

IMPLEMENTING RIGHT TO INFORMATION IN BANGLADESH: OPPORTUNITIES AND CHALLENGES¹

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I. INTRODUCTION

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. The United Nations has called it the touchstone of all the freedoms to which UN is consecrated.³ The history of the recognition of the right to information is much older though. The first country to have the RTI law was Finland and Sweden in 1766 when the former was a territory governed by Sweden. The joint Parliament of the then Finland and Sweden adopted the first RTI law of the world titled Access to Public Records Act, 1766. Nearly seventy countries have since enacted RTI law or act, of which over 40 have done so during the decade of nineties and thereafter. The newly elected Government of Bangladesh adopted the Right to Information Act in the first session of the 9th Parliament on May 29, 2009, marking a significant step forward in fulfilling the constitutional pledge of the state of Bangladesh.⁴

This upsurge of the RTI law worldwide comes as an indicator of the growing recognition of the importance of the citizens' access to information as a catalyst for strengthening democracy, promoting human rights and good governance, and fighting corruption. Enactment of RTI laws has in many cases taken persistent efforts of campaign and advocacy by a multiplicity of stakeholders in the public, private, and non-governmental sectors, particularly the latter who like in Bangladesh, played the catalytic role. The experience of RTI movement shows that while enactment of the law appears as a dream-

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² Executive Director, Transparency International Bangladesh. I am grateful to my colleagues Sajjad Husain, Imam Uddin, Tanvir Mahmud and Nahid Sharmin for their valuable research assistance.

³ The UN General Assembly in its very first session in 1946 adopted the Resolution 59(I) which states, "Freedom of Information is a fundamental human right and ... the touchstone of all the freedoms to which UN is consecrated".

⁴ Article 7 of the Bangladesh Constitution says, "All powers in the State belong to the people". Article 39 stipulates that everyone has the right to freedom of opinion and expression; this right includes right to seek, receive and impart information and ideas regardless of frontiers.

come-true for the campaigners, its implementation, like any other law enforcement, is much more challenging.

Thanks to the adoption of the RTI Act, Bangladesh has also placed before itself the challenge of implementing the Act and delivering the people the right to information. This paper seeks answer to the questions on why is it important to promote and protect people's right to information; what are some of the key preconditions and factors that should be in place to ensure effective delivery of benefits of the RTI Act; and what are the roles of the key stakeholders.

II. THE CONTEXT

The RTI Act 2009 of Bangladesh adopted in the parliament marks a culmination of a process that can be traced from 1983 when the Press Commission recommended adoption of an RTI Act, through the Law Commission's Working Paper of 2002 and the civil society demand for an Act that intensified by 2004.⁵ As a part of their advocacy for an RTI Act the civil society organizations eventually formed the RTI Forum of nearly 80 organizations led and supported by the Manusher Jonno Foundation (MJF), which drafted the Act and lobbied with the Government. The Caretaker Government passed the RTI Ordinance 2008 leaving it for ratification by the elected Government. In the meantime, the demand for the RTI Act occupied a central position in public discourse as reflected in the media and eventually in the election manifesto of the major political parties. Coupled with continued efforts by the RTI Forum, this resulted in the adoption of the RTI Act 2009 by the present Government.⁶

Result of a collective effort by stakeholders within and outside the Government, the RTI Act of Bangladesh has made a good beginning as a comparable law with those adopted by many other countries in recent times. The Act has been welcomed and criticized as it happens in case of any law like this, especially with respect to the list of

⁵ On September 28, for the first time in Bangladesh the Right to Know Day was observed by Transparency International Bangladesh throughout the country. TIB then partnered in 2005 with Manusher Jonno Foundation (MJF) and a number of other NGOs to observe the Day which helped bringing the demand for RTI into sharper focus.

⁶ For a good tracking of the process leading to the Bangladesh RTI Act see, Shaheen Anam, "Freedom to Know", *The Monthly Forum*, published by *The Daily Star*, June 2009.

exemptions which many including this author considers to be too long.⁷ Instead of going into a discussion of the merits and demerits of the law as such, we proceed with the assumption that the Act has opened up an unprecedented opportunity to make progress towards ensuring citizen's right to information. We also assume that like any other law the RTI Act in its present form is not necessary written in stone, and should be amended in due course in incremental approach to meet the higher standards.

We also assume that it can be disappointing to be too ambitious. Results should be expected in an incremental process. Instead of too high expectations of the Act the main targets of implementation at least in the early stage should be achievable gains in terms of building trust between the demand side and supply side and thereby a developing a relationship of partnership rather than "we versus they", in order to develop shared stakes in the culture of openness.

We approach the problematic of RTI implementation from a perspective of the on-going national struggle for democratic institutionalization, better governance, control of corruption as well as a matter of fundamental right which can change the daily lives of citizens, especially the poor and disadvantaged, consistent with the commitments made by the Government.

III. RTI AND GOVERNANCE

Information is the cardinal source of power. Those who possess information are powerful. Those who do not have access to information are powerless. By enforcing people's right to information the powerful and be brought closer to powerless, through sharing and disclosing information. It can turn out to be the most effective catalyst for institutionalization of democracy, promotion of good governance and control of corruption. It is about empowerment of citizens and about building responsiveness of the state and its organs, the political parties and leaderships, administration and other institutions to the citizens. The RTI Act gives the citizen the right to ask for information from the government, non-government and other institutions, while it also creates the opportunity for those in

⁷ There are criticisms of the Act including those who consider some provisions of the Act to counterproductive the notion of right to information as such. See for example, Nurul Kabir, "Hypocrisy, thy Name is Government", a 5-part article published in *The New Age*, May 3-7, 2009. For a good documentation of the process leading to the adoption of the Act and a more positive view of it see, Shaheen Anam, *ibid*.

positions of power to devolve it through sharing of information. The Act can be a key legal instrument to support, protect and facilitate democracy in Bangladesh.

Research has shown a strong correlation of transparency indicated by existence of Freedom of Information laws and frequent publication of government economic data with quality of governance.⁸ Transparency is also associated with lower levels of corruption, better socioeconomic and human development indicators, and greater economic competitiveness.⁹ On a more specific level, there are growing evidences that transparency in budget is associated with better governance standards and improved economic and social outcomes. Opening budget processes to civil society engagement can promote improvements in budget accountability and the effectiveness of pro-poor expenditures.¹⁰ A recent study of budget-focused organizations in six countries - Brazil, Croatia, India, Mexico, South Africa, and Uganda – has shown that civil society engagement in the budget process had a direct impact on improving the quality of the budget system, pro-poor allocations, and the quality of expenditures.¹¹

Research has also demonstrated a strong causal link between corruption and poverty. Good performance in the Corruption Perceptions Index (CPI), released every year by Transparency International, has been found to lead to higher per capita income.¹² According to estimates, an improvement in the CPI by one index point (out of ten) increases capital inflows by 0.5 percent of the country's gross domestic product and raises productivity, leading to an increase in average income by 4 percent.

On the other hand countries that have had adopted and enforced the RTI law tend to score higher in terms of the CPI. It may be difficult to establish a correlation, but prevalence of corruption in such countries, especially the Nordic countries, Finland in particular, has been perceived to be the lowest. There are exceptions though, e.g., countries like Singapore which has been nearly at the top of the list of least-corrupt countries do not have the RTI,

⁸ Based on aggregate World Bank data for 169 countries, R. Islam has shown such correlation. See, R. Islam, *Do more transparent governments govern better?* World Bank Policy Research Working Paper No. 3077, 2003.

⁹ A. Bellver and D. Kaufmann, *Transparenting transparency: initial empirics and policy implications*, World Bank Policy Research Working Paper, Washington DC, 2003.

¹⁰ P. de Renzio and W. Krafchik, *Budget monitoring and policy influence*, Briefing Paper 16. Overseas Development Institute. London 2006. See also, M. Robinson, (ed.) *Budgeting for the poor*, Basingstoke: Palgrave MacMillan 2008.

¹¹ M. Robinson, *Budget analysis and policy advocacy: the role of non-governmental public action*, Institute of Development Studies, Working Paper 279, , 2006.

¹² Johann Graf Lambsdorff, *The Institutional Economics of Corruption and Reform*, Cambridge University Press, paperback version 2008

which make a conclusive correlation difficult to achieve. Nevertheless, it is widely believed that the higher the score in CPI the more is the possibility that the country would have legal and institutional provisions for an open society. The following table shows influence of RTI on the CPI scores of 13 selected countries which, having recently adopted the RTI law have shown a nearly systematic improvement of scores in CPI .

**Influence of RTI on Performance in Corruption Perceptions Index
in Selected Countries**

Scores in CPI (in a scale of 0-10)

	Country	Year of adoption of RTI law	2003	2004	2005	2006	2007	2008
1	Albania	1998	-	-	2.4	2.6	2.9	3.4
2	Croatia	2003	3.7	3.5	-	3.4	4.1	4.4
3	Czech Republic	1999	3.9	4.2	4.3	4.8	5.2	5.2
4	Estonia	2000	5.5	6.0	6.4	6.7	6.5	6.6
5	India	2005	2.8	2.8	2.9	3.3	3.5	3.4
6	Latvia	1998	3.8	4.0	4.2	4.7	4.8	5.0
7	Pakistan	2002	2.5	2.1	2.1	2.2	2.4	2.5
8	Romania	2001	2.8	2.9	3.0	3.1	3.7	3.8
9	Slovakia	2000	3.7	4.0	4.0	4.7	4.9	5.0
10	Slovenia	2003	5.9	6.0	6.1	6.4	6.6	6.7
11	South Africa	2000	4.4	4.6	4.5	4.6	5.1	4.9
12	South Korea	1996	4.3	4.5	5.0	5.1	5.1	5.6
13	Turkey	2003	3.1	3.2	3.5	3.8	4.1	4.6
	Bangladesh	2008	1.3	1.5	1.7	2.0	2.0	2.1

Source: Transparency International, www.transparency.org

IV. IMPLEMENTING RTI IN BANGLADESH: OPPORTUNITIES

With regard to implementation a number of crucial factors come into play, the most important of which 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. Therefore any discussion on the prospect of implementation of the RTI Act of Bangladesh must seek answer to the question on what motivated the government to enact it. Was it from a real ownership of the law at the top echelons of the Government and the Parliament, and was it from a realization that fulfillment of the electoral commitment for the law per se was an imperative. At the same time, is there also recognition of the potential role of the law in moving towards institutionalization of democracy, promotion of good governance and control of corruption?

Time will tell the proper and full answer, but at least there is hardly any evidence to suggest that this law, as it often happens in a country like Bangladesh, is a result of any pressure or conditionality from any international donor. It cannot also be viewed as an act of automatic ratification of just another Ordinance passed by the caretaker government (CTG), though the newly-elected Government worked on the basis of the RTI Ordinance issued by the CTG. If election manifesto and political pledge make any sense, the adoption of the RTI Act 2009 is an evidence of the delivery of a Government commitment. There is no doubt that demand and advocacy from outside the government until the last moment played an important role in bringing about the enactment, but the priority given to the Act for adoption in the Parliament indicates that the Government wanted to be faithful to its electoral commitment.

Right to information occupied a key position in the process building up to the national election to the 9th parliament held on December 29, 2008. All major political parties including the two major electoral alliances led by the ruling Bangladesh Awami League (AL) and Bangladesh Nationalist Party (BNP) respectively recognized the importance of the RTI.¹³ The AL in particular committed in its election manifesto to ensure people's right to information, so did the BNP, though the former was more specific about it. RTI was also prominently at the core of public discourse and demand, media reports and commentaries.

¹³ See Election Manifesto of Bangladesh Awami League and Bangladesh Nationalist Party, published in *The Daily Star*, 16 December 2008.

A close look at the AL manifesto for the 9th Parliament elections makes it easy to realize how RTI was dovetailed with its commitment to promote good governance and control corruption. In addition to Specific commitment to ensure right to information, at least 13 more specific commitments stand out that can contribute to the creation of institutional and policy structures facilitating people's right to information. These are: 1) making the parliament effective so that the government can be held accountable; 2) annual disclosure of wealth statement and source of income of the Prime Minister, members of the cabinet, Parliament members and their family members; 3) ensuring genuine independence and impartiality of the judiciary and the rule of law; 4) effectiveness and independence of the Anti-corruption Commission; 5) administrative reform to make it pro-people and free from politicization; 6) efficiency and merit to be established as the basis of appointment and promotion in public service, and curtailing the discretionary powers of officials; 7) e-governance; 8) police and other law enforcing agencies to be kept above political influence; 9) competitive market system in commerce and industry to be established by eliminating bribery and administrative difficulties and breaking the state or private monopoly; 10) strong measures against those having unearned and black money, loan defaulters, tender manipulators, and users of muscle power in every stage of state and society; 11) effective Human Rights Commission; 12) appointment of Ombudsman; and 13) introduction of Citizens Charter in every department and widespread computerization. The key first step towards implementing the RTI – generating the political will – therefore appears to have been taken.

V. IMPLEMENTING RTI IN BANGLADESH: KEY CHALLENGES

At the political level, commitment is one thing, while delivery can be quite different. The main challenge lies in the fact that information is power. It requires a paradigm shift including a major transformation of the mindset and attitudes to be able to share power and to own and internalize the culture of disclosure.

5.1 Developing a Strategy

Given the expectations created by the high-profile political commitments, right to information needs to be placed in a strategic framework and a plan of action with specific time frame. In developing the strategy all stakeholders, especially the civil society, NGO leaders, media and others must be involved in a participatory process, though the lead has to

be taken by the Government represented by a relevant ministry or preferably the Cabinet Division. The lead authority will also develop an action plan. An inter-ministerial committee should coordinate and monitor the implementation of the action plan by the various government ministries and departments. NGOs and other institutions covered by the law should develop their own time-bound implementation and monitoring plan.

5.2. Capacity of the Information Commission

A key element of the strategy and action plan must be the Information Commission provided for by the Act, its capacity, independence, vibrancy and effectiveness. The Commission must be headed by Commissioners who have the highest degree of credibility, public trust, professional excellence and capacity, leadership quality and dynamism. As much as a Commission like this will be as effective in a country like Bangladesh as the Government of the day wants it to be, it must be sufficiently resourced – financial, human, technical. It should be independent and proactive.

To be sure, the Commissioners and other human resources will be involved in addressing issues with a relatively unknown professional expertise and experience compounded by the challenge of confronting the problem of mindset. Their own training will therefore be of crucial importance. In addition to addressing the core jurisdiction of complains and appeals, the Commission should also be provided with the capacity to conduct public awareness campaigns in collaboration with other stakeholders, particularly the civil society. The awareness campaign should go beyond the Act and its provisions as such, and put specific emphasis on complains and appeals mechanisms, tools and processes that could ease the tension between the information providers and seekers. It should also contain information and communication plan delineating in plain language the scope of what should be expected of the law in order to be able to limit expectations which could lead to conflicts.

When developing the RTI Rules following from the Act the request procedures must be made simple and easily accessible to all in both urban and rural settings, keeping in view the problem of low literacy rate. Special provisions must be made to ensure that the centralized structure of administration that Bangladesh has does not act as a barrier to information requests and deliveries. In the absence of local offices of the proposed Information Commission, public libraries and NGO offices can be dovetailed into the access system.

5.3 Breaking the culture of secrecy

The most formidable challenge facing democratic and accountable governance is secrecy. Secrecy leads to concentration of power and widening of discretion which are ingredients of poor and unaccountable governance. Most governments, and indeed also often the non-government organizations are used to doing things in a secretive fashion¹⁴. Those in positions of power in the Government or outside are not normally comfortable disclosing information because this would be usually viewed to weaken the powerful position.

Openness is more easily preached than practiced, often because of lack of capacity and knowledge, but more often because of a mindset. It is crucial therefore, to work towards achieving a qualitative change of mindset breaking away from a culture of secrecy to culture of openness. Each institution covered by the RTI Act is under obligation to designate information officers with specific responsibility to provide information to the seekers. While all officials have to be oriented towards the mindset change, it is particularly important in case of information officers with provisions for their training and capacity-building. Equally important for effective implementation is clear dissemination of the process of applying for information and contact details of the information officers. Priority should be to train a core team of officials at various levels who could then train and sensitize peers and others.

It will not be easy to move towards the culture of openness, but the sooner the holders of information realize the virtue of sharing information – how it improves governance, builds trust and increases credibility- the better is the possibility of specific results. It requires huge and comprehensive efforts, which must be built on motivation of stakeholders on how the change of mindset benefits the information providers too. Disclosure can, for instance, ease burden, improve credibility and acceptability, or even facilitate material benefits like entitling officials – public or private – to challenge decisions affecting themselves.

5.4 RTI-friendly Information System

One of the most formidable challenges of implementing RTI is the lack of capacity

¹⁴ A recent study by Transparency International Bangladesh revealed a widespread prevalence of secretiveness and reluctance to disclose information by the NGO sector. See, Transparency International Bangladesh, Challenges of Governance of the NGO Sector in Bangladesh” 2007.

of the information holders – institutions as well as individuals. It goes without saying that the information management system in Bangladesh is archaic, because of which the practical limitations in retrieving and providing information may also be conveniently exploited to deny and deceive information seekers. There is no alternative to developing a modern digital system of information management that would facilitate easy, dependable and secure archiving and retrieval with clear tracking indicators. Without this even with the best commitment and capacity the information system will remain insensitive to the letter and spirit of RTI.

The information management system must ensure the largest possible proactive disclosure which is helpful for both information providers and seekers. For other information to be available on request, classification in terms of obligation to disclose under the Act will be helpful. Like all RTI Laws, the Bangladesh Act has a list of exemptions, which must be very clearly defined and categorized to be able to avoid conflicts and meet the best standards.

5.5 RTI-friendly legal regime

Success in ensuring RTI depends very significantly on supportive legislation.¹⁵ The RTI Act itself should be constantly reviewed and analyzed to ensure that it actually facilitates and not restricts the people's access to information. Like many other countries, in Bangladesh there is a number of legal and policy provisions that may make it difficult to enforce the RTI Act. Although the Act provides for precedence of its provisions over any other existing law that may contradict with this, 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. Instruments like the Official Secrets Act 1923, Evidence Act 1872 (123-124), Rules of Business 1996 (Rule 28-1), Government Services Conduct Act 1979 (Rule 19) or the secrecy provision under the Oath (affirmation) of Appointment to public office 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.

¹⁵ See for more, Commonwealth Human Rights Initiative, *Implementing Access to Information: A Practical Guide for Operationalising Access to information laws*, Revised Edition, CHRI, New Delhi, 2008.

RTI and an effective Information Commission will require active support and enforcement from the courts and law-enforcement institutions. Independent judiciary and law enforcement agencies are a sine qua non for implementation of the RTI Act. Without an independent judiciary the right to information can turn out to be illusory. A prerequisite for building a RTI-supportive national integrity system in which key institutions of democracy are independent of partisan political influence supported by a firm constitutional jurisprudence favourably disposed to the concept of RTI.

5.6 The Civil Society and the Media

The civil society has a two-way stake in the implementation of the RTI in Bangladesh – as providers of information and as campaigners for implementation on both demand and supply side. Provisions of the Act applicable to the Government institutions in terms of providing information are equally applicable for non-governmental organizations. Indeed it is incumbent upon the NGOs as a sector and individually as separate entities to lead the process by adopting policies and time-bound implementation plan emphasizing more on proactive disclosure than on providing information on request. The civil society must also take active role in partnering with the Government in campaigning for supply side capacity building.

The more a society moves to implementation of the RTI, the more information would be available for the people. However, in practice it will be impossible, even for the most enlightened citizens, to effectively use all that is available. Apart from creating demand for citizen's right to information in general, NGOs may play a very important role in developing and communicating various categories of materials containing information depending on areas of interest of members of the public, with special emphasis on what it is that should concern them and how they could demand and use those effectively in achieving their rights and entitlements.

There are excellent examples of civil society role in enforcing people's right to information. The experience of the MKSS in Rajasthan, India provides one of the most frequently noted grassroots approaches in implementing RTI. The MKSS has provided impetus to many other community initiatives to apply RTI in ensuring citizen's access to rights and entitlements. Many NGOs have also taken the course of providing legal support to citizens with regard to their right to information. NGOs can build in RTI awareness in their own core and project activities and conduct advice and information campaign in public

service delivery institutions in key areas like education, health, land administration, local government etc.¹⁶

The substance of civil society role in RTI implementation is similar to that in most other areas of advocacy, which is to catalyze awareness and participation that would catalyze empowerment of the disempowered, and thereby promote greater transparency, accountability and democratic practices. The civil society organizations like the RTI Forum can launch advocacy for public education campaigns through collaborative efforts involving government, civil society and media to ensure that people are aware of their right to information and of the procedures to exercise it. Educational and training institutions both public and private at various levels can be motivated to adopt special curricula for RTI awareness.

The role of civil society must also be strategic, with a special emphasis on partnerships particularly with the media, which has its own role to play as a primary stakeholder. The principal vehicle for taking information to the public is an independent and free media. More than any other stakeholder, a free media is strategically positioned to bring to the notice of the public the whole range of information freely, fairly and objectively to the notice of the public keeping an eye on what concerns the public, what they want and need to know. In partnership with the civil society the media can play a crucial role in effective demand creation on behalf of the information seekers and in putting pressure on the supply side. Like the Judiciary a free media, as a strong pillar of democracy, that can also hold the government and other institutions accountable in general as well as from the perspective of RTI.

Like any other sector, media is not also free from challenges. There can be conflict of interest between its function of informing the public and imperative to make profit. Increasing concentration of media in business houses with political links can pose a challenge to the true spirit of RTI by influencing the opinion through purposive use of information. A strong and principled self-regulatory system within the media can be helpful.

With the growth of the Internet, which is also another potentially powerful stakeholder in RTI, the world of information is being increasingly democratized. Effective

¹⁶ Transparency International Bangladesh has been conducting the Advice and Information Desk (AI-Desk) campaign in the 36 locations all over the country which has been delivering positive and measurable results. See Colin Knox, *Dealing with Sectoral Corruption in Bangladesh: Developing Citizens Involvement* in *Public Administration and Development*, www.interscience.wiley.com.

use of the Internet by the both public and private sector can truly free the information and communication system from domination of any particular authority.

VI. IN LIEU OF A CONCLUSION

Implementation of RTI will empower citizens, the common people. It will hold authorities in and outside the Government accountable. It will strengthen democracy, promote good governance. It will devolve authority, curtail discretion. But it will be resisted. The resistance may emerge, not very surprisingly, from within the stakeholders. Public officials may resist it because openness reduces the range of discretion; political leaders may resist because transparency reduces the scope of unaccountable use of power or influence; opposition to RTI may come from private business houses who tend to gain in a culture of secrecy; NGOs may resist because of gains from non-disclosure; media may play a negative role by using information to promote vested interests; failure of key institutions of the national integrity system especially the judiciary and law-enforcement bodies to enforce the rule of law may prevent RTI to be established. Above all the civil society organizations that must play the most important demand creating role may also fail to do so because of their own failure to promote proactive disclosure on the one hand, and because of polarization, unhealthy competition and lack of unity.

Such challenges cannot, however, dampen the high expectations and extraordinary opportunity created by the RTI Act. The knowledge that challenges exist can rather help develop the strategies and policy actions to implement the RTI. Implementation of RTI, as earlier indicated, is much more difficult than adoption of the Act; it is a multi-stakeholder challenge; it requires a comprehensive approach; and it will yield result only when there is a full-fledged and committed ownership of all stakeholders, especially internalization of the benefits of the concept of the right to information by the demand side as well as the supply side - those who need the information and those who hold them.
