

RTI and Governance¹

Civil society regarded the passing of the RTI (Right to Information Act) 2009 as a ground breaking decision of the current government. The rationale of this Act is; ***since all powers of the Republic belong to the people, it is necessary to ensure right to information for their empowerment.*** The aim of RTI is to empower the people, ensure transparency and accountability in the government, autonomous, non-government and foreign aided organizations. This Act stands as milestone in the path of country's democracy, governance and development. Over 90 countries from all region of the world have either have enacted right to laws or put in place systems to provide with access to government –held information. The spirit of democracy and the right to information is considered as a fundamental human right everywhere in the world. Traditionally, participation in political and economic processes and making informed choices are restricted to small bureaucratic elites in developing countries. Consultation on important policy matters, even when they directly concern the people is rarely the practice. Usually, the consultative processes are severely undermined and devoid of participation of those people who are going to be most affected by such policies and programmes. However, it should be kept in mind that government information is a national resource. Neither the particular government of the day, nor public officials, creates information for their own benefit. The greater the access of the citizen to information, the greater would be the responsiveness of government to community needs. Alternatively, the greater the restrictions on 'access', the greater the feelings of 'powerlessness' and alienation.

RTI carries spirit of many important human rights documents, In the Constitution of the People's Republic of Bangladesh several articles such as 7, 32 and 39 lays the foundation of recognizing it in particular Article 39 (2) states that ***"a right of every citizen of freedom of speech and expression and b) freedom of the press guaranteed."*** The RTI is a major legislative step in the Bangladeshi anti-corruption and transparency movement. It is believed that the citizens armed with information obtained through their exercises of right to know would be able to protect life and liberty as well secure equity and justice before the law. IC(Information Commission) is a non-constitutional independent body; subject to the permission of Act; shall by its own name sue and be sued. In addition, any organization constituted in accordance with the Constitution and under the Rules of Business made under Article 55 (6) of the Constitution is seen as a unit to provide information .Four parties are involved for providing information: applicants for information, DOs (Designated Officials) to provide information, Appellate Authority and IC.

RTI is about empowerment of citizens and building responsiveness of the state and its organs, the political parties, administration and other institutions to the citizens. The RTI Act (Section 4) says that ***"every citizen has a right to Information from the Authority and the Authority shall on demand from a citizen be bound to provide information."*** Thus it creates the opportunity for those in power to devolve it through sharing of information. In regard to the RTI information includes material in any form including records, documents, memos, e-mails, opinions, advices, press releases,

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This Article got published in ***the independent*** A Daily News Paper , Dhaka Bangladesh on 27 & 28 November , 2013, www.theindependentbd.com

circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in forces. It is to be noted that information does not include office note sheet.

There are some clauses of different Acts like The Official Secrets Act 1923, Evidence Act 1872, Rules of Business 1996, Government Service (Conduct) Rules 1979, and the oath (affirmation) of secrecy under the constitution act as an impediment and barrier to getting access to information. Certainly, government servants are still bound by both their oath and service rules to refrain from disclosing information. However, through the RTI Act section (3) while citizens would seek for information all these restrictions can be override; except in regard to exemptions listed in Article 7 of the RTI ACT.

Despite all these limitations, RTI has given people more opportunity to participate in public affairs and hold duty bearers accountable for their action. RTI has enabled people of all strata to seek information from various government and non-government offices.

People who are failing to get information from DOs and Appellate Authority on time provided by the Act have started since 2010 to launch complaints to the IC . In regard to article 9(2) of RTI Act the government and non-government DOs are required to provide the applicants information; if applicants are not given information or gets rejected aggrieved by the decision of the appeal units then under section 24 complaints for not receiving information can be filed to IC. In light of RTI Act (Section 25 [10] can take minimum 45 days and maximum 75 days to resolve complaints.

IC follows civil procedure (in accordance to 1908) to dispose the complaints. Most petitioners usually come from disadvantaged people who failed to get information on old age allowance, special safety net programme, regarding the free distribution of medicines by the community hospitals, rules and regulations to obtain agricultural cards, information about the location of *khas* land, allegations against cooperative officer, information in regard to the rules of medical practitioners, practice of minimum wage, bank related issues, and so forth.

In addition *adivasis* are as well seeking justice from IC. *Adivasi* activist sought information on the quota provided for the *adivasi* students by various public universities and other educational institutions. IC disposed the cases by providing the information through the DOs who previously not attended or rejected the complainers' prayers.

The IC received since 2010 total 473 complaints till date and out of which 239 cases are being disposed of (almost 51%). 211 complaints not accepted by IC to be contested. These complaints are usually sent back to the applicants with directives to reapply by following the RTI procedure duly.

However, the re-application rate seeking information properly is extremely low. This is where IC requires brain storming with RTI forum and other relevant organizations working to benefit people by providing information.

Major causes for rejecting those cases are where the applicant directly complained without seeking the information from the DO and appellate authority; information seekers did not apply to the proper authority; only sent copy of the application to the IC where information was sought and not following RTI procedures and so forth. Nevertheless,

IC constantly takes initiatives to rectify the incorrect applications by contacting with the applicant.

RTI is empowered by the provision that no authority shall conceal any information or limit its easy access (except 8 exempted security and intelligence agencies, [see section 32] as is the case in other countries including India). However, according to Section 32 (2) of the RTI Act points that section 32 shall not apply to such information that are pertaining to corruption and violation of human rights in regard to 8 exempted intelligence organization.

For, instance Tahera Begum of Sayeedpur upazila sought information on tortured women who lodged complain in Sayeedpur police station from January to June 2011. The DO and respectively Appellate Authority refused her to provide desired information and later complaint was launched with the IC and on the hearing day Officer-in Charge brought all required information.

One Journalist sought information on the number of constables got recruited in Dhamrai Upazila, Dhaka , in 2011,2012 and 2013. After failing to obtain the information submitted a complain in IC and later summon was issued and the DO of that thana provided desired information to the journalist.

Most of the cases are actually questioning the governance matters of the government offices and NGOs. For instance, one information seeker sought information on voter list of Subornochar Upazilla of Noakhali District. After failing to get the information from the DO and the Appellate Authority launched complaint with the IC. On hearing the DO pointed that according to the rules of Election Commission voter list with photographs can not be given. Upon hearing the IC instructed DO to provide the voter list without photographs and the complaint was disposed off. One Lady demanded information from Bangladesh Railway on commuter train, lease, tender documents, contract copies-etc. After not being successful to achieve full information from DO and the Appellate Authority launched complaint with IC and later on hearing the IC instructed DO to produce complete information to the complainant and the cases was disposed off.

Not only from mainstream but from CHT (Chittagong Hill Tracts) five applicants from Khagrachari launched complaints with IC for failing to get information on rules of electricity bills, number of meters allocated in 2012, price of meter, TR. Kabikha etc. Later IC on hearing instructed to provide information to respective applicants and cases were disposed off.

Recently Bodiul Alam Mojumder sought information from the Election Commission on income/expenditure of registered political parties with the commission. The DO refused to provide information on the ground that they require political parties nod to release there information. IC pointed out that once political parties have submitted there audit report to the election commission this could be treated as "public Document" and hence could be made public.

Another important case in point is with PSC (Public Service Commission) an applicant of 29 batch demanded to know his score obtained in viva-voce and also written and viva-voce numbers of police, foreign service, administration tax cadre of the same batch in order to compare his position.

PSC refused and in IC hearing mentioned that PSC's higher authority did not empower them to disclose such information as well PSC fears that if given then the number of applicant seeking such type of information would increase.

It could be argued that public institutions are yet to be RTI friendly and requires incorporating the principles of RTI Act. RTI is as well getting used in public litigation organized by activists and NGOs.

However while processing the cases IC is observing that the government offices will have to change the way the government machineries operate and keep efficient computerized records of everything for rapid release of information. Their major responsibilities to prescribe the application procedure, giving access to information from the authorities, fix appropriate price of the information. Also information needs to be stored in terms of categorization/typologies of information.

She needs to become reservoir of information. The other important concern is the role of the DO in charge to provide information. During the hearings by IC in dealing with most cases it has been found that DOs informally require a nod from the appellate authority to provide information to the applicant. DOs are at times suffer from fear factor and reluctant to provide information without prior consent from their respective authorities. It could be because their ACR (annual confidential report) is being evaluated by their respective higher authority. Thus the release of information depends on the superior authority. Also, DOs on many cases is observed that using article 7 of the RTI and the definition of information to avoid in releasing information.

It should be noted that DOs can be penalized as mentioned in the section 27 for providing misleading information, false information and not giving information at all by 20 or 30 working days. Two DOs already have been penalized by the IC Nevertheless; IC is empowered by section 27(3) to recommend departmental action against Appellate Authority for not cooperating with DOs and not providing information at all.

Not being satisfied with the judgment given by the IC 6 writ petition has been issued to the High court. Among them in one particular case the DO of the Dhaka RMC (Residential Model College) in IC hearing refused to provide information to one of the complainant on published results, questions and evaluated exam sheets on the ground that these information falls under the purview of Ministry of Defense.

IC on the contrary pointed out that all government colleges are governed by the Ministry of Education and interesting that RMC's governing body is chaired by the Secretary of Education. Disclosing education related is not going to violate the sovereignty of Bangladesh.

Further there are some limitations faced by information seekers particularly the marginalized people yet to know in regard to seeking information that who is responsible for what and have to encounter power structures that are still not people friendly. In Bangladesh people are following the format given in RTI to seek information from various government offices and NGOs. It should be noted that 70 to 80 % people are not aware of their rights to seek information, let alone ways and means to establish those rights. The ideas and benefits of RTI must reach all levels of society to establish transparency and fight corruption.

ICTs (Information Communication Technologies) along with RTI can support the UP (Union Parishad) to perform these civic functions like informing people about the services, setting up web notice board that will include all the relevant UP information like budget allocation or block grant given for that UP area and which could lead to check whether corruption is occurring in those projects.

Also can publish new development schemes; preserve all information about local people and resources through data base, relief and Vulnerable Group Distribution, birth registration etc. Further Community Radio in this regard can play a remarkable role addressing issues on women's empowerment, climate change, education, encouraging parents to send children in school, etc.

E-governance along with the practice and use of RTI in the region would enhance people's participation in the spectrum of state policy making thereby giving governance and democracy a better foundation.

The impact and implementation of RTI depends on research and monitoring. Both the print and electronic media and a number of organizations are working at grass root level to create mass awareness on people's RTI and use for such a law. The success and failure of the RTI Law at large will depend on the efficiency of the Commission itself, the capability of the government to supply information, a phased wise plan of implementation and mode of engagement and partnership between the government and NGOs/CSOs, journalists, public officials and the public.

Experiences from other neighbouring countries show that RTI is resisted by political elites, business elites, vested interest group, NGOs, media and civil society for polarization and lack of unity. For instance MNCs (Multinational Companies) and Foreign Banks do not fall under the purview of RTI.

However, in India, information about MNCs which is available with Departments, Agencies that have regulatory authority is covered by the RTI Act. In this regard we can look at Section 2(h) that defines public authorities and Section 2(f) which defines information in Indian RTI Act. It should be mentioned here that RTI Act of Bangladesh heavily draws upon Indian RTI Act.

In recent past IC of Bangladesh has dealt with complaints launched against State owned Sonali Bank, Agrani and Janata and DBH (Delta BRAC Housing Finance Corporation LTD) . The IC strongly feels the necessity to bring those foreign banks under the purview of RTI Act which follows the rules and regulations of Bangladesh Bank. The other major challenge is voluntary disclosure of information. No authority shall conceal any information or limit its easy access (except 8 exempted security and intelligence agencies, as is the case in other countries including India).

Information Commission's capacity as guardian institution to ensure peoples' right to know in playing supervising role to monitor performance of public/private institutions as well needs to be enhanced. In addition, the financial, administrative and legal independence of the Commission is of crucial importance to ensure its autonomy.

The bigger budget should be proposed in the national budget and be passed by the parliament.

Finally, we would like to see the set up of IC in Bangladesh within the specified time as a strong and independent IC to which all necessary support is provided so that they are able to play an effective role to protect people's Right to Information. RTI Act has envisaged for providing a framework for promoting interface between the citizens and the government.