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RIGHT TO INFORMATION

Disclosure laws should be on citizens' agenda for the next elections



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Pakistani Prime Minister Nawaz Sharif's removal from office was the subject of much attention in Bangladesh and elsewhere. But buried within the story about political turmoil and the future of civilian rule in Pakistan was a story about leaked information and disclosure of assets.

The leaked information belonged to a list of 11.5 million files that were obtained by a German newspaper from the database of a law firm of Panama, which specialised in setting up offshore corporations and accounts for its clients. Based on them, the International Consortium of Investigative Journalists (ICIJ) had released the so-called Panama Papers in early 2016. It followed a year-long investigation which revealed how world leaders, politicians and businesses hide and launder money, evade taxes and finance arms and drug deals.

The Panama Papers had also named 32 Bangladeshi nationals and two Bangladeshi companies. But while the Pakistani public undertook a vigorous campaign to have the Pakistani links investigated, resulting in the downfall of their prime minister, nothing like that happened in Bangladesh. After some initial noise, the matter was left to the Anti-Corruption Commission, which formed a three-member committee to probe the allegations. It has remained with them since then.

This is somewhat uncharacteristic of Bangladeshi civil society. This is the community which fought Pakistani injustice and misrule for 23 years and played a key role in the liberation of Bangladesh in 1971. Since then, our civil society provided support to civilian politics to topple military-led governments and re-establish democratic rule in 1991.

However, it appears to have lost its sting over the years. What is happening in Bangladesh today is, of course, not unique; it is a global trend. There is growing recognition worldwide that the efficacy of street agitations is waning as governments learn new, innovative and more repressive ways to control them. Citizens must, therefore, consider other means, combining individual and collective efforts, to compel governments to fulfil their obligations to the people. And a foremost obligation is to provide good governance through transparent and accountable mechanisms.

It is this realisation that gave rise to a contemporary global trend to promote adoption of legal instruments aimed at open and accountable governments. The specific goal is to remove the veil of secrecy that has traditionally shrouded the work of governments, through “disclosure” of hitherto classified information to the public. This would help citizens to monitor the work of public officials and check abuse of power and plunder of resources.

The above may appear utopian given today's realities. But international experience has shown that over time transparency laws have forced governments to make changes—if an alert citizenry uses those laws.

The primary objective of “disclosure laws”, as they are popularly known, is to fight corruption and promote good governance. Fighting corruption requires a multidisciplinary approach which includes fighting bribery of public officials, elimination of corrupt candidates from contesting elections, combating corruption in fiscal policy, public and private sector governance, etc.

A key mechanism, at the government level, is to set up anti-corruption bodies such as the Anti-Corruption Commission (ACC) of Bangladesh and the Central Bureau of Investigation (CBI) of India. At the non-governmental level, there are institutions like Transparency International Bangladesh (TIB), which is the Bangladeshi branch of Transparency International, dedicated to fighting corruption globally. Disclosure laws complement this process. Some of them specifically empower citizens to play a role.

Laws relating to asset declarations by public officials and members of the government are among the most prominent disclosure laws. These are aimed at preventing conflict of interests or identifying illicit enrichment. Laws for Foreign Exchange Control keep politicians or public officials from holding overseas bank accounts, largely to prevent money laundering. There are similar laws to combat other types of corruption.

In Bangladesh, persons seeking to contest parliamentary elections must declare, under Article 12 of Representation of the People Order (RPO) 1972, their assets and other pertinent particulars when registering their candidature. However, once elected, there is no legal requirement for continuing disclosure. Similarly, Rules 13-17 of Government Servants (Conduct) Rules 1979 require most civil servants to disclose their assets and financial involvements, including those of their spouses and children, at the time of entry into service and annually thereafter. Under the Money Laundering Prevention Act 2009, overseas account holders are barred from transferring any amount of money to that foreign account from his/her earnings in Bangladesh. Such transfer is considered money laundering.

However, while these laws require disclosure only to a public agency and not to the public directly, the Right to Information Act 2009, foremost among disclosure laws, fills the gap. It empowers citizens to seek disclosure of almost all information, except a few categories, held by public authorities. Citizens who wish to play a role in promoting transparency in government work and fight public corruption, could not have a better tool. Use of disclosure laws could be one of the most effective means to strengthen democracy and promote good governance.

It may be argued that some of the information provided under disclosure laws may belong to the “exempt” category under the RTI Act. But this has not been proven yet. The scope and extent of the exemption clauses under Section 7 of the RTI Act is still waiting to be legally tested. For example, if asset and other declarations

by government servants or election candidates are claimed to be “exempt information” under the RTI Act on the grounds that they are “private confidential information”, it may be challenged effectively. One argument would be that any information provided by citizens to public authorities under any legal mechanism to promote public interest should be considered public information, and no longer private, and hence disclosable.

A constant endeavour of citizens should, therefore, be to stretch the scope of disclosure laws, through their use, to ensure transparency. If a public authority, including the Information Commission, interprets a legal provision restrictively, the intervention of the judiciary could be sought by arguing the objective test.

Greater civil society attention to such matters would be helpful also to supplement individual efforts. Imagine the likely impact on political parties if a substantial number of citizens start using RTI to seek information disclosed by candidates to the Election Commission under RPO and expose false or untrue claims. Hopefully, more care would be taken not to put up candidates whose honesty and integrity could be questioned.

As the country moves towards general elections next year and the civil society gears up its efforts towards more participatory democracy and open government, they must go for specific commitments from political parties to include in their election manifestos effective measures to strengthen disclosure laws. More particularly, they should insist that the relevant particulars of their candidates in the elections are disclosed in good time for public scrutiny. Citizens should not have to depend upon Panama Paper-type leaks to learn about the wrongdoings of their elected representatives or public servants.

At the same time, civil society leaders and social activists must promote greater public awareness of disclosure laws and the importance of their use by citizens in large numbers. Collective efforts by citizens to exercise their watch-dog role on the government, as foreseen in the RTI Act, may alone be more productive in the long run than street agitations.

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