

LAVin-depth

BANGLADESH TELECOMMUNICATION (AMENDMENT) ORDINANCE, 2005

National security or infringement on civil rights?

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PRIVACY is a fundamental human right. It underpins human dignity and other values such as freedom of association and freedom of speech. It has become one of the most important human rights of the modern age. Privacy is recognized around the

day, previous proposals were re-introduced, and new policies with similar objectives were drafted to extend police surveillance authority. Five years on, the political landscape has shifted significantly in many, if not most, countries.

The policy changes were not limited to the United States, as a large number of countries

so as to combat 'terrorism'. In that view "Bangladesh Telecommunication (Amendment) Act 2006" has been passed in the parliament. According to the said act, some amendment was made in the earlier Telecommunication Act 2001. Section 97 A has been inserted in addition to section 97 of the Act which states that for the security of the state and public tranquility, the Government can empower any of its agencies to record, prevent and collect information regarding communications made by any person through telephone. This section also states that the Government can order any service provider for assistance and in that case the service provider shall be bound to assist the Government. Section 97 B of the Act states that any information collected under section 97A shall be admissible under the Evidence Act 1872 and section 97C deals with punishment of anybody who does not comply with the order under section 97A.

Therefore present situation is that the Government (Ministry of Home Affairs) is entitled to tap any telephone line of any person if it so desires without any prior warrant or order of any court and collect information, which can be used as evidence. Telephone tapping and collecting information from the conversation of two individuals is an infringement of fundamental rights. This is a violation of the right to privacy and Article 43 of the Constitution which states that "Every citizen shall have the right, subject to reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health- (a) to be secured in his home against entry, search and seizure and (b) to the privacy of his correspondence and other means of communication."

The legislature without considering the impact and its validity under the constitution has passed the Act. Almost every country that changed its laws to reflect the environment following September 2001 increased the ability of law enforcement and national security agencies to perform interception of communications, and transformed the powers of search and seizure, and an

increase in the type of data that can be accessed. However, there are certain procedures to be followed under those laws. Unfortunately, in the case of this new law in Bangladesh, such indiscriminate power as provided in this Act to tap any telephone line without any warrant or order from court is beyond the limit of reasonableness.

In the United Kingdom it is an offence for any person intentionally, and without lawful authority, to intercept any communication in the course of its transmission through a public telecommunication system and - except in specified circumstances - through a private telecommunication system. This offence is established under the Regulation of Investigatory Powers Act 2000 (RIPA). The procedure to be followed and the information to be provided when seeking an interception warrant from the Home Secretary are set out in 'The Interception of Communications Code of Practice'. An interception warrant can only be issued if the Home Secretary believes that it is necessary for a reason relating to national security, serious crime or the economic well-being of the UK (the 'stated reasons') and it is proportionate in the circumstances. As well as balancing the intrusiveness of the interception against the operational need for it, the Home Secretary must consider whether the information sought could reasonably be obtained by other means. The Code of Practice also includes special rules regarding 'collateral infringement of privacy'.

Tapping a telephone does not only infringe the privacy of the person who owns the telephone, the interception subject it also affects anyone who calls or is called by that person. If communications relating to medical, religious, journalistic or legally privileged material are likely to be involved, the application for an interception warrant should draw attention to this as it will give rise to an unusual degree of collateral infringement of privacy. This is to be taken into account by the Home Secretary when considering the application.

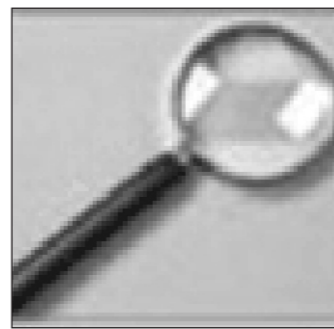
The legislature in Bangladesh before enacting the act did not consider its practical aspect. There are approximately 6 to 7 million

mobile phone users in the country, which means on an average 1 to 2 million cell phone calls are made each day. Considering this it is not practically possible to record all these telephone calls each day. Then the very object of the Act to provide the law enforcement agencies credible information is not feasible. The probability of obtaining significant information regarding any crime or anti state activities is one in a million.

Another aspect of the Act is that it is absolutely silent about privileged communication. What if the communication is made between a lawyer and a client or a doctor and a patient? Communication between a lawyer and his client is privileged communication and it cannot be used as evidence in any court of law. But the Act has explicitly stated that the Government has the power to record, prevent and collect information regarding communication made by any person through telephone and this recorded communication shall be admissible under the Evidence Act 1872. Furthermore, the Act is also silent about voice identification.

It is apparent that this act will be a new tool for the government to invade the privacy of the general people. Yet again the Government has enacted a law that will be used as a political weapon to harass political opponents and general people alike. The Government has taken all sorts of preparations to invade privacy by telephone tapping and thereby crossing the line of decency of human dignity. In a way the Government is trying to manipulate state mechanism over others. These were the practices of Military regime in the then Pakistan and during the Martial Law Administrators in Bangladesh. It is quite undesirable act from a democratically elected government to frame such an abusive and ill motivated legislation which has given the law enforcing and intelligence agencies a license to invade privacy of its own citizens.

The desirability of the Government monitoring communications, whether permitted by law or not, is a common debate. Privacy primarily relates to government actions not private actions. Human



rights guarantees do not impose broad obligations on governments to protect individuals against possible invasions of their privacy by other individuals. However Constitutional and international guarantees require that restrictions on freedom of expression, even in the interests of privacy, must meet a very high standard of legality and necessity. Governments in many countries are given powers to breach privacy. This is often done during criminal investigations, where police are permitted to seize private property from a suspect's house. Telephone tapping, where all information being transmitted over a phone line is secretly monitored, is often permissible for Law Enforcement Agencies although it requires permission from a court or proper authority subject to some restrictions.

The present Telecommunication (Amendment) Act 2006 has provided the Government irrational power to invade privacy of the people. It is obvious that this newly enacted Act will be another mechanism for the Government to use it for political oppression. But as human rights defenders it is our duty to stand against such irrational actions of the Government.

The author is a researcher and working with Odnkar.

UN reform



UN HUMAN RIGHTS COUNCIL

Bangladesh's pledge for the membership: The question of credibility

AHMED SAYEED

After the swift funeral of the stinking 'UN Human Rights Commission', a new council is being formed with the name of 'Human Rights Council'. The 191 Member States of the United Nations will vote on 9 May to elect the 47 members of the Council.

A total number of thirteen members are to come from Asia. Many of the Asian states like Bangladesh, India, Pakistan, China, South Korea and Japan have already publicly declared their interests as potential members of the new HR Council. As required by the General Assembly Resolution on the Council (A/60/251, paragraph 8), Bangladesh has made a 17-point public pledge to support its candidacy. But the pledges made by Bangladesh falls short of substantive steps forward to ensure effective promotion and protection of human rights domestically and internationally. Let's look at some of the points of the document (PMBNY/Elections/HRC/06, New York, 13 April 2006) and compare it with the ground reality.

In pledge no 5, it has been mentioned-'Remain prepared to be reviewed under the universal periodic review mechanism'

In Pledge no 9, Bangladesh has mentioned-'Strengthen its efforts to meet its obligations under the treaty bodies to which she is a party'

Bangladesh is making such commitment when seven of her reports are overdue. Following chart will show the details -

Treaty	Type of report	Number of years overdue
ICCPR	Initial report	5 (due November 2001)
ICESCR	Initial report	6 (due June 2000)
TCERD	12th periodic report	4 (due July 2000)
	13th periodic report	2 (due July 2004)
CAT	Initial report	7 (due November 1999)
	2nd periodic report	3 (due November 2003)
CEDAW	6th periodic report	1 (due December 2005)

In pledge no 11, Bangladesh committed to 'Continue to cooperate with the special procedures and mechanisms of the'

The reality is quite contrary with this claim. The Special Rapporteur on the right to freedom of opinion and expression made her request in 2003 and the Special Rapporteur on adequate housing in 2005 for country visit, which are still pending.

Bangladesh is still in the place to ratify the two optional protocols to the ICCPR (individual communications and abolishing the death penalty), Declaration under article 14 of CERD, Declaration under article 22 of CAT (both on individual communication), ILO Convention 138 (Minimum Age Convention). Moreover Bangladesh did not make any pledges to remove the present reservations. Bangladesh has made reservation on Article 14, ICCPR (no trial to be permitted in absentia), Article 2 (principles of non discrimination and elimination of discrimination against women) and 16 (c) of CEDAW, Article 14 (freedom of thought, conscience and religion) and Article 21 (procedures for the adoption of a child) of CRC Bangladesh did not pledge to support any new treaties. To prove its strong commitment to the promotion and protection of human rights it should commit itself to the speedy approval of the draft Convention for the protection of all Persons from Enforced or Involuntary Disappearances and the draft Declaration on the rights of Indigenous Peoples which are on the table for a couple of years.

Many countries have issued stronger commitments that they will undertake as a member of the council, such as:

- Issuing standing invitations to the Special Procedures;
 - Improving opportunities for contributions to the Council by NGOs;
 - Ratifying all core human rights treaties;
 - Submitting the reports to the Treaty Bodies within the deadline and ensuring the follow-up to the recommendations.
- Will Bangladesh go for similar type of commitments, which have substantive value?

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LAW opinion

World press freedom day

BARRISTER HARUN UR RASHID

ON 3rd May, World Press Freedom Day has been observed across the globe. Press is the mirror of conditions of society and freedom of press is an essential component of democracy because press ventilates joys and sorrows of people of a nation.

Press has been called a "fourth estate" (fourth branch of government) in Britain from early days of democracy because the three other branches consist of representation from common people (temporal), from clergy (spiritual) and from feudal lords.

Democracy and Press

If one needs to find out the extent of prevailing democracy within a nation-state, one has to ask a simple question: Is press free or not?

Democracy is intertwined with transparency and openness. The press always plays a vital role in advancing democratic institutions. Often it has been found that the press is a harbinger of political change towards democracy and rule of law. The press is thus a vital link between the people and the government.

The former World Bank President James Wolfensohn once said "A free press is at the absolute core of equitable development". Similar sentiment has been expressed by Nobel Laureate (1998) Amartya Sen who wrote a book "Development As Freedom" (1999). In the book, the author robustly argues that the essence of development is to create an environment of freedom within a country.

Article 39.2 (b) of the Bangladesh Constitution guarantees "freedom of the press". A free press is also the key to transparency and good governance. The press can facilitate the protection of human rights and the rule of law. By highlighting acts of commission and omission, the press makes the government of the day accountable to people at large.

Suppressed press by governments manifest that government have something to hide. Controlled press is counter-productive to governments because authorities will be in the dark about voice of people of their deeds and words. The



not work. It may work in the country for a segment of people but those who have access to Internet and cable TV know what they have to know about events in the country and outside. The days of hiding information has gone.

The events of the whole world are at the feet of the press through the Internet. As Arthur C. Clarke said long ago that freedom of press would be determined not by governments but by technology. It has become difficult to control the press in the new information age. Even authoritarian governments have failed to control the press.

No country can suppress news. For example in 1971, Pakistan army ordered foreign journalists out of Dhaka to keep them away of the great massacre of 25th March on unarmed Bengali people of Pakistan army. On hind sight they now realize that action was a blunder and this view has been found in many books written in Pakistan by civil or military persons who were directly or indirectly involved in the crackdown.

In advanced democracies, there is hardly any portfolio of Minister for Information in the government. Britain has none, for example. This is because press is free and there is nothing for the government to say or do for press. What these countries have is the Press Code, a voluntary self-disciplinary regulation and a press complaints body or commission.

What is news?

Graham Murdock offers an answer: "It has to be an event. It has to be something that has happened, rather than a long process that has been unfolding over time. It has to have happened recently...It has to be an event that has some significance for the country as a whole."

To quote Lippmann: "The news does not tell you how the seed is germinating in the ground but it may tell you when the first sprout breaks through the surface. It may even tell you that that the sprout did not come up at the time it was expected"

Press freedom and ethics

Press freedom and ethics go together. It has been argued that freedom is not to be interpreted as a licence and there-

fore the press must have either voluntary or compulsory code of ethics for collection and dissemination of news and information. Ethical standard of a newspaper would arise on whether journalists have violated ethical standard in not disclosing their identity in interviewing people.

Press has a social obligation too by being truthful and accurate. Press must be transparent and open to create trust with the public. Free press is neither a gift from heaven nor a favour of the government of the day.

The press must be aware of its responsibility towards the community and the press realises that its freedom has a bearing on what is good for the community. Freedom is not without reasonable limits. The press must set certain ethical standards on issues, such as relationship with sources, relationship with advertisers, separation of comment and fact, respect for privacy, misrepresentation and deceptive or illegal practices.

In 2003, London's Daily Mirror claimed a great scoop-- that one of its regularly bylined reporters had obtained a job as a "footman" at Buckingham Palace, where he had free access to the Queen. Palace officials had given only cursory attention to his curriculum vitae in which he had omitted his job as the Daily Mirror. There was a heated debate in Britain as to whether the reporter should have revealed his job in the newspaper in his submitted curriculum vitae. This brings to the issue of ethical standard of a newspaper to which all employees should comply with.

It has been reported that the code of conduct of the New York Times for its journalists including its editorial staff runs into 52 pages. In a competitive world, all journalists have a legitimate interest in the commercial success of the paper but that does not mean a journalist should ignore ethical standards in obtaining information or news or dealing with advertisers.

On the disclosure of the identity of a journalist, the code of the New York Times says:

"Staff members should disclose their identity to people they cover (whether face to face or otherwise), though they need not always announce their status as journalists when seeking information normally available to the public."

Another code lays down: "Staff members may not pose as police officers, lawyers, business people or anyone else when they are working as journalists. As happens on rare occasions, when seeking to enter countries that bar journalists (Zimbabwe barred BBC reporters in the country), correspondents may take cover from vagueness and identify themselves as traveling on business or as tourists."

It is reported that the New York Times treats advertisers as fairly and openly as its readers and news sources. The relationship between the New York Times and advertisers rests on "the understanding...that those who deal with either one have distinct obligations and interests and neither group will try to influence the other." For example, if a writer on motor vehicles decides to test a car, the newspaper insists on paying the rent or its equivalent, of the car at a market rate so that the writer can provide an objective and impartial comments on the product.

The compliance of ethical standards is important for newspapers to avoid an appearance of bias or inaccuracy of news. It has been argued that the press may claim special rights and privileges based on their unique status as the "fourth branch of government" only when it complies strictly with ethics of journalism. The aim of the press is to have an informed society and it can only discharge its task by being truthful, accurate and open. In that way the press can promote democratic traditions in a country.

Conclusion

Members of Parliament and Press can be said to have a shared constituency. They have to be accountable to the public whatever they publicly do. In both cases, truth must be told. The Press should not revel in sensationalism and in the process, the public is left with incomplete information and half truth, often giving a distorted picture of reality.

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