SALOT & SHAH ASSOCIATES

NEWSLETTER

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We're thrilled to share the latest updates, industry insights, and key announcements with you.

In this edition, we highlight significant developments and offer practical tips to help you stay ahead.

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NAVIGATING DATA BREACHES IN SOCIAL MEDIA: LEGAL INSIGHTS AND COMPLIANCE WITH THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023

INTRODUCTION

In an era where social media permeates every aspect of our lives, the threat of data breaches looms large, posing significant risks to individuals and organizations alike. With the introduction of the Digital Personal Data Protection (DPDP) Act, 2023, India has taken a decisive step toward fortifying personal data protection, ensuring that social media platforms operate within a stringent legal framework. This article delves into the intricacies of data breaches on social media, elucidating how the DPDP Act, 2023, addresses and mitigates these breaches.

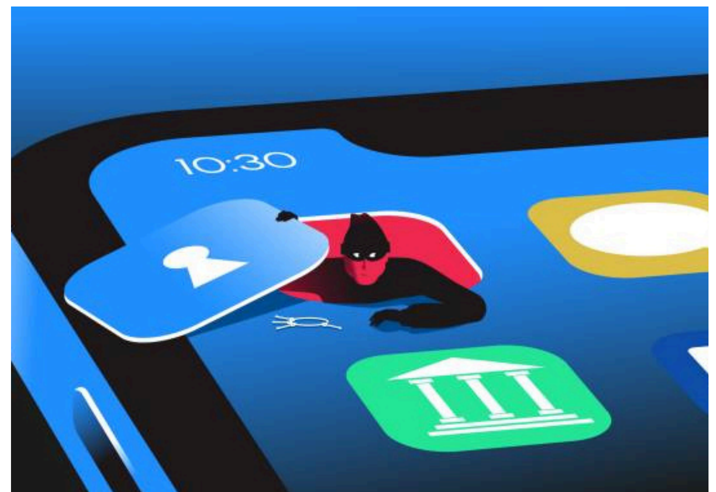
UNDERSTANDING DATA BREACHES ON SOCIAL MEDIA

Data breaches, by definition, occur when confidential, sensitive, or protected information is accessed, disclosed, or utilized by unauthorized entities. Social media platforms, given their extensive user bases and substantial data repositories, are prime targets for cyberattacks. Common manifestations of data breaches on social media include unauthorized access, data scraping, phishing attacks, and insider threats.

Unauthorized access typically involves hackers infiltrating user accounts to steal personal data. Data scraping employs automated tools to extract vast amounts of user data illicitly. Phishing attacks deceive users into revealing personal information through fraudulent messages, while insider threats stem from employees misusing their access to data for malicious purposes.

LEGAL IMPLICATIONS OF DATA BREACHES

The repercussions of data breaches are severe, encompassing identity theft, financial loss, and emotional distress for individuals. Organizations suffer from eroded trust, legal penalties, and financial damages. In the context of social media, where immense volumes of personal data are processed daily, these risks are magnified, underscoring the necessity for stringent legal safeguards.



THE DPDP ACT, 2023: A COMPREHENSIVE LEGAL FRAMEWORK

The DPDP Act, 2023, marks a transformative shift in India's data protection landscape. Its primary objective is to safeguard the privacy of individuals while facilitating the necessary flow of data for economic and social activities.

Key provisions of the DPDP Act relevant to social media include:

- **Consent-Based Data Processing**: The Act mandates that social media platforms obtain explicit consent from users prior to collecting and processing their personal data. This consent must be informed, specific, and revocable, ensuring users maintain control over their personal information.
- **Data Minimization and Purpose Limitation**: Platforms are required to collect only the data necessary for a specified purpose and to refrain from retaining it beyond the requisite period. This principle curtails the excessive accumulation of personal data and mitigates potential misuse.
- **Rights of Data Principals**: Users, referred to as data principals, are endowed with enhanced rights under the DPDP Act. These rights include access to their data, correction of inaccuracies, and erasure of data. Users can also object to data processing and withdraw consent at any time, empowering them to manage their personal information actively.
- **Obligations of Data Fiduciaries**: Social media companies, designated as data fiduciaries, bear significant responsibilities under the Act. They must implement robust security measures to protect personal data, conduct regular data protection impact assessments, and appoint data protection officers. These obligations ensure a proactive approach to data security and compliance.
- **Data Breach Notification**: In the event of a data breach, data fiduciaries are obligated to notify the Data Protection Board and affected individuals promptly. The notification must encompass details of the breach, potential risks, and remedial measures taken, ensuring transparency and accountability.

ENSURING COMPLIANCE: BEST PRACTICES FOR SOCIAL MEDIA PLATFORMS

To comply with the DPDP Act, social media platforms must adopt a proactive and comprehensive approach to data protection. Key best practices include:

- **Enhanced Security Measures**: Implementing advanced encryption, multi-factor authentication, and regular security audits are critical to safeguarding user data. These measures prevent unauthorized access and ensure data integrity.
- **Transparent Data Policies**: Clearly communicating data collection, processing, and retention policies to users is essential. Privacy policies should be easily accessible and comprehensible, fostering trust and transparency.
- **Regular Training and Awareness**: Conducting regular training sessions for employees on data protection best practices and legal obligations is crucial. Raising awareness about phishing and other cyber threats enhances organizational resilience.
- **Incident Response Plan**: Developing and maintaining a robust incident response plan ensures prompt and effective addressal of data breaches. This plan should encompass procedures for breach detection, containment, investigation, and notification, ensuring swift action and mitigation.
- **Data Protection Impact Assessments (DPIAs)**: Conducting DPIAs identifies and mitigates potential risks associated with data processing activities. This proactive approach aligns with the principles of data minimization and purpose limitation.

- **User Empowerment: Providing users with easy-to-use tools to manage their privacy settings, access their data, and exercise their rights under the DPDP Act is essential. Empowered users are more likely to trust and engage with the platform.**

CONCLUSION

As social media continues to evolve, the legal landscape surrounding data protection must keep pace. The DPDP Act, 2023, represents a significant milestone in ensuring that personal data is handled with the utmost care and respect. For social media platforms, compliance with this act is not merely a legal obligation but a commitment to safeguarding user trust and privacy. By adopting best practices and adhering to the provisions of the DPDP Act, social media companies can navigate the complexities of data breaches and contribute to a safer digital ecosystem.

In a world where data is the new oil, protecting it is paramount. The DPDP Act, 2023, provides a robust framework for achieving this, ensuring that social media remains a platform for connection, innovation, and expression, free from the shadows of data breaches. By aligning with the DPDP Act, social media platforms can foster a secure and trustworthy digital environment, benefiting users and businesses alike.

RBI'S UPDATED GUIDELINES: USHERING IN A NEW ERA OF BANKING TRANSPARENCY

INTRODUCTION

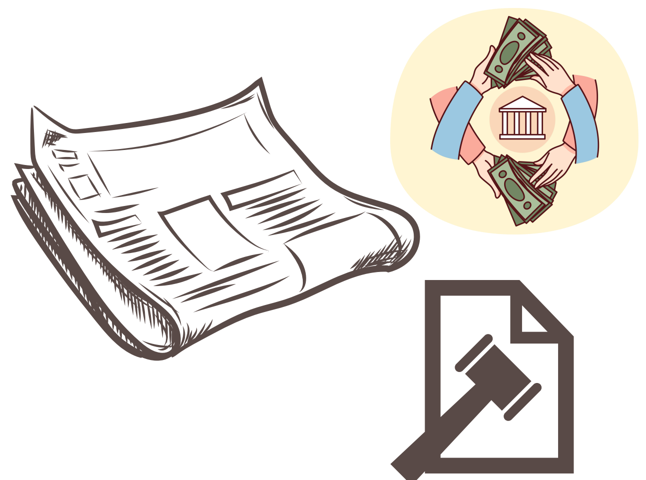
The Reserve Bank of India (RBI) has recently introduced revised guidelines aimed at enhancing the transparency and accountability of commercial banks in the process of declaring borrower accounts as "fraud." This reform responds to the increasing legal disputes and widespread dissatisfaction among borrowers and stakeholders regarding the opaque manner in which such declarations have traditionally been made.

Earlier, bank's declarations of fraud have often been seen as arbitrary and unilateral, causing significant financial and reputational harm to borrowers without offering them a fair opportunity to present their case. This lack of transparency has triggered numerous legal challenges and public discontent. The Apex Court, in its ruling in State Bank of India v. Rajesh Agarwal, stated the importance of incorporating principles of natural justice within the banking sector, paving the way for the RBI's recent initiatives.

HIGHLIGHTS OF THE NEW CIRCULAR

The RBI's revised circular introduces several substantial measures intended to ensure fair and transparent procedural changes, indicating a fundamental shift in how banks handle fraud declarations–

- Banks are now required to include detailed information on the grounds for initiating fraud declarations within the Show Cause Notice (SCN). This measure ensures that borrowers are adequately informed of the reasons behind the fraud declaration and can prepare an effective response. This aligns with the Court's emphasis on the principles of natural justice, ensuring that borrowers are not caught off guard by unexpected declarations.
- The RBI has instituted a well-defined system for issuing SCNs and examining borrower responses. This ensures that all responses and submissions are thoroughly reviewed before a final decision is reached, thereby preventing arbitrary decisions and enhancing the credibility of the fraud declaration process.
- Banks are now mandated to issue reasoned orders when communicating their decisions. This requirement ensures that decisions are transparent and that the rationale behind each decision is clearly explained and documented. By providing a detailed account of why an account was declared fraudulent, reasoned orders enable borrowers to understand the basis of the decision and address any potential misunderstandings or inaccuracies effectively.
- Borrowers are granted a 21-days period to respond to the SCN. This timeframe ensures borrowers have sufficient opportunity to gather evidence, seek legal counsel, and present their case comprehensively. By allowing an adequate response period, RBI aims to prevent hasty decisions that could unjustly penalize borrowers.

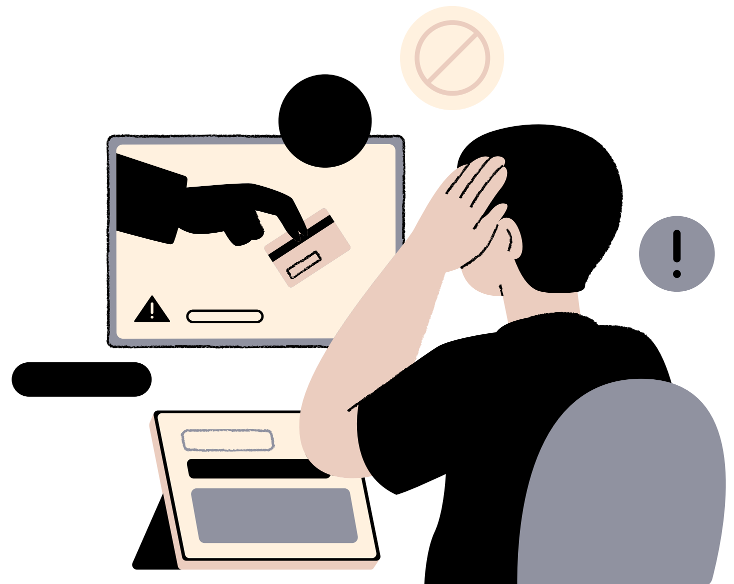


- The requirement to refer all fraud cases involving amounts of Rupees 3 crore or more to the Advisory Board for Banking and Financial Frauds adds an extra layer of oversight and scrutiny. This measure aims to enhance the credibility and fairness of the fraud declaration process by ensuring that significant cases are thoroughly examined by an independent body.
- Banks are mandated to involve qualified external or internal auditors in investigating suspected fraud cases. This requirement ensures that investigations are carried out independently and impartially, thereby minimizing the risk of biased or incomplete assessments.
- The directives establish specific timelines for different stages of fraud detection and reporting, including a 180-day period to determine the status of red-flagged accounts. These timelines are intended to ensure that the process is carried out efficiently and without unnecessary delays, thereby preventing extended periods of uncertainty for borrowers.
- The new directives stress the importance of implementing an Early Warning Signals (EWS) system to proactively detect and prevent fraud. This system is designed to identify potential frauds at an early stage, enabling banks to take preventive actions before the situation worsens. By concentrating on early detection, the EWS system aims to reduce the occurrence of fraud and safeguard the interests of both banks and borrowers.

PRECEDENTS AND THEIR IMPACT

In the case of R. K. Jain v. Union of India (1993), the Apex Court addressed the need for reasoned orders in administrative actions. The Court emphasized that reasoned orders are crucial for ensuring transparency and accountability, as they provide a clear explanation of the decision-making process and the rationale behind decisions. This practice fosters trust in administrative processes and prevents arbitrary or capricious decisions.

The RBI's mandate for reasoned orders in fraud declarations directly reflects the principles established in this case. By requiring banks to provide detailed justifications for their decisions, the RBI seeks to improve the transparency and credibility of the fraud declaration process.



In the case of SBI v. Rajesh Agarwal, the Apex Court examined the procedural fairness required when declaring an account fraudulent. The Court held that borrowers must be afforded a fair opportunity to present their case prior to any such declaration. This includes issuing a SCN outlining the reasons for the proposed declaration and providing the borrower with adequate time to respond. The judgment highlighted the necessity of adhering to principles of natural justice, ensuring that borrowers' rights are protected from arbitrary and unilateral actions by banks.

The RBI's revised directives align with the Apex Court's mandate in this case by incorporating the requirement for SCNs and ensuring a fair hearing process. This alignment with judicial standards reinforces the legitimacy and fairness of the new procedures.

EVENTS LEADING TO THE ESTABLISHMENT OF THE FRAUD CIRCULAR REGIME

The formulation of these circulars responds directly to several high-profile cases where the banking sector's handling of fraud declarations faced scrutiny and criticism:

- The situation involving Vijay Mallya and Kingfisher Airlines drew considerable attention to the issues surrounding fraud declarations. Kingfisher Airlines was declared a Non-Performing Asset (NPA), and subsequent investigations uncovered financial irregularities. However, the process was tainted by allegations of insufficient disclosures and procedural shortcomings. The public outcry and legal disputes highlighted the need for a more transparent and equitable procedure for fraud declarations. The revised directives seek to address these concerns by ensuring that borrowers have a fair opportunity to respond and that all decisions are well-documented and reasoned.

- The Nationalized Bank fraud case, revealed significant weaknesses in the banking sector's internal controls and fraud detection mechanisms. The failure to detect the fraud in a timely manner and the lack of adequate oversight led to substantial financial losses. The introduction of the Early Warning Signals (EWS) system and the requirement for mandatory referrals to the Advisory Board for major fraud cases are intended to prevent such large-scale frauds in the future. By focusing on the early detection and comprehensive examination, the RBI aims to reduce the risks associated with banking frauds.

CONCLUSION

While the RBI's revised directives are commendable, their effectiveness will ultimately depend on their implementation. Several critical questions remain: Will banks fully adhere to the principles of natural justice? Will borrowers receive all relevant documents? Will personal hearings be granted upon request? These questions underscore the challenges in ensuring that the new directives lead to fair and equitable practices in practice.
The requirement for engaging external auditors and referring significant fraud cases to the Advisory Board are positive steps towards increased scrutiny. However, the success of these measures will hinge on their consistent and impartial application throughout the banking sector.

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GROUP INSOLVENCY REGIME

INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 (IBC) currently does not address the issue of group insolvency. However, there is an increasing agreement that it should be revised to include a structure for dealing with group insolvency. Implementing such a framework would simplify the insolvency procedure for businesses and enable creditors to obtain the actual worth of their assets. Nevertheless, the introduction of a group insolvency framework would necessitate significant modifications to the current system for resolving corporate insolvency. The Insolvency and Bankruptcy Board of India (IBBI) and the Ministry of Corporate Affairs (MCA) have separately released reports recommending the adoption of a group insolvency framework in India. The IBBI's report was prepared by its Working Group on Group Insolvency published on September 2019, while the MCA's report was prepared by the Cross-Border Insolvency Rules/Regulations Committee (CBIRC).

Firstly, the term "cross-border insolvency" or "international insolvency" refers to the scenario where an insolvent debtor has creditors and/or debtors in numerous jurisdictions, spanning different countries. It guarantees the effective and equitable management of insolvency situations that involve numerous jurisdictions. Through the facilitation of collaboration between global courts and insolvency practitioners, it effectively reduces the occurrence of contradictory rulings and the depletion of assets, thereby safeguarding the interests of creditors.

Furthermore, the inclusion of group insolvency measures is essential because of the interdependent structure of contemporary company groups. They facilitate a –

- synchronised strategy for handling insolvency cases,
- minimising the loss of assets and
- Minimising legal expenses.

RECOMMENDATIONS OF THE WORKING GROUP

The Working Group suggested phasing in group insolvency. The structure must be introduced in domestic group firms first. This requires integrating procedural coordination tools while maintaining asset partition and creditor rights. This model combines a cooperative insolvency application procedure with multiple enterprises, effective communication and cooperation among insolvency experts, a centralised adjudicating body, and a creditors' committee. These techniques reduce insolvency action costs and time and streamline resolution.

Adding cross-border group insolvencies and substantive consolidation to the framework in the second phase requires effective completion of the first phase. Substantive consolidation simplifies insolvency administration by considering a group of enterprises' assets and liabilities as a single economic unit. The stepwise approach allows for systematic and progressive adjustment and review, ensuring the framework meets current requirements and legislative goals.

The Working Group followed international norms including the "UNCITRAL Legislative Guide on Insolvency Law and the World Bank Principles for Effective Insolvency and Creditor / Debtor Regimes" while creating the framework. Western legislation, notably European and American, was used to create a comprehensive and pragmatic framework.

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The recent experiences and legal decisions on insolvency processes in India have offered valuable insights into the connections between different entities within a group, emphasising the necessity of establishing a framework for group insolvency-

- In cases where the operations of the parent, subsidiary, or sister enterprises are intricately interconnected. None of these companies can sustain a viable business strategy without the others.
- In cases when the group structure of CD includes various entities to address regulatory and/or other limitations.
- Real estate corporations commonly utilise subsidiaries or special purpose vehicles (SPVs) as a means to circumvent the limitations imposed by Urban Land Ceiling regulations.
- The structures are designed to optimise bank borrowings, typically by dishonest promoters, who may also utilise them to separate and conceal assets.
- In cases where the companies have activities in multiple countries or geographical locations. Legal and operational obligations necessitate the establishment of local subsidiaries or corporations, such as Jet Airways.

CONCLUSION

Currently, group insolvency has been acknowledged in India, albeit solely through legal precedents. While several countries have already implemented legislation regarding group insolvency, India still lacks a legislative framework to govern this matter. While seeking to address these deficiencies, it is crucial to prioritise the resolution of the primary measure of the efficacy of the IBC – economic recovery – which has recently been experiencing setbacks. According to a recent research by CRISIL (Credit Rating of Information Services of India Limited), the recovery rates under the Insolvency and Bankruptcy Code (IBC) have decreased from 43 percent to 32 percent between March 2019 and September 2023. The Standing Committee on Finance noted in its Sixty Seventh Report in February 2024 that the insolvency procedure has been hindered by significant delays that exceed the legal time restrictions.

Given the current situation, it is necessary to have a suitable set of laws that governs this specific component of group insolvency, which is urgently required.