

ROLE OF INTERMEDIARIES IN INDIA

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ABSTRACT

Websites like Blogspot, Youtube and Facebook only provide a platform for users to post their content, and do not have any editorial control over this content. It was realised that these intermediaries must be given protection from legal liability that could arise out of illegal content posted by users, considering the importance of these intermediaries in the online space and the fact that their mode of operation was quite different from the traditional brick-and-mortar business.

Keywords: Intermediaries, India.

INTRODUCTION

Intermediaries are entities that provide services enabling the delivery of online content to the end user. "Section 2 (w) of the Information Technology Act, 2000 (IT Act, 2000) defines the term 'intermediary'. The intermediaries like Internet Service Providers, web hosts, social networking sites and blogging platforms play an important role in dissemination of information by providing tools and platforms that allow users to access the Internet, host content, share files and transact business." [1]

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Countries like the US and members of the European Union, and India now provide protection to intermediaries from such user generated content. Such protection is often termed as a 'safe harbour' protection. The Government has notified on April 13, 2011 the Information Technology (Intermediaries guidelines) Rules, 2011 prescribing guidelines to be observed by the intermediaries. Section 79 of the Information Technology Act, 2000 mandates the intermediary to observe due diligence while discharging its duties under the Act and to observe such other guidelines as prescribed by the Central government in this behalf. The Central Government is thus conferred with powers to prescribe guidelines relating to duties to be discharged by the intermediaries.[2]

The new intermediary rules mandate the intermediaries to impose a set of rules and regulations on users. The rules further specify the terms of such regulations and this includes a broad list of categories of content which should not be posted by users. It includes information that is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever. These words are too ambiguous and result in broad interpretation.

The rules do not provide for the creator of the content to respond to this complaint. In fact, the rules do not even provide for the intermediaries to inform the user who posted the content regarding the complaint. When it comes to Interactive websites and social networking, the guidelines are skewed entirely against the creator of the content. The rules also do not place any burden on the complainant to produce evidence in support of the complaint and also do not provide for any penalty on sending frivolous complaints.

The Information Technology (Intermediaries Guidelines) Rules, 2011 are replete with numerous words that are ambiguous and have not been defined in the rules or the parent Act. Most words are not defined in any Indian statute for that matter. The Indian legal system does indeed have some teeth to tackle instances of fake news or rumours, be they in the real world or online. The problem is that such regulation is largely focused on hate speech and defamation. In reality fake news goes much beyond hate speech.[3]

The terms of service of WhatsApp dictate as:

“We collect, use, preserve, and share your information if we have a good-faith belief that it is reasonably necessary to: (a) respond pursuant to applicable law or regulations, to legal process, or to government requests; (b) enforce our Terms and any other applicable terms and policies, including for investigations of potential violations; (c) detect, investigate, prevent, and address fraud and other illegal activity, security, or technical issues; or (d) protect the rights, property, and safety of our users, WhatsApp, the Facebook Companies, or others, including to prevent death or imminent bodily harm.”

Terms of service of Whatsapp provide in clause (d) that the safety of their users is of utmost importance and the social networking entity shall take care to deal with the issues of fake news as an intermediary.[4]

CONCLUSION

While exempting intermediaries from liability for any third party content, Section 79 of the IT Act imposes an obligation on them to remove any such content pursuant to takedown notices by law enforcement agencies.

REFERENCES

- [1] J. Howells, "Intermediation and the role of intermediaries in innovation," *Res. Policy*, 2006.
- [2] J. Stewart and S. Hyysalo, "Intermediaries, users and social learning in technological innovation," *Int. J. Innov. Manag.*, 2008.
- [3] M. K. Sein and B. Furuholt, "Intermediaries: Bridges across the digital divide," *Inf. Technol. Dev.*, 2012.
- [4] M. W. Peng, S. H. Lee, and S. J. Hong, "Entrepreneurs as intermediaries," *J. World Bus.*, 2014.