

**SCRUTINISING THE STORM ASHORE: IS THERE A NEED TO OVERHAUL THE  
EXISTING SAFE HARBOUR PROTECTIONS FOR E-COMMERCE  
INTERMEDIARIES?**

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**I. INTRODUCTION**

The Information Technology Act, 2000 (hereinafter referred to as *the IT Act*) was passed by the Indian parliament, the drafting of which was undertaken by the Ministry of Communications and Technology.<sup>1</sup> The act gave legal recognition to the ever-growing world of *‘electronic commerce’* in India. The primary objective of the Act has been to govern and regulate the internet sector in India. While the sector has witnessed immense boom and growth in terms of both the revenue collection and diversification of the industry into a multi-faceted sector of the market, the IT Act 2000 governing the same has been amended just once in 2008.<sup>2</sup> The advancement in the technological sector in India has led to innumerable challenges in internet governance. Today, the sector has branched into areas such as social media, e-commerce, OTT, digital news platforms among other things.<sup>3</sup> But still, one Act governs these all.

While there are subordinate legislations in the form of rules, regulations, or guidelines to complement the statute, the concern regarding the inadequacy of appropriate legal setup remains a question. E-commerce which witnessed significant growth in the past decade in India is one sub-field that is governed by the IT Act along with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereinafter referred to

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<sup>1</sup> The Information Technology Act, 2000 (Act 21 of 2000) (*‘IT ACT’*).

<sup>2</sup> The Information Technology (Amendment) Act, 2008. (*‘IT AMENDMENT’*).

<sup>3</sup> TV Mohandas Pai and Nisha Holla, “Five trends in 2022 that will supercharge India’s technology-enabled sector”, January 01, 2022, *available at*: <https://www.moneycontrol.com/news/opinion/five-trends-in-2022-that-will-supercharge-indias-technology-enabled-sector-7877771.html>; Tanya C Kakaria, “An overview of e-commerce in 2021: Growth, hits and misses”, Dec. 31, 2021, *available at*: <https://timesofindia.indiatimes.com/blogs/voices/an-overview-of-e-commerce-in-2021-growth-hits-and-misses/>; Mint, “Government will back IT cos to boost exports: Piyush Goyal”, Jan. 22, 2022, *available at*: <https://www.livemint.com/news/india/government-to-offer-it-firms-all-support-needed-to-boost-exports-piyush-goyal-11642337625512.html>.

as *'the IT Guidelines'* as subordinate legislation.<sup>4</sup> As per the IT Act, e-commerce is given a status of intermediary and hence enjoys certain immunities from liability provided that it complies with certain Due Diligence requirements as stipulated and also follows the Guidelines that the government may provide from time to time.<sup>5</sup> But there are numerous underlying legal challenges that the stakeholders in the e-commerce industry have to face.

## II. ANALYZING THE EXISTING LEGAL REGIME AND IDENTIFYING RELEVANT SUBSTANTIVE LAW TRENDS

### A. *Objective of Limiting liability: A subsidy to incentivize growth in the sector?*

*'Safe harbour'* essentially refers to a legal position wherein immunity from liability is awarded in specific situations provided that certain conditions are met.<sup>6</sup> The jurisprudence behind the inclusion of intermediary liability law within the IT Act in India can be attributed to the idea of providing legal protection subsidy to the intermediaries to incentivize growth of the sector.<sup>7</sup> In the opinion of the authors, this doctrine helps in making a legal provision objective and clear to a certain degree when the law on the subject is still in its premature stage and it is prone to frequent changes.

The authors believe that these board immunities need a revision given the tremendous penetration of a certain class of intermediaries in the market. Since the model is constantly adapting to new circumstances, there is a need to ascertain whether it should be given privileges that were given to it initially.<sup>8</sup>

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<sup>4</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules (Feb. 25, 2021) ('IT Rules').

<sup>5</sup> IT Amendment, *supra* note 2, s. 40.

<sup>6</sup> Prashant Reddy, "Back to the Drawing Board: What Should be the New Direction of the Intermediary Liability Law?" 1 *NJLS* 38 (2019), available at: <https://nludelhi.ac.in/download/publication/2019/Journal%20of%20Legal%20Studies%202019%20Volume%201.pdf>.

<sup>7</sup> McClain and Francis E McGovern, "The Variety, Policy and Constitutionality of Product Liability Statutes of Repose" 30 *The American University Law Review* 579 (1981), available at: [https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1367&context=faculty\\_scholarship](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1367&context=faculty_scholarship); Anupam Chander, "How Law Made Silicon Valley" 63(3) *Emory Law Journal* 639 (2013), available at: <https://scholarlycommons.law.emory.edu/elj/vol63/iss3/3/>.

<sup>8</sup> Reddy, *supra* note 6.

### ***B. Tracing the definition of important terms and legal provisions***

Definition of ‘intermediary’ is given in Section 2(w) of the IT Act, 2000. This definition seems to be in its quite rudimentary stages.<sup>9</sup> The definition is given with respect to the handling of a *‘particular electronic message’* by the intermediary. The 2008 amendment amended this to include TSP, ISP, NSP, Web Hosting SP, Search Engines, Online Payment Sites, Online-auction sites, Online Marketplaces, and Cyber Cafes as intermediaries.<sup>10</sup>

As to the ‘safe harbour protections’, they draw the power from Section 79 of the IT Act.<sup>11</sup> Section 79(1) protects intermediaries from the act of the third parties who use the infrastructure of the intermediaries for their purpose. The protection is to be accorded only if the intermediary fulfills the conditions of passivity (*doesn’t perform certain actions, observes due diligence and guidelines*) as per Section 79(2) and no wrongdoing (*doesn’t conspire, aid, abet or induce an unlawful act and acts for takedown on receiving actual knowledge of such acts*) as per Section 79(3).<sup>12</sup>

Apart from these provisions, the rules in the Guidelines also have a crucial role. Rule 3(1) entails the Due Diligence requirement which also includes the provision for the taking down of the content upon receiving the actual knowledge (as per Rule 3(1)(d)).<sup>13</sup>

### ***C. Interpretation by courts, the legal position, and corresponding challenges today***

In this segment, the authors take a look at the observations of the courts in leading cases on e-commerce intermediary liability law. Given below is a chart that encapsulates key findings in the leading cases aimed at summarizing the present legal position.

Cases	Key Observation(s)
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<sup>9</sup> IT Act, *supra* note 1, s. 2(w).

<sup>10</sup> *Supra* note 5.

<sup>11</sup> *Ibid.*

<sup>12</sup> Ikigai Law, “Intermediary Liability, judicial interpretations of current safe harbour provisions”, Dec. 04, 2019, *available at*: <https://www.ikigailaw.com/intermediary-liability-judicial-interpretations-of-current-safe-harbour-provisions/>; Ikigai Law, “Intermediary Liability: Evolution of Safe-harbour law in India”, Nov. 12, 2019, *available at*: <https://www.ikigailaw.com/intermediary-liability-evolution-of-safe-harbour-law-in-india-part-i/>.

<sup>13</sup> IT Rules, *supra* note 4, rule 3(1)(d).

<p><i>Christian Louboutin v. Nakul Bajaj,</i> Delhi HC, 2014</p>	<p>Whether an intermediary is active or passive would determine whether it should be protected under Section 79. Made an exhaustive list of functions which an intermediary if performs would become an active participant. (Referred in cases of Skullcandy Inc. and Luxottica Group)</p>
<p><i>Amazon Seller Services Ltd. v. Amway India,</i> Delhi HC, DB, 2019</p>	<p>The court set aside the theory of categorization into active and passive but didn't go into the merits. Immunity can be availed with the mere satisfaction of Section 79(2) or 79(3) individually.</p> <p>Separated the two prongs of Section 79(2). It was observed that the e-commerce intermediary has to comply with Section 79(2)(a) when it is limited to only providing 'access' to the platform, but in case it does more, it would have to comply with Sec 79(2)(b).</p>
<p><i>Kunal Bahl v. State of Karnataka,</i> Karnataka HC, 2021</p>	<p>Same as above (first part only). The court relied on the distinction between an inventory-based model and marketplace to determine Snapdeal's position as an intermediary.</p>

The trend that follows in the above cases clearly shows a transition from the direct theory of categorization (*into active and passive*) to a rather nuanced approach being taken by the courts for awarding safe harbour protection.

### III. FOUR KEY CHALLENGES: A BRIEF LOOK

#### *A. The requirement to observe 'due diligence' and government 'guidelines'*

A thorough reading of Section 79(2) makes it clear that the obligation to observe the 'due diligence' and 'government guidelines' are both separate obligations. But there have been cases where the issue of competition between the two has arisen. For instance, in a case, the Delhi HC had interpreted 'pre-screening' of all content to be a part of the due diligence

exercise even though the guidelines did not entail any such ‘pre-screening’ provision.<sup>14</sup> In another case, the same HC had opined that observing the guidelines would by default mean the observance of due diligence.<sup>15</sup> Hence, in such a scenario the conundrum becomes quite evident. There is a need to define ‘due diligence’, since the phrase as of now has had a very vague interpretation.

### ***B. On constitutionality of auto-filtering or blocking of illegal content***

The existing debate around the contours of mandating proactive auto-filtering (as a part of due diligence) is one that is largely confined to social media intermediaries in India.<sup>16</sup> The present position is that such filtering would effectively violate the Fundamental Rights.<sup>17</sup> However, the authors believe that the application of such auto-filtering won’t be unconstitutional in relation to e-commerce intermediaries. There is an urgent need for proactive filtering of listings on e-commerce platforms to counter the rampant growing sale of counterfeit products and products that violate trademarks and copyrights.<sup>18</sup> For this the present ‘*actual knowledge*’ approach is highly untenable because it might be difficult for third parties to track every listing that may be illegal.<sup>19</sup> Hence, the burden should be shifted onto intermediaries. AI-based filtering tools and technologies can be adopted like in China to overcome this issue.<sup>20</sup>

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<sup>14</sup> *Super Cassettes Industries Limited v Myspace Inc and Anr.*, 2011 (48) PTC 49 (Del).

<sup>15</sup> *Myspace Inc. v. Super Cassettes Industries Ltd*, 2016 SCC OnLine Del 6382.

<sup>16</sup> Law and other things, “Intermediary liability and Safe Harbour: On due diligence and automated filtering”, Nov. 25, 2020, available at: <https://cis-india.org/internet-governance/blog/intermediary-liability-and-safe-harbour-on-due-diligence-and-automated-filtering>; Sflc.in, “Intermediary Liability 2.0: A shifting Paradigm”, March 2019, available at: [https://sflc.in/sites/default/files/reports/Intermediary\\_Liability\\_2\\_0\\_-\\_A\\_Shifting\\_Paradigm.pdf](https://sflc.in/sites/default/files/reports/Intermediary_Liability_2_0_-_A_Shifting_Paradigm.pdf).

<sup>17</sup> *Shreya Singhal v. Union of India*, AIR 2015 SC 1523; Shweta Mohandas & Torsha Sarkar, “Finding Needles in Haystacks: Discussing the role of automated filtering in the new Indian Intermediary Liability Law”, July 29, 2021, available at: <https://www.law.kuleuven.be/citip/blog/finding-needles-in-haystacks/>.

<sup>18</sup> *Christian Louboutin v. Nakul Bajaj and Ors.* (2014) SCC OnLine Del 4932; Shivani Saxena, “Can victims of E-commerce counterfeiting look to E-commerce giants for relief”, Feb. 13, 2018, available at: <https://www.bloombergquint.com/law-and-policy/can-victims-of-counterfeiting-look-to-e-commerce-giants-for-relief>; Divij Joshi, “Delhi HC examines intermediary liability for Trademark infringement”, Nov. 19, 2018, available at: <https://spicyip.com/2018/11/delhi-high-court-examines-intermediary-liability-for-trademark-infringement-part-ii.html>.

<sup>19</sup> Michalis Kosmopoulos, “Liability of intermediaries: the effective counterfeiting tool”, May 24, 2018, available at: <https://www.worldtrademarkreview.com/global-guide/anti-counterfeiting-and-online-brand-enforcement/2018/article/liability-of-intermediaries-the-effective-anti-counterfeiting-tool>.

<sup>20</sup> Deacons, “China passes new e-commerce law - a “safe harbour” with Chinese characteristics”, Oct. 18, 2018, available at: <https://s3.amazonaws.com/documents.lexology.com/28f9f26c-4173-40ec-9e00-43004864e433.pdf?AWSAccessKeyId=AKIAVYILUYJ754JTDY6T&Expires=1642577433&Signature=JM6jkTf%2BAJBmN6dkZhzRXhuqPrI%3D>.

### ***C. Overcoming the one-size-fit-all approach***

Under the original version of the IT Act, 2000, in Section 79, NSPs were provided immunity as an intermediary. Then the 2008 amendment swept numerous other players within the scope of the intermediary. These include TSP, ISP, NSP, Web Hosting SP, Search Engines, Online Payment Sites, Online-auction sites, Online Marketplaces, and Cyber Cafes as intermediaries. Hence, at this juncture, it becomes necessary to point out that such broad generalization of these extremely different service areas under the same heading is rather uncalculated and hence detrimental.

There is a need to categorize as one the likewise service areas and then subject them to customized legal provisions. This approach can be detailed furthermore by categorizing the e-commerce intermediaries themselves into even further sub-categories. By doing so, the degree of liability limitation can be distinctively applied. This will help in moving away from the universal subsidized liability model that exists today (*discussed in Part II(A) above*). The differentiation can be decided on factors such as functions undertaken, revenue generated, time in the industry, etc. For instance, a start-up being a new entrant may be given more immunity from liability while the behemoths should be subjected to industry-standard norms. The categorization based on function (as market-based, inventory-based or hybrid models) can be seen in the recently released Consumer Protection (E-Commerce) Rules, 2020 (hereinafter referred to as '*E-Commerce Rules* ').<sup>21</sup>

### ***D. Enforceability of Guidelines versus Rules as a rider to the Act***

Some different rules and guidelines act as a rider to the IT Act especially the IT Guideline and the E-Commerce Rules, 2020. Three worrying points need to be discussed concerning these legal instruments.

Firstly, the title of the guideline '*Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* ' is itself very confusing as it has both the words 'Guideline 'and 'Rules 'in it. It is important to note that both have different meanings. While a guideline is meant to have a mere guiding effect, a rule on the other hand is for regulation.

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<sup>21</sup> Consumer Protection (E-Commerce) Rules, 2020, Press Note No. 3 (2016 Series), "Guidelines for Foreign Direct Investment on E-Commerce", available at: [https://dpiit.gov.in/sites/default/files/pn3\\_2016\\_0.pdf](https://dpiit.gov.in/sites/default/files/pn3_2016_0.pdf).

The guidelines hence generally do not have a binding effect.<sup>22</sup> Under the IT Act, Section 79 gives power to the government to only make guidelines, while as per Section 87 of the IT Act the Central government has the power to make rules to give effect to the guidelines. Hence, it seems that the parliament intended to make effectively non-binding guidelines.

Secondly, the overriding effect that the IT Act enjoys through the virtue of Section 81 is another problem that needs to be pointed out. Although this overriding is ineffectual over the Patents Act and Copyright Act, there appears to be a conundrum when we talk about the E-Commerce Rules 2020 and the Consumer Protection Act for instance.<sup>23</sup> Hence, in such a scenario the question arises as to how a legal liability action on an intermediary in the case of non-compliance would be affected for the violation of provisions under the E-Commerce Rules 2020 or the Consumer Protection Act, 2019.<sup>24</sup>

Thirdly, the introduction of the *fall-back liability* clause within the amendments to E-Commerce Rules, 2020.<sup>25</sup> The draft defines fall-back liability as “*the liability of the marketplace e-commerce entity where a seller registered with such entity fails to deliver the goods or services ordered by a consumer due to negligent conduct, omission or commission of any act by such seller in fulfilling the duties and liabilities in the manner as prescribed by the marketplace e-commerce entity which causes loss to the consumer.*” If this clause is indeed included in the final amendment, then the interplay between the act fall-back liability clause and the intermediary liability under Section 79 of the IT Act would be an interesting tussle to witness.<sup>26</sup>

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<sup>22</sup> *Bobby Art International Etc. v. Om Pal Singh Hoon and Ors.* (1996) 4 SCC 1; *Narendra Kumar Maheshwari v. Union of India & Ors.*, AIR 1989 SC 2138; *Syndicate Bank v. Ramachandran Pillai and Ors.*, (2011) 15 SCC 398.

<sup>23</sup> LiveLaw.in, “Consumer Protection In The Online Marketplace- An Analysis Of Consumer Protection (E-Commerce) Rules, 2020”, Aug. 17, 2020, available at: <https://www.livelaw.in.gnlu.remotlog.com/columns/consumer-protection-in-the-online-marketplace-an-analysis-of-consumer-protection-e-commerce-rules-2020-161516?infinitemscroll=1>.

<sup>24</sup> *Ibid.*

<sup>25</sup> Lakshmikumaran and Sridharan attorneys, “Fall-back liability under the Consumer Protection (e-Commerce) Rules, 2020: Stricter norms in digital diaspora”, Oct. 19, 2021, available at: <https://www.lexology.com/library/detail.aspx?g=d4640462-4ce3-44ac-861d-53e36e6d5673#:~:text=E%2Dcommerce%20Rules%20define%20fall,fulfilling%20the%20duties%20and%20liabilities>.

<sup>26</sup> The Economic Times, “Proposed e-commerce norms can hit consumer interest, increase the compliance burden for firms: IAMAI”, July 21, 2021, available at: <https://economictimes.indiatimes.com/industry/services/retail/proposed-e-commerce-norms-can-hit-consumer-interest-increase-compliance-burden-for-firms-iamai/articleshow/84617906.cms>;

In the opinion of the authors, there is a need to develop a comprehensive policy tool that should ideally comprise of all the relevant provisions as discussed above in a correlated manner. This will surely help in the evolution of a more detailed, nuanced, and comprehensive policy approach.

#### IV. FOREIGN APPROACHES TO LIABILITY OF E-COMMERCE SERVICE PROVIDERS

More often than not, countries have been somewhat successful in providing the intermediaries with some shelter through their safe harbor provisions. India, while coming up with their guidelines, have been inspired by various foreign laws to an extent. For instance, provisions in the laws of the United States such as Section 230 of the Communications Decency Act<sup>27</sup>, 1936 is quite similar to Section 79 of the IT Act, and likewise, Article 6 of the proposed Digital Services Act, 2020<sup>28</sup>, is similar to Rule 3(1)(d) of the IT Guidelines of 2021. While most of the countries have enacted regulations, some are yet to catch up with the pace of the issue.<sup>29</sup>

##### *A. Countries that have a similar approach as India*

In the United States, amendment of the Communications Decency Act of 1936, or the Telecommunications Act of 1996<sup>30</sup>, enacted by the US Congress remains the seed that inspired legislation in different countries regarding the protection of online platforms. Section 230 of the Communications Decency Act, 1936 provides for the exemption of the online intermediaries from any liability that arises due to actions of any third parties excluding IPR violations.<sup>31</sup> The law states that online platforms are not publishers of any information given by other information content providers.

On the other hand, for matters involving copyright, the Digital Millennium Copyright Act of 1998 through Section 512 provides for '*safe harbor provisions*' to service providers.<sup>32</sup>

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Indian Express, "Drafted in the name of consumer interest, the proposed e-commerce rules shield vested interests", July 15, 2021, *available at*: <https://indianexpress.com/article/opinion/columns/new-e-commerce-online-shopping-rules-india-7405077/>.

<sup>27</sup> Communications Decency Act, 1996 (U.S.) § 230. ("CDA")

<sup>28</sup> Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act), 2020. (E.U.), art. 6. ("DSA")

<sup>29</sup> Pappalardo & Suzor, "The liability of Australian online intermediaries" 19 Sydney Law Review 2018, *available at*: <http://classic.austlii.edu.au/au/journals/SydLawRw/2018/19.html>.

<sup>30</sup> The Telecommunications Act, 1996 (U.S.).

<sup>31</sup> CDA, *supra* note 34.

<sup>32</sup> Digital Millennium Copyright Act, 1998 (U.S.) § 512.

According to this section, providers are not liable; if they had no knowledge about the infringing content, and upon receiving such knowledge, they immediately process measures to take down and block such content.<sup>33</sup>

In the United Kingdom, the statute that reigns supreme concerning online intermediaries and their liability is the E-Commerce Directives of 2002.<sup>34</sup> India has transplanted the technical limitations of intermediaries from Articles 12 - 15 of the E-Commerce Directives, incorporated under sub-clauses (a) and (b) of Section 79(2) of the IT Act. As per Article 15 of the E-Commerce Directives, a hosting provider was not liable if they had no knowledge of any infringement and if upon receiving knowledge it takes down such information.<sup>35</sup> On the other hand, Article 16 stated that there was no obligation for the providers to monitor any infringement.<sup>36</sup>

In the European Union, a recent proposal of the Digital Services Act has rejuvenated the debate on intermediary regulation. With the proposed DSA, it is believed that content moderation and regulation of the online platforms can be developed immensely. While Articles 3, 4, and 5 are taken from the EC Directives, provisions such as self-investigation and compliance<sup>37</sup>, no general monitoring or active fact-finding obligations<sup>38</sup>, orders to act against illegal content<sup>39</sup>, etc, catch the eyes in the newly proposed law. While the rest of Europe is on course to adopt the Digital Services Act, the UK is left with the old provisions as they have not considered enacting the DSA after Brexit.

### ***B. China and its law of modern-day relevance***

In China, the new E-Commerce Law was adopted by the Standing Committee of the National People's Congress in August 2018, which was later officially enacted on 1st January 2019. Through fines and takedown policies, the latest regulations have introduced stringent measures for violators of the law and aim to work parallel to the interest of the consumers and their safety.

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<sup>33</sup> *Ibid.*

<sup>34</sup> Electronic Commerce (EC Directive) Regulations, 2002 (U.K.).

<sup>35</sup> *Id.*, art. 15.

<sup>36</sup> *Id.*, art. 16.

<sup>37</sup> DSA, *supra* note 36, art. 6.

<sup>38</sup> *Id.*, art. 7.

<sup>39</sup> *Id.*, art. 8.

The new E-Commerce Law of China has introduced takedown measures to be followed by the platforms that include deletion, blocking, disabling the link, and termination of transaction and service<sup>40</sup>, upon receiving notice from the IPR holder or upon any prima facie knowledge of any sort of infringement. According to the new law, failing to act upon such violation would result in ‘*joint and several liability*’ of the e-commerce platform along with the infringer.<sup>41</sup> This comes as a major step towards consumer safety as the injured party now possesses the right to take legal action against both the vendor and the e-commerce platform.

Initially, the punishments for the violators included heavy fines of RMB 50,000 to RMB 500,000 Yuan in regular cases and RMB 500,000 Yuan to RMB 2,000,000 Yuan in serious cases.<sup>42</sup> However, there have been proposals to amend the E-Commerce Law with new penalties for violators from the State Administration of Market Regulation (SAMR) which include revocation of licenses if the platform fails to take actions against the infringers.<sup>43</sup>

## V. SUGGESTIONS AND RECOMMENDATIONS FOR REVAMPING THE EXISTING FRAMEWORK

India as of now, has a half-decent framework for the liability of the e-commerce intermediaries at best, and still lacks a lot in terms of clarity in these laws. There are numerous issues, such as the opaque nature of the concept of due diligence, the ‘one-size-fits-all’ route taken by the lawmakers among others, that need fixing in our present legal setup. Nonetheless, India is in a good state to still overcome these issues, thanks to the nation’s IT sector being one of the biggest booming industries in terms of revenue and the availability of tools and resources. The government should try converting the problem into an advantageous resolution by striking an arrangement with the e-commerce intermediaries themselves, by making them come up with their own regulatory and monitoring mechanism. The government should consider throwing incentives (*in the form of tax benefits, etc*) to do so, making the approach quite similar to the concept of compulsory licensing in IPR protections.

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<sup>40</sup> E-commerce Law of the People's Republic of China, art. 45. (“E-Commerce Law”)

<sup>41</sup> *Ibid.*

<sup>42</sup> *Id.*, art. 83.

<sup>43</sup> Reuters, “China's market regulator proposes amendments to e-commerce law”, Sep. 01, 2021, *available at*: <https://www.reuters.com/world/china/chinas-market-regulator-proposes-amendments-e-commerce-law-2021-08-31/>.

India should follow China's approach which has come up with a concrete set of laws on the subject. The takedown measures are relevant in the modern day, and their policy of making the intermediaries jointly and severally liable in case they fail to take actions against infringement is also quite practical.<sup>44</sup> The content monitoring and filtering policy of China is another thing India should refer to and transplant in a customised fashion.<sup>45</sup> These along with the suggestions mentioned in above parts of the paper can go a long way in strengthening India tech policy for intermediaries.

For now, only cracks have appeared in the system, and there is still the scope of fixing them if India takes an active statutory approach provided that the policymakers come up with something comprehensive rather than pushing the matter and beating around the bush by introducing mere guidelines.<sup>46</sup>

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<sup>44</sup> E-Commerce Law, *supra* note 46.

<sup>45</sup> Kosmopoulos, *supra* note 25.

<sup>46</sup> Vidhi Centre for Legal Policy, "Primer for an Information Technology framework law/ working paper", available at: <https://vidhilegalpolicy.in/research/primer-for-an-information-technology-framework-law/>.