

COMPARATIVE ASSESSMENT

of

Law Commission Paper - Civil Society Draft - RTI Ordinance, 2008 - RTI Act, 2009

COMPILED BY

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To make sensitize the relevant stakeholder about the strength and weakness of the Act, Ordinance, civil society draft and law commission working paper. Also to make sensitize the relevant stakeholder how RTI Act was evolved.

Draft of RTI Act was open for public consultation. Many recommendations of civil society were adopted in the Act and the Act was enacted through participatory process. There is a scope to improve RTI Act further during making rules of RTI Act.

Content	Law commission paper	Civil society draft	RTI Ordinance, 2008	RTI Act, 2009	Comments
Definition of RTI	Sec.16 Provision Right to information. (f) Every citizen shall have right to information and on request, be given access to information relating to decisions made, proceedings drawn, or acts performed or proposed to be performed by any Public Authority. In the law commission working paper public authority means govt. bodies, org. owned by govt. or private individuals, Org owned by private bodies is not mentioned in law commission definition.	Sec. 3 Right to Information: It is strong point of the civil society draft to mention that non govt. organization and private bodies as information provider. In the civil society draft it is suggested to obligate non govt. org to provide information which has been adopted in the ordinance and subsequently in the Act. -Civil society draft has explicitly mentioned about political party -Present Act may include private sector as third party. For example if we need information of Grameen phone we will seek information from Bangladesh telecommunication.	Sec. 4 Right to information:- Subject to the provisions of this ordinance, 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 information. Sec 2-b (vi) It is mentioned that any organization or institution that undertakes public functions (which cover both govt and non govt. organization) is under the obligation to provide information to the citizen.	Same as mentioned in the Ordinance	It is strong point of the civil society draft to mention that non govt. organization and private bodies as information provider. In the civil society draft it is suggested to obligate non govt. org to provide information which has been adopted in the ordinance and subsequently in the Act. -Civil society draft has explicitly mentioned about political party -Present Act may include private sector as third party. For example if we need information of Grameen phone we will seek information from Bangladesh telecommunication.
Proactive Disclosure	Sec. 17 (provision): Publication of Information by Public Authority. (1) Every Public Authority shall cause to be published on periodic basis not less than once each two years. (2) It shall be the duty of the concerned officer of a public	Sec. 4 Publication of Information by Public Authority: Specific time line has been mentioned for public Authority to publish information which is within six months after the Act comes into force. Some important features of this section: (c) the public authority will	Sec. 8 Publication of Information:- (1) Every authority shall publish and publicize all information pertaining to any decision taken, proceeding or activity executed or proposed by indexing them in such a manner as may easily be accessible to the citizens. (2) In publishing and publicizing information under sub-section	Publication of Information - Same as mentioned in the Ordinance	According to the civil society draft public authority is bound to publish a lot of things to make public authority more accountable and transparent which is missing in the ordinance and in the act. For example sec 4(c) of civil society draft mentioned During policy formulation and implementation stage particulars of policy may be opened to the public for consultation, which have not been adopted in the ordinance or in the Act. But this limitation may be overcome by

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	authority to give reasons for decision and to disclose relevant facts and analysis when major policies or decisions are made.	publish the particulars of any arrangement that exists for consultation with the members of the public in relation to the formulation of its policy or implementation (m) information on any new project, policy, scheme, programme or enactment of law that may affect people generally or sections of people particularly and which the people concerned must know for the sake of natural justice and promotion of democratic principles; (n) information relating to contracts entered into by them, the objective of the contract, the expected outcomes, benefits to accrue to the public, the amount of money involved, the name of the contractor(s) or individuals to whom the contract has been awarded and the periods within which the contract is to be completed. 2) It shall be the duty of the every officer of a public authority to give reasons for decision to affected or interested persons.	(1) no authority shall conceal any information or limit its easy access. (3) Every authority shall, at least after every 02(two) years, publish a report. (4) If the authority frames any policies or takes any decisions important, it shall publish all such policies and decisions and shall, if necessary, explain the reasons and causes in support of such policies and decisions. (5) The report prepared by authority under this section shall, free of charge, be made easily available for public information and its copies shall be stocked for sale at nominal price. (6) All publications made by the authority shall be made easily available to the public at reasonable price. (7) The authority shall publish and publicize matters of public interest through press note or through any other means.		sec 6(7) of the ordinance and the Act which mentioned that the authority shall publish and publicize matters of public interest through press note or through any other means. If sec 6(7) is used effectively by public authority, we expect that public interest will get priority, many issues will be covered by public interest and authority will be obligated to provide information. Sub sec. m-n of civil society draft is very important to promote accountability and transparency of the govt. to the mass people. One strong point of the Act. is that Every authority shall publish a report every year. In the Ordinance and civil society draft it was every two year. According to Ordinance and Act information providing agency is extended up to upazila level thus it excludes public agencies working at union level. In the civil society draft it has extended up to Union level which is very essential for grass root people. According to Act and Ordinance (Sec2f provision) note sheets or copies of note sheets shall not be included in the information list (Sec2f provision). But in the civil society draft it is recommended to include notes, file notes as information.

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Power and function of information commission:	Sec 20 Provision 14. Information Tribunal- (1) For the purpose of adjudging whether any person has committed a contravention of any of the provisions of this Act, or of any rule or regulation made there under the Government shall, subject to the provisions of sub-section (2) of this section, constitute an Information Tribunal for each district. 15. Powers of the Tribunal. - (3) Every Tribunal shall have, for the purposes of discharging his functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908).	Sec.19(3) Powers and functions of the Information Commission: The Information Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908. The Information Commission, or as the case may be, the Chief Information Commissioner or Information Commissioners, may exercise such powers as a civil court may exercise under Code of Civil Procedure, 1908 (Act V of 1908)	Sec 13. Powers and functions of the Information Commission: (3) The Information Commission, or as the case may be, the Chief Information Commissioner or Information Commissioners, may exercise such powers as a civil court may exercise under Code of Civil Procedure, 1908 (Act V of 1908)	Same as mentioned in the Ordinance	The information Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908- it is stronger point of law commission and civil society draft which has been adopted in the ordinance & subsequently in the Act.
Rank of Information Commission		Sec. 16 Salaries and Allowances: The salaries and allowances payable to and other terms and conditions of service of - (a) the Chief Information Commissioner shall be the same as that of a Judge of the Appellate Division; (b) an Information Commissioner shall be the same as that of a Judge of the High Court Division of the Supreme Court of Bangladesh.	Sec. 17 Salaries, Allowances and other facilities of the members: The rank, remuneration, allowances and other facilities of the Chief Information Commissioner and Information Commissioners shall be determined by the government.	Same as mentioned in the ordinance	In the civil society draft commissioners including chief rank was higher and mentioned specifically. So that in case of decision making information commission may exercise proper authority otherwise information commission will be weaker. In the ordinance and in the Act rank and allowances of chief Information Commissioner and Information Commissioners has not been specified.
Employee of information commission		Sec17: The Commission shall have the authority to appoint such officers and employees as may	Sec23(2): The Commission may, subject to the prior approval of the Government in	Same as mentioned in the ordinance	In the Civil Society draft Commission have the sole authority to appoint employees which is a strong

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		be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.	respect of the organizational organogram, appoint such number of officers and employees as may be necessary for the efficient performance of its functions under this ordinance.		point of Civil Society draft. According to Ordinance and Act prior approval of the Government is required to appoint employees of information commission. Authority of information commission has been reduced in the act and ordinance.
Annual report of the commission		Sec 28 Preparing annual report Information Commission will forward a copy to the Parliamentary Standing Committee on the Ministry of Information and make this report available for public perusal.	Sec. 30 Annual Report of the Information Commission.- (1) The Commission shall, by 31 March of every year, submit an annual report to the President about its activities of the previous year. (3) After receiving the report under sub-section (1), the President shall cause the report to be laid before the National Parliament.	Same as mentioned in the ordinance	CS draft is more strong since report will be discussed in the parliamentary standing committee directly which is participatory and democratic. In the Ordinance and Act report will be submitted to the president at first, if he thinks he will pass it to the parliament. It depends on his discretion. It is weaker point of the Act and Ordinance.
Meeting of the commission			(3) Presence of any 2 (two) from among the Information Commissioners and chief Information Commissioner shall constitute quorum in commission meetings.	(3) Presence of any one from among the Information Commissioners and the Chief Information Commissioner shall constitute quorum in commission meetings.	To run the information commission smoothly quorum of the meeting has been reduced into two members in the Act. In the ordinance it was three. This will help to hold meetings on regular basis.
Penalty / punishment	In sec 20 there is a provision of penalty.	Sec 22(1): If the information provider maliciously denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request the information commission shall impose a fine of not less than five hundred taka and not more than one thousand taka.	Sec27(e): Information commission may impose 50 (fifty) taka per day as compensation for the period from the date of doing such action by the officer-in-charge to the date of providing information and the officer-in-charge shall be liable to be punished with imprisonment for a term not exceeding six months or with fine not exceeding one thousand taka or with both.	Same mentioned in the ordinance	One group of people holds opinion that excessive penalty and punishment may create panic among the information provider which may obstruct free flow of information. So less penalty is better which has been mentioned in the Ordinance and Act. Less penalty may encourage information provider to provide information. In civil society draft it was higher.

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		period not exceeding one month and/or impose a penalty of taka two hundred and fifty taka each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand taka:	than 5000 (five thousand) taka		
Protection for whistle blower		Sec. 2. Protection for Disclosure of Wrongdoing: In spite of legal, administrative, or employment obligation if any one discloses information related to serious threat to health, safety or the environment in good faith and belief that the information was substantially true will not be subject to any prosecution, suit or other legal proceedings.	Sec. 31 Indemnity for acts done in good faith: No prosecution, suit, or other legal proceedings shall be initiated against the Commission, the Chief Information Commissioner or any Commissioner, officers or employees thereof or Officer in Charge of any authority or any other officer or employee thereof in respect of any information made public or deemed to be made public in good faith under this act or rules or regulations made there under.	Same as ordinance.	Protection of whistle blower is a strong point of CS draft which has been mentioned in the ordinance and Act indirectly. We expect that during making rules or or interpretation of the Act govt. will consider the section of CS draft.
Exemptions	Sec 19: Provision Exemptions from disclosure of information	Sec 8 : Exemptions from disclosure of information: What types of information will be exempted has been described in 12 clauses of two sub sec of this sec.	Sec7. Publication of or providing certain types of information not mandatory: What types of information will be exempted has been described through 20 sub sec and one provision of sec 2(f). Notwithstanding anything contained in any other provisions of this ordinance, no authority shall be bound to provide following information, namely- (a) any such information that disclosure of which is not possible or a threat to security, integrity	Sec 7. Publication of or providing certain types of information not mandatory: Same as mentioned in the ordinance.	Last provision of section 7 of RTI Act has been mentioned that the relevant authority shall take prior approval from Information Commission for withholding information under this section which will contribute to ensure transparency of relevant authority so that relevant authority can not show any excuse to disclose information and it is expected that it will reduce complain to the information commission. Many situations have been described in the Ordinance and in the Act in which situation disclosing of information are not mandatory. It is not possible to identify which info. is or is

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		and sovereignty of Bangladesh; (b) any such information relating to any foreign policy that may offend the existing relationship with any foreign country or international organization or any regional bloc or organization; (c) any secret information received from a foreign government; (d) any information relating to inherent secrets of commercial or business nature, copyright or intellectual property that may, if published, harm the intellectual property right of a third party. Sec. 7(i): any such information that may, if disclosed, obstruct the enforcement of law or incite any offence; (j) any information that might, if disclosed, endanger the security of public or impede the due judicial process of a pending case; (h) any information that might, if disclosed, offend the privacy of the personal life of an individual;			mandatory to disclose. Some examples are necessary to make understand the citizen such as, which information obstruct the enforcement of law or incite any offence (Sec7i). If examples are provided many information would not be restricted unexpectedly. Act has mentioned publishing of information every year instead of every two year mentioned in the Ordinance and Civil Society draft. In such case it will make public authority more efficient by publishing information every year. In Act it has been clearly mentioned that organizations related to intelligence and security are obligated to provide information in case of corruption and violation of Human rights (Sec32-2)— it is strong point. Civil Society draft has less number of exemption in compare to ordinance and Act.

Ordinance, Act both has reflected well civil society's expectations. Since this Act was adopted in participatory process many recommendations of civil society were included in the Act. For example in some cases Act has reflected Civil society draft points such as a) Act has overriding power; b) inclusion of women as a member of information commission c) mechanism sensitive to peoples with disability, d) Provision of providing information free of cost to poor people in consultation with information commission, e) Information commission functions is not only limited to arbitration or civil code rather it is extended to guiding research capacity, promotion of information management etc. Moreover it can make obligated court and parliament to provide information because authority includes any organization constituted in accordance with constitution.

During implementation stage and making rule of the RTI Act govt. has much scope to make the Law more need based.

Source

1. Law commission paper, 2002,
2. Civil Society draft, 200
3. Right to Information Ordinance, 2008
4. Right to Information Act, 2009
5. The national information policy, 2009

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