

VOLUME 30 | JULY 2023

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Victoriam Legalis - Advocates & Solicitors | Newsletter



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We here, at Victoriam Legalis, believe in continuous learning and growth, and agree that one way to do the same is to keep up with the developments and changes taking place around us.

We live in an Information Age, and while there is no dearth of knowledge and information, we, through this newsletter, hope to give you a consolidated account of relevant updates and developments.

In light of the same, we present to you the first issue of our newsletter, which we hope, you find beneficial!

Happy Reading!



Technology and E-Commerce Updates

1. India's cybersecurity to get a boost: Parliamentary panel recommends overarching regulatory body [1]

The Parliamentary standing committee on finance headed by Mr. Jayant Sinha put forth suggestions safeguarding the national IT infrastructure and cybersecurity, including establishment of a centralised and all-encompassing regulatory authority dedicated to cybersecurity. This would be achieved through a collaboration with of state governments and private sector entities. The panel also proposed the establishment of a Central Negative Registry that would in turn consolidate important information on fraudulent accounts and official documents to prevent misuse.

2. Vodafone Idea (VI) Not Liable To Deduct TDS On Inter-Connectivity Usage & Bandwidth Charges

Hon'ble Karnataka High Court observed that Assessee was entitled to benefits as under the Double Taxation Avoidance Agreement (DTAA), hence it is not liable to deduct tax at source, and went on to over-turn ITAT's ruling which held Assessee as TDS Defaulter under the same to non-residents by classifying the sum paid as 'royalty'. The Assessee contracted with Non-resident telecom operators (NTOs) and paid interconnection fees and a capacity transfer agreement for bandwidth with a Belgian organisation. The Court also stated that the Indian Revenue Authorities had no jurisdiction to taxing income arising out from extraterritorial sources when the facilities are situated abroad i.e, outside India.

3. Canva restrained from making available its 'Present and Record' feature in India [2]

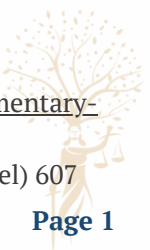
The popular graphic design platform, Canva was restrained from making available its 'Present and Record' feature in India and was also directed to deposit Rs. 50 lakhs with the Registrar general as a security in a patent infringement suit by RxPrism Health Systems Pvt Ltd. which sought a permanent injunction restraining infringement of its patented 'My show and tell' feature. The interim order was passed in favour of the Petitioner as it would otherwise cause irreparable loss and injury to them after considering the balance of convenience, market share and claim charts.

4. Meesho reports First ever profit in July with 43% growth in Orders.

The Indian E-commerce startup founded in 2015 and backed by Softbank attained profitability at a consolidated Profit After Tax (PAT) across all categories, with a 43% growth in orders and 53% growth in revenue. The Company is also planning to launch its initial public offering (IPO) in a year.

[1] <https://www.businesstoday.in/technology/news/story/indias-cybersecurity-to-get-a-boost-parliamentary-panel-recommends-overarching-regulatory-body-391613-2023-07-28>

[2] RXPRISM HEALTH SYSTEMS PRIVATE LIMITED & ANR. v. CANVA PTY LTD & ORS. 2023 LiveLaw (Del) 607





Corporate & Commercial Law Updates

1. NCLAT Can ‘Recall’ Its Judgement, Can’t ‘Review’ Them [3] (July 31)

The Hon’ble Apex Court dismissed appeal in the case of Union Bank of India Vs M/s Amtek Auto Limited & Ors. (Section-7 Application by Financial Creditors) and upheld the NCLAT ruling which held that NCLAT had the power to recall its judgement by invoking inherent powers under Rule 11 of the NCLAT Rules, 2016 and this would not include the re-hearing i.e., Review of a case to examine apparent errors in the judgment and placed reliance on the case of Agarwal Coal Corporation Pvt Ltd. Vs Sun paper Mill Ltd & Anr. In the event of a procedural error whilst delivering earlier judgement or other grounds like fraud played on the court in obtaining judgement from the court were grounds on which power of recall could be exercised.

2. There Can’t Be Discrimination Between One Class of Creditor

The NCLAT, Principal bench directed the Successful Resolution Applicant to allocate funds as per the resolution plan to unpaid operational creditors, whereas other class of operational creditors were proposed to be paid, highlighting a discrimination between the payment of one class of creditors. The initial resolution plan was rejected by the NCLT for violating Section 30(2)(e) and 30(2)(f) of IBC and was permitted by the NCLAT only post modification. Difference in payment between financial and operational creditors is acceptable but there cannot be a difference in inter se payment within a class of creditors.

3. Proceedings under SARFAESI Act, 2002 unaffected by Orders Passes Under SEBI Act, 1992 [4]

The Hon’ble Delhi High Court observed that on interpreting Section 35 and Section 37 of the SARFAESI Act, 2002 would show that the proceedings under the act are not affected by orders passes under the SEBI Act, 1992. On bare perusal of the object and purpose of the SARFAESI Act, 2002, it is evident that the provisions create a prioritisation of debts of secured creditors over any dues owed to government or local authority. And would allow swifter recovery of the same.

3. ZEE Entertainment Enterprises Ltd. & Indusind Bank Enter Settlement, NCLAT Delhi Terminates Insolvency Proceedings Against Zee Entertainment [5]

Siti Networks Ltd, a subsidiary of erstwhile Zee Telefilms Ltd had availed financial facility from the Financial Creditor for Rs. 150 Cr and submitted a bank guarantee of Rs. 95 Cr. Siti Networks entered into a Debt Service Reserve Agreement (DSRA) with the F.C with Zee Entertainment as the guarantor under the same. Upon failure to fulfil its required obligations as under DSRA, a Section 7 IBC petition was filed against Zee entertainment seeking initiation of CIRP and simultaneously against Siti Network, which was admitted and an IRP was appointed. This was appealed against on the ground that the NCLT ought to have granted the Corporate Debtor an opportunity to file a reply in Section 7 Petition which was granted and CIRP was stayed. Meanwhile, the parties entered into a settlement and payments were made by the Corporate Debtor and hence the CIRP was terminated.

[3] Union Bank of India Vs Financial Creditors of M/s Amtek Auto Limited & Ors., 2023 Livelaw (SC) 589

[4] ICICI BANK LIMITED v. THE DEPUTY GENERAL MANAGER & ORS.

[5] Punit Goenka v Indusind Bank Ltd. & Anr. Company Appeal (AT) (Insolvency) No. 232/2023.





Litigation & Dispute Resolution

1. Extra-Judicial Confession based on Newspaper Report Does not accord greater credibility, would constitute as Hear Say Evidence [6] (July 27)

As rightly quoted by Mark twain "If you don't read the newspaper, you're uninformed. If you read the newspaper, you're misinformed", the Hon'ble Supreme Court whilst setting aside Life imprisonment of murder accused due to insufficient evidence observed that an extra judicial confession could not be placed on a higher pedestal or given greater credibility solely because it was published in a newspaper, allowing it to be treated as secondary evidence at utmost. Reliance was also placed on Laxmi Raj Shetty & Anr. Vs State of T.N which reiterated that a newspaper report would constitute only as hearsay evidence and would not fall under the documents referred in S. 78(2) of the Evidence Act through which an allegation of a fact can be proved. The presumption of genuineness accorded under S. 81 to the same cannot be treated as proved facts reported. The conviction of one accused was based on the testimony of a newspaper correspondent which was further based on hearsay interaction between the editor and the accused in the interview and was surprised to observe the High Court according it greater credibility.

2. Only Fundamental Determinations Hit By 'Res Judicata', Not Incidental Or Collateral Findings:

In appeal against an order of High Court allowing an intra-court appeal by State of Telangana and revenue authorities pursuant to which a show cause notice was issued to the appellants which was held to be unsustainable pursuant to which a second SCN was issued, which the appellants contended was barred by principles of Res-Judicata as it was based on the same subject matter. The Hon'ble Supreme Court observed that only determinations/ findings which are fundamental in nature and "without which the court cannot adjudicate upon the dispute, also forming the vital cog in the reasoning of a definite conclusion on an issue on merits" would be hit by the principle of Res-judicata and not any collateral, non-essential findings that do not form the foundation of the final determination well in accordance with common law jurisprudence. Further, an effective test was laid down to distinguish between fundamental and collateral determination with respect to Res Judicata by hinging on the inquiry of whether the concerned determination was so vital to the decision without which it itself cannot stand independently that is, it has to be fundamental. The appeal was dismissed by the Hon'ble Supreme Court.



3. Arbitration Clause cannot be invalidated due to Ineligibility of Arbitrator as under Section 12(5) of the Arbitration Act [7]:

In a petition filed under Section 11(6) of the Arbitration & Conciliation Act, 1996 for the appointment of an arbitrator, the core dispute arose due to exclusion of arbitration itself in case the Chief Executive Officer or their nominee could not arbitrate. Section 12(5) of the act provides that notwithstanding anything in prior agreements to the contrary, a person would be ineligible to be appointed arbitrator if they have any relationship with either party to the dispute or their counsels except without written consent. The applicant asserted that statutory provisions of S. 12(5) would override party autonomy granted in the clause. The Hon'ble Allahabad High Court held that merely because a person who could act as an arbitrator as per the arbitration clause becomes ineligible to act as an arbitrator by virtue of S. 12(5) r/w 7th Schedule, would not mean the core part of the agreement of arbitration be rendered nugatory. The importance of party autonomy and neutrality in appointing arbitrator was emphasised to go hand in hand with the spirit of Section 12(5) and principles of natural justice.

4. Magistrate's Order Under Section 14 SARFAESI Act Cannot Be Quashed By High Court U/S 482 CrPC [8]:

The Hon'ble Supreme Court set aside the order of the Madras High Court which quashed an order under Section 14 of the SARFAESI Act under S. 482 of the CrPC. Section 14 of the SARFAESI Act relates to the power of magistrates to assist creditors in taking possession of secured property from defaulting debtors whereas Section 482 of the CrPC granted High Courts their inherent powers to ensure compliance with the CrPC provisions, prevent abuse of court processes and provide justice. It was held that an order under S. 14 cannot be quashed under S. 482 of the CrPC when there is an adequate remedy under the SARFAESI Act addressing such situations and clarifies the stance of SARFAESI Act providing appropriate remedy and avenue for redressal, hence limiting the High Court's power to quash such orders under S. 482 CrPC.

[7] M/S Bansal Construction Office v. Yamuna Expressway Industrial Development Authority And 2 Ors. 2023 LiveLaw (AB) 250

[8] Phoenix Arc Private Limited vs V. Ganesh Murthy 2023 LiveLaw (SC) 513



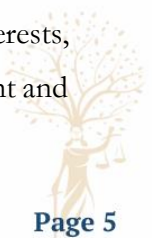


Navigating India's Data Protection Landscape: Analyzing the Digital Personal Data Protection Bill, 2023

- Aryan Garg and Drishya Dilip

INTRODUCTION

In the digital era, personal data has emerged as a valuable currency, raising critical concerns about privacy, security, and individual rights. Amid this dynamic backdrop, the Digital Personal Data Protection Bill, 2023 (“**DPDPB**”) takes center stage in India's efforts to regulate the complex realm of data processing. This article delves into a comprehensive analysis of the DPDPB tracing its evolution, scrutinizing its provisions, and examining its potential implications for individuals, businesses, and the nation at large. As data becomes the lifeblood of modern economies and societies, the need for a robust data protection framework is evident. The DPDPB serves as a crucial milestone in India's journey to strike a delicate balance between safeguarding citizens' privacy rights and facilitating data-driven innovation. This article embarks on a multidimensional exploration, shedding light on the legal, ethical, and technological facets of this ambitious legislation. The analysis commences with an overview of India's evolving data protection landscape, tracing the journey from the Expert Committee on Privacy's landmark report in 2012 to the emergence of the DPDPB . The intersections of expert insights, parliamentary committees, and public consultations have contributed to shaping the bill's trajectory, underscoring the commitment to crafting a comprehensive data protection framework. A central aspect of this article involves dissecting key provisions of the DPDPB to understand its nuanced approach to data processing, consent, exemptions, and cross-border data flows. By delving into these critical components, the paper aims to provide a thorough understanding of the legal principles underpinning the bill and the challenges posed by its potential implementation. Furthermore, this analysis delves into the potential implications and gaps within the DPDPB. It scrutinizes the balance between individual rights and state interests, explores the impact of exemptions for government entities, and evaluates the evolving concepts of consent and



non-consensual processing in the digital realm. The article examines how these facets align with emerging global trends in data protection and privacy rights. Ultimately, this article seeks to contribute to the ongoing discourse surrounding the DPDPB, by offering a comprehensive and balanced assessment of its strengths, limitations, and potential future trajectories. As India stands at the crossroads of data protection legislation, understanding the complexities and implications of the DPDPB is paramount to fostering a data-driven society that respects privacy, upholds ethics, and harnesses innovation.

THE EVOLUTION OF DATA PROTECTION LEGISLATION IN INDIA

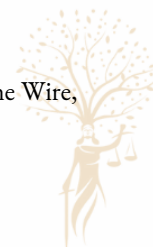
The trajectory of India's data protection journey has been significantly influenced by a watershed moment that accelerated the development of privacy laws – the Supreme Court's landmark judgment in the case of Justice *K.S. Puttaswamy (Retd.) & Ors. v. Union of India*¹, this case challenged the Indian Government's proposal for a biometric-based identity card system for accessing governmental benefits and services. The crux of the contention rested on whether this scheme violated an individual's fundamental right to privacy. In 2017, the Supreme Court ruled in favor of privacy as a fundamental right under Article 21 of the Constitution of India, establishing a seminal precedent and providing a litmus test for determining potential violations of this right by government actions.

This verdict marked a pivotal juncture in India's journey towards robust personal data protection and privacy jurisprudence. It galvanized a movement to introduce comprehensive data protection regulations that would safeguard citizens' privacy rights in an increasingly digitized landscape. This judicial pronouncement resonated across sectors and compelled organizations to recalibrate their data handling practices in anticipation of an impending regulatory framework. Building on the momentum generated by the Puttaswamy judgement, a series of legislative initiatives were set in motion to enshrine the fundamental right to privacy in statutory form.² Over the course of the last six years, the Indian Government embarked on a journey characterized by the introduction, withdrawal, and refinement of draft bills focused on data protection and privacy. These initiatives culminated in the Joint Parliamentary Committee's examination of the Personal Data Protection Bill, 2019. This comprehensive review aimed to address the intricate web of data protection concerns specific to India's context.

Furthermore, expert insights and committee recommendations played a pivotal role in shaping India's data protection landscape. The Expert Committee on Privacy, led by Justice A.P. Shah, released a seminal report in 2012 that set international and national privacy standards in motion. This foundational document provided impetus to subsequent data protection initiatives. Building on this groundwork, the Expert Committee on Data Protection, chaired by Justice BN Srikrishna, emerged in 2017. The committee's 2018 report served as the

¹ (2017) 10 SCC 1

²“Digital Personal Data Protection Bill Could Have Adverse Impact on Press Freedom, Say Editors Guild and DIGIPUB.” The Wire, thewire.in/media/digital-personal-data-protection-bill-adverse-impact-press-freedom-editors-guild.



blueprint for the Personal Data Protection Bill, 2018 (PDPB, 2018), ushering in a series of revisions and iterations aimed at striking a delicate balance between individual rights and state interests.³ In conclusion, the Puttaswamy judgment was the catalyst that set India's data protection trajectory in motion. As the nation moves towards enacting the DPDPB, it becomes evident that this evolution is not just a regulatory shift but a societal transformation – one that embraces individual rights in the digital realm while accommodating the imperatives of governance and innovation.

THE LEGISLATIVE ODYSSEY OF THE PERSONAL DATA PROTECTION REGIME IN INDIA

The PDPB, 2018 marked the inception of India's formal journey toward comprehensive data protection. Subsequent to its introduction, the bill underwent scrutiny by a Joint Parliamentary Committee (JPC), comprising members from both houses of Parliament. The culmination of this process yielded the JPC's report on December 16, 2021, accompanied by the unveiling of the Data Protection Bill, 2021 (DBP, 2021). However, the journey took an unexpected turn as the DBP, 2021 faced withdrawal in 2022. Amidst these changes, the Ministry of Electronics & Information Technology presented the draft Digital Personal Data Protection Bill, 2022 (DPDPB, 2022) for public consultation. The engagement raised concerns over the opacity of the process as the ministry decided not to disclose public submissions⁴. This paved the way for the DPDPB the latest version that forms the focal point for comprehensive analysis and public discourse.

STRIKING THE BALANCE AND ADDRESSING CRUCIAL CONCERNS

The DPDPB encompasses a host of critical concerns that warrant in-depth examination. Balancing the preservation of privacy rights with the exigencies of state interests and evolving governance demands is paramount. Central to the bill's foundation is the concept of informed consent in data processing. While the bill mandates explicit consent for lawful data processing, exemptions for state-driven purposes such as permits and services raise a fundamental dilemma. The pivotal concern hinges on the potential consequences of these exemptions, which could inadvertently pave the way for unchecked data processing and potential privacy infringements.⁵

The transition from the contentious "deemed consent" clause in DPDPB, 2022 to the concept of "certain legitimate uses" in DPDPB reflects an evolution in addressing non-consensual data processing. Despite this

³ Author, Guest, et al. "The Genesis and Evolution of India's Data Protection and Privacy Regime." *MediaNama*, 14 Dec. 2022, www.medianama.com/2022/12/223-genesis-evolution-india-data-protection-regime-views.

⁴ "IFF's First Read of The Draft Digital Personal Data Protection Bill, 2023." Internet Freedom Foundation, 3 Aug. 2023, internetfreedom.in/iffs-first-read-of-the-draft-digital-personal-data-protection-bill-2023.

⁵ "The Digital Personal Data Protection Bill, 2023." The Digital Personal Data Protection Bill, 2023, 3 Aug. 2023, prsindia.org/billtrack/digital-personal-data-protection-bill-2023.



change, the existence of vaguely defined non-consensual processing provisions for scenarios like employment and public interest continues to raise queries about potential breaches of individual privacy.⁶

The treatment of cross-border data transfer underwent a transformation, shifting from an allowlist mechanism in DPDPB, 2022 to a blocklist approach in DPDPB. While this modification underscores the importance of safeguarding data, the absence of well-defined criteria for blocklisting countries introduces a level of subjectivity that could compromise data security and privacy.

A significant challenge emerges from the broad exemptions granted to government entities in DPDPB. The inclusion of government instrumentalities under exemptions from data protection frameworks raises the specter of potential misuse of citizen data. Moreover, the absence of stringent safeguards against overbroad surveillance further undermines the cherished right to privacy.⁷

AN UNCERTAIN TRAJECTORY: FUTURE CONSIDERATIONS

As the DPDPB navigates the legislative process, transparency, accountability, and equilibrium between individual rights and state interests stand as crucial benchmarks. While the bill endeavors to provide an encompassing framework for data protection, its journey is far from over. Through debates and deliberations, stakeholders have an unprecedented opportunity to collaboratively shape India's data protection narrative. Ensuring that the delicate equilibrium between privacy and governance is upheld in a manner that respects individual rights and promotes ethical data practices is of paramount importance. India's foray into data protection legislation underscores the nuanced nature of modern challenges. The DDPB serves as a stepping stone toward securing digital personal data. However, the journey is complex and multifaceted, necessitating vigilant assessment and continuous adaptation to address the ever-evolving landscape of data protection in an interconnected world.⁸

CONCLUSION

In the wake of the DPDPB, India finds itself at a pivotal juncture in the realm of data protection. The intricate interplay between safeguarding personal privacy, accommodating state interests, and embracing technological advancements presents a multifaceted challenge that demands careful consideration. As this comprehensive

⁶ “Centre Tables Digital Personal Data Protection Bill, 2023: What It Says and Why It’s Being Criticised.” The Indian Express, 4 Aug. 2023, indianexpress.com/article/explained/explained-sci-tech/digital-personal-data-protection-bill-2023-provisions-and-criticism-explained-8876018.

⁷ “MoS IT on Concerns Around Digital Personal Data Protection Act: There Will Be Checks and Balances to Ensure Personal Data Is Not Misused.” The Indian Express, 12 Aug. 2023, indianexpress.com/article/business/economy/concerns-around-contentious-provisions-of-data-protection-law-mos-it-8889933.

⁸ “DPDPB, 2023 in the Parliament: Dialogue, Drama, and Discord.” Internet Freedom Foundation, 10 Aug. 2023, internetfreedom.in/dpdpb-2023-in-the-parliament.



analysis has underscored, the journey of India's data protection legislation has been marked by evolution, expert insights, and a commitment to shaping a secure digital future. The trajectory of India's data protection journey reflects a relentless pursuit of balance. From the pioneering recommendations of the Expert Committee on Privacy in 2012 to the unveiling of the DPDPB this journey has been marked by iterative efforts to reconcile individual rights with the imperatives of state governance. However, as the bill advances, it is incumbent upon stakeholders to critically assess potential gaps and challenges that emerge from its provisions. In this context, the DPDPB approach to informed consent, non-consensual processing, cross-border data transfer, and exemptions for government instrumentalities warrant robust deliberation. Striking the right balance between data security, individual rights, and state interests is a complex endeavor that necessitates the active involvement of legal experts, technologists, civil society, and policymakers.⁹ Transparency and accountability serve as cornerstones of effective data protection legislation. As the DPDPB traverses the legislative pathway, transparency must be upheld in the consultation process, allowing the public's concerns and insights to shape the bill's final form. Simultaneously, the accountability of government entities and private organizations in upholding data protection standards must be meticulously scrutinized to prevent potential breaches of trust. The DPDPB represents an essential step in India's data protection journey. Nevertheless, the legislation's success hinges on its ability to evolve in tandem with changing technological landscapes, international data protection trends, and societal expectations. The coming years will undoubtedly witness amendments, refinements, and adjustments that reflect the maturation of India's data protection framework. As India navigates the intricate data protection terrain, it must remain committed to fostering public discourse, embracing expert recommendations, and addressing potential shortcomings head-on. The DPDPB is not merely a legal document; it is a reflection of India's dedication to securing the digital future of its citizens. By fostering a holistic approach to data protection, India can emerge as a global exemplar in ensuring the delicate equilibrium between privacy, innovation, and effective governance in the digital age.

⁹ Mathi, Sarvesh, et al. "Summary: India's Digital Personal Data Protection (DPDP) Bill 2023." *MediaNama*, 3 Aug. 2023, www.medianama.com/2023/08/223-summary-india-digital-personal-data-protection-bill-2023.





Cinematograph (Amendment) Bill, 2023

(A Brief Overview)

BACKGROUND

The Cinematograph (Amendment) Bill, 2019, initially focused on addressing film piracy and was introduced in the Rajya Sabha on February 12, 2019. The Bill underwent scrutiny by the Standing Committee on Information Technology, which suggested the inclusion of age-based certification categories and removal of unnecessary provisions. Consequently, the revised Cinematograph (Amendment) Bill, 2021, was published on June 18, 2021, inviting public feedback. Subsequently, in 2022, consultations with industry stakeholders were conducted, leading to the formulation of the 2023 Bill, which incorporates comprehensive changes to the Cinematograph Act, 1952.

OBJECTIVE

The Amendment aims to update and modernize the Cinematograph Act, 1952, by introducing contemporary certification processes, addressing industry challenges like piracy and declining theatre visits, curbing film piracy through stricter measures, improving certification procedures with age-based categories, providing perpetual validity to certifications, streamlining revisional powers, and prohibiting unauthorized recording and exhibition of films. These amendments collectively aim to make the film certification process more effective, combat piracy, and foster the growth of the film industry, promoting job creation in the sector.

THE SALIENT FEATURES OF THE AMENDMENT

Under **Section 2(i)** of the Principal Act “infringing copy” shall have the same meaning as assigned to it in sub-clause (ii) of clause (m) of Section 2 of the Copyright Act, 1957. As per the definition under the Copyright Act **infringing copy constitutes a copy of the film made on any medium by any means.**



Categories of Age Certification - The introduction of new categories of certification on the basis of age group under 'UA' itself which is recommendatory in nature and enforceable only by parents or guardians only.

The new categories of certification are as follows:

- Without Restriction ('U')
- Without restriction, but subject to the guidance of parents or guardians for children below 12 years of age ('UA')
 - a) UA 7+
 - b) UA 13+
 - c) UA 16+.
- Only to adults ('A')
- Only to members of any profession or class of persons ('S').

Validity of Certificates - Presently, the certificates issued by the board entail a validity period of 10 years which would now be perpetually valid.

Separate Certification for TV and other form of media - A separate certification would now be required for the exhibition 'A' and 'S' Category films on television and the board may also direct certain modifications or deletions.

Preventing & Curbing Piracy – The Amendment introduces two new sections, 6AA and 6AB, to address the issues of "Prohibition of unauthorized recording" and "Prohibition of unauthorized exhibition of films," respectively. Additionally, the bill proposes to make "attempt" and "abetment" to commit unauthorized recording punishable offenses.

Punishment for Unauthorized Recording:

- Offenders involved in unauthorized recording of films will face imprisonment ranging from 3 months to 3 years.
- They will also be liable to pay a fine, which will be between Rs. 3 Lakhs and 5% of the audited gross production cost of the film.

Punishment for Unauthorized Exhibition:

- Individuals engaged in the unauthorized exhibition of films will be subject to imprisonment for a period of 3 months to 3 years.



- They will also be liable to pay a fine, which will be between Rs. 3 Lakhs and 5% of the audited gross production cost of the film.

Revisional Powers - Taking into consideration, the 1991 judgement of the Hon'ble Supreme Court¹⁰, the revisional powers of the central government were omitted given in Section 6(1). These powers empowered the central government to examine and make orders for films that have been certified or are pending.

CRITICISM

Criticism and proposals for more limitations on content for over-the-top (OTT) platforms have been levelled at the Bill, which aims to combat film piracy and introduce age-based certification categories. Some lawmakers have expressed concerns about the presence of adult content on OTT services and the need for stronger oversight. MP G.V.L. Narasimha Rao raised the issue of regulations that apply to OTT content, questioning why the Cable and Television Act, which controls content on television, does not apply to OTT content. He also raised concerns about the possibility of uncensored films being put on OTT platforms. MP Prashanta Nanda expressed reservations about the practicality of the new age-based categories. However, The Minister of Information and Broadcasting has stated that self-regulatory measures have been discussed with representatives from the OTT industry. The criticism and concerns reflect the challenges in finding a balanced approach that protects authors' rights and ensures responsible content distribution online, while also addressing the growing demands for appropriate content on digital platforms.

CONCLUSION

The Cinematograph (Amendment) Bill, 2023 has been a significant legislative journey, evolving through multiple iterations and stakeholder engagements since its introduction with the primary aim of addressing film piracy. The comprehensive amendments made to the Cinematograph Act of 1952 reflect a forward-looking approach to modernize the film certification process and combat piracy effectively. By introducing age-based certification categories, extending the validity of certificates, and enforcing stringent measures against unauthorized activities, the bill seeks to strike a delicate balance between promoting creativity and safeguarding intellectual property rights. However, the criticism regarding content on OTT platforms and the practicality of age-based classifications highlights the complex challenges ahead. The successful implementation of the new amendment hinges on navigating the evolving landscape of the film industry, public expectations, and ensuring responsible content dissemination while fostering creativity and growth in the sector.

¹⁰ Union of India v. K.M. Shankarappa, (2001) 1 SCC 582



Get in Touch

We hope you enjoyed reading the newsletter, and we would love to hear your thoughts on what you want to be covered in our next edition!

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