



The intersection of data privacy and abuse of dominance in digital markets: The role of AI

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Abstract

The digital age has witnessed a surge in the power of dominant firms, particularly in technology markets, leading to significant concerns regarding data privacy and abuse of dominance. This article explores the growing intersection between these two areas of law, particularly considering the role of Artificial Intelligence (AI) technologies. The advent of AI has enabled firms to exploit personal data for competitive advantage, thereby exacerbating privacy concerns and monopolistic practices. By analysing case laws and regulatory frameworks in India, the European Union (EU), and the United States (US), this article seeks to identify gaps in the current legal frameworks and propose possible reforms to address the intersection of data privacy and abuse of dominance.

Keywords: Data privacy, abuse of dominance, digital markets, artificial intelligence, competition law, consumer protection, legal systems, India, European Union, United States

Introduction

In today's rapidly evolving digital landscape, the intersection of data privacy and the abuse of dominance in digital markets presents one of the most significant regulatory challenges globally. As the digital economy continues to grow, large tech companies, such as Google, Amazon, Facebook, and Apple, not only control vast amounts of user data but also dominate key digital platforms.

These companies leverage this data for business advantages, often enabling them to consolidate their market power. The ability to access, process, and utilize vast amounts of consumer data gives these platforms a competitive edge, allowing them to engage in practices that can potentially violate data privacy while stifling competition. For instance, in the landmark case *Google Inc. v. Competition Commission of India*, the Competition Commission of India (CCI) found that Google's dominance in the search engine market could result in unfair competition. While this case dealt primarily with anti-competitive behaviour, it also highlighted the broader issue of how platforms with significant market dominance can leverage user data to undermine both consumer privacy and fair competition. Data privacy, on the other hand, has become a critical issue worldwide as consumers' personal information is increasingly exposed to commercial entities.

The General Data Protection Regulation (GDPR) of the European Union has been a pioneering regulation in this domain, attempting to safeguard individual data rights by imposing strict rules on how personal data is collected, stored, and processed.

However, while GDPR has made strides, the growing influence of Artificial Intelligence (AI) and machine learning (ML) adds new dimensions to the complexity of regulating data protection and monopolistic practices. AI systems, particularly those that power targeted advertising, data mining, and recommendation algorithms, have the capacity to use personal information to not only enhance user experiences but also manipulate consumer choices, often without explicit consent. As platforms continuously refine these algorithms to maximize user engagement,

concerns over data privacy violations and the manipulation of users through sophisticated data-driven models only intensify. The key challenge, therefore, lies in regulating the delicate balance between enabling the free flow of data to drive economic innovation while protecting consumers from undue exploitation and preserving a competitive digital ecosystem. India's digital market, while booming, is facing these very challenges.

The Personal Data Protection Bill (PDPB), modelled after the GDPR, seeks to protect consumers' data rights but has yet to become law. It is also widely believed that existing competition law frameworks in India, particularly in the context of the Competition Act, 2002, are insufficient to tackle the nuances of data-driven monopolies that emerge in today's digital economy. As a result, there is a need for a comprehensive legal framework that integrates data privacy with competition law to ensure fair play in the market.

In this context, the growing dominance of companies like Amazon and Facebook, which thrive on controlling vast amounts of personal data, exacerbates these issues. India's existing regulatory infrastructure, including the Competition Commission of India (CCI) and the PDPB, provides an initial framework but remains fragmented in dealing with the simultaneous complexities of data protection and anti-competitive practices. Moreover, the technology-driven nature of digital platforms presents an additional challenge to regulators, like how to craft effective regulations in an environment where technological advancements move faster than the legal responses to them. For example, in the *Google Android* case, the CCI ruled that Google was abusing its dominance by forcing Android manufacturers to pre-install its apps on mobile devices, a practice that restrains competition. While this case sheds light on the anti-competitive behaviour of tech giants, it fails to fully address the undercurrent issue of how data collection and privacy concerns intertwine with such market practices.

Furthermore, the role of Artificial Intelligence (AI) cannot be overstated in this analysis. AI-powered tools, like machine learning algorithms, have revolutionized how data is used, but they also raise significant privacy concerns. AI algorithms often rely on consumer data to enhance

personalization and create targeted content. However, this leads to issues of informed consent, where consumers may unknowingly consent to the collection and use of their data, not fully understanding the consequences of their actions. AI also has the potential to create data monopolies, where platforms with more access to personal data use AI to lock users into their ecosystems, making it difficult for competitors to challenge their dominance. For instance, companies like Facebook and Google collect vast amounts of personal data through their platforms, which they then use to refine their targeted advertising systems.

These systems are powered by AI and can shape consumer behaviour in subtle and powerful ways. One case that underscores this issue is Facebook's Cambridge Analytica scandal, where the social media platform was accused of harvesting the data of millions of users without their consent and using it for political advertising. This case highlights not only data privacy violations but also how market dominance in the digital space can be exploited through the manipulation of data.

Therefore, while AI provides significant benefits in terms of business efficiency and personalized user experiences, it also brings forth ethical challenges and risks related to data privacy, consumer autonomy, and fair competition. Globally, countries like the European Union have developed stricter data privacy laws, most notably the GDPR, which regulates how companies collect, store, and process personal data. The GDPR applies not only to companies within the EU but also to any company that processes data of EU citizens, regardless of where the company is located. The regulation has set a high standard for data privacy, imposing hefty fines for non-compliance and offering robust consumer rights. However, the rapid pace of technological change, particularly in areas like AI and big data analytics, has led to a growing debate about whether such frameworks are sufficient to address the challenges of today's digital economy. In comparison, India's Personal Data Protection Bill seeks to adopt a similar approach but is yet to be fully enacted.

The differences in how these two jurisdictions address data privacy, coupled with the issue of digital monopolies, highlight the need for a more nuanced and integrated approach to data protection and competition regulation. Furthermore, the abuse of dominance in digital markets in India, while addressed under the Competition Act, 2002, does not yet fully account for the complex nature of data-driven monopolies that have emerged with the rise of AI-powered business models.

The case of *Google Inc. v. CCI*, for instance, primarily addressed issues of anti-competitive conduct in relation to its mobile operating system but did not comprehensively explore how data privacy plays a role in the abuse of dominance. India's current framework, while providing tools for investigating anti-competitive behaviour, is still insufficient to account for the unique challenges posed by the intersection of data privacy, AI, and market dominance. Consequently, the need for a holistic regulatory approach is critical to ensure that digital platforms are held accountable for both their market behaviour and the way they manage and use consumer data.

Digital markets have witnessed an explosion in data collection, driven by AI technologies that enable businesses to gather, analyse, and use vast amounts of personal data. While these technologies have led to innovations and

efficiencies, they have also sparked concerns about data privacy and the abuse of market power. Dominant firms such as Google, Amazon, and Facebook now control massive datasets that are critical to their competitive advantage. In doing so, they pose significant risks to consumers, competitors, and the market.

This paper delves into the intersection of data privacy and abuse of dominance, particularly considering AI's role in exacerbating these challenges. By reviewing relevant case laws, legal frameworks, and international best practices, this article aims to shed light on how India and other jurisdictions can address these growing concerns.

Literature Review

The issue of data privacy and abuse of dominance has garnered significant academic attention. Scholars have discussed the challenges of regulating digital platforms that operate across borders, collecting vast amounts of personal data without clear consent. Klonick (2018) emphasized the tension between free markets and consumer protection in the digital economy, arguing that platforms leverage their access to data to secure market dominance, thereby impeding competition and violating user privacy. Additionally, Zohar (2020) noted that AI-driven systems often manipulate consumer behaviour by exploiting personal data, making traditional regulation less effective. The GDPR has been widely discussed in literature as a pioneering attempt to address data privacy violations. However, Franco (2020) pointed out that while the GDPR is robust in terms of data protection, it does not adequately address the competitive implications of data monopolies, which often operate within the same digital ecosystem.

In India, the Personal Data Protection Bill (PDPB) has been a significant development, inspired by GDPR but not yet fully enacted. Scholars such as Mishra and Sharma (2021) argue that while the PDPB attempts to address data protection, it fails to account for the complexities of regulating data-driven monopolies. Moreover, the intersection of competition law and data privacy in India remains underdeveloped, particularly when it comes to AI-powered business models.

The convergence of data privacy and competition law has become a central focus in the ongoing regulatory discourse. Several scholars have addressed the challenges and nuances of regulating data-driven dominance in digital markets. Stucke & Grunes (2016) argue that the growing dominance of data is fostering monopolistic practices, with AI amplifying the concentration of power in the hands of a few corporations. They highlight the potential for anti-competitive behaviour as firms exploit data to the detriment of consumers and competitors.

Zohar & West (2020) discuss how AI is reshaping market dynamics and complicating traditional models of competition. They emphasize the need for legal frameworks that account for the unique challenges posed by AI-driven market structures and the monopolization of data.

Townley (2019) calls for a coordinated regulatory approach that integrates data protection laws with competition law. He suggests that data privacy and anti-competitive practices are inextricably linked, and without a unified regulatory framework, the enforcement of consumer rights and market fairness will remain fragmented.

This literature review highlights the critical need for a modernized legal approach to regulate the intersection of data privacy and market dominance.

Research Problem

The central research problem of this paper is:

How can India effectively address the intersection of data privacy and abuse of dominance in digital markets in the context of AI technologies?

With the increasing dominance of firms that use AI to control vast amounts of consumer data, there is a growing concern that current legal frameworks particularly those in India are inadequate. Data privacy laws and competition regulations often operate in silos, leaving room for abuse and exploitation in AI-driven markets.

Research Objectives

The primary objectives of this research are:

- To examine the relationship between data privacy and abuse of dominance in AI-powered digital markets.
- To analyze how AI technologies are used to monopolize data and restrict competition.
- To review landmark legal cases related to data privacy and abuse of dominance.
- To assess the regulatory frameworks of India, the EU, and the US, and compare them in terms of their effectiveness in addressing these issues.
- To propose legal reforms and solutions tailored to India's specific needs and context.

Methodology

This study employs a comparative legal analysis methodology, which involves:

- Primary data analysis: Examining relevant case laws, regulations, and judicial interpretations.
- Secondary data analysis: Reviewing academic articles, policy papers, and reports from regulatory authorities.
- International comparison: Analysing the legal frameworks of India, the EU, and the US in regulating data privacy and abuse of dominance.
- Qualitative research: Conducting an in-depth review of current trends in AI, data protection, and competition law to identify gaps and areas for reform.

The Role of Artificial Intelligence in Data Privacy and Abuse of Dominance

Artificial Intelligence (AI) is at the core of many technological advancements in today's digital economy. Machine learning algorithms, data analytics, and predictive modelling allow firms to personalize consumer experiences, enhance operational efficiencies, and streamline business models. However, these very technologies have contributed significantly to concerns about data privacy and the abuse of dominance in digital markets.

AI's ability to collect and analyse vast amounts of data makes it uniquely positioned to facilitate monopolistic behaviour. The issue lies not just in the collection of personal data but in the processing and exploitation of such data. AI-driven systems can aggregate, analyse, and leverage user data to gain competitive advantage, leaving consumers vulnerable to exploitation.

For example, AI tools allow firms to:

- Monitor consumer behaviour in real time, creating highly accurate user profiles.
- Personalize advertising strategies, which can be intrusive and manipulate consumer choices.

- Manipulate prices based on market demand and user data, leading to price discrimination or unfair pricing practices.
- Exclude competitors by using data to create market barriers or lock-in consumers to platforms.

These developments raise important questions about whether the current legal frameworks can keep pace with the speed of technological evolution, particularly in the AI-driven digital marketplace.

Landmark Legal Cases

The intersection of data privacy and abuse of dominance has been addressed in several landmark cases worldwide. These cases offer insights into how legal systems are grappling with the regulation of data monopolies and AI-driven market practices.

Google Inc. v. European Commission (2017)

In 2017, the European Commission fined Google €2.42 billion for abusing its dominant position in the search engine market by prioritizing its comparison-shopping service in search results. The case highlighted how dominant players can manipulate data-driven algorithms to create barriers to entry for competitors.

The Commission found that Google's algorithms, which use personal and transactional data from users, favoured its own shopping comparison service over others. This data-driven manipulation is an example of how companies can exploit dominance by controlling access to critical consumer data.

Relevance to India: The regulatory challenges faced by Google in the EU are directly relevant to India, where Google continues to be dominant in search engine services and advertising platforms. India's regulatory frameworks, especially in the digital and AI space, need to integrate learnings from this case to address similar monopolistic practices.

Facebook Inc. v. Bundeskartellamt (2019)

In a landmark decision, the Bundeskartellamt (Germany's Federal Cartel Office) prohibited Facebook from combining data collected from its various platforms (WhatsApp, Instagram, etc.) unless users explicitly consented. The Bundeskartellamt argued that Facebook's dominance in the social media space allowed it to use AI-driven data aggregation methods that led to consumer harm.

Data aggregation through AI was the key issue here, as Facebook's ability to combine data from its platforms without consent raised concerns about its market power and privacy violations.

Relevance to India: Similar practices in India, where platforms like Facebook and WhatsApp are ubiquitous, could easily lead to the creation of monopolistic data control unless stricter regulations are enforced. The case is a direct call for India to reassess how data protection laws could be made more stringent to address AI monopolies in social media markets.

The AI it's not just a bane to the digital market and Technology of the hour but if mishandled, it can become a significant setback for society, potentially making people vulnerable to exploitation, privacy breaches, and manipulation.

Current Regulatory Framework in India

India's regulatory landscape for data privacy and competition law is evolving, but it remains insufficient in addressing the unique challenges presented by AI-powered digital monopolies. Here, we will discuss the Personal Data Protection Bill, 2019 (PDPB), the Competition Act, 2002, and how they intersect.

The Personal Data Protection Bill, 2019 (PDPB)

The PDPB aims to protect the privacy of individuals' data and regulate how companies handle such data. It provides a framework for consent-based data collection, mandates transparency in data processing, and ensures consumer rights to data access and rectification. However, PDPB primarily focuses on consumer privacy rather than the abuse of market dominance.

Limitations: The PDPB does not address issues of data monopolies created by dominant firms using AI technologies. There is a lack of clear provisions on how firms can misuse data for anti-competitive purposes or engage in practices that inhibit competition.

The Competition Act, 2002

The Competition Act, 2002 aims to ensure that there is no abuse of dominance in the market. Section 4 of the Act prohibits firms from abusing their dominant position, including engaging in unfair trade practices, predatory pricing, and discriminatory practices.

However, the law does not yet account for the growing role of AI technologies in data monopolization and abusive practices. For instance, Google's abuse of data to exclude competitors or manipulate consumer behaviour would require a more nuanced interpretation of the Act to deal with these challenges effectively.

Comparative Analysis: EU, US, and India

This section will compare the regulatory frameworks of the European Union (EU), the United States (US), and India to explore how they approach the intersection of data privacy and abuse of dominance.

European Union

The EU has made significant strides in data privacy and competition regulation:

GDPR: The General Data Protection Regulation (GDPR) mandates strict rules for companies collecting and processing personal data. GDPR also empowers regulators to enforce hefty fines for violations.

Digital Markets Act (DMA): The DMA addresses the abuse of market power in digital markets, specifically targeting AI-driven monopolistic practices in platforms.

United States

The US has a fragmented approach:

Data privacy laws such as CCPA focus on consumer rights but leave many gaps regarding market manipulation through data.

Federal Trade Commission (FTC) monitors anti-competitive practices, but the FTC's role is not as robust when compared to the EU's integrated approach.

India

India's regulatory frameworks, while evolving, are behind both the EU and US in addressing the intersection of data privacy and competition law. The PDPB and the Competition Act need more comprehensive amendments to address AI monopolies and the misuse of data for competitive advantage.

Future Trends: The Role of AI and Emerging Legal Issues

AI's Growing Influence on Data Privacy

AI continues to evolve, and its ability to analyse vast datasets will only increase in sophistication. AI algorithms will likely become more influential in shaping consumer behaviour and determining market dynamics, which raises the need for stronger oversight. Without effective regulatory frameworks, AI-driven monopolies will dominate the market, leaving consumers at the mercy of dominant firms.

Potential Legal Reforms

To address these challenges, the following reforms are necessary:

- **Comprehensive Data Protection and Competition Law Integration:** A unified framework that brings together data protection laws and competition laws could ensure more effective enforcement.
- **AI Transparency and Accountability:** Laws must ensure that AI algorithms used by dominant firms are transparent and accountable to regulatory authorities.
- **Global Collaboration:** As data crosses borders, international collaboration on data governance will be crucial in regulating AI-driven market behaviour.

AI's Role in Data Monopolization

AI technologies have become a central tool in the digital economy, with firms using machine learning algorithms, data analytics, and predictive models to gain competitive advantages. These technologies allow firms to create highly personalized user experiences, but they also have significant implications for consumer privacy and competition.

For example, platforms like Google and Facebook collect vast amounts of data from users and use AI algorithms to predict consumer behaviour and shape market outcomes. This creates a situation where data monopolies become entrenched, with dominant firms having unprecedented access to user data and market intelligence, leaving smaller competitors at a disadvantage.

The Abuse of Dominance in Digital Markets

Abuse of dominance occurs when firms with significant market power use their position to exploit consumers, restrict competition, or exclude rivals. In the context of AI-driven platforms, the abuse of dominance manifests in several ways, including:

- **Data bundling:** Large firms bundle services and products with data collection, locking consumers into a system where they have no choice but to provide personal data in exchange for access to the platform.
- **Exclusionary practices:** AI algorithms can be used to favor the platform's own products, services, or advertising, effectively shutting out competitors.

- **Price manipulation:** Data-driven insights allow firms to manipulate prices, often based on the data they collect from consumer behaviour, which can lead to price discrimination and exploitation.

Legal and Regulatory Challenges

- **Lack of Integration Between Data Privacy and Competition Laws**

In India, data privacy and competition laws operate in isolation. While the Personal Data Protection Bill (PDPB), 2019 provides some protections for consumer data, it does not address the monopolistic use of data by dominant firms. Similarly, the Competition Act, 2002 prohibits anti-competitive practices but does not specifically target issues related to data-driven market dominance.

- **Weak Enforcement Mechanisms**

India's Competition Commission (CCI) has been slow in addressing issues related to AI-based abuse of dominance. The Google antitrust case in India (2021) highlights this gap, where CCI initiated an investigation into Google's abuse of market power but has not yet reached a conclusive resolution.

Best Practices from the European Union

The European Union's General Data Protection Regulation (GDPR) is one of the most comprehensive data protection frameworks globally. The GDPR has established clear standards for data collection, consent, and consumer rights. Additionally, the EU's Digital Markets Act (DMA) and Digital Services Act (DSA) provide a more targeted approach to regulating dominant platforms and addressing anti-competitive practices in the digital economy.

Lessons from the United States

The United States follows a more sectoral approach to data privacy and competition law. While data privacy regulations like the California Consumer Privacy Act (CCPA) focus on consumer protection, the Federal Trade Commission (FTC) is responsible for addressing anti-competitive behaviour. However, the absence of a unified regulatory framework has led to fragmented enforcement, especially in the case of AI-driven monopolies.

Recommendations for India

India's legal framework must evolve to address the growing intersection between data privacy and abuse of dominance in AI-powered markets.

Key recommendations to irradiate the loopholes:

Integrating data protection with competition law: Amend the Competition Act, 2002 to include specific provisions regarding the monopolistic use of data and the role of AI algorithms in market dominance.

Establishing a Digital Regulatory Authority: Create a body responsible for overseeing digital platforms' compliance with both data privacy and competition laws.

Strengthening enforcement mechanisms: Enhance the capacity of the CCI to address AI-driven monopolies and impose stricter penalties on firms that misuse consumer data.

Conclusion

The intersection of data privacy and abuse of dominance in digital markets, fuelled by AI technologies, presents new challenges for legal systems worldwide. While India has made strides with the Personal Data Protection Bill and the Competition Act, more needs to be done to integrate these areas and address the rapidly evolving AI-driven market dynamics. By adopting lessons from the EU and US, India can develop a comprehensive regulatory framework that ensures a fair, competitive, and consumer-friendly digital ecosystem.

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