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RIGHTS ADVOCACY

THE RTI MECHANISM: Issues of public interest and time duration



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Right to information has been the foundational basis of all rights. The UN General Assembly declared this right during its very first session as the touchstone of all freedoms to which the UN is consecrated. The Constitution of Bangladesh guaranteed freedom of thought, conscience, speech, expression and press under Article 39 with certain restrictions. The year of 2009 was remarkable for Bangladesh to facilitate citizens with unprecedented opportunity of seeking information as of right from the concerned authority. The Right to

Information Act was brought in order to implement constitutional guarantee, empower common people, increase transparency and accountability, decrease corruption and ensure good governance.

Section 4 of the Act declared the right of every citizen to get information from the 'authority' and also confers duty upon the authority to provide such information once citizens demand. This vehement declaration, although seems very empowering, has been subjected by many conditionalities which obstructed to achieve the true spirit of the right to information. The Annual Report 2016 of the Information Commission (the available latest one till date) revealed that 6,369 RTI applications have been filed in that year. The number was 6181 in 2015, 8442 in 2014, 11727 in 2013, 7808 in 2011, and astoundingly 25,410 according to the Annual Report of 2010. Total RTI application since the establishment till the end of 2016 is 82,412. Any common mind would find this downward performance of RTI mechanism as an alarming challenge for Bangladesh particularly when we are proclaiming and projecting developments before the global community. This write-up intends to quest the enhancement of the RTI mechanism.

The first and foremost reason of gradual decrease of performance anyone would find after reading the RTI Act is the longest exceptional list (twenty categories) under section 7 of the Act which do not guarantee RTI to citizens, rather it is the discretion of the authority to provide the information. Moreover, section 32 stipulated that the Act will not apply to the eight enlisted organisations and institutions mentioned in the schedule except information related to corruption and violation of human rights. Here, it is necessary to revisit the RTI-excluding list of sectors in other South Asian countries. Section 8 of the Right to Information Act 2005 of India enlisted eleven categories exempted from the purview of RTI. The Right to Information Act 2007 of Nepal enlisted five categories to be excluded from RTI. The Right to Information Act 2010 of Pakistan excluded RTI from seven different categories under section 8, 15, 16 and 18. The Act further specifically excluded the record of banking companies and financial institutions relating to the accounts of their customers under section 8(1)(a). The RTI Act of Maldives enlisted around twenty categories to be excluded from the RTI. However, the Act of Maldives guarantees RTI for everyone regardless of whether the applicant is citizen or not. Under section 76 of the said Act, legal personalities along with natural persons are entitled to exercise RTI. The Right to Information Act of Sri Lanka clearly specified in section 5 that request under the Act for information shall be refused in fourteen categories. Many South Asian countries, although categorised a list of information to be excluded from disseminating to citizens, have endorsed grounds such 'public interest' and 'time-duration' whereby citizens are entitled to access these restricted information.

Unlike the RTI Act of Bangladesh, 'public interest' has been a common exception to the general exceptions under the RTI Acts of India and Sri Lanka. In other words, whatever be the restrictions specified under the RTI Act for not disclosing information, the authority cannot refuse any citizen to provide information if public interest is involved. The threshold of such disclosure is that larger public interest outweighs the harm resulting from the disclosure.

The enlisted RTI-exempted information of public authority in Bangladesh is perpetual in nature. However, such information in many other South Asian countries is bound to be disseminated after lapse of certain duration. Under the RTI Act of Maldives, if the duration of any information exceeds ten years, such is bound to be disclosed although they fall within exceptions. Sri Lanka enlisted six categories from fourteen enlisted exemptions whereby the authority would be bound to provide information if the duration of information exceeds ten years. In case of India, if the duration reaches twenty years, such is bound to be disseminated once asked by citizens.

Considering the ratio of RTI exercise for last seven years in Bangladesh, it is significant now that the information commission and government must concentrate to accelerate the flow of citizens' access to RTI. Certainly the better performance can be reflected if the law turns out to be more open and liberal from the restrictive shields of exceptionalism. The process can be eased by giving greater emphasis to the public interest than security, privacy and secrecy of the government as well as disseminating some years' old information of authority to the citizens which have already been endorsed by some South Asian nations. Without attracting

more citizens in the system in upcoming days and years; combating corruption, ensuring good governance and increasing transparency would be an illusion.

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