

Challenges of Right to Information in South Asia

- Public and private institutions need to offer post-employment training programmes on ICT-led information archiving and management.
- RTIA language should be amended in such a way that the mass population can understand their right
- Automation of the total system takes long time, huge skilled manpower and huge investment
- The increase in the number of applications has caused serious concern among public authorities who are complaining of excessive increase in their workload
- It might take a while before the practice is embedded in the way governments function; however, it is a start in the right direction.
- RTI activists should request, encourage and influence Government for the enactment of the Public Records Act

Of the 93 countries in the world that have adopted Right to Information (also known as Freedom of Information—FOI) laws, four are in South Asia. They are Bangladesh, India, Nepal and Pakistan.

RTI laws allow citizens to access government-held information and records. By doing so, they are able to monitor the work of government bodies and contribute to their transparency and accountability.

In South Asia, Pakistan led the way by promulgating the Freedom of Information Ordinance, 2002 through a Presidential decree. This was followed by the adoption of RTI Act 2005 by Indian Parliament, and RTI Acts 2007 and 2009 respectively by Nepalese and Bangladesh Parliaments. Efforts continue for the adoption of RTI Act in other countries of the region.

This paper will look at the progress of RTI in the four countries under consideration.

RTI in India

Sustained public attention leading to its adoption helped the Indian RTI Act 2005 to become one of the best in the world. It provides for maximum disclosure of

information with minimal exceptions and that too subject to a public interest override. It requires public authorities to proactively disclose a wide variety of crucial information about their working and finances to the people. The provision of an independent Information Commission and stringent penalties for unreasonable denial or delay in providing information has helped to set the Act rolling rather quickly.

The achievement of the Indian RTI Act has been widely acclaimed. Media reports regularly expose corruption in public bodies exposed by RTI applications. They also highlight benefits resulting from such exposures.

Public enthusiasm about the law is reflected in the increasingly large number of applications made to government bodies both at the central and state levels. In 2010-11 over 550,000 RTI applications were made to central government authorities alone. Together with those received by 28 State RTI authorities, the number would be much higher.

The increase in the number of applications has caused serious concern among public authorities who are complaining of excessive increase in their workload. However, government considerations to amend the law



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have been met with serious public opposition.

RTI in Bangladesh

Like India, the Bangladesh RTI Act 2009 too is considered to be a good law. A survey conducted by the Canadian Centre for Law and Democracy has put the Bangladesh RTI Act 2009 at the 13th position among all RTI/FOI laws of the world, with the Indian Act in the second position. Unlike India, the Bangladesh Act has included NGOs spending public money as falling within the purview of the Act, which is advancement.

However, progress in the implementation of the law even after two years of enforcement is rather slow. Awareness about the law is lacking among majority of government officials, many of whom refuse to accept RTI applications from people. According to the Information Commission of Bangladesh (ICB), only one-third of government offices and concerned NGOs have so far submitted the names of their designated officials to the ICB or made them public.

Neither the government, nor the media-- even the NGOs, appear to be doing much to communicate the use and impact of RTI to the public. For the NGOs, this is largely because they too have been brought within the purview of the law. The media appear more comfortable with traditional ways of getting information through influence-peddling and other means than pursuing the time-consuming RTI path. Thus there is serious lacking both in the demand and supply side of the RTI regime.

One clear indication of the slow progress of RTI in Bangladesh is the fact that in over two and a half years the ICB has heard only 44 complaints out of about 100 received so far. By any count, this is very small in a country with a population of over 150 million. In India the number was over 27,000 in the same period.

On the positive side, an increasing number of applications, though small in absolute figure, are being made to government offices mainly by poverty groups, with good results. They were being helped by some NGOs and activists. The applications relate primarily to government programmes on safety-net, livelihood, health, housing and the like. An example of this success is that people who are entitled to vulnerable group feeding (VGF) cards are now getting them just by filing carefully crafted RTI application. This was not possible previously without bribing the authorities.

Another positive side is that ICB has been provided with the necessary infrastructure and facilities to conduct its business as an autonomous entity. It got off to a good start but appears to have run short of ideas on how to take the law further. Some observers believe that the ICB, as the only entity empowered by the law to shepherd it forward, must play a more dynamic role by, among other things, coordinating all RTI-related activities in the country. It must do more to identify the challenges facing both the demand and supply sides of the law, and find ways of meeting them. The ICB must also take action to remove impediments identified by activists.

Editor's Note

RTI Act has been a milestone in South Asian campaign for people's right to information. Initial experience of implementing the Act shows a mixed scenario. RTI Act has certainly provided a legal framework and helped building awareness on RTI in the region. However, based on the experience of first few years of RTIA implementation, time has come to review the texts of the Acts.

RTIA makes information a right for the people and a responsibility for the institutions. To ensure this right, the institutions need to be more responsible. Civil society organisations who were leading the campaign for RTIA should come forward with their own information and set examples of transparency.

Introduction of RTIA not only makes the information providing officials accountable but also identifies the impediment for establishing RTI and largely increases the responsibility of the citizens, mass media and development workers for creating the demand for information among the public. Unless people are aware of the connection between right and access to information and their impact on livelihood, demand for information will also remain subdued.

Scientific archiving and management of information is essential for effective supply of information. These backward linkages of information delivery process require more investment and human resources. Many government institutions have established automated information delivery system, were processing of the delivered information remained manual. At a larger scale, this will not be sustainable. Institutions will have to gradually invest more on information management.

Lack of human resources in information archiving and management has been a major challenge for government and non-government institutions. Public and private institutions need to offer post-employment training programmes on ICT-led information archiving and management.

Interview

Professor Dr. Sadeka Halim

Information Commissioner, Information Commission



The Information Commission has been entrusted with the key responsibility of taking forward the RTI Act 2009. However, the Commission is facing certain challenges while implementing the Act.

RTIA mentions a number of items as 'information', but there needs to be a clear understanding of the very definition of 'information'. Otherwise, it may confuse people of their right to information. Sometimes designated officers, who are responsible for providing information, exploit the situation and try to take advantage of Article 7 of RTIA2009 by arguing that the information people asked for falls under the exemption clause of RTIA which includes the provision of not providing information for personal protection or national security. RTIA language should be amended in such a way that the mass population can understand their right to know the scope of asking for information and fully utilise the RTIA to improve their living condition.

According to the RTIA2009, the application for information has to be addressed to a designated information officer both by name and designation. This creates a problem when that particular officer gets transferred or become unavailable after the submission of the application. These designated officers are often preoccupied with maintaining their office protocol, resulting in delay or denial to provide information to applicants. Therefore, the government offices need to allow the designated officers to perform their duties.

Another obstacle to right to information is the lack of trained personnel and mismatch between profession and educational background. Most designated officers are not trained in information archiving and processing. There is a need for post-employment training for the designated officers of different government and non-government organisations.

RTI in Nepal

In Nepal, the RTI Act 2007 was adopted primarily as a result of persistent efforts by some civil society and media groups which took advantage of every opportunity that arose in the course of political developments in the last two decades. It is perhaps the first such law in the world which includes political parties as falling within the fold of the law. However, progress is rather slow mainly due to unstable political situation in the country.

Concerned observers have identified other reasons for slow progress. These are conventional practices relating to secrecy about government activities among civil servants; lack of trained and competent human resource in public agencies; lack of monitoring mechanisms to oversee the implementation of the Act; lack of intellectual discourse; lack of awareness of the laws to the citizens; failure of civil society to take adequate initiatives and measure etc.

As in Bangladesh, NGOs, which have been brought within the purview of the Act, appear to have opted for caution. An added problem is the inclusion of the President of Federation of Nepali Journalists in the selection committee for the formation of the Nepalese Information Commission (NIC), which has created an impression in public mind that RTI law is mainly for the media.

The other reasons for the slow progress of the Act are illiteracy combined with limited public outreach activities around the law and lack of rule of law. As a result, public bodies and others do not generally take implementation of laws seriously.

Activists and proponents of RTI in Nepal believe that once the country has successfully passed through the ongoing political transitional period – from internal conflict to constitution making – the situation will change rapidly. They also expect that RTI will receive constitutional recognition.

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FOI in Pakistan

Although Pakistan was the first country in the sub-continent to have adopted the law, its performance in implementing the FOI Ordinance 2002 is considered to be the weakest in the region. Many Pakistani observers see the FOI Ordinance 2002 to be flawed both in terms of concept and content. The biggest flaw is that it exempts several important types of information from the public. Among other things, the procedure is so cumbersome that many applicants are said to lose interest midway and give up their quest.

The top-down manner in which the FOI Ordinance was promulgated in Pakistan and the fact that this was done by a military ruler ostensibly to meet a donor requirement, as well as many shortcomings in the law, have led to civil society rejection of it. This, together with the lack of government interest, has meant that ordinary citizens do not know about the law or see it as relevant to their concerns. The extremely small number of FOI requests submitted since 2002 is a clear testimony to this. In recent years efforts have been made by individual lawmakers to promote the adoption of a new law by the Parliament.

Concluding remarks

RTI, as an instrument to empower citizens vis-a-vis their government, is slowly but steadily gaining ground in South Asia. In a region long used to a secretive bureaucratic culture, this is encouraging. But the road is long, more for some countries than others. The following are some key points emerging from the above discussions:

- The success of RTI is closely linked to the level of democracy in a country. In a true democratic set-up it is easier for people to believe that all government-held information and records belong to the people and they have a right to access them. Where democratic practices are lacking, it is of utmost importance that the government is seen to be fully committed to the ideal of RTI.
- A paradigm shift in the mind-set of public officials as well as citizens long used to subservient relationship with the authorities is also required for the success of RTI. Such paradigm shifts can be enhanced by champions from every segment of the society and the administration. Within Government it is important to

identify senior officers who can champion the creation of enabling procedures and practices for implementing RTI. Similarly, the demand-side requires activists with a sense of dedication and commitment.

- While training and awareness-building of government officials are important, their real learning comes from dealing with actual applications. This must receive the highest attention from all concerned.
- To help public authorities understand the objectives of RTI, it is best to start with seeking information from them which is innocuous in nature and does not cause discomfort. As they become used to the practice, demand for revealing information may be gradually scaled up. A great deal of patience is needed to change the entrenched mind-set of people.
- The lack of a tradition of rule of law and the existence of a culture of impunity are detrimental to the promotion of RTI. In such a situation, it is difficult to convince people that the law would work. The importance of using the penalty clause to bring recalcitrant officials to book has been proven in India and to some extent in Bangladesh.
- Procedural problems that impede the effective implementation of the law must be dealt with quickly. In Bangladesh, the requirement to address RTI applications in the name of the designated official is one such problem. Any mistake in this regard results in rejection of the application. This must not happen. The requirement to pay for information in the form of judicial stamps is another such impediment. The cost of coming to Dhaka for complaint hearings is burdensome for many applicants. Alternatives like holding complaint hearings in regional centers or through video conference could be considered.
- The importance of NGO and media involvement in promoting RTI has been demonstrated in India. The relative lack of such involvement in Bangladesh, Nepal and Pakistan is impeding progress. Exchange visits of media personnel and RTI activists may help in this regard.
- A proactive and committed Information Commission is sacrosanct for the success of RTI. The selection of people-oriented and dynamic Information Commissioners is of paramount importance.

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Interview

Dr. Md. Rafiqul Islam

Secretary, Ministry of Information and Communication Technology



Implementation of the RTI Act 2009 is not directly linked with ICT rather it is a management issue. But the implementation of RTIA can be accelerated with the help of ICT. If information dissemination is automated and the process is re-engineered, then it will be possible to supply the requested information as per provision of the RTIA to the applicants. Automation of the total system requires long time, huge skilled manpower as well as huge investment and initially we would not have any visible impact. Government has desired to ensure visible impact from the beginning in the service delivery. Considering the desire, delivery automation was chosen as the first step. Therefore, there are few government organisations who have automated system delivery of information but the entire background work is done manually.

Another issue is that the government is providing information for public consumption on its websites or through internet. But 'E governance' cannot be ensured by the government itself. The public demand has to be ensured for utilising ICT to improve service delivery and ensure citizen participation in government decision making. By that way the government can be made more accountable, transparent and effective.

The concept of 'Information' also needs to be very clearly defined for proper implementation of RTIA. Individual opinions are not information. Service delivery using ICT is too fast and it is spread within a blink of an eye. Thus any misinformation could create much impact on the society. Everyone should be careful before disseminating information using ICT so that people are not misled.

Implementation of RTI Act in India

Recently, India's Central Information Commission (CIC) released its sixth annual report. The Right to Information Act 2005 mandates the CIC, established under it, to prepare a report on the status of implementation at the end of each

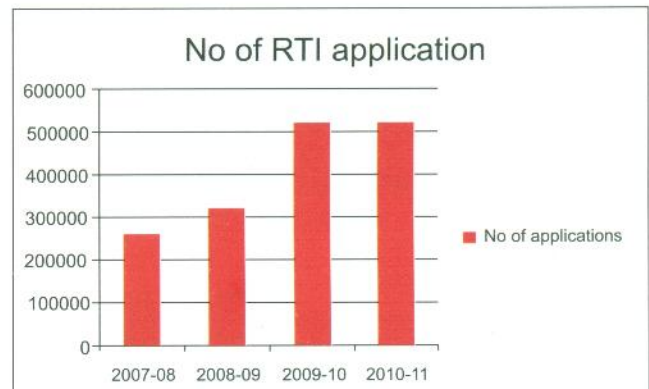


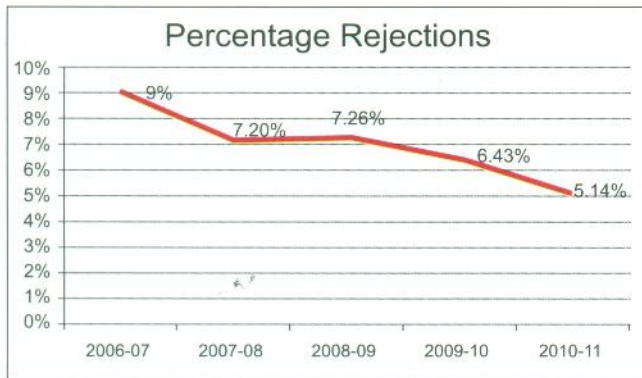
Diagram: Total number of RTI applications received during 2007-08, 2008-09, 2009-10 and 2010-11.

year. It further obligates each ministry or department, to provide information, in relation to the public authorities within its jurisdiction, as required by the CIC to prepare the report. CIC annual report for the year 2010-11, shows a decreasing trend in public authorities filing their reports. Only 67.5 per cent public authorities fulfilled this statutory obligation. In the absence of complete data, any meaningful analysis for assessing the pattern emerging in implementation of RTI Act becomes extremely difficult. Nonetheless, if only the data in hand is relied upon, it can be concluded that there is a decline to the tune of about 11 per cent as compared to the previous year, in the number of information requests. This can be viewed as a digression of sorts, as the number of RTI applications has been steadily going up since 2007.

A reason for the decline in RTI applications could be the growing threat to RTI applicants. In 2010-11, at least 12 RTI activists were murdered for seeking information. Many face serious physical assaults on regular basis. RTI activists are extremely vulnerable as they live in the same areas as the corrupt public authorities, political leaders and mafia who do not want information about their illegal activities to be disclosed. Lack of protection remains one of the main reasons for increasing attacks on people seeking information. Often times, RTI activists seeking protection are turned away, the police even refuse to register FIRs on their cases. The Central Information Commission and its state equivalents do not have the mandate either to protect or provide shelter. They have been mere spectators. The governments even do not comply with court orders. In 2010, the Bombay High

Court, while hearing the murder of an RTI activist, ordered the State government to immediately provide police protection to any person or organisation that complains of threat of use of force or has been attacked. Still, there is no decline in the number of attacks.

In the face of these gloomy developments, there is an upside as well to the RTI story in 2010-11. The number of cases where application for information has been rejected has gone down considerably during 2010-11. In this period, only 5.14% of the applications were rejected as against 6.43% in 2009-10. This movement towards transparency may not only be limited to responses to individual RTI applications but may also be heralding a systemic change in the favour of transparency.



Graph: Decreasing trend of percentage rejection of the requested information over years

A case in point may be regarding allowing for pre-legislative scrutiny by public. Public participation regarding draft Bills is not statutorily mandated in India. If there is sufficient pressure from the legislators themselves, wider discussion and publicising of contents of the Bills may be undertaken and newspaper advertisements issued inviting people's comments on the Bills. In the absence of such pressure, laws with serious flaws get tabled, discussed and voted upon in less than an hour and sometimes in the middle of the night.

With the Right to Information Act coming into force in 2005, an opportunity to open-up the pre-legislative process arose. Section 4(1)(c) of the RTI Act in India requires every public authority to routinely and proactively disclose all facts and figures while formulating important policies. In June 2011, the CIC, while ruling on a complaint filed by CHRI against the Government of Delhi not putting the Delhi Police amendment Bill in public domain, noted that the RTI Act recognises that citizens must be provided with means to debate legislative and policy changes which are likely to affect public lives and Section 4(1)(c) is meant to ensure that. The Commission directed the Chief Secretary, Government of Delhi, to develop a credible mechanism in all departments for proactive and timely disclosure of draft legislations/policies and amendments thereto or to existing laws/policies in the public domain, as required under Section 4(1)(c) of the RTI Act.

Later, in a similar case, a full bench of the CIC gave its recommendation to the Cabinet Secretariat, Government of India, to amend its rules and instructions and create spaces for public consultation on draft laws. Of late, the government has taken steps to increase public engagement. In some cases the government has invited stakeholders for consultations on proposed Bills. For instance, the Department of Information Technology had invited experts for consultations on the draft Electronic Service Delivery Bill, 2011. The Ministry of Finance had held regional consultations on the draft Direct Tax Code. It might take a while before the practice is embedded in the way governments function; however, it is a start in the right direction.

-Vrinda Choraria

Project Officer, Access to Information program,
Commonwealth Human Rights Initiative

Public Records Act - A Pre Requisite to Right to Information

An act to regulate the management, administration and preservation of records of government, semi government and government financed offices is called the Public Records Act. This act provides instruction to originate, classify, organize, publish, and destroy the public records or information. Under this act, government offices are authorized to take decisions on recruitment and budgetary provision for records and information management. Making any exception to the act is subjected to punishment. Act provides authority to form committee (s) to supervise and make recommendations about the implementation of the law and to improve the records and information management system in the country. Within this act, the National Archives is made responsible with sufficient authority to execute the records and information management system in the public offices.

Almost all the developed countries have introduced Public Records Act in one-way or the other. In different states of USA, Public Records Act is practiced since sixties. England, Australia and India adopted the Public Records Act in 1958, 1973 and 1993 respectively. No such act is introduced in Bangladesh till today.

Due to the incompleteness and weaknesses of the National Archives Ordinance 1983, it has failed to complement the Public Records Act in Bangladesh. The administrative and organisational limitation of the National Archives is another reason for the failure of this ordinance to contribute to the information management system of the country. In the colonial period, "Records Manual 1943" was the guideline for all the government offices for records and information management. It used

to be considered as standard guidelines for records and information management in absence of Public Records Act. Later the Records Manual became obsolete for not updating it to Bangladeshi context.

After the independence of Bangladesh, in absence of any guideline from government, most of the public offices introduced their own records and information management system from their experiences. Secretariat published their separate records and information management manual. Some of the organisations adopted their erstwhile records and information management instructions with only a very few changes in Bangladeshi context. Due to the absence of any central and common guidelines or instructions, all these records and information management systems have many differences and contradictions within themselves.

With the implementation of the Right to Information Act 2009, the need for improvement of records and

information management system of all the organisations has arisen afresh. It is evident that without having an appropriate data management system, Right to Information cannot be accomplished. Bangladesh Information Commission has published a regulation on data preservation and management system with very limited scope. Due to poor legal basis, this regulation offers incomplete guideline for records or information management; moreover it fails to complement the Public Records Act. As the Public Records Act and the guidelines prepared in the light of the act will help different organisations in smooth implementation of the Right to Information Act, the RTI activists should request, encourage and influence Government for the enactment of the Public Records Act at the earliest.

- Muhammad Lutful Haq

Executive Director, Campaign to Right to Information

Bangladesh's Experience with RTI Act 2009

For ensuring right to information, RTIA 2009 was an essential prerequisite, but not a sufficient one. RTIA can only ensure legal rights, but management of information and enthusiast and skilled providers of information are also necessary for proper implementation of RTIA.

On completion of the second year of implementation of this Act, Right to Information Forum conducted a survey in 2011 to assess the progress of the implementation. IID prepared the questionnaire and analysed the results of citizens'

survey [for details, see RTI Forum, 2011]. Some 1019 respondents from six different districts were interviewed during this survey. Among the total respondents, 44 per cent respondents did not have any knowledge about RTIA. Among those who knew about the law, some 59 per cent (or 33 per cent of total respondents) applied for information to any organisation. Among those who applied, only 12 per cent applicants (or 4 per cent of total respondents) applied using the prescribed application form of RTIA.

Most applicants (67 per cent of those who applied) received full information, while 23 per cent applicants received partial information, and the rest 10 per cent applicants were denied.

Among those who were surveyed:



Among those who applied for information (using prescribed form or otherwise)



Among the applicants, 70.6 per cent did not face any trouble getting information, while the rest 29.4 percent faced different types of harassments. Majority of the applicants (87.8 percent) informed that they had to visit the information provider's office too many times; 25.6% faced difficulties finding out the responsible Information officer (IO) and 7.8 percent people had to

pay additional money to get the information.

Interestingly, the experiences of the respondents who applied to government and non-government institutions were similar when compared the percentage of unsuccessful applications, completeness of supplied information, and required time to supply information by these organisations.

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