

Right to Information Legislation in Khyber

Pakhtunkhwa Province, Pakistan

“A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both”

(James Madison)

Global Context on Right to Information Legislation

It is increasingly being recognised that governments hold information not for themselves but, rather, on behalf of the public and that, as a result, public bodies should provide access to that information.

As of 2013, nearly 100 countries have laws on the books granting individuals a general right to access information held by public bodies, and imposing an obligation on public bodies to proactively disclose key types of information. In 1990, only 13 countries had such laws. Furthermore, most of the international financial institutions, including the World Bank and all of the regional development banks, as well as a growing number of other inter-governmental organisations, have adopted information disclosure policies (ARTICE 19).

Why Laws on Right to Access Information are Important?

In its very first session in 1946, the UN General Assembly adopted Resolution 59(I), stating, “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.”

Right to access information laws

reflect the fundamental premise that government is supposed to serve the people. There are, however, a number of more practical ideas underlying the recent widespread recognition of the right to information. Right to information is considered as “the oxygen of democracy” (ARTICE 19). Information is essential to democracy at a number of levels. The ability of individuals to participate effectively in decision-making that affects them depends, in obvious ways, on information. Elections can never meet their goal described under international law as ensuring that “[t]he will of the people shall be the basis of the authority of government” if the electorate lacks access to information which enables it to form an opinion.

Democracy is also about accountability and good governance. The public has a right to scrutinise the actions of its leaders and to engage in full and open debate about those actions. It must be able to assess the performance of the government and this depends on access to information about the state of the economy, social systems and other matters of public concern. One of the most effective ways of addressing poor governance, particularly over time, is through open, informed debate.

Right to access information is also a

key tool in combating corruption and wrongdoing. As U.S. Supreme Court Justice Louis Brandeis famously noted, “A little sunlight is the best disinfectant.”

Access to information laws also serve a number of important social goals. The right to access one's personal information, for example, is part of respect for basic human dignity, but it can also be central to effective personal decision-making. Access to medical records, for example, can help individuals make decisions about treatment, financial planning and so on.

Finally, access to information laws can help facilitate effective business practices. Commercial requesters are, in many countries, one of the most significant user groups of such laws. Public bodies hold a vast amount of information of all kinds, much of which relates to economic matters and which can be very useful for enterprises. The potential for increasing the effectiveness of business is an important benefit of access to information laws, and helps answer the concerns of some governments about the cost of implementing such legislation.

Right to Information Legislation in Pakistan

Under the 18th Amendment in Constitution of Pakistan in 2010, Article 19-A has been added to explicitly provide for right to

information. Article 19-A of the constitution states:

‘Right to Information: Every Citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law’

Even before 18th amendment, the two main political parties of Pakistan, Pakistan Peoples Party (PPP) and Pakistan Muslim League Nawaz (PML-N) expressed their pledge for right to information legislation through the Charter of Democracy signed on May 14, 2006. Article 14 of the Charter of Democracy states:

‘The press and electronic media will be allowed its independence. Access to information will become law after parliamentary debate and public scrutiny’.

The Supreme Court of Pakistan has on many occasions expressively emphasized on citizens' right to access information:

“...the Government is the major source of information, which in a democratic setup, it is duty bound to disseminate for public awareness, to enable them to adjudge the conduct of those who are in office and the wisdom and follies of their policies” [PLD (Pakistan Legal Digest) 1993 SC (Supreme Court of Pakistan)746].

“It is an unfortunate facet of our history that during the 64 years since Pakistan's independence in 1947, the people of Pakistan have been, at times, disserved by a non-inclusive governance paradigm where information critical to them has been withheld from them....the people in quest of the truth have mostly been left with conjectures, rumours and half-truths.

Concealment of information has, in turn, led to a distorted history of the country and to a destabilising division in the polity...At critical times in history, the legislature, by inserting Article 19A through the 18th Constitutional Amendment, has empowered the citizens of Pakistan by making access to information a justiciable right of the people rather than being largesse bestowed by the state at its whims....Article 19A, has enabled every citizen to become independent of power centres which, heretofore, have been in control of information on matters of public importance.” (Remarks of Supreme Court Judget, Justice Jawwad S. Khawaja, on Constitutional Petitions 77 to 85/89 of 2011 on January 12, 2012).

The 18th amendment has necessitated a new effective right to information laws at the federal and provincial levels. Pakistan became the first country in South Asia to have freedom of information law,

when Freedom of Information (FOI) Ordinance was promulgated in 2002. Balochistan and Sindh provinces adopted the same Ordinance by enacting Freedom of Information Acts in 2005 and 2006 respectively. However, these laws do not guarantee right to access information held by public bodies. In these laws, the list of exemption is very huge.

Furthermore, there is no strong mechanism for citizens to get redress if the information request is denied, while the procedure to file information request is very complicated. The Punjab cabinet has approved the Freedom of Information Bill in March 2013. The bill, though needs further improvements, is still more effective than the existing Freedom of Information Laws in Pakistan.

Need for Right to Information Legislation in Khyber Pakhtunkhwa

There is no specific law in Khyber Pakhtunkhwa (KP) which can ensure citizens' constitutional right to access information. However, right to information discourse is not new in KP. In 2004, the two then provincial ministers (Mr. Haji Ayaz Khan and Mr. Sardar Mohammad Idrees) pledged to enact FOI law (Dawn Newspaper, August 11, 2004). In 2006, the then provincial information minister, Mr. Asif Iqbal

Daudzai, pledged that provincial government would soon table FOI bill in provincial assembly (Daily Times, May 21, 2006). In 2008, Mian Ifthikhar Hussain (provincial minister for information) declared FOI as 'key to the progress of democracy' (KP official website). However, no serious efforts were made to enact such law in KP.

In the absence of RTI law, it is very challenging to access information held by public bodies in KP. Centre for Governance and Public Accountability (CGPA) filed information requests on January 5-6, 2013 to concerned District Officers, Finance and Planning (DOs-F&P) of all 25 districts of KP. The DOs-F&P were requested to provide copies of district health and education budget documents of fiscal year 2011-2012 and 2012-2013.

However, of total 25 district officers (finance and planning) only two (Chitral and Upper Dir) provided the information, while CGPA did not get any information from DOs-F&P of remaining 23 districts of KP (Daily Dawn, February 28, 2013). CGPA holds that delaying the enactment of Right to Information Act in KP is tantamount to violation of basic constitutional right of citizens.

Main Hurdles in way of Effective Right to Information Legislation in KP

CGPA believes that following are the main bottlenecks in the way of effective RTI legislation in KP

1. Bureaucratic Hurdles

Bureaucracy considers the information holds by their offices as their personal property, and strongly pre-empt any attempt by citizens to access information. The culture of secrecy runs deep into the corridors of government departments. This trend can partly be attributed to pre-partition colonial legacy. There are various colonial laws which are in direct conflict to the Article 19-A of the constitution, e.g. Official Secret Act 1923 which is often quoted when information is sought from government bodies.

2. Worsened Law and Order Situation/War on Terrorism

Worsened law and order situation is often forwarded as another false pretext for not enacting any right to information law in KP. It is often stated that such law would put the police and other service providers, who are already under intense pressure, under more work-load by responding to information requests. However, this analogy missed the basic premises that all these institutions are run by citizens' tax money.

More importantly, while rising trend in militancy and weak service

delivery has greatly weakened the democratic institutions in KP and citizens' trust on state's ability to protect their life and property has deteriorated, the culture of secrecy is in no way arresting this trend. Rather, ensuring citizens right to access information can help reverse the trend, by paving way for inclusive governance and bridging citizen state divide. RTI is an effective tool to strengthen citizens' voice on government performance, and to increase citizens' stake in functioning of state institutions.

Furthermore, right to access information can also help improve social service delivery. Weak social service delivery in KP is a driver of fragility and conflict. Improved social sector service delivery, on the other hand, facilitates legitimacy of government and mitigates conflicts. In post conflict environment, improved social service delivery is one of the most effective tools for mitigating social exclusion. Long-term social and political changes supporting good governance have more chance of success if linked to reforms in service delivery with tangible results. When these improvements are visible to the public, they can lead to pressure for wider and more systemic reforms and protection of human rights.

3. Weak Political Will

The political leaders of different

political parties did not have the will to legislate RTI Act in Khyber Pakhtunkhwa province. Most of the promises for RTI legislation are limited to political rhetoric, while no serious effort on part of political leadership is made in this regard.

4. Weak Civil Society Demand

Civil society in KP has not yet conveyed their strong demand to the corridor of legislators for such RTI legislation. However, it is time now for civil society to demand for strong and effective RTI Act in Khyber Pakhtunkhwa province of Pakistan.

Principles for Effective Right to Information Legislation

Following are considered to be the key principals for effective right to information legislation, and KP legislators should consider them for RTI legislation:

Principle 1. Maximum Disclosure
Freedom of information legislation should be guided by the principle of maximum disclosure.

Principle 2. Obligation to Publish
Public bodies should be under an obligation to publish key information

Principle 3. Promotion of Open Government
Public bodies must actively promote open government.

Principle 4. Limited Scope of Exceptions

Exceptions to the right to access information should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests.

Principle 5. Processes to Facilitate Access

Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.

Principle 6. Costs

Individuals should not be deterred from making requests for information by excessive costs.

Principle 7. Open Meetings

Meetings of public bodies should be open to the public.

Principle 8. Disclosure Takes Precedence

Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.

Principle 9. Protection for Whistleblowers

Individuals who release information on wrongdoing whistle blowers must be protected.

Centre for Governance and Public Accountability (CGPA) is not for profit, non-governmental, civil society organization. CGPA strives for inclusive development and promotion of peace through right based and governance focused approaches. CGPA is registered under Society Registration Act XXI of 1860'.

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