

"We need to separate speech that is offensive and insulting from speech that actually leads to imminent threats to people's lives and well-being"

David Kaye, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, shares his observation on Bangladeshi blogger killings and state responsibility, the distinction between hate speech and offensive speech, and surveillance in the name of national security, in an exclusive interview with Sushmita S Preetha of The Daily Star

What are your views on the current state of "freedom of expression" in Bangladesh?

At first I have to say I can't speak comprehensively about what is happening in Bangladesh. I think the one issue that is very obvious is the pressure on bloggers and the real insecurity that people who just want to write and express their opinion face in Bangladesh. As we know, this is a problem that has resulted in lives being taken brutally. That seems to be symptomatic of a much broader problem, which is lack of tolerance of different opinions and views, and insecurities about one's views, perhaps. We have made a request for a country visit to Bangladesh, along with requests to a dozen other states. Visiting Bangladesh would enable us to look at a whole range of issues, such as the broadcast policy, internet regulation, religious freedom and blasphemy, and freedom of expression at large.

As you identified, there seems to be a real sense of fear among bloggers and writers in general, many of whom believe the state has let them down. Under the circumstances, what should be the role of the state?

I think there are at least two roles. One, the state has an obligation to protect the right to life for all of its citizens. As we can see, these are not just one-off killings, these are part of a broader trend, so the state has a real responsibility to provide protection to those who are being threatened in a systematic manner. What that means in terms of how that protection is provided is up to the state to determine. The second part entails engaging in public education and making clear statements, not just in terms of rejecting the killings, but in terms of rejecting all forms of intolerance of different ideas. The govern-



David Kaye

ment doesn't need to be partisan to any one of those ideas, but it has to support everybody's right to express themselves. There needs to be a lot of work done in educating the public about basic rights.

Speaking more generally, would you say freedom of expression is an absolute right? What happens, for instance, when "hate speech" is propagated in the name of "free speech", and what can we do to ensure freedom of expression is not exploited by those in positions of power?

This is one of the hardest questions. Most of the time when we see hateful speech, it's in the service of some power or some position, whether it's maintaining power or trying to

get power. So much of hate speech is about manipulating people's identity and views. I think we need to separate speech that is offensive and insulting from the kind of speech that actually leads to imminent threats to people's lives and well-being, whether in the form of discrimination or physical attacks. We need to be careful about restricting speech that is not at the level of inciting violence because once you start going down that path, you start restricting all kinds of speech, on the mere supposition that it could lead to something else. That's a real problem in the way we talk and think about hate speech. When there is state and/or powerful institutional support for hateful speech, civil society has a very important role to play, not

just on the side of those who are being attacked, but also on the side of those who are carrying out the hate speech. That means that all actors need to talk and engage in dialogue, because hate speech snowballs into violence that harms everybody.

As technology has advanced, we have unfortunately also witnessed greater surveillance on people, often in the name of national security. What can the UN do, if anything, to deal with this rising concern?

I think you have identified a really important problem - well, two problems, really. One is the use of surveillance tools to undermine everybody's security and privacy. That's a real problem because, at the end of the day, if you think you are being watched, your willingness to express yourself is going to be limited on any number of issues. And there are tools for that (to counter surveillance tactics), such as encryption and anonymity, but states are trying to cut back and deprive people of these

tools. I think it's essential for the UN to insist that these tools are essential for ensuring security and privacy globally.

The other issue is that states are increasingly using national security as an excuse to undermine freedom of expression, and that's an area where rapporteurs and UN more generally can ensure that when states are doing something in the name of national security, we don't simply say, 'oh, ok, that's a legitimate objective', but that we really push them, and ask: why is this really necessary to take this measure in order to advance your security, how is this proportionate given the threat you have identified? So really, we need to challenge states on their claims of national security. There was a time when states could say, national security, and no one would respond, but I think that time is behind us, and we should be really challenging them, and demand that they explain and justify.

Have you observed any significant trends across the South Asian and South-east Asian region in regards to freedom of expression?

First of all, civil society across the region is quite vibrant and dynamic. But once you start to criticise existing power structures or the government, one of the things we observe across the region - not in every state, but you do see it in a number of places - that people get targeted for dissent. Some examples are: the Sedition Act in Malaysia, which is clearly designed to limit dissent, both political and religious; in Thailand, with Lèse-majesté laws, there is basically no way to criticise the government right now. You see such clamping down and restriction of legitimate forms of dissent and expression across the region.

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NEW MOBILE BANKING REGULATIONS

A PUZZLE WORTH SOLVING

PIAL ISLAM

WHY is it that the mention of mobile banking creates such a polarising set of reactions among many people? For some, it seems to be the next best thing to sliced bread. Yet, for others, it seems to represent the next big disaster waiting to happen. Let us remember that mobile banking is still really quite a new phenomenon - barely four years old. The fact that something this new can instigate such strong emotions (excitement or fear) at least should warrant a close look.

If we look at the global experience with mobile banking, we see 200+ live deployments around the world across two predominant models: an MNO-led model and a bank-led model. Globally, about 70% of the deployments are MNO-led models, while 30% are bank-led models. Some countries are experimenting with hybrid models too. Sri Lanka allows both MNO-led and bank-led models to co-exist. Earlier this year, India introduced the "payment bank" model where non-bank entities are allowed to operate special purpose mobile banking services. And most recently, Bangladesh has put forward a set of draft regulatory guidelines last month that seems poised to encourage yet another hybrid model. This article takes a closer look at these proposed changes.

emerged from the best of intentions, but their practical implementation measures and leave a lot of room for clarity and improvement. This was my first reaction in reading the document. Subsequently, over the last few weeks, I spoke to a number of well-recognised industry experts and practitioners, both local and global, and everyone I spoke with echoed my reaction. I was not the only one puzzled. Let me illustrate with three key examples.

First, the new draft guidelines allow no more than 15% ownership by a single entity (bank or non-bank). This means a mobile banking operation needs to have about seven different equity partners. Even if you leave out the coordination costs associated with this proposal, getting seven organisations, some of whom will be direct competitors in their traditional businesses, to agree on things will not only be difficult, but it will be an ineffective governance structure. Moreover, with limited equal shares, the incentive for one organisation to take the lead on anything will be almost nonexistent. This has the risk of running an operation only half-heartedly.

Second, the new draft guidelines indicate that this multi-player approach is intended for encouraging interoperability in mobile banking. This is truly confusing. While it is true that interoperability would help the mobile banking ecosystem to grow further, restructuring the owner-

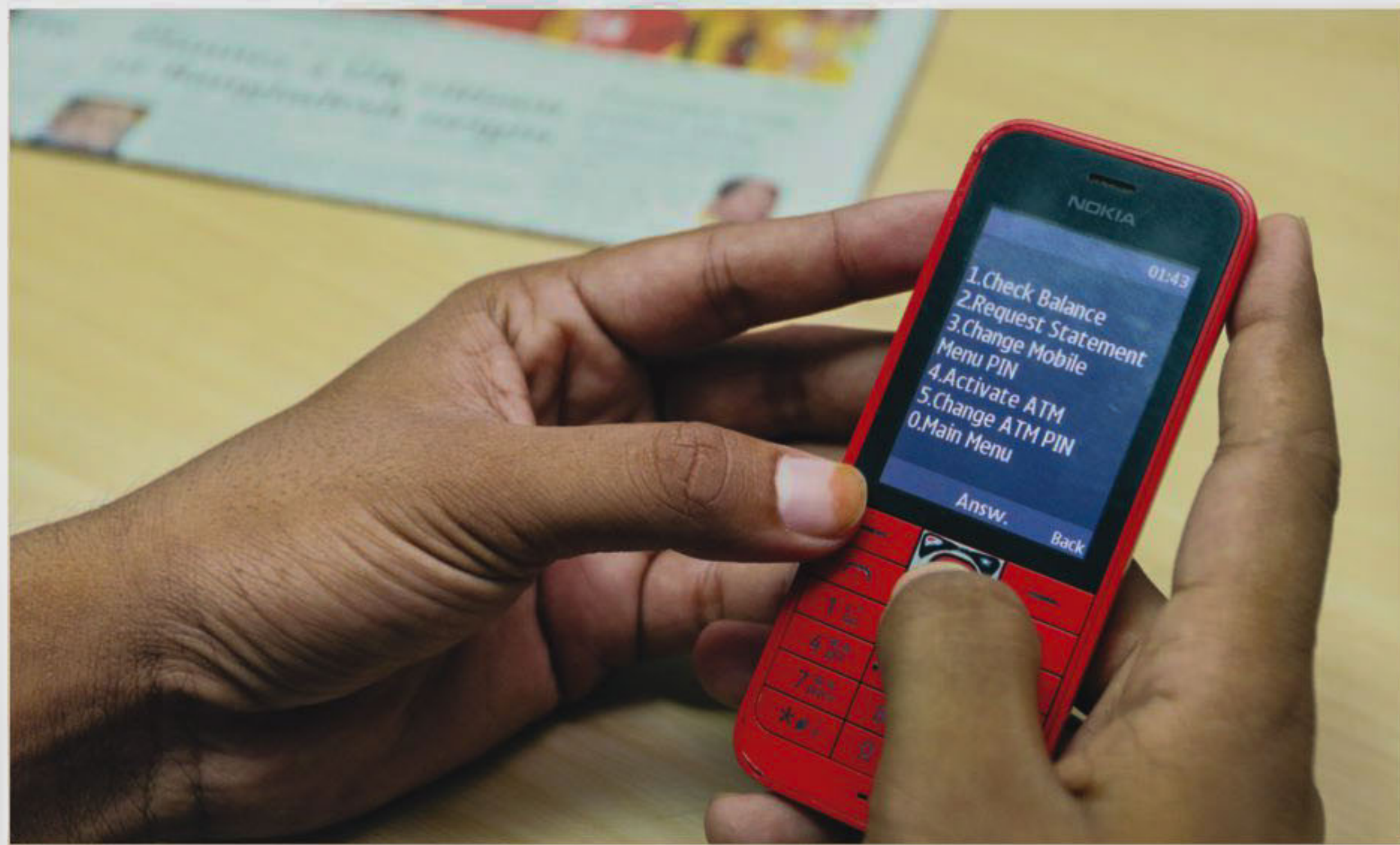


PHOTO: PRABIR DAS

ship structure to do so is befuddling. We have interoperability in the banking sector today - if you write a check from one bank and deposit it into another bank, the cheque clears within 24 hours. We have a national payment switch for this. We also have interoperability in the telecom sector today - you can call your sister with a Robi number from your GP number. That connection is made in seconds. Do you really need to change the ownership structure to ensure

interoperability? This would be like asking a bank to own shares in all other banks so that their cheques are cleared by others, or asking an MNO to own shares in all other MNOs so that people can place calls across networks. How silly would that be? A much simpler and far more efficient way to ensure interoperability in the mobile banking sector would be to have them connected to the national payment switch.

Third, the new draft guidelines

state that acceptance of an MNO as equity partner is conditional on its extending reliable telecom access to all mobile banking platforms at the same effective standard of access and pricing. The first part of this is good. But expecting a firm to offer the same pricing to its competitors as it offers an organisation it partially owns, is counterintuitive to the principles of competitiveness. If your organisation owns shares of a firm, it is only natural that you

would take steps to maximise its return on investment. Pricing, one of the three "Ps" in business nomenclature, is often a critical component of a differentiation strategy. Banks, MNOs, airlines, and practically all sectors are allowed to set their own pricing. Why would we treat this differently for mobile banking?

There are two sides of a coin. The new draft guidelines certainly have some positive changes too. The risk-proportionate simplified KYC requirement for limited purpose Mobile Accounts is definitely one of those. Another is the opening up of equity stakes to MNOs. Yet another positive change is the further expansion of the categories of transactions allowed through mobile banking.

The mobile banking sector in Bangladesh is truly at a crossroads today. What is clear is that it is not the next best thing to sliced bread (just yet), and nor is it another disaster waiting to happen (just yet). What is also clear is that more of the same is really not going to serve us well in the future. At a holistic level, I view the new draft guidelines as recognition of this reality and a positive step towards finding the right balance between overly prescriptive and too laissez faire approaches. It now requires due consultations with various stakeholder groups to arrive at the best path forward.

The writer is Managing Partner at pi Strategy Consulting, a management consulting firm.

QUOTABLE Quote

HARRIET TUBMAN, 1822-1913
AFRICAN-AMERICAN ABOLITIONIST AND HUMANITARIAN

I freed a thousand slaves. I could have freed a thousand more if only they knew they were slaves.

CROSSWORD BY THOMAS JOSEPH

ACROSS	DOWN
1 Sung drama	1 Spotted cat
6 Chore	2 Outcasts
10 Writer Carr	3 Waistband material
11 Summer of song	4 Take a breather
12 Make blank	5 Lincoln nickname
13 Silver bar	6 Great weights
14 Shopper's aid	7 Beef variety
15 Guarantee	8 Derisive sound
16 Feedbag bit	9 Sagal of "Sons of Anarchy"
17 The Matter-horn, for one	11 Scatter
18 Messy room	15 Maximum amount
19 Meadow blooms	17 Finally
22 Edinburgh native	20 Scatter seeds
23 Harvest	21 Harden
26 Refs' needs	24 Factbook
29 Cobbler's tool	25 Showy fowl
32 Genesis woman	27 College climber
33 Travel aid	28 Sleek and stylish
34 Noted name in horror	29 Took steps
36 Tex-Mex snack	30 Marine mammal
37 Hawk's grasper	31 Jimmy smits series
38 Stately home	35 French denials
39 Oryx's cousin	36 City car
40 Precise	38 Most CEOs
41 Morning glisteners	
42 Sister of Paris Hilton	

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Yesterday's answer

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BEETLE BAILEY by Mort Walker

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