

## Section 79: Exemption from liability of intermediary in certain cases

(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made hosted by him.

(2) The provisions of sub-section (1) shall apply if -

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored; or

(b) the intermediary does not -

- (i) initiate the transmission,
- (ii) select the receiver of the transmission, and
- (iii) select or modify the information contained in the transmission

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf

(3) The provisions of sub-section (1) shall not apply if-

(a) the intermediary has conspired or abetted or aided or induced whether by threats or promise or otherwise in the commission of the unlawful act.

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation:- For the purpose of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary.

More information on Section 79 of Information Technology Act, 2000:

### [Relevant Judgments:](#)

#1. [CHRISTIAN LOUBOUTIN SAS Versus NAKUL BAJAJ & ORS](#) (Nov 2018)

Great analysis of [section 79 of IT Act, 2000](#) and the Intermediary Guidelines done by honorable Judge Ms Pratibha M Singh. Importantly, it lays down the circumstances, in which the Intermediary will be assumed to be abetting the sale of online products/services and therefore, cannot go scott free. In the said matter, the Complainant, a manufacturer of Luxury Shoes filed for injunction against an e-commerce portal [www.darveys.com](#) for indulging in Trademark violation, along with the seller of spurious goods.

#2. [SC: Google India Private Ltd vs M/S. Visakha Industries \(Dec 2019\)](#)

[In final appeal, before the Hon'ble Supreme Court of India, set aside the findings by the High Court regarding the alleged refusal of the appellants to respond to the notice to remove]

#2A. [Google India Pvt Ltd VS. Visaka Industries Limited \(2016\)](#)

[In a second appeal, before the Andhra High Court, Google India Pvt Limited held not guilty as they do not have any control and cannot disable the offending information as they are just a subsidiary of the Google Inc.]

#2B. [Google India Pvt Ltd VS. Visaka Industries Limited \(2009\)](#)

[Google liable as Intermediary (if proved guilty) as criminal complaint instituted before the Information technology (Amendment) Act 2008 came into force]

#3. [Gaussian Network Pvt. Ltd V Monica Lakhanpal & Another \(2012\)](#)

[Whether there is any restriction on playing the Games of Rummy, Chess, Golf, Poker, Bridge, and Snooker of skill with stakes on the websites making profit and whether wagering and betting on games of skill make the activity 'Gambling?', as covered under Rule 3 of Intermediary Guidelines ?]

#4. [Vyakti Vikas Kendra & other vs Jitender Bagga & Google \(2012\)](#)

[Art Of Living Foundation filed for interim relief against a blogger and the intermediary Google owned Blogger.com for cyber defamation. The latter was ordered to remove all the defamatory content within 36 hours]

**News:**

#1: The following arrests of an .IN Accredited Registrar Ideaa Biz owner, Jalandhar, shows how an Intermediary is liable for lack of Due Diligence, when he himself seems to be aware of the fraud being conducted though the Domain Names registered at his end. This is a great example of lack of due diligence and the resulting liability of the Domain Registrar, i.e. the Intermediary.

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**Relevant Rules 2011:**

[Information Technology \(Intermediaries guidelines\) Rules, 2011 \(Clause \(zg\) of subsection \(2\) of section 87 read with sub-section \(2\) of section 79 of the Information Technology Act, 2000\)](#)