

## Right to Information Act for Good Governance: Bangladesh Perspective

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### Abstract

*Right to Information (RTI) is considered as a fundamental human right everywhere in the world. An effective RTI act has the potential to empower people to engage themselves more meaningfully in the democratic process with a view to increasing transparency and accountability in the mechanism of good governance and also reduce corruption. In Bangladesh, There are some laws and legal provisions like The Official Secrets Act (1923), The Evidence Act (1872), The Penal Code (1860), Government Servant (Conduct) Rules (1979), The Code of Criminal Procedures (1960), The Rules of Business (1996) The Oath of Secrecy, curtail people's right of access to information. On the other hand, United Nations (1946), UN General Assembly (1948 & 1966), The Commonwealth Law Ministers (1980), RIO Declaration (1992), UN Commission on Human Rights (1993 & 1995), The Commonwealth Expert Group Meeting (1999), The Commonwealth Human Rights Initiative (2003) part special emphasis on my establish RTI act in every country. No fewer than 75 countries, including India, Pakistan and Nepal, have introduced the RTI acts under different heads (Haque, 2008). In Bangladesh, the president has finally approved RTI ordinance, 2008 (RTIO, 2008) on 20 October 2008. This article analyss the importance of RTI ordinance for ensuring good governance of Bangladesh, identifiys the obstacles to the enactment of RTI act. present situation of Bangladesh.*

### 1. Introduction

In recent years, there has been surge of interest and increasing concern about governance issue in the development debate. The concept of governance and good governance is as old as human civilization and it can be found in ancient Indian literature like *Valmiki's Ramayan* that contains comprehensive lessons on the subject (Singh and Chauhan, 2008). However, with the development of society and refinement of its

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economic and political structures, these concepts have also been undergoing a quantitative and qualitative change. For instance, *Kautilya's Arthashastra* is a famous treatise on governance but today the world is entirely different from what it was in the ancient times (Singh and Chauhan, 2008). Now, new global standards of governance are emerging and accordingly the elements of governance are being modified. Citizens of developing countries are demanding better performance on the part of their governments, and they are increasingly aware of the costs of poor management and corruption. Day by day, the intellectuals, bureaucrats and civil society members are accepting the spirit of the concept and conceptualizing it in their own experience and environment. In Bangladesh, all the internal and external actors of politics, administration and development are emphasizing on the need for good governance. Today it is not only academic issue rather it is being discussed in aid forum and executive meeting and discussions. But actual picture of governance in our country does not prove to be good and satisfactory. So, various factors are related to ensure good governance. Right to Information (RTI) is the key among these. We all know that information is power and the spirit of democracy and the right to information is considered as a fundamental human right everywhere in the world. But like many other fundamental human rights, such as right to food, shelter, clothes, medicate and education, the RTI is also faced with an identical fate of non-realization in Bangladesh. An effective RTI has the potential to empower people to engage themselves more meaningfully in the democratic process with a view to increase transparency and accountability in the mechanism of governance and also to reduce corruption (Haque, 2006). Therefore RTI is now considered in many other countries as a central development theme and is emerging as one of the most challenging issue in Bangladesh. This challenge becomes more explicit when access to avail information related to people's lives is denied. Usually RTI is considered as a development tool, however, many believe that it should be recognized as a 'right' since it is related to almost all aspects of people's lives and well being (Anam, 2005). In recent years, there has been an almost unstoppable global trend towards recognition of the RTI by countries, intergovernmental organizations, civil society and the people. The RTI has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings. The RTI forms the crucial underpinning of participatory democracy- it is essential to ensure accountability and good governance (Kumar, 2003).

The purpose of this article is to comprehend the importance of RTI act for good governance, identify the constraints to formulate RTI act and explain major argument for establishing RTI act in Bangladesh with the present situation.

The article is based entirely on secondary data, which encompass relevant acts, rules & regulations, the constitution of People's Republic of Bangladesh, newspaper articles and Internet supports etc.

## **2. Right to Information**

Right to information is a key underpinning for work in democratic governance and is vital for promoting 'open governance' and the accountability of public decision makers as well as for strengthening transparency, participation and the rule of law. The right to information is not only fundamental for an open and democratic society but is a key weapon to fight against poverty and in accelerating human development.

According to the draft RTI ordinance 2008 of Bangladesh, "Right to information" means the right to obtain information from any public authority and it includes taking notes and obtaining photocopies or certified copy of any document or record, taking certified sample of any materials, obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

Right to information and freedom of expression are international human rights norms. Article 19 of both the UNDP Declaration on Human Rights and the International Covenant on Civil and Political Rights (ICCPR) states that the right to freedom of expression includes not only freedom to 'impart information and ideas of all kinds', but also freedom to 'seek' and 'receive' them 'regardless of frontiers' and in whatever medium (UNDP, 2003).

So, RTI is not only about promoting and protecting right to information but also is equally concerned with promoting and protecting communication (use of information) to voice one's views, to participate in democratic processes that take place at all levels (community, national, regional and global) and to set priorities for action.

## **3. Good Governance**

"Good governance" is a relatively new term that is often used to describe the desired objective of a nation-state's political development. The principles of good governance, however, are not new. Accountability, effectiveness and efficiency, participation, transparency, responsiveness

and equity are the major characteristics of good governance as outlined by the United Nations.

The World Leaders at the 2005 World Summit concluded that good governance is integral to economic growth, the eradication of poverty and hunger and sustainable development. The views of all oppressed groups including women, youth and the poor must be heard and considered by governing bodies because they will be the ones most negatively affected if good governance is not achieved (<http://issues.takingitglobal.org/governance>).

"Good governance is important for countries at all stages of development. Our approach is to concentrate on those aspects of good governance that are most closely related to our surveillance over macroeconomic policies—namely, the transparency of government accounts, the effectiveness of public resource management, and the stability and transparency of the economic and regulatory environment for private sector activity (Michel Camdessus, IMF Managing Director)".

In general good governance means an ideal governing system that is inevitable for political, economic, social and cultural development of a country. Ideal governing system means the ideal orientation of a state that works best to achieve self-reliance, sustainable development and social justice and the ideal functioning of government that operate most efficiently.

#### **4. The Importance of Right to Information**

It is as a keystone of democracy that RTI is most important. Information held by public bodies is not only for the benefit of officials or politicians but also for the public as a whole. Unless there are good reasons for withholding such information, all interested parties should be able to access it. More importantly, freedom of information is a key component of transparent and accountable government. It plays a key role in enabling citizens to see what is going on within government and in exposing corruption and mismanagement. Transparent and open government is also essential if voters are to be able to assess the performance of elected officials and if individuals are to exercise their democratic rights effectively, for example through timely protests against new policies or by using their vote against candidates who have indulged in undemocratic activity.

RTI and freedom of expression is a fundamental right and must be held as a cornerstone of democracy. In its absence, government can and often does, behave with impunity. It is argued, however, that it is not an absolute right—the International Covenant on Civil and Political Rights (ICCPR) for instance, specifies certain permissible constraints. One of these is the right of the state to withhold information ‘for the protection of

national security or of public order or of public health and morals'. This is irascibly vague and provides many loopholes for governments to use this wording as a basis for restricting information that is inconsistent with their ambitions. For instance, it is now widely recognized that the Asian financial meltdown of the late 1990s was due in part to draconian censorship that prevented reporting on government corruption (<http://www.cerebration.org/information.html>).

There are various observations from existing situations in the following (Chowdhury, 2007):

- Lack of market price information puts a farmer in a disadvantageous position in negotiating the price of his/her produce.
- Lack of correct health information puts the poor pregnant woman in a remote village at risk of losing the child.
- Lack of knowledge of legal recourse leaves the abused wife in a perpetual violation of her human rights.
- Lack of knowledge of what relief supplies have been sent by the government to a flood affected area cheats the deserving of their rightful share.
- Lack of law that mandates the government to make public any information that is not a threat to national sovereignty and security sets the stage for corruption at every level of the society and administration.
- Ask a day laborer whether the contractor gave him his allocated share of remuneration at the end of the day; he does not know, and does not even think of asking.
- Ask a parent whether she has received the stipend allocated by the government for her school-going daughter; she does not know, and is scared to even ask.
- Ask the villagers if they know what share of the allocated budget is being spent on the bridge being constructed over the small stream; the villagers will typically express grave concern that misappropriation of funds was very likely, but they dare not investigate the matter further since they have no information on how much was allocated and how much was being spent.

So, RTI is important for many reasons. Chief among these is the contribution it makes towards:

- Creating a more open and democratic society.
- Reducing poverty (Achieving the Millennium Development Goals [MDGs]).
- Challenging corruption and enhancing transparency.

- Make the country safe and stable.
- Help the country's economy develop.
- Benefits of public facilities etc.

### **5. Constraints to Formulate RTI Act in Bangladesh**

In Bangladesh, where democratic governments have been in power since 1991, there are some laws in force these are antithetic to the right to access to information. The Penal Code (1860), the Evidence Act (1872), the Code of Criminal Procedure (1898), Official Secrets Act (1923), Bangladesh Constitution (1972), Government Service Conduct Rules (1979) and the Rules of Business (1996), are such restricting laws that are being imposed by the governments to curtail people's rights of access to information (Anam, 2005).

#### **a. The Penal Code (1860)**

Section 499 of this Code restricts person to express their belief, expression by words (written/spoken), signs or by any other means he/she has been defamed, entitles him/her to sue for defamation. This is a risk especially for journalists to collect and publish information.

#### **b. Evidence Act 1872**

Restricting articles of the act are 123, 124 and 125. Section 123 has put the matter of getting unpublished official records on the permission of the head of department. "No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit." Head of the department of the concerned office can permit in providing information but nothing to do on his denial. Even the Court is bound to accept the decision of the public officer.

Under section 124, no public officer shall be compelled to disclose communications made to him in official confidence when he considers that public interest would suffer by the disclosure. There is no clear definition of public interest, suffering. If a disclosure is against public interest is to be decided by the concerned official and does not fall within the court's jurisdiction.

According to section 125, a civil servant is exempted from court orders for production of documents or questioning with regard to information but why privileges are claimed, have to be explained to the court.

#### **c. Code of Criminal Procedure, 1898**

With the help of section 99 A, the government by official gazette can forfeit any book, publication under Press and Publication Act. This is a

threat to the freedom of press and publication. Right to information includes both rights to know and right to make know.

#### **d. Official Secrets Act, 1923**

Official Secrets Act is operative in almost every country of South Asia, which were under British colonial rules. These Laws were brought into force to suit their agenda of preserving an oppressive regime. These have been adopted by independent nations for promoting vested political interest.

- In this Act sub-section 8 of section 2 has defined prohibited area in a very wide range limiting the areas for collecting information.
- Section 3 deals with disclosing information against the state's interest. The penalty provision under this section does not provide nay scope for defending.
- Section 4 states that only for presumption of giving information to foreign agents, offense will be considered.
- According to section 5 any person can be convicted only for the disclosure of information possessed by him. In this presumption is enough to prove disclosure which can affect the sovereignty, integrity, security and the interest of the state, assist the enemy of the state, degrade the friendly relation with the other states.

In most of the cases Government interpret the terms 'enemy', 'foreign agent', 'security or interest' in its own way and restricts the flow of necessary information. Secrecy Act instead of being used in the time of war or emergency and for defense is being used in a way that it strikes at the core of the democratic right of the people. In Bangladesh, this Act has been used as an instrument to limit the growth of independence and impartial journalism.

#### **e. Bangladesh Constitution**

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. The interpretation of this Article is intended to include discussion and dissemination. Although the constitution does not specifically mentions the right to information in Commonwealth countries such as India and Sri Lanka, courts have read this right into the Constitutionally recognized right to freedom of speech and expression or freedom of thought.

**f. Oath (or affirmation) of secrecy**

According to the Bangladesh constitution (Article No.148), “I...do solemnly swear (or affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Prime Minister (or as the case may be) except as may be required for the due discharge of my duty as Prime Minister (or as the case may be).”

**g. Government Servants (Conduct) Rules, 1979**

Article 19 of the Government Servants Conduct Rules, 1979 says: "A government servant shall not, unless generally or specially empowered by the government in this behalf, disclose directly or indirectly to government servants belonging to other Ministries, Divisions or Departments, or to non-official persons or to the Press, the contents of any official document or communicate any information which has come into his possession in the course of his official duties, or has been prepared or collected by him in the course of those duties, whether from official sources or otherwise."

**h. Rules of Business 1996**

The Rules of Business, 1996 has described the allocation of responsibilities of respective ministries and departments/divisions. According to The Rules of Business, Ministry of Information is directed to take initiatives for publicity of internal and external policy. Moreover it is Information Ministry's responsibility to build "coordination of publicity activities of the different Ministries/Divisions and Bangladesh Missions abroad"(Schedule 1 of the Rules of Business, 1975). The ministry of Information has the major role for "Preservation and Interpretation of the policies and activities of the Government of Bangladesh through the medium of press" But this is not in practice.

**6. Argument for Formulating RTI Act in Bangladesh**

In its Practice Note on RTI, UNDP recognizes that the more readily understandable official information is made available to the people, the more a governance system can be declared as democratic and open. The Practice Note promotes the establishment of legal mechanisms that ensure that people, especially the poor, have access to information, which enhances their ability to exercise their rights. It also supports enhancing awareness of citizens' rights to official information, particularly that impact directly on poor people's lives. This Practical Guidance Note focuses on one very critical aspect, i.e. the need for legislation on the “right to information (RTI)”. The RTI is not only fundamental for an open and democratic society but is a key weapon in the fight against poverty and corruption. The terms RTI and freedom of information are



often used interchangeably and have long been regarded as a fundamental human right.

Very early on, RTI was recognized as a fundamental right within the **United Nations**. In 1946, at its first session, the UN General Assembly adopted Resolution 59(1), which stated: "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the UN is consecrated." In ensuing international human rights instruments, freedom of information was set out as part of the fundamental right of freedom of expression, which included the right to seek, receive and impart information (Kumar, 2003).

**In 1948, the UN General Assembly** adopted the Universal Declaration of Human Rights (UDHR) which guarantees freedom of opinion and expression: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (Kumar, 2003).

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the **General Assembly in 1966**. This guaranteed: a) Everyone shall have the right to freedom of opinion; b) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of his choice; and c) The exercise of the rights. ...carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary (Kumar, 2003).

**In 1980, the Commonwealth Law Ministers** meeting in Barbados stated, "public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information" (Kumar, 2003).

**1992 Rio Declaration on Environment and Development:** Principle 10 of the 1992 Rio Declaration on Environment and Development first recognized the fact that access to information on the environment, including information held by public authorities, is the key to sustainable development and effective public participation in environmental governance. **Agenda 21**, the 'Blueprint for Sustainable Development', the companion implementation document to the Rio Declaration, states: "Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to

have a significant impact on the environment, and information protection measures" (Kumar, 2003).

**In 1993, the UN Commission on Human Rights** established the office of the UN Special Rapporteur on Freedom of Opinion and Expression. Part of the Special Rapporteur's mandate is to clarify the precise content of the right to freedom of opinion and expression (Kumar, 2003).

Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, elaborated on this in his **1995 Report to the UN Commission on Human Rights**, stating: Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked. This quotation highlights the importance of right to information at a number of different levels: in itself, for the fulfillment of all other rights and as an underpinning of democracy (Khan, 2007).

More recently, the Commonwealth has taken a number of significant steps to elaborate on the content of that right. **In March 1999, the Commonwealth Expert Group Meeting** in London adopted a document setting out a number of guidelines on the right to know and freedom of information as a human right, including the following: Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the State, as well as any government-owned corporation and any other body carrying out public functions. These principles and guidelines were endorsed later at the Commonwealth Heads of Government Meeting in November 1999 (Kumar, 2003).

**The Commonwealth Human Rights Initiative (CHRI) report 2003**, titled "Open Sesame," called for enactment of laws to ensure liberal access to information in all Commonwealth countries by 2005, and ensure effective access to information (Haque, 2007).

The above international instruments have set a standard for countries to be followed in their domestic domain, and ask the state parties to ensure freedom of information for openness in government activities. Over the years, the United Nations Human Rights Committee and UNESCO have been very dynamic in their efforts to expand the meaning of freedom of information to include access to official records, access to personal information and accessibility of media.

In many countries there are constitutional guarantees for the right of access to information, but usually these are unused if specific legislation

to support them does not exist. Over 70 countries around the world have implemented some form of such legislation.

Other countries are working towards introducing such laws, and many regions of countries with national legislation have local laws. For example, all states of the United States have laws governing access to public documents of state and local taxing entities, in addition to that country's freedom of information act which governs records management of documents in the possession of the federal government. In Western Europe, only Germany and Switzerland lack legislation. Nearly all Central and Eastern European countries have adopted laws as part of their democratic transitions. Almost a dozen Asian countries have either enacted laws or are in the process of doing so. Similarly, in South and Central America, several countries are considering laws. Many countries in southern and central Africa are following South Africa's lead, with varying proposals for formulating freedom of information laws.

Bangladesh is in the list of 12 Commonwealth countries without the right to information laws. The CHRI report also said that the remaining 42 of the 54 members of the Commonwealth either have specific laws guaranteeing right to information or explicit constitutional guarantees. No fewer than 75 countries, including India, Pakistan, and Nepal, have since introduced right to information laws under different heads. According to the CHRI report, the countries with right to information laws are perceived to be the least corrupt. Eight countries out of ten, scoring the best in the Transparency International's 2002 Corruption Perceptions Index (CPI) have effective laws that enable the people to see government files. On the other hand, of the ten countries scoring the worst, not even one has access to information laws. In 2006, over 68 countries had legislation to facilitate access to state records. Transparency International's Annual Corruption Perceptions Index 2005 shows that nine out of ten least corrupt countries had some sort of right to information law enacted, and nine out of ten most corrupt countries did not have such legislation. So, various arguments are available for formulating right to information act to ensure good governance.

## **7. RTI Act in South Asian Countries**

In the case of **Afghanistan**, there is apparently a lot of emphasis on national security despite the provision of Article 5 in their Right to Information draft Media Law. This has made the matter of access very complex and created procedural questions with regard to the obligation of disclosure. Precise regulatory principles are also missing pertaining to refusal and possibility of appeal from any refusal. In addition, there are

also vague areas regarding management of information and promotional measures.

**In Maldives**, a law on press freedom, despite numerous restrictions, was adopted in August last year. However, their parliament is yet to agree on any law on access to information. A regulation of sorts pertaining to right to information has been ratified by the Maldives President through a decree on 5 May 2008, but is not expected to come into effect till 2009. In the meantime existing regulation allow an institution to refrain from starting whether information is available or not – and that includes cabinet records and information related to ‘economic stability’ (which creates scope for great subjectivity).

**Bhutan** is presently going through an important process of transformation in its quest to adopting democratic governance. They still do not have any clear law guaranteeing right to information. Government authorities however agree that Bhutan needs to take the necessary steps in this direction. The fact that they understand that such a right is consistent with constitutional obligations is an important positive indication.

**The Nepalese** Right to Information Act 2007 adoption last year was an important step in giving practical effort to their Interim Constitution’s guarantee of the right to information. It has been a progressive piece of legislation. Nevertheless, it needs to do more to bring the engagement up to international standards. A more constructive and inter-active process within the parliament and with the civil society in Nepal will hopefully address some of the unresolved issues. I am referring here particularly to certain overrides that have been included on the basis of so-called national interest. There is also the procedural question of applicants seeking information having to submit reasons for their requests. This is not only contrary to international standards but also potentially places the burden of proof on the applicant.

**In Srilanka**, despite both major political parties agreeing on the need for a Freedom of Information Act, there are worrying signs that the government is trying to reintroduce harsh media controls to curb free flow of information. This country now is the Chair of SAARC. One can only hope that there will be more of a constructive engagement with independent media rather than against it.

The **Indian** RTI Act was introduced to the Indian Parliament in July 2000. It came into effect on 12 October 2005. Supreme Court of India had, in several judgments prior to enactment of RTI Act, interpreted Indian Constitution to read right to information as the fundamental right as embodied in right to freedom of speech and expression and also in right to life. RTI act laid down a procedure to guarantee this right. Under

this law all government bodies or government funded agencies have to designate a Public Information Officer (PIO). The PIO's responsibility is to ensure that information requested is disclosed to the petitioner within 30 days or within 48 hours in case of information concerning the life and liberty of a person. The law was inspired by previous legislation from select states (among them Maharashtra, Goa, Karnataka, Delhi etc) that allowed the right to information (to different degrees) to citizens about activities of any state government body. A number of high profile disclosures revealed corruptions in various government schemes such as scams in public distribution systems (ration stores), disaster relief, construction of highways etc. The law itself has been hailed as a landmark in India's drive towards more openness and accountability.

**In Pakistan**, Article 19 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 court has taken the same approach as Srilanka bringing the right to information within the purview of freedom of expression. In Pakistan, the freedom of information ordinance was promulgated in October 2002 to provide for transparency and freedom of information to all, and clearly states that all citizens of Pakistan have the right to access public records.

## **8. Bangladesh Standards**

### **a. *Historical Background***

Right to information (RTI) is a widely discussed subject in recent days. There is a growing sense of awareness about the necessity of RTI throughout the world. Many countries today are showing more and more interest for implementation of an act to ensure RTI. This they are doing in order to achieve transparency, accountability and overall good governance for securing human rights. The same is also applicable to Bangladesh. today it is an accepted fact that in order to establish good governance and ensure human rights, flow of information and its easy availability needs to be guaranteed. Despite an abundance of advocacy and citizen groups in Bangladesh, the lack of right of access to information has consigned the country and its people to an abject obscurity about the government functionaries. Several civil society organizations have formed coalitions and networks to work at different levels to make the act a reality. Attempts were taken up and a draft law

on the right of information had been prepared by *Manusher Jonno Foundation* (MJF) based on the existing one by the Law Commission along with addressing its loopholes. A process of consultation was also initiated by MJF with a number of civil society organizations to take inputs from a wide stakeholders group on the draft law and prepare a final draft that has ownership of many, including lawyers, professionals, and the general public. The proposed Right to Information Act, drafted by the Bangladesh Law Commission in 2002, had sent to the Ministry of Law, Justice and Parliamentary Affairs for scrutiny. The main feature of the proposed act was that government functionaries were compelled to supply information to the people enjoying this statutory right. But the loophole remains that the act had been made applicable subject to certain provisions of the Official Secrets Act. But this is not yet to be passed.

After 9/11 of 2007 situation, Chief Adviser Fakhruddin Ahmed's commitment to enacting the law, an eight-member committee headed by the Joint Secretary (Development) Mr. Kamal Uddin Ahmed of Information Ministry was commissioned to draft the law. The committee has analyzed the right to information laws of India, Pakistan and Sri Lanka in addition to the drafts prepared by the Law Commission and *Manusher Jonno Foundation*, a local NGO. After formulating the draft, the information ministry made it open for public to receive suggestions on it. Responding to citizens' request, the information ministry extended the time for sending opinion on the preliminary RTI draft from March 23 up to April 3, 2008. This is for the first time in the history of Bangladesh that a draft ordinance was prepared with the direct participation of the people, by disseminating it widely through a website ([www.moi.gov.bd](http://www.moi.gov.bd)) and arranging dialogues with civil society. This reflects the government's commendable intention to make the RTI act more people oriented.

The committee comprising experts from different fields had included in the draft a number of provisions similar to those in the Indian act since socio-economic circumstances of these two countries match closely. Draft of the act, to be titled Right to Information Ordinance, 2008, had been sent to the cabinet for further action.

The council of advisors, in its cabinet meeting on June 18, approved in principle the right to information ordinance, 2008 (RTIO, 2008) to ensure free flow of information to the people. According to the government sources, the cabinet sent back the draft of the Right to Information (RTI) Ordinance, suggesting a few changes in its wording, rewriting a few clauses and merging some sections. At last 20 October 2008 the President approved the RTI Ordinance 2008.

In the 9<sup>th</sup> parliament election, the Grant Alliance Government led Bangladesh Awami League has come to the power and has decided to pass the RTI Ordinance 2008 with another 52 ordinances. But the effectiveness of the ordinance ceased to have effect on 25 February 2009, as it was not ratified in parliament within the timeframe as per the constitution. Later, the government placed a bill before the parliament to enact a law for continuation of the provisions of the RTI ordinance with retrospective effect from the date of promulgation of the ordinance. The information minister first placed the bill in the house on February 25, containing almost no changes from the caretaker government's ordinance of the same name.

Before placing the RTI bill to the parliament, the parliamentary standing committee on information ministry arranges several meetings with the civil society representatives and media personalities. After scrutiny of the RTI Ordinance 2008, the parliamentary standing committee on information ministry places its report to the parliament named 'Right to Information Bill-2009'. The RTI Bill-2009 has passed in the parliament last 30 March 2009 by voice vote. Earlier the council of adviser's on September 21, 2008 gave final approval to the much-awaited RTI Ordinance 2008 aimed at ensuring people's right to information.

#### **b. Major Characteristics of RTI Act 2009**

Major sections of RTI ordinance are as follows:

1. Under the law, all other organisations funded by public money are obliged to reveal information to citizens. But the ordinance will not cover National Security Intelligence, Directorate General of Forces Intelligence, Military Intelligence Directorate, Special Security Force, Criminal Investigation Department of Police, Central Intelligence Cell of the National Board of Revenue, Special Branch of Police and the Intelligence Cell of the Rapid Action Battalion.
2. According to section 3(a), it will not be hindered to provide information of any existing laws by this law. Section 3(b) mentioned that the regulations of this law will be get preference when the obstacle regulations regarding providing information will be conflicted with the regulations of this law.
3. As per a provision of the bill, organisations are not bound to provide or disclose information that might pose a threat to country's security, integrity and sovereignty or confidential information received from any foreign government, advance information on changes in tax, VAT and budget, matters under trial and investigations.

4. New posts will be created in most of the government offices and non government organisations (NGOs). Officials holding those posts will provide people with the information they seek within 20 days of receipt of applications form them, says the ordinance. But in cases of issues concerning a person's life and death, arrest and release from jail, the officials will have to provide primary information within 24 hours, it says.
5. The law covers government offices down to upazila level.
6. Under the new law, people will have to pay fees for filling application seeking information. But people living below poverty line will be able to apply in white sheets of paper without paying any fees.
7. A three member information committee headed by a chief information commissioner will be formed to properly enforce the law and deal with complaints from the information seekers.
8. The information commission, apart from financial liberty, has been entrusted with the authority to punish or fine officials who will fail to provide primary information on life and death, arrest and release of a person from prison within 24 hours.
9. If any assigned official does not provide information to an information-seeker as per the law, he will have to pay Tk 50 for a day's delay and a total fine not exceeding Tk 5,000, according to a provision of the ordinance.
10. The committee also recommended that the organisations must publish reports every year with details about their structures, functions, laws, rules and notifications.

***c. Limitations & Recommendations on RTI Act 2009***

Albeit, the Right to Information Ordinance 2008 seems to satisfy the clarion call of time, inconveniently it contains some limited limbs:

As the ordinance in section 3, the sub-section of 3(a) is totally opposite of 3(b). If we want to get preference RTI law, 3(a) is not needed. If 3(a) exists in the law, most of the cases information might be disclosed by 3(a).

As the ordinance reads in Section-7 “application for access to information under this law may be rejected, if there is apprehension that disclosure would prejudicially affect the sovereignty, honor, security, integrity, foreign policy, defense or relation with foreign state or organization”. So, it is plainly to be understood that no information could be obtained in time of or regarding any contract like “SOFA” or “HANA”, and even also for when our state authority intends to enter into a contract with other foreign organization like Asia Energy.



Because, such disclosure, as hereby apprehended, would emerge unexpected public reaction or opposition which is seemed to result in weakening the relation with these organization. But what is about the irony of the seventieth decade, when thousands of the people of the West Pakistan had to die by cyclone and then government of Pakistan was never intended to reveal the fact, rather interpreted the approach to through light on the truth by the newspaper and some politician, as an evil effort to spoil the “image” of the country.

Really, it is a matter of regret that state security, sovereignty, public interest etc. these kinds of sensitive word are used by the authority to protect themselves, which always traces the message of misuse by keeping touch with the past. So, for not to let the concern be repeated, is not it a must to define these words as to culminate their limits?

Sub-section (d) of 7 likewise proceeds on and restricts the right to information in the case where the disclosure would harm commercial trade or strategic interest of the person or authority. But it is a normal inclination to keep the interest up and therefore to secrete the information which people or authority would prefer. So, where does the effectiveness of the ordinance lie while it excludes these kinds of information from the ambit of right to know?

In the same way Sub-section (e) of Section (7) confer the right on the person or authority to conceal the information where it is likely to disturb the economic management of the government or likely to benefit any particular person or organization and also where it relates the income tax, custom tax and tariff or exchange rate of currencies or the monitoring or administration of economic management. Moreover, the protection of personal privacy has been secured under Sub-section (h), but that what personal security means, still scarce the clarity, which would be sufficient to cause the confusion as to whether the news of restoring national resources like deer or relief materials from the house of an honorable member of the parliament be considered as personal privacy and therefore will not be provided.

Various sub-section also permits that information could be concealed if its disclosure goes against public interest. But the question arises, what will be the feature of public interest and the nature of threats to it? So, thus any kind of information may fit with the so-called status, which will escape the information from being published. However, of appeal, the right has been ensured. But what would you call the situation when “*Sofura Bibi*”, the representative of the have-nots of a rural village of Kurigram, comes to their Chairman to inquire about the relief and

becomes completely deprived of, as it is impossible for her to come up to Dhaka and make the Chairman of the Commission know about the fact by way of appeal? So, will not it be sufficient to call it “a cock and bull story”?

Of Section (7), thus, all of the sub-section has been arranged so flatly that it creates a “pigeon hole” through which any kind of information may be dropped out fallen into the dark.

Verily, state security, sovereignty, foreign policy and defense are too important to be reserved and thereby to be controlled to some extent. But for removing the uncertainty it would be convenient to make clear-cut contents of these concepts. And likewise there should have a time-lag after which every information, whatever their merit may be, will be published by considering that no information should be unknown as like as the American State Department Seems.

Besides, it is very much necessary to make direction paper for containing and maintenance data of any authority. But it should not be as like section 5(3) which are reflected in RTI Ordinance. It should be imitating for the same type of institution and it should be developed a system for transferring data to the people by a minimum fee. Sometimes, government and other various institutions have responsibility to deliver their information without the demand of people, it should be ensured in RTI Ordinance 2008.

Besides, for avoiding transparency and accountability some persons or institutions can damage important documents willingly. It can be said criminal offence for damaging documents that is recommended in article 19 named International Standard Series.

It is mentioned that every government institutions will have to publish minimum one report in every year considering the important of information with demand and supply of people that is reflected in RTI Ordinance. But, it is not mentioned to arrange open meeting by government institution for disseminating information to the people with the international standard. Internationally government has responsibility to orient the people about administrative discussions by open meeting in RTI act of any country. It is needed to arrange meeting with circulating notice like the meeting of elected representatives, the meeting of planning related matters of government; government decisions that is related to public interest which should be reflected in this RTI Ordinance.

It is not reflected ‘the Protection of Whistle Blower’ in any section of RTI Ordinance. If any government officer or staff wants to publish willingly about any corruption news of individuals, government should ensure the security of that people that is not mentioned in RTI Ordinance.

But, internationally such kinds of security exist. So, if any honest or brave person wants to publish any corruption related news to the people or court, government should ensure security for them. So, 'Protection of Whistle Blower' rules should be covered in RTI Ordinance.

It is not clear by RTI Ordinance; Information Commission will be established on what type of status. It has been said that Information Commission will be directed as an independent institution. But it should be clearly mentioned that Information Commission would be directed independently without any kind of interfere from executive division. It is also mentioned in RTI Ordinance that government, on request of the Commission will appoint officers/staffs in any time for directing the Information Commission. As a result, the people of ruling party may get opportunity for appointing in Information Commission. So, it should be clearly mentioned that Information Commission itself would appoint officers/staffs without interference of government. Besides, the budget of Information Commission will be made by which process that is not clear in RTI Ordinance. So, it should be clearly showed in RTI Ordinance that Information Commission would have power to prepare its own budget and approval in the parliament. For that regards, Information Commission will not be dependent for employment and budget preparation that should be ensured in RTI Ordinance.

Various views or ideas are available in the world with determination of applying fees. Mexico, Canada, Jamaica and Britain have been benefited avoiding the fees. The people who live under poverty line in India are not needed to give fee for getting information. But, ten rupees will have to give in West Bengal. If it is needed to photocopy for providing information, then two rupees is to pay for it. If page is big size, then real costs is to pay. Record supervision cost for every fifteen minutes or its fraction is five rupees. If information is given in CD or floppy, then 50 rupees is to pay for it. For smooth applying of RTI Ordinance in Bangladesh, the rate of fees should be fixed as like India. On the other hand, time duration for providing information should be decreased.

Section 34 of RTI Ordinance shows that The Commission, in order to achieve objectives of this Ordinance and with the prior permission of the Government and by notification in the official gazette, may frame Regulations. But for effective Information Commission, it will have powered as an independent, autonomous institution like Election Commission Secretariat.

We all know that Union Parishad (UP) is only sustainable institution of local area which is very near to the people. People has various types of

allegations about the services of UP. But the Union Parishad is out of the law. All members of the civil society, media personalities and conscious people of the country feel that the spirit of RTI law will not be effective to keep UP out of the law.

In RTI Ordinance, there is no opportunity for the people to participate in the meetings of government and non-government institutions. Besides, there is no obligation to express or publish information enthusiastically by which matters are taken into consideration for decision-making.

#### **d. Issues to be included in RTI Ordinance**

**There are some issues, which can be included in RTI Ordinance that is given below:**

- i. Information Commission should have a broad based website. For that regards, Bangladesh can follow Mexican model. In Mexico, implementation process of RTI act is based on ICT. We should also start Internet based applying system. Because, if this benefit is available for media and conscious part of the society, a large number of people will be benefited. Section 5(2) of RTI Ordinance is the matter of website. Organizational structure, functions, decision making process etc. is not changed every year. But sometimes it needs to be amendment. So, after amendment, within three days necessary correction will have to added in website compulsorily. Besides, government gazette is not provided in time. So, gazette should also publish in website.
- ii. Punishment must be availed for damaging any kinds of records.
- iii. All information those are already 30 years old can be published for the people considering the section 7(a) of RTI Ordinance 2008 of Bangladesh.
- iv. There are rules not to provide information of the functions of RAW, CBI, BSF and other 18 organizations in Indian RTI act considering national security. But, there is an exception, information about corruption and human rights of above organizations in India will be provided if necessary. So, such kind of regulations can be added in our RTI Ordinance.
- v. The president can provide direction the council to inquiry and publish its result by three reasons like physical & mental inability of anybody and gross misconduct. It is not mentioned in constitution, which process will create inability. There is no definition about gross misconduct in constitution. This function is main duties of chief justice and senior two justices. But, in section 16(2) of RTI Ordinance, the president may remove the Chief Information Commissioner or any Information Commissioner from office, if the

Chief Information Commissioner or any Information Commissioner, as the case may be adjudged an insolvent; or has been convicted of an offence which, in the opinion of the president, involves moral turpitude or is unfit to continue in office by reason of infirmity of mind or body or has been guilty of gross misconduct. This is not wise to give same power between two institutions. So, after removing the section 16(2) of RTI Ordinance of Bangladesh, government should follow the section 14(c) of Indian RTI act. Besides, it will be said 'supreme judicial council' in lieu of 'the opinion of supreme court'.

### **9. Concluding Remarks**

Finally, we should all make an effort, at individual and institutional level to get out of the culture of secrecy. For too many years, information has been the monopoly of only a few. Open and timely information has the potential to change the lives of millions. It can also help and assist governments to promote their pro-poor policies and bring benefits to the poor. The current poverty discourse stresses the need to integrate governance issues into poverty reduction strategies because more attention needs to be paid to accountability, transparency, empowerment, responsiveness and participation of people in poverty programmes. By informing all stakeholders on the (human rights) ground rules for development, "participation, accountability and empowerment" become the logical modality for future development efforts. In these efforts the RTI Ordinance can play a catalytic role in articulating a vision for human-centred sustainable development.

RTI Ordinance is also a vital factor for achieving the goals of good governance, which promote transparency and public accountability in the working of government functionaries. Information is a public resource in the hand of the government and the government is to share it with the citizens to the best advantage of the society. We sincerely hope that our present government will give importance the proper implementation of right to information act, which will eventually lead to good governance and give the democracy a real spirit. The media and the conscious people of the country should also come forward to meet their moral obligation for right to information (Haque, 2006). It is expected that the findings of the article would be helpful for the policy makers, concerned organizations and the citizens for creating awareness and undertaking active programs to improve governance. Besides the government will be able to take decisions to improve the law by the recommended corrections of this article.

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