

LAW REVIEW

# LOCALISATION OF DATA A threat to citizens' right to privacy?

One of the main arguments for data localisation is that Bangladeshi citizens' sensitive data should be stored within Bangladesh. It is necessary to ensure users' rights as well as to safeguard government's jurisdiction over data produced in its territory. However, these measures have raised concerns among citizens who fear that they could be used to limit free speech and access to information

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Data, more specifically private data, on digital platforms has put a great impact towards the technological advancement over the last decade. Most of the data is now controlled by a few giant tech companies resulting in the monopolisation of data. Many countries are, however, adopting laws regarding data localisation.

Data localisation means regulating and controlling its citizens' data within the territory of the originated country before transferring the same overseas. Laws on this are special regulations enforcing how data can be processed and transferred in a certain territory. The argument behind data localisation is to increase a country's ability to regulate data flow and ensure data security.

More than 100 countries now require their internal data stored in servers physically located inside their borders. The proposed Data Protection Act, 2023; and the Bangladesh Telecommunication Regulatory Commission Regulation for Digital, Social Media, and OTT Platforms, 2021 are some of many efforts to protect citizens' information against big fishes.

However, experts fear that these initiatives are a legal way to nose out personal data and enhance the surveillance capabilities of law enforcing agencies. One of the main arguments for data localisation is that Bangladeshi citizens' sensitive data should be stored within Bangladesh. It is necessary to ensure users' rights as well as to safeguard government's jurisdiction over data produced in its territory. However, these measures have raised concerns among citizens who fear that they could be used to limit free speech and access to information.

December last year, Information Technology & Innovation Foundation (ITIF) confirmed that "a one-unit increase in an industry's data restrictiveness is associated with a 0.5 percent decrease in the following year's trade – including a 0.6 percent decrease in imports and a 0.9 percent increase in import prices". "After five years, restrictive data policies will reduce Bangladesh's volume of trade by 6 percent", the ITIF reported.

The proposed Data Protection Act of 2023 contains some sections which elaborate on the concentration of power and give indemnity to the proposed Data Protection Agency. Although terminologies such as 'data', 'biometric data' and 'health data' are defined, the proposed law does not define the personal



data directly and there are no provisions for its protection. There is also no mention of privacy of personal data and the standards of privacy on the storing of personal data in the proposed law.

According to section 10, the data relating to national security, crime prevention, inspection and investigation can be collected by the authorised person. It apprehends that the data production institutions/servers and the NGOs will be bound to share their data with the government. Section 49 states that if someone violates any provision of this Act or any right of data subject, a complaint be filed to the Director General (DG) of the proposed Data Protection Agency.

To seek remedy for the violation of privacy, there is little to no chance to go the court under the proposed law. Section 33 empowers the government to exempt any Data Controller or data processing activities from the obligations under the proposed law, including the power of further exemption. Section 34 tells that the government may, by notification published in the official gazette, exempt the application of any provision of this Act too. According to this proposed law, the DG of the Data Protection Agency can order the data subject to collect any sort of data and the concerned person will be bound to provide the data. If this proposed law is passed without any modification, it

will be a serious threat to the protection of personal data.

As data is very important, Bangladesh being an independent and sovereign country has the full right to control its own data which originates/originated in its own territory. If we cannot control our own data, this will go against our own national interest. Foreign companies will trade by using our data against us. For that, we need collective efforts between the state and the stakeholders of the data. Our legal system relating to storing and controlling data should be updated. Relevant intuitions should be functional following the best practices of the world. Awareness among the people must also be increased so that the government and its agencies cannot play with our personal data/privacy.

Data localisation laws around the world are evolving every year, and the IT operators as well as individual users should follow them. They are not as disruptive for businesses as they may seem at first sight, so it is possible to continue doing business without breaking them. Therefore, while data localisation can benefit data security, it is essential to implement it in a way that protects citizens' right to privacy and ensures free speech as well as access right to information.

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RIGHTS ADVOCACY

## The legal conundrum of male rape

MD. EMTIAZ HUSSAIN

In 2019, a 45-year-old man was gang-raped in Gazipur while the rapists videotaped it and blackmailed him for 2 lakh taka. Afterwards, the victim committed suicide without seeking any legal remedy. Sexual harassment remains a pervasive and alarming issue in Bangladesh, with many victims reluctant to report their experiences due to cultural and social obstacles. Although most victims are women and children, it would be impractical not to address the male victims of sexual harassment as well. Regardless of the low number of reported cases, the rape of adult men is not a new phenomenon in the country. The idea that men can be raped is not widely recognised. A 2013 study by the United Nations found that 2,374 male-on-male rape occurred in Bangladesh. Ten years later, the subject is still so taboo that it is difficult to get precise data on it.

This problem is exacerbated by our legal system, where there is no such thing as male rape. According to section 375 of the Penal Code of 1860, only rape of women by men has been made a punishable offence. Though male children under the age of sixteen can seek remedy under the Nari O Shishu Nirjatan Daman Ain of 2000, the legal resolute to adult male rape is non-existent.



ILLUSTRATION: KAZI TAHSIN AGAZ APURBO

**Numerous countries have recognised that males can be victims of rape, including the USA, Canada, and Australia. Male rape has been recognised as a crime in the UK since 1994. In 1995, 150 cases of male rape were reported in England and Wales. In 2004-2005, ten years after the introduction of the law, reports of male rapes increased sevenfold to 1135.**

Male victims, however, can file a case under section 377 of the Penal Code in case of rape of men by other men. But the section itself talks about unnatural offences and was introduced during the British period to establish Victorian principles and condemn homosexuality. It is apparent that the provision does not sufficiently cover male rape. Also, sexual assaults of transgender people are not addressed by this provision. Last year, following a writ petition, the High Court Division of the Supreme Court of Bangladesh questioned why the definition of rape in the Bangladesh Penal Code has not been amended to provide legal protection for both male and female victims. However, there has not been any progress on the matter since then.

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There is a stereotypical belief that "real men" are tough and can defend themselves, and those who cannot protect themselves are not men enough. This type of perception makes victims more afraid to open up. They fear societal perceptions of their sexual orientation and masculinity. Most of the victims blame themselves as if it was their fault. In most cases, it remains a long-term trauma for the victims.

Even those countries in the world where the legal system is considered to be very advanced are struggling to reduce male rape. Despite the recognition, it remains taboo, and stigma and discrimination against male victims persist. Recognition of male rape is the first step in solving the problem. Legislative bodies should focus on making rape laws gender-neutral instantaneously. We need to reform section 375 of the Penal Code. Offenders and victims should be defined as 'persons' instead of using gendered pronouns. It should be recognised that not only men or women, but transgender people can also be the victims of sexual harassment. As there are already several instances of male rape, the concerned authority needs to work on improving the mental health of the victims. Like in developed countries, an independent sustainable institution can be considered for their mental health in Bangladesh.

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FOR YOUR INFORMATION

## Mobile Financial Services (MFS) regulation in Bangladesh

AKASH GUPTA & PARBAN CHARMA

Mobile Financial Services (MFS) generally refers to electronic money services provided against a particular mobile or cell phone number of a client (termed as mobile account), where the record of funds is stored on the electronic general ledger. MFS and related Fintech companies are regulated by the Mobile Financial Services (MFS) Regulations of 2022 formulated by the Bangladesh Bank. In India, on the other hand, the industrial ordinances are relatively scattered, and are regulated and managed by a plethora of Reserve Bank of India (RBI) ordinances.

With several amendments over the years, the MFS Regulations have now come close to achieving the intended regulatory goals but have taken so much time owing mainly to Bangladesh's demographic constituency. More than 60% of Bangladesh's population, close to 100 million people, belongs to rural areas. Out of this, nearly 35 million people do not have a bank account and are not a part of Bangladesh's formal economy. This results in bad on ground tech infrastructure, people having extremely low credit scores, and lack of general technological literacy.

On the other hand, Bangladesh's MFS industry lacks interoperability, meaning digital wallet users cannot transfer money to the wallets of other service providers. The country's localised approach features many in-house brands, creating a need for an interoperable system. Currently, only users with the same digital wallet can transact with each other, while bank-to-bank transactions are interoperable. Bangladesh needs a national payment switch to enable interoperability, as in India's Unified Payments Interface (UPI)



transactions.

Furthermore, Bangladesh lacks infrastructure and data in the financial sector, making introducing fintech services to its skeptical rural population a huge challenge. A solution could be implementing a Regulatory Sandbox similar to the one released by the RBI in 2019, to test and deploy financial services safely and efficiently. The Sandbox enables regulators, innovators, financial service providers, and customers to evaluate the feasibility of their products, including financial advisory services, smart contracts, cybersecurity products, and AI and ML applications.

India's UPI has seen rapid growth due to the India Stack, a set of Application

Programming Interfaces (APIs) that provide a digital infrastructure for presenceless, paperless, and cashless service delivery. The stack has four layers: Presenceless (digital identification system like Aadhar Card), Paperless (e-KYC), Cashless (UPI Payments), and Consent (privacy data sharing). Bangladesh lacks a widely accepted e-KYC (electronic Know Your Customer) system and a UPI, and its population is largely technologically challenged. A regulated Depth First Search (DFS) seems to be the way forward.

Bangladesh also lacks strong settlement regulations for digital money transfers, which leads to abundant financial fraud over tech platforms with

no recourse for customers. The lack of a robust customer identification system makes it difficult for law enforcement agencies to apprehend criminals. Unlike India, there is no safety mechanism for customers to get recourse to such actions. Currently, the MFS providers cannot be held responsible if a sender transfers money to an incorrect number, and customers are responsible for any erroneous transactions.

It needs to be emphasised that MFS is a new phenomenon in Bangladesh. However, if we implement the proposed changes, we can eliminate most of the shortcomings.

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