

Daily Star, September 15, 2018

Of political parties, general elections and RTI in Bangladesh

Shamsul Bari and Ruhi Naz

A positive outcome of the contemporary trend towards authoritarian rule by democratically elected governments around the world is that it is providing a welcome boost to the limping Right to Information (RTI) or Freedom of Information (FOI) movements globally. Faced with shrinking democratic spaces, citizens' groups and RTI/FOI enthusiasts are coming together to form national, regional and international watchdog bodies to share their strengths, identifying ways to counter the trend. The need for citizens to use RTI to question public authorities on why and how they do what they do has perhaps never been so important.

RTI law allows citizens to seek information from government and public bodies on matters relating to their functions. The idea is to make them more transparent in their work and accountable to the people, the two basic requirements for democracy. If nothing else, citizens' queries can at least cause consternation for concerned authorities. The hope is, over time, this will lead to better governance.

RTI groups are discovering the value of sharing and discussing experiences in different countries and devising strategies based on good practices. The immense reach of the internet and social media is playing a stellar role in this regard.

Though many governments have adopted RTI/FOI laws only recently, most of them increasingly feel uneasy about them. As they face sensitive RTI requests from citizens, they begin to worry about the impact on their hitherto unbridled exercise of power and authority. Hence, they quickly develop a negative stance about the law. International RTI/FOI groups see this happening all over the world.

Governments are also discovering that while it is easier to disregard or abuse many other laws of the land, this is not true for RTI/FOI. The law contains specific sanctions against non-compliant public officials, who may be summoned, reprimanded or fined by the Information Commissions.

Many in the government, therefore, wish to water it down through amendments. This is motivating RTI/FOI watchdog groups around the world to come together and fight this trend through collective wisdom.

Resistance to RTI/FOI instruments comes not only from governments but also from politicians and their parties. The latter take the view that political parties are not “public authorities” and, therefore, not susceptible to RTI queries from citizens. RTI activists take the view that as political parties ostensibly seek to promote public wellbeing and owe their existence to public support, they must be accountable to the people—political parties challenge the legal validity of this position.

This explains why only seven out of over 115 countries that have adopted RTI/FOI Acts have specifically included political parties as falling within the definition of “public authorities”. As the Acts are normally adopted by national parliaments, most of whose members belong to political parties, the latter have managed to keep themselves formally outside the fold of the law in most countries.

Their position has, of course, been challenged by citizens at National Information Commissions and/or in the court of law. In a landmark case, the Central Information Commission (CIC) of India ruled that political parties are indeed covered by the Indian RTI Act 2005. But the political parties have so far refused to abide by the ruling. It has provided a rare occasion for them to unite. Government efforts to undo the CIC decision by amending the RTI Act failed in 2013 due to dogged resistance by Indian RTI groups. But similar efforts continue.

In a more positive development, the South African Constitutional Court has recently held that the right to access information and the entitlement to exercise an informed right to vote, implicitly demands that information on the private funding of political parties and independent candidates be made reasonably accessible to the public. The case was precipitated by an RTI request for information from certain political parties about their private funding.

The Constitutional Court highlighted the centrality of information to the electoral process and warned against political candidates being able to pick and choose what information should be made available to voters. It also indicated that access to information on private funding could deter corruption and avoid the appearance of corruption in politics. In Bangladesh, the question of whether political parties come within the ambit of the RTI Act has not been directly contested yet. But, it indirectly featured in a judgement of the High Court (HC) in connection with a writ

petition filed by Shujon, a civil society organisation, against a decision of the Information Commission of Bangladesh.

The decision related to a request by Shujon to the Election Commission (EC), asking for copies of audited annual statement of accounts of political parties, which the latter regularly file with the EC. The EC declined, claiming it was “secret information” for which permission must be sought first from the parties concerned. When Shujon challenged this position to the Information Commission, the latter sided with the EC, whereupon Shujon filed the writ petition. The HC judgement declared Information Commission's decision to “have been passed without lawful authority and is of no legal effect”.

The judgement firmly stated that: “Ignoring the people's right to know, keeping them in dark and playing hide-and-seek with them in a democratic country like us where all powers belong to the people and their mandate is necessary for ruling the country, no registered political party can be allowed to take the stand that the audited statements submitted to the Election Commission were 'secret information'.”

It went on to add that: “In modern democratic countries, citizens have a right to information in order to be able to know about the affairs of each political party which, if elected by them, seeks to formulate policies of good governance. This right to information is a basic right which the citizens of a democratic country aspire in the broader horizon of their right to live. This right has reached a new dimension and urgency which puts better responsibility upon those political parties towards their conduct, maintenance of transparency and accountability to the public whom they aspire to represent in the parliament.”

The above exposition of our High Court's view on the role of political parties in a democracy, should encourage RTI enthusiasts in Bangladesh to test the waters by sending RTI requests directly to the political parties. If they claim not to be covered by the RTI Act, the judgement would be useful to challenge it both at complaint and writ stage.

More generally, the time is also right for citizens groups to seek, in the context of the forthcoming general elections, a clear commitment from the political parties to accept their inclusion under the RTI Act and to take the law forward by removing all barriers to its proper utilisation by citizens. This should feature clearly in their election manifestos. The government should also use the occasion to restate its full commitment to the RTI Act 2009.

And in the larger context, let the international Right to Know Day on the 28th of this month be the occasion for members of the RTI Forum of Bangladesh to join forces with the global RTI/FOI movement to turn the law into an effective tool for good governance worldwide. In the face of shrinking multilateralism in inter-governmental affairs today, let the people-to-people cooperation contribute to making governments everywhere more transparent and accountable to their population.

Shamsul Bari and Ruhi Naz are Chairman and Project Coordinator (RTI section) respectively of Research Initiatives, Bangladesh (RIB).

Email: rib@citech-bd.com