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The meaning of “information” under the RTI law (PART 1)

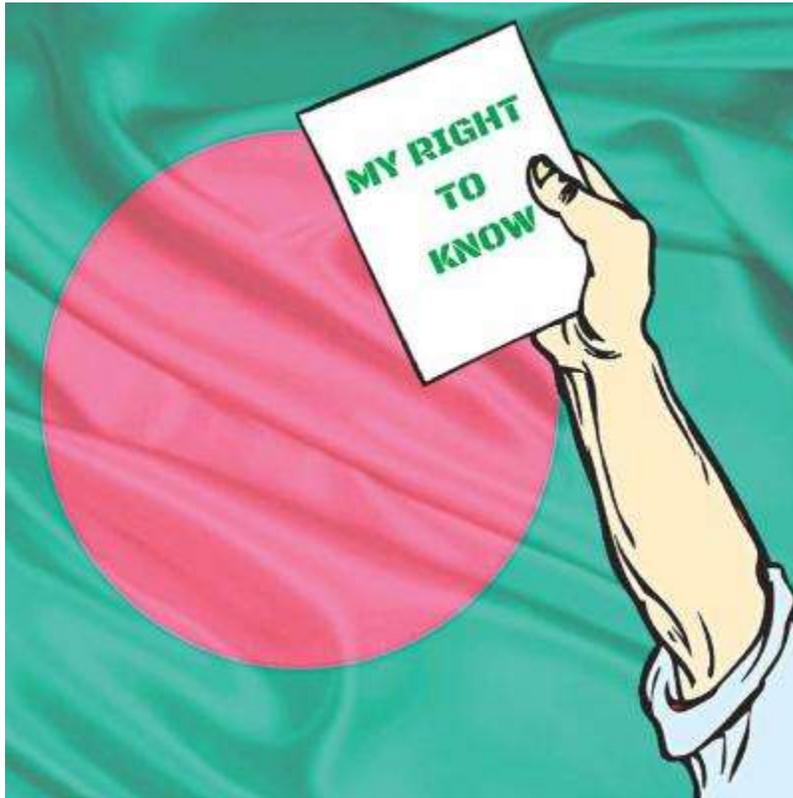


Illustration: Nahela Nowshin

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In last month's column, we said that a key reason for the tardy progress of the Right to Information Act (RTI) in the country is general disbelief that the age-old practice of official secrecy in the work of public authorities will change just because there is a new law that seeks to end it. In fact, the erosion of faith in the rule of law extends to most laws of the land.

With the RTI law, an additional impediment is the lack of understanding about the unique nature of the law, its revolutionary objectives and the fact that, unlike other laws, it is meant to be used by citizens vis-à-vis the government and not vice versa. Concomitantly, there is a general misunderstanding about the meaning of the term “information” itself, as used in the act. Those who are not aware of the difference between the popular meaning of the term and its specific connotation under the act are prone to conclude that as more information is not their priority and as they are happy with whatever information they get through the media or from published

sources or through traditional means, they do not see any need to seek further information by invoking the act.

An important task of RTI activists in the country over the years has, therefore, been to make people realise that the meaning of the term “information” under the RTI law is more circumscribed and, in any case, obtaining information per se is not the main objective of the law. The objective of the law, in fact, is establishing transparency and accountability in the work of public/government offices. By seeking RTI-relevant information, citizens promote the objectives of the law. The process of information-seeking, therefore, is as important, if not more, as information itself. This will be evident from examples we have cited below.

It is important to underline that the term “information” under the RTI Act relates only to information which is associated with the work of public authorities. The latter create information in the process of their work, such as those they put on their files. They also receive information from other sources, such as letters, reports and the like, stored on files or in other forms, such as CD, maps, videos, books, reports, etc. Taken together, they constitute the sort of information that concerns the RTI law.

Such information, like the contents on the files of public offices, is not normally made public. RTI law seeks to make as much of such information as possible available to all citizens. Some of these can be provided through publication on websites, annual reports and the like. Those that are not or cannot be so disclosed in a proactive manner must be provided to citizens who ask for them. Only some sensitive information-- such as those relating to national security, foreign relations, privacy of individuals etc.--has been exempted from such disclosures. The law makes it mandatory for public authorities to provide the non-exempted information to applicants without any questions asked as to why the information is being sought. Citizens are entitled to them as their rights and not as a grace from authorities.

In short, though citizens cannot ask public authorities to create information, unless they were in any case obliged to collect or record the information and had failed to do so, all information that is already with them (and which is not legally exempt) can be accessed by citizens. In fact the future of the RTI regime lies in making more and more information proactively available, but in an easily accessible and comprehensible manner.

This revolutionary provision of the law is premised upon the notion that under democracy and under the constitution of the country, all power of the state belongs to the people and, therefore, the latter has the right to know how those who are employed to exercise these powers do their jobs. By seeking relevant information, citizens are able to monitor the work of public bodies and check whether public officials are performing diligently and honestly. Moreover, it allows them to ensure that the laws are applied objectively, without fear or favour, and wrong or misconceived decisions are corrected.

RTI is, thus, an excellent tool to link citizens with the government. It helps to enhance and deepen the sense of citizenship of the people. By accessing relevant information, citizens are able to get improved services from the government, and conversely, the government too is helped to assess how it is performing and what its deficiencies are.

An added advantage for the government is that as citizens become better informed about the functioning of the government, they also understand better the constraints that governments often function under, and become more appreciative of efficient and honest officers and departments. The same argument would apply vis-à-vis the public and NGOs who use public funds or receive foreign funding and who have been brought within the purview of the law.

A few examples may help amplify the above points. As mentioned before, a unique feature of the Bangladesh experience is the fact that it is mostly the ordinary and marginalised people who made use of RTI in the initial years. To a large extent they still do so. Having been sensitised about the scope and objectives of the law by NGOs, they soon realised that the best use of the law for them would be to ask officials engaged in implementing government's safety-net programmes for information on the processes they follow in selecting beneficiaries. For example, they would simply ask for the list of beneficiaries who received a particular safety-net benefit, such as VGF and VGD cards, and the names of those who were involved in the preparation of the list. Such a demand causes great discomfort for officials concerned since disclosure of true information would expose their irregular practices. At the beginning, therefore, they tried to shoo the applicants away through threats or abuse, but when they persisted, often backed by NGO support, they would soon realise that providing the applicants with the related benefits would be easier than providing them with the information sought. This, in fact, happened in many cases in which the applicants got the benefits without getting the information sought. The RTI process itself, thus, produced the desired result.

Whether getting results like this without getting the information sought is good for the RTI regime has been a matter of debate among RTI scholars and activists. There are those who think that it is fine at least in the beginning as it encourages people, particularly those who are more interested in getting the benefits they seek than to ensure transparency per se, to make use of the law. They also argue that by demanding relevant information, they contribute to creating awareness among public officials that they are now being watched by the people, which is a first step towards transparency and accountability.

There are others who argue that if RTI applications are filed but not followed up by appeals against non-response or wrongfully denied information, the process of information seeking gets weakened. The dealing officials become complacent because there are no adverse consequences of ignoring information requests. The RTI system, they say, is a bit like the use of antibiotics, either follow the full course or do not take them at all. Half way measures are dangerous. We leave it up to readers to make their choice.

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