

LAW campaign



HUMAN RIGHTS monitor



TRANSBOUNDARY CYBER CRIME Spammers! Beware

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SPAMMING is the worse kind of cyber crime. The commonly accepted definition of 'spam' is an electronic mail message sent without the recipient's expressed permission for the purpose of promoting real property, goods, or services for sale or lease. Spam often is referred to more formally as an unsolicited commercial electronic message. Now a days, a large percentage of e-mailer often loathe the time spent sorting through, identifying, and deleting unwanted and unsolicited emails and fret over exceeding email storage quotas resulting from the onslaught of unwanted messages. Most important of all, spam creates distrust among internet users in the digital economy, which could have an adverse impact on the development of e-commerce. Spam can increase 'the online consumer reluctance' to participate in the internet commerce. As we said earlier, spamming is a crime, but spamming is not same as real world crimes. Real-world crimes have several defining characteristics which a cyber crime like spamming does not possess. Let us have an example:

Imagine this stomach-churning scenario: Your company e-mail account is receiving 1000 anonymous e-mail offering access to adult sites, low-price drugs such as Viagra, DVD-copying software, e.t.c. everyday. Due to this unwanted intrusion it becomes impossible for your office stuffs to find out important business e-mails from bulk of spam mails. So you decide to report this misdemeanour to proper law enforcement authority. In order to trace and punish the offender the law enforcement authority faces the following legal predicaments arising from the lack of 'four predominant fundamental characteristics' which a real, real-world crime possesses but a cyber crime doesn't. These are:

(a) The most fundamental characteristic of real-world crime is that the offender and the victim are physically proximate to each other at the time when the felony is committed or attempted. For instance, it is physically impossible for Asif to kill Mezba if Asif (assassin) and Mezba (victim) remains in different countries. But a spammer can send spam from any part of the world to a genre of recipients. All the he requires is unlimited access to a computer that is linked to the Internet. With the aid of the net, he may send spam to any e-mail account holder, he can inflict "harm" upon anyone's reputation directly; he may obtain information from the victim's computer by hacking it and he may use the victim's credentials to commit fraud on a grand scale. So the rule of proximity is not affecting cyber crime at all.



(i) It is committed on a scale far surpassing that of real-world crime; and
(ii) It represents an entirely new class of "crime" that is added to the real-world "crimes" with which law enforcement has traditionally dealt and with which it must continue to deal.

As a result, existing law enforcement authority's ability to react to crime erodes because the resources which were adequate to deal with the incidence of real-world crime are insufficient to deal with real-world "crime" plus cybercrime like spamming (The ISP AOL has reported that it intercepts a billion spams a day. World-wide, more than 13 billion spam e-mail messages are sent each day. According to a 2001 European Union study, spam costs internet users an estimated \$10.6 billion a year worldwide due to expenses for anti-spam equipment, manpower and lost productivity). Moreover, spamming facilitates the criminal conduct in such a way via matrix of Internet that it is become a transnational problem for governments and the individuals.

How spamming becomes transnational problem:

Ali is a cyber merchant; he earns \$ 50,000 a month from his spam - business based in USA. Recently, America enacted an 'anti-spam' bill and his business became illegal. So, he bought a domain name and kept sending illicit e-mails from Bangladesh to USA's cyber-consumers. As prevailing Bangladeshi legislation failed to provide appropriate remedies against those loopholes that still authorises 'spamming' from the soil of Bangladesh, Ali's action becomes legal. And American court cant not impose any restriction against Ali for spamming. This makes spamming a transboundary crime. Therefore, a transnational co-operation is highly recommended to prevent spamming. Unfortunately, existing international law is rudimentary in providing remedies against spamming because it is difficult to identify standards of conduct, or to secure preventive or anticipatory remedies for spamming as techniques of handling multiple spam claims are not well developed in the international law. Therefore, co-operation with the nations for prevention of spamming is required.

Law against spamming at a glance:

In order to prevent spamming, the Australian House of Representatives recently passed The Spam Bill 2003 and The Spam Bill 2003 has now passed into the Senate for consideration. If the Bill is passed by the Senate, it will become law in Australia. The Bill regulates, not just spam, but all commercial electronic messages. In the United Kingdom, the Government introduced the Electronic Commerce (EC Directive) Regulations 2002. These required "unsolicited commercial communications" to be clearly identified and identifiable as such, upon receipt. The responsibilities of UK advertisers in relation to email were increased further on June 4, 2003 when the new Sales Promotion and Direct Marketing Code came into force. USA has enacted into law a new Act regulating the sending of commercial emails. The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM) came into effect on January 1st 2004. The CAN-SPAM Act does not prohibit the sending of commercial email. It does, however, prohibit certain fraudulent and misleading practices and requires senders of commercial emails to label these messages accordingly and give recipients a means to opt out of future mailings from those senders. The CAN-SPAM Act will have little impact on unethical businesses that already engage in fraud or deception by means of email. Those enterprises will locate their servers offshore or take other measures to avoid prosecution, and simply will continue to operate as usual.

Courts approach towards spammers: the buffalo spammer case

In 2003 Howard Carmack, known as Buffalo spammer was charged for sending of hundreds of millions of spam emails through accounts Mr. Carmack sent about 825 million spam emails offering for sale spamming software, herbal sexual stimulants, and bulk email lists and he took a share of profits from these sales. NY State Police, and the FBI's 'Buffalo Cyber Task Force' were successful in penetrating his electronic camouflage used by Mr. Carmack and arrested him. In this case the plaintiff has won a \$16 million judgement against the defendant.

Willis- griffin lawsuit [2003]: Paul Willis and Claudia Griffin were charged for sending millions of unsolicited email advertisements promoting products. The Santa Clara County Superior Court ordered Mr. Paul Willis and Mrs. Claudia Griffin to pay \$2 million in civil penalties for violating state laws prohibiting unsolicited commercial email, false advertising, and unfair business practices.

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(b) A real world crime consists of an event involving one victimiser and one victim. For example, if Nafees intentionally kills his long term rival Feroz, the "crime" - commences when the victimisation of the target (Feroz) is begun and ends when it has been concluded (when Feroz is murdered by Nafees); during the event Nafees focuses all of his attention on the consummation of killing Feroz. When the "crime" is complete, Nafees is free to move onto another victim and another "crime." This one-to-one character of real-world crime derives from 'the constraints physical reality imposes upon human activity': i.e. one can't commit two offences at the same time. For example, a shoplifter cannot still from more than one shop at a time; it should be noted that this rule is not applicable to all situations. Prior to the development of firearms and similar destructive weaponry, it is possible for one person to cause the simultaneous deaths of more than one person at one time. In cyber zone, crimes like spamming is free from the 'one-to-one character of real-world crime' as a single perpetrator can commit thousands of net- crimes in a short period of time because of its automated nature.

(c) Every real-world crime requires some level of preparation, planning and implementation and these activities must be conducted in physical space, actual space. But spamming is free from such physical constraints. For example, spamming is committed in an electronic environment; since a perpetrator is not physically present when the crime is committed, one can no longer assume she/he will leave trace evidence at the crime scene. Moreover, cyberspace lets perpetrators conceal their identities; a spammer can enjoy anonymity on a scale that is not possible in the real-world.

(d) In Real-world only a small segment of a functioning society's total populace are persistently engaged in criminal activity. This means that much of the "crime" in a society will be concentrated in specific areas, such as at Mirpur or Jatrabari areas most of notorious crimes take place. But it is still impossible to derive conclusions as to how spam-circulation or other types of cybercrime manifests themselves geographically and demographically. Consequently, criminologists failed to develop the type of crime maps (for cybercrime, especially spam-circulation) which law enforcement authority uses to allocate its resources in dealing with real-world crime.

Therefore, it is wise to conclude that spams are free from any prevailing crime pattern. Furthermore, spamming violates the assumption of real-world crime in two ways:

- (e) agriculture and other development works
 - (f) social welfare and community centres
 - (g) cottage industries and cooperatives
- Moreover, Union Parishad may constitute additional Standing Committees. In that case, prior approval is needed from the Deputy Commissioner, however.
- Again, Union Parishad may co-opt a person possessing special qualification of either sex outside from the members of Union Parishad. Though, s/he would not have any voting right, shall deemed to be member thereof for all other purposes.

Transparency and accountability

Not only rural people of Bangladesh are skeptical by and large in effectiveness of UPs in fulfilling the demands of the public, they also think that there is a lack of internal transparency in the conduct of UP's business. Activation of Standing Committees would help UPs bring transparency in financial management with better service delivery by monitoring service delib-

eration properly.

Network of Union Parishad

National Union Parishad Forum (NUPF) is a network of Union Parishad. This forum has expressed strong interest in forming standing committees, as it would give UP credibility to the people of the constituency whom they represent. At the same time, it would help them delivering service in a better way through a participatory and transparent process.

Concluding remarks

Although there are some committees prescribed by the government circulars, they do not exist or are not effective in practice. According to the aforesaid ordinance, UPs like parliament are authorised to form standing committees to oversee services, like health and education. If Standing Committees are in place, local government would be further strengthened and people would get better service.

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NEPAL: STATE OF EMERGENCY DEEPENS HUMAN RIGHTS CRISIS

Royal takeover prompts fears for safety of critics

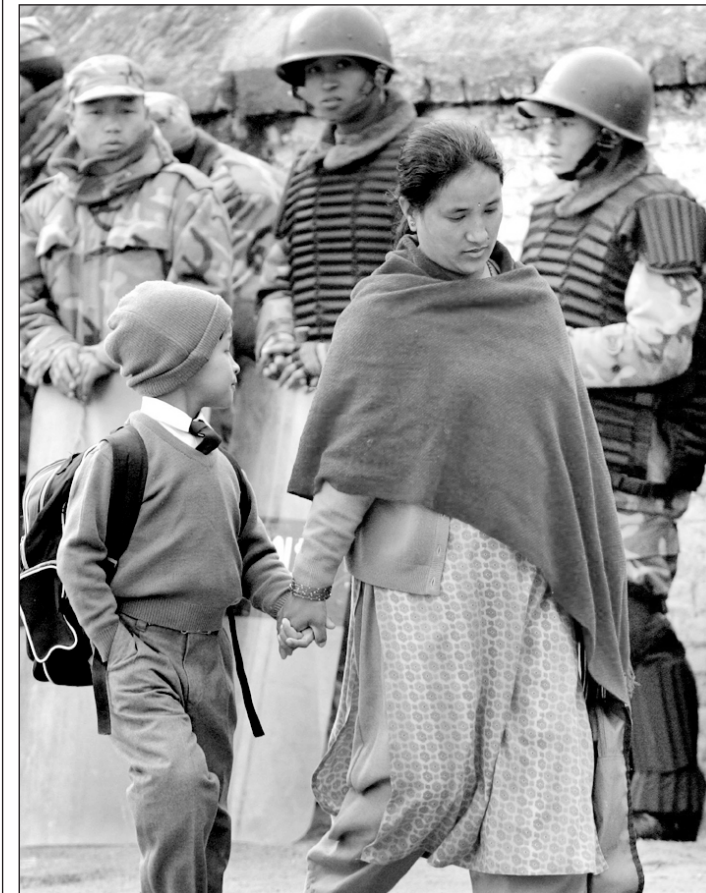


PHOTO: AFP

King Gyanendra of Nepal dismissed the Government, assumed direct power, and declared a nation-wide state of emergency. This action plunges the country deeper into crisis and puts the Nepalese people at even greater risk of gross human rights abuses, said Amnesty International, Human Rights Watch and the International Commission of Jurists. Widespread human rights abuses have taken place during the nine-year conflict in Nepal between government forces and the Communist Party of Nepal (CPN) (Maoist) rebels.

Political leaders have been placed under arrest and communications links within Nepal and with the outside world have been severed. All independent Nepali media have been closed down and state owned radio announced that a number of rights -- including freedom of movement and freedom of assembly -- have been suspended.

"The international community must make it immediately clear to the King that by assuming power he is directly responsible for protecting the people of Nepal and safeguarding their fundamental human rights," the organisations said. A number of countries, including India, have already expressed concern at the situation.

The organisations fear for the immediate safety of human rights campaigners, political activists and members of the National Human Rights Commission, who have recently faced increasing harassment from both security forces and the CPN (Maoist).

The organisations are urging the UN Commission on Human Rights to appoint a Special Rapporteur to monitor the human rights situation in Nepal when it meets in Geneva next month.

Basic human rights must be fully protected even in times of emergency. These include the right to life and the prohibition of torture and ill treatment, as well as fundamental principles of fair trial and freedom from arbitrary detention. The organisations are concerned that the steps being taken by the King and the army, as described above, have been sweeping, arbitrary, and excessive.

Nepal's last state of emergency in 2001-2002 led to an explosion of serious human rights violations, including increased extra-judicial killings, enforced disappearances, arbitrary detention, and a breakdown in the rule of law.

Today's move comes just one week after the UN High Commissioner for Human Rights, Louise Arbour, met King Gyanendra in Nepal and strongly voiced her concerns over the unfolding human rights crisis in Nepal. She noted a prevailing climate of impunity for serious human rights abuses committed by both the government and the CPN (Maoist)

Source: Amnesty International.

LAW reform



Activate standing committee to strengthen the local government

OLI MD. ABDULLAH CHOWDHURY

STRENGTHENING local government is one of the essential elements of good governance and service delivery to the rural people of Bangladesh could be made effective through the supervision of local government. Though there had been suggestion for encouraging local government in the constitution of Bangladesh, successive governments have discouraged this basic institution instead. As a result, essence of the development activities does not reach to rural people and centralisation remains a big problem until now after three decades of independence.

Constitution and the local government

"The State shall encourage local Government institutions composed of representatives of the areas concerned and in such institutions special representation shall be given, as far as possible, to peasants, workers and women" - as it is said in Article 9 of the Constitution of the People's Republic of Bangladesh. Instead of encourag-

ing local government, centralisation has been ensured by all the governments.

Union Parishad Ordinance

An ordinance to provide for the constitution of Union Parishads for the unions in rural areas was made in 1983, namely, The Local Government (Union Parishads) Ordinance, 1983. Though there has been an ordinance for more than 20 years, it has not been implemented wholly. The provision of constitution of Standing Committee is a glaring example that laws are not implemented in our country properly.

Constitution of standing committee

It has been codified in Section 38(1) of the ordinance, "The Union Parishad shall, at its first meeting, in each year, or as soon as may be at any meeting subsequent thereto, constitute Standing Committees for dealing respectively with-

- (a) finance and establishment;
- (b) education;
- (c) health, family planning, epidemic control and sanitation
- (d) audit and accounts



PHOTO: AFP