

Risk management, not unproductive public feuds

BNP's party council A time for soul-searching

THE BNP is holding its sixth triennial council after a long gap of seven years. It is a party of a fairly long standing but over the years has been on a gradual decline. There are many reasons for the torpid state that BNP finds itself in. Shrinking of its political space, stemming from the government highhandedness towards it, is one of those. However, that cannot be the reason for the type of politics that BNP had resorted to, particularly in the period immediately before the 2014 election which it chose to boycott and tried to prevent, a politics it repeated in January 2015.

We feel that there are primarily two issues that the BNP must cogitate on. First, the role it played following the 2014 elections that have caused many people to lose faith in its politics, should be thoroughly assessed. But more than that, it must indulge in an objective review of its link with the Jamaat. We have been consistently opposed to BNP's relationship with Jamaat and fail to rationalise the association. A cost benefit analysis of its alliance with the anti-liberation party is imperative if it wants to remain a viable entity that can play the role of an effective opposition when out of power. We feel that BNP's association with Jamaat has been the principal cause of its slump.

The country needs a good opposition and none exists today. But the BNP should understand that if it wants to be a strong political party and find acceptance among the voters in electoral politics, its politics must adhere to the fundamental principles and ethics of the Liberation War, shunning the company of those that have stood against the birth of this country.

Flouting of traffic rules?

End this atrocious practice.

DRIVING on the wrong side of the road has become the norm in Dhaka these days as highlighted by the front page photos published in this newspaper on Thursday. What is inconceivable is that police-escorted vehicles and VIPs should be committing this gross violation. In one of the photos, we can even see a policeman penalising some bikers for taking the wrong side of the road near Rupashi Bangla intersection, but oblivious of a government vehicle committing the same offence right beside him. It seems that some can violate traffic rules with impunity.

We have, time and time again, pointed out that such utter disregard for traffic rules by those who should be setting us an example can only lead to chaos in our already flawed traffic system, encouraging more people to break the laws. We have witnessed buses of public offices and institutions break rules without any concern that they are holding up traffic and causing mayhem on busy roads and intersections. This is most unacceptable in a country that claims to be civilised.

The unlawful use of the road not only threatens urban order, but also people's lives. Unfortunately, two untimely deaths by vehicles driving on the wrong side of the road, within the last one month, do not seem to have moved the conscience of the city-dwellers, at any rate, of the people high up.

We expect the police to apply the rules equally to all, and a directive should be issued from the top to end this atrocious practice.

MO CHAUDHURY

THE recent news of fraudulent transfer of the Bangladesh Bank's (BB) US Dollar Reserve to yet unidentified beneficiaries has ignited a governance firestorm inside the country, while showcasing the vulnerabilities of a digital world, and the strengths and weaknesses of the international funds transfer architecture. This commentary seeks to discern the key aspects of forensic investigation and financial prevention.

Funds Transfer Architecture

To pay another party from its Federal Reserve Bank of New York (FRBNY) accounts, BB's authorised officers, using their electronic signature/pass codes, send an electronic advice to Deutsche Bank (correspondent bank of BB in New York), using the Belgium-based secure messaging network, Society for Worldwide Interbank Financial Telecommunication (SWIFT). It seems that the Deutsche Bank and the FRBNY were initially executing the transfer requests without manual due diligence (identification, reconciliation and confirmation). This means that the Deutsche Bank's automated system mechanically and instantaneously relayed the BB's payment/debit requests to the FRBNY using the Fedwire Funds Services (owned and operated by the Federal Reserve Banks), the payment order also routed to the Clearing House Interbank Payments System (CHIPS), a clearance and settlement system for large value international transactions of public and private counterparties, owned and operated by some large banks in the US since the payees are private individuals/NGOs. The CHIPS then automatically credited the funds of the banks of the payees (Rizal Commercial Banking Corporation or RCBC, Philippines, and Pan Asia Banking Corporation, Sri Lanka; possibly through their correspondent banks), and debited that of FRBNY (in

turn debiting BB's account). Pan Asia Banking Corporation officials in Sri Lanka became suspicious of the unusually large transfer and immediately brought this to the attention of Deutsche Bank. Reportedly, Deutsche Bank officials also noted a spelling error in the NGO payee name of Sri Lanka, possibly upon verification request from Pan Asia. The alarm bells then went off everywhere, including the FRBNY and BB.

Investigation

The crucial part of the transfer architecture compromised in the heist was the SWIFT messaging system, either remotely by the external and unrelated hackers based in Bangladesh or elsewhere, or physically on BB site. In either case, there may be BB insiders involved as collaborators. Investigating the CCTV shutdown both at BB and RCBC sites during the February 4-5 timeframe, as reported in some media, is thus important; if the report is factual, then the prospect of BB and RCBC insiders as collaborators will be high. Even without CCTV shutdown, investigation should explore if any BB and RCBC official, with access to or intimate knowledge of SWIFT authorisation codes, met physically or communicated via phone or internet in the recent past. By itself, this requires a multi-country and multi-department investigation.

Judiciously BB Governor Dr. Atiur Rahman engaged the Washington DC area consulting firm, World Informaticx, which in turn has recruited famed cyber intelligence firm FireEye. However, this effort needs to be immediately augmented by and coordinated with international law enforcement and intelligence agencies. Further, all Bangladesh Bank officials, not just those of a department, should be immediately barred from leaving the country for now.

A complicating factor is that the sets of hackers and ultimate financial beneficiaries of the heist may be disjointed. The latter may have simply

paid the hackers for hacking without the hackers knowing their purpose and identities. This seems like a real possibility, given the elaborate and sequential transfer of funds involving the casinos in the Philippines. If not stopped, the Sri Lankan scheme might have involved the casinos there too. It seems that the choice of this unlikely duo of countries, the Philippines and Sri Lanka, could have been driven by the money whitening opportunity at the casinos, with the stricter alternatives in Macau, Malaysia and Singapore being avoided. This type of sophisticated choices in various aspects of the globally spanned fraud operation hints to very wealthy and resourceful ultimate beneficiaries, ominously raising the possibility of financing for extremist/rebel organisations or geopolitical covert operations. Coincidentally, maritime Bangladesh is located in a triangular fashion with the island nations of Philippines and Sri Lanka on the south-western and south-eastern shipping routes respectively, both dotted by rebel movements and terrorism.

Prevention

Notwithstanding Dr. Atiur Rahman's leadership in improving risk management at domestic banks, one area that remains visibly weak is that of operational risk relating to failure of operations, most notably failure to prevent internal and external fraud. Risk management in this context requires, among other things, control of the physical environment (sites and technical infrastructure) and the financial environment (rules and policies for executing financial activities like funds transfer, trading, accounting, etc.). As recommended by IT experts, there is clearly plenty more to do in securing the technical infrastructure. If not already in place, it will be highly desirable, as per the norms of today's banking world, to institute electronic card access to BB sites for all BB staff with restricted access to sensitive areas such as funds transfer messaging zones.

The control of the financial environment is much more complex and challenging, since too restrictive an environment may reduce flexibility to react timely and promptly, and hurt efficiency by increasing the time and cost of executions. For example, manual due diligence in payment advice verification is safer but would be quite inefficient for all, especially smaller payments. With this tradeoff in mind, best practices around the world use some common controls that include the size of single transfer, number and size of total transfer to a single payee, number and size of total daily transfer requests to all payees in aggregate, daily size and number of transfers authorised by a single officer, restrictions on transfers to specific geographic destinations, daily reconciliation and reconfirmation of transactions, etc. A severe event may still occur, albeit with a low probability. As such, a best practice is to allocate risk capital to manage and withstand such losses.

Further, the internal BB financial controls in Bangladesh need to be complemented and synchronised with similar controls, whenever possible, at the end of the global partners in the architecture, importantly the FRBNY and Deutsche Bank. If such controls are already in place, they need to be revisited now following the seismic heist.

To conclude, going forward, bolstering operational risk management at BB will be of paramount importance since any further security breach could immutably tarnish the country's banking and cybersecurity image. Instead of unproductive public feuds over the lag in information sharing by BB and making drastic personnel changes in a hasty manner, the country is better off speedily identifying the intercontinental network of perpetrators and their ulterior motive, for once without bureaucratic or political intervention.

The writer is Professor of Practice, Finance Dept. at McGill University, Canada.
 Email: mo.chaudhury@mcgill.ca, mochaudhury@gmail.com.

PROJECT ■ SYNDICATE

India's Antiquated Penal Code



SHASHI THAROOR

A number of seemingly unrelated controversies in India actually have one important element in common: They all relate to criminal offenses codified by India's British imperial rulers in the mid-nineteenth century that India has proved unable or unwilling to outgrow.

The problematic features of the British-drafted Indian Penal Code include the prohibition of "sedition," defined loosely as speech or actions promoting "disaffection against the government established by law"; the criminalisation of homosexual acts; and the uneven prosecution of adultery. The first two, in particular, have lately been the source of considerable public outrage – and rightly so. These provisions – as I argued when introducing amendments to them in the Lower House of Parliament (of which I am a member) – can easily be misused by the authorities in ways that infringe upon Indians' constitutional rights.

Consider sedition, against which a draconian law that was established in 1870 to suppress any criticism of British policies – even criticism that, as one Briton candidly put it, did not involve "an absolute breach of the peace." The result was Section 124A of the penal code, under which any person who used "words, signs, or visible representation ... to excite disaffection against the government" could be charged with sedition and potentially sentenced to life imprisonment. In other words, no free speech for Indians.

But even that was not sufficient for Britain's leaders, who tightened the law further in 1898, making it even harsher than the sedition law in England. The British had concluded, in the words of the British lieutenant governor of Bengal, that "a sedition law which is adequate for a people ruled by a government of its own nationality and faith may be inadequate, or in some respects unsuited, for a country under foreign rule."

Sedition was thus explicitly intended as an instrument to terrorize Indian nationalists; indeed, Mahatma Gandhi was among its prominent victims, though far

from its last. In fact, just last month, students at New Delhi's Jawaharlal Nehru University were arrested on charges of sedition, for using "anti-Indian" slogans in their protests against the execution of the convicted terrorist Afzal Guru. These arrests, which shocked many Indians, would not have been possible without the loose wording of the law.

My amendment would limit sedition charges to situations where an individual's words or actions lead directly to the use of violence or incitement to violence, or where they constitute an offense – such as murder or rape – that, under the Indian Penal Code, is punishable by life imprisonment. By clarifying that simply criticising the government's actions does not constitute sedition, such an amendment would reinforce freedom of speech – fundamental to any democracy – while safeguarding against speech that actually incites violence.

Then there is Section 377 of the Penal Code, which was enacted in 1860 and criminalizes "carnal intercourse against the order of nature" – wording so archaic that it would invite derision in most modern societies. Even in the past, there was no taboo against homosexuality in Indian culture and social practice; it was the British Victorians who introduced it.

By criminalising sexual acts in private between consenting adults, Section 377 violates the fundamental rights guaranteed under Article 21 (life and liberty, including privacy and dignity), Article 14 (equality before the law) and Article 15 (prohibition of discrimination) of India's Constitution. The real-world consequences of this are jarring: in the last two years, 58 Indians have been arrested under Section 377 for acts carried out in the privacy of their homes.

My amendment to Section 377 would have decriminalised sex between consenting adults of any gender or orientation. Unfortunately, conservative members of the ruling Bharatiya Janata Party (BJP) voted against the bill's introduction in Parliament, citing a 2013 Supreme Court judgment upholding the law. But there is still some reason for hope: the Supreme Court has agreed to hear a curative review petition against its earlier judgment.

The Indian Penal Code is not much easier on heterosexual women than it is on homosexuals. According

to Section 497, a husband can prosecute his adulterous wife, and the man with whom she had sexual relations, but a woman cannot sue her adulterous husband, unless his partner is underage or married. This is an appalling and outdated double standard.

It is time for India's government to get out of its citizens' bedrooms, and also to recognise that a pernicious sedition law has no place in a lively and contentious democracy. Indeed, the British, who created these problematic offenses, have since eliminated all of them at home – a reflection of the changing times. (One of the worst legacies of colonialism is that its ill effects outlasted the empire – in India, occupied Palestine, the Caribbean, and elsewhere.)

President Pranab Mukherjee, for one, feels it is time to take India's Penal Code into the twenty-first century, underscoring last month, on the code's 155th anniversary, the need to revise it thoroughly. India's criminal law, he declared, was largely "enacted by the British to meet their colonial needs," and must be revised to reflect our "contemporary social consciousness." Only then can it be a "faithful mirror of a civilisation underlining the fundamental values on which it rests."

With that speech, Mukherjee threw down the gauntlet to the right-wing BJP government. One hopes that its leaders respond, though their fondness for autocratic measures and indulgence of illiberal and intolerant statements by their supporters – behaviour that has spurred serious concern across the political spectrum – raises serious doubts that they will.

As long as they exist, laws that can be misused will be misused. In order to prevent this, and to create a liberal legal framework fit for a modern democratic country, homosexuality and adultery must be decriminalised, and sedition must be approached from a far more liberal perspective. As the recurring debates consuming the country indicate, it is manifestly time for a change.

The writer, a former UN under-secretary-general and former Indian Minister of State for External Affairs and Minister of State for Human Resource Development, is currently Chairman of the Parliamentary Standing Committee on External Affairs and an MP for the Indian National Congress.
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COMMENTS

"Worker dies as iron rod falls on him"
 (March 17, 2016)

Saad Hassan Hasib

In our country, no security measures are taken for the workers' safety, not even helmets are provided to them. This death could be easily prevented. The government and the construction companies are at fault for not caring about workers' safety.

Syed Yasir Arafat

Legal action should be taken against the construction company (Toma Construction) for not taking the minimum safety measures.

LETTERS TO THE EDITOR

letters@thedailystar.net

Draw inspiration from Western democracies but don't be blind

Apropos to Mr. Kajal Chatterjee's letter 'Let us take a hard look at ourselves' (TDS, Mar. 4). When something doesn't support or agenda, it'll be called a human right abuse while when it doesn't support other people's agenda, it will be considered bad and evil. 'Human rights' is often used as a tool by the rich and powerful to abuse the poor and powerless to place sanctions that benefit the long term economic goals of rich countries who intend to establish a hegemony. The wealth of the West has been consolidated at

the price of the tears, blood, dignity, dreams, aspirations and hopes of countless people from the East for generations. Mr. Chatterjee should introspect first the innumerable cases of global human rights abuses by Western nations toward other poorer countries before he counsels others. It is good to draw inspiration from Western democracies; however, a blind and selective tolerance to their broader injustice only reflects a narrow, hollow and selfish vision.

Saikat Kumar Basu
 Lethbridge, AB, Canada

Stop provoking violence

Donald Trump who has spent his career in the pursuit and praise of wealth would seem an odd fit for voters who place greater value on faith, hope and charity. Trump has proved that he is a pathological liar. He should stop provoking violence through his fascist language.

Ted Rudow III, MA
 Palo Alto, CA, USA

Planting trees as part of celebrations

Recently I have come across the news of Bhutan which states that Bhutan has welcomed the birth of its new prince by planting 108,000 trees across the country as part of a prayer for the royal child to grow up happily. It was such a pleasant piece of news and should be a lesson for us. Many people in Bangladesh like to chop down

trees for monetary benefits without even thinking of the consequences. If we change our mindset and make tree plantation a part of all our celebrations, our future generation would be benefited. Let us all give it a thought.

Bashubur Rashid
 Mahabubur Residential Area
 Dhaka