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RTI/FOI Acts: Another Victim of the Covid-19 Pandemic



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One of the institutional casualties of the global Covid-19 pandemic is people's right to information. The Right to Information (RTI) Act, also known as Freedom of Information (FOI) Act in many countries, hosts the transparency regimes in around 130 out of some 210 countries affected by the pandemic. All of them fell victim to government lockdowns, imposed to fight the menace, making most of them inoperative almost instantly.

The physical closure of most public offices makes it difficult to implement this law. But while alternative arrangements were made for many essential services to continue, this was not the case for people's right to information. People were not told if they could still submit their RTI/FOI requests and whether they would receive responses. At a time when they needed most to know how their governments were dealing with such a cataclysmic crisis, they had no one to turn to. And at a time when governments needed to be most transparent and accountable to the people, the efficacy of the law was blunted.

As many governments adopted RTI laws more to enhance their democratic credentials than to promote transparent governance, it is not surprising that countries have rushed to take advantage of the disruption caused by the pandemic to muzzle these laws.

There is a message for RTI enthusiasts in this: whatever their commitment, the Covid-19 pandemic has proven the universal inclination of governments to hide unpleasant facts from the public. This is evident from their penchant to deter public scrutiny of their work and muzzle critics who question the veracity of their claims. Controlling or curtailing people's right to information is natural for governments. The RTI community must take this into account to determine future strategy to overcome it.

Public reaction to the secretive stance of governments has varied between countries. The more vociferous reactions came from countries where transparency regimes and/or a democratic culture are of a longer vintage. RTI/FOI groups in these countries came together to voice their concerns and suggest measures to safeguard the institution. They reminded governments about the importance of people's participation in efforts to tackle the grave crisis which is best ensured by giving them access to all critical information.

However, in countries where the RTI regime is yet to take root and the use of the law is limited even in normal times, there seems to be little public concern about the almost total stoppage of all RTI-related processes during the Covid-19 lockdown. In Bangladesh too, while social media and the press abound with comments and questions on government efforts to deal with the pandemic, no noises are heard about the fate of the fledgling RTI regime of the country. The Bangladesh Information Commission went into total lockdown since late March after announcing that there would be no more complaint hearings till further notice. People were not told if and how the RTI regime would operate during the lockdown. There was no government release either about any alternative mechanism for this purpose. It perhaps indicates the low estimation of the law in the eyes of the public, the Information Commission, and the government alike. As the law aims at empowering citizens vis-à-vis the state, there is no point in blaming only the Information Commission or the government for this state of affairs, if citizens do not care about it.

The lockdown similarly affected the situation in the normally more vibrant RTI scene in neighbouring India. However, online applications have now resumed and the Central Information Commission began limited complaint hearings in late April, though State Information Commissions remained largely inactive.

A Canadian access-to-information specialist made the forecast that "overwhelmed FOI units will be months in recovery. And responses to substantial FOI requests related to the Covid-19 crisis are likely a year away."

Lamenting about this sorry state of affairs, Toby Mendel, a leader of the global transparency movement, commented: "We've got, on the one hand, this incredible need for accountability and, on the other hand, the institutions of accountability are operating well below their normal levels."

Harvard University Health-Law Professor I. Glenn Cohen told *The New York Times*: "Public health depends a lot on public trust. If the public feels as though they are being misled or misinformed their willingness to make sacrifices—in this case social distancing—is reduced." He hoped that "perhaps the lasting legacy of the Covid-19 pandemic will be a generational recommitment to restore custody of critical health-and-safety information to its rightful public owners."

Leading transparency and anti-corruption organisations from across Europe have produced a set of ten recommendations on how governments can ensure transparency of emergency procurement carried out during the coronavirus pandemic.

The recommendations recognised that rapid purchase of equipment such as medical supplies was necessary but reminded governments that EU directives required them to keep a written justification for procurements and make them public. While emergency direct procurement was legal, it must be the exception, even during the pandemic, and should be judged on a case-by-case basis. These are good reminders for all governments.

A spokesperson of the European transparency group reminded governments that "the role of civil society watchdogs and investigative journalists is crucial in investigating wrongdoing, and they can be allies of government in fighting corruption, but they cannot do their job without information."

Apart from civil society groups, the International Conference of Information Commissioners (ICIC) reminded governments about their responsibilities during this critical time. They released a statement in mid-April entitled "Access to Information in the context of a global pandemic," in which they recalled that the impact of Covid-19 had brought unprecedented challenges for the society, both nationally and globally, and reminded governments about their responsibilities to deal with them diligently. They recognised that public authorities must make significant

decisions affecting public health, civil liberties and people's prosperity, but reminded them simultaneously of the importance of maintaining people's right to access information in all circumstances. Equally importantly, they recognised their own responsibility to take a pragmatic approach, for example around how quickly public bodies respond to information requests.

Signatories to the statement included representatives from most of the Information Commissions of the world, though South Asia was only represented by Punjab (Pakistan) and Nepal. Whatever may be the reason for the absences, there is no denying that we are all faced with a pandemic of enormous destructive force. It requires the combined efforts of all concerned, governments and the people alike, to fight the menace and to recover from the damage caused by it, both medically and economically. People's participation in the recovery process will be vital for real success. For that, it is essential that people are taken into confidence and given access to all pertinent public information that enhance their trust in the government. Where such trust existed, people were seen to respect government lockdowns more willingly than where that was not the case.

Finally, once the pandemic is over, there will surely be serious stock-taking and national and international audits of how the crisis was handled by governments. Transparency groups will most certainly use the RTI/FOI Acts to assess government accountability. The Information Commission of Canada has rightly warned: "Because it is impossible to implement measures to ensure transparency retroactively, now is the time for government institutions to ensure that appropriate decision-making documentation safeguards and practices are in place."

Despite the setbacks, public sentiments expressed during the crisis raise hopes that RTI/FOI regimes worldwide will rise like the proverbial phoenix from the ashes of the Covid-19 pandemic with greater grit and energy.

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