

**LAW INTERVIEW**

**RIGHT TO INFORMATION**

*Giving people a sense of empowerment*

**Law Desk (LD):** Please tell us about RTI (Right to Information) application procedure in India.

**Prashanto Chandra Sen (PCS):** The RTI procedure in India is basically regulated by the Right to Information Act of 2005, but the procedure varies from one State to another. Seeking information, one needs to apply to the concerned authority in a prescribed form after paying certain fees fixed by the law. Each authority brings out certain formats on which the application has to be made. Sometimes the amount of fee varies depending upon the extent and weight of the information that has been sought to be shared with the applicant. The legal basis of information authority is well-defined in the RTI Act of 2005. In other words, the duty to provide information arises under this Act. When an application is refused by the information officer, the applicant has an option to go the appellate authority and subsequently, if needed, to the central information authority. Besides in required situations, the applicant can challenge the decision of the central information authority to the High Court under writ jurisdiction and then can go to the Supreme Court of India.

**LD:** As you regularly appear in RTI cases for the clients who come from below poverty line, what does basically motivate you to do so for them?

**PCS:** I believe, one of the ways to contribute to the democratic processes of the nation is to assist the marginalised population of the country to protect their rights guaranteed in the constitution. It gives a lot of satisfaction to a legal practitioner like me. That is one main reason, why I work pro bono for such matters besides my regular private law practice. Secondly there is always opportunity of contributing to the development of law and legal system in RTI jurisprudence. Even in cases which involve persons who come from below poverty line,

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Prashanto Chandra Sen

the litigation may raise issues which have deep legal significance, and that can be intellectually challenging for a lawyer to deal with. So, the motivation that I have is both emotionally satisfying and intellectually challenging. We are trying to build up a network of lawyers who would regularly take up RTI cases on various important issues of RTI which are raised and even if people do not have the resources to follow up, the network of lawyers would take care of for them. That's what we are now planning.

**LD:** How do you evaluate the presence of the Indian RTI Act?

**PCS:** Often the population do not know why the government is doing or not doing something. For example, why the ration is not coming to the people who are entitled to receive. To get all the information, the RTI Act is a means for the population. It empowers them and as a matter of right

they can ask for the information. It is true that many times the information officer would not entertain the application which is asking for some information. Even though it may take time, however, here is at least a legal process which empowers the citizen and enables them to ask questions to the government. And imparts a sense of empowerment that they get, on account of being able to seek information through a process.

**LD:** How do people know about RTI in India?

**PCS:** There are many NGOs creating awareness about RTI among slum dwellers and rural population. These NGOs assist individuals to file RTI applications and suits. And then as words spread around that some RTI applications have been successful, it also encourages people to file RTI applications. All these factors together

results in to make people being able to approach the RTI authority.

**LD:** Are you involved in any RTI awareness movement?

**PCS:** Not too much. I usually confine myself to the court. I can maximise my contribution to the RTI movement through engagement in legal discourse on RTI issues.

**LD:** How do you get yourself engaged in RTI litigations? Where do you find the clients who cannot afford the cost of litigation?

**PCS:** There is an organisation called National Campaign for People's Right to Information (NCPRI) which often refers to me the clients who cannot afford fighting in the court. The aim is to take up issues which are critical for the RTI movement but which cannot be pursued legally because of lack of resources by the person who filed

the RTI. Then there are private clients or organizations which approach me directly.

**LD:** What is the role of Indian judiciary on the issue of RTI movement?

**PCS:** It's mixed. Many times it has been pro-active and many times conservative on some issues. Right to know is something which is part of the constitution and legal ethos. So it is not something new to the judges. But RTI is something different where authorities are obliged to give information and there is a process in which everything has to be done. There is an instance where a High Court made rules not strictly in consonance with the RTI Act, for example, when the Court itself was required or asked to share information. At the same time, the Delhi Court in a landmark judgment took a decision that the judges themselves must declare details of their assets. This issue is now pending before a five-judge bench of the Supreme Court whether judges are required to disclose the information concerning the details of their asset. This is yet to be decided but till then the law declared by Delhi High Court stands.

**LD:** How optimistic you are about the future of RTI movement in India? Do you see any challenges?

**PCS:** I am very optimistic about RTI movement in India. We want to see it grow more. Because the more empowered the people will begin to feel, the more they will get involved in democratic practices. That is the beauty of democracy and this way, I feel, our democracy will mature. But there is one danger for the RTI activists. There are cases of some being physically attacked and killed. This is an area of concern. We need to be very careful to deal with this scenario and I believe the government has a big role play in this situation.

**LD:** Thank you for your time.

**PCS:** You are welcome.

**LAW VISION**

**From Transition to Transformation  
Justice for the Rohingya**

*Choices of transitional justice mechanisms have to be sensitive to the practical limits of justice in a society transitioning from military rule to democracy. And in this process, truth commissions, reparation policies and guarantees of non-repetition hold greater promise.*



AISHA BINTE ABDUR ROB

**T**HE world's fastest growing refugee crisis may seem to be poised for an accelerated resolution as prominent actors in the international community are rallying for the repatriation of the Rohingya. Many have viewed repatriation as a stepping-stone for the broad systemic transformation envisaged in the recommendations of the Kofi Annan Foundation. Notable among the proponents of repatriation is the Vice President of the European Commission, Federica Mogherini, who recently conveyed to Myanmar's State Councilor Aung Saan Suu Kyi the EU's decision to collaborate in Rohingya repatriation. Bangladesh has also welcomed the prospect of repatriation and talks are underway to commence the process. However, this somewhat self-serving idealism on part of the international community must be tested for its prudence, as the fate of the Rohingya swings precariously in the balance.

The proposed framework for repatriation is yet to be revealed. However, what is crucial to emphasise is that any scheme for repatriation must be integrated into a broader transitional justice process. Accountability and reparation for atrocities are vital prerequisites for sustainable peace. While the Burmese army has initiated an inquiry into the military operations in Rakhine State, this cannot be accepted as a genuine effort to reveal the truth of the Rohingya's plight. There is a need for a truth-telling process conducted by an impartial truth commission, accountability mechanisms for those responsible for the atrocities and a reparation policy for victims. There is no automatic nexus between repatriation and gradual realisation of the transformative goals set by the Kofi Annan

Foundation. Transformation must be mediated and facilitated by a carefully designed agenda for transitional justice.

Myanmar's transition to democracy is at a delicate stage of development. The complexities encountered in transitional societies surrounding choices between stability and justice are particularly problematic here. For peace to be genuine and sustainable, a rigorous evaluation of available options will be necessary in order to synthesise a set of transitional justice processes and mechanisms that can deliver justice without severely destabilising the democratisation process. Conferring a civic identity on the Rohingya is, of course, vital to the furtherance of the aim of justice. Other aims of transitional justice, however, will need to be located within the uncertain dynamics of Myanmar's politics.

It is clear that Suu Kyi's position is precarious. Her reticence may be explained as a strategic measure given the fragile balance of powers in Myanmar, wherein the military continues to maintain a stronghold on core governmental processes. Hence, choices of transitional justice mechanisms have to be sensitive to the practical limits of justice in a society transitioning from military rule to democracy. And in this process, truth commissions, reparation policies and guarantees of non-repetition hold greater promise.

Of course, Myanmar's intractable denial of military involvement poses problems for the establishment of a truth commission. There is scope to reflect on the experiences of Colombia and Peru in this regard. In Colombia there was no truth commission preceding the reparation policy. On the other hand, truth-telling can raise unrealistic expectations which reparation

policies cannot meet, as in Peru. However, it is worth asking whether reparations alone can deliver a sense of justice. Moreover, rebuilding the relationship between the Rohingya as citizens of Myanmar and the State of Myanmar demands the truth of the past to be acknowledged.

In the context of reparation, any policy must extend beyond individual outcomes of vindication, recognition and wellbeing and create a climate conducive to the full implementation of the Foundation's recommendations. It must deliver social outcomes including cohesion, reconciliation and social trust, as well as political and economic outcomes that eradicate the prevalent systematic marginalization and structural violence against the Rohingya.

An agenda for sustainable peace must be furthered because as delicate as the political order is in Myanmar, there is no political gridlock that obviates progress. Repatriation alone is certainly not a panacea for the crisis at hand. It is incumbent upon the international community to ensure that repatriation is integrated into a broader framework for the delivery of transitional justice, notwithstanding the risk of destabilisation. We cannot be so enamored of the notion of stability that we become blind to its reality as the perpetuation of injustice with impunity. It is a trial for the conscience of all nations and a test of the merits of our claim to civilisation, in how we discharge our duties as custodians of a religious and ethnic collective.

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**FOR YOUR INFORMATION**

**Wishes on World Cities Day!**

**S**USTAINABLE Development Goal 11 formulates the ambition to make cities and human settlements inclusive, safe, resilient and sustainable. The premise for prioritising cities and urbanisation is that urbanisation provides the potential for new forms of social inclusion, including greater equality, access to services, new opportunities, engagement and mobilisation that reflects the diversity of cities, countries and the globe.

However quite unfortunately, inequalities in cities have grown since 1980. The world's largest cities are also often the most unequal. This year's World Cities Day's theme is 'Innovative Governance, Open Cities', being embraced by the action and implementation of the New Urban Agenda which is putting the topic of inclusive cities as one of the main pillars for the urban shift by aiming at building a symbiotic relationship between urbanisation and development for sustainable development.

The background or premise for designating a day as such was quite simple. The main idea and premise for designating a day as such was to build up an inclusive society. To emphasise the world's urban challenges and to engage the international community towards the New Urban Agenda, Urban October was launched by UN-Habitat in 2014. In October



2016, the HABITAT III Conference, held in Quito, adopted a new framework in order to set the world on a course towards sustainable urban development by rethinking how cities are planned, managed and inhabited. The New Urban Agenda will set the pace on how to deal with the challenges of urbanisation in the next two decades, and is seen as an extension of the 2030 Agenda for Sustainable Development, agreed on by the 193 Member States of the UN in September 2015.

The United Nations General Assembly has designated the 31st of October as World Cities Day, by its resolution 68/239. The Day is expected to greatly promote the international community's interest in global urbanisation, to push forward cooperation among countries in meeting opportunities and addressing challenges of urbanisation, and contributing to sustainable urban development around the world.

The general theme of World Cities Day is Better City, Better Life, while each year a different sub-theme is selected, to either promote successes of urbanisation, or address specific challenges resulting from urbanisation. This year, the United Nations has selected the theme Innovative Governance, Open Cities to highlight the important role of urbanisation as a source of global development and social inclusion.