

# Bangladesh: Political Economy of Right to Information

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## ABBREVIATIONS AND ACRONYMS

<b>4IR</b>	Fourth Industrial Revolution
<b>ACC</b>	Anti-Corruption Commission
<b>BEC</b>	Bangladesh Election Commission
<b>BELA</b>	Bangladesh Environmental Lawyers Association
<b>BGMEA</b>	Bangladesh Garment Manufacturers and Exporters Association
<b>CIC</b>	Chief Information Commissioner
<b>CPD</b>	Centre for Policy Dialogue
<b>CRU</b>	Coordination and Reforms Unit
<b>CSO</b>	Civil Society Organization
<b>DFID</b>	U.K. Department for International Development
<b>DIO</b>	Designated Information Officer
<b>DO</b>	Designated Officer
<b>DSA</b>	Digital Security Act
<b>IC</b>	Information Commission
<b>KII</b>	Key Informant Interview
<b>MJF</b>	Manusher Jonno Foundation
<b>MKSS</b>	Mazdoor Kishan Shakti Sangathan
<b>MOHPW</b>	Ministry of Housing & Public Works
<b>MP</b>	Member of the Parliament
<b>MRDI</b>	Management and Resources Development Initiative
<b>NGO</b>	Nongovernmental Organization
<b>NIS</b>	National Integrity Strategy
<b>RAJUK</b>	Rajdhani Unnayan Kartipokkho
<b>RTI</b>	Right to Information
<b>SUJON</b>	Sushanoner Jonno Nagorik

## Introduction

1. The Right to Information (RTI) Act, 2009, was a milestone in the legal history of Bangladesh to ensure people's right to obtain information from the government offices and other organizations. This act covers most bodies owned, controlled, or substantially financed either directly or indirectly by the government and non-governmental organizations (NGOs). The act aims at giving citizens the right to hold the government accountable.
2. In the 1990s, civil society advocated for the RTI Act as one of the best-fitted tools to establish good governance. The act was drafted by the government and civil society organizations (CSOs) together, following an analysis of a few other RTI Acts. A caretaker administration further cemented the path for the introduction of the RTI Act. The Council of Advisors of the caretaker administration approved the RTI Ordinance in September 2008, and it became formally recognized as a law from October 20, 2008. The democratically elected new government passed the RTI Act in March 2009, in the very first session of Parliament.
3. The context of introducing a law for RTI in Bangladesh was different from that of India. The demand came from the grassroots level in India with a 40-day sit-in protest by a citizens' rights body in 1996. In the case of Bangladesh, it came from Dhaka-based elites and lacked connection with the grassroots (Article 19 2015). The RTI Act, 2009, helps investigative journalism, but that is not the entire goal of this act. The goal is to empower citizens with information and make livelihoods easier for the ones who would otherwise have no means of getting answers from the state or other social actors.
4. The Global Right to Information Rating 2019 showed that Afghanistan maintained the top position in terms of implementation of the RTI Act among 128 countries with a staggering score of 139 out of 150 (Centre for Law and Democracy 2019). With a score of 109, Bangladesh was ranked 26th in 2019. Among the South Asian countries, Bangladesh is only ahead of Pakistan, placed 32nd with a score of 105.
5. The year 2019 marks the 10th anniversary of enactment of the RTI Act, 2009, in Bangladesh. A survey was conducted as a follow-up to track improvements and identify gaps since the baseline survey of 2012 (World Bank 2020). The survey was split into five segments: (a) a survey among 768 designated officers (DOs) in 64 districts, (b) a survey among 768 heads of office covering both government organizations and NGOs in 64 districts, (c) a survey among 359 requesters in 21 districts, (d) a survey among 340 complainants to the Information Commission (IC), and (e) a nationwide survey among 12,800 citizens. The results reveal that there has been notable progress in preparing the supply side to implement the act. In contrast to an increased awareness of the act on the supply side, that is, the DOs and heads of office, the awareness level on the demand side, that is, the citizens, has been found to be low. Only 7.7 percent of the 12,800 citizens surveyed across the country said they were aware of the law. Meanwhile, about two-thirds of the 768 DOs surveyed in 64 districts said they did not receive a single application from citizens for using the act since the time they were designated to provide information services.
6. However, according to the preamble of the RTI Act, 2009, effective implementation of the act is critical to strengthen institutionalization of democratic values, good governance, and anti-corruption measures. The act also admits an obvious correlation of RTI and proactive disclosure with improved governance and increased transparency and empowerment. Thus, the act paved the way for enacting

several statutes like the Right to Information (Disclosure of Information) Rules & Regulations 2010, the Right to Information (Disposal) Rules & Regulations 2010, the Right to Information (Information Management) Rules & Regulations 2010, and so on. Concurrently, several other acts have been enacted or are in effect, namely the Digital Security Act (DSA), 2018; Official Secrets Act, 1923; and so on, which are often discussed in the context of the implementation of the RTI Act. Proper and effective implementation of the act requires a discussion of the impact of these laws on the act as well.

7. Given the above, this study is an attempt to analyze the political economy of the implementation of the RTI Act, 2009, in Bangladesh. The findings of the study would help the stakeholders track the implementation of the act in Bangladesh and adopt strategies for future engagements with relevant state and non-state actors.

## Objective of the Study and Research Questions

8. The objective of this study is to take an unbiased account of the current status of implementation of the RTI Act that would enable the stakeholders, both in the supply (state actors) and demand (non-state actors, citizens) sides, to undertake future RTI interventions to benefit the citizens.

9. This research is mostly exploratory in nature. It will seek answers to the following questions to assess the political economy attributes of RTI in Bangladesh:

- Stakeholders' perception of the institutional arrangement, capacity, and enforcement of the RTI Act, 2009 (supply side) in the given democratic space
- Challenges and barriers and factors preventing citizens from using the act (in the light of the different legal frameworks, political environment, and so on)
- Roles of the state (legislative and executive branches as an enabler) and civil society and media (as a facilitator) in the implementation of the act

## Method of Study

10. The study required a combination of primary and secondary methods of data collection. Therefore, three types of methods have been used here: (a) literature review, (b) key informant interviews (KIIs), and (c) case study.

11. Available literature on RTI has been reviewed to understand the context, background, and rationale of enacting the RTI Act, 2009. The literature review has helped assess the opportunities and challenges to implement the act in Bangladesh.

12. In-depth interviews have been conducted among selected stakeholders. They include civil servants, civil society leaders, media professionals, and thought leaders. The interviews enabled the study team to understand their perceptions of the implementation of RTI, governance landscape, and roles of the IC and overall supply and demand sides. There were some KIIs as well. Selected officials of the IC and Cabinet Division, who requested anonymity, were interviewed as well. The guidelines for the interview are annexed to this report (Annex 1).

13. Finally, three case studies were selected to connect with the arguments and reality, which surfaced during the study. They reflect on the advantage of the RTI Act, 2009, the jurisdictions of the constitutional body to supply information, and the challenges faced by either an ordinary requester or print media to obtain information sought.

## Structure of the Study

14. The report has been organized into the following sections:

- A. Theoretical Analysis
- B. Accountability of the State and the RTI Act, 2009, in Bangladesh
- C. Information Commission: Assessment of Institutional Arrangement, Capacity, and Enforcement of the RTI Act, 2009
- D. Role of Other State Functionaries
- E. The RTI Act, 2009, and Other Legal Frameworks: Relationships and Probable Impacts
- F. Political Development since Enactment of the RTI Act, 2009
- G. Supply and Demand Attributes and the Drivers of RTI

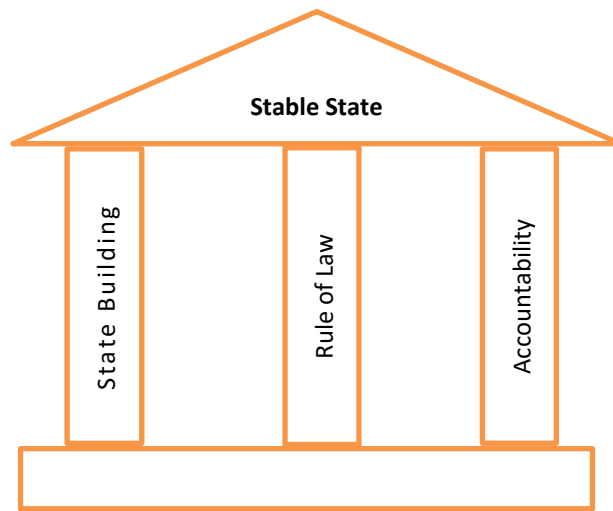
### A. Theoretical Analysis

15. The political economy study on the status of implementation of the RTI Act, 2009, has been able to shed light on political development in Bangladesh. Huntington (1965) opines that political development can be termed as political modernization; development is synonymous with modernization. He also identified four generally agreed-upon criteria to determine political development/modernization: rationalization, nationalism, democratization, and mobilization.

16. According to Huntington's definition of political development as modernization, political decay is the reverse of the linear idea of social progress. In other words, political decay describes how chaos and disorder can arise from social modernization increasing more rapidly than political and institutional modernization. Huntington describes the forms of political decay according to the various definitions of political development or political modernization where he focused primarily on political development as modernization and institutionalization (Huntington 1965).

17. However, Huntington (1965) opines that different definitions of political development are arbitrary ways to comprehend the rise of political systems and the relationships between the political systems in different nations. Later, Fukuyama (2014) redefines the theory of political decay by analyzing the 'sclerosis of democratic institutions' in the United States and other countries. Fukuyama (2011) also opines that to be stable or to ensure political order, a state requires three components: (a) state building, (b) rule of law, and (c) accountable government.

**Figure 1. Components of a State**

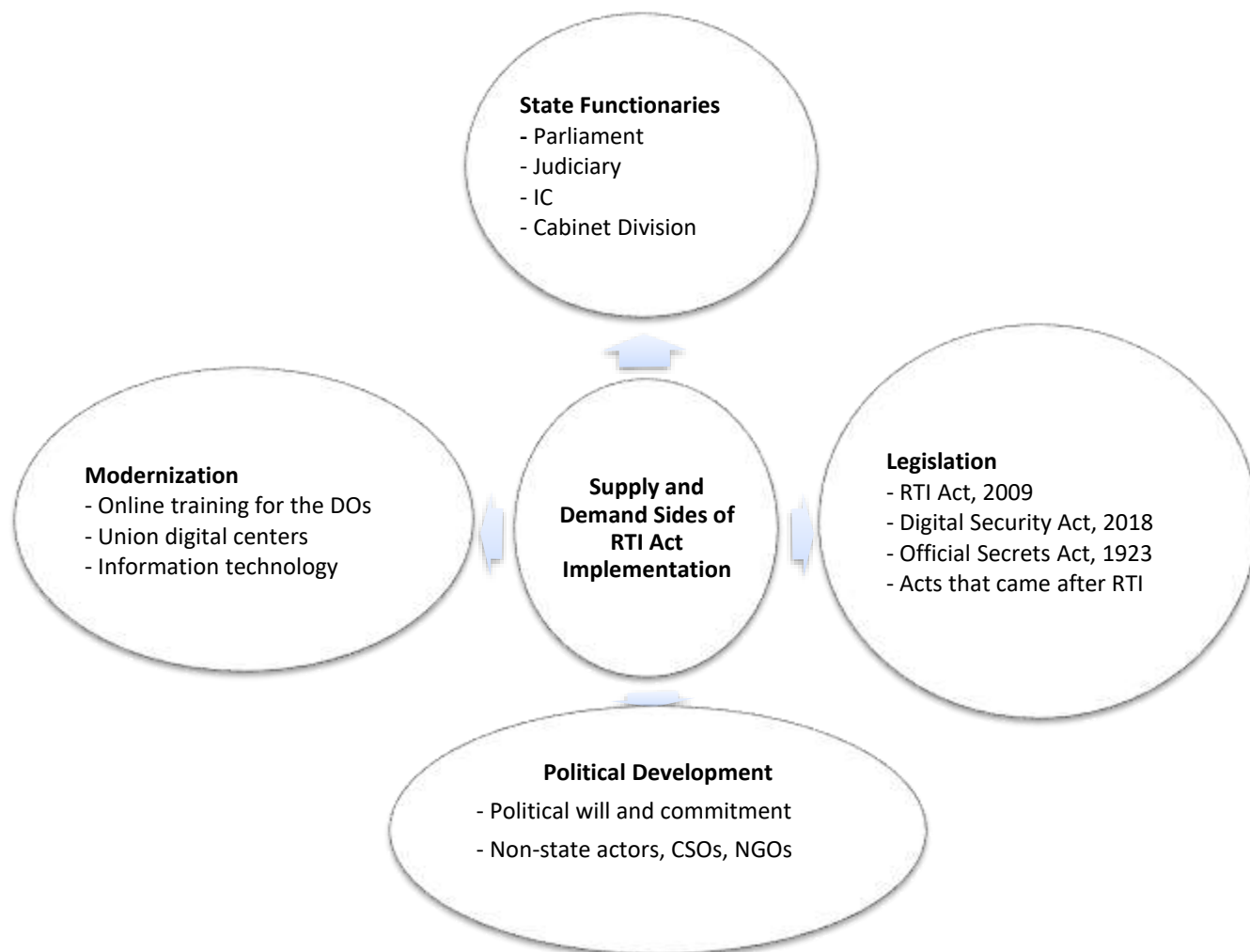


18. Fukuyama (2011) observes that a successful modern democracy balances all three components to achieve stability. He used the examples of China, India, the Middle East, and Europe. He commented that each country developed these three components of political organization in different order, in different ways, and to different degrees to ensure stability.

19. Finer assessed political development by the political culture of a state. Eventually, political development determines the level of development in a country (Finer 1998). Pye viewed political development by the participation of the masses and their involvement in political activities (Pye 1966). Almond defined a political system through input and output functions. The input functions consist of political socialization, political recruitment, interest articulation, and interest aggregation, while the output functions consist of rulemaking, rule application, and rule adjudication (Almond 1965). On the other hand, Huntington and Fukuyama observed that the institutions of political organization must be strengthened for ensuring development. Hence, their arguments seem the best fit for the study.

20. In the following sections, the study, taking the above discussion into consideration, would focus its discussion and interpretations on Figure 2. Here, the concept of political decay will cover accountability of the democratic institutions in Bangladesh while authoritarian modernization will indicate the supply side of RTI and legislative frameworks in the context of Bangladesh.

**Figure 2. Supply and Demand Sides of RTI Act Implementation**



## **B. Accountability of the State and the RTI Act, 2009, in Bangladesh**

21. The history of providing citizens the right to access information held by public bodies traces back to 1766 in Sweden (Mendel 2014). Some 185 years later, in 1951, its neighboring country Finland adopted the right. In 1948, right to information was included in the Universal Declaration of Human Rights (Article 19). By 1995, only 19 countries in western democracy across the world adopted it as a law. However, at present, more than 100 countries from all regions of the world have recognized citizens' right to information.

22. The right to information was recognized as a law in Bangladesh during the regime of a caretaker government on October 20, 2008, as an ordinance. The newly elected government of Bangladesh adopted the RTI Act in the first session of the 9th Parliament on March 29, 2009, as part of its electoral pledge. It became a law on April 5, 2009, through the consent of the President.

23. In 2008, rigorous efforts were made by the caretaker government to build a suitable infrastructure for RTI in Bangladesh. The formation of the IC and the placement of DOs in all public offices were well thought through and useful measures.

24. The RTI Act, 2009, was the result of an almost decade-long journey of advocacy and lobbying by mainly Dhaka-based CSOs and rights groups. Unlike many other laws, this law was not designed to dominate citizens by any means but to empower them to exercise their right to access to information. The then incumbent government saw the prospect of using this law to establish good governance and accountability within the public sector and civil society alike. The 2008 Election Manifesto of Awami League was pro people and pro change. Hence, the law was adopted with full political will and support. The Prime Minister herself was committed about the act in the beginning as a tool to ensure transparency and good governance.

25. Gradually, the overall political and macro environment started to change. The overwhelming majority of a single political party in three successive parliamentary elections since 2008 was considered by many as a not-so-favorable factor for implementing a legislation like the RTI Act, 2009. This affected the momentum of RTI in Bangladesh, which was prominently driven by the CSOs from the beginning.

26. A state has two types of accountability: (a) horizontal, to the Constitution, statutory organizations like the IC and non-state organizations like NGOs, CSOs, and political parties, and (b) vertical, to the citizens who can freely use their voting franchise. The checks and balances system of the state is not optimally functioning. Institutions like the judiciary, legislative, and civil administration have been captured by the state. Their potential to act as watchkeepers of the state functionalities has often been compromised.

27. There is no allocation of funds by the government for implementing any initiatives by the government organizations on RTI. Hence, the concerned government organizations outside the IC face difficulties in advancing the RTI agenda, for example, raising awareness among citizens on the RTI Act, 2009, and its advantages and publishing reports on the implementation of the act. This is also a sign of the lack of attention and political willingness to take this agenda forward.

### **C. Information Commission: Assessment of Institutional Arrangement, Capacity, and Enforcement of the RTI Act, 2009**

28. The IC in Bangladesh became operational on July 1, 2009, under the RTI Act, 2009. The IC declares that its main functions are educating and influencing people (that is, promoting best practice and giving information and advice), resolving problems (for example, resolving eligible complaints from people who think their rights have been breached), and enforcing the legal obligations (that is, using legal sanctions against those who ignore or refuse to accept their obligations) (Information Commission 2020). In other words, the IC is authorized to issue directives and guidelines in preparing and publishing lists of information that would be available free of cost. The IC is a quasi-judicial forum and has the power to act as a civil court under the Code of Civil Procedure, 1908.

29. After the enactment of the act, there were initiatives to make the IC an effective and resilient organization. To date, the IC is composed of a Chief Information Commissioner (CIC) and two other



Information Commissioners. It has an approved organogram of 76 officers and employees. A detailed list of mandates of the IC according to the act is annexed to this report (Annex 2).

30. In the initial years, the IC contributed in formulating required statutes, rules, and regulations and equipping itself by developing the infrastructure. It also helped the civil administration to prepare for supplying information as requested by the citizens and conducted awareness-raising programs among the stakeholders regarding the act.

31. Bangladesh Right to Information (RTI) Survey 2019 viewed the IC as a champion of RTI implementation based on the review of its operational approaches for DOs, requesters, complainants, and appellants (World Bank 2020). Considering that, the study sheds light on the following issues which may have significant impacts on the functioning of the IC.

### **Supremacy of the Retired Civil Servants in the IC**

32. The act clearly spells out the selection process of the commissioners in Section 14. It requires a five-member selection committee. In addition, the act also specifies the formation of the IC; it is mandatory to appoint one female commissioner. So far, there were five Chief Commissioners and six commissioners, of which three were female.

33. As the backgrounds of the commissioners including the Chief Commissioners were analyzed, it was found that the IC has been served mostly by retired civil servants. Among the five CICs, four were retired civil servants (80 percent), while only one was from the academia. For Information Commissioners, the picture is similar as four Information Commissioners out of six were retired civil servants (67 percent). Only two (33 percent) were from the academia.

34. At present, the IC is composed of all retired civil servants (100 percent). The CIC has also served as the Information Secretary, while one of the Information Commissioners served as the Senior Secretary at the Prime Minister's Office. The most recently appointed commissioner also served as the Information Secretary of the government. Thus, it has been observed that the IC is mostly being led by the former senior civil servants (see Annex 2 for details).

### **Feeling of Gratitude/Indebtedness**

35. In Bangladesh, promotion or posting to key constitutional or statutory positions is not entirely based on merit and performance, but it depends significantly on the political high command's trust in an individual. Generally, those civil servants who could earn the trust of the political masters get an appointment to the posts that are considered crucial as well as sensitive. One of the critical observations is that such appointments result in creating feelings of gratitude or, in some cases, indebtedness. This compels the chosen bureaucrats to lie low and compromise on the expectations, demands, and mandates of the organization. Like all other constitutional and statutory bodies, the composition of the IC gave birth to such apprehensions. A participant of the study said the following:

“...it's a nexus between the government and them [appointed officials]. After retirement, many of these trusted civil servants are appointed on contract basis as reward for their service. Under a contractual service, many openly take a partisan role to return the favor. Then some are

appointed to various constitutional/statutory positions. In gratitude, these officials, generally, comply with all the expectations [of the government]. Composing the Commission with such key senior bureaucrats poses that risk.”

### **Old Habits Die Hard**

36. While serving as civil servants, many of these former government officials were accustomed to keeping information away from citizens. However, their new role requires strong advocacy to ensure citizens’ access to information. This sharp change in the philosophical stance, which contradicts their earlier practices, creates a huge dilemma for some of them. Many fail to adjust to their new roles; they prefer maintaining the status quo by serving the interests of the public administration as well as not creating any awkward situation for the government with their new roles. A participant of the study stated:

“...most of the civil servants fail to adjust in their new roles due to their mental makeup. For a long period of time they served in the administration and when they were given the responsibility of serving the causes of citizens, they simply cannot adjust. The Anti-Corruption Commission (ACC) under Golam Rahman, a retired Civil Service of Pakistan recruit and retired secretary of the government can be cited here. The ACC turned into a paper tiger during his term.”

37. Another participant commented:

“One of my colleagues used to contradict with me in every initiative that I wanted to take. The way he tried to serve the interests of the administration that seemed he was still a member of the civil service.”

### **Lack of Proactive Leadership**

38. A major responsibility of the IC is to take a proactive leadership role for advancing the RTI agenda. However, the IC has not adequately fulfilled this responsibility (Bari 2015). The IC’s functions and initiatives were inadequate to build the citizens’ confidence that the IC would support their rightful causes (Bari 2015). The IC has been largely unsuccessful in convincing the stakeholders about taking a proactive leadership role.

39. Experiences of requesters and RTI experts indicate that the entire setup of implementing the act lacks a pro-citizen approach. Many organizations that help citizens in requesting information reported the negative impact on applicants due to the IC’s restrictive interpretation of the act and its rules (Bari 2015). The Bangladesh Right to Information (RTI) Survey 2019 also supported this finding, where 44.2 percent of the respondents reported their negative experiences (World Bank 2020). According to a participant of the study:

“The Act, supporting rules and regulations and the functions of the IC lack the pro-citizen approach. The IC also fails to encourage simple and friendly attitude to attract general public let alone those who are from the marginalized community and lack the literacy skill.”

## Quantity versus Quality of Requests

40. The IC has been publishing its annual reports for the last 10 years. The reports provide information on the number of applications received yearly from the requesters. The annual report for 2010 mentioned that some 24,410 RTI applications were received by government offices and NGOs across the country. In fact, this number covered all queries sent to government offices by citizens seeking information on everyday matters such as train and launch timings, how to apply for public service examinations, how to obtain a passport, and so on (Bari 2015). Due to criticisms of the CSOs about the definition and inclusion of queries/requests, the number of applications came down to 7,616 in the 2011 annual report. The figures for the last five years are shown as follows:

**Table 1. Yearly Number of Applications**

<b>Year</b>	<b>Number of Applications</b>
2014	8,442
2015	6,181
2016	6,369
2017	8,167
2018	8,660

41. The Minister for Information informed the Parliament that a total of 95,233 applications out of 99,238 were addressed up to 2018 (Tathya Odhikar Ainey 2019). He also stated that 2,972 complaints out of 3,083 complaints lying with the IC have been resolved, while 111 complaints were in waiting list.

## Red Tape Everywhere

42. The whole system to seek information from government and nongovernment entities has become a grand show of bureaucratic ordeal coupled with complexities. As it is a support system to provide access to information to the disadvantaged and marginalized people, the system should be user-friendly. In India, anyone can seek information by sending a postcard to the concerned authority mentioning the information sought and giving particulars of the applicant. In Bangladesh, one has to wade through many rules and regulations to seek information. This includes submitting an application in the prescribed forms with specific and accurate information. In other words, it can be said that the whole RTI setup embraces the traditional view of public administration where the bureaucrats were process-oriented instead of the modern view where public administration is result-oriented. Furthermore, the Bangladesh Right to Information (RTI) Survey 2019 reported a lack of positive attitude of the bureaucracy as one of the obstacles (12.8 percent) to proper implementation of the act. In addition, it was highlighted in the survey findings that many of the applications were rejected due to procedural errors and simple errors such as wrong name of the DO. This indicates that the bureaucratic approach to the RTI process is hindering its implementation on the ground. A participant of the study stated:

“...it seems the Commission focuses more on bureaucratic process than to ensure access to information to the requesters.”

## Experiences in Complaint Hearing

43. According to the RTI Act, 2009, any aggrieved applicant can file a complaint with the IC. Based on the merit of a complaint, the IC may call both the parties for a hearing. However, there were cases of intimidation and animosity at hearing sessions, especially for those who came from the marginalized communities (Bari 2015). The Bangladesh Right to Information (RTI) Survey 2019 revealed that, among other reasons, 3.9 percent of the respondents did not file any complaint in fear of harassment (World Bank 2020). Thus, it could be concluded that the requesters are not always supported by the complaint-hearing system of the IC.

## Hesitation in Imposing a Penalty

44. The RTI Act, 2009, provides the IC the authority to impose penalty on the public officials for not complying with the act. However, the IC seems to be hesitant in imposing that or any other sanctions under the act. The retired civil servants leading the organization may have a bias for the civil servant or they still nurture an old culture of secrecy. There is evidence that after appearing for a hearing, many DOs commit to delivering information sought by the citizens, which they had refused in the first place. In most of the cases, the IC is satisfied with that action, while a nonresponse in the first place is subject to imposition of a penalty according to the act. Between 2011 and 2018, a total of 54 officials were awarded punishment (compensation/fine/divisional punishment).

45. The Bangladesh Right to Information (RTI) Survey 2019 (World Bank 2020) presented a statistic on DOs who were penalized for not complying with the RTI Act, 2009, as follows:

**Table 2. Actions Taken on DOs Not Complying with the RTI Act, 2009**

Penalty	Actions	
	Number	Percentage
Departmental action taken	3	3.41
Fined	34	38.64
Reprimanded	3	3.41
No action	48	54.55
Total (based on 1,284 hearing decisions assessed)	88	100.00

## Frequent Deferral of Hearing

46. Hearings at the IC are often deferred as the concerned DO remains absent. Statistics show that the IC is very lenient about this practice, which provides an advantage to the defendant. However, this completely works against the interest of the requester who perhaps is an ordinary citizen.

### **Case Study 1: Use of RTI Act, 2009, to Seek Information from Upazila Primary Education Office**

#### **Problem: No Response from Upazila Primary Education Officer**

On September 25, 2019, *Prothom Alo*, a Bangla daily, sought information from the Upazila Primary Education Officer at Dhamrai in Savar on the vouchers for purchasing digital attendance machines for government primary schools, source of fund, and purchase process, under Section 8(1) of the RTI Act. According to the act, information requested should be delivered within 20 working days.

#### **RTI Appeal and IC's Action**

As no response was received from the office, an appeal was made with the Dhaka District Primary Education Officer on November 14, 2019. The appellate authority also did not respond within the stipulated time. *Prothom Alo* then complained to the IC on December 12, 2019, regarding this.

A hearing was held at the IC on February 18, 2020, but the officer in charge of the Upazila Primary Education Office was absent that day. A fresh date was fixed for the hearing, to be held on March 4, 2020. Again, that officer did not show up and the hearing was postponed. Later, the IC fixed a new date for the hearing for the third time. When the concerned Upazila Primary Education Officer was contacted, she said that she did not get any summon from the IC about the hearing. Moreover, it was not possible for her to provide such information.

#### **Lesson Learned**

It is seen from the claim of the concerned government officer that the IC had not issued a summon regarding that hearing. The IC did not follow up on the summoning process. Instead of following up and taking punitive action against the respondent, the IC fixed the date for hearing for the third time. Such leniency toward government officials is, in fact, encouraging the respondent not to respond to the requests of information seekers. On the other hand, this practice leads to harassment of the complainant and questions on the smooth implementation of the act.

47. Since the hearings of the IC take place in Dhaka, complainants from distant districts face challenges like travel, cost, time, accommodation, and so on. These challenges become a burden when the hearing is postponed due to absence of the concerned respondent. A significant number of complainants consider this before lodging a complaint. Thus, hearings at the IC often result in the absence of the complainant.

### **No Observer Policy**

48. In Bangladesh, the IC follows a strict policy regarding the presence of observers at the time of complaint hearings (Bari and Naz 2019b). It does not allow any observer who may have a genuine interest in the proceedings. In India, the proceedings are open to the general public with some exceptions only when the commission there examines confidential records.

### **Modernization Tools**

49. Since 2009, the government is promoting the Digital Bangladesh agenda. Now, it has emerged as the guiding theme for many activities of the government agencies while many of the services have been digitized and this has had an impact on the livelihoods of the public (Hasan 2017). Thus, like all other government agencies, the IC too has started using the power of information technology. The IC and the Cabinet Division jointly launched an online training platform for the DOs in 2018. This online training platform on RTI has been developed by the Management and Resources Development Initiative (MRDI),

an NGO, with assistance from the World Bank. Now, the IC is providing training to DOs mainly through this platform. Till December 2018, more than 50,000 officers completed this online training using this platform (World Bank 2020). In 2018, the IC got a videoconferencing system. This has enabled it to exchange views with the offices of the divisional commissioners and deputy commissioners when needed. These may be the features of authoritarian modernization of the system to benefit the institutions and administrators (Fukuyama 2011).

50. The IC has now started piloting an online RTI request tracking system with the technical assistance from the D.Net. The purpose of this system is to reduce the time and labor of the requesters and help them get updates on their requests from the DOs. All parties—the requesters, DOs, and the IC—will be able to use this system from any place at any time. The system will generate a tracking number and send that to the requester’s cell phone when a request is made. Once this piloting is successful and the system is formally introduced, it would be an effective modernization tool to benefit the citizens.

### **Communication Strategy**

51. The Management and Resources Development Initiative (MRDI) prepared a communication strategy for the IC a while ago. It was prepared in active partnership with the IC under the World Bank and U.K. Department for International Development (DFID) financing. This includes activities to work on print and electronic media as well as social media to engage citizens more on RTI. However, the IC has not yet implemented the strategy. The Bangladesh Right to Information (RTI) Survey 2019 also mentioned the issue (World Bank 2020):

“in the absence of comprehensive media strategy, IC was constrained by both budget and scope to undertake behavior changing communication interventions, which require sustained campaigns over a longer period of time to register key messages among a countrywide audience.”

## **D. Role of Other State Functionaries**

52. Implementation of the RTI Act, 2009, is not the sole responsibility of the IC. A concerted effort by all state functionaries as well as non-state actors is of utmost importance. The state functionaries include the Parliament, judiciary, and other key public authorities. The sections below attempt to discuss the role of those actors in augmenting the implementation of the act.

### **The Parliament**

53. In a Westminster democracy, parliament or legislature is considered as one of the three key pillars of the state. It has some specific functions which include representing the electorate, making laws, forming government, allocating funds for government, and overseeing the government through hearings and inquiries. Even then, lawmaking is still considered the most important function (Ahmed 2002). By enacting the RTI Act, in 2009, the Parliament in Bangladesh has completed its primary responsibility. According to Section 30 of the act, the IC has to submit an annual report to the President by March 31 every year, which is to be presented to the Parliament for discussion. That means the Parliament possesses the jurisdiction to oversee the activities of the IC. However, if the Members of the Parliament (MPs) use that jurisdiction, it is worth conducting an independent research. Even then, analyzing the

newspaper reports on parliamentary sessions, it seems MPs occasionally make queries about the use of RTI and the annual report submitted by the IC (Tathya Odhikar Ainey 2019). Thus, it can be said that regular queries and supervision by the MPs would have made a positive impact on the implementation of the act. A sense of openness would strengthen the democracy and promote efficiency and effectiveness in Government.

## **The Judiciary**

54. The judiciary can play a decisive role in ensuring proper implementation of the RTI Act, 2009. Very few cases have been brought to the attention of the High Court Division of the Supreme Court so far. However, the cases which were brought to the attention of the court received a reasonable guidance from there.

55. A landmark verdict came in favor of seeking audit reports of the registered political parties lying with the Bangladesh Election Commission (BEC). Refusals from the BEC and later by the IC encouraged the petitioner, Badiul Alam Majumdar, General Secretary, Sushanoner Jonno Nagorik (SUJON), a citizens' network for good governance, to seek attention of the High Court on behalf of six aggrieved citizens. The High Court Division ruled in favor of the plaintiff, identifying two questions judicially needed to be disposed of (Shaon 2016). The first question was whether the IC could pass on any decision favoring the culture of 'secrecy' and curtailing citizen's right to information. The second question was related to the issue of distinguishing which information falls under 'public information' and/or 'private information' as far as the political parties and their activities are concerned.

## **Case Study 2: Use of the RTI Act, 2009, to Seek Information on Audited Financial Statements of Political Parties from the Bangladesh Election Commission**

### **Problem: No Response from the Election Commission**

Eminent personality Badiul Alam Majumdar, on behalf of SUJON, a civil society platform for good governance, sought the audited financial statements of registered political parties to the Bangladesh Election Commission (BEC) on June 12, 2013. Badiul applied for the same thrice. However, the BEC replied that the information was confidential and could not be given without the consent of the political parties. Later, the BEC wrote to the political parties seeking their permission but did not get a positive response from any major political party.

### **RTI Appeal and IC's Action**

Badiul then appealed to the IC for a directive on the BEC to give him the information. In July 2014, the IC rejected his plea on similar grounds. Then he made the second appeal to them arguing that the IC erred in its interpretation of the law. The IC again rejected the appeal with almost the same argument.

### **Writ Petition to the High Court**

In January 2015, six citizens—M Hafizuddin Khan, ASM Shahjahan, Syed Abul Moksud, Ali Imam Mazumder, Tofail Ahmed, and Badiul Alam Majumdar—filed a writ in the public interest. After the final hearing, a High Court Bench, in their judgment on February 18, 2016, declared the decisions of the BEC and the IC illegal. In the ruling, the High Court said that people must have access to income and expenditure statements of political parties under the RTI Act, 2009.

### **Lesson Learned**

The judgment is groundbreaking for several reasons. First, it established the fact that information flow should become open and the culture of secrecy can be broken. That means all information held by government offices, with some exceptions, will be viewed as public rather than private information. This will clearly remove barriers to citizens' rights to receive such information. Second, the prerequisite to the right of expression is opinion formation, which requires information. Finally, this judgment creates an opportunity to demand transparency about the income and spending by the political parties in Bangladesh.

56. Recently, the High Court Division issued a rule asking the government to explain why Sections 25 and 31 of the DSA, 2018, should not be declared unconstitutional as reported in the leading dailies in Dhaka. This rule was issued following a writ petition filed by nine people on January 19, 2020, challenging the legality of the two sections that they had claimed were hampering the freedom of expression and thought guaranteed under Article 39 of the Constitution. Apart from these sporadic initiatives, there is a dearth of interested and empowered stakeholders who could use the judiciary to bring a difference in the implementation of the RTI Act, 2009.

## **The Cabinet Division**

57. The front line of the supply side of RTI in the government is in the ministries, divisions/departments, and districts and upazillas. The Cabinet Division has the strongest command over all government organizations including the field administration. Hence, the partnership between the IC and the Cabinet Division seemed mutually beneficial for both organizations. The Cabinet Division established the Coordination and Reforms Unit (CRU) in 2014. The CRU is headed by a secretary. The Cabinet Division has been supporting the IC and has been exercising its convening power and leadership to bring together the relevant stakeholders, such as various line ministries and district and upazila administration units to augment implementation of the act. To support the implementation of the act,



the IC and the Cabinet Division developed a Strategic Plan 2015–21 with the technical assistance of the World Bank (Information Commission and Government of Bangladesh 2015).

58. The Cabinet Division has formed various committees to spearhead the implementation of the RTI Act, 2009, across the government offices, for example, the RTI Working Group headed by the Secretary (CRU) and the District Advisory Committee. However, these committees appear to have little impact on the implementation of RTI. Instead the dedicated RTI section; a subcommittee and a working group at the Cabinet Division; and three separate implementation, supervision, and monitoring committees at three separate tiers seem to have produced a bureaucratic working structure that lacks any significant impact on the implementation of the act. The details of the Cabinet Division’s implementation support arrangement for the act are available in Annex 3.

59. Supervision of the implementation of the RTI Act, 2009, by the field administration falls under its allocation of business for the CRU. However, the leadership role of the CRU in advancing the RTI agenda has been uneven so far. The CRU has had five secretaries since its inception. There were some instances with highly engaged secretaries and desk officers (deputy secretary and senior assistant secretary) in the CRU. Each of the first two secretaries of the CRU served there for more than two years and could support the RTI agenda well. The secretaries who came later could not show their commitment in implementing the act in the country due to a short tenure in the CRU. The incumbent secretary is the fourth one in the last one-and-a-half years. There were also frequent changes of the desk officers during this period. This has been detrimental for the RTI agenda in the government organizations in the districts and upazillas.

## **E. The RTI Act, 2009, and Other Legal Frameworks: Relationships and Probable Impacts**

### **RTI Act, 2009**

60. The RTI Act, 2009, has provisions for ensuring free flow of information and citizens’ right to information. There are eight chapters and one schedule in the act. The chapters cover introduction of the act; Right to, Preservation of, Publication of and Access to Information; Designated Officer; Establishment of Information Commission; Financial Matters of Information Commission; Officers and Employees of Information Commission; Appeal, Complaint, and so on; and Miscellaneous. This act establishes the basis of forming the IC and its functions and other supporting mechanisms. The act has legitimized greater access to information by the general public from the autonomous and statutory bodies and private institutions constituted or run by government or foreign financing:

- Authorizing and encouraging greater routine disclosure of the information held by public authorities without the need for requests or applications,
- Authorizing and encouraging greater active disclosure of the information held by public authorities in response to informal requests without the need for applications,
- Giving members of the public an enforceable right to the information held by public authorities, and
- Providing that access to the information held by government bodies is restricted in only limited circumstances which are defined in the act.

61. One of the most important features of the act is the provision of superseding (Section 3) any existing law with regard to accessing information. To be exact, this provision of the law has clearly stated, “Act to override. - Of any existing law-(a) the provisions of providing information shall not be affected by the provisions of this Act; and (b) the provisions of creating impediment in providing information shall be superseded by the provisions of this Act if they become conflicting with the provisions of this Act.” Thus, any public, autonomous, and statutory entity and nongovernment entity run by a government or foreign fund is bound by law to provide information if sought. That means, according to the law, this act supersedes some outdated legislations such as the Official Secrets Act, 1923; Evidence Act, 1872; Rules of Business, 1996; and the Government Servants (Conduct) Rules, 1979. However, whether this is being followed will be discussed in a companion study.

62. According to Section 8 of the act, a person may apply to the officer in charge requesting for information either in writing or through electronic means such as e-mail. Following the definition, ‘officer in charge’ means any officer appointed under Section 10 (that is, DO) and the request must be made in prescribed form to the concerned DO citing his/her name and designation. In practice, this provision provides scope for the concerned authority to disregard a request if there is a mistake in the name/designation of the DO or the assigned DO is transferred or sometimes the DO is not appointed. It also creates problems for complainants as many of them are unable to identify the appropriate appeal authority. This issue is evident from the Bangladesh Right to Information (RTI) Survey 2019 (World Bank 2020).

63. The RTI Act, 2009, has a list of 20 non-mandatory areas for disclosure, which is described in Section 7 of the Act. Investigation into the long list of nonmandatory areas for disclosure under the RTI Act, 2009, would require reflecting on the long movement for an RTI legislation in Bangladesh. In 2002, the Bangladesh Law Commission shared a proposal to the government to draft a legislation on RTI. It was taken into cognizance while drafting the RTI Ordinance (Article 19 2015). However, the RTI Ordinance, 2008, did not include political parties as an information-providing authority and the IC’s authority to recruit staff and brought in a greater number of exemptions to providing information instead of fewer ones, as recommended by the Bangladesh Law Commission. The ordinance turned into an act with those exemptions and adjustments.

64. Statistics show that almost 27 percent of the RTI requests seeking information on nonmandatory areas for disclosure are denied (World Bank 2020). However, some countries have a ‘public interest override’ clause to provide the authority with the discretion to decide the issue of serving public interest even when the act may not have a provision. Some countries also have the ‘harm test’ provision, which allows disclosure of the requested information if it is unlikely to cause any harm to any protected interest under the law (Bari and Naz 2019a).

### **Effect of Emerging Laws on the RTI Act, 2009**

65. The DSA, 2018, is an extension of the ICT Act, 2016. The DSA, 2018, poses a high risk to the advancement of the implementation of the RTI Act, 2009. There is an apprehension that a number of sections of the DSA, 2018, are contradictory to the RTI Act, 2009. Issues like digital communications, cybercrimes, and so on have been broadly defined there and go against the freedom of information, freedom of speech, and civil liberty. The DSA is apparently contradictory to Article 39 of the Constitution,

which guarantees the right of the citizens to freedom of speech and expression and of freedom of the press. The participants of the study have referred to Sections 25–29, 32, 43, and 53 of the DSA, 2018, that are conflicting with the spirit of the RTI Act, 2009, and freedom of the press. However, a participant of the study has stated the following about the DSA, 2018:

“The preparation of the Act started in 2016. The civil society, media and other stakeholders were consulted to draft the DSA. The ICT Act 2016 didn’t have a cybersecurity section. Some sections of the ICT Act have been moved to this Act. Bangladesh’s Act is more flexible as compared to other similar Acts in countries like Malaysia and Singapore. It doesn’t impact on freedom of press.”

66. Section 3 of the DSA, 2018, states, “... for any provisions relating to right to information the provisions of The Right to Information Act 2009 will apply.” Still, many sections of the DSA, 2018, have led to intimidation of investigative journalists and curbing of freedom of speech.

67. The RTI Forum, a network of CSOs, believes that the DSA, 2018, would grossly block the scope of citizens’ access to information under the RTI Act, 2009, as some provisions of the Official Secrets Act, 1923, have been included in Section 32 of the DSA, 2018 (Anam 2018).

68. Power and energy sector is an example where citizens’ right to information is being ignored. The act that governs the purchase of the quick rental power plants has been kept outside the purview of RTI. The Quick Enhancement of Electricity and Energy Supply (Special Provisions) Act, 2010, overrides all other acts. Sections 9 and 10 are, in particular, the biggest obstacle to any prospect of disclosure with or without application of RTI. This act has the following:

“Act to override all other laws. Notwithstanding anything contained in the Public Procurement Act, 2006 (Act No. XXIV of 2006) or any other law for the time being in force, the provisions of this Act shall prevail.”

## **Overall Legal Environment**

69. The democratic space in Bangladesh may not be fully conducive for the implementation of the act. The key institutions like the judiciary, Election Commission, and ACC want to stay away from RTI with the excuse of being constitutional offices. A participant of the study observed the following:

“The political space has been monopolized in Bangladesh. There is an unwritten policy to undermine the RTI Act by bringing other conflicting Acts. No accountability is entertained in the given political space. The Official Secrets Act, which is overruled by the RTI Act but not annulled yet.”

70. Another participant of the study observed the following:

“The Parliament passed two Acts in the same session, one is the Road Safety Act 2018 and another is the Digital Security Act 2018. The Digital Security Act 2018 immediately became effective, while, the implementation of the Road Safety Act 2018 is being delayed. There are vested interest groups who act against pro-people Acts like the RTI Act and Road Safety Act.”

71. It may be a matter of concern that sometimes there are false legal suits against a person who requests for information. This happens mostly because of the vested interest of groups of people at the local level according to a participant of the study. A paper prepared by the Centre for Policy Dialogue (CPD) and presented in a national dialogue dated March 10, 2019, observed the following:

“No information is found with regard to reasons behind discontinuation of earlier selected firms for seismic surveys, selection of a firm under G-G contract, ignoring BAPEX as lowest bidder and providing the contract to a foreign company which costs a significant loss, lack of transparency in nuclear deal with regard to terms and conditions and taking back solid waste from Bangladesh, ignoring huge public outcry about the site selection for Rampal power plant on environmental concern, lack of clear direction about long term plan on the use of coal reserve when imported coal has been used in power plants and other purposes.”

## **F. Political Development since Enactment of the RTI Act, 2009**

72. The Strategic Plan for implementing the RTI Act, 2009, developed by the IC and the Cabinet Division has underscored the need for political support to implement the act successfully. To be precise, the political will is totally dependent on the political party or group which forms the government and runs the state machineries. In Bangladesh, the process of forming a government depends on the parliamentary elections. Except for some nominal hiccups, parliamentary elections in Bangladesh were participatory and credible up to 2009. We have noticed a weakening of accountability and transparency in the functioning of the state. There were two elections afterward. The main features of the general election in 2014 were boycott by the major opposition groups and widespread violence across the country (Barry 2014). On the other hand, the parliamentary elections in 2018 were successful in ensuring the participation of all major political parties, while there were claims of widespread vote rigging and violence by the opposition political groups. Like in the previous election, it was a landslide victory for the Awami League-led Grand Alliance, which claimed 289 seats (out of a total 300).

73. These abovementioned scenarios may raise questions about the magnitude of the democratic space for all political parties, especially the opposition political parties and their activists. This also indicates the further weakening of accountability and transparency. The Awami League-led government, which enacted the RTI Act, 2009, has been in power all through the implementation of the act. The following is an observation by a participant of the study:

“The social accountability is complementary to horizontal and vertical accountability of a state. In the given environment, it is difficult for social accountability to work in isolation.”

74. Given this prevailing political environment in Bangladesh, there is a risk that any attempt to amend the RTI Act, 2009, may bring about unintended consequences. Such a scenario has been seen in India in the immediate past. India recently brought an amendment to its RTI Act to curtail the independence of its Information Commission. The original act had quantified the tenures and defined the salaries of its Chief Information Commissioner and Information Commissioners in terms of fixed benchmarks. The amendments are being viewed as implying that, in effect, the terms of appointment, salaries, and tenures of the Chief Information Commissioners and Information Commissioners can be

decided on a case-by-case basis by the government. The opposition has argued that this will take away the independence of the RTI authorities (Yadav 2019). A participant of the study observed the following:

“...PM Modi [government] brought this amendment to the Act as they were embarrassed by the queries. Major one was regarding the demonetization of all Rs. 500 and Rs. 1000 banknotes. Modi claimed that the action would curtail the shadow economy and reduce the use of illicit and counterfeit cash to fund unlawful activities and terrorism. He claimed that he was doing this getting the signal from their central bank and financial institutions. However, an RTI request showed that the central bank and other financial experts were against it. That put him and his government in an embarrassing situation, which apparently played a critical role in the decision to bring an amendment to the Act.”

75. There is a demand to amend the provision of providing personal details of the applicant and allowing anonymous requests in Bangladesh. However, the scenario in India provides the apprehension that eventually, a process of amendment now might go in a wrong way.

## **G. Supply and Demand Attributes and the Drivers of RTI**

### **Evolution of the RTI in Bangladesh**

76. The role of the state and civil society in augmenting the implementation of RTI requires a discussion on the development of the RTI Act, 2009, in Bangladesh. The Press Council of Bangladesh first recommended the government to introduce a law that would ensure the common people's right to information. However, the government of a military autocrat at that time ignored that proposal. Later, in 2003, the Bangladesh Law Commission submitted a draft outline of the RTI Act to the government. By that time, the civil society, representatives of NGOs, print and electronic media, journalists, politicians, educationists, and many others raised their voices and prepared a platform supporting the enactment of the RTI Act. The movement intensified during the regime of the last caretaker government and an ordinance on RTI was promulgated on October 20, 2008.

77. The next elected government passed the act on July 1, 2009, in the first session of the 9th Parliament. The newly elected government led by Awami League fulfilled its electoral pledge by adopting this tool to empower citizens' right to know. The following day, the government formed the Bangladesh IC as provided by the law. A participant of the study stated the following:

“The Prime Minister said to a delegation of the newly formed IC that the RTI Act was a landmark in the legal history of Bangladesh and would contribute to reduce corruption in the society.”

78. Governance in a country entails both supply and demand sides. The RTI Act was demanded to establish good governance in Bangladesh. The entire mechanism is based on a tripartite representation model. Citizens would seek information from the duty bearers (demand side), DOs would provide information (supply side), and the IC would resolve any disputes between the supply side and demand side.

79. This brief discussion shows that the emergence of the RTI Act in Bangladesh was possible due to the efforts of a few diehard RTI activists including academia, journalists, researchers, legal experts, and

some CSOs and NGOs. In other words, the law in Bangladesh has not been formulated in the wake of the demands of common people but rather due to pressure from the intermediary civil society and professional groups. Unlike in Bangladesh, the law emerged due to the pressure and demands of common people in India. The 40-day sit-in protest in 1996 demanding information by the Mazdoor Kishan Shakti Sangathan (MKSS), a citizens' rights body, was instrumental in bringing this legislation in India. Hence, we see a difference in the pattern of usage of this act in India and in Bangladesh; in the former, the grassroots people are conversant with application of the act in their daily lives but not so much in the case of the latter.

80. The abovementioned context of framing the RTI Act, 2009, is important to understand the potential impact of the act. First, an ordinance on RTI was promulgated by the military-backed caretaker government based on the demand of the civil society groups. Later, the RTI Ordinance became an act with 44 other ordinances, which were promulgated by the immediate past caretaker administration. At the time of enactment of the act, several amendments were made to the RTI Ordinance. The key amendments include (a) a representative nominated by the government from among the persons involved in the profession of journalism holding a post equivalent to the editor or a prominent member of the society related to mass communication (is included in the act), (b) supremacy of this act in case of any contradictions (is included in the act), and (c) supply of information on any human rights violation and corruption within 24 hours (is excluded now).

### **CSOs and NGOs**

81. "Ensuring people's right to information is a matter of shared responsibility, not only of the government. The NGOs, civil society, media and the private sector must also take greater responsibility for complementing government efforts and especially assisting common people to use the law" (Iftekhharuzzaman 2010).

82. Surprisingly, the CSOs and NGOs that played a leading role in the enactment of the law have lost their appetite. The RTI Forum was composed of the CSOs, NGOs, and the RTI champions. They played a leading role to bring this pro-people law, while this has become a loose network now. The members of the forum meet on a yearly basis these days. They may have become fatigued due to the lack of responsiveness by the authorities.

83. In many cases, the CSOs are divided in the country and some are considered as pro and others as antiestablishment. New laws like the DSA, 2018, and Foreign Donations (Voluntary Activities) Regulation Act, 2016, may have curbed their ability to perform independently. Given this, the CSOs and NGOs do not feel comfortable to pursue any agenda that might create a backlash with the civil administration and the other state functionaries.

84. According to the RTI Act, 2009, NGOs are mandated to share information about their projects and activities with the citizens. However, the majority of the NGOs have not appointed a DO yet. There are also cases where NGOs have refused to provide requested information. In the first four years, only 108 out of the 2,500 registered NGOs had DOs (Hassan 2013). In 2019, the RTI Forum organized the first national convention on RTI with the support of the World Bank and DFID. Most activities of the NGOs on RTI are excessively dependent on financing from the donors.

85. There is a culture of fear among CSOs. BRAC, Article 19, Manusher Jonno Foundation (MJF), Transparency International Bangladesh, and a host of national and international NGOs are operating comfortably in the area of service delivery. However, they are not always keen to work on governance issues like RTI. Perhaps, the DSA, 2018, and Foreign Donations (Voluntary Activities) Regulation Act, 2016, pose a threat to such activities.

### **Case Study 3: Use of RTI Act, 2009, for Environmental Advocacy against Illegal Building of BGMEA**

#### **Problem: Construction of the BGMEA Tower Violates Government Regulations**

In 1998, the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) started the construction of a new building in Hatirjheel, Dhaka. The construction of the BGMEA Tower was contested by those who considered it a violation of legal procedures in the existing regulatory framework. The main issue is the site of the BGMEA Tower, which forms a part of the Hatirjheel, which was once a huge body of water and helped drain rainwater during monsoon. This was a concern for environmentalists, particularly as the land was used for construction of the building and lacked formal registration and approval. It did not follow the Urban Development Act, 1953, and the Water Body Preservation Act. Additionally, the 15-story structure was built on land that is government owned, without approval from Rajdhani Unnayan Kartipokkho (RAJUK), the city development authority. The land had been set aside for the Begunbari-Hatirjheel integrated development project. The main objective of this project is to drain out stagnant water from the city quickly during the rainy season. Thus, the BGMEA Tower built on reclaimed land that was a part of the Hatirjheel Lake has been cited as the main reason for chronic and severe water logging in Dhaka city. The Bangladesh Environmental Lawyers Association (BELA), urban experts, academics, and environmentalists have repeatedly called on the government to demolish the BGMEA building because it is in the middle of the canal and defies the law in the heart of the city.

#### **RTI Application and Action Taken**

The use of the RTI Act has been quite encouraging throughout the entire process. On July 8, 2009, BELA, a partner organization of MJF, for the very first time, submitted a request for information based on the RTI Act to RAJUK. The information request encompassed the following: approval of the BGMEA building plan, the rationale behind approving BGMEA to construct a building in a public body of water, and the processes and so on. After filing the request, BELA waited for 20 working days, but no information was provided. On December 17, 2009, BELA submitted another information request. This time additional information was sought to determine whether RAJUK had appointed a Designated Information Officer (DIO) following the stipulations of the RTI Act. This attempt failed as well. Then an appeal was made to the Secretary, Ministry of Housing & Public Works (MOHPW) as the appellate authority. This was also unsuccessful. Then BELA filed a complaint to the IC. In response to this complaint, the IC ordered RAJUK to provide the name of the DIO and his/her appellate authority. Apart from this, the IC ordered RAJUK to inform the Commission about the actions taken in response to BELA's complaint within seven days. "Otherwise legal action would be taken," the IC warned RAJUK. RAJUK remained silent, violating the order of the IC. On July 22, 2010, a legal notice was sent to the Chairman of RAJUK.

Finally, all these efforts resulted in RAJUK handing over the requested information to BELA on September 19, 2010. The collected information clearly indicated that approval for the sale of the building was given upon fulfillment of some legal conditions, which were not followed afterward. A report was published in a daily newspaper called The New Age on October 2, 2010. The BGMEA building was reportedly built without the permission of RAJUK. This report drew the attention of public authorities and many people. Accordingly, a legal case started in court. This turned into a movement to ensure that proper procedures are followed and the land is used in the best interests of the people. The lawyers of BELA submitted to the court the documents that had been collected through the use of the RTI Act. BELA President Rezwana Hasan in a hearing stated, "this (construction of the building) has violated some laws including the Environmental Act."

#### **Impact of the Information**

In the court ruling, it was noted that the BGMEA had no ownership of the land on which the building was constructed and that the authorities must evict it. The BGMEA building was ordered to be demolished due to this violation of the law. Concerned offices were given time to move to other locations. According to the RTI Act, BELA found that RAJUK had not nominated a DO, and BELA filed a complaint to the IC. After receiving the order from the IC, RAJUK appointed a DO.



### Lesson Learned

The RTI Act is a powerful tool for advocacy, as environmental advocacy around the BGMEA building demonstrates. The use of the RTI Act contributed to the efforts to show that the building had been erected in violation of environmental laws. On the other hand, this process led to strengthening the implementation of the RTI Act within public agencies by compelling RAJUK to appoint a DO. When an RTI application is made and pursued, it can result in government agencies promoting better compliance with the act.

86. Seeking of information from a public authority has sometimes resulted in background checks and contacting the applicant about the motives behind seeking information, and there were threats in some cases. The public authority sometimes considers this practice of seeking information as a provocation. Thus, there exists a sense of discouragement about using any governance tools. A participant of the study stated the following:

“The Institute of Governance Studies (IGS), now BRAC Institute of Governance and Development (BIGD) used to publish State of the Governance Report every year. They published 8 reports so far. For last two years, BIGD didn’t publish this report as the political environment was not conducive. The last report was finalized two years back, but has not been published yet.”

87. The National Right to Information (RTI) Survey 2019 (World Bank 2020) also pinpointed that while reviewing the role of the CSOs and NGOs. It stated that NGOs should mainstream the RTI issues in all their interventions. Initiatives should be taken to develop a close working relationship between CSOs and the IC (Bari 2015). This would make the IC and its activities visible to the greater population of the country. It would also project the IC as a people-friendly institution. The joint efforts of the IC and CSOs would be able to convince the government to pay more attention to the needs of RTI.

### Media

88. There is no doubt that the media (and social media) has great potential to mobilize public opinions and to hold the whole spectrum of state and non-state actors accountable to the citizens. Like the CSOs and NGOs, the journalists of both print and electronic media had a good role to generate awareness among stakeholders at the beginning. They were one of the leading stakeholders in the formation of the RTI Forum (RTI Forum 2012).

89. Currently, a program is broadcast every month from the Bangladesh Betar, the national radio, titled *Tathya Odhikar Ain Jonogoner Ain* or RTI Act is People’s Act. Besides, talk shows are occasionally arranged in different electronic media including the state-owned Bangladesh Television. Community radio channels and FM radio channels also occasionally broadcast programs on RTI. The most prominent is the Daily Star, the leading English daily of the country. It has earmarked a place in the newspaper for an op-ed article on RTI issues every month.

90. A study by the RTI Forum back in 2012 on the implementation of the RTI Act, 2009, identified lack of interest of the media (16.3 percent) as one of the leading challenges (RTI Forum 2012). The journalists use their personal contacts in collecting information as they did earlier. The Bangladesh Right to Information (RTI) Survey 2019 also showed that journalists working in various media outlets said that the

act was not providing much benefit to them as the process of receiving official information was slow and time-consuming (World Bank 2020). One of the participants of the study stated the following:

“...they [journalists] were very buoyant about the legislation from the very beginning as they thought this would give them easy access to exclusive government information. However, after enactment [of the Act] they lost their interest as the process is bureaucratic and time-consuming. They keep on using their personal contacts.”

91. Another observation could be made on the role of the media in covering news on noncompliance with the RTI Act, 2009, by the government agencies while turning a blind eye to the same done by NGOs. Thus, a proper focus on NGOs alongside public entities is needed. Moreover, the media has the potential and an ethical mandate to contribute to addressing the lack of public awareness of the act.

## Conclusions

92. The discussions on various aspects of the implementation of the RTI Act, 2009, in this study have attempted to shed light on identifying the defenders and challengers of the RTI in Bangladesh. Among all the actors that have been analyzed, it is not easy to identify some as defenders of the act. The country is yet to see a committed and organized group of defenders for the RTI Act, 2009. Rather, activities of many of the actors have become a constraint to advance the implementation of the act.

93. The IC is the key driver to champion the RTI agenda in Bangladesh. The government should ensure the necessary infrastructure and provide necessary funding to the IC to promote the implementation of the RTI Act, 2009. The team of commissioners in the IC should effectively support the citizens' right to information and advocate to reform the century-old legacy and culture of secrecy in government organizations. Moreover, the government ought to establish a judicious and objective process of selection of the IC members. The commissioners appointed should not be only from the civil service.

94. Different bodies formed by the Cabinet Division including the IC are party to it, has failed to achieve the desired level of public awareness. Thus, the internal administrative relationship among the concerned bodies within the Cabinet Division and the implementation/supervision and monitoring committees at different tiers need to be redefined so that they can contribute to augmenting the implementation of the RTI Act, 2009.

95. A strong commitment by the political masters to promote a pro-people legislation like the RTI Act, 2009, is a critical determinant. The experience in Bangladesh shows that political parties, be it the ruling party or the opposition, do not talk about the importance of the RTI Act let alone exercise it. Nevertheless, they are the most potential defenders of such an act. If they could use the immense potential of this tool, then a drastic change would take place in the area of governance. Experiences in India indicate that the Congress Party, the main opposition party, often uses the act to seek information from the government, and this helps ensure transparency and accountability in public administration. It can be said that without a strong political will and the participation of political parties, it is a tough call to make for an effective implementation of the act. The political will trickles down to the state functionaries as a signal to implement the act and ensure citizens' right to information.

96. The government should carefully review a few other acts, like the DSA, 2018, and the Quick Enhancement of Electricity and Energy Supply (Special Provisions) Act, 2010. It would be damaging for the implementation of the RTI Act, 2009, if new acts emerge that undermine the spirit of RTI. The list of exemptions or nonmandatory areas for disclosure is already pretty long.

97. The CSOs, NGOs, media, and the like should bring back the rigor and proactiveness to promote the RTI agenda and engage the citizens in the process as much as possible. However, the role of those prominent demand-side actors is inadequate. NGOs, in particular, should promote the culture of RTI in their own operations too. The citizens need to be encouraged to hold all non-state actors of their operations and service delivery in Bangladesh.

98. Strengthening of the demand side of the RTI Act, 2009, depends on the responsiveness of the supply side too. The supply side needs to be more forthcoming to implement the act. This is a necessary condition to see an effective use of the RTI Act, 2009. Besides, terminologies like social justice, equity, equal opportunities, fourth industrial revolution (4IR), and so on should be used in place of governance as the state actors are sometimes sensitive to those terms.

99. It may not be the right thing to conclude that the civic space is shrinking in Bangladesh. It is increasing space for other actors who may not promote transparency and accountability in the governance system. So, CSOs and NGOs need to reconfigure their space in a way that they can reengage themselves to work on governance. Investment should be made on youth below the age of 35 at the community level. The changing demographic pattern should be considered. Young leaders need to be developed. It should not be considered as a short-term investment but as a long-term one.

## Annex 1: Guidelines for Semi-structured Interview

The following questions were used to conduct the semistructured in-depth interview to achieve the objectives of the study:

- According to you, how do stakeholders perceive the institutional arrangement, capacity, and enforcement of the RTI Act, 2009 (supply side) in the given democratic space?
- Can you think of any challenge/barrier and factor preventing people from using the act (in the light of the different legal frameworks, political environment, and so on)?
- If so, what are those?
- How do you perceive the role of the state (legislative and executive branches as an enabler) and the civil society and media (as a facilitator) in augmenting the implementation of the act?

## Annex 2: Information Commission

### Mandates of the Information Commission according to the RTI Act, 2009

- To issue directives for the preservation, management, publication, and publicity of and access to information by authority
- To prescribe the procedure for applying for information from the authority and, as the case may be, to fix appropriate price of information
- To formulate guidelines and directives for the preservation and implementation of the right to information of the citizens
- To consider the provisions recognized under the Constitution of the People's Republic of Bangladesh or any other law for the time being in force to preserve the right to information and recommend to the Government for their effective implementation by indicating the impediments
- To identify the impediments against the preservation and implementation of right to information of the citizens and recommend to the Government for appropriate solution
- To conduct research on the agreements relating to the right to information and other international instruments and to recommend to the Government for their implementation
- To examine the similarities of the prevailing law relating to the maintenance and implementation of the right to information of the citizens and to make necessary recommendation to the Government or, as the case may be, to the appropriate authority to ensure their harmonization with the international instruments
- To advise the Government to ratify or sign any international instrument on right to information
- To conduct research on the preservation and implementation of the right to information and to assist the educational and professional institutions for conducting such research
- To publicize the issues relating to the preservation and implementation of the right to information among different classes of citizens of the society and to increase their awareness about the right to information by publishing, disseminating, or any other means
- To advise and provide assistance to the Government to make necessary laws and administrative directives for the preservation and implementation of right to information
- To advise and provide assistance to the organizations or institutions working for the preservation and implementation of the right to information and to citizens in general
- To increase public awareness on right to information by conducting research, seminars, symposiums, workshops, and other similar measures and disseminate the result obtained from the research
- To give the authority technical and other assistance with a view to ensuring right to information

- To establish a web portal for Bangladesh to ensure right to information
- To oversee the actions taken under any other law relating to the preservation and implementation of the right to information

### Profile of the Commissioners

Sl. No.	Name	Status	Professional Background	Percentage
<b>Chief Information Commissioner</b> (Not by tenure)				
1.	Mr. Martuza Ahmed	Present CIC	Civil Servant	80%
2.	Ambassador (Retd.) Mohammed Farooq	Former CIC	Civil Servant	
3.	Ambassador (Retd.) Muhammad Zamir	Former CIC	Civil Servant	
4.	Mr. M Azizur Rahman	Former CIC	Civil Servant	
5.	Professor Md. Golam Rahman	Former CIC	Academician	20%
<b>Information Commissioner</b> (Not by tenure)				
1.	Ms. Suraiya Begum	Present IC	Civil Servant	67%
2.	Mr. Abdul Malek	Present IC	Civil Servant	
3.	Mr. Nepal Chandra Sarker	Former IC	Civil Servant	
4.	Mr. M A Taher	Former IC	Civil Servant	
5.	Professor Dr. Khurshida Begum Sayeed	Former IC	Academician	33%
6.	Professor Dr. Sadeka Halim	Former IC	Academician	

## Annex 3: Cabinet Division

The Cabinet Division has the mandate to consolidate good governance through various measures. Accelerating the implementation of the RTI Act in collaboration with the IC is one of those initiatives. For this purpose, a section has been installed as “Right to Information” under the Administrative Reform branch under the Reforms Wing of the Cabinet Division. At present, a deputy secretary oversees that section. Moreover, an eight-member RTI subcommittee headed by the Cabinet Secretary has been set up under the framework of the National Integrity Strategy (NIS) and an eight-member working group on RTI headed by the Secretary (Coordination and Reform) is in operation at the Cabinet Division.

The RTI Working Group was established in 2014 comprising representatives of the Cabinet Division, IC, and the Ministry of Information. To strengthen the implementation of RTI at the district level, a 16-member RTI District Advisory Committee was formed, according to the decision of the RTI Working Group, in September 2014, headed by the concerned deputy commissioner. The terms of reference of the committee include building public awareness, recommending public about right to information and protection of whistleblower; observing various national and international days related to RTI and arranging training; coordinating among various government and nongovernment organizations regarding RTI and providing necessary support to the IC to resolve dispute; and arranging investigation and implementation of RTI. The committee is to meet once a month and will be able to invite an officer or expert if required.

Undertaking necessary initiatives for the implementation of the RTI Act, 2009, has been incorporated in the charter of duties of the newly created positions in the CRU of this division. The process of implementation of the act has been being institutionalized through different measures. One of the initiatives is the Strategic Plan for Implementing RTI, which has been discussed in an earlier section.

Furthermore, the Cabinet Division formed three separate committees on May 31, 2018, to strengthen the implementation of the RTI Act, 2009. The committees are as follows: (a) 25-member Divisional Supervision and Monitoring Committee headed by the Divisional Commissioner, (b) 24-member District Supervision and Monitoring Committee headed by the Deputy Commissioner replacing the District Advisory Committee, and (c) 18-member Upazila Implementation and Monitoring Committee headed by Upazila Nirbahi Officer.

These committees are composed of representatives from the government, civil society, professional groups, and women and nongovernment agencies. The terms of reference of these three committees are the same, which include building public awareness about RTI, providing advice regarding the protection of applicants, observing RTI-related national and international days, rendering necessary support to the IC in dispute resolution and conducting investigation, and so on. The committees are to meet once in two months, and the proceedings of the meeting are to be sent to the Cabinet Division, the IC, and concerned district and divisional committees.

The 7th Five Year Plan also sets some activities for the Cabinet Division which include facilitating the RTI strategic partnership among different stakeholders, for example, the IC, Ministry of Information, different line ministries, district administration, CSOs, and private sector entities; promoting capacity building of civil servants, particularly the DOs through traditional and online means; initiating legislative and policy

changes to establish record management systems among government agencies regarding the RTI Act, 2009; and increasing the RTI requests with a response from the government to at least 14,000 by 2020 annually.



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