

# Bangladesh steps into the data protection regime

## What it means for us

**THE** jurisprudence of data protection stems from the right to privacy. Data protection and privacy are recognised as fundamental rights. An individual's "private life" includes the protection of his or her personal data. Personal data, in principle, is information that identifies an individual, or is related to the individual.

Data, in the age of the fourth industrial revolution, is considered as the new currency. The amount of data created and stored every day continues to grow at an unprecedented rate, and data-driven disruptive technologies like Artificial Intelligence, Internet of Things and Big Data are continuously challenging the legal framework in every jurisdiction.

Data protection laws by and large govern processing and handling of personal information and aim to protect individuals to safeguard their privacy and protect their personal information from being misused by others. According to Privacy International, 126 countries now have data protection laws.

Article 43(B) of the Constitution of Bangladesh safeguards citizens' privacy of correspondence and communication, but such protection would not usually extend to the breach of privacy caused by a private entity or caused through peer-to-peer data-sharing.

The basic distinction between "data" and "information" is that data is unprocessed, i.e. raw facts, texts, figures, symbols or characters. Data, once refined or processed, transforms into information, and becomes useful to users. The ICT Act, 2006 of Bangladesh was intended to provide the legal framework and recognition to digital signature, electronic records and controller of certifying authorities. It was not intended to deal with data privacy or data protection, nor does it intend to do so now. However, the government of Bangladesh has enacted the Digital Security Act, 2018, and the same was published through a gazette notification on October 8, 2018. Digital Security Act, 2018, which is commonly known as the Cyber Security Act in other jurisdictions, aims to promote confidentiality, integrity, and availability of public and private information



SOURCE: HREXECUTIVE.COM

systems and networks with the goal to protect individuals' rights and privacy, economic interests and security in the cyberspace. Therefore, the inherent purposes of the ICT Act, 2006 and the Digital Security Act, 2018 are therefore distinct.

With the enactment of the Digital Security Act, 2018, Bangladesh has stepped into the data or information protection regime. Section 26 of the Digital Security Act, 2018 defines personal data as "identity information". Section 26 requires that an individual's explicit consent or authorisation be obtained for collecting, selling, storing/preserving, supplying or using his or her identity information.

Section 26 defines any external, biological or physical information or any other information which identifies a person or system singly or jointly as "identity information". This includes name, picture, address, date of birth, mother's name, father's name, signature, national identity card, birth and death registration number, fingerprint, passport number, bank account number, driving licence, e-TIN number, electronic or digital signature, username, credit or debit card number, voice print, retina image, iris image, DNA profile, security question, etc. Collecting, selling, preserving, supplying, or using such "identity information" without the individual's explicit consent or authorisation is a *crime*, which is punishable

for a maximum term of five years' imprisonment, or for a penalty of Tk 5 lakh maximum, or both.

Consent/authorisation unequivocally is the decisive factor, as far as Section 26 is concerned, and unless consent/authorisation is expressly given by the information/data subject, processing identity information is prohibited. Section 26 appears to interpret consent "strictly", which means without consent, or once the consent is withdrawn, information cannot be used or processed. However, Digital Security Act, 2018 does not appear to contain further provisions to administer regulation of consent or processing identity information by an individual. Digital Security Act, 2018 in its preamble defines an "individual" as an organisation or public or private entity or a body created by law.

The doctrine of consent followed in various data protection regimes, including UK, EU, Canada and Australia, makes it very clear that "consent" must be voluntarily given, it must be specific, informed and unambiguous, and is subject to withdrawal by the same individual that gave the consent. Consent could therefore be conditional. Section 26 of the Digital Security Act, 2018 is therefore "the provision" that specifically governs protection of personal information or data in Bangladesh. It is the lone, yet a very powerful and persuasive, piece of law in

Bangladesh, as far as protection of information/data is concerned. It therefore would not be appropriate to be under the impression that "Bangladesh does not currently have a specific law to govern protection of personal information or data."

Section 26 can have an immense impact in Bangladesh's digital economy, especially the telecommunication, e-commerce, banking and fintech industries. Companies in these industries handle a huge amount of customer data in electronic or digital form every day. Besides, there are entities that collect customer information/data. This information/data is mostly customer names, their cell phone numbers and email addresses that are regularly shared with various entities for sending bulk SMSs, phone calls and emails for marketing purposes. Post-enactment of the Digital Security Act, 2018, telecommunication, e-commerce, and fintech companies, banks, third parties and other entities now must obtain authorisation or consent, from the individuals (principal) whose identity information/data they are handling, or are required to revalidate their respective privacy terms and conditions in order to comply with Section 26. Breach or non-compliance of Section 26 could trigger potential criminal liabilities against such entities. Breach could result from absence of consent or for breach of any conditions of such consent too. Any pre-executed privacy policies or privacy terms and conditions must now be construed in accordance to Section 26(1), to ensure that an individual's identity information is used lawfully, and for the purpose it was collected for.

It is also important to note that mere existence of any privacy policy or terms and conditions executed in the form of a contract prior to or post-enactment of the Digital Security Act, 2018, cannot oust the jurisdiction of a criminal court in cases where Section 26(1) is breached.

Nonetheless, the government, as a matter of fact, is going to frame rules (supplementary regulations) pursuant to Section 60(1) and (2) of the Digital Security Act, 2018, which is expected to address the breadth of issues related to information/data regulation, including categorisation of personal information/data, defining sensitive personal information/data, manners for processing information/data and exemptions thereof, duties of the information/data

fiduciary, procedure for preserving information/data, rights of the information/data principal, procedure and conditions for obtaining and revoking consent, procedure for executing the right to seek remedy in case of breach, etc.

The need for framing rules or supplementary regulations is significant, considering the fact that we generate a huge amount of information/data in Bangladesh every day, and such information/data can be used for data analytics which could help us in many facets including designing new products or services, solving various problems that we experience in our daily social lives, improving healthcare services and traffic systems, combating crimes, managing supply chain efficiently, handling manufacturing process more robustly, transforming the agriculture eco-system, maximising earning foreign currency by exporting information/data and so on. A comprehensive set of regulations therefore could go a long way, but without such supplementary regulations, Section 26 could turn into a terrifying legal threat.

In recent times, we saw how Pathao, one of the leading ride-sharing companies in Bangladesh, was accused of extracting data without authorisation from the smartphones of customers who had downloaded the Pathao app, and daraz.com, one of the leading e-commerce platforms in Bangladesh, was issued legal notice for using an individual's email address (identity information) without his consent. We, therefore, cannot rule out the possibilities of experiencing more aggravated legal actions in the coming days, in the absence of comprehensive regulations to address the dynamics of the information/data driven society that we now live in.

However, during the pendency of the enactment of such rules or supplementary regulations, if circumstances demand, the judiciary reserves the discretion to interpret Section 26 on the basis of the jurisprudence of data protection law followed in various common law regimes, in line with the legislator's intention, preamble of the Digital Security Act, 2018 and the heading of Section 26.

Barrister ABM Hamidul Mishbah is the managing partner of Old Bailey Chambers and a practising advocate at the Supreme Court of Bangladesh.

# In the age of massive global changes

**F**UNDAMENTAL changes are taking place in the international system at a rapid pace. As a matter of fact, more changes have taken place in the world in the past 20 years than in the previous 200 years.

These changes are all-encompassing and span many spectrums, including geostrategic, political, economic, societal, and more.

A significant change is taking place in the geostrategic space; we are witnessing the rise of new powers. The rise of the East has brought forth new economic powers like China, regional powers such as India, and power blocs like those of Brazil, Russia, India, China and South Africa (BRICS). This transformation has also brought forth geo-maritime strategies like the Belt and Road Initiative (BRI) and the Indo-Pacific Strategy (IPS) which can prove to be competitive, and even confrontational. We are indeed in a moment of transition: from a unipolar to a multipolar world.

In the political arena, this shift has been towards the exercise of rights and increased political aspirations and has seen the birth of liberal democracies. With the state gradually losing its monopoly over information, we saw the rise of civil society. All this, however, is under threat as we are now witnessing the rise of nationalism and chauvinism all over the world. This has also given birth to more authoritarian regimes such as those in Turkey

and Central African Republic and the growth of hybrid democracies like in Cambodia. Rapid transformation in the economic realm has brought forth benefits of globalisation and market mobility has opened up enormous opportunities for people. At the same time, it has also invited gross income inequality which has sowed the seeds of discontent amongst people throughout the world. Therefore, we are now seeing increased pushback in the form of protectionism, illiberal democracies and trade wars.

Perhaps, one of the most volatile arenas of change has been in the field of environment and climate change. As human-induced conditions continue to trigger global temperature rise, the risks of food, water, health and livelihood insecurity are being heightened. One of the most significant resultant impacts of climate change will be large-scale displacements of populations. The certain possibility of rising sea levels will further aggravate the situation. As more and more lands are lost to the sea, millions of people will become climate refugees, causing social upheaval and even inter-state conflict.

We are also at a moment of transition when it comes to energy since we are trying to move away from fossil fuel dependency to a non-carbon economy. There is thus the possibility of wide-scale transformation in the energy sector with cleaner, renewable energy now being a priority. This is not an easy transformation and, if not managed well, it might cause massive socio-economic disruptions.

Some of the most exciting changes that are



A supporter of Jair Bolsonaro wears a mask of Donald Trump as he celebrates after Bolsonaro, the far-right populist leader, won Brazil's presidential election on October 28, 2018. Bolsonaro has openly expressed admiration for Brazil's military dictatorship which ruled the country from 1964 to 1985.

PHOTO: MIGUEL SCHINCARIOL / AFP

happening are in the field of digitalisation. It has touched all aspects of our lives, including the structure of governance and states. Access to digital technology has never been this prevalent; today, over three billion people in the world carry a "super computer" in their pocket in the form of a smartphone. New technologies being created by Artificial Intelligence, robotics, Big Data, etc., will completely change the way we live, communicate, educate and even the way we

think. It is indeed a "GAFA" (Google, Amazon, Facebook and Apple) world, but this will also come at a cost in the short run as these emerging technologies of the fourth industrial revolution will take away our known skills, expertise and our jobs. If we are able to adapt well and re-skill ourselves, and rethink how our societies can function, the number of new opportunities will be greater than those we will have lost.

At a social level, we are seeing major

transformations when it comes to women's empowerment—the #MeToo movement being a good example. These transformations have brought forth new opportunities for women around the world. Societies that continue to deny this opportunity to women will only do so at their own peril.

On the demographic front, the changes are equally massive. On the one hand, we are seeing a rapid increase in the global population with almost 83 million people being added to the world population each year, and the presence of the youth bulge in many countries in the developing world, on the other. At the same time, the world is witnessing declining populations in countries such as Russia and Japan.

A changing world creates both risks and opportunities. In the age of the fourth industrial revolution, advanced technology and globalisation are unleashing a period of unprecedented innovation that could alter our work, lives and the "known world". There are some countries that are trying to resist these seismic changes, but there are also others that are embracing this transformation and the potential to design and build a safer, smarter, healthier, and a more sustainable world. I certainly believe Bangladesh should be in the latter category so that we can build a better country for the future generations.

Major General ANM Muniruzzaman ndc, psc (ret'd) is the president of Bangladesh Institute of Peace and Security Studies (BIPSS). This article is based on the keynote speech delivered by the writer at the Harvard Conference on International Affairs held recently at Harvard University, USA.

### A WORD A DAY

### HOMOPHONE

NOUN

Each of two or more words having the same pronunciation but different meanings, origins, or spelling.

### CROSSWORD BY THOMAS JOSEPH

**ACROSS**

- 1 Lends a hand
- 6 Lockups
- 11 Turn away
- 12 Slangy denial
- 13 Sorceress of Greek myth
- 14 Invitation to a hitchhiker
- 15 Weary sigh
- 17 Poem of praise
- 18 Exactly
- 22 Corned beef dish
- 23 Young hooters
- 27 Zodiac ram
- 29 Party prep
- 30 Cover, as expenses
- 32 Skin woe
- 33 Had bad posture

**DOWN**

- 1 Deli meat
- 2 Second person
- 3 Went first
- 4 Ministers
- 5 Celery serving
- 6 Some puzzles
- 7 Hatchet's cousin
- 8 Obsessed with
- 9 Pleased down--
- 10 "Auld Lang--"
- 16 Commotion
- 18 Herring's kin
- 19 Stallion's mate
- 20 "Like that'll happen!"
- 21 Sports seating
- 24 Engrave
- 25 Melody
- 26 Went fast
- 28 Sockeye and coho
- 31 Second person
- 34 Grammar topic
- 35 Blue hue
- 36 Young seals
- 37 Essence
- 40 Low digit
- 42 Used a chair
- 43 Low digit
- 44 Score amts.

Write for us. Send us your opinion pieces to [dsopinion@gmail.com](mailto:dsopinion@gmail.com).

**YESTERDAY'S ANSWER**

SCRAP SAGAS  
PROSE OPERA  
ROSIN TENET  
UNCAPS ONA  
CEO OTTOMAN  
ESE IRENE S  
TARTUP PAR  
PICASSO AMI  
ERA SITSON  
RADIO NOTES  
LEANS SNEAD

### BEETLE BAILEY by Mort Walker

LOOK! I'VE RE-DECORATED OUR WHOLE BEDROOM!

GREAT! I COULD USE A NAP!

WHOA! GET BACK! DON'T MESS IT UP!

### BABY BLUES by Kirkman & Scott

NOW FOCUS, WANDA.

THINK OF SOMETHING THAT MAKES YOU REALLY ANGRY, AND TAKE IT OUT ON THE BAG!

HARD WATER SPOTS ON THE GLASSWARE!

WHAM!

OKAY THEN...

IF I HAD PICTURED COMMON CORE MATH HOMEWORK, I COULD'VE PUT THAT SUCKER THROUGH THE WALL.