

Unofficial Secrets Act: The Administration of Certainty and Ambiguity

SHUDDHABRATA SENGUPTA

Secrecy is the very substance of statecraft, and it is not for nothing that the ritual of appointment to a government position, whether by virtue of election or official recruitment or promotion, involves an oath of secrecy. Official matters, by and large, are secret matters, protected by laws that are usually called Official Secrets Acts.

In India, the Official Secrets Act (OSA) has been on the statute books since 1923, and performs a delicate tango with the more recent Right to Information Act (RTI), which should perhaps have more accurately been called the Right to Selective Information Act. Its actual function is to ensure that you cannot know anything about things that really matter, such as the way decisions of defence and the notion of national security affect our daily lives. So that if a person 'disappears' in the course of yet another exercise of 'national security' under, for instance, the Armed Forces Special Protection Act (AFSPA) in Kashmir or India's Northeast, the RTI cannot be invoked to reveal the circumstances and the official stances pertaining to that disappearance.

These two pieces of legislative technology, the OSA and the RTI, build a firewall around government out of the incendiary masonry of the security and integrity of the state, public order, the honour and dignity of the courts, relations with friendly powers. They constitute, in some ways, the obverse face of surveillance – if surveillance is a mechanism of rendering people transparent to power, then official secrecy is a method of rendering power opaque to people.

My interest in the subject of contemporary information politics is not to investigate things locked up and filed away as official secrets, but to explore the shadowy world of unofficial secrets – the kind of things that are done *without* a memo or jotting in a file. In other words, how unofficial secrets 'act' under the shadow of the Official Secrets Act.

This interest in the unofficial secret had many sources, but one of the earliest was a curious report by journalist Swati Chaturvedi about the innocuous Indian pastime of writing 'Letters to the Editor', in the *Indian Express* newspaper (25 July 1997):

IB Plays Impostor, Writes Letters Using Your Name

When you open the newspaper in the morning, be ready for a surprise. You may see your name and address below a letter to the Editor, carrying an opinion that's certainly not yours. If you're lucky, you may see only your address and a name that doesn't exist.

The Intelligence Bureau (IB), the government's dirty tricks department, has employed a bunch of officers whose job is to ensure that editorial pages of newspapers carry what is perceived to be the government's point of view. To ensure credibility and variety, they regularly use real names or real addresses, sometimes both.

The suspicion – and investigation – began when letters to the editor began arriving at two private fax numbers at the *Indian Express*. First came the letters. Then a string of reminders. The tone and tenor of the letters were strikingly similar and, more important, they were on select issues such as the Comprehensive Test Ban Treaty, nuclear opinion and Pakistan. There have been similar persuasive letters and reminders in the mail too. And in all the letters, the content was identical, often backed by facts only specialists usually have access to.

The *Indian Express* decided to unravel the mystery and trace the authors. As for the letters sent by fax, the task was easy. In one case the fax number that the letter was sent from figures in an internal directory at the IB office in RK Puram.

Express sent out letters to some of these 'writers', inviting them to write opinion pieces for the newspaper. These letters were sent by courier and registered post. Here's what we found:

1. Name: Jesse Kochar. Address: 421 Victorian Avenue, 13th 6 D Main Nagar, HAL, Bangalore - 8.

Letter: "In every country letters going out and coming in are read. I would guess there is no other method except this to find out if the post is not being used for hanky-panky".

Status when investigated: Person exists, address is correct, but he never wrote the letter.

A puzzled Jesse Kochar of Bangalore wrote back: "While I do not remember writing to you, I would love to write for the paper".

2. Name: Colonel Ram Singh. Address: 1/4 Preet Vihar, Nainital, Uttar Pradesh.

Letter: "That you should publish the article after the Indian veto at the ad hoc Nuclear Test Ban Committee reflects poorly on your editorial standards and your apparent willingness to bend backwards to accommodate non-proliferation pedagogues".

Status when investigated: Wrong address and incomplete, since there is no Preet Vihar in Nainital.

3. Name: Dr S.S. Srinivasan. Address: DEE Rm 12, Indian Institute of Technology, Hauz Khas, New Delhi.

Letter: "It is regrettable that the *Indian Express* should continue to allow American non-proliferation fanatics to use its columns to disseminate their propaganda".

Status when investigated: The address exists, but no such person. “This is not me”, writes Dr Murthy, actual occupant of DEE Rm. 12, IIT, to the institute’s despatch section.

4. Though our letter addressed to S.P. Rajan of Rajouri Garden, Delhi, came back saying “No such person at given address”, this correspondent went to the spot to confirm. After spending four hours in Rajouri Garden trying to trace S.P. Rajan, the address (G-19/2) was finally located. An irate middle-aged lady who had been woken up from her siesta said, “*Kya baat hai? Yahan par koi is naam ka nahi hai* (What is the matter? There is no one by this name here)!” The family, she said, doesn’t buy this newspaper and nobody has ever written a letter to the editor.

So, where do these ghost letters come from?

Investigations show that these letters are written by a shadowy cell of the IB, headed by a joint-director. It keeps an eye on what it calls ‘media trends’ and steps in to correct wrong perceptions. The cell employs Deputy Central Intelligence Officers (DCIOs) and Assistant Central Intelligence Officers (ACIOs). But when it is a case of writing letters to the media, officials of other cells will step in and write letters trying to correct ‘peacenik’ and ‘Pakistan-friendly perceptions’.

This is a telling instance of how unofficial secrets do ‘act’: sometimes with hilariously whimsical consequences, sometimes with deadly precision; they act with great effect also because they are, by and large, *absences in the record*.

Their existence can only be inferred from anomalies and the recurrence of inexplicable patterns, and from the measures that become necessary for the sake of credibility and variety. Walking ambiguities, unresolved suspicions: these measures are spectres that haunt and patrol the territory of certainty, armed with their own ephemeral nature. Like the sophisticated forms of torture that leave no mark on their victims, unofficial secrets act without leaving traces in files.

We know they exist, we sometimes experience the agony or the uncanny sense of *déjà vu* that they cause, but our knowledge is of no real consequence because we cannot hold anyone accountable for them. This is typical of the functioning of what is today known as the ‘deep state’.

This entity – in Turkish, *derin devlet* – is generally defined as an influential and informal coalition cutting across political ideologies, that lies at the heart of the Turkish political system. In some ways, it is analogous to what has been called the ‘military-industrial complex’ (or more recently, the ‘military-industrial-entertainment complex’ in the US), since the deep state is composed of elements within the Turkish military and intelligence communities, the judiciary, the media and key leaders of organised crime.

There is, however, a crucial distinction between the ‘deep state’ hypothesis and ‘conspiracy theory’, an apparently similar construct. *Conspiracies are episodes; the deep state is an enduring condition*. Conspiracies involve the conscious coming together of

specific people for specific covert purposes. The deep state, on the other hand, is part of the political unconscious; it does not have to rely on individuals and their particular agendas or self-interest.

The deep state is an effect of a certain technology of governance, particularly in situations where there is a semblance of formal democracy, which creates a suspension, deep within the heart of the political system, of the limitations of constitutionality and political accountability.

It is a fascinating paradox that a totalitarian state does not actually need a deep state. The permissible arbitrariness of state action in totalitarian systems does not require any comprehensive camouflage. The secret police is at most a very public secret. However, in societies where totalitarian and repressive tendencies lurk as enclaves at the core of apparently open political systems, for instance in Turkey, Israel, Iran, India, Russia, the US and the UK, the mechanisms of the deep state are regularly utilised.

Its characteristics include:

- > an overarching fealty to nationalism (transcending, as in India, the ideological divides between left/right, secularists/communalists, liberals/conservatives)
- > similar loyalty to the interests of the 'security' and 'integrity' of the state; this may come occasionally into conflict with what is called the 'rule of law'
- > covert deployment of strategies of coercion, disinformation, performance, information management, 'discreet' influence and outright violence, to manipulate and sometimes assist political and economic elites
- > realisation of specific state objectives with great velocity, within an apparently democratic, rule-bound framework
- > the state holding in abeyance its own constitution
- > enactment of legislation such as the AFPSA, mentioned earlier, and the now-repealed Prevention of Terrorism Act, which effectively annul the question of due political process or legality
- > building fluid coalitions between state and non-state actors – from the street level of the *havaladar* (police constable) and the *mukhbir* (informer), to the special operations counter-insurgent/surrendered militant, mandarin, senior journalist or media baron
- > enabling a systematic pattern of exchange between formal and informal processes of repression and information management
- > creating durable ties between the intelligence community and the criminal underworld

The deep state is that aspect of the state that does not have to obey the laws that bind the lives of its citizens, or which can act according to the laws that annul what is otherwise called the rule of law. It is the crystallisation of the state of exception, of the originary moment of violence that transcends and takes precedence over the limitations of legality, on which the authority and the fear of the state is built. The deep state is the secret agent

who lurks in the depths of the terror network, and the terrorist nested deep within the structures of power.

The production of terrorism is not something that happens *sui generis*. In almost every society, this phenomenon is also a production of *images* of terror. The fear that terrorism generally induces is not so much by way of the actual violence but by way of a circulation/amplification of images and their effects. Even more or less arbitrary calendrical notations such as 9/11, 12/13 or 7/7 become indexical images of terror. Encountering these particular alphanumeric arrangements stimulates at least a reflexive twinge of the recognition of fear.

If the production of terrorism is so interlaced with the production of images, it can also be claimed that the production of certain images is also linked to a particular climate, one that gives credibility to the production of a certain set of seemingly self-evident truths about terrorism. For instance, as seen in the following media accounts.

The first is from *The Hindustan Times* of 19 August 2005:

Deoband in J&K Terror Frame

By Vasistha Bhardwaj

Muzaffarnagar: It was just another film roll, until it was developed. The roll contained 32 snaps – all of terrorists brandishing AK-47 rifles and wireless sets. The dress of the terrorists and the hilly backdrop suggest the snaps were taken somewhere in J&K or PoK.

The roll also lends credence to Home Minister Shivraj Patil's recent admission in the Rajya Sabha about the connection between western UP and various terrorist organisations.

Sources say a girl, who identified herself as Vandana and had come with a child, had given the roll to Gitanjali Photo Studio and Colour Lab in Deoband for developing on 17 August. The Deoband studio had, as per its arrangement with another studio, handed it over to Maan Colour Lab in Muzaffarnagar for developing the same day. The girl was supposed to take delivery on Thursday.

The studio owner in Muzaffarnagar was in for a shock when he developed the roll. He immediately informed the police, who only messed things up. Instead of laying a trap for the girl, they took into custody the owners of Maan Colour Lab, Pradeep and Ambarish Tyagi. Word spread and no one turned up to claim the snaps. The owner of the Deoband studio, Atul, has also been taken into custody.

As per the description given by Atul, the police are getting a sketch of the girl made. The matter has been brought to the notice of the SSP, DIG and IG.

The police have also sent the snaps to the J&K police to ascertain the spot where they were taken and identify the terrorists if possible. Investigations are in progress to ascertain the possible links and hideouts of terrorists in Uttar Pradesh, Principal

Secretary (Home), Alok Sinha, told reporters in Lucknow. Sinha too said the snaps were taken somewhere in the Kashmir Valley.

The UP government has issued a statewide alert asking officials to step up vigil in all the districts. Sinha, however, refused to name the sensitive districts.

Meanwhile, police officials in Kashmir agreed that the hilly backdrop in the snaps strikingly resembles the hilly areas of J&K and PoK. "The Kashmir connection is clearly visible from the snaps", a senior officer told *HT*.

The second is from *The Indian Express* of 20 August 2005:

Story behind J-K Photos: Only Cops in Disguise

New Delhi: An embarrassed Army today admitted that photographs seized from a studio in Muzaffarnagar district two days ago were of undercover special police officers and village defence council (VDC) members disguised as militants for counter-insurgency operations.

On suspicion that men shown as carrying weapons and radio sets in the 36 photographs were militants, UP police had yesterday sealed the Muzaffarnagar studio and arrested its owner Pradeep Tyagi and his associate Ambarish.

The Army confirmed that photos reached the studio because of an oversight by Major Amit Agarwal, adjutant of the 27 Rashtriya Rifles battalion, deployed in Poonch district. The roll was dropped off at a photolab in Deoband by Major Agarwal's sister.

Confirming that there was an "administrative lapse and a human error" on part of the investigating agencies, DIG (Meerut Range) R.K. Vishwakarma told the *Indian Express* that last evening, he received a call from a senior Army officer, a colonel based in Poonch, informing him that the pictures in question were taken a few months back in Surankote.

"He categorically told us that these pictures were in custody of Major Amit Agarwal, a *dandapal* in the Rashtriya Rifles, and that he had inadvertently left the film roll in Deoband, at his ancestral house".

The police had, meanwhile, prepared a sketch of the girl on the basis of the description provided by Neetu Tyagi, the studio owner, and had released the sketch of the girl late last night. A massive hunt for the girl had begun late last night and the police had questioned several people in this regard, Saharanpur SSP Prashant Kumar said.

The men in the photographs, from a village in Surankote, were under the supervision of the 27 RR battalion in Poonch in July. "They were on a routine operation when the SPOs and VDCs decided to click photographs at a scenic location in the mountains", an Army official said. The roll they had used to click "casual photographs" was confiscated by a junior commissioned officer and handed over to Major Amit Agarwal.

Agarwal had inadvertently carried the roll to his house in Deoband; his sister left the roll at the studio.

The performativity of fancy dress, when transposed onto the indexicality of the photographic image in this case, makes for the peculiar layering of ambiguity and certitude that is the hallmark of the information strategy of the deep state. And so, the dead bodies of terrorists on a suicide mission, as in the case of the 13 December attack on the Indian parliament in 2001, always carry identity cards with photographs, diaries with names and addresses, maps and mobile phones with the phone numbers of their contacts. The contacts and co-conspirators, like Mohammad Afzal Guru, the man sentenced to death in the Parliament Attack case, are inevitably found by accident in a truck in Srinagar, with a laptop that contains every operational detail – from the image file of the fake home ministry car sticker that was used to enable entry into the parliament precincts, to photographs of the environs of the site of attack itself.

Dead and arrested terrorists, whose every prior move is revealed to us *post factum*, as if they were always under surveillance – including right up to the point when they set about their acts of violence, and not excluding details of the meals they ate, their last phone conversations to their mothers, and the Hindi film songs they listened to on the night before their mission – overwhelm us with particularities. Some patterns stand out, such as the recurrence of the figure of Rs 22 lakh, which is the Delhi Police Special Cell's favourite amount for any transaction entered into by any anti-national element...

There is a definite relationship between the 'reality' effect of certain technologies of representation and a desired economy of truth. Mobile phone interceptions, or biometric indices, by virtue of their 'technological' character, carry with them an aura of facticity, far beyond their evidentiary function – more so if the transcripts are degraded, or if the mobile phone IMEI identification numbers or call records are inconsistent, as with the Parliament Attack case. The mere fact that these exist has the public function of demonstrating, through the performative tropes of forensic science, the aura of technologically mediated truth. Similarly, identity cards have a certain 'truth value'; and those found on the bodies of dead terrorists take on a definite credibility. As members of the public, we assume that terrorist organisations such as the Lashkar-e-Tayyaba and the Jaish-e-Mohammad surely equip their *mujahideen* with identity cards – how else would we know that these dead men were terrorists?

How do we respond to the ambivalent identity of the cadaver that was exhibited as the now-dead Ghazi Baba, one of the masterminds of the Parliament Attack case and the

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mentor of Mohammad Afzal Guru, the prime accused? All doubts about the body disappeared with the manifestation of a convenient Jaish-e-Mohammad ID card. Who knows, perhaps terrorist groups *do* actually issue identity cards these days, because no one quite knows who is who in Kashmir; and because some Special Task Force commandos grow their hair and beards in order to appear as 'militants', it might actually have become necessary for a 'genuine' terrorist to carry a 'terrorist identity card'.

Either way, we can never be sure. Is a dead militant a dead soldier costumed as a dead militant and tagged with a 'terrorist identity card'? Or is the corpse a dead militant, who when alive carried a 'militant' card, so as to prove that he is not a soldier in *jihadi* drag?

Is a card a forgery designed to adorn a real identity, or is an identity forged in order to effect an epistemic adjustment to a real card?

The case of Ghazi Baba, for instance, is marked by several profound anomalies. Praveen Swami, a journalist writing for the newsmagazine *Frontline*, from what might be called the 'intelligence bureau (IB) perspective', reported in detail about the cadaver identified as Ghazi Baba. Swami stated that Ghazi Baba had disguised himself by growing a beard, and was bearded when the encounter with the security forces took place. But the corpse triumphantly displayed as the dead Ghazi Baba, accompanying the account of his own demise in *Frontline*, has a clean-shaven face with the faint hint of nine-o'clock shadow. A bearded man is shot to death, a clean-shaven corpse is photographed... It is important that the photograph be of a clean-shaven man, because Ghazi Baba when not in disguise did not have facial hair. However, Ghazi Baba in disguise, the one who was shot, *had* a beard. Was the dead man (who should have had a beard when he died) then shaved by a counter-insurgent barber for a photo opportunity? For the sake of 'credibility'? If so, when was he shaved? How long after the encounter? How long did it take for the ghost of stubble to begin to show on a dead man?

Swami does not answer these questions, but he does reiterates in many of his reports that what we *really* need is an identity card to solve these problems, so that we can predict, by looking at the ID card in a Galtonian manner, whether a person is or is not likely to be a terrorist.

Once everyone has an identity card, you have a win-win situation with regard to dead terrorists. If they *really* are dead terrorists, you win. Because they too will carry their own kind of ID cards, to distinguish themselves from the rest of the population; or they will carry fake ID cards, to pretend to be like anyone else. Either way, the truth of the matter will be enshrined only in the ID document. And these can be made to speak far louder than even human beings subjected to third-degree torture.

The Parliament Attack case too is similarly fraught with rampant anomalies. On 13 December 2001, five (or was it six, no one seems to be sure) men entered the grounds of

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THE DEEP STATE IS AN ENDURING CONDITION**

the Indian parliament on a suicide mission. Those five men were killed in a gun battle witnessed live on television, in a stunning piece of political theatre. The dead 'terrorists' were carrying mobile phones and diaries with contact information about other Kashmiri men, who were then detained in Delhi and Srinagar for their role in what was rapidly processed as a conspiracy by the media. The armies of India and Pakistan mobilised in huge numbers along the border. A draconian preventive detention anti-terrorism ordinance was passed as law following the attack on parliament, much as the passage of the Patriot Act in the US had required the occurrence of 9/11. In August 2005, S.A.R. Geelani, one of the accused in the case who had been sentenced to death by the lower courts, was acquitted because the evidence against him (based on phone surveillance and mistranslated transcripts of his phone conversations) was found to have been manipulated by the prosecution. Afzal Guru, one of the other co-accused, was sentenced to death.

Afzal Guru, who had inadequate legal representation, has consistently held that he, a surrendered militant, had often been coerced into acting on behalf of the Special Task Force (STF), a dreaded unit attached to the Jammu & Kashmir police, which acts under direct orders from the Intelligence Bureau. Afzal has named a certain Davinder Singh of the STF as being the officer who had tortured him and compelled him to escort a man to Delhi, a man who happened to be one of the 'terrorists' who stormed parliament.

Afzal has also insisted that if he was considered a suspect on the basis of his phone records, which showed that he was in contact with the dead 'terrorists', those same phone records would also show that he was in contact with his STF handlers.

But this fact has never been paid much attention, either by the court or the media. Perhaps too much would have unravelled. The President of India has received clemency petitions from citizens' groups, asking that Afzal's death sentence be commuted; this has compelled the state to invest in a certain level of information management in the case.

And so, unofficial secrets begin to act. A prominent news channel aired a sensational exclusive – a hidden-camera sting operation, in which Davinder Singh and Afzal's two brothers Aijaz and Hilal speak at length about the fact that Afzal was a dreaded Jaish-e-Mohammad terrorist, and close to the deceased Ghazi Baba. Davinder Singh admitted to having tortured Afzal at great length and on more than one occasion, but said that he let him go; Singh denied ever having introduced Afzal to anyone in the STF net of suspects, some of who obdurately turned up a few months later as dead bodies in the precincts of the parliament.

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What compels a functionary of the deep state to suddenly expose his vulnerability to a hidden camera, as a confessional? Singh talks extensively to a person outside the frame, to his right. The camera is filming to his left. Evidently, there are at least two other people in the room. These two people have managed to enter this space without being bodily searched or their 'hidden' camera detected. Just as a carload of five 'terrorists' armed with guns entered the parliament grounds in full daylight, under the gaze of security cameras and several manned checkposts...

The two people outside the 'hidden' camera frame then talk at length with Singh, who admits to a few crucial things, such as the fact of knowing and torturing Afzal a few months before the 'suicide attack' on parliament. So a certain degree of careful, calibrated disclosure occurs.

One of the brothers arrested with Afzal insists in another segment of this 'confessional' that no laptop, on which so much evidence depended, was seized. So a degraded piece of evidence, on which the entire 'circumstantial evidence' is based, is thus rejected.

But the brother says Afzal was a 'terrorist'. So does Singh.

This *must* be true, because they say this on 'hidden camera'. And the 'hidden camera', like 'narco-analysis' and 'truth serums', only produces truth, because those filmed on 'hidden cameras' do not know, ostensibly, that they are being filmed – so they reveal everything.

In this instance, stealth meets stealth and produces truth.

When the deep state encounters a crisis, it reveals some of its depths; a few unofficial secrets then act, only to ensure that our momentary disorientation as a result of these revelations actually prevents us from looking any further. Does the discourse of transparency, of rights to information, actually have any purchase when it comes to the operations of the deep state?

The demand for transparency can only be made to an entity that records all its own moves, which is typical for totalitarian societies; the demand is made successfully when a totalitarian state collapses, and the records of its atrocities come tumbling out of the archives. But the sophisticated informality of covert state action in societies with totalising enclaves within apparently more open political frameworks requires other analytical strategies and interpretive frames.

Editors' Note

This text is an edited transcript of a presentation made by the author at 'Sensor-Census-Censor: Investigating Regimes of Information, Registering Changes of State', an international colloquium on information, society, history and politics, held at Sarai from 30 November – 2 December 2006. The colloquium was organised by the initiative Towards A Culture Of Open Networks (Sarai-CSDS, Delhi; Waag Society, Amsterdam; t0, Vienna), and supported by the EU-India Economic and Cross-Cultural Programme under its Media, Communication and Culture dimension.