

More Effective Right to Information Legislation and its Implementation in Pakistan

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Abbreviations and Acronyms

CLD	Centre for Law and Democracy
ICCPR	International Covenant on Civil and Political Rights
MKSS	Mazdoor Kisan Shakti Sanghat
NCPRI	National Campaign for Peoples' Right to Information
OAS	Organization for American States
OSCE	Organization of Security and Cooperation in Europe
RTI	Right to Information
UDHR	Universal Declaration of Human Rights
UN	United Nations

FOREWORD

This Background Paper has been prepared by PILDAT to facilitate an informed discussion on passing and implementing effective Right to Information legislation both at the Federal level and in the Provinces.

A strong RTI Law is vital for ensuring transparency and accountability within government. The RTI law has great potential to enhance the overall institutional efficiency of government and its functionaries. Effective implementation of RTI legislation also enables performance assessment of public officials and legislators by the public based on verifiable records of their official actions and decisions, which are otherwise unavailable or difficult to access within a culture of official secrecy.

A strong RTI law is an effective tool for eroding a culture of official secrecy which breeds corruption, misgovernance and public suspicion of the political administration and its motives.

RTI legislation also helps promote citizens participation within policy decision making processes of government and is therefore an important tool in ensuring government is run in line with public interest.

A well-defined and comprehensive mechanism which makes official information available to the public could vastly improve delivery of social services and make information on certain benefits and entitlements easily accessible to the public, therefore bolstering the relationship between government and the governed.

While an effective and progressive RT law is in place in the Punjab and an institution is functional in the form of Punjab Information Commission, the legislation itself is weak in terms of form and implementation in Sindh, Balochistan and at the Federal level. Dedicated institutions for overseeing the implementation of RTI legislation and hearing of information disclosure related appeals in the form of Information Commissions have not yet been formed at the Federal level and within Sindh and Balochistan.

It is in this context that PILDAT has planned briefings on 'Effective Right to Information Legislation' for members of the Parliament and members of Provincial Assembly, Sindh. In addition to this, PILDAT will be conducting a series of capacity building sessions in collaboration with Punjab Information Commission. These training sessions have been especially tailored for Public Information Officers (PIOs) and Heads of Departments (HoDs) of various district public bodies in Punjab with a view of improving the implementation of Punjab Transparency and Right To information Act 2013. This paper has been produced as an attempt to facilitate the stakeholders at the Centre and in the Provinces of Sindh and Punjab in bringing comprehensive and effective RTI laws into effect.

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Disclaimer

PILDAT team has made every effort to ensure accuracy of the publicly-available data and analyses based on it. Any omission, or error, therefore, is not deliberate. The views and analyses in this paper do not necessarily represent the views of the Development Alternatives Inc. (DAI).

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RTI: an Internationally Protected Human Right:

Right to Information (RTI), is an internationally protected human right, which has rapidly achieved near-global recognition in the past few decades.¹ In the process, it has transformed the way information held by offices of government and other public bodies, is understood and managed according to international law: i.e. on behalf of the public.²

The adoption of RTI Legislation around the world can be broken down into two phases: pre-1995 and post-1995.³ The Centre for Law and Democracy (CLD) notes that the conditions in which early adopters (i.e., those who adopted the law before 1995) and late adopters (i.e., those who adopted the law after 1995) have drafted and implemented RTI legislation are quite distinct.

Late adopters are in a unique position to benefit from the knowledge and experience of the past and ongoing efforts of different national governments in implementing RTI. After the post-1995 boom in international advocacy organizations and regional civil rights groups campaigning for RTI, late adopters of the law are also in a better position than early adopters to learn from the experience of these organisations and collectives.⁴

Being a late adopter, Pakistan may enrich its own efforts in improving its current RTI legislation by learning from the experiences of government and civil society within early RTI-adopting countries.

Given this encouraging outlook, Pakistan may move rapidly towards the ideal of RTI if takes stock of international and regional experiences of adopting and implementing RTI legislation. Already, the country is poised to top CLD's Global RTI Rating on the strength of the draft RTI law in consideration at the Centre, a remarkable improvement on its current position of 84th in the world.⁵

Recognizing the rapid adoption of RTI legislation around the world, intergovernmental bodies such as the United Nations (UN), the Commonwealth, and the South Asian Association for Regional Cooperation (SAARC) have called on governments around the world to guarantee access to this basic human right.

The United Nations (UN)

In its very first session in 1946, the UN General Assembly adopted Resolution 59(1), which states: "Freedom of information is a fundamental human right and...the touchstone" of all other freedoms consecrated by the UN.⁶

The right to information has also been enshrined in Article 19 of both the UN's Universal Declaration of Human Rights (UDHR) 1948 and the UN's International Covenant on Civil and Political Rights (ICCPR) 1968, of which 76 countries are signatories, including Pakistan.⁷

The Commonwealth

In March 1999, the Commonwealth Secretariat organized an Expert Group Meeting to discuss the importance of RTI legislation. A Final Document issuing from this Meeting held that RTI was a legal and enforceable right granting the right of public to access information held by all three arms of state – judicial, legislative and executive – and other bodies owned by government or carrying out its functions through public funding. These views were later endorsed by the Law Ministers Meeting in May 1999, and also by the Commonwealth Heads of Government Meeting in November of the same year.⁸

The South Asian Association for Regional Cooperation (SAARC)

In 2008, at a SAARC Ministerial Meeting, delegates endorsed legislation that confers the right to information held by public bodies for all citizens to eliminate corruption and improve governance at all levels of government.⁹

1. Mendel, Toby (1999): pg. 1, "Freedom of Information as an Internationally Protected Human Right", [online at <https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf>, accessed on July 28, 2015].
2. Ibid.
3. Centre for Law and Democracy & Access Info Europe (2013): pg. 8, "Overview of Results and Trends", Global RTI Rating Data Analysis Series, September, Canada; [online at <http://www.law-democracy.org/live/wp-content/uploads/2013/09/Report-1.13.09.Overview-of-RTI-Rating.pdf>, accessed 30 July, 2015]
4. Ibid. pg. 9.
5. Ibid.
6. Ibid.
7. United Nations Treaty Collection (2015), "Chapter IV: International Covenant of Civil and Political Rights", [online at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en, accessed August 7, 2015].
8. Mendel, Toby (1999): pg. 3, "Freedom of Information as an Internationally Protected Human Right", [online at <https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf>, accessed on July 28, 2015].
9. The Asia Foundation (2014): pg. 1, "Citizens' Access to Information in South Asia", Regional Synthesis Report, August, Nepal.

Development RTI Concept and Legislation

Key Legislative Improvements: International Perspective

The second and ongoing phase of RTI adoption around the world has been accompanied by significant refinements in certain provisions of the law.¹⁰

Improvements in RTI legislation have been observed in the following key areas:

- a. Scope of the law
- b. Exemptions and refusals
- c. Sanctions for offenders and protections for whistleblowers
- d. Promotional measures, such as training of officials and the initiation of public awareness campaigns.¹¹

According to CLD's Global RTI Ratings data between 1985 and 2013, the largest area-wise improvement in legislation was in the category of promotional measures. This reflects growing recognition of the importance of harnessing momentum generated right after passage of RTI law through the enactment of specific promotional measures that ensure smooth and sustained implementation.¹²

Improvements in the law's scope reflect widespread acknowledgement that relevant law must apply to all branches and tiers of government to guarantee RTI for all citizens.¹³

Finally, improvement in provisions pertaining to exemptions and refusals have been wrought by a better understanding of the confidentiality requirements of government while refinements in provisions related to protections have come after widespread acknowledgement of the importance of safeguarding whistleblowers acting in public interest.¹⁴

Another key development observed during the

Over the last decade, important strides have been taken toward recognizing and implementing the right to access of public information in South Asia. Between 2002 and 2009, governments in Bangladesh, India, Nepal, Sri Lanka and Pakistan formally enacted RTI legislation

transition from first to second-generation RTI laws has been the drafting of relevant laws in light of implementation challenges faced by past and ongoing efforts.¹⁵

Adoption of RTI in South Asia

Over the last decade, important strides have been taken toward recognizing and implementing the right to access of public information in South Asia.¹⁶ Between 2002 and 2009, governments in Bangladesh, India, Nepal, Sri Lanka and Pakistan formally enacted RTI legislation. More recently, relevant legislation has also been passed in Bhutan and Maldives. Additionally, in Afghanistan, a draft Bill has also been under consideration of the government.¹⁷

India's Right to Information Act 2005 has gained international recognition as the benchmark legislation in South Asia.¹⁸ It has also been lauded for its widespread use by citizens.¹⁹ This explains India's high score on CLD's Global RTI Rating 2015 (3rd).²⁰

Despite recent RTI-related successes, South Asian

10. Centre for Law and Democracy & Access Info Europe (2013): pg. 9, "Overview of Results and Trends", Global RTI Rating Data Analysis Series, September, Canada; [online at <http://www.law-democracy.org/live/wp-content/uploads/2013/09/Report-1.13.09.Overview-of-RTI-Rating.pdf>, accessed 30 July, 2015]

11. Ibid. pg. 10 – 11

12. Ibid. pg. 10

13. Ibid. pg. 11

14. Ibid.

15. Laura Neuman & Richard Calland (2007): pg. 8, "Making the Access to Information Law Work: The Challenges of Implementation", The Right to Know, ed. A. Forini; [online at http://www.cartercenter.org/resources/pdfs/peace/americas/making_the_law_work.pdf, accessed 30 July, 2015]

16. The Asia Foundation (2014): pg. 1, "Citizens' Access to Information in South Asia", Regional Synthesis Report, August, Nepal.

17. Ibid.

18. Ibid. pg. 11

19. Ibid.

20. Centre for Law and Democracy (2015), "Country Data", Global RTI Rating Series, September; [online at <http://www.rti-rating.org/country-data>, accessed August 10, 2015]

states like Pakistan, Bangladesh, India, and Nepal face unique challenges regarding the implementation of the RTI legislation, especially in overcoming the colonial culture of secrecy, which, in many ways, continues to this day. Laws restricting access to public information, like Pakistan's Official Secrets Act of 1923, which is still in effect at the Centre, have been inherited from this time.²¹

RTI Recognition in South Asia

India

Due to persistent civil society pressure for the passage of RTI legislation, and the implications of several landmark judgments by the Indian judiciary, the culture of secrecy within government and civil society was challenged during the late 1970s and early 1980s.

In context of the Indian judiciary, two particular cases are seminal. In the State of UP v. Raj Narian and Ors 1975,²² the Indian Supreme Court observed that barring national security, only some matters pertaining to public interest could not be discussed in public.²³

Again, in 1982, the Supreme Court held that the right to access public information was implicit in constitutional guarantees for freedom of speech and expression. It further held that non-disclosure of information was to be treated as an exception, only justified in the interests of the public.²⁴

Indian civil society has also played an important role in the country's RTI movement. The passage of the country's 2005 Right to Information Act was expedited through pressure generated by popular grass roots movements to obtain information about government expenditure, and public benefits and entitlements.²⁵

The most important among these movements was spearheaded by Mazdoor Kisan Shakti Sanghat (MKSS) in Rajasthan.²⁶ This movement provided a platform for the formation of a coalition of activists and civil society organizations campaigning on RTI called the National Campaign for Peoples' Right to Information (NCPRI) in 1996, an organization which has contributed invaluable to the initial passage of India's Right to Information Act 2005 and the ongoing RTI reform agenda in India.²⁷

Bangladesh

The culture of secrecy prevalent in Bangladesh during colonial rule and subsequent military regimes was challenged by the emergence of popular demand for the right to information in the 1980s.

This issue, however, was sidelined by political turmoil and a succession of military-backed governments between 1975 and 1990. After the restoration of democracy in 1991 demands for RTI legislation emerged once again.²⁸ In 2002, the Law Commission presented a working paper on RTI, an effort which encouraged collaboration between the State and civil society in the preparation of a draft RTI law. This draft Law was also posted on the Ministry of Information's website to invite citizens' feedback.²⁹ Further political turmoil eventually impeded the passage of the draft law. However, in 2007, the military-backed caretaker government committed to the enactment of RTI legislation. At around the same time, citizens groups and civil society organizations formed the Right to Information Forum to create sustained pressure for the passage of relevant laws. As a result, an Ordinance on RTI was approved by the President in 2008, and passed by the Parliament in 2009. A landmark Act for protection of whistleblowers was also enacted in 2011.³⁰

21. Sharan, Sanjay (2011): pg. 3, "Reviewing the Right to Information Through the Prism of Indian Policy Process", International Institute of Social Studies, November, The Hague, Netherlands; [online at <http://thesis.eur.nl/pub/10788/>; accessed July 30, 2015]

22. Supreme Court of India (1975), "State of UP vs. Raj Narian and Ors 1975", New Delhi, India; [online at: <http://indiankanoon.org/doc/438670/>]

23. Mendel, Toby (1999): pg. 3, "Freedom of Information as an Internationally Protected Human Right", [online at <https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf>, accessed on July 28, 2015].

24. Ibid. pg. 3

25. Sharan, Sanjay (2011): pg. 12, "Reviewing the Right to Information Through the Prism of Indian Policy Process", International Institute of Social Studies, November, The Hague, Netherlands; [online at <http://thesis.eur.nl/pub/10788/>; accessed July 30, 2015]

26. Ibid.

27. NCPRI completed its draft of India's first Freedom of Information Bill in 1997, later tabled in Parliament during 2002. The organization later joined protests against the passage of the Bill, claiming that it was a watered-down version of its original draft, and eventually forwarded recommendations for amendment of the law to the National Advisory Council in 2002. These were eventually passed, almost without change, in the form of India's Right to Information Act on October 13, 2005. Since then NCPRI has spearheaded many other campaigns on improving access to information and enhancing government transparency and accountability, including drafting a Bill on whistleblower protections, tabled in Parliament in 2010. For details please see: National Campaign for Peoples' Right to Information (2015), "Brief History of RTI", India, [accessed online on August 16, 2015, at: <http://righttoinformation.info/about-us/brief-history-demand-for-the-right-to-information/>]

28. The Asia Foundation (2014): pg. 3, "Citizens' Access to Information in South Asia", Regional Synthesis Report, August, Nepal.

29. Ibid.

30. Ibid. pg. 4

Given these developments, Bangladesh's Right to Information Act 2009 has been awarded 20th position on the Global RTI Rating 2015.³¹

Nepal

A popular people's movement, Jana Andolan, which forced the monarchy to concede the absolute powers it had enjoyed for nearly two centuries, also gave impetus to demands for government transparency and accountability.

The Constitution of 1990 recognized many of these demands by enshrining RTI as a fundamental right under Article 16. However, the first RTI Bill tabled in the Nepali Parliament in 1993 was resoundingly rejected by civil society stakeholders and the media, who claimed that the law would bolster the prevalent culture of secrecy.

Subsequent efforts were all derailed by political turmoil – a Bill tabled in 2002, for example, was not passed due to dissolution of Parliament. Finally in 2007 – after the enactment of an Interim Constitution following years of autocratic rule – Nepal's first Right to Information Act was passed. Rules of

implementation were promulgated in 2009, after the establishment of a National Information Commission in 2008.³²

As a partial result of this final development, Nepal's Right to Information Act 2064 (2007) occupies 23rd position on the Global RTI Rating 2015.³³

South Asian RTI Legislation: Salient Features

Scope

The scope of RTI laws in Nepal, Bangladesh and India extends to all tiers of government. All three branches of government – legislative, judicial and executive – are covered by RTI laws in these countries. In India and Bangladesh laws provide absolute exemptions to some national security and intelligence agencies. However, in India these exemptions are overridden in cases of alleged corruption or human rights abuse. Finally, RTI legislation in Nepal extends coverage of the law to all political parties, perhaps, the first in the world to do so.³⁴

However, laws in Bangladesh³⁵ and Nepal³⁶ only grant the right to information citizens, whereas India³⁷ extends this right beyond citizens to all legal persons, such as registered immigrants.

For Non-governmental organizations (NGOs) and other private bodies, laws in India and Nepal are less stringent. However, as per the Supreme Court's directives in 2013, private organizations are legally bound to disclose information if they are substantially financed through public funding. In Nepal, provisions exist in law pertaining to NGOs funded by the Nepali government, foreign governments and intergovernmental organizations. However, due to unclear definition of the term 'institutions', there is confusion about whether such provisions can also be extended to I-NGO's and other bilateral or multilateral institutions.³⁸

The scope of RTI laws in Nepal, Bangladesh and India extends to all tiers of government. All three branches of government – legislative, judicial and executive – are covered by RTI laws in these countries. In India and Bangladesh laws provide absolute exemptions to some national security and intelligence agencies

31. Centre for Law and Democracy (2015), "Country Data: Bangladesh", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Bangladesh, accessed August 10, 2015]

32. Ibid.

33. Centre for Law and Democracy (2015), "Country Data: Nepal", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Nepal, accessed August 10, 2015]

34. The Asia Foundation (2014): pg. 16, "Citizens' Access to Information in South Asia", Regional Synthesis Report, August, Nepal.

35. Centre for Law and Democracy (2015), "Country Data: Bangladesh", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Bangladesh, accessed August 10, 2015]

36. Centre for Law and Democracy (2015), "Country Data: Nepal", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Nepal, accessed August 10, 2015]

37. Centre for Law and Democracy (2015), "Country Data: India", Global RTI Rating Series, September; [online at http://new.rti-rating.org/country-data?page_id=57&country_name=India, accessed August 10, 2015]

38. The Asia Foundation (2014): pg. 16 - 17, "Citizens' Access to Information in South Asia", Regional Synthesis Report, August, Nepal.

Finally, in terms of providing access to different categories of information held by the government, both India³⁹ and Nepal⁴⁰ provide access to all such categories in principle. However, in Bangladesh,⁴¹ there are limits to the kinds of information that may be disclosed by government: file notings are explicitly exempt from RTI Act provisions.⁴²

Despite losing points in some key areas, all three laws are progressive and modern in the area of scope. Barring the provision of constitutional guarantees on RTI, which exist in India⁴³ and Nepal,⁴⁴ but not in Bangladesh,⁴⁵ the scope of these laws ensures near-universal access to information across almost all government departments, public bodies and private organizations performing public functions.

Exemptions and Refusals

In India, Nepal and Bangladesh, the disclosure of information that would harm protected public or national interests, such as economic or national security, and international relations, is exempt under the provisions of the relevant RTI legislation.

Article 37 of Nepal's RTI law, however, is ambiguous on whether the law is the overriding legislation pertaining to the disclosure of public information.⁴⁶ Whereas, in Bangladesh⁴⁷ and India,⁴⁸ RTI laws have been decreed the overriding legislation on matters of information disclosure.

Further, the protection of legitimate privacy, fiduciary and proprietary and copyright interests may also exempt the disclosure of certain information within all three countries. Bangladesh, however, has a long list of exclusive exemptions within its law that are not in line with international standards, such as the broad exemption of all information of a strategic or research-oriented nature.⁴⁹ Similarly, in Nepal a broad exemption has been granted to information that jeopardizes the coexistence of different communities.⁵⁰ Of these three countries, only India has specific provisions for the disclosure of protected information, provided the benefits of disclosure outweigh the harms.⁵¹

India's RTI law is the most robust out of the three in the area of exemptions and refusals. Bangladesh and Nepal's laws, by comparison, are weakened by broad exceptions granted to information of a particular nature. Nepal's law, much like Pakistan's Freedom of Information Ordinance 2002, is the only law in the region that is not the overriding legislation in matters of information disclosure.

Sanctions and Protections

In India, Bangladesh and Nepal, the relevant authorities tasked with implementing RTI laws and handling information requests and complaints, have the power to impose sanctions and penalties on public officials who violate the RTI-related obligations they have been placed under.⁵² In India⁵³ and Nepal,⁵⁴ however, the

39. Centre for Law and Democracy (2015), "Country Data: India", Global RTI Rating Series, September; [online at http://new.rti-rating.org/country-data?page_id=57&country_name=India, accessed August 10, 2015]
40. Centre for Law and Democracy (2015), "Country Data: Nepal", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Nepal, accessed August 10, 2015]
41. Centre for Law and Democracy (2015), "Country Data: Bangladesh", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Bangladesh, accessed August 10, 2015]
42. Ibid. pg. 16 - 17
43. Centre for Law and Democracy (2015), "Country Data: India", Global RTI Rating Series, September; [online at http://new.rti-rating.org/country-data?page_id=57&country_name=India, accessed August 10, 2015]
44. Centre for Law and Democracy (2015), "Country Data: Nepal", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Nepal, accessed August 10, 2015]
45. Centre for Law and Democracy (2015), "Country Data: Bangladesh", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Bangladesh, accessed August 10, 2015]
46. Centre for Law and Democracy (2015), "Country Data: Nepal", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Nepal, accessed August 10, 2015]
47. Centre for Law and Democracy (2015), "Country Data: Bangladesh", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Bangladesh, accessed August 10, 2015]
48. Centre for Law and Democracy (2015), "Country Data: India", Global RTI Rating Series, September; [online at http://new.rti-rating.org/country-data?page_id=57&country_name=India, accessed August 10, 2015]
49. Centre for Law and Democracy (2015), "Country Data: Bangladesh", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Bangladesh, accessed August 10, 2015]
50. Centre for Law and Democracy (2015), "Country Data: Nepal", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Nepal, accessed August 10, 2015]
51. The Asia Foundation (2014): pg. 17, "Citizens' Access to Information in South Asia", Regional Synthesis Report, August, Nepal.
52. Ibid. pg. 19
53. Centre for Law and Democracy (2015), "Country Data: India", Global RTI Rating Series, September; [online at http://new.rti-rating.org/country-data?page_id=57&country_name=India, accessed August 10, 2015]
54. Centre for Law and Democracy (2015), "Country Data: Nepal", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Nepal, accessed August 10, 2015]

Regarding provisions on sanctions and protections, Bangladesh's RTI regime appears to be the most progressive, as, unlike its regional counterparts, it provides protections to whistleblowers and grants full authority to the Information Commission in terms of sanctioning both public officials and bodies

powers of Information Commissions are limited to imposing sanctions on individuals, not entire public bodies, and issuing recommendations to offending public bodies. Only Bangladesh grants the Information Commission the authority to sanction both offending public officials and public bodies found violating its disclosure obligations under law.⁵⁵ Only Bangladesh has been able to successfully enact a law granting explicit protection to whistleblowers acting in public interest.⁵⁶ The Whistleblower Protection Bill in India tabled in Parliament in 2010, on the other hand, has still not been passed.⁵⁷

Regarding provisions on sanctions and protections, Bangladesh's RTI regime appears to be the most progressive, as, unlike its regional counterparts, it provides protections to whistleblowers and grants full authority to the Information Commission in terms of sanctioning both public officials and bodies, which significantly increases effectiveness of the law.

Promotional Measures

India's RTI legislation contains key provisions for the

promotion of RTI implementation. It contains provisions for the appointment of designated officials within public bodies to ensure departmental compliance with its information disclosure obligations. Further, the law in India also requires a centralized authority, such as an information commission, to undertake the responsibility of RTI promotion, such as initiating public awareness campaigns. However, it is unclear whether these provisions impose legal obligations on the information commission pertaining to public RTI promotion. Finally, India's law requires the training of officials on RTI, and mandates all public bodies to undertake measures for the promotion of effective record keeping and management.⁵⁸

The RTI regime in Bangladesh, with regards to legal provisions for RTI promotion, is stronger than India's. It contains robust provisions in all key areas identified by the CLD as indicators within the RTI Ratings Annual Report of 2013. However, unlike India, these provisions do not extend to requirements pertaining to the training of public officials.⁵⁹

In Nepal, the law lacks specific and/or strong provisions on RTI promotion, including the formation and application of minimum standards of record management, and requirements to report actions and decisions taken with regards to the handling of information requests and complaints.⁶⁰ This particular law appears to be the weakest in the region regarding provisions for RTI promotion.

Adoption and Recognition in Pakistan

Recognition

Pakistan ratified the ICCPR 1968 on June 23, 2010, and this act came into effect on September 23, 2010. Additionally, Pakistan withdrew the reservations it raised upon initial ratification of the Covenant in 2008.⁶¹

55. Centre for Law and Democracy (2015), "Country Data: Bangladesh", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Bangladesh, accessed August 10, 2015]
56. The Asia Foundation (2014): pg. 4, "Citizens' Access to Information in South Asia", Regional Synthesis Report, August, Nepal.
57. National Campaign for Peoples' Right to Information (2013): pg. 1, "NCPRI Note on Whistleblower Protection Bill", April 19, New Delhi, India; [online at: <http://righttoinformation.info/wp-content/uploads/2013/10/NCPRI-2013-note-Whistle-Blower-Protection-Bill-19-April-2013.pdf>]
58. Centre for Law and Democracy (2015), "Country Data: India", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=India#promotional, accessed August 10, 2015]
59. Centre for Law and Democracy (2015), "Country Data: Bangladesh", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Bangladesh#promotional, accessed August 10, 2015]
60. Centre for Law and Democracy (2015), "Country Data: Nepal", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Nepal#promotional, accessed August 10, 2015]
61. United Nations Treaty Collection (2015), "Chapter IV: International Covenant of Civil and Political Rights", [online at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en & <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280004bf5>, accessed August 7, 2015].

Key Developments before Adoption

The first concrete efforts made to pass such legislation were in the Senate. The private member bill introduced by Prof. Khurshid Ahmed of Jamaat-e-Islami in the early 1990s, however, was not adopted for consideration by the Senate.⁶² Later, when Benazir Bhutto's first PPP-led government sought to overcome the charges of corruption leveled at it, a committee was set up to examine the causes of the problem and recommend solutions. One such solution was the passing of an RTI bill. However, resistance from bureaucracy and the dismissal of Bhutto's government derailed these efforts.⁶³

The 1973 Constitution of Pakistan provides no specific guarantees or recognition for the right to access information. However, in 1993, the Supreme Court observed that, as the major source of information in democracy, the government was "duty bound" to disseminate information about its decision-making and operations in the interests of public accountability [Pakistan Law Digest (PLD) SC 746].⁶⁴ Further, the court also explicitly read the right to access of information into Article 19 of the Constitution on freedom of expression.

These judgments, however, received no attention in the legislature until the dismissal of Bhutto's second government in November 1996. After the Bhutto regime's dismissal on charges of corruption, the interim government led by Malik Miraj Khalid promulgated the Access to Information Ordinance on January 29, 1997.⁶⁵ This Ordinance, however, lapsed as the successive PML-N government failed to turn it into an act of Parliament.^{66,67}

Adoption at National and Provincial Levels

The existing Freedom of Information Ordinance was

promulgated in 2002 at the Federal level by the military-backed Government of President General Pervez Musharraf. The law was passed through the 17th constitutional Amendment, and without much parliamentary oversight or ownership.⁶⁸ Some entities have claimed that this law was passed as a condition to the ADB's future disbursement of loans in Pakistan.⁶⁹ Collaborative efforts between civil society and government, such as the Briefing Sessions for Parliamentarians and Parliamentary Staff held by PILDAT on June 28, 2004, resulted in the proposal of many different amendments to the Freedom of Information Ordinance 2002. However, as mentioned by speakers invited to this Briefing Session, a culture of apathy within government prevented their passage.⁷⁰

At the provincial level, Balochistan and Sindh replicated the FOI Ordinance 2002 in 2005 and 2006, respectively.⁷¹ Additionally, within Khyber Pukhtunkhwa (KP) and Punjab, stronger RTI laws were passed in 2013 in the shape of Khyber Pukhtunkhwa Right to Information, and Punjab Transparency and Right to Information Act.⁷²

The Punjab Information Commission, formed under relevant provisions of the province's RTI legislation, notified Rules of Business in 2014. Rules of business for the equivalent law in KP have still not been notified.

The Punjab Information Commission has also issued landmark decisions in 2015 within three RTI-related complaints: Mr. Waseem Abbassi v. Deputy Secretary Governor House; Waseem Abbassi v. Principal Secretary, Chief Minister Secretariat; and Amer Ejaz v. Secretary, Punjab Assembly.⁷³

The KP Right to Information Commission has reportedly violated its obligations by failing to respond

62. Centre for Peace and Development Initiatives (2009): pg. 5, "Freedom of Information Ordinance 2002 and its implementation", December, Islamabad.
63. Ibid.
64. Ibid. pg. 6
65. Shehri.org (2014), "History of Freedom of Information Legislation in Pakistan", as accessed on August 16, 2015, at: <http://shehri.org/rti/legislation.html>
66. Centre for Peace and Development Initiatives (2009): pg. 6, "Freedom of Information Ordinance 2002 and its implementation", December, Islamabad.
67. Standing Committee of National Assembly on Information (2014): pg. 13, Broadcasting and National Heritage, "Special Report on Right to Information Bill, 2013", March, Islamabad; [online at: <http://nacomm-infobh.pk/Activities/Specialreports/SpecialReportonRighttoInformation.pdf>]
68. PILDAT (2004): pg. 14, "Proceedings: Freedom of Information", Briefing Sessions for Parliamentarians and Parliamentary Staff, May, Islamabad.
69. The Asia Foundation (2014): pg. 4 - 5, "Citizens' Access to Information in South Asia", Regional Synthesis Report, August, Nepal.
70. PILDAT (2004): pg. 15, "Proceedings: Freedom of Information", Briefing Sessions for Parliamentarians and Parliamentary Staff, May, Islamabad.
71. The Asia Foundation (2014): pg. 5, "Citizens' Access to Information in South Asia", Regional Synthesis Report, August, Nepal.
72. Shehri.org (2014), "History of Freedom of Information Legislation in Pakistan", as accessed on August 16, 2015, at: <http://shehri.org/rti/legislation.html>
73. Centre for Peace and Development Initiatives (2015): pg. 19, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

to eight (8) complaints within the prescribed time period of 60 days.⁷⁴ The KP Government also passed the Right to Information (Amendment) Bill 2015, effectively exempting the KP Assembly and Peshawar High Court from any disclosure obligations under provisions of the law.⁷⁵

At the district level, the Punjab Local Government Ordinance 2001 has also given effect to RTI within Pakistan's most populous province.⁷⁶ The Senate of Pakistan passed the Islamabad Local Government Bill 2015 on July 9, 2015 which, among other things, guarantees an individual's right to access information held by local Government in the capital. The Bill currently awaits Presidential Assent to be passed into law.⁷⁷

Additionally, after the passage of RTI legislation in KP, residents of the Province can also access information held by district public bodies as well.⁷⁸

Finally, the 18th Constitutional Amendment, passed on April 9, 2013, importantly enshrined RTI as a fundamental right under Article 19A on the Right to Information.^{79,80}

74. Centre for Peace and Development Initiatives (2015): pg. 19-20, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

75. Ibid. pg. 1

76. Ibid. pg. 1

77. Senate of Pakistan (2015), "Islamabad Capital Territory Local Government Act-2015" July, Islamabad; [online at: http://www.senate.gov.pk/uploads/documents/1428491077_893.pdf]

78. Centre for Peace and Development Initiatives (2015): pg. 6, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

79. Associated Press of Pakistan (2013), "Full text of 18th Amendment Bill", April, Islamabad, as accessed on August 15, 2015, at: http://www.app.com.pk/en/_index.php?option=com_content&task=view&id=100264&Itemid=1

80. Standing Committee of National Assembly on Information (2014): pg. 13, Broadcasting and National Heritage, "Special Report on Right to Information Bill, 2013", March, Islamabad; [online at: <http://nacomm-infobh.pk/Activities/Specialreports/SpecialReportonRighttoInformation.pdf>]

Current International Standards

Article 19, a renowned International Advocacy Organization for Freedom of Speech and Information has developed a set of standards for ideal RTI Legislation. These standards have been developed in keeping with best practices and laws around the world. Both the UN's Special Rapporteur on Freedom of Opinion and Expression 1999 in an Annual Report, and the UN Commission on Human Rights, in a Resolution on Freedom of Expression, have endorsed them in 2000. Numerous governments and civil society organizations have used these principles in various efforts for the promotion of RTI. In Pakistan PILDAT,⁸¹ the National Assembly Standing Committee on Information, Broadcasting and National Heritage,⁸² and various other entities have adapted these standards for the purposes of various reports and papers.

Principle 1: Maximum Disclosure

This principle enshrines the obligation of full disclosure of official information to be pursued in all but a very limited set of circumstances. Many countries, including India⁸³ and Pakistan,⁸⁴ have ensured this principle through constitutional guarantees.

The exercise of this right should not require the demonstration of the requester's interest in the information sought. Conversely, the denial of a legitimate information request by a public body must be premised on justifications clearly enshrined in law.⁸⁵

Important definitions

- i. **Information:** includes all records held by a public body, regardless of its source, date of production, or the form in which it is stored, including classified records.
- ii. **Public body:** includes all branches and levels of government; private bodies holding information

Modern RTI law obliges public bodies to voluntarily publish and disseminate documents and records of significant public interest, subject to resource availability and capacity constraints. Further, the law must also state key categories of information subject to this obligation

crucial to the protection of key public interests, such as environment and health, and intergovernmental organizations.

- iii. **Destruction of records:** includes the willful destruction of, or obstruction of access to public records, thereby protecting their integrity and availability. The law should view the destruction of public records as a criminal offence and outline minimum standards for public record management. The law must also require adequate resources to be allocated for this purpose.⁸⁶

Principle 2: Obligation to Publish

Modern RTI law obliges public bodies to voluntarily publish and disseminate documents and records of significant public interest, subject to resource availability and capacity constraints. Further, the law must also state key categories of information subject to this obligation.⁸⁷

The following categories of information must be included:

- i. Information related to how the public body

81. PILDAT (2004), "Briefing Paper on Freedom of Information", PILDAT Briefing Paper Series for Pakistani Parliamentarians, June, Lahore, Pakistan.

82. Standing Committee of National Assembly on Information, Broadcasting and National Heritage (2013), "Special Report on Right to Information Bill, 2013", March, Islamabad; [online at: <http://nacomm-infobh.pk/Activities/Specialreports/SpecialReportonRighttoInformation.pdf>]

83. Centre for Law and Democracy (2015), "Country Data: India", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=India#right]

84. Centre for Law and Democracy (2015), "Country Data: Pakistan", Global RTI Rating Series; [online at http://www.rti-rating.org/view_country?country_name=Pakistan#right]

85. Article 19 (1999): pg. 2, "The Public's Right to Know: Principles of Freedom of Information Legislation", International Standards Series, June, London.

86. Ibid.

87. Ibid.

- functions, including costs, objectives, audited accounts, standards, achievements etc.
- ii. Information on requests, complaints or other direct actions resulting from official interactions with the public
 - iii. Guidance on how public can participate in policy-making and decision-making processes of government
 - iv. The types of information held by the public body and the forms in which this information is stored
 - v. The content of any decision or policy affecting the public, along with rationales and background material important in its comprehension

Principle 3: Open Government

The promotion of a culture of openness in government is also necessary. The law must require that adequate resources and attention are devoted to the promotion of this principle. Some promotional activities of this nature include:

- i. *Public Awareness:* The law must require public education and the dissemination of information on RTI, such as the scope of information available on request and the manner of accessing such information. Ideally, such initiatives must be a collaborative effort between individual public bodies and a specially designated and an adequately funded and specially established RTI oversight and coordination body.
- ii. *Trainings and other capacity-building measures:* Public bodies must provide RTI training to employees on the importance and scope of RTI legislation. The official body responsible for these trainings might also help in promoting an open government through: a) provision of incentives for good RTI-related performance; b) production of an annual report for Parliament detailing future milestones, progress on current targets, and recommendations to streamline the law's implementation c) laying down procedures for maintaining and providing access to government records.⁸⁸

Principle 4: Limited Scope of Exceptions

All requested information must be furnished unless the public body can demonstrate that disclosure would harm a protected public interest.

- i. *Legitimate exceptions:* Are aims which may

justify non-disclosure. These aims should be specified in law and limited to matters of law enforcement/public order, privacy, national security, commercial interests, individual safety/privacy, and the integrity of government decision-making processes.

- ii. Exceptions should be narrowly drawn, and based on content of information rather than type. Where possible, exceptions should also be time-bound, after which the public's right to know takes precedence.
- iii. Refusals must meet a substantial harm test, which is a means of deciding when the disclosure of protected information must be allowed in public interest.⁸⁹

Principle 5: Processes to Facilitate Access

A process for ruling on requests for information must be specified in law at three levels: within the public body, during appeals to an independent administrative body, and during appeals to court.

Where necessary, provisions ensuring access to disabled or marginalized groups must also be laid out. Public bodies must designate an official responsible for processing information requests and ensuring compliance with legitimate requests according to law. These officials must also be responsible for assisting individuals in submitting information requests where required.

Conversely, public bodies must also have the authority to refuse frivolous or vexatious requests. Additionally, the law should specify strict time-limits for the processing of requests, the hearing of complaints and written communication of denials of those requests.

Appeals process

The law should provide for an individual's right to appeal, to an independent administrative body, on refusal of his/her request by a public body.

This commission must meet certain standards and enjoy certain privileges:

- a. Financial and administrative autonomy
- b. Staff appointed process by representative bodies, such as all-party parliamentary committees

88. Article 19 (1999): pg. 4 - 5, "The Public's Right to Know: Principles of Freedom of Information Legislation", International Standards Series, June, London.

89. Ibid. pg. 5-6

The appeals process must ensure timely delivery of judgments at the lowest possible cost to the public, thereby ensuring access to all citizens notwithstanding their financial background. Further, the appellate authority must enjoy comprehensive powers to investigate an appeal, including powers to compel witnesses; and to require public bodies to provide any requisite information or record for review.

In case of criminal obstruction of information disclosure, the authority must also have the power to refer cases to higher courts. Finally, both the applicant and the public body must be granted the right to appeal the appellate body's decisions in a higher court.⁹⁰

Principle 6: Costs

Individuals should not be deterred from submitting information requests on account of procedural costs. A nominal fee corresponding with the actual retrieval and disclosure costs of the requisite information must be charged, with no additional flat fee for each request.⁹¹

Principle 7: Open Meetings

Meetings of public bodies must be open to the public, since the right to know also includes knowing what the government does in the name of public interest.

A meeting in this context refers to a formal meeting, requiring both a quorum and subject to procedural rules of government service. Public notice of meetings must also be provided a reasonable time in advance to ensure people's participation.

Meetings may be closed, in accordance with established procedures or in cases where adequate reasons for closure exist. However, the decision to close a meeting must itself be open to public, to ensure that the decision is made transparently and with public knowledge and approval.⁹²

Principle 8: Disclosure Takes Precedence

RTI law requires that other legislation pertaining to the disclosure of official information be repealed or overridden.⁹³

Principle 9: Protection for Whistleblowers

Individuals should be exonerated from any legal, administrative or employment-related sanctions for

disclosing information on wrongdoing. Wrongdoing in this context refers to the commission of a criminal offence, failure to comply with a legal obligation, miscarriage of justice, corruption or dishonesty, or serious maladministration on part of a public body. It also includes serious threat to health, safety and environment, whether linked to individual wrongdoing or not. Whistleblowers should enjoy such protections as long as they have acted within a reasonable belief that the disclosed information was substantially true and indicative of a wrongdoing. Such protections should override punitive measures related to the breach of a legal or contractual requirement.⁹⁴

90. Article 19 (1999): pg. 7 - 8, "The Public's Right to Know: Principles of Freedom of Information Legislation", International Standards Series, June, London.

91. Ibid. pg. 8 - 9

92. Ibid. pg. 9 - 10

93. Ibid. pg. 10

94. Ibid. pg. 10 - 11

Crucial Gaps in Pakistan's RTI Legislation and Implementation

In reviewing the gaps within Pakistan's RTI legislation, PILDAT has chosen to examine the following laws: Freedom of Information Ordinance 2002; Balochistan Freedom of Information Act 2005; Sindh Freedom of Information Act 2006; Khyber Pukhtunkhwa Right to Information Act 2013, and Punjab Transparency and Right to Information Act 2013, which are currently in effect at the Centre and in the Provinces. Of these, the laws in effect within Balochistan and Sindh, and at the Centre are identical, and will therefore be analyzed collectively

This section analyzes the strengths and weaknesses of Pakistan's various RTI laws on the basis of the international standards highlighted above.⁹⁵

This paper will also comment on the status of implementation and complaints proceeding status of the designated authorities at the Centre and within the Provinces.

Legislative Gaps Maximum Disclosure

Federal, Sindh and Balochistan

These laws fail to conform to this standard, since they do not in principle recognize all categories of information as accessible. For example, file notings, minutes of meetings and records of banking companies are exempt from disclosure under Section 8 of the law.⁹⁶ Under the same Section, the government also enjoys broad discretionary powers in declaring other classes of records exempt from disclosure. There are also no specific provisions ensuring maximum disclosure, such as the three-part harm test for determining when either disclosure or non-disclosure is most in line with public interest.⁹⁷ Coupled with broad lists of exceptions, under Sections 15-18, these laws are not suited to ensuring the principle of maximum disclosure, despite Section 2(h)(v) which contains a broad definition of public records.

Punjab and KP

RTI laws in KP and Punjab contain a narrowly and clearly drawn list of information exempted from

RTI laws in KP and Punjab contain a narrowly and clearly drawn list of information exempted from disclosure. All other types of information are recognized as accessible to the public, with both laws specifying broadly the categories of information that must be proactively disclosed by public bodies under the law's purview

disclosure. All other types of information are recognized as accessible to the public, with both laws specifying broadly the categories of information that must be proactively disclosed by public bodies under the law's purview. In KP's law, under Section 14 a minimal and clearly-defined list of exceptions is provided, while Sections 15-22 outline interests that must be protected from harm resulting from the disclosure.⁹⁸ However, in cases where the harm is disclosure is outweighed by the benefits, these laws also contain the three-part harm test described earlier.

In Punjab, on the other hand, Section 13 outlines a minimal and clearly defined list of exceptions under the law, and states certain special interests that must be protected from harm resulting from disclosure, provided the harm test is satisfied.⁹⁹ Given these provisions, RTI laws in Punjab and KP are far more progressive than their counterparts in Sindh and Balochistan, and at the Centre.

Obligation to Publish

Federal, Sindh and Balochistan

Under Section 5, these laws require that rules, regulations, notifications, by-laws, manuals and orders must be published and made available at different outlets to ensure public access. This provision, in itself, is not enough to fulfill the above principle, since it does

95. PILDAT (2004): pg. 13, "Briefing Paper on Freedom of Information", PILDAT Briefing Paper Series for Pakistani Parliamentarians, June, Lahore, Pakistan.

96. Transparency International - Pakistan (2002), "Freedom of Information Ordinance promulgated", October, Karachi, Pakistan.

97. Centre for Peace and Development Initiatives (2015): pg. 7, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

98. Government of Khyber Pukhtunkhwa (2013), "Khyber Pukhtunkhwa Right to Information Act 2013", November, Peshawar, Pakistan.

99. Government of Punjab (2013), "The Punjab Transparency and Right to Information Act 2013", Lahore, Pakistan.

not explicitly mention that the above steps must be taken proactively as long as sufficient resources have been allocated for the purpose.¹⁰⁰

Punjab and KP

RTI laws in both KP and Punjab contain a comprehensive list of categories of information that must be proactively disclosed. Despite similarities in language, both laws impose almost identical proactive disclosure obligations upon public bodies. The law in KP, however, requires proactive disclosure of relevant background information related to government decisions and policies under Section 5(1)(f), whereas Section 4 of the Punjab RTI law on Proactive Disclosure carries no such requirements.^{101, 102} With regards to the Obligation to Publish, the RTI law in Punjab is the most progressive, while the laws in effect at the Centre and within Sindh and Balochistan are the weakest.

Open Government

Federal, Sindh and Balochistan

These laws lack provisions for public education on RTI or the authorization of an independent statutory body responsible for oversight and coordination of RTI implementation. Although Section 4 does provide for the maintenance and indexing of public records,¹⁰³ the Rules notified for these laws, at the Federal level, for example, do not specify rules and minimum standards in this regard.¹⁰⁴ These laws also lack provisions on public education on RTI and the training of officials responsible for implementation of RTI law in various government departments.¹⁰⁵

Punjab and KP

Punjab's RTI law contains provisions in Section 6 on the training of public officials on disclosure obligations they must fulfill [sub-section (5)(e)]; the promotion of RTI in the public, such as initiation of public awareness campaigns [sub-section (5)(f)] and publication of User Manuals [sub-section (5)(h)]; the publication of handbooks/manuals for Public Information Officers

[sub-section (5)(i)]; and the publication of an annual report on the status of implementation of RTI in the Province [sub-section (6) and (7)]. The law also contains detailed provisions on the maintenance and indexing of public records under Section 8 with a special emphasis on computerization, thereby ensuring easy and cost-effective access.¹⁰⁶ Moreover, the Punjab Information Commission has also notified minimum rules and standards of maintaining and indexing public records under Punjab Transparency and Right to Information Rules, notified on January 4, 2015.¹⁰⁷ In KP, a similar commission has been set up but has been comparatively weaker in tackling the culture of official secrecy.¹⁰⁸ It has, for example, failed to notify rules and minimum standards of public record management.¹⁰⁹ Further, the RTI law of KP in itself is weaker on the promotion of RTI implementation. While Section 25 requires the KP RTI Commission to undertake the training of public officials [sub-section (3)(d)], and the publicization of the rights of individuals under the Act [sub-section (3)(e)], these details are not as detailed as their equivalents in Punjab's law. However, similar to the Punjab law, the KP RTI Act 2013 contains provisions, under Section 25, for the publication of a User Manual and an annual report on the implementation status of RTI in the province.¹¹⁰ Thus, in terms of the principle of Open Government, the Punjab Transparency and Right to Information Act 2013 is the most progressive.

Exceptions

Federal, Sindh and Balochistan

These laws fail to state a minimal and clearly-defined list of the types of information exempted from disclosure. Section 7 of the Freedom of Information Ordinance 2002, for example, declare a very limited list of records as open to the public. Moreover, Section 8 prescribes certain important categories of information, such as file notings and minutes of meetings, exempt from disclosure, while also specifying certain broad categories of information that must be not disclosed under any circumstances. Also of concern is the lack of

100. Transparency International - Pakistan (2002), "Freedom of Information Ordinance promulgated", October, Karachi, Pakistan.

101. Government of Khyber Pukhtunkhwa (2013), "Khyber Pukhtunkhwa Right to Information Act 2013", November, Peshawar, Pakistan.

102. Government of Punjab (2013), "The Punjab Transparency and Right to Information Act 2013", Lahore, Pakistan.

103. Transparency International - Pakistan (2002), "Freedom of Information Ordinance promulgated", October, Karachi, Pakistan.

104. PILDAT (2004): pg. 27, "Briefing Paper on Freedom of Information", PILDAT Briefing Paper Series for Pakistani Parliamentarians, June, Lahore, Pakistan.

105. Transparency International - Pakistan (2002), "Freedom of Information Ordinance promulgated", October, Karachi, Pakistan.

106. Government of Punjab (2013), "The Punjab Transparency and Right to Information Act 2013", Lahore, Pakistan.

107. Government of Punjab (2015), "The Punjab Transparency and Right to Information Rules of Business", January, Lahore, Pakistan.

108. Centre for Peace and Development Initiatives (2015): pg. 19 - 20, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

109. Salman Yousafzai (2015), "KP RTI still running sans rules of business", July, Peshawar, Pakistan.

110. Government of Khyber Pukhtunkhwa (2013), "Khyber Pukhtunkhwa Right to Information Act 2013", November, Peshawar, Pakistan.

any provision that allows exempted categories to be revised; therefore allowing exemptions to continue into perpetuity.

Punjab and KP

These laws provide a definition for the term information, unlike laws in effect at the Centre and other Provinces. However, the definition of the term in KP's law is imprecise, open to different interpretations, and therefore in need of revision. On the other hand, Punjab's law contains a detailed and comprehensive definition of the term.¹¹¹ Section 14 of KP's law provides a minimal and clearly defined list of exceptions, while Sections 15-22 specify the interests protected by harm resulting from disclosure. Under Section 14(f) of the law, all specified exemptions are time-bound, while under Section 5(1)(l) the KP RTI Commission is empowered to prescribe further categories of information subject to proactive disclosure obligations. Finally, Section 14(d) and (e) contain strong presumption in favor of disclosure in public interest.¹¹²

Processes to Facilitate Access

Federal, Sindh and Balochistan

These laws oblige public bodies and designated officials within them to assist requesters, however they

The law in Punjab requires designated public officials to request assisters, especially if they are from marginalized groups, and does not impose strict requirements on the form of an information application. It also requires designated information officers to provide information in a form preferred by the requester

do not specify procedures for this. No notifications have been issued in this regard either at the Centre or within Sindh and Balochistan.¹¹³ Under Section 3(2)(ii), these laws must also be interpreted to facilitate disclosure of information at the lowest reasonable cost. However, a number of provisions in these laws contradict this requirement: unreasonable restrictions on the right to appeal,¹¹⁴ absence of provisions for sanctions on public bodies or officials in violation of disclosure obligations,¹¹⁵ and strict requirements pertaining to the form of the application [Section 13(2)(a)].¹¹⁶ Further, while these laws require official responses to information requests to be time-bound, no such requirement has been imposed with regards to hearing of complaints.¹¹⁷

Punjab and KP

The law in KP is clearer and more detailed in its provisions on the duty of designated public officials to assist requesters. The law also contains a broad presumption in favour of information disclosure at lowest possible cost. It also grants individuals a broad right to appeal. The law also contains provisions on application forms, but states that these requirements should not interfere with the requirement of facilitating disclosure. The law requires both information requests and applications to be processed and responded to within a specific timeframe of 10 working days, however, applications pertaining to life and liberty of an individual must be processed within 2 working days. However the law does not specify a timeframe for disposal of complaints.¹¹⁸

The law in Punjab requires designated public officials to request assisters, especially if they are from marginalized groups, and does not impose strict requirements on the form of an information application. It also requires designated information officers to provide information in a form preferred by the requester. The timeframe for responding to requests is 14 working days but reduces this to 2 working days in case the life or liberty of a person is at stake. The law also imposes a timeframe for the disposal of complaints – 30 working days.¹¹⁹ Therefore the law in Punjab is better at facilitating access to information.

111. Transparency International - Pakistan (2002), "Freedom of Information Ordinance promulgated", October, Karachi, Pakistan.

112. Government of Khyber Pukhtunkhwa (2013), "Khyber Pukhtunkhwa Right to Information Act 2013", November, Peshawar, Pakistan.

113. Transparency International - Pakistan (2002), "Freedom of Information Ordinance promulgated", October, Karachi, Pakistan.

114. PILDAT (2004): pg. 11, "Briefing Paper on Freedom of Information", PILDAT Briefing Paper Series for Pakistani Parliamentarians, June, Lahore, Pakistan.

115. Ibid

116. Transparency International - Pakistan (2002), "Freedom of Information Ordinance promulgated", October, Karachi, Pakistan.

117. PILDAT (2004): pg. 13, "Briefing Paper on Freedom of Information", PILDAT Briefing Paper Series for Pakistani Parliamentarians, June, Lahore, Pakistan.

118. Government of Khyber Pukhtunkhwa (2013), "Khyber Pukhtunkhwa Right to Information Act 2013", November, Peshawar, Pakistan.

119. Government of Punjab (2013), "The Punjab Transparency and Right to Information Act 2013", Lahore, Pakistan.

Cost-effective Access

Federal, Sindh and Balochistan

There is a prohibitive schedule of fees within law at Federal level, and within Sindh and Balochistan, which require applicants to deposit Rs. 50/- per request to NBP/SBP/Treasury, and pay an additional Rs. 5/- per page for every page after the first ten. Copying costs for documents exceeding 10 pages are prohibitive, especially when coupled with the law's denial of the right to inspect documents before requesting copies.¹²⁰

Punjab and KP

The initial Schedule of Fees notified by the KP RTI Commission was quite prohibitive, imposing a flat fee on all requests and per page fee double the average cost of photocopying in the Province.¹²¹ The Revised Schedule of Costs introduced by the KP Information Commission does not include a flat fee for each request. Moreover, it furnishes records free for all documents less than 20 pages, and charges a fee of Rs. 2/- per page for documents exceeding this length. The Schedule of Costs introduced by Punjab Information Commission includes the features described above, with one addition: it does not require postal costs to be borne by the applicant, whereas in KP postal costs must be borne by the applicant.¹²²

Open Meetings

Federal, Sindh and Balochistan

No such provisions exist in these laws.

Punjab and KP

These laws impose proactive disclosure obligations on public bodies, which include the disclosure of official meetings related information.

Disclosure Takes Precedence

Federal, Sindh and Balochistan

RTI legislation in these jurisdictions is not recognized as overriding law in matters pertaining to access of

information. In fact, it is overridden by certain secrecy-promoting laws such as the Official Secrets Act 1923.

Punjab and KP

Both laws override other laws pertaining to the access of public information. In Punjab's law, Section 24(1) clearly states that the provisions of the law will take precedence over all other laws pertaining to the disclosure and management of public records.¹²³ Similarly, Section 3(2) of KP's RTI law contains the same override provision.¹²⁴

Whistleblower Protection

Federal, Sindh and Balochistan

Provisions for whistleblower protection are absent from relevant laws.

Punjab and KP

Section 30 of KP's law contains safeguards for whistleblowers acting in public interest. These safeguards include protection of liability against breach of any legal or employment obligation, provided the whistleblower disclosed information on wrongdoing.¹²⁵ Punjab's law, however, contains no such provisions.¹²⁶

Administrative Gaps

Under the section on Transparency, PILDAT's Scorecard Series on Quality of Governance Assessments contains a comprehensive analysis of the steps taken to implement RTI at the Centre and within the Provinces during the years 2013-2014.

Federal level

Despite steps taken to publicize and promote activities of the government, and provision of Information Technology training to public officials, the Federal Government has yet to enact modern RTI legislation,¹²⁷ even though a new draft has been prepared. This draft law, as mentioned earlier, could potentially top the Global RTI Rating if passed in its current form. The Federal Government is asked for earliest possible passage of the draft in its current form.¹²⁸

120. PILDAT (2004): pg. 27, "Briefing Paper on Freedom of Information", PILDAT Briefing Paper Series for Pakistani Parliamentarians, June, Lahore, Pakistan.

121. Centre for Peace and Development Initiatives (2015): pg. 19, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

122. Khyber Pukhtunkhwa Right to Information Commission (2015), "Revised Schedule of Fee for Hard Copies", June, Peshawar,

123. Government of Punjab (2015), "The Punjab Transparency and Right to Information Rules of Business", January, Lahore, Pakistan.

124. Government of Khyber Pukhtunkhwa (2013), "Khyber Pukhtunkhwa Right to Information Act 2013", November, Peshawar, Pakistan.

125. Ibid.

126. Government of Punjab (2015), "The Punjab Transparency and Right to Information Rules of Business", January, Lahore, Pakistan.

127. PILDAT (2015): pg. 63, "Scorecard: Assessment of the Quality of Governance in Pakistan", May, Islamabad, Pakistan.

128. PILDAT E-news (2015), "PILDAT Lauds Pakistan's Lead in the Global RTI Ranking; Demands early Passage of RTI Law at the Centre and in Sindh and Balochistan Provinces", July, Pakistan; [online at: <http://pildat.org/eventsdel.asp?detid=764>]

With regards to handling of information disclosure related complaints at the Centre, between July 1, 2014, and June 30, 2015, only three information requests were submitted at the Centre, none of which received a response.¹²⁹ Further, out of three complaints registered with the Federal Ombudsman, two resulted in the disclosure of information upon the former's directives.¹³⁰

Sindh

After passage of the Sindh Freedom of Information Act 2006, the Provincial Government of Sindh has made no legislative or policy interventions that may improve access to public information.¹³¹

Moreover, between July 1, 2014 and June 30, 2015, only two requests for public information were submitted by individuals, of which none received a response.¹³² These requests did not lead to the disclosure of information even after such directives were issued by Sindh Ombudsman.¹³³

Balochistan

PILDAT notes significant challenges within the implementation of RTI legislation in Balochistan. The province has yet to update its outdated RTI law, or revise the prohibitive Schedule of Costs, which deterred citizens from submitting any information request between 2013-2014.¹³⁴

Similarly, the year 2014-2015 was another inactive year in Balochistan in terms of the disclosure of official information. Two requests for information were submitted to public bodies in the Province, however none received a response even after directives of the Balochistan Ombudsman were issued in this regard.¹³⁵

Khyber Pukhtunkhwa

On November 5, 2015, KP became the first province in

PILDAT notes significant challenges within the implementation of RTI legislation in Balochistan. The province has yet to update its outdated RTI law, or revise the prohibitive Schedule of Costs, which deterred citizens from submitting any information request between 2013-2014

Pakistan to pass modern and progressive RTI legislation. After its formation, the KP Right to Information Commission arranged training on the obligations of public officials under RTI for members of the Public Information Office, and 90 other public officials.¹³⁶ However, currently there are no Rules of Business prescribing procedures for handling information requests in KP, which is the joint failure of the Provincial Government and the KP RTI Commission. The Commission has also yet to notify minimum standards for public record management. Finally, after receiving criticism for its initial Schedule of Fees,¹³⁷ the Commission issued a Revised Schedule of Fees on June 1, 2015.¹³⁸

Moreover, between June 1, 2014 and July 30, 2015, public bodies in the Province received 38 information requests, of which 14 received a direct response. Moreover, the KP RTI Commission failed to ensure disclosure of information in 8 complaints received within the same time timeframe.¹³⁹

129. Centre for Peace and Development Initiatives (2015): pg. 18, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

130. Ibid. pg. 20

131. PILDAT (2015): pg. 17, "Scorecard: First Year of the Government of Sindh", May, Islamabad, Pakistan.

132. Centre for Peace and Development Initiatives (2015): pg. 18, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

133. Ibid. pg. 20

134. PILDAT (2015): pg. 16, "Scorecard: First Year of the Government of Balochistan", May, Islamabad, Pakistan.

135. Centre for Peace and Development Initiatives (2015): pg. 18; 20, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

136. PILDAT (2015): pg. 46, "Scorecard: First Year of the Government of Khyber Pukhtunkhwa", May, Islamabad, Pakistan.

137. Centre for Peace and Development Initiatives (2015): pg. 19, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

138. Khyber Pukhtunkhwa Right to Information Commission (2015), "Downloads/Notifications", June, Peshawar, Pakistan; [online at: <http://www.kprti.gov.pk/rti/downloads.php>]

139. Centre for Peace and Development Initiatives (2015): pg. 18; 20, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

Punjab

Despite the fact that the budget for the Punjab Information Commission was released in October 2014, the Commission was only allotted premises in May, 2015. However, since then the Commission has been very active: it drafted Rules for the Punjab Transparency and Right to Information Act 2013 on January 4, 2015. It also notified Schedule of Costs on January 19, 2015.

In terms of information requests, the Province received 114 requests, of which only 12 received a direct response from the relevant public body. The Punjab Information Commission also received 102 complaints regarding non-disclosure of public information, of which only 27 resulted in the disclosure of information upon the Commission's directives. Finally, the Commission had conducted trainings of 350 Public Information Officers till June 30, 2015.¹⁴⁰

140. Centre for Peace and Development Initiatives (2015): pg. 19, "State of Right to Information Legislation in Pakistan 2014-15", July, Islamabad.

Benefits of Implementing RTI Legislation

Outcomes for Government

Efforts to increase official transparency have yielded many benefits for governments, according to a paper published by Global Partners and Associates.¹⁴¹

Voters' Confidence/ Citizens' mandate

The proactive disclosure of official information improves public trust in government and removes suspicions about its inner workings. This explains why popular movements, whether against corruption as in the Indian states of Maharashtra and Rajasthan, or against monarchy as in Nepal, are usually accompanied by strong demands for guarantees on the right to information.

Rule of law and Increased Accountability

Promotion of the right to information enhances public awareness of official rules and policies and their own legal obligations. This is likely to strengthen rule of law in numerous ways:

- a. Greater public awareness on the laws and policies they live under encourages compliance with and respect of law.
- b. Citizens are empowered to check that governments are making decisions in public interest rather than under the influence of special interest groups. They are also enabled to hold governments accountable for corruption, mismanagement and violation of official policies and rules.

Enhanced Operational Efficiency

Effective implementation of RTI legislation encourages and enables governments to improve its internal information management. This ensures the speedy and cost-effective disclosure of public information and strengthens the institutional memory of government offices, aiding officials to make more informed policy choices more efficiently.

Outcomes for Civil Society

Civil institutions like the media and civil society organization and ordinary citizens have all benefitted from the effective implementation of RTI legislation.¹⁴²

Personal information requests

Citizens are able to access their personal information

with greater ease, including medical records and information about eligibility to certain benefits. Even in countries where such requests were commonplace before RTI was given effect, the passage of laws on access to public information have helped in the development of robust rules and procedures regarding the handling of personal information requests.

Pressuring government for better service delivery

In countries with weak social services, RTI legislation has enabled citizens to pressure governments to ensure efficient service delivery and minimize delays, obstruction and arbitrariness in the provision of social services. In many countries, individual citizens and civil society organizations have also used RTI laws to evaluate the performance of service delivery mechanisms and advocate for their improvement.

Combating corruption and other wrongdoing

Promoting the right to information has enabled ordinary citizens and civil society organizations around the world to expose government corruption and mismanagement. RTI laws have also been used by individual citizens and civil society organizations, at both national and local levels, to ensure the protection of civil rights.

Participation in decision-making

Individual citizens and civil society organizations have been empowered to participate in government through the enactment of RTI legislation. In the absence of such laws, people lack the means to monitor and assess the actions and decisions issuing from governments. Even in countries where such information is readily available, additional information about government rules and policies may be necessary for people to provide informed feedback on government performance.

Investigative Reporting

The media performs a vital function within all democracies by monitoring the performance of government and the conduct of public officials and disseminating this information to the public. Media also informs people about their responsibilities and alleged violations of their rights. Effective implementation of RTI has strengthened media performance in all the above areas.

141. Zausmer, Rebecca (2011): pg. 3 – 4, “Towards Open and Transparent Government: International Experiences and Best Practices”, Global Partners and Associates, December.

142. Mendel, Toby (2011): pg. 1, “Right to Information and Citizenship”, paper read at Conference on Freedom of Information in Zambia, March, Zambia; [online at <http://www.right2info.org/resources/publications/rTI-and-citizenship-mendel>, accessed August 7, 2015]



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