



ESQUARE'S
GUIDE TO

Right to Information

An introductory guide to Right to
Information in Pakistan

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CHAPTER ONE

Executive Summary

Executive Summary

The Right to Information (RTI) is a basic Fundamental Human Right that grants every citizen the right to have access to information held by public bodies and government institutions, such a right lies at the heart of every democratic system where a lay person can have access to information and can hold the state machinery accountable for their actions

This paper primarily focuses on RTI from a Pakistan's context tracing the development of RTI over the years and how the Right to Access of Information Act 2017 came about, it further moves on to explain the contents of the act and scrutinizes some of its aspects, however, to help the reader better understand how the act is put into practice and its overall effectiveness some famous cases surrounding RTI in Pakistan have been added. Although the paper highlights the loopholes present in the act as well as its overall implementation including certain inefficiencies and restrictions by the state bodies it would be unfair to miss a comparative analysis with another country, therefore at the end the paper provides a comparison between RTI practices in India and Pakistan and bases its conclusion on the difference in practices and how it can further be improved.

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CHAPTER TWO

Development of RTI in Pakistan

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The Right to Information (RTI) is a key pillar of democracy and good governance because it gives citizens the capacity to access public information and holds their government accountable for its actions .

Pakistan, which has ratified the International Covenant on Civil and Political Rights, acknowledges the relevance of this right and the connection it has to the right to freedom of speech. Nevertheless, the process that the government has been going through to build comprehensive RTI laws has been one that has been slow and difficult.

1. In the 1990s, Professor Khurshid Ahmed, who was then the Naib Amir of Jamaat-i-Islamic, was the first person in Pakistan to propose the implementation of RTI laws. He did so by presenting a Private Members Bill in the Senate to solve the problem at hand. Unfortunately, neither the government nor the parliament paid the law the serious attention it deserved, which reflects the early reluctance to the implementation of transparency and accountability requirements.

2. An Anti-Corruption Committee made a groundbreaking suggestion for the implementation of a freedom of information legislation back in the 1990s, while former Prime Minister Benazir Bhutto was in office. This recommendation was made by the committee. By giving individuals access to public information, the act that was being proposed aims to make government operations more open and combat corruption. However, those with vested interests fought against the concept because they were afraid of being exposed or held accountable.



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3. Despite the difficulties, Pakistan made its first substantial advance in RTI law on January 29, 1997, when the Freedom of Information Ordinance 1997 was promulgated under the caretaker Prime Minister Malik Meraj Khalid. This was Pakistan's first major step forward in RTI legislation. This was the first step towards establishing RTI rules in the country and marked the beginning of the process. However, this early triumph was short-lived since the subsequent government, led by former Prime Minister Nawaz Sharif, failed to pass the ordinance into law, which eventually led to its lapse. The failure of this government led to the eventual lapse of the ordinance.

4. At the beginning of the twenty first century, Pakistan approached the Asian Development Bank (ADB) for aid in carrying out extensive judicial and administrative reforms. As part of the action plan that the ADB developed for Pakistan, the government was required to increase access to justice for the country's population. This obligation required the government to enact laws regarding freedom of information. As a direct result of this, the Federal Freedom of Information Ordinance was passed into law by the military government led by General Pervez Musharraf in the year 2002. However, it appeared that the demand of the ADB loan was the driving force behind this decree, rather than a real commitment to advancing openness and human rights. The Freedom of Information Ordinance that was passed in 2002 was criticized for being ineffective and poorly executed, which made it mostly symbolic on paper while having no major influence in practice. The Federal Freedom of Information Ordinance was eventually nullified after having served its purpose for a period of twelve years.

5. In 2013, Pakistan took a huge step forward when it introduced the Right to Information Act 2013, which aimed to give stronger legal safeguards for accessing public information and encouraging accountability. This act was enacted in an effort to promote transparency and accountability. However, difficulties were encountered in both the execution and the effectiveness of this law.

6. In order to continue the process of reform, the Right to Information Act of 2017 was passed into law in 2017. This new legislation replaced the RTI Act of 2013, and it further refined the RTI framework. To further increase access to information at the provincial level, each province in Pakistan has also passed its own RTI laws, which have been closely modelled after Pakistan's Right of Access to Information Act, 2017, which was passed in 2017.



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CHAPTER THREE

Right to Access to Information Act, 2017

Right to Access to Information Act, 2017

The RTI Act 2017 follows 19A and guarantees the right of access to information only for citizens. Aside from the federal level legislation, the RTI Act 2017, provinces have their own right to information laws. The scope of the RTI Act 2017 is sufficiently broad as it covers all branches of power and a wide range of further bodies. These include the executive (cabinet) and administration, including all ministries, departments, federal, municipal and local authorities, courts, tribunals, commissions under federal law, “statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal Government” and “nongovernmental organisation which directly or indirectly receives or has received public funds, subsidy, tax exemption, piece of land or any other benefit”. However, the defence forces and anything connected to national security are already excluded at the level of definition of records.

Under Section 11 of the RTI Act of 2017, the procedure for submitting a request for information is outlined.

The procedure for submitting a request under Pakistan's Right to Information Act is simple and citizen-friendly. Through the designated official, any citizen of the Islamic Republic of Pakistan may submit a request to a public body. The request must be submitted in writing and may be made in person, by mail, fax, online, or via email, depending on the facilities available to the public body. The written request must include sufficient information to identify the requested information or record, as well as the complete address and contact information for delivering the requested information or record. The Act ensures that petitioners are not required to provide justifications for their requests, even if the public body provides a prescribed request form. This provision emphasizes openness and access, allowing citizens to pursue information freely and without undue restrictions or burdens.

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CHAPTER FOUR

Exceptions to RTI

Exceptions to RTI

According to Section 16 of Federal RTI.



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Information that is likely to damage Pakistan`s interest



2

Information that may lead to the commission of an offence



3

Disclosure of information invading an individual`s privacy



4

Information that causes serious Prejudice to defense security, armed forces, or law enforcement



5

Information that endangers life, liberty, health or safety of an individual



6

Information obtained from a third party, if its disclosure breaches confidence is exempt



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Information causing prejudice to government policy, development, success, deliberative processes, testing, auditing procedures, or court proceedings is exempt, with exceptions relating to crime prevention, detection, apprehension, prosecution, administration of justice, immigration controls, and civil proceedings Information that may Lead to Commission of offence

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CHAPTER FIVE

Harm test and Public Interest test



"In a society fueled by the flame of knowledge, the Right to Information becomes the beacon that illuminates the path towards transparency, accountability, and empowered citizenship. In Pakistan, embracing this right is not merely a choice; it's a testament to the nation's commitment to a brighter, informed, and just future."

Barrister Safi Gauri

Harm Test and Public Interest test:

The RTI Act 2017 includes a harm test for each exception, though some of them are only implicit in the phrasing of the exception, such as some exception related to crime prevention and prosecution or the exceptions related to privacy. Only one exception includes a public interest override. It is the privacy exception when "the third party is or was an official of a public body and the information relates to his functions as a public official. The other public interest override relates to the coverage of the law. Classified records are by definition not public records, but "the Minister-in-charge of the Federal Government shall have to record reasons as to why the harm from disclosure of information outweighs public interest and further that information pertaining to allegation of corruption and violation of human rights shall not be excluded". This amounts to a public interest test for classification. However, the law contains no specific reference to public interest tests.

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CHAPTER SIX

Important Case Laws

Important Case Laws

1. Tosha khana case:

Under Article 19-A of the Constitution, the LHC has been petitioned to make Toshakhana`s records public. The petitioner requested information on all gifts purchased/returned by Pakistan`s Prime Ministers and Presidents since 1947. In accordance with Article 19A of the Constitution, LHC ordered the cabinet to disclose the documents.

2. Shahid Orakzai v ECP case:

In this case, the Peshawar High Court ruled in favour of the citizen`s right to access information relating to expenses incurred during the General-Elections, stressing the importance of transparency in the electoral process.

3. Mahmood Khan Achakzai v Federation case:

The Supreme Court in this case highlighted the significance of right to information as a means to hold officials accountable to ensure transparency in governmental affairs.

4. Justice Shaukat & others v Federation case:

In this case, 19A was used to seek public hearings for cases of judge malfeasance. However, the court ruled that Article 19A pertains to right to information not right to entertainment through the malicious satisfaction of idle curiosity.

5. PIA Association case:

This case was handled by Esquare Legal, led by the Barrister Safi Ullah Ghauri. Associations sent notices requesting disclosure of documents pertaining to the privatisation of Pakistan International Airlines (PIA). As the documents pertained to the transfer of national assets, the demand for disclosure was founded on the right to information. The requested documents pertain to cabinet and parliamentary proceedings, the tendering process, the consultants involved, the valuation of the PIA, and the adherence to the socioeconomic aspects of privatisation. According to Barrister Ghauri, failure to provide the requested documents may result in legal action and court intervention. The Chairman of the Privatisation Commission stated that legal notice was unnecessary because the privatisation was open to the public and PIA employees.

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CHAPTER SEVEN

Information Commissioner & the Practice

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Information Commissioner:

A federal Information Commission is a new entity established by the RTI Act 2017. The composition of the commission, which consists of one member from the judiciary, one member from the public administration and one from civil society, contributes to the independence of the body. However, the chief commissioner is appointed by the prime minister. The law prohibits members of the commission from any political affiliation or holding public office at the time their appointment and during their mandate and sets further conflict of interest rules. The rules related to the removal of members of the Information Commission also contribute to their independence. The funding of the Information Commission is a weaker point in the RTI Act 2017, as the federal government make budgetary allocation to the commission. The Information Commission does not have the power to access and review classified documents or enter the premises of public bodies.



Practice: Although the right to information regime of Pakistan is by now 16 years old, its implementation still has many shortcomings. In practice, a number of factors make it unnecessarily burdensome and difficult to request or gain access to information. Requestors have to provide complete contact details, both when they used the 2002 FOI Ordinance and when using the Punjab RTI Act. The new RTI Act 2017 also contains similar provisions. In addition, public awareness of the law is low among public sector employees. Media have also reported that the lack of interest in the electronic RTI application system launched in 2015 displayed by the Khyber Pakhtunkhwa Right to Information Commission and public information officers has nearly crippled the initiative on their websites, the Khyber Pakhtunkhwa Right to Information Commission and the Punjab Information Commission provide details and status of the complaints they review, as well as statistics on their work

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CHAPTER EIGHT

Comparative Analysis of Pakistan & India

Comparative Analysis of Pakistan & India

Both India and Pakistan's Right to Information (RTI) laws have some goals in common, including the promotion of openness, accountability, and citizen participation in government. However, they are rather dissimilar with regard to the processes of execution and the success of each. The Right to Information Act (RTI Act) of India was passed into law in 2005, and it is now largely considered to be one of the most advanced and effective transparency laws in the entire world. It promotes a culture of openness and accountability by establishing a comprehensive framework for citizens to access information held by public institutions.

Citizens are given the ability to submit requests for information (RTI) under the authority of the Act, and appointed Public Information Officers are obligated to supply the information sought within a predetermined amount of time. The Right to Information Act (RTI) in India has a structure for its implementation that consists of independent information commissions at both the government and state levels. These commissions are responsible for deciding appeals and monitoring compliance. Despite the fact that the Act has been essential in exposing several instances of corruption and holding public officials accountable for their actions, it is currently being hampered by a backlog of outstanding cases as well as incidents of non-compliance on the part of some authorities.

In contrast, Pakistan's Right to Information law, known as the Freedom of Information Ordinance, was implemented in 2002; nevertheless, it has been subject to a number of amendments and improvements over the years in order to increase transparency. The execution of the law, on the other hand, confronts a number of obstacles. These include a lack of understanding among people of their right to access information, as well as limited ability and resources on the part of public authorities to efficiently react to requests for information. The lack of a comprehensive and independent oversight system is another factor that has contributed to the law's decreased efficiency. In contrast to the Information Commissions in India, the functioning of Pakistan and India's Federal Information Commission has been hampered by delays in choosing commissioners and limited powers to enforce rulings. As a result, the commission's ability to ensure timely information disclosure has been negatively impacted.

Comparative Analysis of Pakistan & India

In terms of its efficacy, India's Right to Information Act has had a considerable impact on boosting the transparency of the government and providing citizens with more agency. There have been many instances of corruption and misuse of public resources that have been brought to light, which has led to increased accountability. In addition to this, the Act has been extremely helpful in easing public scrutiny of decisions and policies made by the government, which has ultimately led to improved governance. However, difficulties still exist, such as the requirement for ongoing implementation improvements and the necessity of addressing the problem of retaliation against those who report wrongdoing.

On the other side, Pakistan's RTI law has made some headway in encouraging openness and accountability, but its impact has been restricted due to insufficient implementation and a lack of knowledge among the general public. To ensure that public entities rapidly comply with information requests, there must be a stronger level of political will. In addition, the establishment of an independent and rigorous oversight body would boost the efficiency of the law and strengthen the faith that citizens have in the system. In summary, the Right to Information (RTI) laws that each country has enacted have helped India and Pakistan take significant steps towards improving government openness and accountability.

The Right to Information Act in India has been more successful in accomplishing its goals as a result of the well-established implementation mechanism and the increased authority granted to Information Commissions under the Act. The Right to Information (RTI) law of Pakistan, on the other hand, is having trouble being put into practice and has to be amended further in order to realize its full potential in promoting transparency and citizen participation in governance

Conclusion

The passage of extensive RTI rules in Pakistan was an important step towards advancing transparency, accountability, and good governance in that country. Even if progress has been slow and there has been opposition along the way, the passage of laws at both the federal and provincial levels represent a significant accomplishment. However, the full impact of RTI laws won't be known until they are effectively implemented and citizens actively participate in accessing public information. This will determine how much of an influence RTI laws have, because there is a positive association between access to information laws and lower levels of corruption, it is clear that RTI laws are extremely important in Pakistan for fostering transparency and fighting corruption. In order for the government to achieve good governance and development, it must place a high priority on maintaining peace and security throughout the nation, work to improve institutions, encourage honest leadership, invest in education, and work to promote growth.

In conclusion, rules establishing citizens' rights to access information are very important to the development of a society that is open, accountable, and prosperous. The success that Pakistan has made in this area represents a significant step towards strengthening the democratic underpinnings of the country and increasing the active engagement of citizens in the governance process. The realization of the full potential of RTI legislation in Pakistan's journey towards good governance and progress is contingent upon ongoing efforts towards efficient implementation and public awareness.