

# **PRIVACY IN DIGITAL AGE: JUDICIAL APPROACH IN SOUTH ASIA**

**Babu Ram Aryal**  
**Nepal**

# ABOUT BABU RAM ARYAL

- Babu Ram Aryal is Kathmandu, Nepal based lawyer engaged in cyber law and telecommunication law.
- Vice Chair of Asia Pacific Regional Internet Governance Forum (APrIGF)
- Went to Pune University, India for LLM, Annenberg-Oxford for Media Policy Course and US Telecommunication Training Institute for Cyber Policy Course.
- Attended various ICANN meetings as ICANN Fellow, Global Conference on Cyber Space, Internet Governance Forum etc.
- Consultant for drafting Information Technology Bill, 2018 (Nepal), Review of Cyber related laws of Nepal and research on Cyber Crime Trends in Nepal
- Research Coordinator for several countries and contributed for Affordability Index, developed by A4AI
- Co-founder of Delta Law Private Limited, a leading law firm in Cyber Law area.

# POLICY ISSUE

- Data automation, collections of data from various public services like ecommerce, e-governance, extraction of the individual data through surveillance and interceptions of private communications are threatening the privacy in digital age.
- To address these treats and vulnerabilities in privacy, it is important to develop a better cyber policy.

# PRINCIPLES OF DEVELOPING CYBER POLICY

- One of major issue of the developing cyber policy is to consider the various stakeholders' interests and harmonize them.
- Policy processes must be based on the principles of openness, accountable, collaboration, and the respect for human rights.

# BUILDING CYBER POLICY: JUDICIAL APPROACH

- *Steve Jackson Games, Inc. v. United States Secret Service*, 816 F.Supp. 432 (W.D.Tex., 1993) (held that electronic mail deserves at least as much protection as telephone calls.)
- *ACLU v. Reno*, 1997 (US Court struck down the 1996 Communications Decency Act, which censored the Internet by broadly banning "indecent" speech.)
- *Privacy Commissioner v Telstra Corporation Limited* [2017] FCAFC 4 (Australian court held that personal information includes information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion." .

# BUILDING CYBER POLICY: JUDICIAL APPROACH

- Roman Zakharov v. Russia [2015 ] (the European Human Rights Court held that there had been a violation of Article 8 of the Convention [ECHR], finding that the Russian legal provisions governing interception of communications did not provide for adequate and effective guarantees against arbitrariness and the risk of abuse which was inherent in any system of secret surveillance, and which was particularly high in a system such as in Russia where the secret services and the police had direct access, by technical means, to all mobile telephone communications

# BUILDING CYBER POLICY: JUDICIAL APPROACH

- **Bara v. Președintele Casei Naționale de Asigurări de Sănătate, Casa Națională de Asigurări de Sănătate and Agenția Națională de Administrare Fiscală (ANAF) [Rumania], European Court of Human Rights held that in order to satisfy the requirement of fair processing of personal data [under Article 10 of Directive 95/46/EC] a public sector body must inform the data subjects in advance of the transfer of their personal data to another public sector body for the purposes of the recipient body unless it has already done so. Furthermore, the recipient controller of the data [in order to satisfy the fair processing requirements under Article 11(1) of Directive 95/46/EC], must also inform the data subject in advance as to their identify, the purpose of the processing and any further information necessary for the fair processing of the data.**

# BUILDING CYBER POLICY: JUDICIAL APPROACH IN SOUTH ASIA

- **Karmanya Sing Sareen v. Union of India (2016)** (famously known as WhatsApps Case) (Delhi High Court ruled that WhatsApp has to delete user account information of all users who had opted to delete their account and that it couldn't share information with Facebook up to the order date. The court recognized that Right to Privacy as a Fundamental Right and should be protected in digital world as well.
- **Muhummad Ruhul Amin Khandaker (Bangladesh)**, however, is a bad example of court judgment where The High Court Division Bench termed Khandaker's post as a "derogatory statement" and thus sentenced him to undergo three years rigorous imprisonment. The decision fails to distinguish between the right of a citizen to voice his opinion about the functioning of the government authorities on any media and a 'true threat'.
- **The Bytes for All v. Federation of Pakistan** ( Best known as the YouTube Case) a very significant case where Pakistani court asked for the localization of the YouTube.



# BABU RAM ARYAL V. GOVERNMENT OF NEPAL

- **Right to Privacy is privy of Individual and it is related right to be alone**
- **Right to Privacy denounces any Intervention by Government or any third Party**
- **Any Collection of CDR and other digital information without due process of law is illegal**
- **District Court Permission is required**

# POLICY RECOMMENDATIONS

- Cyber law or policy should be developed through open, transparent and accountable manner respecting human rights that includes Privacy.
- Inclusive & multi stakeholder engagement should be adopted for better cyber law and policy.
- Judiciaries should (Could?) step up to protect individual's rights like right to privacy when there is legislative gap.

# THANKS

- Questions and Comments: