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LAW OPINION

Pegasus controversy and cyber security in Bangladesh

Emdadul Haque

The controversial Pegasus surveillance spyware has shaken the cyber security of the world sparking global outrage. Over the years, journalists, political leaders, civil society activists and human rights campaigners have voiced their concerns over tapping and data hacking of their communication devices through sophisticated spyware.

A recent string of exposures of Israeli cyber-espionage firm, NSO group's Pegasus Project spyware surveillance of around 50,000 people by the Forbidden Stories and Amnesty International along with 17 media groups, including the Guardian, the Washington Post have unearthed how Pegasus was used to extract information from mobile phones of journalists, politicians, and rights activists.

Surprisingly, the Israeli made Pegasus spyware device is used as spyware weapon by nearly 50 government agencies across America, Europe, Africa, and Asia including India, Pakistan, and Bangladesh to deal with individuals dissenting against the government. It has been possible due to lack of cyber security laws to deal with surveillance technologies.

According to UNCTAD, 128 out of 194 countries have put in place laws to secure the protection of data and thereby of privacy. Across Asia, only a few countries including China, Vietnam, and Singapore have dedicated cyber security laws while others have traditional cyber laws focusing digital data safety of civilians, government bodies, and e-commerce industries.

Regarding Bangladesh, we do not have a cyber security law except the conventional Information and Communication Technology (ICT) Act, 2006 and the Digital Security Act (DSA), 2018. In the wake of ultra-advancements in surveillance techniques over the last 10 years, the existing legal structure is not sufficient to cope with the newly manifested threats.

As of today, in Bangladesh, any sort of spyware is illegal because spyware or malware enables cybercrimes under the ICT Act, 2006 and the DSA, 2018. In order to check the misuse of surveillance technologies, the existing cyber law needs to be amended or a dedicated cyber security law should be enacted.

Article 43(B) of the Bangladesh Constitution, 1972 safeguards citizens' privacy of correspondence and communication. Section 63 of the ICT Act, 2006 provides penalty for disclosure of confidential and private electronic record, book, register, correspondence, information, document, or other material without consent of the person concerned. The punishment for unlawful disclosure of such records may extend to two years of imprisonment or fine up to Taka two lakhs.

The DSA, 2018 as a form of cyber security law, aims to promote confidentiality and integrity with the target to protect individuals' rights and privacy, commercial interests, and data protection in the cyberspace. Section 26 of the DSA terms personal data as identity information requiring individual's explicit consent or authorisation to be obtained for collecting, selling, preserving, supplying, or using. Any violation of such provision is punishable with five years of imprisonment, or fine of Taka 5 lakhs and in case of repetition of the offence, the penalty increases up to 7 years of imprisonment or fine of Taka 10 lakhs. Under section 34, the DSA treats hacking as a seriously punishable offence with imprisonment up to 14 years or fine up to Taka 1 Crore or both.

Section 71 of the Telecommunications Act, 2001 penalises for eavesdropping telephone conversation with six months' imprisonment or fine of Taka 50 thousand. But the amendment of the law in 2006 exempts the law enforcement agencies on the grounds of state security or public order under section 97A. Under sections 407, 408, and 409, the Penal Code 1860 penalises the violation of privacy through criminal breach of trust.

Article 17 of the International Covenant on Civil and Political Rights (ICCPR), 1966 to which Bangladesh is a party, provides that no one shall be subject to arbitrary or unlawful interference with privacy, family, home, or correspondence.

Undeniably, interception and monitoring are important tools for the Government in targeting opponent voices undermining digital rights and liberties including the data security and right to privacy. The Pegasus scandal is an incident that has shaken as well as shattered all stakeholders intending to take the internet and cyber security for granted. This episode is a wakeup call for Bangladesh to adopt appropriate strategies to deal with the constant challenges of surveillance technologies.

In today's data-driven world, amid advent of newer technologies like artificial intelligence (AI), Internet of Things (IoT), Big Data, and Blockchain, the upcoming years ahead, the country will be crisscrossed with numerous distinct challenges on cyber ecosystem requiring adoption of adequate measures to prevent unauthorized misuse of surveillance and interception. A holistic perspective to strike a balance between protecting sovereign interests and digital liberties and rights of individuals is the need of time.

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LAW WATCH

Forest management in Bangladesh: loopholes and inadequacies

Nadim Zawad Akil

Forests contribute to the economy and maintain ecological stability. Despite being a selfless auxiliary, forests in Bangladesh have been depleted and degraded in volume and area over the years. Among the multiple factors behind this impropriety with the forests, some are- migrants who decided to move to the forests due to the problems in their place of origin, the timber industries which legally or not cutting too many trees, grazing and browsing, transforming the forest lands into agricultural lands, unjust use of forest woods particularly in the brickfields and other industries. Apart from all of these factors, is there any legal factor that works as the hidden root behind this inequity with the forests?

Forest Department works as an integral part of the ministry of Environments and Forests and is empowered to superintend the forest resources and governmental forest lands. A country must have 25% forestlands whereas according to the Forest Department, Bangladesh has 46,52,250 acres which are around 12.76% of the total area. A report of TIB suggests, forestlands decreased around 4,32,250 acres over the last two decades. The report adds, Forest department managed to rescue only 8792 acres in the last 5 years. Up to the year 2019, 2,87,453 acres of land were possessed through illegal collusion. Forest Department has been vested with the proprietorship of forests whereas the Department of Environment was only given the monitoring and enforcement capacity. The research of TIB discovered up to 61% embezzlement during the allotment of funds for accomplishing forestation projects by the Forest Department and the policymakers at the upper echelon. In the appointment and transfer of departmental posts such as Forest range officers, beat officers, chief or deputy chief conservator, project director, divisional forest officers, etc. in the department, large sums of money are transacted.

The forest scammers are politically influential. Despite the remonstrance from the Department of Environment, Forest Department has been permitted to operate coal-fired power projects and also some mega projects which are harmful to the environment beside the reserved forests. This somehow implies the inadvertence and tendency to disobey the instructions or rules. Stolen woods from forests are mostly delivered in the brickfield industries where direct interference of the Beat officers is clear. Rule 5A (2) of the Social Forestry Rules, 2004 dictates clearly who will be listed as the beneficiaries. However, in reality, exactly the opposite scenario has been witnessed. There exists a direct or indirect intervention in the selection of beneficiaries.

One can easily get the accessibility to protected forests getting the license from the Forest Department. Once someone gets the license, he gets all the authority to extract woods and forest products from the forest. To expedite the regulations of protected forests, the co-management process was launched through the Protected Area Rules. In reality, only 3-4 of the total protected forests are guided by the rules. So, the Protected Area Rules are not functional in Verite. The subject of sustainable and accountable forest management is in question.

Forest Act, 1927 which was enacted by the British is still the basic law by which forests are being governed in Bangladesh. The first and foremost mission of the British was to boost up their economy by extracting resources of the Indian sub-continent. Not only economic advancement but also in composing their infrastructural development, our resources contributed immensely. Progressive commercialisation of forest resources for revenue maximisation, by the acquisition of agricultural lands and using them for trade and commerce, were their ultimate goals. One of the biggest loopholes of the Forest Act is that it does not talk about forest protection, conservation and improvement of quality. Rather this law is mostly focused on how you can generate money because this law was created from the British colonial perspective. Even today, we are extracting the benefits of this Act adversely. From then to date, we have failed to abolish this law and to bring a sustainable, environment-friendly law into force.

A recent survey conducted by FAO found that the rate of deforestation has increased up to 37,700 hectares per year. The research of USAID and CIDA also tells, 50% of the total forests have been destroyed within the last 20 years. According to the estimation of the forest resource management project, the ratio of supply and demand of timber and fuelwood is drastically inconsistent. So, it is high time, we made the Forest Department more functional & accountable and saved our forests from deforestation by implementing a dynamic forest law.

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LAW LETTER

Why quota reservation is significant for ethnic minorities

"Leaving no one behind: Indigenous peoples and the call for a new social contract" is the theme to celebrate this year's International Day of the World's Indigenous Peoples. Unfortunately, the government had decided to scrap quotas for class-I and Class-II jobs in Bangladesh in October 2018, following large scale protests in the country. The quota system was introduced through an executive order in 1972 and has been amended several times since. Before the abolition of the quota system in first and second-class government services, 5 per cent quota used to be allocated for the ethnic communities. Quota system was introduced to facilitate representation of a portion of ethnic minorities in government services.

According to article 28(4) of the Constitution, the government can make special provision for the advancement of of any backward section of citizens that include ethnic minorities. Furthermore, section 10 of part four of the CHT peace accord refers that the government shall maintain quotas in government services and provide necessary scholarships for research works and higher education in abroad for ethnic minorities.

Equality of opportunity in public employment is a fundamental right under article 29 of the Constitution. Making special provision in favor of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic is a constitutional right under article 29(3).

In addition, as a member state of ILO, Bangladesh must respect ILO convention on Discrimination (Employment and Occupation), 1958 (No. 111). According to article 1 of the ILO convention no. 111, no member state should take any step which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Withdrawal of quota system in first and second-class government services is considered to be a deprivation for the candidates representing the ethnic minorities of equal opportunities and eventually impairing equality of opportunity under article 29 of the Constitution and article 1 of the ILO convention no. 111.

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LAW ANALYSIS

Why the new 'Digital Commerce Operation Guidelines' needs major revisions?

Gargi Das Chomok and Saurov Dash Roni

In response to the growing impact of digital platforms on the country's current economic successes and the challenges, the Ministry of Commerce enacted 'Digital Commerce Operational Guidelines' (hereinafter the guidelines) on July 4 this year. The guidelines have been prepared under the National Digital Commerce Policy, 2020. The new guidelines have brought e-commerce operations under the direct inspection of the government. Its goal is promoting transparency, accountability, and consumer protection in digital commerce operations as well as taking measures to increase and ensure consumers' confidence and rights by bringing discipline into the digital commerce operations.

The newly framed guidelines purport to put an end to the fraudulent transactions. The long-awaited guidelines focus on banning Multi-Level Marketing (MLM) businesses through digital or e-commerce platforms, prohibiting online gambling, requiring a license in the case of buying and selling medical goods, protecting personal data, and requiring a Unique Business Identification Number (UBID) for every marketplace. For protecting the customers from misleading purchases, the rules suggest that products presented online to the buyers should have a clear description for the consumer so that buyers can have a realistic understanding of what they are buying.

That said, these new guidelines failed to incorporate a few necessary instructions, without incorporation of which, it may fail to measure up to the expectation the policymakers had had while outlining it.

One of the major loopholes of the new guidelines is that although the guidelines provide instructions for complaints, it fails to mention detailed instructions and procedures following a complaint by a customer. To resolve such complaints, resorting to the Consumer Rights Protection Act, 2009 (CRPA) can be the appropriate remedy, which the instrument itself also mentions in its guideline no. 3.4.6.

But the main hindrance, in this case, is that the CRPA does not apply to online transactions. To overcome this obstacle, section 2(11) of the CRPA should be amended to incorporate the phrase 'online or offline'. With the introduction of this simple amendment, it will be easier for the concerned authorities to provide the proper remedy of complaints arising out of online business, and that too within existing legislative frameworks. It is pertinent here that, India has, in order to protect the rights of the consumers in the digital platform, enacted a new Act titled Consumer Protection Act, 2019. The term 'online' has been included in that statute through explanation (b) of Section 2(7) of the instrument.

Even though the guidelines in the 'Aim and Purpose' chapter cues as to its commitment towards achieving a competitive e-commerce market, it (somehow consciously) omits to put a cap on the excessive discount or predatory pricing. In recent years, the e-commerce market has seen platforms like Evaly and Alesha Mart offering products with predatory price tags and with luring cashback offers, which in turn caused customers to wait for a period of 3-4 months to get the products or in worse cases, not to get them at all. Moreover, these practices forced many new and long-standing e-commerce platforms to downsize their operations and sustain losses despite providing better service. Hence, in order for the market to be competitive and less manipulated into the hands of some, the guidelines should come up with a ceiling for cashback and pricing. Otherwise, we would only spectate a rather manipulative and uncompetitive market that militates not only against the competition in the market but also the rights of the consumers.

Another concept that can be incorporated from the newly drafted stringent e-commerce policy of India is the idea to promote local products in preference to foreign ones. This can be accomplished by recommending, wherever possible, local alternatives each time a consumer looks at an imported good or service. This action will promote the 'made-in Bangladesh' tags and encourage the local brands to make better quality products that comply with international standards.

Furthermore, the new guidelines are completely silent on the cross-border e-commerce policy issue. It should be mentioned that on the recent United Nations Conference on the Trade and Development's (UNCTAD) Business-to-Consumer (B2C) E-commerce Index 2020, Bangladesh ranked 115th, slipping 12 notches from its previous position. It is the most significant regression among the South Asian countries.

According to UNCTAD, the percentage of people who use the internet, the share of people who use a financial account, the surety of secure servers, and postal reliability are the four factors to assess a country's e-commerce progress. Bangladesh lags in all of these sectors. The absence of a cross-border e-commerce policy is the primary cause of this shortfall as non-expansion of local e-commerce beyond the frontiers play counterincentive role in the fulfilment of these criteria.

Henceforth, to advance thoroughly in this field of digital commerce globally, Bangladesh must evaluate the criteria mentioned above and revise the guidelines appropriately to cope up with the challenges. If these efforts become successful, the future of e-commerce will undoubtedly flourish and sail us towards a robust economy.

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