

An Analysis of Right to Information Laws of Pakistan and India

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ABSTRACT

The first decade of 21st century have a special significance in the legislative history of Pakistan and India. It's a decade which is known for the dawn of freedom of information laws in both countries. In 2002 Pakistan became the first country in sub-continent which adopted freedom of information laws. Thanks to judicial activism which laid the foundation stone of "Right to Information Act 2005" in India. A deep analysis of different features of the law of information prevailing in Pakistan and India is the scope of this paper. There are tough challenges ahead but how to overcome these challenges will be explore through this study. This paper would also focus on highlighting the long term social, economic and political impacts of RTI laws in Pakistan and India.

KEYWORDS: Judicial Activism, Good Governance, Public Empowerment, legislature, Principles of freedom of information, Constitution, Democracy, Corruption.

INTRODUCTION

The dawn of freedom of information laws in Pakistan and Indian is a sincere attempt by legislature to empower the public and make them an active participant rather than having the role of a silent spectators. It is a feather in the cap of all those legislators who were part of the Assembly which passed this law. They would always feel proud of it. It was a true attempt on the part of legislature to empower the common people and made public authorities accountable in the eyes of public and law. It's a law which amount to clipping the wings of public authorities. It will promote transparency, democratic process, good governance, increase accountability, and reduce corruption. These laws are revolutionary in nature and have a built in capacity to bring revolution in the social, economic and political sphere.

It is the due right of public to know and have access to all information which have an ultimate effect on their lives and relate to a matter of public importance. The public importance matters must be disclose and share with the public by officials. It is a right and duty relation in which the public are provided a constitutional right to know about all the matters of public importance and public information officer are duty bound to share all the necessary information with public which will bring transparency and reduce chances of mal practices and corruption.

Sweden is consider as pioneer in enacting freedom of information laws. Sweden enacted the first ever RTI law in 1766. It was an attempt to access to information held by the King. The precedent set by Swedish was followed by US and Norway by enacting its laws in 1966 and 1970 respectively.

In the last five decades a tremendous spirit was shown by countries for recognition of freedom of information laws. Almost 90 countries had adorn their constitutions with this powerful rights. Pakistan and India are also fortunate to find place in the list of these 90 countries.

PAKISTAN

The 1973 Constitution of Pakistan did not recognize access to information as a constitutional right though Article 19 did provide for freedom of speech. Through the 18th Amendment, Article 19A was included to grant freedom of information and right to information as a constitutional right in Pakistan. The Article 19-A reads as:

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

Article 19-A adorn the constitution of Pakistan with the right to information and thus conferred a constitutional right upon the people of Pakistan.

In Pakistan the regime of laws related to right to information or freedom of information is quite recent. Professor Khurshid Ahmed¹ was the first man to take initiative in this direction by introduction of a private bill in Senate in 1990, which bear no fruits. Similarly in the same year an Anti-Corruption Committee established by then Government also recommend the enactment of FOI but it also bite the dust.

¹A member of Jumat-i- Islami, a religious party of Pakistan.

In 1997 a positive step was taken when on the initiative of Fakhruddin G. Ibrahim², the President of Pakistan promulgated a Freedom of Information Ordinance on January 29, 1997. But the public elected government of Nawaz-Sharif let the ordinance to die its death and could not transform it as a law.

It's an irony that The Asian Development Bank, in 2001, through its action plan for Pakistan obliged Pakistan government to adopt freedom of information laws. In 2002 then military Government of General Pervez Musharraf promulgated the Freedom of Information Ordinance on 26th Oct, 2002. It is icing on the cake that the most powerful law recognition is on the credit of a military General than a politician.

The promulgation of FOI Ordinance 2002 made Pakistan as the pioneer of RTI in South Asia.

Freedom of Information Rules were framed in 2004 with the object to operationalize the law. The FOI Ordinance was in force for almost 12 years before it was time to be repealed as the new law on Right to Information Act 2013 was in Parliament.

The Khyber Pakhtunkhwa Right to Information Act, 2013 is one the most recent of the information laws that have been promulgated in Pakistan, and it has been termed as one of the most progressive laws for recognizing the people's right to know and accessing information. "The KP RTI Ordinance contains all the features that are vital for a strong RTI law. This is why it scores 143 and is positioned at the top of global RTI rankings," commented a World Bank expert³. The Ordinance has since then become an Act on 1st November 2013 with very minor changes and retains its high position in global RTI ranking.

In Pakistan at federal level as well as at provincial level legislation have been done on the freedom of information. In center Federal RTI 2013 while in the province of Punjab, KP, Baluchistan and Sindh have the Punjab Transparency & RTI Act 2013, KPK RTI 2013, Baluchistan FOI Act 2005 and Sindh FOI Act 2006 respectively. The both Baluchistan and Sindh FOI Acts are almost a replica of the Federal Information Ordinance, 2002 with minor language changes to reflect that these are provincial laws.

INDIA

Democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed', says the preamble of the Indian Right to Information Act 2005.

Article 19 of the Indian Constitution which upholds the right to freedom of speech and expression, has been interpreted by the Supreme Court of India to implicitly include the right to receive and impart information. The national Freedom of Information Act 2002 was passed in December 2002 and received Presidential assent in January 2003. However, a date for the Act to come into force was never notified, such that it never actually became operational.

Then after over a number of amendments an act titled "Right to Information Bill, 2005" was passed by the Lok Sabha⁴ and Rajya Sabha⁵ on 11th and 12th May of 2005 respectively and acquires the assent of Indian President on 15th June, 2005 and thus officially came into force since 12th October, 2005.

Disclosure of information held by public authorities in India was governed by the Official Secrets Act (1923) enacted during the British rule. The Supreme Court of India had in several judgments prior to enactment of the RTI Act, interpreted Constitution to read RTI as the fundamental right as embodied in right to freedom of speech and expression and right to life. The *raison d'être* for a gradual and strong evolution of RTI in India is primarily because of a group of villagers in central Rajasthan, mostly poor wage workers, asserted their RTI by responding against ghost entries in muster rolls, which was the sign of rampant corruption in the system, and demanding official information recorded in government rolls related to drought relief work. The movement spread to various parts of Rajasthan, leading to a nationwide movement for the RTI and related state legislations. Thus, it was states that took the first step by enacting RTI laws – Tamil Nadu (1997) Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004)⁶.

INTERNATIONAL STANDARDS

ARTICLE 19 has published a set of principles, *The Public's Right to Know: Principles on Freedom of Information Legislation*⁷ setting out best practice standards on freedom of information legislation. These Principles

²The Federal Minister of law in the Interim Government of 1997, headed by Malik Mairaj Khalid.

³<http://www.thenews.com.pk/Todays-News-2-196823-KPK-info-bill-a-catalyst-for-change>.

⁴The LokSabhais the lower house of India's bicameral-parliament.

⁵The RajyaSabhais the upper house of the Parliament of India.

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⁷The Public's Right to Know: Principles of Freedom of Information Legislation (<http://www.article19.org/pdfs/standards/righttoknow.pdf>)

are based on international and regional law, standards, and evolving State practice. These are useful set of principles to gauge the standard of law to bring it into conformity with international standards.

The RTI laws prevailing in Pakistan and India are the most advanced laws and are in conformity with the International standards. Let analyze these laws in the light of the Principles of Freedom of Information.

Maximum Disclosure:

The principle of Maximum Disclosure requires that a body seeking to deny access to information has the onus of proving that the information may be validly withheld; that everyone not just citizens should benefit from the right, and those seeking information should not have to explain why information is sought; that information or records should be broadly defined; and that no public body should be excluded from the ambit of the law.

The KPK RTI section 3 and Indian RTI 2005 section 3 are almost a standard to follow the principle of Maximum Disclosure. Both the laws states that every citizen have right to access any information while the scope of Pakistan federal RTI section 3 is restrictive in nature as it read as Access to information rather than Right to information.. The word “right” has not been used, which shows the intention of the law, more to provide lip service, than to really grant the right to its citizens to access information.

Secondly, one thing is very common in all of the laws the word citizen is used which means that foreigners or legal entities (as the Punjab Ordinance provides) cannot ask for information.

The federal RTI does not fully adopt the principle of maximum disclosure. Rather it has made disclosure of information quite restrictive.

The jurisdiction of the Federal RTI does not extend to the Federally Administered Tribal Areas. Article 247 that governs FATA contradicts Article 19-A of the constitution, which forms the constitutional basis for RTI⁸s.

Obligation to Publish:

Under the principle of obligation to publish, public bodies must be required to actively publish and disseminate key categories of information irrespective of any request.

The Federal RTI 2013, the Section 5 Publications and availability of record, provides for a long list of information to be routinely published by the Govt. so that it is available to the public on a reasonable price and at adequate number of outlets.

The law provides for the “number of outlets” for public to access public information

Interestingly it has omitted the words “Detailed budget of the public body” which the KPK and even Punjab RTIs have. Also there is no requirement of the publication of the annual reports by the public bodies as has been mentioned by KPK and Punjab laws. The law under section 6 Computerization and voluntary disclosure of records, has obliged the public body that all records considered as public record under the law is to be computerized and connected through a network all over the country so that “authorized” access is facilitated.

The section 4 of RTI 2005 required for computerization and maintenance of record and publish it within 120 days. It is also provided under clause (b) sub –section (1) of Sec 4 that the data must be publish suomotu to the public.

Promotion of Open Government:

According to the principle of promoting an open Government, those officials who obstruct access to information must be dealt with severely; the maintenance of records should be improved; public servants must be trained in promoting openness; and the public’s awareness about their right to information must be raised.

The Federal RTI does not score well on the application of the principle of promoting an open Government. While there is a section on maintenance of record: Section 4 Maintenance and indexing of records, the responsibility has been given to the principal officer of each pubic body to ensure that all records covered in the law are properly maintained, all the other criteria of the principle which can lead to an open government are missing. There is no deterrence for the officials that if they obstruct access to information that they will be dealt with severely. It merely provides 25,000 fine or imprisonment for a term not exceeding 2 years. Or with both. The aggrieved can request for a review of the decision by the head of the public body, and even then if the information is not provided, then the applicant can make a complaint to the Federal Ombudsman or Federal Tax Ombudsman. On contrary to it the Indian

⁸“CRTI Demand extension of RTI to FATA residents”, Frontier Post, Dec. 10m 2013. <http://www.lhrtimes.com/2013/12/09/crti-demands-extension-of-rti-to-fata-residents215014/#sthash.Y9Vj2VTR.dpuf>.

RTI 2005 under sec 20 (1) provides for more severe penalty as imposition of a penalty of **two hundred and fifty rupees each day** till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees.

Exceptions:

The principle of limited scope of exceptions lays down that exceptions should be clearly and narrowly defined and subject to strict “harm” and “public interest” tests. Exceptions should be subject to content-specific case-by-case review and non-disclosure only permitted where it is in the public interest and where release would cause serious harm.

The federal law like its predecessor FOI Ordinance, 2002 provides under section 8 a detail list of certain documents which are exempted from disclosure but it neither provide for partial disclosure of information, nor for the “harm” and “public interest test”, whereby if the benefit in disclosure outweighs the harm, or when it is in public interest to disclose information.

The KPK RTI has clearly defined the exceptions to disclosure of information under Section 15 to 21.

Indian RTI 2005 under section 8 (1) had provided a detail list of information which are exempted from disclosure. In sub-clause (2) public authority may allow access even to exempted information if public interest in disclosure outweighs the harm to the protected interests.

FACILITATING ACCESS:

The Principle for the process to facilitate access requires that the process should be rapid and fair; there must be an independent review of any refusal; refusal must be supported by reasons; and there should be a right of appeal to the courts from the independent review body.

Sections 13 of the Federal RTI lays down the procedure for disposal of informant requests and review. The procedure requires that the applicant can submit a request for information on the prescribed form, hence it bars out email enquires which are allowed under the KPK RTI. The public officers under obligation to render assistance to requester

An applicant does not have to deposit any fee for submitting an information request. When a request for information is rejected, the applicant has to be informed about such a decision with reasons in writing within 21 days. The applicant can then within 30 days make a review application to principal officer of the public body. KP RTI law and Indian RTI also stipulates that information needed to protect the life and liberty of any individual will be provided within 2 working Days.

Indian RTI laws under Section 5(3) and 6 and 7 makes the PIOs at state and central level duty bound to render assistance to requester and where necessary reduce oral information into writing. They are also bound to either provide information within 30 days of receipt of request or reject it for any reason mention in sec 8 and 9.

COSTS:

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

There is no cost for submitting a request for information. However Federal law does mention “lowest reasonable cost” for disclosure of information which means there may be some cost to be decided in rules while under KP RTI there is no cost not only for submitting a request for information but even for complaint to Information Commission. It is also provided that there is no cost for the first 20 pages of reproducing the document, and if requester is below poverty line. Indian RTI 2005 under section 4(4) states that the information be available free or at such cost of the medium or the print cost price as may be prescribed. Indian.

DISCLOSURE TAKES PRECEDENCE:

Laws that are inconsistent with the principle of maximum disclosure should be amended or repealed; whenever possible, laws must be interpreted consistent with freedom of information legislation.

The Federal RTI 2013 is not very different from the 2002 FOI Ordinance and though words such as voluntary disclosure have been inserted in the new law, disclosure does not take precedence over non-disclosure. As there is no “harm” and “public interest test” included in the new law, there is no discretion provided to the designated official to use his/her judgment to disclose when it is in the public interest and when not disclosed could cause harm. Rather as explained before the designated official is required to work “on authority of the principal officer”, which means that s/he has no power to judge or to communicate on his/her own.

The KPK RTI laws and section 8(2) of Indian RTI, 2005 have upheld the principle of disclosure taking precedence over non-disclosure, even though it has provided for exceptions/exemptions. These laws give

discretionary powers to the Information Officer who has to judge that if the benefit in disclosure outweighs the harm, then even exempt information must be disclosed.

PROTECTION FOR WHISTLEBLOWERS:

The principle for protection of whistleblowers requires that individuals who release information on wrongdoing –whistleblowers- must be protected.

There is no protection in Federal RTI and Punjab RTI for the whistleblowers in the law. It does not provide protection against any legal, administrative or employment-related sanction for releasing information. In the absence of a clause for protection of whistleblowers, officials who even sense wrong doings or maladministration, would be afraid of losing their jobs or being suspended, if they disclosed information. On the other hand the KPK RTI in Section 30 and section 21 of Indian RTI 2005 provides full protection to whistleblowers which bring these laws in conformity with international standards.

HOW TO MAKE IT A REALITY?

It is argue that FOI is a revolutionary step which is true beyond shadow but there are tough challenges ahead to realize the fruits of this law. The mere recognition of FOI is not suffice to materialize the revolutionary potential of it and therefore, it is necessary to strive for solution and overcome the challenges. In Pakistan and India freedom of information almost face similar challenges as they have a shared political, social and culture environment. The challenges are gigantic but few are discuss as follow to find the solution.

The lack of awareness on the part of public about the law is one of the challenges which need to be taken seriously. The government should work on war footing to create awareness among the people. Practice shows that a bigger section of rural areas are completely oblivious to the usefulness of law as compare to urban areas. In order to exploit the full fruits of this law every effort should be made to create awareness among the people.

The 2nd factors is Illiteracy which completely paralyze the effects of law. Owing to low literacy ratio in developing countries like Pak and India a bigger section of society is deprive of this basic utility. The government should take serious steps to make education available as much as possible to the masses. The FOI without education is like a toothless tigers. It is like a bow without an arrow.

The 3rd hurdle in the implementation of FOI is the non-friendly attitude of Public Information Officer (PIO). PIOs have a negative attitude towards the requester which is an attempt to discourage the spirit of a requester. The government should train the PIOs in this regard and take strict action against those who found guilty of such practices.

The 4th and foremost resistance comes in the form of harassment and threats from the officials. In most of the developing countries it is a common practice that even a right conscious segment of society is reluctant to benefit from RTI just because of fears of public official. Different tactics are used by official to frightened requesters. The hostile attitude public officials and lack of security by government is a big hurdle in the implementation of law.

The 5th resistance is the lack of proper training of PIOs. It causes significant hurdle in the smooth flourishing of law. Most of the official don't know the basic process therefore the government should provide them with a full fledge training environment.

To sum up it is observed that lack of seriousness and full commitment on the part of government is the most important reason in the failure of implementation of FOI. The experience shows that the government though enacted a law but did nothing to materialize it into its true letter and spirit. The government must come out of their slumber and show a spirit of seriousness and commitment for the implementation of the law. In order to exploit the revolutionary potential of RTI the government move forward from mere lip service attitude and take an action.

SIGNIFICANCE AND ITS IMPACT

The impact FOI in social, economic and political realm is very strong. It is one of the most powerful and revolutionary laws. The power of right to know and access information work as a wall before corruption and promote accountability and transparency. It will work as impetus for good governance, increasing public participation and strengthening democracy. The secret of progress and development in every sphere of life lies in access to information to public by public authorities. FOI is instrumental for the alleviation of poverty, which is the root cause of all social evils.

"The great democratizing power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task, your task...is to make that change real for those in need, wherever they may be. With information on our side, with knowledge a potential for all, the path to poverty can be reversed."
--- Kofi Annan

While good governance is the ultimate end of democratic polity, the right to information is a valuable instrument to achieve it.⁹

Chandra U, believes that to strengthen the human rights regime in India, parliament has enacted the Right to Information Act, 2005. It is said to be the most progressive legislation ever passed by the Indian parliament. Its purpose is to secure citizens access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority has enabled the citizens to fight against corruption, inefficiency and the arbitrary use of power by the public officials¹⁰.

The Bangalore-based Public Affairs Centre describes the adoption of the RTIA as a "watershed moment in the history of public governance in independent India" (Public Affairs Centre 2009, 1).

Speaking to a national conference in Delhi in October 2009, Lord Meghnad Desai called the RTIA "a great and revolutionary act . . . another step further in the embedding of democracy."

A report prepared for India's central government in 2009 agrees that the RTIA could "bring in a socio-economic revolution" (Price Waterhouse Coopers 2009, 27).

RECOMMENDATIONS

Federal RTI laws should apply to FATA as well and the contradiction b/w Article 247 and Article 19-A of constitution of Pakistan must be removed.

The word citizen should be replace with person to extend the scope of section 3 of Indian, Pakistan Federal and KP RTI laws.

Article 143 of constitution of Pakistan which restrict Provincial legislative power must be amended.

The federal RTI law must be amended to include partial disclosure of information and the "harm" and "public interest test".

The formality of prescribed form for request and bar on email should be amended.

A clause providing protection to whistle blower should be included in Federal RTI and Punjab RTI laws.

A comprehensive training plan for public official and awareness campaign must be included in Federal RTI laws.

CONCLUSION

To sum up the discussion, it will not be wrong to say that In the legislative history of Pakistan and India the enactment of RTI laws is one of those laws for which the legislator will always be admire and feel proud of it. It is observed that the Federal RTI law as compare to Indian RTI is a weak law as there are deficiencies which need to be amended and brought into conformity with the International standards. On the other hand the KP RTI law is one of the most progressive and up to date law in the world. It is completely in conformity with the international standards.

RTI laws are considered one of the most powerful laws. It works as oxygen for the strengthening of democracy and promotion of transparency. These laws promote transparency, democracy, accountability and reduce corruption. It empowers the common masses and instrumental in good governance. It has the revolutionary potential as it is symbolize with power but in order to exploit it in true letter and spirit its implementation is vital. Though implementation is a tough job but not impossible. If the law is not implemented it will lose its sanctity and integrity which is worse than not having a law on the subject in question. The future prospects of this law are very bright and it will have a strong impact if the government show seriousness and will for its implementation

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