

**Conference Paper<sup>1</sup>**  
**Right to Information: The current Situation in  
Bangladesh”**

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**Manusher Jonno (MJ)**

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<sup>1</sup> This paper is an edited version of the seminar paper titled ““Situational Analysis of Right to Information in Bangladesh: Challenges and Realities” presented in the Seminar, 5 September, 2005, Manusher Jonno. Edited by Sanjida Sobhan and Farzana Naim, Manusher Jonno under the guidance of Shaheen Anam, Manusher Jonno.

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## **Introduction**

Access to information is considered a development tool while there is growing recognition that it should be recognized as ‘**right**’ since it is related to almost all aspect of people’s well being. Right to avail information has become an important issue in Bangladesh considering its impact on people’s life and liberty. This challenge becomes more explicit when access to avail information related to people’s lives is denied by a ‘culture of secrecy’.

Due to this ‘culture of secrecy’ people suffer from a lack of required information, which marginalizes ordinary people further. Poor and disadvantaged people suffer due to their inability to access to information further creating inequalities in society. This state of lack or gap of information is one of fundamental causes of poverty, since it has direct linkages with livelihood options.

This paper intends to highlight the present state of people’s access to information and its significance to people’s day to day life. It also looks at existing impediments in accessing information by identifying limitations, gaps, attitude and loopholes plus procedures and laws in the present system.

## **Right to information: Concept and Scope**

*United Nations has recognized freedom of information as a fundamental human right and the touchstone for all rights*<sup>2</sup>. Right to information creates legal entitlement for people to seek information and includes duty of the public function bodies, both government and non-government, to make information public and easily available. It enables citizen to seek information from duty holders and make duty holders responsible to disseminate important information voluntarily even if it is not asked for. For example the public has the right to know environmental management process of an industry since it affects people’s right to health.

### ***Rights perspective***

Admission to information is not only a tool for development but also a right. Satisfactory information is needed for the manifestation of thought, conscience and speech. To build and express ones opinion one has to rely on adequate information. The realization of the right to personal safety and property also requires sufficient information to protect them. Lack of information creates barriers to people to realize opportunities and services rendered for them and hence their basic rights remain violated. Accessibility and availability to information are the foundation of other rights; it is a fundamental right and the touchstone of all other rights.

### ***Governance perspective***

Adequate information, if available, reduces the chance of misuse of resources and lessens corruption. It also helps governance system function better, makes service providers accountable for their act and action, creates participatory and transparent atmosphere for

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<sup>2</sup> UN General Assembly 1946 Resolution 59 (1), 65<sup>th</sup> Plenary Meeting December 14, 1946

people to contribute in policy formulation establishing rule of law. The extent of availability and access to information are parameters of democracy. We know that a true democratic situation leads to development. A voter who knows where the vote center is located can exercise the right to vote on time, an individual tax payee must know how to fill-in tax form and in which zone tax return should be submitted. Parents have the right to know what the opportunities are and incentives available for free education and public should know the substantial proportion allocated for health services in the budget. All services that are meant for the benefit of people should develop systems that will enable people's easy access to information.

### ***Diversity and Right to Information Challenges***

Many groups in society; particularly those which are disadvantaged and marginalized due to their profession, identity, geographic location and gender are systematically excluded from the information system. For example women have less access to information due to lack of awareness and opportunities, cultural barriers, imbalanced power relations, lack of participation in information, communication and technology. These are also considered as major obstacles to women's empowerment.

### ***Disclosure of Information***

Public function bodies should make information available unless there are strong reasons for denying it. Denial of information is only acceptable when it is for the best interest of the public. Specific and clear ground should be provided in case of denial of information. Information includes not only written documents but verbal and non-verbal communication as well.

### ***Sphere of Right to Information***

Public as well as private bodies, corporations, NGOs and international institutions that carry out public function, which affects public rights, influence the destinies of millions, are responsible to provide information. Considering this, some Commonwealth countries have extended the coverage of their laws to some private bodies. Often agreement, treaty with international, multinational agencies and corporations are not made public, based on the presumption that it is confidential. Issues involved/concerned with public interest should be made open. "The World Bank, International Monetary Fund, Asian Development Bank and other similar agencies are universally cited agencies, which have long term, and deep impacts on people's lives but very little information is given to the people."(Commonwealth Human Right Initiative, CHRI 1999, pg 4)

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This removes information from the public domain. Private bodies are providing public services their activities need to be open to public scrutiny if they affect people's right. For example, the shrimp farming in Bangladesh has long term impacts on people's lives, health and ecology of the local population, but these were never explained nor this information made public.

#### **RTI and Coverage**

Government information includes: international accords; negotiating briefs; policy statements; minutes with discussions with vendors; donors and debtors; cabinet deliberations and decisions; parliamentary papers; judicial proceedings; details of government functioning and structure; intra governmental memos; executive orders; budget estimates and accounts; evaluation of public expenditure; expert advice; recommendation and guidelines; transcripts of departmental meetings; statistical data; reports of taskforces, commissions and working group; social surveys and analyses of health, education and food availability; assessments of demographic and employment trades; analysis of defense preparedness and purchases; maps; studies on natural resource locations and availability; proof of the quality of the environment, water and air pollution; detailed personal records.

**Source: CHRI 2003 Report**

## **Access to Information: The Case of Bangladesh**

Access to information is not recognized as a right in Bangladesh. It has been mentioned earlier that a culture of secrecy creates obstacles to peoples need to get the rights which are essential for their day to day life. The continuous denial and negligence from public offices have made people accustomed with this culture. The three major organs of state is embedded with some rules regulations and laws that has not been able to discharge its functions in a pro-people manner. However, the Constitution of Bangladesh has recognized freedom of thought, conscience and of speech as a fundamental right, which indirectly recognizes access to information as a 'right'. This provides an opportunity that can be utilized to avail information easily and freely. However, the ethics that work within three major organs of the state, namely executive judiciary and legislative erode the essence of constitutional value of "freedom of expression".

### **Bangladesh Constitution**

The Constitution of Bangladesh has not declared any definite provision for access or right to information. Though an inclusive interpretation of **Article 39** could be exercised to realize one's freedom of thought, conscience, speech and the freedom of press. The interpretation of this Article is intended to include discussion and dissemination. In support of this articulate interpretation, the Supreme Court of Bangladesh in Dewan Abdul Kader Vs. Bangladesh cited an Indian decision, "----freedom of speech and expression includes the freedom of propagation of ideas—." (Rapid Assessment, p.5). Denial of access to information amounts to denial of freedoms guaranteed in article 39. Article.39 (2) of the Constitution states that subject to any reasonable restrictions imposed by law in the interest of the security of the state, friendly relations with foreign state, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence, a) the right of every citizen to freedom of speech and expression and b) freedom of the press are guaranteed. Freedom of speech as enshrined in our Constitution would not carry any meaningful purpose unless this **right** contains the right to receive and access information. Likewise, it would not be possible for the citizen to

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realize their right to know unless repealing other inconsistent law, rules with this Article 39 of the Constitution. **Article 26**<sup>3</sup> has clearly affirm that the state shall not make any law inconsistent with the provisions of this part, and any law so made shall to the extent of such inconsistency be void. Therefore, from the Constitutional perspective people's right to know, right to access to information can be ensured only by the effective practice of the constitutional provision. If real democracy is in practice in the country, then the absence of any particular provision for this right should create no bar in accessing information. **Article 7** of the Constitution implicitly recognizes people's right to information. *Article 7 declares that all powers in the Republic belong to the people.* So peoples right to all information cannot be barred in any way, as it has been recognized by the Constitution itself. Bangladesh Constitution clearly declares protection of right to life and personal liberty<sup>4</sup> "no person shall be deprived of life or personal liberty save in accordance with law". Which means that all actions and acts should be administered for the welfare of the people.

### ***Executive***

**Government** officers have to discharge their duties and responsibilities abiding by some rules and regulations. It is unfortunate that after more than 50 years of freedom from British rule, the Government of Bangladesh is exercising some law, regulations, which prohibit people from getting any information in spite of the claim that, all government acts and action is directed towards the greater interest of all people.

Specific rules such as section 5 of **Official Secrets Act 1923** prevents government officer from providing any information even to a person directly related to the concerned information. According to this law, any government official can be convicted for disclosing official information. Official Secrets Act is operative in almost every country of South Asia, which were under British colonial rules. These Laws were brought into force to suit the ill motive of the British rulers of preserving an oppressive regime. These have been unfortunately adopted by independent nations for promoting vested political interest. Bangladesh has inherited this Secrecy Act from British regime and its application has not changed from bureaucratic culture and tradition of secrecy. In most cases Government interprets the terms 'enemy', 'foreign agent', 'security or interest' in its own way and resists the flow of necessary information. Secrecy Act instead of being used in the time of war or emergency or for defense is being used in a way that strikes at the core of democratic right of people. In Bangladesh, this Act has been used as an instrument to limit journalists to discharge their responsibilities independently<sup>5</sup>.

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<sup>3</sup> Article 26 states that "All existing law inconsistent with the provisions of this part (i.e. fundamental rights) shall, to the extent of such inconsistency, become void on the commencement of this Constitution

<sup>4</sup> Article 32 of The Constitution of The People's Republic Of Bangladesh

<sup>5</sup> CHRI 2003 Report, pg 54 described the fact that an editor was arrested for publishing the public examination question on the shake of Official Secret Act.

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Rule 19 of the **Government Servant (Conduct) Rules, 1979** states, any sitting government official cannot disclose any information “to other Ministries, Divisions or Departments, or to non-official persons or Press”<sup>6</sup>

**The Rules of Business, 1996** Schedule I has described the allocation of responsibilities of respective ministries and departments/divisions. The Rules of Business clearly defined the role of Ministry of Information to take initiatives for publicity of internal and external policy. Moreover it is Information Ministry’s part of business to build “coordination of publicity activities of the different Ministries/Divisions and Bangladesh Missions abroad”(Schedule 1 of the rules of Business 1975). The ministry of Information has the major role for “Preservation and Interpretation of the policies and activities of the Government of Bangladesh through the medium of press”(ibid). But in practice this statements has become vague in nature. Section 28(1), (3) and (4) of Rules of Business 1996 clearly reserves the protection regarding communication of official information.

Restricting sections of the Evidence Act 1872 are 123<sup>7</sup>, 124<sup>8</sup> and section 125. According to Article 125, a civil servant is exempted from court orders for production of documents or questioning with regard to information. However, why these privileges are claimed, have to be explained to the court. Section 499 of The Penal Code entitles a person to sue for defamation due to the act or expression by any other person, which might be perceived to be defamatory. This is a risk especially for professional groups to collect and publish information. Section 99 A of Code of Criminal Procedure, 1898 states the government by official gazette can forfeit any book, publication under Press and Publication Act. This is a threat to the freedom of press and publication.

Very recently government of Bangladesh has taken initiative to amend present **Telecom. Act** showing reason of curbing terrorism. Many fear that this amendment will allow government to tap individual conversation over land or cell phone. This is seen as a direct interference in individual’s private and personal life since telecommunication is an effective mechanism for information flow. While on one hand the government is promoting e-governance, on the other such interference will promote the culture of secrecy rather than breaking it.

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<sup>6</sup>“A government servant shall not, unless generally or specially empowered by the Government in this behalf, disclose directly or indirectly to Government servants belonging to other Ministries, Divisions or Departments , or to non-official persons or Press , the contents of any official document or communicate any information which has come in to his possession in the course of his official duties or has been prepared or collected by him in the course of those duties whether from official sources or otherwise” Government Servant Conduct Rules, 1979

<sup>7</sup> According to this section no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

<sup>8</sup> Under Section 124 no public officer shall be compelled to disclose communications made to him in official confidence when he considers that public interest would suffer by the disclosure. Office OR department head can permit in providing information to his subordinate officer but nothing to do on his denial. Even the Court is bound to accept the decision of the public officer.

There is no provision that obligates government official to specify their act and actions even it is said to be directed towards the interest of citizens. Culture of secrecy and undemocratic practice also results in poor documentation of information. People face problems in collecting information because of weak documentation, which results in loss of information and creates opportunity for tampering with documents. This also leads to limited acquire skills to prepare and produce information in more meaningful and useful ways.

It is also seen that lack of coordination between different line ministries causes problems in availing information and meeting deadlines. Sometimes secrecy is maintained in such restrictive manner that duty bearer themselves remain in darkness regarding the information they are supposed to know.

Similar statements are equally applicable in *non-government and private sector*. One can see the reflection of Government secrecy culture in their attitude and actions. It would not be exaggerated to define non-government attitude as the mirror of government attitude.

### ***Judiciary***

Judiciary can play a significant role to establish this as a right. Recently upon a writ petition Court has directed the EC (Election Commission) to provide eight kind of information regarding property, criminal charges and educational background of election candidates. By giving this judgment court has demonstrated that voters have the right to know the profile of an election candidate. This example of judgment is a great step forward towards transparency and accountability of election candidates. Judiciary is in a favorable position to create precedence by giving positive direction to the concerned authority of the state, which may bring a positive change in accessing information.

### ***Legislative***

In Bangladesh, though a parliamentary form of government exists, lawmakers rarely play their prerogative role. Lawmakers are supposed to develop laws in accordance with public opinion, interest, and will of the people. During the last two terms of elected government the opposition bench has been absent from the parliament. But in reality their dialogues, debates in the parliament or out side the parliament rarely reflects public expectation since the a major opposition party keeps away from all debates.

Lawmakers themselves are not aware that people have the right to know and do not recognize this as a right. This statement is more relevant in case of preparing the national budget. The allocation of budget does not also reflect the expectation and demand of the community.

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Lawmakers have an important role to uphold the value of open government. They can adopt legislation in support of publishing key categories of information held by all public as well as private bodies.

### ***Proposed Information Act 2002***

Bangladesh Law Commission has drafted the Right to Information Act, 2002. However, it is not ready to be considered as a Bill to be produced in the Parliament. Many have expressed fear that this draft law will not serve the required purpose as it has not been circulated nor discussed with relevant stakeholders. Recently a dialogue arranged by Manusher Jonno among civil society members opined that to get rid of the culture of secrecy, only a Law would not be enough. A well-defined, well-formulated law with effective implementation mechanisms is also needed to make the law effective. Also before preparing any law to make information public, a strong demand from the community should be created. While introducing the Women and Children repression prevention Act 2000 government took the initiatives to include expert opinions from different groups; recently government finalized the PRSP in consultation with relevant stakeholders. The following table provides a snapshot on the proposed Act, which should be placed for public debate to ensure its effectiveness.

#### **An Overview of the proposed Information Act**

<b>Advantage</b>	<b>Disadvantage</b>
<p>The definition of information has been defined in section 2 (a);</p> <p>Government and Semi-government offices are bound to publish their documents to the public. The publication should contain useful and accurate information on important matters.</p>	<p>It was expected that this Act would prevail over the Official Secrecy Act. But in reality it was found that the proposed Act was made applicable subject to certain provisions of the Official Secrecy Act. As a result access to information will always be limited.</p>
<p>Private authority comes under the same boundary as the public.</p>	<p>Some rules are added where the public authority is not bound to give information by showing the excuse of safety and state security;</p>
<p>Public authority are bound to supply Information to the people who will enjoy this statutory right;</p>	<p>The structure and power of the information tribunal has been mentioned but that is without any specific time limit. As a result one can easily be harassed without decision for long time.</p>

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## An Overview of the proposed Information Act (continued)

The process of access to information has been discussed in detail;	In Section 8, the person denied access to information is entitled to get Tk 5000/ as compensation, which should be rationalized.
The offences committed have been divided into different categories and have different penalties (compensation, fine, and imprisonment etc);	This needs to be reviewed further considering process involved and time needed to prove offences and how far poor and disadvantaged people's justice can be ensured.
The formation of Information Tribunal and Appellate Information Tribunal has been recommended. Functions of Information Tribunal has no time limit, however, the Appellate Tribunal has 3 months time limit to dispose a case.	More specific implementation mechanism may be suggested by defining "who" and "how" each government agency will disseminate information and protect people's right to know.
	Information dissemination, information maintenance and enhancing skill in implementing information Act. require both human and financial resources . No specific guidance has been provided in this regard.

### ***The Media***

The media can play a pivotal role in influencing and promoting transparency in the way three organs of state operates. It can bring to public attention the hundreds of examples of misuse of power; lack of transparency and bad governance that affects peoples lives everyday.

Usually it is print media, which face challenges in publishing news about the powerful groups. Evidence show that journalists receive threat from those whose ill motives have been exposed and published. Often they have to face physical assault and injury and in some instances death. Furthermore media has to face contempt cases (example of publishing information related to forgery of a sitting judge). This incidence shows how state creates a negative implication on the "whistle blower". Bangladesh was ranked the 151<sup>st</sup> position out of 167 countries considering the situation of freedom of press. This ranking is based on the global media watchdog. Bangladesh's position clearly indicates the present situation of press freedom though the constitution has declared that freedom of press as a fundamental right.

Here it should be mentioned that media's attention should not only be directed at public offices. It is the duty of the media to highlight such problems in the private sector that includes business, NGOs etc. The recent campaign against food

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adulteration is a good example where the government is taking positive steps to prevent food adulteration and the media is giving it wide coverage.

### ***Some examples where RTI is obstructed and denied***

Following are few examples narrating impact and implications caused by inaccessibility to necessary information;

#### **Mutation and Record**

Non-compliance in mutation<sup>9</sup> and records of inherited property causes sufferings to family members whereby vested interest groups illegally occupy their property. Non-availability of tax documents lead to court cases and producing false documents before the court often place the court into dilemma. A process of transparent and easy access to information can generally mitigate this situation, which is a common phenomenon in rural Bangladesh.

#### **Misappropriation of Wakfa and Debottar property**

Benevolent people often donate their landed property to mosques, madrasa and mandir. Very often land record is not done in the name of mosque/madrassa/ mandir committee, even these committees some times do not have proper documents of their legal existence. Due to absence of legal documents and lack of information those properties are often misappropriated. However, in case of Debottar property has other dimension as well. Powerful people even from non-Hindu community produce false documents of ownership, which ultimately makes a section of minority community more vulnerable and insecure and many of these people often migrated out. It is, therefore, lack of right to information which is adversely affecting social and communal harmony.

#### **Bribe for information**

During litigation, to collect any information, one needs to pay bribe to court officials in varying rate depending on their position, for example, Bench Clerk (peshkar) Tk 25 - 30 and Serestadar Tk 200 –300 etc. This points out that in getting information through out the period of litigation, which usually takes a decade, huge amount has to be paid by the parties involved. One may safely infer that this sort of problem largely occurs due to lack of information.

#### **Inconsistency in data source on ethnic minority of CHT**

Realities, condition and major feature of Chittagong Hill tract (CHT) are not accurately covered in official Bangladesh Bureau of Statistics (BBS) data sources. Definitional inconsistencies, lack of sociological and anthropological knowledge about various ethnic groups, lack of understanding about major factors of central economy of hill peoples have made BBS data and information non reliable and inaccurate. It fails to provide reliable data on areas and output of jum cultivation, ethnic break down in most of socio economic

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<sup>9</sup> Mutation is a process of transferring ownership of landed property from one person to another.

data ranging from literacy and education to employment, income and poverty incidence. Credible doubts exist about BBS data on the distribution of owned and operated land, categories of land tenure in CHT. No clear scenario can be drawn on eviction and displacement of hill peoples. These are being considered as one of the major barriers for being well aware of existing CHT situation. Process of taking informed policy decision and undertaking need based development interventions is also getting obstructed.

### **Unplanned “ Rush to develop ” CHT**

Following the Peace Accord, the government as well as donor agencies and NGOs have been engaged in taking development initiatives for CHT although these were held up for certain period during 1998-2003 for various reasons. Development interventions and approaches are primarily based on the experience and information generated from plain land, therefore, does not address the problems and needs of the indigenous people and at the same time potentials of the region remains unrealized. Broad based consultation with ethnic groups, and wide scale information dissemination on probable impacts and benefits are, therefore, seen critical for development interventions for this region.

### ***Some Examples where citizen RTI is recognized and promoted***

There are some cases and good examples where information have benefited citizen and protected them from probable corruption and mal practice.

### **Improving information flows: Empowering users in Power Sector**

As required by law, Dhaka WASA (Water and Sewerage Authority), Chittagong WASA and the city corporations publish water usage tariffs in newspaper in advance of any increase in tariffs. This made literate people informed about usage rates. This reduces potential corruption of charging higher than existing rate. However, lack of published rates on connection charge creates room for corruption where clerical staff demand bribe to potential users group. Connection prices therefore also need to be publicized like usage tariffs.

### **Other cases: GO and NGOs contribution**

Executive order for holding open budget dialogue session at each Union Parishad, growing demand and practices in favors of Public Notice board on Union Parishad roles/responsibilities with Standing committees’ information, open list on disadvantaged and destitute people receiving relief during emergency, notice board on duty schedule of block supervisors, client charters at every upazila health complex are good examples of making community people aware of their entitlements and this also empowers people to hold authority accountable to them. These are yet to be practiced all over Bangladesh. Intensive monitoring and placing demand to relevant authority are required for sustaining such good practices.

Though such examples do not exist at large scale these have demonstrated application of information in improving governance and protecting violation of rights.

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## Recommendations

A Few months back Manusher Jonno arranged a seminar with civil society members and organizations working for ensuring information right directly and indirectly. Manusher Jonno also organized round table meeting with the lawmakers in association with APPG (All Party Parliamentary Group). From both event following recommendations were made:

### Policy

- Rules, laws, regulations that hinders to provide information needs to be revised.
- To evaluate and monitor the law a provision of monitoring committee will have to be formed.
- The election process is needed to be reorganized. Information of each political party and candidate should be made open before the people.

### Administrative

- Government should take initiatives to publish annual report regularly mentioning information regarding its activities and allocation for activities.
- Electronic/digital documentation and e-governance should be introduced to avoid corruption and to bring transparency in public sector.
- Information intermediaries should be developed in a planned way to disseminate information more effective.
- Information provider's security should be ensured and protected by state.

### Functional

- A wide range of consultation involving all sections of people is needed on the draft law.
- Campaign and strong advocacy is needed to aware people regarding the necessity and advantage of information accessibility. Following such process a grass root constituency needs to be built and demand for such law should come from local level
- Local government institution needs to be strengthened further to play an important role in protecting people's right to know.

## Conclusion

Although **Right to Information** is not yet recognized as a **Fundamental Right**, there is enough evidence to believe that it has implication on every aspect of people's lives and well being. It is all the more important in Bangladesh where violations occur easily and common people become vulnerable to the failings of the state and forces of vested interest groups.

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There is an urgent need to raise awareness on the issue and embark on a national campaign so that the need for a Right to Information law is enacted.

However, it is very important to remember that this law is not something that can be drafted in some Ministry or by some bureaucrats. Such a law will not have ownership and will have even less chance of being implemented.

The demand for Right to Information law will have to come from the people. The people must understand the need for such a law, they must know how and why this law will affect their lives. The demand should be such that the government will have to recognize it as the need of the hour and take steps for its enactment.

Here the role of the civil society organizations and individuals becomes very important. They should actively promote this concept in all their programs at the local and grass root levels. The media should be a close ally of the Right to Information campaign and in fact should be in the forefront of the movement. Examples of other countries show that a strong peoples movement was the primary force behind the final enactment of the law.

It is important to remember that Right to Information law should not be restricted to public institutions. Private organizations, NGOs, business etc. should have to abide by the same standards of disclosure.

Lastly, a law only has use and value in the way it is used and implemented. It is critical that some mechanism is developed that will enable the proper implementation of the law once it is enacted.

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