

Constitutional Bench Update

**Karmanya Singh Sareen
vs.
Union of India**

WhatsApp Privacy Policy



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Bench

**Justices K.M. Joseph,
Ajay Rastogi, Aniruddha Bose,
Hrishikesh Roy, C.T. Ravikumar**

**Case Admitted on
January 9, 2017**

**Last Date of Hearing
September 29, 2022**

**Next Date of Hearing
January 17, 2023**

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Background



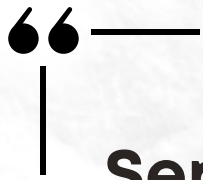
August 25, 2016: WhatsApp Inc. changed its privacy policy to reflect its relationship with its parent company, Facebook, by stating that they will begin to share user data with them.

The privacy policy was challenged in the Delhi High Court highlighting the following issues:

- Does Privacy Policy of WhatsApp contravene the Privacy Rights of its users?
- Shouldn't there be a provision of information options on Facebook for the users?
- Is the way in which Whatsapp has acquired the authorisation of its users manipulative?



Background



September 23, 2016: Delhi High Court in the case of Karmanya Singh Sareen v. Union of India, MANU/DE/2607/2016 issued the following directions to protect the interest of the users of "WhatsApp":

- If the users opt for completely deleting "WhatsApp" account before 25.09.2016, the information/data/details of such users should be deleted completely from "WhatsApp" servers and the same shall not be shared with the "Facebook" or any one of its group companies
- So far as the users who opt to remain in "WhatsApp" are concerned, the existing information/data/details of such users upto 25.09.2016 shall not be shared with "Facebook" or any one of its group companies



Background

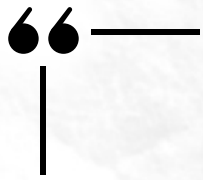
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- The respondent Nos. 1 and 5 shall consider the issues regarding the functioning of the Internet Messaging Applications like "WhatsApp" and take an appropriate decision at the earliest as to whether it is feasible to bring the same under the statutory regulatory framework

Petitioners filed an SLP in Supreme Court against Delhi High Court judgment which was initially heard by a Division Bench and later a Constitution Bench.

July 21, 2017: 5-Judge Bench, heard arguments on maintainability of the writ and the need for a regulatory regime for data sharing services provided by large corporations. Questions related to the applicability of fundamental rights were also discussed.

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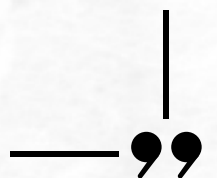
Background



January 2021: WhatsApp rolled out a new privacy policy, giving users time till February , 28 2021 to accept and update it. The new policy does not provide the users with the option to opt out of their data being shared with Facebook Inc, WhatsApp's parent company.

February, 2021: Application was filed in Karmanya Singh Sareen v. Union of India challenging the new privacy policy. The application claimed that WhatsApp is offering lower privacy protections in India as compared to Europe.

September 29, 2022: Supreme Court has adjourned the matter to January 17, 2023 and directed to complete all the pleadings till December 15, 2022.



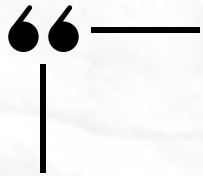
Issues under Consideration



- Whether the privacy policy infringes the right to privacy of its user groups
- Whether the failure of the user to share their data with Facebook is impermissible
- Whether the way in which Whatsapp obtains user assent is misleading



Issues under Consideration



- Whether the Internet networking systems that allow users to share text/audio/video messages, data and render audio/video calls constitute ‘telecommunication’ systems and are subject to regulation by the competent authorities?



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