

INTERNATIONAL DAY FOR UNIVERSAL ACCESS TO INFORMATION

What should be our resolve this year?

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Rapists of Sylhet's MC college incident must face justice

Culture of impunity for criminals in BCL must end

WORDS are not enough to express our shock and horror at the incident of rape that happened last Friday in the hostel of Sylhet's MC college. Reportedly, on Friday night, six Bangladesh Chhatra League (BCL) activists forced a married couple visiting the college campus to the hostel and gang-raped the wife while keeping the husband tied with a rope.

The questions are, how could such a horrible crime happen inside a college hostel? Where were the hostel superintendent and the administration when the incident happened? What emboldened the BCL activists to rape the woman without fearing any repercussions? The answers to these questions, sadly, are also very clear. Although all the accused, except for one, are the former students of the college, they, in fact, have been controlling the hostel for years. And the fact that the prime accused Saifur Rahman used to live in a bungalow designated for the hostel superintendent makes it clear that the hostel superintendent remains only in name but has no control over the institution.

What is the source of power of these BCL men? Reportedly, the accused have backings from influential ruling party leaders. Talking to several present and former BCL activists of the college, our reporter came to know that all the accused are followers of former youth and sports affairs secretary of Sylhet district Awami League. The college authorities are helpless when it comes to dealing with them. There were previous allegations of arson against the BCL activists for which they were never punished, and that only emboldened them to be more ferocious. When police raided the bungalow—where the prime accused used to live—after the incident, they found a pistol, four sharp weapons and a lot of iron rods there.

We are concerned at the way the BCL members have been carrying out all kinds of atrocious activities at educational institutions across the country, including torturing and harassing students, stalking, assaulting and raping women, being involved in extortion, tender grabbing and occupation of hostel, etc., under the shelter of powerful ruling party leaders. The environment of fear that has been created by them in our public university and college campuses prevent the general students or even the administrations to speak up against their crimes. The rape in Sylhet's MC college hostel is just an example of what happens when crimes go unpunished. The principal of the college also pointed out this fact in an interview with *The Daily Star* yesterday.

We have learnt that police have arrested two accused in the case, including the prime suspect Saifur Rahman. We urge them to immediately arrest all the accused in the case and bring them to justice. The college authorities also cannot avoid their responsibility; they should take prompt action against the accused after the committee submits its report. The rapists must face justice no matter how powerful they are.

There are more like MAAR Ltd polluting water bodies

Without administrative commitment rivers will continue to die

A report in this paper on Sunday has revealed the poor condition of a canal due to disgorgement of effluent by the Maize Advance Argo Refineries (MAAR) Limited in Habiganj which produces starch powder. The factory management and owners have violated the existing rules and even misrepresented facts by claiming they have an effluent plant. But that, reportedly, is not working. The untreated liquid waste is dumped into the canal, conveniently, which ultimately falls into the Sutang River. Needless to say, dumping untreated liquid waste pollutes the water bodies and affects the life of every living creature in and around the canal and the river. The water is unusable, the marine life is all but decimated, the crop fields cannot be irrigated, and poultry and cattle succumb due to the polluted water.

The report, presented as a part of survey by this paper on the occasion of World Rivers Day, informs us that many such factories and industrial establishments dump untreated waste into canals, rivers and other water bodies in the Shahpur area in Habiganj's Madhabpur upazila.

Protests and remonstrations of the locals have had little effect. And if, as the DC Habiganj claims, the factory was closed, how come it is functioning? Does the local administration have no way of monitoring such gross violation of their order? And what was the Director of the Sylhet Divisional Office of the Department of Environment doing the last six years, since, according to its Director, the MAAR Ltd has been functioning without the environmental clearance certificate since 2014? It is incomprehensible that such a grossly illegal act could have been possible without the Sylhet DOE's knowledge.

MAAR Ltd is not the only factory in the country polluting our rivers and canals, deliberately. We believe that the condition of the Ekhtiarpur canal and the Sutang River represents fairly the state of our rivers and canals all over the country, particularly those that pass through industrial belts. And the performance of the local administration, including the office of the local department of environment has been not only shoddy, but in some cases these offices have been complicit in the environmental pollution. The local administrations must address river pollution, on which the government has laid so much stress. Otherwise, we may end up with dead canals and rivers, and sooner than we think.

SHAMSUL BARI

INTERNATIONAL day for universal access to information this year comes at a time when the whole world is reeling from the greatest global crisis since World War II. The Covid-19 pandemic has spared no country over the last six months and shows no signs of abating.

The crisis has wounded the relationship between governments and citizens. People have felt that their governments have not shared the relevant information with them, making it difficult for them to assess the ominous ground realities and their government's responses to them. The importance of proper information sharing between the two sides could not have been brought into sharper focus. People started paying more attention to transparency regimes, like Right to Information (RTI) Acts.

The critical need for governments to keep their citizens informed about their activities holds true at all times; the pandemic has only sharpened our awareness. Transparency is the crux of good governance. International day for universal access to information provides us with an opportunity to reflect on how the law has fared in the country so far and consider measures to do better.

The RTI Act 2009 of Bangladesh has now been in operation for 11 years. The decision to open up all government records, with few exceptions, to public scrutiny, was indeed a revolutionary act by our lawmakers. The law fulfilled the democratic aspirations of the people and a commitment of successive governments. It sparked hope for more transparent and accountable governance, bringing the people and the government closer together to strengthen democracy. The goal of RTI is to help the government to ensure good governance, not to topple it.

In the years that followed, it became apparent that the transition from secretive to transparent governance is not easy. The challenge lay in the objectives of the law itself. To make full use of the law would require the two main protagonists—citizens and the government—to completely change their traditional mindset about governance. While in the old system, government's authority held sway over citizens, the new dispensation recognised citizens' ultimate ownership of all powers of the state and thus their authority over government machinery. Few people realised that the

tables were turned.

Such a fundamental change in the concept of governance obviously called for redefining the respective roles of the protagonists. For citizens, who are made the pivot of the system, it meant that they not only have the right to monitor the work of the government but a responsibility, even a duty, to do so. On the other hand, government bodies are required to recognise the ultimate controlling authority of the people over them and, as a corollary, their responsibility to keep them properly informed about their work. The term "information" assumed a special meaning and importance.



The concept of public information is, of course, inextricably linked to the concept of "public interest". The law gives citizens the right to access public information based on the concept of public interest. It may or may not have anything to do with one's private or personal interest. For example, my interest in accessing all information on whether public fund is being properly spent for the construction of the Padma Bridge is based on my public interest and not personal.

Public authorities must, therefore, appreciate the concept of public information to understand why citizens are given access to them. RTI law links disclosure of information to public good. In fact, the RTI Acts of many countries, though not of Bangladesh, contain a "public interest override" clause, which means that even exempted information may be disclosed if public interest overrides the need for secrecy. Such is the

power of citizens in democracy!

So how should we highlight the international day for universal access to information? The short answer is, all of us—government and people alike—must resolve to implement the RTI Act, as seamlessly as possible, to promote better governance.

We learn from the annual reports of the Information Commission that on an average around 8,500 RTI requests are filed annually with various public offices in the country. Compared to the annual average of 60 lakh requests in India, the number is very small indeed. It should be the resolve of all concerned to increase the number.

and fear, affecting people's will to pursue the process. And three, unfriendly attitude towards complainants at IC hearings, and the propensity of the commissioners to be more accommodating towards recalcitrant government officials. Many also allege the tendency of the IC to interpret the law restrictively to deny disclosure.

International day for universal access to information provides an opportunity for all the stakeholders to discuss the impediments dispassionately and identify remedies. As the law is meant to serve the interest of the entire nation, there should be no "we" versus "they" in its application. The Covid-19 pandemic has undeniably aroused greater interest in the law among previously disinterested citizens. RTI enthusiast must utilise this positive development to promote collaborative efforts to overcome the impediments and induct them into the system. The views of the High Court should also be sought on legal issues underlying the decisions of the IC. This will help, *inter alia*, to draw focus on the fundamental principles of the law. The government on its part can help immensely by promoting neutrality of the IC through appropriate messages and ensuring a transparent process of selecting the commissioners. A mechanism to reward public officials for exemplary compliance with the law can also be helpful.

The RTI Act provides an opportunity for the government to work hand in hand with the people. At a time when the highest leadership of the government appears to be giving greater attention to governance issues affecting the public, we should expect that the ailments of the RTI regime would receive similar attention. A serious dialogue between the people and the government on the matter is overdue. As the foremost law of the land which only citizens can apply to advance democracy, the government has all the reasons to ensure its successful operation. The systemic change in governance that the law promises can only happen with the full commitment of the government. Let citizen-government cooperation for good governance be the resolve of this year's international day for universal access to information and for all future years to come.

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Challenges of making the Right to Information Act effective

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RIGHT to information is well-recognised as a significant facet of fundamental freedom of expression. More significantly, accessibility to information on government entities and their functioning facilitates informed decision-making and meaningful public debate. The transparency established through free flow of information is also key to building credibility for public institutions. Based on such premises, the UN Special Rapporteur on Freedom of Expression reiterated that the right to access the information held by public authorities is a fundamental human right that should be brought into effect through comprehensive national legislation.

The Right to Information Act 2009 (RTI Act) of Bangladesh has been promulgated in recognition of people's right to information as an inalienable part of the constitutional right to freedom of thought, conscience and speech. Appreciated as a significant step towards ensuring public participation and transparency at the time of its enactment, the effectiveness of the RTI Act has been questioned over the subsequent decade. Studies have pointed to shortcomings in terms of the legal framework as well as extra-legal factors such as the culture of secrecy, fear and red-tapism as reasons behind the slow progress in its implementation.

In order to evaluate whether the RTI Act fulfils international standards, its provisions may be compared with the principles on Freedom of Information legislation endorsed by the 2000 report of the UN Special Rapporteur on Freedom of Expression. One of the foremost principles is that of maximum disclosure. This principle implies a presumption that all information held by the public authorities is subject to disclosure and that this presumption may be overcome in limited cases. Furthermore, it puts the onus on the relevant authorities of justifying why a request for information has been denied. The principles also state that a refusal to provide information must meet a three-part test, i.e. the information must be for a legitimate aim provided in law, the disclosure must pose a substantial harm to that aim and the harm must be greater than the public

interest in favour of disclosure.

Section 7 of the RTI Act contains a list of 20 circumstances in which disclosure is not mandatory. Although the section is accompanied by a proviso that prior approval shall be obtained from the Information Commission for refusing information under this section. Studies conducted by the World Bank shows that about 27 percent of information falling under the section was refused. Therefore, the compliance of the RTI framework with the principle of maximum disclosure is dubious. Another significant principle entails that "disclosure takes precedence", which requires that other pieces of legislation must be interpreted in light of

being presented as evidence without the permission of the department head. In the cases of conflict with these laws, the RTI Act 2009 shall prevail. This is a positive aspect of the law; however, the subsequent reference to the Official Secrets Act 1923 in the Digital Security Act has been criticised for undermining the spirit of the RTI Act.

Section 32 of the Digital Security Act states that any person who commits or aids and abets any offence under the Official Secrets Act 1923 by digital means shall be punished with imprisonment up to 14 years and/or fine up to Tk 25 lakh. Whereas the relevance of such outdated, colonial laws is in itself questionable,



the obligation to disclose information. The interplay of RTI Act 2009 and other laws, particularly the Official Secrets Act 1923, Digital Security Act 2018 etc. are crucial in determining its effective implementation.

Section 3 of the RTI Act 2009 states that in case of any impediments in other laws, they shall be superseded by the RTI Act. Therefore, some existing laws which uphold state secrets shall be overridden or narrowly applied in order to protect the right to information.

For example, under section 6(2) of the Official Secrets Act 1923, if one allows any other person to possess official documents issued for his use alone, for any purpose which is prejudicial to the safety of the State, they will be committing an offence. Section 123 of the Evidence Act 1872 prevents any "unpublished official records" from

the Digital Security Act adds further validity to the existing culture of secrecy by upholding the 1923 Act. Section 3 of the Digital Security Act 2018 states that the Act supersedes conflicting provisions in other laws except in cases of right to information (in which case, the RTI Act shall prevail). However, several other provisions of the Digital Security Act pose a threat to the proper implementation of the RTI Act.

For example, the sections defining offences of publishing "offensive, false or fear inducing information", collecting or using identity information without permission etc. as well as provisions on defamation and blasphemy have been framed in an extremely broad and vague manner. Furthermore, section 43 allows the law enforcement to arrest, without warrant, any person if they have reason to believe that an offence has

been committed or there is a possibility that an offence will be committed.

These provisions are not only prone to misuse, they also have a chilling effect on free speech and practically restrict the implementation of the RTI Act.

Moreover, section 31 of the RTI Act provides protection to acts of the authority undertaken in "good faith". The concept of good faith refers to acts done with due care and attention. The elements of due care and attention can only be measured by the subjective satisfaction of the authority. Such subjective satisfaction of the authority based on good faith clause may lead to abusive and discriminatory practices. The inclusion of the good faith clause in a law enacted with the very purpose of holding public authorities accountable is inherently paradoxical.

Apart from the shortcomings of the RTI Act, there exist certain practical challenges in its implementation such as the role adopted by the Information Commissions (IC) and Chief Information Commissions (CIC). Many of the IC and CIC selected in the past have been retired public servants who are reluctant to shift from their existing roles in preserving the culture of secrecy. As a result, they have not been able to foster a pro-citizen climate in the RTI regime. The relatively complex procedure of requesting information and excessive bureaucracy also largely diminishes the efforts of concerned applicants under the Act.

The RTI Survey 2019 has also shown that the concerned authorities are hesitant to impose penalty on the Designated Officer(s). According to the survey, no action was taken in 48 percent cases of non-compliance with the RTI Act.

To sum up, it can be stated that the RTI Act poses both challenges and opportunities for the establishment of transparency and accountability within public bodies. The legal framework needs to be reformed to make it compliant with the international standards. In addressing the extra-legal factors, concerted efforts from different walks of life is necessary. Civil Societies, media and the judiciary can also play an active role in this regard by popularising the RTI Act and upholding the spirit of access to information.

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