

The Right to Information Act, 2009: A Step Towards the Accountability and Transparency of Government in Bangladesh

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Abstract

Right to information or access to the necessary informations by the public can ensure good governance in a country. Since right to development is considered as one of the human rights, in order to execute this right, people must have to be complied with the right to information. Because, without exercising the right to information, accountability, transparency and rule of law cannot be pertained, which are very much necessary fo both good governance and right to information. Our government has enacted The Right to Information Act,2009. Despite some limitations, the provisions of this Act are enforceable in Bangladesh. An Information Commission has also been established which has taken some effective steps.

Introduction:

With the enormous victory at the liberation war of 1971, Bangladesh achieved independence. After the great independence, we got our constitution in 1972, which provides that, all powers in the Republic belong to the people of the country.¹ The constitution of our country ensures nationalism, democracy and socialism that means economic and social justice.² Since our constitution ensures democracy, the real taste of democracy yet to be tasted by the people of the Republic because of lack of participation and accountability on behalf of the government. Article-39 (1) of the constitution guarantees the freedom of thought and conscience. Clause (2) of the same Article provides the right of every citizen to freedom of speech and expression subject to reasonable restriction imposed by law. The right to freedom of opinion and expression includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.³ It is evident

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¹ Article-7, The Constitution of The Peoples Republic of Bangladesh.

² Article-8, The Constitution of The Peoples Republic of Bangladesh.

³ Article-19 of the Universal Declaration of Human Rights, 1948.

from the Article that in order to exercise the right to express opinion one must have to apply the right to information which is included in this fundamental right. Information was essentially protected by the Colonial Secrets Act 1923, which makes the disclosure of official information by public servants an offence. The colonial legacy of secrecy, distance and mystification of the bureaucracy coupled with a long history of one party dominance proved to be a formidable challenge to transparency and effective government.⁴ But with the change of time, it became a great desire of the people of our country to have a right to access to the necessary informations which they need and the lack of and concealment of which cause hamper to them in a sense that sometimes they could not hold the authority accountable. As a result of our aspiration, we got the Right to Information Act, 2009 which was enacted by the Government of Bangladesh . With this enactment, the people of the country, got an opportunity to have the taste of transparency and to make the concerned authorities accountable for non- furnishing the necessary information.

History of Right to Information:

In 1766, Sweden adopted world's first access to information law. The law establishes press freedom, including the freedom to print and disseminate materials about the government, courts, and parliament. The law, which forms part of Sweden's constitution, recognises that press freedom is contingent upon access to information and states "to that end free access should be allowed to all archives, for the purpose of copying such documents in loco or obtaining certified copies of them".⁵

France's Declaration of Human and Civic Rights in 1789 which still forms part of the French Constitution establishes at Article 14 that: "All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration." Although this declaration has not been used as the basis for asserting a right of access to information in France, it does seem to provide for a public "right to know" about the spending of taxes.⁶

⁴ Transparency and Accountability in Governance and Right to Information in India by-Dr. Sheila Rai P-5,6 http://www.napsipag.org/pdf/SHEILA_RAI.pdf

⁵ <http://www.access-info.org/en/get-connected-links/19-useful-links>

⁶ *ibid*

In 1946 ,UN General Assembly Resolution 59(1) on Freedom of Information provides that, "Freedom of Information is a fundamental right and is the touchstone of all the freedoms to which the United Nations is consecrated. Freedom of Information implies the right to gather, transmit and publish news anywhere and everywhere without fetters. As such it is an essential factor in any serious effort to promote the peace and progress of the word." This language was not however clearly understood or defined at the time as the right to request and receive information from public authorities.⁷

In 1966, United States of America adopts Freedom of Information Act: Enacted in 1966, The Freedom of Information Act (FOIA) is a federal law that establishes the public's right to obtain information from federal government agencies. The FOIA is codified at 5 U.S.C. Section 552. "Any person" can file a FOIA request, including U.S. citizens, foreign nationals, organizations, associations, and universities. In 1974, after the Watergate scandal, the Act was amended to force greater agency compliance. It was also amended in 1996 to allow for greater access to electronic information.⁸

In 1981 Council of Europe adopts Recommendation to member States on the Access to Information Held by Public Authorities. This non-binding recommendation urges member states to ensure that "Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative and judicial bodies." The recommendation reflects the trend in Europe to recognise a right of access to administrative information, as reflected in laws such as France's 1978 law on the "improvement of relations between the public and the administration" and the Netherland's 1978 "law on openness of the adminis."⁹

Relation Between Right to Information and Good Governance:

"Governance" means: the process of decision-making and the process by which decisions are implemented (or not implemented).¹⁰ Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law.¹¹ these characteristics could not get a practical shape unless there is proper exercise of right to information.

⁷ ibid

⁸ ibid

⁹ ibid

¹⁰ <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>

¹¹ ibid

In order to ensure good governance rule of law should be established it requires fair legal frameworks that are enforced impartially.¹² However, Transparency means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement.¹³ More so, accountability is a key requirement of good governance. Not only governmental institutions but also the private sector and civil society organizations must be accountable to the public and to their institutional stakeholders. Accountability cannot be enforced without transparency and the rule of law.¹⁴ It is evident that, accountability, transparency, rule of law cannot be established without making certain the right to information.

Right to Information and Right to Development:

The Declaration on the Right to Development was adopted by General Assembly in 1986. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development.¹⁵ Article-2(1) provides that, the human person is the central subject of development and should be the beneficiary of the right to development.

However, States are bound to undertake at the national level, all necessary measures for the realization of the right to development and shall ensure equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.¹⁶ If we consider people as the central subject of development, the government should provide information which are necessary for the people otherwise the development will be slowed down due to non-transparency and non-accountability.

Right to Information Act, 2009

The government of Bangladesh has enacted The Right to Information Act on 6 April, 2009. According to the Act, information is in relation to an authority's constitution, structure and official activities and includes any: memo, book,

¹² *ibid*

¹³ *ibid*

¹⁴ *ibid*

¹⁵ Art-1(1) of Declaration on the Right to Development, 1986

¹⁶ Art-8(1) of Declaration on the Right to Development, 1986

design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts statement, project proposal, photograph, audio, video, drawing, film, any instrument prepared through electronic process, machine readable documents and any other documentary material regardless of its physical form or characteristics.¹⁷ Information does not include office note sheet or photocopies of note sheets.

Right to Information :

"Right to information" means the right to get information from any authority.¹⁸ According to section 2 (KHA) of the Act. Authority means any institution created by the constitution of Bangladesh any ministry or division constitute under Article-56 (6) of the constitution of Bangladesh which denotes that the president shall make rules for the allocation and transaction of the business of the government, any statutory organization or institution constituted by any law, any organization or institution running by the government fund, any org. or institution regulated by foreign donation, any org. or institution which is performing the duties according the contract conducted with the government and any other organization or institution which is notified by the official gazette of government.¹⁹

Disclosure of information :

Section-6 of the act states that, each authority must publish a report each year which will contain the following information:

- 1) The particulars of an authority's organizational framework, functions and duties and responsibilities of its officers and employees and the description of decision-making processes;
- 2) List of all laws, acts, ordinances, rules, regulations, notifications, directives, and manuals etc. of authorities and classification of all information available with the authorities.
- 3) Description of the terms and conditions under which any person can obtain from an authority, license, permit, grant, allocation, consent, approval or the description of any other facilities and description of such terms and conditions, that require the authority to make transactions or enter into agreements with him;

¹⁷Right to information Act,2009 compiled by sohini paul http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/bangladesh/bangladesh_rti_act_2009_summary.pdf, at-p-2

¹⁸Sec-2(chha) of RTI Act. 2009 (translated by the author)

¹⁹translated by the author

- 4) Description of all facilities in order to ensure the right to information of the citizens and the name, designation, address, and where applicable fax number and e-mail address of the Responsible Officer.²⁰

Section - 6(5) enumerates that, the report, which has been prepared by under this section shall be subject to the inspection by the public free of cost and the conserved for sale at a nominal price.

According to Section- 2 (GHA), "Information providing unit" means, any ministry, divisional office or office attached to the divisional office, regional office, district or sub-district office of any department of the government, and also includes the head office, divisional office, regional office, district or sub-district office of any authority.²¹

Who Can Apply to Get Information?

Section-4 provides that, every citizen has the right to get information from the authority, and the authority shall be bound to deliver the information upon request of the citizen.

About Preservation of Information:

A section- 5 says that the authority shall prepare and preserve the catalogue and index about all information in order to ensure the right to information. If the authority thinks necessary, it will preserve the information in computer within reasonable time.

Request for Obtaining Information (Application procedure) :

According to Section-8 of the Act, any person may request to the responsible officer for obtaining information by presenting a written application or by e-mail. The written application should contain the name, address, fax, number and e-mail address of the applicant, the description of the information which is seeking for, other necessary information and the method by which he wants to obtain the information. It should be noted here that, the fees for request and information cost will be prescribed by the government upon consultation with the information commission and shall be published in the official gazette. The government can, however, exempt from paying cost any person or person.²²

²⁰ Right to information Act, 2009 compiled by sohini paul http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/bangladesh/bangladesh_rti_act_2009_summary.pdf, at-p-5

²¹ Translated by the author.

²² Translated by the author.

Procedure and Time Limit for Providing Information :- (Section-9)

The responsible officer will have to deliver the information within 20 working days after receiving the request²³ and if he is unable to provide the information, he will inform the reason of inability to the applicant within 10 working days from receiving the request.²⁴

If the requested information is about arrest or acquittal, the information will have to be provided within twenty four hours.²⁵

Exemption of the authority from the disclosure of certain information:

According to section-7 of the Act, the authority is not bound to provide certain information's, such as -

- (i) information for the disclosure of which there will be threat to the security, integrity and sovereignty of Bangladesh.
- (ii) any matter of foreign policy.
- (iii) any confidential information received from the foreign state.
- (iv) any information, for the disclosure of which, an individual or organization would be benefited or aggrieved, such as (1) any advanced information about tax, budget or the changed rate of revenue.
- (v) any advance information which is related with the exchange of currency and the rate of interest etc.
- (v) any information, for the disclosure of which the implementation of law may hampered or the crimes may increase.
- (vi) information, for the disclosure of which due judicial process may impede.
- (vii) any matter which is pending in the court and the disclosure of which is forbidden by the court or tribunal.
- (viii) any criminal investigation procedure and any information which would influence the arrest and punishment of the offender.
- (ix) information, which may cause the breach of privilege of National Parliament.
- (x) any advance information about the question paper and given number in the examination.

²³ sec-9(1) of RTI Act,2009, Translated by the author.

²⁴ sec-9(2) of RTI Act,2009 ,Translated by the author.

²⁵ sec-9(2) of RTI Act,2009 ,Translated by the author.

But, it has been laid down in Section - 8(9) of the Act, that, any information should not be refused by the authority only for the reason that, it is related with the information the disclosure of which is not compulsory rather, the information's should be separated reasonably and delivered to the applicant.²⁶

About Appeal:

According to section-24, if any person fails to get the information according to the rules of sub section-1, 2 or 4 of Section-9 or if feels aggrieved by the decision, he may prefer an appeal to the appellate authority within 30 days from getting the decision.²⁷

Information Commission:

The information commission is a statutory independent institution. It has the power to sue and to be sued.²⁸

The commission is constituted with a chief information commissioner and two other information commissioner.²⁹ The Information Commission has been established on 1 July, 2009 constituting three members which is situated at Agargaon in Dhaka city.

Powers of Information Commission :

According to Section- 13, The Information Commission can exercise the following powers.³⁰

- 1) The Information Commission has the power to receive complaints from any person, inquire into and dispose off complaints received on the following issues -
 - a) Non-appointment of Responsible Officer by an authority or its refusal to accept requests for information;
 - b) Refusal upon request for any information;
 - c) Not being given either a response or the information requested for within the specified time period;
 - d) If the applicant is asked to pay a fee or is compelled to pay an amount of fee which he/she thinks are unreasonable;

²⁶ translated by the author.

²⁷ translated by the author.

²⁸ Sec-11(2) of the RTI Act, 2009.

²⁹ Sec-12(1) of the RTI Act, 2009.

³⁰ Right to information Act,2009 compiled by Sohini Paul http://www.humanrightsinitiative.org/-programs/ai/rti/international/laws_papers/bangladesh/bangladesh_rti_act_2009_summary.pdf, at-pp-11,12.

- e) If the applicant feels that the information given is incomplete, false or misleading;
 - f) In respect of any other matter relating to requesting or obtaining information under this ordinance.
- 2) Information Commission may on its own accord or upon a complaint, conduct an inquiry regarding a complaint made under the Act;
- 3) The Information Commission or the Chief Information Commissioner or Information Commissioners may exercise powers of Civil Court as per the Code of Civil Procedure 1908 in respect of following matters, namely -
- a) summon and enforce attendance of persons, compel them to give oral or written evidence on oath and to produce documents or things;
 - b) Examine and inspect information;
 - c) Receive evidence on affidavit;
 - d) Requisition information from any office;
 - e) Issue summons for witnesses or document

Functions of Information Commission :

The functions of the Information Commission include the following:³¹

- Issue directives to authorities for preservation, management, publication, publicity and access to information;
- Prescribe the application procedure for accessing information from an authority and fix the appropriate price of information.
- Formulate and publish guidelines and directives for preservation and implementation of citizens' right to information.
- In order to preserve the right to information, consider the provisions recognised under the Constitution or any other law in force and provide recommendations to the Government for their effective implementation by indicating the impediments.
- Identify the impediments against the preservation and implementation of citizen's right to information and recommend appropriate solutions to the Government.
- Conduct research on agreements related? to the right to information and other international instruments and documents and recommend to the Government for their implementation.
- Advise Government to ratify or sign any international instrument on right to information.
- Conduct research on preservation and implementation of right to information and provide support to educational and professional institutions for their implementation.

³¹Right to information Act,2009 compiled by Sohini Paul http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/bangladesh/bangladesh_rti_act_2009_summary.pdf, at-pp-12,13

-Generate and increase awareness about the? right to information amongst different sections of society.

-Advise and provide support to the Government to make the necessary laws and administrative directives for preservation and implementation of the right to information.

-Provide necessary advice and support to organizations and institutions working on right to information and the civil society.

-Conduct research and organize seminars, symposium, workshops and similar other measures to increase people's awareness on right to information and to disseminate the results obtained from the research .

-Provide technical and other support to the authorities with the aim to ensure the right to information.

Complaints Mechanism: Sections 25

The rules for making complaint and disposal of that complaint has been laid down in Section-25.

Grounds for Making Complaint:

Any person for the following reasons may submit a complaint with the Information Commission:³²

a)As given in Section 13 (1) i.e.:

- Non-appointment of a Responsible Officer by an authority or refusal to accept applications for information;
- Refusal upon request for any information;
- Not being given either a response or the information requested within the specified time period as given in the Act;
- If the complainant is asked to pay a fee or is compelled to pay an amount of fee which he/she thinks unreasonable;
- If the complainant feels that the information given is incomplete, false or misleading; and
- In respect of any other matter relating to requesting or obtaining information under this Act.

³²Ibid,at pp-7,8

- Not being given either a response or the information requested within the specified time period as given in the Act;
- If the complainant is asked to pay a fee or is compelled to pay an amount of fee which he/she thinks unreasonable;
- If the complainant feels that the information given is incomplete, false or misleading; and
- In respect of any other matter relating to requesting or obtaining information under this Act.

b) If the person is aggrieved by the decision on his appeal under Section 24 regarding appeal.

c) If the person does not get the information from the Responsible Officer within the time limits specified i.e. 20 days (if information is sought from one unit), 30 days (if information is sought from more than one unit or authority) and 24 hours (information related to life and death or arrest and release from jail).

In case of point a) given above, a complaint can be filed with the Information Commission any time and in case of points b) and c) the complaint can be filed within 30 days from the date of getting a decision or as the case may be. If the Information Commission is satisfied that the complainant could not file the complaint due to reasonable causes within the specified time period, then the Commission can receive the complaint even after the expiry of the time period.

On the basis of a complaint, or if the Information Commission is satisfied that any authority or Responsible Officer has failed to carry out any function then the Commission has been given the powers to take action against the authority or the Responsible Officer.³³

During the enquiry, any authority or the Responsible Officer against whose decision, the complaint is being made will be given a reasonable opportunity to be heard.³⁴

Ordinarily the Information Commission shall take 45 days to dispose off a complaint from the date on which the complaint is received. However, in certain cases, the time could be extended if required, to complete the enquiry and depositions of the witnesses. However, the time limit for disposing a complaint shall not exceed more than 75 days including the extended time.³⁵

³³ibid, at p-8

³⁴ibid, at p-8

³⁵ibid,at p-8

The Information Commission shall have the following powers according to Section-25, in taking decision on a complaint, such as;³⁶

(i) To direct the authority or the Responsible Officer to take the following steps:

- To provide the requested information in a specified particular manner;
- To appoint Responsible Officers;
- To publish any special information or special class of information;
- To bring necessary changes in the procedures followed by the authority with regard to preservation, management or publication of information;
- To impart better training on right to information for officers of Authorities;
- To provide compensation to the complainant for any loss or other detriment suffered;

(ii) To impose Penalty as provided in the Act;

(iii) To uphold decisions of the authorities;

(iv) To reject complaints;

(v) Re-classification of information by the authorities;

(vi) To interpret any matters relating to nature, classification, preservation, publication and supply of information as per the Act.

The decisions of the Information Commission in cases of complaints shall be binding on all concerned.³⁷

The decisions of the Information shall be communicated to all parties in writing.³⁸

Representation Before the Information Commission -

The parties to a complaint may present their statements before the Commission either personally or through a lawyer.³⁹

Recent Activities of the Commission:

The Commission has publish a booklet containing the RTI Act, different questions and answers. Former ambassador Md. Zameer has been appointed as Chief Information Commissioner. Dissemination programme has been conducted in 25 different districts. Besides, seminars and symposiums had been arranged in World Bank, UNDP, ILO.⁴⁰

³⁶ *ibid*,at p-9

³⁷ *ibid*, at p-9

³⁸ *ibid*, at p-9

³⁹ Sec-26, *ibid*, at p-9

⁴⁰ Tatha Adhikar Ain somporke jono obohitokoron o motbinimoi shovai prapto guruttupurno prosno o uttor(a booklet) published by the Information Commission in July, 2010 at p-15 (translated by the author)

On 25 February, BELA(Bangladesh Environmental Lawyers Association) made a complaint to the Commission. In which it was stated that, BELA presented an application, for obtaining information about the construction of the building of BGMEA ,to the Responsible Officer, RAJUK; Chairman, RAJUK and Secretary, Ministry of Housing and Public Works, but they did not respond to the application. In response to the complaint, the Information commission requested the concerned Ministry to take proper steps. But the Ministry does not inform the Commission about their taken steps.⁴¹

Besides this, the Commission advised 22 concerned ministry and organizations to take proper steps according to the Right to Information Act, 2009 in response to the applications presented by the people of different districts.⁴²

Right to Information in India:

The government of India has taken a forward step regarding ensuring right to information of the people. The government has enacted Right to Information Act in 2005. According to Section- 4 of this Act, each public authority shall be bound to maintain the records and publish the necessary information. There will be a Central Information which will be established under Section- 12 and will be the State Information Commission which will be established under Section-15 of the Act . These bodies will have to perform the functions assigned to them under the Act.

Conclusion:

Surely the government of our country has taken a courageous step with the enactment of of The Right to Information Act, 2009. As we have seen in the earlier time, the concerned authorities were very much disinclined in providing informations to the public, for which they could not be held accountable properly. Sometimes, specially in rural area, people could not take any step in case of where they don't get their required service. But now one can make a complaint against the concerned authority for non providing information and false information. Since it is nowhere present in the Act that, whether the non-citizen or foreigner can apply to the authority for obtaining information or not, the question in this regard is yet unsettled. So what we need now is the proper implementation of the provisions of the Act. In ther procedure of Right to Information Act, there is even now little compliance with the sayings of the Act. It happens out of reluctance of the concerned which at all in the present situation must not occur. That is to say, mindset of all concerned towards right to information must need for promoting the regional right to information in practice.

⁴¹Tattha Adhikar Ain,2009, Tattha odhikar(Tattha prapti songkranto) bidhimala,2009, guruttopurno prosno o uttor(a booklet) published by the Information Commission in June, 2010 at p-80 (translated by the author)

⁴² ibid,at p-80