

Examining the Online Anonymity Debate: How far should the law go in mandating user identification?

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- *Recognising the right to online anonymity has key expression, privacy and equity related benefits, and thus, a general identification mandate for users of online platforms should be avoided.*
- *At the same time, anonymity is not an absolute right. Lifting of the veil of anonymity is a complex exercise that requires careful balancing of competing interests and contextual factors, that is best undertaken by a judicial authority.*
- *An option for voluntary identity verification must not, de facto, become mandatory, or be used to mandate linkages with Aadhaar.*
- *A mandatory traceability requirement, as contained in the Intermediary Guidelines Rules, 2021, is disproportionate given the costs to civil liberties and the digital ecosystem, the alternatives available to law enforcement, and the lack of proper safeguards that can balance competing interests.*

Context

The debate between liberty and security, and which value should get primacy in modern democracies has been a perennial one, and is equally contested in the space of digital rights. Growing instances of online harm have led to increased demands for the State as well as intermediaries to take steps to make the online ecosystem safer.ⁱ The issue of how to identify perpetrators of online offences is therefore a key question, as this enables fixing liability for illicit activities online.

The tension between the need of society to identify individuals, and in some cases to recognise the limits of identification have only been exacerbated by the Internet. The ability to navigate the Internet relatively anonymously is one of the defining characteristics of the medium, even if the Internet was not, as such, designed to facilitate anonymity. There are strong justifications for supporting a right to online anonymity, even while recognising that anonymity may be counterproductive in certain contexts. Thus, it is important to delineate the conditions under which the veil of anonymity can be lifted by the courts.

In India, the absence of clarity on the duties of intermediaries, and the inability expressed by law enforcement to take prompt action pertaining to illegal content have increased calls for new legal approaches to be adopted. These have taken the form of requirements for certain intermediaries to either enable the voluntary verification of users, or to enable

the traceability of the originator of messages on their platforms.ⁱⁱ Indian Courts have also weighed in. Petitions have been filed in the Madras High Court seeking the linking of social media accounts to user's Aadhaar details.ⁱⁱⁱ Most recently, WhatsApp has filed a petition before the Delhi High Court challenging the mandatory traceability requirement imposed by the Intermediary Guidelines, 2021.^{iv}

In this context, this paper attempts to examine how India law deals with anonymity, and therefore outlines the contours of any proposed regulation.

Main arguments presented

Online anonymity rests on similar normative foundations as the right to privacy elucidated in the *Puttaswamy* cases, and is not an absolute right.

The main arguments around this can be divided into three-inter related considerations of speech, privacy and equality.

(a) Speech-related arguments: The right to anonymity enhances autonomy and enables individuals to contribute fearlessly to public discourse, without fear of reprisal by the State or non-state actors.¹ This can be particularly important in contexts such as whistle-blowers, journalists, activists, and those who do not conform to mainstream social mores.² This ability to escape social accountability structures can also prove harmful in various contexts,