

**GOVERNMENT OF MEGHALAYA
FINANCE (PENSION CELL) DEPARTMENT**

No. FEM(PC)24/2021/Pt/32

Dated Shillong, the 1st November, 2021.

From : Smti A.B.Thabah,
Deputy Secretary to the Govt. of Meghalaya,
Finance Department.

To,
✓ Mr Jade Jeremiah Lyngdoh,
Candidate, B.A., LL.B. (Constitutional Law Honours) | Class of 2023
National Law University Jodhpur,
Rajasthan, India.

Subject: Reply to the Legal Notice with regard to Facial Recognition Technology used in
“Pensioner’s Life Certificate Verification Mobile App”.

Reference: Your email dated 7th August, 2021 sent to ACS, Finance, Meghalaya.

In response to your notice indicated above, I would like to inform you that Government has examined the issues highlighted in your email above on “Facial Recognition Technology (FRT)” used in “Pensioner’s Life Certificate Verification Mobile App”, launched by Government of Meghalaya on 15th July 2021 in consultation with NIC, Meghalaya State Centre as well as Law Deptt. You may kindly note the following statement of facts and legal provisions:-

A. Policy Decision

The deployment of a particular technology for the ease and convenience of the targeted population is well within the competence of the Government of the State.

It is to be noted that the Government has found it necessary and appropriate to use this technology, because only with use of such technology can a senior citizen/ pensioner be provided the convenience of obtaining life certificate without having to venture out to any of the physical modes for obtaining the same.

It is also to be noted that the use and deployment of FRT is only by way of option and is not mandatory. This facility is in addition to already existing modes for obtaining life certificate and therefore, any person having any concerns with the same is at liberty not to use the facility.

The use of FRT does not require any anchoring legislation. The only requirement is that the use of technology which has some impact on the right to privacy must be done in a proportionate manner to the need for such technology, and that the use of such technology must be necessary and in pursuit of a legitimate aim. All these conditions are met in the present case as:-

- a. The use of the app is optional thereby meeting the test of proportionality,
- b. The purpose of the technology is well defined i.e for the establishing of identity of the concerned pensioner,
- c. The technology is aimed at offering additional convenience to pensioners, thereby meeting the requirement of having a legitimate aim,

In addition to the above, your concern that in absence of any legislation, the general public would be remediless in case of misuse of personal information is also misconceived. In this context, the existing law in the form of The Information Technology Act, 2000 classifies biometric data as sensitive personal data, and contains rules for collection, disclosure and sharing of such information. In the event of violation, recourse can be taken to section 43A of the IT Act, which reads as follows:

“Body corporate ‘possessing, dealing or handling any **sensitive personal data or information** in a computer resource which it owns, controls or operates is negligent in implementing and maintaining **reasonable security practices and procedures**, and thereby causes wrongful loss or wrongful gain to any person, this body corporate will become liable to pay damages as compensation to the affected person”.

Private information and its protection is governed by provision in The Information Technology Act, 2000, which prescribes “punishment for violation of privacy” for any person who “intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person.”

Therefore, the existing framework itself takes care of the apprehended misuse of such information and there is no need for any anchoring legislation. Recourse to provisions of IPC is also available in case of misuse of this information and it is apparent that the policy decision is within the legal parameters and in-fact the use of such technology can make some things better and more efficient.

B. Privacy Policy :

The mobile application has privacy policy which is available at https://meghalaya.gov.in/sites/default/files/documents/plev_privacy_policy.pdf.

The link has been provided in Google Play Store as well as App Store, which clearly states about the collection and purpose of data as well as the period for which information will be retained. It may be mentioned that Apple app store is very strict when it comes to data privacy and the Mobile application has cleared all the review processes and is available in app store as well. The App Store is designed to be a safe and trusted place for users to discover apps created by talented developers around the World. App on the App Store are held to a high standard for privacy, security, and content because nothing is more important than maintaining users trust. Moreover, all the rules described under Notification G.S.R. 313(E) dated New Delhi 11.4.2011, issued by the Ministry of Communication and Information Technology, (ANNEXURE I) has been observed.

C. Collection of information:-

It has been clearly stated in the apps that the photo collected from the user is strictly for the purpose for which it is intended for and the user can opt out by not submitting the photograph if he/she does not wish to do so. Also if the User wishes to check the validity/ authenticity of his /her data or to opt out of the system at a later stage, he/she can always submit a request to the Treasury Officer accordingly.