

WHATSAPP PRIVACY POLICY

Working on data protection framework: Govt to SC

MPOST BUREAU

NEW DELHI: A comprehensive data protection framework may be put in place by this year end and the TRAI is working on it, the government on Tuesday told the Supreme Court.

The government told the apex court that there would be a regulatory mechanism in place on data protection, likely by Diwali in October, and the Telecom Regulatory Authority of India (TRAI) was actively pursuing a framework of this nature.

Stating this, Attorney General Mukul Rohatgi urged a five-judge constitution bench, headed by Justice Dipak Misra, to defer the hearing in the WhatsApp privacy policy matter by a couple of months so that the government can come out with the law on data protection.

"The government is actively mulling over a comprehensive data protection framework," Rohatgi told the bench, which also comprised Justices A K Sikri, Amitava Roy, A M Khanwilkar and M M Shantanagoudar.

Senior advocate Harish

Salve, appearing for the petitioners, told the bench that there was no regulation in place and there should be privacy of data or information shared by the users on social networking or instant messaging platforms.

"It does not look like that even the government is alive to this problem," he said, adding that the "TRAI is focussing on net-neutrality. Let them start on the policy for privacy first".

Responding to this, the Attorney General said, "The TRAI is already in the process. By Diwali, we should have it (the new data protection framework)." He said the Centre's stand was "that there is going to be a regulatory regime to save the data base to guide the concept of net-neutrality".

Rohatgi also referred to the privacy aspect and said another five-judge bench would be dealing with it while deciding petitions challenging the constitutional validity of Aadhaar scheme.

Meanwhile, senior advocate Kapil Sibal, representing WhatsApp, told the apex court that they have an encrypted technology and data or con-



tents, including voice and messages, shared on their platform cannot be accessed by a third party. "WhatsApp has an end-to-end encrypted technology. We are more concerned about it. We are very popular because we protect privacy. We do not share content, data or anything," he said.

Sibal also questioned the way in which the matter was listed for hearing before a constitution bench, saying it could not have been referred to such a bench without hearing the issue and framing questions.

Salve countered him saying "it has been done under the order of the Chief Justice of India. The CJI has unbri dled power. He is master of the roaster. He can place anything before any bench of any strength".

"It is a direction, by exercise of discretion, that this matter be placed for hearing before a five-judge constitution bench," the court said, adding, "we are not concerned with the issue of net-neutrality. We are concerned with the points raised by the petitioner".

Sibal, however, said that bench headed by CJI J S Khehar should have formulated the questions to be deliberated upon by the constitution bench.

The court said that it would deal with the preliminary objection raised in this regard in its final verdict saying, "once an issue has been raised, it has to be addressed. And we think we shall put the controversy to the rest in this regard".

During the hearing, Salve argued that privacy policy of WhatsApp was "unacceptable" and suffers from constitutional vulnerability as it affects the freedom of an individual.

He argued that WhatsApp could not have framed such policy under the garb of data sharing.

Senior advocate Sidharth Luthra, appearing for Facebook, told the court that they were in compliance with the provision of the Information and Technology Act and the 2011 privacy policy and rules.

The bench, while posting the matter for hearing on April 27, asked Salve to formulate the issues to be deliberated upon by it by August 24.