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Right to privacy in Bangladesh in the internet era

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Not too long ago, only the big-budget studios could afford to create movies using this technology. Back in 2015, the face of Paul Walker was superimposed on his brother to imitate the deceased actor in Fast and Furious 7.

An American director ventriloquized and created a photorealistic fake video of Barack Obama cursing and calling the then President Donald Trump a “total and complete dips—” in 2018.

While deepfake content was initially only about public figures, nowadays it is being used by and against ordinary people. Many consumer applications offer advanced functionalities like face swapping, lip-syncing, puppet-mastery, attribute synthesis and audio manipulation.

Now, with these readily available software and mobile applications, even a 14-year-old in his mother’s basement with a smartphone can create fabricated content.

For privacy advocates and policymakers, access to these tools in the consumer market rings alarm bells. In many countries, this technology is already being used to create non-consensual pornographic deepfakes (of both celebrities and regular folk).

In Bangladesh, using this technology for political satire, spreading misinformation on the internet and cyberbullying is gaining traction.

In an era of unmoderated social media interactions and unrestricted access to online content, the multifaceted ramifications of this technology include reputational damage, psychological trauma, law enforcement risks against victims, intellectual property rights violation, political scandals, and creation of a shadow market for false identity and pornography.

In Bangladesh, while the Digital Security Act, 2018, and Pornography Control Act, 2012 criminalises impersonation and pornography, these laws are not fit-for-purpose in counteracting deepfakes and other emerging internet crimes.

In fact, most other countries are yet to implement effective laws to insulate victims from such invasive privacy violations. In several jurisdictions, defamation lawsuits and privacy tort are the main recourse.

However, trials are fraught with evidential issues, and there is a dearth in qualified lawyers and forensic experts,

citizens’ privacy rights.

In 2019, the High Court Division of the Supreme Court of Bangladesh in The State v Oli took cognizance of the fact that private conversations are frequently intercepted, recorded and leaked without the consent of the concerned individuals, and reminded the Bangladesh Telecommunication Regulatory

Under the proposed law, data localisation (i.e., a requirement to store data in servers and data centres located in Bangladesh) will be compulsory.



ILLUSTRATION:
STAR

Commission of its “great responsibility towards proper compliance of the constitutional mandate of maintaining privacy in communication.”

Earlier in 2016, another court in Aynunnahar v Bangladesh observed that the “right to privacy is an essential foundation of the freedom of dissent. So this right cannot be undermined in the name of surveillance.”

More recently in August 2021, a trial court in Jhenaidah reportedly rebuked a

and oftentimes the creator of the content cannot be located. Most importantly, a trial can be perverse to the victim’s privacy, as the public and media will have full access to materials and evidence submitted to the court.

So, what’s the solution?

Put simply, proactive judicial intervention and enactment of data privacy legislation is the answer.

Bangladeshi courts have, every now and then, been vocal advocates of the

civil servant for confiscating the mobile phone of a private citizen and reading his messages, observing that as the messages were sent over an end-to-end encrypted private messaging application, his action was tantamount to an infringement of privacy rights.

However, such judicial interventions are few and far between, and there is no landmark judgement on privacy, or on conflict between privacy and press freedom, and hence there is a strong case for judicial engagement in the development of privacy jurisprudence in Bangladesh.

There is an equally strong case for introducing tort of invasion of privacy in order to provide victims financial remedies. For the foreseeable future, the lawyers and judges are probably best suited to create creative solutions to these complex problems as they come across their desks and dockets.

On the legislative front, given the amount of data being generated, collected, processed and stored continues to increase exponentially, it is an opportune time for the parliament to enact a data privacy law. Since 2020, the government has reportedly started drafting a new data protection legislation.

However, there are indications that in crafting this legislation, the government is taking into consideration factors that are extraneous to the protectionist architecture of the law, and commentators were quick to point out shortcomings on some very crucial issues.

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