

**NATIONAL SECURITY VS. HUMAN RIGHTS: WHISTLE BLOWING ACT OF
EDWARD SNOWDEN**

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To deny the people their human rights is to challenge the very humanity

-Nelson Mandela

Abstract

The right striking of balance between state powers and rights of citizens is a symbol of democracy. Human rights are not esoteric concepts removed from the reality of human existence. Rather, they are the anchors on which our common humanity can be assessed. Many states are driven every now and then by human rights issues, these types of issues have usually been subordinate to national security. The balance between state powers and rights of voters may be a image of democracy. With the arrival of the net, workout free speech, expression, association and assembly became abundant easier. It's not solely created communication technology reasonable however has additionally given a platform for style, that was otherwise not accessible through ancient media. The proportionality concept between both the human rights and national security is always lacking. States often violate the right to privacy and other basic human rights

of the individuals in the name of national security. Though national security is must in the digital age, yet it cannot violate the human rights. Edward Snowden, a low level private contractor to the US-based National Security Agency (NSA), breached *prima facie* legal and moral confidentiality/secrecy obligations by engaging in unauthorized accessing and releasing of a large volume of confidential data from NSA to the press. As such, his activities were *prima facie* not only unlawful but also, given they undermined institutional processes and purposes, corrupt. But these acts were done by him only to secure the privacy of the citizens. This paper focuses on Edward Snowden's act of releasing such information and the need for a balance between human rights and national security.

Keywords: National security, human rights, Edward Snowden, National security Agency (NSA), violation.

Introduction

Many States have mostly viewed the promotion of human rights and also the protection of national security as a most inherent friction. Nearly while not exception, every administration has treated the two goals as reciprocally exclusive-promote human rights at the expense of national security or defend national security whereas high international human rights. Whereas many states are driven every now and then by human rights issues, these types of issues have usually been subordinate to national security. This subordination of human rights to national security is each excess and strategically questionable. A more practical policy would read human rights and national security as related and complementary goals. The balance between state powers and rights of voters may be a image of democracy. With the arrival of the net, workout free speech, expression, association and assembly became abundant easier. It's not solely created communication technology reasonable however has additionally given a platform for style, that was otherwise not accessible through ancient media. However, most countries build contingencies into their national law that give governments to require management of communication networks, and block or intercept them below the colour of national emergency or to shield national security. Higher protection of human rights round the world is very much essential. The foremost appropriate example lies within the situation that occurred in NSA(National security agency) wherever the agency concerned in multiple right violation of the

voters. Edward Snowden exposed the act of National Security Agency and later he was given asylum by Russia. The States ought to reconstitute its policy consequently.

The aim of this paper is to explore the interface between the domestic human rights practices of States and the demands of national security. It also examines the validity of Asylum given to Edward Snowden in the context of this interface.

Hypothesis:

Violation of human rights to secure national security cannot be justified.

Materials and methods:

The present paper is analytical, descriptive and supported non-empirical study. The study was conducted on secondary sources using materials such as books, journals, e-sources, theories and relevant provision with determined case laws.

Review of literature:

1. Seumus Miller, in his article entitled Edward Snowden, whistleblowing and national security states that the acts of Edward Snowden is clearly mentioned along with the ethical issues. It is said that Edward Snowden who is a low level private contractor is alleged to have committed a crime against the state. But according to the researcher the alleged act of Edward Snowden is done to protect the privacy of the citizens which also comes under ethical theory.
2. Jane smiley, in his article entitled Why human rights are more important than national security examined the importance of national security and human rights. The researcher says that human rights are profound rights available to every individual and it cannot be violated in the name of national security.
3. The good, the bad and the ugly: human rights and national security challenges for 2017 by the International civil liberties monitoring group: In this article the challenges present to secure the human rights in digital era is widely dealt by the researcher. It is said that there has to be a balance between national security and human rights.
4. Balancing human rights and national security by Festus Okoye: In this article the meaning of national security and human rights is clearly given. It is said that the State must strive to strike a balance between national security and human rights as human rights are inalienable rights of every individual.

5. Russia extends Asylum to Edward Snowden by Roland Oliphant: In this article the asylum given to Edward Snowden is examined. According to the author the reason to extend Edward Snowden's asylum was to give citizenship in Russia during the later stage.

National Security and Human Rights:

“Human rights are not esoteric concepts removed from the reality of human existence. Rather, they are the anchors on which our common humanity can be assessed.”[1](Okoye et al. 2017) Since the birth of the human rights movement within the mid-twentieth century, the promotion of human rights has been seen as competitive with or maybe compromising core problems with national security. “The rights to privacy and due process are clearly implicated by unaccountable state powers exercised in the name of national security and counter-terrorism.”[2](Anon n.d.) Promoting human rights has long been viewed as a luxury, to be pursued once the govt. has spare diplomatic capability and national security isn't being jeopardized. Human rights square measure associate intrinsic a part of human security and human rights are delineated because the core of human security and as a normative framework for human security. “These rights are cornerstones of democracy. Their infringement without adequate judicial control jeopardises the rule of law.”[3](Harding 2015)

The two rights have to be proportional. “Proportionality means balancing two interests, here it is the interest of the state in security and the interest of the individual in the preservation of human rights.”[4](Harding 2015; here] n.d.) The tenets of human security will offer insights to form a replacement, a lot of holistic and relevant understanding of security in Asian country. “One of the fundamental questions that policy makers and government officials should be able to answer is how to harmonize Internet surveillance policies with international human rights treaties.”[5](Harding 2015; here] n.d.; Anon n.d.) A replacement understanding of national security needs a paradigm shift from the normal state-centric model to a people- centric model. This constitutional vision is inextricably joined to the guarantee of human rights protection enshrined within the Constitution. A folks-centric model would recognise that any actions by state and non-state actors impacting the freedoms and living of the people of Asian country represent grave threats to security. “The Indian Constitution format in respect of human rights was remarkable as a significant and unique attempt at conflict resolution for the delicate balance

it sought to achieve between political and civil liberties on one hand and social and economic rights on the other hand or between social needs and individual rights.”[6] Apparently, the framers of the Constitution wrestled with these problems in terribly similar ways in which, as discovered by the Constituent Assembly debates. “Liberals, progressives, and Democrats recognize, at least intuitively, that “national security” is a code word for tribalism, while “human rights” is a code word for the rule of law.”[7](Smiley 2007) “After all, if the West, a region that many regard as the bastion of human rights, has failed to respect human rights in the face of dire circumstances, what obligation is there for the other countries to do so if confronted with similar threats?”[8](Smiley 2007; w19sj n.d.)

International Instruments regarding human rights:

“The international covenants which would be relevant for the purpose would be the Universal Declaration of Human rights which as proclaimed by UN in 1948 in Article 1 itself sums up the basic doctrine on which human rights are founded namely, All Humans are born free and equal in dignity and rights.”[9] “In 2009, the United Nations Human Rights Council (UNHRC) adopted a resolution that highlighted the importance of the Internet for human rights for the first time. One of the key documents that established a link between protection and promotion of economic, social and cultural rights as well as civil and political rights on the Internet was adopted in 2012 by the UNHRC”[10](Anon n.d.)

The Preamble to the ICCPR states that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is that the foundation of freedom, justice and peace within the world. Recognizing that, in accordance with the Universal Declaration of Human Rights, the best of free groups of people relishing civil and political freedom and freedom from concern and wish will solely be achieved if conditions square measure created whereby everybody could enjoy his civil and political rights, similarly as his economic, social and cultural rights. The ICCPR recognises that the foremost serious security things may need states to pick at (i.e. suspend temporarily) from a number of the rights enshrined within the Covenant below terribly strict conditions. It additionally provides that many specific rights could be restricted on the grounds of national security. In time of public emergency threatening the lifetime of a nation, the ICCPR permits states that have formally declared such emergency the facility to pick at from bound provisions of the Covenant if such measures don't seem to be inconsistent with their different obligations below law of nations and don't involve

discrimination only on the bottom of race, colour, sex, language, faith or social original. Thereby, derogation from bound human rights within the name of national security is permissible provided that four conditions square measure met; a public emergency threatening the lifetime of the nation, a proportionate response by the state, a response in accordance with the international obligations of the state and a non discriminatory response. States have the right to derogate from ICCPR but there are lists of rights which cannot be derogated which are given below.

Non-derogable rights

Even in cases wherever a state of emergency threatens the lifetime of a nation, Article 4 of the ICCPR provides that a list of civil and political rights are to be treated as non-derogable, which suggests that under no circumstances can a State infringe upon these individual rights, irrespective of however serious the threat to national security is. These rights square measure inherent to the respect for the life and liberty of the individual that no derogation is granted. “While it’s certainly the duty of government to protect our country and defend its citizens, this must be accomplished without violating fundamental human rights.”[11](Anon n.d.)

NSA Program And Edward Snowden

Edward Snowden, a personal contractor to the US based National Security Agency (NSA), breached prima facie legal and ethical confidentiality/secretcy obligations by participating in unauthorized accessing, retrieving and/or emotional of an oversized volume of confidential information from National Security Agency to the press and, possibly, to foreign powers, e.g. China, Russia. “The US has spied on the staff of prominent human rights organisations, Edward Snowden has told the Council of Europe in Strasbourg, Europe's top human rights body.”[12](Anon n.d.) Snowden’s activities square measure a significant, so beautiful, breach of institutional confidentiality and were enabled by trendy info and communication technology (ICT) and, specifically, the existence of huge amounts of communicable, searchable, analyzable, hold on information on a laptop joined to a network. As such, his activities were clear not solely unlawful however additionally, given they undermined institutional processes and functions,

corrupt. “This is problematic in so far as privacy is regarded as a human right and, therefore, a right of all persons, US citizens or not.”[13](Anon n.d.)

Thus, “the US government has conducted unfair terrorism investigation, so US was called for to provide fair trails in civilian courts to all terrorism suspects, ensure accountability for past abuses, including at higher levels of government and bring all national security policies in line with US obligations under international human rights and humanitarian law.”[14](Anon n.d.) However, unharnessed of a number of this information to the press could be virtuously even by the public’s ‘right to know’, e.g. the public’s right to grasp that the National Security Agency was engaged in a particularly massive scale assortment method of the information folks and different voters. in an exceedingly liberal democratic polity, if the state engages during this quite large-scale assortment method while not the data and approval of the people then, arguably, it goes on the far side its remit and, probably, undermines trust within the government and its security agencies.

“This position is inconsistent with international human rights law, which considers the acquisition and copying of personal information an “interference” with the right to privacy. Government collection of digital data violates the right to privacy under Article 17 of the ICCPR if it is “arbitrary and unlawful.”[15](Anon n.d.) In short, whereas the gathering method can be even in itself, the way during which it had been enforced rendered it a prima facie corrupt method. “The bombshell revelation of unlawful collection of citizens’ personal information raised red flags on how security agencies are collecting, sharing and using our private details.”[16](Anon n.d.; Csik 2017) That said, the discharge by Snowden of confidential information to foreign powers, e.g. China and Russia, if it's taken place, may be a sort of cyber-espionage. Moreover, it additionally constitutes prima facie serious ethical wrongdoing, since it probably undermines legitimate security functions and processes, and/or puts security personnel et al in harm’s manner. whether or not or not it had been virtuously wrong, all things thought of, depends on the countervailing ethical weight to be hooked up to Snowden’s fulfilling the public’s right to grasp regarding the NSA’s information assortment and connected activities. Speaking usually, these leaks were a breach of security within the sense that they infringed National Security Agency confidentiality necessities and, indeed, America secrecy laws. As such, they undermined institutional integrity and, as such, were acts of corruption, a minimum of

clear, albeit apparently acts of noble cause corruption – corruption driven by the need to attain sensible (assuming Snowden acted for the bigger sensible, as he claims).

However, the larger question is whether or not they undermined peace within the stronger sense, to illustrate, by compromising the legitimate intelligence-gathering strategies and activities of the America and its allies, and by golf shot place the lives of security personnel and, ultimately, voters in danger. On the opposite hand, there's the matter of the public's right to grasp. Sure as shooting the America people had a right to grasp that this huge scale information assortment was happening. Moreover, the intelligence agencies, arguably, were acting outside their institutional remit and were themselves engaged in an exceedingly corrupt apply, albeit one which will otherwise be in itself virtuously excusable. Indeed, forward that the members of those agencies acted for the bigger public sensible, their activity ought to maybe be considered associate instance of noble cause corruption. However, granted that the America voters have a right to grasp, a minimum of generally terms, regarding the information assortment policies of their intelligence agencies and, indeed, have the proper to approve or disapprove them, it doesn't follow that, objectively speaking, those policies ought to be allowed or disallowed. "Contrary to common sense, there is no public interest exception to the Espionage Act." [17] (Anon n.d.; Csilec 2017; Anon n.d.) Thus there are literally variety of problems here that require to be unbroken separate.

First, there's the question of the institutional damage done by Snowden; this can be partially a matter regarding corruption and, specifically, the corrupt activity of associate institutional actor, Snowden. Second, there's the question of whether or not the National Security Agency acted outside its institutional remit; this can be additionally partially a matter regarding corruption, albeit on the a part of those in positions of authority inside the National Security Agency and government. Third, there's the question of the justifiability of the NSA's bulk assortment of knowledge thought of in itself, i.e. freelance of whether or not it had been, or ought to be, fitly democratically licensed. Fourth, there's the question of Snowden's actions, all things thought of. I actually have already prompted the answers to the primary two queries. The solution to the fourth question activates the solution to the third question.

As noted on top of, the National Security Agency was engaged within the bulk assortment of, particularly, the communication information folks and different voters. The information in question was sometimes supposed information. Information doesn't embrace the

content of phone number and different communications. Rather it's, to illustrate, the distinctive phone number/email address of caller/recipient, the time of calls and their period, and also the location of caller/recipient. This assortment of meta-data usually consisted of the majority assortment of mobile phone information each for domestic and international calls. The event of data-mining and analytics techniques and technologies has resulted in quicker and a lot of economical interception of different forms of communications, the combination of this information with existing information, and also the analysis thence for intelligence functions. Intelligence agencies raised their specialise in data processing and analytics technologies to extract new useable info from disparate information sources at a similar time as non-state threat actors like terrorists were victimization multiple and safer ways in which to speak.

In addition to info regarding the metadata program, Snowden's revelations additionally enclosed material regarding NSA's PRISM program that permits the agency to access an oversized quantity of digital info – emails, Facebook posts and instant messages. “The spike of coverage following his actions as a whistleblower left the NSA scrambling and forced President Obama to address the leaks on multiple occasions.”[18](Anon n.d.)

Validity of Asylum Given to Edward Snowden

There are two forms of Asylum square measure as follows, Territorial Asylum; and Extraterritorial Asylum. Territorial Asylum is granted by a State on its Territory, it's known as Territorial Asylum. The proper to grant asylum by a State to an individual on its own territory flows from the very fact that each State exercises territorial sovereignty over all persons, on its territory to anyone. The grant of territorial asylum thus depends upon the discretion of a State that isn't below a legal obligation to grant asylum to fugitive. On Dec 1967 General Assembly adopted Declaration of Territorial Asylum through the adoption of resolution. The declaration consists of a Preamble and 4 Articles managing the principles regarding the grant or refusal of asylum. This Declaration provides that the proper to hunt and luxuriate in asylum might not be invoked by anyone with relevancy whom there square measure serious reasons for considering that he has committed a criminal offense against peace, a war crimes and crimes against humanity. Article four of the this Declaration provides that the State granting asylum shall not allow persons UN agency have received asylum to interact within the activities contrary to the

aim and principles of world organization. From then on top of provisions of the declaration it's clear that State doesn't have absolute right to grant asylum. The grant of asylum may be a part of that can't be exercised in respect of International crimes together with genocides. "Adopting a human rights approach to counter-terrorism laws combines principle and pragmatism. Such an approach can be used by lawmakers to achieve national security without disproportionately limiting the very rights and liberties that are essential to the maintenance of the rule of law." [19] (admin n.d.)

US government revoked the passport of Edward Snowden. This has itself resulted within the discretionary deprivation of right to hunt asylum. As per Article fourteen of the universal declaration of human rights, all persons have the proper to hunt and to relish asylum. But this right has bound limitations. Universal declaration of human rights additionally says that nobody is left unsettled. Edward Snowden's right to enter the house country has rendered the situation of statelessness. Asylum was granted by Russia to Edward Snowden. "Edward Snowden's right to asylum in Russia has been extended for a further three years and he will soon be eligible to apply for Russian citizenship." [20] (Anon 2017) The Asylum granted by Russia is valid as a result of Edward doesn't delight in any undercover work activity. The knowledge given by him is merely restricted to people's right to grasp and so it's a legitimate asylum.

Conclusion and Recommendation

Protection of national security has become an important priority for States all over the world. Even while recognizing this one needs to understand that this can not be achieved at the price of deprivation of right to privacy. In Digital era, there are risks of ton of privacy violation by the third parties. [21] However, States should guarantee protection to any or all its voters. National security and human security each square measure is necessary to possess a peaceful democratic state. The act of informant Edward Snowden reveals that there's a mass violation of human rights, there is several such agencies in every developing and developed nations like National Security Agency. [22] The answer to unravel this drawback is to strike a balance between human rights and national security.

Nations measure taking counter terrorist act measures are acceptable and most important within the digital era. The researcher suggests that governments should not violate non-derogable human rights. International human rights law provides a fastidiously tag set of scales that change governments to balance national security and human rights. The derogable rights ought to solely be infringed in accordance with human rights law. A regular, freelance review of the operation of counter-terrorism law shall be established. The governments ought to provide domestic force to international human rights law by introducing express statutory protections for human rights. A Commission shall be got wind of to handle the problem in implementing the on top of aforementioned suggestions that shall additionally provide recommendations to the International Organs and resolve the problem, ultimately reaching to strike a balance between human security and human rights.

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