

Summary:

The Indian Supreme Court has required online content platforms to abide by 11 recommendations relating to removal of videos depicting sexual violence. A committee comprising Government bodies, NGOs and content platforms Facebook, Google, Microsoft, Yahoo and WhatsApp produced these recommendations. The Supreme Court has required a report on their implementation by the next hearing. It remains to be seen if these recommendations end up impacting Indian laws on Intermediary liability for content.

Brief Background

- » In 2015, an NGO named Prajwala approached the Supreme Court seeking action on videos of sexual violence circulating on online content platforms.
- » In March 2017 the Supreme Court constituted a committee to advise on feasibility of ensuring that videos depicting rape, gang rape and child pornography are not carried online.
- » This committee held meetings, considered submissions made by its members and came out with a report and certain consensus recommendations.
- » The Court, in October 2017, required that 11 of these recommendations be implemented.

The Court's Order

- » Recommendations include search engines (like Google and Yahoo) expanding the list of keywords that relate to child porn content.
- » Content hosting platforms should voluntarily identify, remove and prevent distribution of pre-existing child porn/rape video content on their platforms.
- » Content hosting platforms should provide links to their users for reporting such content.
- » When such information is reported/identified, platforms must preserve and retain such content to assist law enforcement.

Key Takeaways

- » Indian law relating to intermediaries, such as content hosting platforms, provides them with immunity over the content they host, so long as they do not knowingly host illegal content.
- » As per the 2015 Shreya Singhal case, an intermediary is liable only if it fails to remove content pursuant to an order of the court/order of a Government designated officer.
- » It remains to be seen whether the Supreme Court's order leads to a change in the current intermediary liability framework, including requiring more proactive 'due diligence' from content platforms where matters such as child protection are concerned.
- » The next date of hearing is December 11, 2017. The order can be accessed here: <https://barandbench.com/wp-content/uploads/2017/10/prajwala-order.pdf>.

