

Whistleblowing and Secrecy Law: Where is the Balance?



TASLIMA YASMIN

THE legal protection for secrecy of "nationally important" information and its conflict with the free press constitute a dichotomy that has long been debated around the globe. Although governments are usually granted legal protection to keep certain documents and information undisclosed, guarantees of right to information and press freedom are considered essential to ensure government accountability. When laws protecting official secrets are ill-defined and the scope of applying the laws is kept broadly ambiguous, leaving avenues for potential misuse, investigative journalism or public-service whistleblowing would naturally face undue restraints.

The Official Secrets Act (OSA) of 1923 in Bangladesh has attracted much public attention in recent times in the context of journalist Rozina Islam's arrest under the Act. It was the first time that a journalist, or any person for that matter, was known to be arrested under the law in the country. Nevertheless, a quick review of the reported cases of Supreme Court reveals that in a 1993 judgment, reference was made to a case being filed against the concerned petitioner for "secretly transferring important information relating to Bangladesh Gas Field to a foreign mission" (Writ Petition No. 196 of 1993). Although filing of cases under the Act is rare, the legislative trend does indicate that the law was very much alive in the minds of our legal drafters. In

the 2017 Rules formulated under the Public Interest Information Disclosure (Protection Provision) Act, 2011, and in the Digital Security Act of 2018, specific reference had been made to the OSA.

In Britain, the first OSA was enacted in 1889, which was then legislated in the British Indian colony in the same year, amidst growing numbers of public officials acting as correspondents for newspapers. The law in colonial India was later amended in 1904 and finally in 1923, especially to deal with offences related to espionage. The law was thus never meant for prosecuting journalists; rather the purpose was to prosecute government officials for leaking information, along with prosecuting individuals for espionage. However, the provisions were clothed in languages that could cover almost all information within its scope, and there were clauses that could also implicate any person who has obtained any leaked information. On these very grounds, the OSA in Britain was criticised from the very beginning for having a wide scope for misuse, especially against journalists for whistleblowing.



'The rationality of such colonial-time regressive laws needs to be assessed against our constitutional guarantees of free speech and free press.' PHOTO: COLLECTED

The OSA that is now in force in Bangladesh does not only reflect British colonial policies, it also includes changes made by the Pakistan government.

In the face of such criticisms, the law in Britain had gone through several amendments, with the latest being in 1989. That amendment replaced the previous Section 2 of the OSA (which was similar to Section 5 of the 1923 OSA), providing sanctions on leaking official information. Replacing the previous "catch-all" provision, the 1989 amendment provided the protection of secrecy only to six specific categories of information. Importantly, the amended section only considers "disclosure" of information as an offence, as opposed to merely knowing or receiving them, and such

a disclosure also has to be "damaging" to the national interest.

In the post-colonial period, the 1923 OSA was amended multiple times both in India and Pakistan, although unlike the amendments in the British law, not much positive change was brought to the Act. Rather, several Indian commentators had criticised the Indian amendments to the Act as even more draconian than the British regime. After Bangladesh's independence, we adopted the 1923 OSA along with the changes brought during the Pakistan period post-1947. As such, the OSA that is now in force in Bangladesh does not only reflect British colonial policies, it also includes changes made by the Pakistani government. A 1968 amendment in Pakistan had increased the maximum punishment for espionage (s.3) and leaking (s.5) to death penalty (which was earlier 14 years of imprisonment). The death penalty as such is part of the OSA applicable in Bangladesh, which is extremely harsh compared to similar laws in other countries.

Apart from the broad scope of Sections 3 and 5 and the harshness of the punishment, the 1923 OSA is also unclear in several aspects. In particular, the law does not set any criteria for determining what documents are to be considered as "official secrets", leaving it to the whims of the authorities to brand any document a "secret" as per their convenience. Such loosely defined provisions would eventually help corrupt officials to hide behind the cover of secrecy. Section 3, which deals with espionage, also has a very wide scope which can include a broad range of information that cannot always be justified as necessary or relevant in terms of protecting national interests or security. Moreover, the 1923 Act uses

terms like "enemy state", which do not reconcile with the existing foreign policies of Bangladesh. Another crucial aspect of OSA that had been heavily criticised both in the UK and India is that, under Section 3(2), unlike the ordinary rules of criminal prosecution, the burden of proof is placed on the accused. The provision says that even if no act of espionage could be proved against the accused, he/she may be convicted only on the basis of some subjective considerations like the person's "conduct" or "known character" or any special circumstance from which it may appear that the accused had a purpose prejudicial to the safety or interests of the state. This leaves scope for most arbitrary use of the provision and is clearly contradictory to the principles of justice.

The rationality of such colonial-time regressive laws needs to be assessed against our constitutional guarantees of free speech and free press. We have enacted the Right to Information Act in 2009, which echoes those guarantees. We also have the Public Interest Information Disclosure (Protection Provision) Act of 2011, which endorses the value of disclosure of information in public interest, although it doesn't apply to information disclosed in media. Echoing that same notion, our legal framework should also provide avenues where such disclosures in public interest by investigative journalists and whistleblowers can get legal protection. Disclosure in public interest and "national secrecy" cannot stand contrary to each other, and hence it is only in the interest of good governance that a conscious balance is crafted between the two.

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Bangladesh at 50: Reaping the benefits of bottom-up entrepreneurship

M. NIAZ ASADULLAH and MISHKATUR RAHMAN

AS Bangladesh turns 50 this year, the country has much to celebrate. Its human-development progress has been exceptional compared to that of its South Asian neighbours. Sustained economic growth has reduced extreme poverty—not least because the early introduction of mobile phones at the grassroots level enabled the modernisation of previously unconnected village economies. Moreover, Bangladesh has become more resilient to natural disasters such as cyclones and floods, and the state's capacity to manage crises also has improved.

Bangladesh's virtuous cycle of technology-aided development stems from decades of sustained state-NGO collaboration, combined with an emphasis on bottom-up initiatives to empower female entrepreneurs. This model has also given the country an unexpected advantage in managing the economic impact of the Covid-19 pandemic.

Although many developing countries rapidly implemented new cash-transfer programmes in response to the pandemic, not all of these schemes have been equally effective in reaching the poor. Pakistan and India both relied on the traditional banking system to disburse cash benefits, while China opted to digitise transfer services. But both methods have excluded significant segments of the population.

Bangladesh, therefore, chose a different path by using mobile money to bridge the double divide in access to digital technology and formal banks. The government recently ended the age-old practice of transferring money under safety-net programmes to beneficiaries' bank accounts. Instead, mobile financial services (MFS) providers today cover 98 percent of the country's mobile-phone subscribers. Nearly 80 percent of users live within one kilometre (0.6 miles) of an MFS agent, stationed in local grocery stores and mobile recharge points. The agent manages e-money and cash withdrawals from mobile



Mobile financial services (MFS) providers today cover 98 percent of mobile-phone subscribers in Bangladesh. PHOTO: RASHED SUMON

money accounts, as well as assisting with account registration. The MFS regulation also allows money transfers to cell phone owners who do not have a mobile-money account, thus ensuring that even those without internet access can benefit.

MFS could potentially revolutionise social-service delivery in South Asia, where as many as 625 million adults have no bank account. Bangladesh, with high teledensity and (by regional standards) a relatively small gender gap in mobile-phone ownership, stands to benefit. But other countries' use of mobile-phone payment technology to disburse Covid-19 funds has been limited by lower coverage and a lack of mobile-money agents.

Pakistan, for example, lags behind Bangladesh in terms of the number of mobile cellular subscriptions per hundred inhabitants. According to the World Bank, only 50 percent of Pakistani women own a

mobile phone, compared to 61 percent in Bangladesh. Furthermore, just 7 percent of the population has a mobile-money account, whereas 21 percent of Bangladeshis do.

The explanation for this uneven spread of mobile telecommunications technology across South Asia is the effort by Harvard University's Iqbal Qadir, who strongly believes in "bottom-up entrepreneurship."

Bangladesh's dynamic telecoms sector is the product of an inclusive development strategy. The end of Bangladesh's military dictatorship in the 1990s paved the way for a range of NGO-led social innovations and market-led solutions to create jobs and deliver critical public services. The then-newly elected government of Prime Minister Sheikh Hasina ended the state monopoly in the telecommunication sector, issuing licenses to Grameenphone and two others. But the key to inclusive development

was the simultaneous promotion of tele-entrepreneurship targeting village women. The country's large number of mobile-money agents and rapid growth in cellular subscriptions reflect the unorthodox model of first-generation cellular providers, which focused on grassroots women entrepreneurs.

Crucially, Qadir, a budding tech entrepreneur at the time, persuaded Grameen Bank to enter the rural telecom market. Together, they set up Grameenphone in 1997 to help subscribe thousands of rural women to mobile service delivery in remote locations well beyond the reach of the state-owned telephone network. With additional microcredit support from Grameen Bank and BRAC, millions of women set up microenterprises, while telecommunications technology connected previously isolated rural areas with cities and markets. Grameenphone's Village Phone Programme not only connected millions of people across thousands of Bangladeshi villages and empowered rural women; it also laid the foundation for the subsequent emergence of

money sectors, as well as innovative NGO programmes promoting female entrepreneurs. Differing levels of support for bottom-up entrepreneurship partly explain the divergent path of women's development following Bangladesh's independence from Pakistan in 1971. According to World Bank data, at least 10 percent of Bangladeshi women have a mobile-money account, compared to only 1 percent in Pakistan. And while 36 percent of women in Bangladesh have a bank account, only 7 percent in Pakistan do.

The early emergence of grassroots tech entrepreneurs in Bangladesh helped to spread telecommunications technology in low-literacy rural communities. This perhaps explains the explosive growth in Bangladesh's mobile subscription rate in the past two decades (from 0.2 to 101.6 per hundred inhabitants) and why the country is currently leading Pakistan in terms of socioeconomic development. The end result is a market solution to a long-term development challenge, including the emergence of a responsive state in times of crisis.

Had Bangladesh not adopted a long-term approach to technology development and instead relied only on digital and conventional finance for public-service delivery, new technologies such as mobile money would have left many citizens excluded during the pandemic. Other countries seeking technology-based solutions to foster a post-pandemic recovery—not least developing Asian and African economies with millions of "unbanked" people—should thus invest early in social infrastructure. Bangladesh at 50 offers a blueprint for how to do it.

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MFS could potentially revolutionise social-service delivery in South Asia, where as many as 625 million adults have no bank account.

many commercial service providers, including bank-led mobile money firms such as bKash.

Pakistan, by contrast, has largely lacked community-level social entrepreneurship in the telecommunications and mobile-

QUOTABLE Quote

ELIF SHAFAK (1971-) Turkish novelist

Stop running after the waves. Let the sea come to you.

CROSSWORD BY THOMAS JOSEPH

ACROSS

- 1 California wine valley
- 5 Dance studio features
- 11 Oodles
- 12 "Anchors—"
- 13 Sister of Amy, Jo, and Meg
- 14 Chiding words to Fido
- 15 Crafty people
- 17 Early hour
- 18 Liner parts
- 22 Dropped-tomato sound
- 24 Spa room
- 25 Silent approval
- 26 Chapel sight
- 27 Manual readers
- 30 Aspirin targets
- 32 Floppy top
- 33 Summer sign
- 34 Silverbacks, e.g.
- 38 Eyetooth
- 41 Goofing off
- 42 Shrewdness
- 43 High home
- 44 Loathe
- 45 Aphrodite's son

DOWN

- 1 Arrests
- 2 Baldwin of "30 Rock"
- 3 Cook's protector
- 4 Wise goddess
- 5 Paul Bunyan's ox
- 6 Tony and Oscar
- 7 View from Jiddah
- 8 Vault part
- 9 Swelled head
- 10 Retiring
- 16 Got together
- 19 Spot for a driver's drink
- 20 Pants part
- 21 Shop tools
- 22 Rebuff
- 23 Do some modeling
- 28 Ruling group
- 29 Go pieces
- 30 Ring great
- 31 Singer Dion
- 35 Tenant's fee
- 36 To boot
- 37 Match parts
- 38 Scoundrel
- 39 Casino card
- 40 Bolt's partner

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BEETLE BAILEY BY MORT WALKER

BABY BLUES BY KIRKMAN & SCOTT