

INDIA RESPONDS TO WHATSAPP, SAYS NO INTENTION TO VIOLATE RIGHT OF PRIVACY

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The Indian government on Wednesday 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.

The statement by the Ministry of Electronics and IT (MEITY) comes hours after the social messaging app filed a lawsuit in Delhi High Court challenging the government's new digital rules saying the requirement for the company to provide access to encrypted messages will break privacy protections.

"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 statement added.

"The Government of India recognises that 'Right to Privacy' is a Fundamental right and is committed to ensure the same to its citizens," the ministry added.

However, it added that as per all established judicial dictum, "no Fundamental Right, including the Right to Privacy, is absolute and it is subject to reasonable restrictions. The requirements in the Intermediary Guidelines pertaining to the first originator of information are an example of such a reasonable restriction."

On this issue, IT minister Ravi Shankar Prasad has said, "the Government of India is committed to ensuring the Right of Privacy to all its citizens but at the same time it is also the responsibility of the government to maintain law and order and ensure national security."

Prasad also stated that "none of the measures proposed by India will impact the normal functioning of WhatsApp in any manner whatsoever and for the common users, there will be no impact."

The IT ministry also clarified that the rule of the Intermediary Guidelines is examined through the test of proportionality then that test is also met. The cornerstone of this test is whether a lesser effective alternative remedy exists. "As per the Intermediary Guidelines, the originator of information can only be traced in a scenario where other remedies have proven to be ineffective, making the same a last resort measure. Moreover, such information can only be sought as per a process sanctioned by the law thereby incorporating sufficient legal safeguards."

On February 25, the government had announced tighter regulations for social media firms, requiring them to remove any content flagged by authorities within 36 hours and setting up a robust complaint redressal mechanism with an officer being based in the country.

The new rules were announced in February which requires large social media platforms to follow additional due diligence, including the appointment of a chief compliance officer, nodal contact person and resident grievance officer.

In the statement today, the ministry added that it is very important to note that such an order, to trace first originator, under the said guidelines shall be passed only for the purposes of prevention, investigation, punishment etc. of inter alia an offence relating to sovereignty, integrity

and security of India, public order incitement to an offence relating to rape, sexually explicit material or child sexual abuse material punishable with imprisonment for not less than five years.

It is in public interest that who started the mischief leading to such crime must be detected and punished. "We cannot deny as to how in cases of mob lynching and riots etc. repeated WhatsApp messages are circulated and recirculated whose content are already in public domain. Hence the role of who originated is very important," it stated.

Citing the intermediary status guidelines, the government further added that rules have been framed after consultation with various stakeholders and social media intermediaries, including but not limited to WhatsApp.

Here's what India stated about WhatsApp's functioning in the country:

After October 2018, no specific objection has been made by WhatsApp to Government of India in writing relating to the requirement to trace the first originator in relation to serious offences. They have generally sought time to extend the time for enforcement of guidelines but did not make any formal reference that traceability is not possible.

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.

Any operations being run in India are subject to the law of the land. WhatsApp's refusal to comply with the guidelines is a clear act of defiance of a measure whose intent can certainly not be doubted.

At one end, 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.

On the other hand, WhatsApp makes every effort to refuse the enactment of the Intermediary Guidelines which are necessary to uphold law and order and curb the menace of fake news.

WhatsApp defends its refusal to enact the Intermediary Guidelines by carving out an exception that messages on the platform are end to end encrypted.

It is pertinent to note that the rule to trace the first originator of information is mandatory for each and every significant social media intermediary, irrespective of their method of operation.

Furthermore, Prasad said, "the entire debate on whether encryption would be maintained or not is misplaced. Whether Right to Privacy is ensured through using encryption technology or some other technology is entirely the purview of the social media intermediary. The Government of India is committed to ensuring Right of Privacy to all its citizens as well as have the means and the information necessary to ensure public order and maintain national security. It is WhatsApp's responsibility to find a technical solution, whether through encryption or otherwise, that both happen."

As a significant social media intermediary, WhatsApp seeks safe harbour protection as per the provisions of the Information Technology Act. However, in a befuddling act, they seek to avoid responsibility and refuse to enact the very steps which permit them a safe harbour provision, the ministry stated.

The government also added that these new digital rules are not enacted in isolation but have global precedence.

In July 2019, the governments of the United Kingdom, United States, Australia, New Zealand and Canada issued a communique, concluding that: "tech companies should include mechanisms in the design of their encrypted products and services whereby governments, acting with appropriate legal authority, can gain access to data in a readable and usable format."

The statement also clarified that what India is asking for is significantly much less than what some of the other countries have demanded. Therefore, "WhatsApp's attempt to portray the Intermediary Guidelines of India as contrary to the right to privacy is misguided."

On the contrary in India, privacy is a fundamental right subject to reasonable restrictions. The new rule is an example of such a reasonable restriction.

"It would be foolhardy to doubt the objective behind the Intermediary Guidelines, which aims to protect law and order," the government added.

"All sufficient safeguards have also been considered as it is clearly stated that it is not any individual who can trace the first originator of information. However, the same can only be done by a process sanctioned by the law. Additionally, this has also been developed as a last resort measure, only in scenarios where other remedies have proven to be ineffective," the statement further added.

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