Right To Information, National Security and Foreign Relations

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In 1946, the UN General Assembly resolved: ‘Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated’.

Enshrined in the Universal declaration of Human Rights, the right’s status as a legally binding treaty obligation was also affirmed in Article 19 of the International Covenant on Civil and Political Rights which states- ‘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 regardless of frontiers’. Jurists consequently claim that this has made right to access information part of the body of universal human rights law.

How the RTI Act 2009 Evolved in Bangladesh

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Introduction

The Right to Information Act 2009 was passed in the first session of Parliament on March 29, 2009. It was a ground breaking decision on the part of the government and paved the way for all citizens to get information from public authority as a right. In so doing Bangladesh joined 75 countries in the world with RTI regimes.

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It is this matrix of access to information that has made the evolution of this process that much more significant. Right to information has emerged as a basic tool for building robust democratic systems through the informed participation of politically active and conscious citizens interested in matters of public interest. Today there is general agreement that public information is meant not only to protect rights but also to enhance the security of the State. There is also consensus, since the recent upsurge of terrorism, fundamentalism and extremism that this path is not easy and success depends not only on the tools that we have at our disposal but also in our ability to use them effectively.

In Bangladesh, the RTI Act, 2009 stresses on certain fundamental principles as enunciated in our Constitution: freedom of thought, conscience and speech. It also underlines that right to information is necessary for the empowerment of the people, for ensuring transparency in government and accountability of all public, autonomous and statutory organizations and of other private institutions constituted or run by government or foreign financing. This has been underlined to create factors that will discourage corruption. Section 3 of the Act specifies that the RTI Act shall override any other existing law if any conflict arises between them. This widens the spectrum of the Act.

There are however certain limitations that have been incorporated within Section 7 of this Act. They include inter alia: information that may, if disclosed, can cause a threat to the security, integrity and sovereignty of Bangladesh; information relating to foreign policy that may affect the existing relationship with any foreign country or international organization and any secret information received from a foreign government. Such aspects have obviously been included for the sake of national security and in the context of foreign relations.

There are also other limitations related to any information relating to intellectual property right; any advance information about income tax, government duties, the budget or changes in the tax rate; any information, if disclosed, can offend privacy of an individual or endanger his physical safety. A Schedule vide Section 32 has also enumerated that the provisions of the RTI Act would not apply (except with regard to information pertaining to corruption and violation of human rights) to certain State security and intelligence agencies involved in state security and intelligence gathering Section 9 (4) has however tried to level the playing field by stating that whatever be the situation, if a request for information relates to the life and death, arrest and release from jail of any person, the Officer-in-charge shall provide preliminary information thereof within 24 hours.

Such exemptions are however not singular or unique and just for Bangladesh. They exist through different versions within the structure of the Freedom of Information Acts in all the countries that subscribe to this process. In certain countries, unlike Bangladesh, such exemptions have continued to grow within their Act. One such example has been the USA.

These States that have increased restrictions have done so because of the premise of national security and the need to avoid existing friendly relations with other countries. In some countries like the United Kingdom they have introduced principles like ‘Neither Confirm Nor Deny’ within the response process related to queries for information. This has been interpreted by many analysts as unacceptable.

The above situation has sometimes led to debate within Bangladesh about availability of information and the absence of details pertaining to certain agreements entered upon with foreign institutions and other countries. Inability to obtain information about the activities of certain State security and intelligence agencies has also been referred to as discriminatory in the media.

There is no single universally accepted definition of national security but it would be pertinent to try and understand elements of national security and the way this feature is understood in most countries of the world. National security initially focused just on military might but now it is supposed to encompass a broad range of facets, all of which impinge on the non-military or economic security of the nation and the values espoused by the national society. In this context, it is felt that a nation needs to possess economic security, energy security, environmental security, etc. There is also consensus that security threats involve not only conventional foes such as other nation-states but also non-state actors such as violent non-state groups, narcotic cartels, multinational corporations and non-governmental organizations.

It is also generally agreed that measures need to be taken to ensure national security. Such proactive steps are expected to include: using diplomacy to rally allies and isolate threats; marshalling economic power to facilitate or compel cooperation; maintaining effective armed forces, implementing civil defense and emergency preparedness measures (including anti-terrorism legislation), ensuring the resilience and redundancy of critical infrastructure, using armed forces to detect and defeat or avoid threats and espionage, protecting classified information and using counterintelligence services or secret police to protect the nation from internal threats.

Nevertheless, despite the above dictums, national security for the State and the maintenance of its friendly relations with other countries as a process can become quite ambiguous. At times, absence of true democratic institutions, transparency and lack of accountability lead to sophisticated forms of political coercion through the exercise of state power. This needs to be avoided at all times.
সম্পাদনকৃত

এমআরডিইআইয়ের কর্মকাণ্ড

তথ্য অধিকার আইন ২০০৯ ব্যবহারের সকল, তথ্য বিক্রয় এবং বিতরণের সার্বিক অনুমোদন প্রক্রিয়ার প্রক্রিয়া

সকারাত্মক অধিকারের দায়িত্বের প্রশিক্ষণ

তথ্য অধিকার আইনের 'ধারা-১' বিষয়ে বিতরণের সিদ্ধান্ত আলোচনা

নাগারিক কমিটি গঠন এবং কমিটি সদস্যদের প্রশিক্ষণ

পোষ্ট টি মন্ত্রণালয়ের ভূমিকা নির্দেশনায়

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How the RTI Act 2009 Evolved in Bangladesh

The law was passed through the efforts and effective lobbying and advocacy of many civil society organizations, academia, media, researchers, legal experts etc. It was not preceded by a grass root level awareness and mobilization as in India.

Background

The demand for a law on Freedom of Information was first articulated by the Press Club in 1986 as a response to curtailment of Press Freedom under a dictatorial regime. The demand was raised in the form of a memorandum to the President seeking Press Freedom and allowing journalists to perform their professional duties without fear. Most of the well known news papers both English Vernacular Bangla such as Observer, Ittefaq etc. joined in this demand. After that a number of civil society organizations started to have discussions on the necessity of adopting a RTI regime in Bangladesh. Notable among those was a seminar organized by ASK and CHRI in 1998 and initiatives by MMC, Nagonik Udhyog etc.

The Law Commission prepared a working paper on RTI in 2002. This inspired by pledges Bangladesh was making during that time, both nationally and internationally. However the most compelling rationale is in the constitution which in Article 39 clearly states "the notion of freedom of thought and conscience and of speech. Signing of some International protocol such as the ICCPR in 2000.

Manusher Jonno Foundation

Realizing the benefits of Access to Information on the lives of people Manusher Jonno Foundation, decided this was a niche area it could work on. Learning from examples of other countries where RTI regimes have changed the outlook and functioning of public institutions, MJF embarked on a mission to facilitate and coordinate the enactment of the RTI law. MJF commissioned a rapid assessment to get an idea of the general perception of RTI in Bangladesh and identify the different actors involved. The report revealed that the existing perception about RTI was related to freedom of information with respect to the media. Moreover, state rules and regulations does not recognize the idea of information as a right to which all citizens should have access to. The main reason behind this is the "culture of secrecy" which prevails in every sphere of the governance system of the state.

MJF took up several strategies involving different stakeholders to take the demand for RTI law further. 3 Core Groups such as the Law Drafting Core Group, Policy Advocacy Core Group and Awareness/Capacity Building Core Group was set up. Eminent persons and experts were members of these Core Groups and included legal experts, academics, NGOs, media personalities, activists, researchers etc. This was effective in broadening the support base and raise a concerted demand for the RTI law.

Drafting RTI Law

The Law Core group comprised of noted legal experts such as Shahdeen Malik, Sulitana Kamal, Shamsul Bar, Asif Nazrul, Tanjibul Alam and Elena Khan. All the members provided inputs, feedback and reviewed the draft several times while Tanjibul Alam, supreme court lawyer, drafted the law. RTI laws from India, South Africa, Canada, and UK was consulted during the process. National and Regional consultations were held where the draft was shared and comments received. Organizations such as Article 19 and CHRI provided feed back, comments and recommendations. The Working Paper of the Law Commission was taken as a basis for the draft. The draft was formally presented to the Law Advisor of the Care Taker government in 2007.

Networking and Alliance building with different Stakeholders including media

The core groups on Policy Advocacy and Mass Mobilization initiated a series of activities such as writing articles, holding TV Talk shows, orienting NGOs, local journalists, policy makers etc. Journalists were sent on cross visits to India to learn from their experience. Government officials also went on a cross learning tour to Mexico. Besides, through regional and international networking, alliances were built with national and local partners for issue based mobilization on RTI such as TIB, PET, BEI, SUPRO, MIHDI, SANAK, Article 19, CHRI (India), MKSS (India). Eminent personalities were approached to act as champions for the law. They also started to lobby and advocate for enactment of the RTI law.

Engaging Government

In March, 2007 the Law Core group submitted the draft law to the Law, Justice and Parliamentary Affairs and Information Advisor for its review and consideration. Members of the Core Groups met with the Law Advisor several times as follow up.

In December 2007, the Chief Advisor of the Care Taker Government in a MJF organized seminar announced officially that RTI will be enacted as an Ordinance and instructed the Information Ministry to prepare the draft law and take assistance from the draft submitted by the civil society. The Ministry of Information (MOI) formed a working group to draft and finalize the law within a month and MJF representative was officially part of the working group. During this time a number of discussions were held within the different Ministries and Departments. There were opposition on certain clauses such as imposing of fine to government officials in case of denial of information, inclusion of Union Parishad as Authority and civil society insistence of having at least one women as member of Information Commission. MOI organized a national seminar in March 2008 to share the draft and put it up on the Web site for comments.

After the draft was finalized by the working group, it was sent to the Committee of Secretaries via the Cabinet Ministry to get comments of all other Ministries. Certain changes were brought in the draft at that time. The penalty clause remained but the amount was drastically reduced; a clause was inserted which gave indemnity to officials in case of denial of information in “good faith” but was later removed, the exemption list was made longer and the private sector and political party as authority was removed. The inclusion of foreign funded NGOs as authority was also resisted but those advocating for the law insisted it should remain because it would give the advocacy group a moral authority to insist on transparency from all other groups.

Finally the draft was submitted to the Chief Advisors office in July 2008. During this period constant dialogue and consultations were held between relevant civil society members, the Information Ministry and the Chief Advisor’s office. The Council of Advisors approved the ordinance on 20th September 2008. In October 2008, it was passed as an Ordinance by the President on 20th October 2008. We believe that this paved the way for eventual adoption of the RTI law by the elected government which came to power in December 2008.

Formation of RTI Forum

A Right to Information or RTI Forum was set up with MJF as the Secretariat. The RTI Forum is composed of 40 organizations and individuals with the objective of creating demand for the enactment of the RTI Ordinance into an Act by the next elected Government and later to monitor its implementation.

Engaging political parties

Civil society groups were aware that political parties need to be engaged if the law was to be passed in Parliament once an elected government came to power. Series of consultations and meetings were held with members of main political parties. Attempts were made to have RTI included in their party manifestos prior to the National Elections.

Legislation of the RTI Act 2009

After the General Elections of December 2008 the RTI Forum again started to lobby with Parliamentarians for the enactment of RTI law. The Law Minister, Information Minister and several MPs were met individually to press for its enactment. During the Caretaker government a total of 154 Ordinances were passed. MJF was invited as a member of the review committee of the parliamentary standing committee to make comments and recommendations on the Act. RTI Forum lobbied with the expert groups and the special committee.

Finally on March 20th it was approved in the Cabinet and on March 29th 2009 it was passed in Parliament in the first session.
My involvement in the movement of Right to Information (RTI) was rather coincidental. I was perhaps not meant to be part of the movement except due to the fact that my name propped up as a potential member of the Advocacy Group formed by Manusher Jonno Foundation for promoting RTI in Bangladesh. Thanks to Mr. M.A. Bari, President of Research Initiative Bangladesh. Bari bhai suggested my name to Shaheen apa as a potential member.

I received a phone call from Sanjida Sobhan informing me that I have been selected as a member of RTI Advocacy Group under the leadership of none other than Sultana Kamal. I accepted the offer wholeheartedly. I have been active in the field of human rights movement ever since I have joined this profession in 1997. Therefore, the role of advocacy group and expected involvement as a member of the group was not unknown to me. However, when I attended the first meeting of the Group, I discovered that this group was not like regular advocacy group. They meant business this time! Our RTI Advocacy Group consisted of Ms. Sultana Kamal as the convenor, Mr. M.A. Bari, Ms. Shaheen Anam, Mr. Shahdeen Malik, Mr. Asif Nazrul and myself. There may be other members in our group which names I am unable to recall at the moment.

Unlike conventional advocacy group, our Group adopted a resolution to embark on the task of drafting a RTI Act for Bangladesh. In our first meeting we had brief discussion about the course of action and how to achieve it. Bari bhai presented a partial draft of RTI Bill, which I heavily criticised during the meeting. Perhaps I was talking too much during the meeting in my excitement to be part of the Group which consisted of luminaries in the field of human rights and civil society movement. I still remember how Shaheen Anam was encouraging us to jump into the project as we all felt that time was of essence.

The Group decided in its second meeting that for the sake of good working order, a smaller group should be formed to draft a model RTI Act as part of the advocacy tool. The idea was that instead of demanding a RTI Act, our objective shall be implementation of the draft law that we are going to prepare and present to the Government. With hindsight, we can say that it was a very pragmatic idea and I am glad that I was able to be part of the process.

Since the task of drafting a law is rather technical in nature, members with legal background was assigned the job. Although Bari bhai has a strong legal background as he is also a Barrister, given the nature of the task he was asked to play a supervisory role. Therefore, the job of actual drafting fell upon three of us, namely Shahdeen bhai, Asif Nazrul bhai and myself. Since I was the youngest among the "technical members", I was assigned the job of doing the leg work of preparing the first draft on which my two fellow members will give their insight.

We sat number of times at Shahdeen bhai’s place in Dhanmondi. After many cups of tea and coffee with lots of load shedding episodes during the scorching heat of July-September, 2005 we came up with our first draft of RTI Bill. Asif Nazrul bhai was so overwhelmed with the RTI law he immediately accepted a post-doctoral fellowship from the University of London on comparative RTI law.

In drafting the law, we used the Law Commission Report on RTI as our starting point, which was published in 2002. At the time of preparation of the Law Commission Report, the concept of RTI in this subcontinent was still at its evolutionary stage. We have seen the civil society movement in India revolving around RTI and how it was used as a tool against corruption and a device to secure good governance. All of us were inspired by the Indian experience. I still remember my meeting with the Chairperson of Indian RTI Commission.

While drafting the law, we were aware of the fact that we will not get everything we wish for. But our effort was free of inhibition and we did not dare in aiming for the best possible RTI law for Bangladesh. The objective of any world class RTI law is maximum disclosure and minimum exemption. Given the myriad of conflicting interest, achieving a balance is never easy. In this age of information technology, access to information by the general public is sine qua non for a transparent government. At the same time, disclosure of classified information to the general public at times may lead to incalculable damage to the security of state as well as country's relationship with the outside world.

Ensuring internal security and maintenance of seamless flow of information amongst intergovernmental department is also another challenge. Any law is prone to abuse unless a proper balance is struck between competing interests. It was felt that the best way to achieve this would be taking a participatory approach in preparing the law itself. Thanks to Manusher Jonno Foundation for taking up the gigantic task of organising seminars in divisional headquarters and multiple seminars in Dhaka with different stake holders including journalist community, civil society leaders and bureaucrats. It will not be out of place to mention few names who played pivotal role in organising seminars by Manusher Jonno Foundation. I am grateful to Farzana Naim, Sanjida Sobhan, Shahahna Huda for giving me indulgence and accommodating my unreasonable requests at times last minute adjustment of schedule. Since the success of a proposed RTI law is wholly depended on earning confidence of the Government officials, it was vital to sensitise them and encourage them to come out of the century old colonial framework of secrecy. The Official Secrets Act, 1923 was a big hurdle that RTI movement had to overcome.

I am glad that our draft RTI Bill was taken favourably by the participants of numerous workshops and had also received encouraging reviews from the civil society. Although, general public wanted a law without any exemption, considering the practically and attitude of bureaucracy, the stakeholders reluctantly accepted that a RTI law without a list of exempted category would be a far cry. Then our challenge was, how to minimise the list of exempted category. The draft RTI Bill that Manusher Jonno Foundation finally presented to the Government had only 11 exempted categories of information. However, the Government and the bureaucracy in their infinite wisdom increased the list of exempted category to a level that many stakeholders find it difficult to implement the law.

With regard to the level of implementation of RTI law, judging the socio-economic condition of the country, I am hopeful for a bright future. Since implementation of RTI largely depends on the seriousness of its beneficiaries, until we start asking for information and pursue our effort, the bureaucracy of this country will never give in. Current status of RTI law reminds me a verse of our National Poet, Kazi Nazrul Islam: amra jodi na jagi ma, kenne shokhai hobe.