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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

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**WHO OWNS THE CONTENT? INTERMEDIARY
PLATFORMS IN THE SHADOW OF PUBLISHER
RESPONSIBILITY (SPECIAL REFERENCE TO:-
WIKIMEDIA FOUNDATION VS ANI MEDIA)**

AUTHORED BY - ARCHA MENON,
BBA LLB (HONS.) 2027, NMIMS School of Law

With the growing use of the internet along with digital and social media journalism, it has become all the more tough to verify the veracity of information being hosted on various platforms. The sweet spot that internet platforms including certain applications and websites have found is that of claiming itself to fall under the definition of an Intermediary, which is not legally liable of hosting content on its platform. The reason to how the liability differs from being an Intermediary and the difference between an Intermediary and a Publisher under it's relevant laws will be discussed in detailed under this article.

India's recent regulations regarding intermediary liability and the oversight of digital content publishers have sparked considerable discussion since their introduction in February 2021. The Information Technology Act, 2000¹, along with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021², has distinctly clarified the differences in liability between intermediaries and publishers regarding content regulation, publication, and accountability.

The ongoing legal dispute between the Wikimedia Foundation, the parent organization of Wikipedia, and Asian News International (ANI) Media raises a critical question about whether Wikipedia should be classified as an intermediary under the relevant laws or be treated as a publisher. The resolution of this question holds significant importance for Wikipedia, as its liability under Indian law could vary greatly and potentially harm its business model if classified as a publisher.

¹ Information Technology Act 2000,

² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

INTERMEDIARY UNDER IT ACT 2000.

In general, an intermediary is a person or third party that connects two parties, facilitating communication between them. The term Intermediary is defined under **section 2 (1) (w)** of Information Technology Act 2000 as — *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 and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.*³

Intermediaries can perform a variety of functions including collecting data, transmitting data or storing data, without actually partaking in the process of its creation, facilitating the use of internet. Examples include social media platforms like Facebook, Instagram, WhatsApp, Tumblr; E-Commerce platforms like Flipkart, Amazon; Cloud service providers, search engines, network providers and other service providers as mentioned in section 2 (1) (w). Intermediaries are primarily facilitators of communication and do not modify the information being transmitted.

Liability of the Intermediary for content transmission and posting through its service was first questioned in the US courts. US district court of northern California first set up precedent in 1995 in the Netcom case when it held that ISP is a passive service and like telephone company cannot be held liable for content transmitted through its server. Entities classified as intermediaries benefit from a specific provision under Indian laws via the **Section 79 of the IT Act, 2000**⁴, commonly referred to as the **Safe Harbour Mechanism**, which protects them from liability arising from content published on their communication channels. The rationale behind this section revolves around the fact that intermediaries being middlemen only act as a conduit between those who curate content and those who consume it. Therefore, it would be inappropriate to hold intermediaries liable for all content posted by third parties, as it is unreasonable to expect them to review and edit information submitted by millions of users.

³ Information Technology Act 2000, s 2 (1) (b)

⁴ Information Technology Act 2000, s 79

SECTION 79 OF THE IT ACT 2000: SAFE HARBOUR MECHANISM

Section 79 of the IT Act 2000 provides for exemption of liability of intermediary in certain cases.

Section 79 (1)⁵ provides intermediaries exemption from any liability incurring upon them. Further section 79 (2)⁶ of the act provides conditions when an intermediary cannot be held liable. An intermediary will not be held liable if their role is only to provide access to a system that allows third parties to share information, which they either transmit or temporarily store. Further they should not **start the transmission, choose who receives the transmission, or change the information being transmitted**. They should also follow proper procedures and guidelines set by the Central Government while performing their duties under this Act through any content hosted or transferred through their platform.

However, Intermediaries can be held liable in certain scenarios as prescribed under section 79 (3)⁷ if the intermediary is guilty of conspiring, abetting, aiding or inducing any unlawful act, An intermediary must take action if they receive actual knowledge or a notification from the government that certain information on their platform is being used for illegal activities. If this happens, the intermediary is required to quickly remove or block access to that information without tampering with any evidence. If an intermediary fails to do so in the prescribed time limit they can be held liable and the safe harbour mechanism will not apply to them.

NEW CLASS OF INTERMEDIARIES UNDER AND IT (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES 2021.

The Rules introduce two new subcategories, which are:

“social media intermediary” defined (in **Rule 2(w)**)⁸ as one who “primarily or solely enables online interaction between two or more users and allows them” to exchange information; and “significant social media intermediary” (SSMI) (in **Rule 2(v)**)⁹ comprising social media intermediaries with more than five million registered users in India.(as per government

⁵ Supra 4

⁶ Supra 4

⁷ Supra 4

⁸ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r (2) (w)

⁹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r (2) (v)

notification)

Given that a widely used messaging app like WhatsApp has over 400 million users in India, the threshold seems quite conservative. The government can require any intermediary to follow the same obligations as Significant Social Media Intermediaries (SSMIs) under Rule 6 if their services are deemed to pose a risk to national security, India's sovereignty and integrity, foreign relations, or public order. SSMIs must adhere to much stricter "additional due diligence" requirements to qualify for the intermediary safe harbor, including mandatory tracking of message origins and proactive automated content screening. These new obligations raise concerns about privacy and data security, as they go beyond traditional notions of platform "due diligence," potentially exposing private communication content and creating new privacy risks for users in India.

PUBLISHERS

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021¹⁰ introduced a new category known as publishers, which includes entities that publish news and current affairs content as well as online curated content like OTT services. Unlike intermediaries, publishers are responsible for the content they create or host. The rules define publishers as entities that make available curated content over the internet and impose specific regulatory obligations on them that do not apply to intermediaries. **Rule 2 (s)** of the The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 define publisher as: *'publisher' means a publisher of news and current affairs content or a publisher of online curated content*

The introduction of the 2021 Rules marks a significant shift in how digital entities are regulated in India. While intermediaries continue to enjoy certain protections under the IT Act, publishers face stricter scrutiny and must comply with additional guidelines aimed at ensuring accountability for the content they distribute.

Publishers can be of further two kinds under the rules given above:

- **Publishers of News and Current Affairs (Rule 2 (t))¹¹** : This category includes online newspapers, news portals, news aggregators, and agencies that operate similarly to traditional news publishers. However, it excludes physical newspapers and individuals not engaged in systematic commercial activity.

¹⁰ Supra 2

¹¹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r (2) (t)

- **Publishers of Online Curated Content(Rule 2 (u))¹²:** These are entities that determine the online curated content available to users, offering access to such content over the internet. This category does not include intermediaries that simply provide access to curated content without significant involvement. Examples under this category include Netflix, Hotstar, etc.

The rules establish a three-tier regulatory structure for publishers:

1. **Self-regulation by publishers.**
2. **Self-regulation by associations of publishers.**
3. **Oversight by the Central Government.**

PUBLISHER'S COMPLIANCE REQUIREMENT UNDER THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021

Publishers are mandated to adhere to a **code of ethics**, which includes prohibitions against publishing illegal content that could threaten national security or public order. They must maintain transparency by providing information about their operations and filing monthly compliance reports detailing grievances received and actions taken. Publishers are also required to preserve records of their content for at least sixty days and make these records available to regulatory bodies upon request.

Additionally Significant Social Media Intermediaries (SSMIs) , which have a large user base, face additional requirements such as appointing a chief compliance officer and a grievance officer based in India. They must also enable the identification of the first originator of information on their platforms when required by government orders.

DIFFERENCE BETWEEN INTERMEDIARIES AND PUBLISHERS

The key differences between intermediaries and publishers under the IT Act and the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, lie in their definitions, liabilities, and regulatory requirements. Intermediaries are entities that facilitate the transmission of third-party content, such as social media platforms and internet service providers, and are generally protected from liability for this content under Section 79 of the IT Act, provided they meet certain due diligence criteria. In contrast, publishers are entities that

¹² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r (2) (u)

create or curate content, such as news websites and OTT platforms, and can be held liable for the content they publish. Publishers must adhere to a stricter regulatory framework that includes a code of ethics and a three-tier grievance redressal mechanism, whereas intermediaries have more limited obligations. This distinction underscores the varying levels of responsibility assigned to different types of digital entities in India.

The Key differences can be summarised through a table given below:

Feature	Intermediaries	Publishers
Definition	Entities providing platforms for third-party content	Entities creating or curating content
Liability	Protected from liability for third-party content	Liable for the content they publish
Regulatory Requirements	Must follow due diligence under Section 79	Must adhere to a code of ethics and grievance mechanisms
Examples	Social media platforms, ISPs	News websites, OTT platforms
Grievance Redressal	Basic grievance mechanism	Three-tier grievance redressal system

RELEVANT CASE LAWS

1. Shreya Singhal v. Union of India (2015)

This landmark Supreme Court case established critical principles regarding intermediary liability. The court ruled that intermediaries cannot be held liable for content they do not host unless they have actual knowledge of its unlawful nature, which must be communicated through a court order or government directive. This ruling reinforced the safe harbor provisions under Section 79 of the IT Act, emphasizing that intermediaries should not be compelled to remove content based solely on user complaints without judicial oversight²³.

2. Live Law Media Private Limited v. Union of India (2021)¹³

The case is a writ petition filed by an online curated content filed in the High Court of

¹³ *LiveLaw Media Private Limited v. Union of India* [2021] WP 6272/2021.

Ernakulam challenging the Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules, 2021¹⁴ and seeking a direction that such rules are ultra vires the parent act (Information Technology Act, 2000)¹⁵ and in violation of Articles 14¹⁶, 19(1)(a)¹⁷, 19(1)(g)¹⁸ and 21¹⁹ of the Constitution of India. The outcome of this case could clarify the legal basis for differentiating between intermediaries and publishers, particularly regarding the regulatory scope of each category 1.

3. **Foundation for Independent Journalism v. Union of India (2021)**²⁰

This case is also a writ petition filed in the High Court of Delhi. This petition addresses the validity of the new regulations imposed on publishers, highlighting concerns about how these rules extend beyond traditional intermediary definitions. The case seeks to challenge the framework that imposes stricter obligations on publishers compared to intermediaries, thereby questioning whether such differentiation is legally justified.

ABOUT WIKIMEDIA AND WIKIPEDIA²¹

The Wikimedia Foundation, Inc., abbreviated WMF, is an American nonprofit organization headquartered in San Francisco, California, and registered there as a charitable foundation. It is the host of Wikipedia. Wikipedia is a free content online encyclopedia written and maintained by a community of volunteers, known as Wikipedians, through open collaboration and the wiki software MediaWiki. Wikipedia is the largest and most-read reference work in history.

Unlike Meta or Google, Wikipedia relies on a complex network of volunteers who don't just post content; they actively manage it. These volunteers are tasked with reviewing, editing, and verifying every submission to align with Wikipedia's standards. This isn't the typical process of an intermediary. Wikipedia does not require that its editors and contributors provide identification. The English Wikipedia has 6,922,103 articles, 48,390,062 registered editors, and 122,379 active editors. An editor is considered active if they have made one or more edits in the past 30 days.

¹⁴ Supra 2

¹⁵ Supra 1

¹⁶ Constitution of India 1950, Article 14

¹⁷ Constitution of India 1950, Article 19 (1) (a)

¹⁸ Constitution of India 1950, Article 19 (1) (g)

¹⁹ Constitution of India 1950, Article 21

²⁰ *Foundation for Independent Journalism v. Union of India* [2021] W.P.(C) 3125 / 2021

²¹ 'Home' (*Wikimedia Foundation*, 4 March 2025) <<https://wikimediafoundation.org/>> accessed 12 April 2025

THE CASE OF WIKIPEDIA- WETHER WIKIPEDIA IS AN INTERMEDIARY OR A PUBLISHER?

On **July 9, 2024**, Asian News International²² (“ANI”) filed a civil suit before the **Delhi High Court** against **Wikimedia Foundation**, which runs the popular free online encyclopaedia **Wikipedia**. The suit is for defamatory statements about ANI published on Wikipedia.

ANI has lodged a lawsuit of **Rs 2 crore** against US-based non-profit Wikimedia Foundation, which runs Wikipedia, for “allowing misleading, negative, and defamatory” edits on their Wikipedia page. The second paragraph of Wikipedia’s page on ANI says that it has been “*accused of having served as a propaganda tool for the incumbent central government, distributing materials from a vast network of fake news websites, and misreporting events on multiple occasions*”.²³ The news agency, meanwhile, has alleged that the edit has been done with the “malicious intent of tarnishing” its reputation.

On **August 20, 2024** The Delhi High Court ordered the Wikimedia Foundation to disclose the identities of the editors who made controversial edits to ANI's Wikipedia page within two weeks.

On **September 5, 2024**, the Delhi High Court issued a contempt notice to Wikipedia for not divulging information about the users who made the allegedly defamatory edits on ANI’s Wikipedia page. Justice Navin Chawla had threatened to block Wikipedia’s operation in India if it continues to violate the orders of the court.

On **September 19, 2024**: The Wikimedia Foundation appealed against the August 20 order, arguing that it was issued without hearing their side and lacked sufficient justification.

During this period, Wikipedia had further started a page which contained information on the case ANI Media Vs Wikimedia Foundation which was still proceeding before the court.

Pulling up Wikipedia, the bench said that the page will have to be taken down and that the single judge cannot be put in fear or be threatened. “*This page (titled ANI v. Wikipedia) will*

²² ANI Media (P) Ltd. V. Wikimedia Foundation [2025], CS(OS) 524/2024

²³ ‘Asian News International’ (Wikipedia, 17 April 2025)
<https://en.wikipedia.org/wiki/Asian_News_International> accessed 12 April 2025

have to be taken down by your client in case he even wants to be heard. Otherwise we will not hear him. And we'll direct the single judge not to hear him. You can't put the single judge in fear or threaten him," the court told Wikipedia's advocate on record.²⁴

Senior Advocate Akhil Sibal appearing for Wikipedia said that corrective steps will be taken if required and sought some time to obtain instructions in the matter.

Sibal took the Bench through international law and various precedents worldwide on the test adopted by Courts to direct disclosure of information²⁵. He said that no prima facie view was taken by the single judge while passing the impugned order and that no injunction was granted. Wikipedia was asked by the court to disclose the information of the three users who had edited through the content on the page of ANI on Wikipedia's Website leading to the current case.

As Sibal said that Wikipedia functions on anonymity which is its backbone, the bench orally remarked that the platform's system cannot be a cloak to defame someone. Stating this statement the court further went ahead to state that by these actions, Wikipedia's protection under section 79 had now blown up.

Sibal informed Court that the individuals who made the edits, are administrators who are not employees or agents of Wikipedia and hence Wikipedia falling under the category of intermediary was entitled to protection under section 79 of the IT Act 2000²⁶.

As a reply to Sibal's Statements- the court expressed strong disapproval of the notion that the platform could be used to defame individuals, specifically highlighting the serious implications of labeling someone as an "Indian agent." The bench, addressing Sibal, emphasized that Wikimedia's role transcends that of a mere intermediary, indicating that such claims cannot be shielded under privacy protections. Chief Justice Manmohan remarked on the absurdity of attempting to evade accountability by making serious allegations while objecting to disclosure requirements, underscoring the court's stance on the necessity of transparency in such cases.

²⁴ Thapliyal N, 'Delhi High Court Takes Exception to Wikipedia Page on Pending Defamation Suit by Ani, Says Majesty of Court Is over and above Anyone' (Live Law, 14 October 2024) <<https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-wikipedia-ani-defamation-cant-threaten-judge-272349>> accessed 14 April 2025

²⁵ Supra 24

²⁶ Supra 24

The government issued a notice to Wikipedia on **5 November 2024**²⁷, expressing concerns over bias, inaccuracies, and the concentration of editorial control among a small group. It also questioned why Wikipedia shouldn't be treated as a publisher rather than an intermediary. This follows a September Delhi High Court ruling, which criticized Wikipedia's open editing model, citing risks related to defamatory content. Wikipedia has since defended its editing policies, ensuring legal compliance.

On **November 11, 2024**, the Division Bench resolved the appeal via a consent order, which included several terms: fresh summons would be issued to **defendants 2 to 4 (the three Wikipedia administrators who have allegedly made the edits)**, and the appellant (ANI) was responsible for serving these summons via email within four days. The appellant had to file an affidavit of service disclosing basic subscriber details within seven days and provide a redacted copy to **defendant 1's (Wikimedia-parent organization of Wikipedia)** counsel. The order clarified that this service would constitute sufficient notice but would not impose liability on the appellant for any actions or inactions of defendants 2 to 4. The court directed that fresh summons be issued through all permissible modes and scheduled the next hearing for **December 16, 2024**.

The case has further taken a turn with it now moving to the Supreme Court. On **April 17, 2025** the Supreme Court overturned the Delhi High Court's order that directed the mandatory removal of ANI Page. The Supreme court felt that the Delhi High Court's order was overly worded moreover has asked ANI to file a fresh application before the Delhi High Court to seek an injunction against the specific pieces of content being disputed on the Wikipedia page.

Currently the page of ANI on Wikipedia is under an **Extended Confirmed Protection**²⁸, meaning that changes can be made to the article only by user accounts that meets certain criteria. The current criteria prevents the action if the user's account is not extended confirmed (**at least 30 days old with more than 500 edits**).

²⁷ Online E, 'Government Puts Wikipedia on Notice after Complaints of Bias and Inaccuracies' (*The Economic Times*) <<https://economictimes.indiatimes.com/news/india/complaints-of-bias-and-inaccuracies-govt-sends-notice-to-wikipedia/articleshow/114968736.cms?from=mdr>> accessed 23 April 2025.

²⁸ 'Category:Wikipedia Extended-Confirmed-Protected Pages' (*Wikipedia*, 30 November 2024) <https://en.wikipedia.org/wiki/Category:Wikipedia_extended-confirmed-protected_pages#:~:text=Extended%2Dconfirmed%20protection%20prevents%20a,days'%20tenure%20and%20500%20edits.> accessed 14 April 2025

Conclusion

Whether an intermediary is entitled to avail the safe harbor exemption or not, is essentially a question of fact. As will be evident from the judicial precedents referred to herein, the Courts have delved in detail on the actual role of the intermediary vis-a-vis the content hosted. An entity's classification as an intermediary may not be a status that applies across all its operations but rather the function it is performing vis-à-vis the specific content in question. Thus, the same website may be an intermediary where it hosts a user's content, but not an intermediary where it uploads its own content. Further, merely because an entity is an intermediary does not *ipso facto* entitle it to avail safe harbor exemption, unless all applicable conditions in law as laid down by the legislature are complied with by the intermediary.

In view of the same, if the functionality dedicated to user-generated content is segregated from the functionality dedicated to publishing curated content, availing the safe harbor exemption would be better warranted. Upon bare reading of Section 79 (2) (a) of the IT Act it is evident that for availing the exemption of safe harbor, the intermediary must limit its service to providing access to the "communication system" through which the content is hosted, stored or transmitted. In view thereto, merging the proposed vertical for user-generated content with the existing vertical for curated content, and not having two separate, distinct functionalities for the two kinds of content, may pose the risk of loss of the safe harbor immunity under Section 79 of the IT Act, as for all technical purposes, the communication system of the platform shall then be invariably hosting and disseminating both user-generated content and curated content within the same interface and platform, thereby falling foul of the requirement under Section 79 (2) (a) of the IT Act.

The legal battle between ANI and Wikimedia Foundation is ongoing, with significant implications for freedom of speech, defamation law, and the responsibilities of online platforms in India. As the case progresses, it will likely have broader consequences for the way user-generated content is managed and moderated on platforms like Wikipedia, both in India and globally. It may also lead to drastic changes in the regulation patterns as well as existence of certain free user generated information websites, especially if they originate from a foreign jurisdiction.