

**DHAKA SATURDAY DECEMBER 17, 2005** 

The Haily Star

## HUMAN RIGHTS advocacy

# This is outrageous!

SULTANA KAMAL

UST when people are demanding a law on right to information in Bangladesh news came that the Government by a Presidential Order promulgated the ordinance legalising 'tele-tapping'. The joke went around that the



government has struck a new interpretation of right to information. They have ensured their right to dig information even by tapping telephonic conversation of whomever they choose to check on

People's instant comment was not that they were not doing it all these years, but now they will do it with

absolute impunity and flagrantly under the blanket of legitimacy.

Even in the most jovial note, this is outrageous. But seriously, it is a matter of grave concern. It is a matter of grave concern not only because the government now has the legal right to penetrate into the private life of the citizens, it is definitely a very direct indication that the government wants to control people's freedom of expression and mobility a direct offence to the basic norm of privacy and attack on people's sense of dignity.

Even in the face of the Law Minister's assurance that this law shall only be used for a limited time and with caution this in no way mitigates the attack on citizens' sense of security and privacy. It is not a question of whether the Government is actually tapping someone's conversation, but the knowledge that they are open to invasion of their privacy falls foul of the basic notions of privacy, decency and ethics which are underlying principles of citizens' rights. While "Tele-tapping" by itself is not a new phenomenon and not peculiar to the present government, but no government except for the most undemocratic military regimes had shown such open disregard for people's right to private sharing of thoughts, views or opinions.

The government's act, as I would see it, betrays their intention to control the society's flow of information in order to intervene in the most basic mechanism of construction of people's power through which they are able to demand accountability and transpar-

It is again a matter of grave concern especially in the present political context where any opposition to the government (not necessarily from the politics) is deemed to be anti-state and a conspiracy against them.

Moreover, in these days of highly advanced technological excellence, no one can be totally free of the fear of manipulation by the interested parties. Where there is very little confidence in the minds of the people that protection of one's human rights is one of the fundamental motivations of the state organs, be it executive, judiciary or the legislature, the ordinance has definitely further eroded the existing sense of insecurity in the minds of the citi-No doubt, many would argue, and

with absolute correctness that the state (or government) in particular situations is perfectly authorised to promulgate such ordinances, enact such laws

But then at the same time, the sate or the government must have full confidence of the citizens that the intention is bona fide and that the state and the government has acted in a way that people themselves, even if not properly consulted, have consented to such promulgation and enactment. Are we seeing any process of consensus working in

Even until today the government as the government, is reluctant to admit that the situation needs to be handled with more clarity and firmness. Some ministers, members of the ruling party, administrative authority, police give certain statements which are immediately refuted, contradicted or denied by another minister, member or officer.

Actions taken by the government reminds us of the often quoted example of letting loose the mad elephant and pushing the innocent victims behind bars. Number of examples can be cited here to establish that the very groups who claim themselves to be engaged in the same line of political activism as the groups engaged in using terrorism to realise their plans and also with clear links with them are allowed to further their agenda with full government protection and patronage whereas citizens' activism around victory day functions were in some cases forcibly and others tactically foiled by the government authorities in several districts in the past few days.

If the government had listened to the many voices that struggled to draw their attention to the actions of a Banglabhai and JMJB in 2004, probably some lives could have been saved.

How can the Government ever absolve itself of its responsibility for the loss of innocent lives, rampant disruption of normalcy and peace in citizens' minds, and downslide of the overall health of the state

It never can. Reparation will have to be made. Either today or tomorrow. At least in terms of the tele-tapping let the Government come clean and explain how and exactly to what



Right to information is our basic right

extent it will use the new provisions and what safeguards citizens' can hold them accountable to. If not

citizens' outrage will be increased another notch.

The author is a human rights activist.

## LAW report

# UK: Highest court rules out

### Decision Affirms Global Ban on Torture

use of torture evidence

HE unanimous ruling by Britain's highest court that torture evidence can never be used in court proceedings is an important milestone, Human Rights Watch said December 8, 2005

'This is a real victory in the struggle against torture," said Holly Cartner, Europe and Central Asia director of Human Rights Watch. "The Law Lords have affirmed a core tenet of our values that torture evidence is never

A seven-judge panel of the House of Lords Judicial Committee ruled that even in terrorism cases, no British court can consider evidence obtained under torture. In the words of Lord Nicholls: "Torture is not acceptable. This is a bedrock moral principle in this country." The verdict overturns an August 2004 majority decision by the Court of Appeal that such evidence could be used, provided that the U.K. 'neither procured nor connived at" the

The British government's assertion that such evidence should be admissible is part of a growing effort to erode the torture prohibition. It is seeking to bypass the ban on returning people to torture by obtaining promises of humane treatment to allow it to deport terrorism suspects, despite clear evidence that such promises are an ineffective safeguard. It has concluded no-torture agreements with Jordan and Libya, and is negotiating similar ones with Egypt, Algeria and other countries with poor records on torture.

"Britain's highest court has sent a clear signal to the government that torture is wrong," said Cartner. "It is vital that the British government heeds that message at last, and stops trying to undermine the global torture ban. The case, A and others, was

brought by ten foreign nationals previously certified under the Anti-Terrorism Crime and Security Act 2001 as suspected international terrorists and subject to indefinite detention without trial. The majority of the men are Algerian. In December 2004, the Law Lords ruled that indefinite detention was unlawful. The case arises from a July 2002 decision by the Special Immigration Appeals Commission (SIAC) that it was entitled to consider evidence that may have been obtained under torture in determining the men's appeals against certification. The certifications will now be reconsidered by the SIAC in light of the House of Lords judgment.

Two of the men have left the U.K. and two had their certificates revoked prior to December 2004. Six of the men were subject to control orders under the Prevention of Terrorism Act 2005 following their release from indefinite detention in March 2005, but an unspecified number of the six were subsequently detained on immigration charges pending their deportation on national security grounds.

Source: Human Rights Watch.

## LAW campaign

## Cyber space: Claiming conceptual and institutional innovations

MOHAMMAD MAHABUBUR

he Internet has revolutionised the computer

and communications world like nothing before. The Internet is a world-wide broadcasting capability, a mechanism for information dissemination, and a medium for collaboration and interaction between individuals and their computers without regard for geographic location. In the last decade the Internet has achieved considerable expansion.

So a considerable portion of Human activities is performed in the cyberspace. These activities bear economic, social, cultural, civil, political character and so on. Sometimes activities in cyber space exceed the social norms, moral values and legal principles. Consequently cyber activities require inter alia a distinct set of law, which has already been termed as cyberlaw.

#### A challenge for traditional concepts of Jurisprudence

Internet, cyberspace and cyber law cvber crime /offence are almost verv much new phenomena. These concepts have become substantial issue in the field of law and legal philosophy. Law was actually a territorial concept so long as we did not have any kind of familiarity with computer,

Internet and cyber space.

The state itself is very much territorial institution and the existing of modern positive law cannot be even thought independent of the sovereign authority like state. State being as of territorial nature contributes to the control of territorial activities.

So existing laws or legal principles whether of domestic or international character comprising territorial approach .So the contemporary jurisprudence moves a round the circle of territorial attitude and accordingly falls short of covering the issues in internet. Therefore, the traditional principles of jurisprudence, or of the legal philosophy need to be revised to cope with the cybernecessity.

The peculiarity of cyber structure placed it on very distinct and significant position that is virtually different form this real world. The control of cyber activities is substantially a divergent management. From legal point of view, this is much more difficult than all other perspectives. The definition of cyber law is still being developed

New and newer program are being invented that causing new types of occurrence in the cyber space. Cyber space is a virtual place beyond the boundaries that can easily be considered as an international territory. This proposed new international territory claims a substantial recognition in the arena of international law, which will open the door of the trial of cyber offender under a previously systema-

tised set of laws.

The rules and the principles of existing international law can be applied mutatis mutandis to the offences in the cyber territory, or a distinct set of law can be proposed to be enacted by the states inter connected with each other by Internet. Another peculiarity of Internet is that it is accessible from anywhere of the world, which rendered the concerning states legal capacity to claim jurisdiction simultaneously.

This is also a complicated issue to be resolved. Besides, the issues like extradition will come forward as it very often comes up in the traditional nternational cases. It is notable that some cases of territorial practices can provide some precedents. This will not fulfil the requirement for an everwidening space holding a vast package of activities of non-physical char-

These activities of non-physical character carries importance in every aspect that is not less than a physical matter. This can be said in monetary sense or otherwise. The classification of cyber crimes has become another problem for juristic analysis. This happened for the different approach of the different parts of the world to the traditional legal principle and the cyber activities of different types.

Even in case of very primordial types of crime like murder, theft, extortion, robbery, riot, unlawful assembly are defined in different way in different countries or in different types of legal system e.g. civil law system, common law system, religious legal system etc, or in different school of legal philosophy. And it is also very important that a particular cyber crime can be available with a lot of diverse names which necessarily create puzzles for the legal analyst and for other persons relating to internet.

So the cyber law can be categorised only upon the basis of the technique of commission, or of the field of target or of the object of the commission of the offence. That can be observed in the classification of the United Nations. It can be said that the cyber revolution has uncovered an immense necessity of change in the traditional concept and principle of jurisprudence that will cause the emergence of a new branch of legal philosophy to be termed as cyber

The location of cyber space: A study of a

puzzling territory

We very repeatedly ask or are asked Where are your home? Where is cox's bazar? i.e. The location is one of the most significant concepts in geography. There are two ways to represent the location of an object. First, we can use coordinate system to record the location of some phenomena or objects in our real world.

The location implies the geometrical meanings. Plane coordinate system(X, Y) is the easiest and most popular system. Polar coordinate system is used to calculate the point of fall of cannon balls or the orbit of planets. Cartographers use some specific coordinate systems and projection methods to represent the world on maps. Different coordinate systems could lead to different meanings of the world. There is another way to describe the location of an object.

That is the "mailing address" or we can call it "relative location". Different from the coordinate system, mailing address system shows the meaning of relationships between each area or region instead of the geometrical relationship.

As at the address "1/A O.R Nizam Road, Prabartak Circle, Chittagong " we can see the relationship among O.R Nizam Road Prabartak Circle Chittagong . Our mails will be sent to their address by their address instead of the values of their coordinates. Cyberspace also has its specific coordinate system. the cyberspace uses IP (Internet Protocol) address and DNS (Domain name systems) to locate the tremendous computer sites. Both methods use hierarchy structure to distinguish each different location and subject of machines.

An IP address has four levels to consist a complete address name such as 128.130.170.14. Each level can use 0 to 255 value (1 byte). So, the total maximum machines used in Internet can be 4,294,967,296 units, which at present time is still adequate to accommodate a great number of sites. The IP address implies the topology and the connection of net-

Local networks usually define a "mask" to filter some unnecessary signals from outside networks by using "bridge" or "router"(some devices used in networks). DNS is similar to the "mailing address" in our real world. It also has tree structure and is more flexible and memorable than the IP addresses. DNS can imply the hierar-

chy relationship in the local network. The level of hierarchy is unlimited.



The total number of a Domain Name Address could be 256 characters. It has been the most popular address systems in cyberspace. Email system or WWW uses domain name as their 'mailing address" in networks.

The difference between the real world and the cyberspace is that the coordinate system in cyberspace does not reflect the quantitative relationship between each other. For example, we can calculate the distance between two points by their coordinates, but we cannot calculate the network length between two IP addresses.

What we can measure is the transmission speed and the intermediate sites between two IP addresses. The transmission speed and the intermediate sites are the major factor of influence on transmitting information.

### Cyber space as an emerging international space

The word cyber apparently refers to the science of cybernetics. It derives from the Greek word Kubernao, which means "to steer" and which is the root of our present word "to govern". It connotes both the idea of navigation through a space of electronic data, and of control, which is achieved by manipulating those data.

The reference to cybernetics is important because it defines itself as a science of information and communication. The term "cyberspace" is sometimes treated as a synonym for the Internet, but is really a broader concept. The term cyberspace emphasises that

it can be treated as a place. William Gibson is credited with coining the term in his novel Neuromancer

For example, in his novel Gibson describes how someone, by entering cyberspace, could steer computercontrolled helicopters to a different target. Gibson's cyberspace is connected to the real world, and allows cyberspace navigators to interact with that world. Gibson's concept included a direct brain-computer link that gives the user the illusion of vision, moving about in the data "matrix" to obtain information.

Cyber space is a virtual space that has become as important as real space for business, politics, communication and for like other purposes. But where is cyberspace? The answer to this question seems to approach the metaphysical one. It is everywhere and nowhere; so we should ask: what is cyberspace? To this question at least a functional answer is possible.

Functionally, cyberspace is a place. It is a place where messages and web pages are posted for everyone in the world to see. In his book Wyrms, science fiction author Orson Scott Card describes a most remarkable place called Heffiji's house, which could have been a metaphor for cyberspace. The United States Supreme Court's first opinion about the internet contains language that can be determined as acceptance of the legal metaphor of cyberspace as a place outside national

The expression of the court was

that a unique medium consisting of certain tools located in no particular geographical location but available to anyone, anywhere in the world, with access to the internet that is known to its users as 'cyberspace " There exists in international law a type of territory, which

is called international space. At present there are three international spaces as such Antarctica, Outerspace, and the High Seas. For jurisdictional analysis, cyberspace should be treated as a fourth international space. The history of international spaces begins at sea. Modern admiralty law and the law of the High Seas began in large part with Grotius in the 17th Century.

The Law of the Sea remains the dominating voice in the discussion of international spaces, and the oceans have long been the most important of the international spaces. Antarctica was not discovered until about 1820, and it did not become the subject of serious international attention until the 1950s, especially during the International Geophysical

Year (1957-58). Although visible since time immemorial, outer space remained similarly unexplored until 1957, when Sputnik introduced man to a new international space. Cyberspace emerged during the 1970s and 1980s as the apparatus of the Internet took root, but it was not until the early 1990s that an explosion in users and uses, including commercial uses, introduced a worldwide virtual community to another international space. The theoretical and conceptual impediment is physicality. These three physical spaces are not like cyberspace, which is a non-physical space.

### International cyber law: In quest of some domestic

### international bodies

The typical nature of cyber territory/space as discussed above shows that the management of this territory require a distinct set of laws.

As the cyber space carries the characteristics of an international space or territory, so the law to regulate this territory can be termed as international cyber law consisting of a uniform definition of cyber law, of different types of cyber crime, uniform principles for trial procedure etc. Consequently international cyber space to be ruled by international cyber law requires the following new institutions in national and interna

1. The states connected with

significantly distinctive when it states Internet should take necessary step to the enactment of uniform international cvber law. This law will clearly define the cyber crime, clarify the jurisdictional confusion and complication concerning extradition, settle the status of cyber space as international space or territory, and the concerning state must determine which are cyber torts and which are cyber crimes. In framing international cyber law existing principles of international law has to be adjusted with this new one. Moreover, the principles regarding the implementation of international cyber law in the domestic legal system have

to be determined. 2.An international regulatory body can be established by the states connected with Internet to regulate. and to monitor cyber activities cyber space and accordingly every state connected with internet should create a national body to regulate cyber related activities in collaboration with the internationally formed regulatory body. The accomplishment of this collaboration will be easier under the

UN framework. 3. An international cyber court can be established by the states connected with Internet to try the cyber offence of international character and at the same time the concerning state will establish domestic cyber tribunal to try cyber offence in accordance with the uniform cyber code consisting of international cyber law to be adopted by the concerning states.

### Concluding remark Physical borders no longer can func-

tion as signposts informing individuals of the obligations assumed by entering into a new, legally significant, place, because individuals are unaware of the existence of those borders as they move through virtual space.

However, cyber law has become a promising field. Cyber law encompasses cyber crime, electronic commerce, and freedom of expression, intellectual property rights and privacy rights. Cyber crime involves activities like credit card fraud, unauthorised access to computer systems, child pornography, software piracy and cyberstalking. Application of the traditional tenets to the Internet has proved troublesome. The uneasy effort to fit age-old concepts of territorial jurisdiction to the new medium has led to complex and contentious contro-

The author is a Lecturer, Premier University

