

Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

Information

How Do We Manage?

by Martin Saldamando

Bangladesh should not blindly follow other countries in drafting information-access laws, rather lawmakers should learn from their experience and take what is good and reject what is bad.

Today, the rate of information generation has grown exponentially. Our capacity to absorb information, organise it and cope with it has not grown at the same rate. This has never happened before in human history. The issues of the information society emerging today are complex and do not revolve only around economic value. It is just as important for Bangladeshis to have the foresight to utilise technology to strengthen democracy, increase social equality and strengthen their unique culture and language. This will not happen by itself. In Bangladesh, rural people who depend on their own labour for survival make up the bulk of the population. They are unorganised and reluctant to make claims for their minimum wages and other human rights. The concept of their human rights, if communicated and understood by them, could very well transform into an all-out agitation. Globalisation has had a strong impact on these dis-empowered communities, and they have no voice in the decisions made by policymakers. Transnational corporations and big business about their livelihoods and how they will survive. Above all, people must increase mechanisms for these people to act on their own behalf. The question then follows—within Bangladesh, who is going to put a Right to Information for the people into practice? And for what purpose? First, the present system of information storage and retrieval needs to be thoroughly understood and specific bottlenecks in getting information need to be identified. Then, specific processes for accessing information must be devised which either upgrade the existing systems of information-access or introduce new methods for it. Management of informa-

tion would then prove to be the key to people's empowerment. There are two primary challenges before the Right to Information movement in Bangladesh. The first is to foster a deeper and more vibrant understanding amongst the citizens and activist groups on how basic, vital and essential this right is to all democratic and survival issues. The second is to fight for a legal entitlement, which would allow people to increase their democratic space by exercising this right. In the past, whenever these two elements have converged in South Asia, the Right to Information campaign has succeeded in energising a cross-section of people. Information is very important to give an image to people's minds. But to give it practical effect, the question is, what are you going to do with it once you get it? Because the accountability mechanisms within the state are very backdated, and records are in a sorry state. How can inert information, either in state or in private hands, be transformed into social action? In working out the process and the internal dynamics lies real substance in the concept of Freedom of Expression. Within this process would be involved the human ingenuity of encoding, recording, reproducing, transferring, publishing, disseminating and broadcasting the information. Storage and retrieval of data and transmission of facts are also a part of this process. As Justice Krishna Iyer had said: "The Chemistry which converts sterile information into living wisdom requires intermediate processes and meaningful sequences... facts don't speak nor do facts alone illuminate the mind." In India as well as in Sri Lanka, the Right to Information is now an established fun-

damental right and is perceived even by the courts as being a part of the right to Freedom of Speech and Expression and the Right to Personal Liberty. As of now, if a person is refused information by the government, the only remedy for him or her would be to approach the Court by way of Writ petition. Now, legislation is needed not to create a right, but to create systems in which the right can become meaningful without recourse to constant litigation. Why can't citizens take their own initiatives? Why must people wait for information to be given to them by others? When the national campaign for a Right to Information came out in India, bureaucrats all across India felt overwhelmingly that RTI was impossible from a management perspective. They felt that it would be as dangerous as opening some kind of 'Pandora's Box'. But many bureaucrats were nonetheless sickened and demoralised by the corruption they witnessed around them every day, and some believed that an RTI would provide some remedies. It therefore became important to show that it is practical to provide people with access to government-held information.

Harsh Mander, a senior official in the Indian Administrative Service, was interested to know what information, if given to the people, would empower them. He started by issuing a series of orders to release information to the public related with the Public Distribution System (PDS). And to show people what food-grain was available and whom it was going to, he found that with the mere possibility existing that the public might access the PDS records—corruption in that area fell by 50%. Then he extended this to worker's wages, contracts and receipts—the traditional areas of corruption. The Chief Minister was interested when he saw Mander's findings and he passed orders to photocopies of documents, the administration went on to burden itself further by not allowing citizens to have certified copies of documents. Had there been certified copies released to citizens then and there, the citizens could have made their complaints directly in court or at the police station with the documents supporting their complaints.

In mid-1997 the Chief Minister of another Indian state, Goa, announced that his government would soon introduce a right to information legislation. Goa's activists and press corps were caught off-guard. Then, in early 1998, Goa's citizens had an Act explicitly guaranteeing a Right to Information. Though organisations have been slow to respond, a wide array of individuals have sought to assert their newly confirmed right. After a year on the books, the Goa Right to Information Act (GRIA) has generated about 400 applications for government documents. Many applications are related to inquiries about potentially illegal construction. Some applications involve clearances given to polluting industries.

And many are inquiries into the diligence paid to licensing or taxation rules regarding the properties and businesses of certain individuals, presumably with a view to expose favouritism. Other requests relate to: building permits and subsidies for hotels which violate planning and environmental codes, toxic waste emitted by a zinc factory, and the role of an Indian Administration Service officer in a lottery scam. In addition, the "All Goa Citizens' Committee for Social Justice and Action" submitted applications for information involving cases of alleged patronage, nepotism in appointments, promotions and service conditions in higher and secondary education. Willingness to divulge this information has varied widely across the government. Some departments have not responded at all, violating the 30-day time limit. Others have responded fully.

There is enormous variation in charges levied for this information. Some departments have not made any charge, while others have made seemingly arbitrary and sometimes significant charges—charges for 'processing fees', for instance, or for the cost of ar-

ordinary citizens. These legal provisions should be supplemented by sustained pressure from NGOs, political and social activists, the press and legal professionals to ensure that a Freedom of Information bill is used to promote the interests of the needy, particularly rural Bangladeshis. Some bureaucrats however, will invariably say that a Right to Information will cost too much to manage, and Bangladesh cannot afford it. But compare the cost of managing this right to the cost of corruption. The corruption and mismanagement within this country's system being reduced alone would make up the costs easily. In the United States, it is said that one of the unanticipated benefits of having the Freedom of Information Act has been that agencies now have to improve their filing and information management systems so that they are workable. That is something Bangladesh desperately needs. Presently, there is not the slightest attempt at any systematic record-keeping in the government. For example, if you happen to enter a District Record Room, you'll invariably find it in a complete mess, with stacks of papers and files scattered all over the place and enveloped in dust, damp and darkness from all around. The so-called Record Keeper generally knows nothing about the papers being 'preserved' here. Senior officers simply cannot be bothered to inspect the record rooms. The academic community, eager to use these materials for carrying out in-depth research, is obviously unable to do so under the existing circumstances. There is also the petty bureaucratic tangle of obtaining 'necessary permission' which inhibits the use of such materials by those who are willing to put up with the horrible state of record maintenance. However, it is quite possible for the Bangladesh government to collect and preserve its valuable records and documents almost free of cost, and in the process maintain the heritage of a people who rightly claim to be a new nation, but with a long past. What is required is a little 'heritage consciousness' and 'will power' on the part of those who matter in this regard. There is no need to hire a single new person, and if necessary the surplus staff of the government, who are now drawing salaries without doing any work, could be utilised in this exercise. If a legislated Right to Information were made retro-active to 3-5 years, then it is not a huge task to get all the information together. The public demand is reasonable. Using the local pool of Information Technology technicians it should be cost-effective and sufficient to develop methodologies by which to store, preserve and retrieve information. If the state is unable to run an uncorrupted, clean system, at least let it enable us, the citizens, to check its corruption by legislating on the Right to Information. Right to Information is a Fundamental Right and since we claim to be a democracy, we define our own rights and duties, or don't we? The writer is Consultant, Commonwealth Human Rights Initiative (CHRI).

Status of Women

Law, Constitution and Our Expectations

by Nazmul Huda Shamim

It is undeniable that if we want the progress of a nation, then sustainable development or progress of women is most. The condition or status of women shows the future of a particular society or a nation. Status of women balances the total development of a nation because in a social structure they have to play a key role in building that particular nation. The issue of women's development and empowerment of women are at the local point. It is evident that women are being discriminated in each and every corner of the world. Establishment of a good nation depends upon the promotion and protection of women's rights. Dignity and status of women should be ensured in this regard.

Legislative organ of a country can ensure women's rights by enacting various laws, rules and regulations. The legislature can quench the thirst of time by amending or reforming these laws which are inoperative or backdated. There are several provisions in the Constitution of Bangladesh relating to status of women under the constitutional safeguard. Though the Constitution of Bangladesh has given women equal right along with men, albeit women are being underestimated almost in each and every sectors of life and they can't enjoy their rights.

Steps shall be taken to ensure participation of women in all spheres of national life. The Constitution also provided that— The State shall encourage local Government institutions composed of representatives of the areas concerned and in such institutions special representation shall be given as far as possible to women. [Art.9] In every local Government structure (Union Parishad) there are three reserved seats for women. The reason of this provision is to realise the provision mentioned under article 28 (4) i.e. to develop the status of women and their active participation in the rural areas of Bangladesh. Active participation of women in the local government and grassroots level is a prerequisite for an effective social structure.

The rate of participation in the Government as peoples' representatives is very poor in Bangladesh. The United Nations proposed that at least 30% women representatives should be elected in all stages of a country. In the National Parliament of Bangladesh, there are only 9% female representatives. On the other hand there are only 2% female representatives in the Ministry. This trend must be changed and appropriate measures should be taken to fulfill the UN proposal. Art. 65(3) of the Constitution provides for 30 reserved seats for women to establish the concept of empowerment of women. The reasons are that women need more assistance and special care for the entire development of the country. It was expected that the thirty reserved seats of the Parliament will bring a good result for women in their development programme. It was also expected that they will take special role for social motivation for a better social structure. Art. 65 (3) states—

Under the personal Laws of Bangladesh, women do not enjoy equal right. The leaders of the world community committed themselves to take effective measures through the enactment of laws and policies and their enforcement to eliminate all forms of discrimination, exploitation, abuse and violence against women. Bangladesh is a signatory of the Copenhagen declaration. The Declaration was adopted at the conclusion of the week-long UN summit on Social Development in 1995. As a signatory of that Declaration, Bangladesh is responsible for implementing its commitments and Programme of Action. One of the commitments was to achieve equality and equity between women and men. But we have failed to achieve equality and equity between women and men. The existing laws relating to women's rights should be amended and modified in the light of equality and equity principles.

Bangladesh is also a signatory of the Convention on the Elimination of All forms of Discrimination Against Women. The Convention seeks to do away with discrimination, defined as "any distinction, exclusion, or restriction made on the basis of sex." To condemn discrimination against women, the States Parties have undertaken the obligation to embody the principle of equality of men and women in their national Constitutions or other appropriate legislation and to adopt laws or measures including sanctions where appropriate, prohibiting all discrimination against women.

Though Bangladesh is a signatory of the CEDAW, she has not ratified all of the provisions of the Convention. As a result, it has become fruitless in one sense. Due to several reservation clauses—Art 2 and 16 (c), CEDAW have failed to give any fruitful result for women of Bangladesh. Women Organisations, Human Rights activists are strongly claiming for withdrawal of reservations. We need a lot of changes in the existing personal laws as there are a great deal of discrimination and inequality between women and men in said laws.

Under the provisions of Muslim Law of inheritance a son takes the double portion of a daughter. This is one kind of discrimination to women's dignity. Another discriminating provision is that woman enjoys unequal right as a witness. There is a contradiction between Muslim Law and the Evidence Act of 1972 regarding a witness. According to the Evi-

denance Act women have equal status as witnesses with men. There are also some other provisions in Family Laws regarding minimum age of marriage, polygamy, divorce, guardianship and custody, where women have unequal rights. Women under Hindu law in Bangladesh are deprived from the right to property. According to the law of inheritance a Hindu daughter who is deaf or lame, cannot inherit from her father's property. On the other hand a widow cannot inherit her husband's property. She can enjoy only life interest in her husband's property. She cannot transfer the property.

Women are mostly the victims of cruel acts. They have to face violations of their rights like trafficking, rape, acid burn, fatwa etc. Our society is not conscious enough to protect their rights though we have enacted the Cruelty to Women (Deterrent Punishment) Ordinance 1983 (now repealed), the oppression of women and children (Special Enactment) Act, 1995 etc. These laws do not give us tangible results in preventing oppression or cruelty to women. The reason is that we have failed to create social awareness about these laws and there is hardly any observance of these laws. The Oppression of Women and Children (Special Enactment) Act, 1995 was enacted for the protection of women from various forms of violence and social crimes. Section 8 (1) of the Act states— Whoever imports or exports, or sells, lets to hire or otherwise disposes of any women with intent that such women shall be employed or used for the purpose of prostitution or illicit intercourse or for any unlawful or immoral purpose shall be punishable with imprisonment of life and shall also be liable to fine.

Section 9 of the same Act states— Whoever kidnaps any woman— a) with intent that such woman shall be employed or used for the purpose of prostitution or for any unlawful or immoral purpose or b) with intent that she will be compelled to marry against her will; or c) in order that she will be forced or provoked or seduced to illicit intercourse shall be punishable with imprisonment for life or with rigorous imprisonment for ten years and shall not be less than seven years and shall also be liable to fine. This Act provided capital punishment in cases of rape, dowry and grievous hurt. The law is firmly strict here. But there exists severe lackings in the system of its legal enforcement against criminals. The writer an advocate, is a Human Rights worker, Khan Foundation

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