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SECTION 79 IN THE AGE OF AI: LIABILITY OF SOCIAL MEDIA PLATFORMS

~ Vidhi Bhatnagar

ABSTRACT

This research paper examines the scope and general applicability of liability of intermediaries under section-79 of the Information Technology Act, 2000, based on the idea of the increasing use of Artificial Intelligence (Ai) by social media platforms. Section-79 establishes that conditional immunity, referred to as “Safe Harbour”, to intermediaries for third-party content hosted on their platforms. In spite of that the emergence of Ai-driven technologies such as algorithmic recommendation systems, automated content moderations and targeted commercial advertising has considerably changed the role of these platforms. The primary objective of this paper is to examine whether platforms that actively organise and develop their content through Ai can continue to claim protection under Section-79 of the IT Act, 2000. The study adopts a doctrinal methodology, depending on statutory provisions, case laws, and secondary legal literature. It states that the traditional difference between passive intermediaries and active publishers is increasingly unclear. The paper further determines the effectiveness of legal frameworks and suggests reforms to address evolving challenges. In the author’s view, Ai-driven platforms constantly exercise a degree of control that challenges their classification as mere intermediaries. It concludes that a balanced approach is necessary to ensure both accountability and innovation in the cyberspace.

Keywords: Section-79, intermediary liability, artificial intelligence, safe harbour, social media, IT Act, 2000.

INTRODUCTION

The emergence of the internet and digital communication technologies has essentially transformed the structure of modern society. Social media platforms have become central to public conversations, allowing individuals to share ideas, opinions, and information on a unique and extraordinary scale. Platforms such as Facebook, Instagram, and Twitter are no longer mere communication tools they function as powerful intermediaries shaping social, political and economic narratives.

In India, the legal framework governing such platform is primarily developed from the Information Technology Act, 2000¹. Section-79 of the Act provides intermediaries with conditional protection from liability for third-party content². The provision often called as a ‘Safe Harbour’³, was introduced to support the growth of digital platforms without subjecting them to excessive legal burdens.

However, the technological landscape has advanced significantly since the enactment of the IT Act, 2000. The inclusion of artificial intelligence into social media platforms has transformed their role from passive hosts to active keepers of content. Algorithms now determine what users see, engage with and share online⁴. These systems analyse large amounts of data to personalized user experience⁵, often emphasizing content that maximizes engagement.

This shift increases critical legal and ethical questions. If platforms actively influence the circulation of content, can they still be considered neutral intermediaries? Should they continue to enjoy immunity under Section-79? These questions become specifically relevant in the context of misinformation, hate speech, harassment and harmful online content.

This paper aims to examine the emerging nature of intermediary liability in the age of Ai. It evaluates the adequacy of existing legal frameworks and determines the need for reforms to address emerging challenges.

¹ Information Technology Act, No. 21 of 2000, INDIA CODE (2000).

² Information Technology Act, 2000, Section 79, No. 21, Acts of Parliament, 2000 (India).

³ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, Extraordinary, Part II, sec. 3(i) (Feb. 25, 2021)

⁴ Tarleton Gillespie, Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media 43-47 (2018).

⁵ Mark MacCarthy, Transparency Requirements for Digital Social Media Platforms: Recommendations for Policy Makers and Industry, 10 J. CYBER POL `Y 1 (2021)

LITERATURE REVIEW

The doctrine of intermediary liability has been highly discussed in legal scholarship, particularly in relation to balancing freedom of expression with accountability. Early academic Conversations emphasized the necessity of Safe harbour provisions in promoting intermediaries from undue liability

Judicial interpretation has considerably shaped the understanding of Section-79⁶. In *Shreya Singhal v. Union of India (2015)*, the Supreme Court of India clarified⁷ that intermediaries are required to remove unlawful content only on receiving “actual knowledge” through a court order or government notifications. This decision was important in preventing arbitrary censorship⁸ and preserving freedom of speech.

Similarly, in *MySpace Inc. v. Super Cassettes Industries Ltd.*⁹, the Delhi High Court stated that intermediaries are not obligated to monitor content presciently. The court recognised the impracticality of monitoring large amounts of user-generated content¹⁰ and alleged that liability arises only upon failure to act after receiving specific knowledge.

In *Google India Pvt Ltd v. Visaka Industries*¹¹, the court repeated that intermediaries must remain passive to claim safe harbour protection. These decisions collectively establish that the protection provided under section-79 is contingent upon the intermediary’s neutral role.

Recent scholarships, has shifted their focus to the impact of artificial intelligence o intermediary liability. Researchers state that Ai-driven algorithms basically change the nature of platforms by enabling them to organise, recommend and prioritize content. This progress challenges the traditional understanding of intermediaries as passive entities International literature highlights similar concerns. Scholars studying the European Union’s Digital Service Act (DSA)¹² and the United States’ Section-230 of the Communications Decency Act¹³ have noted a global trend towards increased platforms responsibility. These

⁶ Information Technology Act, No. 21 of 2000, Section 79, INDIA CODE (2000)

⁷ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1.

⁸ *Id.* ¶ 117.

⁹ *MySpace Inc. v. Super Cassettes Industries Ltd.*, 236 (2017) D.L.T. 478 (Del.).

¹⁰ *Id.* at ¶¶ 59–63.

¹¹ *Google India Pvt. Ltd. v. Visaka Industries*, (2020) 4 S.C.C. 162.

¹² Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act), 2022 O.J. (L 277) 1.

¹³ 47 U.S.C. Section 230 (1996).

developments state an expanding recognition of the need to regulate Ai-driven platforms more efficiently.

RESEARCH METHODOLOGY

This research follows a doctrinal and analytical approach, focusing on the interpretation of legal statutes, and judicial precedents.

Sources Of Data:

Primary Sources:

- Information Technology Act,2000
- IT (intermediary Guidelines and Digital Media Ethics Code) Rule, 2021
- Judicial decisions of Indian courts

Secondary Sources:

- Academic journals and research papers
- Legal textbooks and commentaries
- Government reports and policy documents
- Comparative legal framework (EU and US laws)
- Method of Analysis

The study uses:

- Analytical approach to study statutory provisions.
- Interpretations to analyse judicial decisions
- Comparative analysis to determine international regulatory frameworks

This methodology provides the means to comprehensive understanding of intermediary liability in the context of emerging technological advancements.

ANALYSIS AND DISCUSSION

1. Concept of Intermediary liability under Section-79

Section-79 provides conditional protection from intermediary liability¹⁴ for third-party content. The provision aims to protect platforms from liability from user-generated content, provided they act as neutral facility providers.

The key conditions for safe harbour protection include:

- The intermediary shall not initiate or modify the content in any way
- The intermediary shall must exercise due diligence
- The intermediary must remove unlawful or harmful content on receiving actual knowledge¹⁵

This frame establishes a balance between promoting digital advancements and ensuring responsibility.

2. Judicial Interpretation and the Passive Role Requirement

Court judgements have equally emphasized the passive nature of intermediaries. In *Shreya Singhal*, the Supreme Court of India restricted¹⁶ the obligation of intermediaries to act only on receiving actual knowledge through official channels. This interpretation suppressed the imposition of excessive monitoring obligations.

In *MySpace Inc. v. Super Cassettes Industries Ltd.*¹⁷, the court recognized the technical limitations of content surveillance and held that intermediaries cannot be expected to screen all content persistently.

Similarly, in *Google India v. Visaka Industries*¹⁸, the court reiterated that active involvement in content circulation could result in the loss of safe harbour protection.

These decisions state that the availability of protection under Section-79 of the Information Technology Act, 2000 depends on the intermediary's passive role.

¹⁴ Information Technology Act, No. 21 of 2000, Section 79, INDIA CODE (2000).

¹⁵ *Shreya Singhal*, supra note 7, at ¶ 117.

¹⁶ *Shreya Singhal*, supra note 7.

¹⁷ *MySpace*, supra note 9.

¹⁸ *Google India*, supra note 11.

3. Role of Artificial Intelligence in Social Media Platforms

Artificial Intelligence has become a labelling feature of social media platforms¹⁹. Ai systems are used for:

- Content creation and recommendation
- Content automated moderation
- Personalised advertisement creation
- Detection of harmful contents

These systems depend on machine learning algorithms that focus user behaviour to deliver targeted content. While Ai enhances efficiency regarding bias, responsibility and transparency.

4. Algorithmic Amplification and its Legal Implications

One of the most important challenges faces by Ai is algorithmic expansion. Platforms prioritize content that generates large engagement²⁰, often promoting harmful or controversial data. This can lead to the spread of hate speech, misinformation, false accusations and harmful content.

From a legal perspective, algorithmic amplification raises questions about the intermediary's role. If a platform actively promotes specific content, it may be questioned that it is no longer a passive intermediary, This challenges the applicability of safe harbour provision's protection.

5. Blurring of Intermediary and Publisher Difference

The inclusion of Ai blurs the difference between intermediaries and publishers. Traditional publishers enjoy editorial control over content, while intermediaries only host it. However, Ai-driven platforms perform functions similar to publishers²¹ by prioritizing and communicating content.

This raises the question of whether such platforms should be given higher liability standards. The concept of "constructive knowledge" becomes important and relevant,

¹⁹ Mark MacCarthy, Transparency Requirements for Digital Social Media Platforms: Recommendations for Policy Makers and Industry, 10 J. CYBER POL 'Y 1 (2021).

²⁰ Tarleton Gillespie, Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media 43-47 (2018).

²¹ Daphne Keller, Amplification and its Discontents: Why Regulating the Reach of Online Content Is Hard, STAN. CYBER POL 'Y CTR. (2021).

as platforms may be found to have knowledge of harmful and inappropriate content due to their algorithmic procedure.

6. Comparative Analysis on Global Regulatory Trend

European Union

The Digital Services Act (DSA) imposes restrictive and stricter obligations²² on platforms, including:

- Risk evaluation
- Requirement of Transparency
- Accountability and responsibility of algorithmic systems

United States

Section-230 of the Communications Decency Act provides broad protection²³ to intermediaries. However, recent debate has focused on reforming the provisions to focus on issues related to misinformation and harmful or illegal content.

These developments show a global trend towards increased regulation of digital platforms.

7. Limitations of the current Indian Framework

The existing framework under Section-79 faces many limitations:

- Lack of clarity regarding Ai-driven activities
- Inadequacy of the “actual knowledge” standard
- Absence of proper guidelines on algorithmic responsibility and accountability

These limitations highlight the need for a legal change to address evolving challenges.

²² Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act), 2022 O.J. (L 277) 1.

²³ 47 U.S.C. Section 230 (1996).

FINDINGS

1. The study provides the following:
2. Section-79 was made for a pre-Ai digital environment.
3. Judicial interpretations focus on the importance of passive intermediary statutes.
4. Ai technologies have transformed platforms into active content curators.
5. Algorithmic expansion challenges the concept of neutrality.
6. The current legal framework is inefficient to address Ai-related matters.
7. There is a global shift from conditional immunity to increased platform accountability.
8. Balancing innovation, accountability and responsibility remains a key challenge.
9. There is a need for technology-sensitive liability legal framework.
10. Global legal frameworks show increased platform accountability.

CONCLUSION

Section-79 has been an instrument in enabling the growth of digital platforms by providing them safe harbour protection. However, the rapid growth and advancement of artificial intelligence have essentially transformed the nature of social media platforms. These platforms now play an important and active role in shaping online conversation, challenging the traditional understanding of intermediaries.

Judicial interpretation has consistently provided the requirement of passivity. However, in the age of Ai, this requirement is increasingly difficult to maintain. The existing legal framework is inadequate to address the complications introduced by algorithm-driven technologies.

There is an important and urgent need to change intermediary liability provisions to reflect technological realities. A balanced approach that ensures responsibility and accountability while conserving innovation and freedom of expression is essential. Such reforms will play an important and crucial role in shaping and making the future of digital governance.