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STOLEN FACES, SILENT VIOLATIONS: DEEPPAKE TECHNOLOGY AND THE CONSTITUTIONAL CRISIS OF CONSENT

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INTRODUCTION

The face is not only a significant aspect of someone's identity now in the digital era, it is data. Artificial intelligence is now able to manipulate a facial image or a voice via the power of Artificial Intelligence to produce hyper-realistic fake content, such as a smile captured on a photo, a voice captured on a video or a facial expression uploaded on social media. A technological “experiment” that seemed to be part of the future rapidly has become a legal and constitutional issue. The perpetration of any image or video that is manipulated or fabricated is another problem that is far more dire: the loss of the consent, dignity, and personal autonomy of the individual.

The deepfake technology employs artificial intelligence and machine learning to produce fake (but very realistic) sound and visual images of people. At first, it was created as a novelty and a means of inspiring innovation; now it is increasingly being used with the intent to harass, misinform, use for political manipulation, and for digital exploitation. The advent of the deepfake in India has brought in lacunas in the legal system especially regarding the constitutional safeguarding of privacy and dignity as enshrined in Article 21 of the Constitution.

THE HUMAN COST OF DEEPPAKES

Dangers of deepfakes extend beyond technical – they are humanity related. It is common for victims to find videos or pictures made of them that they didn't see, or consent to, online. Not only is their face overlaid on pornographic content or images, but it's even been used with other individuals in that content, including women, journalists, public figures and even everyday internet users.

These acts not only hurt the reputations, but they cause psychological trauma, humiliation, anxiety and social isolation. There is complete loss of control of victim's identity in many cases. This hurt is exacerbated as the person being portrayed was not involved in the act which they are depicted as, and society often believes that this is a real event. In many instances, the Internet becomes a permanent place of victimisation and content removal is hard, slow or even impossible.

DEEPAKES AND THE CONSTITUTIONAL RIGHT TO PRIVACY

It's easy to see that the implications of deepfakes for the constitution are significant. Indian constitutional law has always evolved to include the right to privacy, dignity, autonomy and that of bodily integrity within the purview of Article 21. In Justice K.S. Puttaswamy v. Union of India, Article 31 of the Constitution was interpreted to include privacy as a fundamental right, which is at the core of life and personal liberty.

Not only was privacy limited to physical spaces, but it was also limited from the very beginning. The Supreme Court acknowledged the informational privacy, which was the right for individuals to control the dissemination and use of their personal information. This is undermined in the case of a deepfake, as the need to give individuals control over their own identities, image and voice in digital space is shown to be violated by deepfakes.

Photographs or videos can be posted willingly online, but it is not implied consent for artificial intelligence systems to manipulate and/or commercially exploit the persons depicted in these images. In constitutional context, consent is not just a matter of formality – it is a statement of freedom and of choice. The principle is violated with deep fake technology, as it makes fake representations and images without consent.

THE CRISIS OF CONSENT IN THE DIGITAL AGE

The basis of the liberty and dignity of every person is their consent. While a person can give permission for his or her image to be uploaded online, it is impossible to predict what other kinds of face, voice or likeness will be created in the future.

This leaves a perilous situation in the courts. An image/video that was manipulated can be technically “fake” but the harm has been done to the victim is very real. Deepfakes are so convincing that victims are often left with no choice but to fight back for behaviours that they didn't perpetrate.

When it comes to women and minors, it's a serious worry. The use of non-consensual explicit deepfakes is a contemporary new way to sexually assault another person. The violation does not matter less due to lack of physical contact as the injury is the invasion of the dignity, privacy and identity without permission.

THREAT TO DEMOCRACY AND PUBLIC TRUST

Deepfakes can be used for non-exploitative purposes, too such as harming democracy. AI can create fake political speeches, fake public figures interviews or manipulated videos of public figures. When content is politically charged or during an election, it can quickly get to people before it's proven to be accurate and misinformation may get to them first.

This results in a constitutional issue, not only with respect to the individual rights of people but also in terms of their collective rights. Informed participation of the public is essential and trust in information system is crucial for the viability of democracy. If citizens cannot tell when something is true or false, then the integrity of the discourse of democracy is endangered.

With the emergence of deepfakes, free speech is being challenged, electoral integrity is at stake, and the manipulation of public opinion in digital society has become a problem.

LEGAL CHALLENGES IN INDIA

Currently India does not have a specific law dedicated towards regulating deepfake technology. Presently, the Information Technology Act, 2000, the Bharatiya Nyaya Sanhita, and intermediary guidelines offer little in the way of compensation or relief for the infringement of freedom of information, as these provisions only address instances of obscenity, defamation, impersonation and cybercrime.

But these laws were left in place before the advent of the sophisticated generative AI technologies. Consequently, they are unlikely to effectively compensate for the specific damages to be caused by deepfakes. The victim has often to go through lengthy court proceedings, and manipulated content is disseminated across digital channels.

However, there are signs of recognition by Indian courts of the seriousness of violations of such a nature. In recent cases pertaining to the misuse of identity and likeness by AI, the Delhi HC has recognised that the unauthorised digital exploitation could be a violation of personality rights and privacy.

THE NEED FOR A STRONGER LEGAL FRAMEWORK

India is in a dire need of a thorough legislation regarding deepfakes and synthetic media. Laws need to differentiate non-consensual deepfakes from other forms of digital manipulation and clearly identify non-consensual deepfakes as a violation of digital dignity and identity rights.

But legal action should be balanced, avoiding the use of regulations as a mechanism for censorship and suppression of legal artistic or political expression. The challenge is to safeguard constitutional freedoms, as well as constitutional dignity.

Remedies: Victim-centred also essential. By ensuring victims have speedy takedown mechanisms, mental health support, compensation systems and the use of better cyber investigation units, the long-term harms that victims suffer can be mitigated.

CONCLUSION

The deepfake issue indeed puts society in a dilemma: whose is the human identity in the era of AI? With the ability of technology to perfectly mimic faces, voices and emotions, constitutional safeguards have to adapt to protect digital selves as well as physical ones.

The clash over deepfakes is about much more than technology – it is about humankind. Every stolen face is a stolen face of a real person to whom his or her dignity has been violated, his or her autonomy has been neglected, and his or her consent has been taken and his or her voice has been silenced. However, with AI increasingly making distinctions between fact and fiction it is important the Constitution continues to be a living document which protects the dignity of the human person in physical and virtual spheres.

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