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Finding a balance between official secrecy and citizens' right to information



If those who were enraged by the Rozina incident turn their efforts towards wielding the RTI law as it was intended, they will do a lasting service to the country. Photo: Star



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"We see all governments as obscure and invisible," said Sir Francis Bacon, English philosopher and statesman, in 1605. Governments should work behind the scenes, beyond public view, he felt. And this is how the British Government worked till the dawn of the 21st century, when Britain's Freedom of Information Act (FOIA) was adopted in 2000.

The UK was late to the party, with other western nations having forged ahead with the adoption of FOIAs (Sweden as early as 1766). The US came two centuries later in 1966 and scores of other countries adopted theirs since then, until it became embarrassing for the UK not to follow suit. Political parties extolled the virtues of freedom of information while in opposition, but did little to advance it when in power. Government and the bureaucracy found it hard to abandon

their long-held practice of exercising power over the people under a cloak of secrecy. The British public, too, appeared unprepared for change. Journalists seemed to be the only ones clamouring for change.

By the time Tony Blair came to power in 1997, the concept of public interest as the pathway to good governance was firmly set as international standard. Blair found it opportune to embrace the pro-people concept to enhance his popularity. Open government, he argued, would be the solution for many things that were wrong in the British system which was "about 50, 60, 70 years behind the actual feelings and sentiments of the broad majority of people." The Freedom of Information Act would deliver "not just more open but more effective and efficient government."

Why did it take so long for a leading world power to adopt the law? The answer lies in the inherent tension that exists between the intrinsic tendency of governments to hide their activities from the people and the increasing demand of the people to know how their governments work. It manifests all over the world, in countries large or small, old or new, north or south. For Tony Blair, it surfaced soon after the Act came into force. It troubled him so much that in his memoir, *The Journey*, published in 2010, he famously lamented:

"Freedom of Information Act. Three harmless words. I look at those words as I write them and feel like shaking my head 'til it drops off. You idiot. You naive, foolish, irresponsible nincompoop. There is really no description of stupidity, no matter how vivid, that is adequate. I quake at the imbecility of it."

Blair concluded that the adoption of FOIA was one of his greatest mistakes in office. He found it to be a "dangerous act" as it affected government's ability to debate and decide issues in confidence. As opposition leader, he believed that FOIA would "signal a new relationship between government and people: a relationship which sees the public as legitimate stakeholders in the running of the country". This belief was shaken as prime minister when he felt its impact. The law, to him now, was "utterly undermining of sensible government".

Blair justified his sweeping change of mind by the fact that the FOIA was not being used by "the people" but by journalists who used it as a "weapon" against the government. While the Act is now used by people from all walks of life, for a much-harried Tony Blair, hounded by journalists for his role in the disastrous Iraq invasion and other internal issues, the use of the Act to dig up sensitive records on his administration was too much to bear.

Tony Blair's exasperations are relevant for us for two reasons. One, Bangladesh shares a similar governance culture with the UK; and two, Blair's gripes about FOIA exemplified the inherent conflict between official secrecy and citizens' right to information. The latter came into sharp focus last month through an unfortunate incident involving a senior investigative journalist, Rozina Islam, at a government secretariat in Dhaka.

While indisputably regrettable, the incident has brought Bangladesh's own Right to Information Act (RTIA) sharply into public attention. More articles and comments appeared in the press and more discussions took place in the electronic media on the importance of the Act and its primacy over the Official Secrets Act 1923 than ever before.

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The progress achieved by RTIA in the country so far has been possible largely due to efforts of many dedicated NGOs and individual activists who have succeeded in promoting the law mainly at the grassroots level and among the semi-urban middle-class population. The results are limited to the basic and mid-level objectives of the RTI pyramid, such as personal needs and lower-level transparency goals.

To reach the top of the pyramid, however, the law must be used for higher-level public interest accountability goals foreseen in the law.

Concerned citizens, particularly those knowledgeable about the inner workings of the government, could play an important role by contesting the official position on the status of specific government records based on law. By doing so, they can help to rein in the innate tendency of public offices to deny information in the name of official secrecy. It is such interactions that help to test the scope of the law and contribute to its maturity.

A good way of doing so in the context of last months' agitations, which included a public demand to scrap the Official Secrecy Act (OSA) 1923, would be to test its validity vis-a-vis RTIA on a given issue. If such an RTI request is denied by an authority under one or more exemption clauses of Section 7 of RTIA, it could be the basis for an internal appeal procedure under the Act. If the appeal fails to obtain disclosure, a complaint could be lodged with the Information Commission (IC). If the latter, too, upholds nondisclosure, its decision could be challenged at the High Court (HC) under its writ jurisdiction. There are instances where the HC

has ordered disclosure. Unfortunately, many questionable decisions remain pending before the Court while many others are untested for lack of pursuit.

The RTI process may indeed be lengthy and cumbersome, as many allege, but it is a constructive way to build a law-based society. There are, of course, good reasons for the civil society to seek the scrapping of the OSA, adopted during colonial times, but before that is achieved, RTIA provides a good basis to prevent its abuse.

The Rozina incident is a stark reminder of the inherent tension that exists between official proclivity to do things in an "obscure and invisible" manner and the democratic value of "open and accountable" governance. RTIA provides a unique opportunity for concerned citizens to help establish a balance between the two, by taking the lead to set up a good practice of using the law and paving the way for others to follow.

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