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Let's not consign our RTI law to cold storage

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The title of our column today is inspired by an editorial in *Prothom Alo*, a popular Bangla national daily in Bangladesh, published on February 5, 2022. Titled "Right to Information: Don't send the law into a cold storage," it raised concern about the use of exemption clauses in the RTI law by a public authority to deny information sought by a citizen.

It is reassuring that such an issue was raised by a widely read national daily, bringing into focus one of the most important laws of the land, which has largely been neglected both by the media and the civil society in general. Such neglect has contributed to the failure of the law to attract many users, despite its immense potential in monitoring government work. The reasons for such a failure are not far to seek. Users of the law often encounter many hurdles, as

identified in these columns before. The editorial in question hit upon another—perhaps more formidable—barrier. It is of a more recent origin and relates to the increasing number of RTI requests for information that the authorities concerned find too sensitive to disclose and hence resort to using the exemption clauses.

The story begins with a citizen asking the police authorities for statistics on the number of cases registered in the country every year since the enactment of the Digital Security Act (DSA), 2018, and the number of people arrested and indicted under the law. The request was denied both at the primary and appeal stages, citing a few exemption clauses in the RTI Act. Subsequently, the applicant registered a complaint with the Information Commission, which heard both sides on January 11, and set February 22 for the announcement of its decision.

While we await that decision, a quick recapitulation of the three exemption clauses stated under Section 7 of the RTI Act is in order. Clause 7 (f) permits denial of disclosing information if such disclosure would "obstruct the enforcement of law or incite any offence." Clause 7 (g) allows denial if such disclosure would "endanger public security or impede the due judicial process of a pending case." And Clause 7 (m) allows denial if such disclosure would "affect any investigation process of an offence and the arrest and prosecution of the offender."

We leave it up to the readers to decide if these exemption clauses apply to the given case. Based on the information obtained from news reports, it is difficult to understand how disclosure of mere statistics may lead to the obstruction of justice and increase of offence. Moreover, we don't know how the police authorities justified their use of the exemption clauses.

This case provides us with an opportunity to reflect on the subject of exemption clauses generally, and the rationale behind their inclusion in the RTI Act. The exemptions make it clear that the rights of individual citizens recognised in the law are not absolute and are circumscribed by the collective rights of others. They recognise the need for balance between citizens' rights to monitor the work of the government and, at the same time, the legitimate right of the government to undertake measures to protect public interest. The harmonisation of the two, often conflicting, interests is paramount to preserving the principles and efficacy of participatory democracy.

There is, thus, little controversy about the need for limiting the citizens' right to information in relation to certain critical issues of governance. No one would

challenge the state's need to protect any information affecting Bangladesh's sovereignty, integrity and security from unauthorised disclosure. Equally sacrosanct are the protection of personal information of individuals and the need for upholding the laws of the land and protecting due process. It is not difficult, therefore, to understand the decision of an authority to deny disclosure of any information that clearly falls within the purview of the exemptions. The problem arises if they are not so clear.

In some countries, not all items listed as exempt from disclosure are considered absolute. Some are qualified by what is known as the "public interest override," meaning some exempted information can nevertheless be disclosed if public interest for disclosure overrides the interest of the state to keep them secret. The RTI Act in Bangladesh does not specifically include such a provision, but it may be subsumed to be inherent within the objectives of the law.

What is more important for us is to focus on the proper interpretation of the existing exemption clauses, and ensure that they are not applied inappropriately. There is a clear need for vigilance in this regard. Because we have no such vigilance now in the country, there are instances where information-seekers find themselves in a quandary when the Information Commission itself concurs with the denial of information by the authorities concerned. Since the Information Commission's decisions are final and cannot be challenged in the courts, except in regard to the law's application, the matter normally ends there. Very few have the means to file a writ petition with the High Court to obtain a directive from it under Section 102 of the constitution. And among the few that are filed, many are not followed up properly. Such a state of affairs doesn't augur well for the fate of the RTI regime in the country.

Unless we find a way to ensure that exemption clauses are properly applied, there is a danger that the cynical view held by many about the RTI Act—that if a public authority wishes to refuse an RTI request, it is able to do so without much difficulty—will indeed be confirmed. And that would be tantamount to consigning the RTI Act to a cold storage.

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