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An Analysis of the Right to Information Act 2013 in Khyber Pakhtunkhwa Pakistan

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Abstract: The right to information is a powerful tool of good governance without which Transparency and Accountability remain a mere aspiration and an allegory. The basic purpose of this study is to analyze the importance of RTI in general and to provide an overview of the introduction of this basic human right in the conflicts-affected province of Khyber Pakhtunkhwa of Pakistan in particular. RTI ACT of 2013 in KP was the first serious effort of the PTI provincial government in the country. For accomplishing this task, qualitative methodology with primary and secondary sources as an instrument for collecting data has been employed. Key informant interviews were conducted with members of the Provincial Assembly of KP and officials in the RTI Commission to record their opinion about RTI. The piece of study has highlighted the brief history of the efforts of introducing this law in Pakistan and analyzed the features, mechanism, and success extent of the RTI Act 2013 in Khyber Pakhtunkhwa. The paper concludes that the Act was highly respected throughout the country, as it was ranked 3rd in all global RTI Acts as it met basic international requirements like clearly defining and enumerating information and exemption from disclosure.

Introduction

According to Justice P N Bhagwati, “Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing” (Laskar, 2016). Due to the strengthening of citizen sovereignty, the right to information (RTI) is now regarded as a synonym for democracy. It is regarded as one of the most powerful examples of human rights. RTI empowers citizens to hold public officials accountable for their actions and promotes accountability and transparency, which are essential in the fight against corruption. (Shah, 2021).

When Sweden passed the first RTI law in 1766, largely spurred by the parliament's need for access to information kept by the King, the

need to make information widely available was acutely felt in the international arena. By enacting their laws, the US in 1966 and then Norway in 1970 followed the Swedish model. Other democracies in the West (France and the Netherlands in 1978, Australia, New Zealand, and Canada in 1982, Denmark in 1985, Greece in 1986, Austria in 1987, and Italy in 1990) also passed unique laws. In thirteen countries, there were regulations controlling access to data by 1990. Both the freedom of speech and the right to examine government records are guaranteed by the European Union Charter of Basic Rights, which was ratified in 2000. Nevertheless represented a significant advance. More than 85 countries had national-level RTI rules as of 2010, but there are already 130. Twenty nations in Asia have so far accepted the restriction on knowing

official secrets to certain national interests in the running of governments (Laskar, 2016).

Since the 1990s, Pakistan has attempted to enact RTI laws. Fortunately, in 2002, it became the first state in South Asia to publicize the Freedom of Information Ordinance; yet, the law is still ineffective when it comes to execution. Additionally, duplicate legislation was enacted in Baluchistan in 2005 and Sindh in 2006; however, they fall short of guaranteeing citizens' access to information held by public institutions. The Canadian Centre for Law and Democracy's global ranking of RTI laws found that these Pakistani rules were near the bottom, at 20%, and that they were generally ineffectual by comparison to other countries' RTI laws. Article 19 of the Pakistani Constitution from 1973 guarantees freedom of speech, but the 18th Amendment to the Constitution, passed in 2010, acknowledged the right to information as a basic constitutional right in the nation. The country has seen persistent calls from civil society organizations to repeal outdated laws and implement RTI legislation that complies with international standards (Abdullah, 2016).

The coalition administration in Khyber-Pakhtunkhwa, which was led by the Pakistan Tehreek-e-Insaaf (PTI), was the first in the nation to promulgate an RTI Ordinance that was effective in August 2013 and became an Act in

November 2013. With a score of 137 out of 150, the Khyber Pakhtunkhwa RTI Act was ranked third among all RTI laws in the world and was highly regarded throughout the nation. As serious contributions had been made by the groups of civil society, the law was seen as being effective. The second-generation RTI law in Khyber Pakhtunkhwa has made filing complaints and requests for information easier and more affordable than the first-generation RTI regulations in Pakistan. (Anwar & Rees, 2015)

There are some worldwide standards for interpreting RTI laws, such as the requirement that it be done with maximum exposure and that public authorities disclose important information about their institutions that is of general interest. Exemptions should be precisely and strictly defined, and requests should be treated fairly and promptly (Abdullah, 2016). Knowing whether or not the RTI law passed by the coalition government in Khyber Pakhtunkhwa, led by the PTI, met international standards is important. The goal of the research study is to summarise the fundamental elements, the operation of the RTI law in the province, and the degree to which it has been successful there. An aim to give a thorough review of the RTI Act 2013 in Khyber, the study is an effort to provide an in-depth analysis of the RTI Act 2013 in Khyber Pakhtunkhwa

Methodology



Significance of RTI in Governance

Right to information is typically understood to mean that people should have easy access to government records, documents, official memos, opinions, and advice given by interested parties on public forums regarding any governmental progress or project, among other things. It also refers to a variety of press releases issued by public institutions, governmental circulars, orders, and logbooks, as well as contracts made by the government with national and international firms or companies. RTI gives state residents the right to access the information mentioned above in the operation of any public authority or institution, including non-governmental groups that receive significant government funding. (Singh, 2020).

It is important here to discuss which types of information are ordinarily exempted from disclosure in the RTI laws internationally. Very nearly every state does not allow disclosing the national security and names of the intelligence organizations; however, the corruption of these institutions is kept in the scope of RTI laws. Official secrets do not come into RTI purview, while contempt of court, parliamentary privileges, trade secrecy, foreign government, the safety of informers in law enforcement, investigations, cabinet papers, and privacy are those areas that are usually retained and exempted from disclosure (Singh, 2020).

The leading objectives of the RTI act that is crucial for Good governance are:

1. With the help of information, any person could understand that no public official could overcharge them for a service, and they could inquire about the completion of local development projects like roads and waterworks, as well as the reasons why;
2. With the help of information, any person could understand that no public official could overcharge them for a service, and they could inquire about the completion of local development projects like roads and waterworks, as well as the reasons why;

3. Assist the media and the public in containing corruption, exposing corrupt activities, and eloquently demonstrating the advancement of governmental activity and the costs incurred thereto.
4. By increasing administrative responsiveness, RTI encourages openness, the rule of law, accountability, and transparency in the operations of public authorities. It also prevents organizational arbitrariness.
5. Make democracy truly function for the people by including citizens in decision-making (Laskar, 2016).
6. A well-informed populace is vital to keep an eye on the governance processes and increase public accountability for the administration. (Shah, 2021).
7. RTI is important for the public good and citizen interests since it is the foundation for an open, dynamic government.
8. RTI not only safeguards communication (use of information) to voice one's opinions for engaging at community, national, regional, and worldwide levels in the democratic process and aids in determining priorities of action, but it also protects and promotes human rights.
9. While official information reflects an informed choice on issues that affect the lives of regular citizens, even when citizens obtain information from other various sources, their validity typically leads to misinterpretation.

In an interview with a scholar, Pakistan People's Party member Nighat Orakzai stated that, despite certain efforts to promote information freedom, inhabitants of Pakistan did not have access to any information before 2013. She informed the scholar that it was difficult for the average person to gain access to information that affected the general welfare. She claims that without having access to pertinent information, it was challenging for individuals to participate in any social, political, or economic debate about the interests of the province. She went on to explain

to the professor that voters' natural desire in democracies is to be informed about and involved in national affairs. The RTI has confirmed and ensured some accountability and openness in the administration (Women MPA KII, 02).

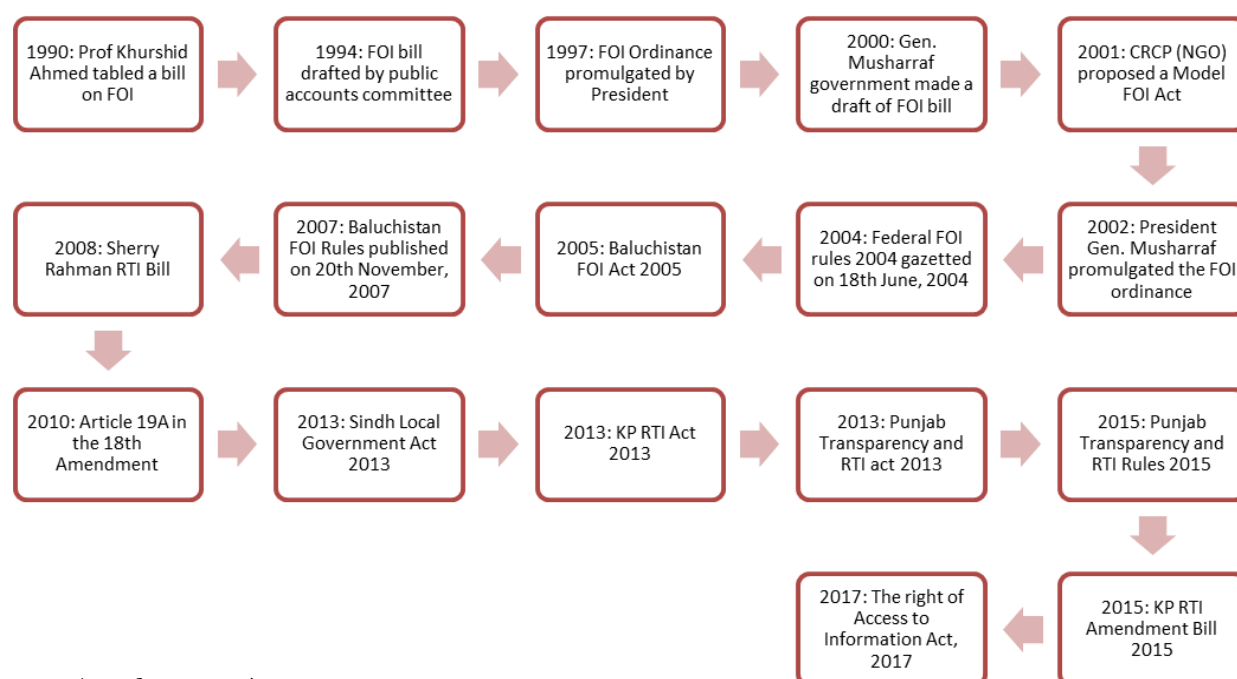
History of Right to Information in Pakistan

RTI is a fundamental human right that falls under international law's definition of freedom of speech, as was previously discussed. Pakistan is required to offer RTI to its citizens because it is a signatory to the International Covenant on Civil and Political Rights. Initially, the 1973 Constitution of Pakistan recognized the freedom of speech as a constitutional right in Article 19 ; however, the 18th Amendment in 2010 under Article 19A grants freedom of information and the right to information as a constitutional right in the country. According to it, "Right to Information: Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law(Riffat, 2018).

It was anticipated that the granting of this fundamental right would allow taxpayers and private citizens access to the vast halls of

government, enabling them to inquire about matters affecting the public good, such as delays in development projects, a lack of transparency in decisions, and developments, and other matters of public interest. As a result, the granting of this fundamental right was a significant achievement for Pakistan's democracy, strengthening it (UNESCO, 2019).

The first country in South Asia to adopt a Freedom of Information Ordinance was Pakistan, which did so in 2002. Despite the early lead, the results expected from this law are still awaited. These can mostly be ascribed to the lack of public awareness about the very existence of this law and certain flaws in the statute that allow the culture of secrecy in government offices to limit and restrict public access. There have been many efforts for FOI legislation in Pakistan. Realizing the international trends towards increased openness and transparency, various attempts have been made in the previous two decades to adopt FOI legislation in the country to improve transparency and accountability in the departments. A brief overview of these efforts is given as under:



Source: (Sardar, 2018)

Due to Khyber Pakhtunkhwa's and the federal government's proactive actions in support of the Right to Information Act, Pakistan improved its position in the global RTI ranking in December 2018 from 91 to 33. A methodology called the Global Right to Information Rating (RTI Rating) compares and evaluates the effectiveness of legal frameworks for the right to information from all over the world. At the heart of the methodology for applying the RTI Rating are 61 indicators, each corresponding to a particular feature of a good RTI regime. Depending on how effectively the legal system achieves the indicator, countries receive points for each indicator within a predetermined range of scores, for a possible total of 150 points. Seven different categories—Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections, and Promotional Measures—are used to group the indicators.

The Need for RTI for Good Governance in Khyber Pakhtunkhwa

The PTI's MPA Humayun Khan informed the scholar that Chairman Imran Khan had pledged, before the 2013 elections, to eliminate Pakistani citizens' hopelessness and weakness in front of the nation's governmental institutions. He said to the scholar that he was eager to provide Pakistani citizens with the chance to query the relevant public authorities about why their concerns weren't being resolved. He promised that their party, after coming into power, would break the wheel of secrecy and authoritarianism in the country and would make accountable the governmental bodies answer every question of the public. To advance this agenda, the government passed 30 laws in the first three months of its term, the most significant of which, the Right to Information (RTI) law, was widely praised. (Men MPA KII, 01).

Shaukat Yousafzai, the MPA and cabinet minister of the PTI government, in personal communication, told the scholar that he was himself the main Architect of this act. A

significant moment in the history of the province was the 2013 enactment of the RTI Act. He told the scholar that this Act had brought sensitivity, responsibility, and accountability to the development process of the province and set an example for the federal and other provincial governments in the country to follow them. He also asserted that the RTI Act is proving to be a game-changer in the fight against corruption and delays in applying for government programs and running public agencies. Yousafzai further informed the researcher that, despite realizations and political pressures, the PTI was the party that demonstrated political resolve to pass RTI legislation to fight corruption and establish a culture of public accountability in the province. (Men Cabinet Minister KII, 01).

Sharam Khan Tarakai, the Cabinet Minister of the PTI government in Khyber Pakhtunkhwa, told the author that before this Act, public authorities' accountability was practically nonexistent nationwide as well as in the province, which is essential for realizing improvements in the quality of life in the nation. He said that “the people of the province had voted PTI for the formation of democratically accountable government; it's the people who paid taxes to finance public activities, so they need to have a constitutional right to have their voices heard and informed about the procedures that were used to formulate the laws that affect them in their final days how the regional government's programmes were carried out, who was involved in the formulation of decisions and execution of the schemes, and why the promises that were made to the underprivileged for the provision of basic goods and services were not kept. (Men Cabinet Minister KII, 02).

MPA Naeema Kishwar of JUI told the writer that, unfortunately, the culture of secrecy in the country's decision-making dated back to the inception of colonial control and persisted during the first 60 years of independence. This issue has fueled widespread corruption in the nation in all spheres of public life. She also told the author

that the country's administration was ineffective because there was a lack of transparency and accountability in how the government operated. She claimed that a lack of transparency has caused all types of poverty to spread throughout society. She further stated that the elements of Good governance, like Transparency, Accountability, Predictability, and Participation, are the essence of any developmental process, and these criteria could be ensured by making knowledge accessible to everyone. In order to fulfil the goals of sound governance, transparency regarding how governmental entities operate is necessary, and this is made possible through the right to information. Democratic accountability, liberty of expression, administrative accountability, accessibility of information, efficacy, and effectiveness, as well as law-abiding residents and collaboration between the government, the opposition, and society, were essential for good governance. She noted that while she respects the law, its goals can only be achieved by its execution in accordance with its original purpose. (Women MPA KII, 01)

Analysis of the Khyber Pakhtunkhwa RTI Act in the purview of International standard of RTI:

When the National Awami Party was in power in Khyber Pakhtunkhwa from 2008 to 2013, they were unable to pass legislation addressing the right to information. Before 2013, the temporary administration created a bill, but it was inadequate since it had structural problems. Pakistan Tehreek-e-Insaaf created a new law after taking office in Khyber Pakhtunkhwa in 2013. The passage of the KP RTI Act 2013 is also a fascinating account of the interaction between political will and bureaucratic tricks to weaken the force of the law. The provincial bureaucracy attempted to support an ineffectual draught bill written by the interim administration after the provincial government shared the draught model of the act with it, even getting provincial cabinet government approval for it. However, it was

denounced by the Center for Peace and Development Initiatives (CPDI) and Civil Societies at a news conference on July 24, 2013, which took place in Peshawar. On August 13, 2013, the RTI draught was replaced. Following that, the Progressive and Strong Act was introduced in a ceremony in Peshawar under the auspices of PTI Chairman Imran Khan. However, the story is not over yet. When the Act was presented to the provincial assembly for approval, some members of the Select Committee of the Provincial Assembly, Khyber Pakhtunkhwa, suggested some negative amendments; however, again, CDPI recorded protests, and on November 5, 2013, the new act with its original model was notified in the official gazette. (Abdullah, 2016)

In Khyber Pakhtunkhwa, a representative of the KPK Information Commission explained to the author that the right to information simply means that the province's residents "can ask public bodies for details about the products and amenities they offer, their personnel, their financial resources, and the way they use them. He goes on to give the author more details on the various data that people might ask regarding. He claims that people can learn about the following:

1. Laws, regulations, and rules that govern how a public entity functions;
2. Province spending plan—both cash allotted and actual expenditures.
2. The system of governance.
3. The quantity, levels, and wages of the staff.
4. Agreement selection and awarding.
5. Products rendered.
6. The yearly and additional reports (Men Official IC, KII 01)

A second KPK information commission employee informed the scholar of the public institutions where residents of the province might obtain information under the RTI Act of Khyber Pakhtunkhwa. He claims that all public organizations that receive funding from the provincial exchequer have to inform the public. He enumerated that all autonomous bodies, including Khyber Medical College (KMC) College,

the provincial Auqaf Organisation, Boards of Intermediate and Secondary Education, Provincial Developmental Authorities, Universities, all local governments, including Tehsil Municipal Administration, and any statutory body established under provincial law(Men Official IC, KII 02)

According to the official of the KPK Information Commission in Khyber Pakhtunkhwa, any citizen of Pakistan "might acquire knowledge in the form of books, notes, strategies, agreements, purchases, accounts, emails, videos, pictures, material in electronic format, and others." He added that in "Proactive Disclosure," a lot of information must be disclosed by the public bodies even if no one submits an RTI request for it, and through online services started by the government. On the websites of these institutions and their offices, proactively released information is available, including specifics about the services of public bodies, the rules under which they operate, their staff and their wages, and their budget(Men Official IC, KII 01).

Speaking further about "proactive disclosure," the official explained that it became required following the statute for all public bodies to reveal their basic data without first requesting it through an RTI. He enumerated all the information that is compulsory for public bodies like "the functions of the institutes, a list of the different kinds of details grasped by the public body, its methods for making decisions, the identities, responsibilities, and authority of its law enforcement and staff members, the rules and procedures it adheres to in order to fulfil its responsibilities, all Acts of the Apostle guidelines, restrictions, and updates that govern how the government entity functions, the regulations and processes it follows, the regulations and processes it comes to transport out its duties, as well as an index of its authorities and personnel, must be provided to the public without request for information(Men Official IC, KII 02).

The official provides further information to the author about the exemptions of the Act and

says that Such data could jeopardize "national safety, economic growth, or the relationship of Pakistan with a different nation, or infringe an individual's right to confidentiality, such as private bank accounts, constitutionally sensitive data (such as attorney-client debates, proper a commercial advantages, the well-being, safety, and life of any person, confronting crime/administrating justice, the ability of the government to handle the finances, formulation of policies or achievement, and all that knowledge), according to the United States Department of State (Men Official IC, KII 01).

It is crucial to discuss whether or not Khyber Pakhtunkhwa's RTI Act of 2013 complied with the global standard for RTI laws. The Khyber Pakhtunkhwa RTI Act has the following fundamental principles that are present in all RTI legislation worldwide:

- A clearly defined list of information that is exempt from disclosure is required under the international standard for RTI, and the remaining material must be designated as public information. Additionally, a damaged test must be included, and it must be stated that even if the sought information falls within a category of exempt information, it will still be disclosed if the public interest outweighs the harm. It was provided by KP RTI (Men Official IC, KII 01).
- The KP Act also met the second international requirement of clearly defining and enumerating information that is excluded from disclosure, and it leaves it up to public officials to interpret. (Abdullah, 2016)
- The RTI of 2013 stipulates that "there is no fee for filing information and for the first 20 pages of the requested information" in terms of cost-effective access to information. However, following the Fee Schedule established by the Khyber Pakhtunkhwa Information Commission, an additional RS. 2 will be charged for each

additional page, and the applicant will be responsible for paying the postage costs.

- The other international standard concerns quick and simple information access. The Khyber Pakhtunkhwa regulations specifically provide that if the sought information relates to the life or liberty of the individual, it will be delivered within 2 working days. The laws stipulate that the requested information must be provided within 10 working days.
- According to the RTI worldwide standard, citizens should have access to an efficient complaint redress procedure. Accordingly, when filing complaints with the commission, the aforesaid statute does not require any form of an affidavit. Additionally, the commissions must rule on complaints within sixty days. However, Section 23 of the Amendment Bill of 2015, which states that an appeal against the commission's rulings must be submitted to the Peshawar High Court, has led to confusion.
- According to international standards, if an officer improperly delays or denies access to requested information, they would be subject to a fine of up to Rs. 25000 or a fine of Rs. 250 per day.
- Adherence to international standards The Act includes a detailed list of information types that must be proactively provided. However, the Law does not mandate that information requests include a specific interest description.
- The deliberate destruction of documents is a crime, as recognized by international law, and this principle has been embraced by the mentioned legislation. "Such an offence carries a punishment of up to two years in jail, a fine up to \$10,000, or both." (Abdullah, 2016)
- KP Act features provisions that permit the inspection of documents, samples of goods, and other items before granting entry, similar to global standards.

- In a similar vein, the Khyber Pakhtunkhwa law mandates that in the event of the absence or unavailability of the designated PIO, the Head of the Public Body shall perform the duties of the PIO.
- The Khyber Pakhtunkhwa Act, which defines public bodies in full, excludes the Peshawar High Court from this description.

Recommendations

- For the guarantee of easy access to justice, enactments for providing good service delivery, and proper working of the provincial judiciary, the Act could include the Khyber Pakhtunkhwa Assembly and Peshawar High Court in its purview after settling down the legal complexities.
- The provincial government should designate Peshawar High Court as the appeals court for Khyber Pakhtunkhwa Information Commission decisions, along with one Chief Information Commissioner and two Information Commissioners drawn from the government, legal system, and civil society.
- The commission needs to quit using its "Complaint Form," stop asking for the complainant's CNIC, and make clear the costs for soft copies of the materials and the amount of time needed to review them.

Conclusion

Good governance requires transparency, accountability, predictability, and participation, which can be ensured by making knowledge accessible to everyone. Democratic accountability, liberty of expression, administrative accountability, accessibility of information, efficacy, and effectiveness are essential for good governance. RTI protects communication, facilitates decision-making, encourages openness, the rule of law, accountability, and transparency, and makes democracy truly functional for the people. Unfortunately, the culture of secrecy in Pakistan's decision-making dates back to

colonial control and has caused widespread corruption.

During the first three months of PTI administration in KP, the provincial government PTI pledged to reduce Pakistani citizens' hopelessness and impotence before governmental institutions by passing 30 pieces of legislation, including the Right to Information law. The PTI showed political tenacity to enact the RTI Act, which is a game-changer in the battle against corruption and delays in applying for government programmes. The Act gives residents a fundamental right to have their opinions heard, to know how laws and programmes are developed, and to know why promises made to the poor were broken.

Many provisions of the worldwide standard of RTI followed all over the world have been satisfied by the KP RTI Act. The Khyber Pakhtunkhwa RTI Act was highly respected in Pakistan and abroad and was ranked third among all global RTI Acts. Even if no one files an RTI request, public agencies must make information available online, including services, policies, employees, salaries, and budgets. The worldwide standard for RTI stipulates that a list of information that is exempt from disclosure must be made, and the remaining information must be marked as public information. There must also be a damaged test and a statement that even if the requested material comes under an exemption, it will still be provided if the public interest exceeds the harm. The KP Act is an upgraded Act when compared to the Information Act of Punjab and Sind. The KP Act also complied with the second international standard by identifying and listing the material that is exempt from publication in explicit terms and leaving interpretation to public officials. Regarding cost-effective access to information, the RTI of 2013 specifies that "there is no fee for filing information and for the first 20 pages of the requested information." Citizens should have access to an effective complaint resolution process under the RTI international standard. As a result, the

aforementioned legislation exempts any type of affidavit from being required for submitting complaints to the commission. However, the Law does not require a specific interest description to be included in information requests.

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