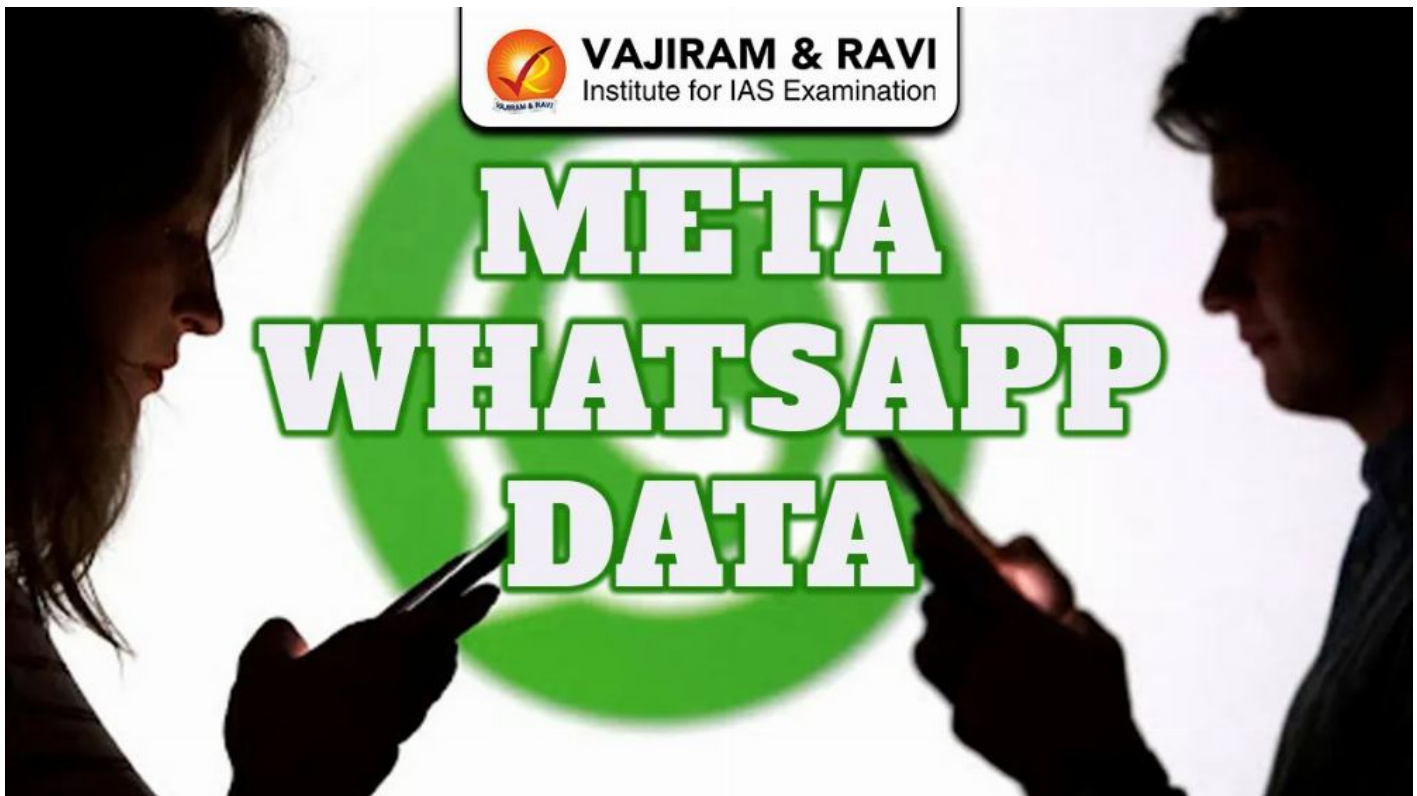


Meta-WhatsApp Data Case: Supreme Court Questions Consent Model

February 5, 2026 • vajiramandravi.com



Meta WhatsApp Data Latest News

- In a significant hearing, the Supreme Court of India sharply questioned the data practices of Meta, the parent company of WhatsApp, suggesting that the extraction of user data may resemble “theft” rather than voluntary exchange.
- A three-judge Bench observed that in markets dominated by a few digital platforms, user consent may be illusory, as individuals have little real choice but to accept data-sharing terms.
- The court indicated that market dominance can convert consent into coercion, raising concerns that go beyond privacy to challenge the very economic foundations of data-driven business models.
- The observations signal a possible judicial rethink on how consent, competition, and data ownership are understood in India’s rapidly expanding digital ecosystem, with far-reaching implications for Big Tech regulation in the world’s largest internet market.

Meta-WhatsApp Regulatory Friction

- The dispute began in 2021, when WhatsApp introduced a “**take-it-or-leave-it**” privacy policy update.

- The revised policy enabled greater data sharing between WhatsApp and its parent company, Meta.
- Although WhatsApp maintained that end-to-end encryption continued to protect message content, regulators flagged concerns over the use of metadata for advertising and business profiling.

Competition Commission of India's Intervention

- The **Competition Commission of India (CCI)** viewed the update as an abuse of dominant market position.
- Key observations included:
 - For most Indian users, opting out of WhatsApp is not a realistic choice
 - WhatsApp functions as India's "digital town square", making consent effectively coerced
- Penalty imposed: ₹213.14 crore (≈ \$25 million) on Meta
- While financially modest for a trillion-dollar firm, it marked a strong regulatory signal.
- Meta challenged the CCI order before the **National Company Law Appellate Tribunal (NCLAT)**.

NCLAT's Nuanced Verdict

- The NCLAT delivered a split decision:
 - Upheld the CCI's finding that Meta had abused its dominant position
 - Retained the monetary penalty
 - Set aside a critical CCI directive that would have barred Meta from sharing WhatsApp user data with its other entities for five years for advertising purposes
- The NCLAT's reasoning rested on:
 - A traditional view of corporate integration, treating data-sharing between parent and subsidiary as a common digital-age practice
 - Concern that a five-year moratorium would be a **disproportionate "structural remedy"**, potentially disrupting Meta's platform synergies
 - Preference to let **privacy-specific legislation**, rather than competition law, govern data flows
- With the **Digital Personal Data Protection Act, 2023** on the horizon, the tribunal appeared inclined to defer finer questions of consent and data use to the emerging data protection regime.

Why Meta Took the Dispute to the Supreme Court

- Dissatisfied with both the financial penalty and the reasoning adopted by the NCLAT, Meta appealed to the Supreme Court of India.
- Meta sought relief from what it viewed as excessive regulatory interference in its data-sharing practices and business model.

Supreme Court's Hard Line on Market Dominance

- The apex court showed little inclination to dilute scrutiny.
- Chief Justice remarked that opting out of WhatsApp in India is akin to "opting out of the country", underlining the network effects that lock users into dominant digital platforms.
- This observation reinforced the idea that user consent in monopolistic markets may be illusory.

Shift from Privacy to Economic Value of Data

- A more far-reaching argument came from Justice Joydalya Bagchi, who reframed the debate beyond privacy to the economic value of personal data.
- India's Digital Personal Data Protection Act, 2023 primarily safeguards informational privacy
- However, the law is largely silent on "rent-sharing"—who benefits economically when platforms monetise user data
- Justice Bagchi questioned: **if behavioural data of Indian users fuels targeted advertising, who owns the profits generated from that data?**

Towards a 'Data-as-Property' Approach

- The court's reasoning hinted at a **data-as-property framework**, aligning India closer to the Digital Services Act of the European Union, rather than the more laissez-faire approach associated with the United States.
- By impleading the Ministry of Electronics and Information Technology (MeitY), the court compelled the government to reflect on a deeper policy question:
 - Is privacy protection alone sufficient, or
 - Does the economic value of citizens' digital footprints warrant a new form of sovereign and regulatory protection?

What Happens Next

- **Court's Growing Discomfort with the 'Free Internet' Model** - The remark that users are "**not only consumers, but also products**" captures the court's unease with digital business models built on harvesting personal data. Targeted ads following private conversations are seen as intrusions, not innovation.
- **Transparency vs Real Understanding** - The court signalled that formal consent does not equal informed consent in a country with uneven digital literacy.
- **Ultimatum to Meta** - The court has issued a clear warning: Meta must give an undertaking to stop sharing personal data, or risk dismissal of its case and the imposition of "very strict conditions".
- **Message from the Judiciary** - The judiciary's stance is unmistakable—Indian users are no longer passive data sources. The long-tolerated model of invisible data extraction may be nearing its end.

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