

CHAPTER 4



Enhancing Access to Law and Information

Access to Law: The Bangladesh Perspective

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Promoting the rule of law, human security, and justice is of primary concern in any developing country. No one can deny that knowledge of the law is a necessary basis for civic activity and for people's capacity to comply with the law.¹ When legal information is equally and easily known to all, the incidents of violation and abuse of law are less. In this context, "access to law" can significantly contribute to a better establishment of the rule of law.²

"Access to law," as used in this paper, pertains to access to the text of laws that govern the conduct of the people. It guarantees the people's right to know the law. By "people," we mean all sections of society including ordinary citizens, professional groups or institutions such as the judiciary, the prosecutorial service, legal professionals, legal aid providers, legal right activists, and/or media—all of whom require access to law in different degrees and for different purposes.

The Importance of Access to Law

The availability of free public access to law contributes toward equality before the law. In an environment where legislation is difficult to access, discrepancies between resources available to one party from those available to another are exacerbated.³ Also, ordinary citizens expect their government to operate openly. When law is accessible to all, there is little chance that ordinary citizens would fall victim to corrupt government officials.

Access to law also enhances economic development and legal certainty. If access to the law is very difficult in a country, such inaccessibility can be viewed by potential foreign investors as substantial legal risk. This could in turn affect the overall proper functioning of international commerce and thereby the economic development of a country. On the other hand, accessibility of the law reduces the level of legal risk by creating a transparent and consistent legal environment for business, trade, and commerce.

Access to law is also an essential component of an effective judicial and prosecutorial system. An effective judicial system has the capacity to extend the protection of the law to all citizens; an effective prosecutorial system acts as the principal catalyst for the administration of justice. It is therefore important that these two systems be equipped not only with the necessary physical facilities, resources, and staff but also with the necessary legal and relevant research materials. Ensuring better access to law by the judicial and prosecutorial systems can greatly improve the effectiveness of these systems.

Further, accessibility of the law to the judiciary ensures, to a certain degree, consistency in applying and setting judicial precedents. This is of utmost importance in common law⁴ countries where the judges, along with legislative bodies, exercise law-making power. Also, easy access to law would work as a safeguard against erroneous decisions. Judges generally refer to legal principles

¹ Sue Scott. Providing Legal Information to the Community via the Internet: Research into Users and Pathways. Paper presented at AustLII's *Law via the Internet 1999 Conference*.

² Daniel Poulin. 2003. *Open Access to Law in Developing Countries*. Canada: Public Law Research Centre, University of Montreal.

³ See footnote no. 2.

⁴ Common Law is understood to be "law by precedent," distinguished from statutory law, i.e., parliamentary legislation to which Common Law is complementary. For details, see Frederic William Maitland. 1901. *English Law and the Renaissance*. Cambridge: University Press; Harold Potter. 1932. *An Historical Introduction to English Law and Its Institutions*. 4th ed. London: Sweet & Maxwell; R C Van Caenegem. 1988. *The Birth of the English Common Law*. 2nd ed. Cambridge: University Press.

and judicial interpretations established in previous decisions for guidance in deciding new cases. Availability of these decisions is therefore crucial to them. In addition, a judiciary or prosecutorial system functioning under a system that allows easy access to law would be able to restore people's faith and confidence in the justice system. It would improve the public image and transparency of the judicial and prosecutorial systems.

Access to law is equally important to legal professionals, legal aid providers, legal right activists, and legal academics. Legal professionals provide professional assistance to clients and unless they are acquainted with updated laws, whether statute or case laws, their services would be useless. Legal aid providers generally have resource limitations that bar them from extending their services to a greater number of potential legal aid seekers.

Better access to law facilitates legal academic research, which may have real positive impact on society. Scholars studying law would find their work significantly easier to accomplish if law is easily accessible.⁵ Also, legal right activists involved in human rights advocacy would benefit from having easy access to law.

Similarly, media plays a vital role in enhancing free flow of information to the public. Publicity is the very soul of justice. A responsible media needs access to law so that it can disseminate the same to the wider community to create social awareness.

Access to Law as a Human Right

Internationally, access to law has been identified as a human right only in the 20th century. The

United Nations General Assembly adopted a resolution in 1946, stating freedom of information to be a fundamental human right.⁶ Article 19 of the Universal Declaration of Human Rights (UDHR)⁷ guarantees freedom of opinion and expression, which includes the right to seek, receive, and impart information.⁸ The International Covenant on Civil and Political Rights also provides a right of access to information.⁹ It essentially repeats and then expands upon the provisions of Article 19 of the UDHR.¹⁰ Similarly, provisions of the International Covenant on Economic, Social and Cultural Rights¹¹ also support the right to public access to the law.¹²

As far as state laws are concerned, right to information or right to know are often found as one of the constitutionally guaranteed human rights in many jurisdictions. For example, the constitutions of Bulgaria,¹³ Estonia,¹⁴ Hungary,¹⁵ Lithuania,¹⁶ Malawi,¹⁷ Moldova,¹⁸ Mozambique,¹⁹ Nepal,²⁰ Peru,²¹ Philippines,²² Poland,²³ Romania,²⁴ Russian Federation,²⁵ South Africa,²⁶ Sweden,²⁷ Tanzania,²⁸ and Thailand²⁹ have specific provisions to this effect. However, in many other jurisdictions where no such provision is created, it remained a judicial practice to rule that the right to access information is actually protected under the constitutional right to freedom of expression.³⁰ The Supreme Courts of Japan,³¹ India,³² and Sri Lanka³³ upheld this concept in various decisions.

Alternatively, right to information or right to know can emerge as a separate national legislation. For example, the history of freedom of information laws can be traced back to Sweden³⁴ and Colombia.³⁵ In recent times, enactment of such law has become a trend in the well-established

⁵ Steven J. Damar. 2001. The Human Right of Access to Legal Information: Using Technology to Advance Transparency and the Rule of Law. *Global Jurist Topics* 1(2) (Article 6).

⁶ Resolution 59(1) adopted on 14 December 1946.

⁷ In 1948, the United Nations General Assembly (UNGA) adopted the Universal Declaration of Human Rights under Resolution 217 A (III), 11 December 1948.

⁸ Universal Declaration of Human Rights, UNGA Res. 217, Art. 19 (10 December 1948).

⁹ International Covenant on Civil and Political Rights, Art. 19, 999 United Nations Treaty Series 171 (opened for signature 16 December 1966; entered into force on 23 March 1976).

¹⁰ It states that: (1) everyone shall have the right to hold opinions without interference; (2) 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; (3) the exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order or of public health or morals.

¹¹ International Covenant on Economic, Social, and Cultural Rights, 993 UNTS 3 (opened for signature 16 December 1966; entered into force on 3 January 1976).

¹² Laws should be neither secret nor difficult to obtain nor available to just an elite, privileged few.

¹³ Article 41.

¹⁴ Article 44.

¹⁵ Article 61(1).

¹⁶ Article 25(5).

¹⁷ Article 37.

¹⁸ Article 34.

¹⁹ Article 74.

democracies³⁶ such as the 1967 Freedom of Information Act of the United States (US), Freedom of Information Act of Australia, Access to Information Act and Official Information Act of New Zealand, Freedom of Information Act of the United Kingdom, Freedom of Information Ordinance³⁷ and Freedom of Information Rules³⁸ of Pakistan, and Right to Information Act³⁹ of India.

In Bangladesh, however, the situation is different. The Constitution of the People's Republic of Bangladesh guarantees freedom of expression but does not explicitly recognize a separate right to information.⁴⁰ Whether or not the right to in-

formation is protected under freedom of expression remains unsettled but a draft Right to Information Act is pending for review by the Ministry of Information.⁴¹ Nevertheless, in 2005, the High Court Division directed the Election Commission to collect necessary information from the candidates of parliamentary election and to disseminate the same through mass media and the Government to provide necessary logistic support for the purpose.⁴²

Codification and Publication of Laws in Bangladesh

Statute laws in Bangladesh are published in *The Bangladesh Gazette*, the official gazette of the Government. It is a regular government publication in which public service appointments, postings, and administrative orders are announced. In addition, this gazette often contains service rules and important government decisions issued by various ministries/divisions. Each issue of *The Bangladesh Gazette* generally contains several parts, including reprints of Acts as well as the drafts of bills in Parliament. The Government also publishes occasional supplementary issues known as *The Bangladesh Gazette, Extraordinary*.⁴³ Issues of *The Bangladesh Gazette* as well as those of *The Bangladesh Gazette, Extraordinary* are considered public documents.

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²⁰ Article 16.

²¹ Article 2(4).

²² Article III, Section 7.

²³ Article 61.

²⁴ Article 31.

²⁵ Article 24(2).

²⁶ Article 32(2).

²⁷ Chapter 2.

²⁸ Article 18(2).

²⁹ Section 58.

³⁰ Article 19, *Global Trends on the Right to Information: A Survey of South Asia*, July 2001.

³¹ Lawrence Repeta. 1999. Local Government Disclosure Systems in Japan. National Bureau of Asian Research Paper, Number 16. October; Jeff Kingston. 2005. Information Disclosure in Japan. Paper presented at the Biennial Conference of the Japanese Studies Association of Australia, Adelaide, 3–6 July 2005.

³² *S P Gupta v President of India* (1982) 149 AIR (SC) 234.

³³ For example, *Hewamanne v Manik de Silva* (1983) 1 Sri L R 1; *Joseph Perera v The Attorney-General* (1992) 1 Sri L R 1999; *Visuvalingam and Others v Liyanage and Others* (1984) 2 Sri L R 123; *Fernando v Sri Lanka Broadcasting Corporation and Others* (1996) 1 Sri L R 157.

³⁴ In 1766, the Swedish Parliament passed the Freedom of Press Act, which required the disclosure of official documents upon request.

³⁵ In Colombia, the 1888 *Code of Political and Municipal Organization* allowed individuals to request documents held by government agencies or in government archives.

³⁶ Article 19, *Global Trends on the Right to Information: A Survey of South Asia*, July 2001.

³⁷ Freedom of Information Ordinance 2002, No. XCVI of 2002. F. No. 2(1)/2002-Pub. Islamabad. The 26th October 2002. Available at: www.crcp.sdnpk.org/ordinance_of_2002.htm.

³⁸ www.infopak.gov.pk/public/govt/freedom_of_information_rules_2004.htm.

³⁹ www.mit.gov.in/rti-act.pdf.

⁴⁰ However, Article 33(1) of the Constitution recognizes a limited right to information, which can be exercised by a detainee. The said Article states that "No person who is arrested shall be detained in custody without being informed ... of the grounds for such arrest."

⁴¹ ANM Nurul Haque. 2006. Right to Information in Bangladesh. *The Daily Star* (Editorial). 30 January; Shaheen Anam. 2005. Right to Information in Bangladesh: Challenges and Opportunities. *The Daily Star* (Point-Counterpoint). 18 September.

⁴² *Abdul Matin Chowdhury and others v. Bangladesh*, Writ Petition No. 2561, 24 May 2005. The Court recognized that "people have a right to know and such right is included in the right to franchise."

Once statutory laws are passed, they need to be adopted, codified, consolidated, regularly updated, and published. According to the *Bangladesh Laws (Revision and Declaration) Act 1973*, all laws in force in Bangladesh should be printed in chronological order under the name of the *Bangladesh Code*.⁴⁴ Laws in Bangladesh used to be in English, a foreign language to the Bangladeshi nationals so all laws had to be translated from English into *Bangla*, the national language of Bangladesh. The *Bangla Bhasha Procholon Ain* enacted in 1987 made it possible to enact laws in *Bangla*. However, to ensure global compliance of Bangladesh laws, it is now also necessary to translate laws in *Bangla* into English.⁴⁵

According to the Allocation of Business among Ministries and Divisions framed by the President of Bangladesh, the Ministry of Law, Justice and Parliamentary Affairs (MLJPA) of the People's Republic of Bangladesh is responsible for compiling, codifying, consolidating, adapting, translating, and publishing Bangladesh laws.⁴⁶ The same ministry also enjoys the copyright in all government law publications.⁴⁷ All governmental law publications prepared by the official law publication unit of the Government, known as BG Press.

As far as the publication of case law is concerned, the *Supreme Court Monthly Review* is the official case reporter of the Supreme Court of Bangladesh. It is expected to publish major case decisions of the higher judiciary on a monthly basis.⁴⁸ At the private initiative, the most popular case reporter is the *Dhaka Law Reports*, commonly known as DLR. The oldest law journal in Bangladesh,⁴⁹ it is a monthly periodical of judgments of the superior courts and statutes that appear in the gazette notification of the Government of Bangladesh. Even though such statute publications lack official authentication, members of the bar and the bench nevertheless widely refer to and rely on these publications.



Anamul Haque Anam

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Another case law reporter is the *Bangladesh Supreme Court Reports* published by the Bangladesh Institute of Law and International Affairs,⁵⁰ a nonprofit, independent, and nongovernment research institute in Bangladesh. *Bangladesh Supreme Court Reports* is a quarterly publication, which publishes important decisions of the Supreme Court of Bangladesh. Its first publication was in 1977. The Bangladesh Bar Council⁵¹ publishes the *Bangladesh Legal Decisions* (BLD), a monthly law journal of important Supreme Court decisions with different questions for the benefit of lawyers and legal scholars. The first publication of BLD took place in January 1981. Some other case reporters in Bangladesh are *Dhaka Law Cases*, *Bangladesh Case Reports*, and *Bangladesh Law Times*. In the current system of Bangladesh, the legal and judicial community recognize and rely on most of these private law reporters.

⁴³ The issues of the extraordinary gazettes published occasionally contain: (i) weekly statistics of reported attacks and deaths from cholera, smallpox, plague, and other infectious diseases in the districts and towns; (ii) statements showing births and deaths from principal diseases in towns with a population of 30,000 or more in various districts; (iii) monthly weather and crop reports; (iv) quarterly weather and crop reports; (v) annual estimates of *araha*r and lentil (pulse) and other *rabi* cereals. Notifications of the same day issued in *The Bangladesh Gazette (Extraordinary)* are normally printed on both pages of each sheet of the gazette in alphabetical order of the ministries, and not on isolated sheets.

⁴⁴ Section 6, *Bangladesh Laws (Revision and Declaration) Act 1973*.

⁴⁵ Law Commission Report. 1998. *A Report by the Law Commission Recommending that Authentic Text of Authorized Translation in English of Original Bengali Texts of Laws be Made*. 14 May.

⁴⁶ Sections 30(7), 30(9)–30(12) of the Schedule I, *Rules of Business 1996*.

⁴⁷ Sections 30(8) of the Schedule I, *Rules of Business 1996*.

⁴⁸ Justice Md. Abdur Rashid, Supreme Court of Bangladesh; Barrister Shamim Khaled Ahmed, Advocate, Supreme Court of Bangladesh.

⁴⁹ *Dhaka Law Reports* had its first publication in 1949. This was soon after the Dhaka High Court was established under the Pakistan regime with jurisdiction over the territory, which now constitutes Bangladesh.

Past Efforts to Improve Access to Law in Bangladesh

Law Indexing

The first initiative was taken via a government print publication, entitled *Alphabetical List of Existing Laws* by the Ministry of Law and Justice in 1984. The second one was a private initiative entitled M.R Hasan's *Index of Bangladesh Laws* published by Basic Law Series. The third effort was entitled *Encyclopaedic Compendium of the Laws of Bangladesh* (Volume I, II, III, and IV). However, none of these law indexes provide any text of the actual laws, rules, or regulations. Similarly, the website of the Parliament of Bangladesh, which contains a special section on Bangladesh legislation from 1972 to 2005, does not include the text of the laws.

Law Text Compilation

There have been a number of private initiatives to compile legal texts according to various selected topics. However, the topic selection may not be sufficient to meet the specific legal information needs of the wider community.

Legal Information Websites

The Ministry of Law Justice and Parliamentary Affairs, Law Commission, Board of Investment, Bangladesh Bank, Registrar of Joint Stock Companies and Firms, Securities and Exchange Commission, Dhaka Stock Exchange, Chittagong Stock Exchange, etc. have their own websites containing relevant laws. These websites, however, do not serve as comprehensive sources of any particular area of law and are not regularly updated.

Codification, Publication and Translation of Laws Project

The Ministry of Law, Justice and Parliamentary Affairs has undertaken the Codification, Publication and Translation of Laws Project (CPTLP). The main objective of the project is to facilitate public access to law by codifying, publishing, and translating all laws of Bangladesh within a reasonable period. The Canadian International Development Agency is currently sponsoring the codification component of the CPTLP.

National ICT (Information and Communication Technology) Policy 2002

In accordance with the provisions of this Ordinance, a force called Armed Police Battalions was formed to perform internal security duties; recover unauthorized arms, ammunitions, and explosives; apprehend armed gangs of criminals; and assist other law enforcing agencies.

Community Legal Awareness Building Projects

A number of nongovernment organizations (NGOs) impart

legal education/information at the community level. Their aim is to build legal rights awareness in the people. Some of them also provide legal aid to the poor and needy. For the vast majority of the country's rural population who do not have easy access to law or lawyers, these NGOs fill the necessary legal information gap to a certain extent. However, NGOs also suffer from poor access to law due to unavailability of authentic legal texts and up-to-date case laws.

Media Efforts

A few law-related programs showcase debates on basic human rights law. *Ain Adalat*, a popular program in the 1980s, presented legal debate and inquiry about various legal issues such as land laws, tenancy laws, civic laws, and family laws, to name a few. However, due to people's lack of access to broadcast media, the program did not reach people outside major cities of Bangladesh. In the 1990s, a few socio-legal awareness programs in the Bangladesh Television provided legal information on women and child rights, trafficking, land rights, medical malpractice, and corruption to the viewers. These programs were ineffective, however, due to inadequate program airtime, use of off-peak time slots, prioritizing only sensational legal issues as opposed to general legal information, and adopting a presentation style (including language) not suitable for the understanding of rural people, etc. Limited access to broadcast media also played an obstructive role.

On the other hand, Bangladesh Betar, the official radio channel in Bangladesh, has a wider coverage and a few popular programs, such as *Mahanagar* and *Amar Desh*, contain discussions on law and law-related issues for common people. *Mahanagar* targets the metropolitan audience and discusses consumer rights, and metropolitan police laws while *Amar Desh* mainly targets the rural audience and imparts legal information relating to family and land law. Also, there have been radio programs which include extensive discussions on women and child rights, many of which are sponsored by the government as well as international agencies like the United Nations Educational, Scientific and Cultural Organization.

In print media, hardly any daily, monthly, or weekly publication allots space for legal issues. However, some of these may include a column where legal advice on common legal problems is provided. The only daily that contains a weekly law page is the *Daily Star* which has articles on a wide range of national and international legal issues. However, as it is an English daily, its readership is limited to the educated circle of society.

Current State of Access to Law in Bangladesh

Legal Awareness in Bangladesh Society

A survey⁵² conducted for this study reveals that citizens have knowledge only about very general laws. For example, people in rural villages know property and inheritance laws but are not aware of their fundamental rights or duties. One possible reason for this is that the former laws affect their immediate personal needs while the latter cannot be easily understood. This lack of awareness is not limited to ordinary citizens. Even practising lawyers are sometimes not aware of the updated laws.

Legal Information Facilities

Not many public library facilities exist in Bangladesh. Aside from the National Library of Bangladesh, there are 68 government and 1,043 nongovernment public libraries.⁵³ In addition to these are a number of special libraries⁵⁴ and academic libraries.⁵⁵ However, there is an acute shortage of law books in these libraries. Still, some academic libraries that possess a limited collection of legal materials are not open to the public. The bar and the court libraries are also important sources of legal materials in Bangladesh. However, neither bar association libraries nor court libraries in Bangladesh have sufficient legal resources. Also, aside from a time limitation for daily usage, most of these libraries in Bangladesh do not have internet access to carry on legal research.⁵⁶ Practising lawyers also have their private libraries but with limited collection. The Legislative Information Centre of the Government also maintains a library within its premises.⁵⁷ The library contains a good collection of legal materials. However, the library is maintained mainly for the benefit of Members of Parliament, secretariat

officers, and staff. While it is also open to researchers, it only provides limited services.

Obstacles to Citizens' Access to Law

Lack of Legal Adaptation, Codification, and Translation

Soon after the independence of Bangladesh, the MLJPA started examining the existing laws for adaptation, codification, and publication.⁵⁸ Accordingly, Bangladesh Code Volumes 1–11 containing the laws enacted during 1836 to 1938 A.D. were published. The *Bangladesh Code* was last published in 1989, leaving laws enacted after 1938 scattered and uncodified. No effective steps have been taken to update the *Bangladesh Codes* already published. It is even more unfortunate that, to date, no comprehensive step has been taken to update and compile rules, by-laws, regulations, statutory orders, etc.

Unavailability and Insufficient Distribution of Authenticated Legal Publications

There is a serious lack of available authenticated legal publications in Bangladesh. Official reprints are not undertaken regularly. For example, *Government Land Recovery Ordinance*, *Haat Bazaar Ordinance 1959*, *Homeopathic Ordinance*, etc. have been out of print for decades but the Government has taken no substantial step to reprint the same. Getting an authenticated translated version of laws is also difficult at times. The government translation procedure goes through a lengthy bureaucratic process. Also, the legislative drafting wing of the MLJPA is not completely equipped with the necessary modern facilities to carry on the huge backlog of translation work. On the other hand, while pri-

⁵⁰ Bangladesh Institute of Law and International Affairs was established on 30 June 1972.

⁵¹ The Bangladesh Bar Council is a corporate body constituted under the provisions of the *Bangladesh Legal Practitioners and the Bar Council Order 1972*. It admits persons as Advocates on its roll, holds examinations for purposes of such admission, and has the power to remove advocates from such roll for "professional misconduct" or failure to pay fees and contributions payable by them.

⁵² In September 2005, a survey was conducted to find out the current status of access to law in Bangladesh. A total of 117 persons was formally interviewed, including those from the judiciary; the Ministry of Law, Justice and Parliamentary Affairs; the Law Commission; the Bangladesh Bar Council; the Judicial Administration Training Institute; the Legal Education and Training Institute; the bar associations; legal personnel (both practitioners and academics); NGOs engaged in legal aid/awareness programs; BRAC; official law publishers; information technology experts; development partners involved in major law reform projects in Bangladesh such as CIDA (Legal Reform Project); and, above all, civil society.

⁵³ Md. Hanif Uddin and Md. Anisur Rahman. *Library Development in Bangladesh: An Overview*.

⁵⁴ For example, AEC Library, BIDS Library, ICDDR Library, National Science Library, Bangla Academy Library, National Health Academy, etc.

⁵⁵ For example, Dhaka University Library, Rajshai University Library, Bangladesh University of Engineering and Technology (BUET) Library, etc.

⁵⁶ For example, 87% of New Zealand public library systems have internet access. See Pittams Grant. 1999. *The Extent of Public Access to the Internet in New Zealand's Public Libraries*. Research Unit, National Library of New Zealand.

⁵⁷ www.parliamentofbangladesh.org/lic.html.

⁵⁸ www.minlaw.gov.bd/cptlp.doc.

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vate initiative to law translation may be very effective as a shortcut,⁵⁹ it lacks the official stamp of authenticity.

BG Press prints only 6,100 copies each of the *Weekly Gazette Extra-Ordinary Gazette* for countrywide distribution. This is definitely not enough for the entire population. Although *BG Press* has a sale center for the public, it only reprints legal materials for profit. Recent gazettes are not readily available to the lawyers on time. Even the Attorney General's Office has no official copy or record of recent amendments of laws.

Lack of Access to Case Law

Citizens not only suffer from lack of easy access to statute law but also from poor access to case law. The Supreme Court is the official repository of case decisions, certified copies of which can be obtained by the public subject to a fee. In many developed countries, and even in some developing countries, court decisions as well as the day-to-day transcripts of court hearings are freely available on the internet.⁶⁰ In Bangladesh, court decisions are yet to be available on the internet.

Supreme Court Monthly Review, the official case reporter of the Supreme Court of Bangladesh, does not publish decisions monthly. Case law reporters published at private initiatives also suffer periodic interruption. For example, the *Bangladesh Supreme Court Reports* only resumed publication in 1995 since its suspension in 1983.

Thus, the only alternative source is contacting legal professionals at the cost of paying huge service fees. This makes not only the access to law but also access to justice very expensive for poor and vulnerable segments of Bangladesh society.

Policy Recommendations: Experiences from Other Jurisdictions

The following recommendations are made to improve and enhance access to law in Bangladesh.

The Government should enhance the ongoing programs on access to law.

As a starting point, the Government should enhance ongoing programs/efforts on access to law. This will avoid the duplication of efforts already undertaken and maximize valuable resources. In this regard, the ongoing Codification, Publication and Translation of Laws Project (CPTLP) should be strengthened. All laws in Bangladesh should be properly codified and translated. The Government should explore all possible sources of internal and external funds to support the successful outcome of CPTLP.

Similarly, to enhance easy access to case law, the current interactive website project for the Supreme Court of Bangladesh under the *Support to ICT Task Force* should be completed as soon as possible. Such website will not only facilitate access to law but also access to justice. In addition, the Government should encourage and facilitate the already existing community legal awareness-building projects. A comprehensive policy could guide all these efforts toward the same direction. At the same time, the Government should consider formulating a supportive media policy to disseminate legal information to the wider community in a more consistent and effective way.

The Government should support the Free Access to Law Movement.

The Free Access to Law Movement was initiated in 2002 with the Montreal Declaration of Public Access to Law.⁶¹ According to the Declaration, "public legal information" means "legal information produced by public bodies that have a duty to produce law and make it public." It includes primary sources of law, such as legislation, case law and treaties, as well as various secondary (interpretative) public sources, such as reports on preparatory work and law reform, and resulting from boards of inquiry.⁶² In many developed countries, the use of information technology has brought in an ocean of change in their status of access to law.⁶³ For example, in the US, France, Canada, and Australia, text of basic laws are now freely accessible to everybody via the internet. A similar Law Web Portal (LWP) for Bangladesh laws will definitely serve as a partial but significant remedy to access to law problems in Bangladesh.

⁵⁹ For example, *The Heidelberg Bangladesh Legal Translation Project* undertaken by the Department of Law of the South Asia Institute (SAI) of Heidelberg University. Available at: www.sai.uni-heidelberg.de/workgroups/bdlaw/.

⁶⁰ For example, US Supreme Court decisions are available at www.findlaw.com/casecode/supreme.html; UK House of Lords judgments are available at www.publications.parliament.uk/pa/ld/ljjudgmt.htm; the High Court of Australia judgments are available at www.austlii.edu.au/au/cases/cth/HCA/; the High Court of Australia transcripts are available at www.austlii.edu.au/au/other/hca/transcripts/; the Indian court decisions can be available at www.judis.nic.in/; etc.

Development of an LWP requires an efficient (if possible, permanent) legal research cell that would continuously contribute toward planning the structure and content of the web. This entails administrative costs, legal research costs for continuous updating, technical costs for system maintenance and operation, and training costs. Considering these expected expenses, the question now is how to manage the long-term costs of such LWP. One option is to consider imposing user fees. However, with a potentially varied group of users, it is very difficult to know the extent of user fees that might be collected.

In principle, to ensure the poor's access to law, nongovernment organizations (NGOs) involved in providing free legal aid to the public should not be made subject to any user fee for using the LWP. This should also be the case for law firms involved in public interest litigations. However, it is tough to monitor who is actually serving the underprivileged and who is not. On the other hand, charging user fees for disseminating legal information is against the basic principles of Open Access to Law. In many developed countries such as France, Canada, US, and Australia, copies of basic laws are now freely disseminated online. Moreover, popularizing the concept of law via internet in Bangladesh will take time. The legal community would first need to appreciate the value of possessing updated legal information and the benefit of the LWP, otherwise such fee would only discourage them from using the facility. Therefore, it is suggested that user fees should not be imposed at the beginning of the project.

Nevertheless, there are several ways to secure long-term financing for LWP. For example, the Government can allocate a portion of the annual budget for this purpose. If a project is initiated, legal, academic, judicial, and legal professional training institutes such as BRAC University (School of Law), the Legal Education and Training Institute of Bangladesh Bar Council (LETI), and the Judicial Administration Training Institute (JATI) would be interested in providing the initial support for legal research, information technology

networking, operation, maintenance, and training facilities. In the long run, BRAC University (School of Law) may also be interested in internalizing the component of legal research cost of the LWP by providing continuous research support. Similarly, LETI may be interested in internalizing the cost of training by charging training fees from the very beginning. Moreover, JATI is already under a long-term funding plan⁶⁴ to conduct its computer training programs.

Multinational companies can also be approached for sponsoring LWP on a continuous basis. Some big commercial law firms in Bangladesh have also shown keen interest in providing financial support to keep the LWP alive.⁶⁵ In addition, the Government can negotiate with its development partners to formulate a platform for joint funding of various aspects of the LWP. For example, organizations promoting and advocating human rights law or environmental law can be persuaded to finance legal research on their concerned area of law. The output of such research work can then be disseminated to all in the same web portal. In other words, the LWP can become a real "one-stop legal information source" of Bangladesh laws.

The Government should consider establishing an Independent Legal Information Institute (LII). To develop and maintain an LWP, a legal research cell has to be established, preferably at a law re-

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⁶¹ "Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximizing access to this information promotes justice and the rule of law; "Public legal information is digital common property and should be accessible to all on a non-profit basis and, where possible, free of charge; "Independent non-profit organizations have the right to publish public legal information and the government bodies that create or control that information should provide access to it so that it can be published."

⁶² www.worldlii.org/worldlii/declaration/montreal_en.html.

⁶³ In 1990, Hermes Project at Case Western Reserve University, in collaboration with the US Supreme Court, was the first pioneering project to make use of the internet for redistributing legal information.

⁶⁴ With a possibility of extension of the same up until 2010.

⁶⁵ For example, Lee, Khan and Partners; The Law Counsel; The Law Associates; Bhuiyan Islam & Zaidi; Huq & Company; the law firms of Barrister Rokon Uddin Mahmud; Advocate Ozair Faruque; and a few others.

The clear-cut advantages of linking Legal Information Institute (LII) with academic legal institutions are: legal research environment and facility; legal research staff; law student support for longer period of time; and less bureaucracy. All these are necessary for the sustainability of the LII.

search center already in operation with proper infrastructural arrangement. Alternatively, this cell may take the shape of an independent institutional structure such as Legal Information Institute as is the case in many developed countries. For dissemination of law in developing countries today, the most relevant model is associated with the acronym "LII," or the Legal Information Institute, a project that began at the Cornell University. This innovative use of the internet soon inspired similar projects in Canada (CanLII/LEXUM) and Australia (AustLII, WorldLII). Therefore, it is suggested that by creating a permanent institutional body, namely the Bangladesh Legal Information Institute (BanLII), the open access to law via internet can be ensured in Bangladesh.

As regards the administration of BanLII, the example of developed jurisdictions such as in the US, Canada, and Australia may be followed. LIIs can be connected to one or more host universities instead of linking them with a government institution. The clear-cut advantages of linking LII with academic legal institutions are: (i) legal research environment and facility; (ii) legal research staff; (iii) law student support for longer period of time; and (iv) less bureaucracy. All these are necessary for the sustainability of the LII. It is recommended that there be two parts of institutional arrangement for LII: one as an advisory committee and another as a working committee. The advisory committee's role should be more as a facilitator that would oversee the development of LWP and suggest policy directions.

The Government should consider establishing public (legal) information kiosks.

Much of the success of LII and LWP will depend on how far it can reach out to the ordinary citizens. In the first place, to access law via the internet, ordinary citizens need access to computer, telephone, and internet services. A vast majority of the Bangladesh population does not have any computer access or knowledge. Telephone access is quite limited. Also, internet facilities are available only at some major district towns of Bangladesh. Except for large cities such as Dhaka, Chittagong, or Sylhet, public access to internet facilities is very limited. Many rural areas of Bangladesh still have no electricity.

To address these problems, the help of legal professionals, legal aid providers, legal right activists, and legal academics could be enlisted. By enhancing their own access, citizens can ensure access to law and justice. As a solution to the logistical problems, the Government could utilize wireless internet connection. Also, a number of NGOs are currently working toward providing wireless internet connection even in rural areas. For example, BRAC is currently working to create a national wireless broadband system⁶⁶ and establish 70 wireless towers by 2007.⁶⁷ The *Grameen Digital Centre Mirzapur* is also aimed at providing internet service through dial-up and broadband connectivity by telephone line and ADSL modem. Based on the *Mirzapur project*, Grameen Communications will provide internet facilities to the remote rural areas through wireless technology by establishing internet village kiosks for Grameen Bank members. Yet another NGO, UnnayanNet, works to give the ownership of modern information and technology to the majority, especially the rural poor by solving the digital divide and poverty alleviation.

It is recommended that the Government set up public information kiosks (PIKs) at strategic points where electricity connection is available, internet connection can be installed, computers can be provided without much risk, and where getting suitable support staff is a possibility. Also, it is important that PIKs be set up at locations where the legal and judicial fraternity have easy

⁶⁶ This system will provide an internet backbone, allowing internet access in all parts of Bangladesh. The plan is to build towers across the country that will provide mobile access to the broadband network. BRAC envisions that someday its primary and secondary schools spread all over the 64 districts of Bangladesh will be connected with an educational website that could potentially lead to vast improvements in the quality of education that could benefit both teachers and students. For more details, see Khadija Rehman and Tariq Omar Ali. 2005. Connecting people through a single network: the BRAC initiative. Holiday, 29 April.

⁶⁷ It may be mentioned that BRAC has already provided computers to many of its "gonokendros" (rural community centers). A unique aspect of BRAC's information technology initiative has been to provide extensive residential training to local librarians (93% of whom are women).

access. It is strongly recommended that various district bar libraries be made target points for establishing PIKs for the following reasons: (i) district bar libraries already have electrical connections; (ii) PIKs will not require separate office space; (iii) there is no need to provide for extra security system; (iv) PIKs will be best utilized by lawyers who are generally treated as legal information intermediaries; and finally (v) the existing bar librarians can become PIK operators.

The Government should plan/implement necessary training programs.

Along with creating an LWP and setting up BanLII, the Government should also initiate necessary training programs for the professional users and PIK operators. At the initial stage, the major target trainees would be new lawyers, bar association representatives, NGO activists involved in legal aid/advocacy programs, judicial members, legal academics, and PIK operators. In addition to face-to-face training programs, the LWP should contain basic online tutorials for LWP users. Every PIK should also have printed technical instructions on how to operate the LWP. Also, similar print instruction notices should be distributed in all legal educational institutes. In this way, the LWP will be popularized among various sections of society.

The Government should consider introducing a compulsory legal education curriculum for primary, secondary, and higher secondary schools.

It is recommended that the Government of Bangladesh initiate a nationwide legal education campaign for all. It can consider including a compulsory legal education component into the country's primary, secondary, and higher second-

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ary school curriculum as a long-term measure to enhance access to law for all. A good model is the People's Republic of China, which constitutionally⁶⁸ and statutorily⁶⁹ provides for legal and human rights education to its citizens.

In Mongolia, legal education is introduced at the secondary school level where the constitutional concepts of civil rights and duties and freedom are discussed.⁷⁰ For the upper secondary level, legal education is one of the four compulsory components of social science.⁷¹

If "the main responsibility and goal of ... the education system is to create awareness among all sections of people about the requirements of life and to help develop an ability to solve various problems,"⁷² legal education in the primary, secondary, and higher secondary levels must be provided. After all, Article 17 of *The Constitution of the People's Republic of Bangladesh* mandates that: "The state shall adopt effective measures for the purpose of:

- (a) establishing a uniform, mass-oriented, and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law;

⁶⁸ Constitution., Art. 24. "The State strengthens the building of socialist spiritual civilization through spreading education in high ideals and morality, general education and education in discipline and the legal system, and through promoting the formulation and observance of rules of conduct and common pledges by different sections of the people in urban and rural areas...."

⁶⁹ Education Law of the People's Republic of China (1995), Art. 6. "The State shall conduct education among education receivers in patriotism, collectivism and socialism as well as in ideals, ethics, discipline, legality, national defence and ethnic unity."

Law on the Protection of Minors (1991), Art. 3. "The State, society, schools and families shall educate minors in ideals, morality, culture, discipline and legal system as well as in patriotism, collectivism, internationalism and communism, foster among them the social ethics of loving the motherland, the people, labour, science and socialism, and fight against the corrosive influences of bourgeois, feudal and other decadent ideologies."

Law on the Prevention of Juvenile Delinquency (1999), Art. 6. "We shall intensify juvenile education on ideals, morals, the legal system, patriotism, collectivism, and socialism. Juveniles who are of the age for compulsory education shall be educated on crime prevention while receiving compulsory education. The purpose of educating juveniles about crime prevention is to strengthen the concept of legal system among juveniles, so that the latter shall understand how law violation and criminal behaviour can harm individuals, families, and society; understand the legal responsibility of law violation and criminal behaviour; and thus foster an awareness of observing discipline and law and preventing law violation and crimes."

Law on the Prevention of Juvenile Delinquency (1999), Art. 9. "Schools shall employ teachers who specialize or work part time in education on the legal system. Schools may employ legal instructors from outside the schools according to requirements."

⁷⁰ Narangerel Rinchin. 2000. Mongolia: Human Rights Education in Schools. In *Human Rights Education in Asian Schools*, vol. 3. Osaka, Japan: Asia Pacific Human Rights Information Centre, p. 17.

⁷¹ Social science covers four main topics: politics, economics, the legislative process, and philosophy.

- (b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs⁷³

Conclusion

Access to law enhances the improved functioning of democratic institutions. Statutes are the result of a democratic process and as such, their publication is mandatory. Corollary to a right of effective access to law is a duty on the part of the government to publicize the law.⁷⁴ Ensuring access to law is crucial to state entities; it helps such entities gain institutional and regulatory efficiency.

Law at times does not work by exercise of force but by information transfer: “communication of what’s expected, what’s forbidden, what’s allowable, or what are the consequences of acting in certain ways.”⁷⁵ In other words, compliance with the law increases when the law is easily known. A law that is not known to exist cannot serve the useful purpose of being a guide to enhance required conduct.⁷⁶ Therefore, providing information about the law to those who are regulated by that law will enhance the efficiency of the regulatory effort and may decrease administrative and enforcement costs.

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⁷² *Qudrat-E-Khuda Education Commission Report of 1974* (Bangladesh).

⁷³ Article 17, Constitution of the People's Republic of Bangladesh.

⁷⁴ Joseph E Murphy. 1982. The Duty of the Government to Make the Law Known. *Fordham Law Review* 51, p. 255.

⁷⁵ Marc Galanter. 1985. The Legal Malaise: Or Justice Observed. *Law and Society Review* 19, p. 537.

⁷⁶ Joseph E Murphy. 1983. Effective Access to the Law. *Journal of Legislation* 10, p. 313.