

- 9- Section 5 should be amended to require public bodies to publish, preferably on its official website, a much larger variety of information including operational information about its functions, costs, objectives, audited accounts, achievements, annual reports, periodic plans, yearbooks, performance reports etc.
- 10- Section 8 and 14 to 17 should be amended so that there are no exclusions and all exemptions are subject to a uniform harm test and public interest override.
- 11- The Act must provide for establishment of an independent 'Information Commission' with the required powers for hearing of the complaints and monitoring implementation of the Act, by removing the role of ombudsman.
- 12- Processing time of information requests must be reduced from 21 days to 14 days. 2.1.15. Sections 10 and 11 should be amended to specify the clearly duties of the designated official (Public Information Officers).
- 13- Section 12 should be amended so that all persons legally present in Pakistan benefit from the rights recognized by the Act.
- 14- Section 13(2), (e) should be amended to include a reference to sections 14 through 17.
- 15- Section 13 should be amended to state that notification of a refused application must be accompanied by substantive written reasons, including the specific provision of the Act under which the application has been rejected.
- 16- Section 18 should be amended to remove the requirement that applicants resubmit their request to the head of the public body in question.
- 17- Section 19 should be amended to eliminate the fine of PKR. 10,000 for vexatious complaints.
- 18- The Act should be amended to provide a procedure for hearing complaints and should spell out the investigative powers of the proposed 'Information Commission'.
- 19- The Act should include a full right of appeal to the courts from any decision by the Ombudsman or Information Commission.
- 20- The Act should provide that the cost of accessing information should not be so high as to discourage potential applicants from making requests and that costs for personal and public interest requests should be minimal.
- 21- Lodging request for information should be free of cost.
- 22- The Act should provide for public meetings to be open for the people's participation in the decision making process and minutes of the meetings should not be excluded from disclosure.

- 23- Section 21 should be amended to distinguish between acts done honestly, and acts done negligently. Provisions of indemnity should not be applied where an applicant has suffered loss or harm due to negligence of the government official under the Act.
- 24- Section 22 of the Act should state that this law shall over-ride other laws to the extent of inconsistency of their provisions with this law e.g. Official Secret Act etc.
- 25- Overlapping exceptions, such as sections 8(d), 8(g), and 16 regarding personal information, Sections 8(c), (e), and section 14 /Section 7 should be eliminated.

B) Rules of Business from Implementation of Amended Law

- 1- Every department of the government of Balochistan should appoint 'Public Information Officers' in each department at all levels to comply with provisions of the law.
- 2- The departments need to pro actively update its official website, all government departments need to computerize its record and make index of the record easily available.
- 3- The departments need to pro actively publish mandatory information according to the law both in hard and electronic formats through its official website.
- 4- The departments should build capacities of the designated officials to deal with information requests.
- 5- Public departments in the province must develop policy guidelines, training manuals and implementation SoPs for the smooth execution of the Act.
- 6- Public bodies and the POB must conduct public education and awareness campaign on importance and use of the FOI law. They should also made available translation of the law in simple Urdu language through their official website.
- 7- The public departments need to submit its annual performance reports with POB regarding its promotional measures and implementation status of the law.
- 8- The POB needs to separately maintain and make available through its annual report the details of information complaints and the actions taken for redress.
- 9- Local civil society organizations need to enhance their involvement in public transparency initiatives and take concerted efforts for mass awareness regarding the importance and utilization of people's right to information.
- 10- Donor organizations need to facilitate government and civil society organizations by providing resources and capacity building for promotion of democratic governance.



Comparative Study

**Freedom of Information (FOI) Act 2005,
Balochistan**

&

**Right to Information (RTI) Bill 2013,
Khyber Pakhtunkhwa**



**Strengthening & Engaging
Civil Society Organizations
in Public Sector Accountability**

Introduction

The Association for integrated development Balochistan (AID) is an independent, non-sectarian, non-political, non-profit development, non-Government organization that was founded by a group of leading Pakistani development and social activists.

AID Balochistan was established in 1998. It is registered under the Voluntary Social Welfare Agencies Registration and Control Ordinance 1961. AID is an independent development and relief or humanitarian organization working with poor rural and urban community of Balochistan, regardless of race, sex, religion or politics in their struggle against poverty, distress and suffering. AID is engaged in participatory research, advocacy campaigning, community awareness mass mobilization, participatory community development and networking for the sustainable livelihood of the poor rural and urban communities by challenging the unsustainable, anti-masses and anti-poor plans, policies and actions.

Importance of Freedom of Information, Pakistan & International Standards

'Freedom of Information' is not only a basic human right but also protects other human rights. Importance of FOI is evident from the fact that it has been rapidly adopted by countries all over the world. In 1989, there were just thirteen national RTI laws globally; today there are some 103. All major intergovernmental organizations and UN agencies have also adopted FOI policies. FOI is important with respect to a number of reasons. It has been called to be 'Oxygen for Democracy'. Free flow of information is the life line for a democratic system to function and to ensure good governance through public participation in decision making process. It is the most effective tool to reduce corruption. Journalists and watchdog NGOs can use this right to expose corruption and wrongdoings.

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

Article 19 of the Universal Declaration on Human Rights 1948 reads that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

Similarly, the Article 19(2) of International Covenant on Civil and Political Rights 1966 says that 'Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

The 1973 constitution of Pakistan made no direct mention of freedom of information but it included Article 19 on freedom of speech and expression. It reads as follows: "Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence."

In April 2010, under the 18th amendment in the constitution of Pakistan Article 19-A was added which provided constitutional guarantee to the 'Right to Information' for the first time to the citizens of Pakistan. Article 19-A states that; '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."

Comparative Study of FOI Act Balochistan & RTI Khyber Pakhtunkhwa

Khyber Pakhtunkhwa "Right to Information (RTI) Bill 2013:

The Khyber Pakhtunkhwa "Right to Information" RTI Bill, 2013 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 31st October, 2013.

Whereas; Balochistan's Freedom of Information Act 2005 (FOIA 2005) is based on the federal FOI Ordinance 2002. The provincial FOI Act has, to a larger extent, not been successful in ensuring transparency in public institutions in the province. This is mainly due to weaknesses in the law and its poor implementation. The law, besides a number of other shortcomings, also restricts access to a large number of public documents and provides no protection to whistleblowers. It does not require the government to establish information commissions at various levels. Though the law has been in place for 10 years now but practical steps to establish mechanisms and processes for its effective implementation are not in place. Furthermore, citizens' awareness of the FOI framework and stakeholders' capacity to enforce the law in Balochistan is minimal.

Balochistan "Freedom Of Information ACT, 2005:

"Freedom of Information" FOI Bill, 2005 having been passed by the Provincial Assembly of Balochistan on 27th November, 2005 and assented to by the Governor of Balochistan. Since, Balochistan remains the only province that has not enacted new Right to Information (RTI) laws.

Therefore; AID Balochistan has proposed to conduct a comparative study of Khyber Pakhtunkhwa RTI Bill, 2013 and Balochistan FOI Act, 2005, under "Strengthening and Engaging Civil Society Organizations in Public Sector Accountability" Project funded by NED.

Recommendations

1- Since Balochistan FOIA is the weakest law which cannot provide any privilege to the citizens and has no role to strengthen democracy, therefore it is strongly recommended that the province Balochistan needs to replace the current law with a more progressive 'RTI' law in accordance with global best practices.

Instead of working on amendments; Balochistan should simply adopt Khyber Pakhtunkhwa RTI Law with some minor amendments to make it more effective.

2- In case the setting coalition government set up did not come to an understanding to adopt KP RTI law, following are the recommendations;

- a) Amendments in the FOIA 2005
- b) Rules of business from implementation of amended law

A) - Recommended Amendments in the FOIA 2005

1- The Act must have a provision to recognize that right to information is a human right and everyone living in Pakistan is entitled to this right without any discrimination. Legal entities, civil society and media groups should also have the right to request information from a public body as requester.

2- The definition of "public body" in should be expanded to include private bodies performing public function or receiving public money (public or private corporations and NPOs receiving public money).

3- The Act and the rules should not require the requester to specify the purpose for requesting information neither it should restrict the requester to utilize the information received without the mentioned purpose. Whistleblower protection must be added to the Act in consultation with all stakeholders.

4- Whistleblower protection must be added to the Act in consultation with all stakeholders.

5- The Act should involve all public bodies to conduct public awareness and education campaigns on right to access information, the scope of the available information and the process to get it from the public body.

6- The definition of record in Section 2(i) should be amended to include electronic record as well.

7- The Act must also provide for accessing the record in any form e.g. notes taking, inspection, identifying pages for photocopying etc.

8- Section 5 should be amended to declare that public's access to basic documents such as a law and a regulation is free of any cost.