

Progress and regress of RTI in Bangladesh



Shamsul Bari and Ruhi Naz

As the Right to Information (RTI) regime nears completion of its first decade of existence, we asked a few scholars, advocates and users of the law for their views on its progress so far. Results were mixed.

A common view is that Bangladesh's RTI regime has not lived up to its expectations. Many are just happy that the law continues to exist, however waveringly, and has not withered away, as some had feared. They hope that over time, citizens and public officials alike will get used to the law and discover its immense value for the future of democracy in the country.

Others are discouraged by the paltry figure of 7,000 RTI requests on an average annually, which too has largely stagnated in recent years. They feel that for a country with over 160 million people, this doesn't augur well for the future of the law. They are afraid that it may end up as a paper law.

The majority, however, take a middle position. They feel that though the law has not flourished as well as it should have, there are indications that it may do better if serious attention is given to the challenges identified over years. We feel the same way. We have highlighted many of the challenges in this column before.

To learn more about contemporary challenges, we looked into recent decisions of the Information Commission (IC) on complaint cases. They often provide a comprehensive picture of the entire journey of an RTI request. Of course, such cases represent only about 15 percent of all RTI applications filed in the country.

As we reviewed the general opinions against the IC decisions themselves, it was apparent that the law has both progressed and regressed in recent times. While some positive developments have taken place, which raise our hope, the continuation of the old and emergence of new negative practices, both on the part of public authorities and the Information Commission itself, cause us concern.

The good news is that a large number of private authorities, who were previously considered to be outside the ambit of the law, have now been brought within its fold. The Information Commission, together with the government, has officially included all private banks of the country to be covered by the definition of “authorities” with whom citizens may file RTI requests directly.

This is welcome news indeed. Private entities are normally excluded from the purview of the law in most countries. Bangladesh has set an example in this regard.

It would have been more useful, though, if we knew the rationale for the decision. We only know that, faced with a complaint from a citizen who was refused information by a private bank, the IC sought the opinion of the Law Ministry if private banks could be specifically included in Section 2 (2) (vii) of the Act. According to the latter, “any organisation or institution as may be notified in the official gazette from time to time by the government” would be considered as “authority” under the law.

In its response, the Law Ministry simply held, without giving any reason, that private banks should indeed be considered as covered by the law. Subsequently, the Ministry of Information issued the notification through official gazette.

Determining whether an entity is an “authority” under the law often requires interpretation of the substantive provisions of the definition provided in the law. This is both a prerogative and responsibility of the IC. We do not know why the IC did not exercise that prerogative. Of course, we welcome the end result but believe that an exposition of IC's reasoning would have been even better for democracy.

Private entities are normally excluded from RTI law simply because the latter is premised upon the fact that citizens are entitled to monitor the work primarily of those authorities which use public funds. Problems arise where private entities may not benefit from public funds directly but interact with the public more closely than many public bodies. Should they not be accountable to the people? The question is a matter of much debate globally.

A global approach has, however, emerged whereby private bodies which have to abide by government regulations are indirectly brought within the RTI fold through the regulatory path. For example, citizens aggrieved by stale food at private restaurants may ask for the government food inspector's inspection report. The Bangladesh IC too has taken this approach wherever appropriate. We laud its position.

These laudable developments have, however, been marred by many less generous and sometimes outright negative positions taken by the IC in dealing with citizens' complaints. In one particular case, the IC's ire against a frequent complainant was expressed through having the local police check on his antecedents. The police found nothing on him, but the action sent a wrong message to prospective users.

It must be remembered that the law does not restrict any citizen from asking for any information from a public authority without providing any reason or justification. The concerned authority may refuse to disclose the information, if permitted by the law, but it cannot reject a request or suspect the motives of a claimant simply because voluminous or even nonsensical or frivolous information is sought.

In another case, the IC found it necessary to investigate if any unfair motive lay behind large number of requests made by two frequent users of the law. However, even if the nature of their requests could arguably give rise to suspicion, a better approach would have been for the IC to look into the matter first by calling in the applicants instead of asking the police to do so.

The observations of the Supreme Court of India in an RTI case where excessive workload of a public authority was invoked may be instructive here. After underlining that public authorities must realise that the era of transparency has arrived, the Court went on to state categorically that: “Additional workload is not a defence. If there are practical insurmountable difficulties, it is open to the...bodies to bring them to the notice of the government for consideration so that any changes to the Act can be deliberated upon.”

If we wish to see an unhindered growth of the RTI regime in Bangladesh, we must take note of the underlying message. An accommodating approach towards the few RTI users in the country who have persevered to apply the law, will have a salutary effect on the regime.

Improvements in some other areas will also be useful. Many designated officers of public authorities are still reluctant to attend complaint hearings at the IC, even after repeated summons, leading to frequent postponements. One hearing was postponed more than eight times. Such delays cause unnecessary hardship for ordinary citizens, including cost in money and time, and are very discouraging. The law provides clear guidance to deal with such dereliction of duty. There is a growing feeling among RTI users that the IC is more lenient towards government officials compared to ordinary applicants. Such impressions must be avoided.

We also found that the IC continues to deny even a hearing to many complainants simply because of procedural errors. Some indulgence here, as practised in many countries, will be helpful.

We hope that our observations would be taken by all concerned in the constructive spirit with which they have been made. As the law benefits us all in the country equally, we need to work together for its success. Let us hope that in the forthcoming general elections, political parties will renew their commitment to uphold the objectives of RTI Act 2009, and whichever government comes to power will take it forward.

Shamsul Bari is Chairman of Research Initiatives, Bangladesh (RIB). Ruhi Naz is RTI Coordinator at RIB. Email: rib@citech-bd.com