

Right to Information Act

The need for *the law* and its present status

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THE UN General Assembly in 1948 declared Freedom of information as a fundamental human right and the touchstone for all rights to which the United Nations is consecrated.

In the last few years, the demand for a law for Right to Information in Bangladesh has grown as has the demand for more openness and transparency in governance.

In Bangladesh, the most important rationale for the enactment for such a law is its link to poverty and good governance. There is no doubt that the poor become poorer and disadvantaged because of their lack of access to information. On the other hand restricting public from accessing information has resulted in a culture of secrecy that has permeated throughout the governance structure creating serious obstacles to accountability of duty bearers.

Bangladesh Constitution

Although our Constitution does not specifically mentions the Right to Information, Article 39 (2) of the Constitution states that subject to any reasonable restrictions imposed by law in the interest of the security of the state, friendly relations with foreign state, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence, a) the right of every citizen to freedom of speech and expression and b) freedom of the press are guaranteed.

Present status of RTI law in Bangladesh

In 2002 the Law commission drafted a working paper on the Right to Information Act which was sent to the Information Ministry for finalization. Since then in spite of several attempts, civil society groups have not been able to discover its present status. In 2005, Manusher Jonno Foundation organized a South Asian Convention to raise awareness on the issue among different stakeholders. In 2006, a group of legal experts facilitated by MJF drafted a revised RTI law based on the earlier draft of the Law Commission.

The reasons for a revised draft were the following

I) It was expected that this Act would prevail over the Official Secrecy Act. But in reality the proposed Act has been made applicable subject to certain provisions of the Official Secrecy Act.

II) In the proposed Act, some rules are added where the public authority is not bound to give information by showing the excuse of safety and state security.

III) The structure and power of the information tribunal has been mentioned but without any specific time limit. As a result one can easily be harassed without decision for a long period of time.

VI) In Section 8, the aggrieved person who is denied access to information is entitled to get Tk.5000/- as compensation, which should be rationalized.



This draft has been widely circulated for comments and inputs from a cross section of people including professional groups, business community, lawyers, academics etc. A number of regional workshops outside of Dhaka were held including a national one in Dhaka. In 2007, after the caretaker government assumed power, the law drafting committee submitted the draft formally to the law Advisor who was also the Information Advisor. He committed that he would take a serious initiative to finalize it.

More recently MJF organized a convention where the Chief Advisor of the caretaker government made a public commitment to enact the law soon. He also advised the Information Ministry to finalize the draft submitted by civil society. In view of this the Information Ministry has formed a committee to finalize it and send to the Cabinet for approval.

Status of Right to Information in some neighboring and C'wealth countries

A number of Commonwealth countries have enacted a law that make it an offence to destroy, conceal, erase, alter or falsify records and contain penalty provisions for these actions. Most access laws cover

information contained in a variety of media using technological innovations for creating and storing information.

India passed the Right to Information Bill in June 2005. Their legislation is being treated as radical measures containing clear rights for those requesting information and strong enforcement mechanism.

The Constitution of Nepal under Article 16 recognizes the right to information as a fundamental right of the citizens and in Article 13, freedom of press and publication has also been guaranteed as a fundamental right. The Nepal government passed the RTI Act in August 2007.

In Sri Lanka, Article 14 (1) (a) of the Constitution does not expressly recognize the right to information. It simply guarantees every citizen the freedom of speech and expression including publication. However the Act has not been passed in parliament as yet.

In Pakistan, Article 19 of the Constitution says that every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign states, public order, decency or

morality, or in relation to contempt of court, commission of or incitement to an offence. Pakistan passed the RTI Act through an ordinance in 2002.

The Right to Information law has been passed in 74 Common wealth countries so far.

Why are we talking about Right to Information Law at this time? It is because we believe that this is an opportunity for Bangladesh to strengthen democracy and establish a more open and transparent system of governance. We believe that the RTI law will give people more opportunity to participate in public affairs and hold duty bearers accountable for their actions. It will also promote transparency, a culture of openness and create opportunities for more dialogue and discussions on critical issues between the general people and policy makers. On the other hand people will begin to have confidence in the system which will create a sense of responsibility. I would go so far as to say that it will give people the right to exercise their citizenship.

People never get to know how government funds are spent at national or local levels. People do not get the opportunity to question how development funds coming to the Union Parishad is utilized, what is the government procurement system or how the government safety net pro-

grams are implemented etc. In fact there is little awareness among the general population that getting certain information is their right as taxpayers and citizens.

Unfortunately, a culture of secrecy prevents sharing of information. Certain archaic laws and policies are still in practice that prevents government officials to make information public. In fact the culture is such that even those information that are supposed to be made public by law are deliberately withheld. There is little sharing of information within or between government departments. However, we know that Information if properly given or received reduces chances of misuse of resources and lessens corruption thereby promoting accountability and transparency in institutions.

Let us see who will benefit from the Right to Information Act.

General population will be able to demand information as a right and will therefore feel empowered, their sense of participation in public affairs will increase.

Poor and vulnerable people will demand information on matters critical to their lives and livelihood.

With more openness, people will have more confidence on the system.

Government functionaries will be able to get information

from different departments, ministries etc.

MP's, politicians will be more accountable and will feel the need to fulfill their election pledges.

The Right to Information Act has now been passed in 75 countries. In most of these countries the enactment of the Act was seen as the first step in establishing a democratic open and transparent governance. The impetus for enactment of such a law usually came from the civil society demand for more openness and transparency in governance. However, Implementation of the law is a major challenge in most of these countries. The first challenge lies in changing mind sets and attitude of people who use information as power and are extremely reluctant to part with it. There are also issues of capacity and putting in place systems and infrastructures that will make it possible to provide as well as access information.

We also believe that the ambit of the Right to Information should include private bodies, business sector involved in public service such as institutions as more and more institutions become privatized such as health care, water supply, telephone services etc. NGOs is a huge sector in Bangladesh and deal with large amount of funds meant for public good and should therefore come under the pur-

view of the Right to Information Act.

The media continues to play their role in making information available to public and have been partners with civil society to create demand for such a law. At present a number of organizations are working at grass root level to create mass awareness on peoples right to get information, the need and use for such an Act.

The gender aspect of Right to Information should not be ignored. Women face added constraint to access information due to their exclusion in decision making both in private and public sphere. A special attempt should be made to ensure that women are represented in the drafting of such a law and also in its implementation and monitoring.

Lastly, a law is only useful to the extent that it is used and implemented. The draft law provides detailed description of the office of the Information Commissioner which has to be neutral and will ensure compliance to the law. It is critical that these mechanisms are developed that will enable implementation and monitoring of the law once it is enacted.

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