

How RTI Act 2009 Evolved in Bangladesh

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Introduction:

The Right to Information Act 2009 was passed in the first session of Parliament on March 29, 2009. It was a ground breaking decision on the part of the present government and paved the way for all citizens to get information from public authority as a right. In so doing Bangladesh joined 75 countries in the world with RTI regimes.

The rationale for the law is clearly stated in the preamble “The right to information shall ensure that transparency and accountability in all public, autonomous and statutory organizations and in private organizations run on government or foreign funding shall increase, corruption shall decrease and good governance shall be established. It is expedient and necessary to make provisions for ensuring transparency and accountability.”

The law was passed through the efforts and effective lobbying and advocacy of many civil society organizations, academia, media, researchers, legal experts etc. It was not preceded by a grass root level awareness and mobilization as in India. However, there is now a concerted effort to disseminate the law and its use so that people at the grass root level are able to use it for their benefit.

Background:

The demand for a law on Freedom of Information was first articulated by the Press Council in 1986 as a response to curtailment of Press Freedom under a dictatorial regime. The demand was raised in the form of a memorandum to the President seeking Press Freedom and allowing journalists to perform their professional duties without fear. Most of the well known news papers both English Vernacular Bangla such as Observer, Ittefaq etc. joined in this demand. After that a number of civil society organizations started to have discussions on the necessity of adopting a RTI regime in Bangladesh. Notable among those was a seminar organized by ASK and CHRI in 1998, initiatives by MMC, Nagorik Uddog etc.

The Law Commission prepared a working paper on RTI in 2002. This was inspired by pledges Bangladesh was making during that time, both nationally and internationally. However the most compelling rationale is in the constitution which in Article 39 clearly states “the notion of freedom of thought and conscience and of speech and also the notion of rule of law is nugatory if the public, for the sake of which the state exists, is deprived of access to information” (RTI working paper 2002). Signing of some International protocol such as the ICCPR in 2000. The working paper on RTI prepared by the Law Commission lacked enough consultation and ownership. Efforts to trace its status resulted in a blank as we found that it was lost between the Information and Law Ministry.

Manusher Jonno Foundation : As information of the governance and development aspects of RTI and its benefits ordinary citizens grew, Manusher Jonno Foundation (MJF) decided that this was a niche area it could work on. A grant making national organization supporting good governance and human rights initiatives, MJF works with more than 120 partner organizations across Bangladesh to create conditions so that vulnerable and marginalized people are able to raise their voice for better governance,

fulfillment of human rights and access to improved basic services. MJF also works on the supply side to motivate and make public institutions respond to the demand of these groups. MJF support revolves around four thematic programmatic areas namely 1. Combatting Violence Against Women; 2) Ensuring Rights of Marginalized Groups 3) Protecting Working Children and Vulnerable Workers. 4) Ensuring Responsiveness of Public Institutions. Through its work, MJF concluded that transparency and accountability of public institutions was essential if these vulnerable groups were to improve their livelihoods get better services. MJF work with partners also demonstrated that the poor are deprived in multiple ways because of lack of information.

Learning from examples of other countries where RTI regimes have changed the outlook and functioning of public institutions, MJF with others, embarked on a mission to facilitate and coordinate the enactment of the RTI law. As a first step, MJF commissioned a rapid assessment to get an idea of the general perception of RTI in Bangladesh and identify the different actors involved. A teacher from the law Department of Dhaka University was given the task who conducted a quick survey of 20 organizations and 25 individuals from different professional groups such as media, activist, academics, NGOs who were directly or indirectly involved with access to information, human rights or governance issues. Structured interviews using questionnaire was used to understand how RTI was conceptualized by them. The rapid assessment report¹ revealed that the existing perception about RTI was more related to freedom of information with respect to the media than right to information as a governance or development tool. Though the constitution² of Bangladesh has recognized freedom of expression as a fundamental right, there is a common notion that Right to Information is only related to freedom of press. Moreover, state rules and regulations do not consider and recognize the idea of information as a right to which all citizens should have access to. The main reason behind this is the “culture of secrecy” which prevails in every sphere of the governance system of the state.

How RTI Evolved in Bangladesh:

MJF took up several strategies involving different stakeholders to take the demand for RTI law further. One of them was coordinating the setting up of 3 Core Groups such as the Law Drafting Core Group, Policy Advocacy Core Group and Awareness/Capacity Building Core Group. Eminent persons and experts were members of these Core Groups and included legal experts, academics, NGO's, media personalities, activists, researchers etc. These Core groups had their own terms of references and worked accordingly. This was effective in broadening the support base and raise a concerted demand for the RTI law.

Drafting RTI Law

The Law Core group comprised of noted legal experts such as Shahdeen Malik, Sultana Kamal, Shamsul Bari, Asif Nazrul, Tanjibul Alam and Elena Khan. All the members provided inputs, feedback and reviewed the draft several times while Tanjibul Alam, supreme court lawyer, drafted the law. RTI laws from India, South Africa, Canada, and UK was consulted during the process. National and Regional consultations were held where the draft was shared and comments received. Organizations such as Article 19 and CHRI provided feed back, comments and recommendations. It is important to note

¹ Situational Analysis of Right to Information in Bangladesh: A Rapid Assessment, 2005 Manusher Jonno Foundation

² Article 39, Constitution of Peoples' Republic of Bangladesh

that the Working Paper of the Law Commission was taken as a basis for the draft. The draft was formally presented to the Law Advisor of the Care Taker government in 2007.

The Care taker government system which came into existence in 1996 was an outcome of the demand from opposition parties that a free and fair election cannot be held under the government in power. The Constitution of Bangladesh had to be changed to bring in the provision of the care taker government which would have the responsibility of overseeing the elections and hand over power to an elected government. The elections planned for February 2007 became controversial and amid threat of violence and anarchy, an army backed Care taker government was installed promising elections as soon as a proper electoral list with identity card was ready. This took 2 years during which many political leaders from the two main political parties were arrested on charges of corruption. This Government was headed by the Chief Advisor with a cabinet of 10 Advisors who were responsible for running the administration and the election commission was entrusted to conduct the elections. The Chief Advisor of the care taker government took a special interest in the RTI law as he wanted to leave a lasting legacy of transparency and accountability in state governance. It was during this time that the draft RTI law was submitted to the Advisor for Law, Justice and Parliament Affairs.

Process of Awareness Raising and Capacity Building:

In 2005 MJF contacted CHRI³ to provide technical assistance and assist in catalyzing RTI in Bangladesh. A two days regional conference was organized jointly with CHRI in December 2005. A partnership between CHRI and MJF resulted in a series of meetings, trainings and other capacity building initiatives. Meanwhile the demand for RTI started to be made in various forums by different groups including media, research groups, academia, NGO's, etc. A process of knowledge building was started through developing various communications materials, theme song on RTI and commissioning research. MJF partner organizations plus other networks were actively involved in this process.

Identifying Act/Law and other policy procedure which have access provision:

MJF commissioned another study in June 2007 to examine the existing laws, policy and mechanisms to assess how those provisions recognize, directly or indirectly, peoples' right to access information. This study was undertaken with the aim to benefit people by informing them of provisions that already exist but are not being utilized. The study revealed that some significant provisions and judgment already exist which complement access to information however few people know about these.

Networking and Alliance building with different Stakeholders including media

The core groups on Policy Advocacy and Mass Mobilization also initiated a series of activities such as writing articles, holding TV Talk shows, orienting NGO's, local journalists, policy makers etc. Journalists were sent on cross visits to India to learn from their experience. Government officials also went on a cross learning tour to Mexico. Besides, through regional and international networking, alliances were built with national and local partners for issue based mobilization on RTI such as TIB, PET, BEI, SUPRO, SANAK, , Article 19, CHRI (India) , MKSS (India). Eminent personalities were approached to act as champions for the law. They also started to lobby and advocate for enactment of the RTI law.

³ Commonwealth Human Rights Initiatives, A Delhi Base human rights organization

Engaging Government

In March, 2007 the Law Core group submitted the draft law to the Law, Justice and Parliamentary Affairs and Information Advisor for its review and consideration. Members of the Core Groups met with the Law Advisor several times as follow up.

In December 2007, the Chief Advisor of the Care Taker Government in a MJF organized seminar announced officially that RTI will be enacted as an Ordinance and instructed the Information Ministry to prepare the draft law and take assistance from the draft submitted by the civil society. It may be mentioned here that during the Care Taker Government, the Chief of Army, General Moeen U Ahmad in a meeting organized by the Global Organization of Parliamentarians Against Corruption in his speech said, “in the near future the interim government will introduce a Right to Information Act and review the Official Secrets Act so that corrupt officials cannot hide behind the cloak of secrecy and escape punishment”. The civil society found an unlikely ally in the army and the caretaker government to push the Ordinance through.

The Ministry of Information (MOI) at the direct instructions of the Chief Advisor, formed a working group to draft and finalize the law and MJF representative was officially part of the working group. The working group was given a months time to finalize the draft. During this time a number of discussions were held within the different Ministries and Departments. There were opposition on certain clauses such as imposing of fine to government officials in case of denial of information, inclusion of Union Parishad as Authority and civil society insistence of having at least one women as member of Information Commission. Moreover before that, MJF faced resistance when trying to find out the status of the Law Commission working paper on RTI. It seems to have gotten lost between the law and information ministry. However some actions of the bureaucrats was positive such as before finalization the MOI organized a national seminar in March 2008 to share the draft and put it up on the Web site for comments. This is one among very few initiatives of Bangladesh Government where they opened up their policy for public comments. This was very well received by people in general and many gave inputs and comments.

The Government also invited Mr. Wajahat Habib Ullah Chief Information Commissioner of India on March 19, 2008 to get his views and opinion on the draft. He had meetings with politicians, business professionals, media and civil society representatives

After the draft was finalized by the working group, it was sent to the Committee of Secretaries via the Cabinet Ministry to get comments of all other Ministries. It is alleged that it was during that time certain changes were brought in the draft. The penalty clause remained but the amount was drastically reduced; a clause was inserted which gave indemnity to officials in case of denial of information in “good faith” (this was again removed due to civil society engagement) the exemption list was made longer and the private sector and political party as authority was removed. The exclusion of private sector as authority was deleted due to pressure from influential private sector groups who argued that they have their own regulatory bodies to monitor transparency and compliance to laws and need not be included. It may be mentioned that the inclusion of foreign funded NGOs as authority was also resisted and opposed by some but the civil group advocating for the law insisted it should. It was agreed that including NGOs gives the advocacy group a moral authority to insist on transparency from all other groups.

Finally the draft was submitted to the Chief Advisors office in July 2008. During this period constant dialogue and consultations were held between relevant civil society members, the Information Ministry and the Chief Advisor's office. Though there were many champions within government who worked with us to make it into a progressive law, there were also again several attempts to dilute the draft and add provisions that would curtail people's access to information. .

The Council of Advisors approved the ordinance on 20th September 2008. In October 2008, it was passed as an Ordinance by the President on 20th October 2008. We believe that this paved the way for eventual adoption of the RTI law by the elected government which came to power in December 2008.

Formation of RTI Forum

A Right to Information or RTI Forum was set up with MJF as the Secretariat. The RTI Forum is composed of 40 organizations and individuals with the objective of creating demand for the enactment of the RTI Ordinance and later to monitor its implementation. The RTI Forum has organized a number of events collectively such as the International Right to Know day in September 2008, the International Conference on RTI in May 2009 plus publishing communications materials. The members come from a diverse background such as NGOs, media, academics, legal professionals etc. the NGO members are involved with issues of corruption, transparency human rights of marginalized etc. Noteworthy among these are TIB, Nijera Kori, Nagoric Uddog, RIB etc. Though have not been advocating for the RTI law per se before the movement for it started, they have been working to demand transparency in public institutions so that the marginalized population are better served.

Engaging Political Parties:

Attempts were made to engage political parties in the dialogue on RTI since 2005. Members of different political parties were invited to seminars and workshops and also met individually. Their general response was positive and most pledged that they would support such a move. In October 2005, MJF in collaboration with APPG and PET (All Party Parliament Group and Peoples Empowerment Trust) organized a National Dialogue where the General Secretary of BNP attended as Chief Guest. Important members of all political parties attended the dialogue where the RTI law, its significance, importance and relevance in Bangladesh was discussed.

Civil society groups were aware that political parties need to be engaged if the law was to be passed in Parliament once an elected government came to power. With this view a series of consultations and meetings were held with members of the main political parties. Attempts were made to have RTI included in their party manifestos prior to the National Elections. All this was done to build their ownership to the issue and the draft law. An important seminar was held on 31 August, 2008 titled 'RTI: Commitment of Political parties in which all the main political parties participated. Awami League, the party that won the elections included RTI in its party manifesto as did the Jatio party. Some political leaders and MPs worked closely with us acted as champions within their political parties to raise awareness and build positive attitude towards RTI.

Legislation of the RTI Act 2009:

After the General Elections of December 2008 the RTI Forum again started to lobby with Parliamentarians for the enactment of RTI law. The Law Minister, Information Minister and several MP's were met individually to press for its enactment. During the Care taker government a total of 154 Ordinances were passed. A number of expert groups were set up to review the Ordinances and make recommendations to a special Parliamentary Committee. MJF was invited as a member of the review committee of the parliamentary standing committee to make comments and recommendations on the Act. Again the RTI Forum lobbied with the expert groups and the special committee. Each member was met separately and spoken to. Members of the RTI Forum held discussions and recommended certain changes in the law.

Finally on March 20th it was approved in the Cabinet and on the 29th it was passed in Parliament. It maybe mentioned that the law was passed in the very first session of Parliament. The law was passed with the following changes recommended by the special committee.

- The law has included the provision of supremacy of this Act in case of contradiction with other laws in disclosing information.
- Government nominated person involved in journalism profession or citizen involved in mass communication was included in the selection committee of Information Commission.
- The exemption list for restricting information is quite longer, though provision has been made for providing information within 24 hours in case of human rights violation and corruption.
- Other minor change was made in case of quorum formation of Information Commission meeting.

Limitations:

Though the list of exemption is long and Civil society groups are critical about it, there is scope to make strong advocacy to make it more focused and specific during implementation.

It was expected that Information Commission will be given enough authority in deciding about staff capacity, number and budget but government will provide final approval on these. Rank and salary of Chief Information Commissioner and Information Commissioners will be decided by the government.

Conclusion:

Though the RTI Act, 2009 has not fully incorporated all international best practices, yet compared to many countries it is a progressive law. Its true value will come with implementation of the law when citizens start to use it. There are huge challenges which the following paper from Bangladesh will elaborate upon. There is a need for wide dissemination of the provisions of the law and most importantly for people to understand in very simple language how they can use it for their benefit. Unless people start to request information, we will not know whether the law is working or not. For that to happen we need to have massive campaigns and mobilization. Civil society

organizations and the Information Commission have already embarked on awareness raising campaigns and dissemination.

While it is true that the demand for the RTI Act did not start from the grass root level as in India, there is every reason to believe that the Act can be effectively used in Bangladesh by ordinary citizens to bring about positive changes in their lives. This will happen when Public Authority, including NGOs are aware, sensitive, open and develop the capacity to respond.

In enactment of the RTI Law Bangladesh has made a strong statement to the world that it is committed to establishing transparency and accountability in public institutions. This commitment will be tested only with proper implementation of the law.