

Final report on the proposed Right to Information Act, 200-----

Introduction: The modern world is now resounding with the call for meaningful democracy needing transparency and accountability in the statecraft and in that view of the matter the subject of people's right of access to information has gained importance. There appears to have been an universal recognition of the demand and necessity for the establishment of people's right of access to information. The wave of the demand has also touched our shores.

2. In the preamble of our Constitution, there is the pledge that it shall be fundamental aim of the state to realise through democratic process a socialist society, freedom from exploitation – a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social will be secured for all the citizens. Article 39 of the Constitution guarantees freedom of speech and expression to every citizen, subject to certain reasonable restrictions imposed by law in the interest of the security of the state, relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. This Article also guarantees freedom of the press.

3. It has been said that the notion of freedom of thought and conscience and of speech and also the notion of rule of law become nugatory if the public, for the sake of which the state exists, is deprived of access to information. It would be profitable to have a look at the international covenants, documents etc. respecting the right to information.

Article 19 of the Universal Declaration of Human Rights, 1948 reads:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”

Article 19 (2) of the Covenant On Civil and Political Rights, 1966 reads:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print in the form of art, or through any other media of his choice”.

The exercise of the above-mentioned right carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions but this shall only be such as provided by law and necessity:

- a) for respect of rights and reputation of others,
- b) for protection of national security or public order:

4. Thus under the aforesaid two international instruments the state parties are obliged to make available to their citizens all kinds of information except those that are necessary to protect national security and avoid interference with the privacy of citizen. Incidentally, Bangladesh has signed the International Covenant on Civil and Political Rights of 1966 on September 6, 2000.

5. The Vienna Convention, Limburg Declaration and Bangalore Colloquium exhorted that human rights as pronounced in the International Bill of Human Rights must be reflected in the domestic laws of the state parties. The Republic of Bangladesh, a party to the above-mentioned international covenants and documents, therefore, has both moral and legal obligation to conform to the international norm respecting public access to information resting with the state machinery, public functionaries and non-government organizations registered with the government.

6. For the sake of transparency in the democratic process and good governance in our country, public access to information appears essential. Again, freedom of information is indispensable for a citizen to bring his grievances before the administrative authority or the Court of law for redress. If the general public remain ignorant about the affairs of the state touching on their fate and welfare it will amount to travesty of democracy.

7. There is no statute in force in Bangladesh specifically recognizing people's right to information and providing a procedure for its implementation. On the contrary, there are certain prohibitory laws namely,

- (1) Section 5(1) of the Official Secrets Act, 1923;
- (2) Sections 123 and 124 of the Evidence Act, 1872;
- (3) Rule 28(1) of the Rules of Business, 1996;
- (4) Rule 19 of the Government Servants (Conduct) Rules, 1979;
- (5) Oaths (affirmation) of secrecy under the Constitution.

8. Section 5 (1) of the Official Secrets Act, 1923, lays down, “If any person having in his possession or control any secret official code or password or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who hold or has held such an office or contract –

- (a) willfully communicates the code or password, sketch, plan, model, article, note, document, or information to any person other than a person to whom he is authorized to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or
- (b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or
- (c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or
- (d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or password or information;

he shall be guilty of an offence under this section.”

Evidence Act: Section 123 of the Evidence Act lays down, “No one shall be permitted to get any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.”

Rules of Business, 1996: Rule 28(1) of the Rules of Business, 1996, says, “No information acquired directly or indirectly from official documents or relating to official matters shall be communicated by a Government servant to the press, to non-officials or even officials belonging to other Government offices, unless he has been generally or specially empowered to do so.”

The Government Servant (Conduct) Rules, 1979: Rule 19 of the Government Servants (Conduct) Rules, 1979 states, “A Government servant shall not, unless generally or specially empowered by the Government in this behalf, disclose directly or indirectly to Government servants belonging to other Ministries, Divisions or Departments, or to non-official persons or to the Press, the contents of any official document or communicate any information which has come into his possession in the course of his official duties, or has been prepared or collected by him in the course of those duties, whether from official sources or otherwise.”

Oaths (affirmation) of secrecy under the Constitution: Oaths taken by the Prime Minister and other Ministers. Those prohibitory laws are reasonable restrictions for the sake of security of the state and good governance.

9. Existing Laws Permitting Access to Information: Rules 513-521 read with rules 522-596 of Civil Rules and Orders Vol-1 enable a person to receive information from a civil court. A Member of the Parliament may obtain information under rules 41-58 and rules 301-302 of the Parliamentary Rules of Procedure. People may also receive information applying in a prescribed form (High Court form No. M-55 A and Bangladesh form No. 871) in the quasi-judicial department like District Registrar/ Sub-Registrar’s office and Land Revenue Department.

It is necessary and appropriate to bring the subject of right of access to information under a legal regime as has already been done in many countries and are in active consideration in India, Pakistan and Sri Lanka. We have to

make an enactment striking a delicate balance between safety and security of the state and matters necessary to maintain the secrecy essential for good governance on the one hand and the people's right to information on the other.

10. In order to attain this objective we have studied the laws and proposed laws relating to freedom of Information in USA, India, Pakistan and Sri Lanka. We have given due consideration to the peculiar situation prevailing in our country in the wake of privatization. The Non-Government Organizations in our country have increased and their activities expanded. The NGOs are playing an important role in the socio-economic life and development of the country. Nearly all such NGOs are using either public money or foreign donations with a pledge to work for the down trodden masses. In this situation the Commission feels that the proposed Act should also encompass the activities of the NGOs registered with the government.

11. In above view of the matter, we propose for the promulgation of an Act which shall make provisions for,

- (a) A right of the public to have access to records of the government, statutory bodies and the registered Non-Government Organizations (NGOs) in order to have information.
- (b) To enable the members of the public using this information to hold government accountable for their actions and the people to access the records and information resting with the government executive authorities and the NGOs for redress of their grievances.
- (c) To cast a duty on the Government and NGOs registered with the government to proactively keep the public informed on issues important for their well being.

12. The Commission prepared a working paper containing above mentioned views and circulated the same among the experts, interested persons and organizations and other stakeholders for eliciting their opinions on the matter. The Commission after having considered the opinions and suggestions received from various government departments and non-government organizations has prepared this final report along with a draft bill of the proposed Act.

In view of the above discussion, we propose the following:-

13. Short title, extent, and commencement: The short title of an Act or Ordinance gives a first hand idea about the subject-matter of the law. The Law Commission of Sri Lanka titled its proposed law on the subject as “The access to Information Act” and recommended that the Act shall deal with the information in the possession of the government or government controlled organizations. We have opined to extend the scope of our proposed Act, so as to include information in the possession of Non-Government Organizations, which are registered with the government under any law for the time being in force. The Metropolitan Chamber of Commerce and Industry suggested in their comments that company, firm, co-operative society and organizations should be deleted from the definition of Public Authority as those private organizations are accountable under the law under which they have been registered. The Commission finds that the accountability of these organizations due to such registration is different from the right to information of the people from such organizations under the proposed law. The Commission is, therefore, unable to accept this suggestion. So, the short title of the proposed Act may be “The Right to Information Act, 200-----” and in Bangla “Tathya Adhikar Ain, 200-----”. The date of the commencement of the proposed Act may be such as determined by the government by notification in the official gazette. So, the provision relating to short title, extent and commencement may run as follows:

“1. Short title, extent and commencement.- (1) This Act may be called the ‘The Right to Information Act, 200-----’ or in Bangla ‘Tathya Adhikar Ain, 200-----”.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date as the Government may, by notification in the official gazette, appoint.”

14. Application of the law.- There is a view that no new law is required for the establishment of people’s right to information; what is necessary is to repeal those laws which restrict public access to information. We do not support such a view. All the world over where right to information has been recognized and legislation made therefor, they have been so done subject to restrictions by law akin to those mentioned in paragraph 7 of this complete report. There is no real conflict between laws protecting state secrecy or individual privacy on the one hand and laws recognizing and establishing people’s right to information on the

other. The Commission received an opinion from the Ministry of Information of the Government of Bangladesh that the full retention of section 5 (1) of the Official Secrets Act, 1923 will stand as a deterrent to right to information. On consideration of this aspect and the proposed legislation the Commission holds that the Official Secrets Act, 1923 need not be disturbed. The Official Secrets Act, 1923 relates to the protection of secret matters of the State while the proposed Act recognizes people's right to information barring those which are absolutely necessary to keep secret for the safety and integrity of the state, as well as for privacy of the citizens. In this view of the matter the Commission is not in favor of interfering with the Act of 1923 rather considers it proper that to avoid any confusion or conflict of laws a provision may be incorporated in the proposed Act to the effect that the proposed Act shall be applicable subject to the provisions of the prevalent restrictive laws. We have found such exclusion clause in the draft laws of Sri Lanka and India on the subject. Besides, applicability of the proposed Act to information in the possession of Non Government Organizations should also be clearly specified. Therefore, the provision regarding applicability of the Act may run as follows:-

“2. Application.- Subject to the provisions of section 7 of this Act and any other law for the time being in force restricting people's access to information, this Act shall apply to information, in the possession of-

(a) the Government or a local or other authority established by or under an Act or Ordinance,

(b) a company, corporation, trust, firm, society, a cooperative society, or associations, whether owned or controlled by the government or private individuals and institutions, registered with the government under any law for the time being in force.”

15. Definitions.- In the proposed Act certain expressions have special meaning and bearing, so that they need be clearly defined in a separate section. So, a separate section defining those words may run as follows:

“3. Definitions:- In this Act unless the context otherwise requires-

(a) “Information” means any material or information relating to the affairs, administration or conduct of any Public Authority and includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording,

video tape, machine readable record, and any other documentary material regardless of physical form or characteristics, and any copy thereof.

(b) "Public Authority" includes-

- (i) any government ministry or government or semi-government office, department, directorate, or office of any local or other authority established by or under any Act or Ordinance; and
- (ii) any company, corporation, trust, firm, society, cooperative society, association or organization whether owned by the government or private individual but registered with the government under any law for the time being in force;

The expressions company, corporation, trust, firm, society, cooperative society, association and institution shall have the same meaning as assigned to them in the respective Acts under which they are registered.

(c) "Prescribed" means prescribed by rules;

(d) "Right to information"- means the right of access to information and includes inspection, taking notes, and extracts, and obtaining photo copy or certified copies of documents or records of any Public Authority."

16. Right to Information and Obligations on Public Authority.- We have mentioned that at present there is no law in our country which recognizes people's right to information. The purpose of enactment of the proposed law is to create such a right for the citizens of Bangladesh. The proposed Acts and Ordinances of Sri Lanka, India and Pakistan have provided a separate section which incorporates such a right for the citizens and obligations on the Public Authority to grant people's access to information. One suggestion made by the Metropolitan Chamber of Commerce and Industry was to make a provision for requirement of the person seeking information to objectively establish any genuine need for the information. The Commission does not favour limiting the right of a person seeking information from any Public Authority by requiring him to establish his purpose first. We recommend for a separate section in the proposed Act which will create a statutory right to information for every citizen and spell out in clear terms the obligations on the Public Authorities in this regard. The provision may run as follows:

“4. Right to information.- (1) Every citizen shall have a right to information and on request, be given access to information relating to decisions made, proceedings drawn, or acts performed or proposed to be performed by any Public Authority.

(2) Every Public Authority shall be under a duty to maintain all its records duly catalogued and indexed and subject to the provisions of this Act and any other law for the time being in force, to make available to any citizen requesting information from it and shall not withhold any information or limit its availability without any lawful reason."

17. Publication of Information by Public Authority.- The periodical publication of all information of public importance by the Public Authority may better serve the purpose of the proposed Act. The Public Authority may also sell such publications to the public at a nominal price. The publication should contain useful and accurate information on important matters, instead of being a useless compilation of old and well known information. The proposed laws of Sri Lanka, India and Pakistan contain such a provision for bi-yearly publication of information by the Public Authority. We feel that such periodical publication of useful information will also ensure transparency and accountability in the activities of the Public Authority. The provision may run as follows:-

“5. Publication of Information by Public Authority.- (1) Every Public Authority shall cause to be published on periodic basis not less than once every two years, a publication containing-

(a) a description of the organization and responsibilities of the executives of the public authority and description of its decision making process and responsibilities of its officers and employees;

(b) classes of records in the possession of the Public Authority including the rules, regulations, instructions and list of manuals used by its employees;

(c) a statement about the conditions upon which citizens can acquire any license, permit, grant, allotment, consent, approval or other benefits of any nature from the Public Authority or upon which transactions or contracts of any category can be entered with the Public Authority;

(d) the facilities provided for access to information and the name, designation and location of the officer to whom requests for information may be addressed.

(2) It shall be the duty of the concerned officer of a Public Authority to give reasons for decision and to disclose relevant facts and analysis when major policies or decisions are made.

(3) The publications referred to above shall be made available to the public for inspection free of cost and copies shall be supplied, on prayer, at a nominal price as may be prescribed.”

18. Procedure for Access to Information.- The absence of any statute on the right to information does not mean that people of Bangladesh can not obtain any information from government offices or courts. There are some provisions scattered in various Acts, Ordinances and Rules prescribing different procedures for access to information in the possession of government offices and courts. We have discussed at length about those provisions in the introductory chapter. Here it may be mentioned that those procedures are non homogeneous. Information from civil courts can be obtained through a procedure laid down in the Civil Rules and Orders, which do not have any application in other government or semi-government offices or in the offices of statutory organizations. Those government or semi-government offices follow different procedures under separate laws/rules. We are not aware what procedures are followed by Non-Government Organizations in this matter. In our opinion a uniform, simple and cost effective procedure for obtaining information from all such offices and courts is necessary for the establishment of right to information. But such a procedure should not supersede the existing facilities; rather it should be supplementary to or in addition to the existing procedures. A citizen be at liberty to utilize any of the procedures convenient to him in obtaining information from any Public Authority. In this regard the suggestion of the Ministry of Information that the time for furnishing an information should be reduced from 15 days to 5-7 days does not appear to be practicable. The Public Authority will require some time to process the information. We have proposed that supply of the information should be within not later than 15 days from the date of request. A Public Authority may supply it earlier but not beyond 15 days. The Commission is not in favour of reducing this time limit for supplying an information. The provision may run as follows:

“6. Procedure for Access to Information. (1) A citizen desiring to obtain an information from a Public Authority under this Act shall make a request to the designated officer or if no officer was designated, to the head of the office or head of the sub-office, as the case may be, of the Public Authority, clearly specifying the particulars of the information, document or record and the mode of access, i.e. inspection, copying or taking note, sought for.

(2) Such a request shall be made in the prescribed form to be printed and supplied by the Public Authority at a price of Taka 5.

(3) The Public Authority shall furnish the information, sought for within 15 days from the date of receipt of a request under sub-section (1).

Provided that the applicant shall pay the actual cost of supplying the information as may be prescribed.

(4) Where the designated officer or head of the office or sub-office decides to refuse access, he shall communicate such decision to the person making request within 10 days, specifying the reasons on which such refusal is based.”

19. Exceptions.- The right to information is subject to some exceptions. In all the legal regimes in the world there are a number of exceptions under which access to information may be denied. These exceptions are identical in the laws in USA, Australia, New Zealand and proposed laws in Sri Lanka, Pakistan and India and relate to the defense, foreign policy, law enforcement, finance and taxation matters of the state and matters relating to the privacy of the citizens. The laws prohibiting or inhibiting right to information in Bangladesh are scattered in different laws. In spite of existence of such laws the USA, Australia, New Zealand have incorporated some exceptions in clear and unambiguous terms in the legislation relating to right to information. We have recommended application of this Act subject to those laws. We consider it convenient and indispensably necessary to incorporate similar exceptions in the proposed Act. In this regard, the opinion of the Ministry of Information of the Government of Bangladesh that the right given to the Public Authority to refuse access to information on certain grounds may nullify the good intention of the proposed law does not find favor with the Commission. The grounds spelled out in the exception clause clearly show that their secrecy is of vital importance for the preservation of state security, individual privacy and trade secrets. The provision may run as follows:

“7. Exemptions from disclosure of information.- A request for access to information made under this Act may be refused if ;

(1) disclosure of such information shall prejudicially affect the security and integrity of Bangladesh or its foreign policy or conduct of international relations with foreign countries or organizations or

(2) such information consists of commercial or trade secrets of a Public Authority disclosure of which would prejudice the lawful interest of such Public Authority; or

(3) disclosure of such information would prejudicially affect the Government’s ability to manage the economy or would cause unfair gain or loss to any individual or organization including premature disclosure of proposals relating to:-

(a) taxation, duties of customs and excise;

(b) currency exchange or interest rates;

(c) regulation or supervision of financial institutions; or

(4) disclosure of such information is likely to affect the enforcement of law or lead to incitement to an offence, or affect public safety or the safety of an individual or affect fair trial or adjudication of a pending case or reveal the existence or identity of a confidential record or source of information; or

(5) disclosure of such information is likely to cause unwarranted invasion of the privacy of an individual; or

(6) disclosure of such information may result in the breach of parliamentary privileges or violation of an order of a competent court; or

(7) such information relates to a matter that is provided by any law or rule to be published at a particular time; or

(8) such information relates to a matter that is contained in any publication available for sale”.

20. Enforcement regime: Offences and Punishments under the Act.- Disputes arising out of the proposed Act are of quasi civil nature. So, offences under this Act may be categorized as bailable and non-cognizable and penalties which may be provided for contravention of provisions of this Act may include

monetary compensation, fines and simple imprisonment for a short duration. Acts constituting contravention may be listed as-

- a) unlawful refusal to grant access to information,
- b) failure in supplying information within the time prescribed by this Act,
- c) failure to publish information under section 5 of this Act,
- d) demanding additional fees more than the actual cost required for supplying such information,
- e) knowingly supplying a false information, and
- f) willful disobedience of the orders of the Information Tribunal or Information Appellate Tribunal.

Any designated officer or head of the office or sub office committing any offence mentioned above should be punished with penalties which may take the form of monetary compensation, damage, imprisonment or fine or a combination of some or all of them according to the gravity of the offence. In this regard the Commission considered a suggestion of the Metropolitan Chamber of Commerce and Industry to reduce the proposed penalty for delay in supplying information. The Commission accepted the suggestion and revised its proposed penalty for such an offence to Tk. 500/- (five hundred) from Tk. 1000/- (one thousand) for each day of delay. So, we propose the following provision :-

“8. Penalty for illegally refusing access to information.- If any designated officer or head of the office or sub-office, as the case may be, illegally refuses access to information to any person, knowing that the applicant is entitled to have an access to such information under this Act, he shall be liable to pay damages to such person by way of compensation not exceeding Taka 5000.

9. Penalty for failure to publish information.- Any designated officer or head of the office or sub-office, who fails without lawful excuse, to publish periodical information under section 5 of this Act shall be liable to pay a penalty which may extend to Tk. 5000/- (five thousand).

10. Penalty for supplying false information.- If any designated officer or head of the office or head of the Sub-office knowingly supplies a false information to a person entitled to have an access to such information under

this Act, he shall be liable to pay a penalty which may extend to Tk. 5000/- (five thousand).

11. Penalty for delay in supplying information.- If any designated officer or head of the office or head of the Sub-office delays in granting access to information, which an applicant is entitled to get under this Act, shall be liable to pay a penalty which may extend to Taka 500 (five hundred) for each day of delay.

12. Punishment for failure to comply with order passed by the Tribunal or Appellate tribunal.- Any person who fails to comply with any order passed by the Information Tribunal or the Information Appellate Tribunal under this Act shall be guilty of an offence and shall be liable on conviction to suffer a simple imprisonment for a term which may extend to three months or with fine of Tk.5000/- (five thousand) or with both.

13. Residuary penalty.- Whoever contravenes any provision of this Act, for which no penalty has been separately provided in this Act, shall be liable to pay a compensation which may extend to Taka 5000 (five thousand) to the person affected by such contravention."

21. Composition, Jurisdiction and Procedure for Information Tribunal and Information Appellate Tribunal.- In each district an Information Tribunal may be constituted to function as the court of first instance for adjudication of disputes under the proposed Act. A person who is or has been a district judge may be appointed as the judge of the Tribunal. An Information Appellate Tribunal may also be constituted for hearing and disposing of appeals from the judgments and orders of the Tribunal. The one member Appellate Tribunal may be constituted with a person who is or has been or is competent to be a judge of the Supreme Court. The composition, jurisdiction and functional procedure of such Tribunals and Appellate Tribunal are required to be clearly laid down in the proposed Act. The provisions relating to the composition, jurisdiction and procedure of such Tribunals and Appellate Tribunal may run as follows:

"14. Information Tribunal.- (1) For the purpose of adjudging whether any person has committed a contravention of any of the provisions of this Act, or of any rule or regulation made thereunder the Government may, subject to the provisions of sub-section (2) of this section, constitute an Information Tribunal for each district.

(2) No person shall be appointed as a judge of the Tribunal unless he or she is or has been or is competent to be a District Judge.

(3) The Government may appoint more than one Tribunal in a district and where such more Tribunals than one are constituted in a district the Government shall specify by a notification in the official gazette the subject matter and territorial jurisdiction of each such Tribunal.

15. Powers and procedure of the Tribunal.- (1) The Tribunal may, if it, after giving both the parties to the dispute a reasonable opportunity of being heard and after holding such inquiry as it may deem fit, finds that the person has committed any contravention, impose upon him such penalty or such compensation as he thinks fit, in accordance with the provisions of this Act.

(2) While adjudging the quantum of compensation or penalty, as the case may be, the Tribunal shall have due regard to the following factors, namely:-

the amount of loss caused to the person requesting access to information;

the repetitive nature of the default;

(3) The Tribunal, may upon a complaint filed before it, take cognizance of an offence and award punishment as referred to in section 12 of the Act to the person found guilty upon holding such inquiry as it may deem fit and ensuring a fair hearing to the accused.

(4) Every Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte;

(g) any other matter which may be prescribed.

(5) Subject to sub-section (3) of this section, the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908), but shall be guided by the principles of natural justice and, subject to the provisions of this Act, or any rules or regulations made thereunder, shall have the powers to regulate its own procedure.

(6) All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Penal Code, 1860 (Act XL of 1860).

(7) Every Tribunal shall be deemed to be a civil court for the purposes of sections 480, 481 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

16. Tribunal may order access to information.- The Tribunal may, if satisfied that the access has been wrongly refused by the designated officer or the head of the office or sub-office on bonafide belief that the information is exempted from disclosure under section 7 of this Act or under any other law, order, that the Public Authority shall grant access to such information in such mode and within such time as determined by it.

17. Information Appellate Tribunal.- (1) For receiving, hearing and disposing of appeals from the order, decision and judgement of the Tribunal the Government may, subject to the provisions of sub-section (2) , constitute an Information Appellate Tribunal.

(2) No person shall be appointed as a judge of the Appellate Tribunal unless he is or has been or is qualified to be a judge of the Supreme Court.

18. Appeal to the Information Appellate Tribunal.- (1) Any person aggrieved by an order or judgement of the Tribunal may prefer an appeal to the Information Appellate Tribunal;

Provided that no appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(2) Every appeal under sub-section (1) of this section shall be filed within a period of 15 days from the date on which a copy of the order appealed against is received by the person aggrieved and it shall be in such form and accompanied by such fee as may be prescribed:

Provided that section 5 of the Limitation Act, 1908 (Act IX of 1908) shall apply to an appeal under this section.

(3) On receipt of an appeal under sub-section (1) of this section, the Information Appellate Tribunal shall, after giving the parties to the appeal reasonable opportunity of being heard, pass such orders as it may deem fit and may, by such order, confirm, modify or set aside the order appealed against or send back the matter for rehearing to the Tribunal.

(4) The Information Appellate Tribunal shall send a copy of every order made by it to the designated officer or head of the office or head of the sub-office of the Public Authority, to the Tribunal and to any other interested person on application being made to it and on payment of such fees as may be prescribed.

(5) Every appeal filed under sub-section (1) of this section shall be disposed of by the Information Appellate Tribunal as expeditiously as possible but not later than within a period of three months from the date of its receipt.

19. Procedure of Information Appellate Tribunal.- (1) The Information Appellate Tribunal shall have the same procedure as laid down in section 15 (3) (4) (5) (6) for the Tribunal.

20. Finality of decision.- Decision passed by the Appellate Tribunal shall be final and no question regarding its propriety shall be raised before any court in Bangladesh.

21. Right of legal representation.- The parties to a proceeding may either appear in person or authorize one or more legal practitioners or any of their officers to present their causes before the Information Tribunal or the Information Appellate Tribunal."

22. Excluding jurisdiction of other courts.- Since exclusive Tribunals and an Appellate Tribunal are being provided for speedy and qualitative adjudication of disputes arising out of the proposed Act it would be appropriate to exclude the jurisdiction of other courts in the matter. A separate provision barring jurisdiction of other courts may run as follows:

"22. Court's jurisdiction barred.- No court shall entertain any suit or proceeding in respect of any matter which an Information Tribunal or Information Appellate Tribunal constituted under this Act is empowered to determine and no injunction shall be granted by any court or other authority in

respect of any action taken or to be taken in exercise of any power conferred by or under this Act."

23. Execution of the order and judgement of the Information Tribunal and Appellate Tribunal.- The effective enforcement of any law substantially depends on speedy implementation of verdicts handed down by courts or tribunals for contravention of its provisions. It is needless to mention that any sentence for imprisonment may be executed by the police by sending the convict to jail. The question remains about the execution of verdicts involving realization of money from the delinquent. Such a verdict may be executed in several ways. We recommend that those be realized as arrears of land revenue under the Public Demands Recovery Act, 1913. The government may also consider the desirability of realizing the fine, penalty or compensation from the offender concerned personally which will have the merit of satisfying the test of accountability. In that case, the Tribunal concerned should have the power of directing the public Authority concerned to deduct the amount from the pay of the person concerned and pay it to the person entitled thereto. The provision may run as follows:

"23. Recovery of penalty and compensation.- The Tribunal may direct the public authority to deduct the penalty or compensation from the pay of the person concerned and pay it to the person entitled thereto. Any penalty or compensation payable under this Act, if not paid, shall be recoverable as arrears of land revenue under the Public Demands Recovery Act, 1913.

24. Power to make rules.- The government may by notification in the official gazette make such rules as may be required for the effective enforcement of this Act."

Justice A.K.M. Sadeque
Member

Justice A.T.M. Afzal
Chairman