

RIGHT TO INFORMATION (RTI) IN BANGLADESH: LOOKING WITHIN AND BEYOND

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I. Introduction

Government openness is a sure technique to minimize administrative faults.² It benefits not only citizens but also government itself. By prompting better record management, making decisions and services more efficiently and by ensuring transparency and accountability at every sphere of the government, it serves as a safeguard against misgovernment and corruption. As light is a guarantee against theft, so governmental openness is a guarantee against administrative misconduct.³ Therefore 'Right to Information' is a matter of great importance in the context of administrative accountability.

In a democratic society, people are the most powerful element and right to information empowers them to realize the fruits of democracy.⁴ At present, people all around the world are demanding more openness in government. They are calling for greater civic participation in public affairs and thereby seeking ways to make their governments more transparent, responsive, accountable and effective.⁵ Responding to the demand, a number of countries in the world have adopted RTI laws. Bangladesh as well followed the trend and adopted the Right to

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² Hasan Talukder, *Development of Administrative Law in Bangladesh: Outcomes and Prospects* 73 (1st ed.1993).

³ *Id.*

⁴ Mohammad Hasan Murad, *Improving transparency through Right to Information and e-Governance: a Bangladesh Perspective*, vol.6 Current L.J.1, 1 (2010).

⁵ The Open Government Declaration, 2011, United Nations, 2011.

Information Act, 2009 and thereby entitled the people to get information as a right. Although we have an ocean of laws, only this RTI Act creates an opportunity for average citizens to investigate day-to-day activities or policies of public institutions and private organizations that operate using government or foreign funds.⁶

The Right to Information Act, 2009 has been adopted to ensure free flow of information and people's right to information which will in consequence establish good governance by increasing transparency and accountability of the government.⁷ Focusing on this fact, this article attempts to evaluate to what extent the objectives of the Act are met. While doing this, the study covers the meaning of right to information, presents an overview of the RTI Act, 2009 with the factors within and beyond the Act that affects its proper implementation. Finally, the write-up comes up with some recommendations that may help to ensure right to information for every citizen of Bangladesh in its true sense.

II. Right to Information: A Conceptual Analysis

The 'Right to Information' is referred to in various ways across the world. Some talk of "freedom of information" others talk of "access to information" or "the right to know" but all these terms have the same sense- people have a human right to seek and receive government held information.⁸

⁶ The Right to Information Act, 2009, No.20, Acts of Parliament, 2009. § 2 of the Act makes a list of authorities who are bound to give information.

⁷ *Id*, Preamble.

⁸ Sadeka Halim, *Role of Right to Information (RTI) in Establishing Transparency and Fighting Corruption in Society*, a paper presented in Bangladesh Social and Economic Forum 2011, organized by Dhaka School of Economics.

The Right to Information is the key to all other rights. It is among the most important instruments to effectively empower those to whom power should belong in democracy - the people.⁹ The United Nations has called it the touchstone of all the freedoms to which UN is consecrated.¹⁰ The Resolution proceeds further covering the scope of freedom of information by stating that this right implies the right to gather, transmit and publish news anywhere and everywhere without fetter.¹¹

This resolution expressly recognizes the RTI as a fundamental human right and at the same time, it protects this right as an integral and intrinsic component of freedom of expression. By stating that RTI implies ‘the right to gather, transmit and publish news anywhere and everywhere without fetters’, it establishes the linkage between RTI and freedom of expression. And, the right to freedom of expression has long been regarded as one of the most fundamental rights in any democratic society including Bangladesh.

The Universal Declaration of Human Rights (UDHR), 1948 and the International Covenant on Civil and Political Rights (ICCPR), 1966 make the linkage more clear. The UDHR states that everyone has the right to freedom of opinion and expression and this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of

⁹ Ifekharuzzaman, *Implementing Right to Information in Bangladesh: Opportunities and Challenges*, Key-note paper presented at the International Conference on “RTI Implementation: Law, Institutions and Citizens” organized by the RTI Forum, 2009.

¹⁰ The UN General Assembly in its first session in 1946 adopted the Resolution 59 (1) which states, “Freedom of Information is a fundamental human right and....the touchstone of all the freedoms to which the United Nations is consecrated.”

¹¹ *Id.*

frontiers.¹² Restating the same essence of UDHR, the ICCPR states that this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print in the form of art, or through any other media of his choice.¹³ Besides, a number of international human rights instruments embedded the right to information as a core human right and in compliance with this, many countries recognize this right as fundamental rights.¹⁴

No international documents explicitly states that people have the right to access government held information. It is implicit in the universal guarantee of the freedom to disseminate information as part of the right to freedom of expression. Thus, the concept of RTI is developed in conjunction with the freedom of expression. Different countries, recognizing freedom of expression as fundamental right, enacted RTI laws and recognized RTI as legal right. Generally, these laws define RTI as a right to receive information which are specified in the definition clause of the law. In fact, definitions of RTI in different international instruments help to map out some commonly-agreed standards for this right which may be reflected in the contents of domestic access to information laws around the world. These include:

- RTI is a right ensured by legislation which guarantees access to certain information held by the Government. At the same time, to release of some of that information, some limited and reasonable exceptions may apply, such as, public interest, state interest including national security, international relations etc;

¹² The Universal Declaration Of Human Rights, 1948, art.19.

¹³ The International Covenant on Civil and Political Rights, 1966, art.19 (2).

¹⁴ *supra* note 7.

- By recognizing this right as a legal right, it ensures right of a citizen to seek for certain government held information and failure to get so entitle him to go for legal remedy;
- The Right to Information must be exercised by the legal process, established by the related legislation;
- An information request for government held information should be processed in minimum time with free of cost or at minimal cost. A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual cost.¹⁵ An information request will not be denied unless the information sought falls within the scope the exceptions specified by the legislation and written reasons for such denial are provided to the seeker of information.¹⁶

III. Right to Information Act in Bangladesh: A Synopsis

The preamble to the Act refers to the constitutional commitment to freedom of thought, conscience and speech as a fundamental right and on that basis recognizes the importance of ensuring free flow of information and people's right to information as an inalienable part of this fundamental right. Reiterating the other key constitutional provision that all powers of the republic belongs to the people, it underlines that for true empowerment of the people the RTI is indispensable. It also declares that RTI will ensure transparency and

¹⁵ The EC Convention on Access to Official Documents clearly states that "...inspection of official documents on the premises of a public authority shall be free of charge. ... A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document."

¹⁶ *supra* note 7.

accountability in all public, autonomous and statutory organizations and in private organizations run on government or foreign funding with the aim to decrease corruption and establish good governance.¹⁷

Right to Information Act aims to give people more opportunity to participate in public affairs and hold duty bearers accountable for their action. To this end, this Act not only ensures right to information as a legal right, it also entrusted the authority, bound to provide information, with some duty to facilitate the exercise of this right. This Act contains statutory remedy for those who failed to receive information asked for. However, the essential features of this Act can be summarized as follows:

III.I. Ensuring Right to Information as Legal Right

Section 4 of the Act clearly states that subject to the provisions of this Act, every citizen shall have the right to information from the authority, and the authority shall, on demand from a citizen, be bound to provide him with the information. From the language of this section it is clear that right to information under this Act is not unlimited; rather subject to some limitations. Only the citizens of Bangladesh can exercise this right. Not all authorities but only those who are termed as ‘authority’ in the Act are bound to provide information.¹⁸ Besides, information that are termed as ‘information’ under this Act are available to the

¹⁷ Government of Bangladesh, *The Bangladesh Gazette - The Right to Information Act*, April 6, 2009 Preamble (Translated and adapted from Bangla)?see also-Towards People's Right to Information in Bangladesh: High Expectations, Tentative Progress, the Way Forward, by Iftekharuzzaman-Presented at the Roundtable Discussion organized by the RTI Forum Bangladesh to mark the International Right to Know Day, Dhaka, 2010.)

¹⁸ *Supra* note 5 at §§ 2 & 32 and schedule.

citizens.¹⁹ The right to information is restricted by exempting twenty kinds of information including information disclosure of which may affect security, integrity and sovereignty or any foreign policy affecting foreign relationship of Bangladesh and so on.²⁰

III.II. Steps to be Taken by the Authority to Ensure RTI

This Act imposes a number of obligations on the authority to facilitate the right to information; such as, to form information providing unit for which a responsible officer must be appointed within the time prescribed by the law;²¹ to preserve the information in a catalogued and indexed manner as instructed by the Information Commission,²² to publish and publicize the information including to publish an annual report on their activities²³ and so on. An independent three-member Information Commission has been formed entrusted with a multi functions and powers including disposing of complaints regarding non-compliance of any of the provisions under the Act, issuing guidelines and directions for the better management of the information, publicizing the right and thereby to generate public awareness and any other functions to promote this right.²⁴ It is seen that the Act not only recognizes the right to information but also mandates some provisions that are supportive to materialize this right.

¹⁹ *Id* at § 2. It defines information as any memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts, project proposal, photograph, audio, video, drawing, painting, film, any instrument done through electronic process, machine readable record, and any other documentary material regardless of its physical form or characteristics, and any copy thereof in relation to the constitution, structure and official activities of any authority: Provided that it shall not include note-sheets or copies of note sheets.

²⁰ *Id* at § 7.

²¹ *Id* at § 10.

²² *Id* at § 5.

²³ *Id* at § 6.

²⁴ *Id* at §§ 11 & 13.

III.III. Time Limit and Cost

Under this Act, a person may apply to the officer-in-charge requesting for information either in writing or through electronic means or through e-mail.²⁵ On receiving the application, the responsible officer is bound to provide information within the specified time limit. The time limit may be 20 working days, thirty working days or 24 hours depending on nature of information.²⁶ The information is to be provided either by e-mail or in hard copy as photocopy or printed copy or in CD as asked by the applicant. Providing information may involve cost depending on the mode of receiving the information but it must not exceed the actual cost of providing information.²⁷

III. IV. Available Remedies in Case of Failure to Receive Information

The RTI Act, 2009 gives a person the right to move in case of failure to receive information which he thinks to be entitled to receive. Section 24 of the Act clearly states that if the applicant fails to receive information within the time specified or is aggrieved by a decision of the officer-in-charge may prefer an appeal to the specified appellate authority who will dispose the matter within 15 days.²⁸ A person may lodge a complaint to the Information Commission if he gets no information or if he is not satisfied with the decision of appeal.²⁹ The Commission, upon a complaint, may keep the decision of the authority or reject the complaint or direct to provide the information in specified manner. If, it is satisfied that any authority or any officer-in-charge has

²⁵ *Id* at § 8.

²⁶ *Id* at § 9.

²⁷ *Id* at § 8.

²⁸ *Id* at § 24. Appellate authority means immediate superior office of the responsible information officer's unit or the administrative head of that unit [§2(a)].

²⁹ *Id* at § 25.

acted in contravention with the provisions of this Act, it may take action against such authority or the officer-in-charge³⁰ including imposing fine.³¹ If there is reason to believe that the officer-in-charge has created impediments in getting information of any citizen by any act, then the commission may, in addition to imposing fine, recommend the concerned authority to take departmental action against the officer, treating his such act to be a misconduct, and may request the authority to inform the Information Commission about the action taken last in respect of this matter.³² Again, section 29 of the Act allows an applicant to take recourse to the court provided that before filing the suit they must exhaust all the available remedies under this Act.

IV. Concerns on Existing Right to Information Regime

Bangladesh ratified Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) which made legally binding on States Parties to ensure right to information for its citizens. Consequently, it adopted RTI Act, 2009 which has made a good beginning as a comparable law with those adopted by many other countries in recent times.³³ Nearly a decade has passed but this law is far away from meeting the challenges in ensuring this right. Recently, A strategic plan on RTI by World bank has identified a number of factors³⁴ which are also common in Bangladesh. In particular, lack of awareness, capacity issues, the need for an increased political support, the lack of an internal coordinating body

³⁰ *Id.*

³¹ *Id.* at § 27.

³² *Id.*

³³ *supra* note 8.

³⁴ A Strategic plan on implementation of the RTI for 2014-2018, drafted by the World Bank.

within the Government are the areas which are identified as acting negatively in this context.³⁵

The most crucial factor in ensuring people's right to information is the political will, the degree of commitment of the government, upon which rest the key responsibility and authority of creating conditions for effective implementation of the RTI law.³⁶ Hence, the Act obliges the government to create a RTI-friendly environment by appointing responsible officer and by proper information management system as provided by the law³⁷, so that people feel ease to seek for information. But lack of political commitment is inferred in this area. Assigning responsible officer for every authority, which is the first step on the way to create RTI –friendly environment, is not yet complete and it is only 55% in government sector and in non-governmental sector the situation is worse.³⁸

Though as per the Act, responsible information officer can act either proactive or reactive in response to a request for application, they are reluctant as to proactive disclosure of information. A Study³⁹ shows that, number of reasons lie behind their reluctance. Frequent transfer of designated responsible officer, acting as information officer in addition to their regular office work, lack of incentives, non-cooperation from co-workers, lack of training and motivation are some of them.

³⁵ *Id.*

³⁶ Iftekharuzzaman, *Towards People's Right to Information in Bangladesh: High Expectations, Tentative Progress, the Way Forward*, Presented at the Roundtable Discussion organized by the RTI Forum Bangladesh to mark the International Right to Know Day, Dhaka, 2010.

³⁷ *supra* note at § 5.

³⁸ Annual Report, 2014, prepared by the Information Commission.

³⁹ Trinomuler Konthoswor (Voice of Grassroots), a publication based on a Study conducted on RTI Management and Resources Development Initiatives (MRDI), 2010.

Failure on the part of the citizen to exercise this right is another downside in matter of implementing RTI. Right and duty are interrelated. The law gives people the right to information but it is their duty to exercise this right properly. Mainly ignorance, illiteracy, culture of bribe in receiving any service in public administration or failure on the part of the government to create a RTI-friendly environment, play role behind their unawareness.⁴⁰ And, for these reasons, the RTI Act is yet to become a law for all people. However, role of government also contributes in this issue as government is failure to make them aware of this right. Government steps taken to motivate and aware citizen is insufficient and those even taken are not beyond questions.

On the way to ensure right to information, another most formidable challenge is the culture of secrecy prevalent in the government and non-governmental organizations. Bangladesh inherited its legal system from British common law system where government secrecy (in the administration) is the general practice and openness is an exception. Consequently, a number of laws are in force in Bangladesh which are enacted to protect official secrecy. The Official Secrets Act, 1923;⁴¹ The Evidence Act, 1872;⁴² Government Servants (Conduct) Rules, 1979;⁴³ these are the laws which are used by the responsible authority as a means to refuse to provide information. Though these laws contain provisions to disclose information under certain situations, in most

⁴⁰ *Id.*

⁴¹ The Official Secrets Act, 1923. § 5 states that any person can be convicted only for the disclosure of information possessed by him.

⁴² The Evidence Act, 1872, §§ 123 & 124. These sections put restrictions on the matter of getting unpublished official records subject to the permission of the head of department.

⁴³ The Government Servant (Conduct) Rules, 1979. Rule 19 says that any sitting government official can not disclose any information to other Ministries, Divisions or Departments, or to non-official persons or Press.

cases, these are interpreted in its own way and thereby, restrict the flow of necessary information. In Bangladesh, these laws have been used as an instrument to limit the growth of right to information.⁴⁴

Effective implementation of RTI depends very significantly on supportive legislation. In that perspective, RTI Act itself suffers from some limitations. The Act recognizes RTI as a legal right. Undoubtedly, it is an epoch-making step. At the same time, limiting this right with exemptions, especially with respect to the exempted list of information and the authority, poses threat to its effective implementation. Besides, the time limit to obtain information, geographical location of the Information Commission, less stringent provisions for encouraging proactive disclosure of information, vague provisions for filing suit can be considered as serious drawbacks of the Act.

A law is only useful to the extent that it is used and implemented. So, it is vital that some mechanisms to be developed for persuading the right-holders to exercise their right more spontaneously and thereby facilitate its better implementation. There is a common allegation from the authority that people do not want information whereas converse is heard from the people side alleging that they do not get information and that's why do not ask for information.⁴⁵ This situation needs to be changed. The initiatives must begin by re-examining the existing RTI law. A reasonable time limit to be fixed to obtain information with reasonable restrictions. The Act should be constantly reviewed and analyzed to ensure that this law really facilitates access to information.

⁴⁴ Shaheen Anam, *Right to information in Bangladesh: Challenges and opportunities*, The Daily Star, September 28, 2005, at 12.

⁴⁵ *supra* note 38.

Although the Act provides for precedence of its provisions over any other existing law that may contradict with this,⁴⁶ grey areas may be easily found to prevent effective enforcement of RTI provisions. Public officials may feel uncertain and insecure about what and how much to disclose and where to draw the line.⁴⁷ Instruments like the Official Secrets Act 1923, Evidence Act, 1872, Government Services (Conduct) Rules, 1979 (Rule 19) may turn out to be among worst predicaments against breaking away from the culture of secrecy. The implementation process should include harmonizing all existing laws and regulations with the RTI Act so as to remove any inconsistencies and contradictions that could impede the prospect of implementation.⁴⁸

Only statutory enactment is not enough unless and until the officials change their mindset of secrecy. Because secrecy leads to concentration of power and widening of discretion. In general, most officials both within and outside the government possess a sense of possessiveness about in information at hand. Releasing them to the public is perceived as sharing the control and hence, power. Therefore, a fundamental change in mindset is necessary.⁴⁹ To this end, government, mainly the Information Commission have to play active role by conducting adequate training and motivation programme, by providing guidance for proper information management and providing incentives for better performance so that the responsible officers would act proactively on the demand for information.

The Information Commission is the ultimate authority for the proper implementation of RTI. Therefore, a vibrant and effective Information Commission is critical for the due enforcement of RTI. Existence of an

⁴⁶ *supra* note 5 at § 3.

⁴⁷ *supra* note 35.

⁴⁸ *Id.*

⁴⁹ *Id.*

effective and strong commission means that implementation of this right is under constant monitoring process. By awaking citizens about their right, by motivating the official to disclose information proactively, by building the culture of openness in the government and other relevant bodies, the Commission can contribute hugely in ensuring RTI. For this, it must be independent, empowered and sufficiently resourced-financial, human, technical.

Moreover, all efforts will go in vein if the people do not exercise their right to seek information. Even worse is the citizens' lack of awareness about their rights irrespective of their educational or social status. So, the only way to counter this challenge is to create greater awareness amongst the general people which would motivate them to exercise this right with confidence. The media plays key role in this regard. It is seen that mainly the print media is concerned with citizens' right to information. Role of electronic media in this field is not satisfactory; whereas, most of the people in rural areas are illiterate and they don't have adequate access to news papers or other printed information. It is easy to communicate to them any information through electronic media. Hence, a conscious effort to make media professionals aware of the issues can be of use. Alternative media channels such as theatre groups, puppeteers, musicians and performers of all sorts, who have acceptability to the rural people, have a role to play in raising public awareness regarding this issue.

V. Conclusion

With the recognition of "Freedom of Information" as a fundamental human right by the United Nations, the demand for right to information has gained momentum worldwide. Starting with Sweden and Finland, the principle of the freedom of information has been approved as part of legislation throughout the world and as of 2016, the number of

countries enacting RTI laws is 113.⁵⁰ In 1990s, the Right to Information was seen predominantly as an administrative governance reform, whereas today it is increasingly being seen as a fundamental human right.⁵¹ Although the Constitution of Bangladesh does not make a clear reference on right to information, but several articles such as articles 7, and 39 lays down the foundation of recognizing it a right.⁵² The Preamble of the Right to Information Act also stipulates that this right is an inalienable part of freedom of expression. Thus, Bangladesh is constitutionally committed to ensure right to information for its citizens. To this end, an effective and substantial implementation policy is badly needed.

Right to information involves two aspects-the demand side from the citizen and supply side from the authority. These two aspects are interrelated- one cannot be realized properly without the effective response from other side. So, only a comprehensive integrated approach on the government side covering both the aspects of right to information-demand side and supply side, can implement the true spirit of the Act. In this regard, government should carefully minimize the loopholes within the laws and also concentrate on the basic challenges posed to be hindrance to implementation of the law. Particularly, the exemption from the disclosure of information should be crystal clarified, and in the possible policy, explanation about the conflicting issues of secrecy provisions incorporated in different laws are extremely needed; otherwise, they will be manipulated. In addition, the management of information needs to be in well manner. A huge

⁵⁰ The Daily Prothom Alo, September 28, 2016 at 14.

⁵¹ Issues of India, *Right to Information in Other Countries*, (Aug.4, 2011), <https://socialissuesindia.wordpress.com/2011/08/04/right-to-information-in-other-countries/>.

⁵² The Constitution of Peoples' Republic of Bangladesh, 1972, arts.7 &39. Article 7 states that people is the source of all power whereas art. 39 guarantees freedom of expression for its citizens.

training for the responsible officers as well as awareness campaign for the people are required enormously. At the same time, it is to be kept in mind that ensuring people's right to information is a matter of shared responsibility, not only of the government. While emphasizing the responsibility of the concerned state authorities to do the needful for implementing RTI, the community, particularly the NGOs, civil society, media and the private sector must also take greater responsibility for complementing government efforts by assisting common people in exercising their right. Only a combined cooperative effort involving the society at large can bring success in implementing right to information in Bangladesh.