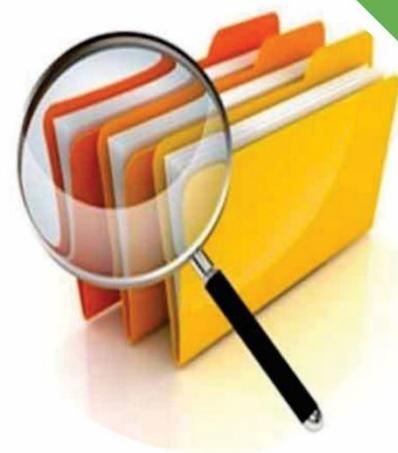




Centre for Peace and  
Development Initiatives

# **The Interplay of Right to Information and Freedom of Expression in Digital Spaces: Issues and Challenges**



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## **Abbreviations and Acronyms**

CLD	Centre for Law and Democracy
CPDI	Centre for Peace and Development Initiatives
FNF	Friedrich-Naumann-Stiftung für die Freiheit
FOI	Freedom of Information
ICT	Information and Communications Technology
PIO	Public Information Officer
RTI	Right to Information
SAARC	South Asian Association for Regional Cooperation

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This research study was carried out by Centre for Peace and Development Initiatives (CPDI) with the objective of initiating and facilitating meaningful debate on the issues and challenges associated with the right to information and freedom of expression in digital spaces. Its specific purpose was to make concrete recommendations to the policymakers, political parties, parliamentarians, journalists and civil society groups, so that they could contribute to protecting and promoting these rights.

The study discusses the constitutional provisions pertaining to the right to information and freedom of expression in eight South Asian Association for Regional Cooperation (SAARC) member countries, as well as ranks national and sub-national right to information (RTI) laws in Pakistan on a scoresheet developed by CPDI. Moreover, it dwells on the proactive disclosure of information through websites and the RTI legal regime in Pakistan.

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**Amer Ejaz**  
**Executive Director**  
**Centre for Peace and Development Initiatives**  
**Islamabad.**

## Executive Summary

The internet penetration in Pakistan has increased from 0.7% of the total population in 2000 to 17.8% of the total population in 2016. While this has opened up new avenues for proactive disclosure of information by public bodies, fresh challenges such as threats to privacy, online harassment, identity theft and surveillance, and hate speech and incitement to violence have also cropped up in digital spaces.

An overview of the constitutional provisions pertaining to the right to information and freedom of expression in eight SAARC member countries, related judgements of Pakistan's superior judiciary, and the Global Principles on Protection of Freedom of Expression and Privacy leads one to conclude that these rights are not absolute and that states can restrict them, but only through appropriate legislation. Incidentally, the constitutions of the SAARC member countries are very similar with regard to the grounds on which freedom of speech and expression can be restricted.

The superior judiciary in Pakistan has upheld the principle of maximum disclosure by saying that "as a rule, information should be disclosed and only as an exception privilege should be claimed on justifiable grounds." In one of its judgements, the Supreme Court holds that freedom of religion must also include freedom of conscience, thought, expression, belief and faith.

The Freedom of Information (FOI) Ordinance 2002 and its replica in Balochistan in the shape of Balochistan FOI Act 2005 do not have strong provisions for indexation and computerisation of public records, as well as provisions to ensure proactive disclosure of information by public bodies; while the Khyber Pakhtunkhwa RTI Act 2013, the Punjab Transparency and RTI Act 2013, and the Sindh Transparency and RTI Act 2016 contain exhaustive lists pertaining to proactive disclosure of information.

With the advent of internet, and the resulting proliferation of social media platforms and tools, citizens are increasingly exercising the right to information and express opinions. On the one hand, they have found new avenues to exercise these rights; while, on the other, new challenges are propping up with regard to the exercise of these rights. These challenges pertain to violation of the right to privacy, online harassment, levelling of blasphemy charges against people in digital spaces, and questionable tactics of law enforcement agencies against people for exercising the right express opinion in digital spaces.

The Global Principles on Protection of Freedom of Expression and Privacy, launched by British human rights organisation Article 19 in March 2017, can provide a starting point for developing guidelines, laws and procedures that are in line with requirements of our social context. While the Prevention of Electronic Crimes Act 2016 needs to be improved and brought in line with the Global Principles, the legal framework alone is unlikely to improve the state of freedom of expression in the country; therefore, the federal government should instruct law enforcement agencies to develop policies and guidelines for the protection of the citizens' right to privacy and express opinions.

CPDI recommends that political parties and civil society groups should make concerted efforts for the promotion of respect for difference of opinion and human diversity. The federal government should finalise the Right of Access to Information Bill tabled in the National Assembly after seeking inputs from civil society groups, journalists and RTI experts. Moreover, the Balochistan FOI Act 2005 should be replaced with an effective law on the lines of those in Khyber Pakhtunkhwa, Punjab and Sindh.

The federal and provincial governments should allocate funds to public bodies in their budgets for digitalisation of records and sharing of these records through website. The Khyber Pakhtunkhwa and Punjab Information Commissions should develop standards for proactive disclosure of information, as well as robust monitoring mechanisms for ensuring public bodies' compliance with proactive disclosure of information through websites in line with the legal requirements under their respective RTI laws.

# 1. Introduction

Democracy is a system of government in which citizens make choices about the people who will govern them and take decisions on their behalf. The assumption is that they will elect those people to power who will safeguard their interests, take decisions in their best interest and ensure judicious use of public resources. This necessitates that citizens make informed choices about the people running for public offices, as well as ensure that those they elect to power keep their promises and articulate public interests through their actions and policies.

The media is termed the fourth pillar of the state since it collects and disseminates information on behalf of citizens, and ensures accountability of those holding or aspiring to hold public offices. However, citizens should also be able to exercise the right to information and gain access to certified and reliable information independent of the media, so that they could form and express informed opinions about the people holding or aspiring to hold public offices. This, in essence, means that the right to information and freedom of expression are closely linked with each other.

Democracy entails that citizens enjoy the right to information and freedom of expression, as well as the ability to freely exercise these rights in a conducive environment. They should also be able to hold and express their opinion without any fear, and governments should facilitate them in the exercise of these rights by providing an enabling environment. Governments should also ensure that other rights of citizens are protected during the process of exercising the right to information and freedom of expression. For example, during the process of receiving and imparting information, the right to privacy of an individual should be protected; and expression of opinion should not lead to incitement to violence resulting in violation of the right to life of an individual.

The right to information and express opinions are not absolute, thus not qualified to ensure protection of other rights. What should be these qualifications and how can access to maximum information and freedom of expression be ensured without compromising other rights? Moreover, with the advent of social media, there have been profound changes in the way people are exercising the right to information and freedom of expression. As boundaries between online and offline spaces are blurring, new problems are propping up as to how citizens' rights are to be protected in the digital era.

Since the turn of the century, internet penetration in Pakistan has increased manifold<sup>1</sup>: in 2000, only 0.7% of the total population had access to internet; by 2007, it had increased to 6.8% and by 2016 to 17.8%. While this has opened up new avenues for proactive disclosure of information by public bodies, fresh challenges such as threats to privacy, online harassment, identity theft and surveillance, and hate speech and incitement to violence have also cropped up in digital spaces. In line with this, a free flow of information needs to be ensured without compromising freedom of expression and personal wellbeing of individuals, in both online and offline digital spaces.

## 1.1 Objectives of the Study

The primary objectives of carrying out this research study were to:

1. Discuss national laws of SAARC member countries to determine if they are in line with the principles of right to information and freedom of expression.
2. Understand the constitutionality of right to information and freedom of expression, as well as the salient related judgements of Pakistan's superior judiciary.
3. Identify the challenges to promoting the citizens' right to information and freedom of expression in digital spaces.
4. Make concrete recommendations to the policymakers to help promote and protect the citizens' right to information and freedom of expression in digital spaces.

## **2. Constitutionality of Right to Information**

Understanding the constitutionality of the right to information is important for determining how its qualifications and restrictions have been spelled out in the constitution and to what extent legislation adheres to the spirit of the constitution.

### **2.1 Right to Information and Constitutions of SAARC Member Countries**

The eight SAARC member countries include Afghanistan, Bangladesh, Bhutan, India, Pakistan, the Maldives, Nepal and Sri Lanka. The constitutions of India and Bangladesh do not have any provision pertaining to the right to information; while those of the remaining six countries have related provisions.

### **2.2 Constitutional Restrictions on Right to Information**

Article 50<sup>2</sup> of the constitution of Afghanistan maintains that all citizens will have access to information under provisions of the law. The constitution does not put limits on the right to information other than in the case of harm to rights of others or to public security.

Article 7(3)<sup>3</sup> of the constitution of Bhutan recognises the right to information as a fundamental right of citizens. Article 7(22)<sup>4</sup> allows the state to put reasonable restrictions by law when it concerns the interests of the sovereignty, security, unity and integrity of Bhutan; the interests of peace, stability and wellbeing of the nation; the interests of friendly relations with foreign states; incitement to an offence on the grounds of race, sex, language, religion or region; the disclosure of information received with regard to the affairs of the state or in discharge of official duties; or the rights and freedom of others.

Article 61<sup>5</sup> of the constitution of the Maldives recognises the citizens' right to information and only that information will not be provided that is declared to be state secret by a law enacted by the People's Majlis. What markedly differentiates the Maldivian constitution from that of other SAARC countries, with the exception of Nepal, is that it mentions that every citizen has the right to obtain all information possessed by the government about him/her.

Article 27<sup>6</sup> of the constitution of Nepal allows citizens the right of access to information in matters concerning them or public interest. With regard to restrictions, only that information is not to be provided about which confidentiality is to be maintained in accordance with the law. Article 19A<sup>7</sup> of the constitution of Pakistan allows citizens to have access to information in matters of public importance. The restrictions on this right have to be reasonable and will be imposed by law. Article 14A<sup>8</sup> of the constitution of Sri Lanka says citizens will have access to any information as provided for by law.

The overview of related constitutional provisions of the six SAARC member countries that specifically recognise the citizens' right to information leads one to conclude that this right is not absolute and that states are empowered to restrict it. These restrictions, however, cannot be arbitrarily imposed and have to be backed by appropriate legislation.

### **2.3 Constitutionality of Freedom of Expression**

As in the case of right to information, understanding the constitutionality of freedom of expression is important for determining how qualifications and restrictions on this freedom have been spelled out in the constitution and to what extent legislation adheres to the spirit of the constitution.

Article 34<sup>9</sup> of the constitution of Afghanistan declares freedom of expression as "inviolable". Moreover, it enlists ways under which citizens will be able to exercise this freedom. They will have the right to print and publish under provisions of the law without prior submission to state authorities.

Article 39<sup>10</sup> of the constitution of Bangladesh guarantees freedom of thought, conscience and speech. However, restrictions are imposed by law in the interests of the security of the state; friendly relations with foreign states; public order; decency or morality; or in relation to contempt of court, defamation or incitement to an offence. In addition to this, Article 39 also protects freedom of the press.

Article 7(2)<sup>11</sup> of the constitution of Bhutan recognises the citizens' right to freedom of speech, opinion and expression. Article 7(22) allows the state to put reasonable restrictions by law when it concerns the interests of the sovereignty, security, unity and integrity of Bhutan; the interests of peace, stability and wellbeing of the nation; the interests of friendly relations with foreign states; incitement to an offence on the grounds of race, sex, language, religion or region; the disclosure of information received in regard to the affairs of the state or in discharge of official duties; or the rights and freedom of others.

Article 19(1)<sup>12</sup> of the constitution of India gives citizens freedom of speech and expression, but it is a qualified right. Under Article 19(3)<sup>13</sup>, the restrictions are to be imposed by law in the interests of the sovereignty and integrity of India, or of public order.

Article 27<sup>14</sup> of the constitution of the Maldives gives citizens the right to freedom of thought and the freedom to communicate opinions. Article 67<sup>15</sup> declares that the enjoyment of freedoms is inseparable from responsibilities and duties. It requires citizens to, among others, promote democratic values and practices in a manner that is not inconsistent with any tenet of Islam; preserve and protect the state religion of Islam, culture, language and heritage of the country; and respect the national flag, state emblem and national anthem. Article 17(2)<sup>16</sup> of the constitution of Nepal gives citizens the freedom of opinion and expression, and declares that no person will be deprived of his or her liberty subject to as provided for in the law.

Article 19<sup>17</sup> of the constitution of Pakistan gives freedom of speech and expression to every citizen. This article also guarantees freedom of the press. Moreover, it makes freedom of speech and expression subject to reasonable restrictions to be imposed by law. These reasonable restrictions will be in the interest of the glory of Islam or 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 offence.

Article 14(1)<sup>18</sup> of the constitution of Sri Lanka declares that every citizen is entitled to freedom of speech and expression, including publication. Under Article 15(2)<sup>19</sup>, this right can be restricted in the interest of racial and religious harmony; or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence.

All the eight SAARC member countries specifically recognise the citizens' right to freedom of speech and expression. The overview of their related constitutional provisions leads one to conclude that these freedoms are not absolute and that these states are empowered to restrict them. There are many similarities with regard to the grounds on which freedom of speech and expression can be restricted, but there are dissimilarities too. For example, under Article 15(2) of the Sri Lankan constitution, freedom of speech and expression can also be restricted in relation to parliamentary privilege, a ground not to be found in the constitutions of other SAARC member countries.

Similarly, under the Maldivian constitution, citizens' freedoms are inseparable from their duties and responsibilities. Article 67 requires Maldivians to promote democratic values and practices in a manner that is not inconsistent with any tenet of Islam. It also expects citizens to preserve and protect the state religion of Islam. The other SAARC member country that specifically mentions a religion by name is Pakistan when it comes to the grounds on which freedom of expression and speech could be restricted. Another major point of departure in the case of the Maldives is that it requires its citizens to respect the national flag, state emblem and national anthem.

### 3. Right to Information, Freedom of Expression and Superior Judiciary

The constitutional right to information was accorded to Pakistanis when Article 19A was inserted in the constitution through the 18th Amendment in 2010. Article 19A says: “Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.” Since then, there have been at least two judgements in which the superior judiciary has deliberated on the right to information by juxtaposing different sections of the FOI Ordinance 2002 with Article 19A.

In Constitutional Petitions No 77 to 85 & 89 of 2011 and CMA No 5505/2011<sup>20</sup>, Justice Jawwad S Khawaja made some pertinent observations on the right to information with reference to the running of the country’s affairs. He laments that “ever since the independence of the country in 1947, people in quest of the truth have mostly been left with conjectures, rumours and half-truths. Concealment of information has, in turn, led to a distorted history of the country and a destabilising division in the polity.” Highlighting the significance of Article 19A, he says that it has “enabled every citizen to become independent of power centres which, heretofore, have been in control of information on matters of public importance.”

Commenting on the “intrinsic worth of information as a stand-alone fundamental right”, Justice Khawaja says that the “very essence of a democratic dispensation is informed choice.” Elaborating on the value of informed choice in the context of a democratic set up, he says that it is through informed choices that people “acquire the ability to reward or punish their elected representatives or aspirants to elected office, when it is time for the people to exercise their choice.” This line of reasoning leads him to conclude that information on matters of public importance is “foundational bedrock of representative democracy and the accountability of chosen representatives of the people.”

Civil society groups have been demanding the repeal of the FOI Ordinance 2002 because of its restrictive nature and limited scope, besides many other shortcomings. Analysing Section 3 of the FOI Ordinance 2002, Justice Khawaja seems to be on the same page with civil society. He brings to the fore its restrictive nature by juxtaposing it with Article 19A and concludes that “the Constitutional right is much broader and more assertive than the statutory right which by its own terms is restricted to disclosure of official record only.”

The Lahore High Court gave a landmark judgement with far reaching implications on 18 January 2016 in Waheed Shahzad Butt vs The Federation of Pakistan case (WP No 28180 of 2014)<sup>21</sup>. The judgement put paid to the practise of filing representations with the president of Pakistan by public bodies against the decisions of the federal ombudsman and federal tax ombudsman, the appellate bodies under the FOI Ordinance 2002. The judgement says that the ombudsman passes a *decision* on the complaint of an aggrieved person under the FOI Ordinance 2002; while the tax ombudsman makes a *recommendation* under the jurisdiction of the Federal Tax Ombudsman Ordinance.

The learned judge wrote: “A *decision* is a binding adjudication of rights and claims between two or more persons whereas a *recommendation* denotes something in the nature of a suggestion. It is, therefore, held that the President had no jurisdiction to entertain and pass a decision on the representation filed by the Board against the decision of the Tax Ombudsman.” This judgement also highlights shortcomings in the FOI Ordinance 2002. The learned judge observes that the exclusions contained in Section 8 of the FOI Ordinance 2002 are loosely worded, open-ended and abstract. There are no *criteria* in the FOI Ordinance 2002 on which the “application of a requester may be turned down”.

What is remarkable in this judgement is that public bodies will not be able to claim blanket exemption when information is requested under the FOI Ordinance 2002. The judgement says that if a public body claims to exclude any information from disclosure, it will have to “justify/demonstrate that the stance is

supported (with sufficient particulars and by demonstrable factual basis) by weighing of the relevant aspects of the public interest.” However, dichotomy exists between judicial pronouncements on the significance of the citizens’ right to information with regard to ensuring public accountability and greater public participation in governance and the lacklustre performance of political parties in putting in place effective mechanisms to enable citizens to freely exercise the right to freedom of information.

Similarly, the superior judiciary in Pakistan has also been interpreting freedom of expression. Justice Tassadduq Hussain Jilani authored a landmark judgement, delivered on 19 June 2014, concerning the rights of religious minorities. Writing about this judgement, Reema Omer<sup>22</sup> states: “The judgement of June 19 clarifies and expands the scope of Article 20 of the Constitution, which guarantees the right to freedom of religion. The court explains that religion cannot be defined in rigid terms, and holds that freedom of religion must also include freedom of conscience, thought, expression, belief and faith.

“The court elaborates that these freedoms have both an individual and a community aspect, and on the basis of this interpretation, holds that each citizen of Pakistan is free to exercise the right to profess, practise or propagate his or her religious views, even against the prevailing or dominant views of his or her own religious denomination or sect.”

## 4. RTI Legal Regime in Pakistan

Article 19A of the constitution of Pakistan says that citizens have the right of access to information in matters of public importance. Moreover, it says that the restrictions on the right to information will be “reasonable” and “will be imposed by law”. Let us examine the RTI laws in Pakistan to determine as to what extent they facilitate the citizens’ right of access to information in matters of public importance and whether the restrictions imposed on them are “reasonable”.

RTI laws can be divided in two categories: first generation and second generation. The FOI Ordinance 2002 and Balochistan FOI Act 2005 belong to the first generation of RTI laws; while the Khyber Pakhtunkhwa RTI Act 2013, Punjab Transparency and RTI 2013 and Sindh Transparency and RTI Act 2016 belong to the second generation of RTI laws. The important distinction between the first and second generation of RTI laws is that whereas the latter largely follow standards of effective RTI legislation, the former either do not completely follow these standards or, in many cases, violate them.

The FOI Ordinance 2002 has been ranked at 91st<sup>23</sup> in the world by the Centre for Law and Democracy (CLD). Since CLD only ranks national RTI laws, CPDI is the sole organisation in Pakistan that ranks sub-national RTI laws. As the following table shows, both the FOI Ordinance 2002 and its replica in Balochistan in the shape of Balochistan FOI Act 2005 are the weakest RTI laws in Pakistan, scoring only 30 points of a total of 140. The most robust and progressive law in Pakistan is the Punjab Transparency and RTI Act 2013 with 139 points, followed by the Sindh Transparency and RTI Act 2016 with 130 points and the Khyber Pakhtunkhwa RTI Act 2013 with 129 points.

#### 4.1 CPDI's Scoresheet of RTI Laws in Pakistan

Standard of RTI Legislation	Score Under Each Standard of RTI Legislation		Comments	Score Under Each Standard of RTI Legislation			Comments	Weightage
	FOI Ordinance 2002	Balochistan FOI Act 2005		Khyber Pakhtunkhwa RTI Act 2013	Punjab Transparency and RTI Act 2013	Sindh Transparency and RTI Act 2016		
<i>Guided by the principle of maximum disclosure</i>	0	0	Under the principle of maximum disclosure, a narrowly and clearly drawn list contains types of information to be exempted from disclosure and the rest is declared as public information. This is not the case with any of the two laws. Also, these laws do not have 'harm test'.	10	10	10	These laws contain a narrowly and clearly drawn list of exempted information and the rest has been declared as public information. Moreover, all the three laws have 'harm test' and specifically mention that even if the requested information belongs to categories of exempted information, it will be provided if the public interest outweighs the harm.	10
<i>Clearly and narrowly draws exceptions</i>	0	0	There is no clear definition of 'information' in these laws. Instead of having one clearly defined list of exempted information and declaring the rest as public information, these laws have separate lists: records that can be shared; records that cannot be shared; and records that can be shared but certain types of information, if contained in these records, will not be shared.	9	10	10	These laws clearly define 'information'. The definition of 'information' in the Khyber Pakhtunkhwa RTI Act 2013 is brief and left to the interpretation of public officials; while in the Punjab Transparency and RTI Act 2013 and the Sindh Transparency and RTI Act 2016, the definition of 'information' is comprehensive, and the list of exempted information is narrowly and clearly drawn.	10

Standard of RTI Legislation	Score Under Each Standard of RTI Legislation		Comments	Score Under Each Standard of RTI Legislation			Comments	Weightage
	FOI Ordinance 2002	Balochistan FOI Act 2005		Khyber Pakhtunkhwa RTI Act 2013	Punjab Transparency and RTI Act 2013	Sindh Transparency and RTI Act 2016		
<i>Provides cost effective access to information</i>	3	3	Under the rules framed for these laws, information requests can only be submitted after depositing Rs 50 in National Bank of Pakistan. This covers first 10 pages of information, while Rs 5 are charged for each extra page.	10	10	10	There is no fee for filing information and for the first 20 pages of the requested information under the rules framed for these laws. However, Rs 2 will be charged for every extra page and the applicants will have to bear the postal cost according to the Schedule of Fees introduced by the Khyber Pakhtunkhwa and Punjab Information Commissions. According to the Sindh Transparency and RTI Act 2016, public information officer (PIO) shall not charge any fee for making the request other than the cost of reproducing and sending the information in accordance with the Schedule of Fees stipulated by the Sindh Information Commission.	10
<i>Provides for speedy and easy access to information</i>	1	1	These laws allow 21 working days to public bodies for providing access to the requested information. There is no provision for expediting the process of providing the requested information if it pertains to the life or liberty of a person.	10	10	10	These laws allow 10 (Khyber Pakhtunkhwa RTI Act 2013), 14 (Punjab Transparency and RTI Act 2013) and 15 (Sindh Transparency and RTI Act 2016) working days to public bodies for providing access to the requested information. However, they specifically mention that if the requested information pertains to the life or liberty of a person, it will be provided within 2 working days. These laws adhere to the principle of providing requested information within reasonable timeframe.	10

Standard of RTI Legislation	Score Under Each Standard of RTI Legislation		Comments	Score Under Each Standard of RTI Legislation			Comments	Weightage
	FOI Ordinance 2002	Balochistan FOI Act 2005		Khyber Pakhtunkhwa RTI Act 2013	Punjab Transparency and RTI Act 2013	Sindh Transparency and RTI Act 2016		
<i>Provides for an effective complaint redress mechanism</i>	3	3	Under these laws, an affidavit has to be submitted before lodging a complaint, testifying that no complaint regarding the matter has already been submitted and that no lawsuit pertaining to the matter is pending with any court. The federal ombudsman requires a form to be filled after lodging the complaint testifying the same. No timeframe has been specified for Ombudsman Office in the Balochistan FOI Act 2005.	9	10	10	There is no need to furnish any kind of affidavit before lodging a complaint under these laws. The Khyber Pakhtunkhwa and Punjab Information Commissions are bound to take decision on a complaint within 60 days; while the Sindh Information Commission is bound to take a decision on a complaint within 45 days. However, the Khyber Pakhtunkhwa RTI (Amendment) Bill 2015 has created confusion because the amendment in Section 23 does not specifically say that appeal against the information commission's decision will be made in the Peshawar High Court.	10
<i>Imposes penalty on the officer for wrongfully denying/delaying access to the requested information</i>	0	0	There is no such penalty in these laws.	9	10	10	A fine of Rs 250 per each day of the delay can be imposed under the Khyber Pakhtunkhwa RTI Act 2013 and it can go up to Rs 25,000. Under the Punjab Transparency and RTI Act 2013, 2 days of salary can be deducted for each day of the delay or fine of up to Rs 50,000 can be imposed. Under the Sindh Transparency and RTI Act 2016, a fine of 10% of the basic salary of the PIO can be imposed.	10

Standard of RTI Legislation	Score Under Each Standard of RTI Legislation		Comments	Score Under Each Standard of RTI Legislation			Comments	Weightage
	FOI Ordinance 2002	Balochistan FOI Act 2005		Khyber Pakhtunkhwa RTI Act 2013	Punjab Transparency and RTI Act 2013	Sindh Transparency and RTI Act 2016		
<i>Requires proactive disclosure</i>	0	0	There is no such provision in these laws.	10	10	10	A comprehensive list containing categories of information that have to be proactively disclosed is included in these laws.	10
<i>Does not require description of specific interest with information requested</i>	0	0	The purpose for seeking the information has to be described under these laws.	10	10	10	There is no such provision in these laws.	10
<i>Recognises the wilful destruction of records as a criminal offence</i>	7	7	Under these laws, it is a criminal offence to destroy any record if an information request is submitted to have access to the record or complaint is lodged in this regard. The penalty for such an offence is imprisonment of up to 2 years or fine or both.	10	10	10	Under the Khyber Pakhtunkhwa RTI Act 2013 and the Punjab Transparency and RTI Act 2013, it is a criminal offence to destroy any record if an information request is submitted to have access to the record or complaint is lodged in this regard. The penalty for such an offence is imprisonment of up to 2 years or fine of up to Rs 10,000 or both. Under the Sindh Transparency and RTI Act 2016, it is a criminal offence punishable with imprisonment for a term which may extend to 2 years and 6 months or fine which will not be less than Rs 10,000 or 10% of the basic pay of the PIO or with both.	10

Standard of RTI Legislation	Score Under Each Standard of RTI Legislation		Comments	Score Under Each Standard of RTI Legislation			Comments	Weightage
	FOI Ordinance 2002	Balochistan FOI Act 2005		Khyber Pakhtunkhwa RTI Act 2013	Punjab Transparency and RTI Act 2013	Sindh Transparency and RTI Act 2016		
<i>Takes precedence over all other laws contradicting its aim</i>	0	0	These laws do not override other laws.	10	10	10	These laws override other laws.	10
<i>Has provisions that allow for inspection of documents before getting access</i>	0	0	There is no such provision in these laws.	10	10	10	Under these laws, the right of access to information also includes right to inspect documents, samples, materials, etc.	10
<i>Requires PIOs to assist the applicants as their duty</i>	3	3	The duty of PIO to assist the applicants is mentioned in these laws, but not elaborated.	5	5	0	Under the Khyber Pakhtunkhwa RTI Act 2013 and the Punjab Transparency and RTI Act 2013, PIO are duty-bound to facilitate the disabled and illiterate in filing information requests; however, there is no such provision in the Sindh Transparency and RTI Act 2016.	5
<i>Makes the head of public body act as information officer during PIO's absence or unavailability</i>	10	10	If an official has not been designated, the head of public body is made responsible for providing the requested information.	10	9	10	In the absence or unavailability of PIO, the head of public body is to serve as information officer under the Khyber Pakhtunkhwa RTI Act 2013 and the Sindh Transparency and RTI Act 2016. Similarly, under the Punjab Transparency and RTI Rules 2014, the head of public body is to serve as information officer if PIO has not been designated.	10

Standard of RTI Legislation	Score Under Each Standard of RTI Legislation		Comments	Score Under Each Standard of RTI Legislation			Comments	Weightage
	FOI Ordinance 2002	Balochistan FOI Act 2005		Khyber Pakhtunkhwa RTI Act 2013	Punjab Transparency and RTI Act 2013	Sindh Transparency and RTI Act 2016		
<i>Has a comprehensive definition of a public body</i>	3	3	Government-funded organisations do not come under the purview of these laws.	7	10	10	Organisations substantially funded by public money come within the purview of these laws. The Khyber Pakhtunkhwa RTI Act 2013 specifically excludes the Peshawar High Court from the definition of a public body.	10
<i>Does not prescribe penalties for the applicants for alleged vexatious applications</i>	0	0	Under these laws, if complaint is found to be 'frivolous, vexatious and malicious', the ombudsman can impose a fine of up to Rs 10,000.	0	5	0	Under the Khyber Pakhtunkhwa RTI Act 2013 and the Sindh Transparency and RTI Act 2016, it is a criminal offence to seek information with <i>mala fide</i> purposes.	5
<b>Total</b>	<b>30</b>	<b>30</b>		<b>129</b>	<b>139</b>	<b>130</b>		<b>140</b>

## 5. Proactive Disclosure of Information through Websites

Effective RTI laws make it binding on public bodies to proactively disclose information by displaying it at prominent places on their premises and notice boards, as well as through their website. The purpose of proactive disclosure of information is that citizens do not have to go through the process of filing information requests to public bodies about the information that can be made available to them through website. Moreover, it makes the job of public bodies easier since they can simply direct requesters to their website if they ask for any information that has already been made available there.

Section 5<sup>24</sup> of the FOI Ordinance 2002 is about publication and availability of records; however, it does not mention proactive disclosure of information through website. Section 6<sup>25</sup> requires public bodies to computerise all public records. It describes the purpose of this computerisation as facilitating “authorised access” to public records. It further says that computerisation of public records will be carried out within a reasonable time subject to the availability of resources.

Because the Balochistan FOI Act 2005<sup>26</sup> is a replica of the FOI Ordinance 2002, the same Sections 5 and 6 are also found in this law.

Section 4<sup>27</sup> of the Khyber Pakhtunkhwa RTI Act 2013, Section 5<sup>28</sup> of the Sindh Transparency and RTI Act 2016, and Section 8<sup>29</sup> of the Punjab Transparency and RTI Act 2013 pertain to the indexation and computerisation of records. The main features of these sections are: (a) public bodies are required to computerise their records; (b) public bodies are required to follow the timeframe set by the information commissions; (c) public bodies are required to follow standards for computerisation, if any, developed by the information commissions; and (d) the purpose of computerisation is to ensure easy and electronic retrieval of information by the applicants.

Section 4<sup>30</sup> of the Punjab Transparency and RTI Act 2013, Section 5<sup>31</sup> of the Khyber Pakhtunkhwa RTI Act 2013, and Section 6<sup>32</sup> of the Sindh Transparency and RTI Act 2016 enlist categories of information to be proactively disclosed by public bodies. The key features of these sections have been summarised in the following:

1. The Khyber Pakhtunkhwa RTI Act 2013, the Punjab Transparency and RTI Act 2013, and the Sindh Transparency and RTI Act 2016 require public bodies to proactively disclose information about their functions and enlisted information to be proactively disclosed, subject to provisions of their respective laws are wide ranging and cover almost all records available with a public body.
2. Section 4 of the Punjab Transparency and RTI Act 2013 requires public bodies in the province to proactively disclose enlisted categories of information subject to provisions of the law and does not specifically mention that public bodies are required to proactively disclose enlisted information through their website.
3. Section 4 of the Punjab Transparency and RTI Act 2013 does not make proactive disclosure of information subject to the availability of the resources.
4. Section 5 of the Khyber Pakhtunkhwa RTI Act 2013 specifically mentions that public bodies in the province will proactively disclose enlisted information through their website subject to the availability of resources.
5. Section 5 of the Khyber Pakhtunkhwa RTI Act 2013 mentions that enlisted information to be proactively disclosed will be made available in a manner that it is accessible to citizens.
6. Section 5 of the Khyber Pakhtunkhwa RTI Act 2013 specifies that the enlisted information to be proactively disclosed should be up-to-date.
7. Section 6 of the Sindh Transparency and RTI Act 2016 requires public bodies in the province to proactively disclose enlisted information through their website and does not make it subject to availability of resources.

Information can only be shared with citizens in a proactive manner if it is properly maintained. The advancements in information and communications technology (ICT) mean that information is being not only created differently but also preserved and transmitted differently. Even records created prior to the advent of ICT are being preserved through the use of new modes of employing different electronic devices. In this context, it is the job of information commissions to develop standards for public bodies for preservation and sharing of information, both on-demand and in a proactive manner.

CPDI conducted interviews with members of the Khyber Pakhtunkhwa and Punjab Information Commissions to determine what steps are being taken by them for the implementation of different provisions of their respective laws. Section 25(2)[a] of the Khyber Pakhtunkhwa RTI Act 2013 empowers the provincial Information Commission to “set rules and minimum standards regarding the manner in which public bodies are required to manage their records, in accordance with Section 4 of this Act.” Khyber Pakhtunkhwa Information Commission members informed that these standards had been drafted but not finalised yet.

Similarly, Section 6(5)[a] of the Punjab Transparency and RTI Act 2013 states: “(The Commission may) issue directives to public bodies for preservation, management, publication, publicity and access to information.” However, Punjab Information Commission members shared that they had not yet issued any directives to public bodies for the preservation and management of records.

Both the Khyber Pakhtunkhwa and Punjab Information Commissions are public bodies; as such, they are required to proactively disclose information under Sections 5 and 4 of their respective laws. In fact, they need to serve as role models for public bodies with regard to proactively sharing information through website. CPDI believes that the information provided to citizens on the intervention of these commissions should also be proactively shared through their websites for the benefit of other citizens. Moreover, the material available on the websites of the Khyber Pakhtunkhwa and Punjab Information Commissions is not accessible for all because the blind using screen reading software cannot access scanned images of the documents uploaded there.

Before the enactment of the Khyber Pakhtunkhwa RTI Act 2013 and the Punjab Transparency and RTI Act 2013, no law in these provinces required public officials to share information with citizens. In fact, there were laws in place that were incendiary to the concept of transparency, prohibiting public officials from sharing information with citizens. As a result, public officials were functioning in a culture of secrecy. The purpose of enacting RTI laws was to change the culture of secrecy and promote a culture of openness and transparency in the functioning of public bodies. This departure from the culture of secrecy to the culture of transparency calls for changing the mindset of the bureaucracy.

With this in view, under both the Khyber Pakhtunkhwa RTI Act 2013 and the Punjab Transparency and RTI Act 2013, Information Commissions are tasked with conducting trainings for PIOs on their roles and responsibilities. Section 25(3)[d] of the Khyber Pakhtunkhwa RTI Act 2013 requires the Information Commission to “undertake training activities for public officials on the right to information and the effective implementation of this Act.” Similarly, Section 6(5)[e] of the Punjab Transparency and RTI Act 2013 requires the Information Commission to “conduct training of the public information officers.”

The Khyber Pakhtunkhwa and Punjab Information Commissions have done well in terms of imparting trainings to PIOs on their roles and responsibilities but this needs to be scaled up. During the course of these trainings, PIOs shared with members of these commissions that they lacked funds to proactively disclose information through website. Under both Khyber Pakhtunkhwa RTI Act 2013 and the Punjab Transparency and RTI Act 2013, public bodies are obligated to provide the requested information on-demand, as well as proactively share categories of information mentioned in Sections 5 and 4 of their respective laws.

Moreover, Section 5(2) of the Khyber Pakhtunkhwa RTI Act 2013 says: “Public body shall also publish an annual report on what they have done to implement their obligations under this Act, which shall include detailed information about the requests for information which they have received, and how they have processed these requests.” Similarly, Section 9 of the Punjab Transparency and RTI Act 2013 says: “A public body shall publish in electronic form or otherwise an annual report of its activities under this Act during the previous financial year by 31 August each year in such manner as may be prescribed and make the report available for public inspection free of charge and for purchase at a reasonable cost.”

The Khyber Pakhtunkhwa and Punjab Information Commissions have to ensure that public bodies publish the details of information requested from them in their annual reports. This is only possible if the two Information Commissions develop monitoring mechanisms to track the progress of public bodies with regard to their obligations under their respective RTI laws; however, none of them has as yet done so.

The last research study to determine the compliance level of public bodies with provisions of proactive disclosure of information in the Khyber Pakhtunkhwa RTI Act 2013 and the Punjab Transparency and RTI Act 2013 found that public bodies in these provinces had started sharing information about their budget, but not proposed and actual expenditure. The public bodies also failed to provide information about remunerations, salaries, benefits and any other such payments that they provided/made to their employed staff or beneficiaries.

## 6. Freedom of Expression in Digital Spaces

In a democratic system of governance, citizens need to exercise the right of access to information held by public bodies so that they could form informed opinions about the performance of public officials and elected representatives. They need to not only exercise the right of access to information, but also hold and express their opinions based on the information received. In other words, each of these basic rights is meaningless without the other.

With the advent of internet, and the resulting proliferation of social medial platforms and tools, citizens are increasingly exercising these rights in digital spaces. On the one hand, they have found new avenues to exercise the right to information and express opinions; while, on the other, new challenges are propping up with regard to the exercise of these rights. These issues<sup>33, 34 & 35</sup> pertain to violation of the right to privacy, online harassment, levelling of blasphemy charges against people in digital spaces, and questionable tactics of law enforcement agencies against people for exercising the right to express opinions in digital spaces. How can these issues be tackled so that citizens could freely express their opinions in digital spaces within accepted norms?

If the citizens' right to hold and express opinions is to be promoted and protected, the debate and legislation around freedom of expression will have to be inspired by internationally accepted principles. The Global Principles on Protection of Freedom of Expression and Privacy<sup>36</sup>, launched by British human rights organisation Article 19 in March 2017, can provide a starting point for developing guidelines, laws and procedures that are in line with requirements of our social context. These principles were developed in order "to provide a systematic analytical framework for assessing the ways in which the right to freedom of expression and privacy are mutually reinforcing, and for determining the permissible limits which can be placed on these rights where they are in conflict, both on and offline."

In the introduction, the Global Principles declare that freedom of expression and privacy are "mutually reinforcing rights", especially in the digital age. They state that "without privacy, individuals lack the space to think and speak without intrusion and to develop their own voice". The Global Principles realise that "one person's right to freedom of expression may impinge on someone else's right to privacy and vice versa". The Preamble refers to relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, the European Convention on Human Rights, and the European Union Charter of Fundamental Rights and Freedoms.

Principle 1 of the Global Principles pertaining to the legal framework for the protection of rights requires states to carry out legislation to protect the right to information, freedom of expression and privacy. Moreover, it requires states to ensure that the constitutional provisions pertaining to these rights are in line with the international law. According to this principle, the right to freedom of expression includes "the 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 or other platforms of his or her choice."

Principle 1 further states: "The right to freedom of expression includes the right to offend, criticise, comment or talk about others, including on aspects of their private life, which are either private or known to the public, without their consent." Is our constitution, legislation and society ready to adhere to the high bar set in this principle? More important, how can laws and guidelines pertaining to the right to freedom of expression be developed in line with the spirit of this principle considering the makeup of our society?

This principle also defines the 'right to information' and states that it includes "the right of everyone to seek, receive, use, and impart information held by or on behalf of public authorities, or to which public

authorities are entitled by law to have access, and information held by private bodies exercising public functions and required for the exercise or protection of any right or fundamental freedom.” It further states: “Personal data must be processed lawfully and fairly for specified purposes and on the basis of the informed consent of the person concerned, or some other legitimate basis laid down by law.”

Principle 2 pertains to the restrictions that can be imposed on rights. It says that the scope of these restrictions should be limited and that their basis should be in the law. It also says that the right to hold an opinion cannot be restricted. Lastly, it says that there should be appellate bodies and courts to interpret validity of restrictions imposed on rights. The Global Principles exhaustively discuss the issues pertaining to data protection, the role of law enforcement agencies in protecting these rights and the responsibilities of data holders.

The Prevention of Electronic Crimes Act 2016<sup>37</sup> is supposed to protect the citizens’ right to freedom of expression and privacy; however, it is found wanting in many respects and its shortcomings are well documented<sup>38, 39 & 40</sup>. While the act needs to be improved and brought in line with the Global Principles on Protection of Freedom of Expression and Privacy, the legal framework alone is unlikely to improve the state of freedom of expression in the country.

The reported cases of violation of the constitutional right of citizens to express opinions on social media should be seen in the context of lack of respect for diversity that is manifested by both individuals and institutions. One of the essentials of democracy is diversity of opinions and it should be not only respected but also protected. There is a democratic system of governance with all its attendant paraphernalia such as the constitution, political parties, elections, assemblies and their committees, etc., but democratic norms are missing. That there have been incidents where political parties forged alliances to disallow women to cast their votes shows that democratic norms are missing even among its supposed torchbearers<sup>41 & 42</sup>.

Where do women, people with disabilities, and ethnic and religious minorities stand in terms of exercising basic freedoms and to what extent do these groups exercise power on their own lives? This mindset that defines the status of the disabled, women, and ethnic and religious minorities is a major hindrance to exercising the right to hold and express opinions. This mindset is also in direct conflict with international commitments of the state of Pakistan, which is party to the United Nations Convention on Rights of Persons with Disabilities and the International Covenant on Civil and Political Rights.

In other words, the state of Pakistan has subscribed to accumulated wisdom of humanity as to how to ensure the rights of its citizens but it has not taken steps to change the mindset that manifests itself in our laws, customs and social structures, which results in denial of basic freedoms to vulnerable groups. For example, how can the Frontier Crimes Regulations<sup>43</sup> and the concept of collective punishment still practiced in the country’s tribal areas be justified in a democratic system of governance?

There is a need to engage political parties in changing the mindset that does not respect human diversity. Genuine respect for human diversity will lead to respect for diverse opinions. Politicians need to understand that social media is there to stay and curbing voices of the people in digital spaces is in itself self-defeating because of the very nature of the medium. Conducting business of politics has become next to impossible without social media. Politicians will eventually have to realise that they can themselves become victims of the restrictions they are imposing on the use of social media at the hands of forces that were dictating the extent to which citizens may exercise basic freedoms before the dawn of social media.

## **7. Findings and Recommendations**

The important findings and recommendations of this research report have been summarised in the following for the convenience of the reader:

### **7.1 Findings**

1. Internet penetration in the country has increased manifold since the turn of the century, but the legislation to protect and promote the right to freedom of expression in digital spaces does not meet the principles of freedom of expression and speech.
2. Civil society groups have termed the Prevention of Electronic Crimes Bill, 2016 flawed and restrictive.
3. The FOI Ordinance 2002 and the Balochistan FOI Act 2005 do not contain exhaustive list of information to be proactively shared with citizens through website, as is the case with the Khyber Pakhtunkhwa RTI Act 2013, the Punjab Transparency and RTI Act 2013 and the Sindh Transparency and RTI Act 2016.
4. There is an effective legislation in place in Khyber Pakhtunkhwa and Punjab to promote the right to information in digital spaces, but the provincial information commissions are not playing their due role in the implementation of provisions pertaining to proactive disclosure of information.
5. Both the Khyber Pakhtunkhwa and Punjab Information Commissions have not developed the rules and standards for public bodies to manage their records.
6. The Punjab Information Commission did not publish its annual report for 2016 by 31 August, as required by the Punjab Transparency and RTI Act 2013.
7. The Punjab government, in consultation with the provincial Information Commission, has framed the Punjab Transparency and RTI Rules 2014; while the Khyber Pakhtunkhwa government has yet to frame rules for the provincial RTI Act 2013.
8. The Khyber Pakhtunkhwa and Punjab Information Commissions have done well with regard to the training of PIOs on their roles and responsibilities under their respective RTI laws.
9. The Khyber Pakhtunkhwa and Punjab Information Commissions are empowered to hold enquiries, other than those pertaining to complaints, for the implementation of different provisions of their respective laws, but they have as yet held no such enquiries.

### **7.2 Recommendations**

1. The Prevention of Electronic Crimes Bill, 2016 should be brought in line with the spirit of the Global Principles on Protection of Freedom of Expression and Privacy.
2. The federal government should instruct law enforcement agencies to develop policies and guidelines to protect the citizens' right to freedom of speech and expression, in consultation with civil society groups.
3. The provincial governments should allocate funds in their annual budgets for the implementation of provisions of their RTI laws pertaining to proactive disclosure of information through website.
4. The Khyber Pakhtunkhwa and Punjab Information Commissions should develop robust mechanisms to monitor and report on the compliance of provincial public bodies with relevant provisions of their respective RTI laws. They will only be able to collect data from provincial public bodies if there is a monitoring mechanism in place to collect such data.
5. The Khyber Pakhtunkhwa and Punjab Information Commissions should develop guidelines for PIOs to implement provisions of their respective RTI laws. These guidelines should cover, inter alia, the following:
  - a) Standards of record-keeping.

- b) Proactive disclosure of information through website and notice boards.
  - c) Timeline for responding to information requests.
  - d) Application of harm test.
  - e) Transfer of information requests to relevant PIOs.
  - f) Fee to be charged for providing requested information.
  - g) Facilitation to the illiterate and people with disabilities in filing information requests.
6. The Khyber Pakhtunkhwa and Punjab Information Commissions should develop rules and standards for public bodies so that information could be properly maintained. These rules and standards should take cognisance of the fact that owing to the advancements in ICT, information is being not only created differently but also preserved and transmitted differently. These rules and standards should also ensure that records are preserved, both off-line and on-line, through the use of new modes of employing different electronic devices.
  7. The Khyber Pakhtunkhwa and Punjab Information Commissions are public bodies; as such, they are required to proactively disclose information under Sections 5 and 4 of their respective RTI laws. In fact, they need to serve as role models for public bodies with regard to proactively sharing information through website.
  8. More than three years have passed since the enactment of the Khyber Pakhtunkhwa RTI Act 2013 but rules for this law have not yet been framed. The Khyber Pakhtunkhwa government, in consultation with the provincial Information Commission, should frame these rules at the earliest.
  9. The federal government should ensure that the inputs of RTI experts and civil society groups are incorporated into the Right of Access to Information Bill 2017 before it is tabled in the National Assembly.
  10. The Balochistan government should repeal the provincial FOI Act 2005 and enact an effective RTI law for the province on the lines of those enacted by Khyber Pakhtunkhwa, Punjab and Sindh.

## End Notes

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<sup>1</sup> Internet Live Stats (2016). *Pakistan Internet Users*. <http://www.internetlivestats.com/internet-users/pakistan/>

<sup>2</sup> Article 50 of the Constitution of the Islamic Republic of Afghanistan: The state shall adopt necessary measures to create a healthy administration and realize reforms in the administrative system of the country. The administration shall perform its duties with complete neutrality and in compliance with the provisions of the laws. The citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provisions of the law. This right shall have no limit except when harming rights of others as well as public security. The citizens of Afghanistan shall be recruited by the state on the basis of ability, without any discrimination, according to the provisions of the law. <http://www.afghanembassy.com/pl/afg/images/pliki/TheConstitution.pdf>

<sup>3</sup> Article 7(3) of the Constitution of the Kingdom of Bhutan: Fundamental Rights. A Bhutanese citizen shall have the right to information. <http://www.nationalcouncil.bt/assets/uploads/files/Constitution%20of%20Bhutan%20English.pdf>

<sup>4</sup> Article 7(22) of the Constitution of the Kingdom of Bhutan: Fundamental Rights. Notwithstanding the rights conferred by this Constitution, nothing in this Article shall prevent the State from subjecting reasonable restriction by law, when it concerns: (a) The interests of the sovereignty, security, unity and integrity of Bhutan; (b) The interests of peace, stability and well-being of the nation; (c) The interests of friendly relations with foreign States; (d) Incitement to an offence on the grounds of race, sex, language, religion or region; (e) The disclosure of information received in regard to the affairs of the State or in discharge of official duties; or (f) The rights and freedom of others. <http://www.nationalcouncil.bt/assets/uploads/files/Constitution%20of%20Bhutan%20English.pdf>

<sup>5</sup> Article 61 of the Constitution of the Republic of Maldives: Publication of acts and regulations. (a) All statutes, regulations, government orders requiring compliance by citizens and government policies shall be published and made available to the public. (b) No person may be subjected to any punishment except pursuant to a statute or pursuant to a regulation made under authority of a statute, which has been made available to the public and which defines the criminal offence and the punishment for commission of the offence. (c) All information concerning government decisions and actions shall be made public, except information that is declared to be State secrets by a law enacted by the People's Majlis. (d) Every citizen has the right to obtain all information possessed by the Government about that person. <http://www.majlis.gov.mv/en/wp-content/uploads/Constitution-english.pdf>

<sup>6</sup> Article 27 of the Constitution of the Federal Democratic Republic of Nepal: Right to information. Every citizen shall have the right to demand and receive information on any matter of his or her interest or of public interest. Provided that no one shall be compelled to provide information on any matter of which confidentiality must be maintained in accordance with law. <http://www.wipo.int/edocs/lexdocs/laws/en/np/np029en.pdf>

<sup>7</sup> Article 19A of the Constitution of the Islamic Republic of Pakistan: Right to information. Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law. [http://na.gov.pk/uploads/documents/1333523681\\_951.pdf](http://na.gov.pk/uploads/documents/1333523681_951.pdf)

<sup>8</sup> Article 14A of the Constitution of the Democratic Socialist Republic of Sri Lanka: Right of access to information. (1) Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen's right held by: (a) the State, a Ministry or any Government Department or any statutory body established or created by or under any law; (b) any Ministry of a Minister of the Board of Ministers of a Province or any Department or any statutory body established or created by a statute of a Provincial Council; (c) any local authority; and (d) any other person who is in possession of such information relating to any institution referred to in sub-paragraphs (a) (b) or (c) of this paragraph. <https://www.parliament.lk/files/pdf/constitution.pdf>

<sup>9</sup> Article 34 of the Constitution of the Islamic Republic of Afghanistan: Freedom of expression shall be inviolable. Every Afghan shall have the right to express thoughts through speech, writing, illustrations as well as other means in accordance with provisions of this constitution. Every Afghan shall have the right, according to provisions of law, to print and publish on subjects without prior submission to state authorities. Directives related to the press, radio and television as well as publications and other mass media shall be regulated by law. <http://www.afghanembassy.com/pl/afg/images/pliki/TheConstitution.pdf>

<sup>10</sup> Article 39 of the Constitution of the People's Republic of Bangladesh: Freedom of thought and conscience, and of speech. (1) Freedom of thought and conscience is guaranteed. (2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence (a) the right of every citizen to freedom of speech and expression; and (b) freedom of the press are guaranteed. [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=367](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367)

<sup>11</sup> Article 7(2) of the Constitution of the Kingdom of Bhutan: Fundamental Rights. A Bhutanese citizen shall have the right to freedom of speech, opinion and expression. <http://www.nationalcouncil.bt/assets/uploads/files/Constitution%20of%20Bhutan%20English.pdf>

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<sup>12</sup> Article 19(1) of the Constitution of India: Protection of certain rights regarding freedom of speech, etc. All citizens shall have the right: (a) to freedom of speech and expression.

<http://www.pocketlawyer.com/blog/wp-content/uploads/2017/01/The-Constitution-of-India.pdf>

<sup>13</sup> Article 19(3) of the Constitution of India: Protection of certain rights regarding freedom of speech, etc. Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

<http://www.pocketlawyer.com/blog/wp-content/uploads/2017/01/The-Constitution-of-India.pdf>

<sup>14</sup> Article 27 of the Constitution of the Republic of Maldives: Freedom of expression. Everyone has the right to freedom of thought and the freedom to communicate opinions and expression in a manner that is not contrary to any tenet of Islam.

<http://www.majlis.gov.mv/en/wp-content/uploads/Constitution-english.pdf>

<sup>15</sup> Article 67 of the Constitution of the Republic of Maldives: Responsibilities and duties. The exercise and enjoyment of fundamental rights and freedoms is inseparable from the performance of responsibilities and duties, and it is the responsibility of every citizen: (a) to respect and protect the rights and freedoms of others; (b) to foster tolerance, mutual respect, and friendship among all people and groups; (c) to contribute to the well-being and advancement of the community; (d) to promote the sovereignty, unity, security, integrity and dignity of the Maldives; (e) to respect the Constitution and the rule of law; (f) to promote democratic values and practices in a manner that is not inconsistent with any tenet of Islam; (g) to preserve and protect the State religion of Islam, culture, language and heritage of the country; (h) to preserve and protect the natural environment, biodiversity, resources and beauty of the country and to abstain from all forms of pollution and ecological degradation; and (i) to respect the national flag, state emblem and the national anthem. <http://www.majlis.gov.mv/en/wp-content/uploads/Constitution-english.pdf>

<sup>16</sup> Article 17(2) of the Constitution of the Federal Democratic Republic of Nepal: Right to Freedom. Every citizen shall have the: (a) freedom of opinion and expression. <http://www.wipo.int/edocs/lexdocs/laws/en/np/np029en.pdf>

<sup>17</sup> Article 19 of the Constitution of the Islamic Republic of Pakistan: Freedom of speech, etc. Every citizen shall have the 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 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 offence. [http://na.gov.pk/uploads/documents/1333523681\\_951.pdf](http://na.gov.pk/uploads/documents/1333523681_951.pdf)

<sup>18</sup> Article 14(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka: Freedom of speech, assembly, association, occupation, movement, etc. Every citizen is entitled to: (a) the freedom of speech and expression including publication. <https://www.parliament.lk/files/pdf/constitution.pdf>

<sup>19</sup> Article 15(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka: Restrictions on fundamental rights. The exercise and operation of the fundamental right declared and recognized by Article 14(1)(a) shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence.

<https://www.parliament.lk/files/pdf/constitution.pdf>

<sup>20</sup> Justice Jawwad S Khawaja (2011). *Judgment on Right to Information in Memo Gate Case* (in 'Constitution of Pakistan', 79 of 2011).

<http://www.cpd-pakistan.org/wp-content/uploads/2014/11/Eloquent-note-by-JUSTICE-JAWWAD-S.-KHAWAJA-on-Right-to-Information-in-Memo-Gate-Case.pdf>

<sup>21</sup> Justice Shams Mehmood Mirza (2016). *Judgment on Freedom of Information Ordinance 2002*.

<http://www.cpd-pakistan.org/wp-content/uploads/2016/02/lhc-Decision.pdf>

<sup>22</sup> Reema Omer (2014). *A welcome judgement* (Dawn). <https://www.dawn.com/news/1118991>

<sup>23</sup> Centre for Law and Democracy. *Global Right to Information Rating*. <http://www.rti-rating.org/country-data/>

<sup>24</sup> Section 5 of the Freedom of Information Ordinance 2002: Publication and availability of records. 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 at an adequate number of outlets so that access thereof is easier, less time-consuming and less expensive.

<http://www.cpd-pakistan.org/wp-content/uploads/2017/04/Freedom-of-Information-Ordinance-2002-.pdf>

<sup>25</sup> Section 6 of the Freedom of Information Ordinance 2002: Computerisation of records. Each public body shall endeavour within reasonable time and subject to availability of resources that all records covered by the provisions of this Ordinance are computerised and connected through a network all over the country on different systems so that authorised access to such records is facilitated.

<http://www.cpd-pakistan.org/wp-content/uploads/2017/04/Freedom-of-Information-Ordinance-2002-.pdf>

<sup>26</sup> Balochistan Freedom of Information Act 2005.

<http://www.cpd-pakistan.org/wp-content/uploads/2017/04/Balochistan-Freedom-of-Information-Act-2005-.pdf>

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<sup>27</sup> Section 4 of the Khyber Pakhtunkhwa Right to Information Act 2013: Maintenance and indexing of records. Subject to the provisions of this Act and in accordance with the rules as may be prescribed, each public body shall ensure that all of the records which it holds are properly maintained, including so as to enable it to comply with its obligations under this Act, and in accordance with any relevant rules or standards established by the Information Commission.

<http://www.cpd-pakistan.org/wp-content/uploads/2017/04/Khyber-Pakhtunkhwa-Right-to-Information-Act-2013-.pdf>

<sup>28</sup> Section 5 of the Sindh Transparency and Right to Information Act 2016: Proper Maintenance of Records. Subject to the provisions of this Act and any rules made herein, each Public Body shall ensure that all of the records which it holds are properly maintained so as to enable it to comply with its obligations this Act, and in accordance with any relevant rules or standards established by the Sindh Information Commission.

<http://www.cpd-pakistan.org/wp-content/uploads/2017/04/THE-SINDH-TRANSPARENCY-AND-RIGHT-TO-INFORMATION-BILL-2016.pdf>

<sup>29</sup> Section 8 of the Punjab Transparency and Right to Information Act 2013: Maintenance and indexing of information. (1) Subject to provisions of this Act and the rules or regulations, a public body shall maintain information relating to the body in an easily accessible form. (2) A public body shall, within the time prescribed by the Commission for any special or general categories of information, computerise or maintain in electronic form the information to enable: (a) easy retrieval of information; and (b) easy and authorised electronic access of information by an applicant.

<http://www.cpd-pakistan.org/wp-content/uploads/2017/04/The-Punjab-Transparency-and-RTI-Act-2013-.pdf>

<sup>30</sup> Section 4 of the Punjab Transparency and Right to Information Act 2013: Proactive Disclosure. Subject to the provisions of this Act, a public body shall proactively disclose: (a) particulars of the public body, its functions and duties; (b) powers and functions of its officers and employees; (c) norms and criteria set by the public body for the discharge of its functions; (d) Acts, Ordinances, rules, regulations, notifications, circulars and other legal instruments being enforced, issued or used by the public body in the discharge of its functions; (e) a statement of categories of information being held by the public body; (f) a description of its decision-making processes and any opportunities for the public to provide input into or be consulted about decisions; (g) a directory of its officers and employees with their respective remuneration, perks and privileges; (h) budget of the public body including details of all proposed and actual expenditures; (i) amount of subsidy and details of beneficiaries if the public body provides any subsidy; (j) particulars of the recipients of concessions, permits or authorisations granted by the public body; (k) facilities available with the public body for obtaining information held by it; (l) name, designation and other particulars of the public information officer of the public body; and (m) any other information that the Government may notify in the official Gazette.

<http://www.cpd-pakistan.org/wp-content/uploads/2017/04/The-Punjab-Transparency-and-RTI-Act-2013-.pdf>

<sup>31</sup> Section 5 of the Khyber Pakhtunkhwa Right to Information Act 2013. Publication and availability of records. (1) The following categories of information shall be duly published by public bodies in an up-to-date fashion and in a manner which best ensures that they are accessible to those for whom they may be relevant, including over the Internet, subject to reasonable restrictions based on limited resources: (a) Acts and subordinate legislation such as rules, regulations, notifications, bye-laws, manuals and orders having the force of law in the Province, including being made available at a reasonable price at an adequate number of outlets to ensure reasonable access by the public; (b) information about the public body, including its organisation, functions, duties, powers and any services it provides to the public; (c) a directory of its officers and employees, including a description of their powers and functions and their respective remunerations, perks and privileges; (d) norms and criteria set by the public body for the discharge of its functions, including any rules, manuals or policies used by its employees to this end; (e) a description of its decision making processes and any opportunities for the public to provide input into or be consulted about decisions; (f) relevant facts and background information relating to important policies and decisions which are being formulated or have been made and which affect the public; (g) a detailed budget of the public body, including proposed and actual expenditures; (h) details about any subsidy or benefit programmes operated by the public body, including details about the amount or benefits provided and the beneficiaries; (i) particulars of the recipients of concessions, permits, licenses or authorisations granted by the public body; (j) the categories of information held by the public body; (k) a description of the manner in which requests for information may be made to the public body, including the name, title and contact details of all designated officers; and (l) such other information as may be prescribed. (2) Public body shall also publish an annual report on what they have done to implement their obligations under this Act, which shall include detailed information about the requests for information which they have received, and how they have processed these requests. (3) The annual report under sub-section (2) shall be formally forwarded to Speaker Provincial Assembly of Khyber Pakhtunkhwa and to the Information Commission, who shall take such action on the report as they may deem appropriate.

<http://www.cpd-pakistan.org/wp-content/uploads/2017/04/Khyber-Pakhtunkhwa-Right-to-Information-Act-2013-.pdf>

<sup>32</sup> Section 5 of the Sindh Transparency and Right to Information Act 2016: Proactive Disclosure. Subject to the provisions of this Act, a Public Body shall proactively disclose and publish: (a) Particulars of its organisation, functions and duties; (b) Powers and functions of its officers and employees; (c) Norms and criteria set by it for the discharge of its daily functions; (d) Rules, regulations, notifications circulars, instructions and other legal instruments being enforced, issued or used by it or being used by its employees in the discharge of its functions; (e) Statement of categories of information that are under its control; (f) Description of its decision making processes; (g) Details of all its administrative and developmental decisions; (h) Directory of its officers and employees with their qualifications and respective

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remuneration, perks and privileges; (i) Budget including details of all proposed and actual expenditures; (j) Manner of execution of subsidy programmes; (k) Full particulars of the recipients of concessions, permits or authorisations granted by it; (l) Facilities available with the public body for obtaining information held by it; (m) Complete particulars of its public information officer; (n) Any other information as may be prescribed; and (o) Maintenance of record in respect of applications received and actions taken thereto. (2) For the purpose of sub-section (1), every Public Body shall disseminate all information as widely as possible including the internet where possible so that all citizens have easy access to it. (3) Every public body shall endeavour to ensure proactive disclosure of information as explained in sub-section (1) of section 6.

<http://www.cpd-pakistan.org/wp-content/uploads/2017/04/THE-SINDH-TRANSPARENCY-AND-RIGHT-TO-INFORMATION-BILL-2016.pdf>

<sup>33</sup> Sindhu Abbasi (27 May 2017). *40% of women face harassment on internet, says Pakistan's first online violence study* (Geo TV).

<https://www.geo.tv/latest/143464-40-of-women-face-harassment-on-internet-says-pakistans-first-online-violence-study>

<sup>34</sup> The News International (12 April 2017). *Cyber Harassment Helpline receives 535 complaints in 4 months*.

<https://www.thenews.com.pk/print/198101-Cyber-Harassment-Helpline-receives-535-complaints-in-4-months>

<sup>35</sup> Nighat Dad & Shmyla Khan (7 January 2017), *Naila Rind killed herself because Pakistan's cybercrime laws failed her* (Dawn). <https://www.dawn.com/news/1306976>

<sup>36</sup> The Global Principles on Protection of Freedom of Expression and Privacy.

<https://www.article19.org/data/files/medialibrary/38657/Expression-and-Privacy-Principles-1.pdf>

<sup>37</sup> The Prevention of Electronic Crimes Act, 2016. [http://www.na.gov.pk/uploads/documents/1462252100\\_756.pdf](http://www.na.gov.pk/uploads/documents/1462252100_756.pdf)

<sup>38</sup> Jinnah Institute (2017). *Policing Cybercrime: A Comparative Analysis of the Prevention of Electronic Crimes Bill*.

<http://jinnah-institute.org/wp-content/uploads/2017/01/Policing-Cybercrime-A-Comparative-Analysis-of-the-Prevention-of-Electronic-Crimes-Bill.pdf>

<sup>39</sup> Haroon Baloch (2016). *Internet Rights and Legislation in Pakistan: A Critique on Cyber Crime Bill, 2016*.

[http://www.netfreedom.pk/wp-content/uploads/2016/06/CSO-criticism-on-PECB-2016\\_IssuePaper.pdf](http://www.netfreedom.pk/wp-content/uploads/2016/06/CSO-criticism-on-PECB-2016_IssuePaper.pdf)

<sup>40</sup> Digital Rights Foundation (2015). *Pakistan: New Cybercrime Bill Threatens the Rights to Privacy and Free Expression*.

[http://digitalrightsfoundation.pk/wp-content/uploads/2015/04/Pakistan-Cybercrime-Joint-Analysis\\_20-April-2015.pdf](http://digitalrightsfoundation.pk/wp-content/uploads/2015/04/Pakistan-Cybercrime-Joint-Analysis_20-April-2015.pdf)

<sup>41</sup> The Express Tribune (20 November 2015). *Restrictions in Punjab: Women barred from voting in some districts*.

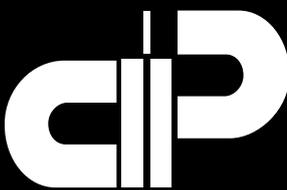
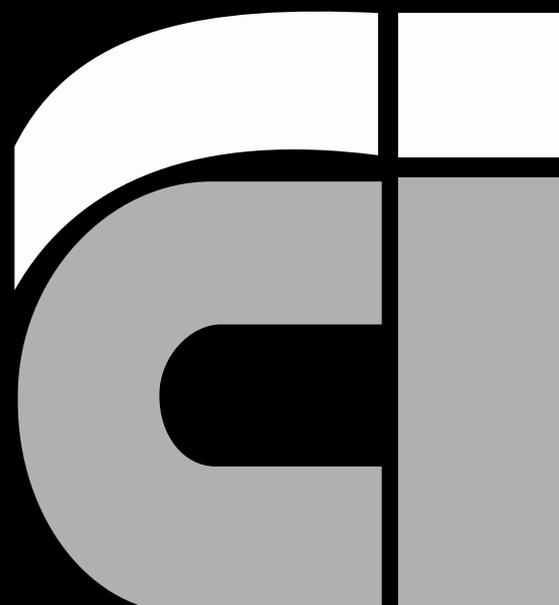
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<sup>42</sup> AP (6 May 2013). *In Pakistani town, men have spoken: no women vote* (Dawn).

<https://www.dawn.com/news/812287/in-pakistani-town-men-have-spoken-no-women-vote>

<sup>43</sup> The Frontier Crimes Regulations (2011). <http://www.isj.org.pk/the-frontier-crimes-regulations-amended-in-2011/>

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