THE NEW IT RULES IN INDIA AND WHAT IT MEANS FOR SOCIAL MEDIA GIANTS LIKE WHATSAPP AND TWITTER: CONTROVERSY ENSUES

The New [Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021](https://www.meity.gov.in/content/notification-dated-25th-february-2021-gsr-139e-information-technology-intermediary), came into effect starting from May 26. While giants such as Facebook and Google have agreed to comply with these rules, other giants such as Twitter and WhatsApp, a Facebook subsidiary, are not on board with these new rules.

According to the new rules, all ‘significant’ intermediaries are required to have a chief compliance officer, a nodal contact person and a grievance officer. All of these posts need to be filled by residents of India. The issue that these platforms see with the appointments of Indian residents to these positions is that there might be a [tussle](https://www.livemint.com/technology/tech-news/why-facebook-twitter-won-t-yet-face-a-ban-inindia-11622049622841.html) between the ‘law of the land’ and social media platforms’ own regulations. Thereby, if an Indian resident is appointed, there could be concerns about being pressurised by the local authorities.

Following the Trump Twitter ban, the former US President had [stated](https://www.bbc.com/news/technology-56985583) that “the people of our country will not stand for it! These corrupt social media companies must pay a political price and must never again be allowed to destroy and decimate our electoral process.” There is a need to protect the employees from political pressure, and these new rules could increase the political pressure that these Indian resident officers could face. This political tension can be seen in India through the incidents in the past few weeks. Police had [visited Twitter’s offices](https://reut.rs/3ccSQ7J) as well.

The new rules also dictate that a company should be able to track down the ‘first originator’. This will only be in cases where there is sexually explicit content being circulated or a threat to national security. However, the terms can be subjective and can curb the freedom of expression in the latter circumstances.

“Technology companies need regulation but not at the expense of user rights,” [said](https://www.businessinsider.in/tech/apps/news/why-whatsapp-twitter-and-facebook-are-reluctant-to-comply-with-indias-new-it-rules/slidelist/82975313.cms#slideid=82975401) Mishi Choudhary, the director and founder of Software Freedom Law Centre (SFLC).

Photo Credits: Tushar Mahajan, taken from Unsplash

**THE CASE IN FRONT OF THE DELHI HIGH COURT**

WhatsApp has [filed a lawsuit](https://www.reuters.com/world/india/exclusive-whatsapp-sues-india-govt-says-new-media-rules-mean-end-privacy-sources-2021-05-26/) at the Delhi High Court over this matter as the new rules would compel Facebook’s [(FB.O)](https://www.reuters.com/companies/FB.O) messaging app to break privacy protections. The petitioners have [requested](https://www.reuters.com/world/india/exclusive-whatsapp-sues-india-govt-says-new-media-rules-mean-end-privacy-sources-2021-05-26/) the Delhi High Court to declare one of the new rules to be a violation of the right to privacy as guaranteed by the Constitution of India due to the identification of the “first originator of information” when authorities demand it.

The previous landmark judgement of [Justice K.S.Puttaswamy(Retd) vs Union Of India](https://indiankanoon.org/doc/127517806/) has been cited in the lawsuit supporting the right to privacy. The Puttaswamy judgement had adjudged that privacy must be preserved except in cases where legality, necessity and proportionality all weighed against it. WhatsApp argues that the new rules fail to pass these tests. Experts have [backed](https://www.reuters.com/world/india/exclusive-whatsapp-sues-india-govt-says-new-media-rules-mean-end-privacy-sources-2021-05-26/)WhatsApp’s arguments.

Tech companies have also been demanded to remove what the Government perceives as misinformation on the COVID-19 pandemic, including criticism of the Government’s response to the crisis.

WhatsApp uses end-to-end encryption, and the new rule would [make](https://www.reuters.com/world/india/exclusive-whatsapp-sues-india-govt-says-new-media-rules-mean-end-privacy-sources-2021-05-26/) WhatsApp break its encryption for receivers of messages and the originators to comply with the new law.

“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,” WhatsApp [said](https://www.reuters.com/world/india/exclusive-whatsapp-sues-india-govt-says-new-media-rules-mean-end-privacy-sources-2021-05-26/) in a statement when asked to comment on the lawsuit.

“The new traceability and filtering requirements may put an end to end-to-end encryption in India,” Stanford Internet Observatory scholar [Riana Pfefferkorn wrote](https://brook.gs/3um1PJY) in March.

**THE NEW APP KOO AND ITS PRESENCE IN INDIA**

Apart from WhatsApp, other apps such as Signal and Telegram do not command a massive user base in India. WhatsApp, Facebook, Twitter, etc., have all invested a lot in India and fear that the new regulations could jeopardize their prospects.

Notably, the Indian social media company [Koo](https://play.google.com/store/apps/details?id=com.koo.app&hl=en&gl=US) has complied with the rules.   
With close to six million downloads, Koo is a major social media intermediary, which has to meet the complete guidelines.

As a company founded in March 2020, Koo has positioned itself as a micro-blogging platform for Indic language users and is also available in multiple local languages.

Mayank Bidawatka, the co-founder of Koo, [said](https://www.livemint.com/companies/news/koo-complies-with-intermediary-guidelines-for-social-media-platforms-11621671758376.html), “Given that we had three months to comply with the new guidelines, we interviewed candidates and finally identified experienced colleagues from within the team. They are already familiar with the systems we have in place and will be the best people to further build on top of it.” However, the company has not [divulged](https://www.livemint.com/companies/news/koo-complies-with-intermediary-guidelines-for-social-media-platforms-11621671758376.html) the details of its new appointees.

**WHAT’S NEXT?**

While there was a social media meltdown thinking that the apps will be completely banned from India, that is not the case. “The Government has no power to ban any of these companies under these rules. Noncompliance results in loss of safe harbour protection for a company leading to increased liability,” explained Mishi Choudhary, the director and founder of Software Freedom Law Centre (SFLC).

The Ministry of Electronics and Information Technology had written to all significant social media intermediaries requesting them to comply with [the new guidelines that came into effect.](https://www.thehindu.com/news/national/facebook-says-it-aims-to-comply-with-indias-new-it-rules/article34638367.ece)There have been several requests for extensions. Various industry bodies, including the Confederation of Indian Industry, the Federation of Indian Chambers & Commerce Industry, US-India Business Council, Asia Internet Coalition, and the US-India Strategic Partnership Forum, have [requested the Government](https://www.thehindu.com/news/national/new-it-rules-centre-seeks-compliance-report-from-intermidiaries/article34652065.ece) to extend the deadline and give a one-year compliance window due to various reasons, including the COVID-19 pandemic. [Citing](https://www.thehindu.com/news/national/new-it-rules-centre-seeks-compliance-report-from-intermidiaries/article34652065.ece) the second COVID-19 wave in the nation, these different industry bodies have sought an extension as they cannot comply with the stipulated timeline as the transition to the newly notified rules required extensive capacity building, new operational models, product redesign, and personnel onboarding.

The case is pending in front of the Delhi High Court. The case and details will only become clearer once we reach closer to the hearing date.

**Harsh Mahaseth** is an Assistant Lecturer at Jindal Global Law School, and a Research Analyst at the Nehginpao Kipgen Center for Southeast Asian Studies, Jindal School of International Affairs, O.P. Jindal Global University. He is currently a Fellow at Kathmandu Tribune.