

Self-incrimination through forced revelations of journalistic data

Are there any safeguards under Bangladeshi law?

Rozina's bail a welcome relief

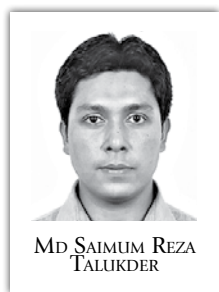
Withdraw the case against her to ensure press freedom

WE are relieved that journalist Rozina Islam has been finally granted bail by the court after six days of imprisonment. We thank the court and congratulate the wider journalist community and all those who came out in support of Rozina and the freedom of the press. The bail brings only temporary relief, however, as the court has set a July 15 date for the next hearing in the case. While we are encouraged by the news of the bail, the circumstances under which this case was initiated leading to her detention raise several questions.

First, we must reiterate that whatever the charges against her, Rozina was only performing her professional duty like any journalist serving public interests. Any problem the health ministry had with her alleged conduct should have been handled more responsibly and professionally, instead of confining her for nearly six hours and humiliating and harassing her. So it is only fair to ask whether the ministry's actions leading to Rozina's arrest warrant judicial scrutiny to the same extent as her alleged conduct. Secondly, we fail to understand the obligation for Rozina to surrender her passport, one of the preconditions for her bail. She is a respected journalist well-known for her work, not some criminal to be treated as a flight risk. This obligation, we feel, may be construed as prejudice on her innocence.

Third, and most frightening, is the prospect of the investigation officer being allowed to conduct a forensic analysis of two cell phones seized from Rozina. If it comes to pass, it will not only constitute a breach of her privacy and compromise her position as an investigative journalist, but will also set a bad precedent affecting the work of all investigative journalists who must protect their sources to access vital information. As we made clear in our report yesterday, "the nature of Rozina's work was such that it relied on government whistleblowers who she protected under the cloak of anonymity, and the upcoming forensic analysis raises questions about whether their identities would now be revealed." What this means for the future of journalists—and the safety of their sources—is anybody's guess. Section 5 of the Public-Interest Information Disclosure Act 2011 is there precisely to avoid such a situation.

Unfortunately, we are passing through a time when there are few safeguards for journalists as draconian legal instruments like the Digital Security Act and the defamation act—and now, a century-old law like the Official Secrets Act—are being used or invoked to silence them. This is unfortunate because journalism is a public good, and when journalists are silenced, it is the public who stand to lose the most. As for Rozina, her bail is a step in the right direction, but the case remains in place. If it is allowed to continue, it will not only further affect her work and reputation but also cast a long shadow on the future of investigative journalism in Bangladesh. We urge the government to immediately withdraw this case and all such cases filed to harass journalists.



MD. SAIMUM REZA TALUKDER

IN this age of intelligent machines, journalists often keep information that is sensitive, confidential and self-evident in their laptops or mobile phones, or in cloud storage facilities. That is

why the threshold of privacy of such data is much higher than of personal data. One can recall the Panama Papers scandal, which shook the whole world with revelations of confidential documents regarding corruption and offshore wealth. Therefore, access to the digital devices of a journalist cannot be given without due process and judicial scrutiny, and without maintaining checks and balances in order to protect the right to privacy and freedom of the press in a democratic society.

In April 2021, the European Court of Human Rights (ECHR) ruled in favour of Natalia Sedletska, host of the award-winning investigative TV programme "Schemes". She was accused of leaking state secrets nearly four years ago by Ukrainian prosecutors, and a Ukrainian court ruling in 2018 gave authorities unlimited access to 17 months' data from her smartphone. The ECHR concluded that Sedletska should be protected from the data search under Article 10 of the European Convention on Human Rights, which is essential for free press and privacy in a democratic society. The ECHR verdict says "[T]he court is not convinced that the data access authorisation given by the domestic courts was justified by an 'overriding requirement in the public interest' and, therefore, necessary in a democratic society".

So, the higher threshold of privacy and protection of journalistic sources can be justified, especially when it involves public interest. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, recommended in his report that, "Journalists should never be forced to reveal their sources except for certain exceptional cases where the interests of investigating a serious crime or protecting the life of other individuals prevail over the possible risk to the source. Such pressing needs must be clearly demonstrated and ordered by an independent court." Another report by the UN High Commissioner for Human Rights emphasises that, "no interference could take place except in cases envisaged by the law. Interference authorised by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of

the Covenant". As per the UNESCO Resolution on internet-related issues published on November 2013, "...privacy is essential to protect journalistic sources, which enable a society to benefit from investigative journalism, to strengthen good governance and the rule of law, and such privacy should not be subject to arbitrary or unlawful interference..."

Now the question is, where does Bangladesh stand in terms of data protection of journalistic sources? It is to be noted that there is no dedicated Data Protection Act enacted in Bangladesh yet that expressly talks about digital safety or data protection of journalistic sources. Article 43 (b) of our Constitution ensures privacy of correspondence and other means of communication, subject to reasonable restrictions imposed by law in the interests of the security of the State,

never thought that such fiction would one day be reflected through the DSA, which destroys the basic principles of defining a crime—that is, both *actus reus* (action done) and *mens rea* (guilty mind) have to be present to constitute a crime. But how can we establish that *actus reus* is fulfilled when a person is yet to commit a crime?

Also, if a journalist collects confidential information of a government office from a government employee who collected that information by misusing telecommunication apparatus, the Inspector assigned by the Bangladesh Telecommunication Regulatory Commission (BTRC) can look into such data or records under the Bangladesh Telecommunication Act 2001 (Section 68, 74 and 61). However, a journalist's smartphone might not contain data of the alleged crime only, but also

accused of any offence shall be compelled to be a witness against himself". The International Covenant on Civil and Political Rights, to which Bangladesh is a party, says in Article 17 that "no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation". It further states that "everyone has the right to the protection of the law against such interference or attacks." Also, in the case of Monzur Ahmed Bhuiyan and Ors. vs Adilur Rahman Khan and Ors., the Appellate Division of the Supreme Court of Bangladesh upheld the decision of the High Court Division that the Voluntary Disclosure of Information Ordinance 2008, through which the government formed the Truth and Accountability Commission for voluntary disclosure of corruption-accused, is unconstitutional and illegal. The High Court Division declared that the said impugned Ordinance is violative of Article 94 and 111 under part VI and also Articles 27, 31, 35(3), 35(4) and 58B-E of the Constitution. Also, in the recent judgement of State vs Oli, the High Court Division of the Supreme Court observed that "...it is our common experience that nowadays private communications between the citizens including their audios/videos are often leaked and published in social media for different purposes. We must not forget that the citizens' right to privacy in correspondence and other means of communication is guaranteed under Article 43 of the Constitution which cannot be easily violated at the instance of any interested quarter."

The BTRC and telecommunication companies operating in Bangladesh have a great responsibility towards proper compliance of the Constitutional mandate of maintaining privacy in communication. They cannot provide any information relating to the communication of/between their subscribers and the citizens of this country, unless it is permissible in law matched with the Constitution. Therefore, forcing a person, regardless of their profession, to give up access to their digital device which may lead to his/her being criminalised is a violation of the above mentioned constitutional rights. Which begs the question: should not the above mentioned provisions of the Official Secrets Act, Telecommunication Act, and Digital Security Act be declared unconstitutional? Is it not high time that we introduce higher thresholds within our local laws to protect the privacy and freedom of journalists, human rights defenders, and rights activists?

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PHOTO: COLLECTED

public order, public morality or public health. Different ICT-related laws, such as the Bangladesh Telecommunication Act 2001, The Information and Communication Technologies Act 2006, and Digital Security Act 2018 do not contain any provision on privacy of "journalistic sources". Instead, Section 43 of the Digital Security Act 2018 gives free rein to law enforcement agencies to confiscate any computer or computer systems (smart phones can be included in this regard) and obtain data or information from anyone if the law enforcement official has reasons to believe that the evidence might be destroyed or compromised. Even a police officer can arrest a person or confiscate a computer if s/he believes that a crime (defined within the DSA) is about to happen. When I was in school, I watched the movie *Minority Report*, which showed people being criminalised for even thinking of a crime. I

other confidential journalistic sources and personal data. Accessing data for investigating alleged crimes is necessary and legitimate, but having to give access to digital devices also creates the scope for compromising other personal information that might not have any relation to the alleged crime. The nature of a digital space as a crime scene is not the same as that of a physical crime scene, but none of the Bangladeshi laws recognise this difference. Section 8 of the Official Secrets Act 1932 also says that it shall be the duty of every person to give information on demand relating to an offence or suspected offence. This leads to another grave concern for investigative journalists—self-incrimination. Can a journalist be compelled to give the password to their digital device, which might reveal data leading to criminalisation?

Article 35 (4) of the Constitution of Bangladesh clearly says that, "No person

The public must know more about black fungus

Govt should take emergency measures to make sure it can be treated quickly if it occurs

A MONG the ongoing Covid-19 crisis, a new infection has surfaced—black fungus or *Mucormycosis*. Although the infection has mostly spread in Delhi, Maharashtra, and Gujarat states of India, as a neighbouring country, we must also start taking preventive measures as it can have severe consequences, such as blindness, stroke and death.

A report published by *The Daily Star* yesterday mentions health experts suggesting that Covid-19 patients who have taken steroids are more susceptible to this disease because of reduced immune response of the body, as steroids often cause blood sugar to shoot up. Among all the Covid-19 patients, those with diabetes are the worst victims of black fungus. People with weak immune systems and patients taking immunosuppressants are at great risk of being afflicted as well.

We are relieved to know that health officials are planning to come up with some guidelines to prevent black fungus. While the National Technical Advisory Committee (NTAC) on Covid-19 has been preparing a set of recommendations, the Public Health Advisory Committee at the Directorate General of Health Services (DGHS) is also working to set up a prevention protocol. According to the aforementioned report, the department of Microbiology and Immunology at Bangabandhu Sheikh Mujib Medical Hospital (BSMMU) has one of the country's best laboratories in terms of testing black fungus. The chairman of this department said that the BIRDEM hospital gets two or three cases of black fungus every month. This means that Bangladesh is already aware of the disease, which may make it easier for health experts to carry out proper treatment.

To tackle the threat of black fungus, indiscriminate use of steroids to treat Covid-19 patients outside the hospital have to be stopped and only used according to doctors' prescriptions. Besides, a strong surveillance system has to be set up so that black fungus patients can be identified easily and their treatment can be started as soon as possible. All hospitals must be equipped to treat this disease and all laboratories and diagnostic centres should be on high alert so that they can detect the fungus during testing. Most importantly, the government has to carry out awareness-raising campaigns all over the country to make people understand the reasons behind the spread of black fungus and how to seek treatment, without creating any panic among the general populace.

Focus on women business owners to unlock growth

CURTIS S CHIN and STACIE NEVADOMSKI BERDAN

THE latest Global Gender Gap report from the World Economic Forum makes clear that around the world, from Bangladesh to the United States, the impact of the pandemic has disproportionately hit those most vulnerable or in need. In Bangladesh, this has included large numbers of now unemployed women workers as lockdowns have hit garment factories.

Around the world, the economic impact of Covid-19 has created new barriers to building inclusive and

generally low-paying jobs—a failure of job diversification.

In the recently released World Economic Forum's Global Gender Gap Index 2021 rankings, Bangladesh dropped 15 places in just one year, coming in at number 65 of 156 economies. The nation did, however, rank far ahead of South Asian neighbours Nepal (106th), Sri Lanka (116th), Bhutan (130th), India (140th) and Pakistan (153rd).

Bangladesh has much to gain by redoubling post-pandemic efforts to close the gender gap. Advancing women's



With women often at the forefront of the hardest-hit sectors, recovery strategies must include closing the ever-widening gender gap.

PHOTO: ANISUR RAHMAN

prosperous societies. With women often at the forefront of the hardest-hit sectors—such as garments, food service and personal care—recovery strategies must include closing the ever-widening gender gap. This is critical to long-term economic growth in every country.

To its credit, Bangladesh has been able to increase women's participation in the readymade garments (RMG) industry over the last few years. Yet, women's roles in this workforce remain restricted to

equality in Bangladesh could achieve an eight percent increase over business-as-usual GDP, or USD 30 billion, according to a report by consulting firm McKinsey & Company.

Yet, despite strong evidence that women business owners can transform local economies and contribute significantly to the global economy, their involvement in business remains miserably low. In Bangladesh, women comprise only 4.5 percent of all

business owners, according to the Mastercard International Index of Women Entrepreneurs 2020. That is slightly behind India, where 5.2 percent of all business owners are women.

The vast majority of these women-owned businesses are micro-, small- and medium-sized enterprises (MSMEs), and their success is critical to the growth of Bangladesh, as it is in almost every economy around the world.

Bangladesh would benefit from a specific focus on women business owners. The good news is that Bangladesh can benefit from lessons learned at home and abroad, as well as from initiatives of global organisations investing in women-owned businesses. One such effort is that of WEConnect International, a global network that connects women-owned businesses to qualified buyers around the world.

The Washington, DC-based, global non-profit organisation's mission is to help drive money into the hands of women business owners so as to enable them to better compete in the global marketplace. Working with the World Bank Group (WBG), WEConnect International offers local women-owned businesses the opportunity to connect and conduct business with local and multinational corporations in Bangladesh. This initiative is one of the first of its kind in Bangladesh to assess the potential for market linkages and greater market opportunities for Bangladeshi women.

In partnership with the Ministry of Commerce of Bangladesh, the WBG and WEConnect International established the first Supplier Diversity Advisory Committee with representatives from Apex Footwear, BRAC Bank, DBL Group, Gemcon Group, Knit Asia Limited, Marriott International and Walmart India. The committee discussed how to scale up gender-inclusive sourcing, as well as set gender-inclusive-sourcing goals and how to formulate lessons to share with the broader business community.

By registering their businesses with the organisation, Bangladeshi women business leaders, such as Taslima Miji,

CEO, Leatherina Pvt Ltd; Ahktar Afrin, Director, Opus Technology; and Nawshin Khair, CEO, Aranya Crafts Ltd, strengthen their capacity to pitch and sell to potential investors and large corporations. They also gain the opportunity to connect with domestic and international businesses with an interest in buying from women-owned businesses.

To raise awareness and accelerate change, WEConnect International recently issued the one-year "Rise to the Challenge" to its more than 110 global members. Large multinational organisations, including Intel, Unilever, Logitech and Moody's, have stepped up, making significant commitments to increase their spending with women-owned businesses. Companies have until March 8, 2022, to make a pledge.

As with other environment, social and governance commitments, such public pledges to support women-owned businesses must also be quantified to ensure the reality of action follows the "ESG rhetoric."

According to the International Finance Corporation, roughly 30 percent of all privately owned businesses worldwide are owned by women. Yet, the CEO and Co-Founder of WEConnect International, Elizabeth A Vazquez says, women-owned businesses on average receive less than one percent of the supply chain spending from large multinational corporations and governments.

By increasing their spending, large, global corporations, as well as multilateral institutions and governments, could collectively have a multi-billion dollar impact on women-owned enterprises worldwide, including those in Bangladesh.

Leaders in Bangladesh have an opportunity to build a more resilient and gender equal economy by focusing on women business owners to unlock growth.

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