

WHATSAPP AND INDIAN GOVERNMENT

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- Amid a major controversy over intermediary guidelines enforced by the Centre on tech giants like Facebook, Google, WhatsApp and Twitter, Facebook-led messaging giant, WhatsApp has opened another frontier by suing the Indian government over free speech and privacy protection issues

Background



- The Facebook-owned instant messaging service application WhatsApp, which identifies India as its biggest market by users, said it filed the lawsuit in the High Court of Delhi on 26 of May 2021.
- The new IT rules that were introduced in February 2021, came into effect starting May 26
- **WhatsApp filed a lawsuit in the Delhi High Court on May 25, the last day to comply with the new rules.**
- It said India's "traceability" requirement — which would require WhatsApp to help identify the originator of a particular message — violated citizens' constitutional right to privacy
- **WhatsApp's challenge, at the very last moment, and despite having sufficient time and opportunity available during consultation process and after the rules were enacted, to the Intermediary Guidelines is an unfortunate attempt to prevent the same from coming into effect.**
- Also, WhatsApp seeks to mandate a privacy policy wherein it will share the data of all its user with its parent company, Facebook, for marketing and advertising purposes.

- The move marks one of the first times that WhatsApp, an encrypted messaging app owned by Facebook, has filed a lawsuit against a national government.
- The company has also clashed with the government in Brazil over similar privacy concerns which led to the service being shut down multiple times.

Why Did WhatsApp Sue Indian Government?

- The lawsuit, requests the Delhi High Court that one of the rules under the new social media guidelines is in violation of the right to privacy in India.
- This rule requires social media companies to reveal the identity of "first originator of information" when government authorities ask for it.
- WhatsApp, a service owned by Facebook that sends encrypted messages, claimed in its suit that the rules were unconstitutional. The service said that making its messages traceable "would severely undermine the privacy of billions of people who communicate digitally" and effectively impair its security.
- **WhatsApp believes this rule is against its end-to-end encryption model, which assures the right to privacy of every message, photo, screenshot, etc, for both sender and receiver.**
- End-to-end encryption ensures that no third party can read the message, except for the sender and the receiver, not even the messaging app itself.

Issues

- The traceability clause is applicable to most messaging apps such as Signal, Telegram, Snapchat, Wire and others, however, considering WhatsApp has about 450 million users in India, the impact is significantly larger for WhatsApp
- **The traceability clause would require WhatsApp to keep a track of which user is sending what messages on the app.**
- According to WhatsApp it cannot read the contents of a message so keeping a track of the messages and their originator will require re-engineering the app.
- WhatsApp says that if it had to trace an originator, then it would have to "store information".

Major Concern

- It adds the threat that anything someone writes can be traced back to them takes away "people's privacy and would have a chilling effect" on what people say even in private settings, violating universally recognised principles of free expression and human rights.
- Through such an approach, innocent people could get caught up in investigations, or even go to jail, for sharing content that later becomes problematic in the eyes of a government, even if they did not mean any harm by sharing it in the first place. As per **WhatsApp, traceability forces private companies** to turn over the names of people who shared something even if they did not create it, but shared it out of concern, or sent it to check its accuracy.

The Government

- The **Indian government** on 26 of May 2021 said that it respects the "**Right of Privacy**" and has no intention to violate it when WhatsApp is required to disclose the origin of a particular message.
- Such requirements are only in case when a particular message is required for prevention, investigation or punishment of serious offences such as sexually explicit content
- The Government of India recognises that 'Right to Privacy' is a Fundamental right and is committed to ensure the same to its citizens
- The governments of the UK, the US, Australia, New Zealand, and Canada, too, have stated that technology companies must give access to the data in a readable and usable format

What Are The New Social Media Guidelines?

- The **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021** were notified on February 25, 2021. The Rules have been notified under the Information Technology Act, 2000. The Act provides for the regulation of electronic transactions and cybercrime. The 2021 Rules replace the Information Technology (Intermediaries Guidelines) Rules, 2011.
- **Categories of Social Media Intermediaries:**
- Based on the number of users, on the social media platform intermediaries have been divided in two groups:
- **Social media intermediaries.**
- **Significant social media intermediaries.**
- Due Diligence to be Followed by Intermediaries:
- In case, due diligence is not followed by the intermediary, safe harbour provisions will not apply to them.
- The safe harbour provisions have been defined under Section 79 of the IT Act and protect social media intermediaries by giving them immunity from legal prosecution for any content posted on their platforms.
- Grievance Redressal Mechanism is Mandatory:
- Intermediaries shall appoint a Grievance Officer to deal with complaints and share the name and contact details of such officers.
- Grievance Officer shall acknowledge the complaint within twenty-four hours and resolve it within fifteen days from its receipt.

Ensuring Online Safety and Dignity of Users:

- Intermediaries shall remove or disable access within 24 hours of receipt of complaints of contents that exposes the private areas of individuals, show such individuals in full or partial nudity or in sexual act or is in the nature of impersonation including morphed images etc.
- Such a complaint can be filed either by the individual or by any other person on his/her behalf.
- **Additional Due Diligence for the Significant Social Media Intermediaries:**

- Appointments: Need to appoint Chief Compliance Officer, a Nodal Contact Person and a Resident Grievance Officer, all of whom should be resident in India.
- Compliance Report: Need to publish a monthly compliance report mentioning the details of complaints received and action taken on the complaints as well as details of contents removed proactively.
- Significant social media intermediaries providing services primarily in the nature of messaging shall enable identification of the first originator of the information.
- Required only for the purposes of prevention, detection, investigation, prosecution or punishment of an offence related to sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order,
- Or of incitement to an offence relating to the above or in relation with rape, sexually explicit material or child sexual abuse material punishable with imprisonment for a term of not less than five years.

Removal of Unlawful Information:

- An **intermediary upon receiving actual knowledge in the form of an order by a court** or being notified by the Appropriate Govt. or its agencies through authorized officer should not host or publish any information which is prohibited under any law in relation to the interest of the sovereignty and integrity of India, public order, friendly relations with foreign countries etc.

Ambit Of The IT Rules

- All significant social media platforms with more than 50 lakh (5 million) users, which means Facebook, Twitter, Instagram and Koo, for instance, are very much categorized as large social media platforms.
- As of March, this year, WhatsApp has more than 390 million users in India.
- Facebook had clocked 320 million users in India, as of January 2021 numbers from research firm Statista, making this the largest market for the company ahead of the US (190 million) and Indonesia (140 million).
- Twitter also has more than 17.5 million users in India, as per the numbers from January this year.
- The made in India social media platform Koo has crossed 60 lakh users.
- **Different Social Media Sites On New Social Media Laws**
- Significant social media intermediaries' — defined as those with over 50 lakh registered users — were given three months to comply with the additional requirements.
- Except for one Indian social media company - Koo (having user base above 50 lakh), none of the significant social media intermediaries have appointed the Resident Grievance Officer, the Chief Compliance Officer and Nodal Contact Person as per the new guidelines.
- Facebook and Google on 25 of May 2021 had said they are working towards meeting the compliance requirements for the new guidelines.
- Twitter said it would strive to comply with applicable law in India.
- **Previous Encounter:** This is not the first-time tensions have arisen between WhatsApp and the Indian government.

- In 2019, the finger was pointed at the Modi government after WhatsApp claimed that Indian journalists, scholars and activists were among users targeted with spyware which meant their personal information could be accessed remotely.
- WhatsApp alleged that NSO Group's software had been used to target the users and filed a lawsuit against the Israeli firm in the US.
- NSO Group has previously denied the claim and has said it ought to be immune from such lawsuits because its clients are foreign governments, and it is they which are responsible for deploying the software.
- The company has argued that its government clients are only meant to use its technology against terrorists and criminals, and it is not privy to who is targeted by its surveillance tools.
- The Indian government has denied any responsibility.

About WhatsApp

- Launched in 2009, WhatsApp is one of the most popular text and voice messaging apps.
- Part of what makes this app appealing is that it works on various phone and computer operating systems, helping with messaging. It can also take advantage of Wi-Fi and cellular data to make one-on-one or group calls.
- It has end-to-end encryption, just like Apple's iMessage and Signal. All messages flowing through the platform are secured so that only the sender and the recipient can view them. This means WhatsApp couldn't read your message even if it wanted to.
- **WhatsApp says it serves more than 2 billion people in over 180 countries, with over 1 billion daily active users.**
- WhatsApp Messenger is now the leading mobile messaging app in 169 countries — although perhaps surprisingly, not in the U.S., where Messenger is more popular. The app dominates in India, Germany, Russia, and the U.K.

Editorial

- Facebook-owned WhatsApp has led a case in the Delhi High Court against the Indian government, seeking to block the new IT rules that come into effect today. The new rules require "significant social media intermediaries" like WhatsApp to "trace" the origin of particular messages sent on the service.
- The WhatsApp vs Government of India case was led on Tuesday, May 25.
- **"Requiring messaging apps to 'trace' chats is the equivalent of asking us to keep a fingerprint of every single message sent on WhatsApp, which would break end-to-end encryption and fundamentally undermines people's right to privacy,"** a spokesperson for the world's largest messaging app said on Wednesday.
- WhatsApp has consistently joined civil society and experts around the world in opposing requirements that would violate the privacy of its users. "In the meantime, we will also continue to engage with Government of India on practical solutions aimed at keeping people safe, including responding to valid legal requests for the information available to us," it added.

- ET had reported on Tuesday that social media platforms such as Facebook, WhatsApp, Google and Twitter run the risk of losing their status as “intermediaries” and may become liable for criminal action if they do not comply with the revised regulations.
- Google and Facebook had said on Tuesday that they are attempting to comply with the new Rules.
- India has fixed five million registered users as the threshold for defining a significant social media intermediary. It has directed appointment of a resident grievance officer, chief compliance officer and nodal contact person and to publish the details of these executives on their website, along with a physical contact address. The rules also mandate traceability of the originator of messages, along with a provision for voluntary verification as a means to establish user identity.

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We strongly endorse and believe in the fact that our faculty is our asset and one of the strong pillars of Success Mantra. This is the reason, we cherry-pick our faculties in order to fulfil the expectations of the students. Each of our faculty is the master of their subject, thus ensuring the best results across the industry.



Mahesh H Singh

Faculty - Constitutional Law (Polity)

I am a commerce graduate and belong to Mumbai. I have been teaching constitution and PSIR to Law and CSE aspirants for the last 4 years.

My role at Success Mantra is to mentor students to understand the constitution through flow charts and fine examples. I believe in 3 C's (i.e. CONTENT, CLARITY of topics and CONNECTION between students and teacher) are the key elements of effective teaching, what I ensure at success mantra.



Shivendra Pratik

Faculty - Logical Reasoning

I'm a Post Graduate Diploma in Management and a Gold Medalist in Finance and Banking. I have a comprehensive experience of around 8 years in the Corporate & Education industry. For the last 6 years, I have been teaching Logical Reasoning to various competitive entrance exam aspirants majorly CLAT, AILET, DU LLB, HM, BBA, Banking, UPSC, DSSSB etc.



Richa Jha

Faculty - Legal Aptitude

I am Advocate Richa Jha. I'm LLB, LLM from Law Faculty, University of Delhi. Law, as a subject, can be taught with the help of legal theories, their practices and applications which can be substantiated with the help of case studies.

I sincerely believe in imparting a legal education which a candidate can relate to his exam and could become a means to achieve success.



Ankit Jha

Faculty - General Knowledge | Service Aptitude

I'm a hospitality professional and a qualified manager. I've diversified experience of more than six years in different industries. I graduated from the prestigious IHM Pusa Delhi.

I mentor the aspirants of Success Mantra as a Faculty for General Awareness & Service Aptitude. I'm dedicated towards providing the best content in terms of quality & relevancy and always eager to assist the students.



Vipin Sharma

Faculty - Quantitative Techniques

I'm an MBA, LL.B. and B.Com (AMU). I have been in association with Success Mantra since 2013. Extensive knowledge of arithmetic mathematics, algebra, geometry, statistics and other areas of mathematics allows me to confidently explain concepts and processes to my students. My lesson plans engage students and help them feel confident in their mathematical abilities.



Deepak Chauchan

Faculty - English Language & Usage

I'm Deepak Chauhan. I'm PG in English. I've more than fifteen years of Experience including teaching experience of eight years. I'm committed to creating a classroom which is stimulating and highly motivated.

I'm highly professional and dedicated towards my work. I've created a huge library of competitive english which I share with my students as and when required. I've passion for English Language and my ultimate goal is to help my students to achieve their goal in life.

