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## Freedom of Information in Pakistan: Social and Legal Perspective

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**Abstract:** *Over Seventy years have passed since independence, but the colonial system of governance, which excluded public participation in the formulation and implementation of public policy, continues to exist in Pakistan. Citizens have lost confidence in the system and have developed an attitude of apathy towards issues of larger public concern. Recently the inclusion of Article 19(a) recognizing freedom of information in the Constitution as a fundamental right is a step in the right direction; however, mere inclusion in the list of fundamental rights will not serve any purpose unless the practice of this right is facilitated through the development of a system and removal of hindrances in the free flow of information. An effective FOI regime is a need of time. In order to conduct this research, qualitative research methodology was applied, and the instant article was part of the author's PhD research.*

**Key Words:** Article 19 A of the Constitution of Pakistan, Expression, Freedom of Information, Pakistan.

### Introduction

Although Pakistan was the first country in the subcontinent to have adopted the law, its performance in implementing the FOI Ordinance 2002 was considered to be the weakest in the region. Many Pakistani observers see the FOI Ordinance 2002 to be flawed both in terms of concept and content. The biggest flaw is that it exempts several important types of information from the public. Moreover, the procedure is so cumbersome that many applicants are said to lose interest midway and give up their quest. The top-down manner in which the FOI Ordinance was promulgated in Pakistan and the fact that this was done by a military ruler ostensibly to meet a donor requirement, as well as many shortcomings in the law, have led to civil society rejection of it. This, together with the lack of government interest, has meant that ordinary citizens do not know about the law or see it as relevant to their concerns. The extremely small number of FOI requests submitted since 2002 is a clear testimony to this. In recent years efforts have been made by individual lawmakers to promote the adoption of a new law by the Parliament ([Challenges of Right to Information in South Asia, 2012](#)).

The Constitution of the Islamic Republic of Pakistan, 1973 provided a comprehensive list of rights

in its chapter I (Article 8–28), including the right to freedom of speech and expression. However, the right to information was inserted under the 18th Constitutional Amendment in 2010 ([18<sup>th</sup> Amendment Act, 2010](#)).

Pakistan's legislative history reflects that law-making has not always been fueled by public interest. In fact, law-making has been subject to certain expediencies and a variety of other internal or external factors ranging from inadequate knowledge of an issue, lack of interest, weak democratic institutions, political compromises, and protecting vested interests. More significant has been the pressure of international financial institutions, which include the World Bank and IMF. Consequently, undesirable policies and laws have been introduced or enacted that hinder the process of good governance. The fate of FOI legislation could not find any exception and was marked with the same expedience and practicality ([From RTI to FOI: Some Lessons and Insights, 2014](#)).

Pakistan being the first country in South Asia to enact freedom of information laws in 2002, started its journey in the 1990s and is still on its way toward its final destination. In the last decade number of legal and procedural deficiencies in an effective RTI regime have been highlighted, including the scope exemptions and exceptions review processes, and so on. Private

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member bills were presented in the Assembly demanding the fresh, comprehensive RTI laws and addressing the shortcomings of existing regimes in 2004, 2008, 2010, and 2011. Recognizing the recent international trends towards a more open and transparent system of governments, several attempts have been made in order to promote transparency and accountability in Pakistan. A brief account of these efforts is given under two pre and post-18<sup>th</sup> amendment article 19A stages.

### **Legislative Developments on Freedom of Information in Pakistan**

The work on the right to information in Pakistan dates back to 1990 when Professor Khurshid Ahmed, Naib Amir of Jamaat-i-Islami, introduced a Private Members Bill in the Senate in this regard. However, the Bill could not attract the attention of the House. Later in the 1990s, the government of former Prime Minister Benazir Bhutto established an anti-corruption committee, headed by late Malik Qasim, to look into the causes of corruption and make recommendations. One of the key recommendations of the committee was an enactment of a freedom of information act. Nevertheless, the caretaker government of Malik Miraj Khalid promulgated an ordinance on freedom of information in 1996-97. The Ordinance promulgated by the caretaker government of Malik Miraj Khalid lapsed, as the elected government of Nawaz Sharif (1997-1999) did not present it before the parliament for enactment ([Challenges of Right to Information in South Asia, 2012](#)).

The Freedom of Information (FOI) Ordinance, 2002 was the first legal instrument which recognized the freedom of access to information as a statutory right. The FOI Ordinance was promulgated by President General Musharraf in October 2002 and is applicable to the Federal government only. Similar laws (replicas of the Freedom of Information Ordinance, 2002) were also promulgated/enacted in the provinces of Balochistan (2005) and Sindh (2006). Being limited in scope and application, complicated in procedural aspects and restricted in providing access to information, these laws were termed ineffective by civil society groups. Therefore, when the work on the Eighteenth Amendment of the Constitution started, the civil society campaigned for recognition of the Right To Information (RTI) as a constitutional right and Article 19A was added to the Constitution of Pakistan in 2010 ([From RTI to FOI: Some Lessons and Insights, 2014](#)).

The inclusion of Article 19A changed the paradigm and debate on access to information in the

country. Previously, the entire debate revolved around the freedom of information. As a result of Article 19A, the discourse of information moved to "right to information". Article 19A requires further legislation to detail the process of access to information and list down "exempted information". Therefore, all provinces, as well as the federal government, are supposed to enact right-to-information laws for their respective jurisdictions. In response to the requirement of this Article, KP and Punjab introduced the progressive and robust right-to-information laws in 2013. The laws are known as the Khyber Pakhtunkhwa Right to Information Act 2013 and the Punjab Transparency and Right to Information Act 2013.

As a matter of fact, is that most of the FOI laws were introduced reluctantly as not a political will but rather a political compulsion, and Pakistan is no exception. There has been consciousness within political parties regarding the impact of right-to-information legislation in restricting corruption, but these parties have been more active and voiced the need for RTI enactment while in opposition and less than willing to act out these laws while in power. In KPK, the Pakistan Tehreek e Insaaf was the only exception that not only showed political will but rather enacted FOI legislation when it came to power. In the context of Pakistani legislative history, there are two sets or generations of RTI laws: the Freedom of Information Ordinance 2002, replicated in Baluchistan and Sindh, belongs to the first generation of RTI laws. These are mostly ineffective laws and were enacted as a part of the demand attached to the Asian Development Bank loan (to get instalments of the loan). These laws failed to provide the desired ends or standards of the right to information and without any relevance or partaking the input from civil society groups working for transparency and right to information. On the other hand, KPK Right to Information Act 2013 and the Punjab Transparency and Right to Information Act 2013 are considered the second-generation of RTI laws as highly effective laws based on significant input from civil society groups while enactment in 2013 (Right to Information legislation in Pakistan, 2016). The most recent effort by the federal government in this regard was enacting the Right of Access to Information Act, 2017. FOI commissions were also established, but to date, the law remains under-utilized and is relatively unknown to the ordinary citizen.

The Centre for Peace and Development Initiative (CPDI) has developed a score sheet to gauge the weaknesses and strengths of right-to-information

laws in Pakistan. According to this Score-Sheet, RTI laws of Punjab and Khyber Pakhtunkhwa (KP) have scored 140 and 125, respectively, out of total of 145 marks. Federal, Sindh and Baluchistan FOI laws could get only 32/145 marks according to this Score-Sheet. Moreover, the Punjab and KP laws are guided by the principle of maximum disclosure. These laws draw exceptions clearly and narrowly and provide easy and cost-effective access to information. These laws provide dedicated and independent information commissions to deal with the complaints of information requesters. Furthermore, the laws provide a penalty for non-compliance with orders of the information commissions. Under the law, all provincial public bodies, as defined in the laws, are duty bound to publish their annual reports. Similarly, these laws do not require a description of specific interests when information is requested. These laws also provide for inspection of the documents. Having an overriding effect, these laws take precedence over all other laws contradicting their aim ([Alam, 2015](#)).

### **Freedom of information and lack of transparency in Pakistan**

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Pakistan is one of the top ten most populous countries in the world, whereby political parties and parliamentary institutions have remained weak because of a civil-military bureaucracy that has governed Pakistan for most of the time since its independence. Public apathy is the cause and result of an exclusive, non-participatory and non-transparent government system, where a culture of secrecy and uncontrolled corruption prevails. The underlying factors are a large number of restrictive laws, rules and government instructions. It is widely accepted among the policymakers in Pakistan that the unfortunate state of governance and common corruption in government activities is mostly owing to a lack of transparency and access to information when it comes to public affairs, which hamper the ability of citizens, civil society groups and public representatives to effectively scrutinize the performance of public institutions leading to arbitrary and non-participatory decision-making, inefficient project execution and unchecked financial corruption. It further contributes to the upholding of excessive bureaucratic controls and non-functioning democratic institutions ([Ali, 2006](#)).

Owing to the serious criticism of secrecy and corruption, in the recent past, the Government of Pakistan, during its military government, enacted certain important laws apparently aiming promotion of transparency and access to information, including

the [Local Government Ordinance in 2001 \(Local Government Ordinance, 2001\)](#), a significant step towards transparency and public participation in the functioning of Unions, Tehsil and District levels. Further, in 2002 Freedom of information Ordinance (though subject to a large number of exclusions and exemptions weak to make citizens' RTI a reality) was also enacted as the first FOI law at the national level in South Asia. Unfortunately, it proved very ineffective as it was not based on any scientific research into public department functioning, planned hurriedly and executed without much consideration and consultation. Further policy initiatives excluded civil society groups from the design process and could not provide an effective framework wherein persons could engage with public departments and make use of the enabling provisions in the new laws ([Local Government Ordinance, 2001](#)).

### **Factors Obstructing transparency and Freedom of Information in Pakistan**

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The current state of public accountability laws and practice in Pakistan does not provide a clear picture as to their formal implementation having various restrictions. The political interference in this regard cannot be ignored as it is one of the most influencing factors for the effective implementation of existing law. Furthermore, the infrastructure and record keeping by different departments is another serious issue in this regard. Another significant issue is the existing laws inconsistent with the right to know, and other factors impeding the free flow of information for better governance through public accountability are briefly highlighted below.

#### **Laws Requiring Secrecy**

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Official reluctance to disclose information and records to citizens can be attributed to a large number of laws, rules, and regulations requiring secrecy for official information may include ([Ali, 2006](#)):

#### **The Constitution of Pakistan 1973**

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In the 1973 Constitution, the rights of free expression and freedom of information are subject to exclusion on the grounds of "public order, security, and defence, the glory of Islam and subject to restrictions imposed by law (Articles 8 and 19 of [the Constitution of Pakistan, 1973](#)). The exclusions are so broad that they can easily be utilized to block information and defeat the intent of the right to information.

### **Official Secrets Act, 1923**

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Several laws on the statute books, dating back to the colonial times, protect and promote this culture of secrecy by prescribing criminal penalties for those who leak or obtain the so-called classified information, but no elaborate criterion of classification exists at all. It does not provide any definition of official secrets and hence, leaves it to the government officials to arbitrarily decide what is secret and what is open for public scrutiny. Consequently, even the information of ordinary nature is kept secret under one pretext or the other. Under Article 5 of the Act, even an individual who is found in possession of official information can be prosecuted, which leaves a lot of room for abuse because the official secrets have not been clearly defined ([Ali, 2006](#)).

### **Qanoon-e-Shahadat Order (Law of Evidence), 1984**

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Various provisions of [the Qanoon-e-Shahadat Order \(Law of Evidence\) 1984](#) also control citizens' right to information. Articles 6 and 7 of the Order are used to restrict the free flow of information. It may, however, be noted that in the case ([Ms. Benazir Bhutto v. Federation of Pakistan, 1989](#)), the Supreme Court of Pakistan held that the privilege claimed under Article 6 & 7 of the Order does not give absolute power to government officials to withhold or disclose records. Hence, as a principle, 'public interest' is to be finally determined by courts. However, that allows significant power at the disposal of public officials to block the free flow of information and requires definitions and procedures to balance the requirements of public interest and flow of information.

### **The Security of Pakistan Act, 1952**

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Under section 11 of the Act, the Federal Government can require an editor, publisher or printer to disclose the name of a confidential source to forbid the publication, sale or distribution of a document and to forfeit the same if it is of the opinion that the document contains matter likely to negatively affect the defence, external affairs or security of Pakistan. To this end, any police officer may be authorized to take a search and seizure operation. The act further empowers the Federal and Provincial governments to impose a prior censorship regime regarding "any matter relating to a particular subject or class of subjects affecting the defence, the external affairs or the security of Pakistan". No matter disallowed by the censor can be published; the censor has up to 72 hours to give his or her judgment. Appeals may be made within seven days to

the government, which must assign the case to a district judge. Breach of these provisions may lead to imprisonment (Global Trends on The Right to Information: A survey of ([South Asia, 2001](#))).

### **The Maintenance of Public Order Ordinance, 1960**

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This is perhaps the most draconian Pakistani law in relation to the media, giving the authorities all the extraordinary powers available under the Security Act and more. It empowers the government or a district magistrate, if "satisfied that such action is necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of public order", to pass an order:

- prohibiting the publication of any material;
- requiring a publisher to publish material supplied by the government within the time and in a manner prescribed by it;
- imposing prior censorship;
- closing down a publication or a press for a specified period;
- requiring the disclosure of a confidential source; and/or
- Requiring delivery of relevant material.
- Provincial governments are further empowered to prohibit the entry of newspapers into a province and to order a search for material. The Ordinance also empowers a district magistrate to order preventive detention of citizens, and journalists have been among those detained under this law.

### **The Pakistan Penal Code**

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A number of provisions in the Penal Code unduly restrict freedom of expression and the free flow of information. Many are extremely broad in scope, while others include undefined, subjective terms whose interpretation is effectively left to the authorities. Some do not require proof of intent, contrary to basic rules of criminal due process. Section 123-A criminalizes anything which is prejudicial to the safety or ideology of Pakistan or which amounts to 'abuse' of Pakistan. It is so widely worded that it can be applied to anyone giving out information which presents the "ideology of Pakistan" (a concept which has never been satisfactorily defined) in a way which displeases the authorities. Similarly, the scope of the notion of 'abusing' Pakistan can only be guessed at. This section is clearly open to misuse and violates the right to freedom of expression.

Section 124-A deals with sedition and is also extremely broad. It can be invoked for mere criticism of the government and has been applied to journalists. Section 153-B penalizes the incitement of students or others to take part in political activity which disturbs or is likely to disturb public order.

Section 292, which prohibits the sale, public exhibition and even possession of obscene books, is extremely broad and vague. An explanation exempts material "used *bona fide* for religious purposes", but the exemption does not extend to artistic works. Since the law does not define obscenity, this term is, in practice, left to subjective interpretation by the authorities (Global Trends on The Right to Information: A survey of South [Asia, 2001](#)).

### Government Servants' (Conduct) Rules, 1964

Similarly, certain legal provisions also restrict government servants in terms of disclosure of official information, for instance, under rule 18 of Government Servants (Conduct) rules.

### A Weak Legal and institutional framework for freedom of information

The legal and institutional framework for freedom of information is weak, though gradually improving in the last decade, as discussed earlier, but still cannot ensure prompt, proficient and effective realization of citizens' rights to information. Despite the fact that the right to information is a constitutional right, under Article 19A after the 18<sup>th</sup> amendment and information is a pre-requisite for the effective exercising of freedom of speech and expression. Recently the Provincial government, following the KPK Freedom of information initiative, has promulgated their law which is a step forward to a brighter future, but the federal government has not taken any action in this regard yet.

### The existing mechanism for transparency and Access to information

Secrecy is the norm, though, but some existing laws and rules provide for certain mechanisms or procedures to be followed whereby some information can be officially shared with the public, although these mechanisms are not fully operational, for a variety of reasons in most of the cases. These include the following:

- i) Official publications and Annual Reports.
- ii) Gazette Notifications
- iii) Ministry Spokesperson
- iv) Parliamentary Questions
- v) The parliamentary committee proceedings

- vi) Court Proceedings
- vii) Websites(official)
- viii) Print and Electronic Media [\(Ali, 2006\)](#)

### Lack of Political Apathy and Public accountability

Political apathy and indifference in Pakistan have become a cultural norm largely owing to the lack of easy access to information and official discouragement. To ensure transparency and appropriate use of public funds, citizens need to have information about various public departments, their activities and the way they spend public money meant for public welfare projects. The secretive culture prevalent in Pakistan largely explains people's mistrust of state institutions and lack of participation in formal economic activities (Freedom of Information, [Consumer Rights Commission of Pakistan](#)).

It is surprising that even the reports of various committees and commissions on reforms in areas such as policing, education and corruption are treated as confidential and, therefore, inaccessible to citizens. Effective freedom of information regime, therefore, would also require intervention through the law to inculcate a culture of questioning and accountability amongst the citizenry.

### Poorly Regulated Media

Print and electronic media represent an effective tool for the dissemination of information. However, at this stage, Pakistan's media suffers on two fronts. On the one hand, are laws and regulations which remain on the statute book which are colonial in nature and are exclusionary on the grounds of "public interest," "defence," and "glory of Islam." On the other hand, the media regulation has not kept pace with technological advances, which is rendering the difference between information and propaganda difficult. Also, laws need to be upgraded to safeguard the citizens from the excesses of media, which can create immense pressure on the working of the state and justice system.

Journalists and media practitioners do not have any legal right to get information except through their informal connections with the bureaucracy and the ruling elite. In the absence of formal-legal arrangements for access to information, a lot of time, energy and resources of media, concerned citizens and civil society organizations are wasted in obtaining access to information through informal means and arrangements. Some argue that information illegally or informally acquired cannot be used for legal

purposes. A freedom of information regime is therefore essential to overcome this shortcoming.

### **Non-indexation and poor maintenance of public record**

Poor preservation of official public records, which makes maintenance of data as well as its retrieval, a complicated job, if and when required ([Ali, 2006](#)). Further, the lacking focus on computerization of records, indexation, networking and availability of computer systems and relevant resources and other concerns about relevant infrastructure to make sure prompt or active data management and the handling of citizens' requests as regard to access to information.

### **Official Attitude towards Requestor**

The information requests are not generally taken seriously, and the official responses vary from person to person. These hindering or obstructive attitudes can be for different reasons like the generally prevalent culture of secrecy, sometimes lack clarity regarding rules, procedures, and government policy can be an issue, or as regards the covering up of inefficiencies and wrong-doings and some time can even be official arrogance that leads to members of the public, especially the disadvantaged, being discouraged from asking questions. To a lesser but relevant point, officials' concerns are about increasing their workload if they have to respond to questions and information requests from members of the public.

Most recently, a long-awaited decision of parliament was finalized in October. Right of Access to Information Act 2017 has been promulgated, a step in the right direction towards a flourishing regime in Pakistan. Apparently, a good piece of legislation but relevant issues of implementation will remain a hurdle unless taken some prompt and serious steps in this regard. The conflicting laws with FOI need to be interpreted in such a way that FOI may be given preference so that uniformity and clarity can be achieved. Policy reforms are also required for better implementation of FOI to cope with the level of corruption and to target transparency and improved governance.

### **Conclusions**

A historical review of legislation in Pakistan presents that law-making has not always been done in the context of public interest; rather, the legislation remained the area of expediencies and a number of other factors like democratic institutional failures,

political compromises, lack of interest, lack of required knowledge or expertise on an issue and worse of all protection of vested interest. On the other side, the external pressure of International Financial institutions like IMF and World Bank is also an important contributor to the undesirable policies and legislation that have been introduced or enacted, resulting in poor governance and hindering transparency, of course affecting the FOI regime.

FOI 2002 though deficient in many aspects but definitely a significant positive development towards a cultural shift from secrecy to a more open approach. Where once the minimum access to the official record by a citizen was official discretion, now citizens can demand information, and In case of denial, related departments have to justify the refusal of information requests. Of course, such efforts changed the concept of freedom into a right to access information from public bodies.

The 18th Constitutional Amendment to [the Constitution of Pakistan, 1973](#) in 2010, insertion of Article 19-A, totally altered the landscape of the FOI system in Pakistan. Significant accessibility has been observed on all fronts, particularly among the political groups. Further, this changed discourse also led to bringing in change in the old and basic FOI legislation in the country and accelerated the efforts to put in place better provincial RTI laws like Khyber Pakhtunkhwa and Punjab, where no such laws were in existence.

FOI/RTI is commonly referred to as oxygen for democracy. It is fundamental for transparency and good governance to enhance accountability and reduce corruption in any democratic state. To enact comprehensive and effectual laws on RTI in Pakistan, recent developments in KP and Punjab have set an example. Previously Freedom of Information Ordinance, 2002 remained applicable at the federal level, and the same was replicated in Sind and Baluchistan.

These laws have failed to serve the citizens due to inherent deficiencies and vehemently ignored international standards such as maximum disclosure of information, obligation to publish key information, promotion of open government, a short

list of exceptions, rapid and fair processes to facilitate requester, cost-effective procedure, open meetings of public bodies and whistleblowers protection. In the situation, there is a dire need to replace these outdated legislations with comprehensive and meaningful legislations at the first stage leading to the next essential steps like improving

implementation mechanisms which is a fundamental obstacle through regular engagement, trainings and capacity building of government officials that need serious attention to defeat the issues of implementation under the relevant laws.

The most important factor to be seriously focused on is the education and awareness of the citizens, along with collective effort from other stakeholders like political activists and workers, CSOs, media persons and academia, about how to use the right to information would in fact, fortify the demand side of implementation mechanism, that is a common hurdle with almost all the legislations.

Most recently, Federal legislation on FOI was enacted in the month of October 2017, which is a ray of hope for a better FOI regime in Pakistan. The prevalent situation when this Act was enacted in the political context of Pakistan history is significant as after the

decision of the Supreme Court of Pakistan in the Panama case, the FOI and its implementation have gained further importance. The debates on different forums for the information on the issue have reached the general public interest in the disclosure of information through many aspects of the situation are still controversial.

The success of the FOI system relies on a citizenry acutely aware of its right in the matter and insistent upon knowing what its government is doing. The objective of this legislation will only come to fruition when the people of Pakistan will demand the information and are willing to take action upon its refusal. This demand will come around with the active assistance of the media and the civil society organizations that can keep the citizenry reminded of their right to know.

## References

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- Asia, S. (2001). *Global Trends on the Right to Information: A Survey of South Asia*.
- Ali, M. A. (2006). *Lack of Transparency and Freedom of Information in Pakistan*. An Analysis of State Practice and Realistic Policy Options for Reform. *Open Society Institute International Policy Fellowship Program paper*.
- Alam, M. A. (2015). *Right to Information and Media Laws in Pakistan*. Islamabad: Centre for Peace and Development Initiatives CPDI.
- Challenges of Right to Information in South Asia. (2012). *Portfolio policy brief, issue 5*.
- Consumer Rights Commission of Pakistan (CRCP) From RTI to FOI: some lessons and Insights (2014). *Issue paper on RTI Legislation in Pakistan. CRCP*. <http://www.crcp.org.pk/index.php>
- Government Servants' (Conduct) Rules, (1964).
- Local Government Ordinance (2001).
- Ms. Benazir Bhutto vs. Federation of Pakistan 1989PLD SC 66
- Official Secrets Act, (1923).
- Pakistan Penal Code, (1860).
- Qanoon-e-Shahadat Order (Law of Evidence), (1984).
- Right to Information legislation in Pakistan (2016). *The Country Briefing Paper. Center for Peace and Development Initiative*.
- The Constitution of Pakistan, (1973).
- The Constitution (18<sup>th</sup> Amendment) Act (2010). Act No. X of 2010.
- The Maintenance of Public Order Ordinance, (1960).
- The Security of Pakistan Act, (1952).