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Why do we fail to utilise our Right to Information Act?

In a country with such a politically-oriented population, why has RTI not caught on?



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Upon the adoption of Bangladesh's Right to Information (RTI) Act in 2009, many had considered it the most revolutionary law of the land. But 14 years on, no large-scale scandals have been unearthed, no earth-shattering investigative journalism has shed light on major corruption. The NGOs, journalists, and civil society members who most celebrated the entry of the law hardly pay it any attention. The avowed objective of the RTI Act of "increasing transparency and accountability of public offices, decreasing corruption of the same and establishing good governance" remains a pipe dream.

In a country with such a politically-oriented population, why has RTI not caught on? Clearly this is one law that allows citizens to play a meaningful role in monitoring the work of the government and other public authorities, and keep them under surveillance. Are citizens held back by fear of retaliation from the authorities for seeking sensitive information, lack of understanding about the law and its intricate facets, distrust of the authorities to open up to the public? Or is it the frustrations of many users of the law who find their counterparts in the administration abusing its provisions to deny them information? Clearly, it is a combination of all these factors.

Some of the stumbling blocks in the use of RTI are confusion, uncertainty, misunderstanding, even doubts and anxiety – whether among users of the law, public officials, or in the Information Commission itself.

As a general rule of thumb, all institutions, bodies, or offices which benefit from and/or use public funds are to be considered as "public authority", including NGOs receiving foreign funds. Even some private entities can be brought into the RTI fold if the government exercises some control over them.

The term "information" itself is the source of much confusion. In a country with a long history of colonial and authoritarian rule, "information" normally connotes government edicts, rules, regulations, and some general knowledge on matters governments wish the people to know in order to regulate and control them. These are mostly "open" information, created and disseminated by the government itself through various measures. Beyond such ordinary information, there lies a vast range of information related to matters of governance, often of a sensitive nature, which the authorities have kept "hidden" from the people through laws like the Official Secrets Act.

Most people do not realise that the RTI Act was meant to open up a large portion of such undisclosed information so that citizens could use them to monitor the work of the government. The law not only created an opportunity for people, but also a responsibility for them to play a critical role "so that good governance shall be established".

The situation was compounded by the fact that there was little debate in the country on the pros and cons of the law, either in Parliament or outside, before it was enacted. Neither the population nor the public officials tasked with responding to people's information requests fathomed the revolutionary nature of the changes foreseen in the law.

Unlocking government records and opening them up for public scrutiny is clearly the basic goal of the law. The best way to promote a real understanding of this would be to project the law as an instrument to facilitate citizens' *access to government records*, rather than "information" in general.

Moving on, the term "public authority", from whom citizens are to seek information, also creates confusion. Many do not realise that this is not limited to the executive branch only, but also extends to the legislative and judiciary arms of government; yet, few requests have been addressed to the latter bodies. In most RTI-mature countries, these sectors are equally the target of citizens' inquiry and surveillance. Attention towards them will increase the range for citizens to apply the law.

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Private banks, for example, which report to the Bangladesh Bank could be asked to share that information with the public. Even private restaurants are subjected to RTI enquiry in countries

where the law requires periodic government inspection of their premises to ensure they are complying with hygiene and health standards.

But what about dealing with rejection of RTI requests or being denied information? Public Information Officers (called "DOs" in Bangladesh) tend to reject RTI requests on grounds that they fall under the exemption clauses provided in the Act. While the grounds for nondisclosure – such as national sovereignty and integrity, public safety and security, foreign relations, individual privacy, fiduciary relationship, etc – are generally accepted as justified in public interest, they are often used as excuses by DOs who cite them as reasons for nondisclosure without providing any justification.

The few ordinary citizens who take the trouble to use the RTI law as a civic responsibility have little expertise or capacity to challenge such decisions through appeal and complaint procedures. Even the Information Commission often lacks the capacity to justify its decisions in favour of nondisclosure with proper reasoning. And yet, in most countries where the law is well entrenched, it is mandatory to give full justification of denial. For instance, a decision of the Central Information Commissions of India clearly stated: "If no specific reasoning is given to justify denial, the information must be provided."

Another problem frustrating users is the general predilection of many DOs to avoid their responsibility by claiming that the information requested is missing. Faced with such denial, information seekers have been known to abandon their pursuits altogether.

As maintenance of public records is mandatory under the law, any delinquency in this regard should lead to serious administrative measures against those guilty. According to one decision of the Central Information Commission of India: "By practice, 'missing file' cannot be read into as exception in addition to exceptions prescribed by RTI Act. It amounts to breach of Public Records Act, 1993 and punishable with imprisonment up to a term of five years or with fine or both." The challenge is to enforce this clear response.

In order for the RTI Act to succeed, what is crucial is active collaboration among citizen groups, for whose empowerment the law was enacted in the first place. These groups include all civil society groups (including RTI activists and enthusiasts), NGOs, journalists, academics, and relevant professional groups. They must unite to address the challenges, to deal with the misuse and abuse of the provisions of the law – through intervention of the judiciary where necessary – and to help the small community of its earnest users who are ill-equipped and struggling against all odds to keep the transparency ball rolling. It is time to energise the RTI forum and ensure regular interaction between the civil society and the Information Commission to address critical roadblocks.

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