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Information Commission's key role in ensuring right to information

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Citizens' right to monitor, probe and question the work of their governments is essential for democracy. The use of this right varies among countries which have adopted a Right to Information (RTI) or Freedom of Information (FOI) Act – tools to facilitate the process. The path from government secrecy to openness is long, winding and rocky, even in countries where the right to information is well-entrenched. In a country such as ours – where the law is relatively new – we still have far to go before the right is seen not merely as "window dressing" to bolster our democratic credentials but becomes a true tool to hold our public authorities to account.

The three key parties in this process are citizens, their public authorities and the arbiters of any disputes between the first two. The first have the right to demand information; the second have the responsibility to respond. The third are members of the Information Commission (IC), composed mainly of former bureaucrats. Both the

second and third pillars of this tool can be too hesitant in carrying out their duties, uncertain about the extent of government sincerity in opening itself up to public scrutiny.

A survey of 311 IC decisions on complaint cases from June 2022 to March 2023 throws important light on the predilections of the IC in dealing with both sides at complaint hearings, in interpreting and applying the law, and more importantly, in serving as the custodian of its hallowed objectives. All the cases arise from citizens submitting RTI requests and most of them not receiving timely responses from the relevant authority – resulting in the complaint to the IC. As the decisions do not provide a comprehensive picture of the exchanges that take place at the hearings, we also sought the views and experiences of some complainants themselves.

In over 91 percent of all complaints, the applicants claimed not to have received *any* response to their applications or subsequent appeals. In many of them, the government's Designated Officer (DO) – charged with responding to RTI requests – rushed to respond only after receiving summons from the IC for complaint hearings.

Our consultation with users from the field yielded a number of other critical issues which deserve IC's attention. In the era of online meetings, many claimed that when they sought to present their arguments, their microphones were muted. On some occasions they were cut off due to faulty internet connections. Others claimed to have faced harsh, irrelevant and intimidating questions.

Disappointingly, in approximately 78 percent of cases surveyed, the IC simply directed the DOs to provide the requested information without recording a serious concern for their wanton disregard of the law. This is very worrying indeed, given the mandatory nature of the law. In 62 percent of the cases, the IC did ask DOs for the reasons for not responding, but in the remaining cases no such questions appear to have been raised. While in a few cases the IC did ask the DOs to show cause for their absence at earlier hearings, it showed little concern for their disregard of RTI requests. This apparent indifference from the IC will not help curb the general tendency of DOs not to respond. A stricter position by the IC and invocation of sanctions under the law is clearly called for: records show only two such sanctions made in 2019.

This lack of holding DOs to account extends to other areas. Many DOs simply denied having received any information requests at all or claimed that they were new to the job and/or unaware of the law. Except for 2.5 percent of such cases, here too the IC simply directed the DOs to provide the requested information without questioning the

veracity of the denials or expressing discontent. If DOs manage to flout the law so easily, user confidence will continue to erode. A serious probe into the matter and the use of sanction provisions would go a long way to stem such unfair practices.

In a sizable number of cases, the decisions also indicate that the IC discharged cases for non-appearance of parties, passed orders in the absence of one party or both, which are against the principle of natural justice, and postponed hearings because of non-appearance of DOs. These too can only have negative impact on citizens who see their use of the law more as a civic responsibility than as a simple exercise of their rights.

The decisions brought to light another recurring penchant of DOs. They appear to be more inclined towards using the exemption clauses contained in Section 7 of the Act to deny RTI requests than to focus on the more positive provisions of the law to promote transparency and accountability in government work. Sadly, however, they often use them without fully assessing their applicability and explaining the reasons for their invocation. More unfortunately, the IC too often fails to discuss the underlying legal issues at the hearings or to provide reasons for their acceptance of exemption claims by the DOs. As a quasi-judicial body, it is expected to do so. However, providing such legal analysis is a difficult task and requires legal expertise, an area where the government might wish to equip the IC properly.

Some DOs reportedly insist that applicants provide their phone numbers so that they may be called and threatened to come and see them, provide reasons for their request or collect the information from their office when there are no such requirements under the law. The IC should clearly admonish DOs who indulge in such practices.

Our consultation with users from the field also yielded a number of other critical issues which deserve IC's attention. In the era of online meetings, many claimed that when they sought to present their arguments, their microphones were muted. On some occasions they were cut off due to faulty internet connections. Others claimed to have faced harsh, irrelevant and intimidating questions. The virtual process also made checking and verifying documents physically difficult. And many claimed their submissions were often not reflected in the decisions. As the Covid-19 pandemic appears to have subsided now, the continuing use of virtual hearings calls for re-examination.

The law foresees the IC to be its "guardian angel" and has empowered it to be a strong and objective arbiter, with regard both to information-seekers and information-providers. It is incumbent on the IC to play its role boldly and effectively, bearing in

mind that the foremost objective of the law is to empower citizens to promote good governance. This will happen only if the IC is able to pave the way for unencumbered and unhindered use of the law by citizens while, at the same time, safeguarding the legitimate interests of the government to maintain secrecy in clearly demarcated areas of governance. Such a balance must be premised upon a clear recognition of the basic tilt of the law in favour of transparency and accountability.

We hope that the Information Commission will take the above conclusions into account in assessing its own work. We recognise the enormity of the task of moving a nation from an age-old culture of secrecy to one of openness and accountability. The progress of RTI in Bangladesh is slow, but it is moving on. Our efforts are aimed at nudging it along the long rocky road.

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