

State of Transparency and Freedom of Information in Pakistan

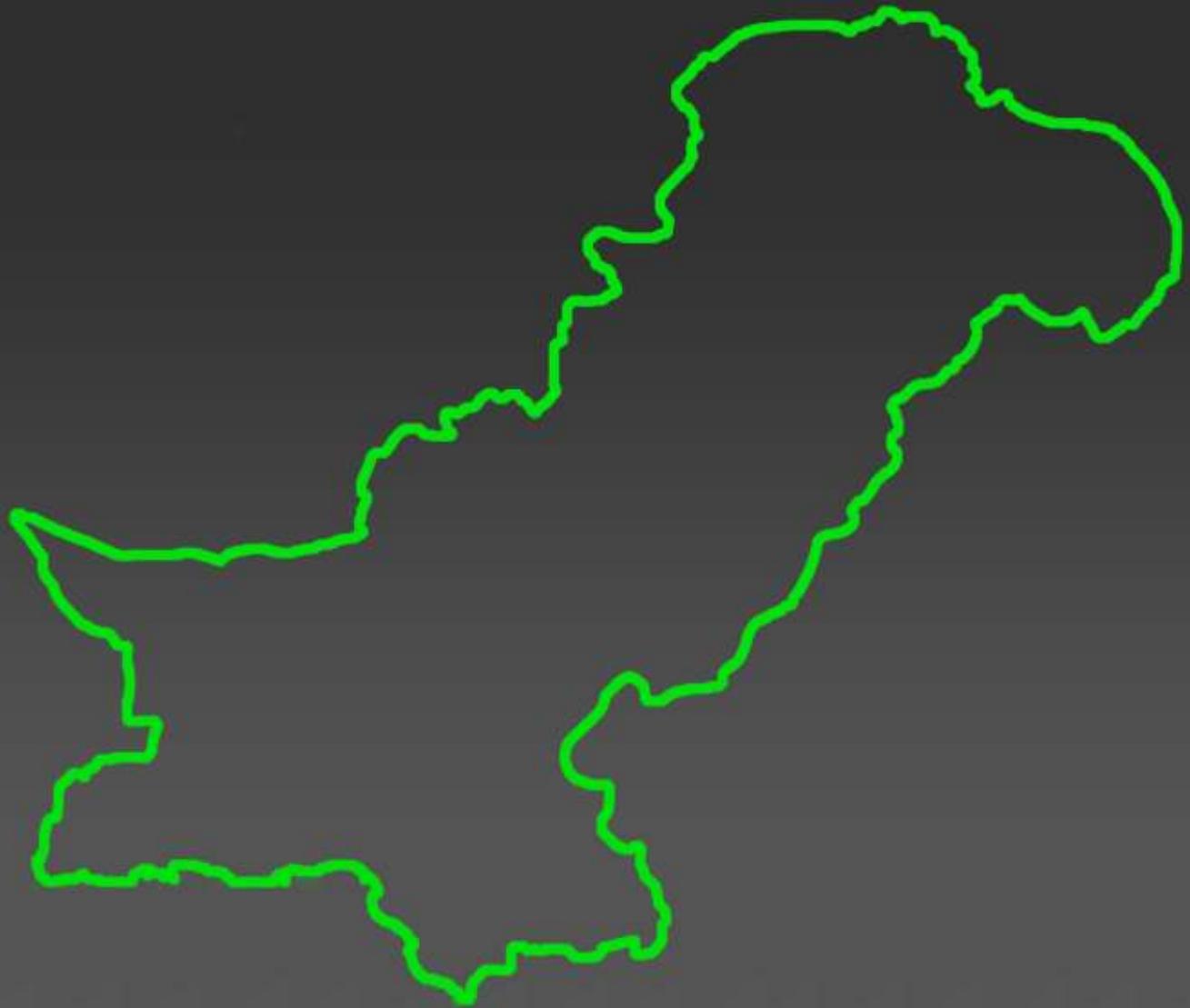


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Preface

Freedom of information is recognized as a fundamental human right, and as an effective tool to promote transparency, public participation in decision making and accountability in governance. However, in Pakistan, successive governments have either imposed restrictions or allowed the continuation of a large number of existing restrictions on information disclosure and citizens' right to know. These restrictions are often justified on the grounds of national security or public interest but, on a closer analysis, it becomes clear that the real motive is to protect vested interests, hide inefficiencies and wrong priorities, avoid public scrutiny and pre-empt accountability. The time has come when people must demand an efficient implementation of their right to know; and impress upon the government that, barring a few minimal exceptions, it will have to recognize the citizens' right to access any information or record held by the government.

Centre for Peace and Development Initiatives, Pakistan (CPDI-Pakistan) has prepared this paper with the aim of generating and informing the public debate on the importance of freedom of information and the related state of affairs in Pakistan. We hope that this modest contribution would motivate many citizens to explore deeply into the subject and become a part of civil society movement to work for the achievement of the goal of maximum transparency and public accountability in governance.

1. Introduction

Since independence, Pakistan has also been experiencing serious problems in terms of building a relationship of trust between the state and society, ensuring efficient utilization of public funds, providing effective public services, and eradicating inefficiencies and corruption in government activity. In fact, these problems have worsened over the years. For instance, out of the total 163 countries surveyed by Transparency International (TI) in 2006, Pakistan ranked at 142 with a Corruption Perception Index (CPI) score of 2.2 on a scale of 10. The CPI Score was 2.25 in 1995, which improved to 2.7 in 1998 but again declined to 2.2 in 2006¹. This shows that the existing anti-corruption strategies, which are largely based on administrative measures and prosecution and trial of corrupt officers, have failed to produce any significant results in terms of improving the public perception about the problem of corruption.

The poor state of governance and endemic corruption in government activity in Pakistan is largely attributed to lack of transparency and access to information in public affairs, which restricts the ability of citizens, civil society groups and public representatives to effectively monitor the performance of public institutions. This lack of transparency leads to arbitrary and non-participatory decision-making, inefficient project execution and rampant financial corruption in public bodies. Lack of transparency and access to information also contributes to sustaining excessive bureaucratic controls and non-functioning of democratic institutions. Over the years, this non-transparent, non-participatory and exclusive system of governance has become a subject of increasing criticism in view of its failure to deliver public goods.

In view of growing criticism of the culture of secrecy and rampant corruption, the government of Pakistan has recently enacted certain laws with the professed aim of promoting transparency and access to information in public institutions. For instance, the Local Government (LG) Ordinance 2001 makes significant provisions for greater transparency and public participation in the functioning of union, tehsil and district authorities². In addition, in October 2002, the President of Pakistan also promulgated the Freedom of Information Ordinance, which recognized citizens' right to information and records held by federal public bodies, although subject to a large number of exclusions and exemptions.

It, however, needs to be noted that the above mentioned initiatives have not proven very effective in terms of promoting transparency and access to information. It seems that it is

¹ Other countries with the CPI score in 2006 included Angola, Congo Republic, Kenya, Kyrgyzstan, Nigeria, Sierra Leone, Tajikistan and Turkmenistan. See the website of Transparency International i.e. www.transparency.org

² Refer to the Sections 42(7), 54(1), 54(2), 57, 76, 114(5) and 137 of the Punjab Local Government Ordinance 2001. See the website: www.nrb.gov.pk

largely because of twofold reasons. First of all, the policy initiatives have not been based on any scientific research into the functioning of public departments. In fact, they were hurriedly planned and executed, without allowing much time for consideration and consultations allegedly to achieve political mileage than to truly promote transparency and empower citizens by ensuring their access to information and records held by public bodies. Secondly, these policy initiatives have excluded civil society groups from the designing process, and hence do not provide effective framework wherein they could engage with public departments and make use of enabling provisions in the new laws.

Existing government policy and practice is heavily tilted towards secrecy in the government's activity. Secrecy is a norm and is practiced as a matter of policy across the board, while information disclosure remains an exception. There exist a large number of laws, which include very broad provisions to put restrictions on freedom of information. Among others, these laws include the Official Secrets Act 1923, the Scurity of Pakistan Act 1952, the Maintenance of Public Order 1960, the Quanoon-e-Shahadat (Law of Evidence) Order 1984, Defence of Pakistan Rules (Part VI) and the Pakistan Penal Code. Further restrictions on information disclosure are imposed through the Government Servants (Conduct) Rules 1964 and Establsihment Instructions issued from time to time. Even the rules of procedures and conduct of business in the national and provincial legislatures treat a vast range of information as restricted and confidential³.

In recent years, government has enacted certain laws that include provisions for transparency and access to information. These laws mostly relate to autonomous regulatory bodies, which have been established within the context of government policy aimed at deregulation and privatization. Primary purpose was not to empower people and facilitate them to effectively participate in governance by excising their citizenship rights in an informed manner. Rather, it was to build investors' confidence. Moreover, even these laws generally do not have the over-riding effect vis-a-vis other laws that promote secrecy.

There is, however, growing recognition among the top policy makers that transparency and citizens' right to information are critical for effectively combating corruption and providing good governance. Senior government officials, including the President and Prime Minister, have been repeatedly talking about the importance of transparency in government activity. The National Anti-Corruption Strategy, which has been developed by the National Accountability Bureau (NAB), also recognizes its importance as a very effective anti-corruption tool⁴.

³ Under Rule 231 of the the Rules of Procedures and Conduct of Business for the Senate of Pakistan (1988 as amended in 2006), the Secretary is declared as the custodian of all records of the Senate and Senate committees, and no record can be given out without the written permission of the Chairman of the Senate.

⁴ The National Anti-Corruption Strategy (2002). See the website: www.nab.gov.pk

Claims and public statements aside, by looking at the government priorities and practices, it becomes clear that government lacks any sincere commitment to enact comprehensive laws and implement steps whereby transparency and citizens' right to information and records held by public offices could be effectively ensured. At present, government lacks any coherent and a well-thought out policy to ensure transparency in government activity across the board. Therefore, the relevant steps implemented so far are inadequate, flawed, ineffective and with a limited focus. In almost all cases, these steps were taken not because of any serious in-house stocktaking leading to corrective actions but because of certain external pressures. For instance, FOIO 2002 was reluctantly promulgated in response to the 'policy actions' agreed with the Asian Development Bank (ADB). Lack of government's commitment to transparency is evident from the FOIO 2002, which includes too many exclusions and hence makes sure that no significant information would be accessible to citizens.

Culture of secrecy is so deeply embedded that, in many cases, even the parliamentary committees refuse to hold their meetings in the open. Relevant examples include the parliamentary committees of the Senate and the National Assembly on education, which have not held even a single meeting in the open during 2003-2007). These committees continued to hold their meetings in camera, as the members of the public or media were not allowed to observe their proceedings. It may be noted that, under the Rules, the committees are empowered to hold in-camera meetings, although the presumption is that the meetings would ordinarily be held in the open. However, the idea of open meetings is opposed on the grounds that it is difficult to hold serious deliberations in the glare of media, as the members start playing to the gallery, instead of examining matters on merit and in a spirit of cooperation. But, if this be the concern, the committees could meet in-camera when these were holding deliberations on recommendations, whereas briefings by the officials, presentations by outside experts or civil society representatives and cross-examination by members could be held in the open.

Against the above background, this paper provides an analysis of causes and mechanisms of prevailing culture of secrecy at various tiers of governance in Pakistan and, on the basis of it, makes realistic policy recommendations for reform.

2. Importance of Freedom of Information and Related Best Practices

“Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented”.

Mr. Abid Hussain, UN Special Rapporteur, 1999

Within the good governance debate, there is a growing emphasis on freedom of information as a tool to ensure transparency, public participation and accountability. It is in addition to the fact that, since mid 1940s, the right to information is widely recognized as a fundamental human right. In a democracy, it is imperative for citizens to make informed electoral choices. It has been rightly characterized as 'the oxygen for democracy'. Right to information is also crucial for exposing inefficiencies and corrupt practices, and ensuring effective public accountability and good governance. No one can deny the need and significance of right to information, except those who have a vested interest in protecting inefficiencies and corrupt practices and would like to restrict the scope and effectiveness of freedom of information laws.

During its very first session, in 1946, the UN General Assembly adopted a Resolution 59(1), which reads: “Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the UN is consecrated⁵.”

Article 19 of the Universal Declaration on Human Rights 1948 reads that: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers⁶'.

Similarly, the Article 19(2) of International Covenant on Civil and Political Rights 1966 says that '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 choice⁷'.

Constitution of Pakistan makes no direct mention of freedom of information but it includes Article 19 on freedom of speech and expression. It reads as follows: “Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or

⁵ Resolution No. 59(1) adopted on 14 December 1946 during the 1st Session of the UN General Assembly. See <http://www.un.org/documents/ga/res/1/ares1.htm>

⁶ See www.un.org/Overview/rights.html

⁷ This Covenant came into force on 23 March 1976. See <http://www.ohchr.org/english/law/ccpr.htm>

the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence⁸.” In several instances, the Supreme Court of Pakistan has held that right to information is integral to the freedom of speech and expression guaranteed under the Article 19 of the Constitution⁹. Similar view is taken by the Indian Supreme Court, which has held that right to information flows not only from the fundamental right to free speech and expression but also from the right to life and liberty.

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the touchstone of all the freedoms
to which the UN is consecrated.*

United Nations General Assembly, 1946

The UN adopted certain basic Principles on Freedom of Information in 2000. Derived from international and regional law standards, evolving state practice and general principles of law, these principles need to be kept in mind while legislating on citizens' right to access government records and information, or analysing an access to information law. These are⁸:

A. Maximum Disclosure

Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information; “information” includes all records held by a public body, regardless of the form in which they are stored.

B. Obligation to Publish

Public bodies should publish and widely disseminate documents of significant public interest, for example, on how they function and the content of decisions or policies affecting the public.

C. Promotion of Open Government

At a minimum, the law should make provision for public education and the dissemination of information regarding the right, and include mechanisms to address the problem of a culture of secrecy within government.

D. Limited Scope of Exceptions

Exceptions should be clearly and narrowly defined and should be subject to strict 'harm'

⁸ It is provided in the Part II of the Constitution of Pakistan, which is on „Fundamental Rights and Principles of Policy”. See <http://www.pakistani.org/pakistan/constitution/>

⁹ See PLD 1993 SC 473 and 746.

¹⁰ See <http://www.article19.org/pdfs/standards/righttoknow.pdf>

and 'public interest' tests. Exception should also be subject to content-specific case-by-case review and non-disclosure only permitted where it is in the public interest and release would cause serious harm.

E. Processes to Facilitate Access

Requests for information processes should be rapid and fair. There must be an independent review of any refusal to provide information. Refusal to provide information must be supported by reason/s. Law should provide a right of appeal to the courts from the independent review body.

F. Costs

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

G. Open Meetings

Meetings of public bodies should be open to the public. The law should establish a presumption that all meetings of governing bodies are open to the public.

H. Disclosure Takes Precedence

Laws that are inconsistent with the principle of maximum disclosure should be amended or repealed. Wherever possible, laws must be interpreted in a manner consistent with freedom of information legislation. Review all laws that restrict disclosure of information to bring them in line with the freedom of information law.

I. Protection for Whistleblowers

Individuals who release information on wrongdoing - whistleblowers - must be protected from any legal, administrative or employment-related sanctions.

3. Transparency and Access to Information: An Overview

“Freedom of Information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions.”

Commonwealth Expert Group on the Right to Know, 1994

All government departments and ministries currently operate in a culture of secrecy wherein officers are extremely reluctant to share information with members of the public. Culture of secrecy dates back to the British times when the primary objective of the

government was to protect interests of the colonial power. Government neither represented people, nor was it responsible nor accountable to them. As the government had no trust in people, it had ensured through laws like Official Secrets Act 1923 that most government records were inaccessible to members of the public. This culture has not changed much since 1947, as the representative institutions remained weak and bureaucracy continued to operate largely within the framework of exclusive and secretive procedures established by the British.

The persistence of culture of secrecy is largely based on a large number of laws, rules and government instructions, which can be invoked anytime to punish officers who have violated them. These laws, rules and instructions are often so broad in application that even the disclosure of any information can be treated as unlawful. This makes government officials feel significantly insecure, and compels them to usually decide in favour of secrecy even in cases where information requested is of very ordinary nature. It is also because of this that, even when government do disclose information, they mostly do it informally. They are mostly very reluctant to put a cover note under their signatures or certify that the information disclosed is authentic, except when it is specifically and clearly required under the existing laws or rules.

Reluctance of government officials is partly because of the fact that they do not have clear and updated guidelines about their conduct relating to requests for access to official information and records. While the Estacode is supposed to provide guidance relating to the terms and conditions of Federal Civil Servants, its latest edition is often not available. Therefore, government officials are themselves not fully aware of all the changes that have been introduced since the last edition of Estacode. This also compels them to err, if at all, on the side of secrecy, which remains the dominant framework for all government activity.

However, although secrecy is a norm, existing laws and rules provide certain mechanisms whereby some information could be shared with members of the public. But, in most cases, these mechanisms are not fully operational for a variety of reasons. These include the following:

3.1. Annual Reports and Other Official Publications

All government departments and ministries are required under the rules to publish annual reports and make them accessible to, among others, members of the public. These reports, however, published only in small numbers, and are not easy to obtain. Furthermore, the quality of these reports is generally very poor and hence fail to disclose any useful information. Annual reports of most departments and ministries are full of statistics, which do not make any sense in the absence appropriate analysis or explanations.

Ministries and departments can also publish additional reports on specific issues or concerns but such a practice is quite rare. Even when such reports are published, public

access to them is restricted as only a small percentage of them understand the English language.

3.2. Gazette Notifications

All laws, rules, regulations and notifications are published in the official gazettes. In theory, any member of the public can obtain copies of these gazettes. In practice, however, it is very difficult because gazettes are published in a very small number, and these are available only at few designated places in big cities. Furthermore, gazettes are also published in English and, therefore, these are beyond the comprehension of most people.

3.3. Spokesperson of the Ministry

In almost all ministries, a senior officer (i.e. Joint Secretary or Additional Secretary) acts as the spokesperson of the Ministry. The role of the spokesman, however, is very limited and often of reactionary nature. This role includes briefings on official visits, important agreements signed or explanations on various news reports related to the Ministry. Rarely, his/her office seeks to proactively give out information in public interest, especially with the aim of ensuring transparency or building public confidence in the Ministry. It may also be noted that the relevant officers are not exclusively appointed as spokespersons but performs such duties in addition to various other responsibilities assigned to them. This partly explains why spokesman is rarely seen as disclosing information or engaging media on important issues or concerns about respective ministries.

3.4. Parliamentary Questions

Members of the Senate and national and provincial assemblies have a constitutional right to ask questions and demand explanations from any government department or ministry. Exercising this right, members of the National Assembly submitted a total number of 10476 questions in 2004-05. Government, however, answered only 2101 questions. Number of questions answered in 2004-05 was significantly less than previous years i.e. 3980 in 2002-03 and 2462 in 2003-04. This huge gap between the questions asked and answers received, for whatever reasons, indicated the weakness of the parliamentary institutions in terms of asserting themselves and maintaining an effective check on the executive authority.

Over time, there also appears to be gradual decrease in the number of questions being asked in the National Assembly. In 2004-05, 10476 questions were asked as compared to 12008 in 2003-04 and 14737 in 2002-03. This decline could be for the reason that members of the National Assembly no longer trust that question-hour is an effective tool to make government responsible and accountable. It may be noted that a large number of questions are killed by the secretariat while, regarding others, complaints about long delays in providing answers or about sketchy/wrong answers abound.

Almost all questions relating to the security establishment of the country are killed without even sufficient consideration. As a result, it appears that the security establishment is completely out of parliamentary scrutiny.

Furthermore, only some of the information disclosed by the government in the parliamentary bodies is accessible to the general public through print and electronic media. Other information, although officially disclosed and accessible to members of the parliamentary bodies, is hard to access by members of the general public. It is because such information is not made available on book-shops or on official websites of concerned ministries or parliamentary bodies.

3.5. Proceedings of Parliamentary Committees

One of the responsibilities of parliamentary committees is to oversee the performance of various government departments and ministries. In performing this role, the committees can collect information and summon records of concerned government departments, and scrutinize them to assess their performance and expose any inefficiencies or wrongdoings. Hence, parliamentary committees can also be a source of information disclosure, especially to the extent the committees decide to share the information collected with general public. Information is widely shared when parliamentary committees hold most of their meetings in the open, and allow journalists to freely report on their proceedings. However, barring a few notable exceptions (e.g. Senate Committee on Human rights), most committees hold their meetings in camera and treat minutes of committee meetings as confidential, which does not help in protecting or promoting citizens' right to information.

3.6. Court Proceedings

Court proceedings and records are generally treated as public records and are accessible to all members of the public directly or through print and electronic media. Working under the constitutional authority, courts can summon any government records and make them a part of the court cases. If and when it happens, relevant government records get into the public domain and become accessible.

3.7. Websites

A large number of government departments and ministries have setup official websites to post information. Although most of these websites are useless and do not provide any significant information, there are some that are very good. It is difficult to categorize but generally the ministries and departments mandated to facilitate foreign investors have good websites. It is, therefore, not a coincidence that the ministries responsible for finance, trade and investment can be credited for having good websites; while most others do not bother to put any attention on information sharing through websites. Even the websites of the National Assembly and the Senate do not provide any useful information.

3.8. Print and Electronic Media

For decades, the print and electronic media was under severe restrictions imposed by a range of media and information related laws, and their strict arbitrary enforcement by successive governments. But this has changed recently. While restrictive media related laws remain on the statute books, they are no longer implemented that frequently to curtail freedom of media. In fact, it seems that the battle for media independence vis-a-vis government has been largely won. In the meanwhile, the reach out of media has also increased tremendously. A large number of new televisions stations, radio stations and publishing houses have opened up. This must provide a conducive condition for the realization of citizens's right to information.

There are, however, serious issues about whether media, in the prevailing circumstances, can provide timely and credible information to citizens, especially in areas they need it the most to keep an effective watch on public services and make them accountable. It is argued that it is difficult for media to play such a role in a situation where most government records are treated as confidential and are not accessible to media. Media thus remains unable to report on a large number of concerns simply because the required records are inaccessible. Even when the media is able to dig out such information, it may be partial, incomplete or it may have been made accessible at a specific time which suited certain interests in the government vis-vis others. While such information-related manipulations hard to completely eliminate, an effective right to information law should be helpful in curating their incidence.

4. Factors Obstructing Transparency and Access to Information

*“Where secrecy and mystery begins
Vice or roguery is not far off.”*

Dr. Samuel Johnson

4.1. Laws, Rules and Regulations Requiring Secrecy

The reason why most government officials are often reluctant to disclose information and records to citizens is explained by a large number of laws, rules and regulation requiring secrecy of official information. These include:

Official Secrets Act, 1923:

It does not even provide the definition of official secrets; and hence leaves it to the government officials to decide in their own discretion. 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. Under the Act, the accused persons are required to prove their innocence, while the

grounds for presuming guilt are worded in very broad terms. Given the overall culture of secrecy and non-participatory attitudes prevalent in the bureaucracy since colonial times, such discretion is often used in favour of denying citizens' access to public records. Culture of secrecy is also protected and promoted to hide inefficiencies and corrupt practices, which will be exposed if strong freedom of information legislation was implemented.

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

Certain provisions of Qanoon-e-Shahadat Order (Law of Evidence), 1984 also restrict citizens' right to information. Article 6 of the Order says that 'no one is permitted to disclose official record relating to the affairs of the state unless authorized by head of the department concerned, who shall give or withhold such information as he thinks fit'. On the other hand, Article 7 of the Order reads that no government official would be compelled to disclose information 'when he considers that the public interest would suffer by disclosure'. It may, however, be noted that in the case of Ms. Benazir Bhutto vs. Federation of Pakistan, 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 withhold or disclose records. Hence, as a principle, 'public interest' is to be finally determined by courts.

Government Servants (Conduct) Rules, 1964:

A number of restrictions have been placed on government officials in terms of disclosure of official information. For instance, the Rule 18 of Government Servants (Conduct) Rules, 1964 states as follows:-

“No Government Servant shall, except in accordance with any special or general order of the Government, communicate directly or indirectly any official document or information to a Government Servant unauthorized to receive it, or to a non-official person, or to the press.”

4.2. Inefficient Maintenance/ Non-indexation of Public Records

The Secretariat Instructions (i.e. Instruction No. 70) provide detailed guidelines for proper preservation of record. Instruction no. 53 provides details on the Inspection of the Secretariat, whereby strict compliance of the instructions is to be monitored and ensured. It is in line with the Secretariat Instructions that various ministries and departments have established a Receipt and Issue (R & I) Unit, which is open round the clock to receive and issue all the correspondence for and from the Ministry. There also exist Dak Registers, File Registers and Movement Registers from where all the record and information can be traced and tracked down. Most of these instructions are strictly complied with without much difficulty. This system has been in place for decades and is fully institutionalized.

However, the record preservation aspect has become neglected over the years. There are very few record rooms, which cannot accommodate the official records. Records are,

therefore, just dumped around wherever space is available in the ministries and departments, and are extremely difficult to retrieve when required. Even where the record-rooms are available, ministries and departments do not regularly send records to the record rooms in accordance with Secretariat Instruction nos. 77 to 80.

There also exist Secretariat Instructions for indexing of the record (Instruction no. 73), and about quarterly and annual weeding out system (Instructions nos. 75 & 76). These Instructions, however, are not strictly implemented. The result is that indexing that could have made the information retrieval system very efficient does not exist. On the other hand, offices are full of records, which should have been weeded out as per Secretariat Instructions. If effectively implemented, the weeding out system can give offices a leaner look, provide space for necessary records and improve efficiency.

Poor record-keeping sometimes creates very difficult situations for officials in government departments and ministries. In the course of interviews for this study, an official in the Ministry of Health narrated an interesting case. One of the public bodies under the Ministry of Health wanted to increase the inspection fee from some Paisas to Rs. 1000 per inspection. It is because the fee had been fixed in the 1980s and had become very low in the current circumstances. The case was examined thoroughly in the Ministry, and rates of similar inspections in other countries of the world were compared. In the end, case was presented to the Finance Division for concurrence. The Ministry of Finance desired the letter of the 1980s whereby the earlier approval had been granted. In spite of all efforts, the officials in the Health Ministry have been unable to trace that letter or file. As a result, the case of fee increase is still pending. The loss to public exchequer through possible fee increase can be estimated in millions. Many more examples of similar nature can be quoted --- sometimes involving extremely serious implications for public health and efficiency of resource utilization.

4.3. State of Equipment, Computeraization and Infrastructure

Lack of resources and equipment is also an issue which needs consideration in the process of analysing the will and capacity of government departments to disclose information and records. In this context, it must be realized that computers are not yet available to a large number of sections in different ministries and departments and, therefore, government officials still depend on the conventional methods of correspondence, file handling and record management. Even where computers are available, very few records have been computerized. Most officials do not have email addresses; nor do they use emails to interact with eachother or with members of the public. Lack of networking of computer systems within and across government departments is also a cause of inefficient data management and its prompt retrival, when required. In such a situation, most sections are just not able to cope with the job requirements and ensure compliance with various Secretariat Instructions.

Similarly, limited photocopying facilities exist in departments and ministries. For instance, the entire Ministry of Health has got only two photocopying machines, which also fail frequently and cause delays in the official work. Any additional workload involving photocopying of official records may not be easy to handle by existing infrastructure.

4.4. Obstructive Attitudes

In the existing circumstances, information requests filed by citizens are not generally taken seriously and responses of concerned government officials vary from person to person. In most cases, requesters never receive a reply as their requests are simply filed by concerned officials without informing requesters about it. In other cases, requesters do get a reply but it is only in rare cases that the requested information is also provided. It is provided only if it is of very ordinary nature and/ or it is already in the public domain. All other information is just withheld and is never provided in response to such formal requests.

A typical response to information requests is that the requested information is about official business or about government functions and, therefore, it is classified and cannot be disclosed. In cases where the concerned officials suspect that the requested information can expose some wrong-doing, they take active steps to obstruct citizens access to it by all means at their disposal. This is particularly so in relation to official records relating to, among others, procurements, contracts of public works, use of official facilities, records about the allotment of government houses and inquiry reports. In particular, records about decision-making process are kept secret and it is ensured that minutes of meetings, intermediary opinions and noting on the files are not accessible to members of the public.

Obstructive attitudes are for a variety of reasons including (a) the over all culture of secrecy, (b) lack of clarity about rules, procedures and government's policy, (c) vested interested in covering up inefficiencies and wrong-doings, and (d) official arrogances whereby members of the public, especially the disadvantaged, are discouraged from asking questions. To a lesser extent, it is because the officials are concerned about increased workload if they have to respond to questions and information requests from members of the public.

4.5. Weak Legal and Institutional Framework for Freedom of Information

At present, the legal and institutional framework for freedom of information is extremely weak, and cannot ensure prompt, efficient and cost-effective realization of citizens' right to information. It is despite the fact that the right to information is a constitutional right, as per the Supreme Court's interpretation of Article 19 whereby it held that right to information is a pre-requisite for effective exercise of freedom of speech and expression. A brief overview of laws and rules, which recognize citizens right to information is presented in

the following paragraphs:

Laws Governing the Newly Established Regulatory Bodies:

Various recently enacted laws about the establishment of regulatory bodies in Pakistan include provisions about transparency and citizens' right to information. For instance, Section 31(3)(b) of the National Electric Power Regulatory Authority (NEPRA) Act 1997 reads: 'Whilst determining the tariff the Authority shall provide an opportunity for customers and interested persons to participate meaningfully in the tariff approval process'. It can be argued that a meaningful participation of customers would be possible only if the customers would have assured access to all the relevant information.

Similarly, Section 6(b) of the Pakistan Telecommunication Authority (PTA) Act 1996 obligates the Authority to ensure that 'all of its decisions and determinations are made promptly in an open, equitable, non-discriminatory, consistent and transparent manner'. Arguably, these objectives can also be achieved only if citizens have the right to information and they participate in the relevant determinations in an effective and informed manner.

However, as it is evident from the wording of these provisions, the citizens' right to information is not clearly and firmly acknowledged. Nor do the relevant laws lay-down a detailed procedure about how citizens' can access information held by the regulatory bodies, which may be necessary for them to effectively participate in relevant determinations. While it is encouraging to note that the regulatory bodies in general have been relatively progressive in information disclosure by putting it on their websites or giving out to individual requestors, there have been instances when information was denied arbitrarily. There is an urgent need to include clear and effective provisions about right to information pending a comprehensive freedom of information legislation that is applicable across the board on all government departments including patially or fully funded autonomous agencies and private bodies.

Local Government Ordinance 2001:

The Local Government Ordinance (LGO) 2001 also includes a number of provisions about transparency and access to information in government activity. Among others, these include the following:

- a) Meetings of Zila Council shall be open to public [Section 42(7)];
- b) Public objections will be invited before the Tehsil Municipal Administration assigns or contracts out any of local government functions to any public-private, public or private organization [Section 54(2)];
- c) The functions of Union Administration include (a) to collect and maintain statistical information for socio-economic survey; and (b) to disseminate information on the matters of public interest [Section 76];

- ? It is applicable only to the public bodies of the Federal Government, and not to the provincial and district authorities. It is not applicable even to the private bodies, which are partially or substantially funded by the Federal Government;
- ? It provides 2 long lists of excluded records (Section 8) and information exempted from disclosure (Sections 14-18). These exclusions and exemptions are unjustified, arbitrary and unfair, and have been included in the Ordinance with malafide intent. The motive is obvious: to defeat the very purpose of the Ordinance;
- ? It makes no clear provisions about the form in which access to information can be requested, and will be provided by citizens. In particular, it makes no mention that citizens have the right to inspect records, take notes and identify pages for photocopying;
- ? The complaint and appeal procedure provided in the Ordinance is not very effective. For instance, complaint can be filed with the Federal Ombudsman (or Federal Tax Ombudsman) but the Ombudsman's final orders are not binding but only of recommendatory nature;
- ? It does not provide penalties against officials who may willfully delay or deny information with malafide intentions; and
- ? It does not override or abrogate other laws or their provisions, which may be inconsistent with its purpose or provisions.

Rules (2004) for the Freedom of Information Ordinance 2002:

In exercise of powers conferred by Section 25 of the Freedom of Information Ordinance 2002, the Cabinet Division notified Rules in June 2004. Purpose of these Rules was to explain on various provisions of the Ordinance and give a clear procedure for submitting and handling information requests. However, the Rules have been made in such a manner that they put further restrictions on citizens' right to information under the Ordinance. These restrictions include:

- ? Under the Rules, citizens requesting information have to pay a fee of RS. 50/- for each request with the entitlement to receive information only up to 10 pages. If the requested information exceeds 10 pages, the requester has to pay additional fee @ RS. 5/- per page. This requires substantial downward revision of the fee and photocopying charges in order to encourage citizens to make easy and cost effective use of the FOI Ordinance 2002. Existing fee/ photocopying charges are prohibitive and fail the very purpose of the Ordinance. The photocopying charge @ RS. 5/- per page is particularly unfair, as the market rate for a page is only up to RS 1. Higher fee/ photocopying charge partly explains why designated officers have received very few information requests since the notification of Rules. It may be noted that high fee and photocopy charges are in violation of Article 3 of the Ordinance, which

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Table 1: Comparison of FOI Laws in India and Pakistan

| Countries/ Provisions | India: Right to Information Act 2005 | Pakistan: Freedom of Information Ordinance 2002 |
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| Meaning of Right To Information | Right to information means the “right to information accessible under this Act which is held by or under the control of any public authority and includes the right to (i) inspection of work, documents, records; (ii) taking notes, extracts, or certified copies of documents or records; (iii) taking certified samples of materials; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device” [S. 2(j)]. | No such provision. |
| Definition of Information and Record | <p>Information means “any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data materials held in any electronic form and information relating to any private body which can be accessed by a public body under any law for the time being in force” [S. 2(f)].</p> <p>Records includes “(a) any document, manuscript and file; (b) any microfilm, microfiche and facsimile copy of a document; (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (d) any other material produced by a computer or any other device” [S. 2(i)].</p> | <p>Information not defined.</p> <p>Record means “record in any form, whether printed or in writing and includes any map, diagram, photography, film, microfilm, which is used for official purpose by the public body which holds the record”.</p> |
| Applicability/ Scope of Law | <p>Any authority or body established or institution of self-government established or constituted:</p> <ul style="list-style-type: none"> (i) by or under the Constitution; (ii) by any other law made by Parliament or a State Legislature, (iii) by notification made by an appropriate government and includes (a) any other body owned, controlled or substantially financed and (b) non-government | Any Ministry, Division or attached department of the Federal Government; Secretariat of Majlis-e-Shoora (Parliament); any office of any Board, Commission, Council, or other body established by, or under, a Federal law; courts and tribunals [S.2] |

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| | organization substantially financed; by funds provided directly or indirectly by the appropriate Government [S.2(h)]. | |
| Application on Private Bodies | Includes (a) any other body owned, controlled or substantially financed and (b) non-government organisation substantially financed; by funds provided directly or indirectly by the appropriate Government [S.2(h)]. | Not applicable on private bodies |
| Suo Motu/ Proactive Disclosure | <p>It shall be a constant endeavour of every public body to provide as much information as possible suo moto to the public at regular intervals through various means of communications. Information shall be disseminated as widely as possible and in such form and manner which is easily accessible to the public, including through notice boards, newspapers, public announcements, media, internet or any other means including inspection of offices of any public authority.</p> <p>Every public body shall publish the following information:</p> <ol style="list-style-type: none"> i) the particulars of its organization, its functions and duties; ii) the powers and duties of its officers and employees; iii) the procedures followed in the decision making process, including channels of supervision and accountability; iv) the norms set by it for the discharge of its functions; v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; vi) a statement of the categories of documents that are held by it or under its control; vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation | The acts and subordinate legislation such as rules and regulations, notifications, by-laws, manuals, orders having the force of law in Pakistan shall be duly published and made available at a reasonable price [S. 5]. |

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| | <p>of its policy or implementation thereof;</p> <p>viii) a statement of the boards, councils, committees, etc., and whether their meetings are open to public, or the minutes of such meetings are accessible to public;</p> <p>ix) a directory of its officers and employees;</p> <p>x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;</p> <p>xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;</p> <p>xii) the manner of execution of subsidy programmes, incl. the amounts allocated and details of beneficiaries;</p> <p>xiv) particulars of recipients of concessions, permits or authorizations granted by it;</p> <p>xv) details in respect of the information, available to or held by it, reduced in an electronic form;</p> <p>xvi) the particulars of facilities available to citizens for obtaining information;</p> <p>xvii) the names, designations and other particulars of the Public Information Officers;</p> <p>Xviii) any other information as may be prescribed [S.4].</p> <p>In addition, every public authority is required to:</p> <p>i) publish all relevant facts while formulating important policies or announcing the decisions which affect public;</p> <p>ii) provide reasons for its administrative or quasi-judicial decisions to affected persons [S.4].</p> | |
| <p>Public Records/ Exemptions</p> | <p>Exemptions include:</p> <p>(a) information, disclosure of which would prejudicially affect the sovereignty and</p> | <p>Only the following, subject to a large number of exemptions and exclusions, have been declared as public records:</p> |

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| | <p>integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an Offence;</p> <p>(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;</p> <p>(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;</p> <p>(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of information;</p> <p>(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;</p> <p>(f) information received in confidence from foreign government;</p> <p>(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;</p> <p>(h) information which would impede the process of investigation or apprehension or prosecution of offenders;</p> <p>(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;</p> <p>Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over;</p> <p>Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;</p> | <p>A) policies and guidelines;</p> <p>b) Transactions involving acquisition and disposal of property and expenditures undertaken by a public body;</p> <p>c) information regarding grant of licenses, allotments and other benefits and privileges and contracts and agreements made by a public body;</p> <p>e) record relating to defence forces, defence installations, or connected therewith or ancillary to defence and national security;</p> <p>f) record declared as classified by the Federal Government;</p> <p>g) record relating to the personal privacy of any individual;</p> <p>h) record of private documents furnished to a public body either on an expressed or implied condition that information contained in any such document shall not be disclosed to a third person;</p> <p>i) any other record which the Federal Government may, in public interest exclude from the purview of this Ordinance. [S. 8]</p> <p>Restrictions imposed on access also relate to:</p> <p>A) international relations;</p> <p>b) disclosure harmful to law enforcement;</p> <p>c) privacy and personal information;</p> <p>d) economic and commercial affairs [S. 14, 15, 16, 17, 18].</p> |
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| | <p>(j) information which relates to personal information the discloser of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information;</p> <p>Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person (S. 8).shall not be denied to any person (S. 8).</p> <p>Without prejudice to the provisions of section 8, the Public Information Officer may reject a request for information where it would involve an infringement of copyright subsisting in a person other than the State [S. 9].</p> <p>Certain specified intelligence and security agencies, except where the Information Commissioner holds that the requested information pertains to allegations of corruption or human rights violations [S.24 and Schedule 2].</p> | |
| Public Interest Disclosure | But notwithstanding anything in the Official Secrets Act or exemptions, information may still be disclosed if the public interest in disclosure outweighs the harm to protected interests [S. 8(2)]. | <p>No public interest override.</p> <p>Reverse public interest test included, such as that the Government can broadly refuse to disclose any other record from the purview of this Ordinance in the public interest [S. 8(i)].</p> |
| Partial Disclosure / Severability | Information to be given if reasonably severable [S. 10(1)]. | No such provision. |
| Fees and Waiver | Must be reasonable & will not be imposed where the applicant is below the poverty line. Amount to be prescribed [S. 7(5)]. | Fee to be prescribed in Rules by the Government. [S. 12 & 25(2)]. |

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| | Information is provided free if the public authority fails to comply with time limits [S. 7(6)]. | But the decision to prescribe fee should take into account Section 3, which reads that the Ordinance shall be interpreted so as “to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information”. Under the Rules, the applicant is required to pay an initial fee of RS. 50 for 10 or less than 10 pages. An amount of RS. 5 per page of photocopy shall be paid for every additional page i.e. exceeding 10 pages [The Freedom of Information Rules, 2004]. |
| Time for Providing Access to Information | 30 working days for granting or refusing the information request [S. 7]. 40 days where confidential third party information has been requested [S. 11(3)]. | Required information or, as the case may be, a copy of any public record must be provided with 21 days of receipt of the request [S. 13]. |
| Urgent Requests | Where the information requested concerns the life and the liberty of a person, it should be provided within 48 hours of receipt of the request [S. 7(1)]. | No such provision. |
| Review/ Appeals Process | One internal appeal to the officer senior in rank to the Public Information Officer. Second appeal to the Central or State Information Commissions, which are independent appeal bodies set up under the Act. Jurisdiction of Courts is barred [S.19(1), 19(3), S. 23]. | Applicant can file a complaint with the head of the public body within 30 days of notification. "On failing to get the requested information from him within the prescribed time", the applicant may file a complaint with the Mohtasib (Ombudsman) or Federal Tax Ombudsman [S. 19]. |
| Penalties | Where a Public Information Officer has, without any reasonable cause, refused to receive an application, has not furnished information within time limits, or malafidely denied the request or knowingly gave incorrect, incomplete or misleading information or destroyed information subject to a request or obstructed the process, a penalty of Rs 250 per day will be imposed | Any person who destroys a record, which was the subject of a request, or of a complaint with the intention of preventing its disclosure under this Ordinance, commits an offence punishable with imprisonment for a term not exceeding two years, a fine or both [S. 21]. |

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| Penalties | Until the application is received or information furnished. Total penalty not to exceed Rs 25 000. In the above cases, the Information Commission can also recommend disciplinary action against the Officer at fault under the applicable service rules [S. 20]. | Where a complaint instituted is found to be malicious, frivolous or vexatious, the complaint may be dismissed by Mohtasib, and fine may be imposed on the complainant up to an amount not exceeding Rs. 10,000 [S. 20]. |
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5. Conclusions and Recommendations

„Since the earliest civilized societies, there has been a tug of war between the democratic and the dictatorial impulse”.

Rick Snell, Editor FOI Review, Australia

This paper makes the point that freedom of information is necessary not just because it would help in good governance but also because it is an inalienable human right. In view of this, as well as for pragmatic reasons, the status quo is effectively no option. Sooner or later, the government will have to match its verbal pronouncements with concrete steps, or else it would risk gradual erosion of its credibility.

“The only thing necessary for the triumph of evil is for good men to do nothing”.

Edmund Burke

In the circumstances, one option available to the government, albeit with serious risks, is to 'do nothing' and maintain the status quo. This would mean that the culture of secrecy would continue to characterize governance in Pakistan, as a result of restrictions imposed by the laws and rules like Official Secrets Act 1923 and the Rule 18 of Government Servants (Conduct) Rules 1964. This culture of secrecy would also be supported by the official attitudes, which are insensitive to citizens' needs and demands for transparency and access to information, and discourage citizens' participation in planning and implementation of government initiatives. It is this option, which the government seems to be currently exercising but it may change. Continued perusal of this policy option would indicate that the political constituency for eradication of corruption and effective public accountability is very weak in the country. And that is why the government has no real commitment to good governance and a lot that it entails i.e. transparency, openness, public participation and accountability.

Other option that the government can pursue is implementation of a gradual and

decentralized policy reform approach. This option would involve selected amendments in the existing secrecy laws in order to gradually restrict and precisely define the scope of classified or secret information with corresponding widening of the scope of publicly accessible records. This option could also involve changes in the existing rules, which are easy to make as compared to amendments in the law. In pursuit of this option, the federal government may encourage the provincial governments to enact their own freedom of information laws, but would not make any effort to come up with a national legislation that applies to all federal, provincial and local departments. This option may result in some improvements on certain counts but implementation of access to information as a matter of human right would remain a distant dream.

This policy option may be easier to implement, and may overtime remove the apprehensions of some officials who honestly believe that access to information laws can create a lot of 'unnecessary' burden on government departments without any tangible corresponding benefits. However, risks in this policy option seem to be a lot higher than the benefits. One main risk is that of reversal or relapse. For instance, proactive information disclosure policies adopted by ministries or departments could be easily reversed, if certain members of the Cabinet or some other vested interests were able to persuade the government. Reversal is easier because it only requires an administrative order without any recourse to the parliament.

Another option that can be followed would involve uniform national policy signifying a radical shift from the culture of secrecy to a strong framework for freedom of information. This may be difficult to implement but it holds the greatest promise to promote good governance, improve public service delivery and build public confidence in the government. This policy option would require the Federal Government to repeal the existing secrecy laws and enact a comprehensive freedom of information legislation that covers all the provinces and is in line with international best practices.

Implementation of this option would introduce a major shift from the prevalent culture of secrecy to transparency and openness in the government activity, which is critical for good governance and reducing the incidence of corruption in Pakistan. This would also result in a significant boost in public confidence in the government, and its commitment to ensuring public participation and accountability. This, however, presumes a complete and unflinching commitment of top political leadership to good governance. This also assumes that a strong support constituency exists for such a policy shift in the bureaucracy as well as civil society.

However, it must be emphasized that the final decision about the choice of a particular option by the government would be significantly influenced by the role that civil society plays on the demand side. If civil society organizations are able to generate demand for

transparency and galvanize political parties, it can be expected that the government would at least opt for the gradual reform processes if not the radical approach. However, in the absence of any significant success by the civil society on the demand side, it is more likely that the government would stick to the status quo. It is because of the reason that, at present, there exists little evidence of any serious deliberations within the government aimed at providing greater access to information.

