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RTI unearths discrimination against female students

With so much negative news flooding the media in recent times, a piece of good news has provided some warmth. Bangladesh's High Court has asked the authorities of a public university to allow pregnant and married female students to remain in the dormitories for the time being. The discriminatory nature of such a restriction has been highlighted and the university has been asked why its recent notice requiring such students to leave the residential hall should not be cancelled or withdrawn.

While the news was widely welcomed, very few realise that this move has come after a series of information requests under the Right to Information (RTI) Act 2009 of Bangladesh were submitted by staff members of Bangladesh Legal Aid and Services Trust (BLAST) to 38 public universities between December 2022 and July 2023. They were reacting to news reports published in national dailies alleging that pregnant students were not being allowed to stay in the residential halls of Dhaka University.

The reports referred to a policy relating to the allocation of seats in five residential halls of Dhaka University which read as follows: "If any female student is married, she must inform the authorities immediately, otherwise her seat will be cancelled due to violation of rules. Only in special cases married students will be given the opportunity to study from the hall in the current session. If she is a pregnant student, she cannot stay at the hall anymore."

The RTI requests sought to discover what actually happens when this policy is implemented and what the specific university guidelines are for male and female students. Based on a response from Jagannath University, BLAST filed a public interest litigation (PIL) suit on October 30, 2023 in the High Court, challenging the gender-discriminatory nature of the notice—issued on September 25 by the university, under an internal Rule (from the 2021 Rules)—requiring pregnant and married female students to leave a residential hall.

BLAST, through its RTI requests, queried whether there were specific policies for male and female students living in residential halls; whether the policies were the same for both male and female students; whether there were specific policies for married and pregnant female students; and whether there were specific policies for married male students.

The responses received indicated that most of the authorities did not have separate policies for male and female students and no specific policies for married and pregnant female students. A few indicated strict time limits for female students returning to the halls each night; five universities barred married and pregnant female students from residing in the halls at all; and six restricted the categories of visitors seeking to meet a female student to include only her parents, guardians, siblings, and husband.

In response to BLAST's PIL, Justices Naima Haider and Kazi Zinat Hoque of a Division Bench of the High Court, passed a rule nisi on Jagannath University and its officials on October 31, asking them why they should not be directed to cancel or withdraw the notice and the 2021 Rule. The Court's Rule was made returnable by February 7, 2024. It included an interim order staying the operation of the notice till that date.

The Court further directed the Ministry of Education and the University Grants Commission (UGC) to submit a report within February 7, 2024 on rules and regulations based on sex, marital status, or health in Bangladeshi universities, and the measures proposed to ensure gender inclusive policies for all students.

This development augurs well for the RTI regime in the country and testifies to the readiness of our judiciary to safeguard basic rights of our citizens. It is also indicative of the critical role our courts can play in advancing the hallowed objectives of the RTI Act. While awaiting a denouement of the case, we would like to highlight two important elements emanating from the case so far: 1) the efficacy of the RTI mechanism's use by institutions like BLAST, rather than by individuals, to sidestep the negative reactions of many public officials towards individual applicants, including harassment and threats of retribution, and 2) the readiness of our Courts to accept information derived through the RTI mechanism as admissible evidence.

On the first point, it has been a constant complaint of this column that not many RTI applications originate from socially conscious and responsible citizens of the country, who fear the negative, sometimes threatening, attitude of public officials towards applicants seeking "bothersome" information. We posit that one way to overcome such fear would be for citizen groups, rather than individuals alone, to use the law in matters of public interest. The requests to the universities received positive responses largely because they came from a reputed NGO and not from individuals. There is clearly a lesson to learn here.

On the second point, it is heartening that our High Court took cognisance of evidence obtained through the RTI Act in issuing its Rule, as has happened in similar situations in the past. This is encouraging, as courts in neighbouring India are split on whether RTI responses are acceptable as evidence, and if so, how they should be presented and whether they should be considered as secondary or substantive evidence. Some courts have ruled that RTI responses may be read directly in court, others have ruled that they are inadmissible. There is thus a need to establish uniform norms of admission in this regard. Hopefully, our courts will take the lead, and the example established by BLAST in making use of RTI to address public interest issues will be emulated by other NGOs and civil society organisations of the country.

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