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Country Report: The Right to Information in Bangladesh

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Info Lady Shathi helps 50 year old Kohinur Begum to Skype with a relative. In rural Bangladesh the Info Ladies are bringing internet services to men and women who need information but don't have the means to access the web. After three months of training the Info Ladies set out each day in their pink and blue uniforms to cycle to remote villages where they provide Skype connections to villagers who want to communicate with relatives working overseas. They also provide tech services, photographs, health tests, cosmetics and other small items that can be easily carried.

Constitutional Framework

Article 39 of the Bangladeshi Constitution guarantees the right of every citizen to freedom of speech and expression and freedom of the press, and subjects these rights to reasonable restrictions in the interest of state security, friendly relations with foreign states, public order, etc. The right to seek, receive and impart information is not explicitly mentioned, although the preamble of the Right to Information Act stipulates that this right is an inalienable part of freedom of expression.

Right to Information Act

The fight against corruption was a major factor in Bangladesh's path to adopting the RTI legislation. The initiative and lobbying for the passage of the RTI legislation came from a variety of different interest groups and individuals: human rights defenders, media professionals, academics, grassroots organisations, NGOs and concerned citizens. In 2002 and 2006 two draft proposals on the Right to Information Act were circulated, the first by the Bangladeshi Law Commission and the second by the Manusher Jonno Foundation, an NGO advocating for freedom of information. In 2008, the caretaker government installed during the state of emergency in Bangladesh passed the Right to Information Ordinance that the civil society had the opportunity to co-shape. The 2008 Ordinance was subsequently ratified by an elected government and the Right to Information Act (RTI Act) came into force on 1 July 2009.

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Provisions of the RTI Act

Principles

The purpose of the RTI Act stated in the Preamble is to increase transparency and accountability, decrease corruption and establish good governance. The Act includes a provision whereby laws that create an impediment to the right to information are superseded by the RTI Act in case of a conflict of laws. Right to information is laid down as

a principle underlying the functioning of the government and “no authority shall conceal any information or limit its easy access” (Section 6(2)).

Scope

Only citizens have the right to demand and receive access to information from public bodies. The scope of the RTI Act in relation to bodies liable to provide information extends to the executive, legislative branch and organisations that undertake public functions. Private organisations with government or foreign funding are included, which applies to NGOs, international organisations and other private bodies. However, the Act excludes state security and intelligence agencies, unless information sought pertains to corruption and violation of human rights in these institutions. The definition of “information” is broad: any documentary material relating to the constitution, structure and official activities of any authority regardless of its physical form or characteristics (including machine readable records) fall within this definition.

Proactive disclosure

The RTI Act includes a long list of information that should be proactively published, although it does not explicitly mention that such information should be available online. This includes information on decisions, activities, policy related documents and reasons for their adoption. On an annual basis, every authority shall publish a report containing information about its structure and activities, rules and regulations, conditions on accessing services and information on freedom of information officers.

Disclosure upon request

As a rule, requesters are required to fill out a form to request documents, but if the form is not easily available, the information may be requested in writing (without a form) or in an electronic form. The requesters need to identify themselves only by name and address;

describe the information sought so that it can be identified; and note the form in which they wish to obtain the documents. Individuals have the right to receive a copy, inspect the documents, take notes or use any other “approved method”.

Each body must appoint a Designated Officer. There is no general requirement to provide assistance to all requesters, but if the requester is a person with a disability, the authority must provide such assistance as necessary for him or her to access requested information. If the authority is not in possession of the information sought, there is no procedure in place to refer the request to another body.

The authority must provide the information within 20 working days, unless information relates to life and death, arrest or release of persons, where the deadline is 24 hours. If more than one authority is involved in the decision-making, the information may be provided within 30 working days. If the authority decides to refuse access, the decision must be issued within 10 working days. In case of administrative silence, the request is presumed to be rejected.

A reasonable fee may be imposed for obtaining information and the price should not exceed the actual expenses. The regulation fixing the fees should be published in the Official Gazette. The fee regulation may also provide for fee waivers.

Exemptions

The access to information regime put forward by the RTI Act takes supremacy over any impediments laid down in other laws. There is a list of 20 exemptions which broadly protect the following interests: state security; international relations; commercial secrets and intellectual property rights; tax and budget information; law enforcement; judicial activities; investigations; privacy; “secret information” of a person; life or physical safety of individuals; and others. Some of these exemptions are subject to a harm test, but there is no public interest override. The only similar provision relates to information on human rights breaches or corruption held by security and intelligence services, which are otherwise excluded from the scope of the law, but in this case fall inside the scope.

Partial access is provided by the law; no request may be fully rejected if

it is reasonably possible to allow access to non-exempt portions of requested information.

The authority must inform the requester of the reasons for refusal. The RTI Act also states that information may be refused only with a “prior approval from Information Commission” (Section 7).

Appeals

The Act explicitly bars access to a court following a denial of the right to information, but establishes the Information Commission, an independent appeal authority with strong competences. The Commission is formed of a Chief Commissioner and two Commissioners, appointed by the President with respect of a gender balance requirement. This oversight body handles appeals against refusal decisions, administrative silence, imposition of unreasonable fees, incomplete, misleading or false information and other violations of the RTI Act. The Commission may conduct inspections, has other strong oversight powers and issues binding decisions. The Commissioners may also conduct other tasks, such as promoting the right to information, issuing policy recommendations, researching on the impediments to the right to information and so forth.

Sanctions

The RTI Act prescribes fines for officials who fail their duty to justify the refusal, to decide upon the request in due time, to give misleading or false information or who create impediments to the right to information. The Commission may also recommend to the authority takes departmental action against the responsible official.

Publication / Reporting mechanisms / Promotional measures

Every authority shall prepare a catalogue and index of all information and preserve it and designate a RTI officer. The Information

Commission is entrusted with promotional and awareness-raising activities. The Commission adopts an annual report that includes statistics on the implementation of the law and presents it to the President, who sends it further to the Parliament.

Implementation of the RTI Act

Several groups have noted that the RTI Act has a concrete effect on the ground, a possibility to achieve societal change. However, civil society groups report that implementation of the RTI Act is a challenging process, not least because of the “culture of fear” and the lack of trust. The World Bank has drafted a Strategic plan on implementation of the RTI for 2014-2018, which identifies areas where implementation has stayed behind the promises of the RTI legislation, in particular: lack of awareness, capacity issues, the need for an increased political support, the lack of an internal coordinating body within the Government.

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Many NGOs warn that strong demand-side efforts, namely frequent use of the law, is needed for the success of the Act. While the Commission reported that as many as 7,000 requests have been filed in 2012, people are still not sufficiently informed on their right to information. The Commission implemented some wide-ranging awareness campaigns, such as running TV campaigns and sending mobile text messages to the public (250 million free SMS messages have been sent). Nevertheless, more awareness-raising activities among lay and expert public and authorities are needed. On the supply side, two studies have shown that the response rates to RTI requests remain low.

Another serious challenge for implementation of the law is the capacity of governmental agencies, frequent transfers of designated officers and the lack of training for the officers. Constant transfers of RTI officers are not good for the continuity and they also make trainings on implementation of the law less efficient. The question is also whether all authorities liable under the RTI Act designate officers; a special problem arises with private bodies (such as NGOs and internationally

funded organisations), where a study from 2001 showed that only 201 from roughly 30,000 such organisations appointed an officer. Nevertheless, the NGOs seem to be better aware of their responsibilities under the RTI Act.

Related legislation

Media laws

In 2014, the Government released a National Broadcasting Policy which reportedly prohibits broadcasters from disseminating information that could smear the image of law enforcement agencies, armed forces and government officials with judicial powers, information that is against the government or public interest or impedes national security. Nevertheless, this is not a law and any restrictions should be incorporated in a law and conform to international standards.

State Secrets Act

The Official Secrets Act (OSA) was adopted in 1923 under the British colonial rule. The OSA prohibits the unauthorised collection or disclosure of secret information and imposes fines for perpetrators, even in cases when a person voluntarily receives secret official information but knows or ought to have known it is classified. Attempts to or assistance in breaching the OSA are also punishable. The RTI Act overrides the OSA, but intelligence and secret services are excluded from this Act and there are a number of exemptions applicable to information related to national security with no public interest test prescribed.

Protection of whistleblowers

Whistleblower protection has been enacted in The Disclosure of Public Interest Information (Protection) Act, 2011. It defines public interest information as information relating to misuse of public money or

resources, abuse of power, criminal acts and acts against public health, safety or the environment, and corruption. Any whistleblower can make a “public interest disclosure” to the competent authority and receives protection from civil and criminal prosecution, employment disadvantages, protection of identity etc. Disclosure of false information or information not in the public interest is punishable.

Environmental protection legislation

Bangladesh adopted the Environmental Protection Act in 1995 and its amendments in 2010. The tasks of the Director General of the Department of Environment, include collection, publication and dissemination of information relating to environmental pollution. The Act and the Amendment also prescribe the obligation of the Government to publish in the Official Gazette general guidelines and maps with legal descriptions of environmentally critical or threatened areas. Nevertheless, the Government is required to publish very little environmental information proactively.

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[The Right to Information Principles \(https://www.article19.org/resources/asia-the-right-to-know-principles/\)](https://www.article19.org/resources/asia-the-right-to-know-principles/).