

Two Years of Right to Information in Bangladesh A Review

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Foreword

When the Right to Information Act, 2009 came into force on 1 July 2009 throughout Bangladesh, RIB saw in it an opportunity to put it to use in improving the situation of many impoverished and marginalized communities in the country who were the main focus of its activities since its creation in 2002. It immediately decided to bring awareness about the law to these groups through the help of a large number of animators chosen from the groups themselves. The animators were sensitized and prepared in a way that they would be able to help the people to identify the issues that mattered most in their lives. Once the issues were thus identified, they were helped to identify the authorities, to draft their applications and to accompany them to hand over the applications to the respective authorities. This has been a most rewarding experience. We have learnt how difficult it is to convince the authorities that there is a new law that imposes a duty upon them to provide the information being sought by people from them. That the days of secretive and closed-door work habit of government officials have been brought to an end by the law in favour of a transparent, accountable and people-friendly official culture.

Needless to add, the people from such lowest rung of society had to face the severest of abuses from the authorities in the beginning. However, over time the situation began to change, albeit very slowly. The authorities have in many cases provided them not only the information sought but also their rightful entitlements under the laws of the land, such as those that deal with the government's safety-net programmes. This has created a great deal of confidence in the minds of the people. The officials too are slowly becoming more courteous towards them. This has given us hope and encouragement to carry on our efforts more vigorously. One such effort is to monitor the progress in the implementation of

the Act. Another, perhaps more important, relates to our support to the work of the Information Commission which we consider to be the pivot for the successful implementation of this most revolutionary law of the country. RIB is grateful to the Commission that in its first set of complaint hearings, it dealt with complaints originating from members of the groups supported by RIB. In fact the majority of the complaints reported by the Commission in its first Annual Report came from them.

The attached paper has been prepared by the RTI Team of RIB based on their own experience over the last two years and the knowledge they have acquired through various sources during this period. The challenges facing the implementation of the Act have been identified, as have been the emerging opportunities. The paper ends with some recommendations for the three key sides of the Act. They have been made in a constructive spirit and will hopefully be accepted as such by all concerned.

Shamsul Bari,
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18 September 2011

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I. Introduction:

By adopting the Right to Information Act, 2009 (RTI), Bangladesh joined 90 other countries/territories in the world that have enacted similar laws to empower their citizens to monitor the work of the government. The Bangladesh RTI Act additionally includes NGOs who use foreign/public fund to come within its purview.

RTI Act compels public authorities to disclose hitherto undisclosed information of public interest to enquiring citizens. The idea is that by accessing and utilizing such information citizens will be able to claim their rightful entitlements from the authorities and make them more transparent and accountable. A successful RTI regime thus serves the interest of both individual citizens and society as a whole. It is a potent instrument to fight official corruption and promote good governance. This is why many have hailed the adoption of RTI Act, 2009, as the most revolutionary law passed by the Bangladesh Parliament.

II. Objective of the Paper:

This paper seeks to assess how far the objectives of RTI have been achieved in Bangladesh in the last two years. While two years is not a long time to review the work of an instrument of such a revolutionary nature which seeks to transform the mind-set of public officials to move away from their age-old secretive and closed-door work habit towards a more people-friendly and open culture, it is ample time to indicate whether a good beginning has been made. The paper will look for those indications through assessing the performance of the three key aspects of the RTI regime.

III. The three key aspects of RTI:

The three key aspects of an RTI process are: the demand-side in which citizens demand for information from public authorities; the supply-side in which public authorities provide the information sought by the people; and the dispute adjudication side in which the Information Commission (IC), set up for this purpose, decides on complaints from information-seekers against information-providers. It is the combined result of their performance that indicates the health of the regime.

IV. Assessment of the three sides of RTI:

An attempt has been made in the sections below to take a critical look at the performance of the three sides. In doing so, the problems/challenges faced by them will be identified. At the same time the more promising developments will be highlighted. And finally, on basis of the findings, some recommendations will be made.

A) Assessment of the demand-side:

1. In a country long used to official secrecy and a deep divide between the people and public offices, the creation of the demand-side is understandably not an easy task. This has been reflected in the performance of this side in the last two years. There is no receptive ground for the law to be trusted and embraced by the people. As a result very few people took the law seriously when it was enacted and those who came to know about it did not fully understand the real objectives of the law. As a result, very few applications for information, relevant to the objectives of the Act, were made by citizens to public authorities.
2. The first Annual Report of the Information Commission, however, mentions that an impressive number of some 23000 RTI applications for information were made to government offices all over the country by the end of 2010. But from all indications it appears that very few of these were actual RTI-

related application. Most of them appear to be unrelated to the basic objective of the Act which is "ensuring transparency and accountability" in the work of public offices. This is clear from the type of information sought by people from Government offices as listed in page 29 of the Annual Report. The overwhelming majority of the applications related to subjects such as: how to secure licenses for guns or business establishments or obtain passports and the like. It is not clear how many applications related to information that would reveal whether a government decision was taken in a transparent and honest manner. Therefore, the real purpose of the Act appears not to have been served by most of these applications.

3. Thus a big challenge for the demand-side is how to help people understand/appreciate the fact that RTI is primarily a transparency instrument and not meant simply to ease the availability to citizens of public information which does not require any "disclosure" on the part of the authorities. They must be made to understand that while such information may indeed be sought under the Act, it is not actually meant for such use because much of such information is "open" in nature that could be obtained, albeit with some difficulty, without recourse to the Act. They must be made to realize that by using the Act to seek "open" information, they actually devalue the system and such a practice over time could overburden/clutter it, affecting the delivery of more pertinent transparency-related information.
4. The above explains why such a large percentage (99.7%) of applications reported in the Annual Report of the Commission received positive responses from the authorities, why they did not lead to any appeal to higher authorities or complaints to the Commission and why they could generate such a large income (14 lakh Takas) for the government. It is obvious that most of the information sought and provided did not require any disclosure of previously undisclosed information but simple photocopying and delivery of "open" information. It is

inconceivable that the same government offices which two years ago maintained such strict secrecy about divulging any official information would provide 7 lakh pages of photocopies (at Tk 2 per page under the RTI rules) of such information to its citizens.

5. To attract people to making use of the Act, an important challenge is to convince them that the government really wants to see the law to succeed in promoting their participation to monitor the way government offices are run. Very few people believe that public officials would indeed provide them the information that so far they did not wish to share with them. The age-old culture of official secrecy and non-disclosure of official information has created such deep distrust in the minds of the people that they are naturally skeptical about it. The real challenge is to remove it.
6. The media, which are key players for the promotion of RTI in many countries, do not appear to be excited about it in Bangladesh. They find its processes to be long-drawn and cumbersome. They also seem to believe that their existing practice of obtaining information through private channels is lot easier. According to a recent media report, efforts of a few journalists to use the Act as a tool for investigative journalism were unsuccessful because the authorities concerned were not aware of the law.
7. NGOs too have largely remained unexcited about RTI mainly because many of them have been brought within the purview of the Act. They seem to think that their active involvement in the RTI process could lead to retribution by the government. This may, however, dispel over time. There are, however, many NGOs which are nevertheless engaged in promoting the Act.
8. The position of the civil society is also not much different from the media and NGOs. There is a general fear that asking public officials to disclose unpleasant or sensitive information may result in retaliatory/retributive actions from them. This could be considered as one of the main reasons why not many information activists have emerged so far.

9. The political parties and their workers are also not much aware about the law, and those who are do not appear to be interested in it. It is obvious that if they came to know the tremendous possibilities that have been created for them by the law, they would be interested in making use of it, particularly those belonging to the opposition parties. The same is the case with lawyers and the legal fraternity. It should be an objective of the promoters of the Act to bring awareness about the Act to them as well.

B) Assessment of the supply-side:

1. Side by side with people's skepticism about the willingness of the public authorities to change their closed-door and secrecy-cloaked official culture, Government officials too are not helping to improve the situation by their lack of awareness about or negative attitude to the law. Most of them are unaware about it, mainly because the Government has done little more than matter of fact publicity about the law and its intents. Those that have heard about the law and sat through awareness-building exercises either did not understand it fully or accept it seriously. Even many Designated Officers (DOs) to whom citizens must apply under the law for information are not fully conversant with the Act. This is a constant refrain of applicants throughout the country. It is also evident from confessions made by DOs at complaint hearings of the Information Commission.
2. The lack of seriousness of most government offices about the Act is reflected in the appointment of their DOs. Most of them appear to have been chosen in a casual manner and only because they are required under the law to appoint them. Most of the DOs have other substantive jobs to do; they lack training and are not provided with the necessary resources to do their jobs properly. There are also frequent turnover of DOs requiring fresh training of the new DO. This does not augur well for the future of the Act.

3. Government offices lack proper filing system which impedes the work of DOs to provide information within the stipulated period. Added to this is the lack of equipments to copy documents for applicants.
4. The biggest challenge, however, is how to change the age-old culture of official secrecy and turn it into a new culture of openness and accountability to citizens. This is not an easy task since public officials have long been trained and even made to take oaths to preserve official secrecy.

C) Assessment of the Information Commission:

1. Of necessity, the Information Commission had to devote a great deal of its time in the initial period to administrative, infrastructural and regulatory matters, such as, establishing its office, acquiring staff, procuring office equipments and furniture, developing its website, ensuring adoption and publication of rules and regulations. It also had to spend time to disseminate the law to various audiences all over the country. It wrote to government offices to appoint DOs and Appeals officials. It did the same with greater vigour with concerned NGOs. These are important tasks to set the ball rolling and the Commission deserves credit for it. However there are still many gaps to be filled in these regard. A glaring need is to update its website regularly and make it people-friendly.
2. The Commission has now embarked upon more substantive work, the most important of which is initiating complaint hearings. There is a great deal to be done though in this regard to turn it into a powerful engine to move the Act forward. Very few people seem to know about the work of this very important institution. The number of complaint hearings the Commission has held so far either show that very few complaints have been made or that the Commission is very slow in dealing with them. In the Annual Report of the Commission, the decisions on some 18 cases have been published. It is not sure how many more cases have been dealt with by the Commission since then.

From all indications, it would not be more than 40 cases. This is a very small number indeed. Why should it be so?

3. The fact that there is hardly any publicity/reporting on the complaint hearings of the Commission in the media is a matter of concern. It is not known why the Commission is so publicity shy in this regard. Is it because the Commission is not sure about its decisions in most cases. In fact, six months after the first complaints hearings, the Commission is yet to inform the parties about its decision. This is not a good practice and is contrary to the provisions of the Act. If the Commission itself does not follow the law strictly, it will be difficult to convince the supply-side officials to fulfill their obligations under the law.
4. The Commission also appears to be reneging on the requirement under the law that it should arrange for complaint hearings within 45 to 75 days after receiving a complaint. In some cases hearings have taken place even after 100 days have passed after receiving the complaint. This is a violation of the law and is setting a bad example.
5. Beyond the routine task of complaint hearings, the Commission has the responsibility to develop and implement a clear-cut strategy to promote the basic objective of the law which includes progressive change in the mindset of public officials so that they move away from a culture of official secrecy towards a more open, responsive and people-oriented culture. It is not known what strategy the Commission has in this regard.
6. Another big challenge for the Commission is setting the right norms, rules, standards and practices for all its activities. These must ensure, among other things, that the IC is perceived by citizens as an autonomous and neutral body and not an extended arm of the government. This is a difficult task given its dependence upon the government in many ways. The task is made more difficult because its officials are mostly either former bureaucrats or on secondment from the government.

7. As the guardian/keeper of a legal instrument which is meant to empower citizens *vis a vis* the government, a big challenge for the Commission is to establish itself as a friend of citizens, ever ready to assist them realize their rights under the law. Towards that end, a big challenge for the IC would be to establish itself as the champion for transparent and accountable governance and to become the sentinel for promoting the objectives of RTI in all acts of the government.

D) Some promising developments:

1. The challenges aside, a few windows of opportunities are also opening up. The most promising are the impressive results, however limited, obtained by members of some marginalized communities who are making use of the RTI Act to obtain benefits under the government's safety-net programmes which were earlier denied to them due to corrupt and irregular practices of the authorities. They are being helped in this regard by some NGOs. It is hoped that over time these groups would realize that RTI is more than simply a grievance redress mechanism but also an instrument to promote transparency and accountability of public bodies. They will have to be helped to understand, for example, that while ensuring their entitlements to receive VGF cards, they have also the possibility to make the authorities become transparent and honest, simply by asking for the names of persons who were involved in preparing the list of recipients. This will help expose any nepotism or favoritism.
2. The good thing about involving impoverished groups in RTI is that, unlike the upper classes, they have a more compelling need to ensure that public authorities are honest and transparent in taking decisions on their entitlements, such as those relating to health, livelihood, social protection and safety net programmes. They can, therefore, be motivated more easily to make use of the law. It is therefore important for all those involved in promoting the Act to bring more and more impoverished communities to make use of the law and through their achievements spur other social groups/classes into similar actions.

3. The success of the impoverished groups was made possible largely because of efforts by animators who helped them to identify issues on which to seek information and also to draft the applications for them. The animators were trained on the use of the law by some NGOs and were chosen from the communities themselves so that they could be trusted by the people. The key to success of the RTI Act thus lies in helping people identify, formulate and submit demands for information to appropriate authorities and follow them up till completion of the process.
4. Since in the beginning the concerned public officials had little or no knowledge about the law, it was the applicants themselves who provided them, while submitting their applications, with copies of the RTI Act and a booklet explaining the law. It turned out to be a very useful practice. Similar approach could be used for some more time in the future till the law becomes widely known.
5. It has also been seen that in situations where the information-seekers persisted with their efforts despite abusive treatment of officials in the beginning, the same officials turned more courteous towards them over time. Their behavior changed progressively as they became more used to dealing with applications from people. There are lessons to be learnt from it.
6. The above experience has shown that the knowledge a public servant acquires through handling a single application for information under the Act far exceeds those obtained through attending many awareness-building meetings, seminars and lectures. Strengthening the demand-side is thus linked with strengthening the supply-side.

V. Recommendations for the three sides:

A) For the Government:

1. The best contribution that the Government can make is to ensure that the Act and its objectives are fully understood by all its officials. It should develop a strategy, together with the IC,

- on how to remove the age-old culture of official secrecy and replace it with a people-friendly and transparent official culture.
2. The Government must urgently undertake necessary measures to instill in the minds of its officials that the Official Secrets Act 1923 has been superseded by the RTI Act 2009. Changing the mindset of Government officials is a formidable task. Senior Government officials and Ministers must constantly remind all concerned about the commitment of the Government to ensure the success of RTI. They must be relentless in their efforts to convince people that the era of closed, secretive, inaccessible, hidden, inward-looking administration is over. The civil servants' training institutes must be mandated to spread the same message all the time. The government should consider entering into arrangements with NGOs to promote this objective.
 3. The Government must empower all DOs to perform their duties without fear of consequences. It should provide them with necessary support, including information management trainings, photocopying machines and similar other facilities. To facilitate their work, public officials should also be properly trained in information management, including indexing, cataloguing and storage of documents.
 4. The Government should consider a reward system under which all its officials making significant and consistent contributions to advancing the objectives of the RTI Act would be duly recognized and others encouraged to emulate them.
 5. Where this has not been done yet, the Government should put up notice boards at prominent places in all Government offices clearly displaying the names of Designated Officers (DOs) and Appeals Officers. They must be put up on relevant Websites, including that of the Information Commission, regularly updated and made user-friendly. However, since the overwhelming majority of the people have no internet access, the need for traditional methods will remain.

6. Government/NGO offices must fully implement the proactive disclosure provisions of the Act. Apart from general information relating to the work of the office and who does what, the proactive disclosure list should also include information popularly sought since the Act came into force. This will help reduce unnecessary applications from people and thus the workload of the DOs.
7. At the grassroots level proactive disclosure lists should be put up on notice boards at the Union Council Offices. It must, however, be understood that no amount of proactive disclosures will absolve public authorities to supply information that require real "disclosure" of information which they would not normally disclose unless asked for.
8. The Government should take all possible measures to convince citizens that it is committed to protect people seeking information from public authorities under the law. It should include in the proposed Whistleblower Act, 2010 a provision for the protection of RTI applicants and activists.
9. An active and effective Information Commission is crucial to the success of RTI. It is imperative that the Government provides it with the necessary support, including adequate human, financial and other resources. The autonomy and neutrality of the Information Commission must be steadfastly underwritten by the Government.

B) For the Information Commission:

1. The Chief Information Commissioner (CIC) and the other two Information Commissioners should make it a point to convey to all their audiences at all the times that RTI is not merely about someone formally filing an application and obtaining the information but that it is about transparency and access to information with minimum efforts. The ultimate objective of the Act is to make the government more transparent and thus reduce the need for people to seek information formally.
2. The IC should meticulously project in all its activities and manifestations that it is an autonomous and neutral body and

not a government institution. The Government officials who are summoned to complaint hearings should be made to feel they are there to attend a judicial process and not visiting colleagues in a Government office. The atmosphere at complaint hearings must project the gravity and solemnity of the task.

3. The IC must firmly establish its reputation as a fair arbiter of disputes between information-seekers and information-providers. Above all it should be seen as the champion of transparency. It must bear in mind that RTI law is about giving access to information. So the Commission is not an impartial court like civil courts. It must be biased in favour of transparency because the intention of the law is 'openness in government's functioning', except where the law provides for exemption.
4. The IC must bear in mind that the law was created primarily to establish the authority of citizens over State machinery. Some complaints have been heard about the high-handed nature of IC's dealings with some complainants. If such allegations continue, it may impact negatively on the credibility of the IC and distance it from the people.
5. The IC has so far been reticent about imposing fines on officials who renege on their responsibilities under the law. It should, however, slap fines, as provided for under the law, whenever it is appropriate. In the face of wanton disregard of the law by many public officials, it is imperative that strict measures are taken to ensure their full adherence to the law.
6. Where appropriate, the IC should consider recommending departmental actions against offending officials provided for in Article 27(3) of the Act. There are reports from the field that many public officials have openly dared anyone taking action against them for disregarding the RTI law. The mindset of such officials could perhaps only be changed by imposition of the stiffest fines and other possible sanctions under the law.
7. The IC must convey its decisions to both the parties of a complaint proceeding in the shortest possible time. It chose to

publish the first batch of 18 decisions in its Annual Report. However, section 25(13) of the RTI Act requires that all concerned persons must be informed of the decision in writing. There is a need to flesh this out in Rules that could be adopted by virtue of Section 33. In a quasi-judicial process the parties are entitled to the decision in their case announced publicly as is done in courts and free copies must be given to parties. The rules should include the time frame within which decisions must be given. It must be remembered that if the IC fails to give a decision within the stipulated time, complainant could go to the High Court against the IC with a writ petition. These are basic safeguards in any adjudication process.

8. As the number of complaints picks up, the IC should consider publishing a list of all complaints received during any month, the total number of cases pending from the previous month and the number of cases disposed of by the end of the previous month. It should also put up the cause list in advance. These are minimum requirements that ensure predictability of any adjudication procedure. Without such predictability the IC and indeed any judicial body will lose credibility in the public view.
9. The IC must itself meticulously abide by the law so that it can set the standards for others to emulate. There are instances where the IC has failed to hold complaint hearings within the period stipulated under the law.
10. The IC must keep the nation regularly updated about progress in the implementation of the law. It should issue periodic reports rather than wait till the Annual Report is due. The big challenge for it is to instill confidence in the minds of the citizens that it is doing all it can to move the law forward.
11. The IC should provide guidance and/or make recommendations to public authorities whenever they enter into agreements, such as Public-Private Project (PPP) agreements, to ensure that they are RTI-complaint. In fact, whenever such projects are considered or discussed or made public, the IC must offer its views on how to insert transparency clauses in them and make

- them RTI compliant. Such a practice over a period of time will help to make public authorities RTI-conscious.
12. In a situation where the majority of the complainants are from impoverished groups, the IC should bear in mind the expenses they have to incur to travel long distances and bear other costs to be in Dhaka to attend complaint hearings. They must, therefore, be spared from travelling more than once to Dhaka for a complaint hearing. It must be remembered that while Government officials are paid for their attendance, ordinary people are not. The possibility of holding IC sessions in different parts of the country, or arranging for video and audio conferencing methods could be considered.
 13. The IC should consider recommending to the Government to make rules permitting groups of citizens to jointly submit applications. This will go a long way to allay the fear of individual citizens of adverse reaction from public officials. However, the pros and cons of this option must be discussed with all concerned.
 14. The CIC in many of his public utterances has stated that most NGOs have not provided the IC with names of their DOs and Appeals officials. While he is right about this, he must match it with similar exhortations to the government. The IC should remember that international efforts to promote RTI are primarily aimed at governments. Citizen's daily concerns relate overwhelmingly to the work of government offices and not the NGOs. As a transparency instrument, the main target of RTI is, therefore, the government. In most countries NGOs are not even included within the purview of RTI law. Bangladesh should be congratulated for bringing them in. However, there is no scope to equate their responsibilities with that of the Government.

C) For the civil society, NGOs and the media:

1. NGOs which fall within the scope of the Act must duly appoint their DOs and Appeals officials. They must make sure that their

- DOs are trained to abide by the provisions of the Act. They must also actively participate in promoting its success.
2. Civil society groups, NGOs and individual activists should consider making use of the Act to undertake people's campaign to fight corruption. They could learn from the experience of other countries in this regard. Arrangements for regular exchanges among RTI activists of South Asia would be useful for this purpose.
 3. NGOs, civil society groups, media, RTI-activists and others should work together to form RTI-watchdog bodies all over the country which, among other things, would serve as pressure groups to ensure proper implementation of the Act by all concerned and as sentinels to ensure that all public contracts are RTI-compliant. They should make sure that their representatives observe the proceedings of complaint hearings on a regular basis. By doing so they will be able to provide the Commission with constructive observations.
 4. NGOs helping individuals or groups to make use of the Act should coordinate their activities with each other. Efforts of some NGOs have demonstrated the tremendous value of the Act in helping poverty groups access their entitlements under the law and alleviate their poverty to some extent.
 5. NGOs should set examples for transparency and accountability in their work since many of them run very large institutions. They could also take the lead in information management for others to learn from. They could set the pattern in regard to proactive disclosures.
 6. Ways must be found to involve political parties, particularly those belonging to the opposition, to promote the objectives of the RTI Act. Office-bearers and party workers must be trained and sensitized on the objectives and processes of RTI. They must realize that by using RTI they can promote the development of a fair, transparent and corruption-free governance system which will provide a level playing field for them to conduct their political activities.

7. Media should organize special training sessions for journalists in the use of RTI. It should enter into arrangements with the IC to widely disseminate latter's proceedings and decisions to the public. It is essential that citizens are made aware of the fact that RTI is an effective mechanism and can bring in significant benefit to the people and society. Such publicity would also help dispel the fear in many that seeking information under the Act could expose them to retribution from the authorities.
8. Lawyers and the legal fraternity should also be made aware of the tremendous possibilities that have been created for them by the RTI Act to make use of it as an additional tool for their job, such as for seeking information from the authorities on matters relating to the interest of their clients. They could learn from experiences of other countries in this regard.
9. However, the ultimate benefit of the Act would only come when citizens are able to scale up the use of the Act from limited individual objectives to larger societal/national gains. This will require turning RTI into an integral part of a national campaign to fight corruption and promote good governance. There are many issues awaiting such a campaign, such as distribution of *khas* land (public land), and many others that arise regularly, such as large infrastructure and public procurement project contracts. Only then will the immense potentials of this revolutionary law of Bangladesh be unlocked.