



Right to information: A right yet to be informed

RIght to information is considered to be a fundamental human right within the rubric of freedom of speech and expression guaranteed by the Constitution of People's Republic of Bangladesh. It also enlightens the term "people's republic of Bangladesh". The term "People's Republic" itself mandates a state obligation to engage all people meaningfully for the attainment of true essence of democracy, and by then the constitution as a supreme law can reflect the solemn expression of the will of the people. With this end, Right to Information Act 2009 is one of the important legislation to establish the "culture of the transparency and accountability" of all public, autonomous and statutory organisations and of other private institutions constituted or run by government. The term "culture of the transparency and accountability" deserves attention as it becomes foreign to get the practice transparency and accountability especially in public bodies where corruption, politicisation and criminalisation are replacing. In this regard, Right to information can be instrumental by empowering people's right to know in all public spheres and this should be granted to an educated man living in the city as well as to an illiterate villager living in the rural area being deprived from many advancement facilities. In Bangladesh there is still a huge gap between rural and urban people in terms of their entitlements and this facilitates the urban people to suppress the rural people keeping them unlettered from their guaranteed right and by this the practice of corruption can be exercised smoothly which completely disregards the constitutional pledges of empowerment of all people. Here Right to information is an important tool to know how the government is performing or where is the money that he or she gives as tax going?

Coming to the Right to information Act 2009, it is found that it enables every citizen access to information from the authority and the authority shall, on demand from a citizen, be bound to provide him with

the information. Here it implies that everybody should aware of their information and if any kind of information is necessary he have to make a demand for it by making an application.

How to seek information?

- Under this Act, people have to apply to the concerned Designated Officer (DO) of the concerned authority directly requesting for information either in writing or through electronic means or through e-mail.
- All information requests must provide the applicant's name, address and other particulars for a response in prescribed format as mentioned in the



Rules.

- Description of the information sought for should be as correctly and clearly as possible.
- One can express a reasonable preference for the mode you wish the information to be supplied, for example, making inspection, having copy, taking note or any other approved mode like e-mail.
- For obtaining information one must pay fees as determined by the DO as prescribed in the Rules.
- The designated officer shall, on receipt of a request by fulfilling the above mentioned criteria, provide the information to the applicant within 20 (twenty) working days from the date of receiving the request. But if more than one unit or authority are involved with the information sought for, such information may be provided within 30 (thirty) working days.
- If the designated officer, due to any reason, fails to provide the information sought for, he shall inform the applicant the reasons thereof in writing within 10 (ten) working days.
- If any person fails to receive information within the

aforesaid time or is aggrieved by a decision of the designated officer, within 30 (thirty) days from the expiry of such period or, as the case may be, from the receipt of such a decision, prefer an appeal to the appellate authority.

- The appellate authority will settle the appeal either by making direction to the concerned designated office to supply the appellant the requested information or dismiss the appeal if it is not considered fit for acceptance.

However the right to seek information from a public authority is not absolute. Sections 7 of the Act enumerates the categories of information which are exempt from disclosure such as information which would

prejudicially affect the sovereignty and integrity of Bangladesh, information that may affect relationship with foreign country and many others described under this section and schedule to the Act. These are made to make a balance between the freedom of information and individual privacy as well as state integrity.

But here, in defining state interest or integrity due sincerity and good faith must be ensured otherwise the misuse of the exemption particularly by the government can make the whole purpose vitiated.

Despite continuous efforts by the concerned authorities, the benefits of right to information are not achieved even after three year of its journey. It is still an alien concept to millions of rural people as they are unaware or in other words reluctant as well as indifferent to know about their rights. Here state can only ensure their right to know by creating mass awareness program and strengthening local implementing units to attain the mandate of the RTI Act. The meaningful implementation of this Act will surely contribute to build the capability approach of common people and make them able for assertion of their entitlements. Only then, the Right to information can be turn into a vehicle towards the journey of empowerment process.

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CROSS-EXAMINING CHILD RIGHTS

Let's fix the age of a child

harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. Every right translated to ensure the human dignity and harmonious development of every child. The Convention also protects children's rights by setting standards in health care; education;

What is reality?

In a recent survey conducted by National Human Rights Commission (NHRC), narrates, "less than 1% respondents had no clear idea about who is a child". Children are born with rights and are entitled to protection. Creating a safe and enabling environment is a precondition in order for them to reach their full potential. However, many children in Bangladesh are at risk working or living in the street endangering their development. Others, less visible to the public see their rights violated under different forms.

Less than 1% of survey respondents believed people are children until age 18. This is in sharp contradiction to the UN Convention on the Rights of the Child (CRC), which asserts that anyone under 18 is a child. Approximately half the respondents believed both

boys and girls stop being children between the ages of 6 and 10, while 16-17% considered them no longer children by age five.

Bangladesh has also ratified the Convention on the Worst Forms of Child Labour, but has yet to do so for the Convention concerning Minimum Age for Admission to Employment. While there is no uniform minimum age for admission to work in Bangladesh, the Labour Act (2006) prohibits employment of children under 14, and hazardous labor for anyone under 18. From the constant lobby and advocacy, Ministry of Labour and Employment recently adopted a National Child Labour Elimination Policy (2010), providing a framework to eliminate all forms of child labour by 2015. However, with 93% of working children employed informally, the Labour Act is minimally enforceable and eliminating child labour will be a huge task.

The age of a children is differently, depicted in our polices and national laws and still there is lack of coordination. But as long as we don't fix the age how we are going to ensure fullest protection for our future generation?

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This is a two-part write up on rights of the child. The concluding part will publish on January 05, 2013.

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From Law Desk.

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

are actually two related but distinct issues involved here. The starting was with the child marriage and it continued with the domestic violence.

The Child Marriage Restraint Act, 1929 makes it an offence for anyone to marry a child. For the purpose of this Act, a girl under 18 is considered as a child. Accordingly, the bridegroom has committed an offence in contravention of section 4 of the Act, which is punishable with imprisonment with up to 1 month. In the similar manner, the guardians of the child have also violated the provisions of the Act by directing the child marriage and are also liable to be punished under the Act.

However, it is notable that the court has to take cognisance of the said offences of child marriage within 1 (one) year of such marriage. In case if one year has already passed, the court will not try the case.

Moving to the next issue, it seems that the bride has been facing domestic violence and torture in her in-law family. Such actions by the members of her in-law family may attract several provisions of the Penal Code, Nari-O-Shishu Nirjatan Daman Ain, Dowry Prevention Act etc.

It is possible that the bride or her parents lodge a complaint against the offenders of her in-law family. The fact that her in-laws have already filed a G.D with the

false contents will not deter them from filing a complaint. It is also possible that they lodge a G.D. with the real factual descriptions. So far as the dower money is concerned, the bride is definitely entitled to receive the same at the time of solemnizing the marriage. She is also entitled to get maintenance from her husband during the continuity of the marriage and also for another three months, in case of the marriage is dissolved by way of divorce, except for some exceptional circumstances. She can demand for the same from her husband.

However, the best possible solution in a family matter lies within the family. The law can certainly give protections to the distressed but entering into a legal battle does not always ensure the best outcome for the parties concerned. The senior members of both the families should sit together to find an amicable and workable solution for the couple taking into account their wishes. If that does not work, the parties may respectfully get divorced without the need of filing cases and counter cases against each other. I hope that the couple will be able to find their best possible solutions with the wholehearted support from their respective parents, friends and well-wishers.

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For detailed query contact: omar@legalcounselbd.com



HC questions RPO provisions

The High Court on December 26 questioned the legality of amended provisions, introducing preconditions for registration of political parties, of the Representation of the People Order, 1972. In response to a writ petition, the court also issued a rule upon the Election Commission and the government to explain in three weeks why the provisions should not be declared unconstitutional and illegal. One precondition, among others, states that any political party must have at least one member who has been elected with the party's symbol once or at least got five percent votes of a constituency in an election after the country's independence. The petition stated that the EC, through an October 23 circular, brought about the amendments and asked political parties to apply with it for registration by December 31 with documents fulfilling the preconditions. The petition was recently filed by Democratic League's General Secretary Safiuddin Ahmed Moni challenging the legality of the amended provisions and stating that fulfilling such precondition in such a short time was not possible for his party. - *The Daily Star December 27, 2012.*

HC order on Skype conversations stayed

The Supreme Court on December 26 stayed for six weeks a High Court order that asked the daily Amar Desh authorities not to publish any report relating to Skype conversations between Justice Md Nizamul Huq and expatriate Bangladeshi legal expert Dr Ahmed Ziauddin. Justice Nizamul, a judge of the High Court Division of SC, resigned from the post of chairman of International Crimes Tribunal-1 on December 11 following a report published in the daily over his Skype conversations with Ziauddin. Justice MA Wahhab Miah, a chamber judge of the Appellate Division of the SC so stayed the HC order that directed the district magistrate of Dhaka to hold an enquiry whether the Press and Publication law has been violated due to publishing the conversation in the newspaper. The apex court judge passed the order following a petition submitted by acting editor of Amar Desh Mahmudur Rahman on December 24 seeking stay on the HC order. The judge also asked Mahmudur to file a leave to appeal petition with the SC against the HC order within six weeks. - *The Daily Star online edition December 26 2012.*

Azad verdict anytime soon

International Crimes Tribunal-2 may deliver the judgement on the war crimes case against expelled Jamaat-e-Islami leader Abul Kalam Azad any day as the proceedings of the case concluded on December 26. The tribunal however did not fix a date for the verdict. The three-member tribunal led by Justice Obaidul Hassan will pronounce the verdict once it becomes ready for the pronouncement, Prosecutor Sahidur Rahman told reporters emerging from the courtroom. Azad, who went into hiding, is facing eight specific charges of crimes against humanity that he had allegedly committed during the country's Liberation War in 1971. Earlier on December 23, the tribunal started recording closing argument against Azad which ended on December 26. - *The Daily Star online edition December 26 2012.*

Mosharraf, Kazi Ferdous held over

Padma bridge graft

The Anti-Corruption Commission on December 26 arrested former secretary of the Bridges Division Mosharraf Hossain Bhuiyan and Superintendent Engineer of Bangladesh Bridge Authority Kazi Mohammad Ferdous in the capital for their alleged link with Padma bridge graft. The arrest was made eight days after the ACC filed a case against seven persons, including Mosharraf for conspiring to commit bribery in the Padma bridge project. The anti-graft body however did not include in the case former communications minister Syed Abul Hossain and former state minister for foreign affairs Abul Hasan Chowdhury. On December 17, the ACC filed the case with Banani Police Station. The other accused are: Executive Engineer of Roads and Highway Department Reaz Ahmed Zaber; Deputy Managing Director of Engineering and Planning Consultant, a local agent Canadian firm SNC Lavalin, Mohammad Mostofa; and SNC Lavalin officials Mohammad Ismail, Ramesh Shah and Kevin Wales. - *The Daily Star online edition December 26 2012.*

Fakhrul denied bail again

A Dhaka court on December 24 again rejected two bail petitions of BNP acting secretary general Mirza Fakhrul Islam Alamgir in as many cases for torching vehicles during the opposition's road blockade this month. The Metropolitan Sessions Judge's Court refused the prayers filed challenging an earlier denial of bail by another court. On December 11, the Chief Metropolitan Magistrate's Court rejected two bail petitions by Fakhrul in the same cases and sent him to jail. During the hearing on December 24, defence counsels claimed that the cases filed against Fakhrul were false as a political leader like him cannot vandalise a waste disposal truck. Opposing the bail petitions, the prosecution said the accused was the key planner of acts of sabotage centring the opposition's road blockade on December 9. The BNP-led 18-party alliance enforced the blockade demanding restoration of the caretaker government system. Police on the same day filed the cases with Paltan and Sher-e-Bangla Nagar Police Stations. - *The Daily Star December 25 2012.*

Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those.

Please send your mails, queries, and opinions to: Law Desk,

64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel:

YOUR ADVOCATE



Query

A girl on my neighborhood got married by her parents at the age of 16. She has not gone through good time at her in-laws. They used to torture her very frequently. At one point she was compelled to escape from there. But she hasn't brought anything with her like gold ornaments or money. Her mohorana is still not being paid. Her guardians are not filing any case as they are in fear that they have already done a crime by marrying their daughter at the age before 18. Meanwhile they are informed that her in-laws have filed a G.D. in her name for escaping with valuable things. Now at this situation what can be remedy in law for them? Can she get her mohorana or maintenance from her husband?

Nafiu Akther
Agrogaon, Dhaka.

Response

Dear Reader, thank you very much for your query. I am glad that you have taken up the issue of your neighbor seriously. It is quite unfortunate to know that child marriages are still taking place in the country even in the heart of the capital-Dhaka. We have not been able to eliminate the child marriage despite having legislative restrictions and despite doing continuous and detailed activities for raising awareness against the same. There