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RTI: All three branches of government fall within its ambit



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The deleterious impact of the Covid-19 pandemic on the operations of the Right to Information (RTI) Act has been much discussed in the last one year. We drew attention to it in several of our columns. We also highlighted the positive role it played in enhancing public awareness about the importance of the law during a crisis period. In today's column, we revert to its use in normal times.

Let's look at three examples from neighbouring India, Pakistan, and Sri Lanka—some more recent than others.

The Sri Lankan example stemmed from an RTI request filed by a local journalist, Chamara Sampath, who sought from the secretary general of the Parliament the list of Members of Parliament (MP) who had submitted Declaration of Assets and Liabilities during the years 2010-2018. The secretary general declined to release them, arguing that they were submitted confidentially by the MPs to the speaker, and he had no access to them. He also felt that the request infringed on the privileges of the Parliament.

On appeal by the journalist to the Right to Information Commission (RTIC) of Sri Lanka, the latter set aside, in a decision last month, the refusal of the secretary general and directed him to release the desired information. It based its decision on the ground that the list of MPs did not amount to personal information or information that infringed parliamentary privilege provision of the RTI Act.

The commission further held that MPs, by taking on a public role, had accepted a higher level of public scrutiny and the requested information would provide the people with crucial insights into compliance of the law by MPs who held elected office and were financed by public funds. As such, there was an overriding public interest in the disclosure of the information.

Equally significant was the RTIC ruling that since the Parliament was a Public Authority under the RTI Act, it is of no consequence whether the requested information was in the hands of the speaker or the secretary general. The latter being the "administrative arm" of Parliament, had "institutional possession" of the information. It is remarkable that unlike many other commissions in the region, the RTIC took a constructive approach to advance the objectives of the law rather than looking for loopholes to deny it.

The example from Pakistan relates to a decision made by the Pakistan Information Commission in an RTI appeal submitted by a citizen, Mukhtar Ahmed Ali. The latter was aggrieved by the demand for proof of his citizenship by the Public Information Officer (PIO) of the National Assembly (NA) of Pakistan to whom the initial RTI request was submitted and which he considered *ultra vires*. In its June 2019 decision, the Commission allowed the appeal and directed all PIOs under the Right of Access to Information (RTAI) Act 2017 of Pakistan not to demand a certified copy of the national identity card, CNIC, of an RTI applicant, as it was not required by the law. It ordered the respondent to provide the requested information within a stipulated period.

It all began when the appellant submitted a RTI application to the PIO of the National Assembly of Pakistan, requesting information on the total sanctioned posts of the NA: the pay scale against different positions; total number of vacancies and dates since they lay vacant; number of staff members who were not regular but engaged on a daily-wage or short-term or long-term basis; total number of female staff members and persons with disabilities, etc. Though the information sought appeared innocuous, the PIO declined to disclose them and looked for a way out. Unfortunately, such a tendency is not too uncommon among PIOs in the region.

It is remarkable, however, that the commission allowed the appeal and held that the RTAI Act 2017 did not require applicants to establish proof of citizenship for making information requests. It underlined that the elected representatives of the people who had adopted the law had not restricted the right of access to information only to CNIC-holding citizens of Pakistan because they did not want to deny its benefits to members of vulnerable groups who did not have access to CNIC. It further stated that the constitutionally guaranteed fundamental human right of access to information in matters of public importance should be interpreted by public bodies as a right of all citizens of Pakistan and not a privilege extended only to those who can first provide certified copies of their CNICs. A very positive approach indeed!

The Indian example relates to another arm of the government—the judiciary, and more specifically, the Supreme Court of India (SCI). It has emerged as a landmark case in the annals of the RTI Act of India. It underwent a long battle for accountability and transparency waged by an Indian citizen, Mr Subhash Chandra Agarwal, against the Central Public Information Officer (CPIO) of the office of the Chief Justice of India (CJI). The latter had declined to disclose information sought by the applicant some 10 years ago, claiming that the office of CJI did not fall within the purview of the RTI Act. The request included information regarding assets and liabilities of judges.

In a remarkable judgement, delivered on November 13, 2019, the SCI held that the office of CJI was indeed a "public authority" within the ambit of RTI Act. A five-judge constitution bench, headed by the CJI himself, having considered three separate appeals filed by the CPIO, challenging the Delhi High Court verdict of 2010 and that of the Central Information Commission of India (CIC) in the same year, upheld the verdict in three separate but concurring judgments.

"Nobody wants to remain in the state of darkness or keep anybody in the state of darkness," the judgement said, adding that: "The question is drawing a line. In the name of transparency, you

can't destroy the institution." The judges also held that while public interest demands accountability, judicial independence was equally sacrosanct. They concluded, however, that bringing the CJI's office within the ambit of RTI Act would not undermine that independence.

The verdict was hailed by RTI activists of India, including former CIC of India, Wajahat Habibullah, who saw it as "the consummation of the implementation of the law and not the initiation of any new process." Former Information Commissioner, Shailesh Gandhi, well-known for his teleological interpretation of the law, lamented that "it took 10 years for the Supreme Court to take this decision". Others found it marking "an advancement of the key right of the people to seek information about public functionaries" and felt that "the judgment had once again reiterated a famous adage that "sunlight is the best disinfectant and therefore transparency in the functioning of all institutions, be it a legislature, executive or even judiciary, is indispensable in a modern democracy."

We hope that RTI users of Bangladesh will find the examples instructive and a source of knowledge and inspiration for public officials from all three branches of the government and for the Information Commission itself. They edify the immense possibilities of the RTI Act to advance good governance, benefitting everybody, and the role each can play to achieve its goals.

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