
EVALUATING META AI'S COMPLIANCE WITH INDIAN DATA PROTECTION REGULATIONS IN ITS INTEGRATION TO WHATSAPP

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1. Introduction:

The first attempt to define the right to privacy was made by Thomas Cooley while discussing the concept of personal immunity¹ - "the right of one's person may be said to be a right of complete immunity; the right to be alone."² Recognition of the Right to Privacy first came under the judicial lenses in the case of *M.P. Sharma v. Satish Chandra* (1954)³. Placing reliance upon the judgements passed by the SCOTUS⁴, the right to privacy was recognized as a fundamental right under Article 19(1)(a), 19(1)(d) & 21 of the Constitution⁵. On the momentous day of 24th Aug, 2017, the Supreme Court of India in *K. S. Puttaswamy v UOI*⁶, by a constitutional bench of nine judges, unanimously, recognized Right to Privacy as a fundamental right under Article 21 of the Indian Constitution applying the concept of penumbral rights. Right to Privacy also has application on the protection of data. This brings us to an important question: What is the need of protecting data? The more we are advancing technologically, the more we are outing ourselves to the risk of data privacy invasion. Now, the digital world has changed. Artificial Intelligence, which may be defined as a technology wherein machines are simulating human intelligence⁷, has become an integral part of our lives. Recently, meta has introduced its AI Technology on various social media platforms operating in India. It is important to analyse whether the current legislation, the Digital Personal Data Protection Act, 2023 (DPDP Act) is comprehensive enough to cater to continuously evolving technological dimensions. This paper particularly deals with the legality of Meta AI's

¹ *Justice K.S. Puttaswamy(Retd) v. Union Of India*, 2019 (1) SCC 1.

² Thomas Cooley, *Treatise on the Law of Torts* (1888), 2nd edition Ibid, at page 29

³ *M. P. Sharma and Ors v. Satish Chandra*, 1954 SCR 1077.

⁴ *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Roe v. Wade*, 410 U.S. 113 (1973).

⁵ *Govind vs State Of Madhya Pradesh*, (1975) 2 SCC 148.

⁶ *Justice K.S. Puttaswamy(Retd) v. Union Of India*, 2019 (1) SCC 1.

⁷ IBM, 'What Is Artificial Intelligence (AI)? | IBM' <https://www.ibm.com/topics/artificial-intelligence> accessed 14 August 2024.

integration with most popularly used social media platforms like WhatsApp, Instagram etc., in compliance with the DPDP Act in consonance with General Data Protection Regulation (GDPR).

2. Understanding Meta AI:

Meta Platforms, Inc, formerly known as the Facebook, Inc, is engaged in the development of platforms wherein people can interact, build communities & even engage in businesses. The most popularly used platforms owned by Meta includes Facebook, WhatsApp, Instagram, Threads etc. Meta's AI Assistant built on the Large Language Model Llama 3, called Meta AI, is basically a chatbot designed to provide answers to certain considerations and questions on how prompts help in generation of images and comprehensive outputs. It is interesting to note that this Meta AI update was automatically installed in above-mentioned social media platforms, without any informed consent from the user to opt-in to this change on these Platforms. At the same time, the current model fails to extend any opt-out option to its users.

3. Adverse Effects of Integration of Meta AI with WhatsApp:

An integral part of AI Training is by feeding on large quantity of data so as to analyse, learn & generate the desired result. This is achieved by AI absorbing big data, which IBM has characterised in terms of three "Vs": Volume, Variety, Velocity.⁸ In the current scenario, social media platforms such as Facebook, WhatsApp, Instagram etc. contains enormous amount of information which comprises the personal data of the users of such platforms. Personal data may be defined as any information relating to an identified or identifiable natural person, e.g. name, location, cultural or social identity etc.⁹

On the positive side, the potential of AI powered algorithms in analysing real time data helps in deterrence of threats of security breaches. By detecting malpractices like phishing attempts, spams, viruses etc., AI plays a vital role in making these platforms more efficient. However, AI's access to such data raises ethical considerations. The most important one being, whether the multifaceted applications of AI in today's time worthy enough to put private information

⁸ Daniel O'Leary, 'Artificial Intelligence and Big Data' (IEEE Journals & Magazine, April 1, 2013) <https://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=6547979> accessed 14 August 2024.

⁹ General Data Protection Regulation, Article 4

of users at the stake of invasion?

In June, 2024, soon after google had introduced its AI – Gemini, Meta integrated its AI technology with Facebook, WhatsApp, Instagram & Messenger. It is built to multitask so as to make these platforms more interactive & user-friendly. The interface comprises of a chat-box wherein users are assisted by using real time information powered by Microsoft Bing & Google.¹⁰ It includes making recommendations for different food joints, planning vacations, writing e-mails etc. India, being the largest market for WhatsApp had more than 400 million monthly active users as of November, 2023.¹¹ These statistics reflects the popularity of this platform, which to a certain extent is worrisome because this generative AI is also susceptible to all AI's general operational issues such as biases, intellectual property infringements etc.

Upon cumulatively reading the Privacy Policies of Platforms like WhatsApp & Instagram it can be deduced that information extracted from users is shared across the globe with other Meta Companies as well as partners & service providers for the sake of providing a personalised user experience. Although Meta AI's privacy policy provides that tools for de-identifying and anonymization are used while recording certain information, now that AI has been integrated with Meta Platforms, the notorious nature of AI wherein it is capable of reidentifying data upon interacting with massive datasets shall continue to pose significant threat to personal data privacy.

4. Is the Meta AI Integration to WhatsApp in Compliance with the DPDP Act, 2023?

4.1. Application of the Act: The act applies to processing of digital personal data within the territory of India as well as outside the territory of India when it relates to any platform (WhatsApp) extending its services to Data Principles within India.¹² The Act defines Data Principles as individuals to whom such data by which he may be identified relates.¹³ As provided under the privacy policy of Meta AI, the data collected by Meta

¹⁰ Unnati Gusain, 'Meta AI Rolls out in India Days after Google Launched Gemini App in the Market' *India Today* (June 24, 2024) <https://www.indiatoday.in/technology/news/story/meta-ai-rolling-out-in-india-few-days-after-google-introduced-gemini-2557084-2024-06-24> accessed 14 August 2024.

¹¹ ETtech, "WhatsApp Channels Surpasses 500 Million Monthly Active Users" *The Economic Times* (November 15, 2023) <https://economictimes.indiatimes.com/tech/technology/WhatsApp-channels-crosses-500-mn-monthly-active-users/articleshow/105241047.cms?from=mdr> accessed 14 August 2024.

¹² The Digital Personal Data Protection Act 2023, s 2 (j)

¹³ *Ibid*, s 3 (b)

powered platforms is shared with Meta Companies & their partners at a global level, which brings Meta's cross border operations within the purview of the DPDP Act, 2023.

- 4.2. Informed Consent of the User:** The DPDP Act, 2023 imposes an obligation upon the Data Fiduciaries (individual or company determining the purposes & means of processing data by human intervention or by automated means)¹⁴ that, in order to process personal data of Data Principals for legitimate purposes, it is necessary to obtain their consent after notifying them the purpose of processing data. The Act elaborates that such consent must be free, specific, informed, unconditional & unambiguous.¹⁵ WhatsApp users were neither notified nor given an opportunity to give their express consents to Meta AI's Integration with either of the above-mentioned social media platforms, thereby making such consent invalid.
- 4.3. Opting out:** The Act provides that Data Fiduciary is bound to provide an easy consent withdrawal mechanism to its users at any given point of time.¹⁶ However, here Data Principals have no choice of opting out of this integration other than using a non-upgraded version of these platforms.
- 4.4. Legitimate uses of Data:**¹⁷ The Act provides that Data Fiduciary must take reasonable security safeguards to protect the Principal's Data from any Breach. It introduces user's vital right of erasure of personal data upon withdrawal of consent, which was offered for processing such data, once the purpose of the same ceases. A separate provision for consent of children & person with disabilities is also provided where consent of guardians must necessarily be obtained.
- 4.5. Judicial Viewpoint:** Even before the introduction of Meta AI, the current privacy policy of WhatsApp introduced on 4th January, 2021 was challenged before the Delhi High Court on the grounds of violation of right to privacy thereby undermining Article 21 of the Constitution. The Court asked WhatsApp to publish an undertaking that WhatsApp shall refrain to enforce the aforementioned privacy policy for its Indian users unless a legislation intended to extend protection to personal data was enacted.

¹⁴ *Ibid*, s 2 (i)

¹⁵ *Ibid*, s 6 (1)

¹⁶ *Ibid*, s 6 (4)

¹⁷ *Ibid*, s 8 (5), s 8 (7), s 9

Although, the DPDP Act, 2023 is now enacted, the matter is still sub judice. In this situation of ambiguity, Meta introducing an AI feature, with its own risks, capable on feeding upon the voluminous data of its users is a gross violation of privacy & simultaneously infringes the directions of the Supreme Court.¹⁸

5. How GDPR dealt with Meta AI integration to WhatsApp?

The European Union (EU) in May, 2018 enforced the General data Protection Regulation (GDPR). It is one of the most comprehensive data protecting legislations in the world.¹⁹ The purpose of this regulation is to govern the actions of individual & firms engaged in processing personal information throughout the territory of Europe. This legislation is applicable to all EU member states & its operations under GDPR are carried by appointment of Data Protection Authorities (DPAs) for each such state.

Recently, Meta informed the European countries that it had plans of changing its privacy policies under which it intended to use AI Technology to seek personal data from users & share it with third parties. Meta claimed its legitimate interest and did not make the option of consenting available for its users. “None of your business” / “noyb”, a Vienna based Non-Profit organization filed a complaint in 11 European Countries to take urgent measures so as to prevent this change from taking effect.²⁰ The complaint stated that Meta was planning to incorporate all its public & private data collected since 2007 with its AI Technology without disclosing its actual usage. In response to the same, the Data Protection Commission, which is the supervisory body of GDPR in Ireland requested Meta to refrain from launching its AI Technology in the European Union. In June, 2024, Meta announced that its plan to launch Meta AI in European Union stands deferred for now.²¹

¹⁸ *Karmanya Singh Sareen v. Union of India* [2017] S. L. P. (C) 804

¹⁹ Aastha Singhal & Ashish Guwalani, ‘The Intersection of Law and Technology: Online Privacy and Personal Data Protection’ (2023) 32 <https://www.multidisciplinaryarticle.in/assets/archives/2023/vol9issue1/9010-1686723171455.pdf> accessed 14 August 2024.

²⁰ ‘Noyb Urges 11 DPAs to Immediately Stop Meta’s Abuse of Personal Data for AI’ (noyb.eu, 26 June 2024) <https://noyb.eu/en/noyb-urges-11-dpas-immediately-stop-metas-abuse-personal-data-ai> accessed 14 August 2024.

²¹ ‘Meta Will Not Launch Meta AI in Europe for Now’ (The Economic Times, 15 June 2024) <https://economictimes.indiatimes.com/tech/technology/meta-will-not-launch-meta-ai-in-europe-for-now/articleshow/111003847.cms> accessed 14 August 2024.

6. Recent Developments:

It has recently been reported that, WhatsApp is working on a new Voice Mode feature for its Meta AI chatbot on Android devices. This feature will enable users to engage in two-way conversations with the AI chatbot using their voice. The feature appears to be accessible through a long press of the Meta AI button, located above the New Chat icon. Alternatively, users can activate the hands-free mode by tapping on a waveform icon next to the text field within the Meta AI chat. As of now, the official rollout date for the feature remains unknown.

7. Conclusion:

Meta's privacy policies have been a questionable subject since a long time now. In 2016, during the U.S. Presidential elections, data of 86 million Facebook users was employed in manipulated undecided voters by Cambridge Atlantica.²² At present, WhatsApp holds the monopoly in the messaging market as we do not have any efficient alternatives to replace it. The large number of WhatsApp users have been sharing extremely private information ranging from healthcare to banking details on this Platform.²³ WhatsApp's integration with Artificial Intelligence & Machine Learning poses a big threat to the protection of personal data of users. Although, WhatsApp's help centre states that personal messages shall remain end-to-end-encrypted, it explicitly mentions that AI is equipped to read the messages exchanged between users. It is important that tech industry while focusing in innovation & development, simultaneously focuses on identification & redressal of negative effects of AI. It can be achieved by bringing in policy makers, engineers, legal scholars & advocacy groups together and collaborating upon the impact assessment of AI. Ultimately, India, in its application of the DPDP Act, 2023, should be as rigid in taking stance as the European Union in its application of the GDPR. The most important aspect of these regulations is user's freedom while exercising informed consent in opt-in & opt-out options.

²² Fabio Morandin-Ahuerma, 'Ethics of AI from global companies: Microsoft, Google, Meta, and Apple'(2023) 19 https://www.researchgate.net/profile/Fabio-Morandin-Ahuerma/publication/374579961_Ethics_of_AI_from_global_companies_Microsoft_Google_Meta_and_Apple/links/65254b330d999b4754b46641/Ethics-of-AI-from-global-companies-Microsoft-Google-Meta-and-Apple.pdf accessed 14 August 2024.

²³ 'Data Privacy and Competition Law at the Crossroads' (Economic and Political Weekly, 25 September 2021) <https://www.epw.in/journal/2021/39/commentary/data-privacy-and-competition-law-crossroads.html> accessed 14 August 2024.