

# **“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 world in diverse regions and cultures. It is protected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and in many other international and regional human rights treaties. Nearly every country in the world includes a right of privacy in its constitution. At a minimum, these provisions include rights of inviolability of the home and secrecy of communications. Most recent constitutions include specific rights to access and control one's personal information. In many of the countries where privacy is not explicitly recognized in the constitution, the courts have found that right in other provisions. In many countries, international agreements that recognize privacy rights such as the International Covenant on Civil and Political Rights or the European Convention on Human Rights have been adopted into domestic law.

It may take some years to fully evaluate the effects of September 11, 2001 on privacy and civil liberties. Shortly after the events of that 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 responded to the threat of 'terrorism'. With 'terrorist actions' around the world, including in Bali, Russia, Morocco, and Saudi Arabia, governments have seized on these events as opportunities to create and enhance their powers. The country reports in this survey outline, in more detail, the many legislative shifts that took place around the world. President Bush signed legislation that expands the ability to tap telephones and track Internet usage in the hunt for terrorists- new powers that drew praise from law enforcement officials and concern from civil libertarians. The bill, known as the USA Patriot Act, gives federal authorities much wider latitude in monitoring Internet usage and expands the way such data is shared among different agencies.

The rise of 'terrorist activities' and the bombing of 17<sup>th</sup> August by the group calling themselves the JMB, all over the country led the Government to pass an act to empower the Ministry of Home to tap any telephone line they intend 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.