comparisons act as a standard, providing creative answers and directing the creation of efficient regulations suited to the particular difficulties encountered by social media intermediaries in India.¹¹

The Way Forward

A major shift has been implemented for intermediaries operating in India with the introduction of the Amendment Rules. One significant feature of these regulations gives intermediaries the ability to communicate with users in several Indian national languages and post their policies. This trend, which encourages the creation of intermediaries focused on local languages, has the potential to completely transform the digital world. The Amendment Rules improve the accessibility and inclusiveness of online platforms by guaranteeing that a multilingual and varied user base is better engaged through the allowance of communication in regional languages.¹²

The Amendment Rules, however, also deal with a critical issue, namely the spread of hate speech, notably on social media platforms. As a proactive measure against hate speech, intermediaries must now react quickly to requests for the removal of hate speech-related content. This mandate lays a heavy burden on intermediaries to set up effective systems for quickly detecting and eliminating hate speech content. As a result, by limiting the spread of objectionable and dangerous content, this program is anticipated to foster a safer virtual space.

Intermediaries are required to expeditiously improve their internal grievance redressal procedures due to the Amendment Rules' immediate application upon notice. This urgency highlights how important it is for intermediaries to simplify their operations and make sure they perfectly comply with the new rules.

But among these modifications, one crucial element that has drawn criticism is the creation of Grievance Appellate Committees. Although these committees provide a forum for the resolution of complaints, there is a noticeable absence of information about the rights of intermediaries and the channels by which they can challenge the judgments reached by these committees. Within the digital realm, this uncertainty might lead to debates and legal conflicts. More updates and

¹⁰ *Rajashri Tripathi, 'Social Media Impersonation' (2022), 2, Jus Corpus Law Journal, 361.*

¹¹ *Supra note 1.*

¹² *Supra note 3.*

explanations are expected to be released in this respect as interested parties look for a deeper comprehension of the procedures and ramifications.

Conclusion

It is crucial that social media intermediaries in India have a carefully considered and balanced legislative framework. Such a framework serves as the cornerstone for the peaceful coexistence of the values of privacy, responsible content distribution, and freedom of speech. In addition to being required by law, striking this balance is essential to creating a digital environment where user safety, expression, and innovation may coexist. A well-balanced legislative framework serves as a beacon of guidance, guaranteeing that social media platforms are responsible organizations as well as venues for unrestricted speech. It prevents the transmission of dangerous content that might instigate violence or disseminate false information while simultaneously defending people's rights to express their thoughts without fear of retaliation. It offers social media intermediaries a guide on how to properly filter material, promoting a thriving digital environment where dissenting opinions are heard and false information is suppressed.