

## **Towards People's Right to Information in Bangladesh: High Expectations, Tentative Progress, the Way Forward<sup>1</sup>**

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*The enactment of the Right to Information Act is an epoch-making incident in the history of Bangladesh ... it will greatly help establish accountability and transparency in every sphere of society and the administration ... the government will continue to work to safeguard the people's right to information.*

Sheikh Hasina, Prime Minister of Bangladesh<sup>3</sup>

Few other pieces of law in Bangladesh have raised as high expectations as the Right to Information (RTI) Act 2009, adopted in the first session of the Ninth Parliament on March 29, 2009. The provisions of the law became effective on July 1, 2009, while on the next day the Government formed the Bangladesh Information Commission as provided by the law. The heightened expectation of the law is primarily because of the kind of potential and opportunity created by it as captured by the Prime Minister in the above statement.

The preamble to the Act refers to the constitutional commitment to freedom of thought, conscience and speech as a fundamental right and on that basis recognizes the importance of ensuring free flow of information and people's right to information as an inalienable part of this fundamental right. Reiterating the other key constitutional provision that all powers of the republic belongs to the people, it underlines that for true empowerment of the people the RTI is indispensable. It also declares that RTI will ensure transparency and accountability in all public institutions<sup>4</sup> and non-government

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<sup>2</sup> Executive Director, Transparency International Bangladesh. I am grateful to Sanjida Sobhan of MJ Foundation, and Rezwon ul Alam, Sajjad Husain and Habibur Rahman of TIB for their valuable assistance. In writing this paper I have drawn considerably from my paper on "Implementing Right to Information in Bangladesh: Opportunities and Challenges", presented at the International Conference on "RTI Implementation: Law, Institutions and Citizens" organized by the RTI Forum, Dhaka, 21-22 June 2009.

<sup>3</sup> Sheikh Hasina, Prime Minister of Bangladesh, quoted in the *Daily Star*, August 8, 2009

<sup>4</sup> Except those in the exemption list provided by the Act.

organizations (NGOs) that operate using government or foreign funds. The preamble declares that RTI will lead to control of corruption and improvement of governance quality<sup>5</sup>.

The law empowers citizens to seek and receive information and official documents from authorities covered under the law. The RTI can not only empower the people to hold the authorities including the Government accountable but also indeed in its letter and spirit has the potential to revolutionize the concept of democratic governance - governance that engages the people to establish democracy *with* the people.

The people's right to information is far more than enactment of the Right to Information Act (RTI) Act, it is about its compliance and enforcement. It is also about ensuring that the people's access to information is ensured in all aspects of the society in a way that daily lives of citizens are positively transformed. This is much easier expected than achieved, for which a whole range of stakeholders have to own it, take the responsibility, and deliver the same. A year and a half after the enactment of the law, this paper is an attempt to assess the progress towards its implementation against the expectations and to identify key areas of strategic emphasis needed in moving ahead if the law has to serve its goals and objectives.

The experience of implementation of right to information laws worldwide shows how difficult, long-drawn and often frustrating it is for people to start to reap the benefit out of such laws. Bangladesh will be no exception, and indeed for all practical purposes it may be even premature to make an assessment of the progress in that direction. The theme of the paper is even more important because laws and institutions of democracy in Bangladesh face perennial challenge of multifarious nature including an erosion of public trust and confidence. For many there may be a sense of helplessness, despair, cynicism and even apathy as far as rule of law is concerned and the capacity of laws and institutions to deliver. It is also important in a situation where inspite of highly supportive statement of the Prime Minister mentioned above, opposing views from the corridors of the Government not are not far to seek.<sup>6</sup>

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<sup>5</sup> Government of Bangladesh, *The Bangladesh Gazette - The Right to Information Act*, April 6, 2009 Preamble (Translated and adapted from Bangla).

<sup>6</sup> One of the Advisers with the status of a Minister was recently reported to have trashed the Act by indicating that government officials were not bound to provide information to the public. Quoted in *Prothom Alo* and the *Daily Star*, September 20, 2010. Although Information Minister assured that this was not the official position of the Government, that such statement could come from an adviser to the Prime Minister remains a matter of concern. Earlier, on July 25, 2010, at the 22nd Conference of the Deputy Commissioners held in the Conference Room of the Office of the Prime

## II. THE RIGHT TO INFORMATION: MOTHER OF ALL RIGHTS

The Right to Information is the key to all other rights. It is among the most important instruments to effectively empower those to whom power should belong in democracy – the people. The United Nations has called it the touchstone of all the freedoms to which UN is consecrated.<sup>7</sup> The history of the recognition of the right to information is much older though. The first country to have the RTI law was Finland and Sweden in 1766 when the former was a territory governed by Sweden. The joint Parliament of the then Finland and Sweden adopted the first RTI law of the world titled Access to Public Records Act, 1766. More than eighty countries have since enacted RTI law or act, of which over 40 have done so during the decade of nineties and thereafter. The fact that the newly elected Government of Bangladesh adopted the Right to Information Act in the very first session of the 9<sup>th</sup> Parliament, marked a significant step forward in fulfilling the constitutional pledge of the state of Bangladesh.<sup>8</sup>

This upsurge of the RTI law worldwide comes as an indicator of the growing recognition of the importance of the citizens' access to information as a catalyst for strengthening democracy, promoting human rights and good governance, and fighting corruption. Enactment of RTI laws has in many cases taken persistent efforts of campaign and advocacy by a multiplicity of stakeholders in the public, private, and non-governmental sectors, particularly the latter who like in Bangladesh, played the catalytic role. The experience of RTI movement shows that while enactment of the law appears as a dream-come-true for the campaigners, its implementation, like any other law enforcement, is much more challenging.

The enactment of the Act marks the 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

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Minister, the deputy Commissioners expressed their reluctance to provide to the public all the information they are required under the RTI Act. They preferred "limited flow of Information". That time too the Information Minister came out in defence of the law and advised the officials to ensure free flow of information for the public as required by the law. *The Daily Star* July 26, 2010.

<sup>7</sup> The UN General Assembly in its very first session in 1946 adopted the Resolution 59(I) which states, "Freedom of Information is a fundamental human right and ... the touchstone of all the freedoms to which UN is consecrated".

<sup>8</sup> Article 7 of the Bangladesh Constitution says, "All powers in the State belong to the people". Article 39 stipulates that everyone has the right to freedom of opinion and expression; this right includes right to seek, receive and impart information and ideas regardless of frontiers.

intensified by 2004.<sup>9</sup> As a part of their advocacy for an RTI Act the civil society organizations eventually formed the RTI Forum led by the Manusher Jonno Foundation (MJF), which drafted the Act and lobbied with the Government. 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. Coupled with continued efforts by the RTI Forum, this resulted in the adoption of the RTI Act 2009 by the present Government.<sup>10</sup> As much as the enactment represented a realization of one of the key electoral pledges of the Government, it also a significant step forward in fulfilling Bangladesh's international commitment as a State Party to the UN Convention against Corruption, which provides for creating legal and institutional mechanisms to ensure people's access to information.<sup>11</sup>

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. The Act has been welcomed and criticized as it happens in case of any law like this, especially with respect to the list of exemptions which many including this author considers to be too long.<sup>12</sup> Like any other law the RTI Act in its present form is not necessary written in stone, and can be expected to be amended in due course in incremental approach to meet higher standards.

### **III. TENTATIVE PROGRESS**

A recent report based on 4 workshops held at divisional cities participated by various professional groups has assessed a less than encouraging progress towards implementation of the Act in terms of people's awareness and perception of the law, the Information Commission, strengths and weakness of the Act, instances of application of the law, challenges and ways to cope as perceived by the participants, and indicators for

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<sup>9</sup> On September 28, for the first time in Bangladesh the Right to Know Day was observed by Transparency International Bangladesh throughout the country. TIB then partnered in 2005 with Manusher Jonno Foundation (MJF) and a number of other NGOs to observe the Day which helped bringing the demand for RTI into sharper focus.

<sup>10</sup> For a good tracking of the process leading to the Bangladesh RTI Act see, Shaheen Anam, "Freedom to Know", *The Monthly Forum*, published by *The Daily Star*, June 2009.

<sup>11</sup> The United Nations, *The UN Convention against Corruption*, Article 10.

<sup>12</sup> There are criticisms of the Act including those who consider some provisions of the Act to counterproductive the notion of right to information as such. See for example, Nurul Kabir, "Hypocrisy, thy Name is Government", a 5-part article published in *The New Age*, May 3-7, 2009. For a good documentation of the process leading to the adoption of the Act and a more positive view of it see, Shaheen Anam, *ibid*.

measuring progress of implementation.<sup>13</sup> With only nineteen months passed since the law was passed, to expect too many tangible results may not be realistic. Results can indeed be expected in an incremental process. Nevertheless, one can observe a number of notable positive steps, hesitant and tentative though, in the direction of implantation of the Act.

### **Government Initiatives**

The Government has duly constituted the Information Commission, and with the end of the tenure of the founding Chief Information Commissioner appointed his successor. The Commission has also been provided with office premises reasonable enough for a good start. The Government is also exploring the possibility of allocating a plot of land to the Commission where its own premises could be built.<sup>14</sup>

The Ministry of Information as the focal point in the Government for the implementation of the Act has approved the rules<sup>15</sup>, setting out the procedures of application for seeking information and acknowledgement of receipt of thereof; delivery of the requested information; communicating inability to provide information; appeals to the authority, means of providing information; determination of fees for request and price of information. The rules include formats for application, notice of inability to provide information, for appeals, and for determining the cost and price of information. Out of an estimated 700,000 plus officers to be designated officers in Government bodies to provide information to the public several thousand have been assigned.<sup>16</sup>

The Government has also taken some initiatives for awareness and training of designated officers. These include trainings being organized by the Bangladesh Public Administration Training Complex (BPATC) in collaboration with Manusher Jonno Foundation and the Bangladesh Academy for Rural Development (BARD). The BPATC has also planned to mainstream RTI in its regular training programmes. The NGO Affairs Bureau issued a notice to the NGOs registered with them to assign designated officers and

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<sup>13</sup> Ananya Raihan, "Tothyo Odhikar Ain: Trinomuler Konthoshhor", presented at a seminar organized by MRDI, Dhaka, 23 September 2010.

<sup>14</sup> The Information Secretary to the Government of Bangladesh, at a seminar in Dhaka on September 23, 2010, in which the present author was present.

<sup>15</sup> Government of Bangladesh, Right to Information Rules (Relation to Receipt of Information) 2009, *The Bangladesh Gazette*, 27 October, 2009, and amendment of the same dated 7 March 2010.

<sup>16</sup> Exact and updated number of designated officers is not available. The Information Secretary mentioned about 7000 to have been appointed, *op.cit.*

communicate appropriately.

### **Initiatives by the Information Commission**

After an initial stage of uncertainties and resource constraints the Bangladesh Information Commission started off in earnest with a series of public awareness and outreach events in divisional, district and even lower levels, in which the Information Commissioners took part. Among participants were local level government officials, civil society, NGOs, media, and general members of public. By June 2010, 25 such visits took place. The Commission has also been receptive to proposals for attending outreach events organized by NGOs.

Work on a database consisting of the names and contacts of the designated officers in both public and NGO authorities has started. The commission has completed drafting the regulations which, as at this writing, was awaiting the Government approval. Work on organizing a user-friendly office including its own website has commenced.

The Commission sent out letters to all Deputy Commissioners to inform within July 15, 2010, the names and contacts of their respective designated officers and other measures taken towards implementation of the Act, to which response with the names of designated officers came from nearly all except a handful.

The Commission has also acted upon nearly two dozen applications it has received and advised the concerned institutions to take action as per provisions of the law. Apart from the Commission's participation in awareness and training programmes organized by various other authorities including the NGOs, the Commission conducted a training programme involving government officials at the level of Deputy secretary and above. They have also printed a few informative documents like the text of the Act, brochure, and a compilation of reports from the Commissioners' field visits.

### **NGO Initiatives**

As already mentioned, unlike most other countries that have adopted the RTI law, the non-governmental organizations using funds from the Government sources and from foreign donations have been included in the jurisdiction of the RTI Act of Bangladesh. As a result both as campaigners for people's right to information and as a part of obligation under the law NGOs of Bangladesh have high stakes in the enforcement of the Act.

Accordingly, some notable initiatives have been taken by the NGOs collectively and individually, though according to most observers these are much below the expectations.

Steps taken by NGOs include<sup>17</sup>: i) assigning of designated officer for providing information;<sup>18</sup> ii) adoption of disclosure policy and/or proactive disclosure by a few; iii) organizing seminars, workshops and trainings at both national and local levels; iv) information fair for awareness about the law and strengthening the demand and supply side; v) training programme for government officials through formal arrangements with the BPATC; vi) integration and mainstreaming of RTI in institutional capacity building and in project implementation including awareness communication and outreach programmes; vii) publication of training manuals, books, leaflets, brochures, implementation guidelines; viii) engagement with media, training of journalists; ix) grassroots awareness campaign; x) user-friendly guidebook on the Act, xi) international conference; xii) local level mobile advice & information service; xiii) advocacy for effective Information Commission through media statement and other means of campaign; xiv) technical assistance to drafting of the RTI Rules; and xv) seeking or providing support to seek information from authority. In a few cases NGOs have also received requests for and duly provided information one of which the request came from within an organization.<sup>19</sup>

#### **IV. THE WAY AHEAD**

The challenges of RTI implementation cannot be viewed in isolation from those of the democratic space - the institutional, legal, political and behavioural context in a society that enables fulfillment of the letter and spirit of democracy. It is about the capacity, for example, of contesting political actors to uphold certain principles, values and standards so that opposing political stance and debate thrive. The democratic space is protected by basic standards of civility, mutual acceptability and coexistence of diverse political forces within

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<sup>17</sup> Taken from, Ek Bochhore Tothyo Odhikar Ain 2009: Bortoman Obostha o Vobishyot Kormo-Koushol", an undated report compiled by MJ Foundation with information provided by MRDI and D-Net.

<sup>18</sup> About 2 percent of the NGOs registered with the NGO Affairs Bureau have done so. Ananya Raihan, op.cit. "Tothyo Odhikar Ain: Trinomuler Konthoshhor", presented at a seminar organized by MRDI, Dhaka, 23 September 2010. The Chief Information Commissioner, who was present in the seminar, however, said that the ratio would be even less than 2 percent.

<sup>19</sup> Notable among the NGOs who have taken one or more of these initiatives are: Ain O Shalish Kendra, Article 19, BELA, BLAST, Bondhu, CMCS, CAMPE, COAST, D-Net, IEC Bangladesh, Manusher Jonno Foundation and many of its partner organizations, MMC, MRDI, Nagorik Udyog, Research Initiatives Bangladesh, RTI Forum, Transparency International Bangladesh and 36 Committees of Concerned Citizens working with TIB.

the bounds of the rule of law. It is a set of democratic practices and spirit where politicians and political parties, as much as may be opposed to each other and may not accept what they stand for, would be able to ensure that the mutually conflicting stance remain within the "rules of the game," so that one would defend the right of the other to differ and be critical.

The history of Bangladesh is replete with evidences of the people's movement for the democratic space.<sup>20</sup> Yet there is much to be desired in terms of the democratic and political space conducive to promotion of people's right to information that demands much advanced and matured type of political behaviour and practice to evolve only in a long term process. Politics in Bangladesh remains locked in a bitter confrontation of contested legitimacy and acceptability between the leading political parties. Disputing a policy or raising critical voice is often unacceptable. The prospect of refreshing transformation in democratic space in the days to come will depend on the leadership and the institutions and processes that are going to evolve. Equally, if not more important, will be the extent to which the people can engage in raising voice and demand to hold the government accountable in a space where questions or criticisms will be viewed as an indispensable element of democratic behaviour for which people's right to information will be recognized as indispensable. The change will come as an outcome of a collective of the following.

### **1. Primacy of the Political Commitment**

The most crucial factor that will continue to determine the degree of success in ensuring people's right to information is the political will, the degree of commitment of the government, upon which rest the key responsibility and authority of creating conditions for effective implementation of the RTI law. That the enactment of the law was backed by a clear manifestation of the top level political will be hardly questioned. The right to information occupied a key position in the process building up to the national election to the 9th parliament held on December 29, 2008. All major political parties including the two major electoral alliances led by the ruling Bangladesh Awami League (AL) and

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<sup>20</sup> The series of historical struggles for assertion and establishment of democratic rights with such milestones as the language movement of 1952 and the long periods of struggle against the Pakistani authoritarian rulers including protest movements of the late sixties leading to the liberation war in 1971, restoration of democracy through popular uprising after a decade and a half of post-1975 military or military-dominated rule, and the extraordinary public participation in the national election of December 2008 to put an end to the military-backed caretaker regime are but examples of Bangladesh's struggle for democratic space.



Bangladesh Nationalist Party (BNP) recognized the importance of the RTI.<sup>21</sup> The AL in particular committed in its election manifesto to ensure people's right to information, so did the BNP, though the former was more specific about it. RTI was also prominently at the core of public discourse and demand, media reports and commentaries. A close look at the AL manifesto for the 9<sup>th</sup> Parliament elections makes it easy to realize how RTI was dovetailed with its commitment to promote good governance and control corruption. The key first step towards implementing the RTI – generating the political will – therefore was clearly taken.

At the political level, commitment is one thing, while delivery can be quite different. The main challenge lies in the fact that information is power. It requires a paradigm shift including a major transformation of the mindset and attitudes to be able to share power and to own and internalize the culture of disclosure. What will remain an open question is the capacity to sustain the commitment.

## **2. National Implementation Strategy of RTI**

The implementation of RTI needs to be placed in a strategic framework and a plan of action with a time-frame preferably identifying targets in short, medium and long term. In developing the strategy, all stakeholders should be engaged, especially the Information Commission, civil society, NGOs, media and others in a participatory process. The lead has to be taken by the Information Ministry as the focal point to set up a high-powered inter-ministerial committee that could coordinate the development of the strategy and action plan. The technical input to the strategy could be outsourced to a panel of independent experts. The strategy and the action plan should contain clearly defined processes and tools of monitoring and evaluation. NGOs and other institutions covered by the law should develop their own time-bound implementation and monitoring plan.

Information officers need to be designated early in all public offices. The office of the designated officers should be in such places as may be accessible to the people without any inconvenience. Special arrangements should be made for offices and/or institutions like the Government Ministries where entry of common people is restricted without which assigning designated officers will not bear fruit.

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<sup>21</sup> See Election Manifesto of Bangladesh Awami League and Bangladesh Nationalist Party, published in *The Daily Star*, 16 December 2008.

Effective implementation demands that necessary resources are allocated. Shortage of resources can turn out to be crucial in a country like Bangladesh where not only that the transition from the culture of secrecy will require significant investment in training and capacity building in the demand and supply side, but also modernizing the archiving and retrieval system of information will require huge investments for projects of relatively long term nature. A recent study has shown that even in highly developed countries like UK and USA shortage of resources stands out as a key predicament against implementing access to information.<sup>22</sup> Therefore, the national implementation strategy must also provide for plans to generate appropriate funds in short, medium and long terms for implementation of the right to information. Such allocations should be reflected in the annual national budget as well as that of concerned authority as defined in the law.

A sensible approach could be to start modestly on a pilot basis. It could be a phased initiative in which the law is enforced on experimental basis in a few key ministries and/or departments and then drawing upon the experience replicate the same over a well-designed time-line across the board. Such an approach can not only provide for learning by doing, but also prevent situations where both the demand and supply side can be overwhelmed by over-expectations.

### **3. Priority to Proactive Disclosure**

The Implementation Strategy should attach high priority to the principle of maximum possible proactive disclosure, which implies that disclosure is the rule, and non-disclosure is the exception. Like RTI laws in most other countries, the Bangladesh RTI Act contains provisions requiring institutions or authorities covered by it to make certain types of information disclosed before being asked or proactively, by publishing reports or other means including websites. Proactive disclosure of this type can build the trust of the people on the authority whether in the public or non-governmental sector. If activities of the different ministries and/or departments including information on public procurement can be made available on-line everyone will have an equal opportunity to know about upcoming tenders and about contracts that have been awarded. Such measures can lead to

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<sup>22</sup> House of Commons Constitutional Affairs Committee, "Freedom of Information Act 2000 — Progress Towards Implementation," vol. 1, November 30, 2004. <http://www.dca.gov.uk/foi/bkgrndact.htm#top>., Alasdair Roberts, *Blacked Out: Government Secrecy in the Information Age* (New York: Cambridge University Press, 2006).

higher levels of accountability, and by limiting discretion reduce abuse of power.

Experience of countries where access to information law has been effectively implemented shows that proactive disclosure before being asked also reduces the number of requests and cuts delays in receiving information when requested.

#### **4. A Vibrant and Effective Information Commission**

Experience has shown that where an independent, sufficiently resourced and empowered Information Commission is operational to oversee the due enforcement of the right to information act it can make a hugely positive contribution in ensuring delivery of information to the seekers, addressing grievances, and above all, building the culture of openness in the government and other relevant bodies as well as the society as a whole.

The enthusiasm of the Bangladesh Information Commission has raised many expectations. The Commission needs to develop its own strategy and plan of action, consisting of time-bound targets for its capacity building and delivery of measurable results and effectiveness. Much would depend on the degree to which it can achieve higher levels of public trust, credibility, professional excellence, visibility and dynamism. A Commission like this in Bangladesh will be as effective as the Government of the day wants it to be. Hence in order to be sufficiently resourced – financial, human, technical, it must take advantage of the highest level political commitment to build working relationship with the Government, while maintaining the highest degree of independence.

One important aspect of the law that needs to be reviewed together with the Government is article 17 that provides that the Government will determine the status, compensation and other benefits of the Chief Information Commissioners and other Commissioners shall be determined by the Government. This leaves uncertainty and creates the scope of undue dependence of the Commission upon the government.

The Commission and its human resources are, to be sure, in a relatively unknown professional terrain, not least because of the need to cope with challenges of mindset transformation of stakeholders. Their own training and exposure to international expertise and experiences will therefore be of crucial importance. In addition to addressing the core jurisdiction of complains and appeals, the Commission should also develop its plan to conduct public awareness and outreach campaigns in collaboration with other stakeholders, particularly the civil society and NGOs. The awareness campaign should put specific

emphasis on complains and appeals mechanisms, tools and processes that could ease the tension between the information providers and seekers. It should also contain information and communication plan delineating in plain language the scope of what should be expected of the law and what not in order avoid over-expectations and conflicts.

The Commission will have to be specially alert that the appeals procedures are simple and easily accessible to all in both urban and rural settings. Special provisions must be made to ensure that the centralized structure of administration of the country does not act as a barrier to information requests and deliveries. In the absence of local offices of the proposed Information Commission, public libraries, post offices and NGO offices can be dovetailed into the access system. The Information Commission can actively engage with members of the parliament, particularly parliamentary committees in enforcing the implementation.

Work of the Information Commission also needs to be monitored in order to determine its effectiveness in promoting implementation. This is a role primarily for the Commission itself. But they can also outsource some such responsibility involving the civil society like the RTI Forum and the media. The RTI Forum has undertaken an initiative to assess the level of implementation the Act focusing on all key stakeholders in both demand and supply side. A more specific regular activity of the Forum could be the tracking of the work of the Commission including the actions or inaction of the Information Commission, consistency of decisions vis-à-vis the law and the rules, and to bring out periodic reports which the Commission can benefit from.

A mission of the Information Commission should be to develop relationships with various authorities in a manner that helps inculcate a sense of ownership of the right to information. If the law and the Commission is perceived as intimidating to the supply side, the achievement of the purpose of the Act will be jeopardized. Regular consultations and collaboration between the authorities and the commission will help prevent possible misperceptions and mistrusts.

## **5. Breaking the culture of secrecy**

The most formidable challenge facing democratic and accountable governance is secrecy. Secrecy leads to concentration of power and widening of discretion which are ingredients of poor and unaccountable governance. Most governments, and indeed also

often the non-government organizations are used to doing things in a secretive fashion<sup>23</sup>. In general, most officials both within and outside the government possess a sense of possessiveness about in information at hand. Releasing them to the public is perceived as sharing the control and, hence, power. Therefore, a fundamental change in mindset is necessary.

Openness is more easily preached than practiced, often because of lack of capacity and knowledge, but more often because of a mindset. It is crucial therefore, to work towards achieving a qualitative change of mindset breaking away from a culture of secrecy to culture of openness. While officials in general have to be oriented towards the mindset change, it is particularly important in case of information officers with specific provisions for their training and capacity-building. Equally important for effective implementation is wide dissemination of the process of applying for information and contact details of the information officers. Priority should be to train a core team of officials at various levels who could then train and sensitize peers and others.

It will not be easy to move towards the culture of openness, but the sooner the holders of information realize the virtue of sharing information – how it improves governance, builds trust and increases credibility - the better is the possibility of specific results. It requires huge and comprehensive efforts, which must be built on motivation of stakeholders on how the change of mindset benefits the information providers too. Providing information can, for instance, ease burden, improve credibility and acceptability, or even facilitate officials – public or private – to seek information on matters affecting themselves.

Drawing upon the national implementation strategy, the various authorities holding the information must develop and implement their respective disclosure and communication policies to provide the public with information upon demand and without being asked. Such policies should also define ways and means to build capacity to handle grievances and internal appeals against a decision by the designated officer.

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<sup>23</sup> A recent study by Transparency International Bangladesh revealed a widespread prevalence of secretiveness and reluctance to disclose information by the NGO sector. See, Transparency International Bangladesh, Challenges of Governance of the NGO Sector in Bangladesh” 2007.

Seeking and receiving information should not require any special effort. It should be easy and convenient for the information seeker, putting the onus on the supply side - the officials must be aware that they are not only obliged to supply information as provided by the law but also to justify denials, if any. The policy should provide tools and processes for monitoring of RTI implementation process with strict enforcement of disciplinary measures for willful and motivated denial of information.

An important way to mainstream right to information could be through reviewing the code of conduct of officials and staff in the public sector as well as NGOs to incorporate the commitment to openness. The RTI Act also obliges the Members of the Parliament to assume a more proactive and oversight role in enforcing the people's right to information, which can be effective when they lead by example in disclosing information.

Linking the right to information initiatives to the government's grand vision of digital Bangladesh can greatly help the transition to culture of openness and building of systemic capacity for proactive disclosure.

## **6. RTI-friendly Information System**

One of the most formidable challenges of implementing RTI is the lack of capacity of the information holders – institutions as well as individuals. It goes without saying that the information management system in Bangladesh is archaic, 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 and capacity the information system will remain insensitive to the letter and spirit of RTI.

The information management system must ensure the largest possible proactive disclosure which is helpful for both information providers and seekers. For other information to be available on request, classification in terms of obligation to disclose under the Act will be helpful. The list of exemption must be very clearly communicated to avoid conflicts. On the other hand, Article 32 (2) which qualifies the exemption list to provide that information related to corruption and human rights violation shall not be

exempted even for the organizations in the exemption list should be widely communicated at all levels. The information management system must be modernized including the use of new technologies, equipped with both hardware and software including the necessary knowledge, skills and capacities.

## **7. RTI-supportive legal regime**

Success in ensuring RTI depends very significantly on supportive legislation.<sup>24</sup> 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.

Although the Act provides for precedence of its provisions over any other existing law that may contradict with this, grey areas may be easily found to prevent effective enforcement of RTI provisions. 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. The implementation process should include harmonizing all existing laws and regulations with the RTI Act so as to remove any inconsistencies and contradictions that could impede the prospect of implementation.

RTI and an effective Information Commission will require active support and enforcement from the courts and law-enforcement institutions. Independent judiciary and law enforcement agencies are a sine qua non for implementation of the RTI Act. Without an independent judiciary the right to information can turn out to be illusory. The integrity and capacity of the judiciary would be crucial for instance in terms of providing solutions when needed, particularly about determining the limits and exemptions to the coverage of the Act. A prerequisite for building a RTI-supportive national integrity system in which key institutions of democracy are independent of partisan political influence supported by a firm constitutional jurisprudence favourably disposed to the concept of RTI.

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<sup>24</sup> See for more, Commonwealth Human Rights Initiative, *Implementing Access to Information: A Practical Guide for Operationalising Access to information laws*, Revised Edition, CHRI, New Delhi, 2008.

## **8. The Civil Society and the Media**

Ensuring people's right to information is a matter of shared responsibility, not only of the government. The NGOs, civil society, media and the private sector must also take greater responsibility for complementing Government efforts and especially assisting common people using the law. Strengthening the demand side capacity by creating greater awareness of the availability of the law, its usefulness for the individual, ways and means to use it, and above all build the confidence that the law is about empowering them are therefore, crucial. Without civil society engagement, the prospect of enforcing the RTI Act is most likely to fade away.

Training of various professionals including NGO officials, media, lawyers and business can stimulate demand for information which in turn helps ensure that public authorities put in place the most effective systems for responding. The business community is particularly relevant for anti-corruption activists: requests by businesses about government contracts can contribute to the creation of a more level playing field in the public procurement sector.

The civil society has a two-way stake in the implementation of the RTI in Bangladesh – as providers of information and as campaigners for implementation on both demand and supply side. Provisions of the Act applicable to the Government institutions in terms of providing information are equally applicable for non-governmental organizations. Indeed it is incumbent upon the NGOs as a sector and individually as separate entities to lead the process by adopting policies and time-bound implementation plan emphasizing more on proactive disclosure. The civil society must also take active role in partnering with the Government and the Information Commission in campaigning for supply side capacity building.

The more a society moves to implementation of the RTI, the more information would be available for the people. However, in practice it will be impossible, even for the most enlightened citizens, to effectively use all that is available. Apart from creating demand for citizen's right to information in general, NGOs may play a very important role in developing and communicating various categories of materials containing information depending on areas of interest of members of the public, with special emphasis on what it is that should concern them and how they could demand and use those effectively in achieving their rights and entitlements.



There are excellent examples of civil society role in enforcing people's right to information. The experience of the MKSS in Rajasthan, India provides one of the most frequently noted grassroots approaches in implementing RTI. The MKSS has provided impetus to many other community initiatives to apply RTI in ensuring citizen's access to rights and entitlements. Many NGOs have also taken the course of providing legal support to citizens with regard to their right to information. NGOs can build in RTI awareness in their own core and project activities and conduct advice and information campaign in public service delivery institutions in key areas like education, health, land administration, local government etc.<sup>25</sup>

The main thrust of civil society role in RTI implementation is similar to that in most other areas of advocacy, which is to catalyze awareness and participation that would catalyze empowerment of the disempowered, and thereby promote greater transparency, accountability and democratic practices. The civil society organizations like the RTI Forum can further strengthen their advocacy for public education campaigns through collaborative efforts involving the government and the media to ensure that people are aware of their right to information and of the procedures to exercise it. Educational and training institutions both public and private at various levels can be motivated to adopt special curricula for RTI awareness.

The role of civil society must also be strategic, with a special emphasis on partnerships particularly with the media, which has its own role to play as a primary stakeholder. The principal vehicle for taking information to the public is an independent and free media. More than any other stakeholder, a free media is strategically positioned to bring to the notice of the public the whole range of information freely, fairly and objectively to the notice of the public keeping an eye on what concerns the public, what they want and need to know. In partnership with the civil society the media can play a crucial role in effective demand creation on behalf of the information seekers and in putting pressure on the supply side. Like the Judiciary a free media, as a strong pillar of democracy, that can also hold the government and other institutions accountable in general as well as from the perspective of RTI.

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<sup>25</sup> Transparency International Bangladesh has been conducting the Advice and Information Desk (AI-Desk) campaign in the 36 locations all over the country which has been delivering positive and measurable results. See Colin Knox, Dealing with Sectoral Corruption in Bangladesh: Developing Citizens Involvement" in *Public Administration and Development*, www.interscience.wiley.com.

Like any other sector, media is not also free from challenges. There can be conflict of interest between its function of informing the public and imperative to make profit. Increasing concentration of media in business houses with political links can pose a challenge to the true spirit of RTI by influencing the opinion through purposive use of information. A strong and principled self-regulatory system within the media can be helpful.

With the growth of the Internet, which is also another potentially powerful stakeholder in RTI, the world of information is being increasingly democratized. Effective use of the Internet by the both public and private sector can truly free the information and communication system from domination of any particular authority.

## **V. CONCLUDING REMARKS**

Implementation of RTI will empower citizens, the common people. It will hold authorities in and outside the Government accountable. It will strengthen democracy, promote good governance. It will devolve authority, curtail discretion. But it will be resisted. The resistance may emerge even from within the stakeholders. Public officials may resist it because openness reduces the range of discretion; political leaders may resist because transparency reduces the scope of unaccountable use of power or influence; opposition to RTI may come from private business houses who tend to gain in a culture of secrecy; NGOs may resist because of gains from non-disclosure; media may play a negative role by using information to promote vested interests; failure of key institutions of the national integrity system especially the judiciary and law-enforcement bodies to enforce the rule of law may prevent RTI to be enforced. Above all the civil society organizations that must play the most important demand creating role may also fail to do so because of their own failure to promote proactive disclosure on the one hand, and because of polarization, unhealthy competition and lack of unity.

Such challenges cannot, however, dampen the high expectations and extraordinary opportunity created by the RTI Act. The knowledge that challenges exist can rather help develop the strategies and policy actions to implement the RTI. Implementation of RTI, as earlier indicated, is much more difficult than adoption of the Act; it is a multi-stakeholder challenge; it requires a comprehensive approach; and it will yield result only when there is

a full-fledged and committed ownership of all stakeholders, especially internalization of the benefits of the concept of the right to information by the demand side as well as the supply side - those who need the information and those who hold them.

Ensuring people's right to information will be possible only in a long-term process that demands un-ending commitment and effort from a range of different actors who have to be prepared for coping with setbacks and frustrations. Capacity to be creative for facing challenges will be crucial, in which taking lessons from experiences of what works and what does not is important, so would be a commitment to learning by doing backed up by a continuous process of innovation and creativity.

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