
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**ANALYZE ON THE INFORMATION TECHNOLOGY RULES, 2021 AND
INFORMATION TECHNOLOGY RULES, 2022 VIZ A VIZ THE
REGULATION OF CONTENT ON THE INTERNET THROUGH SELF-
REGULATION AND GOVERNMENT REGULATION**

- Sarren Muhil K S¹

The regulation of the contents on the internet is always a inconvenient task.²India being the world's largest internet society where the social media plays a vital role in the world which led to rise on certain major problems such as the persistent spread of fake news, hate speech, libelous & obscene content, attack on women's dignity & security, flagrant disregard for national & religious sentiments and so on.³In order to regulate these contents, the authorities should formulate new different strategies as the final Rules of IT Act 2011 did not mention about many issues and the same went beyond the idea of parent act.

The main issue in publishing the content in the internet is in order to trace the violation of right to privacy, it should be proportionate to the need of interference.⁴Also women and children are more susceptible to social media sexual offenses.⁵In the SC judgements on Re Prajwala⁶ and Tehseen S. Poonawala⁷cases “where the central government directed to implement mechanisms for removing images and videos of child pornography and rape from content hosting platforms,

¹ Student at Reva University, Bangalore

² <https://www.legalserviceindia.com/legal/article-7198-critical-analysis-of-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021.html>

³Pooja Gautam, UPES, Dehradun, Critical Analysis of Intermediary Guidelines and Digital Media Ethics Code, Volume 23, December 2022, <http://www.penacclaims.com/wp-content/uploads/2022/12/Pooja-Gautam.pdf>

⁴ Justice K.S.Puttswamy (Retd) vs Union of India, W.P.(Civil) No 494 of 2012, Supreme Court of India, August 24, 2017

⁵<http://www.penacclaims.com/wp-content/uploads/2022/12/Pooja-Gautam.pdf>

⁶ In Re Prajwala, Supreme Court of India, October 23, 2017,

https://main.sci.gov.in/supremecourt/2015/6818/6818_2015_Order_23-Oct-2017.pdf

⁷Tehseen S. Poonawalla Vs. Union of India, Writ Petition (Civil) No. 754 of 2016 SC of India, July 17, 2018

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

as well as to prohibit the spread of explosive texts and films with the potential to incite mob violence and lynching of any kind from those platforms.”

The Intermediaries Guidelines 2011 were superseded by Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 on February 25, 2021 (“Intermediary Guidelines”) which has mentioned about publishing the privacy policy and user agreements on their own website or apps in order to prohibit from posting harmful content, developing systematic and organizational measures for data security, etc.⁸Based on the same, rules are developed to deal with problems on transparency; accountability on intermediaries, digital media platform and their rights; establish systematic grievance redressal mechanism.⁹ The present rules has challenged for having an wider scope and ambit of IT Act by widening the scope to include digital media, making the executive action ultra-vires and providing unrestricted discretionary power where the terms “public order” and “substantial risk of harm,” as well as the government’s enormous powers under Rules 3, 4, and 6 to “order any intermediary” under the IT Rules, give the government far too much discretion.

Intermediaries liability issue:

The intermediaries weren’t protected under IT Act when there was any content being published by the users.¹⁰On the same issue, in the case of Avinash v State,¹¹ where they have mentioned in widening the scope of intermediaries protection along with defining the safe harbor under the IT Act. In this case, the managing director of an e-commerce company was charged under IPC, 1860 for the content posted by third parties on the same company. Court held that an intermediary will be liable even if he provides a platform to publish those contents apart from he creating the same.¹²

⁸ <https://www.mondaq.com/india/social-media/1235196/information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021-adequate-regulation-of-intermediaries>

⁹Pooja Gautam, UPES, Dehradun, Critical Analysis of Intermediary Guidelines and Digital Media Ethics Code, Volume 23, December 2022, <http://www.penacclaims.com/wp-content/uploads/2022/12/Pooja-Gautam.pdf>

¹⁰ <https://www.mondaq.com/india/social-media/1235196/information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021-adequate-regulation-of-intermediaries>

¹¹Avinash Bajaj v. State (NCT of Delhi), 2005 (79) DRJ 576.

¹²<http://www.penacclaims.com/wp-content/uploads/2022/12/Pooja-Gautam.pdf>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Also, the SC in *Shreya Singh v. Union of India*,¹³ also discussed the intermediary liability, “Section 79 is valid subject to Section 79(3)(b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relating to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material.”¹⁴ Similarly, in *Myspace Inc v. Super Cassettes Industries Ltd*,¹⁵ the court had emphasized the concept of ‘knowledge on actual content being infringed’ be provided to the intermediary to him with an intent to not pressure them with more obligations on due diligence.¹⁶

The law concerning ‘Intermediary Liability’ is observed by upholding the actual knowledge of the intermediaries by not imposing much obligation on them where the court must carefully consider the factors before passing any judgement.¹⁷ If such intermediary doesn’t comply with the due diligence, then he won’t be protected as safe harbor under the S. 79 of IT Act.¹⁸

Observance and Adherence on the Online publishers and Digital Media:

The regulatory body has discretion to decide the matters but shouldn’t use them arbitrarily.

“**Level I** – Self-regulation by the publishers – Publisher will appoint a Grievance Redressal Officer responsible for the grievance redressal who should either decide on such grievances within 15 days or it will be referred to the self-regulating body.

Level II – Self-regulation by the self-regulating bodies of the publishers – There may be one or more self-regulatory bodies of publishers. Such bodies have to register with the Ministry of Information and Broadcasting who will oversee the adherence by the publishers and address the grievances.

¹³(2013) 12 S.C.C. 73

¹⁴ <https://www.mondaq.com/india/social-media/1235196/information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021-adequate-regulation-of-intermediaries>

¹⁵*MySpace Inc. Vs Super Cassettes Industries Ltd.*, [236 (2017) DLT 478]

¹⁶ <https://thedigitalfuture.in/2022/03/08/review-of-the-information-technology-intermediary-guidelines-and-digital-media-ethics->

¹⁷ Id

¹⁸Pooja Gautam, UPES, Dehradun, Critical Analysis of Intermediary Guidelines and Digital Media Ethics Code, Volume 23, December 2022, <http://www.penacclaims.com/wp-content/uploads/2022/12/Pooja-Gautam.pdf>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

Level III – Oversight mechanism by the Central Government – Ministry of Information and Broadcasting will formulate an oversight mechanism who will publish Charter and Practice codes for self regulatory body. They will also establish an Inter Departmental Committee for hearing grievances.”¹⁹

²⁰There are many cases in which there are rules claiming on the Ultra vires actions by the regulatory government bodies. In the case of Live law,²¹ where the Union of India was restrained from taking coercive action against Live Law under Part III of the Rules. Also, in the case Digital News Publishers Association and Mukund Padmanabhan vs. Union of India and Other Connected Matters also stayed the enforcement of IT Rules against digital media observing that the oversight mechanism robs media of its independence.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022 [hereinafter “Amendment Rules”] on 28th October, 2022, brought changes to the IT Act, 2021 on enhancing due diligence requirements, and ensuring accountability of, social media, other intermediaries and Grievance Appellate Committee.²² There are major developments made in this amendment rules,²³

- Alteration on the grounds of due diligence that intermediaries must observe under the Rule 3 of the Rules. There are concepts inserted under the same relating to ‘promoting enmity and intermediaries must be informed and ‘ensure compliance’ with its policies by the user. It indicates that onus is on the online platform in ensuring that the user-uploaded content does not run counter to its policies. There are removal of concepts under Rule 3(1)(b)(x): “patently false and untrue written to harass a person for financial or cause injury” and under Rule 3(1)(b)(ii), the words “defamatory” and “libelous”.
- Amendment under Rule 3(2)(a)(i) with respect to adjudication of requests for removal of information be resolved by Grievance Officer within 72 hours in a fair and transparent manner which ultimately leads to receiving opinions that directly affects free

¹⁹Id

²⁰ Id

²¹Live Law Media (P) Ltd. v. Union of India, WP(C) No.6272 of 2021, 10-03-2021

²² <https://sflc.in/information-technology-intermediary-guidelines-and-digital-media-ethics-code-amendment-rules-2022/>

²³Id

speech and expression. As a result, forms a burden on intermediaries as it would pave way for excessive censorship of legitimate speech..²⁴Also, within 72 hours the complaint must be resolved from reporting time. It has few exemptions: sub-clause (i) - “Belonging to another person and user does not have a right”;sub-clause (iv) – “Patent, Trademark or Copyright infringements” and sub-clause (ix) – “Violating any law for the time being in force”.

- There is a newly added Rule 3A deals with Grievance Appellate Committee who would address the complaints on content moderation and free speech. There were no clarificationswith respect to the appointment of the membercalled as ‘independent members who were actually been appointed on the discretion of the Central government. It isa substantive statutory provision, hence the appointment procedures must be discussed in the parliament and be made a part of the parent Act.

Privacy has fundamental as well as instrumental value, and the gradual increase in censorship will result in a commensurate reduction in user privacy. There are regulations and guidelines which will help in removing all the violations taking place by the internet users while accessing the internet.

²⁴<https://cis-india.org/internet-governance/files/a-deep-dive-into-content-takedown-frames>