



Research

Legal and Institutional Mechanism of Transparency: Bangladesh Perspective

Md. Shadat Hossen¹, Atiqur Rahman^{2*}

¹LLB (Hon's), LLM, Department of Law, Islamic University, Kusthia, Jhenidah Bangladesh

²Post-graduate researcher, Institute of Social science, Department of Public Law, Ataturk University, Turkey

*Corresponding author

Accepted: 10 August, 2019; Online: 19 September, 2019

DOI : <https://doi.org/10.5281/zenodo.3451502>



Abstract :In the modern state mechanism, the concept of 'transparency' gets more importance incessantly. Citizens are interested to see accountable and transparent government. A Hidden, ambiguous, unfair technique, in the government activities are caused of disrelish of its citizen. People are interested to know what, why and how government performs and runs. It indicates the consciousness as well as the legal expectation that government all activities are visible and understandable. Bangladesh, as a modern and democratic state also includes right to freedom of thought and conscience and of speech of the citizen as fundamental rights in article 39 of its Constitution. Besides, Article 11 of the Constitution of the People's Republic of Bangladesh guarantees basic human rights including access to information. For ensuring transparency of the government functions, the Constitution has guaranteed the freedom of thought and conscience. Access to information and freedom of expression are closely connected. If information is not available, the freedom of expression will be meaningless. The 1990s marked as era media freedom as granted in the constitution. Despite the freedom, the media face many challenges in performing their functions. After long time in 2009 the government has enacted the right to information Act. Besides the Universal Declaration of Human Rights have recognized freedom of expression and opinion as a Human Rights. For making the declartion mandatory, the International Covenant on Civil and Political Rights (ICCPR) adopted and opened for signature, ratification and accession by UN General Assembly resolution 22004 (XXI) of 16 December 1966 and became effective on 23rd March 1976. Bangladesh ratified the ICCPR in 2000 and is pleased bound to guarantee access to information to all its citizens. In spite of above legal instrument the government can't ensure transparency as well as freedom of expression properly. Therefore, this research will highlight the legal and institutional structure of transparency in Bangladesh henceforth an analysis of impoverished transparency caused by some contradictory Acts of the country itself.

Keywords: Transparency, Mechanism, Institutional, Information, Government, Accountability, Expression, Harassment, Ambiguous & Ensure.

Transparency

Transparency means the continuous sharing of information, decision making, and implementation should be open. It is not sufficient that should simply be made available. It must also be reliable and presented in useful and understandable ways in order to facilitate accountability.¹ Information should be accessible in that every citizen can participate in the debates. Such information helps to ensure a level playing field and encourage the effective participation of all social groups and partnership between different sectors. Transparency makes the institution and organizations more responsible.²

Transparency refers to availability of information to the general public and clarity about government rules, regulations and decisions. Transparency refers to unfettered access by the public to timely and reliable information on decision and performance in the public sector. Access to accurate and timely information about the economy and government policies can be vital for economic decision making by the private sector. Transparency in government decision making and public policy implementation reduces uncertainty and can help inhibit corruption among public officials.

Different Dimensions of Transparency

Transparency is to be ensured different dimensions namely,³

1. Openness in public dealings;
2. Right to information relating to the service delivery process;
3. Right to information relating to criteria and their applications;
4. Right to information relating to public expenditure/contract;
5. Enactment relating to the right to information;
6. Code relating to access to information; and
7. Openness in the cost of the project, quality standard, etc

Transparency in Bangladesh: Legal Mechanism

Access to information is very much important for ensuring transparency in the administration. The easy access to information can create awareness about peoples' right and responsibilities of the government. People can take part in the development and decision-making process

¹ Kamal Siddiqui, op. cit, p. 4.

² Mohammad Johurul Islam, "Good Governance in Bd: An agenda for Development"

³ <http://orissagov.nic.in/e-magazine/orissareview/aug2004/englishpdf/pages27>

upon information and shall have the due share and else can ensure balanced development and also work for equality among the people. The access to information or freedom of expression is the precondition to the fulfillment of all other rights in the democratic society. Access to information and freedom of expression are closely connected. If information is not available, the freedom of expression will be meaningless. These have been recognized as human rights in the Universal Declaration of Human Rights of 1948.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and freedom of opinion and expression. observance. ⁴

The right of access to public information has also been recognized by the Inter-American Court of Human Rights as a fundamental human right, which became the first international tribunal to do so. In the case *Claude Reyes*,⁵ the Court held that any restrictions of access to information need to be based on satisfying an imperative public interest, and if there are several options to attain that objective, the one which poses the least restrictions to the protected right should be selected. Therefore, state authorities should be ruled by the principle of maximum disclosure, on the assumption that all information should be accessible, limited only by a restricted system of exemptions. In those cases, the state bears the burden of proving the legitimacy of the restriction. **Article 10 of the European Convention of Human Rights** and the First Amendment to the United States Constitution provides their guarantees of freedom of expression in the language that is strikingly similar and spare. It assures individuals that the fundamental right to be free from governmental interference in expressing their sentiments. Article 10 provides the safeguard in these few words, ‘Everyone has the right to freedom of expression. This right shall include freedom to receive and impart information and ideas without interference by public authority.’

This right includes freedom to hold opinions without interference and to seek receive and impart information and ideas through any media and regardless of frontiers.⁶

⁴ Article 18 of the Universal Declaration of Human Rights, 1948

⁵ IAHR Court, Case *Claude Reyes and others vs., Chile*, Sentence from September 19, 2006, Series C, No. 151, par. 90, 91 & 92.

⁶ Interference of Press Freedom with Administration of Justice: An analysis/Dr. Moammad Abdul Hannan

For making the UDHR mandatory, the International Covenant on Civil and Political Rights (ICCPR) adopted and opened for signature, ratification and accession by UN General Assembly resolution 22004 (XXI) of 16 December 1966 and became effective on 23rd March 1976. Article 19 of the ICCPR provides that

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expressing; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art. or through any other media of his choice.
3. The exercise of the rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security, or of public order, or of public health or morals.

Bangladesh ratified the ICCPR in 2000 and is pleased bound to guarantee access to information to all its citizens. The Constitution of Bangladesh provides necessary controlling measures (both internal and external) for making the administration accountable and transparent. For example, Article 134 stipulates that except as otherwise provided by this Constitution every person in the service of the Republic shall hold office during the pleasure of the President. Article 55(3) says that the cabinet shall be collectively responsible to parliament.

Article 11 of the Constitution of the People's Republic of Bangladesh guarantees basic human rights including access to information. For ensuring transparency of the government functions, the Constitution has guaranteed the freedom of thought and conscience." The Constitution also provides that subject to any reasonable restrictions imposed by law in the interests of the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offense - (a) the right of every citizen to freedom of speech and expression; and (b) freedom of the press.⁴⁸ There was however no progress until a draft law on Right to Information was prepared in 2002 and promulgated by the Caretaker Government through an ordinance in 2008. However, the elected government finally

passed the Right to Information Act in 2009 with a view to ensuring a free flow of information and people's right to information.⁷

- a. The preamble of this Act recognizes that if the right to information of the people is ensured, the transparency and accountability of all public, autonomous and statutory organizations and of other private institutions constituted or run by government or foreign financing shall increase, corruption of the same shall decrease and good governance of the same shall be established. The salient features of this act is as follows:
 - b. a. The objective of the act is to ensure transparency and accountability in public,
 - c. Autonomous, statutory organizations and private institutions .which are constituted run by a government or foreign funds.
 - d. b. For providing information according to this act, all authorities are bound to appoint designated officer in each unit of the department concerned within 60 days at the commencement of this act and the authority concerned shall inform the Information Commission about the name Designation, address, fax number, the e-mail address of the designated officer within 15 working days of such appointment.
 - e. c. The authority of the concerned office is bound to give information on the request (request may be made either written or electronic or e-mail) from any citizen. The designated officer shall provide information within 20 working days from the date of receiving the request. In case of more than one authority, the time limit is 30 working days. But if the request is related to life and death, arrest and release from the jail of any person, the officer. in charge shall provide the preliminary information within 24 hours. Failing to provide information within the prescribed above time is considered as rejection of the request.
 - f. This act makes some restrictions, where the authority concerned, shall not be bound to provide information. But prior approval of these restrictions from the Information The commission is essential. A list of 20 subjects has been considered as a matter of restrictions; **viz.**, matters relating to national security, integrity and sovereignty; a foreign policy that may hamper the relationship with foreign country, international organization or any regional alliance or organization; secret information received from a foreign country; information relating to intellectual property rights; any advance information relating to

⁷ Act no XX of 2009

custom, VAT, tax, the exchange rate that may be gainful or damaging to any particular individual or organization; any information obstructing the enforcement of the law; information endangering the security of the public or impede the due judicial process of a pending case; offend the privacy of the personal life of an individual; endanger the life or physical safety of anybody; matters that may cause contempt of court; impede the process of investigation; prejudicial to the special rights of the House of the Nation; summary for the discussion or the decision of the Cabinet or Council of Advisers, etc.

g. Establishment of independent Information Commission is one of the prime concerns of this act. The head office of the Commission shall be at Dhaka, but the Commission may establish branch offices anywhere in Bangladesh. The Commission shall be consist of the Chief Information Commissioner and 2 other Commissioners, at least one of whom shall be a woman. The Chief Information Commissioner and other Information Commissioners shall be appointed by the President on the recommendation of the selection committee. The selection committee is composed of 5 members having a judge of the Appellate Division nominated by the Chief Justice, who shall be its chairman, Cabinet Secretary, one Member of Parliament from the ruling party and one from the opposition, one from the profession of journalism or a prominent member of the society related to mass communication nominated by the government. As a watchdog authority of implementing of the right to information of the citizens, the Commission shall receive, inquire into and dispose of any complaint according to the provisions of this act. The Information Commission may exercise such powers as a civil court may exercise under the Code of Civil Procedure, 1908 in respect of issuing a summons, inspecting and examining information, receiving evidence on affidavit, etc. Besides, the Information Commission has been assigned to take necessary measures for fulfilling the spirit of the Right to Information Act.

h. A person may lodge a complaint to the Information Commission if he gets no information from the authority or if he is dissatisfied with the decision on his appeal. The act provides detail reasons for making a complaint before the Commission. The Information Commission may take various actions in this regard. The Information Commission shall have the power to reject any complaint, to direct the authority or the officer-in-charge for providing the requested information in a specific manner among others. Moreover, the Information The commission may

impose fine if the officer-in-charge refuses to receive any request without any reason or fails to provide information within the time limit or refuses to receive a request or an appeal with mala fide intention or provides wrong, incomplete, confusing and distorted information.

i. When a complaint is disposed of by the Information Commission shall be binding upon all concerned and no person can raise any question before any court for anything which has been done under this act except preferring an appeal before an appellate authority or lodging a the complaint before the Information Commission.

j. **Legal and other Obstacles in the way of Right to Information:** In a democratic society, there should be right to know and let others know about everything of public interest. Obtaining information is necessary for building any opinion. Inline with this view, the Bangladesh Constitution has guaranteed the freedom of speech and expression along with freedom of the press. Specific law regarding the right to information has also been promulgated and came into force. But there are some inconsistencies of the existing laws and due to the presence of some legal and practical barriers, free flow of information is being hampered and right to information as well as the transparency is virtually not ensured. Some of these causes are discussed below.

k. The ICT Amendment Act, 2013: The prevalence of the freedom of expression in the country can be understood by the presence of the following indicator of free and independent media, literature and different forms of cultural expressions, free religious institutions, the scope of assembling and staging demonstration freely, forming political or quasi-political organizations, trade unions, and peasant organizations and their opportunity to bargain collectively, scope to form free professional and other private organizations, presence of independent the judiciary, rule of law in civil and criminal matters, official, legal, social and cultural mindset to treat people equally under the law, police remaining under direct civilian control, presence of state mechanism to protect people from political terror and from unjustified imprisonment, exile or torture; scope to hold an open public discussion and free private discussion, personal autonomy; no state control on travel, choice of residence, or choice of employment. ⁸

⁸ The Daily Sun 27 July 2017 Tasmhia Nuhia Ahmed)

The right to freedom of expression guarantees every individual to write and speak freely without undue interferences from the incumbent government. Freedom of expression is called one of the cornerstones of democracy. It also secures other fundamentals of democracy like pluralism and free, fair and transparent elections. Furthermore, a healthy government will encourage the media to provide legitimate criticism.

This will raise the country's reputation abroad. Moreover, open criticism will reduce corruption and mismanagement, which caused harm to the economy. It is not worthy to mention here that all of the world's strongest economies allow open criticism for the betterment of their countries .⁹

The section 57 of the ICT (Amendment) Act of 2013 provides that “If any person deliberately publishes or transmits or causes to be published or transmitted in the website or in any other electronic form any material which is false and obscene and if anyone sees, hears or reads it having regard to all relevant circumstances, its effect is such as to influence the reader to become dishonest or corrupt, or causes to deteriorate or creates a possibility to deteriorate law and order, prejudice the image of the state or person or causes to hurt or may hurt religious belief or instigate against any person or organization, then this activity will be regarded as an offense.”

To conclude, the ICT (Amendment) Act, 2013 is a direct threat to freedom of expression because it contradicts to the Constitution of Bangladesh and Right to Information Act as well as challenges for privacy and Human Rights. It is true that cyber-crimes are on the rise and we have to deal with them within a legal framework. Therefore, we must adopt new laws as required in current times. The amendment of the ICT law is more about violating citizens' constitutional right to freedom of expression than protecting their liberty. We the citizens of the country don't want oppression in the name of protection. The government can take the ICT Act to protect and control the misuse of information technology. But the act should be clear and specific, so that it may not affect the right to freedom of expression of the citizens.

Criminal offenses under section 57 are very loosely defined. By such definition that is contrary to the basic principle of Criminal law, has been expanded the state power upon the infliction of unnecessary and precarious punishment. Through the use of indefinite/vague terms of 57 Section – for example, “the image crisis of state and people”) have been denied fundamental “principle of certainty” of criminal law.

⁹ The Lawyers Club Bangladesh.com Advocate Mahbobul Alam (Toha)

It has been created the opportunity to bring any of the innocent or legitimate online publications/dissemination, under the wish of state and punishment. The Amendments ordinance 2013- section 57 defined by loosely and indefinite/vague words- by making several offenses cognizable and non-bailable, has created unlimited opportunities for state harassment and oppression.

The act was used for the first time in April 2013 to arrest four bloggers who had been vocal on different social issues and mostly wrote against religious extremism. They were formally indicted in September for alleged anti-Islamic comments. By then, however, the penalties they faced had increased to a maximum 14 years in prison under an amendment passed in August 2013 without regard for civil society criticism.² Police no longer need a warrant to make arrests under the amended act, and used it to detain at least eight bloggers, Facebook users, journalists, and civil society activists for criticizing the government or the prime minister during the coverage period of this report. About 400 cases are pending in different court against the print and electronic media worker under this Act.

In recent time 5 section of the ICT Act including 57 has abolished but these sections come in new form in the Digital Security Act, 2018.

If we look at our neighboring country, India; we find that the Indian Supreme Court in March 2015 struck down almost a similar section like section 57 of the Act of 2013, terming it unconstitutional. The court observed section 66A of the Information Technology Act hit at the root of liberty and freedom of expression, two cardinal pillars of democracy.¹⁰

Digital Security Act, 2018

The Digital Security Act, 2018 is the absolute restriction on the way of access to information or right to information as well as transparency. About this Act, there was a storm of severe criticism from the beginning of the law. The editorial council rejected the law. They objected to the 8,21,25,28,29,31,32,43 and 53 sections of the law. The journalist union also raised objections to the law.

In above sections of Digital Security Act, there is a fear of harassment in the opinion of the public, which will hamper independent journalism. For example, Section 32 of the Act provides for the provision of the spying of spies for digital crimes. It states that "If a person enters, transmits or preserves, preserves or preserves through any illegal, most secretive information-data computer,

¹⁰ <http://www.daily-sun.com/arcprint/details/243519/Section-57-of-the-ICT-Act-2013/2017-07-27>

digital device, computer network or any other electronic, official, semi-government, autonomous or statutory agency through the illegal entry. , Then it would be a crime for a computer or digital spying. ' For this purpose, the person concerned will be sentenced to a maximum of 14 years imprisonment or a fine of Tk 25 lakh or both. If the same person repeats the same mistake, he or she will be sentenced to life imprisonment or one core taka, or both.

In this context, Article 32 of the Digital Security Act has created a new controversy. Naturally, the question arises, the controversial 57 articles of the IT Act is coming back as a section of the Digital Security Act. Article 28 states that the maximum punishment for the 10 years in prison is to suffer religious injuries or hurt feelings. On the other hand, if some publicity campaign is published in section 29, it will be sentenced to three years. According to Section 30, if you have to pay e-transaction for any bank, insurance or financial institution beyond the law, you will have to face five years in prison. Besides, the provision of various penalties and penalties for hacking, destruction of the computer source code, and illegal possession, transmission, and preservation of government information. Most of the new laws are not bailable. However, there is a provision of bail for the offenses of defamation of 20, 25 and 48 of 29 defamation cases.¹¹

Mahfuz Anam, general secretary of the Editor's Council of Bangladesh, editor of the newspaper, thinks that the work of the media-workers will be constrained by this act.¹² According to the law, after the introduction of Article 57 in the ICT Act in 2013, for the last several years, Media and human rights activists complained about the cancellation. He said, "Section 32 of the law says the 14-year sentence for breaking the government's secret through digital means.

What is the secret of government? Anything that the government is not officially informing people, that's going to be secret. According to this law, it is not the right to know the people. Because the government does not tell it. But the journalists know 24 hours of work. It is a state secret because I can't do journalism here. According to him, without the warranty, the power of search, seizure, and arrest under section 43 of the law will also be under pressure by the media workers. According to Article 43, if a police officer arrives at my media office and finds that he needs to enter his official server for the sake of the investigation and if he seizes the server, then the sign of the crime should not exist or not, because the server was seized, my publication of the

¹¹ <https://www.jugantor.com/national/12844/%E0%A6%95%E0%A7%80>

¹² <http://www.abcnewsbd.com/?p=20108>

day was closed. To be kept. Section 53 of the Digital Security Act says that there will be 14 sections of the law non-bailable.

In this case, human rights activist Sultana Kamal, the leader of human rights movement, will face the risk. He said, "14 sections of the law have been made non-bailable. If anyone arrested in this section, he will not be bailed. And maybe it will be a long time to prove its crime. Until then, he has to be arrested. It is not possible to do such a thing only when the force which is not working on suspicion. "Under Article 25, 28, 29 and 31 of the new laws, the issues of the person and the state of the country are hurt, religious feelings, injury of somebody, defamation of law and order and deterioration of law and order, are referred to as offenses. The punishments of those who are sentenced from three to seven years of imprisonment. But there is enough scope for misuse of these crimes, because the crimes are not clearly defined.

National Broadcasting Policy, 2014

The National Broadcasting Policy has enacted in 2014. Right to information of the citizens has seriously hampered by this Act. By this Act, the government wants to control criticism against it. There was a lot of objection against this Act from the media and civil society. The terms and conditions for which television licenses are issued are not conducive to independent media, and new policy conditions will get worse. "It is said that there is nothing to say about the officer who can give a criminal punishment? But all government officials have the power to punish anyhow. If someone in despair, then is it news or not? In talk shows, politicians often talk about. If we do not preach a party, we are going to tilt in one direction. There are lots of untrue statements seen in the two campaigns. Syed Ishtiaq Reza Says, "We give up the responsibility of judging the reader or the audience. But if the responsibility of considering this trial only goes to the government, then it is a fear of misuse". Untrue reports and misleading statements can not be broadcast on talk shows or news shows. At the same time, the Talk Show has given instructions for giving equal opportunities to both parties. Besides this Act, the government has taken initiative to pass a new Act which will impose more restriction on media .¹³

Government Service Rules 1979

It has specified that disclosures of departmental information would be punished but the RTI Act exempted them of any punishment. The service rule may be amended to match the RTI Act to make the process smooth.

¹³ The Daily Prothom Alo/ 16 october 2018

Moreover, there are some existing laws which are making hindrances in the way of ensuring the objectives of RTI Act. These are:

The Official Secrets Act, 1923. (Act No. XIX of 1923)

Section 5 makes the communication of any official information by a Government Officer an offence punishable under the said section and thereby prevents citizens from having access to official information.

Section 123, 124 85 162 of the Evidence Act, 1872 (Act No. 1 of 1872)

Section-123

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.

Section-124

No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Section-162

..... The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or takes other evidence to enable it to determine on its admissibility.

Rules 28 (1) of the Rules of Business, 1996

No information acquired directly or indirectly from official documents or relating to official matters shall be communicated by government servant to the press, to non-officials or even officials belonging to other Government offices, unless he has been generally or specially empowered to do so.

Rule 19 of the Government Servants (Conduct) Rule1979

A Government servant shall not unless generally or specially empowered by the government in this behalf, disclose directly or indirectly to government servant belonging to other ministries, Divisions or Departments, Or to non-official persons or to the press, the contents of any official document or communicate any information which has come into 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.

Oath (Affirmation) of Secrecy under the Bangladesh Constitution.

The 3rd Schedule of the Constitution prohibits the Prime Minister and other Ministers to communicate directly or indirectly or to reveal any matter to any person.

1. The RTI act has made a good number of restrictions by the name of state security or other petty reasons where the authority concerned is not bound to provide information. This list is too large. About 20 matters have been listed under this perpetual information not giving principle. This is not but the destitution of giving information.
2. There is a bar to go to the court for remedy. Without making an appeal before an appellate authority or lodging a complaint before the Information Commission no aggrieved person can raise any question before any court against any action or decision or order or instruction made under the Right to Information Act.
3. There is uncertainty to give third party involved information. There is a jugglery with figures for not giving information by the name of third party involvement.
4. As per section 13(1) of the Act, the Information Commission can entertain complaint if a particular authority does not appoint designated officer. But the Commission does not have the power to direct the concerned authority to personally appear before the Commission. The Indian Right to Information Act 2005 has given the Commission such independence and authority.
5. So far as it is known, the different bodies of the government have nominated more than thousand government officers and staffs as 'designated officers' whereas a very few number (201) of non government institutions have appointed designated officers out of some 30000 NGOs. As NGOs were very much concerned about the enactment of RTI act, they should be more responsive in terms of appointing designated officers.
6. The aim of RTI act is to make the vulnerable section informed of their rights and privileges under this act. Unfortunately, the citizens are not aware of this act or Commission established under this act and its functions. The RTI should be widely discussed in all forums and media. The civil society may play a lead role to make it known to all citizens of the country. Side by side, workshops should be organized for the public officials, civil society members, human rights activists, journalists and lawyers to facilitate better understanding of RTI. But it is our pleasure that the Information Commission is enlightening the mass people about right to information and RTI act through SMS mobile phone message and TV scroll

Some other Practical Barriers

- a. The public servants do not feel shy to show indifference and ignorance towards the law, rules, regulations and rule of law. Appropriate system has not yet been established for achieving the target of administration around the time limit.
- b. Political interference upon administration has made our democracy about to cripple. The nation expects fair, honest and impartial administration in terms of the performance of their duties and responsibility. But all successive regimes of Bangladesh have covertly or/and overtly politicized the bureaucracy in varying degrees for advancing their partisan agenda. Involvement of public officials on the jonotar moncho (public dais) in early 1996, appointment of about 450 loyal officials as DC, ADC, UNO before expiry of Awami League tenure in 2001, promotion and posting of a large number of officials were made on political consideration by the present four party alliance in 2003- 2004 are the glaring examples.
- c. One of the main reasons for non-establishment of accountability in the administration is lack of merited people in the administration. Skilled, efficient and worth civil servants are a must for good governance and development of a country. But our national administrative machinery is bereft of such kind of officials. Acknowledging such problem, Prime Minister Begum Khaleda Zia said that a terrible dearth of merit has eclipsed our entire national life setting off deep crisis all around and unfortunately public administration has also not been any exception to the rule.¹⁴

This can be attributed to two broad reasons, namely: the ever declining quality of the top ranking civil servants, and the reckless and forced politicizing of the whole administrative structure.
- d. The principle of power delegation is not explained clearly.
- e. Usually annual confidential report is not so authentic. Almost it is dependent upon the personal relationship with the controlling authority, not on performance.
- f. Lack of proper attitude and training of the officers.
- g. Unsolicited and unexpected pressure of labour associations / trade unions on administration.

¹⁴ Kazi Alauddin Ahamed, "Merit Crisis in Administration-An introspection" The Daily Star/26 february 2004

- h. To disobey the rules of service, to realise undue privileges from the job and to use the government transportation abruptly are the part of our today's culture. It has been created for decadence of value.
- i. For a long period of time our administration has been known as persuasion model of administration and it is not run without any recommendation, request etc.

Transparency in Bangladesh: Institutional Mechanism

The Government's transparency is the opportunity where the citizens' can access Government's administrative process, activities and information. Accessibility of information and data is the core element of transparent bureaucracy. To impose restriction on information without reasonable grounds is one types of fraud. Keep the citizens away from reality being identified as their outsiders. The main mechanism of establishing transparency in Bangladesh is as follows:

Decentralization

The transparent bureaucracy creates opportunities for acceptable and understandable decision making process. This is only possible when the administrative system is decentralized up to the local area and people are given the opportunity to participate in the decision-making process. The local government is result of the concept of decentralization. As a result, local people get the chance to know what is going on inside the government. The entire government administration in Bangladesh has been decentralized through the creation of 4562 unions, 492 upazillas 650 thanas and 64 districts.¹⁶The 64 district administrations is the decentralized nature of the Government of Bangladesh. Every district administration is the representative of the national government and the way of social services of citizens of each district. There are district and administrative courts of every district. It is headed by the deputy commissioner and he is responsible for the land revenue and the public justice system. In order to ensure transparency and accountability as well as remove suffering of public there are three conferences held regularly at the Deputy Commissioner's Office every month like: Conference on law and order, conference on trials and conference on police administration. These monthly conferences are an effective strategy to continue transparency. Besides, they are helpful in clarifying misunderstandings, confusions and issues related to citizen life. In the law and order conference, all the representatives of the society, such as lawyers, transport workers, teachers, doctors, representatives of women society, municipal councils, concerned all the upazila administrators and journalists were called for the conference and the current socioeconomic problems of the people were discussed openly. Participants of the

conference discussed about drug abuse, market value, transport system, important test management. On the judicial conference, open negotiations were discussed to clarify mutual understanding and issues concerning justice. The settlement status of the case is assessed at the conference. The member of law enforcement agencies, government lawyers and upazila executive officers, magistrates, corruption officials, civil surgeon and karapal were invited to the law and order conference. The issues related to arrest warrant, law and order situation, diversity of crime and dimensions, hanging cases, medical reports are reviewed in this conference. So these conferences create the areas of discussion on the major issues local administration.¹⁵

Independent newspaper

In the establishment of a transparent government, press and media play an important role and the observer's responsibility. In the case of mischief, irregularity and wrongful disclosure, the newspaper has huge responsibilities. Only if the democratic environment prevails in the country, the media can work independently and effectively. Since the establishment of parliamentary democracy in Bangladesh in 1991, newspapers are enjoying enough freedom. Newspapers are writing news and reports independently on administrative activity, inactivity and corruption. Magazines are active in discussions about abuses of power, government officials' arrogance. This newspaper work has been done to insulate the government officials. Likewise, newspaper work for elected representatives, for this reason they are vigilant in neglecting their duties and responsibilities. Recently reports publish on newspaper against administrators, public complaints are increasing day by day. In spite of being trained in public-oriented development of government officials, regular reports were published in the newspapers about their arbitrariness, misuse of power, dishonesty, arrogance and jealousy. Other complaints include delay in settlement of cases, nepotism, regionalism, bias, interest, wrong interpretation of rules, violation, wasteful, bribe taking, deliberately neglecting the responsibilities, giving unfair advantage to others and avoiding duty. These are signs of lack of transparency in administration.

Ombudsman

In order to ensure accountability and transparency, the Ombudsman is mentioned in article 77 of the Constitution of Bangladesh. Ombudsman is an effective arrangement for the people to face direct complaints against the administration. When the Ombudsman system is implemented, it is

¹⁵ Transparency of govt/ Syed Nokib Muslim pdf

possible to reduce the distance between the democratic government and the people.

Government money

Publicly, the budget is a strategy to control public money. The responsibility of the elected representatives in Bangladesh is to allocate government funds to the different expenditure and continue the provision of this expenditure through the members of the civil service. The budget is mainly a revenue administration and money allocation document. This indicates the source of income and the proposed expense. The responsibility of the Ministry of Finance is to create annual financial statements and to present it in Parliament under the official rules. Ministry of Finance prepares budget and grants for demand based on estimates received from the heads of government departments and other such organizations.

Parliamentary question-answer

Members of Parliament have the opportunity to ask the administrators about various issues related to government policies and activities. In short notice, the minister responsible for any governmental activity has to explain publicly. Supplementary questions may also arise in this regard. These questions always alert the administrators and ministers; Because it usually reflects public opinion. Publicly asked the minister, but in reality the government officials made the answers to these questions. These questions and responses session were circulated in newspapers and television.

Training

The government's responsibility is to train the government officials and regenerate politicians in the administration. The Bangladesh Public Administration Training Center conducts training programs of all government officials. In order to implement the government's plan to meet the needs of the civil services and to create a transparent and accountable administration, this center has created training syllabus for junior and senior government officials. Regular inter-departmental discussions and workshops / seminars are held to strengthen the viewpoint of the functioning of the government officials and the fundamental basis for the need for transparency. Government transparency can be realized from how government is active in the face of public changes and new problems arising. Transparency and democracy complement each other. Through the establishment of democratic system, the practice of transparency is possible only in politics or bureaucracy.

Judiciary

The scenery of the transparency in the judicial system of Bangladesh is not so bad. Here the judges are appointed by the government gazette notification as well as a competitive examination. Without camera trial anyone can present in the court room at the time of hearing. Both parties get equal opportunity for their self defense. Parties can collect the copy of order and judgment. Followings are the key points of transparency in the judicial system of Bangladesh:

- Existence of a website.
- Publishing and updating of rulings and regulations as well as decision.
- Publishing of statistics on cases filed, resolved and pending.
- Publishing of the Courts' agenda.
- Budget, salaries, background, assets and income, and disciplinary matters on relevant officials.
- Publishing of bidding and procurement information for contracts.
- Access and information regime.¹⁶

On the other hand, Independence judiciary is the essential requirement of transparency. It plays an vital role to ensure transparency and accountability in the administration. Judiciary is the only way to enforce the fundamental rights of the citizen. To ensure freedom of expression and right to information judiciary plays important role.

Comptroller & Auditor General

The Comptroller & Auditor General (CAG) is the most important organ which plays important role to ensure transparency. It justified whether the money approved by the parliament are spent for the purpose intended and in effective and efficient manner. After such auditing the CAG submits its report to the President of the Republic and the President causes it to be laid before parliament.¹⁷ The PAC (Public Account Committee) of the Parliament scrutinizes the report and the PAC plays a vital to question the accounting officer of the concerned ministry. The officer is responsible to express necessary information before the Court. The PAC can take evidence in the public and ask question to other witness.

Election Commission

¹⁶ Access to Information & Transparency in the Judiciary/Alvaro Herrero & Gaspaer Lopez/ World Bank Institute/Governance Working paper Series

¹⁷ Article 132 of the Constitution Peoples Republic of Bangladesh, 1972

Freedom of expression is the fundamental right of the citizen in our country. Giving vote is the most important way to execute this right. On the other hand, in the democratic system people control the government power by giving vote. Honest, qualified and eligible peoples' representative is the precondition of transparency. Citizens of state participate indirectly to the government by elected their representative. Here election commission is responsible to ensure free and fair election. In previous time, election commission have played vital role to elect honest, qualified and eligible peoples' representative. But in the present time if we look some recent local and national election, it has failed to ensure free and fair election. Here mentionable that, if the political government and elected representatives are corrupted, it not possible for administrative officer be free from corruption. For this reason transparency of government can't be ensured properly in Bangladesh.

Suggestions to improve Transparency

Transparency is a wide range concept. Followings are the key points to improve transparency in Bangladesh:

1. We can extend the way of transparency by removing all sections or provisions of different Act which imposed restriction against transparency and right to information.
2. The state must ensure freedom and responsibility of newspaper because it plays vital role to ensure transparency by publishing correct and neutral news.
3. The governor, officer and staff of the republic must be honest and qualified as well as they will have high professional ethics.
4. Radio and television can ensure administrative transparency by telecasting fast news and video. Report, interview, question-answer and live program can play vital role to ensure the rights and interests of the citizen.
5. Under article 76 of the constitution of Bangladesh, effective Public Accounts Committee (PAC) can ensure transparency in the administration by the accountability of the principal account officer about spend public money.
6. Privilege and Standing Parliamentary Committee can play vital role to ensure transparency by investigating important administrative matter in the different parts of administration.
7. Effective and powerful ombudsman post shall be core element of transparency under article 77(2) of the Constitution of Bangladesh.

8. Conclusion

Information is available about such government activities which are done by efficiently, properly, legally and only for the benefit of stakeholders. But when these activities are not in proper way and purpose, then concern officers are not interested to disclose information about such activities. This is the most important obstacle in the way to transparency. In the present situation in Bangladesh there have some legal restriction in the way to ensure transparency. On the other hand institutional mechanism of transparency is not so good. House of the nation, CAG, PAC, Ombudsman, Election Commission, Print & Electronic media, Judiciary can't perform very well. Bangladesh has so far from the proper transparent government as well as good governance.

Reference:

1. *Law on Good Governance: Bangladesh Perspective/Professor Dr. M. Johurul Islam*
2. *Administrative Law/ Jafor Iqbal*
3. *The Universal Declaration of Human Rights, 1948*
4. *(The Lawyers Club Bangladesh.com Advocate Mahbobul Alam (Toha)*
5. *(IAHR Court, Case Claude Reyes and others vs., Chile, Sentence from September 19, 2006, Series C, No. 151, par. 90, 91 & 92.)*
6. *Interference of Press Freedom with Administration of Justice: An analysis/Dr. Moammad Abdul Hannan*
7. *(The Daily Sun 27 July 2017 Tasmhia Nuhia Ahmed)*
8. <http://orissagov.nic.in/e-magazine/orissareview/aug2004/englishpdf/pages27>
9. *Mohammad Johurul Islam, "Good Governance in Bd: An agenda for Development"*
10. *The Daily Prothom Alo/ 16 october 2018*
11. *Transparency of govt/ Syed Nokib Muslim pdf*
12. *Access to Information & Transparency in the Judiciary/Alvaro Herrero & Gaspaer Lopez/ World Bank Institute/Governance Working paper Series*
13. <https://www.bissoy.com/245381/>
14. *Kazi Alauddin Ahamed, "Merit Cerisis in Administration-An introspection" The Daily Star/26 february 2004*
15. <https://www.jugantor.com/national/12844/%E0%A6%95%E0%A7%80.....>
16. <http://www.abcnewsbd.com/?p=20108>
17. <http://www.daily-sun.com/arcprint/details/243519/Section-57-of-the-ICT-Act-2013/2017-07-27>

18. *The Constitution Peoples Republic of Bangladesh, 1972*
19. <https://www.bbc.com/bengali/news-45628775>
20. https://bn.wikipedia.org/wiki/Digital_Security_Act
21. <https://www.jugantor.com/national/12844/%E0%>
22. <https://www.jugantor.com/todays-paper/editorial/12958/>
23. *Amendment of section 57 of Information and Communication Technology Act: Legal Analysis/Dr. Mohammad Mahbubur Rahman*



© 2019 by the authors. TWASP, NY, USA. Author/authors are fully responsible for the text, figure, data in above pages. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<http://creativecommons.org/licenses/by/4.0/>)

Md. Shadat Hossen

LLB (Hon's), LLM, Department of Law, Islamic University,
Kusthia, Jhenidah Bangladesh



Atiqur Rahman

Post-graduate researcher,
Institute of Social Science, Department of Public law
Ataturk University, Erzurum, Turkey

