

Right to Information Key Messages for Sindh Parliamentarians

Right to Information is Universal; Government is the Duty-Bearer of RTI

- Freedom of information is the right to access information held by public bodies.
- In the 1946 UN General Assembly Resolution 59, the right to information is recognized an integral part of the fundamental right of freedom of expression.
- In Article 19 of the Universal Declaration of Human Rights (1948), freedom of information is upheld as the right “to seek, receive and impart information and ideas through any media and regardless of frontiers.”
- Freedom of information is a fundamental right of the media and the citizens. State is the primary custodian and duty-bearer of protection and implementation of fundamental rights of its citizens.
- As a matter of priority public service, state has an obligation to provide speedy and transparent access to information to the people.
- Over the past 10 years, the right to information has been recognized by an increasing number of countries, including developing ones, through the adoption of a wave of Freedom of Information/Right to Information/Access to Information laws.

Right to Information Delivers Better Governance & Justice

- RTI legislation is based on the fundamental premise that all information held by governments and governmental institutions is public, in principle.
- Information may only be withheld if there are legitimate reasons, such as typically privacy and security, for not disclosing it.
- Proactive release of information can improve government service delivery, especially online.

- An open government encourages citizens' participation, which can lead to better decisions by government and the community.
- Governments have an inherent resistance to RTI because of a long tradition of secrecy and manipulation of information as instruments of power.
- Such resistance is no longer relevant or justified in strong democratic, economically thriving and socially vibrant societies.
- In open societies, citizens need information for their everyday needs and grievances.
- If citizens are denied information, they join forces with the media to demand information and transparency, which puts the state on the defensive and creates a negative perception.
- To prevent being on the defensive and to earn public trust and respect, a natural partnership between state, elected representatives, citizens' groups and the media should be fostered and actively implemented.
- Only then will we have effective and responsive democratic governance and practice.
- An RTI Act promotes a more open, transparent, accountable and responsive government.
- For example, PILDAT submitted an information request under the FOI Ordinance 2002 for access to MNAs' attendance records, due to which the proactive disclosure of these records has become a norm within all legislatures of Pakistan today.
- Before 1989, there were only 13 countries which had adopted RTI laws, most of them in Western Europe.
- Since 1995, this number has increased to 103 countries adopting RTI legislation or enacting constitutional guarantees for this right.

- Now that a majority of the 193 UN Member States have recognized and ensured RTI, the nature of official information management and citizen-state relations has been transformed irreversibly.
- Transparency and accountability are gradually becoming the norm for good governance, rather than the exception.
- The post-1995 global boom in RTI legislation has been due to its many benefits for both citizens and governments alike.
- For citizens, RTI helps promote citizen participation within policy and decision making processes of government.
- It improves delivery of basic social services and provision of basic human rights.
- It helps to obtain information on certain benefits and entitlements provided to the public.
- For governments, RTI helps improve public trust in government.
- It promotes public awareness of government rules, policies and laws.
- It exposes corruption and wrongdoing.
- It enhances operational efficiency and institutional memory within government offices.

A South Asian Grassroots Movement for Right to Information

- The South Asian region has a history of feudal social relationships and colonial rule that has left a deep imprint on the day-to-day interactions between governments and societies.
- The draconian British era Official Secrets Act (OSA) of 1923 has created and sustained a culture of administrative secrecy that has continued even after independence.

- Despite the passage of RTI laws, and strong demands from citizens groups across the region for open government, the OSA continues to be on the statute books in many countries, including Pakistan and India.
- Pakistan was the first country in South Asia to pass legislation guaranteeing RTI through the Freedom of Information Ordinance, 2002.
- But public awareness and use of this right in Pakistan has not been as widespread as in the rest of South Asia.
- India has the strongest track record in leading and implementing RTI legislation.
- India's legislation on the RTI began in its States in 1997, with ten State legislatures passing RTI laws.
- This happened because of a fierce grassroots movement led by Indian peasants and farmers -- Mazdoor Kisan Shakti Sangathan -- who demanded freedom of information and transparency and linked it to their "right to live".
- The Indian peasants' movement for right to information gained tremendous power when they were joined by an equally powerful movement of veteran Indian journalists -- National Campaign for the Peoples' Right to Information -- supporting the farmers' cause and demanding right to information from the Indian government.
- Thereafter, a strong national Right to Information Act was enacted in 2005 in India, replacing the comparatively weak and un-notified Freedom of Information Act of 2002.

Pakistan can lead RTI regime in South Asia

- In 2002, Pakistan became the first country to pass RTI legislation in South Asia with the enactment of the Freedom of Information Ordinance.
- Near-identical laws were passed in Balochistan (2005) and Sindh (2006).

- But these laws are outdated by the international standards and their implementation has been weak and in-effective.
- The irony is that the Freedom of Information Ordinance, 2002 was passed by a military-backed government, while previous such efforts had failed during the civilian governments of both Ms. Benazir Bhutto and Mian Nawaz Sharif.
- Despite more than seven years of continuous civilian rule since the overthrow of the military government, which passed the FOIO 2002, no significant improvements have been made to the law.
- The passage of the 18th Constitutional Amendment in 2013 enshrined RTI as a fundamental right under Article 19A.
- Khyber Pukhtunkhwa (KP) and Punjab passed progressive RTI laws, on November 4, 2013, and December 14, 2013, respectively.
- If it were in the mandate of the Global RTI Rating to evaluate subnational laws, then the RTI law in KP would have been the best in the world at the time of its passage, scoring a total of 137 out of 150 points, whereas Punjab's law would also have been placed highly in the world with 123 points.
- With its current outdated FoI Ordinance 2002, Pakistan is at 83rd position out of 102 countries according to Canada-based Centre for Law and Democracy's (CLD) Global RTI Rating.
- However, Pakistan's new draft RTI law could obtain the highest score on the same ranking, as the best legal framework on the right to information in the world.
- If Pakistan's Parliament passes this draft bill in its current form, Pakistan can get 11 points ahead of the world's currently best rated RTI law in Serbia.

Sindh's RTI Legislation – Current Status & Weaknesses

- It is heartening that the Sindh Government is now making efforts to update its outdated 2006 RTI legislation.
- The contents of the draft RTI Bill prepared by the Sindh Government have not been made public yet.
- It must be shared with civil society stakeholders before being presented to the Sindh Assembly for debate and passage.
- It would be in the interest of the Sindh Government to take recommendations and feedback from the public before its enactment.
- The Sindh FoI Act, 2006 is based on the outdated, ineffective and restrictive federal FoI Ordinance, 2002.
- Sindh lags behind Punjab and Khyber Pakhtunkhwa who passed strong and effective new RTI legislation in 2013.
- Sindh's FoI Act, 2006 relies on Provincial Ombudsman to hear RTI-related complaints, rather than forming an independent Information Commission with dedicated Information Commissioners for this purpose – as has been done by Punjab and KP.
- The powers of Sindh's Provincial Ombudsman in hearing complaints have not been defined.
- The Sindh FoI Act, 2006 also fails to specify the criteria for disclosure of public records.
- It has a vague definition of public information, which affords wide discretionary powers in its application.
- It has a restrictive definition of public bodies, which do not include NGOs or private organizations substantially funded from the public exchequer.
- It does not define how the Act is to be implemented within public bodies by designated officials known as Information Officers, and how proactive

disclosure requirements are to be met, or the duties of Information Officers in relation to the handling of information requests.

- It contains defined parameters for exemptions but provides no procedures for overriding these exemptions in the public interest or after the passage of a specified time-period.
- In terms of enforcement, it specifies offences but it does not designate clear penalties for offences.
- It does not grant powers to the Provincial Ombudsman in imposing penalties on public officials obstructing the people's right to information.
- It does not override other laws governing the disclosure of information held by government, and does not require the promulgation of Rules for its implementation within a specific time period.

Room for Improvement in Sindh FoI Act, 2006 – Key Recommendations

- The Sindh Assembly must pass amendments to the outdated FoI Act, 2006 or replace it altogether at the earliest with a law that is in line with current international standards.
- The Sindh Assembly must also ensure the simultaneous framing of Rules to ensure smooth implementation of the law as soon as it is brought into effect.
- Sindh Legislators must pay attention to some key areas for overall improvement of the RTI in Sindh.
- Objections/proposals by civil society stakeholders must be taken into account and incorporated where possible, as the law is meant to both empower the public as well as to place a check on public bodies.
- The Sindh Assembly must include legal provisions mandating publicity of RTI to promote its widespread use by the public.
- The Assembly must include provisions to override other laws which govern the disclosure of information held by government.

- It must incorporate as many of the international and regional best practices as possible so as to achieve a high score on the RTI ranking and set a standard that other Provinces can aspire to achieve through amendments.
- Sindh's elected representatives must make every effort to promote widespread publicity about the Act via mainstream and social media, seminars, conferences, media campaigns, pamphlets etc.
- The Assembly must direct public bodies to follow model samples of publications to comply with disclosure of details.
- It must debate the selection of Information Commissioners for transparency, merit and necessary empowerment.
