



Traceability Provision in New IT Rules 2021

Why in News

Recently, messaging platform WhatsApp has moved the Delhi High Court to challenge the **traceability provision** in the [New IT Rules 2021](#).

- Earlier the Ministry of Electronics and IT (MeitY) had sent a [notice to WhatsApp asking it to withdraw a controversial update to its privacy policy](#) which might be a threat to Data Protection of Indians.

Key Points

▪ Traceability Provision:

- It **requires intermediaries to enable identification of the first originator** of information on their platforms.
- Rule 4(2) of the Intermediary Rules states that **a significant social media intermediary providing services primarily in the nature of messaging shall enable the identification of the first originator of the information** on its computer resource **as may be required by a judicial order or an order passed by a competent authority under the [Information and Technology \(IT\) Act 2000](#)**.
- Failure to comply with this requirement would **take away the indemnity** provided to social media intermediaries under [Section 79 of the IT Act](#).

▪ Concerns Raised:

- **Infringes Rights to privacy and freedom of speech:**
 - This breaks end-to-end encryption and impermissibly infringes upon users' fundamental [Rights to privacy](#) and [Freedom of speech](#).
 - [Article 19\(1\)\(a\)](#) of the Indian Constitution guarantees the **freedom of speech and expression**.
 - The **right to privacy is protected as an intrinsic part of the right to life and personal liberty** under [Article 21](#) and as a part of the freedoms guaranteed by Part III of the Constitution ([Puttaswamy Judgement 2017](#)).
 - **States throughout the world have recognised** the "important benefits" of **end-to-end encryption** and the dangers of undermining that security protocol.
- **Discourages Free Expression:**
 - Freedom of Speech and Right to Privacy **encourages users to express their ideas and opinions, report unlawful activities, and challenge popular views without fear of reprisal**, whereas enabling the identification of the first originator of information in India subverts privacy and **discourages free expression of views**.
- **Will Curb Freedom of Media:**
 - Such a requirement would **put journalists at risk of retaliation for investigating issues that may be unpopular, civil or** for discussing certain

rights and criticizing or advocating for politicians or policies.

- **Clients and attorneys** who could become reluctant to share confidential information for fear that the privacy and security of their communications are **no longer ensured**.
- **Traceability not Effective in Finding Originator:**
 - Traceability would not be effective in finding the originator of a particular message because **people commonly see content on websites or social media platforms and then copy and paste them into chats**.
 - It would also be **impossible to understand the context** of how it was originally shared.

Section 79 of the IT Act 2000

- It says any **intermediary shall not be held legally or otherwise liable for any third party information, data, or communication link** made available or hosted on its platform.
 - **Third party information** means any information dealt with by a network service provider in his capacity as an intermediary.
- This **protection shall be applicable if the said intermediary does not** in any way **initiate the transmission** of the message in question, **select the receiver of the transmitted message** and **does not modify any information** contained in the transmission.
- It is **not granted if the intermediary, despite being informed or notified by the government or its agencies, does not immediately disable access** to the material under question.
- The intermediary **must not tamper with any evidence of these messages or content** present on its platform, failing which it loses its protection under the Act.

End-to-End Encryption vs Traceability

- End-to-end encryption was **designed to help ensure that nobody other than the person you are talking to can know that you sent a particular message**. This is the exact opposite of traceability, which would reveal who sent what to whom.
 - **End-to-end encryption** is a system of communication where only the communicating users can read the messages.
- **Traceability would force private companies to collect and store who-said-what and who-shared-what for billions of messages sent each day**. This will require platforms to collect more data than they need, solely for the purpose of turning it over to law enforcement agencies.

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