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IS "IGNORANCE OF THE LAW IS NO EXCUSE" PRACTICAL IN INDIA?

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The age-old legal maxim "ignorance of the law is no excuse" (ignorantia juris non excusat) implies that individuals are expected to know and abide by the laws of their land. While this principle maintains order and ensures accountability, its practicality is questionable, especially in a diverse and largely illiterate country like India.

The Reality of Legal Awareness in India

In India, where a significant portion of the population is illiterate, expecting universal knowledge of the law seems not only illogical but also unfair. Legal knowledge is limited even among the educated. Many professionals, including lawyers, judges, and law professors, do not claim to know all the laws. This widespread legal illiteracy challenges the fairness of the strict application of the maxim.

Justice R.L. Narasimham has highlighted the practical implications of this principle. He suggested that a mistake should be a valid defence if it relates to a provision of a rule, statute, regulation, or notice issued under an Act of the Legislature and if the mistake could not have been avoided with due diligence at the time.

Preconditions for Ignorance as a Defence

For ignorance of the law to be considered a valid defence, two primary preconditions must be met:

1. **Promulgation:** The formal process of making a law known to the public. Without proper promulgation, expecting individuals to comply with unknown laws is unreasonable.
2. **Knowability**: The ability to know the law involves:
   - -**Availability:** The law must be accessible for individuals to read.
   - -**Comprehensibility**: Individuals must be capable of understanding the law

If someone makes a genuine effort to be aware of and understand their legal obligations but misses a particular requirement, they may have a reasonable excuse for non-compliance. The determination of whether an individual could reasonably be expected to know and understand a legal obligation depends on their abilities, circumstances, and the nature of the missed obligation.

Exceptions to the Maxim

Different legal systems acknowledge exceptions to the rule that ignorance of the law is not a defence. Some notable exceptions include:

1. **Mistake of Law:** In common law systems, a reasonable and good faith mistake about the law can be a defence. For instance, if a new and complex law with unclear regulations is enacted, a reasonable mistake about its provisions might be considered.
2. **Malum Prohibitum vs. Malum in Se**: This distinction separates inherently evil acts (malum in se) from those prohibited by law but not necessarily evil (malum prohibitum). Some jurisdictions might consider ignorance of a malum prohibitum law, especially if it is obscure or newly enacted, as an exception.
3. **Procedural Mistakes:** Ignorance of specific legal procedures might be excused. For example, missing a filing deadline for a lawsuit due to unawareness might be rectified by the courts.
4. **Age and Mental Capacity**: Minors and individuals with proven mental incapacity may not be held fully accountable for legal violations due to their limited understanding of the law.
5. **Government Misconduct**: If the government fails to adequately publish or disseminate a law, it might be considered unfair to punish someone who could not reasonably be expected to know about it.

Notable Cases in India

Several Indian cases have supported the idea that "ignorance of the law is not an excuse" is not achievable in every instance:

1. **M.T. George v. Kerala State Electricity Board (Kerala High Court, 1986)**: The court recognised that in a country with high levels of poverty, ignorance, and illiteracy, it would be unfair to presume that everyone knows the law. The judgment emphasised the need to consider individuals' backgrounds and circumstances.
2. **O.N. Tikku v. Dr. Karan Singh (Jammu and Kashmir High Court, 1987):** This case acknowledged that ignorance of the law cannot always be an excuse, especially when individuals rely on legal advice and are not expected to be aware of complex legal provisions.
3. **R.M. Raja Ambalam v. Malayandi (Madras High Court, 2007)**: The court recognised that individuals, especially those from remote villages and with limited education, may not be aware of legal procedures. The judgment emphasised the role of legal advisors in guiding individuals through legal processes.

The Impact of Legal Information Accessibility

The digital age has significantly impacted the maxim "ignorantia juris non excusat." The widespread availability of legal information online has both strengthened and weakened its application.

Strengthening the Maxim:

1. **Increased Accessibility:** Online resources provide easier access to legal information.
2. **Free Resources:** Many platforms offer free, clear, and understandable legal information.

Weakening the Maxim:

1. **Information Overload:** The sheer volume of legal information can be overwhelming.
2. **Misinformation**: Not all online legal information is accurate.
3. **Digital Divide**: Not everyone has equal access to the internet or the skills to navigate legal resources online.

Impact on Ignorance Defence

The availability of legal information online can be a double-edged sword:

1. **Quality of Effort**: Courts might consider whether the defendant made a reasonable effort to find accurate legal information online.
2. **Complexity of Law**: Courts might take into account whether the law in question is highly technical or written in legalese.
3. **Digital Literacy**: The defendant's technological skills and resources to access and comprehend online legal information could be considered.

Conclusion

While "ignorantia juris non excusat" remains a cornerstone of legal systems worldwide, its application is not absolute. Recognising the evolving landscape of legal information and the varying abilities and circumstances of individuals, courts have carved out nuanced exceptions where ignorance of the law can indeed be an excuse. This balanced approach ensures justice while maintaining the integrity of the legal system.

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UNDERSTANDING THE LABOUR WELFARE AND EMPLOYMENT INDEX: A STEP TOWARDS ENHANCED LABOUR STANDARDS

RK Gupta
Sr. Partner

In a significant move to streamline and elevate labour standards across India, the government is set to introduce the Labour Welfare and Employment Index (LWEI). This new index aims to provide a comprehensive ranking of states based on their adherence to labour laws and the welfare of their workforce. As we delve into the intricacies of the LWEI, it is crucial to understand its potential impact on labour welfare and employment practices across the nation.

The Concept of LWEI

The Labour Welfare and Employment Index is designed to evaluate and rank states on several parameters related to labour welfare. These parameters include compliance with labour laws, safety standards, employment rates, social security benefits, and overall working conditions. By creating a standardized measurement, the LWEI seeks to promote transparency and accountability among states, encouraging them to improve their labour policies and practices.

Importance of Labour Welfare

Labour welfare encompasses various measures aimed at ensuring the well-being and prosperity of the workforce. This includes not only fair wages and job security but also health benefits, safe working conditions, and opportunities for skill development. A high ranking in the LWEI would reflect a state's commitment to these aspects, thereby attracting more businesses and fostering a positive work environment.

Legal Implications and Compliance

From a legal perspective, the introduction of the LWEI signifies a more structured approach to labour law enforcement. States will be incentivized to comply with national labour standards, reducing discrepancies and ensuring uniformity in the application of these laws. This move is expected to mitigate issues such as exploitation, unsafe working environments, and inadequate compensation, which have plagued various sectors.

Impact on Employment Practices

The LWEI is not just a tool for measurement but a catalyst for change. By highlighting areas that need improvement, the index will push States to adopt better employment practices. This could lead to increased job satisfaction, lower turnover rates, and enhanced productivity. Moreover, States that score well on the index are likely to become more attractive to investors, driving economic growth and job creation.

Observation

As legal practitioners, it is imperative to understand the nuances of the LWEI and its implications. The index offers a dual benefit: protecting the rights of workers while promoting a healthy business environment. It provides a framework within which companies can operate fairly and ethically, ensuring compliance with labour laws. Legal experts will play a crucial role in guiding businesses through this transition, helping them align with the new standards and leverage the benefits of a higher LWEI ranking.

Conclusion

The Labour Welfare and Employment Index represents a forward-thinking approach to enhancing labour standards in India. By ranking States based on their labour practices, the index will foster a culture of compliance and continuous improvement. For businesses, this means a clearer, more predictable regulatory environment; for workers, it promises better protection and opportunities. As this initiative unfolds, it will be essential for all stakeholders to engage proactively, ensuring that the LWEI achieves its goal of uplifting labour welfare and employment across the country.

RECOVERY OF DUES UNDER GST BEFORE 3 MONTHS ONLY UNDER CERTAIN EXCEPTIONAL CIRCUMSTANCES: EXPLAINED CBIC

Puneet Agrawal
Advocate

Under GST Law, it is the general rule that proceedings for recovery of dues shall be initiated after the expiry of three months from the date of service of order passed under the law. This provision ensures that the assessee exhausts its statutory remedies before the expiry of three months. However, it is seen that recently, the revenue officials, on their own sweet will, are initiating the recovery proceedings even before the expiry of the prescribed three months or giving much less time than the prescribed period of three months to pay the due amounts. The said dictates are being issued without providing any reasons as well.

Considering the difficulties faced by the taxpayers at the behest of the revenue officials, CBIC has issued guidelines regarding the initiation of recovery proceedings before three months from the date of service of demand order vide Instruction No. 01/2024-GST dated 30.05.2024.

Legal framework for recovery of dues under GST Law

Sections 78 and 79 of the GST Act deal with the recovery of any amount payable by a taxable person under any of the GST provisions to the Government. As per Section 78, any amount payable by any taxable person in pursuance of an order passed under the GST Laws shall be paid within three months from the date of service of the order, and recovery proceedings shall be initiated only after the expiry of the said three months.

It further provides a proviso conferring discretion upon the proper officer to initiate recovery where firstly, he considers it expedient in the interest of revenue to recover dues before expiry of three months, and secondly, he records reasons in writing for exercising such discretionary power.

Further, Section 79 provides modes and procedures for recovery of dues under the GST Act.

Key takeaways from the Guidelines issued by CBIC

1. The proper officer under Section 78 proviso is the jurisdictional Principal Commissioner / Commissioner of Central Tax ("PCCT / CCT").
2. The proper officer under Section 79 of the GST Act for recovery is the jurisdictional Deputy or Assistant Commissioner of Central tax ("DCCT/ ACCT").
3. Before initiating recovery, approval of PCCT/CCT is necessary. The procedure to be followed is as below:

- The jurisdictional DCCT/ACCT shall place the matter before the jurisdictional PCCT/CCT along with reasons/justification for initiating recovery before the expiry of three months.
- PCCT/CCT shall then examine such reasons/justification at the earliest and if he is satisfied that it is expedient in the interest if revenue to ask the tax before the expiry of three months. For this, PCCT/CCT must record reasons in writing.
- PCCT/CCT thereafter may issue directions to the assessee to pay the amount due within the period specified in the directions. These directions shall also be sent to DCCT / ACCT for information.
- PCCT/CCT should provide specific reasons for asking the assessee for early payment of the amount due, clearly outlining the circumstances prompting such early action.

4. Reasons could include high risk to revenue involved due to apprehension that:

- Assessee may close the business operations in the near future
- Possibility of default by the assessee due to his declining financial conditions or impending insolvency.
- Likely initiation of proceedings initiated under IBC etc.

5. Reasons to believe must be based upon credible evidence which may be kept on record.
6. The proper office must duly consider the financial health, the status of business operations, infrastructure, and credibility of the taxable person. He shall strike a balance between the interest of revenue and ease of doing business. The directions should not be issued in mechanical matters and must be issued only in cases where the interest of revenue is to be safeguarded due to specific apprehension in the case.

What can an assessee do if he receives the mandate to pay dues before the expiry of three months?

The aforementioned guidelines by CBIC are a major relief to the taxpayers as they can curb the arbitrary and unfair practice of the officers in initiating recovery proceedings. Now, they have to get approval from PCCT/CCT. The specific parameters in respect of reasons/justifications have also been provided. If an assessee receives the mandate to pay dues before the expiry of three months, an assessee can:

- Write to the department seeking specific reasons for initiating the recovery along with the evidence relied upon by them, and also seek information about approval from PCCT/CCT.
- If the recovery is not consonance with the above guidelines, assessee may approach the High Court in writ jurisdiction.

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THE INTENT OF MANAGEMENT IS PARAMOUNT TO DETERMINE PREFERENTIAL TRANSACTIONS.

Jatin Sehgal
Sr Mentor

In a recent judgment by the Hon'ble NCLT Mumbai Bench in the case of Ankur Kumar vs Jitendra Kikavat & Others, a Section 43 application was filed by the Resolution Professional of M/s Mahavir Roads and Infrastructure Private Limited, seeking the Tribunal to avoid various transactions which in the opinion of the RP are entered into between the Corporate debtor and its Respondent Related Parties (i.e. Directors/Promoters) on a selective basis putting them in a better position than the other creditors thereby prejudicially affecting their rights.

A summary of the case:

The Corporate Debtor herein was admitted into CIRP vide order dated 21.02.2019, and thereafter, the Public Announcement was made on 13.03.2019. During the tenure of the CIRP, M/s BKA & Company (Firm of Chartered Accountants) were appointed as the Forensic Auditors to carry out the transactional audit of the Corporate Debtor, and subsequently, the Forensic Report of the auditors highlighted certain transactions which fall under the ambit of Section 43 & 66 of the Code i.e. the transactions which were entered by the Corporate Debtor with its Related Parties (Directors/Promoters) during the relevant lookback period.

Submissions by both sides:

The Applicant submitted that the suspended directors of the Company were well aware that the insolvency of the company was relatively imminent as it had defaulted in the payment to various creditors and was going through a "Financial Crunch" situation under which it was the duty of the directors to act diligently and minimise the potential loss to creditors, however, still the directors entered into transactions that supposedly gave benefits to its related parties at the expense of the Creditors in one way or another.

The Respondents, through their Legal Counsel, submitted that they had infused essential capital into the Company to maintain it as a going concern during the Financial Crunch, and the payments were made in the ordinary course of business, causing no prejudice to any of its lenders/creditors.

The Reasoning of the Tribunal:

The Tribunal, while analysing Section 43 of the Code, held that certain transactions would be out of the ambit of Section 43 if they were undertaken in the ordinary course of business of both the Corporate Debtor and the Recipient. However, in the present case, the Recipients realizing their debt during the period of the Financial Crunch cannot be constituted as an Ordinary Course of business.

Reliefs & Conclusion:

The Tribunal ordered the Respondents to refund the amounts to the Corporate Debtor and highlighted the importance of Section 43 for protecting the rights of the Corporate Debtor's creditors during CIRP.

ANALYSIS OF FOREIGN EXCHANGE MANAGEMENT (OVERSEAS INVESTMENT) DIRECTIONS, 2022 - INVESTMENTS IN OVERSEAS FUNDS

The Reserve Bank of India (RBI) has introduced an amendment to the Foreign Exchange Management (Overseas Investment) Directions, 2022 (FEM OI Directions), specifically concerning investments in overseas investment funds by Indian entities. This article analyses the implications and benefits of the amendment, providing a comprehensive understanding for stakeholders.

Pre-Amendment Scenario

Before the amendment, the regulations under FEM OI Directions were restrictive in several ways:

1. **Limited Definition of OPI:** Overseas Portfolio Investment (OPI) was previously confined to investments made in "units" of the fund. This narrow definition excluded other instruments such as shares, bonds, or structured products.
2. **Ambiguity with Other Instruments:** The exclusion of instruments other than "units" created ambiguity, potentially leading to confusion and delays for Indian investors.
3. **Unequal Opportunities**: This restriction created an uneven playing field. While overseas investors had access to a broader range of instruments within the same fund, Indian investors were limited to "units".
4. **Lack of Clarity:** The lack of clear guidelines for instruments other than "units" could have resulted in regulatory hurdles for Indian investors.

Need for Amendment

The necessity for the amendment was driven by several factors:

1. **Promote Investment Flexibility:** The amendment aimed to provide Indian investors with more flexible investment options, allowing participation in a wider range of opportunities offered by overseas funds.

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2. **Level Playing Field**: By broadening the definition of OPI, Indian investors could access similar investment opportunities as their overseas counterparts.

3.**Reduce Regulatory Burden**: Clarifying the definition of OPI streamlined the regulatory process, potentially reducing delays and complications.

4. **Enhance Portfolio** Diversification: Access to a variety of instruments enabled Indian investors to diversify their portfolios more effectively, thereby managing risks and optimising returns.

The Amendment

The key changes brought by the amendment involve the expanded definition of OPI. The RBI amended Paragraph 1 (ix) (e) and Paragraph 24 (1) of the OI Directions to remove the previous caveats, accommodating the diverse legal and regulatory frameworks governing investment funds across various jurisdictions.

- Investment (including sponsor contribution): This includes not only regular investments but also initial contributions to set up the fund.
- Units or any other instrument (by whatever name called): The amendment now allows any instrument issued by a duly regulated overseas investment fund to qualify as OPI, irrespective of its specific name or structure. This includes shares, bonds, and structured products.

Outcomes of the Amendment

1. Increased Investment Options: Indian investors now have access to a wider variety of instruments within overseas investment funds, enhancing flexibility in portfolio construction and diversification.
2. Reduced Ambiguity: The broader definition eliminates previous uncertainties, streamlining the investment process and reducing potential delays.

3.Level Playing Field: Indian investors now have equal opportunities compared to their overseas counterparts regarding the range of instruments they can invest in within the same fund.

Special Provisions

- Listed Indian Companies & Resident Individuals: These entities can make OPI in overseas funds (units or other instruments) outside of International Financial Service Centres (IFSCs) without specific limitations on the types of instruments.
- Unlisted Indian Entities in IFSCs: Subject to limits defined in Schedule V of the OI Rules, these entities can also make OPI in overseas funds. Schedule V may specify restrictions on the types of instruments, the amount that can be invested, or other regulatory requirements.

Post-Amendment Impact

The amendment has had several positive effects:

1. **Increased Investment Options**: Indian entities can now invest in a broader range of instruments, enhancing strategic portfolio construction and diversification benefits.
2. **Enhanced Flexibility**: Investors can tailor their strategies to specific risk tolerances and return objectives, potentially achieving a better risk-reward balance.
3. **Streamlined Regulatory Process**: The amendment reduces ambiguity and clarifies regulations, potentially minimising delays and complications for investors.
4. **Potential Impact on Different Investors:**
    - Listed Indian Companies & Resident Individuals: These entities benefit from the most flexibility, with the ability to invest in any instrument offered by a regulated overseas fund outside of IFSCs.
    - Unlisted Indian Entities in IFSCs: These entities gain access to a broader range of instruments but must consider the limitations outlined in Schedule V, which may include restrictions on the types of instruments and investment amounts.

Conclusion

The amendment to the FEM OI Directions, 2022, addresses significant limitations in the previous regulations, promoting greater investment flexibility, clarity, and opportunities for Indian investors. By allowing investments in a wider range of instruments, it ensures that Indian investors can participate more effectively in global markets, thereby enhancing their investment portfolios. The amendment represents a significant step towards creating a more inclusive and competitive investment environment for Indian entities.

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DELHI HIGH COURT CLARIFIES: ARBITRATION PROCEEDINGS DO NOT BAR INSOLVENCY REMEDIES

Introduction

In a recent judgment, the Delhi High Court has elucidated that the initiation of arbitration proceedings does not prevent a corporate debtor from pursuing other legal remedies, including those available under the Insolvency and Bankruptcy Code, 2016 (IBC). This observation came during the hearing of a petition under Section 11(6) of the Arbitration & Conciliation Act, 1996, which sought the appointment of an independent arbitrator.

Facts

Pitambar Solvex and OAgri Farms were engaged in a business relationship with the respondents, who were previously shareholders and directors of Pitambar Solvex. Disputes over financial transactions and corporate governance led the respondents to initiate arbitration proceedings under the arbitration clause in the shareholders' agreement. In response, the petitioners filed a Section 11(6) petition under the IBC, seeking to initiate a corporate insolvency resolution process against the respondents.

Legal Issues

- Interplay Between Arbitration and IBC: The primary legal issue was whether the initiation of arbitration proceedings by the respondents should prevent the petitioners from seeking remedies under the IBC, specifically under Section 11(6) for insolvency proceedings.
- Rights of Corporate Debtors: Another critical issue was the rights of corporate debtors under the IBC to initiate insolvency proceedings when faced with defaults or financial distress caused by creditors or former stakeholders.
- Jurisdiction of the Court: The court needed to determine its jurisdiction and the applicability of Section 11(6) of the IBC in the context of ongoing arbitration proceedings.

Overview of Section 11(6) of the IBC

Section 11(6) of the IBC states, "A corporate debtor who intends to file an application for initiating a corporate insolvency resolution process under this section may file an application before the Adjudicating Authority for initiating the insolvency resolution process." This provision grants a corporate debtor the right to approach the National Company Law Tribunal (NCLT) to initiate insolvency proceedings against a corporate creditor who has defaulted on its debt obligations. It is part of the IBC's procedural framework aimed at addressing corporate insolvency promptly.

In this case, Pitambar Solvex Pvt. Ltd. and OAgri Farms Private Limited (the petitioners) initiated Section 11(6) proceedings against their former shareholders and directors (the respondents) who had started arbitration proceedings against them. The respondents argued that the arbitration clause in the shareholders' agreement provided an exclusive mechanism for dispute resolution, suggesting that the IBC proceedings should not be permitted.

Court's Judgment

The bench, comprising Justice Neena Bansal Krishna, noted that the initiation of arbitration proceedings does not bar the corporate debtor from exploring other legal remedies, including those under the IBC.

The Delhi High Court carefully reviewed the arguments from both sides and examined the IBC and the Arbitration and Conciliation Act of 1996. While recognising arbitration as a preferred method for dispute resolution, the court emphasised that the IBC provides a specific mechanism for handling insolvency matters. It stressed that the initiation of arbitration by the respondents should not automatically preclude the petitioners from utilizing the IBC, particularly Section 11(6), to protect their interests as corporate debtors. The court noted the IBC's aim of swiftly resolving financial difficulties, which arbitration might not always achieve. The court clarified that an arbitration clause does not prevent the NCLT from considering Section 11(6) petitions under the IBC. It balanced the parties' rights and affirmed the petitioners' right to initiate insolvency proceedings under the IBC, despite the ongoing arbitration.

Justice Krishna stated, "**Merely initiation of the arbitration proceedings does not bar the corporate debtor from pursuing his other remedies including those under the Insolvency Bankruptcy Code.**"

Conclusion

In summary, Section 11(6) of the IBC allows corporate debtors to start insolvency proceedings against creditors who default on payments, even if arbitration is already underway.

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SAFEGUARDING PERSONAL DATA IN THE WORLD OF ONLINE GAMING

Introduction

The rapid evolution of data processing technologies has significantly transformed the online gaming industry, enabling gaming companies to collect unprecedented amounts of user data, often exceeding the data collection capabilities of governments. Gaming companies frequently prompt users to disclose more personal information than necessary, offering enhanced communication experiences or access to digital services and products in return.

Importance of Data Privacy

Why Data Privacy Matters in the Digital Age

In the context of the digital age, the safeguarding of data privacy has emerged as a paramount concern, necessitating stringent measures to ensure the confidentiality, integrity, and availability of personal and sensitive information. Data privacy, encompassing the prevention of unauthorized access, use, and disclosure of such information, serves as a cornerstone for the protection of individuals' rights and freedoms.

Building Trust Through Data Privacy

By prioritizing data privacy, companies not only comply with legal obligations but also cultivate a reputation for reliability and integrity, thereby fostering consumer trust and encouraging the voluntary sharing of information. This trust is critical, as the sensitive nature of the data collected, including financial records, and health information, underscores the potential risks associated with unauthorized access.

Consequences of Data Breaches

Data breaches can have severe ramifications, including identity theft, financial fraud, and even physical harm. Therefore, maintaining data privacy is integral to preventing these adverse outcomes. Moreover, data privacy fuels innovation by providing a secure environment wherein individuals feel confident in sharing their information.

The Broader Implications of Data Privacy

This dynamic underscores the broader implications of data privacy, extending beyond mere protection to encompass the influence on individual behaviour, targeted advertising, and decision-making processes affecting opportunities in employment, finance, and beyond. Consequently, the accumulation of personal data by corporations and governments necessitates rigorous oversight to mitigate the potential for abuse and to ensure that individuals retain agency over their personal information, thereby safeguarding their rights and freedoms in an increasingly data-driven world.

Data Privacy & Security in Online Games

The Growing Concern

The rapid advancements in data processing technologies within the online gaming industry have led to significant progress, allowing gaming companies to collect vast amounts of user data, often surpassing the data collection capabilities of governments. This commercial data collection, characterized by techniques such as cookie-based profiling, location-based advertising, and behavioral targeting, has become a prominent privacy issue. Gaming companies frequently encourage users to provide more personal information than necessary, promising enhanced online communication experiences or access to digital services and products.

Digital Personal Data Protection Act, 2023

While much attention has been given to regulating online gaming with respect to digital asset protection, secure payment methods, and preventing impersonation, the issues related to personal data processing, the purposes of such processing, and the sharing of data by platforms require deeper scrutiny.

The Digital Personal Data Protection Act, 2023 mandates that gaming platforms, developers, and users adhere to a structured framework governing the processing of personal data, including reviewing notices, obtaining consents, and exercising data processing rights. This legislative framework aims to balance the protection of personal data with the innovative potential of gaming platforms to offer new products and services, echoing principles of Privacy-by-Design and Privacy-by-Default.

Challenges with Parental Consent

A critical component of the DPDP Act is the requirement for data fiduciaries to obtain verifiable parental consent before processing personal data of children, defined as individuals under 18 years old. However, the Act does not define 'verifiable consent,' leading to significant ambiguity. This lack of clarity poses risks for data fiduciaries, who struggle to determine compliant methods for obtaining consent, and for data principals, who may unwittingly give unconditional consent without fully understanding its implications, thus compromising their privacy.

Ambiguity in Consent Definitions

Additionally, the absence of a clear definition complicates the processes for withdrawing consent or accessing records of past choices, undermining individuals' control over their personal information. For data fiduciaries, this ambiguity increases the risk of non-compliant data collection practices and potential regulatory actions. Therefore, a precise definition of 'verifiable consent' is crucial to ensure that both data fiduciaries and principals can navigate the consent process transparently and effectively, safeguarding privacy while allowing for continued innovation in the online gaming industry.

Responsibilities of a Gaming Company

Protecting the Privacy of Young Users

The Digital Personal Data Protection Act strictly prohibits data fiduciaries from tracking or behaviorally monitoring the personal data of children or minors, aiming to protect their privacy and well-being. This poses a challenge for platforms targeting young users, such as esports and online gaming platforms, which typically collect metadata like time spent, in-game currency usage, and playing session details to optimise marketing strategies.

When such metadata can identify users, it falls under the Act's strict regulations. This restriction hampers esports and gaming companies' ability to engage with their primary audience, predominantly aged 13-18 in India. Moreover, the need for explicit parental consent complicates matters, as repeated consent requests can lead to 'consent fatigue,' where users become overwhelmed by constant prompts, ultimately decreasing the user base for free-to-play platforms.

- **Building Trust Through Transparency**

To create a positive gaming environment, it is crucial for gaming companies to build trust with players by making their data processing procedures, privacy policies, and data-sharing practices transparent.Clearly communicating these aspects will reassure players and boost their confidence in the platform. Allowing users to customise their privacy settings and manage their information availability can further enhance trust.

- **Prioritising Ethical Data Gathering**

Ethical data gathering and usage should be prioritised. This involves explicit user consent and collecting only the necessary personal information for gaming services. Transparency in the purpose and extent of data collection is essential to complying with ethical and regulatory standards.

- **Regular Audits and Compliance Checks**

Regular audits and compliance checks can help maintain these standards and prevent unnecessary information collection. Regular penetration tests and vulnerability assessments can identify and address security gaps. Clear and understandable privacy policies and terms of service should be provided, and explicit consent should be obtained from users before collecting and using their personal information. Consulting certified privacy professionals can further enhance these practices, ensuring that gaming companies act responsibly.

Conclusion

In conclusion, while the regulation of online gaming has traditionally focused on issues like digital asset protection, secure payment methods, and prevention of impersonation, the complexities surrounding personal data processing, the purposes behind it, and the sharing of this data by platforms deserve greater attention. The Digital Personal Data Protection Act, 2023 brings these concerns to the forefront, requiring gaming platforms, developers, and users to adhere to a structured framework for personal data processing, emphasizing informed consent and transparency.

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