

The Right to Information Act: Issues and Challenges of its Implementation in Bangladesh

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Abstract

Over the past few decades, there has been a trend to introduce right to information laws. Even though much of the existing literature regard this trend as a new phenomenon, it was integral to the overall development of international human laws that has taken place over time. In 2009, Bangladesh introduced the Right to Information (RTI) Act, which guarantees people's access to information and aims to reduce corruption and empower people to access their social, economic and political entitlements. This thesis raises the question, 'To what extent has the implementation of the RTI Act contributed to improving people's access to government information?' Few studies have raised this question since the Act was introduced. The existing literature is fragmented and inconclusive. This study aims to address the gap in the literature and investigate the implementation of the RTI Act, particularly at the local level. This thesis strives to ascertain whether the implementation of the RTI Act has been successful in achieving its objectives. The empirical findings of this study show no significant improvement in people's access to information. It presents arguments that support why the top-down approach used to implement the RTI Act in Bangladesh is inappropriate in achieving the desired goals. The study argues that there are various factors-institutional, behavioural, cultural that had a major impact on the implementation of the Act. The proposed Open Access Model is to overcome implementation challenges. In a nutshell, this thesis aims to provide a new perspective and to encourage more studies on approaches to ensure the successful implementation of the Act.

Certificate of Authorship

I certify that the work in this thesis, entitled '*Right to Information Act: Issues & Challenges of its Implementation & in Bangladesh*', has not previously been submitted for a degree nor has it been submitted as part of requirements for a degree to any other university or institution other than Macquarie University.

I also certify that the thesis is an original piece of research and it has been written by me. Any help and assistance that I have received in my research and it has been written by me. Any help and assistance that I have received in my research work and the preparation of the thesis itself have been appropriately acknowledged.

In addition, I certify that all information sources and literature used are acknowledged in the thesis.

Harold Sougato Baroi (42547423)

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List of Abbreviations

AL	Awami League
BBS	Bangladesh Bureau of Statistics
BCCTF	The Bangladesh Climate Change Trust Fund
BMDA	Barendra Multipurpose Development Authority
CBN	Cost of Basic Needs
CC	Citizen's Charter
CPI	Corruption Perceptions Index
CHT	Chittagong Hill Tract
CIE	Foreign Investments Committee
CSO	Civil Society Organisation
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FGD	focus group discussion
FOI	Freedom of Information
G2G	Government to Government
IC	Information Commission
ICSECR	International Covenant on Social Economic and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technology
IEC	Information, Education and Communication
IFAI	Federal Institute for Access to Information
KCC	Kisan Call Center
LFTAIPG	Federal Transparency and Access to Governmental Public Information Act
MIS	Management information system
MKS	Mazdoor Kisan Shakti Sangathan
NGO	non-government organisation
NILG	National Institute of Local Government
OGI	Open Government Information
PRAGATI	Pro-Active Governance and Timely Implementation
RIB	Research Initiatives Bangladesh
RTI	Right to Information
RTI Act	Right to Information Act

SANAC	Sachetan Nagarik Committee
SARATHI	System of Assisting Residents and Tourists through Helpline Information
TIB	Transparency International Bangladesh
UDCC	Union Development and Coordination Committee Meetings
UDHR	Universal Declaration of Human Rights
UISC	Union Information and Service Centre
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UP	Union Parishad
US	United States

1.1 Introduction

Seven years have passed since the *Right to Information Act* (RTI) was introduced in Bangladesh.¹ The literature on the implementation of the RTI Act is fragmented and inconclusive. This study examines the extent to which the implementation process has contributed to the objective of the RTI Act, that is, to ensure people have access to government information.² Further, this study identifies the implementation challenges and suggests solutions to overcome these barriers.

The preamble of the RTI Act states that its purpose is to make provision for the people's right to information from any organisation, any ministry, division or office constituted under the *Constitution* of Bangladesh, any statutory body or institution established under the Act and any private organisation or institution run by government financing, or aid from the government or foreign funds.³ According to Section 2(d) and Section 4, every citizen has the right to information from the aforementioned authorities and their offices, at divisional, regional, district and sub-district level and, on demand from a citizen, these organisations are bound to provide this information.⁴ However, under Section 7 of the RTI Act, there are a list of exemptions applied to areas, in which, if the information are disclosed, it could cause a threat to the security, integrity and sovereignty of Bangladesh, or affect the property rights of a third party, offend the privacy of personal life, obstruct enforcement of the law, or endanger the physical safety of any person.⁵

¹ *The Right to Information Act 2009*.

² Ibid.

³ Information providing unit means– (i) head office, divisional office, regional office, district office or upazila office of any department, directorate or office attached to or under any ministry, division or office of the Government; (ii) head office, divisional office, regional office, district office or upazila office of an authority, Ibid s2(d).

⁴ Ibid s2(d).

⁵ Ibid s7.

This thesis's findings show that, due to implementation problems, the RTI Act in Bangladesh has not yet been successful in achieving people's access to information. Relevant evidence is that very few applications were registered in the first six years of its implementation and 50 per cent of government offices are yet to assign officers designated for RTI Act-related activities. There have been minimal proactive disclosures in either electronic or non-electronic mediums. Information regarding organisation structure, directives, notifications, different services, forms, lists and criteria of beneficiaries of social safety net programs, and the benefits received from these programs, are not displayed or discussed publicly. The application process is complex and time-consuming and there are no guidelines or help desks to assist people who wish to register information requests. The publication of documents by government offices is rare and there are no open meetings or public audits, with the exception of participation in open budgets at the union level. Consequently, there have been no noticeable changes in the availability and accessibility of information to the public. The thesis will return to these findings and discuss each in greater detail. They reveal the implementation of the RTI only as a window-dressing strategy for creating an appearance of government transparency in Bangladesh.

This study identifies several factors that have influenced the implementation of the RTI Act in Bangladesh. These factors are behavioural, institutional, cultural, socio-economic and political. Behavioural factors include the conduct of the target population, frontline workers, interorganisational cooperation among implementation agencies and the participation of Civil Society Organization(CSOs). The study finds that there is a lack of public awareness and knowledge of what the RTI Act is for and how it should be used. Members of the public simply do not know about their right to access public information. There is also a lack of participation from CSOs, particularly, NGOs and the media to generate public awareness about the Act. In addition, not all the frontline workers are aware of the Act. Interorganisational cooperation seems weak and driven by personal and political interest. Institutional factors include staff capacity, infrastructure, resources and design. The study's findings show that the implementation staff lack the skills and knowledge to implement the RTI Act properly and local level institutions do not have the infrastructure or resources to conduct these activities. This is further compounded by discrepancies and an inherent lack of clarity in the Act's content and design. Cultural factors include the administrative culture and power relation between the service provider and recipient. The study finds that the administrative culture is

highly bureaucratic and secretive. There is a lack of trust among people in public institutions, due to power distance and fear of denial or rejection. Besides these factors, socio-economic and political factors make it challenging to implement the Act.

The central argument of this study is that the top-down approach to implementing the RTI Act, which so far has been followed, is not appropriate, as the success of the implementation is influenced by a combination of components that include institutional, behavioural, cultural, socio-economic and political factors. Conversely, an inclusive approach to implementation, in which the public and the frontline implementers are both involved, can lead to a successful implementation. The study proposes the open access model, an integrated approach that comprises three specific recommendations: access to information through e-governance, the instigation of an RTI Act call centre and public deliberation through open disclosure.

The introduction of the RTI Act shows the willingness of the government to ensure good governance.⁶ Poor governance, in the form of misappropriation of public funds,⁷ mismanagement⁸ and corruption,⁹ has increased progressively over the years. As a result, corruption and a lack of transparency and accountability have become institutionalised in almost every sector of the public service.¹⁰ One of the main reasons

⁶ Before the RTI Act was introduced, major political parties that include Awami League and Bangladesh Nationalist Party during the election in 2008 had committed to address poor governance and bring transparency. To keep that promise, Awami League introduced a Bill in the parliament and the RTI Act was introduced in 2009.

See Iftekhharuzzaman, 'Implementing Right To Information In Bangladesh: Opportunities And Challenges' (Paper presented at the RTI Implementation: Law, Institutions and Citizens, Dhaka, 21-22 June 2009).

⁷ Mohammad Mohabbat Khan, 'State of Governance in Bangladesh' (2003) 92(370) *The Round Table: The Commonwealth Journal of International Affairs* 391.

⁸ Ibid.

⁹ Habib Zafarullah and Noore Siddiquee, 'Dissecting Public Sector Corruption in Bangladesh: Issues and Problems of Control' (2001) 1(4) *Public Organization Review* 465; Habib Zafarullah and Ahmed Shafiqul Huque, 'Public Management for Good Governance: ReformS, Regimes, and Reality in Bangladesh' (2001) 24(12) *International Journal of Public Administration* 1379.

¹⁰ Zafarullah and Siddiquee, above n 7; Ishtiaq Jamil and Pranab Panday, 'Inter-Organizational Coordination and Corruption in Urban Policy Implementation in Bangladesh: A Case of Rajshahi City Corporation' (2012) 35(5) *International Journal of Public Administration* 352.

for this is that the public does not have access to information about what the authorities are doing and, in particular, the roles and responsibilities the authorities are assigned and the activities they perform on a regular basis.¹¹ There is also very limited information available about how much financial resources these institutions and organisations receive from various sources and how those resources are spent.¹² The public is not often involved in the decision-making process, especially decisions made by the various tiers of local government administration.¹³ Thus, people have limited information about the activities conducted through various government departments and institutions.

The RTI Act promises that, as access to information is ensured, corruption is reduced, transparency and accountability of government institutions are established and that the people are empowered to gain access to information. There are arguments for and against¹⁴ transparency laws, with those in favour claiming the laws can reduce corruption and ensure greater transparency.¹⁵ Through an analysis of cross-sectional data of different countries, Islam argues that transparency increases better information flows and reduces corruption.¹⁶ However, Bac argues that more transparency does not necessarily imply less corruption, based on his study of the relationship between transparency and corruption in Turkey.¹⁷ Instead, greater transparency can work in the favour of corrupt decision-makers by enabling them to become more informed.¹⁸

¹¹ Iftekharuzzaman, above n 6.

¹² Zafarullah and Siddiquee, above n 9 ;Shakeel Ahmed Ibne Mahmood, 'Public Procurement and Corruption in Bangladesh Confronting the Challenges and Opportunities' (2010) 2(6) *Journal of Public Administration and Policy Research* 103.

¹³ A. S. Huque, *Problems of Participation: Politics and Administration in Bangladesh* (University Press Limited, 1988).

¹⁴ Mehmet Bac, 'Corruption, Connections and Transparency: Does a Better Screen Imply a Better Scene?' (2001) 107 *Public Choice* 87.

¹⁵ Samia Costa, 'Do Freedom of Information Laws Decrease Corruption?' (2012) 29(6) *The Journal of Law, Economics and Organization* 1317; Roumeen Islam, 'Does More Transparency Go Along with Better Governance' (2006) 18 *Economics and Politics* 121.

¹⁶ Islam, above n 16

¹⁷ Bac, above n 15.

¹⁸ Ibid.

Similarly, in a study on the perception of corruption in countries that have adopted a Freedom of Information (FOI) law, Costa disputes the claim that transparency laws could reduce corruption, finding instead that the perception of corruption increased in some countries.¹⁹ The fieldwork of this thesis also provides reasons for scepticism. The empirical evidence of this study finds that there has been no change in Bangladesh's position in the Corruption Perceptions Index (CPI) following implementation of the RTI Act and the country remains among the most corrupt in the world.²⁰ However, this study does not take a position in support of, or against, the claim that transparency laws reduce corruption or increase government transparency. There are two specific reasons for this. First, it is important to establish if the instruments that are used to implement the RTI Act in Bangladesh are contributing to better accessibility to government information. There is no evidence the RTI Act has been effectively implemented in Bangladesh. Until people exercise their right to information and government institutions make information available for citizens, it is difficult to establish whether there is a correlation between corruption and access to information. Second, the preamble of the RTI Act states the immediate outcome of the Act is to ensure people have access to information, so that it can achieve its long-term objective to reduce corruption and ensure transparency.²¹ It is too early to measure the long-term effects of the RTI Act, as better access to government information is required and this will only be achieved if the Act is implemented effectively. Therefore, this study focuses on the implementation process of the RTI Act and its immediate objective of ensuring people have access to government information. Over the years, the number of transparency studies has grown in various disciplines including economics,²² international relations,²³ information and

¹⁹ Costa, above n 16.

²⁰ See Transparency International, *Table of Results: Corruption Perceptions Index 2015* (2016) <http://www.transparency.org/cpi2015#results-table>.

²¹ See *The Right to Information Act 2009*.

²² Joseph E. Stiglitz, 'Participation and Development: Perspectives from the Comprehensive Development Paradigm' (2002) 6(2) *Review of Development Economics* 163; Daniel Kaufmann and Tara Vishwanath, 'Toward Transparency : New Approaches and their Application to Financial Markets' (2001) 16(1) *The World Bank Research Observer* 41.

²³ M. Donaldson and B. Kingsbury, 'The Adoption of Transparency Policies in Global Governance Institutions: Justifications, Effects and Implications' (2013) 9 *Annual Review of Law and Social Science* 119.

library science,²⁴ cultural studies²⁵ and anthropology.²⁶ This study focuses on the freedom of information, from the public policy and legal perspectives. More specifically, the study analyses different approaches to policy implementation, comparing these with the implementation of the RTI Act in Bangladesh. The study also analyses the legal aspects of the RTI Act and identifies the gaps for legal amendments.

1.2 Country Profile

Bangladesh is located in Southern Asia, bordering the Bay of Bengal, between Burma and India. The total land area of the country is 143,998 sq km. The total population is over 160 million people and approximately 26 per cent of the population lives below the poverty line.²⁷ The overall literacy rate is around 61.4 per cent.²⁸ The youth (15–24 years) literacy rate is over 78 per cent (males 77.1 per cent, females 80.4 per cent).²⁹ Bangladesh was a part of British India until 1947. Soon after partition, it separated from India and became a part of Pakistan. However, due to differences in geographical location, language,³⁰ culture, political and economic participation, East Pakistan³¹ (now

²⁴ Paul.T. Jaeger, 'Information Policy, Information Access, and Democratic Participation: The National and International Implications of the Bush Administration's Information Policies.' (2007) 24 *Government Information Quarterly* 840; Gary Burnett, Paul.T. Jaeger and Kim. M. Thompson, 'Normative Behavior and Information: The Social Aspects of Information Access.' (2008) 30(1) *Library & Information Science Research* 56.

²⁵ Jan Teurlings and Markus Stauff, 'Introduction: The Transparency Issue' (2014) 14(1) *Cultural Studies* 3.

²⁶ Gemma John, *Relations that Unite and Divide : a study of Freedom of Information Legislation and Transparency in Scotland* (PhD Thesis, University of St. Andrews 2009)..

²⁷ http://bbs.portal.gov.bd/sites/default/files/files/bbs.portal.gov.bd/page/919dbb37_e0bb_4399_96d9_e74b2f92d2ac/PovertypaperCutting.pdf.

²⁸ UNESCO Institute of Statistics, *Adults and Youth Literacy, 1990–2015: Analysis of Data from 41 Selected Countries* (2012) <http://www.uis.unesco.org/literacy/Documents/UIS-literacy-statistics-1990-2015-en.pdf>.

²⁹ UNICEF, *Bangladesh: Statistics* (2013).
https://www.unicef.org/infobycountry/bangladesh_bangladesh_statistics.html.

³⁰ The languages in East and West Pakistan were completely different—the people of East Pakistan spoke Bengali, while West Pakistan had Urdu as its national language. However, West Pakistan wanted Urdu to be the official language of all Pakistan and faced major objection from the people of

Bangladesh) separated from Pakistan. Bangladesh was formed in 1971, after a liberation war³² against West Pakistan. Following liberation, between 1972 and 2017, the country was ruled either by Awami League or Bangladesh Nationalist Party.³³ Also, there were military backed governments in power for nearly a decade.³⁴ In 2021, Bangladesh will celebrate its 50th year of independence. However, natural disasters and climate change hazards,³⁵ political instability,³⁶ poverty,³⁷ have challenged its socio-economic development. Apart from these challenges, corruption has gradually become a major problem in the last two decades as it not only have hampered the socio-economic

East Pakistan. The Bengali Language Movement, also known as the Language Movement, was a political movement that advocated for recognition of Bengali as the official language of the Dominion of Pakistan and to allow its use in government affairs, the continuation of its use as a medium of education, media, currency and stamps and to maintain its writing in the Bengali script.

³¹ East Bengal was renamed East Pakistan in 1955.

³² The liberation war between East and West Pakistan took place in 1971. West Pakistan was defeated by East Pakistan and East Pakistan then formed an independent state. See <http://www.independent-bangladesh.com/history/liberation-war-of-bangladesh.html>.

³³ Nizam Ahmed, *The Parliament of Bangladesh* (Ashgate, 2002); Nizam U. Ahmed, 'Parliamentary Politics in Bangladesh' (1994) 32(3) *The Journal of Commonwealth & Comparative Politics* 364; Nizam Ahmed, 'The Parliament' in Ali Riaz and Mohammad Sajjadur Rahman (eds), *Routledge Handbook of Contemporary Bangladesh* (Routledge, 2016)

³⁴ Talukder Maniruzzaman, 'The Fall of the Military Dictator: 1991 Elections and the Prospect of Civilian Rule in Bangladesh' (1992) 65(2) *Pacific Affairs* 203.

³⁵ Amireeta K. Rawlani and Benjamin K. Sovacool, 'Building Responsiveness to Climate Change through Community Based Adaptation in Bangladesh' (2011) 16(8) *Mitigation and Adaptation Strategies for Global Change* 845; Anwar Ali, 'Climate Change Impacts and Adaptation Assessment in Bangladesh' (1999) 12 *Climate Research* 109.

³⁶ Stanley A. Kochanek, 'Governance, Patronage Politics, and Democratic Transition in Bangladesh' (2000) 40(3) *Asian Survey* 530; Ferdous Arfina Osman, 'Bangladesh Politics: Confrontation, Monopoly and Crisis in Governance' (2010) 18(3) *Asian Journal Of Political Science* 310; Muhammad Mustafizur Rahaman, 'Origins and Pitfalls of Confrontational Politics in Bangladesh' (2007) 14(1) *South Asian Survey* 101.

³⁷ Mahabub Hossain and Binayak Sen, 'Rural Poverty in Bangladesh: Trends and Determinants' (1992) 10(1) *Asian Development Review* 1; Jane A. Pryer, *Poverty and Vulnerability in Dhaka Slums: The Urban Livelihood Study* (Routledge, 2003).

progress but also has give a bad image outside world.³⁸ Bangladesh's socio-economic progress is challenged by political and administrative corruption. This whether the RTI Act can contribute. The proper implementation of the RTI Act, the RTI Act can contribute to reduce corruption.

1.3 Statement of the Problem

A few years after Bangladesh achieved independence, corruption had gradually pervaded almost every sector of the public service during different political regimes.³⁹ As time passed, corruption gained momentum⁴⁰ and according to reports from Transparency International Bangladesh (TIB), it was at its zenith when Bangladesh became the most corrupt country in the world for five consecutive years, from 2001 to 2005.⁴¹ A number of studies have claimed that one of the reasons behind the deteriorating condition of governance in Bangladesh was the lack of transparency and absence of provisions to hold government agencies accountable for their public actions.⁴² In his study on good governance, Shoban argues that lack of reason giving in

³⁸ Nick Robinson and Nawreen Sattar, 'When Corruption is An Emergency: "Good Governance" Coups and Bangladesh' (2012) 33(3) *Fordham International Law Journal* 737.

³⁹ M. Franda, *Bangladesh: The First Decade* (South Asian Publishers Private Limited 1982); Mohammad Mohabbat Khan, 'Political and Administrative Corruption : Concepts, comparative Experiences and Bangladesh Case ' (Transparency International Bangladesh, 2004).

⁴⁰ S.A. Kochanek, *Patron-Client Politics and Business in Bangladesh* (University Press Limited 1993); Transparency International Bangladesh, 'Corruption in Bangladesh Surveys: An Overview' (TIB (Mimeo), 1997); Transparency International Bangladesh, 'Corruption in Public Sector Departments: Its Manifestations, Causes and Suggested Remedies' (TIB (Mimeo). 2000).

⁴¹ TI, 'Corruption Perception Index' (Transparency International 2003); TI, 'Corruption Perception Index' (Transparency International 2002); TI, 'Corruption Perception Index' (Transparency International, 2001); TI, 'Corruption Perception Index' (Transparency International 2004); TI, 'Corruption Perception Index ' (Transparency International 2005) Available online at <https://www.transparency.org/research/cpi/overview> .

⁴² Khan, above n 7; Noore Alam Siddiquee, 'Bureaucratic Accountability in Bangladesh: Challenges and Limitations' (1999) 7(2) *Asian Journal Of Political Science* 88; Taiabur Rahman, *Bureaucratic Accountability in Bangladesh: The Role of Parliamentary Committees* (Organization for Social Development and Research (OSDER), 2009); Nizam Ahmed, 'The Quest for Accountability: Parliament and Public Administration in Bangladesh' (1996) 18(1) *Asian Journal of Public Administration* 70.

policymaking and the manner in which public services are run can result in bad governance.⁴³ He further adds that the lack of transparency and accountability among bureaucrats and politicians creates such situations.⁴⁴ Similarly, other studies have shown that a lack of transparency among public institutions is causing poor governance and corruption within public services in Bangladesh. These include studies by Khan on governance,⁴⁵ Zafarullah and Siddiquee on administrative reforms in public services,⁴⁶ Siddique on bureaucratic accountability,⁴⁷ Islam and Rahman on measuring trust in public services,⁴⁸ Huque on political and administrative participation⁴⁹ and Alam and Teicher on public institutions and governance.⁵⁰ There is a lack of reason giving and limited provisions for public deliberation at different levels of local government administration.⁵¹ The decision-making process in public services is not transparent,⁵² particularly in social safety net and cash-for-work programs provided at the local level.⁵³ Information about these services has been tightly controlled and there are no

⁴³ Rehman Sobhan, 'How Bad Governance Impedes Poverty Alleviation in Bangladesh' (OECD Development Center, 1998).

⁴⁴ Ibid

⁴⁵ Khan, above n 7.

⁴⁶ Zafarullah and Siddiquee, above n 9.

⁴⁷ Siddiquee, above n 30.

⁴⁸ M.S. Islam and M. Rahman, 'Challenges of Policy Formulation and Implementation of Primary Education in Bangladesh: A Conceptual Analysis.' (2008) 30(40-51) *Asian Affairs* .

⁴⁹ Huque, above n 13.

⁵⁰ Quamrul Alam and Julian Teicher, 'The State of Governance in Bangladesh: The Capture of State Institutions' (2012) 35(4) *South Asia: Journal of South Asian Studies* 858.

⁵¹ Alam and Teicher, above n 30; Zafarullah and Siddiquee, above n 9; Khan , above n 7.

⁵² Mobasser Monem and Hasan Muhammad Baniamin, 'Public Service Ethics and Corruption in Bangladesh' in Meghna Sabharwal and Evan M. Berman (eds), *Public Administration in South Asia: India, Bangladesh, and Pakistan* (CRP Press, 2013) .

⁵³ Apu Deb et al, 'Do Social Safety Net Policies Reduce Poverty in Bangladesh? Understanding Perception of State Philosophy in Swimming across the Tide' (2016) 6(4) *Journal of Public Administration and Governance* 125 Also read Tareq Hossain Khan, 'Political Economy of Social Safety Nets in Bangladesh' (Department of Government and Politics, Jahangirnagar University 2013).

effective procedures for receiving complaints or settling grievances.⁵⁴ It was expected that the situation would improve with the introduction of the RTI Act and people would have better access to information.⁵⁵ This would result in more transparency that would ultimately reduce corruption in the long run.⁵⁶

In Bangladesh, policies often fail to achieve their intended objectives due to the implementation process and the failure of the people responsible for putting the directives into practice to effectively articulate the policy's vision.⁵⁷ The government tends to formulate sweeping policies without questioning the skills and knowledge of those who will be involved in its implementation.⁵⁸ Further, there is little emphasis on how the target population will respond to these policies.⁵⁹ However, it is important that the target population is involved in the implementation process and contributes to the desired objectives as studies have shown that when the target population is engaged,

⁵⁴ Khan , above n 7.

⁵⁵ *The Right to Information Act 2009*.

⁵⁶ Ibid.

⁵⁷ See Habib Zafarullah and Bijoy Kumar Banik, 'Muddling Through: Limitations and Challenges of the Health Policy Process in Bangladesh' (2015) 9(3) *Journal of Asian Public Policy* 211; Bushra Hasina Chowdhury, 'Building Lasting Peace: Issues of the Implementation of the Chittagong Hill Tracts Accord' (Program for Arms Control, Disarmament, and International Security (ACDIS) : University of Illinois at Urbana-Champaign, 2002); Salahuddin M. Aminuzzaman, 'Environment Policy of Bangladesh: A Case Study of an Ambitious Policy with Implementation Snag' (2010) *South Asia Climate Change Forum* .

⁵⁸ P. K. Panday, 'Policy Implementation in Urban Bangladesh: Role of Intra-organizational Coordination. ' (2007) 7 *Public Organization Review* 237; A. H. M. Kamrul Ahsan, *Problems of Coordination in Local Administration in Bangladesh* (Masters of Philosophy in Public Administration Thesis, Masters Thesis, University of Bergen, 2010); Golam Rabbani, 'Environmental Governance: Policies and Practices at Local Government Level in Bangladesh' (2012) *Social Science Research Network* .

⁵⁹ N. J. Chowdhury, 'The Chittagong Hill Tracts Accord Implementation in Bangladesh: Ideals and Realities. ' (2009) XXV, *Nepalese Journal of Public Policy and Governance* 19; Ishtiaq Jamil and Pranab Panday, 'The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People' (2008) 46(4) *Commonwealth & Comparative Politics* 464; Ahmed Shafiqul Huque and A. H. M. Kamrul Ahsan, 'Citizen's Charter and Implementation Failure: Performance of Local Councils in Bangladesh' (2016) 19(1) *Public Administration and Policy* 6.

there is better result.⁶⁰ Further, socio-economic and political conditions are often ignored when the policy is implemented.⁶¹ The policymaking process is not collaborative.⁶² The public does not present issues that later form an agenda for discussion.⁶³ A top-down approach has always been followed in the development and implementation of public policies.⁶⁴ Questions as to whether the implementing institutions can even implement the policy⁶⁵ or the reaction of the public seem irrelevant to policymakers.⁶⁶ In the case of implementation of the RTI Act in Bangladesh, some early findings show that the majority of the population are unaware of the law.⁶⁷ In addition, frontline government workers are short on skills and knowledge.⁶⁸ In his study on the implementation of the RTI Act, Iftekharuzzaman raised concerns about the

⁶⁰ Saber Ahmed Chowdhury, 'Successful Policy Implementation in a Country Where Success Seldom Happens: The Case of the Ban of Two-Stroke Engine Vehicles in Dhaka.' (2005) 35(2) *Social Change*

⁶¹ See Huque and Ahsan, above n 47.

⁶² Panday Pranab Kumar and Ishtiaq Jamil, 'Policy Making in Urban Bangladesh: Whose Domination?' (2010) xxvii(4) *Nepalese Journal of Public Policy and Governance* .

⁶³ Salahuddin Aminuzzaman, 'Public Policy Processes and Citizen's Participation in Bangladesh ' in Meghna Sabharwal and Evan M. Berman (eds), *Public Administration in South Asia: India, Bangladesh, and Pakistan* (2013)

⁶⁴ Zafarullah and Banik, above n 38.

⁶⁵ Nur Muhammed et al, 'Reckoning Social Forestry in Bangladesh: Policy and Plan Versus Implementation ' (2005) 78(4) *Forestry* 373.

⁶⁶ Muhammad Sazzad Hossain Siddiqui, *Challenges of Implementing Peace Accord: The Case of Chittagong Hill Tracts Peace Accord (CHTPA) in Bangladesh* (Master of Philosophy in Public Administration Thesis, University of Bergen, 2016).

⁶⁷ Sohail Iqbal, 'Challenges of implementing the Right to Information Act: Experience of Others and Lessons for Bangladesh.' in Syeed Ahamed and Ashique Nabi (eds), *Right to Information Act (RTIA) in Bangladesh: Challenges of Implementation* (Right to Information Forum, 2012) ; P. K. Panday and Golam Rabbani, 'Freedom of Information in Bangladesh: Policy Dynamics, Present State, and Challenges' in Meghna Sabharwal and Evan M. Berman (eds), *Public Administration in South Asia: India, Bangladesh, and Pakistan* (Taylor and Francis, 2010) .

⁶⁸ Ashiq Iqbal and Gopal Kumar Dey, 'Right to Information Act: Challenges of Implementation' in Syeed Ahamed and Ashiqun Nabi (eds), *Right to Information Act (RTIA) in Bangladesh: Challenges of Implementation*. (Right to Information Forum, 2012) .

mindset of the frontline implementers and their ability to meet RTI Act compliance.⁶⁹ In another study, Rahman found the frontline staff's lack of skills and understanding presented a challenge for Bangladesh in implementing this policy.⁷⁰ Similarly, Iqbal and Dey,⁷¹ Karim,⁷² Kadery⁷³ and Panday and Rabbani also questioned the institutional capacity to implement the RTI Act in Bangladesh.⁷⁴ Despite some of these studies having been conducted at the early stages of implementation, the findings have similarities with past studies on different policies, reflecting a pattern of top-down implementation in which less emphasis is given to the end result and more emphasis is given to the way the policy would be implemented at frontline and what might influence its outcome. The present study investigates how the RTI Act is being implemented, the challenges faced during implementation and how these challenges can be addressed. Unless we discuss solutions and an approach that might suit the context, people's access to information appears to be an implementation challenge.

1.4 Study Aim and Research Questions

The aim of this research is to examine how the implementation of the RTI Act has achieved people's access to government information. To measure this, the study investigates and analyses the provisions and practices of disclosure and publication, application, response, appeal procedures and practices, record preservation and management systems, provisions for open public meetings and enforcement mechanisms.

⁶⁹ M Iftekharuzzaman, above n 6.

⁷⁰ Habebur Rahman, 'Implementation Status of RTI Act 2009: The Institutional Perspective.' in Syeed Ahamed and Ashique Nabi (eds), *Right to Information Act in Bangladesh: Challenges of Implementation*. (Right to Information Forum, 2012)

⁷¹ Iqbal and Dey, above n 55.

⁷² Fukrul M. Karim, *Implementation of the Right to Information Act (RTI-2009) in the Selected Upazilas of Mymensingh* (Masters Thesis, BRAC University, 2013).

⁷³ Mobassera. M Kadery, *Right to information act-2009 in Bangladesh: An Analysis* (Masters Thesis, BRAC University, 2009).

⁷⁴ Panday and Rabbani, above n 67.

The central research question is: To what extent has the implementation of the RTI Act has successfully led to achieve people's access to government information.

To examine this research question, the thesis divided it into three segments (see Figure 1.1).

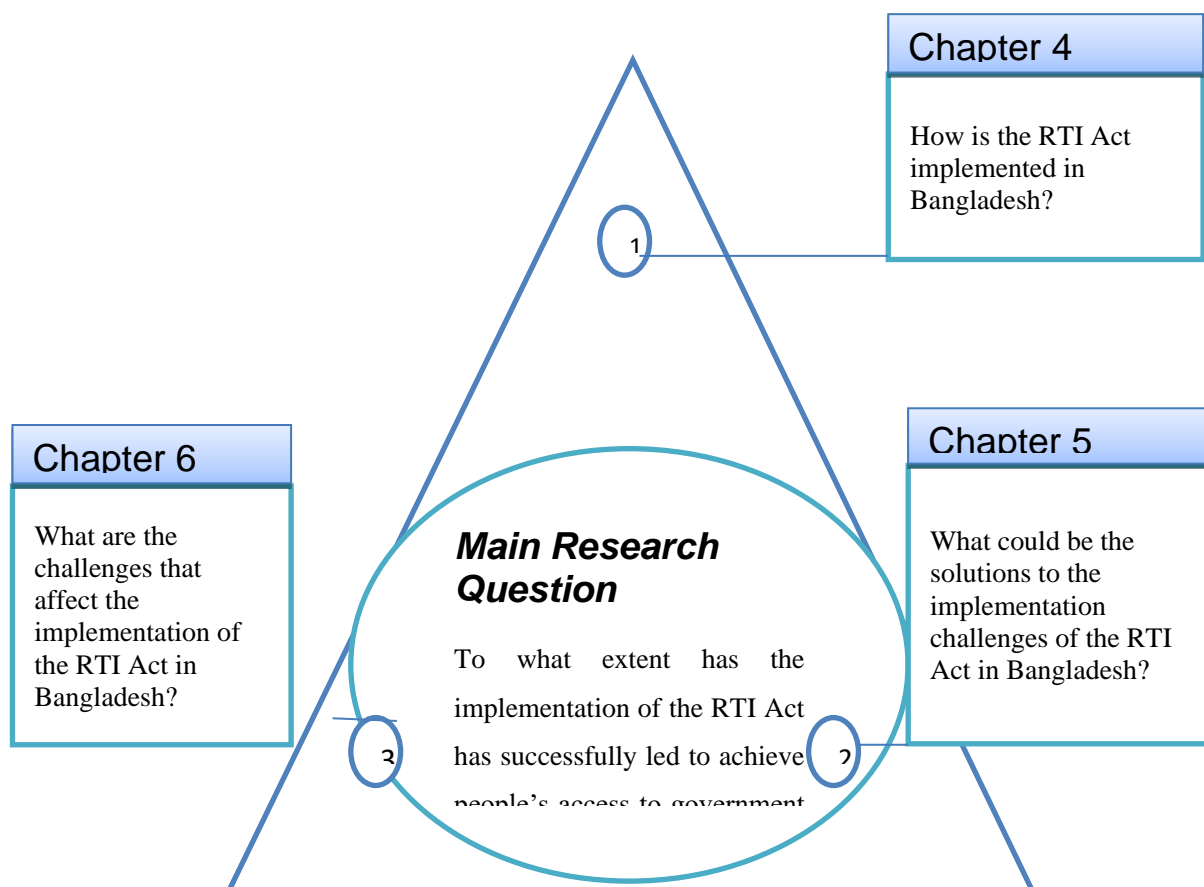


Figure 1.1: Main Research Question Segments

Segment 1: How is the RTI Act implemented in Bangladesh?

This segment intends to examine and understand the existing provision and practices of implementation under the RTI Act. In this way, the study focuses on how policy directives have been followed in practice and how the implementation of the RTI Act has ensured better access to government information on various services and activities (financial and operational), programs and projects of public authorities. More specifically, the thesis considers the provisions and practices of disclosure, application and response. It examines if there any enforcement mechanisms to ensure that people have the right to appeal for and access information. It also investigates whether the publication of information or documents is made public and if there any provisions for open public disclosure. This segment of the research question is addressed in Chapter 4.

Segment 2: What are the challenges that affect the implementation of the RTI Act in Bangladesh?

In this segment, the study identifies the challenges that have affected the implementation process. The thesis elaborates on the different factors that have influenced the implementation of the RTI Act. More specifically, the study looks at how the behaviour of the implementation staff and the public towards the RTI Act has contributed to the implementation outcome. It examines the implementation agencies' capability to translate policy directive into action. It also considers the extent to which socio-economic or political factors influence the implementation process and if there are any cultural factors involved. This segment of the research question is addressed in Chapter 5.

Segment 3: What could be the solutions to the implementation challenges of RTI Act in Bangladesh?

The segment aims to discover possible solutions to overcoming the implementation challenges of the RTI Act in Bangladesh. In doing so, the thesis intends to propose a model that could address the existing challenges and contribute to better access to government-held information. This segment of the research question is addressed in Chapter 6.

1.5 Methodology

1.5.1 Overview of Methodology

In this section, I discuss the methodological aspects that contribute to fulfil the study's objectives. All empirical research has an implicit, if not explicit, research design.⁷⁵ This study has employed case-oriented, qualitative research. A case study is used in diverse disciplines to study a real-life context.⁷⁶ It is an in-depth investigation of a particular

⁷⁵ Robert K. Yin, *Case Study Research: Design and Methods* (Sage Publication, Third Edition ed, 2003).

⁷⁶ D. R. Hancock and B. Algozzine, *Doing Case Study Research: A Practical Guide for Beginning Researchers*. (Teachers College Press, 2006); J. Hamel, S. Dufour and D. Fortin, *Case Study Methods*. (Sage, 1993).

event, to understand why a social or natural phenomenon occurs.⁷⁷ According to Yin, case study research is a preferred strategy when ‘how’ and ‘why’ question are posed, the investigator has little control over events and the focus is on contemporary phenomena within a real-life context.⁷⁸ All three criteria apply for this study. It aims to discover how the implementation of the RTI Act occurred, what the challenges were and how these challenges could be addressed. The study focuses on RTI—a contemporary issue of crucial importance to Bangladesh. Finally, all the respondents for face-to-face interviews and focus group discussion (FGD) were selected through a rigorous process in which the researcher had no control over behavioural events. The research approach used—quantitative, qualitative or mixed—depends primarily on the research questions.⁷⁹ A qualitative approach is best suited to a study that deals with a particular issue and requires in-depth investigation to gain a deeper understanding.⁸⁰ More specifically, social research assumes that social events and behaviours are best understood in their natural setting. Qualitative research examines phenomena through the respondents’ experiences, by interacting with them to understand their perspectives in a real-life context and presenting the responses in a descriptive manner.⁸¹

This research investigates the implementation process of the RTI Act at the local level. Its aims are to observe the extent to which this process has led to better accessibility of information for the public and explain the relationships among the various factors that influence the process. The qualitative approach used in this study has helped to fulfil these objectives and to interrogate the implementation process. One of the reasons to employ a qualitative approach is it focuses more on finding the relationship between various factors that challenge the implementation process and on the experiences of the

⁷⁷ Robert K. Yin, *Case study Research: Design and Methods* (Sage Publications, 1994).

⁷⁸ Ibid; Pamela Baxter and Susan Jack, 'Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers' (2008) 13(4) *The Qualitative Report* ; John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods approaches* (2nd ed.). (Thousand Oaks, 1998).

⁷⁹ John W. Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (Sage Publishers, 2009).

⁸⁰ Creswell, above n 78.

⁸¹ G. E. Gorman et al, *Qualitative Research For The Information Professional: A Practical Handbook* (Facet Publications, 2005).

public in acquiring access to information, rather than measuring the quantity or frequency of the process. In this way, the study explores the reality of the situation by understanding the context in which implementation takes place. There were no pre-conditions or time restrictions placed on the respondents. Participants were able to freely express their thoughts and opinions on the issue. This has enabled the researcher to collect rich data and to analyse and interpret this data in the most appropriate manner. All of these factors complement a case-oriented, qualitative approach. Although the study has mainly employed a qualitative approach, on occasion, questions were asked to gain quantitative information. In rationalising the combination of qualitative and quantitative perspectives, Creswell argues that incorporating a quantitative aspect in a study enables the researcher to gain better insight.⁸² In this study, incorporating some quantitative aspects has helped to understand implementation trends and behavioural patterns in the local context.

1.5.2 Research Location

As the study is about the implementation process of the RTI Act at the local level, the first requirement was to conduct field work in the community. This study was conducted in four out of the nine unions of Godagari Upazila in the northern district of Rajshahi in Bangladesh: Gogram, Matikata, Rishikul and Char Ashariadaha (see Figure 1.2). The unions were selected on a random basis and represent almost 50 per cent of the unions in this Upazila, or sub-district.

Godagari is located about 30 km from Rajshahi. It has a population of 279,545, of which 143,202 are male and 136,343 are female. The total area of the Upazila is 472.13 sq km. The Gogram, Matikata and Rishikul unions are 15, 20 and 10 km, respectively, from the Godagari Upazila, whereas Char Asariadaha is located on the other side of the Padma River (see Figure 1.3). The majority of the population of these unions are involved in agricultural work, while the remainder earn a living through small business, poultry and fishing.

⁸² J.W. Creswell, *Qualitative Inquiry and Research Design: Choosing Among Qualitative Approaches* (Sage, 2nd ed, 2007).

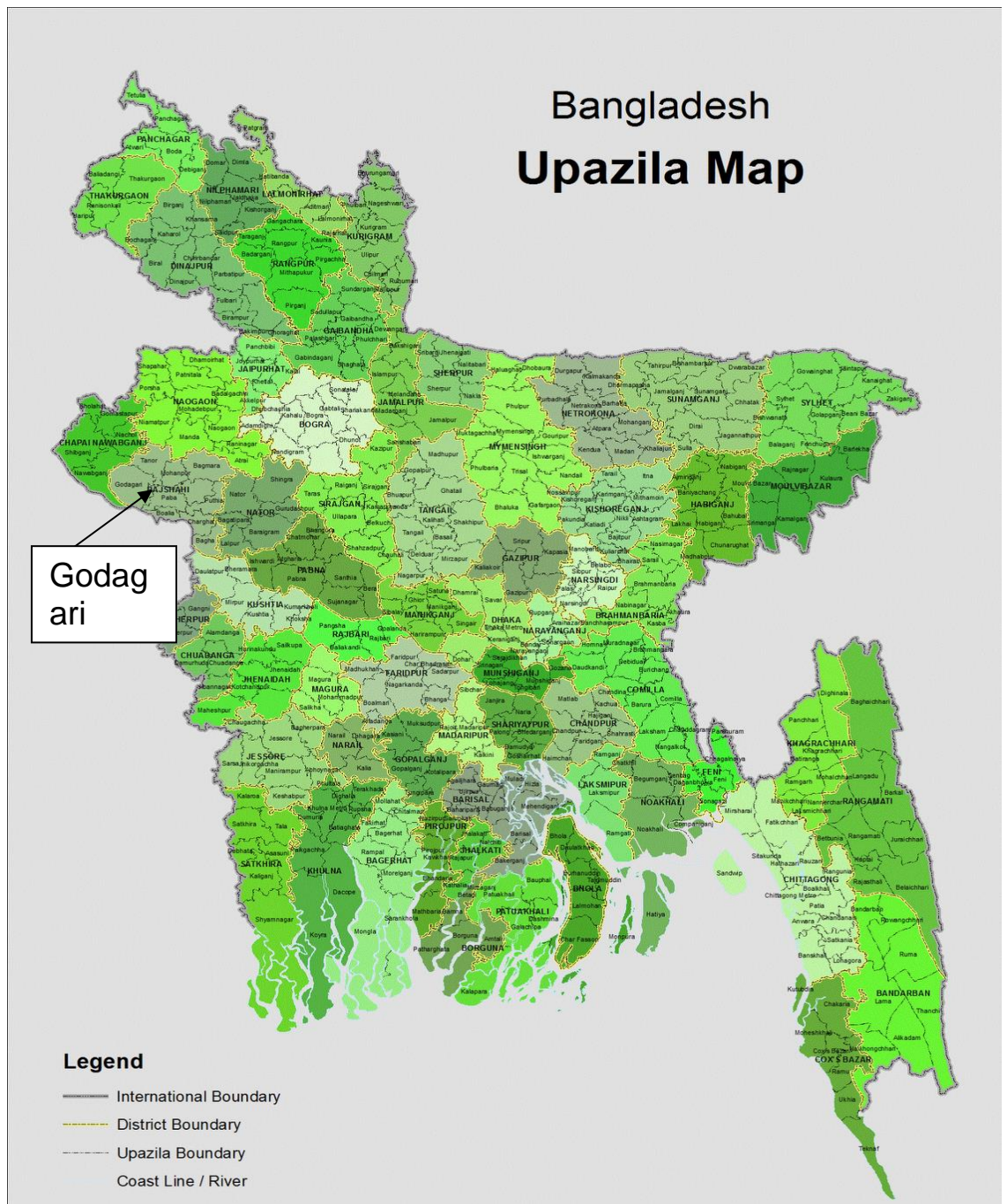


Figure 1.2: Map of Bangladesh Upazila

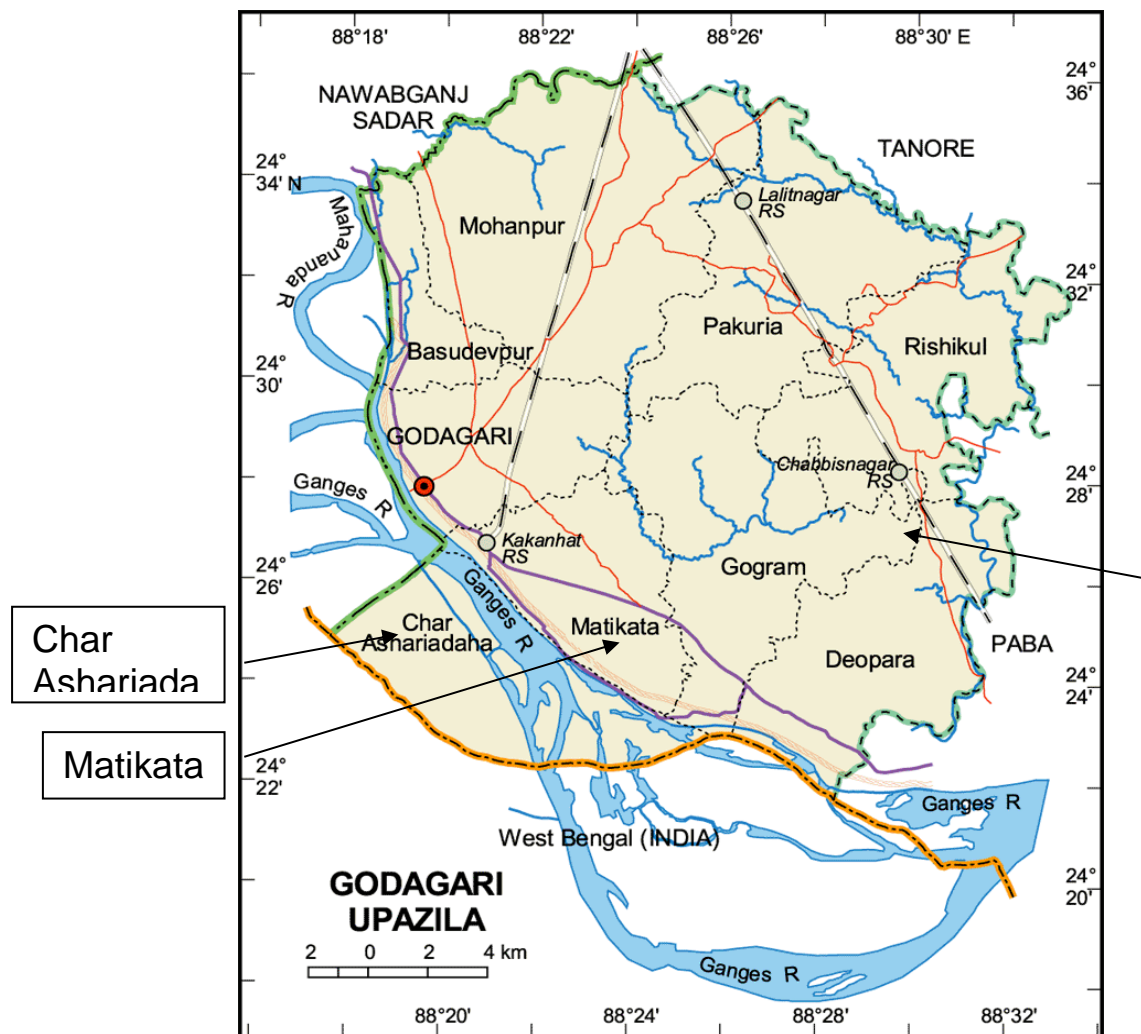


Figure 1.3 Map of Godagari Upazila

There are specific reasons why the Godagari Upazila was selected. The study demands an understanding of the local context and how the community operates within its social and political settings. The researcher has gained a good understanding of the research areas through spending half his life living in the district. Through an in-depth knowledge of local context, the researcher could intervene in any situation in which a discussion could create coercion. Although no question was asked during the interview sessions that could create coercion, as the study deals with people's accessibility to information, there was the possibility issues such as corruption, misconduct and the unavailability of information and services could lead to such situations. The researcher's knowledge of the local context, social and political situations was essential and contributed to the success of this study. In addition, Godagari is a unique upazila in terms of its population diversity (Adivasi and other marginalised groups are present in

these unions), land distribution (Godagari has one of the highest number of Khas lands⁸³ in the region) and proneness to natural disaster (some of these unions are affected by floods every year). In addition, there are many NGOs and community-based organisations working in the Upazila on various issues. In particular, a local governance program of HELVETAS Bangladesh⁸⁴ that aims to build the capacity of local government institutions, is also operating in most of the unions of Godagari Upazila. These factors support the selection of these unions for the fieldwork.

1.5.3 Research Process

This study used a rigorous process for its fieldwork. This included research plans, the development of research instruments, forming a research team, consultation and discussion with supervisors, local resource persons and the local community. The research also involved consultation sessions and discussions with the key respondents before and after the data collection took place. Information was collected from local government representatives, government officials, civil society representatives and the community through face-to-face interview sessions. The fieldwork involved gathering information on various aspects of access to information, including relevant information on services delivery, disclosure provisions, understanding of the law and the institutional arrangements at the community level. This section briefly discusses the research plan that was followed to collect, analyse and interpret the data.

⁸³ Khas land refers to fallow land that is owned by the government. Nobody, except the government, has property rights over these lands. The government also holds the authority to allocate khas lands among landless people, depending on the policy priorities and set guidelines. According to the Khas Land Settlement Policy in 1997, landless people are defined as those who ‘do not have homestead or agriculture land while their livelihoods depend on agricultural activities’. For further reading go to Abul Barkat, Shafique uz Zaman and Selim Raihan, 'Distribution and Retention of Khas Land in Bangladesh' (Human Development Research Centre (HDRC) 2000) and

https://www.ethz.ch/content/dam/ethz/special-interest/gess/nadel-dam/documents/mas/mas-essays/MAS%20Cycle%202014%20-%202016/Essay_Aline%20Herrera.pdf.

⁸⁴ HELVETAS Bangladesh is an international development agency that is a development partner to the Swiss government in Bangladesh. HELVETAS has been working in local governance for over a decade and is also a key advocator for the RTI Act in Bangladesh.

1.5.3.1 Preparatory Stage (Instrument Design and Research Approval)

In this stage, the data collection instruments were designed, consulted and approved. A series of activities took place before ethics approval was received. First, a tentative research plan was designed and presented to the research supervisors. Based on their feedback and suggestions, the plan was adjusted accordingly. Second, the data collection instruments were developed in both English and the local language (Bengali). After a final consultation with the supervisors, the instruments were finalised with the required adjustments. Third, once the instruments were finalised, the ethics approval application was prepared and submitted to the ethics approval committee of Macquarie University. All additional documents were produced and provided with the main application. Before the submission of the ethics application, the main application and all the additional documents were discussed in consultations with the research supervisors and key local individuals. All necessary adjustments were made based on the suggestions received. The application was submitted in August 2015 and the project was approved in November 2015.

1.5.3.2 Data Collection Stage

At this stage, activities included initial visits and communication, preparation of the schedule, arranging appointments and conducting actual sessions with the respondents.

1.5.3.2.1 Initial Visits and Communication

Before the interviews or FGD sessions took place, there were a series of field visits and meetings with different stakeholders. The first few meetings were to build rapport with the local community, government representatives, civil society, NGOs, local elites and politicians. As the visits were taking place, a primary list of respondents was prepared. Later, a final list was completed before the interviews occurred. The respondents were advised via phone and face-to-face communication and appointments were made and the timetable for the interviews for FGDs was fixed, so that it did not affect the respondents' work commitments.

1.5.3.2.2 Fixing Schedule and Appointments

The respondents were asked to nominate a time and place suitable to them for the interviews and FGD. Based on this, a schedule was prepared and sent to the respondents, asking for their consent. Once the consents were received, the necessary adjustments were made and the final schedule was communicated to the respondents.

1.5.3.3 Conducting Sessions

The data collected from the field were processed and analysed between November 2015 and March 2016. A research team, consisting of the researcher and two data collectors, one male and one female, worked to collect the data from the selected unions. Before the fieldwork began, both the data collectors participated in an orientation to ensure they had a clear understanding of the project and their roles in the data collection process. The local community face-to-face interview sessions took place in the houses of the respondents, so that they felt comfortable answering the questions. Interviews with local representatives, academics, government officials and civil society representatives were held at their respective offices. The first set of interviews took place in the field with local respondents, local government representatives and officials. The second set of interviews was conducted with academics, journalists, lawyers, representatives from civil society and NGOs and officials of the Information Commission. Along with interview sessions, key documents were reviewed and analysed, such as registers, lists of beneficiaries, log books, attendance registers, annual reports, circulars and gazettes of government offices in the study areas. FGDs were conducted in each of the four unions. For FGDs involving female participants, the session was co-facilitated by the female member of the research team. While these sessions took place, the other two team members kept records and, at the end of each day, the team sat together to crosscheck and finalise the data collected. All of the FGDs and interviews took place between 16 November 2015 and 11 March 2016. Secondary documents including reports, the training manual and Information, Education and Communication (IEC) materials were collected from government offices and NGOs. Once the data collection from the research area was complete, secondary documents, such as circulars, annual reports and policy papers from the Information Commission were collected.

1.5.3.4 Selection of Participants

As this research was qualitative in nature, the selection of participants was important. The study aims to discover the relationship between different factors and how the existing implementation process has worked thus far for the community, as well for as the implementers. Marshall and Rossman argue that the selection of respondents in a qualitative study should be done purposefully and the researcher should select participants who can contribute to the central phenomenon or key concept in the study.⁸⁵ In line with Marshall and Rossman's proposition, the participants for the FGD were purposefully selected to include Union Parishad (UP) representatives, government officials, academics, students, journalists, social workers, NGO workers and civil society representatives. Only the local community respondents interviewed during the study were chosen randomly. The selection of participants was done through a carefully thought-out process. As discussed earlier, the study employed a qualitative approach in which the participants were asked in-depth questions, so that it could gain insightful input that would ultimately contribute to the outcome of the research. The empirical part of the study was conducted at the local level. In this case, the supply-side representatives included the chairperson and members of UP and officials who worked in government departments. To understand the implementation approach and institutional framework at the national level, information staff were selected and interviewed. On the demand side, members of the public were selected to provide an understanding of how the implementation of the RTI Act has affected the community as a whole and the overall trend towards the RTI Act in rural parts of Bangladesh. Apart from these groups, the selection of academics, journalists, NGO workers and civil society representatives was appropriate because this provided a deeper understanding of the process of implementation and identified loopholes in the policy design and the strategies that were employed in the implementation. As a whole, the process and decisions that were made while selecting the participants for this study were appropriate and justified in meeting the study's aim. The following is a detailed discussion on how the data were collected, the tools that were used for data collection, ethical considerations, the question of validity and reliability and the techniques used for analysing the data.

⁸⁵ C Marshall and G B Rossman, *Designing Qualitative Research* (SAGE Publications, 3rd ed, 1999).

1.5.4 Data Collection Techniques

According to Yin, in qualitative research, a researcher should collect information using different sources and methods, such as documents, interviews, participant or non-participant observation and physical artifacts.⁸⁶ This triangulation of data provides ‘a confluence of evidence that breeds credibility’.⁸⁷ In this way, the researcher can support their findings and reduce the effect of potential biases and allegations that may arise if a single method or source is used. Data collection techniques for qualitative and quantitative approaches vary in nature, content and intensity. In a qualitative study, the techniques mostly used are participant observation, open-ended interviews, FGD and document review.⁸⁸ In this study, the researcher used open-ended observation, semi-structured face-to-face interviews, FGD and document reviews. Seven FGDs and 80 face-to-face interviews were held with key respondents including the public, government officials, local government representatives, NGO workers and civil society representatives, journalists and others. In addition, the research involved direct observation and reviews of relevant documents, reports, manuals and circulars.

1.5.4.1 Focus Group Discussion (FGD)

A focus group can be described as a small and homogenous group of between six to 12 participants who share, in a rather informal manner, their thoughts and feelings about a particular research topic.⁸⁹ Researchers must conduct more than one FGD session to ensure a ‘reliable insight’ into the issue being studied.⁹⁰ For this particular study, to understand the information access situation at the rural level, seven FGDs were conducted with local villagers to gain an insight into if and how the introduction of the RTI Act had affected the public. Each of these sessions involved eight to 10 participants

⁸⁶ Yin, above n 75.

⁸⁷ E. W. Eisner, *The Enlightened Eye: Qualitative Inquiry and the Enhancement of Educational Practice* (Macmillan Publishing Company, 1997).

⁸⁸ C. Marshall, G. B. Rossman and *Designing Qualitative Research* (Sage, 3rd ed, 1999); Creswell, above n 82.

⁸⁹ R. A. Krueger, *Focus groups: A Practical Guide for Applied Research* (Sage, 3rd ed, 2000).

⁹⁰ D. L. Morgan, *Successful Focus Groups: Advancing the State of the Art*. (Sage, 1993); D. L. Morgan, *Focus Groups as Qualitative Research* (Sage, 2nd ed, 1997).

and were conducted in a common place, such as the village courtyard. A moderator from the community was selected and given a short orientation using a list of questions that were provided to them before the session was conducted. The duration of the sessions varied from 75–120 minutes for each group. For each of the sessions, a representation of people from different occupations, gender and age was carefully selected from the local community, with both males and females well represented. The study followed a semi-structured, open-ended checklist. This helped group members to discuss and analyse the topic and enabled the researchers to capture participants' feelings and crosscheck perceptions and general comments.

1.5.4.2 Face-To-Face Interviews

A face-to-face interview, as defined by Kvale, is a method of data collection in which a researcher tries to understand the world from a respondent's point of view and experience of life.⁹¹ The purpose of a face-to-face interview in qualitative research is to discover actualities about specific issues in real-life settings through respondents expressing their feelings and experiences in a structured manner. In this particular study, 80 face-to-face interviews were undertaken with a range of interviewees (see Table 1.1). These included key local respondents, UP representatives (chairpersons and members, both male and female), government officials, Union Information and Service Centre (UISC) representatives, NGO and civil society representatives, academics, journalists and high-level Information Commission staff, including the Information Commissioner. The respondents were asked questions regarding the process and procedures of application, information disclosure provisions and institutional arrangement for information dissemination and enforcement mechanisms.

⁹¹ Steinar Kvale, *Interviews: An Introduction to Qualitative Research Interviewing* (Sage, 1996).

Table 1.1: Face-To-Face Interview Respondents

Category	Number
Local community people (26), small business owners (4), students (4), teachers (4) and journalists (2)	40
People's representatives (eight male, four female)	12
NGO workers	4
Civil society representatives	4
Information Commission staff and government officials	10
Academics	2
Lawyers	2
Journalists	2
UISC members	4
Total	80

Source: Fieldwork 2015

1.5.4.3 Document Review

Document analysis is used alongside other qualitative research methods as a means of triangulation, or ‘the combination of methodologies in the study of the same phenomenon’.⁹² Document analysis is a systematic procedure for reviewing or evaluating documents that include both printed and electronic materials. It requires data to be examined and interpreted to elicit meaning, gain understanding and develop empirical knowledge.⁹³ Documents⁹⁴ can be referred to as social facts that are produced,

⁹² N. K. Denzin, *The Research Act: A theoretical Introduction to Sociological Methods* (Aldine, 1970) cited in Glenn A. Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9(2) *Qualitative Research Journal* .

⁹³ J. Corbin and A. Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (Sage, 3rd ed, 2008).

⁹⁴ Documents may include advertisements, agendas, attendance registers and minutes of meetings, manuals, background papers, books, brochures, diaries and journals, event programs (i.e., printed outlines), letters and memoranda, maps and charts, newspapers, press releases, program proposals, application forms and summaries, radio and television program scripts, organisational or institutional reports, survey data and various public records.

shared and used in socially organised ways.⁹⁵ The document review played a very important role in helping to understand the context and existing RTI practices in Bangladesh. Most of the relevant documents on access to information at different levels were studied and analysed carefully. These included ordinances, circulars, meeting minutes, annual reports, implementation guidelines of various programs, UP registers, training manuals and brochures prepared by government agencies, NGOs (e.g., Manusher Jonno Foundation and SHARIQUE) and civil society organisations (e.g., TIB and Totho Adhikar Forum). These documents provided new insights and a deeper understanding of the different issues relating to the implementation of the RTI Act. In addition, the study also reviewed and used relevant legal documents such as *Government Servants (Conduct) Rules 1979*,⁹⁶ *Local Government (Union Parishads) Act 2009*,⁹⁷ *Official Secrets Act 1923*,⁹⁸ *Rules of Business 1996*,⁹⁹ and international human rights instruments such as the *Universal Declaration of Human Rights* (UDHR, 1948),¹⁰⁰ the *International Covenant on Civil and Political Rights* (ICCPR, 1966),¹⁰¹ The *International Covenant on Economic, Social and Cultural Rights* (ICESCR),¹⁰² *American Convention on Human Rights*,¹⁰³ the *African Charter on Human and Peoples'*

⁹⁵ M. V. Angrosino and K. A. Mays de Pérez, 'Rethinking Observation: From Method to Context' in N. K. Denzin and Y. S. Lincoln (eds), *Handbook of Qualitative Research* (Sage, 2nd ed, 2000) 673.

⁹⁶ *Government Servants (Conduct) Rules 1979*, No. 133-L/79 Available at <https://servicelawsbangladesh.wordpress.com/2014/02/05/government-servants-conduct-rules-1979/>

⁹⁷ *Local Government (Union Parishads) Act 2009*.

⁹⁸ *Official Secrets Act 1923*.

⁹⁹ *Rules of Business 1996*.

¹⁰⁰ Universal Declaration of Human Rights, adopted 10 Dec. 1948, U.N.G.A. Res. 217 A (III) (1948).

¹⁰¹ *International Covenant on Civil and Political Rights*, adopted 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

¹⁰² The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

¹⁰³ *American Convention on Human Rights*, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978).

Rights (ACHPR, 1986),¹⁰⁴ *European Charter of Fundamental Rights and Freedoms*,¹⁰⁵ *International Bill of Human Rights*,¹⁰⁶ other relevant documents such as the Solomon Report (2008),¹⁰⁷ as well as relevant, successful case studies from India and Mexico.

1.5.4.4 Direct Observation

Observation is a tool used in qualitative research to understand the situation and behaviours of the study population under specific conditions.¹⁰⁸ An observation method is descriptive and non-judgemental. In this study, the observation technique is used to examine disclosure provisions (e.g., display boards, citizen's charters, budgets and noticeboards), people's participation in events such as ward meetings, open budget meetings and social safety net programs at the local level.

1.5.5 Data Presentation and Analysis

Data analysis is the stage in which a researcher makes a meaningful interpretation of the text and the data that have been collected.¹⁰⁹ In this study, all the data that were collected during the fieldwork were properly organised into themes, and categorised and summarised to derive a conclusion. Content analysis was used to analyse written documents and verbal information to achieve meaningful interpretations. Tabulation and simple statistical analysis were used to bring clarity to the findings of the study. The data presentation was conducted through narrations and tables. A part of the analysis, the study also used quotations from respondents to describe the findings.

¹⁰⁴ *African Charter on Human and Peoples' Rights*, adopted 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986).

¹⁰⁵ *European Charter of Fundamental Rights and Freedoms*, adopted 2 October 2000, 2000/C 364/01.

¹⁰⁶ *International Bill of Human Rights*.

¹⁰⁷ David Solomon, 'The Right to Information: Reviewing Queensland's Freedom of Information Act' (FOI Independent Review Panel, 2008).

¹⁰⁸ Yin, above n . 75.

¹⁰⁹ Creswell, above n 78.

1.5.6 Addressing the Issues of Validity and Reliability

The quality of the data depends on its accuracy, correctness and consistency. The question of validity and reliability comes with an explanation of the accuracy of the data and findings and whether the data collected achieved what it intended to measure. Validity in an empirical research is decided upon based on the extent to which the data are trustworthy and how accurate the findings are for the participants, researcher and reader.¹¹⁰ According to Yin, four criteria are used to answer these questions and measure the quality of empirical research. These include construct validity, internal validity, external validity and reliability. Construct validity describes the way operational measures are studied in an empirical study. Internal validity refers to whether factors other than those discussed in the study have had an effect on its dependent variable. External validity refers to the extent to which the findings can be generalised to different settings and other people. Reliability means the degree of consistency and stability in the data and findings generated in the study—that is, if applied by another researcher, would they produce similar results? In this particular study, major concepts were identified, discussed and precisely operationalised. These include the right to information, preservation and record management, proactive disclosure, processes and procedures of information access and response, the CPI on which the implementation effectiveness of the RTI Act were measured and various factors that have affected implementation such as institutional, behavioural, cultural and external conditions. Despite the researcher applying multiple sources of data collection to address the issues of accuracy and trustworthiness, it would be overambitious to state that the findings would be identical if applied to other parts of Bangladesh. The study does not ignore the possibility of slight deviations, due to political, cultural, contextual and ideological variations. The researcher spent a great deal of time talking to people and building rapport before the actual sessions took place. Further, the research process that was followed was in-depth and well prepared. Therefore, the study's findings would not vary to any great extent in a different setting, anywhere in Bangladesh outside Godagari Upazila. All the research instruments that have been used are attached to this thesis as appendices. If any future research is conducted using the same instruments, the outcome is expected to be consistent and stable. Yin states that the reliability of case study research can be measured by the capacity of the procedures and instruments to repeat the same results each time they are used by another researcher.

¹¹⁰ Ibid.

Based on all of these factors, it can be concluded that the study addresses the question of validity and reliability and it is accurate, consistent and trustworthy.

1.5.7 Ethical Considerations

Kumar raises the question of ethical and moral conduct in empirical research stating that, as the data are collected from people, the researcher must understand the sensitivity of the information that is provided to them.¹¹¹ It is the responsibility of the researcher to present the findings in such way that ensures that the study is trustworthy.¹¹² This particular study underwent an ethics approval process at Macquarie University during which the project and the instruments used were reviewed before the project received approval to proceed. In addition, the researcher ensured that the participants understood the project and the purpose of each of the sessions held at different levels before the interviews and FGDs were conducted. No names are mentioned anywhere in the thesis when quoting the opinions collected from the respondents during the fieldwork.

1.5.8 Thesis Outline

In the first chapter of this thesis, I introduce the research problem and aim, research questions, methodology, ethical components, research significance and limitations. Implementation of the RTI Act is a crucial stage in the process of providing better access to government information. However, previous experiences in the context of policy implementation in Bangladesh creates scepticism about how well the RTI Act will be implemented. There are few studies that examine the implementation process of the RTI Act.

The right of the public to access information is a crucial element in ensuring civil and political rights, particularly the freedom of expression, thought, conscience and opinion. It is equally important in ensuring socio-economic and cultural rights such as the right

¹¹¹ Ranjit Kumar, *Research Methodology: A Step By Step Guide For Beginners* (Dorling Kindersley Publishing Inc.

, 2008)

¹¹² Ibid.

to work, receive equal pay and employment opportunities and the right to education. There is no special place allocated for the right to information in the *International Bill of Human Rights*. Nor is there any special mention about the right to information in the regional legal instruments or the *Constitution* of Bangladesh. However, the right to information is guaranteed under the right to hold opinions and the right to freedom of expression. Chapter 2 of this thesis focuses on establishing the relationship between the right to information and other human rights and democratic principles.

Chapter 3 focuses on the theory and literature that underpin the framework on which the study is conducted. This chapter outlines the meaning of implementation and the common theoretical models of the policy implementation process. In developing a conceptual framework that justifies the research purpose, the study has considered top-down, bottom-up and synthesised approaches to implementation. The chapter explores different perspectives and theories in the context of policy implementation in Bangladesh. More specifically, it discusses and highlights implementation perspectives of access to information and relevant approaches to address key components that could influence the implementation process in Bangladesh.

Chapter 4 examines the extent to which the existing approach to implementing the RTI Act has improved people's access to government information. More specifically, the study investigates the existing provisions and practices of disclosure and the publication of key information including citizen's charters, guidelines, lists of projects and beneficiaries, application and response procedures, appeal processes, record preservation and management, assignation of staff and public meetings held. The chapter closely examines these indicators to understand the implementation reality of the RTI Act in Bangladesh.

The enactment of the RTI Act is in itself a highly commendable achievement. However, implementation is a pivotal step to ensure the efficacy of this law and, hence, is as significant as the passing of the law. As the RTI Act is a highly challenging law, various pressure points and obstacles impede its implementation. Chapter 5 discusses the implementation challenges of the RTI Act in Bangladesh and how these impede the outcomes. More specifically, the chapter discusses the behavioural, institutional, socio-economic and cultural factors that affect the implementation of the RTI Act.

Chapter 6 discusses the pressure points required to overcome the challenges identified in the previous chapter. The chapter discusses the prerequisites for an RTI model in

Bangladesh and introduces an open access model that could be applied to overcome the implementation challenges.

Finally, Chapter 7 summarises the study's findings and highlights the key points of the thesis, based on the issues discussed in the previous chapters. It also discusses future challenges, in line with the points made in the thesis.

1.6 Conclusion

This chapter introduced the research question 'to what extent has the implementation of the RTI Act contributed to improve people's access to government information?' and provided the context of Bangladesh, in which the study is based. It addressed the methodology of the research used to examine this research question. The chapter outlined the key areas involving access to information in Bangladesh that will be examined in the following chapters.

Chapter 2: **The Right to Information, Its Meaning and Relevance to Human Rights**

2.1 Introduction

Over the past few decades, there has been an increase in FOI laws introduced around the world.¹¹³ Much of the literature considers this development a new phenomenon, isolated from the overall development of international human laws that has taken place over time.¹¹⁴ Human rights, including the right to equality, freedom and expression, have come a long way—from the English Magna Carta¹¹⁵ to the French Revolution¹¹⁶, the

¹¹³ David Banisar, *Freedom of Information in the World 2006: A Global Survey of Access to Government Information Laws* (Privacy International, 2006).

¹¹⁴ Ibid; John M Ackerman and Imra E Sandoval-Ballesteros, 'The Global Explosion of Freedom of Information Laws.' (2006) 58(1) *Administrative Law Review* 85; Louise Krabbe Boserup and Jens Peter Christensen, 'An Introduction to Openness and Access to Information' (Danish Institute for Human Rights 2005); Amita Bavishkar, 'Is Knowledge Power?: The Right to information Campaign in India' (Institute of Development Studies 2007).

¹¹⁵ Magna Carta, also known as Magna Charta, is a charter agreed by the English king John to make peace between the king and a group of rebel barons. The Archbishop of Canterbury, in his first draft, promised to protect the rights of the Church and barons to access justice from illegal imprisonment and feudal customs (legal and military customs practiced in medieval Europe) paid to the Crown. However, neither of the parties kept their promise which ended with a war known as the first Barons War. There was an attempt made by King John's son Henry in 1217 by removing its radical content but he was but was unsuccessful. Later in 1225 he reissued the Charter. King John's grandson and son of Henry repeated the exercise in 1297 and confirmed it as a part of English Statute Law and confirmed it as a part of English Statute Law and of English political life and renewed by their successors. Even though, with the course of time new laws were passed and the content was repealed in the 19th and 20th centuries, it remained as an iconic document.

Also Read Danny Danziger and John Gillingham, *1215: The Year of Magna Carta* (Simon and Schuster, 2003).

¹¹⁶ The French revolution which began in 1789 and ended in the late 1790s, is an iconic event in modern European history as it reshaped the political landscape of France by ripping the system of absolute monarchy and the feudalism and replacing it with liberal ideas of popular sovereignty and inalienable rights. The values and institutions of French Revolution is existent even today and many of the modern ideologies including liberalism, socialism, feminism and secularism are inspired by

English Bill of Rights¹¹⁷ to the United States (US) Declaration of Independence¹¹⁸ and the US bill of rights¹¹⁹. International human rights laws reached a new level in 1948, with the introduction of the UDHR, followed by the International Bill of Human Rights that comprises the UDHR¹²⁰, the ICCPR¹²¹ and the ICSECR¹²². A bundle of human

the event. The Declaration of Right of Man and of Citizen, passed in 1789, was a key document of the French Revolution and human rights.

See Linda Frey and Marsha Frey, *The French Revolution* (Greenwood Publishing Group, 2004).

¹¹⁷ The English Bill of Rights is an Act passed in the Parliament of England on December 16, 1689. The Bill establishes the supremacy of Parliament over the Crown. It sets out the rights of Parliament to have regular meeting, free elections, and freedom of speech in Parliament which contributed to the establishment of parliamentary sovereignty. It limits the power of the Crown by provision by provisions that include no interference of the Crown with the law as well as no new taxes without approval of Parliament. It was later added on by the Act of Settlement in 1701.

Read Geoffrey Lock, 'The 1689 Bill of Rights ' (1989) 37(4) *Political Studies* 540 .

¹¹⁸ The historic declaration of the independence was made during the Second Continental Congress meeting which held at the Pennsylvania State House, also known as the Independence Hall in Philadelphia on July 4, 1776. The state of declaration announced that the thirteen American colonies which were at war with the Kingdom of the United Great Britain, should be regarded as sovereign states which are no longer be under British rule. The core point of the declaration was every human being is made equal and endowed by the creator with certain unalienable rights such as right to life, liberty and pursuance of happiness-whenver a government becomes damaging to these rights, it is the right of the people to alter or abolish it and replace it with a new one.

Also read: David Armitage, *The Declaration of Independence: A Global History* (Harvard University Press, 2007).

¹¹⁹ After the Declaration of Independence in 1776, a Bill of Rights to protect the citizens was realized much later in 1971 when the Bill of Rights officially became the part of the Constitution. The bill mainly includes rights to religion, free speech and press, assembly, right to keep arms, right to property, right to a speedy and public trial and right to fair trails.

See: Bill of Rights of the United States of America (1791)

<https://www.billofrightsinstitute.org/founding-documents/bill-of-rights/>.

¹²⁰ The Universal Declaration of Human Rights, adopted 10 Dec. 1948, U.N.G.A. Res. 217 A (III) (1948).

¹²¹ *International Covenant on Civil and Political Rights*, adopted 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

rights that include the right to life, liberty, security of person, right to a fair trial, individual privacy, freedom of thought, conscience, religion, opinion, expression and association, the right to participate in government and public services, the right to work, etc. is ensured through these bills of rights; however, the right to information has not been acknowledged among these.¹²³ Although there is no clear section allocated for the right to information in the International Bill of Human Rights, it is guaranteed under the right to hold opinions and the right to freedom of expression.¹²⁴ Various international and regional treaties and instruments which include, European Convention on Human Rights and Fundamental Freedoms,¹²⁵ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters,¹²⁶ African Charter on Human and Peoples' Rights,¹²⁷ American Convention on Human Rights,¹²⁸ and courts which include the Victorian Civil and Administrative Tribunal,¹²⁹ Inter-American Court of Human Rights,¹³⁰ European Court of Human Rights,¹³¹ etc, have also acknowledged this relationship. Similarly, while the right to information is not

¹²² The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

¹²³ UDHR, above n 8; ICCPR, above n 9; ICESCR, above n 10;

¹²⁴ ICCPR, above n 9; ICESCR, above n 10.

¹²⁵ *European Convention on Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, ETS 5 (entered into force 3 September 1953).

¹²⁶ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, adopted 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2001)

¹²⁷ *African Charter on Human and Peoples' Rights*, adopted 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986).

¹²⁸ *American Convention on Human Rights*, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978).

¹²⁹ [2010] VCAT 255 (16 March 2010).

¹³⁰ *Claude Reyes v. Chile* 19/2006, IACTHR Series C 151 (2006); 16 IHRR 863 (2009).

¹³¹ See *Ta'rsasa'g a Szabadsa'g v. Hungary*, Application No 37374/05, Merits, 14 April 2009.

recognised in the *Constitution* of Bangladesh, there is a bundle of claim rights and powers that establish a relationship to this right.¹³²

The right to information is a core component that contributes to various levels. It is essential in establishing people's civil and political rights, particularly the right to freedom of thought, conscience, opinion, expression and the right to participate in government and public services.¹³³ It is also crucial in ensuring the right to social, economic and political rights.¹³⁴ This chapter establishes the relationship between the right to information and other human rights and democratic principles.

2.2 History and Background

Internationally, there has been a growing trend to introduce RTI laws.¹³⁵ Scholarly works suggest that the early development of FOI can be traced back to the eighteenth century and the Scandinavian tradition of freedom of the press and freedom of information.¹³⁶ Finnish architect and Lutheran clergyman Anders Chydenius was the first to introduce these concepts.¹³⁷ Chydenius was believed to have been inspired by the Chinese Emperor Taizong's practice of acting as a watchdog for the public interest, recording official government decisions and communicating these to the public.¹³⁸ In 1776, Chydenius promoted access to information regulation, alongside several other social and economic reforms, in the Kingdom of Sweden. After a long deliberation, the

¹³² See *The Constitution of Bangladesh*.

¹³³ ICCPR, above n9, art 19.

¹³⁴ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The Right to Social Security (art 9)*, 4 February 2008, E/C.12/GC/19; 15 IHRR 605 (2008).

¹³⁵ Banisar, David, *Freedom of Information in the World 2006: A Global Survey of Access to Government Information Laws* (Privacy International, 2006).

¹³⁶ Ackerman, John M and Imra E Sandoval-Ballesteros, 'The Global Explosion of Freedom of Information Laws' (2006) 58(1) *Administrative Law Review* 85; Banisar, above n 22.

¹³⁷ Juha Manninen, 'Anders Chydenius and the Origins of World's First Freedom of Information Act' in Juha Mustonen (ed), *The World's First Freedom of Information Act : Anders Chydenius' Legacy Today* (Anders Chydenius Foundation's Publications, 2006) .

¹³⁸ Ibid.

Offentlighetsprincipen, or principle of publicity, was established in Swedish law and, in 1812, an Ombudsman was created to enforce it.¹³⁹ However, this thesis argues that the Swedish case cannot be viewed in isolation to the international growth and development of human rights throughout this period. The existence of a body of basic rights can be traced back to the early twelfth century in Europe, including various schools of thought and philosophical discourse on liberty and the constitutional concept of the rule of law.¹⁴⁰ The theory of natural law and religious doctrine¹⁴¹ also influenced the foundation of human rights. The Magna Carta, established in 1215, played a major role in shaping the English nation and a body of human rights.¹⁴² The English Bill of Rights, introduced in 1688, safeguarded the freedom of speech for legislators and parliamentary assemblies at the time and continues to do so to this day.¹⁴³ Many of these rights found legal expression in the eighteenth century.¹⁴⁴ The Declaration of the Rights of Man and of the Citizen was established in France in 1789¹⁴⁵ and the US Declaration of Independence in 1791 and Bill of Rights,¹⁴⁶ introduced several rights including liberty and equality rights.¹⁴⁷ In many ways, the first, and most important, step towards human rights and fundamental freedoms was the introduction of the UDHR.¹⁴⁸ Article 1 of the UDHR states, 'All human beings are born free and equal in dignity and rights' and, in

¹³⁹ Manninen, above n 24.

¹⁴⁰ See the introductory discussion of this Chapter where the thesis mentions about Magna Carta, French Revolution, English Bill of Rights, the Declaration of US Declaration of Independence.

Also See Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (University of California Press, 2008).

¹⁴¹ Ishay, above n 28; Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (Oxford University Press, 2000).

¹⁴² Danziger and Gillingham, above n 3.

¹⁴³ Lock, above n 5.

¹⁴⁴ Frey and Frey, above n 4.

¹⁴⁵ Ibid.

¹⁴⁶ The US Bill of Rights of 1791, above n 7.

¹⁴⁷ Frey and Frey, above n 4; The US Bill of Rights of 1791, above n 7.

¹⁴⁸ Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights ' (2008) 19(4) *European Journal of International Law* 655.

Article 2, ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind’.¹⁴⁹ The UDHR intends to achieve a common standard in the guarantee of equality for all people.¹⁵⁰ It has 30 Articles that comprise rights such as the right to life, liberty, security of person (Article 3), rights of persons in detention and the right to a fair trial (Articles 7–11), individual privacy (Article 12), freedom of thought, conscience, religion, opinion, expression and association (Articles 18–20), the right to participate in government and public services (Article 21) the right to work standards of living, health and wellbeing and the right to education, cultural life, rest and leisure (Articles 22–27).¹⁵¹ The UDHR recognises the notion of dignity and the equal and unalienable rights of all human beings as the foundation of peace, freedom and justice.¹⁵² Although not legally binding, the UDHR is widely accepted as a global opinion on fundamental rights and is used as the basis for the constitutive documents of many nation states.¹⁵³ In 1966, two international covenants were drafted and presented to the General Assembly of the United Nations (UN) to enable the UDHR to be a more detailed, legally binding option.¹⁵⁴ The International Bill of Human Rights has led the foundation of human rights globally.¹⁵⁵ The ICCPR came into effect on 23 March 1976 and codifies the provision of Articles 3–21 of the UDHR.¹⁵⁶ The ICSECR came into effect on January 1976 and regards the provisions detailed in Articles 22–27 of the Declaration.¹⁵⁷ The ICCPR has 167 parties, 67 of which are by signature and ratification, with the remainder by accession or succession.¹⁵⁸ As Article 19 of the ICCPR gives legal binding to the right to hold an

¹⁴⁹ UDHR, above n 8.

¹⁵⁰ Ibid.

¹⁵¹ Ibid .

¹⁵² McCrudden, above n 37.

¹⁵³ McCrudden, above n 37; Colin Darch and Peter G. Underwood, 'Freedom of Information and the Developing World. The Citizen, the State and Models of Openness ' (2011) 24(4) *Governance*

¹⁵⁴ Ishay, above n29;Darch, Underwood, above n 42.

¹⁵⁵ Ibid 43.

¹⁵⁶ ICCPR, above n 9.

¹⁵⁷ ICSECR, above n 10.

¹⁵⁸ ICCPR, above n 9.

opinion and freedom of expression, many countries began to introduce FOI laws soon after committing to the Covenant.¹⁵⁹ Under 19(2), the ICCPR states, ‘Everyone shall have the right to freedom of expression; this 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’.¹⁶⁰

Bangladesh has included many of the provisions stated in the UDHR, the ICCPR and the ICESCR in the constitution.¹⁶¹ In the 1990s, CSOs put pressure on the government to become a signatory of the ICCPR and ICESCR. On 5 October 1998, Bangladesh became a signatory by ratification of the ICESCR¹⁶² and, on 7 September 2000, of the ICCPR.¹⁶³ The RTI Act of Bangladesh came into effect on 1 July 2009. In the third chapter of the thesis, a detailed discussion is made to discuss and analyze the policy making process that lead to the introduction of the Right to Information Act in Bangladesh.

2.3 Information

The term ‘information’ is one that is wide, abstract and contested and is yet to be robustly defined. Shannon’s widely used definition of information is considered too technical for commonplace understanding and contrary to the analysis of freedom of information.¹⁶⁴ It states, ‘information is thought of as a set of possible messages, where the goal is to send these messages over a noisy channel and then to have the receiver reconstruct the message with low probability of error, in spite of the channel noise’.¹⁶⁵

¹⁵⁹ Darch, Underwood, above n 42.

¹⁶⁰ ICSECR, above n 10.

¹⁶¹ ICCPR, above n 9, art 19.

¹⁶² See https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtmsg_no=iv-3&src=treaty.

¹⁶³ See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&clang=_en.

¹⁶⁴ C. E. Shannon, ‘A Mathematical Theory of Communication’ (1948) Vol. 27(July) *The Bell System Technical Journal*, 379.

¹⁶⁵ Ibid.

Information can be facts, statements, opinions, concepts and ideas. It is also regarded as knowledge,¹⁶⁶ with a person gathering various categories of data or concepts then processing these into something meaningful.¹⁶⁷ Information can be captured in physical objects such as paper as well as in electronic form.¹⁶⁸ It can be published through books or journals, or unpublished.¹⁶⁹ To explain the meaning of information, Britz and Ackermann developed two main characteristics: object-related and conduit-related.¹⁷⁰ The object-related characteristic refers to the content of a communication process or the meaning of a message about an objective reality, that is, a person, a thing, an event or a concept.¹⁷¹ Such content or messages can be political, scientific or economic, and can be public or private.¹⁷² The conduit-related characteristic means the content or message must be carried, transmitted and recorded in some medium such as a broadcast, human language, print or digital form.¹⁷³ It assumes that information is value-free, objective, empirically verifiable and predictive. However, the object-related characteristic presents the moral question: is the information true or can it be falsified? Government information may be defective in many ways and this is a major theoretical challenge for freedom of information advocacy, as it is difficult to claim it is a system of universal morality.

In the RTI Act of Bangladesh, information is defined in different forms. According to 2(f), information means any memo, book, map, contract, log book, order, notification, document, sample, letter, report, account, project proposal, photograph, audio, video, drawing, painting, film, electronic document, machine-made record and any other

¹⁶⁶ S. Keenan and C. Johnson, *Concise Dictionary of Library and Information Science* (Bowker-Saur, 2nd edition ed, 2000).

¹⁶⁷ M.H. Hill, *The Impact of Information on Society: An examination of its Nature, Value and Usage* (Bowker-Saur, 1988).

¹⁶⁸ Shannon, above n 56.

¹⁶⁹ Ibid.

¹⁷⁰ Marius Ackermann and Hannes Britz, *Information, Ethics and the Law : A Guide for Information Practitioners, Students and the Corporate Environment* (Van Schaik, 2006).

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

documentary material, regardless of physical form or characteristics and any copy made in relation to the constitution, structure and official activities of any authority.¹⁷⁴ However, access to information does not always mean access to all information—it varies depending on the category.¹⁷⁵ There are restrictions imposed on government authorities to uphold certain kinds of information and not to disclose this information in public.¹⁷⁶ Section 7 of the RTI Act of Bangladesh defines these categories.¹⁷⁷ By ‘information’, this thesis refers to documents and records related to public services as listed in citizen’s charters or departmental services, including agriculture, land, fisheries, livestock, health and family planning, women affairs, social safety net programs and other government-run development programs that influence the social, political and economic participation of the citizens of the country. Information also refers to records and documents related to governance, such as contracts, tender, procurement and financial management.

2.4 Definitions of Rights

Jhering defines rights as “legally protected interests”.¹⁷⁸ However, not all interests that are protected as human interests conflict with one another and the law only selects some of these for protection.¹⁷⁹ Jhering further notes that a person can be said to have a right if there is some advantage in the interest that is protected by the state.¹⁸⁰ Hohfeld argues

¹⁷⁴ *The Right to Information Act 2009*, s2(f).

¹⁷⁵ Patrick Birkinshaw, *Freedom of Information: The Law, the Practice and the Ideal* (Cambridge University Press, 2010); Anne Cossins, 'Revisiting Open Government: Recent Developments in Shifting the Boundaries of Government Secrecy under Public Interest Immunity and Freedom of Information Law ' (1995) 23(2) *Federal Law Review* 226.

¹⁷⁶ Darch and Underwood, above n 42.

¹⁷⁷ *The Right to Information Act 2009*, s7.

¹⁷⁸ See Rudolf Von Jhering, *Geist des römischen rechts, auf den verschiedenen stufen seiner entwicklung* (Breitkopf und Härtel, 1874-1878).

¹⁷⁹ Jhering, above n 70.

¹⁸⁰ Jhering, above n 70; also see Robert Alexy, *A Theory of Constitutional Rights* (Oxford University Press, 2002).

that all legal rights must have correlatives, largely between the citizen and the state.¹⁸¹ In Hohfeld's system, there are two specific rights that are distinctive from each other: claim rights and privilege rights.¹⁸² A claim right is enforceable by law; therefore, the state must respect, protect and fulfil the human rights of those under its protection.¹⁸³ Conversely, a privilege right or liberty right is non-justiciable and no private or state power protects the right holder.¹⁸⁴ For example, a person has a privilege right to sing a song in a public place, meaning they are freely permitted to do so and the person has no duty to refrain from singing. This does not mean that anyone else is obliged to let them sing. Consequently, anyone can create an obstacle or criticise them for publicly singing. This type of right places no obligations on others to act or not act in any certain way. However, if a person has a claim right to sing a song, then others have a duty to make provisions to allow them to properly sing. If others do not fulfil their duties in this regard, it is a violation of the person's right to sing.

2.4.1 The Right to Information

The right to information is a legal guarantee to the citizens of a respective country or, in some cases, other residents, to have access to government documents without being required to show any legal standing or provide any explanation of why they need them.¹⁸⁵ In the Hohfeldian system, if there is no constitutional guarantee or FOI law, there is no duty on the state or claim right of the individual to make the information available.¹⁸⁶ Hohfeld's correlatives are not mutually exclusive to each other.¹⁸⁷ In the

¹⁸¹ Wesley N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, Faculty Scholarship Series (Yale Law School, 1917).

¹⁸² Ibid .

¹⁸³James Nickel, 'Human Rights' in Edward N. Zalta (ed), *The Encyclopedia of Philosophy* (The Metaphysics Research Lab, 2008) ; Hohfeld, above n 73.

¹⁸⁴ Hohfeld, above n 73.

¹⁸⁵ Alasdair S. Roberts, 'Roberts, Alasdair S., Structural Pluralism and the Right to Information ' (2001) 51(3) *University of Toronto Law Journal* 243.

¹⁸⁶ Nickel, above n 75.

¹⁸⁷ Ibid.

case of freedom of information, the right is exercised discretionally by the applicant and can be regarded as a power, in which the correlative is the state's liability to provide the information requested.¹⁸⁸ The state can also receive immunity from releasing information if there are any national security or privacy concerns.¹⁸⁹ This is described in Hohfeldian schema as a disability.¹⁹⁰ The question of disability for FOI laws is debated.¹⁹¹ How the areas of immunity are defined, who decides whether a piece of information receives immunity and if there is a public interest test overriding the case for immunity are decided by FOI laws that vary from country to country.¹⁹² Some countries have a long list of categories that are exempt from FOI laws and are not subject to any harm test or public interest override.¹⁹³ These include the provision to exclude access to any records or information found to be against the public interest. However, there are provisions to override all exemptions in the public interest.¹⁹⁴ One general principle for this decision is stated in the UN Standards:

A refusal to disclose information may not be based on the aim to protect Governments from embarrassment or the exposure of wrongdoing; a complete list of the legitimate aims which may justify non-disclosure should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest.¹⁹⁵

¹⁸⁸ Darch, Underwood, above n 42.

¹⁸⁹ Patrick Birkinshaw, 'Freedom of Information and Openness: Fundamental Human Rights ' (2006) 58(1) *Administrative Law Review* 177.

¹⁹⁰ Nickel, above n 75.

¹⁹¹ Birkinshaw, above n 81.

¹⁹² Ibid

¹⁹³ Banisar, above n 1.

¹⁹⁴ See South Africa's Access to Information laws for further information. Available at: http://www.gov.za/sites/www.gov.za/files/a2-00_0.pdf.

¹⁹⁵ Abid Hussain, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression submitted in accordance with Commission resolution 1999/36' (Economic and Social Council of the UN Commission on Human Rights 2000).

Available at: [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/102/59/PDF/G0010259.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/G00/102/59/PDF/G0010259.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/102/59/PDF/G0010259.pdf?OpenElement).

The most common areas of immunity include national security, personal privacy, public security, commercial secrets and internal deliberations.¹⁹⁶

2.4.2 The Right to Information as a Human Right

The right to information is a legal right of access to information held by public authorities. There is debate on whether the right to information can be considered a human right. Nickel presents an eight-point characterisation, in which a right can be understood as a demand or norm that a person in a social context could freely act or not act upon, or be acted or not acted upon.¹⁹⁷ In a narrow sense, legal rights can be described as those rights that can be subject to trial in a court of law and may or may not be driven solely on moral principle.¹⁹⁸ In an abstract sense, human rights can be considered the rights that protect the interest of human beings under the circumstances required to live a good life.¹⁹⁹ Some of these rights go beyond the state or association with any political society. Human rights are driven by the moral claim that a person is protected from abuse and any mistreatment by the government or by policy.²⁰⁰ Therefore, human rights require the state to not only refrain from abuse, but also to provide protection against abuse.²⁰¹ Human rights are useless when they are treated as abstract or philosophical.²⁰² Hence, specifying human rights is crucial. For a human right to be qualified, it must be supported by ‘robust justification’²⁰³ that it is important enough and universal.²⁰⁴ Whether freedom of information is considered a human right,

¹⁹⁶ Alasdair Roberts, *Blacked Out: Government Secrecy in the Information Age* (Cambridge University Press, 2006).

¹⁹⁷ Nickel, above n 75.

¹⁹⁸ Ibid.

¹⁹⁹ Jhering, above n 72.

²⁰⁰ Allen Buchanan, *Human Rights, Legitimacy, and the Use of Force* (Oxford University Press, 13 Jan. 2010, 2010) p.31-70.

²⁰¹ Ibid.

²⁰² Nickel, above n75.

²⁰³ Ibid.

²⁰⁴ Ibid.

or a bureaucratic rule designed to promote openness and knowledge, requires further discussion.

The right to information is an essential component in establishing people's civil and political rights, particularly the right to freedom of thought, conscience, opinion, expression and the right to participate in government and public services.²⁰⁵ It has a long relationship with freedom of expression.²⁰⁶ There is a cause and effect relationship between the two, as access to information can be considered a prerequisite to free expression and the right to constitute an opinion.²⁰⁷ Various international and regional treaties, instruments and courts acknowledge this relationship.²⁰⁸ Article 19 of the ICCPR recognises the right to seek, receive and impart information by imposing a positive obligation on states to ensure access to information, especially government-held information.²⁰⁹ Even though no clear section is allocated for the right to information in the International Bill of Human Rights, it is guaranteed under the right to hold opinions and the right to freedom of expression.²¹⁰ It is also crucial in ensuring the right to social, economic and political rights.²¹¹ In the *Constitution* of Bangladesh, the right to information is not recognised, but there is a bundle of claim rights and powers which include the right to freedom of expression, opinion and thought, right to association, right to equality, right to take part in government that establish the relationship to the right to information.²¹² When examining the *Constitution*, we find that Bangladesh was founded on the principle of equality, social and economic justice for all.²¹³ Article 11 of the *Constitution* guarantees that 'the Republic shall be a democracy in which human rights, freedoms and respect for the dignity and worth of the

²⁰⁵ ICCPR, above n 21.

²⁰⁶ Ibid.

²⁰⁷ Birkinshaw, above n 81.

²⁰⁸ See footnote 13-19.

²⁰⁹ ICCPR, above n 21.

²¹⁰ See 2.4.3.1 of this Chapter where a detailed discussion on this point is made.

²¹¹ See 2.4.4 of this Chapter where a detailed discussion on this point is made.

²¹² See 2.4.3.1 of this Chapter where a detailed discussion on this point is made.

²¹³ *The Constitution of Bangladesh*, art.

human person shall be guaranteed'.²¹⁴ Under Article 26, it excludes discriminatory laws and actions by the government and public functionaries.²¹⁵ The *Constitution* has very specific provisions on freedom of movement, freedom of assembly, freedom of association, freedom of speech, thought and conscience, the rule of law, equality before the law to guarantee equality. The entire constitutional regime is aimed at achieving the rule of law.²¹⁶ This thesis argues that there is a strong relationship between the right to information and other human rights, democratic principles and notions that establish the case for the right to information to be considered a human right.

2.4.3 The Right to Information and Its Relationship to Civil and Political Rights

This thesis argues that the right to information is essential in ensuring civil and political rights, particularly citizens' right to freedom of thought, conscience, opinion, expression and the right to participate in government and public services. The thesis establishes the relationship between the right to information and two broad areas of civil and political rights that have a strong relationship with the right to information—the right to freedom of expression and the right to take part in government and public affairs.

2.4.3.1 The Right to Freedom of Expression

Freedom of expression, thought and opinion is among the most valuable of human rights.²¹⁷ It can encompass different forms including verbal, artistic and physical

²¹⁴ Ibid, art17.

²¹⁵ Ibid, art 26.

²¹⁶ *The Constitution of Bangladesh*.

²¹⁷ See *Liith* case, BVerfGE 7, 198, 208. The translation of this passage is taken from David P. Currie, *The Constitution of the Federal Republic of Germany* (1994), 175. The Constitutional Court in Karlsruhe said: To a free democratic constitutional order [freedom of expression] is absolutely basic, for it alone makes possible the continuing intellectual controversy, the contest of opinions that forms the lifeblood of such an order ... [i]t is the basis of all freedom whatever, 'the matrix, the indispensable condition of nearly every other form of freedom'.

expression.²¹⁸ It is often linked to many other rights such as freedom of assembly, linguistic rights, freedom of association, freedom of thought and conscience, freedom of the press and freedom of privacy.²¹⁹ Freedom of expression works at both horizontal and vertical levels against arbitrary interference by the state or private individuals.²²⁰

Article 19 the UDHR states, ‘Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’.²²¹ Under this Article, two fundamental rights, the freedom of expression and the freedom to hold opinions, are protected. Although access to information does not receive special mention in the UDHR, it is in line with people’s right to expression. The treaty can be considered a moral statement of principles without any legal standing. The ICCPR created a legal obligation on its signatories to establish the right to freedom of expression in their respective jurisdictions. A number of regional instruments have also recognised this relationship.²²² According to Article 10(1) of the European Convention on Human Rights (ECHR), ‘Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers’.²²³ Further, Article 9(1) of the ACHPR states, ‘Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law’.²²⁴ As with the UDHR and ICCPR, none of these legal instruments have any special provision for access to information; however, they all

²¹⁸ Rhona K. M. Smith, *Textbook on International Human Rights* (OUP 2012), p301.

²¹⁹ Smith, above n 111, p301; Spanish Constitution, Art 20(1)(b) and (c); SA Constitution, s 16(1)(c) and (d).

²²⁰ Ibid, p 306.

²²¹ UDHR, above n 8.

²²² *American Convention on Human Rights*, opened for signature 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978) (‘ACHR’), art 13; *European Convention on Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, ETS 5 (entered into force 3 September 1953) (‘ECHR’); *African Charter on Human and Peoples’ Rights*, adopted 27 June 1981, 1520 UNTS 217 (entered into force 21 October 1986), art 9.

²²³ ECHR, above n 120, art 10 (1).

²²⁴ ACHR, above n 120, art 9(1).

acknowledge the relationship between freedom of information and access to information. In the context of Bangladesh, Article 39 of the *Constitution* guarantees the freedom of thought, conscience and speech.²²⁵ It is this Article that enables political opposition parties to operate. In addition, any criticism or democratic movement against the government on a policy or act is based upon this right.²²⁶

Alongside the international human rights instruments, the relationship between the freedom of information with other human rights is established in international human rights jurisprudence. Judge Bell, of the Victorian Civil and Administrative Tribunal, in *XYZ v. Victoria Police* expressed the correlation between the right to freedom of expression and freedom of information thus, 'Freedom of information is in the blood which runs in the veins of freedom of expression'.²²⁷ The ruling in the case of *Claude Reyes v. Chile* in 2006 by the Inter-American Court of Human Rights is described by many as groundbreaking and historic:

[T]he Court finds that, by expressly stipulating the right to 'seek' and 'receive' 'information', Article 13 of the Convention protects the right of all individuals to request access to state-held information [...] this article protects the right of the individual to receive such information and the positive obligation of the state to provide it [...] The interest or personal involvement in order to obtain it [...] The delivery of information to an individual can, in turn, permit it to circulate in society, so that the latter can become acquainted with it, have access to it and assess it. In this way, the right to freedom of thought and expression includes the protection of the right to access to State-held information.²²⁸

The issue arose as a part of an environmental campaign to save a large wilderness area of the Tierra del Fuego in South America from potential deforestation for commercial purposes.²²⁹ The US-based corporation Trillium, who later changed its name to Savia

²²⁵ Freedom of the press (both electronic and print media) is guaranteed under Article 39. Article 39(1) guarantees freedom of thought and conscience, Article 39(3) ensures freedom of speech and expression and Article 39(4) guarantees freedom of the press.

See *The Constitution of Bangladesh*.

²²⁶ *Ibid.*

²²⁷ *XYZ v. Victoria Police* See: [2010] VCAT 255 (16 March 2010).

²²⁸ *Claude Reyes v. Chile* 19/2006, IACTHR Series C 151 (2006); 16 IHRR 863 (2009).

²²⁹ *Ibid.*

International, owned rights to 285,000 hectares of the Lenga Forest²³⁰ and wanted permission from the Chilean government for a large-scale logging scheme, known as the Condor River Project. The proposal faced enormous opposition from environmental activists from Chile and Argentina. Reyes and others submitted a request to the Foreign Investments Committee (CIE) on behalf of the Terram Foundation, asking for information about a) Trillium's past track record, legitimacy and the CIE's formal decision on Trillium's application, b) any information in possession of the Committee regarding Trillium's compliance with its obligations under Chilean foreign investment laws, including any past violations and c) any information collected from third parties about the above. Apart from the value of the total investment made by the Trillium in the project, CIE did not provide any written information on its decision nor did it justify its refusal to disclose the remainder of the information requested. CIE's failure to disclose all the requested information was unsuccessfully challenged before the domestic courts who ruled that the complaints were unacceptable. In response to the decision, the applicant registered a complaint under the American Convention on Human Rights arguing that the failure of CIE to disclose the information violated Article 13 of the Convention that protects freedom of expression. This was the first ruling held by an internationally recognised tribunal on the question of the status of the right to information as a human right.²³¹ The court found that:

[T]he principles of disclosure and transparency in public administration [...] enable all person's subject to its jurisdiction to exercise the democratic control of those actions [...] so that they can question, investigate and consider whether public functions are being performed adequately [...] for the individual to be able to exercise democratic control, the State must guarantee access to the information of public interest that it holds.²³²

The court ordered the Chilean government to release the information and also made provisions to recognise the government's corresponding duty to respect, protect and fulfil the access of information rights.²³³

²³⁰ Lenga beech trees are native to the Andes and provide valuable hardwood that is used commercially for furniture and construction.

²³¹ *Claude Reyes v. Chile*, above n 120.

²³² *Ibid.*

²³³ *Ibid.*

Another significant ruling is the case of *Ta'rsasa'g a Szabadsa'g v. Hungary* held in the European Court of Human Rights (ECtHR).²³⁴ The applicant had registered an application for information on a constitutional review of laws about drug offences that a member of parliament had submitted under the country's FOI law to the Constitutional Court. The request was refused on the basis that the information contained personal data that could not be accessed without the approval of the author. In this instance, the ECtHR decreed that refusal of access to information was a violation of Article 10 of the ECHR. After its assessment, the ECtHR came to the conclusion that:

The public has a right to receive information of general interest and the law cannot allow arbitrary restrictions which may become a form of indirect censorship should the authorities create obstacles to the gathering of information. The applicant's intention was to contribute to a public debate that the refusal of access amounted to an interference with the applicant's rights under Article 10.²³⁵

Similarly, in the case of *Kenedi v. Hungary*, the ECtHR decided the decision by the State to deny access to information was unjustified and interfered with the right to freedom of expression.²³⁶ The applicant, a historian, was denied access by the government to original documentary sources when researching the state security service of the 1960s, despite a domestic court judgement to grant access to the required information. The ECtHR held the decision by the State was unjustified and ruled in favour of the applicant, saying that access to original documentary sources for legitimate historical research was an essential element of the applicant's right to freedom of expression and any interference was unjustified.²³⁷ Further, in the case of *Gillberg v. Sweden*, the ECtHR found that the university, in refusing to comply with a court order to give access to his research files, violated the applicant's right to freedom of expression under Articles 8 and 10 of the ECHR and the right to information under Article 10.²³⁸

²³⁴ *Kenedi v. Hungary*, Application No 31475/05, Merits, 26 May 2009

²³⁵ *Ibid.*

²³⁶ *Kenedi v. Hungary*, above n 127.

²³⁷ *Ibid.*

²³⁸ *Gillberg v. Sweden* Application No 41723/06, Merits, 3 April 2012.

Based on the above, this thesis argues that access to information is closely tied to freedom of expression and information is required to constitute an expression or an opinion. When people are informed, they want to express their thoughts and opinions. People must have the right to access information so that they have the power to examine the governance system and hold an opinion, thus exercising their right to expression. A free press is vital to communicate the public doings of government institutions. An independent press can make people more informed and educate citizens on various issues that could shape informed consent. Similarly, by having the right to express their thoughts, citizens can communicate these issues. An independent press keeps the government in check by discovering relevant information and communicating it to the citizens. Therefore, the right to information can be considered a primary condition, not only to exercise freedom of expression by holding opinions, but also to receive and communicate various ideas that, without the right to information, would be incomplete. This discussion clearly establishes the relationship between the right to information and freedom of expression that justifies the argument in favour of the inclusion of a right to information within the framework of freedom of expression.

2.4.3.2 The Right to Take Part in Government

The right to take part in the government, either directly or through exercising voting rights and choosing representatives, is one of the most important political rights.²³⁹ Article 21(1) of the UDHR states, ‘Everyone has the right to take part in the government of his country, directly or through freely chosen representatives’.²⁴⁰ Further, Article 21(3) states ‘The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures’.²⁴¹ The legal obligation on signatories to establish the right for citizens to take part in government and public affairs under Article 25 of the ICCPR states:

²³⁹ Buchanan, above n 93.

²⁴⁰ UDHR, above n 8.

²⁴¹ Ibid.

Every citizen shall have the right and the opportunity [...] To take part in the conduct of public affairs, directly or through freely chosen representatives [...] vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and to have access to public service in his country.²⁴²

Citizens taking part in government by election or exercising voting rights, is essential for a functioning democracy, as it provides people with the opportunity to decide who will govern them and who will present their agendas to parliament.²⁴³ A free and fair election held periodically is one of the indicators that ensures citizens' participation in the democratic process. Stieglitz argues 'meaningful participation in democratic processes requires informed participants'.²⁴⁴ Further, international human rights instruments such as Article 23 of the American Convention on Human Rights²⁴⁵ and Article 13 of the ACHPR²⁴⁶ protect the right of the people to take part in public affairs and vote freely to choose their representatives. The relationship between freedom of information and the right to take part in public affairs is also recognised in international human rights jurisprudence.²⁴⁷ Returning to the case of *Claude Reyes v. Chile*, the applicant argued that, under Article 23, the decision of the CIE to approve a privately owned deforestation project is related to activities of public interest and requires citizens to be informed so that they actively participate in overseeing such activities.²⁴⁸ The Inter-American Commission on Human Rights endorsed this claim and decided that withholding information was a violation of the right to freedom of expression, as it hampered people's right to participate in public affairs.²⁴⁹ Similarly, in *Gauthier v. Canada*, a case was filed under Article 25 of the ICCPR to the UN Human Rights

²⁴² ICCPR, above n 21, art 25.

²⁴³ J.S. Fishkin, *Deliberative Polling: Toward a Better -informed Democracy* (Stanford University Center for Deliberative Democracy, 2002).

²⁴⁴ Joseph E. Stiglitz, 'The Role of Transparency in Public Life' in World Bank Group (ed), *The Right to Tell: The Role of the Mass Media in Economic Development* (World Bank, 2002) vol 30,

²⁴⁵ ACHR, above n 120, art 23.

²⁴⁶ ECHR, above n 120, art 6.

²⁴⁷ *Claude Reyes v. Chile*, above n 120.

²⁴⁸ Ibid.

²⁴⁹ Ibid .

Committee on the denial of access to press facilities in the Parliament of Canada.²⁵⁰ The Committee's decision was that, 'citizens, in particular through the media, should have wide access to information and the opportunity to disseminate information and activities about elected bodies and their members'.²⁵¹

To take part in government, citizens need to be informed.²⁵² Information helps people develop their opinions and express their thoughts during an election process.²⁵³ Florini captures the essence of this argument thus: 'a broad right of access to information is fundamental to the functioning of a democratic society.'²⁵⁴ The essence of representative democracy is informed consent, which requires that information about political practices and policies be disclosed'.²⁵⁵ The right to vote and choose government representatives becomes irrelevant when people have no information on how to effectively exercise those rights.²⁵⁶ Through the right to information, citizens have access to various sources of information including the election manifesto and other relevant information that can shape informed consent.²⁵⁷ Further, if people have all the relevant information they can compare candidates and make better judgements.²⁵⁸ Citizens can take part in the democratic process when they are informed about

²⁵⁰ *Gauthier v. Canada* (633/1995), Merits, CCPR/C/65/D633/1995 (1999).

²⁵¹ *Ibid.*

²⁵² Henry Milner, *Civic Literacy: How Informed Citizens Make Democracy Work* (University Press of New England, 2002).

²⁵³ Mark Bovens, 'Information Rights: Citizenship in the Information Society' (2002) 10(3) *Political Philosophy* 317.

²⁵⁴ A. Florini, 'Introduction: The Battle Over Transparency' in A. Florini (ed), *The Right to Know: Transparency for an OpenWorld* (Columbia University Press, 2007) vol 3,

²⁵⁵ *Ibid.*

²⁵⁶ Milner, above n 145.

²⁵⁷ Bovens, above n 146.

²⁵⁸ Fishkin, above n cited in Colin Darch and Peter G. Underwood, *Freedom of Information and the Developing World: The citizens, the state and models of openness* (Chandos Information Professional Series, 2010).

government policies and activities.²⁵⁹ In addition, public awareness can reduce misunderstandings and dissatisfaction.²⁶⁰ An effective political opposition party acts as a watchdog to keep the government in check.²⁶¹ It provides assurance that a monopoly is not in power.²⁶² It is mandatory to have an opposition party and the right to information is essential for opposition to be effective.²⁶³ Democracy is a fundamental principle of the *Constitution of Bangladesh*.²⁶⁴ Article 11 guarantees that ‘the Republic shall be a democracy in which human rights, freedoms, and respect for the dignity and worth of the human person shall be guaranteed’.²⁶⁵ As discussed earlier, the Constitution of Bangladesh ensures freedom of movement and freedom of association and freedom of speech, thought and conscience. The right to access to information is essential in ensuring these rights and other democratic and general principles. Based on the above discussion, the thesis argues that access to information is tied to the right to take part in government and public affairs.

2.4.4 The Right to Information and Its Relationship to Social, Economic and Cultural Rights

There are some human rights that support and reinforce other rights.²⁶⁶ For example, the right to association depends on the right to opinion and expression, freedom of thought

²⁵⁹ Milner, above n 145.

²⁶⁰ Fishkin, above n ; David Banisar, *Freedom of Information in the World 2006: A Global Survey of Access to Government Information Laws* (Privacy International, 2006), 6.

²⁶¹ Ackerman and Sandoval-Ballesteros, above n 24.

²⁶² Fishkin, above n 151.

²⁶³ Bovens, above n 146.

²⁶⁴ *The Constitution of Bangladesh*.

²⁶⁵ Ibid, art 11 .

²⁶⁶ Vienna Declaration and Programme of Action (Adopted by the World Conference on Human Rights in Vienna on 25 June 1993), art 5, art 8.

Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>.

supports voting rights and due process rights support equality rights through avoiding racism in criminal trials. Another example is Article 25(2) of the UDHR that states, ‘Everyone has the right of equal access to public service in his country’. If a government runs a cash-for-work program this would fall under the right to work of the ICSECR. There are eligibility criteria to select the beneficiaries of the scheme: no one can be excluded access to the service by gender, religion or caste under their right to equal access to public services—a civil and political right under Article 21(2) of the UDHR. Similarly, other social economic and cultural rights, for example, the right to education—if there is a public school for children, there is equal right for everyone under Article 21(2). There are other examples that support this argument that human rights are interdependent and indivisible.

According to the Proclamation of Teheran (1968), ‘Since human rights and fundamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible’.²⁶⁷ The Vienna Declaration and Programme of Action (1993) states, ‘All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis’.²⁶⁸ This thesis argues that there is a relationship between access to information—the right to seek, receive and impart information and ideas—and economic and social rights such as the right to work or the right to education.

The ICESCR is the international instrument that deals with economic, social and cultural rights. According to Article 6(1) of the ICESCR, ‘The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right’.²⁶⁹ Further, Article 6(2) states:

[T]o achieve the full realisation of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive

²⁶⁷ The Proclamation of Teheran (1968)(Proclaimed by the International Conference on Human Rights, Teheran, Iran, 13 May 1968) Available at http://legal.un.org/avl/pdf/ha/fatchr/Final_Act_of_TehranConf.pdf.

²⁶⁸ Vienna Declaration and Programme of Action, above n 164.

²⁶⁹ ICSECR, above n 10, art 6(1).

employment under conditions safeguarding fundamental political and economic freedoms to the individual.²⁷⁰

As a signatory of ICESCR by ratification, Bangladesh acknowledges social, economic and cultural rights, particularly the right to work and equality of opportunity, in the service of the Republic.²⁷¹ According to Article 29(1) of the *Constitution*, ‘There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic’.²⁷² In addition, Article 29(2) states, ‘No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic’.²⁷³ In addition, Article 29(3) states:

Nothing in this article shall prevent the State from (a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic; (b) giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination; reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.²⁷⁴

Consequently, there are clear and specific provisions in the International Bill of Human Rights and the *Constitution* ensuring people’s social, economic and cultural rights. In a general comment on the interpretation of the economic and social rights under the ICESCR, the UN Committee on Economic, Social and Cultural Rights advises, ‘organisations to seek, receive and impart information on all social security entitlements in a clear and transparent manner’.²⁷⁵ The relationship between freedom of information and social and economic and cultural rights is recognised in international human rights

²⁷⁰ Ibid.

²⁷¹ See https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty

²⁷² *The Constitution of Bangladesh*, art 29(1).

²⁷³ Ibid.

²⁷⁴ *The Constitution of Bangladesh*, art 29(2).

²⁷⁵ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The Right to Social Security (art 9)*, 4 February 2008, E/C.12/GC/19; 15 IHRR 605 (2008).

jurisprudence.²⁷⁶ In the case of *Marangopoulous Foundation for Human Rights v. Greece*, the European Human Rights Committee found that the Greek government failed to provide information to the public about pollution resulting from lignite mining, breaching the right to health and the right to safe and healthy working conditions under Articles 11 and 3 of the European Social Charter, respectively.²⁷⁷ Under Article 11, it is the duty of the government to inform and educate the public on environmental hazards.²⁷⁸ The government of Greece failed to provide information or develop a valid educational policy aimed at the people living in the lignite mining areas.²⁷⁹ Further, the government failed to provide reasonable explanation and information on the number of accidents in the mining sector, a violation of Article 3.²⁸⁰

In the context of Bangladesh, the relationship between the right to information and social, economic and cultural rights was recognised in *Ain o Salish Kendra & Ors v. Government of Bangladesh*.²⁸¹ In this case, the petitioners challenged the decision to evict the slum-dwellers of Dhaka on the excuse provided by the government that the slums had become the dens and kingdoms of terrorists who affected the lives of innocent city-dwellers.²⁸² The petitioners argued that the wholesale eviction of slum-dwellers without prior notice or alternative housing schemes would violate the slum-dwellers' right to acquire a livelihood. The court suggested a phase-by-phase approach to the eviction, requiring the government to develop a master plan to guarantee slum-dwellers their minimum necessities of life.²⁸³

²⁷⁶ *Marangopoulous Foundation for Human Rights v. Greece*, Complaint No. 30/2005, European Committee of Social Rights (E.C.S.R.) (2006).

²⁷⁷ *Marangopoulous Foundation for Human Rights v. Greece*, above n 169.

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid.*

²⁸¹ *Ain o Salish Kendra & Ors v. Government of Bangladesh* See:4 MLR (HC) 358.

²⁸² *Ain o Salish Kendra & Ors v. Government of Bangladesh*, above n179.

²⁸³ *Ibid.* Attorney General Mahmudul Islam arguing on behalf of the state, para 5.

Better access to information can encourage better economic participation by citizens.²⁸⁴ When citizens have the right to access information, they can understand how government programs operate and how to access the services that their government offers.²⁸⁵ Through access to information, citizens can influence government if they identify any discrepancies.²⁸⁶ Better access to information can ensure better participation and better life outcomes.²⁸⁷ People want to know about the things that affect their day-to-day lives that can contribute to a better livelihood. For example, citizens who have knowledge of government-run social safety net programs can receive the benefits they are entitled to, and farmers who receive information about government training programs on agriculture and livestock can learn how to improve their production output, ultimately contributing to their livelihoods. People want to know and be informed about what the government is doing and what may benefit their social and economic situation. The above discussion establishes the relationship between access to information and social, economic and cultural rights, particularly the right to work and equality of opportunity in employment in the services of the Republic.

2.5 Conclusion

This chapter discussed in detail the meaning of the right to information and its origin and relationship to other human rights. Although the right to information has not been given a special place in the International Bill of Human Rights, it is recognised as an integral part of freedom of expression, thought and opinion. It is related to various other rights as a key component to ensure civil and political or social, economic and cultural rights. The chapter discussed some of these relationships extensively and established the significance of the right to information as a human right in these relationships. Access to information is key to ensuring both civil and political rights, and social, economic

²⁸⁴ Tara Vishwanath and Daniel Kaufmann, 'Towards Transparency in Finance and Governance' (1999) <https://ssrn.com/abstract=258978> or <http://dx.doi.org/10.2139/ssrn.258978> SSRN .

²⁸⁵ Bovens, above n 146.

²⁸⁶ Ibid.

²⁸⁷ Wolfowitz and the 'T' word, cited in T McIntosh, 'Freedom of Information Laws Added to the Development Agenda' (Freedominfo.org, 2006) <http://www.freedominfo.org/2006/03/foi-laws-and-development-agend/>; Daniel Kaufmann and Tara Vishwanath, 'Toward Transparency: New Approaches and their Application to Financial Markets' (2001) 16(1) *The World Bank Research Observer* 41.

and cultural rights. It is one of the core essentials to a well functioning democracy. It contributes to form informed citizens and their democratic rights to vote, and express opinion. Also, by allowing people to seek and receive information, citizens's participation in public life and decision-making is ensured. As a signatory of the ICCPR and ICSECR by ratification, Bangladesh has incorporated some of these areas of human rights. Despite Bangladesh having no special provision in the *Constitution* for the right to information, it has been recognised as a core element to ensure freedom of expression, conscience and thought. In addition, the introduction of the RTI Act in 2009 contributes to the commitment to ensure civil and political rights, as well as social, economic and cultural rights in Bangladesh. The following chapters discuss the areas of implementation of the RTI Act in Bangladesh and examine whether the purpose of making government information accessible to its citizens is fulfilled.

Chapter 3: Implementation of the Right to Information Act in Bangladesh: Concepts and Framework

3.1 Introduction

Why is the implementation of some policies successful in achieving the desired outcome while other implementations are not? In this thesis, the term ‘implementation success’ is used to define the stage of implementation when the official objective of a policy is achieved and the expected outcomes set by the policymakers are met. Hogwood and Gunn identified three broad reasons for variations in implementation success.²⁸⁸ These include the absence of execution, policy and luck. Absence of execution, or non-implementation, means a policy is not put into effect as intended. This could occur because those involved in the policy’s implementation were not supportive or efficient, or their efforts were not enough to overcome obstacles over which they had little or no control. Thus, the policy may be ineffectively implemented and viewed by the initiators of the policy as badly executed. Absence of policy, or unsuccessful implementation, means a policy is carried out in full, but fails to produce the intended results or outcomes. The explanations for policy failure could include inadequate information, defective reasoning or unrealistic assumptions. Absence of luck refers to a situation in which the policy is a sound one and implementation is carried out as intended, but the policy fails due to some other factors beyond the control of the policymakers.²⁸⁹ However, the thesis disagrees with Hugwood and Gunn’s claim that policy implementation may fail solely due to bad luck. The argument of the thesis is that implementation fails due to a combination of factors that include institutional, behavioural, cultural, socio-economic and political. If we examine the policy literature in the context of Bangladesh, the study’s finds that implementation of a significant number of policies were affected by these factors.

²⁸⁸ Brian W. Hogwood and Lewis A. Gunn, *Policy Analysis for the Real World* (Oxford University Press, 1985).

²⁸⁹ Ibid.

Is there such thing as a perfect implementation? How can we ensure an implementation process is successful? The idea of perfect implementation can be traced back to Hood's study in which he introduces the concept of 'perfect administration'.²⁹⁰ However, the idea of perfect administration is criticised by many. Gunn and Hogwood argue that perfection is an analytical concept or idea and not, in the informal sense of the term, an ideal to be achieved.²⁹¹ They further argue that several of the logical pre-conditions of perfect implementation, such as perfect obedience or perfect control, are morally and politically unacceptable and unattainable in a pluralistic democracy.²⁹² Similarly, Pressman and Wildavsky, Bardach, Van Meter and Van Horn, Kaufman, King and Etzioni also argue that perfect implementation is likely to be virtually unattainable in practice.²⁹³ This thesis argues that it is difficult to claim that there is one universally acceptable model of implementation or a universal model of implementation for the RTI Act. The thesis discusses this concept in the following sections.

The implementation approach can vary in context for social, cultural or historical, political and economical factors, in which a particular position is taken on the objective the policy aims to achieve. Two schools of thought are largely evident in most of the implementation literature—the top-down approach and the bottom-up approach. Both approaches have their merits and demerits. This will be discussed in further detail later in the Chapter. The approach most suitable in a given situation depends on the context of the policy in which the implementation will take place. In some cases, neither of these approaches fully justifies the context. In such situations, attempts have been made by scholars, such as Winter and Sabatier, to synthesise both approaches and adopt an

²⁹⁰ Christopher Hood, *The Limits of Administration* (John Wiley & Sons Canada, 1976).

²⁹¹ Hogwood and Gunn, above n 1.

²⁹² Ibid.

²⁹³ A. Etzioni, *Modern Organizations* (Prentice-Hall, 1964); Jeffrey L Pressman and Aaron Wildavsky, *Implementation* (University of California Press Third ed, 1984); Herbert Kaufman, *Are Government Institutions Immortal?* (Brookings Institution, 1976); Eugene Bardach, *The Implementation Game: What Happens After a Bill Becomes a Law?* (The MIT Press, 1977); Carl E. Van Horn and Donald S. Van Meter, 'The Policy Implementation Process: A Conceptual Framework' (1975) 6 *Administration & Society* 445; H Kaufmann, *The Limits of Organizational Change* (University of Alabama Press, 1971).

integrated approach to achieve the objective of the policy.²⁹⁴ The thesis discusses different implementation approaches later in this chapter.

The core objective of the RTI Act in Bangladesh is to ensure people's access to government information. To measure the implementation performance of the RTI Act, the study adopts an integrated approach including components from both top-down and bottom-up models. The central hypothesis of the framework is that the implementation success of the the RTI Act depends on behavioural, institutional, cultural, socio-economic and political conditions. The more favourable these conditions are, the greater the possibility of a successful implementation. In this thesis, implementation of the RTI Act not only refers to the implementation of rules and policy directives from the Information Commission or ministries, but also to the capacity and behaviour of frontline implementers and the inclusion of local voices and perceptions. In this section, the thesis discusses the top-down and bottom-up perspectives and develop a theoretical framework for the study

3.2 Policy Dynamics of the RTI Act of Bangladesh

Like many other countries of the world, Bangladesh has become a signatory of ICCPR and ICESCR late in 1990s. Even though many of the provisions stated in the UDHR, the ICCPR and the ICESCR have been included in the constitution of Bangladesh, there have been instruments used in the administration of public services to protect government disclosure of information. The Official Secrecy Act Of 1923²⁹⁵ and The Penal Code 1860,²⁹⁶ The Evidence Act 1872,²⁹⁷ and The Rule of Business of 1966²⁹⁸ had elements that promoted government secrecy. These features were later adapted in the Government Service (Conduct) of 1979²⁹⁹ restricting people's access to information. The habits of secrecy had been a key feature in the Indian civil service, which, later

²⁹⁴ Søren C. Winter, 'Implementation' in Guy Peters and Jon Pierre (eds), *Handbook of Public Policy* (SAGE, 2006) ; Paul A. Sabatier, 'Top-down and Bottom-up Approaches to Implementation Research: A Critical Analysis and Suggested Synthesis' (1986) 6(1) *Journal of Public Policy* .

²⁹⁵ The Official Secrets Act 1923.

²⁹⁶ The Penal Code 1860.

²⁹⁷ The Evidence Act 1872.

²⁹⁸ The Rule of Business of 1966.

²⁹⁹ The Government Service (Conduct) of 1979.

translated into the civil service of Pakistan and in the public administration of Bangladesh after its independence.³⁰⁰ The tendency to restrict information disclosure to legitimize malpractices to restrain power has had a major contribution to institutionalize corruption and the culture of secrecy in the public services of Bangladesh.³⁰¹ Corruption had grown gradually and reached a new high as Bangladesh ranked number one in the list of most corrupt countries in the world.³⁰² In this backdrop, there are actors, particularly, policy advocates and other stakeholders started claiming that there is a need for transparency and accountability in government operation. In addition, the country must bring in a law to ensure that. Eventually, the RTI Act of Bangladesh was introduced in 2009. The following section, the thesis briefly discusses its agenda making and formulation process.

3.2.1 Agenda Setting and Formulation Process of the RTI Act

From the agenda setting process to its formulation and later, while it is implemented, there are several contributing actors and factors in the making of a policy. Calling these actors as '*Policy Entrepreneurs*', John Kingdon in his Multiple Stream Model argues that some issues make into the process of agenda making and become an agenda because there is a genuine problem that requires immediate government action.³⁰³ He further claims that there are problems that make the ways to become an agenda to address national mood, administrative or legislative turnover, and interest group pressure campaigns; and then, there are some agendas that come from experts and analysts who examine problems and recommend policy solutions from various possibilities and alternatives.³⁰⁴ Kingdon argues that these three categories of streams shall interact to produce 'windows of opportunities' for agenda setting. So, these actors and factors interplay and influence the government to meet their interests. If the making of the RTI laws across the world are to be analyzed, scholars such as Michener in his

³⁰⁰ Zafarullah, Habib and Ahmed Shafiqul Huque, 'Public Management for Good Governance: Reforms, Regimes, and Reality in Bangladesh' (2001) 24(12) *International Journal of Public Administration* 137

³⁰¹ Ibid.

³⁰² Iftekharuzzaman, 'Implementing Right To Information In Bangladesh: Opportunities And Challenges' (Paper presented at the RTI Implementation: Law, Institutions and Citizens, Dhaka, 21-22 June 2009)

³⁰³ Kingdon, [John W.](#) *Agendas, Alternatives, and Public Policies* (Little, Brown, 1984).

³⁰⁴ Ibid.

study on Latin America,³⁰⁵ Panday and Rabanni in their study on Bangladesh,³⁰⁶ Gill and Hughes in their study on Mexico,³⁰⁷ Darch and Underwood in their study on Global South,³⁰⁸ particularly on South Africa have identified several factors that contribute to the introduction of the RTI law. These include-influence of political and administrative executives,³⁰⁹ politics and power relations,³¹⁰ accountability strategy,³¹¹ administrative control,³¹² influence of international development agencies,³¹³ regional and international trends and political environment,³¹⁴ influence of non—state actors, particularly CSOs.³¹⁵ To set up an agenda and also in the formulation process, various interest groups and different actors including CSOs and international development community took initiatives from 2000 onwards.³¹⁶ The following section analyses how the RTI Act in Bangladesh is made and the factors that influences its agenda setting and formulation process.

³⁰⁵ Michener, Greg, 'Towards an Agenda-Setting Theory of Freedom of Information Reform: the Case of Latin America' (Paper presented at the 1st Global Conference on Transparency Research Rutgers University, Newark, 19-20 May 2011)

³⁰⁶ P. K. Panday and Golam Rabbani, 'Freedom of Information in Bangladesh: Policy Dynamics, Present State, and Challenges' in Meghna Sabharwal and Evan M. Berman (eds), *Public Administration in South Asia: India, Bangladesh, and Pakistan* (Taylor and Francis, 2010).

³⁰⁷ Gill, J., & S. Hughes, (2005), 'Bureaucratic Compliance with Mexico's New Access to Information Law' (2005)22(2) [Critical Studies in Media Communication](#) 121

³⁰⁸ Darch, Colin and Peter G Underwood, *Freedom of Information and the Developing World: The Citizen, the State and Models of Openness* (Chandos Publishing, 2010)

³⁰⁹ Gill and Hughes, above n 5.

³¹⁰ Xiao, *Weibing*, Freedom of Information Reform in China: Information Flow Analysis (Routledge, 2011); Berliner, Daniel, 'The Political Origins of Transparency' (2014) 76(2) The Journal of Politics, Vol. 76, No. 2, 479

³¹¹ P. K. Panday and Golam Rabbani, above n 19.

³¹² Banisar, David, *Freedom of Information in the World 2006: A Global Survey of Access to Government Information Laws* (Privacy International, 2006)

³¹³ Ackerman, John M and Imra E Sandoval-Ballesteros, 'The Global Explosion of Freedom of Information Laws' (2006) 58(1) *Administrative Law Review* 85.

³¹⁴ Banisar, above n 25.

³¹⁵ P. K. Panday and Golam Rabbani, above n19.

³¹⁶ Rahman, T., RTI Implementation in Bangladesh: Taking it to the Next Phase, In *Transparent Governance in South Asia*, India. (Indian Institute of Public Administration, 2009); Iftekharuzzaman, above n)

3.2.1.1 Role of Actors: Civil Society

In the early 1980s when the military regime of that time restricted press freedom, the press council of Bangladesh³¹⁷ articulated the demand for a law on freedom of information. Even though the attempt was unsuccessful, there was a section in the development community who continued advocating for government transparency.³¹⁸ At the same time, there was an internal trend towards adopting freedom of information law as a part of democratic transition in politics across the world.³¹⁹ That also motivated different actors including NGOs, media, academics, think tank and research institutions to introduce a FOI law to ensure government transparency and accountability, and break the culture of secrecy which became a part of the governance system in Bangladesh.³²⁰ A number of CSOs began discussing the introduction of a RTI regime.³²¹ The RTI movement of 1996, led by Mazdoor Kisan Shakti Sangathan (MKSS)³²² in Rajasthan, India, also inspired NGOs in Bangladesh to discuss a legal right to freedom of information.³²³ In 1999, Ain O Salish Kendro (ASK)³²⁴ and Bangladesh Legal Aid

³¹⁷ The Press Council of Bangladesh is a quasi-judicial body of media, responsible for regulating the activities of the media in Bangladesh.

³¹⁸ Anam, S., 'Ensuring Implementation of RTI following Pro-Poor Approach: Role and Potential of Media' (Key note paper for the Advocacy Workshop, 30 May 2009) Available online at: http://www.mrdibd.org/downloads/Keynote_RTI.pdf, 08.02.2011).

³¹⁹ Ackerman, John M and Imra E Sandoval-Ballesteros, above n.

³²⁰ Anam, Shaheen, "'How RTI Act 2009: Evolved in Bangladesh' in Syeed Ahamed and Ashiqun Nabi (eds), *Right to Information Act (RTIA) in Bangladesh: Challenges of Implementation* (Right to Information Forum, 2012)

³²¹ Ibid.

³²² Mazdoor Kisan Shakti Sangathan (MKSS), a group of farmers and rural workers in India, undertook one of the most significant movements demanding a transparent government operation. There were marches, rallies, hunger strikes and sit-in protests for disclosure of information such as mater rolls (daily record of payment of wages) and expenses-related documents from public authorities. MKSS organised '*jan sunwais*' (public hearings) about government activities and expenditures, exposing massive corruption. Following this successful movement, MKSS began to advocate for the people's right to access to information and called for massive movement for a legislation. This was eventually successful and India introduced the Right to Information Law in 2005.

³²³ In 1999, a three-day seminar, led by the Commonwealth Human Rights Initiative, Ain O Salish Kendra and Bangladesh Legal Aid Service Trust was held to analyse the prospect of access to information in South Asia. This seminar played a significant role in strengthening the idea. Later, more NGOs, civil society and citizens joined in and demanded recognition of access to information and legislation.

Service Trust (BLAST)³²⁵ in a partnership with the Commonwealth Human Rights Initiative (CHRI) organized a seminar in Dhaka to have a situational assessment of FOI in South Asia.³²⁶ This particular event has a significant role in engaging different stakeholder to promote FOI at different ways.³²⁷ In 2002, the Bangladesh Law Commission wrote a draft of the RTI Act; however, it was never enacted. Even though there was not much of a success for these groups, they kept raising the issue and formed a platform in 2005 with like minded NGOs which was aiming at advocating on people's right to know and their access to government information.³²⁸ With the continuous effort to set up an agenda, CSOs was finally become successful in insisting the Care Taker Government to issue a gazette notification promulgating the RTI Ordinance in 2008.³²⁹ In the process of making the law three core groups were involved-law drafting core group, policy advocacy core group and awareness building core group.³³⁰ The policy advocacy and awareness building group, which was led by Manushher Jonno Foundation and Commonwealth Human Rights, provided technical assistance.³³¹ They also developed communication materials such as leaflet, brochure, play and documentary, write articles, hold TV talk shows, orientation with local NGOs and journalists, policy makers, etc to promote RTI Law at different levels.³³² Regional and international alliances were formed with national and local partners such as Transparency International Bangladesh, PET, Bangladesh Enterprise Institute, SUPRO, SANAK, Article 19, Commonwealth Human Rights Initiative and MKSS.³³³ Besides, well known academics and celebrities were also approached to promote the RTI Law. The Right to Information (RTI) Forum consisting of 40 members was set up in 2008 with an objective to strengthen the policy making process and also to monitor its

³²⁴ ASK is a legal aid and human rights organization which is based in Bangladesh

³²⁵ BLAST is a human right organization involving in legal aid assistance to the poor and the marginalized people

³²⁶ Anam, above n33; Iftekharuzzaman, above n15.

³²⁷ Anam, above n33; Panday and Rabbanni, above n19

³²⁸ Iftekharuzzaman, above n15.

³²⁹ Anam, above n33.

³³⁰ Ibid.

³³¹ Ibid.

³³² Panday and Rabbanni, above n 19.

³³³ Ibid.

implementation once the law is enacted. The RTI Forum alongside the CSOs also sat with the political parties to take assurance from them to make it passed after national election of 2008.

3.2.1.2 Political Actors

Gill and Hughes in his study on assessing the policy making process of Mexico has claimed that political actors can have a significant influence on the final outcome of policy or law and also its implementation process.³³⁴ If the policy making process of the RTI Act of Bangladesh is analyzed it clearly shows the involvement of key political actors in this process. The caretaker government has played in initiating the process by forming the law drafting group with noted legal experts who gave inputs and feedback and reviewed several drafts and held national level consultation before presenting it to the Law, Justice and Parliamentary Affairs and Information Advisor of the Care Taker Government³³⁵ in March 2007. Later in the same year, an official declaration came from the Care Taker Government of the introduction of the RTI law and it also assigned the Ministry of Information to prepare the draft law in line with the early draft presented in March by the Civil Society Group.³³⁶ The Ministry of Information formed a working group, in which the Manusher Jonno Foundation was a part of, to prepare the draft and finalized the law. Just before finalizing the law, the Ministry of Information held a seminar and invited feedbacks.³³⁷ They also put up on their website for public comments, which, in fact, the first ever opportunity for the public to participate in the policy making process. The law was approved by the council of advisors in September 2008 and then passed by the president through an Ordinance in October 2008.³³⁸ Apart from the caretaker government, both the leading political parties that include Bangladesh Nationalist Party and the Awami League (AL) had made the commitment through the election manifesto to pass the law in the parliament after the

³³⁴ Gill and Hughes, above n 20.

³³⁵ A caretaker government is a form of interim government that works during the transition from one elected government to another. This happens when an elected government ends its tenure and hands over power to an interim government. A caretaker government is formed with a small group of individuals who are not affiliated with any political parties and whose main role is to hold a free and fair election.

³³⁶ Iftekharuzzaman, above n15.

³³⁷ Anam, above n33.

³³⁸ Ibid.

election of 2008.³³⁹ Soon after the election of 2008, the RTI law was approved in the cabinet on March 28, 2009 and passed on March 2009 in the very first session of Parliament. AL's election manifesto which stated its long term vision termed as '*Digital Bangladesh*' - to include digital practices in all spheres of public services has had a close relationship with the introduction of the RTI Act.³⁴⁰ So, political actors, in the case of Bangladesh, has both supported and restrained the policy making process of the RTI Act.

3.2.1.3 International and Regional Actors

Darch and Underwood³⁴¹ in their study on Global South, Ackerman and Sandoval-Ballesteros³⁴² in his study on global expansion of FOI Laws and Xiao in his study on China³⁴³ and Berliner³⁴⁴ in on transparency laws have clearly stated that FOI laws have a strong connection with the international political environment and international actors that contribute to the process of bringing it in the agenda making process and later on influencing the formulation process. The thesis has already discussed elaborately on how the UDHR and The Bill of Rights had an impact of member's countries to make provision for access to information by either including it in the constitution or making FOI laws to ensure citizen's legal entitlements. Bangladesh has been no exception. Being the signatory to the ICCPR and ICSECR, have had a binding to ensure people's right to freedom of thought, conscience and speech and to ensure these right there is a pressure on the government of Bangladesh to introduce a legislation on FOI. Apart from that, with a declining reputation for not being transparent and accountable, Bangladesh needed to repair its image of being the most corrupted country in the world.³⁴⁵ There

³³⁹ Panday and Rabbanni, above n19.

³⁴⁰ Ibid.

³⁴¹ Darch, Colin and Peter G Underwood, *above n 6*.

³⁴² Ackerman and Sandoval-Ballesteros, above n 26.

³⁴³ Xiao, above n 23.

³⁴⁴ Berliner, Daniel, 'Transnational Advocacy and Domestic Law: International NGOs and the Design of Freedom of Information Laws', (2016) 11(1) Review of International Organizations.121; Berliner, Daniel, and Erlich, Aaron, 'Competing for Transparency: Political Competition and Institutional Reform in Mexican States', (2015)109(1)American Political Science Review 110.

³⁴⁵ Panday and Rabbanni, above n19.

was a pressure from the development partners to regain that and introduce mechanism to combat corruption as aid conditionality.

So if all these factors are considered and the policy making process is summarized, it clearly shows that Bangladesh has been facing the challenges of corruption due to lack of transparency and accountability in public administration. So, there was a need to address this issue for agenda setting. Similarly, there has been constant demand from the CSOs, particularly experts and academics to address the issue of corruption and introduce a law that reduce systematic corruption and ensure government transparency. There was also a pressure building up on the government to take required measure to restore the image of the country as a corrupt country and send a message to the donor and international community and the community that the government is willing to address the issue. In the case of Bangladesh, all the three streams have interacted and the RTI become an agenda and the RTI law was eventually enacted by the government of Bangladesh in 2009. The following figure shows the making of the RTI Act of Bangladesh sequentially.

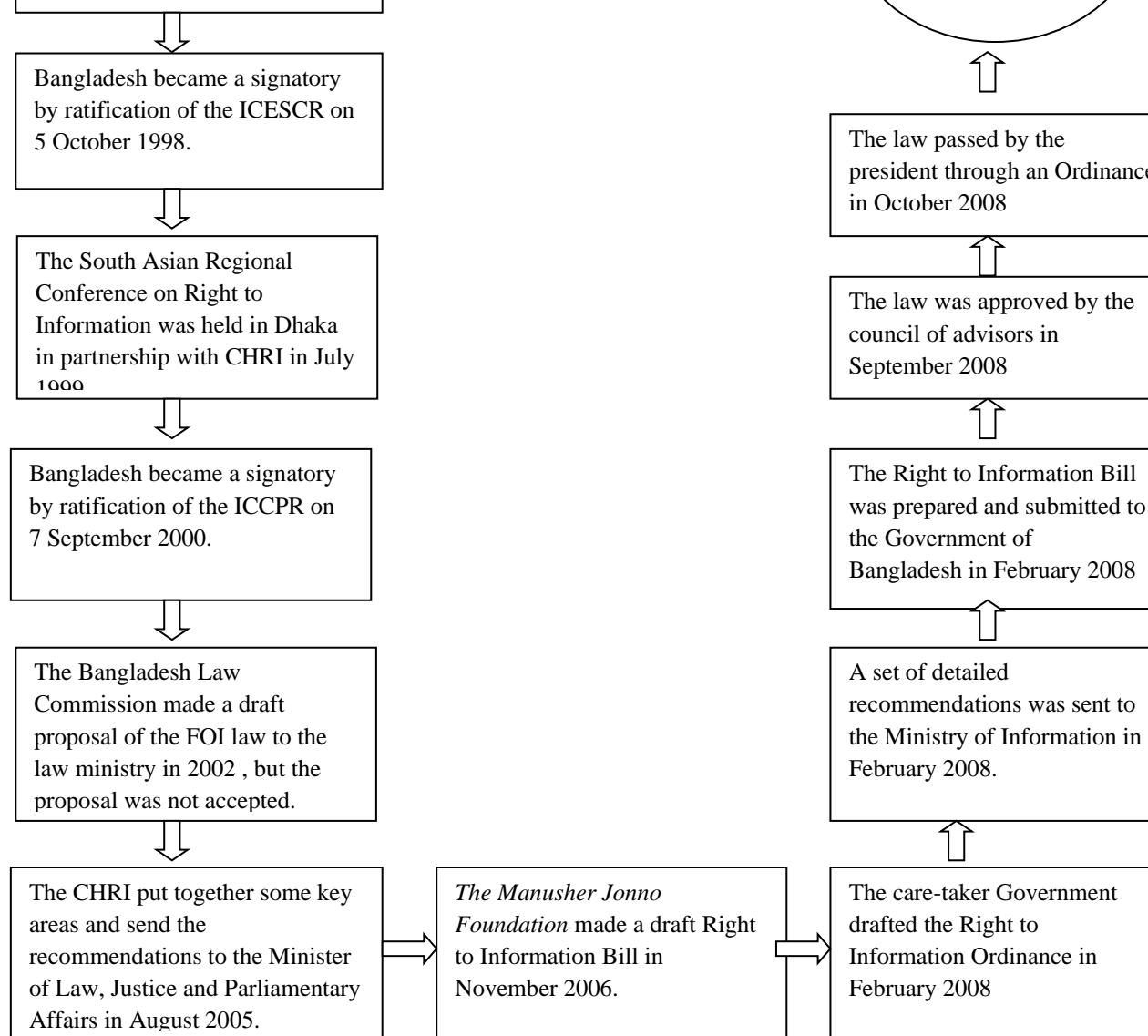


Figure: The Policy Making Process of the RTI Act of Bangladesh

3.3 Different Approaches to Implementation

Until the early 1970s, many policy scientists ignored the significance of implementation, assuming that once a policy decision has been made, the bureaucracy would carry it out.³⁴⁶ Pressman and Wildavsky were the first to identify that one of the main reasons behind policy failure was the way in which it was implemented.³⁴⁷ In studying why US Federal Programs for unemployment failed in Oakland, California, the researchers found that the programs were not implemented the way in which the policymakers had anticipated.³⁴⁸ Similarly, the Great Society programs of the Johnson

³⁴⁶ Jeffrey L. Pressman and Aaron Wildavsky, *Implementation: How Great Expectations in Washington Are Dashed in Oakland* (University of California Press, 1973).

³⁴⁷ Pressman and Wildavsky, above n 6.

³⁴⁸ Ibid.

administration had failed to achieve their intended objectives due to the way they were implemented.³⁴⁹ Later, numerous works validated the claim that the policies were unsuccessful as the process of implementation was not appropriate.³⁵⁰ Over the past four decades, different approaches have been used in implementation research. These include structural, procedural, managerial, behavioural and political approaches,³⁵¹ research strategies, standards and methodologies (e.g., single case multiple data sources, qualitative interviews, observation, behavioural outputs or outcomes)³⁵² and concepts as a dependent variable (e.g., implementation as a process v. implementation as an outcome).³⁵³ From its early development in the 1970s, implementation has become an independent field and an integral part of the policy process.³⁵⁴ Implementation has also undergone a transformation as contrasting perspectives—such as top–down and bottom–up—have emerged and developed over time.

3.3.1 Top–Down Approach

The top–down approach focuses on goals and means to achieve the expected end results. Top–down researchers emphasise specific political decisions or laws and follow the implementation down through the system.³⁵⁵ They tend to give advice on how to structure the implementation process from the top to achieve the purpose of the legislation in the best way.³⁵⁶ This minimises the number of decision points that could be vetoed.³⁵⁷ The top–down approach is based on the proposition of hierarchy, in which

³⁴⁹ Michael Hill and Peter Hupe, *Implementing Public Policy: An Introduction to the Study of Operational Governance*. (SAGE, 2008).

³⁵⁰ Benny Hjern and Chris Hull, 'Implementation Research as Empirical Constitutionalism' (1982) 10(2) *European Journal of Political Research* 105; Meter and Horn, above n 5; Hill and Hupe, above n 11

³⁵¹ Hogwood and Gunn, above n 1.

³⁵² Ibid.

³⁵³ Robert K. Yin, *Applications of Case Study Research* (SAGE Publications, Inc, THIRD EDITION ed, 2011).

³⁵⁴ Pressman and Wildavsky, above n 6.

³⁵⁵ Hill and Hupe, above n 11.

³⁵⁶ Ibid.

³⁵⁷ Winter, above n 7.

top level politicians and senior bureaucrats create policies or statutes to be followed by frontline bureaucrats and officials to achieve the end results and to minimise the chances of disagreement in the implementation process.³⁵⁸ A top-down approach is effective when it requires immediate action and less veto points to address an issue,³⁵⁹ such as an emergency response or crisis management.

The top-down approach has received criticism, mainly from the bottom-up theorists. Berrett and Fudge (1981) criticise the top-down view of an implementation in which implementers work as the agents of those responsible for making the policy.³⁶⁰ They add that:

[R]ather than treating implementation as the transmission of policy into a series of consequential actions, the policy-action relationship needs to be regarded as a process of interaction and negotiation, taking place over time, between those seeking to put policy into effect and those upon who action depends on.³⁶¹

The top-down approach has been criticised, mainly by bottom-up thinkers, for overemphasising top level positions such as senior politicians, bureaucrats and officials.³⁶² It also sidelines the people who work at the lower level.³⁶³ Consequently, the policies designed at the top level barely reflect the voice of the beneficiaries, and thus, face challenges at the implementation level due to a lack of practical understanding.

³⁵⁸ Soren Winter, 'Implementation' in B. Guy Peters and Jon A. Pierre (eds), *Handbook of Public Administration* (Sage Publication, 2003); Michael Howlett, M. Ramesh and Antony Perl, *Studying Public Policy: Policy Cycles and Policy Subsystems* (Oxford University Press, Third ed, 2009); Paul A. Sabatier, 'Top-Down and Bottom-Up Approaches to Implementation Research: A Critical Analysis and Suggested Synthesis.' (1986) 6(1) *Journal of Public Policy* 21.

³⁵⁹ Richard E. Matland, 'Synthesizing the Implementation Literature: The Ambiguity-Conflict Model of Policy Implementation' (1995) 5(2) *Journal of Public Administration Research and Theory* 145.

³⁶⁰ Susan Barrett and Colin Fudge, *Policy and Action: Essays on the Implementation of Public Policy* (Methuen, 1981).

³⁶¹ Ibid.

³⁶² Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*. (Russell Sage Foundation, 1980); Richard F. Elmore, 'Organizational Models of Social Program Implementation.' (1978) 26(2) *Public Policy*; Sabatier, above n 13.

³⁶³ Lipsky, above n 24.

Hjern, Lipsky, Hejrn and Porter criticise the top-down theorists for their failure to recognise the role of officials and government representatives who are involved in the day-to-day implementation at the lower level.³⁶⁴ This thesis would describe the top-down approach as an implementation, meaning that it is driven by hierarchy and rules and directives from top level bureaucrats and political representatives. One of the main limitations in the top-down approach is the question of citizens' understanding and their inclusion in the process of implementation is irrelevant. In the policy literature, there is evidence of policies that did not work out well in Bangladesh that prove this claim.³⁶⁵ A landmark policy initiative in recent years is the Chittagong Hill Tract Accord (CHT Accord), introduced by the government in 1997.³⁶⁶ This was a widely acclaimed move that was expected to bring a solution to the long and violent conflict in the CHT.³⁶⁷ Unfortunately, studies show that it was unsuccessful, due to the lack of inclusion of the target population in the making and implementation of the policy.³⁶⁸ Later in the thesis, evidence will be presented in the context of the RTI Act and explain why a top-down implementation would not be an ideal approach for the implementation of the RTI Act in Bangladesh.

³⁶⁴ Hjern and Hull, above n ; Benny Hjern and David Porter, 'Implementation Structures: A New Unit of Administrative Analysis' (1981) 2 *Organization Studies* 211.

³⁶⁵ Ahmad, A J Uddin Minhaj, 'Problems of Co-ordination in Upazila Administration in Bangladesh' (1991) 11(1) *Public Administration and Development* 25; Ahmed, Nizam, 'Experiments in Local Government Reform in Bangladesh' (1988) 28(8) *Asian Survey* 813; Huque, Ahmed S. , 'The Politics of Local Government Reform in Rural Bangladesh' (1985) 5(3) *Public Administration and Development* 205; Zafarullah, Habib and Bijoy Kumar Banik, 'Muddling Through: Limitations and Challenges of the Health Policy Process in Bangladesh' (2015) 9(3) *Journal of Asian Public Policy* 211

³⁶⁶ M. Rashiduzzaman, 'Bangladesh's Chittagong Hill Tracts Peace Accord: Institutional Features and Strategic Concerns' (1998) 38(7) *Asian Survey* 653; Chowdhury, above n .

³⁶⁷ Chowdhury, above n ; Amena Mohsin, *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace* (Lynne Rienner Publishers, 2003).

³⁶⁸ Ishtiaq Jamil and Pranab Panday, 'Conflict in the Chittagong Hill Tracts of Bangladesh: An Unimplemented Accord and Continued Violence' (2009) 49(6) *Asian Survey* 1052; Chowdhury, above n ; Mohsin, above n 19.

3.3.2 Bottom–Up Approach

In the late 1970s and 1980s, the bottom–up approach emerged as an alternative to the top–down theories.³⁶⁹ The bottom–up approach rejects the idea that decisions are made by the top level and that implementation outcomes are measured as the fulfilment of objectives set by policy directives from top level bureaucrats and policymakers.³⁷⁰ Bottom–up theorists focus on the frontline workers and their contribution towards successful policy implementation.³⁷¹ Lipsky questions the influence of top level bureaucrats and the assumption that the central government is responsible for policy outcomes. He argues that the discretionary decisions that the lower-level bureaucrats make are more important in the implementation process and that this group should be considered the real policymakers.³⁷² He further argues, ‘the decision of the street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work under pressures, effectively become public policies they carry out’.³⁷³ Hjern and Hull note that informal implementation structures are far less hierarchical compared to the formal implementation structures of top–down approaches and often cross organisational borders to form collaborative networks at the operational level.³⁷⁴ Other bottom–up theorists, Barrett and Fudge, consider implementation an integral and continuing part of the policy process—a political rather than managerial process in which negotiation and compromises within organisations determine the success or failure of the policy.³⁷⁵ There are criticisms on the bottom–up approach to implementation.³⁷⁶ Sabatier criticises the focus on peripheral staff who might frustrate

³⁶⁹ Hill and Hupe, above n 11.

³⁷⁰ Matland, above n 21.

³⁷¹ Elmore, above n ; Barrett and Fudge, above n ; K. Hanf and F. Scharpf, *Interorganizational Policy Making: Limits to Coordination and Central Control*. (Sage, 1978); Hjern and Hull, above n ; Sabatier, above n 13.

³⁷² Lipsky, above n 24.

³⁷³ Ibid .

³⁷⁴ Hjern and Hull, above n 12.

³⁷⁵ Barrett, Susan and Hill, Michael, 'Policy, Bargaining and Structure in Implementation Theory' (1984) 12: 219–40. *Policy and Politics* 219.

³⁷⁶ Matland, above n 21.

the policymakers at the top.³⁷⁷ Further, the approach is more focused on interaction and response strategies to the policy rather than its implementation.³⁷⁸ Linder and Peter find the bottom-up thinkers' claim that the success or failure of the implementation process is determined by lower-level bureaucrats to be an overestimation of the bureaucrats' roles in making the policy.³⁷⁹ The thesis describes the bottom-up implementation approach as one in which frontline workers are involved in the making and execution of the policy and are given the choice to adopt strategies based on local conditions that affect people in their everyday lives. One limitation of the bottom-up approach is that it undermines the capacity of policymakers in a democratic political system and their mandate to take policy actions on behalf of their constituents. In addition, it ignores the capacity of frontline implementers or the target population to make their own policy decisions and implementation choices. If we consider the context of Bangladesh, studies show local government reforms and initiatives that were unsuccessful due to an institutional incapacity to carry out the policy measures.³⁸⁰ In addition, the socio-economic and political context in which the target population lives may also influence their decision-making choices and ultimately affect the implementation outcome. In their research on implementation theory, Goggin, Ann, Bowman, Lester and O'Toole argue that the battle between top-down and bottom-up approaches has not contributed to the success of the implementation process.³⁸¹ Instead, each of these approaches

³⁷⁷ Daniel A. Mazmanian and Paul A. Sabatier, 'The Implementation of Public Policy: A Framework of Analysis' (1980) (8 (Special Issue)) *Policy Studies Journal* 538

³⁷⁸ Ibid.

³⁷⁹ Stephen H. Linder and B. Guy Peters, 'A Design Perspective on Policy Implementation: The Fallacies of Misplaced Prescription' (1987) 6 (3) *Review of Public Research* 459.

³⁸⁰ Ishtiaq Jamil and Pranab Panday, 'Challenges of Coordination in Implementing Urban Policy: The Bangladesh Experience' (2011) 11(2) *Public Organization Review* 155; Jamil and Panday, above n ; A. H. M. Kamrul Ahsan and Pranab Kumar Panday, 'Problems of Coordination in Field Administration in Bangladesh: Does Informal Communication Matter?' (2013) 36(8) *International Journal of Public Administration* 588.

³⁸¹ M.L. Goggin, *Implementation theory and practice: toward a third generation* (Scott, Foresman/Little, Brown Higher Education, 1990). James P. Lester et al, 'Public Policy Implementation: Evolution of the Field and Agenda for Research' (1987) 7(1) *Review of Policy Research* 200.

ignores key elements of implementation realities.³⁸² Therefore, it is difficult to pick one particular approach over another as both have merits and demerits. A third approach to implementation has emerged to avoid this confusion,. Some call it a synthesised approach,³⁸³ while others consider it an integrated approach³⁸⁴to implementation.

3.3.3 Synthesised Approach

In the 1980s, a third generation of implementation models emerged to bridge the gap between the two approaches.³⁸⁵ Elmore, Sabatier, Matland, Hull and Hjern and Winter propose a synthesised model that incorporates both perspectives.³⁸⁶ In his study on policy instruments and strategy, Elmore recommends using top–down (forward mapping) and bottom–up perspectives (backward mapping).³⁸⁷ By forward mapping, he recommends policymakers consider the policy instruments and the resources they have at their disposal.³⁸⁸ Conversely, with backward mapping, Elmore recommends an incentive structure that recognises the roles of the target group and street-level bureaucrats so that successful implementation can be achieved.³⁸⁹ Sabatier also uses both the perspectives in two different situations.³⁹⁰ He claims that the top–down perspective is suited for policy areas that are dominated by one specific legislation in one local situation, whereas the bottom–up perspective is best suited to situations in

³⁸² James P. Lester et al, above n 43.

³⁸³ Daniel A Mazmanian and Paul A Sabatier, 'The Implementation of Public Policy: A Framework of Analysis' (1980) 8 *Policy Studies Journal* 538.

³⁸⁴ Winter, above n20.

³⁸⁵ Matland, above n 21.

³⁸⁶ Elmore, Richard F. , 'Organizational Models of Social Program Implementation. ' (1978) 26(2) *Public Policy* ; Matland, above n 21; Sabatier, above n 20; Hull and Hjern, above n 17; Winter, above n20.

³⁸⁷ Elmore, above n 48.

³⁸⁸ Ibid.

³⁸⁹ Ibid.

³⁹⁰ Sabatier, above n 20.

which multiple policies are directed towards a problem in different local situations.³⁹¹ Metland suggests that the top–down approach presents an accurate description when there is no ambiguity in the policy’s objective and conflict is low, while the bottom–up approach gives an accurate description when the policy is ambiguous and conflict is low.³⁹² Hull and Hjern propose a systematic interview analysis from bottom to top; however, this is more of a methodological recommendation than a theoretically based expectation.³⁹³ Winter proposes an integrated model for implementation in which the relevant theoretical elements from different parts of implementation research are integrated into a joint model.³⁹⁴ Instead of a theoretical attempt to synthesise top–down and bottom–up perspectives, Winter’s model combines elements of implementation research to be used to evaluate both implementation performance and results against set policy objectives.³⁹⁵ However, a limitation of Winter’s approach is that it overlooks the socio-economic context in which the policy is implemented. In addition, in a developing democracy such as Bangladesh, there is a political dimension characterised by power, affiliation and trust that cannot be ignored. Similarly, behavioural and cultural components such as administrative culture, cooperation and coordination are narrowly placed as organisational behaviour, when these are a significant component in the implementation context of Bangladesh. In the following segment, the thesis discusses the relevance of these components in the context of this study. Despite these limitations, Winter’s integrated model is notable for two reasons. First, unlike the top–down approach, the model does not focus only on the goals and ends. It measures the results of the implementation process by its performance and outcome in line with policy objectives. Second, instead of attempting a synthesis, it proposes a combined model to evaluate the implementation process.

³⁹¹ Ibid .

³⁹² Matland, above n 21.

³⁹³ Hull and Hjern, above n 12.

³⁹⁴ Winter, above n20.

³⁹⁵ Ibid.

3.4 Policy Implementation in Bangladesh: Towards a Theoretical Synthesis

The theoretical framework of this study has similarities to Winter's idea of integrating elements from implementation research. The thesis argues that the success of the implementation of the RTI Act depends on a set of factors that represent both top-down and bottom-up implementation approaches. If we examine the literature from both perspectives, there are a number of variables that are used in different models of implementation. Some of the most relevant components from these studies are adequate political, financial, managerial and technical resources,³⁹⁶ interorganisational coordination and communication,³⁹⁷ policy design and objective,³⁹⁸ implementation structure,³⁹⁹ socio-economic conditions,⁴⁰⁰ disposition and capacity of implementers⁴⁰¹ and valid causal theory.⁴⁰² In the context of this study, these factors can be categorised into institutional factors, behavioural factors and external factors.

3.4.1 Institutional Factors

Institutional factors are all the factors associated with the design, institutional capacity and structure and resources. Policy design includes a set of goals and objectives and a

³⁹⁶ Hogwood and Gunn, above n 1; Van Horn and Van Meter, above n 6; Merilee S. Grindle, *Politics and Policy Implementation in the Third World*. (Princeton University Press, 1980).

³⁹⁷ Hogwood and Gunn, above n 1; Winter, above n 20; Van Horn and Van Meter, above n 6.

³⁹⁸ Van Horn and Van Meter, above n 6; Winter, above n 20; Paul Sabatier and Mazmanian, Daniel, 'The Conditions of Effective Implementation: A Guide to Accomplishing Policy Objectives' (1979) 5(4) *Policy Analysis* 481.

³⁹⁹ Winter, above n ; Tora Gullberg Skodvin, Therese Anne and Stine Aakre, 'Target-group Influence and Political Feasibility: The Case of Climate Policy Design in Europe. ' (2010) 17 *Journal of European Public Policy* 854.

⁴⁰⁰ Sabatier and Mazmanian, above n 60; Winter, above n20; Van Horn and Van Meter, above n 6.

⁴⁰¹ Hogwood and Gunn, above n 1; Sabatier and Mazmanian, above n 60; Van Horn and Van Meter, above n 6; Winter, above n20.

⁴⁰² Hogwood and Gunn, above n 1; Sabatier, above n 20.

mix of instruments, mandates and resources for achieving goals.⁴⁰³ The objectives of a policy need to be clear to both policymakers and its implementers for it to be executed properly. Sabatier argues that policy without clear, consistent, well communicated and understood objectives is subject to multiple interpretations that may result in bad execution even by implementers who have the best of intentions.⁴⁰⁴ Similar claims are made by Meter and Horn, and Hogwood and Gunn who state that there is a need to understand the objectives of the policy.⁴⁰⁵ Thus, design can have a significant influence on the overall implementation structure and process of implementation. A number of studies from Bangladesh substantiate this claim. These include Jamil and Panday's study on municipal governance and Rahman's study on the Upazila Parishad Act.⁴⁰⁶ In their study on implementing governance and policy implementation at the municipal level, Jamil and Panday find that government policies often face implementation challenges due to inadequate institutional rules and regulations and ambiguity in the financial management system.⁴⁰⁷ Similarly, Rahman's study on the Upazila Parishad Act reflects how a lack of clarity in the Act to define the role of Members of Parliament and the role and authority of the transferred departments complicated the functioning of Upazila Parishad and weakened the Act's implementation.⁴⁰⁸ Aminuzaman reports similar findings in a study on the implementation of environment policy in Bangladesh.⁴⁰⁹

Policy instruments may vary with the context of the policy or its objectives. When designing the policy, policymakers must understand its context and design the instruments to best address the issue.⁴¹⁰ In design, the policy must follow a cause and

⁴⁰³ Winter, above n 20.

⁴⁰⁴ Sabatier and Mazmanian, Daniel, above n 60.

⁴⁰⁵ Van Horn and Van Meter, above n ; Hogwood and Gunn, above n 1.

⁴⁰⁶ Muhammad Sayadur Rahman, 'Upazila Parishad in Bangladesh: Roles and Functions of Elected Representatives and Bureaucrats *Commonwealth Journal of Local Governance* (2012) (11) *Commonwealth Journal of Local Governance*

⁴⁰⁷ Jamil and Panday, above n 42.

⁴⁰⁸ Rahman, above n 68.

⁴⁰⁹ Aminuzzaman, Salahuddin M. , 'Environment Policy of Bangladesh: A Case Study of an Ambitious Policy with Implementation Snag' (2010) *South Asia Climate Change Forum*

⁴¹⁰ Winter, above n 20.

effect theory. Pressman and Wildavsky argue that every policy incorporates a theory of cause and effect and, if the policy fails, it may be the underlying theory that is at fault rather than the execution of the policy.⁴¹¹ Similarly, Bardach claims that when the cause and effect relationship is incorrect, the policy will fail no matter how well it is implemented.⁴¹² These claims can be substantiated by Chowdhury's study on the implementation effectiveness of the CHT Accord. Chowdhury finds that one of the main reasons for the Act not being a success was the introduction of the Regional Council Bill, as it provided no role clarity for local government and regional council.⁴¹³ Previously, the regional council enjoyed a certain degree of power and autonomy to ensure the political, economic and cultural rights of tribal people in the CHT. Consequently, dissatisfaction among the government and people's representatives in the regional council worked against the Act. In addition, the increasing trend for Bengali settlement in the region had a negative effect on the people, as the entire region was previously inhabited by the ethnic non-Bengali population in British India. Although the violent clash between ethnic people and armed forces ceased after the Accord, tensions between Bengali and non-Bengali still very much exist in this region. The government's solution ignored the cultural and social context of the region. The deep cultural differences and diversity in lifestyles of the different ethnic groups in the region made it difficult for them to accept some of the government proposals. This is a clear indication of a negative cause and effect relationship.

Resources, infrastructure and skilled manpower are key factors in effective implementation. Studies have shown that implementation performance also depends on the organisational structure and its capacity to carry out the task.⁴¹⁴ Hogwood and Gunn argue that an appropriate structure, staffing (e.g., skills and training), funding and resources, procedures and methods and monitoring tools are pivotal elements of implementation. In addition, the allocation of resources is important in improving and sustaining the implementation of public policy initiatives.⁴¹⁵ Resources include money,

⁴¹¹ Pressman and Wildavsky, above n 6.

⁴¹² Bardach, above n 6.

⁴¹³ Chowdhury, N. J. , 'The Chittagong Hill Tracts Accord Implementation in Bangladesh: Ideals and Realities. ' (2009) XXV, *Nepalese Journal of Public Policy and Governance* 19

⁴¹⁴ Rothstein, *Just Institutions Matter: The Moral and Political Logic of Universal Welfare State*. (Cambridge University Press, 1998).

⁴¹⁵ Hogwood and Gunn, above n 1.

staffing and organisation, legal and economic sanctions and incentives to overcome any resistance or political will.⁴¹⁶ In studying reforms in developing countries, Grindle and Thomas find that the absence of adequate resources affects the implementation process. They categorise resources into political (i.e., location, organisation, socio-economic group and literacy) and bureaucratic resources (i.e., financial, managerial and technical).⁴¹⁷ Grindle and Thomas's claims can be substantiated by studies set in the context of Bangladesh that show a lack of resources leads to policy failure. For example, Ahmed's⁴¹⁸ study on administrative reform, Jamil and Panday's⁴¹⁹ study on municipal governance and Haque's study on local government planning demonstrate that the capacity of implementation agencies and a lack of resources influences the execution of reform and policy initiatives at different tiers of local government in Bangladesh.⁴²⁰ It is clear from the discussion that institutional elements such as design, resources, infrastructure and staff capacity contribute to implementation performance and why they are an important part of this study.

3.4.2 Behavioural Factors

Behavioural factors include the behaviours of a target group and implementation and interdepartmental staff towards a specific policy. Implementation studies tend to neglect the role of the target population, their views and their responses in the process of implementation. However, successful implementation requires the active participation of the target population who can only contribute to the process once they understand the objectives of the policy. Winter states that the behaviour of target groups has a two-way influence on policy. The groups can influence policy either directly by participation or

⁴¹⁶ Merilee S. Grindle and John W. Thomas, *Public Choice and Policy Change: The Political Economy of Reform in Developing Countries*. (The Johns Hopkins University Press, 1991)

⁴¹⁷ Grindle and Thomas, above n 78

⁴¹⁸ Nizam Ahmed, 'Experiments in Local Government Reform in Bangladesh' (1988) 28(8) *Asian Survey* 813.

⁴¹⁹ Ishtiaq Jamil, 'Inter-Organizational Coordination and Corruption in Urban Policy Implementation in Bangladesh: A Case of Rajshahi City Corporation' (2012) 35(5) *International Journal of Public Administration* 352.

⁴²⁰ Ahmed Shafiqul Huque, 'The Administration of Decentralized Planning in Bangladesh' (2014) 11(2) *Asian Journal of Public Administration* 151.

non-participation in the implementation process, or they can resist or influence the performance of the street-level bureaucrats.⁴²¹ Winter,⁴²² Skodvin,⁴²³ Hill and Hupe and Ryan claim that effective implementation is impossible without including the people in the target group. Target group behaviour is another component that Meter and Horn,⁴²⁴ Winter,⁴²⁵ Sabatier and Mazmanian focus on in their models. Discussing the behaviour of the target population raises the question of inclusion in the formulation of a policy and how this can affect the policy process. In the context of Bangladesh, studies have shown that the behaviour of the target population regarding their perception of the policy and of the implementation agency are crucial for a successful implementation.⁴²⁶ For example, Jamil and Panday identify the target population's (i.e., non-Bengali) lack of engagement was the primary reason for the unsuccessful implementation of the CHT Accord in Bangladesh.⁴²⁷

Winter,⁴²⁸ Meter and Horn,⁴²⁹ Pressman and Wildavsky⁴³⁰ and Lipsky⁴³¹ argue that commitment, coordination, cooperation and relationships within and between

⁴²¹ Grindle and Thomas, above n 78.

⁴²² Winter, above n 20.

⁴²³ Skodvin, Anne and Aakre, above n 61.

⁴²⁴ Van Horn and Van Meter, above n 6.

⁴²⁵ Winter, above n 20.

⁴²⁶ Chowdhury, above n ; Chowdhury, above n ; Wahed Waheduzzaman and Sharif As-Saber, 'Community Participation and Local Governance in Bangladesh' (2015) 50(1) *Australian Journal of Political Science* 128; Mosiur Rahman and Obaida-Nasrin Sarker, 'Factors Affecting Acceptance of Complete Immunization Coverage of Children under Five Years in Rural Bangladesh' (2010) 52(2) *Salud pública Méx* ; M. A. Seddiky, M. Esmat Ara and Sabina Yasmin, 'Role of Union Information and Service Centre (UISC) to Promote Health Care Facilities for the Rural Poor in Bangladesh' (2014) 8(2) *American International Journal of Research in Humanities, Arts and Social Sciences* 201.

⁴²⁷ Jamil and Panday, above n .42

⁴²⁸ Winter, above n 20.

⁴²⁹ Van Horn and Van Meter, above n 6.

⁴³⁰ Pressman and Wildavsky, above n 6.

⁴³¹ Lipsky, above n 24

organisations are equally important components in the implementation process. Winter claims that interorganisational behaviours that represent commitment and coordination are related to successful implementation and there are multiple participants in the process with diverse interests and viewpoints.⁴³² During different stages of the policy implementation, the outcomes are affected if the policy faces veto points in the form of non-cooperation and lack of coordination.⁴³³ Such claims can be substantiated by the findings of Panday in his study on urban governance in Bangladesh.⁴³⁴ The study shows interorganisational coordination between local and central government has a long-term effect on implementing urban policies. Similarly, Ahmed, in an early study on the coordination of Upazila administration,⁴³⁵ and, more recently, Ahsan and Panday's study on field administration⁴³⁶ find that lack of communication and coordination among various departments influenced the implementation of different policies including the Upazila Parishad Act in Bangladesh. Along similar lines, Aminuzzaman shows that the relationship between elected representatives and local officials can be characterised by mutual mistrust, suspicion and even hostility. This led to the implementation failure of policies within the Local Government (Union Parishads) Act, 2009.⁴³⁷

Alongside Lipsky, Winter also talks extensively about the role of the street-level bureaucrats in ensuring a policy is a success.⁴³⁸ The street-level bureaucrats are key actors in the implementation process because they make important discretionary decisions in their direct contact with the citizens. Therefore, it is important that these frontline workers understand the purpose of the policy and work towards achieving the

⁴³² Winter, above n 20.

⁴³³ Ibid.

Ibid.

⁴³⁴ Panday, Pranab Kumar, 'Policy Implementation in Urban Bangladesh: Role of Intra-Organizational Coordination' (2007) 7 *Public Organization Review* 237.

⁴³⁵ Panday, above n 96.

⁴³⁶ Ahsan and Panday, above n 42; Ahmad, A. J. Uddin Minhaj, 'Problems of co-ordination in upazila administration in Bangladesh' (1991) 11.

⁴³⁷ Aminuzzaman, above n 71.

⁴³⁸ Winter, above n 20.

goal. Unless they are convinced of its purpose and act accordingly, the implementation process will be affected. Recent studies conducted in the context Bangladesh validate Winter's proposition about the behaviour of street-level bureaucrats.

3.4.3 Social, Economic and Political Factors

There are obstacles to the implementation process that sometimes go beyond the control of policymakers and implementers since they are external to the policy and the implementing agency. Such factors can be political (e.g., political unrest, party interest, dictatorship or military rule and war prone), social (e.g., norms, gender perception or religious restrictions) natural disasters (e.g., flood, cyclone or drought) and economic (e.g., recession, unemployment or poverty). Meter and Horn argue that economic, social and political conditions have a profound effect on the performance of implementing agencies. Similarly, Sabatier and Mazmanian and Winter claim that economic, political and social conditions could contribute to the performance of the implementation. In the context of Bangladesh, these claims are substantiated by recent studies. In researching quotas for women in various levels in political arenas, Panday finds that, despite the government's decision to ensure women's representation, their representation was low due to social, cultural and religious challenges such as purdah, economic dependency, lower social status and lack of education.⁴³⁹ Another recent example is the National Education Act of 2016 that has gone through several modifications since it was introduced in 2010. This new draft has brought in provisions such as the penalty for practising corporal punishment, punitive measures against producing or selling notebooks or guidebooks or running private tuition and coaching centres, and banning the admission exam in class one. However, it may be difficult to implement the Act due to the enormous objections from coaching owners, political interest groups and religious groups. The last time an effort was made to introduce an education policy was in 1974 and this never came into practice due to sociopolitical conditions.⁴⁴⁰ Similarly, Khan

⁴³⁹ Pranab Kumar Panday, 'Representation without Participation: Quotas for Women in Bangladesh' (2008) 29(4) *International Political Science Review* 489

⁴⁴⁰ Islam, M.S. and M. Rahman, 'Challenges of Policy Formulation and Implementation of Primary Education in Bangladesh: A Conceptual Analysis. ' (2008) 30(40-51) *Asian Affairs*

and Belal's study on the implementation of the Environmental Protection Act,⁴⁴¹ Huque's study on local government reform⁴⁴² and Sarker's study on administrative reforms in Bangladesh find that political conditions influence the implementation process of different policies and reform initiatives.⁴⁴³

3.5 Implementation of the RTI Act: An Analytical Framework

In general, the purpose of FOI Laws is to give citizens guaranteed access to documents held by the government without having to demonstrate any legal interest or standing.⁴⁴⁴ More specifically, through the legal guarantee, all people are informed about whether the information they have asked for from a public authority can be made available or not. In addition, people are entitled to receive information within a given timeline and to know why the information that has been requested cannot be made available.⁴⁴⁵ Some studies claim transparency laws can contribute to various levels including reducing corruption, increasing government efficiency and, in most cases, ensuring economic development.⁴⁴⁶ However, empirical evidence shows that such claims are not always true.⁴⁴⁷ The objective of access to information laws varies from country to country. This

⁴⁴¹ Niaz Ahmed Khan and Aatur Rahman Belal, 'The Politics of the Bangladesh Environmental Protection Act' (2007) 8(1: Environmental Movements Local, National and Global) *Journal Environmental Politics* 311.

⁴⁴² Ahmed S. Huque, 'The Politics of Local Government Reform in Rural Bangladesh' (1985) 5(3) *Public Administration and Development* 20582.

⁴⁴³ Abu Elias Sarker, 'The Political Economy of Decentralized Governance: An Assessment of Rural Local Government Reforms in Bangladesh' (2006) 29(13) *International Journal of Public Administration* .

⁴⁴⁴ Ackerman, John M and Imra E Sandoval-Ballesteros, 'The Global Explosion of Freedom of Information Laws' (2006) 58(1) *Administrative Law Review* 85.

⁴⁴⁵ Pete Mazebe II Mothataesi Sebina, *Freedom of Information and Records Management: A learning Curve for Botswana* (PhD Thesis, University College London, 2006).

⁴⁴⁶ Banisar, David, *Freedom of Information in the World 2006: A Global Survey of Access to Government Information Laws* (Privacy International, 2006).

⁴⁴⁷ Colin Darch and Peter G. Underwood, *Freedom of Information and the Developing World : the Citizen, the State and Models of Openness* (Chandos Publishing 2010).

is one of the reasons why it is not easy to understand what makes a transparency law successful and how its effectiveness can be measured. Different studies feature models that could help measure the effectiveness of FOI laws.⁴⁴⁸ This study discusses some of these ideas and identifies key components to facilitate developing a framework in the context of the thesis.

There are studies that suggest more general assumptions and ideas on how to make FOI laws work. The United Nations Educational, Scientific and Cultural Organization (UNESCO), presented a proposal as a part of the strategy to address Sustainable Development Goals (SDG) that lists three key variables.⁴⁴⁹ These include whether a country has constitutional, statutory or policy guarantees for the right to information, whether national guarantees reflect international human rights standards and agreement and if implementation mechanisms are in place for such guarantees. Implementation mechanisms include government efforts to promote the right to information, citizens' awareness of the legal right to seek and receive information and their ability to utilise it effectively, the capacity of public institutions to provide information requested by the public and an independent redress mechanism.⁴⁵⁰ UNESCO's note, 'in Practice', gives further measurement criteria to assess guarantees for access to information.⁴⁵¹ These include proactive disclosure provisions, mechanisms for information on demand when information is not proactively disclosed, narrowly tailored guidelines on exemptions to disclose, the institutional structure that supports disclosures such as information commissioners, complaint and oversight mechanisms and the number and the success rate of appeals.⁴⁵² Similarly, in a study on Armenia, Bulgaria Macedonia, Peru and

⁴⁴⁸ Neuman, Laura and Richard Calland, 'Making the Access to Information Law Work: The Challenges of Implementation' in Ann Florini (ed), *The Right to Know: Transparency for an Open World* (Columbia University Press, 2007) ; Roberts, Alasdair S, 'Access to Government Information: An Overview of Issues' in Laura Neuman (ed), *Access to Information: A Key to Democracy* (The Carter Center, 2002)

⁴⁴⁹ SDG Target 16.10 "Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements".

⁴⁵⁰ Ibid.

⁴⁵¹ See UNSTATS, *PGA Briefing* (28 January 2016) <http://unstats.un.org/sdgs/files/ga-briefing-28-Jan-2016/PGA-Briefing--Status-of-IAEG-SDGwork-on-global-SDG-indicators-28-Jan-2016.pdf>.

⁴⁵² Ibid.

South Africa, Open Society Justice Initiative developed a monitoring tool to measure the implementation outcome of FOI laws.⁴⁵³ This set of standards includes the institutions that are covered and principles such as openness of disclosure, no eligibility criteria for the person requesting the information, no discrimination in the provision of information, timely disposal of information, provision of oral and written requests and access to information provided in a format that is convenient for the person requesting the information (i.e., electronic or print), provision of transfer or referral of requests to the appropriate authority, cost-effectiveness, provision for refusal decisions to be made within certain time frames on the grounds established by law, duty to assist and the provision of designated officers to manage information requests for publication.⁴⁵⁴

Some studies discuss standards or general principles for an FOI regime. One suggestion, from the British human rights organisation Article 19, outlines nine principles that characterise an FOI regime.⁴⁵⁵ These include maximum disclosure, the obligation to publish, promotion of open government, limited scope of exceptions, process to facilitate access, costs, open meetings, disclosure takes precedence and the protection of whistleblowers.⁴⁵⁶ Similarly, Mendel, in a study conducted in 14 countries, used seven broad measurement indicators to measure the effectiveness of FOI laws. These include the legal right to access information, procedural guarantees, duty to publish, exceptions, appeals, sanctions and protections and promotional measures.⁴⁵⁷

In addition to these studies, there are also specific proposals addressing the question of an appropriate implementation model for FOI laws. Neuman and Calland argue that enabling a transparency law is a three-way process involving passage, implementation

⁴⁵³ Open Society Justice Initiative, 'Results of the Open Society Justice Initiative Access to Information Monitoring Tool' (Open Society Justice Initiative,, 2004).

⁴⁵⁴ Ibid.

⁴⁵⁵ Article 19, 'Freedom of Information Training Manual for Public Officials' (Article 19, 2004); Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation* (Article 19, 2007).

⁴⁵⁶ Ibid.

⁴⁵⁷ Toby Mendel, 'Freedom of Information: A Comparative Legal Survey' (UNESCO, 2008).

and enforcement. They refer to this process as the 'transparency triangle'.⁴⁵⁸ Neuman and Calland argue that implementation is influenced⁴⁵⁹ by the lack of engagement of different stakeholders, especially civil society and NGOs,⁴⁶⁰ weak policy instruments, lack of political commitment and allocation of resources, lack of perception and capacity of the implementers and weak enforcement mechanisms.⁴⁶¹ Solomon, in his 'push model', argues that government should routinely and proactively release information to avoid additional pressure that might come from answering a large number of information requests at the end of the day. He further argues that, in the traditional pull approach,⁴⁶² citizens need to submit information requests and wait for the public authorities to respond and this can be time-consuming and often unsuccessful.⁴⁶³ The push model proposes publication schemes and proactive decision-making processes to routinely release information, disclosure logs to make already-released information accessible online, greater administrative release through the exercise of executive discretion rather than managing documents through an expensive RTI processing model and administrative access schemes. The model also talks about provisions for sufficient legal protections and the role of the Information Commissioner to be revised through active monitoring and a collaborative approach.

These studies and ideas raise the question of whether there can be a universal model for the successful implementation of FOI laws. Previously, the thesis has

⁴⁵⁸ Laura Neuman, 'Mechanisms for Monitoring and Enforcing The Right to Information Around the World' in The Carter Center (ed), *Access to Information: Building A Culture of Transparency* (The Carter Center, 2006)

⁴⁵⁹ Ibid.

⁴⁶⁰ By 'process' they mean the way the access to information law has drawn attention to various policy actors and how it has been introduced. Policy actors can include civil society, the international community, academics, business and professional associations.

⁴⁶¹ If there is no enforcement mechanism, government agencies might revert to arbitrary denial. There should be strong enforcement mechanisms to ensure that if a request for information is denied, there are mechanisms to enforce legal binding on public institutions to provide citizens the information they have requested.

⁴⁶² The pull approach focuses on the disclosure of information in response to requests made by individuals for access to information.

⁴⁶³ Solomon, David, 'The Right to Information: Reviewing Queensland's Freedom of Information Act' (FOI Independent Review Panel, 2008).

discussed the reasons why so many countries have adopted FOI laws. In a study on access to information regimes in the developing world, Darch and Underwood question the speedy expansion of FOI laws in industrially rich nations of the global north as well as in developing countries of the global south and whether a universalised model of FOI is possible. They conclude that a universalised model for all is impossible as the objectives of transparency laws vary from country to country and operate in different socio-economic and political contexts.⁴⁶⁴ The thesis discussed some of these objectives in detail. In summary, the RTI Act in Bangladesh aims to ensure people's access to government information, so that transparency of government is increased, corruption is reduced and people are empowered to take part in social, economic and political life. Therefore, the proposed analytical framework aims to measure the effectiveness of the implementation process in achieving these objectives.

Considering the different perspectives and ideas discussed earlier, this study proposes the following framework. The dependent variable of the study is the implementation success of the RTI Act that is measured by the provision and practice of disclosure and publication, application, response and appeal, record preservation and management, enforcement mechanisms and public meetings (see Figure 3.1). In addition to these indicators, the study also uses the CPI to gain an overall picture of corruption, as the reduction of corruption is discussed in the preamble of the RTI Act as a long-term objective of the implementation. The independent variables of this study are behavioural, cultural, institutional and external conditions. Behavioural conditions are measured by inclusion, interorganisational coordination and cooperation, Institutional conditions are measured by resources, institutional capacity and design. External conditions are those which are beyond the control of the implementing agencies. In this thesis, socio-economic factors and political conditions are considered as external conditions. The thesis here argues that social, economic and political conditions can not be left alone as these conditions are integral to implementation success. While an implementation strategy is adopted, these conditions need to be studied to address the possible risks. A successful approach to implementation is that which addresses the risks posed by external conditions. The central hypothesis of the study is:

The implementation success of the RTI Act depends on behavioural, institutional, cultural, socio-economic and political conditions. The more favourable these conditions are, the greater the possibility of a successful implementation.

⁴⁶⁴ Darch and Underwood, above n 109.

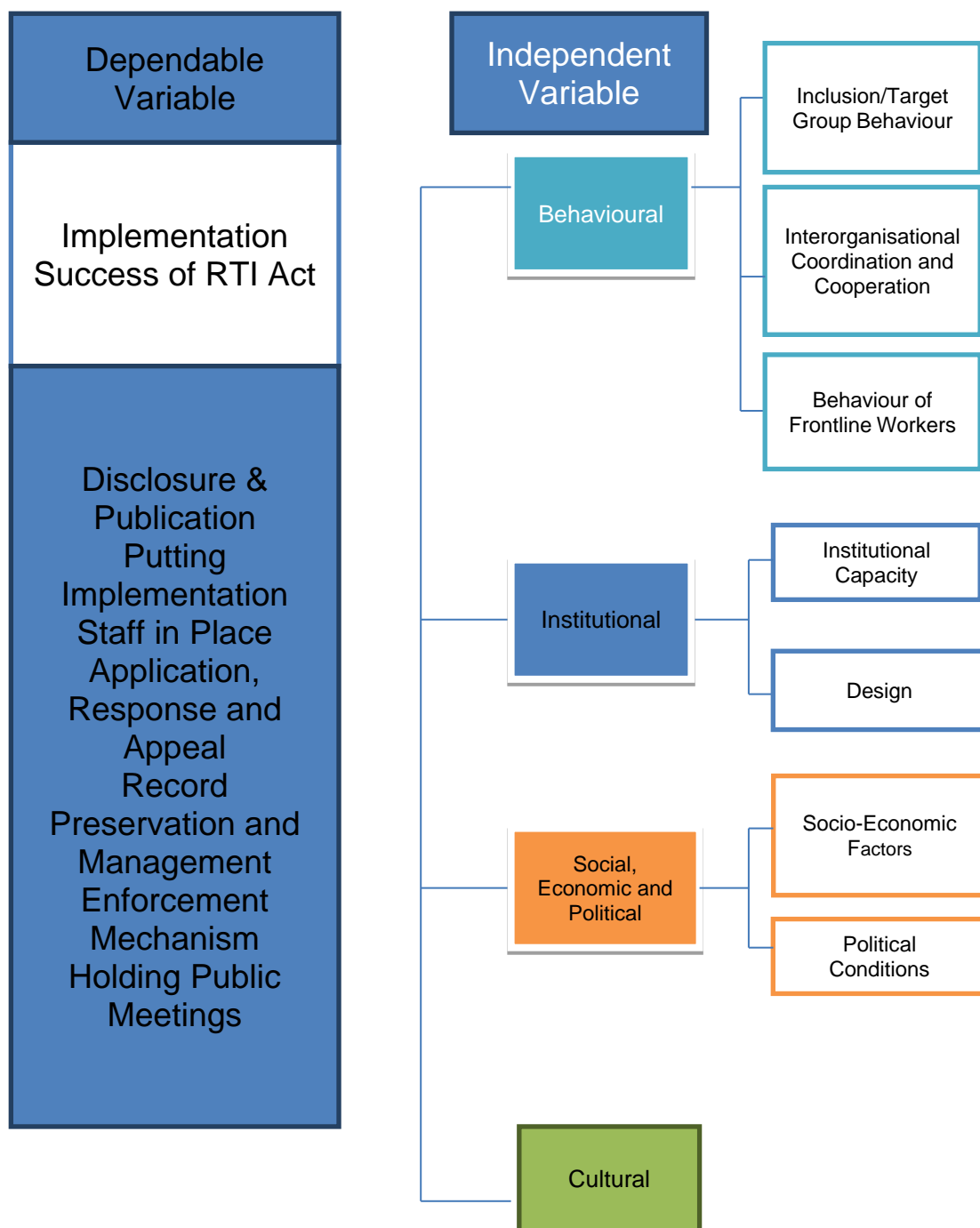


Figure 3.1: Framework of Analysis—Implementation Success of the RTI Act of Bangladesh

3.5.1 Dependent Variable

In this thesis, the term ‘implementation success’ is used to define the stage of implementation when the official objective of the policy is achieved and the expected outcomes set by the policymakers are met. Implementation success in this study is measured by a number of indicators including provisions and practices of disclosure and

publication, application and response, appeal process, record preservation and management, assigning staff; public meetings held and the CPI.

3.5.1.1 Disclosure and Publication

The first operational indicator this study measured is the provision of disclosure and publication. Disclosure is considered a key principle in most of the FOI literature discussed earlier. Section 6 of the RTI Act states the manner in which information should be published and publicised and what information should be included in the publication and disclosure.⁴⁶⁵ The principle of maximum disclosure summarises the basic rationale for FOI laws in different international standards including the Joint Declaration of Special Mandates on Freedom of Expression,⁴⁶⁶ the African Declaration on Internet Rights and Freedoms⁴⁶⁷ and the Aarhus Convention⁴⁶⁸. The UN Principles on Freedom of Information 2000,⁴⁶⁹ gives specific directions for disclosure and

⁴⁶⁵ *The Right to Information Act 2009*, s6.

⁴⁶⁶ Joint Declaration of Special Mandates on Freedom of Expression, 2013 Available at <https://www.osce.org/fom/99558?download=true>.

⁴⁶⁷ African Declaration on Internet Rights and Freedoms Available at <http://africaninternetrights.org/articles/>.

⁴⁶⁸ Hussain, Abid 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression submitted in accordance with Commission resolution 1999/36' (Economic and Social Council of the UN Commission on Human Rights 2000).

⁴⁶⁹ Principle of Maximum Disclosure states 'Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; 'information' includes all records held by a public body, regardless of the form in which it is stored'. Maximum disclosure means, except for limited circumstances, information that governments hold can be disclosed in public. Public bodies must publish and disseminate documents that are related to the public interest. See International Advisory Committee of the Commonwealth Human Rights Initiative, 'Open Sesame: Looking for the Right to Information in the Commonwealth (2003)' (Commonwealth Human Rights Initiative 2003).

publication.⁴⁷⁰ According to the Joint Declaration, ‘Systems should be put in place to increase, over time, the amount of information subject to such routine disclosure’.⁴⁷¹ Article 19’s ‘The Right to Know Principles’, places the obligation to publish as a mandatory principle for an FOI regime, to make provision for the publication of documents produced and make them available to the public, even if there is no formal request for information.⁴⁷²

To measure disclosure and publication provisions and practices, this study examines websites, noticeboards, billboards, annual reports, training manuals, circulars and forms. The study also reviews the content of these publications and analysed whether the publication and disclosure provisions included information about the Citizen’s Charter, organisational structure and services, operational strategy and plans, decisions and acts, public services, budgets, open meetings, subsidies, procurement, lists, registers and databases, publications, information held and the right to information. In addition, the study examines the costs of publication, as the RTI Act clearly states that the publication shall be made available at no or reasonable cost to the people.⁴⁷³ One of the principles of disclosure is to make publications available through multiple means of communication.⁴⁷⁴ The study also reviews these arrangements in an attempt to understand the means each agency used to disclose and publish information. Further, the study gathers information about public meetings to see whether public agencies have such provisions and how these events have taken place.

3.5.1.2 Record Preservation and Management

Record management is the backbone of a good FOI regime. Unless information is properly organised, it is difficult for public offices to respond to the various requests for

⁴⁷⁰ Principle of Obligation to Publish states ‘Public bodies must publish and disseminate documents that are related to the public interest’. See International Advisory Committee of the Commonwealth Human Rights Initiative.

⁴⁷¹ Mendel, above n 119.

⁴⁷² Article 19, above n 117.

⁴⁷³ *The Right to Information Act 2009*, s6(6).

⁴⁷⁴ Darbshire, Helen ‘Proactive Transparency: The Future of the Right to Information? A Review of Standards, Challenges, and Opportunities.’ (World Bank Initiative 2009).

information. Sections 5(1) and 5(2) of the RTI Act discuss the procedures and specific responsibilities of each authority regarding data collection and preservation and how it should operate within the framework.⁴⁷⁵ In addition, the Right to Information (Preservation and Management of Information) Regulation 2010 clearly defines the categories of information to be collected and preserved.⁴⁷⁶

In researching FOI regimes around the world, Banisar argues that, for an effective FOI regime, there must be a record management system that allows easy collection, indexing, storage and disposal of information.⁴⁷⁷ The Office of the Information Commissioner of Canada's 1999–2000 Annual Report highlights why record management is such an information part of RTI:

The whole scheme of the Access to Information Act depends on records being created, properly indexed and filed, readily retrievable, appropriately archived and carefully assessed before destruction to ensure that valuable information is not lost. If records about particular subjects are not created, or if they cannot be readily located and produced, the right of access is meaningless.⁴⁷⁸

In this study, preservation and record management are considered key indicators for measuring implementation success. The study examines how records and the databases are kept, managed and maintained in public offices. It closely examines entire systems—electronic and manual—and the people who are assigned to perform the job.

3.5.1.3 Application Process, Response and Appeal

The next operational indicator that this study considered is the provision of application response and appeal. Sections 6(5), 6(6), 8(1), 8(2) and 8(3), 24(1), 24(2), 24(3), 24(4) of the RTI Act specifically discuss application provision, cost and appeal procedures.⁴⁷⁹ If we examine the international standards, the Joint Declaration of the special mandates

⁴⁷⁵ *The Right to Information Act 2009*, s 5(1), s5(2).

⁴⁷⁶ The Ministry of Information, 'The Right to Information (Preservation and Management of Information) Regulation' (The Ministry of Information 2010).

⁴⁷⁷ Banisar, above n 108.

⁴⁷⁸ *Ibid.*

⁴⁷⁹ *The Right to Information Act 2009*, s6, s8, s24.

makes a very specific point regarding the application process: the procedures need to be simple, rapid and free or low cost for both oral and written requests and the rate of refusal must be as low as possible.⁴⁸⁰ Some countries, for example, Norway and Sweden, have short time frames to respond, that is, 24 hours.⁴⁸¹ According to UN Standards, there should be strict time limits for processing information, and, if the request is denied, a provision of written notice should be issued to the applicant.⁴⁸² Further, the process of acquiring information should not be costly. Article 4(8) of the Aarhus Convention states:

Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount. Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges that may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.⁴⁸³

To measure the processes and procedures of information access and response, the study closely examines how people register their applications for information, whether they find the procedure to apply and receive information difficult, how much time and money is required to acquire information, the provision of further application and fines imposed on authorities for noncompliance, whether there are any special arrangements for those who are unable to submit a written request (e.g., due to physical disability or illiteracy). Further, the study investigates the role the Information Commission has played in resolving any issues.

⁴⁸⁰ See Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression <https://www.osce.org/fom/99558?download=true>.

⁴⁸¹ Open Society Justice Initiative, above n 115.

⁴⁸² Hussain, Abid 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression submitted in accordance with Commission resolution 1999/36' (Economic and Social Council of the UN Commission on Human Rights 2000).

⁴⁸³ Department of Foreign and Commonwealth Affairs, 'Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters' (Parliament, United Kingdom, 1998).

3.5.1.4 Enforcement Mechanisms

The next indicator this study considered were the enforcement mechanisms, as these are key measurement indicators for the implementation success of the RTI Act. Sections 11, 12, 13 of the RTI Act discuss the provisions of the oversight body and their roles and responsibilities.⁴⁸⁴ From the literature, we can observe some mechanisms for appeals and enforcement are available.⁴⁸⁵ These include administrative reviews, court reviews and independent enforcement and oversight bodies.⁴⁸⁶ Many argue that an information commission is the most effective system of oversight.⁴⁸⁷ This is an independent body, responsible for not only receiving information but also for enforcing the law.⁴⁸⁸ Enforcement brings with it the question of sanctions.⁴⁸⁹ In situations in which public authorities and employees unlawfully withhold information, provisions for enforcement are in place in almost all international FOI laws.⁴⁹⁰ In a study of enforcement mechanisms in an FOI regime, Neuman argues that an ideal enforcement mechanism must be independent of political influence, accessible to people who request information without the need for legal representation, affordable, timely and preferably specialist, with the provision of public interest balancing tests.⁴⁹¹ According to Neuman, there can be three enforcement models. First, the judicial review, gives the person requesting the information the authority to appeal to the court if an information request is denied.⁴⁹² The court then has the power to order the respective authority to release information, if it has been inappropriately denied. In such cases, the court possesses the

⁴⁸⁴ *The Right to Information Act 2009*, s11,s12,s13

⁴⁸⁵ Roberts, above n105,107; Neuman, Laura and Carole Excell, 'Appeal Procedures for Access to Information: The International Experience' in The Carter Center (ed), *Access to Information: Building a Culture of Transparency* (The Carter Center, 2006) .

⁴⁸⁶ Roberts, above n105;Neuman, above n 121.

⁴⁸⁷ Department of Foreign and Commonwealth Affairs ,above n 146;Banisar, above n 108;Mendel, above n 119.

⁴⁸⁸ Roberts, above n105.

⁴⁸⁹ Ibid.

⁴⁹⁰ Ibid.

⁴⁹¹Neuman,above n 110

⁴⁹² Ibid.

power to investigate, establish mechanisms to punish the agency for noncompliance and may determine procedural and substantive matters *de novo*.⁴⁹³ Second, an Information Commission(er) or an appeal tribunal with the power to issue binding orders under which a person requesting information can appeal if their access to information is denied.⁴⁹⁴ In this instance, an Information Commissioner is entitled to issue rulings and binding orders. This is a timely and affordable model as there are no litigation costs involved. Third, an Information Commission(er) or ombudsman with the power to make recommendations. Under this model, the Commissioner or ombudsman possesses weaker investigation powers and no order-making powers. Negotiation and mediation are usually used as tools to settle issues related to information denials and appeals. Similarly, Roberts categorises the existing approaches to enforcements into three categories.⁴⁹⁵ First, an administrative appeal is to be made to another official within the same institution as the earlier request was made. If this fails, individuals can apply to a court or tribunal. After reviewing the application, a tribunal or court may disclose the information. Second, an appeal can be made to an independent ombudsman with the authority to recommend that an institution discloses the requested information. If the institution still denies to provide the information, the individuals can go to the court. Third, an appeal can be made directly to an Information Commission, who would then decide whether the information will be made available to the public or not.⁴⁹⁶

To measure how the enforcement mechanisms of the RTI Act worked in Bangladesh, this study examines how the Information Commission deals with applications it receives, processes and procedures it follows to mediate issues between the unit providing the information and the person requesting the information, the hearing process and imposition of fines, if applicable.

⁴⁹³ Countries including South Africa, Bulgaria and the US use judicial review as an enforcement tool.

See Ibid 150.

⁴⁹⁴ Neuman, above n 145.

⁴⁹⁵ Roberts, above n105.

⁴⁹⁶ Ibid

3.5.1.5 Holding Public Meetings

The next indicator this study considers is the provision and practice of holding public meetings. According to Schedules 1 and 2 of the Right to Information (Publication and Publicity of Information) Regulation 2010, each public authority shall disclose information.⁴⁹⁷ Further, there is an explicit provision to hold a public meeting and proactively upload information about the meeting onto their websites. In measuring this, the study investigates the provisions and practices of local government authorities to hold open meetings such as ward meetings, participatory open budget meetings, rallies and open discussion about different issues.

3.5.1.6 Corruption Perceptions Index (CPI)

The last operational indicator is the level of corruption, using the CPI to measure implementation outcomes of the RTI Act. The CPI is run by TIB and ranks countries according to the extent in which corruption is believed to exist. It ranks almost 200 countries on a scale of 0–10, with zero indicating high levels of corruption and 10 indicating low levels. In this study, CPI has been used to analyse year-on-year changes in the score and position of Bangladesh since 2009.

3.5.2 Independent Variables

The central hypothesis states:

The implementation success of the RTI Act depends on behavioural, cultural, institutional and social, economic and political conditions. The more favourable these conditions are, the greater the possibility of having a successful implementation.

The following section discusses the independent variables of this study. In this instance, by ‘favourable’ conditions, the thesis refers to conditions that have a positive contribution to the implementation process. The independent variables include institutional factors, behavioural factors, cultural, social, economic and political factors.

⁴⁹⁷http://infocom.portal.gov.bd/sites/default/files/files/infocom.portal.gov.bd/law/4a7ad5ff_8ffe_4a2e_9ebb_77e5adda5023/Rulse.pdf

These variables are further categorised into sub-variables: behavioural factors (i.e., target group behaviour, interorganisational coordination and cooperation and behaviour of frontline workers) and institutional factors (i.e., design, institutional capacity and resources), social, economic and political factors (i.e., social conditions, economic conditions and political conditions). In addition to these three broad factors, there is another set of factors that is crucial in the context of the implementation of the RTI Act. These are cultural factors. Although the implementation studies do not emphasise cultural factors, in the context of this particular Act the study claims there is a correlation between cultural factors and implementation success.

3.5.2.1 Behavioural Factors

The work by Winter, Meter and Horn and Sabatier, as well as empirical evidence, shows that implementation is affected by behavioural factors. In this study, behavioural conditions were measured by the behaviour of the target group, interorganisational coordination and cooperation and the behaviour of frontline workers.

For target group behaviour, the study specifically examines the willingness of the public to learn about the RTI Act and to make use of it, especially considering the cost involved in the application process. Another factor it examines is whether the public takes part in events such as ward level meetings, participatory budget meetings, standing committees and Union Development and Coordination Committee Meetings (UDCC) meetings. For target group behaviour, the study intends to discover whether ordinary people trust government institutions and public offices to deliver the service and, specifically, meet RTI compliance. The study assumes the favourable behaviour of the target population would contribute to better implementation. Based on this, the study has the following hypothesis:

Hypothesis One: The more favourable the behaviour of ordinary people is towards the RTI process, the better its implementation will be.

For interorganisational coordination and cooperation, the study measures the level of cooperation and coordination among different government departments at various levels. More specifically, the study examines the relationship between local government institutions and government departments, the Information Commission and other

relevant departments performing RTI-related activities. Based on this, the study has the following hypothesis:

Hypothesis Two: The more cooperative government departments are, the better the implementation of the RTI Act.

The behaviour of frontline workers is measured by their engagement and willingness to make provision for information disclosure and publication, respond to public queries, help the public to understand the RTI Act and assist in submitting written applications. Based on this, the study has the following hypothesis:

Hypothesis Three: The more willing the frontline staff are to work towards RTI compliance, the better the implementation of the RTI Act will be.

3.5.2.2 Institutional Factors

The interpretations of Pressman and Wildvasky, Meter and Horn, Winter and Grindle and Thomas and empirical evidence on various institutional aspects, is referred to in the context of Bangladesh.⁴⁹⁸ This study assumes that two broad institutional factors influence the implementation process of the RTI Act. These include the design of the Act and the institutional capacity to run various RTI-related activities.

Policies come in different forms such as legislation, executive orders, rules or other official acts.⁴⁹⁹ The design is the aim of an individual policy and how it is going to achieve its goal.⁵⁰⁰ This includes whom the policy is for and how it will be implemented.⁵⁰¹

⁴⁹⁸ Pressman and Wildvasky, above n 7; Meter and Horn, above n 6; Winter, above n 20; Grindle and Thomas, above n 78.

⁴⁹⁹ J.S. Dryzek, 'Don't Toss Coins in Garbage Cans: A Prologue to Public Policy' (1983) 3(4) *Journal of Public Policy* 345.

⁵⁰⁰ Peter J. May, 'Policy Design and Implementation' in Guy Peters and Jon Pierre (eds), *Handbook of Public Administration* (SAGE, 1999) .

⁵⁰¹ Ibid.

For design, this study measured how clear the objectives of the RTI Act were to the people implementing it and to those who were to use it and whether any of part of the Act is ambiguous or would create any obstacle in the process of implementation. The study also examines whether the Act incorporates some of the main principles of the FOI regime discussed earlier including the provision of proactive disclosure, the provision of record management and publication of information, a short list of exceptions and simple, timesaving and cost-effective procedures for application. Based on this, the study has the following hypothesis:

Hypothesis Four: The clearer the content of the RTI Act is, the better its implementation will be.

The study measures institutional capacity by the capacity of staff to fulfil RTI compliances, the resources for training, the skill and development needs of staff and other stakeholders and additional requirements including the logistics for day-to-day operations, cost of publication, office management, internet, record and data management, cost of publicity and awareness-building. Based on this, the study has the following hypothesis:

Hypothesis Five: The more capacity the implementation agencies have, the better the implementation of the RTI Act will be.

3.5.2.3 Social, Economic and Political Factors

Hogwood and Gunn, Winter, Meter and Horn all agree that there can be some external factors to implementation that are beyond the control of policymakers and implementers.⁵⁰² These factors can be socio-economic conditions or natural hazards that could affect the outcome of implementation. For example, studies show that there is a correlation between economic factors and social structure and social relations among various groups.⁵⁰³ The various components of production such as goods and services and their access among various groups in a particular social setting influence its economic outcomes. The social characteristics such as social structure particularly

⁵⁰² Hogwood and Gunn above n 1; Winter, above n 20; Meter and Horn, above n 6.

⁵⁰³ World Bank, *Understanding Socio-economic and Political Factors to Impact Policy Change*, (Washington, 2006)

power relations among various social groups determine the reallocation of resources (inputs) and the distribution of goods and services (outputs) either through markets or other mechanisms.⁵⁰⁴ A World Bank study measuring Social, Economic and Political Impact on Policy has shown that the distribution of public goods and resources in most countries is unequal which is why in most of the cases there is inequality prevailed among marginal social groups by virtue of their race, ethnicity, gender, religion, family/clan affiliation, political views, etc.⁵⁰⁵

Alongside, in a society where there is cultural bias and people face barriers due to social mobility i.e. mobility to education, information, infrastructure and other public services, it will be an obstruction towards people's economic behavior and growth.⁵⁰⁶ As a result of inequality, these groups remain deprived from availing access to civil, political, and economic mechanisms to improve their status. and most important their participation in the making and implementation of the policy get affected.⁵⁰⁷ It is therefore important in the policy implementation context that different groups in a social setting and their competing demands are processed fairly within the existing power structure and people regardless of their racial, religious, ethnic identity have equal access to the distribution of goods and public services.⁵⁰⁸ Also, with social structure, there comes the question of people's participation in the decision-making process and access to various sources of information and communication to achieve more equitable participation.⁵⁰⁹ The empirical evidence in the context of Bangladesh from earlier discussion substantiates such claims that socio-economic and political conditions do influence the implementation outcome of a policy. Based on this, the following hypothesis is drawn:

⁵⁰⁴ Granovetter, Mark, and Richard Swedberg, *The Sociology of Economic Life*.

Boulder, Colo.: (Westview Press, 2005); Alsop, Ruth, *Power, Rights, and Poverty: Concepts and Connections*. (Washington, 2004),

⁵⁰⁵ World Development Report: *Equity and Development*. (New York: Oxford University Press and World Bank. 2006)

⁵⁰⁶ World Bank, 'Empowering People by Transforming Institutions: Social Development in World Bank Operations', (Washington DC: Social Development Department, World Bank, 2005)

⁵⁰⁷ World Bank, 'Social Analysis Sourcebook: Incorporating Social Dimensions into Bank-Supported Projects', (Washington, DC: World Bank, 2003).

⁵⁰⁸ World Bank, above n 216.

⁵⁰⁹ Sen, Amartya, *Development as Freedom*. New York: Alfred A. Knopf, Inc., 1999); Shin, Doh Chull, *On the Third Wave of Democratization*. 1994 (47) 70, *World Politics*

Hypothesis Six: The more favourable the socio-economic conditions are towards access to information for all, the better the implementation of the RTI Act will be.

By favorable socio-economic conditions, the study is referring to a condition where people of different segments of the society enjoy equal access to government institutions and services offered in these institutions. Alongside, there is also a place for everyone to participate in various events such as open participatory budget meetings, ward shavas, standing committees and UDCC meetings organized at the local level.

By favorable political conditions, the study is referring to a condition where people's access to information and services is not determined by party affiliation or there is no political favoritism or manipulation of political power by any particular groups in the process of implementation of the RTI Act. Apart from that, political parties, both the ruling and opposition parties, contribute to the implementation process, particularly, by not creating any obstacle to disclose information and making it available to the common people as there was a strong political mandate to introduce the RTI law from both sides. It is assumed that, like other past policies that have been discussed, political conditions might have an effect on implementation. Based on this, the following hypothesis has been drawn:

Hypothesis Seven: The more favourable the political condition is towards RTI, the better the implementation of the Act will be.'

3.5.2.4 Cultural Factors

Cultural factors, in terms of the administrative culture of a particular country, can influence the implementation of the RTI Act. Specifically, these include a culture of secrecy, power distance between the administrative elite, their subordinates and the public and the level of trust in the civil service. In general, most civil servants grow an entrenched sense of ownership and control over the services they provide and information they hold.⁵¹⁰ Traditionally, they prefer working in a closed system that is

⁵¹⁰ Laura Neuman and Richard Calland, 'Making the Access to Information Law Work: The Challenges of Implementation' in Ann Florini (ed), *The Right to Know* (Columbia University Press, 2007) .

the complete opposite to the core principle of transparency.⁵¹¹ The culture of secrecy is dominant among civil services in both developed and developing democracies.⁵¹² In his study on administrative practices in the context of the FOI law in Canada, Robert argues that the success of a freedom of information law in securing the right to information depends heavily on the pre-conditions of the political executives and officials required to administer it.⁵¹³ Therefore, to introduce legislation is aimed at ensuring openness and accountability, a change is needed in the mindset of information providers. For cultural conditions, this study examines whether there are cultural obstacles in the administrative practices that influence the implementation process of the RTI Act in Bangladesh. The study claims that a closed administrative culture that is inherently secretive and bureaucratic may influence the implementation outcome. Based on this, the following hypothesis has been drawn:

Hypothesis Eight: The more open the administrative culture is towards information disclosure, the better the implementation of the Act will be.

3.6 Conclusion

Implementation is a crucial step in the policy cycle. We often find policies fail to meet their intended objectives due to the way they are executed in practice. Implementation success in this thesis is defined as the achievement of the main objective of a policy through an effective implementation process. In an examination of the policy implementation literature, we find two contrasting schools of thought, that is, the top-down and bottom-up approaches. The top-down approach focuses on goals and end results through an implementation process led by top level politicians and senior bureaucrats and followed by frontline bureaucrats and officials. Thus, there are limited veto points or room for disagreement at different stages of implementation. Conversely, the bottom-up approach places the emphasis on the frontline workers and their contribution to the implementation process. According to bottom-up theorists, lower-

⁵¹¹ Khan, Mohammad Mohabbat, 'State of Governance in Bangladesh' (2003) 92(370) *The Round Table: The Commonwealth Journal of International Affairs* 391.

⁵¹² Roberts, above n 105.

⁵¹³ Alasdair S. Roberts, 'Administrative Discretion and the Access to Information Act: An 'Internal Law' on Open Government?' (2002) 45(2) *Canadian Public Administration* 175.

level bureaucrats are the most important actors as they deal with the day-to-day implementation challenges and generate strategies to overcome these barriers. Both approaches have their limitations—it is the context in which the implementation takes place that decides the approach that would be best suited. In some cases, neither of these approaches is completely appropriate and there have been attempts to propose a synthesised model.

The policy implementation studies discussed in this chapter show that, typically, the approach of implementation in Bangladesh has been top-down, in which the focus has been on strictly following the rules and policy directives coming from the top of the hierarchy. Often, people at the top are ignorant about the local context and the way things operate and fail to recognise the importance of including those staff who work at the periphery level and the public. However, a lack of institutional capacity in infrastructure, skill and resources is a challenge to implementation. Throughout this discussion, it has been identified that implementation can be influenced by several conditions and it is difficult to choose one particular model from the two approaches. As the RTI Act aims to ensure people have easy access to government information, it is important to discover the extent that implementation has enabled people to access government information and how people benefit from this Act. This chapter argued that the effectiveness of implementation can be best understood by observing the behaviours of the public and frontline workers and how they are included in the process, in addition to the capacity of institutions in translating policy directives into action. Further considerations are cultural factors as well as the socio-economic and political environment in which the policy is implemented. Based on this, the study proposed the following hypothesis:

The implementation success of the RTI Act depends on behavioural, institutional, cultural and socio-economic and political conditions. The more favourable these conditions are, the greater is the possibility of having a successful implementation.

Implementation success in this thesis is defined as a state of implementation that meets the core policy objectives and desired outcomes set by policymakers during the policy's development. In this study, the implementation success of the RTI Act is measured by provisions and practices of disclosure and publication, provision of designated officials, application, response and appeal procedures and practices, record management and

preservation practices, provision and application of enforcement mechanisms and practices of holding public meetings and deliberation.

This study aims to investigate the implementation process of the RTI Act and its immediate outcome, that is, to ensure people's access to information. In this thesis, the dependent variable is the implementation performance and independent variables are the institutional, behavioural, cultural and socio-economic and political factors. The empirical findings discussed in the next chapter, will investigate how people's access to information can be successfully achieved.

Chapter 4: Implementation Realities of the Right to Information Act—The Bangladesh Experience

4.1 Introduction

This study measures implementation success by a number of indicators including provisions and practices of disclosure and publication, applications and responses, appeal process, record preservation and management, assigning staff; holding public meetings, and CPI. This chapter examines the empirical evidence and secondary sources to determine whether the implementation process has ensured people's accessibility to government information. The study finds that there has not been much improvement in access to information since the RTI Act was introduced. Further, corruption has not reduced in these years. Record management remains poor and outdated. Almost 50 per cent of government offices are yet to assign designated officers to perform RTI-related activities. There is limited proactive disclosure and information is not regularly publicised to citizens. Since there are lack of practices among local council representatives and government officials to make regular publication and public sharing, the public has little access to annual reports or other relevant documents at the local level. While there is provision for people to file a written request for information through set procedures, there have been very few applications from different parts of the country submitted to government departments. Most of the government offices do not hold open public meetings. This study closely examines these indicators to understand the implementation reality of the RTI Act in Bangladesh.

4.1.1 Disclosure and Publication

Proactive disclosure means making information available to everyone so that whoever needs it can have access to that information.⁵¹⁴ More specifically, the FOI regime makes provision for the publication of documents to be made available to the public

⁵¹⁴ Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation* (2007).

even if there is no formal request for information.⁵¹⁵ Citizens should be able to access information, regardless of their social, economic or political identities, without having to ask the respective public authorities or private authorities. Therefore, any information that is produced for that purpose should be available through multiple communication channels to ensure that it reaches the people who require it the most. Section 6 of the RTI Act discusses information disclosure and how information should be published and publicised.⁵¹⁶ Under this Section, ‘every authority shall publish and publicise all information relating to any decision taken, proceeding or activity executed or proposed by indexing them in such a manner as may easily be accessible to the citizens.’⁵¹⁷ No authority shall conceal any information or limit its easy access.’⁵¹⁸

At the local level, this study finds that there is no arrangement to update relevant information on a regular basis or provide the public access to this information. The local councils do not keep or maintain any websites. At the same time, there are lack of practices among local council representatives and government officials to make activities and information related to services and projects disclosed. In fact, during the fieldwork the study observed that there is not much information available for the public, apart from a budget board displaying the proposed budget for the financial year and some basic information such as the UP structure, contact details of members and committees, emergency contact numbers, office hours and the names of government officers. The study also reveals that the list of beneficiaries of social safety net programs features no information on the criteria by which these recipients are selected, or the type and amount of allocation they receive from central government or other sources such as international NGOs or special projects. A recent project designed to address climate change adaptation in the Godagari Upazila was affected due to a lack of information. It is a known fact that Bangladesh is the second most vulnerable country in the world to climate change. The Bangladesh Climate Change Trust Fund (BCCTF),⁵¹⁹ worth

⁵¹⁵ Ibid.

⁵¹⁶ *The Right to Information Act 2009*, s3.

⁵¹⁷ Ibid, s6.

⁵¹⁸ Ibid, s6.

⁵¹⁹ Attaching highest importance to the Climate Change issue, Bangladesh Climate Change Strategy and Action Plan (BCCSAP) 2009 was formulated. BCCSAP 2009 identified six thematic areas, namely (1) food security, social protection and health, (2) comprehensive disaster management, (3) infrastructure, (4) research and knowledge management, (5) mitigation and low-carbon development, and (6) capacity building and institutional strengthening. in the fiscal year of 2009-10,

USD345 million, has been created to address this issue. Godagari is of one the sub-districts in the Barind Tract Region of the Rajshahi district to experience the adverse effects of climate change. The effects include an increase in temperature and lower, more unpredictable rainfall. The highest temperature recorded in the last 10 years has been 41°C and the lowest rainfall recorded was 672 mm. Vast land masses have been subject to drought, making Godagari one of the driest places in the entire region. The Barendra Multidimensional Development Authority launched an irrigation and environmental development project, worth BDT15 million, to dig new canals and repair existing ones. The project's aim was to use surface water for irrigation to reduce the demand on underground water and it was successful in this objective. However, a survey involving local farmers of Godagari sub-district, conducted by Sachetan Nagarik Committee (SANAC) and Transparency International Bangladesh (TIB) indicates that 52 per cent of respondents were unaware of the project and 95 per cent were unaware of the benefits that the project would bring. There was also no designated officer for the public to ask questions about the project. According to subsection 3(2) of the Right to Information (Publication and Publicity) Regulation 2010, any project that involves government money must display relevant information about the project in an open place visible to the public. The same survey reveals that no information about the project was provided to the public, with the exception of the project's name being displayed near the canal. There were no open discussions with the public before the plan was made or implemented. The lack of information about the project and the unwillingness of the relevant authority to provide this information led to poor participation by the target population and, ultimately, to the project's failure.

The study also finds that there are few set procedures in place to enable certain services to give or receive relevant information. People are mostly unaware of the procedural part of service delivery, as there is no information disclosed or any guidelines provided by the local authorities of government offices at the community level. In describing the state of disclosure, a local journalist said:

Climate Change Trust Fund (CCTF) was created by the Government from its own resources to finance projects for implementation of BCCSAP 2009. The aim of these projects is to reduce the vulnerabilities caused by the adverse effects of climate change.

For More Information visit: <http://www.bcct.gov.bd/>.

I believe proactive disclosure ensures [the] public's access to government services and protects the marginalised. For instance, there is an Adivasi community in the UP who are considered socially and economically weak as they don't have regular earning[s] and, without education, they find it difficult to request information. There is also a sense of fear [of] rejection if [they] apply for information. However, the disclosure of information about different issues such as social safety net programs or khas land⁵²⁰ empowers and helps them practice their political, economic and legal rights and engages them in state activities. But, unfortunately that is not the case as you look at local institutions—they are reluctant to put proactive disclosure first.

At the central government level, the Information Commission has proactively disclosed different kind of information. It has an informative website that is well organised and updated on a regular basis. It features a wide range of information including the annual reports, information request procedure details, recent appeals and updates (i.e., hearing dates and facts), a list of designated officers of ministries and departments, information about law and regulation, structure and responsibilities, recent and upcoming events, email contact details, social media links, frequently asked questions and answers, photo galleries, a noticeboard and options to download information. In describing the provision of disclosure, the Information Commissioner said:

Many of the things have been digitalised which give a steady increase in facilitating electronic access to government services. You pay taxes online, [apply for] National ID cards, admission forms and results, secondary and higher secondary results online. Many public universities now have free wi-fi zones. Things are changing in line with Vision 2021⁵²¹ and, in the near future, the government is going to make the internet available at the doorsteps of common people. In that case, e-governance is going to find a special place and, thus, will contribute to good governance.

Apart from online publications, the Information Commission also publishes IEC materials, posters, t-shirts, banners, handouts, training modules, information sheets and brochures. The Information Commission has signed a memorandum with a range of

⁵²⁰ Khas land means government-owned fallow land, where nobody has property rights. It is land that is deemed to be owned by the government and is available for allocation according to government priorities.

⁵²¹ 'Digital Bangladesh' is the mid-term vision of the Awami League (AL) led-alliance set during the national election of Bangladesh in 2008. This is the political commitment of AL to make Bangladesh a modern, technologically advanced country by the fiftieth anniversary of its independence in 2021.

news agencies to facilitate proactive disclosure by creating mass awareness through print and electronic media, radio, television and newspapers.

In most cases, disclosure of information encourages public deliberation. Proactive disclosure of information makes citizens informed about the laws and decisions that might affect their daily lives. It ensures government accountability in the use of public funds to make decisions related to infrastructure, agriculture, social safety net programs, health, education and employment. Proactive disclosure minimises the chances of denial or manipulation of information and reduces the number of information requests. However, the study finds that, while many actions are occurring at the Information Commission and central level, at the bottom levels where the information need is the greatest, there is no real effort to make the local administration stronger or encourage proactive disclosure of information.

4.1.2 Annual Reports

According to Section 6(3) of the RTI Act, each authority must publish a report every year that contains information about its organisational structure, activities, responsibility of officers and employees, processes of decision-making, laws, regulations, notifications, directives and manuals, terms and conditions under which a citizen may receive services such as licences and permits, the name, designation, address and other relevant information about designated officers.⁵²² Under Section 6(4), if the authority frames any policy or makes important decisions it must publish these policies and decisions.⁵²³

The study finds that, apart from the Information Commission and a few selected ministries, there are insufficient publications and reports for public disclosure either electronically or in paper format. Four ministries and 38 out of 47 of their departments have published information disclosure guidelines and almost every ministry and its department has published their annual reports. The Ministry of Health and Family Welfare, Ministry of Women and Children Affairs and Ministry of Information and 18 out of 20 of their departments have regularly published annual reports. They have also developed their websites and are updating information on a regular basis. Since 2009, the Information Commission has published its annual reports every year. These reports include information about relevant documents issued by the Information Commission

⁵²² *The Right to Information Act 2009, s6(3).*

⁵²³ *Ibid, s6 (4).*

(e.g., Acts and Ordinances, gazettes, proactive disclosure guidelines, regulations, newsletters and booklets), an account of income and expenditure in the previous year, organisational structure and staff details, designated officers, media partners, website details and future plans. The reports also include information about awareness meetings, training of designated officers and other occupational groups, distribution of materials (e.g., publications, application forms and appeal forms), the inclusion of RTI in the school curriculum, agreements and Memorandums of Understanding signed with departments, ministries and projects and government–NGO collaboration (e.g., the Right To Information Day and other activities). In addition, the reports include the number of registered applications for information and their outcomes, the nature and patterns of applications, appeal results, hearing details and successful case studies.⁵²⁴

At the UP level, the Local Government (Union Parishads) Act, 2009, has made the publication of annual reports mandatory.⁵²⁵ According to the Act, each union must publish annual reports including information about projects, annual budgets, grants, government funds, audit reports, purchase records, UDCC meetings, standing committee meetings, scheme implementation reports, scheme assessment meeting minutes, beneficiary lists of social safety net programs, training details and reports and information related to IEC.⁵²⁶ The study finds that there is no evidence that government departments at the local level are publishing such reports. Local government institutions, particularly the UP, prepare an annual report on a regular basis. However, annual reports are not distributed or disclosed publicly, unless a specific request is made. One of the limitations of these reports is that there is no detailed description of the institution's activities. Further, there is no discussion about the process through which decisions are made at the local level.

⁵²⁴ Information Commission of Bangladesh, *Annual Report 2014*.

http://infocom.portal.gov.bd/sites/default/files/files/infocom.portal.gov.bd/annual_reports/7ae40972_4403_4e2a_b5d1_031fd7cbd30/Annual%20Report-2014.pdf

⁵²⁵ *Local Government (Union Parishads) Act 2009*.

http://www.lgd.gov.bd/LGD_FILES/local_government_union_parishad_act2009.pdf

⁵²⁶ Ibid.

4.1.3 Citizen's Charter

A Citizen's Charter (CC) is a public document that provides information about the services provided by government agencies, such as education, health and local government.⁵²⁷ A CC involves the voluntary engagement of officials and service providers, especially at the local government level, with the service recipients and other citizens, to empower and assist them to obtain better, equally accessible public services. These charters are meant to be a platform to promote interaction between citizens and government offices on a range of service needs, demands and issues to reach an agreement on how to improve those services.⁵²⁸ A charter provides all the information about available services including standards, quality and time frames, the scope for choice, costs, grievance mechanisms and how to access the services from public institutions.⁵²⁹ The CC was introduced in Bangladesh as a tool to improve the services provided in a range of government departments at different administrative levels of public administration.⁵³⁰ The CC initiatives are closely related to the RTI Act, as public disclosure of information is an important component of the Act. By ensuring citizens have access to service-related information, public service holders are held accountable, thus, fulfilling a core objective of the Act. The study examines how effectively CCs have been implemented in local government administration, especially at the union level and upazila level where the majority of people access different services. This study finds that not all government institutions have CCs displayed at the local level. A CC is intended to be formulated by engaging different groups including privileged and underprivileged, male and female, Adivasi and Bengali, physically abled and disabled and mentally abled and disabled. However, the study finds very few people have an understanding of how it is formulated. Table 4.1 shows that 50 per cent of the respondents had noticed the CC in their respective UPs. Although half of the respondents noticed the CC, none of them had participated in its formulation or implementation. This finding can be substantiated by a respondent, an Adivasi youth, who stated, 'none of our people has had the chance to participate in any of these events.

⁵²⁷ Huque, Ahmed Shafiqul and A. H. M. Kamrul Ahsan, 'Citizen's Charter and Implementation Failure: Performance of Local Councils in Bangladesh' (2016) 19(1) *Public Administration and Policy* 6.

⁵²⁸ Ibid.

⁵²⁹ Ibid.

⁵³⁰ Ibid

In fact, I do not think they have any event as such.’ There was no detailed description of the procedures, time frames, terms, conditions or how beneficiaries were selected for services such as Test Relief, food-for-work programs, the Vulnerable Group Fund, the Vulnerable Group Development, Old Age Allowance, Widow Allowance or resolution of disputes through village courts. In general, people were reluctant to ask a question about the services available under the CC. Political affiliates and those who have a personal connection to local representatives did have access to those services. There have been no efforts from any of the government institutions to make the public aware of the process of making and implementing a CC.

Table 4.1: Visibility of CC in Ups

Have you noticed the Citizen’s Charter in your UP and other government offices?	
Yes	22 (20%)
No	18 (80%)
Total	40 (100%)

Source: Based on researcher’s study in 2014–15

4.1.4 Regulations, Agreements, Working Groups and Advisory Groups

Section 5(3) of the RTI Act states that the Information Commission shall, by regulations, frame instructions to be followed by every authority for the preservation and management of information and all authorities shall follow the instruction.⁵³¹ In line with this statement, the Information Commission issued the Right to Information (Preservation and Management of Information) Regulation, 2010.⁵³² This regulation states that the rule applies to all those authorities who do not have any separate laws, rules, regulations, policies or directives for the preservation and management of information. In 2013, a guideline for proactive disclosure was introduced in a joint meeting between the Cabinet Division, Ministry of Public Administration, Ministry of Information and Communication Technology, Access to Information Programme (run

⁵³¹ *The Right to Information Act 2009, s5(3).*

⁵³² *The Right to Information (Preservation and Management of Information) Regulation, 2010.*

out of the Prime Minister's Office), Manusher Jonno Foundation and the Information Commission.⁵³³

According to Section 6 and Section 7 of the RTI Act⁵³⁴ and the Right to Information (Publication and Publicity of Information) Regulation, 2010 respectively, each authority shall disclose and update particular types of information on their website.⁵³⁵ The study finds that the Management and Resources Development Initiative, in association with the Cabinet Division, has taken steps to influence five other ministries including Agriculture, Industry and Trade, Land, Establishment, Primary and Mass Education and the 42 department and agencies working under their supervision to obey the rules and regulations of the RTI Act.⁵³⁶ Further, in 2014, an Information Commission working group was established together with the Cabinet Division, Information Ministry and organisations working on specific issues. The purpose of this working group is to develop and supervise a strategic plan for the implementation of the RTI Act. This group also ensures that the strategic plan is implemented correctly and that the RTI sub-committee of the National Integrity Strategy is informed about their work and responsibilities. The Cabinet Division has signed an Annual Performance Agreement with most of the ministries and departments promising to abide with RTI activity, especially disclosure. The Coordination and Reforms Unit operating in the Cabinet Division works as the secretariat of this working group. At the local level, RTI District Advisory Committees have been formed in every district with members including the District Commissioner, Superintendent of Police, Civil Surgeon, District Information Officer and people from other organisations such as the District Press Club, the District Bar Council, the District Chamber of Commerce, women's associations, NGO and Civil Society Organisation (CSO) representatives.⁵³⁷ However, apart from some meetings and occasional rallies, the study could not find any significant work by these committees to promote access to information.

⁵³³ The Information Commission of Bangladesh, *Annual Report 2014*.

⁵³⁴ *The Right to Information Act 2009*, s6, s7.

⁵³⁵ The Ministry of Information, above n 15.

⁵³⁶ The Information Commission of Bangladesh, above n 11.

⁵³⁷ *Ibid*

4.1.5 Cost of Publication

Publication, whether it is published electronically or in hard copy, should be made available free of charge especially if it is an annual report or form of any kind. Section 6(5) of the Act advises that a report prepared by an authority should be made available free of charge for public information with copies for sale at a reasonable price.⁵³⁸ Further, Section 6(6) states that all publications made by the authority must be made available to the public at a reasonable cost.⁵³⁹ The question is, how accessible and affordable are these publications and if, and how, institutions are making these reports available to the public. The study during the fieldwork observed that most of the relevant forms available at the Information Commission are provided free of charge. These documents and forms are also available on their website. The Information Commission also publishes its annual reports online and hard copies of these reports, if asked for, are supplied without charge. However, because limited copies are published, these publications are not always available for circulation. One of the reasons for the limited publication is the lack of awareness and enthusiasm among citizens to ask for and read these materials. In explaining the situation, an information commission staff said:

We do not make many copies of these reports yet, because, very few people ask for these publications. Majority of the people are not aware of the Act. We need to promote RTI Act and find out ways to reach out to common people. We are also in partnership with the print and electronic media to help us promoting the RTI Act. But, we need to identify the right strategies to address the issue.

At the local level, no effort is made by government authorities or agencies to make this information public. The public is largely unaware of these reports because the reports are never made available. In the instance that a citizen asks for an annual report they are allowed to make copies if they pay for the printing themselves.

4.2 Preservation and Record Management

Without a doubt, the most important element of the RTI Act is that the information is recorded. Even the best access to information law will be meaningless if the relevant

⁵³⁸ *The Right to Information Act 2009*, s 6(5).

⁵³⁹ *Ibid*, s 6(6).

information is not preserved and managed properly. Records include documents, papers, files, notes, materials, videos, audio tapes, samples, computer printouts, disks and other data storage. The way key documents and relevant materials are recorded, stored and managed affects RTI compliance.⁵⁴⁰ When records are accurate and well maintained, it makes it easier for government officials to respond appropriately to information requests. Records supply key information that is relevant and needed during litigation and responses to queries consistent with FOI laws. Thus, without an effective record management system for creating, managing, storing and archiving records, implementation of FOI laws is impossible.⁵⁴¹

Information that is preserved needs to have value and be useful for everyone. According to Roberts, the three domains in which records need to be kept and maintained are business, accountability and cultural.⁵⁴² The business domain includes records that help with day-to-day operations and business needs.⁵⁴³ Whatever an organisation does, it is dependent on the availability and unity of its records. The accountability domain involves records that are relevant to organisations that are accountable for their businesses and required to respond to all queries made by the public.⁵⁴⁴ Last, the cultural domain represents records that are related to history or culture that may not be useful for business purposes but have significant value in defining the society and its culture.⁵⁴⁵ Shepherd and Yoe note that a record is not simply recorded information but holds key features that provides evidence of some activity.⁵⁴⁶ Therefore, it is essential that the records kept are consistent and accurate. The record needs to capture the event as it is. Further, records need to be kept and maintained in such a way that is easily

⁵⁴⁰ Commonwealth Human Rights Initiative, 'Implementing Access to Information: A Practical Guide for Operationalising Access to Information Laws' (2008).

⁵⁴¹ Ibid.

⁵⁴² D. Roberts, *Documenting the Future: Policy and Strategies for Electronic Record Keeping in the New South Wales Public Sector* (Archives Authority of New South Wales, 1995).

⁵⁴³ Ibid.

⁵⁴⁴ Ibid.

⁵⁴⁵ Ibid.

⁵⁴⁶ E Shepherd and G Yeo, *Managing Records-a Handbook of Principles and Practice* (Facet Publishing, 2003).

understood and able to be used as required so that everything that is recorded has value and a meaningful purpose. Archives are also a form of records. The term 'archives' is often used to describe old documentation and sometimes storage areas of offices where old records are kept. These records might not be required for operational use, but hold historical or cultural significance. When records are preserved and managed properly, it allows the entire system to work efficiently and in a timely manner. Consequently, information can be easily disclosed, either online or through other means, without too much time spent in finding its location. The study finds that, in most of the public offices including local government institutions, information is badly managed and disorganised. Therefore, it is difficult for local authorities to locate the exact information requested and provide it on time.

According to Sections 5(1)⁵⁴⁷ and 5(2)⁵⁴⁸ of the RTI Act, every authority must catalogue and index all information and preserve it in an appropriate manner within a reasonable timeframe, so that whenever any particular information is needed, it can be made available.⁵⁴⁹ Further, each authority must preserve this information on computers that are connected through a countrywide network to facilitate access. Sections 4, 5, 7, 8, 9 and 10 of the Right to Information (Preservation and Management) Regulation, 2010 give guidelines on the collection and preservation of personal information and classify this information into four categories:⁵⁵⁰

Category A refers to permanent records or information including discussions and instructions on policy, legislation, rules and regulations, 'precedent' (to be used as a reference for a long time), state documents such as treaties and agreements with foreign countries that will not be replaced by others. It also includes information about prominent personalities. Category A information is deposited in the Record Room/Archives in the Directorate of Archives and Library with a minimum of three additional copies made of the document, along with the original version for preservation.

⁵⁴⁷ *The Right to Information Act 2009*, s 5(1).

⁵⁴⁸ *Ibid*, s 5(2).

⁵⁴⁹ *The Right to Information Act 2009*.

⁵⁵⁰ *The Right to Information (Preservation and Management of Information) Regulation 2010*.

Category B refers to non-permanent records and information such as service records of government employees, development projects, budgets and reports of committees constituted by government orders and are preserved for 10 years or more. Primarily, this information is preserved for three years with proper indexing in the Record Room.

Category C refers to general information records such as sale and purchase details, temporary post creation, training and transfer of officers. This information is preserved for a fixed period, usually 3–5 years.

Category D refers to routine information or documents preserved for a shorter period such as one year, with no requirement to keep them after that period. The regulation also suggests that each authority may seek cooperation or advice regarding preserving information from the National Archives, established under the National Archives Ordinance, 1983.

The study finds that not all ministries and departments have structured record management and preservation in place. The website for the Information Commission launched in 2010 in cooperation with the Access to Information Programme of the Prime Minister's Office and Grameenphone Bangladesh. Since then, the website has been regularly updated. Though government ministries have websites, these are often outdated and unstructured with no categorization as guided in the Preservation and Management Regulation, 2010.⁵⁵¹ The situation is even worse at the lower levels of government. At union level, information and records are mostly kept as hard copies including meeting minutes, decisions, project plans, committee information, lists of safety net program beneficiaries, demographic information, government orders about allocations for different projects, reports of standing committees and UDCC meeting minutes and decisions. As the information is not properly catalogued or indexed, obtaining the relevant information is challenging. It is not always a question of willingness or unwillingness to provide the information, but the way things operate at the lower levels that makes this task difficult. UP has, in recent years, tried to update its record management system and preserve information electronically. However, these steps are not sufficient to address the range of information requests from citizens. This delays the functioning of local government bodies and hampers proactive disclosure.

⁵⁵¹ Ibid.

4.3 Application Process, Response and Appeal

The RTI Act guarantees people's right to seek and receive information from public and private authorities.⁵⁵² Under Section 4 of the Act, each citizen has the right to request and receive information from a public body.⁵⁵³ It is important that the process to seek and receive information is easy to understand for both demand and supply sides and is either low or no cost. The information must be provided on time and if it is delayed the authority must inform the applicant. Further, the number of refusals of both oral and written requests needs to be as low as possible.

4.3.1 Process of Application

Under Sections 8(1),⁵⁵⁴ 8(2)⁵⁵⁵ and 8(3)⁵⁵⁶, a person may apply to the officer in charge for information either in an application form provided by the authority or in a prescribed format if the application form is not available.⁵⁵⁷ In cases in which there are no specific formats, a written application shall be submitted by mentioning the name of the applicant, the name of the person the request is made to, with a correct and precise description of the information sought and the form in which the information is required (i.e., electronic or hard copy).⁵⁵⁸ After receiving the request, the designated officer must provide the information within 20 working days. If more than one unit or authority is involved, the information must be provided within 30 working days. If the officer in charge fails to provide the information, they must provide a written explanation within

⁵⁵² According to the *RTI Act*, all public institutions (except Defence and Audit), local government institutions and private organisations run by government or foreign funding are responsible for providing information if asked by any citizen of the country.

⁵⁵³ *The Right to Information Act 2009*, s 4.

⁵⁵⁴ *Ibid*, s 8(1).

⁵⁵⁵ *Ibid*, s 8(2).

⁵⁵⁶ *Ibid*, s 8(3).

⁵⁵⁷ *The Right to Information Act 2009*, s8.

⁵⁵⁸ *Ibid*.

10 working days to the person requesting the information.⁵⁵⁹ At the union level, very few requests have been sent to the appellate authority. The study finds that most people are unaware of the RTI Act and how the application process works. People are reluctant to participate in this process due to a lack of experience in submitting written requests and because there is some writing involved in the process. Individuals without a formal education find it difficult to register a written application. Further, a written request format is often unavailable. Consequently, a negligible amount of written requests have been submitted at the community level. Table 4.2 shows 80 per cent of respondents found the application process difficult.

Table 4.2: Ease of Application Procedure

Do you find the application procedure easy to understand?	
Yes	8 (20%)
No	32 (80%)
Total	40 (100%)

Source: Based on the researcher's study in 2014/15

Another challenge is obtaining the correct name and designation of the officer in charge of the appellate authority. The absence of appropriate information makes the application process complicated and causes delays. That is why so few applications are submitted to the appellate authority.

4.3.2 Cost of Application

The RTI Act states that the officer in charge shall determine a reasonable price for the information and be paid by the person requesting the information within five working days.⁵⁶⁰ Sometimes printing or photocopy charges are applied for written applications.

4.3.3 Timeliness of Response

The RTI Act advises that the response time should not be more than 20 working days for the designated officers. A written application submitted to the UP or the offices of government transferred departments at the Upazila level must be answered within that timeframe and documented in the register. The study's findings show that information

⁵⁵⁹ Ibid .

⁵⁶⁰ Ibid .

requests are often delayed, and sometimes unanswered. Unavailability of information is one of the main reason for the delay. However, lack of practice to maintain a sound record mangement is also a reseason for the noncompliance.

4.3.4 Response to Information Requests

The study finds that the number of information requests is as low as 0.44 per cent of a Bangladesh's population of 160 million people. From 2010–2014, 69,862 information requests were submitted to government and non-government departments across the country. The number of information requests were 25,420 (2010), 7,808 (2011), 16,475 (2012), 11,727 (2013) and 8,442 (2014).⁵⁶¹ Figure 4.1 shows a declining trend in information requests registered. In most cases, the information that was requested was not provided for the following reasons:

- the application was not completed as prescribed in the guidelines or was incomplete
- the information that was requested hampered individual privacy or presented a threat to life or physical safety
- the fee for the information was not paid
- the person requesting the information applied to the wrong authority
- the information could have impeded due judicial process in a pending case
- the information was unavailable or had not been officially published
- the information could affect the investigation of any offence.

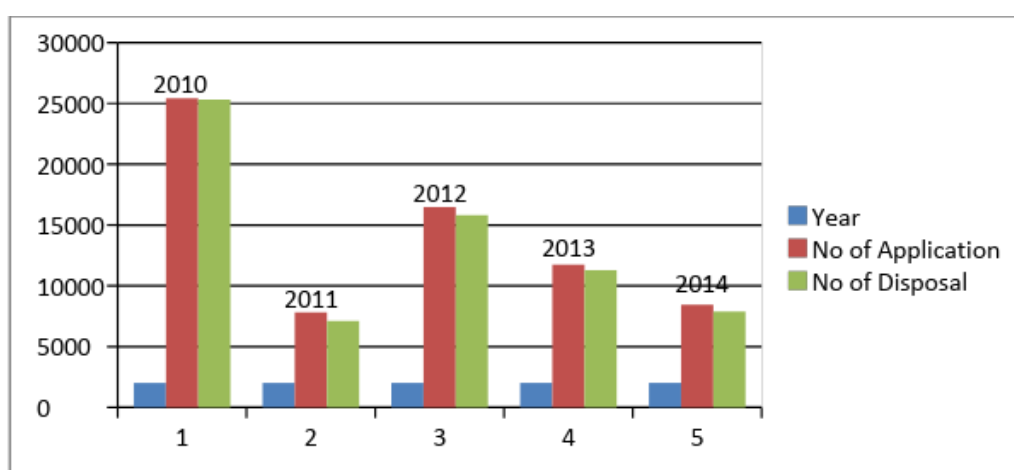


Figure 4.1: Decline in Information Requests 2010–2014

⁵⁶¹ The Information Commission of Bangladesh, above n 11.

4.3.5 Appeals and Complaints

According to Sections 24(1), 24(2), 24(3) and 24(4) of the RTI Act, if an information request is unanswered or goes unnoticed, or the person seeking the information is aggrieved by the decision, they can apply to the appellate authority asking for the information within 30 days from the time of receiving the response from the officer in charge.⁵⁶² Once the application is received, and the appellate authority is satisfied with the application, it can direct the officer in charge to supply the applicant with the requested information. If the application is rejected, not responded to, or the appellant is aggrieved by the decision of their appeal, they may lodge a complaint directly with the Information Commission within 30 days from the date of the decision. Section 25 states, if the Information Commission agrees with the complaint it may take action against the authority.⁵⁶³ This action can include directing the authority or office in charge to provide the information in a particular manner, appointing an alternative office in charge, publishing any specific information or special class of information, imparting training to officials, providing compensation for loss or damage or imposing a fine. The Information Commission can take action within 45 days of receiving the complaint. In exceptional circumstances, the time limit can be extended to up to 75 days.⁵⁶⁴ The study finds that 95 per cent of the cases that were accepted by the Information Commission for hearing were resolved and that the authorities were asked to either provide the information that was requested or pay penalties. In the period 2009–2011, 104 complaints were received, out of which 44 were accepted for hearing and 41 were settled (see Table 4.3). In 2012, 94 complaints were accepted for hearing and in 2013, 116 were accepted.

Table 4.3: Information Commission (IC) Complaints, Hearings and Resolutions

Year	Registered Complaints and Appeals to IC	Accepted for Hearing	Resolved	Settlement %
2009–11	104	44	41	93.18

⁵⁶² *The Right To Information Act 2009*, s25.

⁵⁶³ Ibid.

⁵⁶⁴ Ibid .

2012	202	94	91	96.81
2013	207	116	110	94.83
2014	298	170	162	95.29

Source: Information Commission Annual Reports 2010–2014

The highest number of complaints was filed in 2014. In this period, there was a total of 298 complaints, of which 170 were accepted for hearing. Only eight cases remained unsettled. The study also finds that these complaints were not from any particular occupational groups, but came from different groups of people. Table 4.4 shows that 56 per cent of complaints were submitted by the public, 22 per cent by service holders and 16 per cent by service owners. Lawyers, business owners, students and others made 0.6 per cent, 3 per cent, 1 per cent and 2 per cent of complaints, respectively.

Table 4.4: Occupational Information of Appellant (2014)

Sl	Occupation	Number
1	Public	95 (56.0%)
2	Business owner	5 (3.0%)
3	Service holder	27 (16.0%)
4	Student	2 (1.0%)
5	Journalist	37 (22.0%)
6	Lawyer	1 (0.6%)
7	Others	3 (2.0%)
Total		170 (100.0%)

Source: Information Commission Annual Reports 2010–2014

The Information Commission receives a range of information requests that vary in nature and involve different departments. The study finds that the majority, or 25 per cent, of requests made to the Information Commission relate to land management and registration. The next largest group relates to income expenditure and audits, followed by development projects and social safety net programs, constituting 15 per cent, 11 per cent and 10 per cent of the total complaints, respectively. There was also a small number of requests made for information relating to exam results, advertisements, public discipline and corruption (see Table 4.5).

Table 4.5: Nature of Information Complaint

Sl	Subject	Number
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1	Development Project	19 (11.0%)
2	Social Safety Net Program	18 (10.0%)
3	Land Management and Registration	43 (25.0%)
4	Recruitment	14 (8.0%)
5	Income Expenditure and Audit	26 (15.0%)
6	Exam Results	4 (2.0%)
7	Advertisements	5 (3.0%)
8	Public Discipline	6 (3.5%)
9	Corruption	4(2.4%)
10	Others	31(18.0%)
	Total	170 (100.0%)

Source: Information Commission Annual Reports 2010–2014

4.3.6 Fines Imposed

Under subsection 11(b) of Section 25, the Information Commission can impose a fine if an authority is found guilty of not providing information within a given time limit.⁵⁶⁵ The study finds that the Information Commission has fined authorities who were found guilty of noncompliance.

4.3.7 Exceptions

In countries with access to information, the law must provide a comprehensive list of exceptions. Section 7 of the RTI Act includes a list of exceptions with 20 subsections. The list is broad and highlights the areas and situations in which exceptions apply. These include any information that may, if disclosed, cause a threat to the security, integrity and sovereignty of Bangladesh, affect the property rights of a third party, offend the privacy of personal life, obstruct enforcement of the law, endanger physical safety of any person, is forbidden to be published by any court of law or tribunal, hamper an investigation process, or is related to foreign policy that may affect relationships.⁵⁶⁶

⁵⁶⁵ Ibid.

⁵⁶⁶ Ibid.

The study finds that there is a lack of clarity in the definition of these terms and this causes confusion for people on the supply side. For instance, Section 7(h) of the Act states information is exempt if it may hamper the privacy of the personal life of an individual. There is no clarification of the subjects or areas that cannot be provided or published. Further, Section 7(n) mentions information that is only disclosed for a certain period must not be available to the public afterwards. This subsection contradicts Section 3(a) that states the provision of providing information shall not be affected by the provisions of the Act. Further, Section 7(r) mentions that any secret information of a person that is protected by law must not be published. This contradicts Section 3(b) that states provisions that create an impediment in providing information are superseded by the provisions of the Act if they conflict with the rule. There are areas in the list that are not clear to either the supply or the demand side.⁵⁶⁷ In explaining the complexity of exemption clauses, an academic said:

Look, there are elements of the Act which are unclear and contradictory which need to be changed. I'll give you two examples. Let's talk about Section 7(p) which says, any such information relating to purchasing process before its completion or any decision taken about it, shall not be published. This increase corruption should be refined. Also, Section 7(n) which talks about information that is liable to be published for a certain period shall not be published. It does not only contradict Section 3(a) of the Act but also there is no such binding in either in the Constitution of Bangladesh or international laws.

During the study, it became clear that most people, including people's representatives, do not know what is on the exception list. Only 20 per cent of people's representatives know the exceptions well, 60 per cent do not know any of them and 20 per cent are partially aware of the exceptions (see Table 4.6).

The majority of the public surveyed (90 per cent) do not know anything about the exceptions list and the remaining 10 per cent are only partially aware of the list (see Table 4.7).

⁵⁶⁷ Ibid.

Table 4.6: People's Representatives Awareness of RTI Act Exceptions

Obligation about Disclosure (People's Representatives)	
Do not know	8 (60%)
Partially know	2 (20%)
Fully know	2 (20%)
Total	12 (100)%

Source: Based on the researcher's study in 2014/15

Table 4.7: Public Awareness of RTI Act Exceptions

Obligation about Disclosure (Public)	
Do not know	36 (90%)
Partially know	4 (10%)
Fully know	—
Total	40 (100%)

Source: Based on the researcher's study in 2014/15

The study also finds that the Act excludes government offices at the union level, allowing these government departments the liberty to not disclose anything. People seeking information from any of these departments have to go to a upazila (sub-district) office. This is a major drawback of the Act. Further, there is no provision for 'harm' or 'public test', based on the three fundamental principles: that the information must be within the scope of legitimate aims listed in the law, if disclosed it might cause substantial harm to those goals and the damage is greater than the interest of the public.

4.4 Assigning Designated Officers

According to Section 10, each public, autonomous, constitutionally formed body or private organisation run by the government or foreign finance must appoint a designated officer to the information providing unit within 60 days of the enactment of the Act. Further, Section 11 of the Right to Information (Preservation and Management) Regulation, 2010, states designated officers are responsible for the management of information and must use modern technology to manage and preserve information.⁵⁶⁸

⁵⁶⁸ *The Right to Information (Preservation and Management) Regulation 2010, s11.*

By the end of 2014, 20,136 designated officers had been appointed, of which 16,387 were from public offices and 3,769 from private organisations.⁵⁶⁹ This shows that 55 per cent of the public offices have designated officers, compared to only 22 per cent of private organisations. However, there has been a declining trend in appointments of designated officers in the past few years.⁵⁷⁰

The number of designated officers from both public and private organisations who received training on the RTI Act was 13,526. This constitutes 67 per cent of all designated officers. In addition, 1,034 government officers, 162 teachers and 1,034 journalists and assistant editors were also trained. These training programs are held at the district level and the central level. Of these, 498 government and non-government officers, lawyers and journalists have undergone the Training of Trainers program. These trainers are part of a team that runs three-day training courses at district level and ministerial level.⁵⁷¹ The Information Commissioner explains some of the challenges in appointing designated officers:

We have placed designated officers in over 50 per cent of government offices. The challenge with appointing designated officers is that they are not newly required or appointed for this purpose only. They are selected by the respective departments where they are placed during the time of assignment. Due to nature of their services, they are often transferred to other locations which create a vacuum in the process. Then, you have to pick someone new with the possibility of no prior experience in RTI. So, you have to restart the inclusion process which includes orientation and training to make the person familiar with the responsibilities. That creates the challenge and keeps the numbers high.

Section 10(1) of the RTI Act refers to the provision of appointing designated officers at every unit of a respective department or ministry.⁵⁷² The definition of Information Provided Unit under the RTI Act excludes line agencies from having designated officers at the union level. However, under the Local Government (Union Parishads) Act, 2009, all the clauses of the RTI Act apply to the UP.⁵⁷³ Therefore, the Secretary of the UP acts

⁵⁶⁹ The Information Commission of Bangladesh, *Annual Report 2014*.

⁵⁷⁰ Ibid.

⁵⁷¹ Ibid.

⁵⁷² *The Right to Information Act 2009*, s 10(1).

⁵⁷³ *The Local Government (Union Parishad) Act 2009*.

as a designated person for any requests for information or activities related to the RTI Act. UP chairpersons and secretaries have received separate training at the National Institute of Local Government (NILG). In addition, NGOs and research organisations (i.e., Manusher Jonno Foundation, HELVETAS Bangladesh, TIB, Research Initiatives Bangladesh, Nijera Kori, Dnet and Nagorik Uddyog) have organised training programs for stakeholders including local government representatives, government officials, professional groups, women and NGO workers. However, these training initiatives are small in number and the organisations do not have operations spread across the country. Consequently, not all districts have had received training sessions.

4.5 Holding Public Meetings

According to the Right to Information (Disclosure of Information) Regulation, 2010, each public authority must disclose information as mentioned in Schedules 1 and 2.⁵⁷⁴ Further, there is an explicit provision for holding a public meeting and proactively uploading information about the meeting onto their websites. At the central level, apart from the Information Commission, very few ministries or their departments hold such meetings to publish information or make it available on their websites. At the union level, the study finds that *ward shova*⁵⁷⁵ and open participatory budget meetings have taken place on a regular basis for the past few years. Further, UDCC meetings are held every two months and are attended by government departments, NGOs, professionals and local community members. This is an ideal platform for people to discuss a range of issues and to learn what is happening in their respective UPs. However, as far as the disclosure of information under Schedules 1 and 2 of the Regulation is concerned, the study finds limited arrangements for the publication and publicity of information among local government institutions and public offices. Further, there are very few relevant discussions on proactive disclosures in UDCC meetings or on their websites.

⁵⁷⁴ *The Right to Information (Disclosure of Information) Regulation 2010.*

⁵⁷⁵ *Ward shova* means a meeting that is held at the ward level. It is not mandatory for wards and UPs to hold such meetings under the Local Government Act, 2009. However, over the years, it has become a significant part of the participatory budget process. Ward shova is a part of UP planning process. It is represented by the people of the ward who discuss common problems and prioritises most important ones. Later, key issues from the wards are sent to UP for open budget sessions.

4.6 Corruption Index

As mentioned earlier, this thesis does not focus on establishing a relationship between the RTI and corruption. The thesis is also not intended to measure the state of corruption in sectors in the government. However, the study does assess the overall trend in corruption levels since the RTI Act was introduced. It is assumed that, as the RTI Act has been in place for a few years, even some minor changes would be beneficial in relating the outcome with the implementation of the Act.

Corruption has been a major problem in Bangladesh for a long time. Since 2001, Bangladesh has consistently performed poorly in the CPI. Bangladesh was ranked first place for the period 2001–2005 and named the most corrupt country in the world. Its position slightly improved in early 2007, when it ranked 7th in the CPI. In 2008–2012, Bangladesh ranked between 10th place and 13th place. The best result was in 2013 when Bangladesh ranked 16th place. However, the trend has reverted since then. In 2015, Bangladesh ranked 13th from the bottom and 139th from the top among 168 countries. Bangladesh's score remains at 25, compared to its score in 2014, when the level went down by a position from the bottom and moved up six positions from the top (see Table 4.8).

Table 4.8: Bangladesh's Ranking in the CPI

Year	CPI	Rank from Bottom	Number of Countries
2001	0.4	1	91
2002	1.2	1	102
2003	1.3	1	133
2004	1.5	1	146
2005	1.7	1	159
2006	2.0	3	163
2007	2.0	7	180
2008	2.1	10	180
2009	2.4	13	180
2010	2.4	12	178
2011	2.7	13	183
2012	26	13	176

2013	27	16	177
2014	25	14	175
2015	25	13	168

Source: TIB online reports 2001–2015

Bangladesh's CPI score was at its lowest in 2001, when it ranked 0.4 out of 10. The score remained low until 2004, ranging between 0.4 to 1.5. From 2006 to 2011, the score slightly improved to between 2.0 to 2.7. The best year for Bangladesh's CPI score was in 2013, when it reached 2.7⁵⁷⁶ (see Figure 4.2).

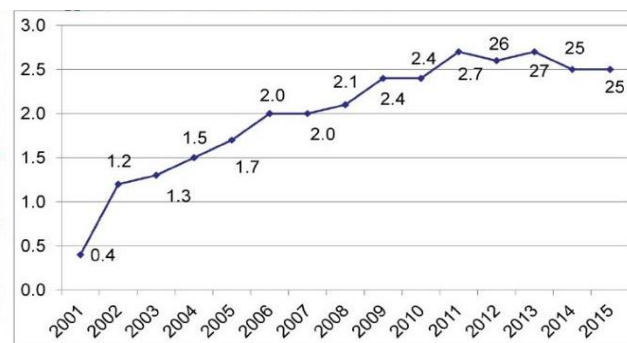


Figure 4.2: Bangladesh's CPI Scores 2001–2015

Source: Transparency International Website⁵⁷⁷

Bangladesh is the second most corrupt country in South Asia, followed by Nepal, Pakistan and Sri Lanka. Bhutan remains the least corrupt country in South Asia, ranking 30th globally. Apart from Bhutan, India is the only other country in the region to improve its position in recent years, moving to 76th position in 2015 from 94th in 2013 (see Table 4.9).

⁵⁷⁶ See <https://www.tibangladesh.org/beta3/index.php/en/activities/4870-bangladesh-retains-last-year-s-score-slips-one-position-from-bottom-tib-calls-for-challenging-impunity-and-bring-the-corrupt-to-justice>.

⁵⁷⁷ For Yearwise Detail See <https://www.transparency.org/research/cpi/overview>.

Table 4.9: South Asian Countries in CPI 2013–2015

South Asia: CPI 2013-15



Country	CPI 2015		CPI 2014		CPI 2013	
	Score (100)	Rank (168)	Score (100)	Rank (175)	Score (100)	Rank (177)
Bhutan	65 →	27 ↑	65	30	63	31
India	38 →	76 ↑	38	85	36	94
Sri Lanka	37 ↓	83 ↑	38	85	37	91
Pakistan	30 ↑	117 ↑	29	126	28	127
Nepal	27 ↓	130 ↓	29	126	31	116
Bangladesh	25 →	139 ↑	25	145	27	136
Afghanistan	11 ↓	166 ↑	12	172	8	175

Rank – counting from top

All South Asian countries except Bhutan have so far scored less than global average, which is 43.

Source: TIB website⁵⁷⁸

In the past few years, there have been quite a few scandals and corruption allegations in Bangladesh involving entities such as Sonali Bank, Basic Bank, Destiny Group and Rana Plazain, in addition to the collapse of the stock market. These scandals remain unresolved and the main culprits are yet to be identified. These incidents have raised many questions about the credibility and effectiveness of the Anti-Corruption Commission. Further, there is a lack of information and explanation on the government's part. Secrecy often serves special interests and discourages valuable opinions and insights.⁵⁷⁹ It is quite clear from this discussion that there is no sign of improvement in the overall state of corruption in Bangladesh since the inclusion of the RTI Act.

4.7 RTI Act Success Stories

The RTI Act has only been in existence for a short time. This study contributes to the existing literature to improve the implementation approach. Although the study finds no significant improvement in people's accessibility to government information following the introduction of the Act, some cases have been identified during the empirical investigation in which the Act has proved successful. Following are success stories in

⁵⁷⁸ Ibid.

⁵⁷⁹ Helen Darbishire, 'Proactive Transparency: The Future of the Right to Information? A Review of Standards, Challenges, and Opportunities.' (World Bank Initiative 2009).

which the RTI Act was used by individuals to access government information. The Case Study 1-3 are collected from different unions of Godagari Upazila during the interview sessions. The Case Study 4-5 are taken from the database of the information commission.

Case Study 1: ‘Mr. X’ Learns How to Apply for a Work Program

‘Mr. X’ lives in the village of Faridpur, located in the Gogram union of Godagari Upazila, in the Rajshahi district. ‘Mr. X’ was very upset that his name was not on the list of workers available to work. He was unsure what criteria was followed in selecting these workers. He went to the UP member to enquire about the program. The member told him to go to the UP office for information. ‘Mr. X’ went to the UP office and asked the UP secretary about the program. The secretary told Sujon he was busy and to come back to office the following week. Disappointed, he returned home and did not know what to do. He was sitting at the tea stall near his house when, in a discussion with one of his friends, he learned about a law that gave everyone the power to ask for information from UP or any other government office. However, he was unsure how to apply. He and his friend returned to the UP office and asked the secretary about the program and how Sujon could apply for the information. While talking to the secretary, they learned about the RTI Act and the procedure to submit a written application. Sujon, with the help of the secretary, filed a written request asking about the selection process for workers under the government income generating program run by the UP and whether there were any plans to start a new program in the future. The written application was responded to within a week and ‘Mr. X’ was happy to learn that the UP planned to start a new program soon.

Case Study 2: ‘Ms.Y’ Now Has Her Widow Allowance Card

‘Ms.Y’ is a widow who lives in Tikael, a small village in the Gogram union. The government runs a social safety net program that provides support to disadvantaged groups and communities. These programs include allowances for widows and elderly citizens. One of her neighbours received a Widow Allowance card last year and ‘Ms. Y’ realised that she, too, was entitled to receive one. She wanted to learn the criteria for selection of beneficiaries under the scheme. She spoke to an NGO worker she knew

asking about the process. ‘Ms. Y’ was told that there was a law that guaranteed her the right to speak to a UP representative. The following morning she went to the UP office and asked the secretary how to apply for the allowance card. She was told to submit a written application including the information she wanted to know. The next day, she returned with the application that she had completed with help from the NGO worker. In her application, she asked for the list of beneficiaries from her village and whether the UP had plans to include more people in the scheme in future. Her application was responded to within a week and her name was included in the list of beneficiaries for the next instalment. ‘Ms. Y’ ’s willingness to ask for information enabled her to become a Widow Allowance cardholder.

Case Study 3: ‘Mr. Z’ is Now an Old Age Allowance Cardholder

‘Mr. Z’ lives in Sreerampur village, in the Gogram union. ‘Mr. Z’ learned that some of the villagers his age had received an Old Age Allowance card from the UP. As an older citizen, he wondered why his name was not on the list. He asked one of the recipients how they found about this scheme. The recipient told ‘Mr. Z’ their UP member had informed them that their name was selected and they needed to go to the UP office to enquire how to collect the card. The card arrived a few weeks later. ‘Mr. Z’ asked what he should do to have his name put on the list and was advised to speak to the UP member. The following day, ‘Mr. Z’ met with the member who told him to talk to the UP chairperson. ‘Mr. Z’ visited the UP office to consult with the chairperson who told him to wait for a few months, but he did provide any further explanation. ‘Mr. Z’ returned home, disappointed. In a discussion with his neighbour, he learned about the RTI Act and how he could submit a written application to the UP asking for information. The next day, he went to UP office and submitted a written request asking about the eligibility criteria to become an Old Age Allowance cardholder. Two weeks after he submitted his request, ‘Mr. Z’ received the information he needed.

Case Study 4: Upazila Secondary Education Office Fined for Non-Disclosure of Information

Prothom Alo, a leading national daily newspaper, submitted a written information request to the Upazila Secondary Education officer (the designated officer of the

department). The application queried the number of books received by the Upazila Secondary Education Office and the schools that were on its distribution list to receive the books. The office did not provide the information within the required time frame, so *Prothom Alo* submitted a written application to the District Education Office. This office also failed to provide any information, prompting *Prothom Alo* to file a complaint to the Information Commission. Both parties attended the subsequent hearing. After listening to their arguments, the Information Commission judging panel fined the Upazila Secondary Education Office BDT2000 and asked its officer to release the information requested.

Case Study 5: ‘Mr. A’ Receives His Information

‘Mr. A’ lives near Shreepur, in the Gazipur district. He went to the Upazila Health Complex to submit a written application requesting the list of patients who received free medicine from the Bitipara village health centre of the Bormi union. The authority refused to accept ‘Mr. A’ ’s application and asked him to leave. As ‘Mr. A’ was aware of the RTI Act appeal process, he filed a complaint with the Information Commission. The Information Commission asked both parties to attend a hearing. During the hearing, ‘Mr. A’ explained why he had filed a complaint. The authority denied that it had refused to accept the application. After considering the arguments from both parties, the Information Commission asked the authority to provide the information as requested.

The empirical findings of the study demonstrate that, despite the RTI Act, there has been no significant improvement in the public’s accessibility to government information. However, the situation improves when people become aware of their rights to access information. These case studies establish that people can achieve successful outcomes when they exercise their right to access information. The challenge is to address the issues so that solutions can be implemented.

4.8 Conclusion

This chapter focused on discovering how the RTI Act was implemented and the extent to which the implementation process had contributed to people’s access to government information in Bangladesh. The study found that there had been no significant

improvement in accessing information since the Act was introduced. As discussed earlier, implementation performance in this study was measured by indicators such as provisions and practices of disclosure and publication, the number of applications and responses, the appeal process, record preservation and management, assigning staff and holding public meetings.

Proactive disclosure and publication of information are key directives of the RTI Act. The study found that, although the provision exists for each public authority to publish and publicise information related to its activities and index information in such a manner that is easily accessible to the public, these authorities did not update information on a regular basis. There was no, or very limited, disclosure of information in most of the public offices at the local level that, if disclosed, could inform people about services they may be entitled to receive. CCs were not regularly updated, nor were people from different groups involved in the development of the charters. Further, no information had been disclosed about the range of social safety net programs provided by the government to different groups of people. The process to decide who was included on the list of beneficiaries and the type of allocations the local government institutions received from the central government or NGOs was not disclosed to the public. Local government display and noticeboards were not updated on a regular basis. With the exception of the Information Commission, very few ministries and departments organised public meetings or made this information public through their websites. This was despite the provision for authorities to hold public meetings and proactively upload information onto their websites, under the Right to Information (Publication and Publicity of Information) Regulation, 2010. At the local level, only UP has organised public events such as open participatory budget meetings and ward meetings over the past few years.

The study also found that only the Information Commission and a few selected ministries made publications and reports available for public disclosure both electronically and on paper. At the local level, UP regularly prepared annual reports, but these were not distributed or disclosed publicly, unless a specific request was made. In line with the law, the Information Commission did not charge a fee to access annual reports and other relevant documents such as forms of different kinds. At the local level, the public rarely had any knowledge about these reports, but, in instances when a person asked for a copy of a report or form, a minimum fee was applied.

One of the main features of the Act is the provision for an applicant to submit a written application if any particular information is required. The study found the majority of people at the local level were unaware of such a provision. In addition, people who had heard about the RTI Act and its application were often reluctant to participate in a written process. Those who did follow the process found it difficult to register a written application because many did not have the education or knowledge to read through the procedures and act accordingly. In many cases, there were no prescribed formats available in public offices. Consequently, there were very few applications submitted at the community level. Many applications were rejected because they were not completed in the manner prescribed by the law. Alongside the rejection of applications was the question of exemptions. In this chapter, there were discussions that clearly demonstrated clauses in the Act that were unclear and created doubt in those seeking information. There was a lack of understanding of the law from both the supply side and demand side. The number of requests registered since 2009 when the Act was implemented was in decline. The study also found that almost 50 per cent of public offices were yet to assign a designated officer to deal with RTI-related issues. A provision in the Act provides the applicant the right to complain and appeal if the supply side was noncompliant in fulfilling an information request. However, very few applicants followed this process due to the cost and time involved. Holding public meetings and proactively uploading information onto websites is another provision authorities are required to abide by under the Right to Information (Publication and Publicity of Information) Regulation, 2010.⁵⁸⁰ The study found that very few ministries and departments, apart from the Information Commission, organised any public meetings or provided information about public meetings through their websites. At the local level, only the UP had organised events such as open participatory budget meetings and ward meetings in the past few years.

One of the requirements for authorities and relevant organisations to meet RTI Act compliance is to have a well maintained and updated record management system. Despite this, in most instances record management was outdated and there were no significant measures to maintain archives in public offices. Many offices (e.g., Union Tehsil offices), kept old paper documents in bad condition and have made no efforts to restore these documents or maintain back up copies. Although government ministries have websites, with the exception of a few ministries, most of these were not

⁵⁸⁰ *The Right to Information (Preservation and Management of Information) Regulation 2010.*

well maintained. The situation was worse at the local level since most of the records were in hard copy and there were with no set guidelines in place for record management and storage.

In addition to these indicators, the CPI also showed there was no significant improvement in the level of corruption in Bangladesh and its position had remained unchanged. Earlier in this chapter, some of the cases that demonstrated evidence of significant corruption and special interests were discussed. As a whole, this study found that the implementation of the RTI Act had not achieved its intended objectives. In the following chapter, the reasons behind this failure will be discussed.

The introduction of the RTI Act is indeed a landmark initiative by the government of Bangladesh towards the goal of achieving better accessibility to public information. For a country that has had a long history of corruption and political manipulation, the aim for open dialogue is commendable. However, the question is, whether enough has been done to meet the desired objectives of the law. The discussion in this chapter has shown that this objective has not yet fully been achieved.

Chapter 5: Implementation Challenges of the RTI Act in Bangladesh:What Went Wrong?

5.1 Introduction

A range of pressure points and obstacles impede the implementation of the RTI Act. In introducing the RTI Act, Bangladesh showed its willingness to ensure the public has better access to information. However, the introduction of such a law does not automatically lead to better access to information. There are a great deal of questions in the aftermath of its implementation. These include whether FOI laws face different issues than other policies and what the challenges are for implementation. This chapter discusses the implementation challenges of the RTI Act in Bangladesh and how these have acted to impede the outcome. The empirical evidence and the secondary data collected in this study show that little has been done to ensure that the RTI Act is effective and that different factors have contributed to its performance. This study categorises these factors as behavioural, institutional, external and cultural. The following discussion addresses these challenges.

5.2 Behavioural Factors

It is crucial to engage people from different groups in the making and implementation of FOI laws. These groups include people's representatives, government officials, political parties, professional bodies (e.g., lawyers, academics and journalists), civil society, NGOs, media and, most importantly, the public. The study finds that the behaviour of the target population, frontline workers, NGOs and civil society and cooperation and coordination among intraorganisational and interorganisational government units have an influence over the implementation process of the RTI Act in Bangladesh.

5.2.1 Target Group Behaviour

In referring to the theoretical framework, this study claims that target group behaviour influences the implementation process. The majority (70 per cent) of the population of Bangladesh lives in rural regions. Government offices, particularly the Union Parishad and Government Line Agencies offer various kinds of services and implement government projects at the rural level. People must know about these services and get proper access to all the relevant information. However, studies in the past have shown that the ordinary people know little about government projects.⁵⁸¹ The RTI Act gives them the legal entitlements to know about these projects and hold these authorities accountable. Therefore, it is important that people know the Act and use it. The empirical evidence shows that, although it was enacted in 2009, the majority of people are completely unaware of the Act or don't understand how it works. As shown in Table 5.1, 90 per cent of the people interviewed for this study had not heard about the Act. One local respondent said:

We are farmers, we work in the field, grow crops and that is how our family survives. That has been the case for so many of us for generations. Usually, if there is something in the UP, we come to know from our members. Unfortunately, we have not heard about such law. Even if we knew about that, it is difficult for us to apply it as most of us cannot read. Many of us have not even gone to any school. Also, we do not have the capacity to understand how these things work. Unless our local representatives or someone who knows about it helps us to understand, it is difficult to make ourselves known.

Table 5.1: Public Awareness of the RTI Act

Have you heard about the RTI Act?	
Have not heard	36 (90%)

⁵⁸¹ Alam, Quamrul and Julian Teicher, 'The State of Governance in Bangladesh: The Capture of State Institutions' (2012) 35(4) *South Asia: Journal of South Asian Studies* 858; Khan, Mohammad Mohabbat, 'State of Governance in Bangladesh' (2003) 92(370) *The Round Table: The Commonwealth Journal of International Affairs* 391; Sobhan, Rehman 'How Bad Governance Impedes Poverty Alleviation in Bangladesh' (OECD Development Center, 1998).

Have heard	4 (10%)
No comment	—
Total	40 (100%)

Source: Based on researcher's study in 2014–15

To make the public aware and engage them in the process is a highly demanding task. Although the Information Commission has held training and awareness-building events, there were too few events to have an effect. The study shows that government initiatives to raise awareness were insufficient at the local level. The majority, or 80 per cent, of the respondents said that no attempt was made to help them gain knowledge about the Act (see Table 5.2). One local respondent said:

Well, most of the people you find in the rural areas are farmers and day labourers who occasionally visit government offices. Unless you are told, it is hard for us to know that there is such law which gives citizens the right to ask for information. There are many NGOs who are working with us. Most of them have forums with us which involve in credit operation. There is only one organisation that works in local government. They have some training programs. But I do not have any idea how they select participants and who have received the training. However, we have not received any training or program on this particular issue.

Table 5.2: Reasons Given for Lack of Awareness of the RTI Act

Why do you think you are not aware of the Act?	
No initiatives by government or others	32 (80%)
Not interested	8 (20%)
Total	40 (100%)

Source: Based on researcher's study in 2014–15

A lack of knowledge and understanding about the RTI Act means the public is disengaged from submitting written requests or asking for particular information. They are reluctant to make an effort to hold public offices accountable. There is also the fear they will offend political elites or the representatives in charge of public institutions if they make queries about government projects or ask for particular information such as a list of beneficiaries, selection criteria, or funds and allocations for specific projects. Such findings are substantiated by a local community member, who said:

There are questions which might be relevant to you and you want to know about it. However, you cannot ask every question to your representatives. For example, I want to know about how the list of beneficiaries for [Old Age] Allowance is finalised this year. I know there are some irregularities and they try to include their people in the list, but you cannot complain or ask why they did so. Because that might offend them and the [last] thing you want is to be considered as an opponent. In that case, your chance to make it to the list is almost gone.

The study also finds that there is unwillingness among the local community to visit public offices (see Table 5.3). As many as 70 per cent of respondents said that they hardly ever visit public offices, whereas only 10 per cent visit these offices on a regular basis.

Table 5.3: Frequency of Visits to Public Offices

How often do you go to public offices?	
Often visit	4 (10%)
Sometimes visit	8 (20%)
Hardly visit	28 (70%)
Total	40 (100%)

Source: Based on researcher's study in 2014–15

Among those who do not often visit public offices, 57 per cent said they did not visit because they did not obtain what they wanted from these institutions and 32 per cent said they did not feel like going there (see Table 5.4). The unavailability of services and absence of key personnel in public offices also limits people's engagement. In commenting on why people do not visit local government agencies and public offices, a local respondent said:

One major limitation [in] local public bodies like Union Parishad is a lack of resources. With limited funds and infrastructure, they cannot provide all the services and relevant information that people want. But there is room for transparency as they are now involved in projects that are funded by the government as well as NGOs. [The] more they disclose information about these projects people will get to know about them. As a result, more people will come to local government institutions and encouraged to [be] involved in the process.

Table 5.4: Reasons For Not Visiting Public Offices

Why do you not visit public offices?	
Did not get what I was looking for	16 (57%)

Did not feel like going there	10 (32%)
Others	2 (7%)
Total	28 (100%)

Source: Based on Researcher's study in 2014–15

Apart from the UP, there are offices of government departments that are not directly accountable to the UP. These include agriculture, livestock, youth development, health and family planning. This lack of accountability means staff at these offices do not follow official hours and remain absent without notifying UP representatives. Consequently, people usually do not go to these offices as they know that there are limited, or no, services available for them. In support of this finding, one respondent said:

One of the main problems with these offices is that you will not always find designated people especially at government departments such as agriculture, livestock, youth development, etc. is not in the office. For example, if I need the Block Supervisor (agriculture) to discuss any issue regarding agriculture, I am not sure whether the officer will be available in the office or not. What we usually do in a situation like this we talk to him over the phone or in worst case go to local dealer and take medicine or advice as per requirement.

For the RTI Act to be effectively implemented, it is imperative the public understands and accepts the law and is able to use it when required. It reflects institutional failure when people are disengaged and do not know how to make the best use of their rights . As the study shows, unless participation is inclusive, it will be challenging to implement the RTI Act.

5.2.2 Interorganisational Cooperation

In line with the theoretical framework, this study claims that the level of cooperation and coordination inside and among government departments influences the implementation process. The empirical evidence in this study shows that interdepartmental cooperation plays an important role in implementing the RTI Act. The relationship between the Information Commission and local government institutions, government departments and agencies, and cooperation between intradepartmental units and different administrative levels influences the achievement of RTI compliance. The study also finds that the Information Commission does not supervise or communicate with local government institutions or public offices at the

upazila or union level to ensure they meet RTI compliance. In explaining the working relationship between the Information Commission and the local government authority, one local government representative said:

So far we have not seen anyone coming from the Information Commission to oversee how local public institutions are meeting RTI objectives. In fact, we have not received the official copy of the Act yet. The one you find here is collected from an NGO office for our use only. We have not received any promotional materials or training programs at the union level. Whatever you see UP doing here is our initiative. There is absolutely nothing coming from the central government or Information Commission for the better implementation of RTI activities.

Further, the public offices use authoritarian practices to make decisions including those related to RTI requests. Junior officials usually consult with their superiors before deciding on any matter, irrespective of how trivial it is. For any decision to be made they must rely on their superiors. In confirming this, one junior official said:

Usually the system is as such that any decision regarding information we need to consult with our superior authority. That is because if something happens as a result of such act of ours, we will be held accountable to our bosses.

There is an invisible, centralised system in place in which a great deal of decisions are made on mutual understanding and cooperation. Although they take ownership, subordinates have a sense of dependency towards their superiors. Consequently, disclosure of information or responses to specific information requests are either delayed or overlooked, unless there are specific instructions coming from the top. The study also finds that the relationship between the Upazila Parishad administration and the UP administration is determined mainly by political affiliation and relationships. This behaviour controls the allocation of funds and cooperation in day-to-day operations. A great deal of information that is interlinked between the administrations cannot be made available to the public due to tensions between the two administrative units. This finding is substantiated by a local government representative who said:

Let's take especial allocation, for instance, often the list of beneficiaries are decided by political affiliation or decided by the MPs or Upazila Administration. Now, the problem with such allocation and its distribution is that you have to follow the instructions from [the] superior authority knowing that there are more deserving people in the community which are left aside than those who are on that list. Now, when people come to their local representative asking about information on the allocation, either you have to ignore their queries or give an explanation which is untrue. This creates doubt in the minds of the common public.

It is clear from the findings that there is no cooperation between departments. Their relationship is strictly determined by hierarchy and their subordinates work in an environment of doubt and suspicion. Consequently, the process to obtain information is often delayed and unfocused.

5.2.3 Frontline Workers

Based on the theoretical framework, the study claims that those people who implement a policy at the frontline are the backbone of the entire implementation process. The way frontline workers react to a policy and their behaviour towards the citizens or service receivers influences the policy's outcomes. The empirical evidence of this study shows that government officials at the local level are inaccessible. They have no fixed office hours to follow. The public finds these workers are too busy and uncaring and often people are made to wait long hours for a service or a response to an earlier request for information. Frequently, people find their requests are rejected or delayed, without receiving any proper explanation why. The study shows that 89 per cent of the respondents experienced either rejection or delay when they visited public offices for a service or for information related to that service (see Table 5.5). During the interview sessions and FGDs, respondents advised that government officials and local government representatives are protective about information related to government allocations, selection criteria for schemes such as social safety net programs, cash-for-work and relief goods. One local respondent said:

There is a sense of guardedness in government officials. You can feel that when you go for particular services, you have to wait for long hours. Many a time you will not find anyone in the office. Personally speaking, I feel uncomfortable going to public offices unless until there is no other choice left, I prefer not to go to public offices.

In contrast, local government representatives are comparatively regular in attending their offices on time and meeting with people.

Table 5.5: Experience of Rejection or Delay in Public Offices

Have you experienced rejection or delay?	
Yes	16 (89%)
No	2 (11%)
No comment	0 (0%)
Total	18 (100%)

Source: Based on researcher's study in 2014–15

The study finds that there is a lack of willingness among local government officials for proactive disclosure. In interviews with local representatives and government officers at the union level, it was found that many considered it a type of burden to prepare disclosure materials and inform people about their activities. The finding is substantiated by the statement of a government official who said:

There are various other responsibilities the government officials are entitled with. We do not get time to do RTI-related works such as routine disclosure and publication of materials. It is also not possible for us to make people aware of the law.

Further, the study finds that government officials are not supportive towards people who make an information request. There are no guidelines available in government offices to help those requesting information understand the application procedure. Although it is a provision of the RTI Act for a prescribed application format to be available at government offices free of cost, in most cases applicants were asked to write a white paper. When government officials are busy doing other work, it is difficult for a person without knowledge to submit a formal written request for information. Most, or 64 per cent, of the respondents found public officials were not supportive, whereas only 18 per cent of the respondents considered them to be supportive (see Table 5.6).

Table 5.6: Support from Public Officials

Do you find public officials supportive?	
Yes	05(18%)
No	18 (64%)
No comment	5 (18%)
Total	28 (100%)

Source: Based on Researcher's study in 2014–15

In summary, the bureaucratic attitude of government officials and an authoritarian culture hinders the relationship between the government and the public. This behaviour affects the successful implementation of the RTI Act, as citizens are generally unwilling to ask for information.

5.2.4 Civil Society Organizations

Civil Service Organizations (CSOs) are often termed as '*Independent Development Actors*'⁵⁸² and '*Private Voluntary Organizations (PVOs)*'⁵⁸³. There is trend of using the term 'NGO' interchangeably with 'Civil Society Organization'. The OECD DAC has come up with the broader definition to address these confusions. CSOs refers to non-state and non-market organizations outside of the family which people organize themselves to pursue common interests in the public domain. These include community-based organizations and village associations, environmental groups, women's rights groups, farmers' associations, faith-based organizations, labour unions, co-operatives, professional associations, chambers of commerce, internationally affiliated organizations with branches in many different countries, independent research institutes and the not-for-profit media.⁵⁸⁴ In the present case of the implementation of RTI, in Bangladesh, this thesis is using the term CSOs to include non-state organizations and actors such as NGOs, CBOs, INGOs, Media, Professional and Research Forums, etc.

In many countries, international stakeholders play a significant role in creating an environment for the adoption of FOI laws. There are three ways that international agencies have applied pressure on governments. First, international non-profit organisations and foundations have provided funds to organise a civil society movement to pass such laws. Second, diplomatic pressure is applied to boost a country's democratic credentials as a member of an organisation such as the European Union. Third, international organisations like the World Bank have introduced transparency as a solution to combat corruption and have made it a development agenda.⁵⁸⁵ Since it

⁵⁸² Tomlinson, Brian, 'Working with Civil Society in Foreign Aid: Possibilities for South South?' (United Nations Development Programme, 2013)

⁵⁸³ Ibid.

⁵⁸⁴ Ibid

⁵⁸⁵ Ackerman, John M and Imra E Sandoval-Ballesteros, 'The Global Explosion of Freedom of Information Laws' (2006) 58(1) *Administrative Law Review* 85.

gained independence over three decades ago, Bangladesh has been dependent on international aid and its policy agendas have been shaped by the international stakeholders who provide this aid. In the case of RTI Act, donors have played a prominent role in influencing CBOs, particularly, the NGOs to apply pressure to introduce the law. It is not inappropriate to say that the RTI Act has been introduced without much deliberation with other stakeholders. Therefore, it is assumed that the promotion of the RTI Act is not only the government's responsibility. CSO representatives, particularly, NGO workers and other professional groups such as journalists, lawyers, the business community and the media not only should participate in awareness-building, but also educate the public and those who are not aware of the law on how to use the law. NGOs can engage a large group of people through their extensive networks and expertise in awareness-building and public education. However, the study finds that there are very few NGOs working on RTI-related issues. Those who are include Manusher Jonno Foundation, HELVETAS, Nijera Kori, Dnet, Article 19, TIB and Nagorik Uddyog. Most of these organisations are centrally located and work with partners at the regional level. Their coverage is not spread across the country. One important role of the NGOs is to develop materials that help demand-side stakeholders to understand the access to information process and how to best make use of it. However, the involvement of NGOs and the RTI Forum has been limited to a few training courses, events to observe Right To Information Day and the publication of some success stories. Although they have reached out to millions of people through such activities it is difficult to ascertain whether this has had any effect on public awareness. Bangladesh is a hub of NGOs—there are around 26,000 registered in the country. Despite their significant presence, the underlining mission of the RTI has not been included in the operational agendas of most NGOs in Bangladesh. One exception is BRAC, the largest international NGO in the world, based in Bangladesh. BRAC has a wide network and works at the community level in almost every part of the country. It runs a community empowerment program—a pilot project funded by the World Bank. The program aims to make people understand and use the RTI Act by developing information-seeking behaviour, especially among poor women, through activities such as popular theatre, RTI clinics, group discussions, education and materials. However, the program only operates in two out of the 64 districts, a significantly low number. The study reveals that only 22 per cent of NGOs have designated officers for the RTI Act,

less than half of government departments. In support of this lack of focus on the RTI, one NGO worker said:

There was a wave [of] NGOs in the 90s. That time, many NGOs were working all over the country. They worked parallel to government and had wide coverage. In the past, NGOs have been involved in many successful cases and projects like immunisation, sanitation, safe motherhood, family planning, etc. However, NGOs in Bangladesh now have shifted their focus from their early themes such as education, health to food security [to] climate change adaptation. [The] donor's mandate has also changed. As a result, there are not too many NGOs working on governance issues, more specifically on RTI. Now the problem is, without an adequate budget and manpower it is tough for NGOs to implement awareness-building activities and develop IEC and promotional material. So, have NGOs lived up to the expectation regarding awareness-building and educating people on how to use the law? I would say, they have failed to deliver.

Other Civil Society Organizations such as Media both electronic and print, academic, research forums, citizen's forum are also important stakeholders who can influence and build awareness among people. They can encourage people to make the best use of the RTI through public campaigns such as rallies, public lectures, talk shows and special messages. In collaboration with the media, citizen's forum like SANAC and research organization such as TIB, RTI Forum, Center for Policy Dialogue etc. can ensure citizens are informed about their rights and the benefits of using the law. In addition, media can promote good governance by broadcasting news and government projects with authenticity and fairness. It can put pressure on the government to be more accountable and transparent in its public operations. Unfortunately, the role of media has been insignificant in building awareness of the RTI Act. A recent study which was carried out to examine Media's response to RTI has shows the top ten mainstream newspapers had published 117 items over a period of one year. Of all the publications 80% were news about events such day observation and meeting, only 7% were features on RTI, 4% editorials and 3% were in-depth reports.⁵⁸⁶ Apart from attending seminars, rallies and holding occasional talk shows they have not done much to advocate on RTI-related issues or engage more people in the process through awareness-building. There are very few board platforms of civil society that work on governance issues, especially on the

⁵⁸⁶ MRDI, "Citizens' access to information in South Asia: Diagnostic analysis - Bangladesh Chapter" (Management and Resources Development Initiative, 2013).

RTI. The RTI Forum⁵⁸⁷ occasionally meets to discuss progress, update documents and plan future activities. Further, the Information Commission has signed a Memorandum of Understanding to promote the RTI Act through print and electronic media. However, a lack of support from other stakeholders weakens its effort to publicise the law among its potential users. As a group, the CSOs are underperforming in their roles to engage the public to use the RTI Act and access information they are entitled to receive.

5.3 Institutional Factors

This thesis claims that there are two broad institutional factors that could influence the implementation process of the RTI Act. These include the design of the Act and institutional capacity. Institutional capacity in this study refers to staff capacity, infrastructure and resources. By design, the study examines the objectives and standards of the Act and operational rules and principles including proactive disclosure, provision of record management and publication, exemptions and application procedures. More specifically, by measuring institutional factors, the study examines whether the law clearly defines its objectives and the instruments to be used in achieving its goals and whether the institutions responsible for the implementation of the RTI Act have the infrastructure and resource capacity to implement it properly. The following section examines whether the institutional arrangements for implementing the RTI Act fit with the institution's objectives.

5.3.1 Staff Capacity

The RTI Act requires proper record management and timely disclosure of information for it to be effective. All documents need to be recorded and managed properly. This requires people with the appropriate skills and experience to keep records and organise them in a way so that they are easy to locate and make available to the public. The introduction of technology and the continuous change in services and patterns of information makes this work extremely demanding. It requires implementation staff to continuously keep records and update information as required. The study finds that

⁵⁸⁷ The Right to Information Forum (RTI Forum) of Bangladesh was formed in 2008 with various NGOS, CSOs, social workers and individuals. The objective of this forum is to create awareness among people and ensure the implementation of RTI in development projects and initiatives.

there has been no new position created to perform these additional activities in the institutions responsible for enabling public access to information. All the designated officers have been sourced from within the respective departments or are on deputation from other departments. It needs to be understood that designated officers are not responsible for keeping records or updating information. Their role is only to respond to requests that are made to the respective public offices. Therefore, record and database management appears to be the responsibility of no one in these organisations. Consequently, in most public offices, records are poorly managed and maintained. At the local level, public offices barely maintain any databases and it is difficult for the public to obtain timely information.

A sound understanding of the RTI Act is a prerequisite for those individuals directly involved in its implementation. These are the people who need to have an explicit knowledge of how to respond to information requests and the type of information that is able to be disclosed. According to the Act, there must be designated officers in every public institution. Further, NGOs that operate through government or foreign donations must have people assigned to respond to public queries for information. The study shows, in 2015, around 55 per cent of public offices and 22 per cent of NGOs had appointed designated officers. Therefore, almost half of public offices and two-thirds of NGOs had still not assigned an officer to manage information requests—six years after the law was introduced. Further, many of the officials that were assigned had not received any orientation. It is difficult for the public to receive any information when the official responsible for providing the service has limited or no proper understanding of the Act. By the end of 2011, 16,101 officers had received training (see Table 5.7). Among these trainees are designated officers from ministries and departments at district and sub-district levels. The list also includes journalists and teachers.

Table 5.7: RTI Training for Designated Officers, Journalists and Teachers

Year	Nature of Trainees	No. of Trainees
2010	Ministerial staff	152
2011	Designated officers at ministry, district and sub-district level	2,094
2012	Designated officers at district and sub-district level	2,067
2013	Ministerial and departmental staff, teachers, journalists and press association	4,187
2014	Ministerial and departmental staff, teachers, press association	7,601
Total		16,101

Source: Information Commission Annual Report 2014

There are 490 upazilas in Bangladesh. Under each upazila are 17 government departments that report to the Upazila Nirbahi Officer.⁵⁸⁸ In contrast, there are 64 districts and each district has offices of government departments. There were 45 ministries with departments under each ministry. Each department has offices at the central and district level. Table 5.8 shows 14,560 government officials from ministries and departments have received training or orientation on the RTI Act, a significantly small number.

Table 5.8: Category Breakdown of RTI Trainees

Description of Trainee	Category of Trainee	Number	
		Sub-total	Total
Designated Officers (Ministry, District and Upazila)	Ministry and Departments	460	14,560
	District and Upazila	13,745	
	Others (Police and Detectives)	355	
Teachers	Dhaka only	162	162
	Dhaka Report's Unity	944	1,379
	Press Institute of Bangladesh	353	
Journalists	(Sub-editors)		
	Journalists at District Level	59	
	Online Journalists	23	
Total			16,101

Source: Information Commission Annual Report 2014

⁵⁸⁸ The Upazila Nirbahi Officer is the Chief Executive Officer of the Upazila administration.

At the union level, the UP is legally bound to disclose information and respond to written applications for information. However, the study finds that only 40 per cent of elected representatives have a clear understanding of the RTI Act. Another 40 per cent are totally unaware of the law and 20 per cent were only partially aware (see Table 5.9). The lack of understanding among the representatives is due to the complexity of legal documents and inadequate measures to build their capacity through training and orientation. The study's findings are indicative, as a local government representative notes:

Most of the representatives have not received any training on [the] RTI. As a result, it is hard for an UP representative who does not have any specialised education to understand the language in which it is written. Also, there has been no copy of the law supplied to the UP representatives. As I know, there was training for [the] Chairman and UP Secretary from the government and Sharique.⁵⁸⁹ However, it has never been discussed with UP members or [the] local community.

Table 5.9: Understanding of the RTI Act—Trainee Designated Officers

What is your understanding of the RTI Act?	
Clear understanding of the process	8(40%)
Partially understands the process	4(20%)
Do not understand the process at all	8(40%)
Total	20 (100%)

Source: Based on Researcher's study in 2015

Many officials underwent training and orientation when the RTI law was introduced in 2009. However, public offices in Bangladesh experience a high level of staff attrition, with employees frequently changing roles and transferring to other areas. It is quite usual for a person to start their career in one upazila and end up retiring in the secretariat. There is no fixed group or individual working in the same place for an extended period. Many designated officers who were skilled at performing RTI-related responsibilities were transferred and replaced with a new set of employees who do not have a proper understanding of the Act. The outcome of a high staff turnover is that most public offices lack the stability to perform and implement the law.

⁵⁸⁹ Sharique is a local governance project, implemented by Helvetas Bangladesh and funded by the Swiss government. Alongside other governance initiatives, Sharique holds capacity-building initiatives for local government representatives on UP planning, budgeting, self-assessment and RTI.

This raises questions on how equipped frontline workers are to implement the RTI Act when only a fraction of them know about the law in its entirety. It also highlights the lack of institutional capacity to respond to queries or to make people aware of the Act. Unless institutions are prepared to gain the knowledge to respond to enquiries, it will be difficult to achieve the outcome of implementation. A lack of understanding about the law, not only among the public but also within the public offices, is one of the reasons for the failure of the implementation of the RTI Act in Bangladesh.

5.3.2 Infrastructure

The implementation of the RTI law is difficult without proper infrastructure and an effective system of record management. Compliance with the RTI largely depends on the availability of relevant records. However, a lack of resources, hardware and filing systems and procedural complexities make record management difficult. The study finds government offices at the local level have poor infrastructure and a weak record management system. Many public offices lack the basic infrastructural facilities and equipment such as photocopier machines, backup arrangements for electricity and uninterrupted internet access. Computers, printers and other logistics are not allocated for RTI-related work. Instead, all RTI-related work must be completed by utilising a proportion of the existing overhead. With such a small income and no allocation from the government, it is hard for public offices to meet expenses such as printing, making and distributing promotional and display materials and holding training events or orientation for local people. Most of the local level public offices have poor record management processes with no archives or database systems. The websites are outdated and proactive disclosure is non-existent. Without a modern record management system, it is difficult for assigned officials at public offices to respond to diverse information requests. There is no provision in the Act for a help desk or for people to volunteer to submit information requests. Further, instead of recruiting new staff, designated officers are appointed from the same departments and given additional RTI-related responsibilities.

The implementation of the RTI Act has been challenging, with no allocation for promotional works, poor infrastructure and unavailability of equipment and facilities. Further, there is no allocation for the local administration to conduct training courses for the public. No initiatives have been taken by the central government or, more

specifically, the Information Commission, to offer training courses to the communities and local government administration. Therefore, only a small number of people know about the Act and very few have utilised it in practice. A lack of understanding of the law among the public as well as local administration and public offices raises the question as to whether adequate efforts have been made to make the RTI accessible to the public. Similar to these findings, an academic also said:

The reason the RTI law has not reached anywhere close to what it set out to achieve is a lack of vision and anticipation of what might be the challenges of implementation. For example, the RTI Act has given designated officers the responsibility to respond to information requests. However, there is no guideline on who is going to keep a record and manage the database, so that required information is available for disclosure. Also, the policy strategists need to ask how realistic [it] is to expect local administration finding themselves self-motivating to produce materials, annual reports, etc. for disclosure and build community awareness on RTI despite budgetary constraints. It is a strategic disaster.

From the study's findings, it is quite clear that the infrastructure required to implement the Act is not available at many public offices, especially those located in rural areas and this has had an effect on implementation.

5.3.3 Resources

In a recent study that measured the effectiveness of the FOI Act in Great Britain, the Constitutional Committee received a submission from a local government associate, that stated:

The single most important issue in FOI compliance is resources. For local authorities do not have time, money and personnel to easily organise information to allow ready retrieval for FOI purposes.⁵⁹⁰

To refer to the theoretical framework, this study claims that the resource and infrastructure capacity of implementing agencies influences the performance of the implementation. The empirical evidence of this study validates this claim as the findings show that, apart from the Information Commission, there is no special allocation for any public offices or local administration to conduct RTI-related activities. This has had a significant effect on the implementation process of the RTI Act at the local level.

⁵⁹⁰ Laura Neuman and Richard Calland, 'Making the Law Work : The Challenges of Implementation ' in Ann Florini (ed), *The Right to Know: Transparency for an Open World* (Columbia University Press, 2007)

Costs are involved in the implementation of RTI laws at three different stages. These include start-up costs, ongoing costs and exceptional costs. Start-up costs are the expenditures that are required in the early stages of implementation. These are costs related to the appointment and training of personnel, logistics, and equipment, record and database management and maintenance of archives. Ongoing costs include salaries and benefits, follow-up training, on the job training, office maintenance and overheads, development of IEC materials, publication of annual reports, promotional activities and awareness-building events. Exceptional costs include litigation and damage or repair of building and equipment.⁵⁹¹

According to the study, the Information Commission, the central body responsible for implementation of the law, has around 50 staff working in various roles. Its office is equipped with the internet, printers, photocopiers, storage places and other necessary logistics and equipment. It also receives an allocation to meet salaries, overhead and program costs (e.g., training, promotional activities and publication). In contrast, most public departments do not have an allocation coming from the government to spend on publication of annual reports, awareness-building or the development of IEC materials such as posters, billboards, display boards for disclosure, rallies and observation of Right to Information Day.

At the local level, the study finds that government institutions and departments do not have the logistical support and equipment necessary to carry out RTI-related activities. There is no allocation made to these institutions, where the resources are needed the most. For instance, the UP is a local self-government and runs on revenues generated from local sources such as tax, tolls, local markets, licences and some block allocations from the central government. This limited income often makes it difficult for UPs to meet their day-to-day expenditure. They must rely on the central government to cover these expenses. Therefore, meeting the cost of disclosure and publication of information is not easy for these institutions. Organising training or holding promotional events also involves costs. In addition, maintaining a website and record management system (both electronic and manual) needs skills, for which, specialised training is required. In explaining the availability of resources, a local government representative said:

The RTI Act tells you to make provision for information disclosure and publication. Now the challenge is where we get the money from? Publication

⁵⁹¹ Ibid.

of annual reports or any other documents needs additional funds to meet the expenditure. But, we do not have funds as such. So, it is difficult for us to comply with everything that the Act says.

Allocation of funds and resources is crucial for the successful implementation of the RTI Act, especially at the local level. Unfortunately, the empirical evidence of this study validates that the implementation approach for the RTI Act in Bangladesh, is very much top-down. When resources are scarce, the implementation of a policy is likely to be affected and the RTI Act is no exception.

5.3.4 Design

This study claims that the lack of clarity or contradictory elements in content might influence the implementation of the RTI Act. The study finds that there are areas of the Act that lack clarity and create contradictions. It examines the content of the RTI Act to discover how clear its objectives have been to the people implementing the Act, and those who were to use it, and whether any part of the Act is ambiguous or would create an obstacle in the process of implementation. Further, the study investigates how some of the main principles have been incorporated in the Act. These include proactive disclosure, provision of record management and publication of information, a short list of exceptions and easy, timesaving and cost-effective procedures of application.

5.3.4.1 Lack of Clarity in Terminology

There is a lack of clarity in some areas due to the language that is used to outline the law. Under Section 7, there are areas that are unclear and some of the clauses are ambiguous with no adequate explanation provided. Further, there are parts of Section 7 that overlap and lead to more confusion.⁵⁹² According to Section 7, no authority shall be bound to provide:

Any information that may, if disclosed, cause a threat to the security, integrity, and sovereignty of Bangladesh affect the property right of a third party, offend privacy of personal life, obstruct enforcement of law, endanger physical safety of any person, forbidden to be published by any court of law or tribunal,

⁵⁹² *The Right to Information Act 2009, s9.*

hamper investigation process or is related to foreign policy that may affect relationship.⁵⁹³

There are no narratives given to define terms such as state security, sovereignty and integrity and this could pose confusion in the minds of the people on the supply side. For instance, according to Section 7(h),⁵⁹⁴ no authority shall disclose ‘any such information that may, if disclosed, endanger the life and physical safety of any person’ or hamper the privacy of personal life of an individual. However, there is no explanation given for the type of information that could hamper individual privacy.

5.3.4.2 Restricted Disclosure

Section 7(n) refers to ‘any such information which is, according to law, liable to be published only for a certain period’.⁵⁹⁵ In this regard, Section 7(n) disagrees with the statement in Section 3(a),⁵⁹⁶ ‘the provision of providing information shall not be affected by the provisions of this Act’,⁵⁹⁷ and there is no such binding in either the *Constitution* of Bangladesh or international laws to support this. Conversely, according to Section 7(r),⁵⁹⁸ any secret information of a person that is protected by law shall not be published. This contradicts Section 3(b) that says provisions of creating an impediment in providing information shall be superseded by the provisions of the Act if they are in conflict with the provision.⁵⁹⁹ Therefore, we can see there are areas in the list that are not clear to either the supply side or the demand side. In commenting on the clause that restricts disclosure, a civil society member said:

There are elements of the Act which are unclear and contradictory which need to be changed, I’ll give you two examples. Let’s talk about Section 7(p)⁶⁰⁰ which says, any such information relating to purchasing process before its

⁵⁹³ *Ibid.*

⁵⁹⁴ *Ibid*, s7.

⁵⁹⁵ *Ibid*,s7(n).

⁵⁹⁶ *Ibid*,s3(a).

⁵⁹⁷ *Ibid*.

⁵⁹⁸ *Ibid*.s7(r)

⁵⁹⁹ *Ibid*, s3(b)

⁶⁰⁰ *Ibid*,7(p).

completion or any decision taken about it, shall not be published. This increases corruption and should be refined. Also, Section 7(n)⁶⁰¹ is in total contradiction to Section 3(a) of the Act and the Constitution of Bangladesh.

It is clear, such provisions are distractions that have an effect on the implementation process.

5.3.4.3 Confusing Clauses

Some of the provisions regarding the enforcement of law and judicial process and personal security overlap with other clauses. They also create confusion among users. According to Section 7(k), no authority shall be bound to provide ‘any matter pending before any court of law and which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court’.⁶⁰²

Conversely, Section 7(m) restricts the disclosure of ‘any such information that may, if disclosed, affect any investigation process of offence and the arrest and prosecution of the offender’.⁶⁰³ Further, in Section 7(j), a restriction applies to ‘any such information given in confidence to any law enforcement agency by a person’.⁶⁰⁴ In addition, Section 7(g) also gives exemption to ‘any such information that may, if disclosed, endanger the security of the public or impede the due judicial process of a pending case’, Section 7(i) also talks about personal safety.⁶⁰⁵ As shown, Sections 7(k), 7(m), 7(i), 7 (j) and 7(g) focus on enforcement of the law and judicial process.⁶⁰⁶ However, these overlap other clauses and create confusion among users, especially the public who may not have the education or acumen to understand legal literature. If these sections were merged into specific themes with narratives provided for terms such as personal security, law enforcement, criminal investigation and judicial process, it could make it easier for users to understand.

⁶⁰¹ Ibid,s7(n).

⁶⁰² Ibid, s 7(k).

⁶⁰³ Ibid, s 7(m).

⁶⁰⁴ Ibid, s 7(j).

⁶⁰⁵ Ibid, s 7(g).

⁶⁰⁶ *The Right to Information Act 2009, s7.*

5.3.4.4 Harm and Public Interest Test

A harm test is a procedure to measure the justification for withholding information.⁶⁰⁷ Through the harm test, a government body shows whether any information, if disclosed, could cause substantial, specific and real harm to national security, privacy and international relations.⁶⁰⁸ However, withholding of information can be overridden in cases of human rights violation or crimes against humanity.⁶⁰⁹ Through public interest tests, a public authority or a tribunal can make a decision on whether information can be released, provided that the public benefit in knowing the information outweighs any harm that may be caused by its disclosure.⁶¹⁰ The majority of FOI laws in the world do not have a public interest test.⁶¹¹ However, some countries contain provisions for the public interest test to be applied in some exceptions.⁶¹² These countries are both developed (e.g., New Zealand, United Kingdom and Japan) and developing (e.g., South Africa and Jamaica).⁶¹³ There is no provision for a harm and public interest test in the RTI Act of Bangladesh. By not including such provisions, this allows public authorities to review and rethink decisions on non-disclosure of a particular type of information.

5.3.4.5 Record Management and Preservation

There is also a lack of clarity of direction for preservation and management information. According to Section 5, each authority shall prepare a catalogue, make an index and preserve these on a computer connected through a countrywide network.⁶¹⁴ However, there is nothing said about who is going to be responsible for this task. Under Section 10, it states that a designated officer is only responsible for information requests that are submitted to respective authorities. Further, there is the question on how capable

⁶⁰⁷ See Darbishire, Helen, 'Proactive Transparency: The Future of the Right to Information? A Review of Standards, Challenges, and Opportunities' (World Bank Initiative, 2009).

⁶⁰⁸ Ibid.

⁶⁰⁹ Ibid.

⁶¹⁰ Ibid.

⁶¹¹ Ibid.

⁶¹² Ibid.

⁶¹³ Ibid.

⁶¹⁴ *The Right to Information Act 2009, s5.*

existing staff members are at preparing catalogues, indexing them and making them available online. There appears to be no proper guideline or clarity on this point in the Act.

5.3.4.6 Application Process

The study finds that the application process for information is complicated because each applicant is meant to follow a particular format that requires the name and designation of the officer in charge of the respective department. This is difficult for the public to know and there is no help desk available to assist them in completing the forms. Further, if the application is rejected, the applicant may apply to the appellate authority. If the appellate authority also refuses to provide the information, the applicant may then register a complaint to the Information Commission. The problem with this process is the time and cost involved. A person who lives in a village would need to come to a capital city for the duration of the hearing that might last for several weeks. This is an obvious barrier for many applicants who would not want to spend that much time and money. In most cases, if an application is rejected by the appellate authority the person making the request is reluctant to take it any further. Another major drawback of the law is that there is no provision for appeal to any other courts after the Information Commission gives its final verdict.

5.3.4.7 Clauses that Limit the Scope of Law

The law does not make it mandatory for transferred departments at union level to disclose information.⁶¹⁵ This is a major drawback, as such provision gives these offices the liberty not to disclose anything at the local level. This is supported by the study findings that show there is no disclosure from these offices. Most of the officials do not follow any office hours and have no accountability. Therefore, if a person wants to obtain information from one of these departments they must go to the upazila office and in most cases, this is not located close to the UP. In expressing their experience of this process, a local respondent stated:

⁶¹⁵ *The Right to Information Act 2009.*

Going to the Upazila Parishad does not guarantee the availability of designated officers of respective departments. Since these officials have other assignments including attending events, often it becomes hard to find them in their offices. This is discouraging for an ordinary person who may be a local farmer or day labourer, to go there and come back disappointed. Usually, what these people do, if they need any suggestions from these officials they seek advice over the phone or find alternatives.

It is clear that the lack of clear provision and having contradictory clauses could affect the implementation outcome in some cases.

5.4 Social, Economic and Political Factors

The literature shows how policy outcomes can be affected by social, economic and political factors. Snell argues that FOI systems must be aligned with their surrounding environments.⁶¹⁶ The FOI system must be able to adopt to the continuous change in administrative and political environments. Viswanath and Kaufmann also note that ‘it is important to tailor regulation policies to local circumstances ... what disclosure policies are appropriate will depend on the particular institutional and market environment’.⁶¹⁷ This study finds that social, political and economic condition had an effect on the implementation of the RTI Act. Further, it is evident that several policies in the past have been unsuccessful due to these factors. For this Act, the study finds that social factors such as a patriarchal mindset, lack of education, gender division and conservative attitudes create a barrier to engaging the public in the process. In addition, political interest and competition among party affiliates restricts local government representatives’ capacity to act transparently. Economic factors, particularly the financial solvency of the public and the cost-effectiveness of obtaining information is also a challenge for effective implementation.

⁶¹⁶ Rick Snell, 'FOI: The Experience Of Australian States: An Epiphany?' (2001) 29 *Federal Law Review* 343–358; Rick Snell, 'Freedom of Information Practices' (2006) 13(4) *AGENDA* 291.

⁶¹⁷ Daniel Kaufmann and Tara Vishwanath, 'Toward Transparency: New Approaches and their Application to Financial Markets' (2001) 16(1) *The World Bank Research Observer* 41.

5.4.1 Social Factors

Social factors such as elitism, gender, education and ethnicity can influence the implementation outcome. The study finds that several social factors challenged the implementation of the RTI Act. First, is gender inequality. Bangladesh is a country of 160 million people, of which 48 per cent are women. However, due to the patriarchal social system, a significant number of women are still disengaged from the mainstream workforce and, instead, are involved in household responsibilities. Despite the emergence of micro-credit and NGO initiatives in the 1990s, and improvements in women's movement outside the home, the participation of women in the decision-making process at different stages has not changed significantly. In rural Bangladesh, it is not common for women to go out in public to claim their rights or engage in any public deliberation. Further, a lack of financial solvency makes women less confident and more dependent on others. In line with the study's findings, a social worker said:

There are lots of things women are not encouraged to do due to [the] patriarchal mindset and social structure that we live in the rural society. There is no denying that things have changed over the years as more young girls are attending schools and also because of women's involvement in the credit program. However, do women from local households have access to take part in the decision-making process? Are they in a position to visit public offices and seek information? I think, they are not. This will take time. As more women become educated, aware of their rights and become financially solvent, it will give them the confidence to break the cycle and claim their rights.

There is limited scope for women to learn about the RTI Act. Even if some of them are aware, it is not that easy for them to go to public offices to make queries and ask for information. Consequently, there are few cases of women submitting written applications or even asking for information at the local level.

Second, is a lack of education. Despite the growth in literacy rate in recent years, more than one-quarter of the population remains uneducated.⁶¹⁸ The rate of literacy is higher among children under 15 years old due to recent initiatives to enrol more children in government primary schools, as a part of Bangladesh's long-term objective Vision

⁶¹⁸ The literacy rate has increased from 45 per cent in 2006 to 71 per cent in 2015. For more information see Centre for Research and Information, *Bangladesh Education for All*, <http://cri.org.bd/publication/2015/Bangladesh%20Education%20for%20All/#/6/>.

2021.⁶¹⁹ However, literacy among adults in rural areas is much lower than the national rate. To make the best use of the RTI, people first need to be informed about such a provision. Then, they need to understand the procedure to obtain information and, finally, to use this knowledge whenever it is required. However, the study finds that the majority of the population remains unaware of the provisions provided by the RTI Act. In addition, there is no help desk or personnel at public offices to assist them by explaining the law or help them apply for information. Consequently, it is a challenge to ensure implementation success when a significant proportion of the population is uneducated and unaware of their rights or unable to apply for information.

Third, is the issue of local elitism and ethnic disparities. The study finds that local elites influence the decision-making process. They maintain good relationships with local representatives and dominate discussion sessions. There are numerous cases of land grabbing and attacks on Adivasi⁶²⁰ in Godagari Upazila. In these instances, local power elites control the voices of the marginalised and take their resources.⁶²¹ Consequently, many of the ethnic minorities who have lived in the area for generations have had to move away to the city or a neighbouring country. Those who have not yet moved, are afraid to talk about the irregularities in the system or their rights.⁶²² An Adivasi leader said:

⁶¹⁹ Vision 2021 was the aim of the AL-led alliance during the national election in 2008. This was a long-term vision of making Bangladesh a modern, technologically sophisticated country by the time of the fiftieth anniversary of its independence in 2021.

⁶²⁰ See CERDC, *Land Grabbers Forcefully Occupy Farming Land of an Indigenous Villager in Godabari, Rajshahi District* (25 January 2014) <http://trimita.com/cerdc/index.php/hr-report/land-rights-plaints/284-land-grabbers-forcefully-occupy-farming-land-of-an-indigenous-villager-in-godabari-rajshahi-district>; Daily Star, *Adivasi Graves in Rajshahi Freed from Grabbers* (22 January 2015) <http://www.thedailystar.net/adivasi-graves-in-rajshahi-freed-from-grabbers-61131>; Asia Indigenous People's Pact, *Bangladesh: Jatiya Adivasi Parishad (JAP) Demands Security of Lives and Properties of Indigenous Peoples in North Bengal Amid Recent Communal Attack on Them* (23 March 2012) <http://aippnet.org/bangladesh-jatiya-adivasi-parishad-jap-demands-security-of-lives-and-properties-of-indigenous-peoples-in-north-bengal-amid-recent-communal-attack-on-them/>.

⁶²¹ See CERDC, above n 17.

⁶²² See IPHRD, *Fear, Threats Trigger Adivasi Displacement* (21 January 2015) <http://iphrdefenders.net/fear-threats-trigger-adivasi-displacement/>; Partho Shankar Saha, *Indigenous*

Adivasi people are living in fear. The fear of exploitation, land grabbing, injustice and threat from local power elites. As a result, many of us have already left our belongings and had to shift to the city or a neighbouring country. In many of these villages, we had become now an ethnic minority when we once used to be the majority.

These local elites are so powerful that if any allegations are made against them, the local administration is not able to take action. Ethnic minorities feel marginalised due to continual humiliation and exploitation by the elites. They are afraid to express their opinions or assert their rights. According to a recent estimate, there are two million people from ethnic minorities living on the plains and included among these are a significant number of indigenous people. The Prime Minister's Office provides Development Assistance for Special Areas for those living on the plains, but the funding is inadequate. In the year 2013, the Upazila Administration received TK900,000 from this program. The study finds that, as 40,000 people from ethnic minorities live in Godagari this amount translates to around TK22.50 per person. This amount is not even enough to buy 1 kg of rice. In explaining the situation, an NGO worker noted:

The Adivasi are marginalised in the society. Most of them are poor farmers and day labourers with low income. Since independence, no government has recognised the vulnerability and sufferings of these people which over the years [has] made the situation worse than before. They have been victimised and their lands have been taken away and many of them have been forced to migrate. With constant humiliation and non-inclusion, they feel isolated. As a result, you won't find anyone from this particular population asking public officials about information. In most cases, these marginalised people do not even know how to get such information.

Fourth, is a lack of trust among the public towards public representatives and government officials. The study finds that there are instances when people's request to receive particular information or access to service got rejected. At the same time, there are individual cases identified during the field study which show favoritism towards a special group of people receiving services particularly social safety net benefits, not on the basis of merit but solely on their political affiliation or relationship with the political representatives. In expressing their experience, a local respondent stated:

I have been to the local council for several times to get information about social safety net benefits. My neighbour who has recently got a VGD and I was wondering why my name was not in the list since I am a widow living with my two adolescent daughters. I also went to my council member to ask her about it but she told me that the list for this year's VGD has already been made and I have to wait for another year. I have a feeling the feeling that my neighbor has a good relationship with the council member and she has also worked for her during the election, that may be the reason why her name was included in the list. I am disappointed and now, I cannot go by her words hoping that something will happen next year.

This situation has arisen due to the way government offices function and the deals they make to privilege specific interest groups in the past. The lack of transparency and unwillingness of government officials to reach out to the public—especially the underprivileged such as ethnic groups, landless and the marginalised poor—has created a real barrier and there is a lack of trust among common people on public institutions. In such a social setting, it is a challenge to engage people in the RTI process. Their previous experiences of deprivation and inequality hold them back from participating in public discussion or going to public offices for information, unless it is an obligatory requirement. The following case study is another example of the social conditions that prevail in rural communities. The study is about a person who belongs to the Santal community. The Santal is a small Adivasi group who only live in some districts of the Rajshahi and Rangpur divisions of Bangladesh. The case study reflects the way the local power structure influences the functioning of public offices at the local level.

Case Study 6: Raghu Can't Reclaim His Land

Raghu lives in Noandapara, a small village under Rishikul UP. He is an Adivasi farmer who does not hold any land of his own. He works at a local landowner's place on a daily basis. His grandfather owned land and so did Raghu's father. However, their lands were taken away from them by the local power elites. Both his grandfather and father were ignorant and did not maintain any land records. As a result, their lands were registered through forgery and now, it is not easy for Raghu to claim back his land. He has visited public offices several times to talk about the issue and to try to find a solution. Unfortunately, he could not get any help or relevant information from the land office. Further, the local government representatives were reluctant to move the case forward or become involved in any case against the local power elite, due to their influence in the local area. The fate of Raghu remained unchanged. He does not have

his land, nor does he receive any special allocation (Development Assistance for Special Areas) from the government.

The challenge for the Adivasi community is that nobody listens to their voices. They are marginalised and isolated. They isolated from mainstream communities. Consequently, the right to information has no meaning to them.

5.4.2 Economic Factors

Almost 70 per cent of the population of Bangladesh lives in the rural areas of the country. Agriculture is the primary occupation for the majority of the population. A large number of the people who are engaged in the agricultural sector do not own any land for cultivation. They either take a lease from the property owner or work as day labourers. Many others have to travel to the city in search of work. According to the Bangladesh Bureau of Statistics (BBS), 25.6 per cent of the population lives in poverty, of which 12.4 per cent live in extreme poverty.⁶²³ These figures indicate how hard it is for many people to earn a daily living. The study finds that, in general, people do not pay too much attention to what happens in public offices unless something occurs that directly affects them such as roads, relief or government social safety net schemes. For the RTI Act to be an implementation success, local public institutions and public offices need to reach out to people and make them understand that they are guaranteed the right to access to information and encourage them to apply. Unfortunately, no such efforts have been made by these agencies. If a person's request for information is denied, they can register an application to the appellate authority, located at either the sub-district or district level. However, it costs people time and money to visit offices in other areas. In most cases, people are reluctant to pursue their request further as they are not sure they will receive the information.

⁶²³ BBS uses food intake or direct calorie intake as the yardstick to measure poverty. Any person who has a daily intake of less than 2,122 calories is considered poor. If a person consumes less than 1,805 calories a day, they are considered to be ultra-poor (living in extreme poverty). BBS also uses the Cost of Basic Needs (CBN) method that assesses a person's access to 11 needs including food, education and clothing. See Prothom Alo, *Country's Poverty Rate Now 25.6%* (28 July 2014) <http://en.prothom-alo.com/bangladesh/news/51338/Country-s-poverty-rate-now-25.6%25>.

5.4.3 Political Factors

In Bangladesh, politics has an influence on every aspect of life. Historically, people have always been a part of a political movement and this affiliation is unyielding, especially among those who live in rural areas. During elections, political differences often cause confrontation and clashes. Political corruption is deeply rooted and plays a pivotal role in changing governance. The country's politics is dominated by financial interests that frequently override public benefit. The political environment is controlled by a group of elites—either top leaders or their loyal bureaucrats—and it is difficult for the public to participate as active citizens.⁶²⁴ Although democracy is one of the core principles on which Bangladesh was founded, it was challenged when government was seized by military dictators, before finally being restored. The system is dominated by two political parties: the Bangladesh Nationalist Party and the Awami League (AL). Between them, these parties have controlled the country for over two decades.⁶²⁵ Party leadership is decided by heredity and kinship. Most decisions taken by the party chief leave little or no space for deliberation.⁶²⁶ The ruling elite uses hostility to establish domination over state institutions and resources. There is no level playing field. Consequently, whoever wins the election monopolises the state apparatus with a 'winner takes all' attitude. The ruling party controls all key institutions by appointing its loyal followers to oversee the bureaucracy, local government and other public institutions.

For effective implementation of the RTI Act, local government representatives, who are largely affiliates of the political parties, need to have the mindset to promote transparency and accountability. The study finds that, at the local level, the list of beneficiaries for assistance programs and development works is often based on a

⁶²⁴ Aminuzzaman, Salahuddin 'Public Policy Processes and Citizen's Participation in Bangladesh ' in Meghna Sabharwal and Evan M. Berman (eds), *Public Administration in South Asia: India, Bangladesh, and Pakistan* (2013).

⁶²⁵ Political governance is about managing the state and establishing a practice of accountability to the people. This includes the process of electing leaders to office, the interface between the political and bureaucratic arms of government, the strength of oversight bodies and the role of the civil society in influencing the quality of governance (Commonwealth of Australia, 2005).

⁶²⁶ Mohammad Mohabbat Khan and Md. Shahriar Islam, 'Democracy and Good Governance in Bangladesh: Are They Compatible?' (2014) 5(1) *Millennial Asia* 23.

person's affiliation with the ruling party. These programs include the social safety net program,⁶²⁷ Old Age Allowance, Vulnerable Group Development and Vulnerable Group Feeding. Many decisions are made in the party's interests. These findings are substantiated by local respondent, who said:

Political affiliation is such a crucial part [of] local politics. It plays a significant part in the allocation of resources and distribution of social safety net benefits. Political support decides the block allocation from the government which comes through the Upazila Parishad and representatives from the ruling party usually get more allocation than the opposition. The same thing happens when UP make a list of beneficiaries. There are cases where they violate the selection criteria and give social safety cards to someone less deserving. Also, UP representatives prefer people who they consider their vote banks while distributing cards. There is no disclosure of any information regarding how the decision to include beneficiaries in the list is made or how much allocation UP has received.

The study also finds that some of the allocation that comes from the central government through local MPs is also distributed among party affiliates. The benefits often go to those who are loyal to the party. In such cases, even local representatives do not have a choice but to follow the instructions given to them by the MP or a higher political administrative from the ministries. In explaining this situation, a local government representative said:

The problem we face distributing items coming as block allocation from the local MPs is that you need to follow their guideline, which is, to give it to people loyal to him. In many cases, the people who need them the most are ignored. Now as local implementers we are just following what we have been told to do. We neither have any explanation ready for the people if any information regarding such event comes to us nor can we disclose such irregularities to the public. In such circumstance, how can you address such issues in RTI perspective?' The study finding further shows that in most of these cases, they prefer not to disclose information as disclosure could raise lots of questions in the mind of ordinary people. In fact, if the people's representatives are from the ruling party, in most of the cases, they do not bother to give any explanation about the process they while selecting the beneficiaries. It clearly gives an indication that of how political interests serve

⁶²⁷ Social safety net programs are non-contributory transfer programs focusing on those vulnerable to poverty. Under this program, poor and vulnerable members in the community receives cash, food grains, supplementary food, price subsidies for food, fee waivers, cash for work, health care waivers, Widow and Old Age Allowance, Freedom Fighter Allowance and emergency relief by the government, as well as from private organisations (e.g., NGOs, private firms, charities and informal household transfers).

as a barrier to people's access to information and services which they have a right to avail.

It is clear that political culture in Bangladesh is party-centric and interest-driven. Political affiliation often serves as a basis for decision-making. Therefore, the challenge is to ensure political commitment from all parties, including opponents, to create an environment in which people, regardless of political belief, class or occupation can receive services from public institutions. However, this will take time, as it requires people to be aware and informed about what is happening around them and ensure that their right to information is guaranteed. The following case study is typical of the way political factors, particularly political affiliation, influence decisions made on access to information about services at the local level.

Case Study 7: Ismail Could Not Access Flood Relief for Political Reasons

Ismail lives in Amtala village, under 9 No Char Asariadaha union. He is a farmer and an occasional fisherman. In a recent flood, Ismail lost his crops and his house was damaged. He and his family had to leave everything behind and seek temporary shelter. They found a house and stayed there for over a month. With the little money they had, they managed to pay for one week's rent, before having to take a loan from an NGO to pay for the remainder. They have to repay this loan within a year. While they were staying in the temporary shelter, they heard about relief distribution. They had not received any relief so Ismail went to the UP office to find out how to apply. He was told that the allocation had already been distributed among flood-affected people in the region and no additional allocation was planned. Ismail was provided no information about the beneficiaries of the allocation, the selection criteria or when the relief items had been distributed. Ismail returned home, disappointed. The next day, he learned that the relief was distributed among those who had a good relationship with the local representatives and were loyal to the ruling party. He was disappointed because people who needed help were being ignored, while those who belonged to political parties were treated well.

5.5 Cultural Factors

Returning to the theoretical framework, this study claims that cultural factors may influence the implementation process of the RTI Act. The study's findings validate this claim, as it shows a correlation between administrative culture and the implementation outcome of the RTI Act. A culture of secrecy combined with a mindset guided by strict and contradictory public service provisions has hindered the implementation process.

Bangladesh has had no prior experience working on governance issues. For over 200 years, the country was a part of India under a colonial administration that featured strict administrative rules and regulations. Civil servants in the Indian subcontinent hold enormous power and, historically, civilians have never been allowed to question them.⁶²⁸ Consequently, the inherently protective nature of the bureaucracy and its mindset is a tremendous barrier to openness.⁶²⁹ A culture of secrecy exists among the judiciary, executive and legislature.⁶³⁰ Their behaviour is guided by legal provisions such as the Official Secrets Act 1923,⁶³¹ the Penal Code 1860,⁶³² the Indian Evidence Act 1872 (Sections 123–124)⁶³³ and the Government Service (Conduct) Rules 1979⁶³⁴ and the

⁶²⁸ Ishtiaq Jamil, 'Administrative Culture in Bangladesh: Tensions between Tradition and Modernity' (2002) 12(1) *International Review of Sociology* 93; Habib Zafarullah, 'Bureaucratic Culture and the Social-Political Connection: The Bangladesh Example' (2013) 36(13) *International Journal of Public Administration* 932; Monem and Baniamin, above n

⁶²⁹ Jamil, above in 45.

⁶³⁰ Ibid

⁶³¹ The Official Secrets Act 1923.

http://bdlaws.minlaw.gov.bd/pdf_part.php?id=132

⁶³² The Penal Code 1860.

http://bdlaws.minlaw.gov.bd/pdf_part.php?id=11

⁶³³ Indian Evidence Act 1872

<http://ncw.nic.in/Acts/THEINDIANEVIDENCEACT1872.pdf>.

⁶³⁴ Regulatory Wing, *The Government Servants (Conduct) Rules, 1979* No. 133-L/79 (Ministry of Establishment, 1979). [http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Bangladesh_Government%20Servants%20\(Conduct\)%20Rules_1979_en.pdf](http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Bangladesh_Government%20Servants%20(Conduct)%20Rules_1979_en.pdf).

Rules of Business 1996 (Rule 28–1).⁶³⁵ According to Section 19 of the Government Services (Conduct) Rules 1979:

Communication of official documents or information: [a] Government Servant shall not unless generally or specially empowered, by the Government on his behalf, disclose directly or indirectly to Government servants of other Ministries, Divisions or Departments, or to non-officials persons or the press, the contents of any official document or communicate any information which has come his possession in the course of his duties, whether from official sources or otherwise.⁶³⁶

Conversely, Section 4 of the RTI Act states, ‘Subject to the provisions of this Act, every citizen shall have the right to information from the authority, and the authority shall, on demand from a citizen, be bound to provide him with the information’.⁶³⁷ Consequently, because of the Official Secrets Act 1923 and the Government Servants (Conduct) Rules 1979, the designated officer appointed under the RTI Act, after receiving an information request, often asks their superior officer whether the particular information should be provided or not. To overcome any obstacles that might affect public offices disclosing information, Section 3 of the RTI Act gives precedence to the Act over any other conflicting legislation.⁶³⁸ Section 35 retains the provision of removing ambiguity to address any inconsistencies between the RTI Act and other laws by issuing official notifications.⁶³⁹ Further, under Section 27, if a designated officer refuses to receive a request without providing any reasons or *mala fide* intentions, or fails to provide information, or gives wrong, incomplete, confusing or distorted information or creates an obstruction in receiving information, they will be charged with fines as high as BDT5000.⁶⁴⁰

⁶³⁵ Rules of Business 1996

http://cabinet.portal.gov.bd/sites/default/files/files/cabinet.portal.gov.bd/legislative_information/d8e711a8_0744_47d4_a1fd_fce1dfb1a5d7/Rules%20of%20Business%20December-20140001.pdf.

⁶³⁶ *he Government Servants (Conduct) Rules, 1979, above n 31.*

⁶³⁷ The Right to Information Act, above n 8.

⁶³⁸ *Ibid.*

⁶³⁹ *Ibid.*

⁶⁴⁰ *Ibid.*

Access to information is an integral part of freedom of expression. However, Section 57 of the Information and Communication Technology (ICT) Act 2006, contradicts the basic premise of people's right to freedom of expression and free speech and goes against the *Constitution* of Bangladesh. Section 57(1) of the ICT (2013) states:

If any person deliberately publishes any material on the website, or any other electronic form causes to deteriorate or creates 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 organisation, such acts will be considered as an offence. The offender will be punished for maximum 14 years and minimum 7 years imprisonment. It also suggested that the crime is non-bailable.⁶⁴¹

The section contains unclear wording and this enables the misuse of the clause against a particular section of the community such as journalists, bloggers and social media users.⁶⁴² There are recent cases that show evidence of misinterpretation and mistreatment of Section 57.⁶⁴³ With such barriers, civil society, to some extent, is reluctant to publicly talk about irregularities and corruption. To make the RTI Act effective, civil society must play a key role in increasing public awareness through public speaking, write-ups and messages. Unfortunately, Section 57(1) of the ICT Act not only protects the culture of secrecy, it also restricts free speech and freedom of expression, creating an obstacle for the implementation of RTI Act in Bangladesh. Although there has been a strong demand, especially from civil society, to withhold the law the government is yet to confirm its decision to abolish the law.⁶⁴⁴

Although the RTI Act has provisions about disclosure, a culture of guardedness still exists among bureaucrats and people's representatives who do not encourage or promote information disclosure. Further, there is a sense of fear among frontline officials on whether to disclose particular information or not, as they might face adverse

⁶⁴¹ See the *Information and Communication Technology (Amendment) Act 2013*; also see Article 19, *Bangladesh: Analysis of Information Communication Technology Act* (April 2016) <https://www.article19.org/data/files/medialibrary/38365/Bangladesh-ICT-Law-Analysis.pdf>.

⁶⁴² Daily Star, *Free Speech vs Section 57* (22 August 2015) <http://www.thedailystar.net/frontpage/free-speech-vs-section-57-130591>.

⁶⁴³ Ibid.

⁶⁴⁴ See Daily Star, *Amended ICT Law to Take Country towards Medieval Age* (7 September 2013) <http://www.thedailystar.net/news/amended-ict-law-to-take-country-towards-medieval-age>.

consequences and undue scrutiny from their superiors. Therefore, even for basic information, junior officials refer to their bosses for advice. In support of this finding, a government official said:

Look, perhaps the most important of all is how willing are the public offices to make information and services readily available for everyone. Once that is guaranteed, people can feel confident to ask for information and get it. Sometimes, they receive the information [without] even asking for it. But, the challenge is if the public offices sense that disclosure could put them in a situation where they might have to face criticisms, they become reluctant to disclose much. It is not unknown how things have worked in public offices over the years and to bring absolute transparency is difficult, it takes time.

The study finds that citizens have a lack of trust and are suspicious of government agencies. The existing administrative culture and the large power distance between the government and the governed causes people to be hesitant about making enquiries. The study also shows that many of the respondents are reluctant to undertake any written process because of the perception they have about public offices. These findings are substantiated by a local community member, who said:

There is a visible gap between the public and the government officials. There was a time when people used to get afraid of going to public offices. There was a fear of humiliation. Things have improved in over the years, but delays and denials are very much existent in these offices. As a result, there is a lack of connection and trust among ordinary people, which is why they are reluctant to make queries.

To reiterate, there needs to be a shift in the mindset of the bureaucrats and people's representatives of Bangladesh. Sadly, this is yet to occur. The reason it has not yet happened is that public officials are reluctant to lose control over information. Thus, it is evident that a culture of openness has not yet been established. It is a challenge for the RTI Act to ensure transparency and hold these representatives accountable. The public retains a sense of fear of rejection and disconnection with service providers. Consequently, there is a lack of enthusiasm among people to become involved in the process of accessing information. They refuse to engage in any confrontation for fear of adverse consequences. Corruption is so deeply institutionalised in Bangladesh, it may be unrealistic to expect a bureaucratic culture with this history, to change within such a short time.

5.6 Conclusion

This chapter examined the factors that impede the implementation outcome of the RTI Act in Bangladesh. More specifically, it addressed the second segment of the main research question, that is, ‘What are the challenges that affect implementation of the RTI Act in Bangladesh?’. The right to access information was never a popular movement in which people from different walks of life came together to bring about change. Instead, Bangladesh was part of a global movement for FOI that occurred in the late 1990s and the beginning of the twenty-first century, with help from NGOs and civil society. There is a lack of awareness and knowledge about the law among the majority of the people. To make the RTI Act inclusive for everyone has been a challenge for those charged with implementing the law. When making and implementing FOI laws, it is crucial to engage people from different groups including people’s representatives, government officials, political parties, professional bodies, CSOs-particularly NGOs and media, and, most importantly, the public. The study found that the behaviour of the target population, frontline workers, CSOs, and cooperation and coordination among intraorganisational and interorganisational government units influenced the implementation process of the RTI Act in Bangladesh.

Referring to the theoretical framework, this thesis argued that the behaviour of the target population influenced the implementation performance of the RTI Act. The study found that the majority of people were unaware of the Act. About 90 per cent of those interviewed had not heard about the law. The Information Commission, who is responsible for organising awareness-building programs, was not able to communicate to the majority of the population especially at the rural level. This is evidenced by a lack of clarity and understanding among the public about how the RTI Act works. Another reason why people were reluctant to visit public offices was the fear of rejection when asking for specific information about government allocations, projects and beneficiary lists of services such as the social safety net program. Many times, the unavailability of information and services made people unwilling to visit government offices. Consequently, the public was disengaged and very few submitted written applications for information. Earlier in this study, it was revealed that, when a written application is rejected, the applicant must register an application to a higher appellate authority. This involves time and money and is another reason why people did not want to become involved in the process. In most cases, the act of obtaining information was more expensive than the value of the information itself. Referring to the theoretical

framework, a hypothesis was drawn that the more favourable the behaviour of people towards the RTI process, the more successful the implementation would be. The study's findings have proved the hypothesis to be correct.

The thesis further argued that cooperation and coordination among government agencies had a major influence in the implementation process. This study revealed that there was a top-down implementation approach to the RTI Act and a lack of communication to key stakeholders. There was no direct supervision of the Information Commission to ensure the implementation progress was achieving the RTI Act objectives. There was no monitoring system to oversee RTI-related compliance. Public offices followed a strict bureaucratic practice and junior officials were afraid to provide information without the consent of their superiors, causing delays in the process. The study also revealed that, at the local level, government administration was dominated by political affiliation and loyalties. Consequently, information that hampered the image of the ruling elites was often not disclosed. Politics also determined the relationship and level of cooperation between different local government units, particularly in the allocation of funds and special projects. Referring to the theoretical framework, the study's findings discussed in this chapter have proved that a lack of cooperation and coordination affected the implementation of the RTI Act.

The behaviour of the frontline workers who deal with RTI-related activities on a day-to-day basis influenced the implementation process. The study showed that most of the public found government officials at the local level to be inaccessible and often unreachable. Further, there were no fixed office hours followed by these officials. The majority of the respondents who were interviewed or participated in the FGDs had either faced rejection or delay when requesting information. The local representatives and government officers at the union level find activities related to RTI to be a type of burden. These activities included proactive disclosure, publication and responses to written queries. Hence, disclosure is not common practice among these authorities. Overall, the bureaucratic attitude of the government officials and an authoritarian culture within these organisations were obstacles to the implementation of the RTI Act. Consequently, people were unwilling to make queries or ask for information and this affected the successful implementation of the RTI Act.

A lack of involvement by the CSOs, particularly NGOs, in building awareness and promoting the RTI Act has also been a contributing factor to its performance. There are

around 26,000 registered NGOs in Bangladesh, providing coverage in every corner of the country. However, very few NGOs were working on RTI-related issues. Similarly, Media's role was limited to talk shows and the observation of Right To Information Day. Media coverage of RTI-related issues was inadequate and not much had been done to create mass awareness. Overall, the CSOs were not doing enough to engage the public and make them aware of their guaranteed right to access information and hold their representatives accountable.

The next component was the design of the Act. The study's argument was that the design of the Act has had a profound effect on implementation performance. The study found that there were areas in the RTI Act that lacked clarity and created contradictions. Under Section 7, no additional explanations were provided for terminologies such as state security, sovereignty, personal life and physical safety, creating confusion and doubt in the mind of implementers. In addition, statements in Sections 7(n) and 7 (r) on restricted or partial disclosure were contradictory to Sections 3(a) and 3(b). Similarly, Sections 7(p) and 7(n) contradicted Section 3(a) and the *Constitution* of Bangladesh. Further, some of the provisions regarding enforcement of the law and judicial process and personal security overlapped other clauses. Sections 7(k), 7(m), 7(i), 7 (j) and 7(g) focused on enforcement of the law and judicial process. However, these overlapped with other clauses, creating confusion among users especially members of the public who lacked the education or acumen to understand legal literature. One of the major drawbacks of the Act was not to make it mandatory for transferred departments at union level to disclose information. In addition, this study found that there were no provisions for harm or public interest tests in the RTI Act.

Returning to the theoretical framework, this thesis argued that institutional capacity was a vital component for successful implementation. The study has revealed that, except for the Information Commission, no public authority had received any funds to implement RTI-related activities such as promotion, awareness-building, publication and materials. In addition, the study found that the absence of proper infrastructure and effective record management systems had an effect on the performance of public offices in responding to queries. Public offices in rural areas were required to utilise existing overheads to meet requirements for photocopies, printing and publishing annual reports. Websites were poorly maintained and outdated and were of limited use. There was no help desk in any of the offices at the union and upazila levels to assist the public in filling in written applications. The frontline workers were not trained to meet RTI

compliance requirements such as proactive disclosure, responding to queries, maintenance of a database and website and record management. Overall, public institutions, especially at the rural level, lacked the capacity to successfully implement the RTI Act in Bangladesh.

The thesis also argued that social, economic and political factors could influence the implementation outcome. The study found conditions such as gender inequality, lack of education, presence of a local elite and the social class system had influenced the implementation outcome. A patriarchal social system contributed to women in rural parts of Bangladesh having limited involvement in financial activities and limited movement outside the home. Consequently, there was very limited scope for rural women to learn about RTI. Although the literacy rate in Bangladesh has increased in recent years, a significant proportion of the rural population remain uneducated and this was one reason why the majority were unaware of the Act. In addition, the power structure among local elites controlled decision-making processes and the voices of the marginalised, grabbing their resources.⁶⁴⁵ Small, ethnic minorities were found to be afraid to speak out against irregularities and the lack of access to services and information. Further, people on limited incomes were reluctant to make an effort to enquire about information especially when they were unsure about the amount of time and money that would be required. In addition, a strong political party-centric and interest-driven political culture existed almost everywhere and most of the decisions regarding the distribution of social benefits and allocations at local government institutions were made purely on a political basis. Consequently, regardless of whichever government was in power, political opponents found the process to access information difficult and were reluctant to ask for information or submit written applications as they knew it would not benefit them. The study's finding indicated that, unless there was a practice of deliberative principles in the decision-making process, local government institutions would remain party-centric political institutions in which political opponents would be afraid to make enquiries or hold their government accountable.

Bangladesh has inherited a culture of secrecy and a sense of superiority and elitism among civil servants from the previous British colonial administration and civil service of Pakistan. The study found that service codes and laws created many years ago still existed in the civil service and this restricted disclosure practices. Further, the mindset

⁶⁴⁵ See CERDC, above n 17.

of the bureaucrats had not changed from a bureaucratic elite to a public servant. For this reason, there was a reluctance to make provision for disclosure and publication or provide timely responses to applications for information from the public. In addition, contradictory provisions and laws such as Section 57 of the ICT Act, Rules of Business and Official Secrets Act made it difficult for civil servants to act in accordance with the RTI Act.

This chapter highlighted the conditions and factors that hampered the implementation of the RTI Act in Bangladesh. In the theoretical framework, the thesis claimed that implementation success was dependent on a combination of factors and components. The empirical evidence substantiated the claim that behavioural, institutional, cultural, socio-economic and political conditions had a profound influence on implementation. The following chapter will consider if these challenges can be addressed to enable implementation success.

Chapter 6: Overcoming the Implementation Challenges: What Comes Next?

6.1 Introduction

Access to information in Bangladesh is unsatisfactory,⁶⁴⁶ despite the constitutional guarantees of ‘freedom of thought, speech and conscience’, ‘equality before law’ and ‘access to justice’ to promote social, political and economic equality,⁶⁴⁷ and the law to ensure people’s right to information.⁶⁴⁸ This chapter argues that there are two specific areas to overcome the challenges to information access. These include how to make people utilise the law and how to introduce an efficient, systematic approach that will work for people who deal with the issue on a day-to-day basis. This chapter analyses solutions to overcome the implementation challenges of the RTI Act.

The study shows that, in 2015, the total number of registered applications for information requests was around 67,000—or approximately 12,000 a year out of a population of 160 million people.⁶⁴⁹ In addition, the number of applications is declining each year. There is limited practice of proactive disclosure, publication or open public meetings. Based on the empirical evidence and secondary sources, it is clear that most of the population is still unaware of the Act. The public finds it challenging to understand the access to information process, visit public offices and submit written requests, due to a lack of knowledge about the law and the environment in which the law operates. In addition, a feeling of disengagement means that people are reluctant to make queries. The study also shows that most government officials have a limited understanding on how to comply with the RTI Act. Training and awareness-building programs for government staff, including officials and people’s representatives, have been insignificant.⁶⁵⁰ In addition, a culture of secrecy prevails among civil servants and

⁶⁴⁶ The study findings in Chapter 4 and Chapter 5 discussed in detail the state of access to information in Bangladesh.

⁶⁴⁷ *The Constitution of Bangladesh*.

⁶⁴⁸ *The Right to Information Act 2009*.

⁶⁴⁹ The Information Commission of Bangladesh, *Annual Report 2014*.

⁶⁵⁰ *Ibid*.

people's representatives, inherited from a previous, more bureaucratic era. The Information Commission, the central body responsible for overseeing the implementation of the Act, has underperformed compared to expected standards. The study's findings also show that there is a lack of enthusiasm among public officials and the public for the RTI Act. Further, different segments of the society, especially marginalized communities, Adivasi, the disabled and other minorities have been less privileged to access information. Also, there are political conditions that influenced the implementation outcome. In addition, the media, civil society and NGOs have failed to communicate the RTI Act to a broader population and generate public awareness to ensure implementation success. Consequently, the level of public access to government information remains unchanged. This chapter focuses on whether there are better solutions to implement an effective RTI model in Bangladesh.

6.2 Setting the Stage

A range of factors challenge the implementation of the RTI Act. There are no innovative systems that have been developed to address these problems. This study has a specific proposal to overcome this situation. The proposal also addresses the uncontrolled conditions such as social, economic and political conditions. However, there are some prerequisites to ensure that the model can function well. The first to be addressed is the capacity of the staff and local government representatives directly responsible for implementation needs to be addressed. The study shows that there are inadequate training facilities and infrastructure such as record management systems and equipment to support implementation. In addition, there is a lack of clarity in some of the clauses of the Act that have created confusion. Further, the involvement of civil society and NGOs in creating public awareness and adoption has also been inadequate. The following section discusses these factors and how they might be resolved.

6.2.1 Enhancing Staff Capacity

A skilled workforce is required to ensure the effective implementation of any RTI model. It is important that those who are responsible for implementing RTI laws are well versed in those laws. Before putting a system in place, the first step is to train

everyone who is responsible for delivering the policy's objectives. The Information Commission should organise training sessions for government officials, apart from the designated officers, who are not directly involved in implementation but hold key positions in their respective departments. Further, local government representatives at different tiers of administration must have a thorough understanding of the Act. Therefore, both the Information Commission and the NILG need to organise training courses for local government representatives. Manuals and guidelines in print and electronic formats should be provided to assist these officials to meet RTI compliance. These manuals and guidelines should be available electronically on government websites, as well as internal department websites, to be accessible to every government official. Further, NGOs working on governance issues need to develop ideas and programs to facilitate public knowledge and a better understanding of the law. The RTI Forum was created to build awareness and incorporate RTI in development programs needs to engage in the promotion of the Act. The RTI Forum should also identify key stakeholders including private institutions, media, donors and development organisations and actively engage them to promote the RTI Act to a wide public audience.

6.2.2 Infrastructure and Resources

To successfully implement the RTI Act, there is a need for proper infrastructure and sufficient resource allocation. The study shows a lack of infrastructure and resources presents a challenge for effective implementation. Many government offices, particularly those located in rural areas, do not have facilities such as computers, printers, photocopier machines or internet access. There is no countrywide or central server to connect all the government offices under one broad network. Further, the staff lack understanding of how to keep and maintain information and record management systems. In most of the offices, records are only kept in paper form. There is no provision for archives or space to store the huge volume of paper documents and no database to track information from previous years. Further, it takes a great deal of time to respond to queries because there is no infrastructure to manage records and respond in a systematic manner. In addition, there is no special allocation for public offices to design activities or meet RTI-related expenses. Administrators are expected to fund such activities within their existing budgets. To ensure RTI implementation is effective,

these challenges need to be immediately addressed. There must be a specific provision of funds and an increase in government allocation towards RTI implementation. The government should also allocate funds to public offices designated for RTI-related works. Government should collaborate with state and non-state stakeholders and international development partners to develop a modern systematic approach to meet RTI compliance and to achieve the goal of transparency and accountability in public administration. The government is working to improve the infrastructure of public offices under the Access to Information (a2i) project run by the Prime Minister's Office.⁶⁵¹ It is also working to modernise the web portal and IT infrastructure of the Information Commission with the support of US aid and India's multi-purpose platform Pro-Active Governance and Timely Implementation (PRAGATI).

6.2.3 Removing Contradictions and Ambiguity

Amending the clauses in the RTI Act that create confusion for information requesters and suppliers is another prerequisite for a successful implementation. Section 7(n) directly contradicts with Section 3(a) of the RTI Act and also the *Constitution* of Bangladesh. There is no such binding in the *Constitution* and the clause in Section 3(a) must be replaced or amended. Similarly, Section 7(r), contradicts with Section 3(b) that says provisions of creating an impediment in providing information shall be superseded by the provisions of the Act if they are in conflict with the provision. In addition, there are clauses such as Sections 7(k), 7(m) 7(j) 7(g) and 7(i) on enforcement of the law and judicial process that overlap and confuse users. These clauses should be merged into specific themes with narratives provided for terms such as personal security, law enforcement, criminal investigation and judicial process. Under Section 7, terms such as 'state security', 'sovereignty' and 'integrity' and under 7(h) the terms 'personal safety' and 'privacy' are used in an ambiguous manner with no explanation provided. There should be narratives to clarify these terminologies. There is also no provision for a harm and public interest test in the RTI Act. This is an obstacle used by officials to review and rethink decisions on non-disclosure of information. Therefore, such a provision must be incorporated in the law. In addition, Section 5 and Section 10 discuss preservation and management information. However, no specifics have been provided

⁶⁵¹ See a2i, *About a2i* (2017) <http://www.a2i.pmo.gov.bd/about-us/>.

on whether this is the responsibility of the designated officer or someone else in the organisation. It is important to mention in specific terms who is going to do the job and how it should be done. Besides, there are clauses in other existing laws such as Section 57 of the ICT Act, the Official Secrets Act 1923, the Penal Code 1860, the Indian Evidence Act 1872 (123–124) and the Government Servants (Conduct) Rules 1979, the secrecy provision under oath (affirmation) of appointment to public office and the Rules of Business 1996 (Rule 28–1), that are contrary to the RTI Act.⁶⁵² Although Section 3 of the RTI Act gives precedence to the Act over other conflicting legislations, it must be written in specific and clear terms under what circumstances these other clauses could override the RTI law. In this way, if any situation arises in which one of these laws creates an obstacle to information disclosure, it can be immediately resolved.⁶⁵³

6.2.4 Partnerships with CSOs

For the RTI Act to work effectively, it is important to consider how CSOs are organised and the role they play in influencing people to use the Act as well as bringing about change to the conflicting clauses by putting pressure on the government. Civil society advocacy groups have made a significant contribution to the positive change process in Bulgaria, India, South Africa, the United Kingdom and Israel. These include the Access to Information Programme Foundation in Bulgaria, the National Campaign for People's Right to Information in India, the Open Democracy Advice Center in South Africa and the Campaign for Freedom of Information in the United Kingdom. In Israel, civil society has gone a step further and used litigation to support their advocacy initiatives. The role of civil society is also to identify problems and work out solutions. In India, the 'Save RTI from Amendments' campaign was launched when the government wanted to introduce negative amendments to the laws. The campaign adopted different strategies including signed postcards, petitions, demonstrations, sit down protests and lobbying alongside media and opposition parties. This was a successful campaign, as the government ultimately withdrew its amendment proposals. In addition, the prior advocacy initiatives of MKSS in bringing about the RTI laws is well scripted in the literature. There is no denying that the CSOs need to contribute to engaging different

⁶⁵² See the *Information and Communication Technology (Amendment) Act 2013*.

⁶⁵³ See *The Right to Information Act 2009*, s3.

stakeholders in the RTI process and to make the law known to people. Unfortunately, in Bangladesh, key stakeholders such as the RTI Forum,⁶⁵⁴ a network of CSOs, has not been able to engage enough people from different occupations and groups to create mass awareness about the law or initiate advocacy efforts such as those achieved in India and other countries.

Media has an important role to play in building awareness of the RTI Act among the public. In particular, journalists can make a significant contribution to publicise RTI laws by publishing reports and success stories on RTI issues. The study shows that the role of media has been insignificant in Bangladesh and there are very few reports on RTI in either electronic or print media. The media's participation in the implementation of the RTI Act has been, at best, passive. News about the Act is only published when journalists are asked to attend events organised by the Information Commission. There is also no media involvement in any campaign on RTI-related issues, unlike the Anna Hazare campaign against corruption in India⁶⁵⁵ that was highly publicised in nationwide print and electronic media. In Bangladesh, only a few events have been covered in the media, despite a Memorandum of Understanding between the Information Commission and some media houses and TV and radio stations to publicise the RTI at different levels. It is important to engage media to make more people aware of the RTI Act and encourage them to hold government agencies accountable. An active media is a prerequisite for the successful implementation of the RTI Act in Bangladesh. The CSOs, particularly the NGOs must also take responsibility to create awareness and to identify key stakeholders who can make a significant contribution to the cause.

⁶⁵⁴ The RTI Forum is a network of institutions, NGOs and members of civil society that work to promote the right to information. This includes building and raising public awareness, ensuring the right to information is included in all development agenda, enhancing capacities and skills on both the demand side and the supply side and monitoring the performance of public institutions.

⁶⁵⁵ Florini, A. , 'Introduction: The Battle Over Transparency' in A. Florini (ed), *The Right to Know: Transparency for an OpenWorld* (Columbia University Press, 2007) vol 3,

6.3 Open Access Model

It is clear from the previous discussion, that the government has had a difficult time implementing the RTI Act in Bangladesh. Efforts to reach out to the public have failed as figures show a poor turnout of information requesters to public institutions. Further, on the supply side, there is no systematic approach to record management and information disclosure. This results in weak compliance.

The study proposes an open access model based on the principles of e-governance, public deliberation and proactive disclosure. The model emphasises two specific points. First, how to engage people to use the RTI Act and second, how to introduce a system that makes implementation useful. The model introduces a system that makes implementation effective and also identifies the best solutions to engage people in the RTI process. This model proposes access to information through e-governance, an RTI Call Centre to receive and respond to public queries for information and, lastly, public deliberation through proactive disclosure. The model addresses the social conditions such as the inclusion of marginalized groups-Adivasi minorities by incorporating public deliberation through proactive disclosure and participatory open discussion. With participatory open discussion, the Model assumes that political conditions such as favoritism and manipulation reduce. The inclusion of e-governance and RTI Call Center addresses the economic challenges as it reduces the cost of transport and time. As the Model is introduced, the thesis discusses elaborately its benefits and limitations and how it contributes to addressing the challenges that have discussed in earlier chapters.

6.3.1 E-Governance

The use of Information and Communication Technology (ICT) is a useful way to store, retrieve, manipulate, transmit or receive information and communication electronically in digital forms. There are many ICT applications used for information storage, management and use of information. These include the internet, software, digital hardware, computer-based information system, television, telephone, mobile phone, radio and wireless devices. ICT also facilitates better record management through technologies such as GIS, MIS and DSS. The open access model proposes a systematic approach to information management through e-governance, a similar approach to the model adopted by Mexico. The open access model follows a unified system to collect, store, manage and communicate information. More specifically, each authority keeps all the records in their e-database, linked to a central database in which information will be

preserved. Each authority will maintain their websites and update all except classified information. Alongside, government agencies will use their databases to regularly collect information about the applications to identify the best practices to improve services. The proposal also includes an introduction of an e-platform that gives the requester the ability to generate information requests. Under the proposal, each government agency will allocate a place for RTI in their web portal where people can submit information requests. If a person is satisfied with the response they receive, they leave feedback for the departmental website. If the response is unsatisfactory they might reapply or call the RTI Centre for further information.

Monitoring is an integral part of the RTI implementation success. It gives an overview of how the law is implemented and identifies any gaps. In Mexico, the use of information technologies such as Infomex, Zoom and POT has played a significant role in monitoring progress, analysing data and evaluating the trends in access to information held by federal agencies. Mexico's Federal Institute for Access to Information (IFAI) has been reviewing requests and the time spent on each case by using Infomex, Zoom, cross-checking and other means.⁶⁵⁶ Through this proposed model, the Information Commission can easily monitor government web portals and evaluate if compliance standards are being met through proactive disclosure and how the authorities are responding to queries. It can have direct access to departmental and central web portals to review disclosure provisions and assess the registered application and government processes. Based on this information, it can enquire and take necessary actions that include imposing fines (higher fines for non-disclosure of information) and issue binding decisions. The Information Commission will handle appeals against refusal decisions, administrative silence, unreasonable fees, incomplete, misleading or false information and other violations of the RTI Act.

Appendix A shows the internal workflow and the requester's workflow. The internal workflow gives an idea about how each government authority should manage and disclose information. As the model shows, each government department must follow a unified system. The first step is to collect or receive information. Once the information is received, the next step is to categorise information. At this stage, it will be decided

⁶⁵⁶ Zachary Bookman and Juan-Pablo Guerrero Amparán, 'Two Steps Forward, One Step Back: Assessing the Implementation of Mexico's Freedom of Information Act' (2016) 1(2) *Mexican Law Review*

whether the information is classified or not classified. After categorisation, information is stored, managed into specific themes and saved to the departmental database. Each department shall maintain a website in which all the information will be disclosed through an automated process. In addition, each department will publish regular annual reports, forms, guidelines and case studies. The departmental database will be connected to a central database, located at the Ministry of Information.

The central website will act as the information hub for all the departments. The Information Commission will be responsible for monitoring both departmental and central websites. The Information Commission will identify best practice cases and publish these on their website alongside other information. The requester workflow shows that people can register their requests directly through the website of the relevant department. The department sends the information back to the requester by email or phone or in another format. If the applicant is not satisfied with the outcome, they can reapply to the appellate authority. If this authority fails to provide a satisfactory response, the requester can apply to the Information Commission. This is a similar process to the existing RTI Act appeal procedure.

The proposed access to information model through e-governance provides a range of benefits. It helps to keep records of all government activities and categorises these in an organised manner. This means, all government business is documented and stored so that, when a person makes a query, the department is easily able to provide the information required. Through automating the administrative process, public offices will be able to operate in an easy, quick and cost-effective manner. Once information is maintained in a regularly updated database, public offices can work more efficiently. The automation system minimises human intervention and reduces paperwork, as the entire process of information management and communication will be system driven. Further, in an automated process, it is mandatory for government departments and institutions to publish and update relevant information on their websites. Consequently, service delivery will improve and government offices will become more responsive and transparent. With no procedural delays and hierarchical complexities, it will be easier to implement RTI laws at various administrative levels. For government bodies, it will be easy to disclose information and publish government reports and other relevant documents. This will reduce the pressure on the government offices as it makes it easier for them to categorise and organise documents to store in the central database, saving public offices both time and money.

In recent times, as more people have become accustomed to the internet, governments of many developed countries have started making as much information as possible available online. The right to access to information through ICT is a relatively a new idea in Bangladesh, but in countries such as Mexico and India, it has been in practice for over a decade. Some of the initiatives have been hugely popular with the public and have received a great deal of recognition for achieving RTI standards and compliance. One of the most successful adaptations of ICT in RTI in recent times is in Mexico. The IFAI in Mexico introduced a central web portal called the 'Transparency Portal' through which all federal government agencies websites are linked. According to Article 7 of the Federal Transparency and Access to Governmental Public Information (LFTAIPG) Act in Mexico, federal government agencies are required to proactively post a list of information.⁶⁵⁷ The use of electronic requests, and technologies such as Infomex and Zoom, have had a positive effect on the success of the access to information law in Mexico.⁶⁵⁸ Through Infomex, the IFAI introduced an e-platform system to electronically manage information requests.⁶⁵⁹ This system enables requesters to submit their information requests online and allows the IFAI to monitor the government agencies' responses to ensure compliance with the law. Mexico has also introduced a constitutional amendment, Article 6, making it mandatory for all government entities and municipalities larger than 70,000 inhabitants to install electronic systems so that all the citizens can submit information requests electronically.⁶⁶⁰ Under the system, government responses are provided electronically and officials are able to communicate directly with the information requester. If the person is unsatisfied with the official response, they can appeal online to IFAI for further information. IFAI has also developed a search engine named Zoom that allows commissioners, government officials and users to search for previous resolved cases by date, topic or agency. This

⁶⁵⁷ See the *Federal Transparency and Access to Governmental Public Information (LFTAIPG) Act*.

⁶⁵⁸ Valery Madero and Nina Morris, 'Public Participation Mechanisms and Sustainable Policy-making: A Case Study Analysis of Mexico City's Plan Verde' (2016) 59(10) *Journal Of Environmental Planning And Management*

⁶⁵⁹ C Galíndez Hernández and Velasco-Sánchez Ernesto, 'E-Government for Transparency in Mexico: Advances and Limits in Promoting Open. ' in Manoharan Aroon and Marc Holzer (eds), *E-Governance and Civic Engagement: Factors and Determinants of E-Democracy*. (IGI Global 2011)

⁶⁶⁰ See the *Federal Transparency and Access to Governmental Public Information (LFTAIPG) Act*.

systemisation of rulings helps both government agencies and users to develop their own cases.⁶⁶¹

Similar to Mexico, in India the System of Assisting Residents and Tourists through Helpline Information (SARATHI) program has made a significant contribution to RTI practices through innovative approaches to help improve government efficiency and effectiveness. SARATHI is an initiative taken by the Pimpri Chinchwad Municipal Corporation located to the north of Pune in India. Its objective is to overcome communication barriers and provide information the citizens require when they need access to essential services. Before this system was introduced, people who visited government offices to seek information, submit applications or register complaints had to make repeat visits and wait a long time for service. Further, there was a lack of uniformity in response or referrals to other departments and instances in which the wrong kind of information had been provided to requesters. In addition, the supply side had to deal with high demands for information without a systematic approach to organising requests and responses. This made their jobs difficult and time-consuming. To achieve a systematic approach to information disclosure, a committee was formed with the heads of all the departments, led by the municipal commissioner. They proposed a unified format on information dissemination that included a list of Frequently Asked Questions (FAQ) and standard answers. In consultation with the officers of respective departments, a total of 774 FAQ were compiled for 45 departments. They used ICT tools such as a website, mobile applications, e-books and a call centre helpline to provide the public direct access to information. In addition, information was shared through advertisement board displays, regular media briefings, social media, bulk SMS text messages and advertisements in local movie theatres. They also introduced an integrated call centre to resolve complaints within a given timeline. Once a complaint is registered, an automatically generated number is sent to the requester via SMS. All complaints received through the call centre are entered into a centralised grievance redressal system. A colour coding system is used to monitor waiting time. The longer a person wait for a response, the more negative points a department receives. For example, if a person waits more than 14 days, the request is coded green and the department receives two negative points. If they wait more than 21 days, the request is coded yellow and the department receives five negative points. For requests that take longer than 30 days, the request is coded red and the department

⁶⁶¹ Bookman and Amparán, above n 13.

receives 10 negative points. If a department receives a total of 50 negative points, it is sent a memo and if it receives 75 negative points, it is sent a notice. If it receives more than 100 negative points, a formal inquiry takes place. SARATHI has played a significant role in improving governance and increasing government efficiency and effectiveness. It has become immensely popular with the citizens of Pimpri Chinchwad due to its approach to use interactive means to disseminate information which has contributed towards people's empowerment and removes communication barriers. Till now it has used multiple channels such as book, website, call center, mobile app, e-book & pdf book to communicate information. Within its first 12 months into operation, it has provided services to 2,60,099 citizens of which a total of 1,09,916 have accessed the information using the website and 52,905 service recipients have received information from the Call Center.⁶⁶² Among 16,549 callers who have made phone calls registering complaints, as many as 15603 (94%) complaints have been successfully redressed by the municipal administration.⁶⁶³ On an average of 679 citizens are benefiting every day from SARATHI which makes it as a best practice of RTI in India. It is an excellent example of how ICT tools can be used effectively to enable access to information.⁶⁶⁴

There are some challenges to implementing e-governance initiatives. First, there is a clear distinction between those who have internet access and those who do not. Bridging this gap to make e-governance work for everyone is a real challenge. Margetts, in researching transparency and digital government, notes:

There is the inhabitable complexity that a major injection of technology brings ... Most of us do not even pretend to understand the computer on our desk there is an element of magic and unpredictability about it. So digital government, relying on a myriad of computers and networks is uncertainty writ large. For those who do not use computers or the internet, digital government is even more mysterious.⁶⁶⁵

⁶⁶² Pimpri Chinchwad Municipal Corporation, 'SARATHI-An effort to connect Citizens with City Managers' (Pimpri Chinchwad Municipal Corporation, 2014)

⁶⁶³ Ibid.

⁶⁶⁴ Department of Personel and Training, *Compendium of Best Practices on RTI* (Ministry of Personel, Public Grivances and Pensions 2014).

⁶⁶⁵ Helen Margetts, 'Transparency and Digital Government' in Christopher Hood and David Heald (eds), *Transparency :The Key to Better Governance* (Oxford University Press, 2006)

A large proportion of the population of Bangladesh lives in rural settings. Many are not familiar with the use of the internet. Consequently, internet penetration is much lower than that of developed countries, where it can be as high as 95 per cent, especially in Norway, Denmark and Sweden.⁶⁶⁶ In a country like Bangladesh, it is difficult for the government offices in remote areas, who are without internet access, to maintain an e-database or maintain a website.

In addition, with a population of 160 million, it is a challenge to immediately establish a comprehensive record keeping system. Skilled personnel are required to keep records, maintain a database (including converting paper documents into electronic format), and disclose information on a regular basis. Despite these limitations, Bangladesh has already begun to take initiatives to digitalise government offices and make information available online. As most government agencies still keep records in paper form, it is a difficult task to transform a record management system that has been operating for decades. To update all this information to an electronic format requires significant investment of time and money. Further, if the electronic records do not correlate with paper records, the authenticity of the records may be questioned and affect the government's performance. The system requires specialists to monitor the process and provide appropriate solutions.

It cannot be denied that government employees currently lack the capacity to meet e-governance compliance requirements. Some public offices might not yet have the necessary equipment or infrastructure or be familiar with the process of automation of record management and publication. There is also the need for an online monitoring system to track each request and, if not answered, hold respective officers or departments accountable for failure to comply with requests. Public offices, particularly in the lower administrative tiers in Bangladesh, do not have skilled personnel to perform this job on a regular basis.

The discussion above shows that there are few challenges to implement the proposed ideas which cannot be eliminated immediately. However, several initiatives which have been taken by the government in the last few years show promises and has laid the foundation for future innovations similar to the proposed model of this thesis. More specifically, the government's Vision 2021 is a long-term vision to make Bangladesh a modern, technologically sophisticated country by the time of the fiftieth anniversary of

⁶⁶⁶ Ibid.

its independence in 2021. Bangladesh has initiated various programs and introduced laws to facilitate the process. Teledensity, the number of telephone connections for every hundred individuals living within an area, increased by up to 79 per cent in 2015 and, by 2021, it is projected to reach 90 per cent. The number of internet users rose to 27.8 per cent in 2015 from 3.2 per cent in 2009. Nearly 70 per cent of the population in Bangladesh is under 35 years old. The size of this demographic proves an enormous opportunity for the government to build a technologically sound and educated workforce in the country. With this objective, the government has introduced ICT as a mandatory subject to be taught in school. Over 20,000 educational institutions now have an internet connection, laptop and multimedia. In addition, teachers and relevant officials have been provided training on ICT. The National Curriculum and textbooks are now digitalised and are available online. Further, the government has set a policy goal to make ICT education compulsory at the secondary level by the year 2014 and at the primary level by 2021. The government has also mandated to expand internet connectivity and to ensure high-speed broadband internet coverage in all the government offices up to the union level. In 2015, 63 out of 64 districts had 3G services bringing services such as e-commerce, e-learning, e-banking and e-helplines to the doorsteps of the public. The government also intends to introduce ICT incubators, such as high-tech parks and software technology parks by 2021. In addition, the government is also working on a range of e-services including the National e-Service System, UISC, National Web Portal and District Web Portal, Service Portal, National Infokosh, social media, Digital Fair and National Data Centre. In line with Vision 2021, the government has given special attention on how to make information and technology available in the most remote places in Bangladesh. So far, information and services centres have opened in 4,547 UPs⁶⁶⁷ and 321 Paurashavas.⁶⁶⁸ Further, 407 ward digital centres opened in all six city corporations. The officer of each District Commissioner now has an e-service centre. Ten years ago, when the internet was first introduced in Bangladesh, no one would have thought that people would be able to go to a union information centre and complete what was previously a difficult job in a short space of time through the assistance of an electronic platform. Further, application forms to universities can now be completed online in from the most remote areas of Bangladesh

⁶⁶⁷ Union Parishad is the lowest tier in the local administrative structure that operates at the grass root level in Bangladesh.

⁶⁶⁸ Paurashava is a local government unit that works in semi-urban settings in Bangladesh.

without students having to travel all over the country to apply in person. This has saved a great deal of time and money. The success of UISC at union level is an example of how e-governance can provide an excellent source of service and information delivery.⁶⁶⁹ Founded on the principles of proactive disclosure, e-governance has set the bar for government institutions and has contributed to making information and services available across Bangladesh in a timely and responsive way.⁶⁷⁰ Services offered at UISC include birth and citizenship certificates, government forms, circulars, notices, online applications and admission forms, access to results of public examinations, entry population census data and a list of CCs of the UP.⁶⁷¹ Apart from these services, information also available about education, agriculture, health, natural disaster management, science and technology and employment.⁶⁷² Each UISC has at least two staff, called 'entrepreneurs', who are available full-time to respond to queries and provide services. These staff are paid from the service charge UISC receives for these services. UISC has contributed to Bangladesh society on two levels. First, it has made service delivery and information accessible to the public, enabling more people to visit the centre and receive services. Second, it has made service delivery easier and simpler. In recent times, UISC has been successful in workforce recruitment. Malaysia, one of the top recruiters of Bangladesh workers, signed an agreement with the government of Bangladesh seeking more workers under the Government to Government (G2G) scheme in 2012. Previously, corruption charges had been made against Bangladeshi agencies who manipulated the recruitment process causing the Malaysian government to suspend recruitment in 2009. This had a negative effect on Bangladesh's labour market. To

⁶⁶⁹ Rakibul Hoque and Golam Sorwar, 'E-Governance for rural development: a case study on union information and service centre (UISC) of Bangladesh' in K. Siau, Q. Li and X. Guo (eds), *PACIS 2014 Proceedings* (2014) ; S.H. Bhuiyan, 'Modernising Bangladesh Public Administration Through E-governance: Benefits and Challenges' (2011) 28 *Government Information Quarterly* 54.

⁶⁷⁰ M A Seddiky, M Esmat Ara and Sabina Yasmin, 'Role of Union Information and Service Centre (UISC) to Promote Health Care Facilities for the Rural Poor in Bangladesh' (2014) 8(2) *American International Journal of Research in Humanities, Arts and Social Sciences* 201. Seddiky, Ara and Yasmin, above n

⁶⁷¹ Researcher's own empirical finding during a study that took place in 2015. Also see M. Gofran Faruqi, 'Reaching the Unreached ? : An Assessment of Union Information and Service Centres (UISC) in Bangladesh from Beneficiary Perspective' in The Journal of Developing Areas (ed), *The Australian Academy of Business and Social Sciences Conference* (2014) .

⁶⁷² Researcher's own empirical finding during a study that took place in 2015.

provide an e-governance dimension to the process, the government of Bangladesh introduced an online application to be completed through UISC in 2013. This initiative helped to eliminate structural injustices such as a lack of information and exclusion of the poor from entitlements. The system is one of the most successful initiatives for workforce recruitment the recent times. From this discussion, it is clear that there are tremendous opportunities to make RTI more available through e-governance and to develop an integrated model to meet RTI compliance.

6.4 The RTI Call Centre

The model proposes an RTI Call Centre to be located at the district level to receive queries from the public and respond accordingly (see Figure 6.1). Those who do not have access to technology (e.g., people who are not familiar with technology or who are living outside internet reach), can use a toll-free number to call the centre with their queries. Each time a request is made to the RTI Call Centre, it will be scrutinised to see whether the information requested falls within an exemption category. If it does, the requester will be informed immediately. If the RTI Centre is convinced of the validity of the application, it will be sent to the respective ministry or departments with a request to provide the information. The departments can respond immediately, or ask the

designated officers to respond to the RTI Call Centre within a predetermined timeline.

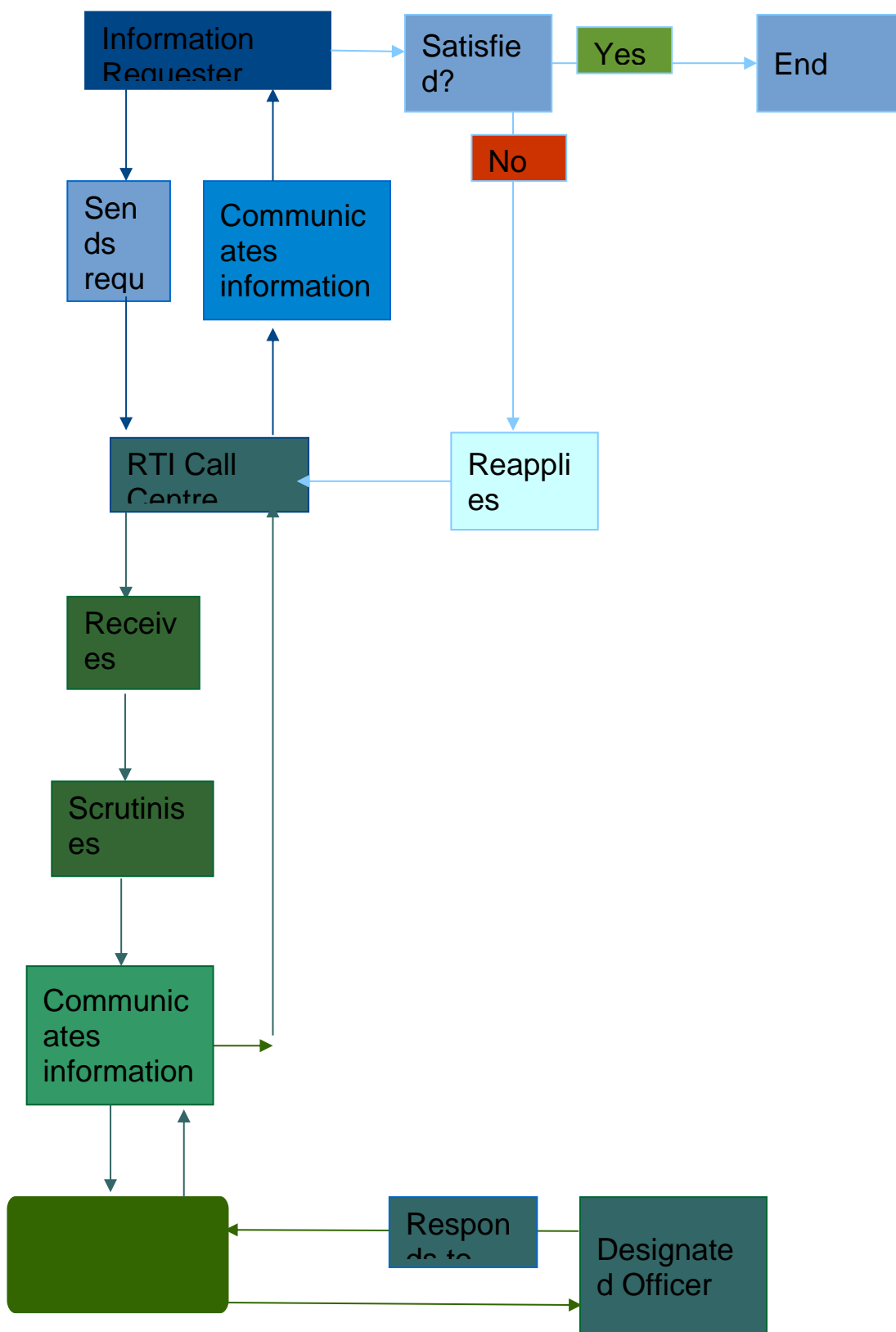


Figure 6.1: Flowchart of RTI Call Centre Request Process

The RTI Call Centre will keep records of the callers, phone them back and communicate the information, once it is received. If the requester is satisfied with the

information, they can provide their feedback immediately. If the information provided is unsatisfactory or incomplete, the person can make another request asking for additional information. For future reference, the conversation will be recorded, analysed and categorised into themes. The proposed RTI Call Centre can be an effective approach to reaching rural communities who do not have access to the internet or who are unable to obtain information from public offices.

There are successful cases of using helplines and call centres to enable the public to obtain information services in some states of India. One is the Jaankari Call Centre, an initiative launched in the state of Bihar to enable people living in remote areas to file RTI applications by telephone.⁶⁷³ It was the first RTI initiative of its kind in India to use ICT tools to help citizens seek information from the government.⁶⁷⁴ Applicants can call the centre to make a valid and legal information request from the public information officer. The only requirement of the applicant is their name and address for communication purposes. The call centre provides the applicant with a reference number for their application. A regular call charge and a fee of Rs10 for the service is added onto their telephone bill. Once the call centre receives the application, it drafts an application under RTI and forwards it to the relevant department or office, by email, fax or by post, to provide the information. When the information is received, the public information officer communicates it to the applicant. A copy of the information is sent to the applicant and stored in the database for future reference. If the call centre fails to provide the information, the applicant, using their reference number, can file an appeal. If the outcome is unsatisfactory, the applicant can file a second appeal to the appellate authority and the Information Commission by telephone.⁶⁷⁵ The Jaankari RTI Call Centre program has won the state of Bihar National Awards for E-Governance for empowering people with information under the RTI Act in the year 2008–09. According

⁶⁷³ Shalini Singh and Bhaskar Karn, 'Right to Information Act' – a tool for good governance through ICT' (2012) 10(4) *Journal of Information, Communication and Ethics in Society* 273 ; Martin Webb, 'Disciplining the everyday state and society? Anti-corruption and Right to Information activism in Delhi' (2013) 47 *Contributions to Indian Sociology* October 2013 47: 363-393, 363.

⁶⁷⁴ Shahla Tabassum, 'Right to Information Act in India: an Overview' (2015) 6(4) *Journal of the Knowledge Economy* 665.

⁶⁷⁵ Also see Jaankari Facilitation Centre, *Jaankari* (2009)

<http://www.biharonline.gov.in/rti/index.aspx?ln=en&AspxAutoDetectCookieSupport=1>

to the state IT department sources, the call centre has so far received 22,600 calls, of which 7,070 were applications under RTI. Overall 3,016 calls were filing a first appeal and 1,400 calls were filing a second appeal.⁶⁷⁶ Another successful case study is the Kisan Call Center (KCC), an initiative located in different states of India. It offers agricultural-related support to farmers seven days a week, from 6 am to 10 pm. The centre has a back-end data support system that is inbuilt into the overall management information system (MIS). The KCC receives queries from farmers and provides suggestions and relevant information. The system captures callers' details and information about the questions. All the information is then categorised, analysed by area and saved in the database for future reference.⁶⁷⁷ A recent study shows that about 180,000 calls were received from 100,000 farmers across the state of Madhya Pradesh in the first 18 months. The service can be accessed by calling a toll-free number. KCC now provides support in 22 languages.⁶⁷⁸ Another KCC case study in Himachal Pradesh shows that between August 2008 to June 2010, 44,723 calls were made to obtain information about different problems related to agriculture.⁶⁷⁹

The proposed RTI Call Centre is a similar initiative to the Jaankari and KCC call centres that have proven to be effective approaches in India. The proposal is expected to bring positive change to the entire RTI outcome and meet compliance requirements. There are both strengths and weaknesses to this proposal. However, it is assumed that the benefits of introducing a system will be much higher in term of inclusion, time and cost-effectiveness than its limitations. One of the strengths of the proposed RTI Call Centre is that it will help people who are without internet access or who are unaware of how to obtain information from websites. People can receive information by making a phone call and registering a request. About two-thirds of the population in Bangladesh now uses mobile phones. Therefore, it is much easier for most people to access

⁶⁷⁶ Times of India, 'Bihar's `Jankari' Model Found Simplest and Best', *Times of India* (Patna, India), Jan 30, 2009 2009.

⁶⁷⁷ See hollern, *Kisan Call Centre* (23 December 2008) <http://www.e-agriculture.org/content/kisan-call-centre>; <http://dackkms.gov.in/Account/Login.aspx#>.

⁶⁷⁸ Rahul Anand, 'Kisan Call Center: Bridging the Information Gap', *The Better India* (New Delhi, India), January 13, 2011 2011.

⁶⁷⁹ B.R. Sharma, Pratap Singh and Amresh Sharma, 'Role of Kisan Call Centres in Hill Agriculture' (2011) 66(3) *Indian Journal of Agriculture and Economy*

information by telephone. Further, it saves time and is cost-effective to use this service, especially for people who live in remote places and would have to travel long distances to public offices. One of the challenges in establishing an RTI Call Centre is finding staff who have the knowledge and skills to deliver the service. A further the risk is high staff turnover. Studies have shown that RTI performance is affected when new staff replace experienced personnel.⁶⁸⁰ In addition, there is the challenge of start-up costs, as an RTI Call Centre requires a system network, equipment and skilled people who are experienced in customer services and are familiar with the RTI Act. However, the long-term benefits justify the investment to provide a system to meet the public's information needs. Most importantly, it would contribute to good governance by holding public authorities accountable for public doings.

6.5 Public Deliberation and Proactive Disclosure

The model proposes public deliberation in the form of proactive disclosure through public discussions, open participatory budget sessions, ward meetings and participatory audits. In addition, it recommends the proactive disclosure of information at different tiers of administration, in electronic and other forms.

6.5.1 Public Deliberation

Public deliberation refers to citizens participating in a discussion with the relevant authorities, presenting arguments and offering solutions to a problem or particular requirement.⁶⁸¹ Deliberation is a key element of deliberative democracy. Although there

⁶⁸⁰ Alastair Roberts, 'Access to Government Information: An Overview of Issues' in Laura Neuman (ed), *Access To Information: A Key To Democracy*

(The Carter Center, 2002) ; Neuman and Calland, above n .

⁶⁸¹ David Estlund (ed), *Democracy*, Blackwell Readings in Philosophy

(Blackwell Publishers, 2002); Josua Cohen, 'Democracy and Liberty' in Jon Elster (ed), *Deliberative Democracy* (Cambridge University Press, 1998) ; James D. Fearon, 'Deliberation as Discussion ' in Jon Elster (ed), *Deliberate Democracy* (Cambridge University Press, 1998) ; Amy Gutmann and Dennis Thompson, *Why Deliberate Democracy?* (Princeton University Press, 2004); Adam Przeworski, 'Deliberation and Ideological Domination ' in Jon Elster (ed), *Deliberative Democracy*

is strong debate concerning the concept of deliberative democracy,⁶⁸² it is generally understood to be a system that provides an ideal of political legitimacy. Political decisions made to solve social coordination or moral problems are ideally made through a discursive procedure. This procedure implies the need to justify all political decisions through a public exchange of arguments ‘offered by and to participants who are committed to the values of rationality and impartiality’, in which all those affected by the decision can take part directly or through their representatives.⁶⁸³ The purpose of deliberation is not to determine the proposal that receives the highest support in numbers but to agree on a preference that best addresses the problem.⁶⁸⁴ The nature and relationship of both parties in a deliberative model encompasses several normative ideals, that is, inclusion, equality, reasonableness and publicity.

Inclusion refers to people’s opinions, perspectives and expressions of interest in specific problems or issues. Its normative focus is on people whose lives are ‘affected’⁶⁸⁵ by democratic decisions and the way they are included in the discussion and decision-making process. The deliberative approach considers how people are affected, even if it is in a very minor way. Therefore, an ideal inclusion must include people’s voices and interests and should represent a norm of the moral request.

Political equality refers to a normative ideal for inclusion but extends to inclusion as political equals. Hence, all those affected by a problem are included in decision-making and can express their opinions, question, argue and criticise one another. As Held notes, ‘individuals should be free and equal in the determination of the conditions of their

(Cambridge University Press, 1998) ; Jane Mansbridge, 'A Deliberate Theory of Interest Representation' in Mark P. Patracca (ed), *The Politics of Interest: Interest Groups Transformed* (Westview Press, 1992) .

⁶⁸² On this discussion, see Cristina Lafont, ‘Is the Ideal of a Deliberative Democracy Coherent?’ in Samantha Besson and Jose Luis Marti (eds), *Deliberative Democracy and Its Discontents* (2006) 3.

⁶⁸³ Jon Elster, ‘Introduction’ in Jon Elster (ed), *Deliberative Democracy* (Cambridge University Press, 1998) p.8; See also Gutmann and Thompson, above n 35.

⁶⁸⁴ Robert Alan Dahl, *Democracy and Its Critics* (Yale University Press, 1989); Fearon, above n ; Gutmann and Thompson, above n ; Iris Marion Young, *Inclusion and Democracy* (Oxford University Press, 2000); John S. Dryzek, *Deliberative Democracy and Beyond* (Oxford University Press, 2000).

⁶⁸⁵ Decision and policies significantly condition a person’s options for action.

lives, that is, they should enjoy equal rights in the specification of the framework that generates and limits the opportunities available to them'.⁶⁸⁶ An ideal position for a deliberative approach is to provide everyone the equal opportunity and freedom to speak without coercion or threat of any kind in accepting or rejecting proposals or outcomes. In an inclusive discussion process, people feel confident to express their interests and discuss and debate their opinions without any fear of force or false consensus.

Many people think they know best and may avoid discussion or ignore the perspectives of others. Reasonableness is the willingness to listen to other people's opinions and give them the opportunity to explain why they believe their ideas are correct and appropriate. Reasonable people engage people in a discussion and try to identify solutions to reach an agreement. Reasonable people participate in a discussion without any prejudice or preconceived notion. They are willing to change their opinions and believe that there may be better solutions to the problem. A reasonable person is ready to listen and give others a chance to express their opinions. Although it is good to reach a consensus, this is not an absolute requirement of a deliberative approach. Many times, there may not be total agreement, but disagreement can also bring insight and offer ideas to reach an agreement of some kind. The basic principle is one of openness and being ready to listen to each other's opinions and be persuaded.

Interaction in a deliberative approach to decision-making takes place among participants who are accountable to each other.⁶⁸⁷ These members of the public embody a group of individuals, their goals and collective experiences, histories, ideas, interests and commitments. As they discuss common problems, they express themselves in ways accountable to others. This means they must explain their background, experiences, interests, proposals and claims in such a way that others can understand their reasons, even if they are not convinced by them. It is not essential for every member of the public to understand and accept the proposal, but the information should be accessible to everyone. Therefore, if there are doubts or disagreements among the public, they can ask questions and receive some answers.

⁶⁸⁶ David Held, *Models of Democracy* (Polity Press, 1987).

⁶⁸⁷ Gutmann and Thompson, above n 38; Young, above n 38.

6.5.2 Proactive Disclosure

Proactive disclosure is crucial for public deliberation. Proactive disclosure refers to information that is disclosed without the need for a formal request. Many countries including both developing and developed countries provide for proactive disclosure as a mandatory feature of their access to information regimes. Evidence from these countries on the implementation of proactive disclosure measures for open and inclusive government. In Australia, for instance, the federal government's Freedom of Information Act 1982 (Cth) (FOI Act), was amended in 2010,⁶⁸⁸ to promote a 'pro-disclosure culture across government and to build a stronger foundation for more openness in government', thereby 'restoring trust and integrity'.⁶⁸⁹ Accordingly, the amendments to the FOI Act provided for proactive disclosure through an Information Publication Scheme.⁶⁹⁰ Under the Scheme, an agency must publish on its website 'a range of information including information about what the agency does and the way it does it, as well as information dealt with or used in the course of its operations'. An agency's compliance with the Scheme is subject to review by the Information Commissioner. At the state level, in South Australia, a new government initiative for the Proactive Disclosure of Regularly Requested Information, introduced in 2013, makes available online, free of cost and for a period of at least one year, such information as details of credit card expenditure by government ministers and officials, domestic and overseas travel arrangements, government expenditure on ministerial mobile phones, functions and consultants, as well as procurement practices and capital works.⁶⁹¹ The South Australian government's policy applies to all of the state's key agencies and demonstrates a commitment to 'being open and accountable, informing and engaging with citizens and encouraging public participation'.⁶⁹²

⁶⁸⁸ Pursuant to the *Freedom of Information (Reform) Act 2010* (Cth).

⁶⁸⁹ Explanatory Memorandum, *Freedom of Information (Reform) Bill 2010* (Cth) 1.

⁶⁹⁰ Now Part II of the *Freedom of Information Act 1982* (Cth).

⁶⁹¹ Government of South Australia Department of the Premier and Cabinet, *Circular 35—Proactive Disclosure of Regularly Requested Information* (November 2016) 4–5, <http://dpc.sa.gov.au/documents/rendition/B17969>.

⁶⁹² *Ibid.*

Developing countries have also embraced similar FOI statutes and policies over recent decades in an effort to support democratic governance and stem corruption.⁶⁹³ In China, the Regulations on Open Government Information (OGI) became effective on 1 May 2008. Articles 9–13 of the OGI require all government administrative agencies and public service bodies, including schools, hospitals, and utility companies, to proactively publish information of four types, including information that concerns the public interest, requires public participation, shows the structure, function and procedures of matters relating to the administrative organ releasing the information and should be disclosed under laws or regulations.⁶⁹⁴ This approach to information disclosure, relatively new to China, came about as a result of sustained pressure from citizens prompting the Chinese government to recognise their right to information and to participation in their own government.⁶⁹⁵ India's 2005 RTI Act also provides for proactive disclosure at both national and state levels; however, these provisions have often been disregarded, with information commissions struggling with a backlog of complaints about agencies failing to comply with the provisions and many state level agencies professing a lack of awareness of their legal obligations for proactive disclosure.⁶⁹⁶ As one commentator on the Indian situation notes, adoption of a law in the style of the US Freedom of Information Act, introduced in 1966, is 'only the first step on the long road to transparency'.⁶⁹⁷

Evidence from other countries on the implementation of proactive disclosure measures indicate characteristic difficulties in successfully transforming the culture of organisations and government agencies—particularly organisations in which disclosure may have been traditionally neglected or deliberately avoided. Switzerland was one of the last European countries to introduce FOI legislation, following 20 years of

⁶⁹³ Roberts, above n 34.

⁶⁹⁴ Sun Yu, Dang Shengcui, Fang Bin and Zhao Qiuyan, 'Public Access to Government Information in the Digital Age: Findings from China' (2014) 41 *Korean Social Sciences Journal* 1, 2.

⁶⁹⁵ Ibid.

⁶⁹⁶ Roberts, above n 34.

⁶⁹⁷ Ibid 926.

consultation and failed attempts.⁶⁹⁸ A study indicates low levels of disclosure about the FOI process on Swiss agency websites in the period 2008–2011.⁶⁹⁹ One explanation for the reluctance to promote disclosure is agencies wish to avoid generating public demand for information and causing a drain on existing resources.⁷⁰⁰ Another reason, and one particularly relevant to developing countries, is that the public benefits of a website that provides information about the work and operations of agencies or organisations has not been fully acknowledged or realised, particularly if there is no legislation mandating disclosure. This has been the case in Colombia, where transparency initiatives relating to the accountability of NGOs are increasing in momentum, as well as elsewhere in the world.⁷⁰¹ Barriers to proactive disclosure persist, although online disclosure is widely noted by commentators as one of the most effective and least costly, means to share information relevant to the public interest.⁷⁰²

6.6 Public Deliberation through Proactive Disclosure

Darbishire identified six core principles that are crucial to the success of proactive disclosure. First, is the availability of information, through multiple communication such as online web portals, noticeboards, leaflets and mobile phones. Second, information disclosed should be easily findable through channels that are convenient to the public. Third, information should be relevant to its users so that it corresponds to their needs. Fourth, the information disclosed to the public by government agencies should be comprehensive and available in all the official languages (in Bangladesh these are English and Bengali). Fifth, disclosed information, such as annual reports, laws, budgets and forms should be made available for free or at low cost. Finally, information

⁶⁹⁸ Jean-Patrick Villeneuve, 'Transparency of Transparency: The Pro-active Disclosure of the Rules Governing Access to Information as a Gauge of Organisational Cultural Transformation. The Case of the Swiss Transparency Regime' (2014) 31 *Government Information Quarterly* 556, 558.

⁶⁹⁹ Ibid.

⁷⁰⁰ Ibid.

⁷⁰¹ María del Mar Gálvez-Rodríguez, Carmen Caba-Perez and Manuel López-Godoy, 'Drivers for the Proactive Online Disclosure of Information in the NGO Sector: The Colombian Case' (2014) 38(6) *Online Information Review* 769, 777.

⁷⁰² Ibid.

in either electronic or hard copies should be regularly updated for release.⁷⁰³ As discussed earlier, one of the challenges in implementing the RTI Act in Bangladesh is a lack of disengagement of the public in the RTI process. The challenge is to make implementation more inclusive for a range of stakeholders. Unless the approach is inclusive, the process is likely to fail. This proposal is to make the principle of public deliberation mainstream through open participatory budget meetings, open audits, public discussion and sharing at events at different tiers of local government administration. Open participatory budget meetings take place in many unions across Bangladesh and are successful. Through making provisions such as participatory budget sessions mandatory for local government institutions including unions, wards (city and corporation), upazilas, Paurashavas and city corporations, people can be engaged in public activities, have confidence in their rights and hold public bodies accountable. Further, making public deliberation and disclosure mainstream practices will give the public access to a great deal of information about programs and activities previously decided by government representatives without public awareness or participation. The mandatory disclosure of a wide range of information for all government bodies, agencies and departments (except the Ministries of Defence and Foreign Affairs), including any information that is not a part of the exemption list. This includes disclosure and publication on their websites of information regarding the structure, functions, activities, circulars and forms of agencies, as well as their periodic progress and annual reports. If categorised, each authority would be required to disclose information that includes its organisational structure and the legal basis for its authority, its agenda plans, policies and programs, budget allocation, subsidies, procurement, expenditure and publications such as annual reports. Government agencies would be required to provide information in both English and Bengali written in a manner accessible to the public and available free of cost. Public authorities would be required to publish information on their departmental websites and also through other communication channels, such as noticeboards, leaflets, newspapers, billboards, radio, television and SMS text messaging.

Public deliberation comes with social benefits. Open access forums empower citizens by recognising their voice through open participation in decision-making. The entire

⁷⁰³ Darbishire, Helen, 'Proactive Transparency: The Future of the Right to Information? A Review of Standards, Challenges, and Opportunities' (World Bank Initiative, 2009).

process encourages the ideas, opinions and preferences of others.⁷⁰⁴ It solves problems collectively⁷⁰⁵ and, reduces the gap between government representatives and the public. Further, the multiple opinions from different segments of society, including those who are disadvantaged, bring different perspectives on common problems. Consequently, people come to know more about the steps and processes taken by government agencies, and hence, have a sense of ownership of the process once it is established. Most importantly, these events are ideal platforms to talk about the RTI Act and increase broad awareness of the application process. In recent times, different studies have claimed that Ward Shava and open participatory budget meetings have emerged as two of the most successful cases of public deliberation in Bangladesh.⁷⁰⁶

The open participatory budget goes through stages. The first step is the participatory planning process that takes place in each ward. There are multiple planning sessions held at the ward level in which people within the community discuss their problems and needs. These sessions are conducted by a team of facilitators who are selected from the community. The respective ward members attend each of these sessions. As issues are identified, participants of each ward takes part in a transect walk⁷⁰⁷ and Participatory Rural Appraisal exercises. This helps to prioritise the issues. Each of these sessions is attended by between 50 to 200 members. The meetings are held in the first quarter of each year before the annual budget meeting takes place. There are also committees formed informally by the local communities to facilitate the process, although they are not a part of the local government structure. These committees include the Ward Development Committee, Union Development Committee (UDC) and Scheme

⁷⁰⁴ Young, above n ; Josua Cohen, 'Deliberation and Democratic Legitimacy ' in Alan Hamlin and Philip Pettit (ed), *The Good Polity* (Blackwell, 1989)

⁷⁰⁵ Jurgen Habermas, 'Popular Sovereignty as Procedure' in James Bohman and William Rehg (eds), *Deliberate Democracy* (Massachusetts Institute of Technology 1997)

⁷⁰⁶ Chowdhury, Shuvra. M., 'Impact of the Local Government (Union Parishad) Act, 2009 on the Local Governance in Bangladesh: A Focus on People's Participation and Accountability' (PhD Thesis, University of Rajshahi, 2015)

⁷⁰⁷ Transect walk is a systematic walk along a defined path across the community area where the facilitator along with local people explore conditions of the locality. Also See Krishna Kumar, 'An Overview of Rapid Appraisal Methods in Development Settings ' in Krishna Kumar (ed), *Rapid Appraisal Methods* (The World Bank, 1998) .

Supervision Committee. Once all the issues from each ward are identified and listed, they are sent to the UP. After being short-listed, the scheme proposals are received in a UP-level meeting and UDC members, following long and careful discussion, select a list of tentative schemes. All the people from the wards are asked to attend an open budget meeting to discuss the schemes to be selected for the coming year. Once the final schemes are accepted by the meeting attendees, the final list is prepared with a tentative budget and sent to Upazila Parishad for approval from the Upazila Nirbahi Officer.

The ward shava and open participatory budget meeting are widely attended events as the present study finds that nearly 50% of the respondents have said they have attended either 'Ward Shava' or open budget sessions of their respective UPs. The study also reveals that people who attended these events have been found informed about how government works and expressed that these events have built confidence in the public to take part in the decision-making process. The respondents in this study have expressed that these events provide people the opportunity to know, discuss and debate various local issues that they face in their day-to-day lives. So, it shows that such events affirm equal participation of all as each of the issues is noted down and discussed in an open forum. One great achievement of the budget meeting and ward shava is therefore that these events have managed to introduce a culture of openness in UP's operation. Further, photographs and minutes from the open budget are properly documented and displayed for public information. So, the organisation is more accountable to the people about the projects that are selected and the amount of money spent than it ever was before. This is a major achievement towards proactive disclosure at the union level.

Although the open participatory budget has been a successful innovation, it may be a challenge to apply the idea on a mainstream level, especially when there are no mechanisms to monitor how the process is conducted at each administrative unit and the extent to which each unit is willing to accept the proposals. The willingness of political institutions to hold a public debate and discussion may also be a challenge. However, if the top leadership is willing to accept the proposal, it may succeed, as both ruling and opposition parties provided mandates to combat corruption during the 2008 election .

Proactive disclosure ensures everyone is informed about the laws and government decisions that may affect their lives. It also ensures that the officials responsible for promoting integrity in government are aware of public funds that are spent on projects and activities. Information disclosure also enables the public to be informed about how

government bodies work and the procedures for obtaining information and services from respective authorities. In addition to these advantages, proactive disclosure reduces the burden of responding to information queries and minimises the chance that information may be denied or manipulated. It removes the need for the public to file information requests, a process that can sometimes be lengthy. Most importantly, proactive disclosure assists those who are marginalised or who come from disadvantaged segments of society, who may find it difficult to request or access information. Disclosure of key information keeps the public informed, as they can participate in the policy- and decision-making process and reduces the dominant influence of special interest groups or local elites. When information is automatically available, everyone, regardless of their sex, religion, or socio-economic circumstances, has timely and impartial access to information.

Proactive disclosure is also challenging, as it requires resources. These include the time and money to set up a proactive disclosure regime, progressive improvement—beginning with a set of information that meets public needs and gradually increasing the list—promotion, training public officials in ICT, public education, monitoring, compliance and enforcement. Enforcement requires a process for receiving complaints and taking appropriate action to ensure compliance.⁷⁰⁸ There should be a clear and transparent distinction between information that is able to be disclosed and information that is not. The list of exemption varies from country to country. Some countries prefer strict policies on disclosure and have an extended list of exemptions, while others manage to operate with a shorter list. Implementing proactive disclosure may be difficult in a situation in which there is no infrastructure, such as billboards, noticeboards or equipment. Further, many public offices do not have an adequate record management system in place and do not have enough material available for disclosure. Given that disclosure of information has never been consistently expected of public offices, in most cases there is no overhead to cover publication and costs. In Bangladesh, public administration has inherited a secretive process and disclosure has been rarely practiced. In situations like this, the practice of information disclosure may take time to establish before it can flourish. Mandatory government measures for disclosure are crucial, including measures for the allocation of resources. It will be challenging for government offices to implement the model proposal when Bangladesh has no prior experience in proactively disclosing information.

⁷⁰⁸ Darbishire, above n 57.

6.7 Conclusion

In the chapter, the thesis proposed a solution to overcome the implementation challenges of the RTI Act in Bangladesh. It is clear from the discussion that a lack of engagement with the public, the limited capacity and skill of the implementing staff, the unavailability of an effective record and information management system, a lack of infrastructure and resources, ambiguity and confusing clauses in law and a lack of involvement from NGOs, media and civil society were challenges to implementation of the Act. It is also evident from the discussion that there has been no unified, systematic approach to RTI to best address some of these challenges.

The open access model dealt with two main areas proposing measures that would work effectively for government agencies and departments to respond to RTI related queries and information engage common people in the RTI process. The first proposal is to provide access to information through e-governance. Here, the model included the provision that each government agency or department must collect, store and manage information through a departmental database directly linked to a central database. Each authority must manage their website and proactively publish information. There is also the provision of an information request that can be directly made to the authority on their websites. The appeal procedure remained unchanged to meet the requirement of reapplication if a person's request is denied or the information they receive is unsatisfactory. One of the strengths of this approach is that it minimises the human effort required to maintain paperwork or find the requested information, ensuring a quicker response. However, this process does have its limitations. Not everyone in Bangladesh has internet access or the knowledge to use the technology.

To address this particular group, and specifically those who live in remote areas and who do not have access to technology, the second proposal of the thesis is the RTI Call Centre—a service centre designated to receive queries and provide information over the phone about the RTI Act. Initially, there would be a trial of one call centre to identify the challenges and solutions before other parts of the country gradually adopt the system. One of the benefits of introducing an RTI Call Centre is that it makes access to information easier for those are marginalised due to remoteness, ethnicity, education and disability. However, the challenges to implementing such an initiative include hiring skilled people and developing an infrastructure to run the system smoothly. There

is also the undeniable challenge of staff turnover. However, if a system could be developed for a call centre it would make it much easier for the public to obtain relevant information quickly. The final proposal of the model was to make public deliberation through open disclosure a mainstream behaviour. The study has shown that the open participatory budget meeting has proven to be successful in involving people in the decision-making process. It has also made local government accountable to the public. This proposal anticipates that if the same process can be applied in other tiers of administration, it could not only engage more people into the process, but it can facilitate disclosure and RTI on a different level. However, there is the question of political willingness. The proposal to overcome implementation challenges of the RTI Act in Bangladesh requires a shift from a traditional service delivery approach to a modern, e-based service delivery approach. With such a proposal, the mindset of public officials, who have been historically highly bureaucratic and closed, can sometimes be the threat. To bring in a change towards a system that gives access to information to the public will take time and may face delays or interruptions. Further, political elites and local government representatives who have been known to be corrupt may expect to lose opportunities if relevant information about their schemes and allocations are disclosed to the public. Therefore, they may try to control the discussion and dominate open participatory budget sessions.

Although the challenges are many and intrinsic, the benefits of having information available to everyone in a democracy like Bangladesh far outweighs the challenges. It is towards this direction that steps must be taken, even small steps, to ensure the success of the RTI Act. During the 2008 National Election, the AL-led alliance set its Vision 2021. Bangladesh initiated various programs and introduced laws that to facilitate the process. The RTI Act, 2009 is one of the laws that was introduced with the promise of reducing corruption and making government operations transparent and accountable to the public. In line with Vision 2021, the government has given special attention to making information and technology available in the remotest places in Bangladesh. So far, information and services centres have opened in 4,547 UPs and 321 Paurashavas. Further, there are 407 ward digital centres opened in all six city corporations. In addition, the officer of each District Commissioner now has an e-service centre. The teledensity has increased to 79 per cent in the year 2015 and, by 2021, it is projected to reach 90 per cent. The number of internet user rose to 27.8 per cent in 2015 from 3.2 per cent in 2009.

Nearly 70 per cent of the population in Bangladesh is under 35 years old. This provides an enormous opportunity for the government to build a technologically sound and educated workforce in the country. With this objective, the government has introduced ICT as a mandatory subject to be taught in school. Over 20,000 educational institutions now have an internet connection, laptop and multimedia. Teachers and relevant officials have been provided training on ICT. The National Curriculum and textbooks are now digitalised and available online. Further, the government has set a policy goal to make ICT education compulsory at the secondary level by the year 2014 and at the primary level by 2021.

The government has also mandated to expand internet connectivity and to ensure high-speed broadband internet coverage in all government offices up to the union level. In 2015, 63 out of 64 districts had 3G services, placing at the doorsteps of the public services such as e-commerce, e-learning, e-banking and e-helplines. By 2021, the government also plans to have introduced high-tech parks, software technology parks and other ICT incubators. In addition, the government is working on e-services that include National e-Service System, UISC, National Web Portal and District Web Portal, There are tremendous opportunities to make RTI mainstream through e-governance and to develop an integrated model to meet the compliance guidelines of the RTI Act.

7. Introduction

This study investigated the implementation of the RTI Act and attempted to discover how far the implementation of the Act has achieved its objective of people gaining access to information. The thesis argued that, due to a lack of implementation, the RTI Act in Bangladesh has not been successful in achieving its intended objective and there is no significant improvement in the status of people's access to information since the Act was first implemented. The thesis claimed that there are several factors including behavioral, institutional, cultural, social, economic and political factors that have influenced the performance of its implementation. The thesis argued that the top-down perspective used in its implementation was an inappropriate approach and there was a need to engage the public to help them understand the law by making the process inclusive. In addition, a system is required that works for frontline implementers. The integrated model proposed addresses these issues through three main strategies that include access to information through e-governance, an RTI Call Centre, and public deliberation through proactive disclosure. This chapter includes a summary of the main findings, the alternative model to implementation, thesis contribution, study limitations and a consideration of future research directions.

1.2 Summary: Research Questions, Claims and Findings

By measuring different indicators to assess people's access to information including the number of information applications, responses and appeals, provision and practices for information, disclosure, publication, record and information management systems, provision and practices for open public meetings and enforcement mechanisms, the thesis answers the first research question: *How is the RTI Act implemented and to what extent has the existing implementation process contributed to people's access to government information in Bangladesh?* The section below summarises these findings:

- The thesis findings show that very few public authorities disclose and publish information related to activities and services and there are not many publications and reports produced and a minimum effort is made to make these publications

in public either electronically or on paper, on a routine basis except for the Information Commission and few selected ministries. CCs are mostly outdated and there is no involvement of the public in the making of these charters. At the local level, there is no practice to make information regarding social safety net programs and other government projects and allocations public.

- Record management was found to be outdated. Archives were not maintained properly. In many offices, important documents were in paper form only and were in bad condition. The websites of most of the public offices at the local and central level, except for a few ministries, were poorly maintained.
- Except for the Information Commission, a few ministries at central government level and UP at the local level, there is no practice to hold public meetings.
- The study finding also reveals that there were very few applications submitted to public offices, particularly at the local level. In the past seven years since the Act was introduced, there were approximately 68,000 applications registered in all of the public offices in Bangladesh. Many applications were rejected because they were not completed in the manner prescribed by the law. But, in some cases, applications were also rejected without any explanation.
- As far as the corruption is concerned, there has been no significant improvement in the Corruption Perception Index (CPI). The country's position remains unchanged from where it was seven years ago. The findings provide a clear indication that the implementation of the RTI Act has not achieved its intended objectives.
- The above findings have clearly shown that, due to a lack of implementation, the RTI Act in Bangladesh has not been successful in achieving its objective and there is no significant improvement in the status of people's access to information since the Act was first implemented.

Referring to the theoretical framework, the thesis claimed that: *The implementation success of the RTI Act depends on behavioral, institutional, cultural, socio-economic and political conditions. The more favorable these conditions, the greater the possibility of a successful implementation.* The thesis findings substantiate the claim that there is a correlation between implementation success and these factors. By examining these

independent variables, the thesis answers the second research question: ***What are the challenges that affect implementation of the RTI Act in Bangladesh?***

The section below summarises the findings and answer that question.

- First of all, the behavior of the target population, frontline workers, CSOs and cooperation and coordination among government departments, affected the implementation of the RTI Act in Bangladesh. The thesis claimed that ***the more favorable the behavior of ordinary people is towards the RTI process, the better its implementation will be***. The study findings have substantiated the claim as it clearly shows that there is limited engagement among common people to exercise their right to information. Only a small number of the population were aware of the Act. People also faced rejection or delay when seeking information from these offices, As a result, they are generally unwilling to make queries or ask for information and that affect the successful implementation of the Act.
- Secondly, there was also a lack of cooperation and coordination among government agencies that affected the implementation process. Referring back to the theoretical framework, the study claimed that ***the more cooperative government departments are, the better the implementation of the RTI Act***. The study findings substantiated the claim, as it shows that there is a lack of cooperation and communication among representatives of different tiers of administration, particularly among different local government units which had an impact on its implementation outcome. The study finding shows that there was a strict, authoritative relationship between superiors and subordinates in government offices that caused why junior officials to be afraid to provide information without the permission of their superiors. This process delayed information responses. In addition, there was no supervision or communication from the Information Commission to the public offices.
- Thirdly, the behavior of the frontline workers who deal with RTI-related activities on a day-to-day basis influenced implementation. Referring to the theoretical framework the study claimed that ***the more willing the frontline staff are to work towards RTI compliance, the better the implementation of the RTI Act will be***. The study findings substantiated the claim, as the finding showed that most of the public consider government officials at the local level to be

inaccessible and often unreachable. The study found that there were no fixed office hours followed at the local level. The local representatives and government officers at the union level found activities related to RTI— such as proactive disclosure, publishing and responding to written queries—a burden. Hence, disclosure was not common practice among these authorities. Overall, the bureaucratic attitude of the government officials and an authoritarian culture was an obstacle to the implementation of the RTI Act and hampered the relationship between the government and the governed.

- Fourthly, the institutional components, particularly, the design that influenced implementation of RTI Act. Referring to the theoretical framework the study claimed that *the clearer the content of the RTI Act is, the better its implementation will be*. The study findings substantiated the claim, as the study found that certain clauses in the Act lacked clarity and overlapped existing clauses of other laws. Further, some of the clauses were contradictory and overlapped clauses of the *Constitution* of Bangladesh. These clauses created confusion among the users. In addition, there was no harm or public interest test. Implementation was also affected by the law that excluded transferred government departments from disclosing information at the union level. This gave officials enormous freedom not to follow any of the policy directives.

Apart from design, there were institutional components including capacity, infrastructure, and resources that influenced implementation of RTI Act. The present study claimed that *the more capacity the implementation agencies have, the better the implementation of the RTI Act will be*. Corresponding to Thomas and Grindle's *Implementation Theory*, quoted 'an implementation agency with having political, financial, managerial and technical resources in place has a profound impact on implementation effectiveness', the present study findings substantiated the claim.[1] The study found that there were no resources allocated for RTI-related activities such as printing and publication, disclosure and awareness-building, for public offices, except for the Information Commission. In addition, poor record keeping and information management including website maintenance made it difficult for frontline workers to respond to queries or produce regular publications. In addition, staff members lack the skill to deliver RTI related works as nearly half of the RTI designated officials were also local representatives who had not received any training on RTI.

These findings indicated a lack of institutional capacity to achieve the successful implementation of the RTI Act.

- Fifthly, the thesis also found there were social factors such as gender inequality, lack of education, domination by the local power elite and social class that had an effect on the success of the implementation process. The study claimed that *the more favorable the socio-economic conditions are towards access to information for all, the better the implementation of the RTI Act will be*. The study findings substantiated the claim, as the study found that in rural parts of Bangladesh, the patriarchal social system and local power structure restrict the ability of the women and marginalized communities to make queries at public offices about services. Economic conditions played an equally important role as the study finding shows people living in the rural parts come from low-income groups who prefer going to work rather than spending a whole day in a public office waiting for information with no guarantee they would receive the information they requested.
- Sixthly, Politics played a significant role in decision-making at the local level. Referring to the theoretical framework, the study claimed that *the more favorable the political condition is towards RTI, the better the implementation of the Act will be*. The study findings substantiated the claim, as the study found that the distribution of social benefits and allocations was based on political affiliations. People's representatives and political elites dominated decision-making on allocation and social safety net program beneficiaries. Consequently, no information that would portray their behavior in a bad light was made public.
- Lastly, the study claimed that there is a strong correlation between the cultural condition and implementation success. The study finding substantiated the claim, as the study has shown that the bureaucrats and people's representatives felt a sense of control over the services they provided and the information they held. They did not encourage or promote information disclosure without asking their superiors due to the requirements of the Official Secrets Act, 1923 and the Government Services (Conduct), 1979, under which, they might face adverse consequences and undue scrutiny from their superiors. In addition, the inclusion of Section 57 of the ICT Act restricted publication of certain information.

This not only protected the culture of secrecy but also restricted free speech and freedom of expression. This was an obstacle to the implementation of RTI Act.

7.3 Discussion on Results

Against the background of the summary of findings presented in the previous section, it is useful to place those in the context of the existing literature. The section below seeks to achieve that.

- The present study finding is consistent with Winter's proposition '*the behavior of target population can influence policy either directly by participation or non-participation in the implementation process*' or they can resist or influence the performance of the street-level bureaucrats.⁷⁰⁹ Alongside, the present study finding is also on the same page with Winter,⁷¹⁰ Skodvin,⁷¹¹ Hill and Hupe⁷¹² as these studies claim that effective implementation is impossible without including the people in the target group. In fact, the thesis argued that the top-down perspective used in its implementation was an inappropriate approach. The thesis has shown that there was a need to engage the public to help them understand the law by making the process inclusive. This is also consistent with some previous studies particularly, Iqbal el.al and MRDI in the context of the implementation of the RTI Act in Bangladesh.⁷¹³
- Meter and Horn's *Policy Implementation Framework* has claimed a strong correlation between implementation success and inter-organization cooperation and

⁷⁰⁹ Winter, Søren C, 'Implementation' in B Guy Peters and Jon A Pierre (eds), *Handbook of Public Policy* (SAGE Publications, 2006) 151; Pressman, Jeffrey L and Aaron Wildavsky, *Implementation* (University of California Press, 3rd ed, 1984)

⁷¹⁰ Winter, above n 1.

⁷¹¹ Skodvin, Tora Gullberg, Therese Anne and Stine Aakre, 'Target-Group Influence and Political Feasibility: The Case of Climate Policy Design in Europe.' (2010) 17 *Journal of European Public Policy* 854

⁷¹² Hill, Michael and Peter Hupe, *Implementing Public Policy: An Introduction to the Study of Operational Governance* (SAGE Publications, 2008)

⁷¹³ Iqbal, Sohel, 'Challenges of Implementing the Right to Information Act: Experience of Others and Lessons for Bangladesh' in Syeed Ahamed and Ashique Nabi (eds), *Right to Information Act (RTIA) in Bangladesh: Challenges of Implementation* (Right to Information Forum, 2012); MRDI, 'Citizens' access to information in South Asia: Diagnostic analysis - Bangladesh Chapter' (Management and Resources Development Initiative, 2013)

coordination, and this is similar to what the present study has claimed and established.⁷¹⁴ These findings are also consistent with Iftekharuzaman's findings who concluded showing that, lack of coordination and cooperation among departments the main challenge for better implementation.⁷¹⁵

- There are findings of other studies particularly Rahman's study on the implementation of RTI Act, Karim's study on assessing the performance of the RTI Act have shown that a lack of commitment and the willing of public representative and officials have contributed to the poor implementation of the RTI Act in Bangladesh.⁷¹⁶ Pressman and Wildavasky's widely used Policy Implementation Theory has claimed a relationship between implementation and behavior of the street level bureaucrats, which is similar to what the present study has claimed and established. There are several other studies which have been conducted in a different policy context, have come to the conclusion that the bureaucratic culture is one of the main challenges for policy implementation in Bangladesh.⁷¹⁷
- The present study finding is consistent with Sabatier's argument 'policy without clear, consistent, well communicated and understood objectives are subject to multiple interpretations that may result in bad execution even by implementers who have the best of intentions.'⁷¹⁸ The study finding shows that the RTI Act has overlapping clauses and lacked clarity in parts which is exactly what Sabatier has claimed. However, the thesis differs somewhat from Jamil and Panday who claimed that policies often face implementation challenges due to inadequate institutional rules and regulations, but that should not be considered as the main reason for implementation failure, there are also skills and institutional capacity

⁷¹⁴ Van Horn, Carl E and Donald S Van Meter, 'The Policy Implementation Process: A Conceptual Framework' (1975) 6 *Administration & Society* 445

⁷¹⁵ Iftekharuzzaman, M, 'Implementing Right to Information in Bangladesh: Opportunities and Challenges' (Paper presented at the International Conference on RTI Implementation: Law, Institutions and Citizens, Dhaka, 21–22 June 2009).

⁷¹⁶ Karim, Fukrul M, *Implementation of the Right to Information Act (RTI-2009) in the Selected Upazilas of Mymensingh* (Master's Thesis, BRAC University, 2013).

⁷¹⁷ Pressman and Wildavasky, above n 2.

⁷¹⁸ Sabatier, Paul and Mazmanian, Daniel, 'The Conditions of Effective Implementation: A Guide to Accomplishing Policy Objectives' (1979) 5(4) *Policy Analysis* 481

involved.⁷¹⁹ In the present case, the capacity of the frontline workers to maintain records and disclose information has been a matter of capacity, not a subject of the inadequacy of institutional rules and regulation.

- The present study found that the dimension of adequate resources and allocation of funds for the implementation of the RTI Act, which is consistent with some of the previous studies (Iftekharuzzaman, Panday and Rabbani, Kadery).⁷²⁰ The study finding is consistent with Grindle and Thomas's proposition '*the absence of adequate resources affects the implementation process*' and also Hogwood and Gunn's dimension of an appropriate structure, staffing (e.g., skills and training), funding and resources, procedures and methods and monitoring tools. However, the study finding has also shown that even though information commission has got its own office and resources to making RTI law a success, the top-down approach implementation approach has proven to be inappropriate in the present case which makes some of these claims (Hogwood and Gunn, Meter and Horn) partially contrasting. Also, even though this did not focus on measuring the impact the RTI Act on corruption, some the CPI indicator did not show any improvement in the state of corruption in Bangladesh. As a result, some of the attempts that have been made by scholars like Islam has proven to be inappropriate in the case of Bangladesh. The present study finding is consistent with the findings Panday and Rabbani, Iqbal el.al on lack of institutional capacity challenging implementation of RTI Act in Bangladesh.⁷²¹
- Very few studies in the context of Bangladesh has had tried to explore the socio-economic and political dimensions in the implementation of the RTI Act. The present study found that there is a correlation between social economic and political condition with the implementation performance of the RTI Act. In such scenario, the study is consistent with Sabatier and Mazmanian and Winter's claim that economic, political and social conditions could contribute to the performance

⁷¹⁹ Pranab Kumar, Panday and Ishtiaq Jamil, 'Policy Making in Urban Bangladesh: Whose Domination?' (2010) xxvii(4) *Nepalese Journal of Public Policy and Governance*

⁷²⁰ Panday, P. K. and Golam Rabbani, 'Freedom of Information in Bangladesh: Policy Dynamics, Present State, and Challenges' in Meghna Sabharwal and Evan M. Berman (eds), *Public Administration in South Asia: India, Bangladesh, and Pakistan* (Taylor and Francis, 2010); Kadery, Mobassera. M, *Right to information act-2009 in Bangladesh: An Analysis* (Masters Thesis, BRAC University, 2009); Iftekharuzzaman, above n 8.

⁷²¹ Iqbal el.al, above n 6.

of the implementation.⁷²² Therefore, it is complementing some early claims made by Iftekharuzaman and Rehman on how political willingness and commitment could influence RTI Law's implementation outcome.

- Also, very few from the existing studies on implementation in the context of RTI in Bangladesh seem to be taking cultural factors into consideration. However, this study has claimed that administrative culture plays an important part in creating the mindset of the government officials and people's representative towards information disclosure. The study is, however, consistent with Jamil's claim where he found that there are conflicting norms and cultural tensions in public administration, which, the bureaucrats have adopted from history, indigenous and foreign sources which is why their attitude towards citizens is more elitist than egalitarian.⁷²³ The finding is also consistent with some other studies (Zafrullah, Alam, and Teicher, Khan, and Islam) who have found the mindset of public servants to be highly secretive.⁷²⁴

7.4 Recommendations and Proposed Model

From the above discussion on findings have clearly shown the implementation of the RTI Act has not achieved intended goals and there are different challenges to its implementation. What could be the solutions to the implementation challenges of the RTI Act in Bangladesh? By proposing the Open Access Model the thesis answers that question. Policymaking and implementation in Bangladesh has always adopted a top-down approach with decisions made by leaders who have no idea about local context. The present case is no exception. The thesis argued that implementation performance can be best understood by observing the behaviour of the public and frontline workers and their engagement in the process. The study's finding show that on the demand side there is very little involvement of the public in using the RTI Act to ensure their right to

⁷²² Sabatier and Mazmanian, above n11; Winter, above n 2.

⁷²³ Jamil, Ishtiaq, 'Administrative Culture in Bangladesh: Tensions between Tradition and Modernity' (2002) 12(1) *International Review of Sociology* 93

⁷²⁴ Zafarullah, Habib, 'Bureaucratic Culture and the Social-Political Connection: The Bangladesh Example' (2013) 36(13) *International Journal of Public Administration* 932; Khan, Mohammad Mohabbat and Md. Shahriar Islam, 'Democracy and Good Governance in Bangladesh: Are They Compatible?' (2014) 5(1) *Millennial Asia* 23; Alam, Quamrul and Julian Teicher, 'The State of Governance in Bangladesh: The Capture of State Institutions' (2012) 35(4) *South Asia: Journal of South Asian Studies* 858;

information, due to lack of knowledge and availability of information. On the supply side, government officials and people's representatives could not efficiently meet RTI compliance due to lack of institutional preparedness, knowledge and skill.

Addressing these issues the thesis proposes an integrated model through three main strategies that include access to information through e-governance, an RTI Call Centre and public deliberation through proactive disclosure. However, there were some prerequisites to ensure that the model could function well. These include training and capacity building of government officials and local government representatives, provisions of infrastructure and resources, review and removal of contradictory clauses and other existing laws, with special mention of Section 57 of the ICT Act, and involvement of CSOs promoting RTI law at different platforms. The proposed model has dealt with two main points: how to make the implementation process easy and smooth for government agencies and departments and, what would be an ideal solution for people's engagement in the RTI process. In combining these two aspects of the study, it answers the third research question, that is, what can be the ideal solutions to the implementation challenges of RTI Act in Bangladesh? The proposed open access model has three specific proposals that include access to information through e-governance, an RTI Call Centre to receive and respond to public queries for information and public deliberation through proactive disclosure.

With access to information through e-governance, the proposal of the thesis is to introduce a systematic data and management system. In the proposed model, each public authority collects, stores and manages information through a departmental database that is directly linked to a central database. The authority also manages its own websites and ensures proactive disclosure. The public can make written applications directly to the authority through their websites. The appeal procedure remains unchanged. Through the introduction of e-governance, human effort can be minimised and a quicker response can be ensured. However, a lack of knowledge of technology among those requesting information can be a barrier to successful implementation. For people who are not able to use the internet, the thesis proposes an RTI Call Centre, a service designated to receive RTI-related queries and provide information over the phone. A call centre would make accessing information easier for those who are marginalised due to remoteness, ethnicity, education and disability. The challenge with managing such a centre is finding, and retaining, skilled staff. Further, there is a cost

involved in establishing a service centre. However, it would make public access to government information much cheaper and easier than the existing processes. The open participatory budget meetings practiced in Bangladesh have been successful at engaging people in the decision-making process. In line with this, the final proposal of the model is to mainstream public deliberation through open disclosure at different tiers of administration. The open participatory budget meeting process would enable the participation of the most disadvantaged in the community, enabling their voices to be heard. Conversely, to mainstream such a process would present challenges without a proper mechanism to monitor the process at various levels. It would also require strong political willingness to progress this idea for wider use. However, considering both the ruling and opposition parties have mandates to ensure government transparency and good governance, the proposal could be a departure point to address implementation challenges of the RTI Act in Bangladesh.

7.5 Contribution of the Thesis

The thesis contributes at different levels:

First, this study was conducted at union level—the lowest tier of local government administration. The study claims that to measure the extent to which people's access to government information is ensured, it must consider the real-life situations in which the implementation takes place. For this reason, the study was conducted at a rural level where the majority of the people live. There are only a few studies that examine this dimension. This study has identified the local challenges and discussed and analysed the issues. Through identifying the strengths and weaknesses of alternative approaches, the thesis proposes the open access model could ensure the public has better access to information, and assisting people living in rural settings, to access information related to social safety net programs, registration, certificates, employment, allocation of government funds for construction and infrastructure, the application process for relevant services and other helpful information. In particular, the proposal of public deliberation through disclosure would encourage public participation at different levels. This would enable the public to learn more about their representatives and their policies. They could also become involved in the decision-making process and advocate for local issues.

Secondly, the study makes a major contribution to the existing literature related to RTI in Bangladesh and beyond. Most of the existing studies conducted under the RTI Act

focus on the way it has been introduced and the involvement of civil society and NGOs in the making of the law. However, once the law was introduced, there were not many studies that examined its implementation and asked questions about whether the implementation fulfilled the promises that the Act intended to achieve. Some early studies did discuss the issues that might challenge the process, but very few of these have examined these issues to discover why the implementation of the RTI Act has failed. The bulk of these studies were conducted in the early phase of the Act's implementation and did not fully reflect the challenges faced during its implementation. This thesis conducted an in-depth study at the local level to try to capture the extent to which the objective to achieve people's accessibility to information was achieved and how it affected people at local level. By using the most recent and in-depth data set, the study gave new insights to measure the effectiveness of its implementation and identify the real issues that affected the entire process.

Thirdly, through careful investigation and observation, the study has identified the challenges in the existing approach and has proposed an alternative approach to overcome these barriers. None of the existing literature has attempted to produce a solution that could address the implementation challenges of the RTI Act in Bangladesh. This thesis has bridged that gap with its proposal of the open access model. A plan to organise a national seminar with RTI stakeholders to discuss the model could not be achieved due to time constraints. However, the model reaches out to the people who are involved in policymaking or contributing to the implementation of the RTI Act at different stages to provide the benefit of a different perspective to implementing the law in Bangladesh. This study provides the Information Commission with possible government strategies to overcome the challenges of implementation.

The study also contributes to the existing literature on implementation more specifically in the field of freedom of information. The proposed model provides a starting point for academics who might be interested to explore this idea further. Many countries in South Asia introduced similar Acts almost at the same time as Bangladesh. Researchers in South Asia and beyond could use some of the ideas used in the proposed model to address the implementation challenges of RTI laws in their own contexts.

7.6 Study Limitations and Further Investigation

This thesis has its limitations and there are some areas in which it has fallen short. Some of these are considered emerging issues for future investigation. First, the study was

conducted mostly at the union level, the lowest tier of rural local government, as the majority of the population lives in rural parts of Bangladesh. However, a fraction of the population also lives in urban areas and these areas were not included in the study. The reason why the urban local government was not included was that the study focused on the population of one particular unit of local government administration to gain an in-depth understanding of the subject area. With that dimension in mind, this is an area that the researcher would consider for further investigation. Further, the study was conducted in the Godagari sub-district under the Rajshahi district. Again, the study plan was to conduct an in-depth study in one area to gain a deep understanding of the problem. It does not consider how similar or different the implementation challenges would have been in another setting. A different study would have been required for a comparison to be made between the two parts of the country. This is an area of study the researcher would consider in the future if there is an opportunity for further investigation. NGOs that receive foreign donations or are run by government funding can also be held accountable under the RTI Act. This study focused on public authorities at the union level. The study did not examine the RTI compliance of NGOs and a separate study could be conducted on this area in the future. One issue that was highlighted during the study and was discussed earlier in this thesis is the lack of trust and suspicion of public offices among citizens. The study's hypothesis did not predict this behaviour. The public interviewed for the study had certain perceptions about government offices and did not want to visit them unless until they had a special need. Therefore, a lack of trust in government officials can influence the implementation process of the RTI Act. This situation also comes from inequality in the society and the absence of the rule of law. Can access to information be achieved without ensuring the rule of law and equality before the law? That is a question the researcher would like to address in a separate study. Despite these limitations, this thesis has achieved what it intended to a great extent. As stated, the areas that could not be touched upon could be addressed in future studies.

7.7 Concluding Remarks

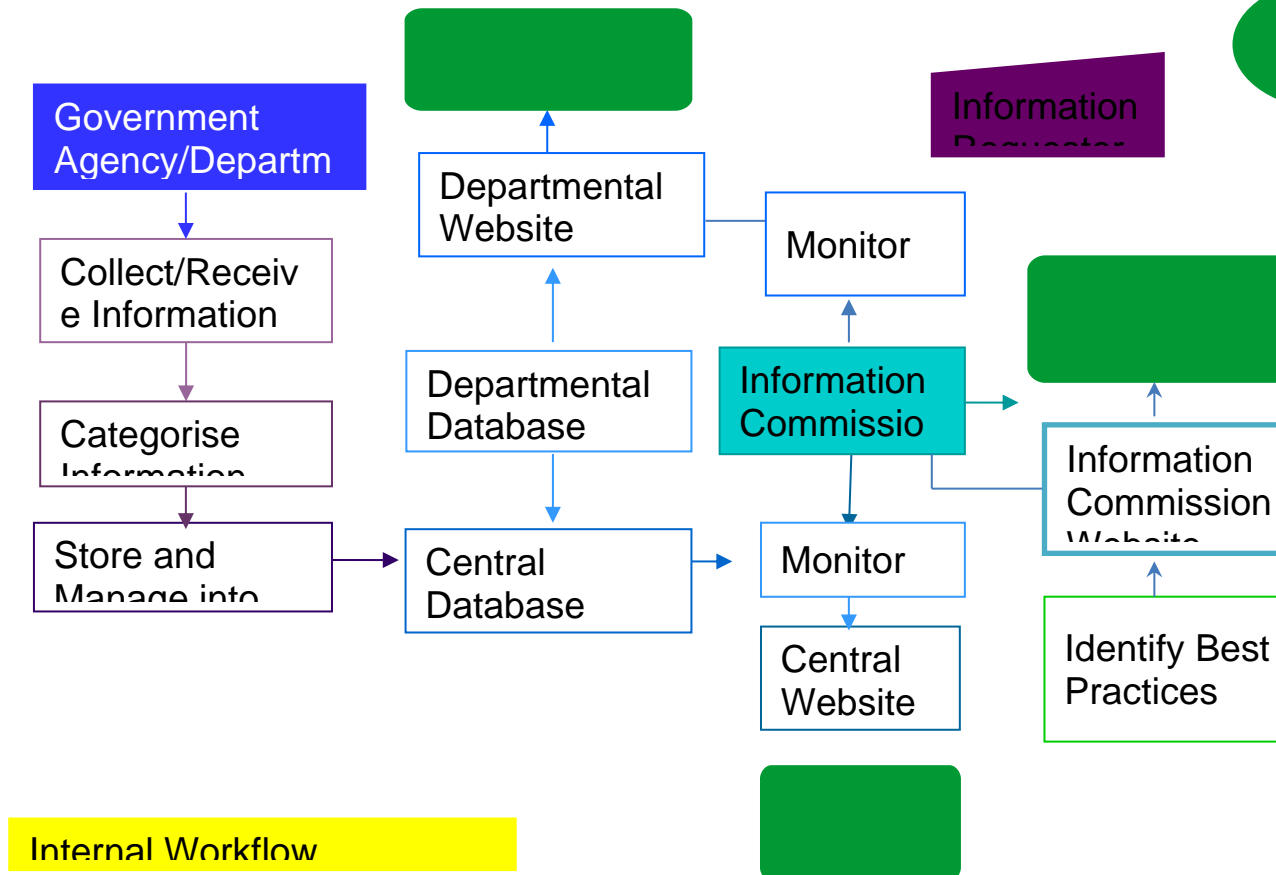
In a constitutional democracy, people need to know what their government is doing. The RTI Act gives citizens the legal guarantee to seek information and hold their government responsible for public doings. The RTI Act is a landmark initiative

undertaken by the government of Bangladesh that shows a willingness to create an environment of open government and public transparency. To what extent the government has achieved its objective to make people's access to information possible, is the focus of this study. The study's findings show that there has been no significant improvement in access to information since the Act was implemented. However, this does not disqualify the relevance of the RTI Act in Bangladesh. The problem lies with the way the Act is implemented. The study finds that a top-down approach was followed from the formulation to the execution of the Act. The RTI Act did not come about through the popular demand of citizens recognising the massive amount of corruption or other reasons that led to a demand for the law. Instead, it resulted from a coordinated effort by CSOs who pressured the government to introduce the Act. There was no public participation or information provided about how and for what purpose the Act was introduced. The RTI Act intends to ensure citizens' access to government information, so it is important that people are aware of such provisions. The findings show that the majority of people are unaware of the Act. Efforts to publicise the Act and capacity-building initiatives are limited and directed towards top level bureaucrats and executives. Consequently, few applications for information have been registered in the government offices. Proactive disclosure rarely exists and there is an inherent culture of secrecy among public officials. There is a lack of trust and a sense of fear and rejection among citizens towards government officials that affects their willingness to claim their right to information. Despite some discrepancies in the design, the Act upholds citizens' right to seek and access government information. Successful cases also disprove any such claim that the RTI Act is irrelevant to fulfil that objective. Based on the study's findings, it is not inappropriate to claim that the problem lies with its implementation. The study's findings show that the process of implementation of the Act is affected by the lack of information and engagement of the public, implementation capacity, infrastructure and resources, record and information management and involvement from CSOs and ambiguity and confusing clauses in law.

The study claims that the best possible solution to overcome these implementation challenges is to adopt an inclusive approach that deals with two points: introducing a system that works effectively for the government agencies and departments and ensuring they are involved in the RTI process. The open access model proposes access to information through e-governance, an RTI Call Centre and mainstream public deliberation through open disclosure.

The RTI laws represent a new experience for a country such as Bangladesh. It is not easy to take away a closed and secretive institutionalised system and replace it with open and transparent one. Therefore, it would be too ambitious to expect drastic changes in information management and disclosure in the short time since the Act was introduced. It will take time and there may be delays or interruptions before full disclosure can be achieved. However, it is expected that, with more research initiatives and innovation, the situation will improve in future. FOI laws are highly demanding and to change a system that has been running for years requires more research and innovations to discover what works best for Bangladesh. The researcher believes this thesis will give new insights and encourage more studies to achieve that goal.

Appendix A: Access to Information Through E-Governance– Internal Workflow and Requester Workflow



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Questionnaire for Face to Face Interviews

A. Government Departments/UP Representatives

Record Preservation and Management

1. Do you store/preserve documents? What kind of information do you preserve?
2. How(hardcopy/softcopy) do you store/preserve documents?
3. Do you maintain any catalog or index to store your documents?
4. Do you update them on a regular basis?

Disclosure and Publication

1. What kind of information do you disclose pro-actively?
2. How do you decide on information that should be disclosed?
3. How do you disclose information (medium-electronic/through notice board, display boards, posters, etc.?)
4. Do you maintain any electronic database or website for information disclosure? If yes, how do you maintain that? How often do you update information that you provide on the websites?
5. Is there any difficulty you face to disclose information?
6. Did you take any initiative to make people aware of RTI Act?
7. Are you happy with the disclosure provision in the UP? Do you think there is enough information disclosed for the public?
8. Do you prepare any progress/activity report? What are the things that you include in the report?
9. .What do you do with the report? Do you publish them? Do you publish them on a yearly basis?
10. If no, what do you think are the reasons that you cannot publish it on a regular basis?
11. Do you charge any fee to collect a copy of the report?
 12. In which form (electronic or print) do you publish them? How often do you publish them?
 13. How do the common people come to know about this report? What measures do you take to make people informed about it?

Application and Appeal

1. Are people aware of the provision for registering information requests (oral or written form)? How often do you receive information requests from the common public? In which form (oral/written) do they make the information requests?
2. What procedures do they follow to apply for any information?
3. How often do you have the information they ask for?
4. How do you respond to written request?
5. Do you maintain any records of written information requests? How many information requests did you receive last year? How many of those could you respond?
6. Do you charge for the services regarding information requests from the beneficiaries?
7. How do you decide the fees? Is there any set of guidelines that you follow while you charge fees?
8. How much time does it take to respond to a request?
9. What do you find most difficult in responding to information request?
10. What are the measures you are taking to make information accessible to public?
11. How often do you use print or electronic media to make information available to people?
12. How do you include all the relevant information on the websites? How often do you update the information?
13. Do you think the Right to Information Act is a crucial policy in the context of Bangladesh? Why do you think it is so crucial?
14. How do you describe the emergence of the Right to Information Act in Bangladesh?
15. Where do you find yourself/your departments in the process of making the Right to Information Act?
16. How do you describe the journey of Right to Information Act since it has been introduced?
17. Are you satisfied with the way the Right to Information Act has performed so far? How do you describe your current role in promoting the Right to Information Act?
18. What do you think can be the best approach in responding to information request you receive?

Instituional Capacity

1. Do you think you have the capacity regarding infrastructure to carry out RTI related activities?
2. Do you think Local Government representatives and officials have the capacity to implement the RTI Act? Do they have a sound understanding of the Act?
3. Do you have any designated person to carry out activities related to RTI? Have they received any specialized training on RTI?
4. Do you have any funds assigned specially to RTI in your office?
5. Do you think there is sufficient allocation to carry out activities related to RTI?
6. How do you arrange funds for RTI related activities (Publication, disclosure, Logistics Etc.)?
7. Is there any fund allocated for the training of local representatives/staff member?
8. Have you done any training session with the common public on the Right to Information Act?
9. How did you manage to fund for that?

Design

1. How do you find the Right to Information Act useful?
2. Do you find the goals and objectives clear? Is there any ambiguity in any parts of the Act?
3. How do you find your roles and responsibilities defined in the Act? Is there any gap in defining your role and responsibilities? Do you find any special provisions missing in the Act regarding your role in implementing the Act?
4. How do you find implementation guidelines under the Act? How useful it is as you implement the Act?
5. Do you find the RTI Act a barrier performing your job independently?

Social Economic and Political Factors

1. How do you think is the social condition of this union? Do you describe the state of people's participation regardless of age, class, sex, religion, ethnicity in various events in your union?
2. Do you think people can participate in these events and express their opinions freely?
3. Do you think it's a barrier in your UP to function properly, especially RTI Act? Describe how?

4. How do you describe the economic condition of the people? How do you describe people's involvement in these event is affected by their economic condition or the kind of occupation they are involve in?
5. Do you find political condition a barrier to implementation? How do you describe political environment and political culture in the implementation of RTI in Bangladesh?

Target Group Behavior

1. How do you define people's perception towards government department and Union Parishad?
2. What do you think of people's take on UP's performance towards RTI Act or any other activities they perform?
3. How do find people's reaction to RTI in terms of registering information requests, showing interest to learn about different things happening in the Union?
4. Do people participate in Ward Meeting, Open Budget Session, UDCC and Standing Committees? How is their participation ensured? How do you describe their involvement in these sessions?

Interorganizational Cooperation and Coordination

1. How do you describe your relationship with the government departments regarding activities related to RTI? What do you recommend to improve working relationship with the information commission?
2. How do you maintain communication with information commission or other government departments? Do you think you have a better coordination with information commission or other government departments as you work on RTI related activities? Is there any gap between government departments or up with the information commission?
3. Where do you find yourself in the implementation stage of RTI Act? Do you have a clear understanding of your role in connection with the RTI Act?

Union Information and Services Centre (UISCs)

1. How do you describe UISCs as an initiative by the government?
2. Could you name the services they are providing?

3. Do you find any difference in the approach of service delivery comparing it with the regular service delivery approach?
4. How do you describe the contribution of UISCs to the service delivery at Union level?
5. What according to you are the biggest strengths of UISCs?
6. If you have to suggest anything to UISCs to improve their services, what would be that?

General Questions

1. How do you think the RTI Act has been implemented in Bangladesh?
2. What do you think are the Challenges of implementing the RTI Act?
3. What are the suggestions you have to overcome these challenges?

B. Information Commissioner/Staff

Record Management and Publication of Information

1. Do you store/preserve documents? What kind of information do you preserve?
2. How(hardcopy/softcopy) do you store/preserve documents?
3. Do you maintain any catalog or index to store your documents?
4. Do you update them on a regular basis?

Disclosure & Publication

1. What kind of information does the information commission disclose proactively?
2. What is the medium you use to disclose information? /How do you disclose information?
3. How do you decide, what kind of information you would like to disclose proactively? Is there any difficulty you face to disseminate information?
4. Do you maintain any electronic database or website for information disclosure? If yes, how do you maintain that? How often do you update information that you provide on the website?
5. Are you happy with the disclosure arrangements in the country? Do you think there is enough information disclosed to the public?
6. If not, what do you think are the reasons why sufficient information is not being disclosed to the public?
7. What recommendations do you have to improve proactive disclosure provisions and practices in Bangladesh?

Application Process and Appeal

1. How often do you receive written information request?
2. How do you respond to such request? How many cases have you settled in the last five years?
3. Do you keep a record of these written requests you receive?
4. How do you find the role of Information Commission in responding to written requests?
5. How do you settle a dispute regarding information request? Has the Information Commission played a mediating role in the past?

6. Are there any instances when Cases have been filed against individual or organization to the information commission? What is the procedure you follow to settle those cases? How long does it take to settle such cases?
7. What are the challenges do you face in resolving such cases? What are the suggestions to make the system more useful and people friendly?
8. Do you refuse information requests? On what basis you take the decision? How do you describe your decision to refuse information requests?
9. Do you charge for the services regarding information requests?
10. How do you decide the fees? Is there any set guideline that you follow while you charge fees?
11. How much time does it take to respond to a written request?
12. What do you find most difficult in responding to information request?
13. What do you think can be the best approach in responding to information request you receive?
14. What are the measures you are taking to make information easily accessible to the public?
15. How often do you use print or electronic media to make information available to people?
16. How do you include all the relevant information in your website? How often do you update?
17. How do you describe the emergence of the Right to Information Act in Bangladesh?
18. What according to you has played a vital role in introducing the Act?
19. What do you think have worked for you all in bringing the Right to Information Act?
20. How do you describe information commission's role in promoting the Right to Information Act?
21. How do you describe the journey of Right to Information Act since it has been introduced?
22. What are the initiatives you take to make people aware of the RTI Act?

Design

1. How do find the Right to Information Act?
2. How clear do you think are the goal and objectives of the Act?
3. Do you find any ambiguity in any part of the Act? What are those?
4. Do you think some of the critical parts like exemptions, disclosure provision, cost, written requests & disposal have been defined clearly?
5. Do you think there is a proper attention given on how the policy is going to be implemented? How do you find policy directives complementing the objectives of the policy?
6. How do you think the roles and responsibilities of implementing agencies have been defined in the policy?
7. Do you find any gaps in defining their roles and responsibilities of the implementing agencies?
8. Do you find any special provision missing in the Act regarding your role in implementing the Act?
9. Do you think, you have given enough authority to implement the Act effectively?
10. What according to you lacking in the Right to Information Act?
11. Regarding design do you any specific recommendations to the betterment of the Right to Information Act?

Institutional Capacity

1. Do you think you have the capacity regarding skilled workforce and infrastructure to implement the Act?
2. How do you maintain coordination with department government departments and public bodies?
3. How do you describe your institutional arrangements to support implementation and enforcement of the RTI Act?
4. Do you organize training and workshops for the staff who work in the Information Commission?
5. Are there any training sessions held for local government representatives and officials of various government departments?
6. How often do you hold seminars and symposiums to exchange ideas and share your achievements?

7. How do you define your relationship with government line agencies as you implement the Policy?
8. What according to you are some of the significant challenges in terms of the institutional arrangement of information commission to carry out policy directives? What do you think can be added to minimize these challenges?
9. Do you think there is sufficient fund allocation to carry out activities related to RTI?
10. Do you have enough funds for publication or disclosure?
11. Do you have sufficient human resources to respond to information requests or maintain and manage your database or website?
12. Is there any funds allocated for the training for government staff, local government representatives or other stakeholders?
13. Have you done any training session with the common public on the Right to Information Act?
14. Do you have the logistics and infrastructural support to implement the Act?

Target Group Behavior

1. How do you define people's perception towards government departments or local government institutions?
2. How important is people's attitude and behavior towards information commission for the success of the Act?
3. Do you think people are willing to ask for information?
4. Do you think people find information commission or other government departments trustworthy to seek information?
5. How do you describe people's understanding about information commission? Do they feel comfortable coming to information commission?
6. How do find people's reaction to RTI in terms of registering information requests, showing interest to learn about different things happening in the Union?

Social Economic and Political Factors

1. Do you think the socio-economic of a country condition can play a crucial role in the success of the Right to Information Act?
2. Do you describe the state of people's participation regardless of age, class, sex, religion, ethnicity in various events in general?

3. Do you think people can participate in these events and express their opinions freely?
4. Do you find any barrier regarding participation, especially with RTI Act? Describe how?
5. Do you think people's involvement in these events is affected by their economic condition or the kind of occupation they are involved in?
6. Do you think political condition has had any impact on the implementation of the RTI Act?
7. How do you describe political environment and political culture of Bangladesh in influencing the implementation performance of the RTI Act?

C. Common People

General Question

1. How do you describe your experience with UP and government departments? How do you find them as service providing agencies?
2. Have you heard about the RTI Act? Have you ever registered any request for information?
3. How did you find the services you received in the response of your request for information? What do you think about government departments and UP as implementing agency of RTI related activities?
4. Do you know what kind of information you are entitled to receive? If not, the why?
5. How did you know about the Act?

Record Management and Publication of Information

1. How often do you visit UP or government offices at UP?
2. What are the purposes of your visit?
3. How do you know, what are the services UP or government departments are doing?
4. Do you have any idea, whether UP or government departments publish their annual report or not?
5. Do you think it is accessible to the common public?
6. How useful do you find the report? How easy do you find it to understand?

Disclosure and Publication

1. What information do you find disclosed when you visit UP or government departments in your locality?
2. Do you think there should be sufficient disclosure of information at the UP or government departments?
3. What do you think are the benefits of proactive information disclosure?
4. What kind of information do you expect them to disclose pro-actively?
5. How do you find the disclosure practices of UP and government departments?
6. How updated is the information that UPs and government departments disclose?

7. Are you happy with the disclosure provision in the UP? Do you think there is enough information disclosed to the public?

Application Process and Appeal

1. Do you know you can ask any public authority for information?
2. Do you know how to apply for information from UP or any other government bodies?
3. Have you filed any information request to UP or any other government departments in the recent past?
4. What kind of request you made (written /oral)?
5. How has your request been responded?
6. Do you find any difficulty in getting the information?
7. Is there any occasion when you have experienced mute refusal?
8. How do you categorize the refusal 'refuse to accept' or 'unable to provide information'?
9. What do you think is the main challenge of submitting a request to UP or any other government departments?
10. What do you think is the right approach to address the problem?
11. Have you been charged for the services regarding information requests?
12. How much did they charge for the request you have made?
13. How much time did it take to receive a response to a written request?
14. Do you find it difficult to submit an information request and receive information request?
15. Do you find information access difficult?
16. Are you similar to disclosure measures like website or publication? How useful do you find the websites? Do you find these websites updated and easily accessible?
17. Do you have any idea on how the Right to Information Act emerged in Bangladesh?
18. What according to you would have made the Government of Bangladesh to introduce the Act?
19. How do you describe your current role in promoting the Right to Information Act ?
20. How do you describe the journey of Right to Information Act since it has been introduced?
21. Are you satisfied with the way the Right to Information Act has performed so far?

Design

1. Do you find the Right to Information Act easy to understand?
2. Do you find the goals and objectives clear?
3. Is there any ambiguity in any parts of the Act?
4. Do you find the process and procedure of getting information difficult?
5. Do you find any special provision missing in the Act which could make information more accessible?
6. Is there anything you find in the Act that to you is a barrier to accessing information?
7. Do you have any suggestions in terms of the content of the policy for the better access of information?

Instituional Capacity

1. How did you learn about the RTI Act? Have you received any training or orientation on RTI from the UP?
2. Have you participated any training or orientation apart from UP on RTI? Where did you get it from?
3. How do you describe your experience of accessing information from the UP?
4. How did you find the staff and other arrangements at UP or government departments in delivering services related to information?
5. Do you find something regarding institutional arrangement at the UP level that is a barrier to accessing information? Do you have any suggestions to improve that?

Target Group Behavior

1. What do you think about UP as service providing body? How do you think the government departments are doing regarding making information accessible?
2. How often do you visit UP or government departments? Do you feel comfortable going there? Do you think the common public has the position to ask for information or submit a query?
3. Do you think the information commission as a central body can oversee activities related to the Act?
4. Have you ever submitted any information request to the Information Commission? Do they feel comfortable coming to information commission?

Social, Economic and Political Factors

1. How do you think is the social condition of this union? How do you describe the state of people's participation regardless of age, class, sex, religion, ethnicity in various events in your union?
2. Do the common people participate in events like Open Budge, Ward Meeting, UDCC, Standing Committee organized at the UP level?
3. How do describe people's participation in these events? Do you think people can participate in these events and express their opinions freely?
4. What do you consider as barriers to the common public to participate in these events or asking information from public bodies and local government institutions?
5. How do you describe the economic condition of the people?
6. Do you think people's involvement in these events is affected by their economic condition or the kind of occupation they are involved in? How do you describe people's involvement in these events is affected by their economic condition or the kind of occupation they are involved in?
7. Do you think the socio-economic of a country condition can play a crucial role in the success of the Right to Information Act?
8. Do you describe the state of people's participation regardless of age, class, sex, religion, ethnicity in various events in general?
9. Do you think people can participate in these events and express their opinions freely?
10. Do you find any barrier regarding participation, especially with RTI Act? Describe how?
11. Do you think people's involvement in these events is affected by their economic condition or the kind of occupation they are involved in?
12. Do you think political condition has had any impact on the implementation of the RTI Act?
13. How do you describe political environment and political culture of Bangladesh in influencing the implementation performace of the RTI Act?

Union Information and Services Centre (UISCs)

1. How do you describe UISCs as a service delivery unit?
2. Have you been there before? How often do you go to UISCs?

3. What kind of services do they offer? Could you name few of the services they offer?
4. How do you find the services relevant and useful to the rural context? How easy, timely do you find the services they are offering?
5. Do they charge any fee while you seek information or services provided at UISCs?
6. What do you think about the fees? Do you find it rational? Are the fees too high for you ?
7. Do you find any differences in the approach of service delivery comparing it with the regular service delivery approach?
8. How do you describe the contribution of UISCs to the service delivery at Union level?
9. What according to you are the biggest strengths of UISCs? Do you have any special incidence/experience with them which you want to share?
10. If you have to suggest anything to UISCs to improve their services, what would be that?

D. Academics/Scholars/Civil Society Representatives

Record Management and Publication of Information

1. How do you describe record management practices in government offices and local government institutions?
2. Do you think the information that are recorded and preserved government offices especially at Union level?
3. How accessible are this information to the common public? Do you find any barrier in accessing information for them?
4. What do you think about the publication of reports and other relevant information held by these agencies?
5. How updated and useful (content of the information) do you find when it comes to information disclosure or publication by information commission or other government agencies?
6. Do you find in any gaps in the record management system among public institutions in Bangladesh?
7. Do you have any particular suggestions to improve the record management system? What recommendations do you have regarding the publication of information?

Publication & Disclosure

1. What kind of information disclosure do you find among public bodies in Bangladesh?
2. What are the things you want public bodies to disclose?
3. How often do you find public bodies to disclose information proactively? How do you describe the situation of pro-active disclosure among public bodies in Bangladesh?
4. What do you consider as major challenges of proactive disclosure in Bangladesh?
5. What are the recommendations you have to address those challenges?

Application process and Appeal

1. What do you think about the state of information appeals and requests in general?
2. Are you satisfied with the response of government officials or local government representatives regarding information request?
3. What do you think are the main challenges of submitting a request to government departments? What according to you is the right approach to address the challenge?
4. Are you in favor of fees for information requests? If so, what is your justification behind that? How much fee is rational according to you?
5. Do you think there should follow specific guidelines regarding fees and how it should be you been charged for the services regarding information requests?
6. Do you think people requesting for information receive a feedback on time? How do you describe the situation?
7. What according to you should be the time limit to respond to an information request?
8. Do you find the procedure of registering and replying on an information request difficult?
9. Do you find it difficult to submit an information request and receive information request? Do you have any particular suggestions on that?
10. What according to you are the main constraints in getting an easy and timely access to information? What can be done to address the issue?
11. How do you describe the emergence of the Right to Information Act in Bangladesh?
12. What according to you would have made the Government of Bangladesh to introduce the Act? What do you think have worked for you all in bringing the Right to Information Act?
13. Do you think the Right to Information Act is a crucial policy in the context of Bangladesh? Why do you consider it as key policy?
14. Where do you find yourself/organization in bringing it into the agenda making process?
15. How do you describe the journey of Right to Information Act since it has been introduced?
16. Are you satisfied with the way the Right to Information Act has performed so far?

17. How do you describe the involvement of NGOs, Civil Society and other key stakeholders in the recent years?
18. Do you think the NGOs, Civil Society, and other key stakeholders are working as a watchdog in the implementation and enforcement of the Act?
19. If not, do you think they are disconnected with the Act? If so, then what would be the reason behind this?

Design

1. What according to you a well designed Access to Information Law should look like?
2. According to you what are the features a well-designed Access to Information Law should have?
3. How do find the Right to Information Act in Bangladesh?
4. What are limitations do you find in the Right to Information Act in terms of design?
5. What according to you is missing in the Right to Information Act in terms of design?
6. If you have to add anything to the Right to Information Act in Bangladesh, what would be those?
7. Do you think there is a specific provision in the Act to monitor the evaluate activities related tor RTI? If not, how would you like to address that in the design?

Institutional Factors

1. How do you describe the institutional structure of government offices and local government institutions to implement the RTI Act in Bangladesh?
2. Do you think they have the capacity in the form of skilled manpower and the resources to implement the Act?
3. How do you describe the inter-organizational relationship and level of coordination among these government agencies?
4. Do you think the information commission can maintain communication with all the stakeholders including government agencies at various levels?
5. How often you find information commission organizing training and seminars to encourage ideas and share experiences with different stakeholders (experts/academics, NGO representatives or people from civil society, local government representatives, beneficiaries)?

6. Do you think the infrastructure that is required to carry out various activities relevant to the Act is there? What are the areas you find lacking in terms arrangements for better implementation of the Act?
7. What according to you are some of the significant challenges in terms of institutional arrangement of information commission to carry out policy directives? What do you think can be added to minimize these challenges?
8. Do you think there is sufficient fund allocation to carry out activities related to RTI in Bangladesh?
9. Do think there are enough funds for publication or information disclosure?
10. Do you think there are sufficient human resources to respond to information requests or maintain and manage your database or website?
11. Is there any funds allocated for the training for government staff, local government representatives or other stakeholders?

Target Group Behavior

1. How crucial do you think is people's perception and behavior towards information commission for the success of the Act? Do you think people have the willingness to involve in the process?
2. What do you think about their perception about the information commission?
3. Do you think they feel comfortable coming to the information commission?
4. How do you describe people's perception towards government departments or local government institutions?
5. Do you find anything that could restrict them coming to public offices and claiming their right to access to information? What do you think can be done to address the issue?

Social, Economic and Political Factors

1. How do you describe the socioeconomic condition in Bangladesh in general?
2. How do you describe the state of people's participation regardless of age, class, sex, religion, ethnicity in various events in your union? Do you think people can participate in these events and express their opinions freely?
3. Do people participate in Ward Meeting, Open Budget Session, UDCC and Standing Committees? How is their participation ensured? How do you describe their involvement in these sessions?

4. How do you describe the economic condition of the people? How do you describe people's involvement in these event affected by their economic condition or the kind of occupation they are involve in?
5. Is there any political barrier to the implementation of RTI Act?

Union Information and Services Centre (UISCs)

1. How do you describe UISCs as a service delivery unit?
2. How do you find the services relevant and useful to the rural context?
3. Do you find any differences in the approach of service delivery comparing it with the regular service delivery approach?
4. How do you describe the contribution of UISCs to the service delivery at Union level?
5. If you have to suggest anything to UISCs to improve their services, what would be that?

E. UISC Representatives

1. How long you have been working at the UISCs? How do you describe UISCs as a service delivery unit?
2. What are the services UISCs are providing? How often does it match with the expectation of the people?
3. How do people know about UISCs? Did make any effort to let people be informed about UISCs?
4. Is there any specific approach you follow while providing services to the common people?
5. Do you think there are differences in the way UISCs provide the services that others?
6. How do you keep and manage information? How much money do you charge as fees? Do you maintain a specific guideline while you charge fees for the services?
7. How much time do you take to provide them the information or services they ask you to provide?
8. Do you disclose information proactively? What do you disclose proactively? How often do you involve in proactive or automatic disclosure?
9. Do you involve in any kind of reporting? How often do you involve in that? Who do you share the report with?
10. How would you describe UISC's role in service delivery at union level?
11. How would you define your relationship with UP and other government agencies?
12. Do you think you have the infrastructure to provide the kind of services expected from you?
13. What do you think is the perception of the people towards UISCs? Can you remember any special experience working at the UISC?
14. What do you consider are the strengths of UISCs?
15. What according to you the limitations of UISCs? What suggestion would you like to give to address them?