

Evolution of the Enactment and Implementation Status of Right to Information Legislation in Pakistan

A Briefing Paper



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List of Abbreviations:

ANP	Awami National Party
CPDI	Centre for Peace and Development Initiatives
COD	Charter of Democracy
CAA	Civil Aviation Authority
CSOs	Civil Society Organizations
CRTI	Coalition on Right to Information
CNIC	Computerized National Identity Card
CRC	Constitutional Reforms Committee
CRPWD	Convention on Rights of Persons with Disabilities
DCO	District Coordination Officer
FOIO, 2002	Freedom of Information Ordinance, 2002
IC	Information Commission
ICCPR	International Covenant on Civil and Political Rights
IHC	Islamabad High Court
LGO, 2001	Local Government Ordinance, 2001
MMA	Muttahida Majlis-e-Amal
OGDCL	Oil and Gas Development Company Limited
PIC	Pakistan Information Commission
PIDE	Pakistan Institute of Development Economics
PLD	Pakistan Law Digest
PPP	Pakistan Peoples Party
PTCL	Pakistan Telecommunication Company Limited
RTI	Right to Information
SDGs	Sustainable Development Goals
UN	United Nations
UNCAC	United Nations Convention against Corruption
UDHR	Universal Declaration of Human Rights
WP	Writ Petition

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Executive Summary:

This briefing paper, titled 'The Evolution of the Enactment and Implementation Status of Right to Information Legislation in Pakistan', commences by tracing the genesis of the right of access to public documents in key provisions of the Swedish Freedom of Press Act, 1766, as well as international legal instruments and initiatives.

The quality of deliberations conducted by the framers of the world's first-ever right to information law is evident from the quality of the content of the Swedish Freedom of Press Act, 1766, which becomes even more striking when juxtaposed with the anomaly-ridden RTI bills and laws of the country. After highlighting the main features of the Swedish law, such as the access it provided to citizens to copies of official documents at cost price without any requirement to state the purpose, the paper dwells upon the differences in each of the Article 19 of the UDHR and ICCPR pertaining to the right to freedom of expression and the right to information. It states that unlike Article 19 of UDHR, Article 19 of ICCPR explicitly identifies certain permissible limitations, including protection of national security, public order, public health, and the rights and reputations of others. The briefing paper also quotes Articles from the UN Convention on Rights of Persons with Disabilities, requiring state parties to remove access barriers faced by persons with disabilities in exercising their right to information.

Although we have witnessed marked improvement in the quality of thought that has gone into right to information legislation in the last three decades, especially evident in the Punjab and Khyber Pakhtunkhwa right to information laws when juxtaposed with the first bill, this improvement has come about at a glacial pace and varies in nature across laws.

Dwelling on the rudimentary nature of earlier bills and laws, the briefing paper states that the Freedom of Information Bill, 1990 and the Freedom of Information Ordinance, 1997 specifically mention that any information denied in any statute will not be provided under these laws which meant that these laws did not have an overriding effect.

Documenting how improvements in the quality of right to information legislation have come about, the briefing paper states that Freedom of Information Ordinance, 2002, (FOIO 2002) and its replicas in Sindh and Balochistan, promulgated to fulfill one of the conditionalities of Asian Development Bank, (ADB) loan, were weak and ineffective laws on multiple grounds. However, a small section of civil society led by CPDI, despite their reservation about this law, consider it as a challenge which could be converted into an opportunity for legislative reforms. They not only started submitting information requests under this law, but CPDI also conducted analysis of FOIO, 2002, juxtaposing its provisions with those of right to information laws enacted in the region. Instead of terming this law ineffective in generic terms, this comparative analysis with the laws of similar countries contributed to informed debate on right to information legislation.

Civil society kept pushing the envelope and eventually, the Charter of Democracy, a historic agreement between the Pakistan Muslim League-Nawaz, (PML-N) and the Pakistan People's Party (PPP) signed in 2006, included a commitment to the legislation on the right to information.

Furthermore, the civil society raised a demand on the members of the CRC that the right to information be explicitly acknowledged through an amendment to the constitution. As a consequence of this engagement, Article 19-A was inserted into the constitution.

The briefing paper states that although 2nd generation RTI laws are a major improvement over 1st generation RTI laws, each law contains certain anomalies that need to be addressed. Benefiting from an analytical framework presented in a tabular form to carry out analysis of RTI laws, developed by CPDI, the briefing paper describes the context in which each law was enacted and the key flaws of each law. For example, so far as the Right of Access to Information Act, 2017 is concerned, the structure of the law has been made complicated with regard to the declaration of public records. In a major departure from all good laws, this Act contains a list of records that can be made public. All good laws on right to information provide a negative list and declare all other records as public records.

The briefing paper states that in an otherwise excellent Punjab information law, a retrogressive amendment in March 2021, introduced in Section 5(6), empowers the government to extend the tenure of Commissioners for an additional 3 years. This raises concerns about potential conflicts of interest, as some commissioners may hesitate to make decisions against the government if they are seeking reappointment by the same government for a second term.

The briefing paper states that the manifestations of the colonial mindset can be observed both in the practices and provisions of right to information laws ostensibly enacted to end the secrecy narrative and to transform the relationship between the people and state institutions from ‘subjects’ to ‘citizens. For example, the Balochistan RTI law requires the applicant to attach a copy of CNIC with the request for information. Under the Khyber Pakhtunkhwa Information Law, a fine of Rs. 50,000 can be imposed on a person who uses information obtained through this law for “malafide purposes with ulterior motives with facile, frivolous design”.

RTI laws have been enacted to make the bureaucracy more open and transparent, but the bureaucracy has found ways and means to dominate these information laws. Bureaucratic dominance is quite discernable from the composition of the information commissions. For example, the information laws of Khyber Pakhtunkhwa, Punjab, and Sindh limit the choice of Chief Information Commissioner to retired senior government servants.

The composition of the Punjab Information Commission also clearly reflects the influence of bureaucracy. Section 5(2) of the Punjab information law allows the government to appoint “not more than 3 commissioners,” which means they can appoint just one Commissioner, which may not be sufficient for effective implementation of the Act and promoting citizens’ right to access information. Additionally, Section 5(2) does not require the government to appoint one commissioner from each of the three categories: judiciary, civil society, and bureaucracy. This means the government can appoint all three commissioners from just one category, and it did appoint two commissioners from the bureaucracy in 2018.

What is worrisome is that the information commissions established under these laws, which are meant to protect and promote citizens’ right of access to information, sometimes become part of the problem rather than the solution. Unlike the Balochistan RTI law, there is no specific requirement in the Khyber Pakhtunkhwa RTI law, the information commission has started the practice of seeking certified copy of CNIC from the appellants. This requirement creates unnecessary hurdles in the exercise of the

fundamental right of access to information, given the fact that millions of people do not have CNICs and there are individuals living in remote areas without access to photocopier machines.

Recently, the Pakistan Information Commission has been wasting its own time and resources, as well as those of complainants, by requesting complainants via email and traditional mail to provide a certificate under Rule 8(2) of the Right of Access to Information Rules, 2019. This certificate testifies that the complainant has not filed an appeal at any other legal forum, while ignoring Rule 8(6) which empowers the Commission to “expedite the process of disposing of complaints through verbal or electronic communication with the complainant”. Furthermore, the Act of 2017 itself overrides all other rules and laws, yet certificates are still being sought even though Section 3(2)(b) of the Act, 2017 requires the interpretation of the Act to “facilitate and encourage promptly the disclosure of the information at the lowest and reasonable cost”.

The briefing paper states that while information commissions have been established at the federal level and in all provinces except in Balochistan, the performance of these information commissions varies across regions and the tenures of their members. The first batch of members appointed in the Sindh Information Commission completed their tenure without deciding even a single complaint. On the other hand, the initial members of the Khyber Pakhtunkhwa, Punjab, and federal-level commissions started off on a sound footing. In particular, the members of the Punjab Information Commission issued detailed judgments on key issues, setting an example for other commissions to follow. The 'harm test' was applied for the first time in the country by the first batch of members of the Punjab Information Commission to decide whether the disclosure, or otherwise, of the logbook of the District Coordination Officer (DCO) was requested under the Punjab law.

Members of the first batch of the Pakistan Information Commission also advanced the process of making the government more open and transparent by issuing detailed judgments on contentious issues. Some of the public interest orders of the commission pertain to the right of access to information/records of officers with disabilities on an equal basis with others, the issue of minimum wage for sanitary workers and security guards, the rights of passengers and patients, the disclosure of gifts received from foreign dignitaries, the declaration of records more than 20 years old as public records, the disclosure of information pertaining to the fees paid to lawyers from public funds, and the declaration of SNGPL, Pakistan Cricket Board, and Islamabad Club as public bodies. Through its different Orders, the Commission held that the information proactively published under Section 5 of the Right of Access to Information Act 2017 should be 'accessible' for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired, and people with other disabilities.

Responding to an information request, the Pakistan Information Commission shared that federal public bodies and citizens have filed a total of 104 petitions in high courts against its Orders. A total of 40 Orders of the commission have been suspended whereas in case of 40 Orders, notices have been issued to the Respondents. That such a high number of orders of the PIC have been suspended, or that notices have been issued and there are no decisions yet demonstrates that the superior judiciary proceeds at a glacial pace on citizens' right of access to information. The remaining orders are either upheld, dismissed or have been reverted back to PIC.

According to data provided by Punjab Information Commission in response to an information request, Punjab public bodies and citizens have filed a total of 14 petitions against the Orders of the Commission from July 01, 2020, to date. A complaint has also been filed with the Punjab Information Commission,

seeking information about the missing orders on its website that were issued prior to 2020. A total of 3 petitions have been disposed of three petitions have been dismissed whereas 8 petitions are still pending with Lahore High Court.

Due to this high number of pending petitions in high courts, several contentious issues concerning citizens' right to access information, which have been addressed at the level of information commissions, remain unresolved including: determining the public body status of organizations like Islamabad Club and Pakistan Cricket Board, clarifying the law's applicability to constitutional bodies, deciding on the publication of public servants' assets and examining citizens' right to be informed about FBR actions on tax collection from proceeds of crime.

Regarding fixing anomalies in the RTI laws, the briefing paper recommends that CPDI collaborate with civil society to engage with parliamentarians to build consensus on its analysis of each law. Given that the first batch of Sindh Information Commission members completed their three-year tenure without resolving a single complaint and that certain regressive practices like requesting copies of CNICs and certificates from citizens to affirm non-filing of complaints at any other forum have been introduced by information commissions, the briefing paper recommends staying vigilant concerning the information commission's performance. The briefing paper also suggests that although the appointment of IC members rests with the PMs and CMs, it's time for CSOs to advocate for these vacancies to be filled through a rigorous recruitment process. This step is crucial to counter the trend of appointing hand-picked individuals at PIC who often lack suitability for fulfilling their responsibilities. Lastly, the briefing paper underscores that transparency and information disclosure, particularly proactive dissemination through websites, demand resources. Thus, CSOs should raise demands on governments during the budget-making process, urging the allocation of adequate resources to enable public bodies to fulfill their RTI obligations, especially proactive information disclosure through their websites.

Introduction:

This Briefing Paper will take us on a journey of right to information developments in Pakistan spanning over three decades, from 1990 when Professor Khursheed Ahmad of Jamaat-e-Islami, (JI) introduced a private member bill in the Senate to present day. We will learn how promulgation of Freedom of Information Ordinance, 2002, (FOI 2002) was a seminal moment for the RTI movement in the country. How did one section of civil society perceive this legislation as worthless, while the other section utilized it as a catalyst to demand effective right to information laws, resulting in the enactment of robust legislation in all four provinces and at the federal level? As we trudge along this fascinating journey, we will witness, at times, exemplary responses; at times, ambivalent and paradoxical ones; and at other times, downright hostile reactions from all principal actors, i.e., the executive, the judiciary, and the legislature, regarding the critical question of citizens' right to access information. We will see how, at times even information commissions, entrusted with facilitating citizens in exercising their right to information, (RTI,) breach their trust by creating hurdles in the exercise of this constitutionally guaranteed right.

Objectives:

The objectives of the briefing paper are as follows:

1. To comprehend the evolution of the right to information legislation in the country, tracing its development from Professor Khursheed Ahmad's 1990 private member bill to the present day. This includes understanding the factors behind the promulgation of the Freedom of Information Ordinance in 2002, the insertion of Article 19-A into the constitution, and the enactment of the Khyber Pakhtunkhwa Right to Information Act 2013, as well as the Punjab Transparency and Right to Information Act 2013.
2. To understand the divergent reactions of civil society towards the Freedom of Information Ordinance in 2002 and how a segment of civil society utilized it to advocate for robust RTI laws. This advocacy ultimately contributed to the emergence of improved legislation across federal and provincial domains.
3. With a focus on the executive, judiciary, and legislature, this briefing paper aims to analyze the multifaceted challenges in implementing RTI laws in Pakistan. The report will scrutinize instances of positive and negative responses, examining how information commissions have both facilitated and impeded citizens' exercise of their constitutionally guaranteed right to access information.

Methodology:

This briefing paper employs the following methodology:

Conducting a comprehensive literature review of both national and international legal instruments and initiatives related to the rig

Reviewing the actions and responses of civil society and political parties in relation to the enactment of right to information laws

Utilizing the Right of Access to Information Act, 2017, to acquire certified copies of the Freedom of Information Bill, 1990, from the Secretariat of the Senate of Pakistan, obtaining the Freedom of Information Ordinance 1997 from the Ministry of Law and Justice. Furthermore, employing federal and Punjab Right to Information (RTI) laws to request information from respective information commissions about the status of petitions submitted by public bodies and citizens against the decisions made by these commissions.

Analyzing the orders issued by information commissions and examining judicial verdicts from the superior judiciary.information.

Chapter 1 **Genesis of RTI:**

The genesis of RTI can be traced in both religious and secular concepts. While all revealed religions such as Islam, Christianity and Judaism highlight significance of seeking truth and ensuring accountability, in secular domain, it was Anders Chydenius, (1729-1803), Finish philosopher, clergy and politician who promoted the concept of access to public documents for transparency and accountability in governance as a legal right.

Swedish Freedom of Press Act, 1766:

As Finland was part of Sweden at that time, efforts of Anders Chydenius led to the enactment of the Swedish Freedom of Press Act on December 02, 1766. The quality of deliberations conducted by the framers of the world's first ever right to information law is evident from the quality of the content of the Swedish Freedom of Press Act, 1766.

Contrary to what its name suggests, this Act, also translated as Freedom of Print Act, 1766, is not restricted to what material should, or should not be published in the press. As Jonas Nordin writes in the paper titled Swedish Freedom of Print Act, 1766: Background that "It was a Freedom of Information Act as much as it was a Freedom of Print Act" and that "the public access to official records was the main purpose of the law".

Dwelling on the key features of this Act, he states: "All citizens were allowed to access and copy official documents at cost price, and without having to state the purpose of doing so. Public documents were also free to print without limitations".

Examining the exemption mentioned in the Act, he states: "Exemptions were made for records that needed to be kept secret (especially in foreign affairs) and working papers from deliberations still in progress" and that the restrictions on public documents were "somewhat undefined".

That the enactment of the Swedish Freedom of Information Act was a watershed moment in the area of access to public records can be gauged from the fact, in the words of Jonas Nordin, "Since 1766 public access has been the norm, while secrecy is the exception".

RTI and International Legal Instruments and Initiatives

No matter how much of a watershed moment the enactment of the Swedish Freedom of Information Act in 1766 was in the area of access to public documents, it was the adoption of international legal instruments and initiatives in the 20th century that gave impetus to the enactment of right to information laws around the world.

At the international level, the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly on December 10, 1948, along with the legally binding treaties such as the International Covenant on Civil and Political Rights (ICCPR) adopted on March 23, 1966, the United Nations Convention against Corruption (UNCAC) adopted on October 31, 2003, and the call for action in the form of the Sustainable Development Goals (SDGs) adopted on September 25, 2015, acknowledge the significance of citizens' right to information.

RTI: Article 19 of UDHR and ICCPR:

Article 19 of the UDHR specifically addresses the right to freedom of thought, conscience, and expression as well as right to information. It states, "Everyone has the right to freedom of thought, conscience, 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 frontiers.”

Article 19 of the ICCPR mirrors the language of Article 19 of the UDHR, guaranteeing the right to freedom of expression as well as the right to information. It states, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of his choice.”

It should be kept in mind that while Article 19 of both the UDHR and the ICCPR protect the right to freedom of expression, there are certain differences as well. Unlike Article 19 of UDHR, Article 19 of ICCPR explicitly identifies certain permissible limitations, including protection of national security, public order, public health, and the rights and reputations of others. While Article 19 of UDHR does not explicitly enumerate these specific restrictions. Furthermore, the ICCPR guarantees the right to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, whereas the UDHR does not explicitly mention the cross-border dimension of freedom of expression.

It is also important to note that while UDHR provides guidelines and is not binding on member states, ICCPR is a legally binding instrument.

Article 10 of UNCAC:

Article 10 of the United Nations Convention against Corruption (UNCAC), a legally binding treaty, specifically addresses the “Public reporting, access to information, and right to information.” Following is the text of Article 10 of the UNCAC:

Article 10. Public reporting Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia: (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Article 9 of UN Convention on Rights of Persons with Disabilities:

Today we have a comprehensive legal document in the shape of the UN Convention on the Rights of Persons with Disabilities. It gives a framework to states for the rights of the disabled and makes it binding on the signatories who have ratified it to take proactive steps to protect the rights of the disabled and be answerable to the international community in this respect.

The UN General Assembly adopted this convention on 13 December 2006, and it was opened for signature on 30 March 2007. Pakistan signed the convention on 25 September 2008 and ratified it in July 2011.

UN CRPWD recognizes barriers faced by persons with disabilities in the exercise of their fundamental rights including the right to information. The article talks about the elimination of barriers pertaining to “information, communications and other services, including electronic services and emergency services.”

Article 21 Freedom of Expression and Opinion, and Access to Information:

Article 21 of UN CRPWD pertains to ensuring that persons with disabilities have freedom of expression as well as freedom of information. They should be able to receive and impart information in the manner of their choice. The states are required to ensure that information intended to be provided to the general public should be made available to persons with disabilities in formats they prefer, and in a timely manner and there should not be extra costs involved for making the information accessible. The state's parties should accept and facilitate "the use of sign language, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions".

Furthermore, not only the officialdom should be able to communicate with persons with disabilities in the manner of their choice, but the state's parties also are required to encourage private entities that provide services to the general public, including through Internet, to do the same. This provision of the article aims at fostering the spirit of accepting diversity and differences as the generally accepted modes of communication are not the only ways of communication and having access to information.

RTI: Goal 16.10 of SDGs:

The SDGs consist of 17 goals and 169 targets adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that all people enjoy peace and prosperity by 2030.

The SDGs consist of 17 goals and 169 targets adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that all people enjoy peace and prosperity by 2030.

Goal 16.10 of the Sustainable Development Goals (SDGs) is to ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements. This goal aims to promote transparency, accountability, and participation in decision-making processes at all levels of society.



The specific target under Goal 16.10 is as follows:

16.10.1: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

Chapter 2 Evolution of RTI as a Legal Right in Pakistan:

The study of the evolution of right to information legislation in Pakistan is fascinating at two levels. The stark difference in the quality of thought put into the Swedish Freedom of Press Act, 1766, which still shines as a beacon of light for the entire world, and the Freedom of Information Bill, 1990, the first-ever attempt in Pakistan to legislate on the right to information, a bill riddled with anomalies, is mind-boggling.

Although we have witnessed marked improvement in the quality of thought that has gone into right to information legislation in the last three decades, especially evident in the Punjab and Khyber Pakhtunkhwa right to information laws when juxtaposed with the first bill, this improvement has come about at a glacial pace and varies in nature across laws.

The Freedom of Information Bill, 1990:

The credit for making the first attempt, albeit unsuccessful, to legalize the Right to Information (RTI) in Pakistan goes to Senator Khursheed Ahmed. In the 1990s, he presented a Private Member Bill titled Freedom of Information Bill, 1990 (see Annex 1) in the Senate of Pakistan, but it did not pass into law.

The stated purpose of this bill is to “curtail corruption in the official machinery, to improve the efficiency and to facilitate effective redress of public grievances.”

Following are its key features:

1. The bill explicitly excludes the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court, and High Courts from its jurisdiction.
2. The bill specifically mentions that any information denied in any statute will not be provided, thus indicating that it does not have an overriding effect.
3. The key concepts, such as ‘information’ and ‘right to information,’ have not been defined in the bill.
4. The right of access to information has not been extended to legal persons.
5. Instead of providing a single negative list of exempted information and making the rest public, Section 3 of the bill pertains to the categories of information to be disclosed and also includes information to be exempted from disclosure.
6. The aggrieved person can file a complaint against the department in the Court of District and Sessions Judge.

The Freedom of Information Ordinance, 1997:

The second attempt to legalize the Right to Information (RTI) was made by Interim Government Federal Law Minister Fakhruddin G. Ebrahim who drafted the Freedom of Information Bill which was promulgated into an ordinance through presidential proclamation on January 29, 1997. However, The Freedom of Information Ordinance, 1997 (see Annex B) remained in effect for only three months before lapsing, as it was not formally enacted as a law by Parliament.

The ordinance states that “transparency and freedom of information are the essence of good governance and improved access to public records is necessary to ensure that the people of Pakistan are better informed about the management of their affairs and the Government is made more accountable”.

Following are its key features:

1. One of the most striking features of this ordinance is that it does not override other laws. In fact, Section 8 states that “This Ordinance shall not override any other law”.
2. The key concepts, such as ‘information’ and ‘right to information,’ have not adequately been defined in the bill.
3. The right of access to information has not been extended to legal persons.
4. Instead of providing a single negative list of exempted information and making the rest public, Section 3 contains list of public documents which includes instructions, policies, guidelines, records related to sale, purchase, lease, mortgage, acquisition or transfer in any other manner of properties both movable and immovable, record pertaining to approvals, consents, permissions, concessions, benefits, privileges, licenses, contracts, permits, agreements, and any other advantages, final orders including decisions taken at all meetings.
5. Section 4 gives absolute exemption to notes on the files, minutes of meetings and records declared classified under policy made by the government.
6. The aggrieved person can file a complaint against the department with the Federal Ombudsman.

The Local Government Ordinance 2001, (LGO 2001):

The LGO 2001, adopted by all provinces, included provisions related to transparency and the disclosure of information to citizens, both upon request and through proactive measures such as posting notices on premises and other available means.

Prior to the enactment of the RTI laws in Punjab and Khyber Pakhtunkhwa in 2013, Sindh in 2005, and Balochistan in 2006, citizens had no choice but to rely on the LGO 2001 to obtain information from provincial public bodies. However, the LGO 2001 primarily focused on local government and its functions, and certain provisions regarding information disclosure and transparency were inadequate as a substitute for comprehensive information laws in each of these provinces.

1st Generation of RTI Laws: Freedom of Information Ordinance, 2002 and its Replicas in Sindh and Balochistan:

These were weak and ineffective laws on following grounds:

1. These laws did not provide an inclusive and exhaustive definition of information.
2. Instead of having one negative list and declaring all the rest of information public, these laws contained three lists pertaining to records:
 - a. Records declared as public.
 - b. Records exempted from disclosure.
 - c. Lists of exemptions applicable to records that should be made public.
2. These laws did not have an overriding effect, meaning they were unable to supersede conflicting laws or regulations.
3. The federal and provincial Ombudsman served as appellate forums under these laws with a limited mandate.
 - a. Their mandate was limited only to deciding on citizens' complaints.
 - b. Key functions such as creating awareness about citizens' right of access to information, ensuring proactive disclosure of information by public bodies, training Public Information Officers (PIOs), developing transparency standards, monitoring compliance of their respective laws by public bodies and giving recommendations to governments to review laws that are against the spirit of right to information legislation were left out of their purview.

Chapter 3 The Role of Civil Society and Political Parties in Legislative Reforms:

The promulgation of FOIO, 2002 gave impetus to the drive for effective legislation on the right to information in the country.

Following are the major achievements of the civil society regarding the legislation on right to information:

Using FOIO 2002 as an Advocacy Tool for Effective Legislation on RTI:

When FOIO 2002 was promulgated, it received an ambivalent response from the civil society in the country. An overwhelming segment of civil society outrightly rejected this piece of legislation, terming it an ineffective and weak law. However, a faction within civil society, spearheaded by CPDI, viewed the FOIO Act of 2002 not as a hindrance, but rather as an opportunity for driving legislative reforms, despite their initial reservations.

CPDI adopted the following two-fold strategy to bring about legislative reforms in the right to information, using FOIO 2002:

A. Filing Information Requests:

In 2003, Mukhtar Ahmed Ali, the founding director of CPDI and former Punjab Information Commissioner, started submitting information requests under FOIO 2002 and set an example of using the RTI law to seek information from public bodies as a matter of right.

One of the earlier information requests was filed with the Capital Development Authority (CDA) to seek information about the date palm trees planted in the capital for beautification. When certified information received from the CDA was shared with the media, it dispelled rumors that certain politicians had profited from providing unsuitable date palm trees from their farm. The CDA shared that it had procured date palm plants from a local nursery.

In another case, the Ministry of Commerce denied access to the requested information, citing the absence of framed Rules for FOIO 2002. The Federal Ombudsman held that the failure to frame the Rules after a considerable amount of time constituted a case of maladministration and directed the ministry to provide the requested information.

As CPDI had started filing information requests and issuing press releases based on the responses received from public bodies and the Federal Ombudsman, it had ripple effects. In 2004, Shehri-CBE, a Karachi-based civil society organization, sought information about the status of a plot using FOIO 2002. A commercial plaza was being constructed on a residential plot, 151-A, PECHS, Block-2. Shehri-CBE approached the Karachi Building Control Authority (KBCA) and the Ministry of Housing & Works to confirm the plot's status. With the intervention of the Federal Ombudsman, the Ministry of Housing & Works confirmed that the plot was indeed designated for residential use. This confirmation played a crucial role in an ongoing court case.

B. Analysis of FOIO, 2002 as a Tool for Legislative Reforms:

Along with submitting information requests and sharing the responses with the media and the parliamentarians through press releases and research papers, CPDI also conducted analysis of FOIO, 2002, juxtaposing its provisions with those of right to information laws in the region. This analysis,

carried out by Executive Director, CPDI, Mukhtar Ahmed Ali, was shared with media and the parliamentarians highlighting the need for the repeal of FOIO, 2002 given its structural weaknesses as this law could not be improved through amendments. This analysis was a major departure in terms of prevailing advocacy efforts for effective legislation in a particular area. Instead of terming this law ineffective in generic terms, this comparative analysis with the laws of similar countries contributed to informed debate on right to information legislation.

He presented an informed commentary on the legal drafts and persistently shared it with the political leadership at all levels of government ever since the promulgation of the FOIO, 2002 and the process continues. Acknowledging his efforts and expertise, Chief Minister of Punjab, Shahbaz Sharif, included him in the committee established to finalize the draft of the RTI law for the province. As a result, we now have the best RTI law in the country on the statute books in the form of the Punjab Transparency and Right to Information Act, 2013.

Effective Engagement with the Media:

It was engagement with the media that played a pivotal role in disseminating information and raising awareness about the importance of RTI laws. CPDI and later on other CSOs continued to issue press releases, hold press conferences, and contribute articles in newspapers and online platforms to highlight the role of transparency and accountability in good governance, doing so with unrelenting frequency during this time. As a result, some important figures in the media were able to understand the complexities and nuances of RTI laws and report on these issues more effectively. In this regard, it would be grossly unfair not to mention Umar Cheema, an award-winning investigative journalist who not only contributed analytical reports but also held public representatives accountable for their public pledges on the enactment of right to information laws.

Coalition Building:

CPDI also took the lead in coalition building, which played a crucial role in the advocacy efforts. The Coalition on the Right to Information (CRTI), a platform of more than 40 CSOs, was established in 2012. Through CRTI, civil society groups were able to strengthen their collective voice and increase their impact. Just a couple of examples would suffice to illustrate how collaborative efforts and resource-sharing among these coalitions have enabled them to amplify their advocacy messages and present a unified front in demanding effective RTI laws. On June 23, 2015, the Khyber Pakhtunkhwa Assembly exempted itself from the purview of the law through an amendment. CSOs from the platform of CRTI launched a rigorous campaign against this retrogressive amendment by holding a press conference at the Peshawar Press Club and on Twitter. Eventually, this amendment was withdrawn on September 10, 2015, because of the pressure mounted on the elected representatives by CRTI partners, the media, and supporters of PTI who did not want to give a bad name to their party. History repeated itself in 2022 when repeated attempts were made to exempt the Senate Secretariat through a private bill from the purview of the federal RTI law.

Lobbying with Political Leadership and Elected Representatives:

Lastly, members of civil society have also lobbied with legislators through one-on-one meetings, which have played a crucial part in the enactment of RTI laws. In this regard, such meetings with Senator Farhat Ullah Babar, the convenor of the sub-committee of the Senate Standing Committee of Information and Broadcasting, proved useful in improving the federal RTI law. During these meetings, they presented

research findings and made persuasive arguments to policymakers, including members of parliament and government officials.

RTI Legislation: A Curious Case of Political Ambivalence:

As CPDI was able to generate informed debate about the ineffectiveness of FOIO, 2002 and its replicas in Sindh and Balochistan through the analysis of these laws and by submitting information requests using these laws, there was increasing realization about the repeal of these laws and enacting new ones. Its first manifestation can be seen in the Charter of Democracy, (CoD).

Right to Information and Charter of Democracy:

Civil society, led by CPDI, had been engaged with the political parties through various means available, such as seminars, conferences, writing letters, and asking them to repeal the ineffective FOIO 2002. Civil society kept pushing the envelope for the repeal of the FOIO 2002 and its replicas in Sindh and Balochistan.

**The point 14 of the CoD states:
“Access to information will become law
after parliamentary debate and public
scrutiny”.**

Eventually, the Charter of Democracy, a historic agreement between the Pakistan Muslim League-Nawaz, (PML-N) and the Pakistan People’s Party (PPP) signed in 2006, included a commitment to the legislation on the right to information.

Insertion of Article 19-A into the Constitution:

The Constitutional Reforms Committee (CRC) was established in 2010, representing all political parties with a presence in the parliament. At that time, the constitution did not explicitly guarantee the right to information, although the superior judiciary, through various judgments, had interpreted that Article 19 pertaining to freedom of speech included the right to information as well.

The civil society raised a demand on the members of the CRC that the right to information be explicitly acknowledged through an amendment to the constitution. As a consequence of this engagement, Article 19-A was inserted into the constitution, which reads as follows:

“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.”

The insertion of Article 19-A into the Constitution was a crucial milestone strengthening civil society in advocating for legislative reforms. This provision recognized the fundamental right of every citizen to access information, particularly in matters of public importance. It underscored the state’s responsibility to establish mechanisms for the implementation of this right while also allowing for reasonable restrictions as imposed by law.

Empty Promises: Failure of Politicians to Deliver on RTI Commitments:

From May 14, 2006, when PMLN and PPP committed in the Charter of Democracy (COD) to enact ‘access to information’ as a law after parliamentary debate and public scrutiny, to October 12, 2017, when FOIO, 2002 was eventually repealed and the Right of Access to Information Act, 2017 was finally enacted, we witnessed tall claims by politicians on RTI legislation but no action other than according constitutional

recognition to the right of access to information in matters of public importance through the 18th Amendment.

On March 29, 2008, Yousaf Raza Gillani pledged in his address to Parliament, soon after being nominated as Prime Minister, that “a new freedom of information law will be brought to promote press freedom.” This was followed by a promise from President Asif Ali Zardari on September 20, 2008, while addressing the joint session of Parliament, in which he stated, “We will soon be bringing other fundamental laws such as the freedom of information bill.”

On January 16, 2016, it was reported in the national media that the federal government had formed a special committee to review the draft Right to Information Bill approved by the Senate Committee on Information and Broadcasting on July 15, 2014, in the light of the ‘changing security situation’.

Successive Federal Information Ministers of both the PPP-led government (2008-2013) and the PMLN-led government (2013 onwards) made promises to enact a federal RTI law. However, they continuously delayed the enactment of the law. Finally, on October 12, 2017, the Right of Access to Information Act, 2017 was enacted.

Similarly, political parties did not enact RTI laws in Punjab and Khyber Pakhtunkhwa and citizens were unable to seek information from provincial public bodies. Whereas in Sindh and Balochistan, RTI laws were in place but ineffective ones as these laws were replicas of FOIO, 2002.

Chapter 4

2nd Generation RTI Laws: the Context and the Flaws of the Laws:

Right to Information laws in Pakistan can be categorized, for better understanding, into two categories: 1st generation RTI laws and 2nd generation RTI laws. The now defunct Freedom of Information Ordinance 2002 and its repealed replicas, such as the Balochistan Freedom of Information Act 2005 and the Sindh Freedom of Information Act 2006, belong to the 1st generation of RTI laws. On the other hand, the Khyber Pakhtunkhwa Right to Information Act 2013, the Punjab Transparency and Right to Information Act 2013, the Sindh Transparency and Right to Information Act 2016, the Balochistan Right to Information Act 2021, and the Right of Access to Information Act 2017 belong to the 2nd generation of RTI laws.

The important distinction between 1st generation RTI laws and 2nd generation RTI laws is that while the latter largely adhere to the standards of effective right to information legislation, 1st generation RTI laws either do not fully comply with these standards or, in many cases, even violate them. Furthermore, there are certain variations in the way 2nd generation RTI laws adhere to these standards.

Although 2nd generation RTI laws are a major improvement over 1st generation RTI laws, each law contains certain gaps that need to be addressed. It is important to understand how Pakistan has been able to transition from the 1st generation of ineffective RTI laws to the 2nd generation of somewhat improved RTI laws, and to further strengthen these laws going forward. In this regard, it is important to comprehend both the content and the context in which these laws have been enacted.

As mentioned earlier, although 2nd generation RTI laws are a major improvement over 1st generation RTI laws, each law contains certain anomalies that need to be addressed. Mukhtar Ahmed Ali has also developed an analytical framework presented in a tabular form to carry out analysis of RTI laws. This framework not only comments on every provision of the RTI law but also provides specific recommendations aimed at enhancing the existing legislation. The analysis, comments, and recommendations of these laws are shared with the top political leadership and respective information commissions from the platform of CPDI to reform these laws.

The following is the content and context of each RTI law in the field in Pakistan.

Context of the Enactment of the Right of Access to Information Act, 2017:

Despite the commitment made in the CoD in 2006, both the PPP and PML-N continued to dither on the issue of enacting the RTI law. Eventually, the PML-N enacted this Act, albeit at the tail end of its tenure on October 12, 2017, and failed to establish the information commission during its tenure, which ended on May 31, 2018. This shows that the political parties were not really keen to enact this law.

Major Flaws of the Right of Access to Information Act, 2017:

Due to its structure, this law is difficult to follow. While this law has numerous flaws, some of the major ones are as follows:

1. Definition of “applicant” in Section 2(ii) lacks inclusion of legal persons.
 1. Section 2(v) does not provide an inclusive definition of “information” and may exclude actual records.
 2. Section 2(ix) does not explicitly mention organizations and institutions established by or under the Constitution.
 3. The offices and secretariats of the President and the Prime Minister are not clearly covered under the definition of “public body” in Section 2(ix).
 4. The definition of “record” in Section 2(x) is restrictive and limited in scope.

5. Section 2(xii) does not specify the forms in which citizens can exercise their right of access to information.
6. The structure of the law has been complicated with regard to the declaration of public records. In a major departure from all good laws, this Act contains a list of records that can be made public. All good laws on the right to information provide a negative list and declare all other records as public records.
7. Section 7 provides absolute exclusions, and the records or categories of information listed in this Section are not subject to any harm test.

Context of the Enactment of the Khyber Pakhtunkhwa Right to Information Act, 2013:

While Balochistan and Sindh had adopted replicas of FOIO, 2002, there was no such law in the province. The successive provincial governments, including the Muttahida Majlis-e-Amal (MMA) an alliance of religio-political parties from 2002 to 2008 and the Awami National Party (ANP) government from 2008 to 2013, did not enact an RTI law despite a rigorous campaign launched by civil society organizations (CSOs). Citizens could only seek information from local government departments under certain provisions of the Local Government Ordinance (LGO), 2001.

The RTI law was enacted as part of the governance reforms agenda of the Pakistan Tehreek-e-Insaf (PTI) which came into power for the first time in the province. Despite the political will demonstrated by the PTI, the provincial bureaucracy created hurdles in the enactment of this law. To the extent that a watered-down version of the highly flawed FOIO, 2002 was presented before the provincial cabinet and approved. When CRTI became aware of this development, a hastily arranged press conference was held at the Peshawar Press Club, where the provincial bureaucracy was criticized. Furthermore, a campaign was launched on Twitter against this development, with supporters of the PTI getting involved and raising this matter with the political leadership. As a result of this sustained campaign, the bill was dropped, and the present RTI law was enacted in the province.

Major Flaws of the Khyber Pakhtunkhwa Right to Information Act, 2013:

Following are some of the major flaws in this law:

1. Section 2(e) of the Act lacks a comprehensive definition of “information,” leading to potential confusion and uncertainty regarding what types of data and records fall under the purview of the legislation.
2. While Section 2(l)(v) includes the subordinate judiciary within the definition of public bodies, it fails to encompass the Peshawar High Court.
3. The Act’s definition of “record” in Section 2(j) is vague and lacks sufficient elaboration. This deficiency hinders citizens’ understanding of the types of documents and data that are considered records under the Act.
4. Section 2(l) of the Act defines a “requester” but neglects to include legal persons within its scope. By limiting the definition to individuals, the Act inadvertently excludes corporations, organizations, and other legal entities that may have a legitimate need to access information.
5. The Act lacks a specific definition for the term “right to information.” This omission leaves room for ambiguity and varying interpretations regarding the precise nature and scope of citizens’ entitlements under the Act.
6. The scope of Section 5 needs to be expanded to include performance reports, evaluation reports, audit reports, contracts, agreements, etc.

7. The principle of accessibility should be upheld, ensuring that information/records made available to one person are accessible to all people. However, Section 5 does not require public bodies to publish such information on their websites.
8. Information requests should only be rejected based on tangible grounds, and the term “vexatious” should not be used in Section 10 (2) (d) as it can be interpreted differently by different Public Information Officers.
9. Section 24 (3) limits the choice of Chief Information Commissioner to retired senior government servants, which is unfair. The selection should be open to individuals from any sector, with relevant expertise being the primary consideration.
10. Section 24 (6) states that commission members cannot hold office after reaching the age of 65 years, which can create problems if members do not complete their full term.
11. Section 24 (8) leaves the decision to take action against a fellow member to the discretion of the commission members, which is unreasonable. This responsibility should be entrusted to an independent body.
12. Requiring the Khyber Pakhtunkhwa Information Commission to register cases in the Court of District and Sessions Judge for implementation of its orders against public bodies is unreasonable. The commission should be empowered to initiate contempt proceedings for implementation, as in the case of the Pakistan Information Commission.
13. Section 28 (1) (e) serves no purpose other than discouraging citizens from using the right to information law, as there are already laws to deal with the misuse of information.
14. While Section 32 provides for rules, there is no provision empowering the Khyber Pakhtunkhwa Information Commission to make its own regulations.
15. The Act doesn’t have the overriding effect, which substantially weakens the Act.

Context of the Enactment of the Punjab Transparency and Right to Information Act, 2013:

While the provinces of Balochistan and Sindh adopted replicas of FOIO, 2002, there was no law in the province until December 12, 2013, under which citizens could seek information from public bodies.

Chaudhry Parvez Elahi remained Chief Minister of the province from 2002 to 2008, but he did not enact an RTI law in the province.

During the 2013 election campaign, Shahbaz Sharif made a commitment while speaking to Umar Cheema that the right to information law would be the first one to be enacted if he came into power in the province, which was reported in the media as well. However, this promise was not kept.

The RTI law in Punjab was enacted in response to the one enacted in Khyber Pakhtunkhwa by PTI, the political rival of PML-N. In this regard, the timeline of the enactment of RTI laws in both provinces makes for interesting reading. On May 15, 2013, the Punjab interim government drafted the Punjab Freedom of Information Ordinance, 2013. On August 18, 2013, the Governor of Khyber Pakhtunkhwa promulgated the Khyber Pakhtunkhwa Right to Information Act, 2013, which was followed by the promulgation of the Punjab Transparency and Right to Information Act, 2013, by the Governor of Punjab on October 4, 2013. On October 31, 2013, the Khyber Pakhtunkhwa Assembly passed the Khyber Pakhtunkhwa Right to Information Act, 2013, and on December 12, 2013, the Punjab Assembly passed the Punjab Transparency and Right to Information Act, 2013. During this period, CRTI played a pivotal role in creating a sense of competition between the two provinces through press releases, rallies, and a social media campaign.

Major Flaws of the Punjab Transparency and Right to Information Act, 2013:

The Punjab Transparency and Right to Information Act, 2013 is arguably the best RTI law in the country. However, there are certain lacunas in the law that need to be addressed which are as under:

1. Section 2(h)(I) should clearly state that the Act applies to all bodies, organizations, and institutions created by or under the Constitution or provincial law.
2. The Act should uphold the principle of equal accessibility by mandating that any information or record made available to one person should be accessible to all.
3. Section 4 should be expanded to include performance reports, evaluation reports, audit reports, contracts, agreements, and more.
4. In Section 2(iv), the term “any court” implicitly includes the Lahore High Court as a public body. However, to avoid confusion, it should be explicitly stated.
5. Section 5(2) allows the government to appoint “not more than 3 commissioners,” which means they can appoint just one Commissioner, which may not be sufficient for effective implementation of the Act and promoting citizens’ right to access information.
6. Additionally, Section 5(2) does not require the government to appoint one commissioner from each of the three categories: judiciary, civil society, and bureaucracy. This means the government can appoint all three commissioners from just one category.
7. Furthermore, a retrogressive amendment in March 2021, introduced in Section 5(6), empowers the government to extend the tenure of Commissioners for an additional 3 years. This raises concerns about potential conflicts of interest, as some commissioners may hesitate to make decisions against the government if they are seeking reappointment by the same government for a second term.
8. The commission is not vested with powers to initiate contempt proceedings to ensure implementation of its orders, as in the case of Pakistan Information Commission.
9. Section 13(5) states that the exempted records will be declassified after fifty years which does not seem reasonable at all which can be judged from the fact that federal RTI law requires declassification of such records after every 20 years.

Context of the Enactment of the Sindh Transparency and Right to Information Act, 2016:

Despite being a signatory of the CoD and having played a pivotal role in the inclusion of Article 19-A in the Constitution of the Islamic Republic of Pakistan, the PPP adopted FOIO, 2002 in the form of the Sindh Freedom of Information Ordinance, 2006 for the province. Despite making repeated public commitments, they failed to repeal this highly ineffective law. As a result, Pakistani citizens were stuck with this law until 2017, when it was finally repealed and replaced with the Sindh Transparency and Right to Information Act, 2016.

Major Flaws of the Sindh Transparency and Right to Information Act, 2016:

This poorly drafted law is plagued with numerous anomalies, and the major ones are as follows:

1. Section 2(d) of the Act defines the term “document” with a limited scope, which needs to be revised to align with its commonly understood meaning and the goal of maximizing public access to information.
2. Section 2(i) should clearly state that the Act applies to all bodies, organizations, and institutions created by or under the Constitution or provincial law, to avoid ambiguity. Currently, Section 2(i)(iv) may be interpreted in a way that excludes certain provincial bodies funded by the province but established under the Constitution.

3. The scope of Section 6 needs to be expanded to encompass various types of information such as performance reports, evaluation reports, audit reports, contracts, agreements, and more, in order to enhance transparency. The Act should uphold the principle of equal accessibility by mandating that any information or record made available to one person should be accessible to all. However, Section 6 currently does not require public bodies to publish such information on their websites, even if it has been disclosed to an applicant.
4. Section 7 lacks sufficient clarification regarding the responsibilities and functions of the designated official mentioned within the Act.
5. Section 8 fails to address situations where the requested information is not held by the public body. Therefore, there is a need to introduce a provision that obliges the designated officer to transfer the application to another public body likely to possess the requested information and inform the applicant accordingly.
6. The Act should establish a comprehensive procedure for the acceptance and refusal of information requests, outlining clear guidelines for public bodies to follow.
7. Section 11(1) does not set a specific time limit for filing a complaint after the designated officer fails to respond or make a decision.
8. Section 11(4) places the burden of proof on the applicant, which disadvantages them compared to the designated officer who is expected to have better knowledge of the law.
9. Section 12(3) requires the establishment of offices at each District Headquarter, which is seen as unnecessary and expensive in the digital age when online platforms or phone communication can be used.
10. Section 12(5) restricts the selection of the Chief Information Commissioner to retired senior government servants, which is considered unfair. The selection should be based on expertise rather than sector-specific criteria. Furthermore, Section 12(8) states that a member of the commission cannot continue in office after reaching the age of 65, which may lead to some members not completing their full three-year term.
11. Section 12(10) allows members of the commission to take action against fellow members for removal based on certain grounds, which is seen as unreasonable. It is suggested that a special committee should be entrusted with the task of removal as outlined in Section 12(12).
12. While Section 18 provides for Rules, there is no provision in the Act empowering the Sindh Information Commission to create its own regulations.

Context of the Enactment of the Balochistan Right to Information Act, 2021:

Balochistan was the first province to replicate the FOIO, 2002 in the form of the Balochistan Freedom of Information Act, 2005, and the last one to repeal it with the Balochistan Right to Information Act, 2021. Despite continuous demands from civil society, previous provincial governments did not repeal the cumbersome Freedom of Information Act, 2005.

However, with the implementation of effective RTI laws in Punjab and Khyber Pakhtunkhwa, and the repeal of the Sindh Freedom of Information Act, 2006 in 2016, it became increasingly difficult for elected representatives to justify the retention of this highly ineffective law.

Major Flaws of the Balochistan Right to Information Act, 2021:

Although the Balochistan Right to Information Act, 2021 is a major improvement over the Balochistan Freedom of Information Act, 2005, it still contains certain anomalies that need to be addressed and fixed. Following are some of the major weaknesses of the Balochistan Right to Information Act, 2021.

1. The definition of “applicant” provided in Section 2(b) lacks inclusivity as it does not explicitly mention legal persons, such as organizations or companies.

2. Section 2(n) should clearly state that the Act applies to all bodies, organizations, and institutions created by or under the Constitution or provincial law, to avoid ambiguity.
3. Right to information is a fundamental human right and, therefore, it should be available to everyone, irrespective of where a person lives. Hence, the exclusion of tribal areas from the purview of right to information is unfair and unreasonable.
4. Section 2(n)(iv): This provision has been phrased in a manner to exclude higher courts, which is not fair, as higher courts use public funds and must be subject to people's right to information.
5. Section 5 needs to be expanded to encompass various types of information such as performance reports, evaluation reports, audit reports, contracts, agreements, and more, in order to enhance transparency. The Act should uphold the principle of equal accessibility by mandating that any information or record made available to one person should be accessible to all.
6. Section 7(2) requires the applicant to attach a copy of CNIC with the request for information. This requirement needs to be done away with as it will create hurdles in the exercise of the fundamental right of access to information, especially for people living in far off areas who do not have access to photocopier machines. Lastly, this requirement is unfathomable given the fact that only that information is to be disclosed which is public information.
7. Exceptions provided in section 15(1) are unreasonable as the way it is phrased may be interpreted to conclude that all summaries and nothing is exempt.
8. Section 15 doesn't include the public interest override provision. Such provisions exist in good right to information laws including the ones in Punjab and KP provinces.
9. Section 15(4) states that the exempted records will be declassified after fifty years which does not seem reasonable at all which can be judged from the fact that federal RTI law requires declassification of such records after every 20 years.
10. Section 18(3) restricts the Chief Information Commissioner choice to retired government servants, which is unfair. The selection should consider relevant expertise, regardless of sector.
11. Section 18(4) mandates three information commissioners, more than in larger provinces. The Commission should have three members, including the Chief Information Commissioner, for effective decision-making with majority votes.
12. Section 20(3) pertaining to the removal of commissioners doesn't provide any guidance about the membership of the special committee to be constituted by the Provincial Assembly. Moreover, it doesn't provide any timeframe within which the special committee must complete its proceedings.

Chapter 5: A Situational Analysis of Factors Inhibiting RTI Legislation in Enhancing the Transparency Narrative:

In order to understand to what extent RTI legislation has been able to strengthen the transparency narrative, we need to comprehend the factors contributing to the secrecy narrative prevailing in the country since 1947.

Factors Strengthening Secrecy Narrative:

Various factors, such as the colonial past, military rule, geopolitical context, and strong centralized governance structures, have contributed to and strengthened the secrecy narrative in the country. Manifestations of an official secretive mindset can still be observed even after the enactment of right to information laws.

Influence of Anti-Information Colonial Legal Legacy:

The influence of the legacy of colonial-era legislation, such as the Official Secrets Act of 1923, in dispensing official business in a secretive manner can hardly be exaggerated. This law has empowered successive governments to classify information as secret and criminalize unauthorized disclosure. The colonial-era legal regime was structured to control the native population, and its purpose was to treat people as 'subjects'. As a consequence, emerged a patron-client relationship between people and the officials.

In a patron-client relationship, People are 'told' to do what officials think is good for them. When people are only "told" what officials decide is good for them to know, it is not necessarily good for the people, but always good for officials both in their personal capacity as well as the institutional interests they represent. However, when information is "shared" with people, they can make informed decisions to do what is generally good for the people which may or may not necessarily be good for officials and institutional interests they represent.

This patron-client relationship has prevailed even after independence as it serves the officials to hide corrupt practices, maladministration and incompetence.

Manifestations of Colonial Mindset in RTI Laws:

The manifestations of the colonial mindset can be observed both in the practices and provisions of right to information laws ostensibly enacted to end the secrecy narrative and to transform the relationship between the people and state institutions from 'subjects' to 'citizens.' These laws contain certain provisions which have the potential to dilute effectiveness of these laws.

For example, the Balochistan RTI law requires the applicant to attach a copy of CNIC with the request for information.

Under the Khyber Pakhtunkhwa Information Law, a fine of Rs. 50,000 can be imposed on a person who uses information obtained through this law for "malafide purposes with ulterior motives with facile, frivolous design". This provision is not going to serve any purpose other than discouraging citizens from using this law. A good right to information law is not about the possible misuse of information; it aims to facilitate maximum disclosure of information. There are other laws on the statute books that deal with the misuse of information.

RTI laws have been enacted to make the bureaucracy more open and transparent, but the bureaucracy has found ways and means to dominate these information laws. Bureaucratic dominance is quite

discernable from the composition of the information commissions. For example, the information laws of Khyber Pakhtunkhwa, Punjab, and Sindh limit the choice of Chief Information Commissioner to retired senior government servants, which is unfair. Why can't the selection be open to individuals from any sector, with relevant expertise being the primary consideration?

The composition of the Punjab Information Commission also clearly reflects the influence of bureaucracy. Section 5(2) of the Punjab information law allows the government to appoint "not more than 3 commissioners," which means they can appoint just one Commissioner, which may not be sufficient for effective implementation of the Act and promoting citizens' right to access information. Additionally, Section 5(2) does not require the government to appoint one commissioner from each of the three categories: judiciary, civil society, and bureaucracy. This means the government can appoint all three commissioners from just one category, and it did appoint two commissioners from the bureaucracy in 2018. ON the recommendations of Punjab Information Commission, a retrogressive amendment was introduced in Section 5(6) of the Punjab information law, in March 2021, which empowers the government to extend the tenure of Commissioners for an additional 3 years and the tenure of the incumbent Chief Information Commissioner was extended through this amendment. Extension in the tenure is tantamount to overstaying the welcome and serves interests of individuals at the expense of the institutions. It would not be surprising to witness bureaucrats serving on information commissions for six years, as the trend has already been established, which will serve the interests of both the bureaucrats and their political bosses, at the expense of the interests of the citizens.

Anti-Information Practices of Information Commissions:

What is worrisome is that the information commissions established under these laws, which are meant to protect and promote citizens' right of access to information, sometimes become part of the problem rather than the solution.

Unlike the Balochistan RTI law, there is no specific requirement in the Khyber Pakhtunkhwa RTI law, the information commission has started the practice of seeking certified copy of CNIC from the appellants. This requirement creates unnecessary hurdles in the exercise of the fundamental right of access to information, given the fact that millions of people do not have CNICs and there are individuals living in remote areas without access to photocopier machines. Lastly, restricting the fundamental human right of access to information to CNIC holders is unfathomable as it excludes citizens who are less than 18 years of age, considering the fact that only public information is to be disclosed.

Creating unnecessary paperwork costs both time and money. Recently, the Pakistan Information Commission has been wasting its own time and resources, as well as those of complainants, by requesting complainants via email and traditional mail to provide a certificate under Rule 8(2) of the Right of Access to Information Rules, 2019. This certificate testifies that the complainant has not filed an appeal at any other legal forum, while ignoring Rule 8(6) which empowers the Commission to "expedite the process of disposing of complaints through verbal or electronic communication with the complainant." Furthermore, the Act of 2017 itself overrides all other rules and laws, yet certificates are still being sought even though Section 3(2)(b) of the Act, 2017 requires the interpretation of the Act to "facilitate and encourage promptly the disclosure of the information at the lowest and reasonable cost". Lastly, while a citizen may be excused for seeking a remedy by approaching any other legal forum, those in charge are legally bound not to entertain such an approach as the Pakistan Information Commission is the first forum of appeal. In such a scenario, it is unfathomable why the PIC has initiated this practice as it serves no purpose other than to defer the resolution of complaints and discourage citizens from exercising their fundamental right of access to information by creating unnecessary hurdles.

Chapter 6 Role of Information Commissions:

Khyber Pakhtunkhwa Information Commission was the first one to be established in the country under an RTI law in 2014 followed by Punjab Information Commission. Now we have information commissions established at the federal level and in all provinces except in Balochistan.

The performance of these information commissions varies across regions and the tenures of their members. The first batch of members appointed in the Sindh Information Commission completed their tenure without deciding even a single complaint. On the other hand, the initial members of the Khyber Pakhtunkhwa, Punjab, and federal-level commissions started off on a sound footing. In particular, the members of the Punjab Information Commission issued detailed judgments on key issues, setting an example for other commissions to follow.

Orders of the Information Commissions Promoting Transparency:

The 'harm test' was applied for the first time in the country by the first batch of members of the Punjab Information Commission to decide the disclosure, or otherwise, of the requested information. This occurred when access to the certified copy of the logbook of the District Coordination Officer (DCO) was requested under the Punjab Transparency and Right to Information Act of 2013. During the hearing before the Punjab Information Commission, it was argued that the DCO performs duties in a sensitive area and that his safety would be at risk if the logbook, which contains information about his past movements, were disclosed. This information could potentially be used to anticipate his future movements.

In an order dated October 3, 2014, the commission said: "This argument merits consideration, as the Respondent undeniably performs certain sensitive functions, and it has been argued that his past movements might be used to predict his future travels. But the point is whether, in this instance, the potential or perceived risk to life or safety of a person touches the threshold where it could be justifiably used as a ground to restrict transparency and a fundamental right to information under Article 19A of the Constitution. The Commission is of the view that the mere mention, assumption or apprehension of possible harm to life or safety of a person is not enough to claim an exemption u/s 13(e) of the Act".

In the case of Mr. Amer Ejaz vs. Secretary, Punjab Assembly, the Punjab Information Commission, in its order on January 12, 2015, "also settled the issue of the attendance record of the members of the provincial assembly as personal information." The commission stated, "The requested information is about the attendance record of elected representatives who perform a public function within their constitutional mandate and are accountable to citizens. They are also compensated in the form of salary, allowances, and other perks or privileges for the work they undertake and the functions they perform. The attendance record provides a basis for documenting performance, processing compensation, and administering legislative business – all of which relate to the official or public domain, not their personal domain."

These and other similar detailed judgments set the tone for the other commissions as well, benefiting from the body of knowledge created by the first batch of Punjab Information Commission members.

Members of the first batch of the Pakistan Information Commission also advanced the process of making the government more open and transparent by issuing detailed judgments on contentious issues. Some of the public interest orders of the commission pertain to the right of access to information/records of officers with disabilities on an equal basis with others, the issue of minimum wage for sanitary workers and security guards, the rights of passengers and patients, the constitutionality of the right to information, the declaration of records more than 20 years old as public records, the disclosure of information

pertaining to the fees paid to lawyers from public funds, and the declaration of SNGPL, Pakistan Cricket Board, and Islamabad Club as public bodies.

The commission has also resolved the issue of the applicability of the Act on superior courts. In the case of *Mukhtar Ahmed Ali vs Registrar, Supreme Court of Pakistan*, the commission has held that "the exercise of constitutional and statutory rights of citizens in matters of public importance through the Act is neither likely to curtail, nor designed to curtail the independence of the superior judiciary."

The commission, through its different Orders, has also interpreted that the Right of Access to Information Act 2017 is applicable to constitutional bodies. The commission, through its different Orders, has held that attorney-client privileged communication does not cover legal fees paid to lawyers from public funds. With regard to the right of access to information/records of officers with disabilities, in Appeal No. 1418-10/21, *Azaz Syed vs. Ministry of Foreign Affairs*, the commission maintained that "the appellant has sought access to a policy to remove access barriers at the workplace so that officers with different disabilities could perform their official duties on an equal basis with others." Those official duties include, among other things, gaining access to official records in the performance of their official duties. Furthermore, the "access" needs of persons with disabilities are characterized by the nature of their different disabilities and can only be ensured through reasonable accommodations clearly spelled out in a legally binding policy document. With regard to the rights of patients to the information held by hospitals and doctors, in Appeal No. 175-11/2019, *Ms. Nadia Naeem vs. Pakistan Medical Commission*, the commission held that any record that can be submitted to a regulatory body or that the regulatory body is empowered to access is considered a record/information for the purposes of this act and can be shared with the applicants/appellants if warranted by the provisions of the act.

With regard to protecting the rights of passengers, in one of its orders, the commission observed that the Civil Aviation Authority (CAA) is responsible for ensuring that information about the rights of passengers is disseminated through all channels of communication that airlines employ for conducting business with their passengers. Therefore, the respondent should ensure that airlines make information about the rights of passengers available through their websites, electronic and printed tickets, and airline counters.

Through its various Orders, the commission held that academic degrees, experience certificates of short-listed candidates, selection criteria, merit list allotted marks, and remarks of the interview committee members are public records and should be provided to citizens to ensure transparency in the recruitment of government jobs.

In the case of *Farhat Ullah Babar Vs. Ministry of Defense*, the commission held that these records pertain to categories of records to be proactively published under Section 5 (1) (b) and (e) of the Act, 2017. The Commission also held that the Act, Rules, and Regulations governing retirement benefits of Army officers have no nexus with defense preparedness. The Commission also maintained that the Act, Rules, and Regulations governing retirement benefits of Army officers pertain to welfare activities which are not excluded under Section 7 (e) of the Act, 2017.

In one of its Orders, the commission held that all reports that are more than 20 years old are public records. Through its different Orders, the Commission held that the information proactively published under Section 5 of the Right of Access to Information Act 2017 should be 'accessible' for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired, and people with other disabilities.

Chapter 7 RTI: Superior Judiciary: Part of the Problem or Solution:

Citizens have to face delays at all levels in getting access to information/records through information filed under RTI laws. Rather than exercising their own judgment, officers tend to provide requested information on the directions of the information commissions.

Inordinate Delays in Judicial Verdicts on Petitions against Orders of Information Commissions:

Since its inception in November 2018, Pakistan Information Commission has so far issued more than 740 Orders on appeals filed by citizens against different federal public bodies. Federal public bodies and citizens have filed a total of 104 petitions against the Orders of the Commission.

A total of 40 Orders of the commission have been suspended whereas in case of 40 Orders, notices have been issued to the Respondents. That such a high number of orders of the PIC have been suspended, or that notices have been issued and there are no decisions yet demonstrates that the superior judiciary proceeds at a glacial pace on citizens' right of access to information. The remaining orders are either upheld, dismissed or have been reverted back to PIC.

The situation is almost the same with regard to the petitions filed in Lahore High Court against the decisions of the Punjab Information Commission. According to data provided by Punjab Information Commission in response to an information request, Punjab public bodies and citizens have filed a total of 14 petitions against the Orders of the Commission from July 01, 2020, to date. A complaint has also been filed with the Punjab Information Commission, seeking information about the missing orders on its website that were issued prior to 2020.

A total of 3 petitions have been disposed of three petitions have been dismissed whereas 8 petitions are still pending with Lahore High Court. That such a high number of orders are pending demonstrates that the Lahore High Court has not accorded priority to citizens' constitutional right of access to information it deserves.

Due to this high number of pending petitions in high courts, several contentious issues concerning citizens' right to access information, which have been addressed at the level of information commissions, remain unresolved. The most significant among these issues include:

1. Determining the status of organizations like Islamabad Club, Pakistan Cricket Board, and SNGPL as public bodies.
2. Clarifying the applicability of the law on constitutional bodies.
3. Deciding whether the publication of assets of public servants is justified under the Act of 2017 or potentially violates its privacy clause.
4. Establishing whether the answer sheets of candidates appearing in the CSS examination qualify as public documents.
5. Examining whether citizens possess the right to be informed about the actions taken by the FBR concerning the collection of taxes on proceeds of crime.

High Courts Judgements Upholding Orders of the Pakistan Information Commission:

So far, high courts have settled the following issues by upholding orders of the PIC and setting aside petitions against these orders.

Educational Testimonials and Right to Privacy:

Educational testimonials submitted for public jobs are not private documents. In Appeal No. 942-03/21, Abdullah Rashed Waraich Vs. Pakistan Housing Authority Foundation, Pakistan Information Commission held that “information such as regional quota roster maintained by a public body, consolidated result of written test of the posts, attendance sheet of written tests, online applications submitted by candidates who were shortlisted for interview, educational certificates/degrees of the candidates who were shortlisted for interview, answer sheets of all candidates who were called for interview, attendance sheet of interviews, evaluation Proforma containing detail of academic records, marks obtained in written as well as in interviews by the candidates shortlisted for interview, duly signed by Departmental Selection Committee, recommendations of the Departmental Selection Committee regarding selection of candidates is a matter of public importance”.

Justice Babar Sattar of Islamabad High Court (IHC) dismissed Writ Petition No. 2491/2021, in limine and stated: “The educational testimonials of an individual are his private information only so far as such individual does not apply for a public job advertised by a public authority and for which other citizens are entitled to compete through an open and transparent process. Further, once a candidate for a public job furnishes his educational testimonials to a public body, there is no express or implied representation that such information shall not be disclosed to other competitors, or even citizens who are not competing for such job, but wish to ensure that public funds being utilized to bear the expense of such jobs are being utilized in a just, fair and reasonable manner and that a public authority is exercising its discretion not in an arbitrary, capricious or discriminatory manner. The Freedom of Information Ordinance has been promulgated by the Parliament to uphold the citizens’ right to freedom of information guaranteed under Article 19-A of the Constitution. Any fetters imposed on such constitutional rights, where provided for in a statute, are to be interpreted in a restrictive manner. 4. Justice Louis Brandeis is often quoted as having said that “sunlight is the best disinfectant”, in the context of transparency and disclosure being an elixir to many societal and governmental malpractices. In this context, it is not for the petitioner to determine what information is and what is not relevant for a citizen seeking information that is otherwise liable to be disclosed under provision of the Act”.

Right to Privacy and Assets of Public Servants, their Spouses and Children:

The details of the assets of public servants, their spouses and children cannot be disclosed under the Act, 2017. IN Appeal No. 437-07/20, Rana Asadullah Khan Vs. National Accountability Bureau, information request was submitted to Chairman, National Accountability Bureau (N.A.B.) seeking disclosure of information with respect to the personal assets of Chairman, Deputy Chairman, Directors, and Regional Directors of the N.A.B. as well as their spouses, parents and children. The asset details were required as submitted by the said office holders of the N.A.B. under clause 10.10 of the National Accountability Bureau Employees Terms and Conditions of Service, 2002.

In this case, the commission held that Legitimate privacy interests of citizens cannot be sacrificed on the altar of mere possible deterrence value of such disclosure against corruption, especially when laws are already available to investigate allegations of owning assets beyond known means of income.

While upholding order of the PIC in W.P.No.1750 of 2021, Justice Mian Gul Hassan Aurangzaib of IHC observed: “It is true that disclosure of information falling in the exceptions given in Section 7 can also be sought where it involves a matter of public importance, but making out a case of public importance certainly requires much more than a general claim.

The objective of the 2017 Act is to bring openness, transparency, accountability and participation of people in public affairs, but at the same time the legislature has made this right subject to restrictions imposed by law. This right is certainly required to be reconciled with the right of privacy which is also a fundamental right guaranteed under Article 14 of the Constitution. Article 14 of the Constitution makes no distinction between a person serving in public service or otherwise”.

Rate Lists/Agreements Vs. Commercial Interests:

In Appeal No. 888-02/2021, Kashif Ali Vs. OGDCL, the information was sought about “certified rate-list of existing annual land lease/compensation rates per acre per annum (to be paid to landowners against their hired lands) of all categories/phases i.e. producing phase, drilling phase, settled, unsettled lands etc of all the regions/districts/fields or otherwise under the administrative control of OGDCL throughout Pakistan” and “certified copy of annual land lease/compensation enhancement agreement (duly enhanced after every three years) reached between Field Manager OGDCL gas field Qaderpur/OGDCL officers’ committee & land owners of Qadirpur Gas Field in the year 2002/2003 or otherwise”.

Deciding W.P. INo.2698 of 2021, Justice Mian Gul Hassan Aurangzaib of Islamabad High Court stated: “Now, the documents copy whereof have been sought by respondent No.2 pertain to agreements and rate lists for lease contracts which have already been executed. Such documents have neither been claimed to be classified nor do they pertain to state secrets. The said documents do not fall within the exclusions set out in Section 7 of the 2017 Act.”

Respondent No.2, either in his capacity as one of the lessors or as a citizen, cannot be deprived of the right to seek the information with regard to transactions entered into by the petitioner in public domain.

Right to Information and Minutes of Meetings:

In Appeal No. E233-02/2022 and -06/2022, the appellants Dr. Farhat Mahmood and Dr. Adnan Akram sought information from Pakistan Institute of Development Economics (PIDE) about “newly adopted performance evaluation criteria, KPI, review committee formation. Minutes of the last two (02) selection committee meetings”, and “i. Minutes of PIDE Selection Committee dated 08.02.2022. In its Order, PIC observed: Even plain reading of Section 7 (a), (b) and (c) suggests that ‘nothing on the files’, ‘minutes of the meeting’ and intermediary opinions are given qualified and not absolute exclusion from disclosure. Exclusion of ‘noting on the file’ and ‘minutes of the meetings’ is subject to a final decision. As such, ‘noting on the file’ and ‘minutes of the meeting’ cannot be shared during the deliberative process.

The disclosure of ‘minutes of meetings’ and ‘noting on the file’ during the deliberative process is protected to ensure that outside influence does not create hindrances in the deliberative process. However, once a public body has taken a final decision, as is the case in the instant appeal, noting on the files and minutes of the meetings cannot be treated as excluded records”. Deciding Writ Petition No. 3174 of 2022, and W.P. 2255/2022, Justice Mohsin Kiyani of IHC held that “The Information Commission has passed the impugned orders with the direction to the PIDE to release the requisite information, however, petitioner institute has taken a categorical stance before the said forum as well before this court in constitutional jurisdiction on the ground that certain record of public bodies is excluded from the Right of Access to Information Act, 2017 and much emphasis has been laid down on clause (b) of section 7 of the Act, which reads as under:

“Minutes of meetings, subject to final decision by the public body;”

While going through the said provision, the learned counsel for the petitioner contends that final decision, of any Selection Committee or Authority after the meeting must be made public and notified accordingly, but the minutes of meeting are excluded, especially when final decision of the public body based on those minutes have been made. While considering this interpretation, this Court has to apply the literal rule of interpretation in the above referred provision, where two separate portions convey two different meanings, and a comma has been used in between. The first part minutes of the meetings, no doubt, falls within the exclusion provision of the Right of Access to Information Act, 2017 but the subsequent portion subject to final decision by the public body, gives a different meaning, that when the meeting was over and minutes culminated in a decision which is final and is not subject to any review, the minutes are no more in terms of exclusion provision, rather become part of the final decision....8. I have also gone through the previous law i.e. Freedom of Information Ordinance, 2002, which stands repealed by virtue of section 29 of the Right of Access to Information Act, 2017, where exclusion of certain record has been explain in section 8, where the relevant sub clause (b) minutes of the meetings have been referred but the subsequent portion which has been provide in the recent legislation was not available, such aspect if compared with the present provision it appears that the legislature has previously excluded the minutes of meetings in either form whether a final decision has been passed or not, the minutes of meeting shall not be shared, however, after the new legislation when the phrase subject to final decision by the public body has been added after a comma, it gives an extended meaning and qualifies the minutes of meeting as public record with the condition that final decision has been made, therefore when such contingency has been fulfilled, the minutes of meeting are not to be considered a secret document. Otherwise, the real intent of the legislature stands refuted. While considering the entire statute, this Court comes to irresistible conclusion that the minutes of meetings could only be made public when the decision of the public body has been made conclusively, which is the outcome of the minutes of the meeting, as such, there is no justification to withhold the minutes of the meetings, which are meant for the purpose of clarity to the relevant quarters, so that every person should know the discussion among the decision makers, whether it is a Selection Committee, Hiring Committee or any other Committee, hence, the order passed by the Information Commission is in accordance with law and all the individual / employees of PIDE have every right to access those information, specially, minutes of the meetings of Selection Committee or any other Committee under the law and such rights could not be withheld under any stretch of imagination, therefore, both these Writ Petitions are misconceived and same are hereby DISMISSED”.

Disclosure of Information about Gifts from Foreign Dignitaries:

Citizens filed requests for information with the Cabinet Division about gifts received by Pakistani PMs, Presidents, and other public officials from foreign dignitaries. They wanted to know how many types of these gifts there were, how many were retained, and how many were deposited in Toshakhana. They also sought information about the value of these gifts and the price at which each gift was retained.

Interestingly, the first request for information pertained to the gifts received by PM Imran Khan during his tenure. Subsequent requests from citizens sought details about all gifts received by public representatives and officials since independence. However, the Cabinet Division denied access to the requested information, stating that it was sensitive as gifts exchanged between Heads of States and Heads of Governments add a personal touch to inter-state relations. It argued that disclosing such information could create media hype and result in unwarranted stories, potentially damaging Pakistan's interests in the conduct of international relations and jeopardizing inter-state relations.

Upon deciding on these appeals, the PIC held that while giving a "personal touch" to inter-state relations through the exchange of gifts between Heads of States and Heads of Governments is a normal practice, the relations between any two states are primarily dictated by common interests. The PIC emphasized that the "personal touch" may complement but cannot replace the role of common interests in

determining the outcome of inter-state relations. In short, the shared common interests between two states have a more significant impact on inter-state relations than the exchange of gifts for personal touch. The PIC also held that it is not the certified information itself but rather the absence of certified information that contributes to media hype and unwarranted stories, creating a trust deficit between citizens and public institutions.

While the petitions lodged in the IHC LHC are pending final verdicts, Justice Mian Gul Hussan Aurangzaib remarked during proceedings that the IHC has not stopped the PIC from enforcing its decision. Consequently, the PIC imposed a fine on the Secretary of the Cabinet Division for not implementing the PIC's order. The Secretary of the Cabinet Division approached the IHC against the imposition of the fine and was granted relief on the condition that the PIC's order would be implemented.

As reported in the media on March 16, 2023, the federal government has now framed a new policy regarding gifts received from foreign dignitaries. Under this policy, the earlier practice allowing government functionaries to retain any gift by paying 50% of the assessed price has been done away with. Now, any gift exceeding US\$ 300 shall immediately become Toshakhana property. Gifts valued up to US\$ 300 shall be allowed to be retained by the recipient without any discount on the payment of the assessed market value. However, this exemption shall not be applicable in the case of antiques and gifts of intrinsic historical value.

High Courts Judgements Upholding Petitions against Orders of the Pakistan Information Commission:

PTCL Not a Public Body:

In Appeal No. 954-03/2021, M. Rehan Paracha-Vs-Pakistan Telecommunication Company, information was sought about the number of active connections and new connections in Sector D-17/2, action being taken to provide connections, information about the employees and their salaries. While dismissing the order of the PIC, in W.P. No. 2688/2021, Justice Mohsin Kiyani of IHC stated that "From the minute scanning of the above referred definitions which are within the purview of Information Commission in terms of Sections 19, 20 of the Act, it is abandonedly clear that only those public bodies are amenable under Right of Access to Information Act, 2017 which have been established by the Federal Government or any Municipal or local authority, statutory authority or institution owned or controlled or funded by the Federal Government, or any organization which undertakes public functions whose information is accessible under this Act. As such PTCL is not controlled by the Federal Government though the Federal Government has 62% ownership rights, but its management share is with M/s Etisalat, even five out of nine Directors for Board of Directors have been appointed by M/s Etisalat. In such scenario, the term "control" has greater significance, which has been interpreted by the superior courts of Pakistan as reported in PLD 1990 SC 452 (Printing Corporation of Pakistan vs. Province of Sindh), PLD 1984 Lahore 106 (Fateh Khan vs. Sharif Khan), PLD 1995 Lahore 572 (Tariq Majeed Chaudhry vs. Lahore Stock Exchange (Guarantee) Ltd.), 2001 PLC (LC) 607, which laid down a test to determine the control factor and as such the test excluded the control of the Federal Government in the PTCL case 10. While considering these legal aspects this Court is of the view that PTCL does not fall within the definition provided in Section 2(ix)(d) of the Although in some manner PTCL undertakes some public functions which could be disclosed or its information may be sought subject to their own decision. In order to deal with the said portion, Section 16 of the Right of Access to Information Act, 2017 is to be considered as relevant in which certain information was exempted from disclosure".

Supreme Court of Pakistan Not a Public Body:

In Appeal No. 060-06/2019, Mukhtar Ahmed Ali Vs. Registrar, Supreme Court of Pakistan, PIC held that the Supreme Court of Pakistan was a public body and directed its Registrar to disclose requested information about its staff.

Deciding Writ Petition No.4284 of 2021, Chief Justice Amir Farooq set aside order of the commission, relying on the argument that “the Supreme Court of Pakistan is a Constitutional body and not a creation of any Federal law, hence does not fall within the definition of public body as contained in the Act”. The CJ relied on a mere obiter on the point by Mansoor Ali Shah. J. in the case of Justice Qazi Faez Isa v. The President of Pakistan and others (C.M.C No. 1243 of 2021 in civil review petition No. 296 of 2020). The relevant observation by Mansoor Ali Shah. J. is as below:

“While this question may be decided authoritatively in some other appropriate case, it prima facie appears that the Legislature has left to this Court the matter of regulating and imposing reasonable restrictions as to the right to have access to information in matters of public Importance dealt with by making rules under Article 191 of the Constitution, which empowers this Court to make rules for regulating its practice and procedure”.

Interestingly, CJ maintained that the “petitions have been decided on the basis of jurisdiction” and, therefore, “no finding is required to be rendered on merits”, and yet the judgment goes on to observe that:

Notwithstanding the referred position of law, the judgment mentioned above also enters for the transparency and providing of information under Article 19-A of the Constitution by framing of the Rules and the practice of the Supreme Court of Pakistan uploading necessary information on the website of the Court. This practice of the Supreme Court of Pakistan abundantly takes care of relevant information pertaining to the Institution being made public and meets requirements of Article 19-A of the Constitution. The fact is that the requested information about the staff of the Supreme Court of Pakistan is not available on its web site.

Answer Sheets are not Public Documents:

In Appeal No. 813-12/2020, Amer Ejaz Vs. COMSATS, the PIC directed COMSATS to provide “copies of drawing tests of the candidates, who took the test for admission in B-Architecture in Fall 2020 semester”. While dismissing the order of PIC in W.P.No.1625 of 2021, Justice Mian Gul Hassan Aurangzaib of IHC observed that “Neither can the Pakistan Information Commission nor this Court issue a direction to the petitioner which would be in derogation of its statutes, or the rules made thereunder. To direct an educational institution or a university to provide the answer / drawing sheets of all the candidates who appeared in the entry test to a father of one of the candidates so that he could carry out a comparative analysis of the marks awarded to the different candidates is not just unprecedented but also most unreasonable. There is no provision in the 2000 Ordinance, or the Regulations made thereunder for answer / drawing sheets of all candidates who appeared in an entry test to be provided to one candidate”.

"The price of freedom is eternal vigilance". Nothing could be more applicable than this quotation regarding protecting citizens' right of access to information, given the challenges faced by citizens in exercising this constitutionally guaranteed fundamental human right. Ironically, these challenges emanate from the quarters entrusted to protect and promote this right. Following are key recommendations in this regard:

Fixing Anomalies in RTI Laws:

All existing RTI laws at the federal and provincial levels have varying degrees of anomalies that need to be fixed to make these laws effective. In this regard, CPDI has carried out a comprehensive analysis of each law, commenting on each provision and suggesting specific recommendations. CPDI needs to build consensus on its proposed reforms of RTI laws and, in collaboration with CSOs, engage parliamentarians to introduce relevant amendments to these RTI laws.

Watching the Watchdog: Ensuring Vigilance of the Information Commissions:

It is important to keep an eye on the performance of all information commissions. It is such a shame that the members of the first batch of Sindh Information Commission completed their three-year tenure without resolving even a single complaint. Furthermore, CSOs need to be vigilant of certain retrogressive practices introduced by information commissions, like seeking copies of CNICs and certificates from citizens testifying that they have not filed any complaint at any other forum, which serve no purpose other than deterring and discouraging citizens from exercising their right of access to information.

This vigilance can take different shapes and forms, such as engaging members of ICs at different public forums, forming RTI Volunteers Committees which should visit these ICs to see their performance, and filing requests for information to these ICs about their roles and functions to make them accountable.

Timely Appointment of Members of ICs through a Proper Recruitment Process:

It is a common practice for all governments to dilly-dally in appointing members of ICs. The vacancies remain unfilled, and members are often appointed only after the intervention of the superior judiciary. While it is within the discretion of the PMs and CMs to appoint members at these ICs, it is about time for CSOs to demand that such vacancies be filled through a rigorous recruitment process. This measure is essential to counter the tendency to pack these ICs with hand-picked individuals who, in most cases, are not suitable for carrying out their responsibilities.

Budgetary Allocations for Transparency:

The idea that governments should be open and transparent is often voiced, but it is easier said than done. Transparency and disclosure of information, especially proactive disclosure of information through websites, require resources. Therefore, CSOs need to raise demands on the governments at the time when proposals are sought during the budget-making process to allocate proper resources for public bodies to carry out their obligations under RTI laws, especially for proactive disclosure of information through their websites.

Annex-A

Freedom of Information Act, 1990
AS INTRODUCED IN THE SENATE

A
BILL

to enact legislation to provide for dissemination of information on public matters and to prescribe the administrative procedure with a view to curtail corruption in the official machinery, to improve the efficiency and to facilitate effective redress of public grievances.

Be it enacted in its next session by the Senate.

PRELIMINARY

SECTION 1: Title and Extent. - (1) This Act may be called the Freedom of Information Act, 1990.

(2) It shall extend to the whole of Pakistan.

(3) It shall come into force at once.

SECTION 2: Definitions. - (i) Department means a Government Department Commission or office of the Federal Government or a stat-story corporation or other institution established or controlled by the Federal Government but does not include the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High Court.

(ii) Government means and shall include both the Federal Government and the Provincial Government in Pakistan.

SECTION 3: Public information. - Every department shall supply a copy of the following information to the public on demand on payment of prescribed fee, namely: -

- (a) Statutes, Statutory Rules, and Orders pertaining to that department, required to be. Published in the Gazette of Pakistan date of its publication in the Gazette and the date of its enforcement.
- (b) Its organizational set up at all levels, identifying the officers from whom, and the methods by which public can make applications or requests and obtain information, decisions.
- (c) Rules of Procedure, the description of and places when forms are available and instructions as to the scope and contents of all Papers, reports or examinations.
- (d) Substantive instructions of general applicability adopted as authorized by law, statements of general applicability formulated and adopted by the department, and the criteria laid down for the exercise of discretionary power.
- (e) Administrative manuals and instructions that may affect a member of the public.
- (f) Entire record containing evidence, comments, data, correspondence, opinions, notes and orders passed matter, effecting a member of public.
- (g) Every department shall publish annually abstracts of important cases containing the final decisions.

Provided that, to the extent required to prevent a clearly unwarranted invasion of personal privacy, a department may delete identifying details when it makes available or publishes an opinion, statements of policy, interpretation, manual or instructions:

Provided further that provisions of this Section shall not apply to matters that are:

- (i) exempted from disclosure by any statute;
- (ii) required by Executive Orders to be kept secret in the interests of national defence or foreign policy;
- (iii) inter-departmental letters of memoranda which would not be available by law to a party other than a department in litigation with other department;
- (iv) contained in or related to examination, operation, or , condition reports prepared by, on behalf of, or for use of a department responsible for regulation or supervision of any financial institution;

- (v) investigatory files compiled for law enforcing purpose except to the extent that ,they may be read by the affected party in the presence of advocate; and
- (vi) any function of the Government requiring secrecy in the public interest.

Provided further that this Section does not authorize withholding of information or limit the availability of records to the parliament, and Courts of Law except in the case of (i) and (ii) above.

SECTION 4: Periodic Review of operation: Every department shall periodically review the operation of each of its activities and functions and of its organization units on a counting basis, with a purpose to:

- (i) determine the degree of efficiency and economy;
- (ii) Identify the units that have abnormally high number of outstanding cases in these respects;
- (iii) assess the effectiveness of its operations in relation to functions and duties assigned to it.

SECTION 5: Right to ask for the framing of rules etc.: Every department shall give an interested person the right to petition of the framing, amendment or repeal of a rule or for formulating the department policy on any matter of public concern.

The petition shall be self-contained and shall be disposed of by a written order.

SECTION 6: Failure to comply the demand.- (1) Every department shall comply with the demand of a member of public at once failing which the person so aggrieved shall have the right to file an application in the Court of District and Sessions Judge, in whose jurisdiction the applicant resides, or has his principal place of business or in which the head office or department records are situated. The Court shall give preference to this application over other work and issues. Show Cause Notice to the department concerned for withholding the record and may order the production of record improperly withheld from the applicant.

(2) The Court shall hear the parties as soon as possible and order for supply of information in accordance with law.

(3) In the event of non-compliance with the order of the court, the court may punish for contempt the responsible employee.

SECTION 7: The Federal Government may make rules Inconsonance with provision of this Act for its proper implementation.

STATEMENT OF OBJECT AND REASONS

Being gravely concerned about the ever-growing tentacles of corruption, spreading throughout the fields where public directly comes into contact with administrative agencies, one measure successfully adopted by no less than 12 countries, namely, Sweden, Denmark, Norway, Belgium., U.S.A., U.K., France, Finland, West Germany, Hungary, Yugoslavia and Canada is the enactment of this kind of legislation. The Freedom of Information Act, 1966, as amended in 1974 of U.S.A, be used as a model for enacting a law which should entitle people know on demand the contents of the official noting on their cases and the reasons for which their cases were rejected and claims of others accepted as also the criteria and the evidence which were used for rejection and acceptance. No doubt there are sensitive fields Where governmental secrecy is of paramount importance, yet the experience indicates that for great many abuses of authority take place because government functionaries are able to deal with the rights and liabilities of people on the basis of secret criteria, reports orders and evaluation of cases. This is the reason why in the judicial fields every judgement has to be given on evidence known to both the parties on criteria known to every contestant and by judgement whose rationale is, by requirement of law, stated publicly, Extension of the same principle to administrative fields is bound to act as a deterrent from corruption.

It is therefore necessary to enact the above-mentioned act forthwith, hence this Bill.

PROF. KHURSHID Ahmed
Member-in-Charge

Annex-B

Freedom of Information Ordinance, 1997

REGISTERED No. M-302—
C.-7646



EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, WEDNESDAY, JANUARY 29, 1997

PART I

Acts, Ordinances, President's Orders and Regulations

GOVERNMENT OF PAKISTAN
MINISTRY OF LAW, JUSTICE, HUMAN RIGHTS AND
PARLIAMENTARY AFFAIRS

Islamabad, the 29th January', 1997

No. F. 2(1)/97-Pub.—The following Ordinance made by the President, is hereby published for general information: —

ORDINANCE No. XV of; 1997
AN
ORDINANCE

WHEREAS transparency and freedom of information are the essence of good governance and improved access to public records is necessary to ensure that the people of Pakistan are better informed about the management of their affairs and the Government is made more accountable to the people;

AND WHEREAS the National Assembly is not in session and the President is satisfied that the circumstances exist which render it necessary to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance:—

(69)

Price: 12.v. 00.30

- 1 Short title, extent and commencement. —(1) This Ordinance may be called the Freedom of Information Ordinance, 1997.
 - (2) It shall extend to the whole of Pakistan.
 - (3) It shall come into force at once.
- 2 **Definition.** --In this Ordinance, unless there is anything repugnant to the subject or context; —
 - (a) "designated official" means an official of a public office designated under section 5;
 - (b) "Government" means the Federal Government.
 - (c) "Mohtasib" means the Wafaqi Mohtasib (Ombudsman) appointed under Article 3 of the Establishment of office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O. I of 1983) ;
 - (d) "public office" means—
 - (i) any Ministry, Division, department or office of the Government;
 - (ii) Secretariat of the Parliament (majlis-c-Shoora);
 - (iii) any office of any Board, Commission, Council, or other body established by or under a Federal law; and
 - (iv) any office of a body which is owned or controlled by the Government or in which the Government has a controlling share or interest; and
 - (e) "record" shall include drawings, computer records, photographs, micro-films, cinematograph films and audio and video recordings.
3. **Declaration of public record.** —Subject to the provisions of section 4, the following record of all public offices are hereby declared to be the public record:—
 - (a) instructions, policies and guidelines;
 - (h) record relating to sale, purchase, lease, mortgage, acquisition or transfer in any other manner of properties both movable and immovable;
 - (c) record pertaining to approvals, consents, permissions. concessions, bene-fits, privileges, licences, contracts, permits, agreements, and any other advantages; and
 - (d) final orders including decisions taken at all meetings

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4. **Exclusion of certain record.** — Nothing contained in section 3 'shall apply to the following record: —
- (a) nothings on the files, minutes of meetings and interim orders.
 - (b) record of the banking companies and financial institutions relating to the accounts of their customers.
 - (c) record declared as classified under the policy made by the Government:
 - (d) record relating to the personal privacy of an individual and
 - (e) record of private documents furnished to a public office either on an express or implied condition that information contained in any such document shall not he disclosed to 'a third person.
5. **Designated Official.** —(1) Every public office shall, within thirty days of the commencement of this Ordinance, designate an official for the purposes of this Ordinance.
- (2) In case no such official has been designated or in the event of the absence or non-availability of the designated official, the person in charge of the public office shall be the designated official.
6. **Procedure for obtaining information, . etc.—(1)** Subject to the provision of sub-section (3), any citizen of Pakistan may, on the payment of the prescribed *tee*, make written application to the designated official for obtaining the information contained in any public record including Copy of any such record.
- (2) The designated official shall within twenty-one days of the receipt of the request supply to the applicant the required information including copy of such record. The information from. or the copy of, any public record supplied to the applicant shall contain a certificate at the foot that the information is correct and that the copy is a true copy of the record, and such certificate shall be dated and signed by the designated official.
- (3) Nothing contained in sub-section (1) shall apply to such public record as has been published in the official Gazette or in the form of book offered for sale:
7. **Recourse to the Mohtasib.**---41 the applicant is not provided the information or copy of the record declared public record under section 3 within the prescribed time or the designated official refuses to give the information or copy on the ground that the applicant is not entitled to receive such information or copy, the applicant may, within thirty days of the last date prescribed for giving the information or copy or the communication of the designated official's order declining to give the information or copy, file a complaint with the Mohtasib.

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(2) The Mohtasib may, after hearing the applicant and the designated official, direct the designated official to give the information or as the case may be, copy the record or may reject the complaint.

(3) The decision of the Mohtasib shall be final.

8. **Ordinance not to override laws.** —**This** Ordinance shall not override any other law.

9. **Power to make rules.** -(1) The Federal Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) The rules made under this section may, among other matters, provide for-

- (i) the fee payable for obtaining information from, and copies of the public record;
- (ii) the form of application for obtaining information from, and copies of, the public record; and the form in which information from public record shall be furnished.

FAROOQ AHMAD KHAN LEGHARI,
President.

JUSTICE (RETD.) AKHTAR HASSAN,
Secretary.

Centre for Peace and Development Initiatives (CPDI) is an independent, non-partisan and a not-for-profit civil society organization working on issues of peace and development in Pakistan. It is registered under section 42 of the Companies Ordinance, 1984 (XLVII of 1984) later substituted by Companies Act 2017. It was established in September 2003 by a group of concerned citizens who realized that there was a need to approach the issues of peace and development in an integrated manner. CPDI is a first initiative of its kind in Pakistan. It seeks to inform and influence public policies and civil society initiatives through research-based advocacy and capacity building in order to promote citizenship, build peace and achieve inclusive and sustainable development. Areas of special sectoral focus include promotion of peace and tolerance, rule of law, transparency and access to information, budget watch, media watch, local government, climate change, election watch and legislative watch and development.



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