

THE RTI MECHANISM

Issues of public interest and time duration

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RIGHT to information has been the foundational basis of all rights. The UN General Assembly declared this right during its very first session as the touchstone of all freedoms to which the UN is consecrated. The Constitution of Bangladesh guaranteed freedom of thought, conscience, speech, expression and press under Article 39 with certain restrictions.

Section 4 of the Act declared the right of every citizen to get information from the 'authority' and also confers duty upon the authority to provide such information once citizens demand. This vehement declaration, although seems very empowering, has been subjected by many conditionalities which obstructed to achieve the true spirit of the right to information. The Annual Report 2016 of the Information Commission (the

when we are proclaiming and projecting developments before the global community. This write-up intends to quest the enhancement of the RTI mechanism.

The first and foremost reason of gradual decrease of performance anyone would find after reading the RTI Act is the longest exceptional list (twenty categories) under section 7 of the Act which do not guarantee RTI to citizens, rather it is the discretion of the authority to provide the information. Moreover, section 32 stipulated that the Act will not apply to the eight enlisted organisations and institutions mentioned in the schedule except information related to corruption and violation of human rights. Here, it is necessary to revisit the RTI-excluding list of sectors in other South Asian countries. Section 8 of the Right to Information Act 2005 of India enlisted eleven categories exempted from the purview of RTI. The Right to Information Act 2007 of Nepal enlisted five categories to be excluded from RTI. The Right to Information Act 2010 of Pakistan excluded RTI from seven different categories under section 8, 15, 16 and 18. The Act further specifically excluded the record of banking companies and financial institutions relating to the accounts of their customers under section 8(1)(a). The RTI Act of Maldives enlisted around twenty categories to be excluded from the RTI. However, the Act of Maldives guarantees RTI for everyone regardless of whether the applicant is citizen or not. Under section 76 of the said Act, legal personalities along with natural persons are entitled to exercise RTI. The Right to Information Act of Sri Lanka clearly specified in section 5 that request under the Act for information shall be refused in fourteen categories. Many South Asian countries, although categorised a list of information to be excluded from disseminating to citizens, have endorsed grounds such 'public interest' and 'time-duration' whereby citizens are entitled to access these restricted information.

interest' has been a common exception to the general exceptions under the RTI Acts of India and Sri Lanka. In other words, whatever be the restrictions specified under the RTI Act for not disclosing information, the authority cannot refuse any citizen to provide information if public interest is involved. The threshold of such disclosure is that larger public interest outweighs the harm resulting from the disclosure.

The enlisted RTI-exempted information of public authority in Bangladesh is perpetual in nature. However, such information in many other South Asian countries is bound to be disseminated after lapse of certain duration. Under the RTI Act of Maldives, if the duration of any information exceeds ten years, such is bound to be disclosed although they fall within exceptions. Sri Lanka enlisted six categories from fourteen enlisted exemptions whereby the authority would be bound to provide information if the duration of information exceeds ten years. In case of India, if the duration reaches twenty years, such is bound to be disseminated once asked by citizens.

Considering the ratio of RTI exercise for last seven years in Bangladesh, it is significant now that the information commission and government must concentrate to accelerate the flow of citizens' access to RTI. Certainly the better performance can be reflected if the law turns out to be more open and liberal from the restrictive shields of exceptionalism. The process can be eased by giving greater emphasis to the public interest than security, privacy and secrecy of the government as well as disseminating some years' old information of authority to the citizens which have already been endorsed by some South Asian nations. Without attracting more citizens in the system in upcoming days and years; combating corruption, ensuring good governance and increasing transparency would be an illusion.

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available latest one till date) revealed that 6,369 RTI applications have been filed in that year. The number was 6181 in 2015, 8442 in 2014, 11727 in 2013, 7808 in 2011, and astoundingly 25,410 according to the Annual Report of 2010. Total RTI application since the establishment till the end of 2016 is 82,412. Any common mind would find this downward performance of RTI mechanism as an alarming challenge for Bangladesh particularly

YOUR ADVOCATE

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.

Query
I am a university student. In social media I have been facing a few problems since the very beginning. In the public groups and pages, I often face harassment by unknown users and strangers in the comment sections. I wanted to know if there is any legal solution to my problem.
Shama Anamika (not real name)
Dhaka

Response
I am sorry to hear you are facing this kind of harassment. The first step to finding a solution is to understand what the problem is. The situation you are facing is commonly known as cyber bullying. A lot of people are under the notion that bullying, through whatever means, is not of serious consequence to the person being bullied. Let

people, anyone can be a victim for example, teachers, employees, employers etc. To be clear, cyber bullying is not just an act to be scorned upon but is an offence punishable under the Information and Communication Technology Act-2006 (the Act). The Act inter alia provides that a person who deliberately publishes, in a website or in electronic form, any material which is fake and obscene or has the effect of corrupting persons who are likely to read, see or hear the material or causes to prejudice the image of a person or may hurt religious belief or instigate against any person, then the person publishing the material will be guilty of an offence under the Act. The punishment for such an offence is imprisonment and fine.

Victims of cyber-crimes (which includes cyber bullying) can lodge a complaint to the Bangladesh Telecommunication Regulatory Commission (BTRC) by calling at +880-



me assure you, and anyone else reading this, that this is not the case. Bullying can often have dire and long lasting consequences or effect on the person being bullied. Therefore, this matter should not in any way be taken lightly.

I will discuss cyber bullying in a broad capacity so that it not only covers the issue which you are having but also covers issues which other people might have. It is first important to understand what cyber bullying actually is. Cyber bullying is one of the aspect of cyber-crimes, whereas cyber-crimes refer to crimes committed in cyber space. In simple terms, cyber bullying is an act done by a person(s) against another person by using electronic communication (e.g. by/on social media). A few examples of cyber bullying are, causing someone harm by posting unwanted or private information, threatening a person by sending mean messages via email, social networking websites, text or audio messages, spreading rumors via email or social networking sites, sharing private/embarrassing pictures, videos websites, creating fake profiles etc.

29611111 or by emailing at btrc@btrc.gov.bd. BTRC is supposed to take necessary actions within 24 hours and the perpetrators will be brought to justice within 3 days after the complaint is filed. The government has also launched a cyber-crime helpline. Victims can call at +8801766678888 to submit their complaints.

Furthermore, if the harassment amounts to criminal intimidation (threatening another with any injury to his person, reputation, property etc.) as per the Penal Code 1860, then the person may be liable to punishment as per the Penal Code 1860.

The above mentioned steps should definitely be resorted to if the matter is serious enough. However, the first step should be the internal reporting process of the particular social media website or application. If we take Facebook for example, photos and comments can be reported and the particular user can be blocked. Similar reporting systems are in place in most popular social media websites or applications.

I hope this information will be useful to you in finding a solution to your problem.

For detailed query contact: omar@legalcounselbd.com.

LAW LETTER

'Female Migrant Workers' means women who move to another country in order to find seasonal or temporary employments. In today's world, there are more than 12 crore female migrant workers, among which almost 2 lac are from Bangladesh, and this number is increasing with every passing day. However significant this number might appear to us, sadly there is no effective legislation in any country to protect the rights of the female workers on foreign soil. As a result, every other day we see newspaper reports and Youtube videos of female migrant workers being underpaid, exploited, tortured, raped or even killed in countries like Saudi Arabia, Jordan, Italy etc.

Now the question is, why have these women chosen to become migrant workers? The answer is poverty. Moreover, as these workers can bring much needed capital to their home countries, thus sometimes they get encouragement from their governments too. On the other hand, there are some sub-agents who fraudulently misguide poor villagers in order to grab big amount of money from them. Often these sub-agents falsify date of birth and other information of the workers, allowing them easier access to the foreign country. Later these workers fall in deep trouble in that country due to such falsification. Specially in Saudi Arabia, where the employers hold the employees' passports, the migrant workers cannot even go back to their homelands without the permission of their sponsor. This is strictly against the UDHR (Universal Declaration of Human Rights)

FOR YOUR INFORMATION

DISCRIMINATION continues to undermine efforts to achieve a more just and equitable world and causes pain and suffering for many. Discrimination has many forms, from racial or religious discrimination to discrimination based on gender, sexual orientation or age, and to bullying at school or at work. Discrimination remains widespread - gender, nationality, age, ethnic origin, sexual orientation or religion can all unfortunately be the basis for some form of discrimination. In only four out of 10 countries worldwide do equal numbers of girls and boys attend secondary school and 75 countries have laws that criminalize same-sex sexual relations.

Many people face discrimination every day based on who they are or what they do. That no one should ever be discriminated against because of their age, sex, gender identity, sexual orientation, disability, race, ethnicity, language, health (including HIV) status, geographical location, economic status or migrant status, or for any other reason is what UNAIDS is highlighting on Zero Discrimination Day.

In December 2013, on World AIDS Day, UNAIDS, a UN program on human immunodeficiency virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS), launched its Zero Discrimination Campaign. From 2014 onward, every year on 1 March, people around the world join together to

Agony of female migrant workers

which declares that everyone has the right to leave any country, including his own. Human Rights Watch describes this condition as "near-to-slavery".

According to Amnesty International's observation, the Saudi Arabian law does not give effective legal protection to female migrant workers or home-maids. In the absence of any interpreters or legal representatives, these migrants fail to defend

years of abuse. In September 2011, a Sudanese migrant worker was beheaded for sorcery. In January 2013, a Sri Lankan home-maid named Rizana Nafeek was beheaded after she was convicted of murdering a child under her care, an occurrence which she attributed to the infant choking.

At present ILO is taking initiatives to protect the rights of workers, including migrant workers, from abusive and fraudulent practices during the recruitment process.

In Bangladesh, we have Ministry of Expatriates' Welfare and Overseas Employment and several private institutions and NGOs who are working for the betterment of female migrant workers. In addition, we have several legislations, e.g. the Prevention and Suppression Human Trafficking Act, 2012; the Overseas Employment and Migrants Act, 2013; the Expatriates Welfare and Overseas Migration Policy, 2016 and the Prevention and Suppression Human Trafficking Rules, 2017. However, the mere existence of these bodies and laws will not ensure the rights of female migrant workers. We



rather require effective implementation and international collaboration. To fight this new way of enslaving people, we need to build awareness right from the grassroots level. We have to remember that these female migrant workers belong to our country. So if we, the countrymen, do not stand beside them, then who else will?

of female migrant workers. We rather require effective implementation and international collaboration. To fight this new way of enslaving people, we need to build awareness right from the grassroots level. We have to remember that these female migrant workers belong to our country. So if we, the countrymen, do not stand beside them, then who else will?

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Observing Zero Discrimination Day

celebrate Zero Discrimination Day. The UN first celebrated Zero Discrimination Day on March 1, 2014.

Discrimination in health-care settings also continues to be widely reported. Imagine a young woman newly diagnosed with HIV

and caring environments. However, such cases are happening too frequently throughout the world. Any obstacles that inhibit access to health-care facilities, including to testing, treatment and care services, must be removed. Access to health must be open to everyone.

The aim with which the zero discrimination day is observed, is to ensure that health-care settings be considered as safe



being told by her doctor that she must be sterilised, a sex worker facing violence or abuse from a nurse, a disabled person denied access to proper advice about their sexual health, a gay man frightened of disclosing his sexuality to medical staff, a person who injects drugs dying after being refused treatment or a transgender person attempting suicide after being turned away from a clinic. All of the