

Twitter loses safe harbour shield in India

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In news

Twitter has lost its 'safe harbour' protection in India over non-compliance with IT rules.

What is safe harbour protection?

- According to Section 79 of IT Act, 2000, "an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him," therefore providing Safe Harbour protection.
- In simple words, the law notes that intermediaries such as Twitter or your Internet Service Providers (ISPs) are not liable to punishment if third parties (users) misuse the infrastructure.
- However, the protection is guaranteed only when the intermediary does not 'initiate the transmission,' 'select the receiver of the transmission,' and 'modify the information contained in the transmission.'
- It means that as long as the platform acts just as the medium to carry out messages from users A to user B, that is, without interfering in any manner, it will be safe from any legal prosecution.

Addition of Safe Harbour protection under Section 79, IT Act

- In its original form, the IT Act 2000 provided little or no Safe Harbour protection to internet intermediaries as the definition of the intermediary was restricted.
- However in 2004, in a case where a student posted an obscene clip on baze.com (now a subsidiary of the e-commerce site eBay) for sale.

- The student and the CEO of the company, Avnish Bajaj, were both held later for letting pornographic material circulate online.
- Bajaj challenged the proceedings against him, contending that he could not be personally held liable for the listing, and that the MMS was transferred directly between the seller and buyer without the intervention of the website.
- The executive was acquitted, the case eventually resulted in the addition of Section 79 in the IT Act to provide immunity intermediaries.

SOCIAL MEDIA

- Identify 'first originator' of content that authorities consider anti-national
- Appoint grievance officer, resolve complaints in 15 days
- File monthly compliance report on complaints received, action taken

DIGITAL NEWS

- Follow Press Council of India, Cable TV Networks (Regulation) Act norms.
- Self-regulatory bodies to oversee adherence to Code of Ethics
- I&B Ministry to form panel, oversight mechanism

OTT PLATFORMS

- Self-classify content into five age-based categories: U (universal), U/A 7+ (years), U/A 13+, U/A 16+, and A.
- Parental locks for any content classified as U/A 13+ or above.
- Age verification mechanism for content classified as 'A' (adult)

Why did Twitter lose the safe harbour?

Following are the reasons for it;

- The Union government introduced the IT Rules 2021 in December last year and implemented it in May 2021.
- As per the new order, all social media platforms with more than 50 lakh (five million) users will need to appoint a Chief Compliance Officer, a Nodal Contact Person, and a Resident Grievance Officer from India to smoothen the grievance mechanism for citizens.
- The officers will need to acknowledge queries with 24 hours and resolve them in 15 days from the date of receipt.
- Twitter failed to fill in these key positions, and due to this, the company lost precious immunity

- The microblogging platform was even at odds with the government over the new rules and expressed the guidelines potentially threatening freedom of expression.
- However, the company had been given extra time to comply with the guidelines, but it has failed to fall in line with the new IT Rules despite government's repeated indulgence, including an extension.

Consequences

- Its top executives, including the country managing director, could now face police questioning and criminal liability under IPC over 'unlawful' and 'inflammatory' content posted on the platform by any user
- Twitter becomes the only American platform to have lost the protective shield – granted under Section 79 of the IT Act, even though others such as Google, YouTube, Facebook, WhatsApp and Instagram remain protected.
- Now stands exposed to action under the IPC for any third-party unlawful content.
- However, the new IT Rules 2021 do not mention any ban for non-compliance.

Extra reading: <https://journalsofindia.com/it-rules-2021/>