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# Combatting bank loan defaults through Right to Information



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Bank loan defaults and their harmful impacts on the economy are not matters of public concern in Bangladesh alone. It has agitated the public mind in neighbouring India for a long time. A recent directive of the Supreme Court of India has some lessons for Bangladesh.

Demand for information on “wilful defaulters” has triggered many Right to Information (RTI) requests to the Reserve Bank of India (RBI) in recent years. The process brought together a large number of RTI activists, bank officials, the Central Information Commission (CIC) and the judiciary to state their respective positions on the matter. As a result, RTI law received a public airing which no other subject could generate in recent years. RTI watchers in Bangladesh should pay close attention. These developments will help us appreciate the many dimensions of the law and its immense capacity to empower citizens to participate in the fight against corruption.

Under Section 35 of the Indian Banking Regulation Act, 1949, the RBI is empowered to conduct annual inspection of all commercial banks, whether public, private or foreign. The central bank undertakes on-site inspections, during which its officials visit the head offices and bank branches

to inspect the books. The content of the annual inspection report is discussed with the head of the concerned bank before finalisation. The final report is then shared with the banks to enable them to take corrective steps.

The April 26, 2019 judgement of the Supreme Court of India dealt with three Contempt Petitions filed by RTI activists in relation to their RTI requests to obtain inspection reports of RBI on a number of banks. They had claimed that the top bank showed wilful and deliberate disobedience of the directives issued by the same Court in a 2015 judgement.

The concerned RTI requests were addressed to RBI over the years. In all of them, the central bank had refused to disclose the requested information. In the case of the more prominent of such requests, RTI activists had asked for copies of RBI's inspection reports on ICICI Bank, Axis Bank, HDFC Bank and State Bank of India, starting from April 2011 till date. The requests went through various stages of the RTI process and finally reached the Supreme Court. The latter, in December 2015, ruled in favour of disclosure and asked the central bank to review its negative policy on the matter, saying "it is duty bound under the law".

Despite this ruling, the central bank denied the requests, stating that the disclosure of the requested information was exempted under the RTI Act 2005 of India and the Reserve Bank of India Act. It argued that the annual inspection report of the bank contained "fiduciary" information which could not be divulged. Subsequently, RBI issued a policy directive to other banks not to disclose certain information under RTI.

The refusal of RBI and its subsequent policy directive was challenged by the petitioners in the contempt cases, resulting in the latest Supreme Court judgement of April 2019. In it, the court maintained its earlier position and directed RBI to disclose its annual inspection reports on banks, along with the list of wilful defaulters and information related to them under the RTI Act. It gave RBI a final chance to reconsider its stand, adding that "(a)any further violation shall be viewed seriously."

It all began when RTI requests were made by activists seeking copies of the inspection reports of RBI on several banks. As stated earlier, RBI refused disclosure, arguing that the information fell under the exemption provisions of India's RTI Act 2005. Similar provisions exist in the RTI Act 2009 of Bangladesh.

The refusal was appealed to the Central Information Commission (CIC) of India. The latter ruled in favour of disclosure and directed the RBI to provide the information sought by the applicants. It may be recalled that CIC had already decided, in a 2011 case, that the public had the right to

know how banks were functioning in the country since significant amounts of public funds are kept in banks.

RBI challenged the CIC decision in the cases, leading to the chain of events resulting in the Supreme Court judgment of December 2015. The court observed that there was no “fiduciary relationship” between the RBI and the financial institutions. It added that “RBI has a statutory duty to uphold the interests of the public-at-large, the depositors and the country’s economy and the banking sector (and it) should act with transparency and not hide information that might embarrass the individual banks and that the RBI is duty-bound to comply with the provisions of the RTI Act and disclose the information sought by the Respondents therein.”

On RBI’s argument that the disclosures would hurt the economic interests of the country, the court found it to be “totally misconceived”. It added that “the intent of the Legislature was to make available to the general public such information which had been obtained by the public authorities from private bodies...(and hence) RBI is liable to provide information regarding inspection reports and other documents to the general public.”

The above positions were reiterated by the Supreme Court in its April 2019 judgement, only more forcefully. Its stance was unequivocal.

Irrespective of whether RBI will finally abide by the ruling or seek other alternatives, it must be said that the public airing of the matter has been very useful. It demonstrated the many ways in which citizens can use RTI to promote transparent and accountable governance. It generated a public discourse on the subject in India which is badly needed in Bangladesh. Such conversations can spread awareness of the law and increase our understanding of how it works. Our legislature has given us a very useful law. It is for us, the citizens, to make good use of it.

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