

# Enforcement of the Right to Information Act, 2009: Challenges and Opportunities towards Transparency and Accountability

Zafreen Andalceb\*

Emdadul Haque\*\*

## 1. Introduction

Information is not only power but also the oxygen of meaningful democracy. It is not just a necessity for people – it is an essential part of good governance.<sup>1</sup> Bad government needs secrecy to survive and also allows maladministration, inefficiency, wastefulness and corruption to thrive. Right to Information<sup>2</sup> is the key to all rights and the touchstone of all freedoms. Information allows people to scrutinize the actions of a government and is the basis for proper, informed debate of those actions.<sup>3</sup> In this regard the government by enactment of the Right to Information Act<sup>4</sup> (RTIA), 2009, has made an important statement in support of transparency and accountability of all public functions and authorities. Bangladesh now stands at the edge of immense possibility and the RTIA will further strengthen democracy, promote human rights, good governance fighting corruption and transforming the culture of secrecy into the culture of openness paving the way for participatory system of governance. Government power, backed by an informed citizenry, is unassailable, because through full availability to the information and news, an equal partnership between the government and the individual is established, based upon respect for the latter's right to know.<sup>5</sup> Over 90 countries representing nearly five billion people have now adopted right to information (RTI)

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\* Lecturer, Department of Law and Justice, Southeast University.

\*\* Lecturer, Department of Law and Justice, Southeast University.

<sup>1</sup> Callamard, Agnes. 2010. 'World Press Freedom Day reminds us that information is democracy's oxygen', *The Guardian*, May 3, available at: <<http://www.theguardian.com/commentisfree/libertycentral/2010/may/03/world-press-freedom-day-democracy>>, last retrieved on January 1, 2011.

<sup>2</sup> In this article, right to information, freedom of information, access to information and right to know have been used as interchangeable expressions.

<sup>3</sup> Staples, William R. 2007. *Encyclopedia of privacy*, Westport, Conn: Greenwood Press. p. 240.

<sup>4</sup> Act No. xx of 2009.

<sup>5</sup> Foerstel, Herbert N. *Freedom of Information & the Right to Know: The Origins & Applications of the Freedom of Information Act*. Westport, CT, USA: Greenwood Publishing Group, Incorporated, 1999. p. 24.

laws. However, over half of the countries of the world have not yet adopted RTI laws and many that have done so have failed to implement them adequately.<sup>6</sup> Many countries have constitutional provisions recognizing the right of access to information, a number that has substantially increased over the last ten years.<sup>7</sup> The enactment of the RTI law in Bangladesh appears as a dream come true but its implementation, like any other law enforcement, is lot more challenging. This article explores the challenges and opportunities towards transparency and accountability through the application of the Right to Information Act, 2009 in Bangladesh.

## 2. Notion of Information and the Right to Information

Simply information means knowledge and data about something. It may be any material in any form- hard copy or soft copy. According to section 2 (f) of The Right to Information Act, 2009 ‘information’ includes any memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts, project proposal, photograph, audio, video, drawing, painting, film, any instrument done through electronic process, machine readable record, and any other documentary material regardless of its physical form or characteristics, and any copy thereof in relation to the constitution, structure and official activities of any authority. But as per the same section information does not include office note sheet or photocopies of note sheets. Section 2(g) points out that ‘right to information’ means the right to obtain information from any authority. Right to information creates legal entitlement for people to seek information, and includes the duty of the public function bodies, government or non-government, to make information public and easily available. It enables citizen to seek information from duty holders and make duty holders responsible to disseminate important information proactively, even if it is not asked for.<sup>8</sup> John Adams terms information as knowledge putting emphasis that it is indispensable, indisputable, inalienable, indefeasible divine right to all born in the world.<sup>9</sup> He went on saying, “the preservation of the means of knowledge among the lowest ranks is of more importance than all the property of all

<sup>6</sup> Available at: <<https://www.article19.org/data/files/pdfs/press/five-billion-now-have-right-to-information.pdf>> , last accessed on October 2, 2010.

<sup>7</sup> Berger, Tammar. 2010. ‘Public Accountability Mechanisms (PAM) Initiative: World Bank Governance and Public Sector Group’, available at: < [http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/285741-1343934891414/8787489-1361546839123/PAM\\_FOI\\_LIRREVIEW.pdf](http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/285741-1343934891414/8787489-1361546839123/PAM_FOI_LIRREVIEW.pdf)>, last retrieved on January 1, 2011.

<sup>8</sup> Anam, Shaheen. 2009. “Freedom to Know: Right to Information Act and its Implications for Bangladesh” *Forum* (A monthly publication of *the Daily Star*), Vol. 3 No. 6.

<sup>9</sup> Adams, John. 1765. ‘*A Dissertation on the Canon and Feudal Law*’, Boston Gazette, September 30, 1765, in Papers of John Adams, ed. Robert J. Taylor et al., vol. 1, Cambridge, Mass.: Belknap Press of Harvard University, 1977, p. 108.

the rich men in the country". The right to information law can be used emphatically to make a difference to the lives of the poor against the rich and the powerful.<sup>10</sup> In broader perspective right to information also means transparency. Although transparency is often conflated with the right of access to official documents, it is a much broader notion covering a wide set of differing claims embracing not only 'openness in government' but also includes concepts such as simplicity and comprehensibility<sup>11</sup>. As a general matter, transparency is born out of a desire to enhance democracy.<sup>12</sup> In the world the right to information was first recognized in Finland and Sweden<sup>13</sup> under the Access to Public Records Act, 1766. Finland was the first to adopt modern legislation in 1951 while the US followed in 1966 with the *Freedom of Information Act*.

### 3. Historical Background of RTIA in International Law

International law in the world has born with the provision of freedom of information. The right to information is firmly positioned in international human rights law. Since 1946, the United Nations has recognized that freedom of information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated.<sup>14</sup> It is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR), and made legally binding on States Parties to the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR states that 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. The United Nations Convention against Corruption (UNCAC) also explicitly recognises the central role that transparency and the right to information can take in ensuring government accountability by enabling the public to participate in the exposure of corruption.<sup>15</sup> Article 13 of UNCAC requires states to ensure that:

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<sup>10</sup> In Calland R. & Tilley A. (eds). *The Right to Know, The Right to Live: Access to Information & Socio-economic Justice*. The Open Democracy Advice Centre (ODAC). Cape Town. 2002.

<sup>11</sup> Above note 6.

<sup>12</sup> 'The Right to Information: A Fundamental Right'. Lecture at EIPA (Maastricht), May 29, 2000 *aei.pitt*. UN General Assembly, (1946) Resolution 59(1), 65th Plenary Meeting, December 14. available at <http://www.unodc.org/unodc/en/treaties/CAC/index.html>, last visited on June 3, 2010.

<sup>13</sup> Staples, William R. 2007. *Encyclopedia of privacy*. Westport, Conn: Greenwood Press. p. 240.

<sup>14</sup> UN General Assembly Resolution 59(1), 1946, 65th Plenary Meeting, December 14.

<sup>15</sup> Available at: <http://www.unodc.org/unodc/en/treaties/CAC/index.html>, last accessed on April 25, 2010.

the public has effective access to information and to undertake public information activities that contribute to non-tolerance of corruption, as well as public education programmes. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families (CMW) include access to information as a specific right that must be guaranteed for these groups. The same right is guaranteed by the European Convention on Human Rights and Fundamental Freedom of 1950, Other major legislation dealing with right to information include the American Convention on Human Rights (1969), the African Charter of Human and the Peoples Rights (1981), and the European Union Directive on Processing of Personal Data 1995.

#### 4. RTIA in South Asia

The access to information regime in the South Asian countries started basically after 1990s. Pakistan is the harbinger in enacting RTI legislation in the South Asia.<sup>16</sup> But India is more successful for leading the RTI movement in this region after framing Right to Information Act, 2005. Pakistan was ahead of India by three years in framing an RTI law. Pakistan first promulgated a Freedom of Information Ordinance in 1997, which, however, lapsed for want of interest. In 2002, General Pervez Musharaff pushed the idea, resulting in a fresh presidential ordinance branded as Freedom of Information Ordinance, 2002. It has since become part of the 17th Amendment to the Constitution and enjoys the status of law. In February 2004, the Pakistan government promulgated the Freedom of Information (FOI) Rules, 2004 creating wider space for access to information. Nepal passed the information law in 2007, followed by Bangladesh in 2009. Bhutan, Maldives and Sri Lanka have yet to pass such laws. India had adapted itself to an open information culture and lamented the comparative records of their own countries. The consensus was that there was very little RTI awareness among the common people in the region. Pakistan had a head start on RTI, the Indian law was far more comprehensive and deserved praise for allowing access to file notings coupled with a penal provision to deter delay in providing information. However, one of the major challenges to RTI in South Asia is the lack of public awareness and consequently limited use of the law. Street corner interviews in Bangladesh, Nepal and Pakistan found that only 24 per cent of 263 respondents knew about their country's RTI law. So, the enactment of the laws relating to RTI is not a solution for transparency and accountability within the governance system rather fruitful implementation of the legislations is the ultimate goal in the days ahead.

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<sup>16</sup> Policy Brief, 2012, 'Challenges of Right to Information in South Asia' Institute of Informatics and Development, No. 5, available at: <[http://r4d.dfid.gov.uk/pdf/outputs/ids/Protifolon\\_5.pdf](http://r4d.dfid.gov.uk/pdf/outputs/ids/Protifolon_5.pdf)>, last retrieved on October 2, 2012..

## 5. RTIA & the Constitution of Bangladesh

The constitution of Bangladesh does not have any special provision for right to information. However, the Preamble, Articles 7, 11 and 39 of the constitution implicitly recognize the people's right to information. The preamble pledges that it shall be a basic aim of the state to realize through a democratic process a socialist society, free from exploitation upholding rule of law, human rights and freedom, equality and justice for all citizens. Article 7 declares that all powers in the republic belong to the people.<sup>17</sup> Article 11 declares the republic as democracy, and talks to assure human rights and freedom. Therefore, people's right to all information cannot be barred in any way. Article 39 articulates freedom of thought, conscience, speech, and the freedom of press.<sup>18</sup> If real democracy is in practice, then the absence of any particular provision for this right should create no bar in accessing information. Bangladesh being a ratifying state of ICCPR in 2000 was due to enact RTI law lot earlier as per its commitment towards the ICCPR.

## 6. Background of Enacting RTI Act in Bangladesh

The RTI Act 2009 of Bangladesh adopted in the parliament in the first session of the 9th Parliament on May 29, 2009, and consented by the President on April 5, 2009 and came into effect with the gazette notification published by the government on April 6, 2009 marking a culmination of a process that can be traced from 1983 when the Press Commission recommended adoption of an RTI Act, through the Law Commission's Working Paper of 2002 and the civil society demand for an Act that intensified by 2004. As a part of their advocacy for an RTI Act the civil society organizations eventually formed the RTI Forum of nearly 80 organizations led and supported by the development organization Manusher Jonno Foundation (MJF), which drafted the Act and lobbied with the Government. In 2005 Manusher Jonno Foundation (MJF), representing a large network of non-governmental organisations, invited the Commonwealth Human Rights Initiative (CHRI) to provide technical assistance in terms of capacity building, awareness raising, and creating better understanding of the benefits of RTI. Meanwhile, the demand for RTI started to be made by different groups such as media, research groups, academia, NGOs, etc. A process of knowledge building started through developing various communications materials, popular theatre, and songs on RTI, and commissioning of research. Many non-governmental organisations and networks become actively involved in this process. It is important to note that, unlike India, the demand for the law did not start at the grass-roots level. The demand was raised by civil society groups, realising that if Bangladesh were to have any chance of improving governance, curbing corruption

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<sup>17</sup> Article 7 of the Constitution of the Peoples Republic of Bangladesh, 1972.

<sup>18</sup> Article 39 of the Constitution of the Peoples Republic of Bangladesh, 1972.

and establishing accountability and transparency in public institutions, then a law on RTI would be key tool to do so. The Caretaker Government passed the RTI Ordinance 2008 leaving it for ratification by the elected Government. In the meantime, the demand for the RTI Act occupied a central position in public discourse as reflected in the media and eventually in the election manifesto of the major political parties. Concerted with continued efforts by the RTI Forum, this resulted in the adoption of the RTI Act 2009 by the present Government. Result of a collective effort by stakeholders within and outside the Government, the RTI Act of Bangladesh has made a good beginning as a comparable law with those adopted by many other countries in recent times. By enactment of the RTI law, the present government has made an important statement in support of transparency and accountability of all public functions and authority.

## 7. Purpose of RTIA

The preamble of Right to Information Act 2009 says that "all powers in the republic belong to the people, and to ensure the empowerment of the people it is imperative to implement RTI Act." This progressive act also proclaims that "the right to information shall ensure that transparency and accountability in all public, autonomous and statutory organisations and in private organisations run on government or foreign funding shall increase, corruption shall decrease and good governance shall be established. It was evident that in the public sector, access to data had become, to an extent, a method for engaging in personal enrichment. Access and dissemination of information is a very crucial issue particularly for the less developed states where poverty, illiteracy and corruption are pervasive. RTIA is a prerequisite to bring about a meaningful change in any state. A consensus also emerged that, in today's globalized world, the media's role as a watchdog of government was essential for achieving economic and social development. In this context it was also agreed that greater efforts be undertaken to do away with laws that deny media access to information and also unduly restrict freedom of expression. Total enforceable media freedom has probably not yet fully arrived. The connotations of Article 19 of the Universal Declaration of Human Rights guaranteeing freedom of expression as a fundamental right might not be completely in place. Bangladesh has begun to take appropriate steps in the right direction. This will ensure better governance, safety of journalists in situations of risk and permit media to function in full security and independence. With the new right to information law being passed, it could herald the dawn of a different information superhighway in Bangladesh heralding a participatory democracy.<sup>19</sup> Our information superhighway has only been approved with the passing of the right to information law; now it needs to be carefully planned and paved with more than just good

<sup>19</sup> Zamir, Muhammad, 2008. "Freedom of access to information in South Asia", *The Daily Star*, August 30, available at: <<http://archive.thedailystar.net/story.php?nid=52406>>, last visited on May 3, 2010.

intentions, but good deeds. It's time that the information flows free, fast and accurately.<sup>20</sup> First, transparency in government facilitates control of the discretionary powers, actions and also inactions of public authorities. Three aspects can be further distinguished here, depending on the perspective one takes. From an individual point of view, control requires access to information on one's own position *vis-à-vis* the government in order to be able to defend oneself against potential abuses. From good governance perspective and also from the perspective of fair competition right of access to information is an essential corollary to welfare state. From the perspective of the citizen or the public, control is essentially about preventing abuses by those we have chosen to govern us. No agreement exists on how such control can best be assured. The desire to keep governmental abuse and corruption at bay made Sweden adopt in the late 18th century a system of extensive individual rights of access to public documents. The British, on the other hand, have traditionally relied on the concept of ministerial responsibility *vis-à-vis* the parliament in order to prevent abuses and secure public trust. A second rationale behind openness is a desire to increase the rationality, deliberateness and effectiveness of the decision-making process and thus, public confidence in it. The argument is that accountable governors, *i.e.*, governors that can be required to explain their actions to the public, reach better and more rational decisions in a more efficient manner. Openness in government is a two-edged sword however. While political studies have indicated that governing 'in the sunshine' brings about the benefits thus mentioned, too much stress on accountability might also lead to attitudes of legalism and risk aversion (which favours the maintenance of the *status quo*).<sup>21</sup>

## 8. Transparency & Accountability in Light of RTIA

Right to information and the ability to share information empower people, regardless of who and where they are. Information can mobilize, increase transparency and accountability, and it is a stimulus to participation, active citizenship, lifelong learning and social change in the complex ramification.<sup>22</sup> In this way information becomes crucial to ensuring a democratic society. Transparency is essential for a well-functioning democracy because it creates a level playing field and simultaneously citizens that have equal access to information also have equal access to opportunities.<sup>23</sup> A full disclosure of information on government activities promotes

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<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Carlson, Ulla. 2010. "Freedom of Information as a Tool for Empowerment Good Institutions, the Public Sphere and Media Literacy", Paper presented marking the celebration of the UNESCO World Press Freedom Day, 3 May, Brisbane, Australia.

<sup>23</sup> Series of White Papers to promote transparency and combat corruption in Egypt: 'Freedom of Information and transparency in Egypt' prepared by The Center for International Private Enterprise (CIPE) P. 9. link at: <<http://www.cipe-arabia.org/files/pdf/EN-ACCESS-TO-INFO.pdf>>, last accessed on October 3, 2010.

the citizens' participation in the administrative process and ensures the protection of the people's right to information how they are being governed. The culture of secrecy begets corruption. It would be worth noting to consider Robert Klitgaard's formula:  $C=M+D -A$ .<sup>24</sup> Corruption equals monopoly+discretion-accountability. When an organization or person enjoy monopoly power over a good or service having the discretion to decide who will receive it and how much then the door of corruption opens. Professor A.V. Dicey says that wide discretionary power is a threat to rule of law and good governance. In fact, discretion is a power mixed with duty but the person or organization having such power abuses due to lack of accountability. A closer examination of transparency in the context of administrative activities shows that the concept refers to the increased flow of timely and reliable information regarding the decision-making process and services guaranteed to all citizens. To quote James Madison, one of the founding fathers of the United States, A popular government without popular information or the means of acquiring it is but prologue to a farce or a tragedy or perhaps both.<sup>25</sup> Transparency includes three elements. First, information should be accessible to all on equal terms. Second, information must be relevant. Third, information should be of good quality, reliable, timely, complete, fair, and consistent and presented in clear and simple terms. Functional national freedom of information law giving practical effect to the principle of right to know. Instead, most countries in the region maintain 'colonial era Official Secrets Acts' and other secrecy legislations that 'actively undermine' the process of information disclosure. It was also alleged that the problem is further compounded by the culture of secrecy that exists within the bureaucracy. The Right to Information Act adopted in 2009 was an important step in giving practical effect to 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 will hopefully address some of the unresolved issues. 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. It is also controversial because the categories of information that can be accessed to are small and that of exempted information 'abnormally large'; the new law leaves out 20 areas where one will not be able to obtain information from,. The appeal procedure in cases where information sought is not provided is also inadequate. One hopes that the present democratically elected parliament will address the various lacunas present in the provisions of the law and take stern steps.

<sup>24</sup> Klitgaard, Robert, 1997. "Controlling Corruption" , in Kimberly Ann Elliot (ed), '*Corruption and the Global Economy*', Washington, DC: Institute for International Economics, pp.181-185.

<sup>25</sup> Letter from James Madison to W. T. Barry, August 4, 1822, in Jeremy Pope (ed.), *The TI Source Book*, (Berlin: Transparency International, 1999). P. 75.



While the government made great progress by passing the act on March 29 2009, since then they have showed a profound lack of will to get the law up and running. Bureaucratic tangles and red tapism are the major impediments for proper functionality of the RTI.

## 9. RTIA & Good Governance

Greek philosopher Aristotle says “If liberty and equality, as is thought by some are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost”. Good governance comprises of four elements- transparency, accountability, predictability and participation. Firstly transparency refers to availability of information to the general public and clarity about functioning of governmental institutions and departments. Right to information opens up government’s reports and records to public scrutiny, thereby arming citizens with a vital tool to inform them about what the government does and how effectively as well as efficiently, thus making the government more accountable. Regarding the third element that is transparency in government organisations makes them function more objectively thereby enhancing predictability. Information about functioning of government also enables citizens to participate in the governance process indirectly but effectively. Therefore, in a fundamental sense, right to information is a basic necessity of good governance.<sup>26</sup> For many years, indeed centuries, the people have been in their daily lives regular victims of an unremitting tradition of acts of corruption by state authorities graft, extortion, nepotism, arbitrariness to name only a few but have mostly been silent sufferers trapped in settled despair and cynicism. From time to time, courageous 'whistle blowers' have attempted to fight this scourge and bring relief to the people. But in most such efforts the role of the people who are victims of such corruption has mostly been passive, without participation or hope. Such campaigns for the most part have arisen out of sudden public anger at an event, and died down as suddenly, or has been sustained, critically dependant on a charismatic leadership. Consequently, the results of campaigns against corruption have been temporary and unsustainable. James Madison, 4th President of the United States of America Says,” A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance: and a people who mean to be their own governors, must arm themselves with the power which knowledge gives.”<sup>27</sup> Daniel Kaufmann, Manager

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<sup>26</sup> ‘Right to Information: Master Key to Good Governance’, Government of India, Second Administration Reforms Commission, First Report, June 2006, p. 6.

<sup>27</sup> Library of Congress, 1989. Respectfully quoted: a dictionary of quotations requested from the Congressional Research Service (Washington) p.185-186 as cited in Vision Statement for Federal Depository Libraries in 21 Century; available at <[http://www.gpo.gov/su\\_docs/fdlp/council/dlcvision092906.pdf](http://www.gpo.gov/su_docs/fdlp/council/dlcvision092906.pdf)>, last accessed on May 4, 2010.

of the Department of Governance, Regulation and Finance of World Bank has shown an equation to curb corruption.<sup>28</sup> The equation is AC (Anti-Corruption Efforts) = KI (Knowledge+Information) + LE (Leadership) + CA (Collective Action.) J M Balkin opines that when government official or politicians turns into a corrupt then by building mass opinion against them transparency and accountability<sup>29</sup> can be ensured. World Bank president James D. Wolfensohn in a speech in 1999 emphasized the role of information in combating corruption and ensuring transparency and accountability in a government system.<sup>30</sup> Mahatma Gandhi termed information as truth putting emphasis for dissemination of information as conducive to good governance saying that the indescribable lustre of truth, a million times more intense than that of the sun we daily see with our eyes.<sup>31</sup>

It is a good sign that the RTI Act overrides the inconsistent provisions in other laws such as the official Secrets Act of 1923, the Evidence Act of 1972, the Rules of business of 1996 and the Government Service Control Rules of 1979. It also provides an independent information commission with broad powers to remedy failures to implement the law. The government has already appointed under section 15(1) of the Act, a three member Information Commission as an important step towards the implementation of the peoples' right to information. This law covers government offices down to upazila level. Hope and aspirations in the mindset of general people is mounting that this law will contribute to increase transparency and accountability in government offices and public funded organizations which among others include NGOs using foreign funds. So, providing citizens with open access to information concerning governments and non government organizations is a cornerstone of good governance.<sup>32</sup>

## 10. The Loopholes of RTIA

The preamble of the Act promises to ensure the free flow of information empowering the people hoping to boost up transparency and accountability, decrease

<sup>28</sup> Kaufmann, Daniel. 1999. World Bank Staff Meeting, available at <<http://siteresource.worldbank.org/EXTWBIGOVANTCOR/Resources/Bibliography408.pdf>>, last retrieved on August 12, 2010.

<sup>29</sup> J M Balkin, "How Mass Media Simulate Political Transparency", P. 2. Available at <http://www.yale.edu/lawweb/jbalkin/artilcesmedia01.htm>, last accessed on October 3, 2010.

<sup>30</sup> Jems D. Wolfenson, *Bank Fund Annual...Speech, 1999*, Available at <<http://www.china.org.cn/english/NM-e/33546.htm>>, last visited on October 1, 2010.

<sup>31</sup> Gandhi, K. Mohandas. 1929. *The Story of My Experiments with Truth*, Part 5, Chapter XLIII.

<sup>32</sup> Ana Bellver Marcos Mendiburu, and Maria Poli. 2008. 'Strengthening Transparency and Accountability through Access to Information', World Bank Publication, July 2008, Number 131 link at '[http://siteresources.worldbank.org/INTENBREVE/Newsletters/21948394/Jul08\\_131\\_HO\\_ATI\\_EN.pdf](http://siteresources.worldbank.org/INTENBREVE/Newsletters/21948394/Jul08_131_HO_ATI_EN.pdf)

corruption and establish good governance with all public, autonomous, statutory organizations and other private organizations run on government or foreign fund. Nonetheless, how much the government as well as the people is ready to practice the freedom of information through RTI law is a gross matter of consideration. It is something like an announcement of a big rally, which is certainly going to be held, but sadly the stage is yet to be installed. Moreover, the concept of RTI is comparatively a new one in the country. The government officials who are the main information providers are not aware of the law.<sup>33</sup> There is a conception that the Act is related with media professionals only. Recently, a survey of the Bangladesh Public Administration Training Centre (BPATC) indicates that many officers think that the law is related with media only.<sup>34</sup> On the other hand, mass awareness on the law has not been created as it was desired. There is also a mind-set problem prevailing everywhere as to non-disclosure of information. The attitude for voluntary disclosure is one of the major concerns for the proper implementation of the law. Record management is also a cause of concern for the government as it follows a traditional system of record management with hard copy documents only. Lack of dissemination is also another challenge before the government for the better practice of the RTI Act. It is equally important to educate and sensitize designated officers for the greater interest of mass people getting access to participation in government functions. Otherwise, to get the desired result from the RTI Act will be ineffective. In this regard media should come forward for wider dissemination of the Act for popularizing it.

## 11. Exemptions from Disclosure of Information

Likewise, the law does have some loopholes, which may pose low-keyed implementation or outcome. One of the major obstacles to the effective implementation of freedom of information law is the exemption from the disclosure of information around 20 cases relating to foreign policy or confidential information received from any foreign government, advanced information on the changes in tax, VAT and budget, and matters under trial or investigation as per section 7 of the RTIA.

Categorically under section 7 of the RTIA the exceptions relating to restriction on access to information include:

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<sup>33</sup> Sobhan, Sanjida. 2010. 'Challenges and Opportunities before government in implementing the RTI Act: Bangladesh Perspective', available at: <<http://rtiworkshop.pbworks.com/f/2010-04-BD-RTI-Workshop-Challenges-and-Opportunities-Before-Govt-in-Implementing-Sanjida-Sobhan.pdf>>, last accessed on January 3, 2011.

<sup>34</sup> Nielson Company Bangladesh Ltd., 2013. 'RTI Baseline Survey for Bangladesh', pp. 1-78.

- State security
- Sovereignty
- Foreign policies
- Defence
- Public business
- Strategy of scientific policies
- Intelligence report
- State honour

Moreover, under the same section the further restrictions on access to information include:

- Information that may affect the government financial policies
- Information that may affect the international relationship
- Any such information that may, if disclosed, offend the privacy of the personal life of an individual
- Any such information that may, if disclosed, endanger the life or physical safety of any person
- Any information given in confidence to any law enforcement agency by a person

Certainly, there are many cases reasonable like sovereignty, national security etc., but in some cases the government misuses the exemption. So, the grounds of exemptions must be lessened.

## **12. The Institutions Excluded from Giving Information**

According to section 32 and schedule of the Act, eight intelligence agencies and security organizations viz. National Security Intelligence (NSI), Directorate General of Forces Intelligence (DGFI), Defence Intelligence Units, Criminal Investigation Department (CID), Bangladesh Police, Special Security Force (SSF), Intelligence Cell of the National Board of Revenue, Special Branch, Bangladesh Police, Intelligence Cell of Rapid Action Battalion (RAB) involved with national security and intelligence will be out of the purview of RTIA. The number of institutions mentioned in the list above should be decreased. Though Section 32 (2) declares this provision will be ineffective in case of information regarding corruption and human rights violation, it is still not clarified. If a request for such information is received, then the concerned organization or institution must give the information, subject to the approval of the Information Commission within 30 days from the date of

receiving the request. In Indian RTIA (Section 24), the same thing is more specified. To remove this problem the government need to keep in mind that the culture of secrecy is obsolete and outmoded being helpful for autocratic rule while the culture of openness is beneficial for good governance ensuring transparency and accountability.

### 13. Request for Information

Under this Act Section 8 says that a person may apply to the officer-in-charge requesting for information either in writing or through electronic means or through e-mail by providing following information namely - name, address of the person making request, in applicable cases, his fax number and email address; correct and clear description of the information sought for; other related information so that the location of the information sought for may be easily found out; description of the modes how he wants to have the information, that is making inspection, having copy, taking note or any other approved method. The request for information under this section shall be made in a form printed by the authority, or as the case may be, in prescribed format.

This request procedure is a bit critical which must be made simple and easily accessible to all in both urban and rural settings, keeping in view the problem of low literacy rate. Special provisions must be made to ensure that the centralized structure of administration that Bangladesh has does not act as a barrier to information requests and deliveries. In the absence of local offices of the proposed Information Commission, public libraries and NGO offices can be dovetailed into the access system<sup>35</sup>.

The law keeping touch of section 9 specifies a 20 day time frame for all public authorities and other bodies to provide information requested by citizens. However, in matters involving the right to life and liberty, the authorities concerned would be obliged to release the information requested within 24 hours. People must know the services the particular office provides, the ways by which they can obtain such service and what kind of procedure they have to follow. The authorities should identify the categories of information that are frequently requested and make them available without waiting for people to request.<sup>36</sup> However, from the past experience

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<sup>35</sup> Iftekaruzzaman, 2009. 'Implementing right to information in Bangladesh: Opportunities and Challenges'. available at: [www.ti-bangladesh.org/banner\\_right/RTI-pap-210609-2.pdf](http://www.ti-bangladesh.org/banner_right/RTI-pap-210609-2.pdf), last visited on September 30, 2010.

<sup>36</sup> Bikson, Tora and Bosman, Sandy, 2010. '*Public Information Provision in the Digital Age: Implementation and effects of the U.S. Freedom of Information Act*'. Santa Monica, CA, USA, p. 33.

it is seen that officers in Bangladesh do not usually respond to emails and a practice of answering emails has not yet developed.<sup>37</sup> In this regard access to internet of the government officials and their web literacy to be enhanced for the better functioning of the law.

#### **14. Appointment and Removal of Information Commissioners**

While appointing of the Chief Information Commissioner (CIC) and other commissioners the political leniency and affiliation must not be a consideration rather experience and skills to be the determining factor. For this the Chief Information Commissioner may be appointed by the selection committee consisted of the following people. (a) a judge of the Appellate Division, nominated by the Chief Justice, who shall also be its Chairman; (b) the Cabinet Secretary of the Government of the People's Republic of Bangladesh; (c) one member from the ruling party and one from the opposition, nominated by the Speaker while the Parliament is in session; (d) one representative nominated by the Government from among the persons involved in the profession of journalism holding a post equivalent to the editor or a prominent member of the society related to mass communication. The final appointment will be given by the President. Majority people of this selection committee are nominated by government<sup>38</sup>. So its quite obvious that the CIC and members of this commission will also be appointed on political basis. The commissioners may become biased and there is a possibility that they may follow the instructions of the Government as well. Again if they work against the directions of the government, they may be removed by the President under section 16. For this reason the CIC can not work independently as there will be always a fear to be removed. Moreover, skilled and adequate manpower in the information commission and its decentralized offices should be ensured and to be trained effectively to serve the purpose.

#### **15. Information Disseminating/management System**

It goes without saying that the information management system in Bangladesh is outdated, because of which the practical limitations in retrieving and providing information may also be conveniently exploited to deny and deceive information seekers. There is no alternative to developing a modern digital system of information management that would facilitate easy, dependable and secure archiving and retrieval with clear tracking indicators. Without this even with the best commitment

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<sup>37</sup> Murad, Mohammad Hasan, 2010. "Improving transparency through Right to Information and e-Governance: a Bangladesh Perspective", *Open Society Journal*. Vol. 6 No. 1, pp. 30-40.

<sup>38</sup> Section 14 of the Right to Information Act, 2009.

and capacity the information system will remain insensitive to the letter and spirit of RTIA. So provisions should be incorporated in the RTIA to develop modern digital system of information management.

## 16. RTIA and its Scope

Section 2(d) of RTIA covers up to upazila (sub-district) level, not up to union council, the bottom unit of local administration. However, innumerable development projects and programs of the government or NGOS conducted in rural areas. So, local people can very hardly reach the information relating to their concern. And few of them can bargain for information with the government officials at Sub-district Council<sup>39</sup>.

## 17. Contribution of the RTIA and other Laws of Bangladesh to Ensure the Right to Information

From one hand, there is yet enough preparation to ensure the practice of right to information including implementation policy and, on the other, also contradiction between the objective of this law and some other acts that the governments formulated time to time in order to suppress the freedom of expression, to control the press and publications even to prosecute the journalists. The most talked and criticized, also so-called black laws are the Official Secrets Act, 1923, the Special Power Act 1974 and the Rules of Business 1996. Unfortunately, nothing about their inter-relation or explanation is stated in Right to Information law. So, it is feared that the officials now may exploit those laws in terms of providing the citizens with information. Public officials may feel uncertain and insecure about what and how much to disclose and where to draw the line. Instruments like the Official Secrets Act 1923, Evidence Act 1872 (123-124), Rules of Business 1996 (Rule 28-1), Government Services Conduct Act 1979 (Rule 19) or the secrecy provision under the Oath (affirmation) of Appointment to public office may turn out to be among worst predicaments against breaking away from the culture of secrecy. Although the laws do not bar disclosure of information, most of the officials are using the Official Secrets Act 1923 as an excuse for not providing anyone, journalists in particular, with information.<sup>40</sup> The implementation process should include harmonizing all

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<sup>39</sup> *Right to information law: Major challenges to implementation.* Dream4dies web blog, available at: <[dream4die.wordpress.com/.../right-to-information-law-in-Bangladesh-major-challenges-to-implementation/](http://dream4die.wordpress.com/.../right-to-information-law-in-Bangladesh-major-challenges-to-implementation/)>, last visited on September 29, 2010.

<sup>40</sup> 'A few clauses of Right to Information Act need change', 2008. The Daily Star, September 28, available at: <<http://www.thedailystar.net/newDesign/news-details.php?nid=56852>>, last accessed on July 30, 2010.

existing laws and regulations with the RTI Act so as to remove any inconsistencies and contradictions that could impede the prospect of implementation<sup>41</sup>.

Article 39(1) of the Constitution provides for freedom of speech, expression and the press but Article 39(2) makes the enjoyment of these rights subject to “reasonable restrictions” in the interests of “the security of the state, friendly relations with foreign states, public order, decency and morality in relation to contempt of court, defamation or incitement to an offence.”<sup>42</sup> Numerous Acts inhibit these freedoms, most notorious in this respect being the Special Powers Act (SPA) of 1974, whose rigor was marginally lessened in 1991 by allowing bail for journalists and others arrested under that Act. The SPA made it an offense, punishable by five years’ imprisonment and/or fine “to print, publish or distribute prejudicial reports.” Journalists were required to identify all sources of information and authorities were given draconian powers to seize documents and newspapers, to ban publications and to search premises. Section 99A of the Code of Criminal Procedure made any printed matter, defamatory of the country’s President or the Prime Minister, an offense punishable by imprisonment from two to seven years<sup>43</sup>.

All publications are subject to the Press and Publication Act of 1973, which requires four copies of each issue to be sent to a “designated government agency.” While the government categorically denies the existence of censorship, in practice, papers are “guided” by the advice and briefings of the Principal Information Officer of the Ministry of Information and Broadcasting as well as by the External Publicity Division of the Ministry of External Affairs. The President’s Council of Advisors controls the newspaper editors informally. In general, criticism of economic policies is more likely to be tolerated than sensitive political issues. This act, high tariff on newsprint and frequent repression of journalists is the main obstacles to ensuring freedom of the press and access to information, according to the media experts of Bangladesh.<sup>44</sup> In fact, the act was promulgated by British colonial government for its own interest. According to this law, government can hide any information which leads people not to obtain information<sup>45</sup>. One of the major challenges in implementing the Right to Information Act 2009 is the mindset of bureaucrats who

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<sup>41</sup> See for more, Commonwealth Human Rights Initiative, 2008. *Implementing Access to Information: A Practical Guide for Operationalising Access to information laws*. Revised Edition, CHRI, New Delhi.

<sup>42</sup> “Bangladesh Press, Media, TV, Radio, Newspapers’ available at: <<http://www.pressreference.com/A-Be/Bangladesh.html>>, last retrieved on June 20, 2010.

<sup>43</sup> Ibid.

<sup>44</sup> ‘Official Secrets Act, repression of journalist major obstacles’, The Daily Star, September 14, 2006, Available at: <<http://www.thedailystar.net/newDesign/news-details.php?nid=56852>>, last visited on October 20, 2010.

<sup>45</sup> See above note 3.



are not yet open to the idea of providing information. So, massive campaign is needed to be launched across the country with the participation of people of all walks of life against the bureaucratic complexity and red tapism. Franz Kafka's opines, Castle. "All governments are subject to one international order of the bureaucracy."<sup>46</sup> Also in the RTIA right to environmental information and children's right to information must be specified. Coordination and cooperation within government and non government agencies and also national, regional and international bodies is a must for proper implementation of the Act. As per the law, every citizen from now on has the right to get information although the government offices are yet to be equipped with a mechanism to deliver information on demand. No information delivery unit has yet been set up in any government office and no set of rules for the effective enforcement of the Act has yet been framed in accordance with its provisions. Even the information commission is yet to frame the necessary rules for implementation of the law, although time and again the government is telling about the implementation of the law.

As per the Act the Information Commission, to be located in Dhaka, shall function independently and supervise the general activities related to the people's right to information, and will have the power of a civil court under the Code of Civil Procedure 1908. It will receive complaints against any authority for refusing to impart information. If any official refuses to provide information, individuals can file appeals with the information commission. The official concerned, if found guilty, may be penalised Tk 50 every day of the delay, but the total sum shall not exceed Tk 5,000. Success in ensuring RTI depends much on supportive legislative initiatives. The *RTI Act* itself should be constantly reviewed and analyzed to ensure that it actually facilitates and not restricts the people's access to information. Like many other countries, in Bangladesh there is a number of legal and policy provisions that may make it difficult to enforce the *RTI Act*.<sup>47</sup>

## 18. Conclusion

In the wider context of democratic, participatory, transparent and accountable governance system, right to information is presently considered to be as valuable as other basic human rights of a common citizen.<sup>48</sup> Information is the basis for all strengthening of government-citizen relations. The access to information is a fundamental human right and a precondition to transparency and accountability in the public sector. Today's knowledge based world is now resonating with the call for

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<sup>46</sup> <http://www.bangladesh-web.com/view.php?hidRecord=337211>.

<sup>47</sup> See above note 30.

<sup>48</sup> Anam, Shaheen. 2012. 'Right to Information Act (RTIA) in Bangladesh: Challenges in Implementation', Right to Information Forum, Dhaka, pp. 1-72.

meaningful democracy backed by transparency and accountability in the state engine and people's right of access to information has gained a great importance.<sup>49</sup> Therefore, governments have an obligation to create an infrastructure and procedures to make available information to individuals and groups. They must do so while balancing the need for guarding public interest as well as protecting the privacy of individuals. In addition to providing information on their performance, governments also need to seek information from the private sector and civil society in formulating policy and improving service delivery. In the shadows of secrecy, vested interest and evil in every shape of state mechanism have full swing. Only publicity of authentic and accurate information can put checks and balances to corruption, maladministration, improbity and injustice creating a lane for transparency and accountability. It is said that where there is no publicity there is no justice as publicity is the very soul of justice. In fact, information is the keenest spur to exertion and the surest of all guards against improbity. Frankly speaking Bangladesh has a bitter experience of the test as the most corrupt country for the consecutive five years from 2001 to 2005 as ranked by Berlin based organization Transparency International. Though the country has got rid of the stigma as the most corrupt country in the world in the following years after the anti-corruption initiatives, the country is still struggling to fight the stigma in a more successful way. Improvement of rank in the less corrupt lists from 2006 to 2009 in fact not visible in the functions of government and other institutions as newspapers reports depicts the scenarios of anomalies and corruptions almost every day. So, if the spirit of RTI is not realized in a pro bono sense replicating as a means for empowerment of the people, good governance and preventing corruption then it will be rhetoric in the name of right to information.

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<sup>49</sup> Murad, Mohammad Hasan and Hoque, Kazi Arshadul. 2011. 'The Right to Information Act in Bangladesh: An Analysis in the Light of Johannesburg Principles of Freedom of Information Legislation', *IUC Studies*, Vol. 7, pp. 73-90.