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LAW ANALYSIS

Legality of bitcoin in Bangladesh

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BITCOIN is a cryptocurrency invented in 2009 by a software developer allegedly named Satoshi Nakamoto with a goal to create "a new electronic cash system" that was "completely decentralised with no server or central authority." The idea, apparently, was to produce a means of exchange, independent of any central authority that could be transferred electronically in a secure, verifiable and immutable way.

Bangladesh is one of only 6 countries in the world that are considered

website on December 24, 2017. While the recent notice reiterates the laws mentioned in the first notice, it added the Anti-Terrorism Act, 2009 as another law that use of bitcoin could violate. Moreover, citizens were asked to refrain from performing, assisting and advertising all kinds of transactions through the virtual currencies such as Bitcoin, Ethereum, Ripple and Litecoin to avoid financial and legal risks.

The 2014 warning by Bangladesh Bank did not get much coverage in the local press but international press and bitcoin forums widely reported

finance with the regulatory response in most countries. However, it could be argued that bitcoin not being accepted or recognised as legal tender does not necessarily make it illegal. The legal basis of a "warning" published by the Bangladesh Bank is also questionable.

The Foreign Exchange Regulation Act and Money Laundering Prevention Act contain provisions for punishment and criminal liability, for trading, importing, and exporting currencies without authorisation of the Bangladesh or if not performed through an

declare that cryptocurrency or bitcoin is "currency" for it to be classified as such, but it has not done that till date. Thus, it appears that bitcoin or other virtual cryptocurrencies may not fall within the purview of the definition of "currency" under section 2(b) of the Foreign Exchange Regulation Act. That being the case, criminal offences relating to trading foreign currency without authorisation, arguably do not explicitly catch bitcoin or cryptocurrencies.

According to section 2(s) of the Money Laundering Prevention Act, foreign currency means any foreign exchange defined under section 2(d) of the Foreign Exchange Regulation Act. However, similarly, the definition of foreign currency in Money Laundering Prevention Act is referred to foreign "currency", which, as discussed earlier, apparently does not cover bitcoin and cryptocurrencies.

It is not clear, upon what basis, the "warnings" regarding legality of bitcoin have been issued so far. The warnings also refer to the Anti-Terrorism Act which criminalises funding of terrorism, but the Act does not make any reference to bitcoin, cryptocurrency or any other currency whatsoever.

Despite Bangladesh Bank's warnings discussed above, the Acts of Parliament which they apparently are based upon, fall short of criminalising or even banning bitcoin or cryptocurrency. However, the fact remains that Bangladeshi authorities are adamant to stop the use of bitcoin and are reportedly hunting bitcoin traders and miners.

In the wake of the global trend in the use of cryptocurrency, it is high time that Bangladesh comes up with a properly formulated regulatory response to bitcoin instead of going after users on an ad hoc basis. It is also vital for the central bank and lawmakers to join the global discussion on regulating cryptocurrency immediately and participate in concerted efforts to ensure that the use of this new technology is only for the good of the society and economy.

THE WRITER IS AN ADVOCATE, SUPREME COURT OF BANGLADESH.

YOUR ADVOCATE



This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.

Query
I am a 23 year old working woman. I have to travel for about two and a half hours to get to my place of residence from my work place in the capital. Every night I have to face problems on my way home. Near my place of residence, almost every evening, a few young boys stay at a tea-stall and they pass degrading comments. Please let me know if there is anything that I can do.
Sristi (Not real name)
Gazipur

Response
The issue which you are facing is a social menace which has become widely known as eve teasing. Unfortunately, there is still a notion

direct approach by going to the police. As mentioned earlier, there are a few legal provisions available which make it illegal to harass women. Most notably, as per section 294 of the Penal Code 1860, doing obscene act or singing or reciting obscene songs, ballad or words to the annoyance of others in or near any public place is a crime punishable with up to 3 months imprisonment and/or fine. As per section 354, assaulting a woman with intention to outrage the modesty, shall be punishable with up to two-year imprisonment and/or fine. As per section 509, uttering words or making sound or gesture or exhibiting objects with intent to insult the modesty of a woman or

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"hostile" to bitcoin. Bangladesh Bank issued its first "warning" against the use of Bitcoin in 2014. The warning included caution towards transacting in any artificial currency as this could involve unauthorised actions stated in Foreign Exchange Regulation Act, 1947 and the Money Laundering Prevention Act, 2012. The central bank expressly disapproved any transaction of cryptocurrencies by stating that these virtual currencies were not legal tender issued by any country and it does not depend on and is not approved by a central payment system, as such, people may be financially harmed by it.

The recent global popularity of bitcoin and other cryptocurrencies pushed Bangladesh Bank to issue another "Cautionary Notice" on its

that Bangladesh has "banned" bitcoin and warned that bitcoin users may be jailed for up to 12 years.

However, from the two cautionary notices published by the central bank, it is evident that the regulator has fallen short of "banning" or "criminalising" the use of bitcoin except in cases where it is used to commit an existing offence under the Foreign Exchange Regulation Act, the Anti-Money Laundering Act and the Anti-Terrorism Act. It could be argued that the use of regular currency to commit crimes under the same Acts would be similarly punishable, and as such while bitcoin itself is not illegal, its use to commit crime is.

Bangladesh Bank's declaration that it is not legal tender finds reso-

authorised dealer, and for illegally laundering proceeds of crime or foreign currency. The definition of currency is given in section 2(b) of the Foreign Exchange Regulation Act, which includes:

(i) all coins, currency notes, bank notes, postal notes, money orders, cheques, drafts, traveler's cheques, letters of credit, bills of exchange and promissory notes; and

(ii) such other similar physical or non-physical instruments, or both as may be notified by the Bangladesh Bank from time to time;

Despite its name, bitcoin is not a coin, and also does not match any of the items listed in section 2(b)(i). As for section 2(b)(ii), there is a positive obligation upon Bangladesh Bank to make a statutory notification and



amongst a lot of people in Bangladesh that eve teasing is not a very serious issue and treats it as "boys being mischievous". However, this is not the case and such acts of eve teasing have resulted in the victims committing suicide. Therefore this matter should not in any way be taken lightly.

There are a few legal provisions available which make it illegal to harass women in such a manner and impose penalties if they are breached. However, before resorting to legal action, you may wish to remedy the situation through a less direct approach. Firstly, you should address the matter directly with the perpetrators, if situation permits, and ask them to immediately stop such behavior. You may also use the hotline number 109 is provided in the web page of the Ministry of Women and Children Affairs. You may call this number and seek advice and/or assistance. You may try going to your local councilor/local authority (may be accompanied by your guardians) and enlist their assistance in order to find a solution to your problem.

If you prefer, you may take a more

intruding upon the privacy of a woman is a crime punishable with up to one-year imprisonment and/or fine. By passing degrading comments every evening, these boys are clearly violating the above-mentioned provisions of the law and as such, they are subject to the penalties mentioned in the said legal provisions.

The above provisions are also triable by the mobile court. Besides the Penal Code, section 76 of the Dhaka Metropolitan Police Ordinance 1976 creating offence of teasing women and accordingly if someone willfully presses or obstructs any woman in a street or public place or insults or annoys any woman by using indecent language or making indecent sounds, gestures, or remarks in any street or public place, shall be punishable with imprisonment up to 1 year and/or fine. A similar provision is contained in other metropolitan police related laws of the country. Whichever option you choose, I sincerely hope you find a just solution to your problem.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.

HUMAN RIGHTS RIGHTS ADVOCACY

MD. TORIQUIL ISLAM & DR. MD. ERSHADUL KARIM

NOWADAYS biometric technology is increasingly used for a wide range of activities ranging from identity authentication to border security, voting system, health care, education and so on. Arguably, biometric identification systems are being used everywhere in the world specially after the terrorist attack in the USA on September 11, 2011. However, there is a huge privacy concern in the developing countries like Bangladesh, where legal safeguards to protect the right to privacy and data security are not adequate and the deployment of new technologies

However, sometimes it is argued that the technology of biometrics is not as accurate as demanded by the stakeholders.

Biometric data contains a huge amount of sensitive personal data and indeed, it presents a complete identity of a person and his activities. Hence biometric information leakage may cause irreparable loss to the data subject. Bangladesh started a countywide compulsory biometric sim registration process since December 16, 2015. On March 9, 2016, a writ petition was filed in the High Court division challenging the legality of that sim registration process through biometric. The writ petition was filed on the apprehension that one's

Telecom Tarana Halim has repeatedly said that mobile phone operators are not storing subscribers' fingerprints but only cross-checking with the National ID database.

Biometrics have a long-held hope of replacing passwords by establishing a non-repudiated identity and providing authentication with convenience. Unlike passwords system, biometrics cannot be script-injected and/or reset. Since resetting the biometric is impossible, the privacy of biometrics is of utmost concern. However, there is no watertight rule or policy, by which, privacy concern in biometric data can be diminished. According to a report of UNCTAD, 2016, there are nearly 108 countries having either comprehensive or partial data protection laws.

However, all focus on privacy and data protection issues and none of them except EU member States includes the biometric technological challenge. EU addresses the issue in GDPR (General Data Protection Regulation) and presents a comprehensive plan to tackle this disaster. There is no comprehensive, single and satisfactory federal legislation in the USA for the regulation of processing and use of biometric data. However, in Illinois and Texas State of USA, there remain legislation over biometric data and lastly, Washington has passed a law on biometric data in June 2017. Clearly, US regulators are also increasingly focusing on the use of biometric data. In a landmark case titled *Justice K.S. Puttaswamy v Union of India*, the Supreme Court of India termed privacy as a 'fundamental right'. Indian Supreme Court further extended by saying that biometric data protection is now on the top agenda of the legislators as well.

Bangladesh does not have any privacy and data protection law till date and so in the case of the use of biometric technology, there is no mandatory policy or regulations etc. from Bangladesh Telecommunication Regulatory Commission (BTRC) too. Therefore, in the wake of this wholesome use of biometric technology, Bangladesh needs to immediately enact a privacy and personal data protection law covering privacy issue arising from biometric technologies. Before the enactment, the BTRC may prepare a compulsory guideline for the concerned stakeholders following GDPR of EU. They are, inter alia, all data must be processed lawfully, fairly and transparently; collected only for specific legitimate purposes; adequate, relevant and limited to what is necessary; must be accurate and kept up to date; stored only as long as is necessary and finally, ensure appropriate security, integrity and confidentiality. It is pertinent to mention that the BTRC may have a look at the suggestions given by the privacy international too while preparing this guideline.

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Protecting privacy in biometric data



such as biometric technology is increasingly popular.

Literally, biometrics refers to an automated process of identification or verification of persons using their physical or behavioural characteristics. Many parts of human body e.g. eyes, faces, hands, fingerprints etc. along with typing styles, DNA, gesture etc. are used to identify a person in the biometric system; however, the fingerprints and facial characteristics are commonly used globally. Biometric system works using two sets of data by comparing each with the other. Firstly, one set of data is put into the system as a template while the second set belongs to the visitor. If these two sets of data are nearly identical, then the device acknowledges that the visitor and the data holder are the same person, and accordingly, permits entry.

It is quite impossible for two sets of data to be matched 100%. Thus, in biometrics, both these two sets of information has to be nearly identical but not exactly the same. This is because, for example, one might have a sweaty finger or a tiny scar that changes the template pattern into the system.

privacy and neutrality will be violated in the biometric system. On March 14, the Court issued a rule asking why the move should not be declared illegal. On April 12, 2016, the Court held a hearing on the rule and issued the order, legalising biometric registration. According to the newspapers reports, a widespread misuse incident of biometric information taken place in Bangladesh during and after the sim registration process. For example, there are several allegations against the 'Teletalk' that without verifying with the information contained in National ID card, they have registered the sim numbers of their customers. While in the sim registration process, NID numbers and date of birth has only been used by Banglalink, another mobile operator in Bangladesh. According to the reports of the several newspapers, different law enforcement agencies have found a close connection among the vendors, customer care officers and even the mobile phone operators of fraud committed during sim registration process using the stolen or fake NID information and fingerprints. However, the State Minister for

Family planning is a human right



THIS year, World Population Day (11 July) marks the 50th anniversary of the 1968 International Conference on Human Rights, where family planning was, for the first time, globally affirmed to be a human right. The conference's outcome document, known as the Teheran Proclamation, stated unequivocally: "Parents have a basic human right to determine freely and responsibly the number and spacing of their children." In this proclamation, embedded was the deep realisation to the effect that women and girls have the right to avoid the exhaustion, depletion and danger of too many pregnancies, too close together. Men and women have the right to choose when and how often to embrace parenthood — if at all. Every individual has the human right to determine the direction and scope of his or her future in this fundamental way. And hence, this year the theme is 'family planning is a human right'.

Current estimates indicate that roughly 83 million people are being added to the world's population every year. Even assuming that fertility levels will continue to decline, the global population is expected to reach 8.6 billion in 2030, 9.8 billion in 2050 and 11.2 billion in 2100, according to the medium-variant projection.

The UN Population Division collaborates closely with the agencies, funds, programmes and bodies of the United Nations system in the implementation of the work programme on population and in the follow-up to the International Conference on Population and Development. United Nations missions, national Government offices, United Nations offices, researchers, media representatives and the public regularly consult the Population Division regarding population estimates and projections, and information as well as analyses on population and development issues.

UNFPA works to support family planning by: ensuring a steady, reliable supply of quality contraceptives; strengthening national health systems; advocating for policies supportive of family planning; and gathering data to support this work. UNFPA also provides global leadership in increasing access to family planning, by convening partners — including governments — to develop evidence and policies, and by offering programmatic, technical and financial assistance to developing countries.

COMPILED BY LAW DESK (SOURCE: UN.ORG).