

Conference on ‘Changing Right to Information Legislative Landscape: The Way Forward for Civil Society Groups and Political Parties’

September 27, 2013

Marriot Hotel, Islamabad

Backdrop and Rationale of the Conference:

The promulgation of Khyber Pakhtunkhwa Right to Information Ordinance 2013 has significantly changed Right to Information Landscape in the country. With Freedom of information 2002 operational at the Federal Level and its replicas operational in Sindh and Balochistan, in the shape of Sindh freedom of Information Act 2006 and Balochistan Freedom of Information act 2005 respectively. KPK and Punjab were the only provinces wherein RTI laws had not been enacted. The government of Punjab publicized its draft RTI law in the newspapers on August 08, 2013 for public comments. The KPK government has put in place an effective and progressive RTI law. If the draft shared by the Punjab government is anything to go by, Punjab is also likely to have a good law in the near future. How can the draft Punjab Freedom of Information Act 2013 and Khyber Pakhtunkhwa Right to Information Ordinance 2013 be improved when these laws are submitted in their respective assemblies? How can the democratization of information be ensured through the implementation of these laws? What strategy needs to be adopted by civil society groups to get freedom of Information Ordinance 2002, Sindh Freedom of Information Act 2006 and Balochistan Freedom of Information Act 2005 repealed and replaced with effective RTI laws? These questions were discussed in the conference on “Changing RTI Legislative Landscape: The Way Forward for Civil Society Groups and Political Parties.

This report is based on the proceedings of the CRTI conference (‘Coalition on Right to Information Conference on ‘Changing RTI Legislative Landscape: The Way Forward for Civil Society Groups and Political Parties), held on Sep, 27, 2013, at Islamabad.

Conference Goals:

Promotion of citizen’s right to information through knowledge sharing about the qualitative aspects of existing RTI laws, their implementation and recommendations for policy makers for reforms in RTI laws.

Specific Objectives:

Anomalies in existing RTI laws highlighted.

Specific suggestions collected from RTI experts for implementation of the laws.

Intended Outcome:

Existing RTI laws reformed

RTI laws getting implemented on ground.

Welcome Note

Mr. Zahid Abdullah welcomed the participants coming from Islamabad and other parts of the country. Mr. Abdullah shared with the participants the background of the formation of the coalition on Right to Information, and objectives and goals of the conference. The coalition on Right to Information was formed on 17 Dec 2012, and charter of action was developed after consultation with coalition partners. Mr. Abdullah shared with the participants that CRTI was holding this conference on the eve of the 'international Right to Know day which was going to be observed throughout the world tomorrow on September 28. Mr. Abdullah further shared with the participants that more than ninety countries of the world have legislated RTI laws. He shared with the participant that CRTI has been contributing to the enactment of effective right to information laws in the country. CRTI has significantly contributed to the enactment of Khyber Pakhtunkhwa Right to Information Ordinance 2013 and Punjab Transparency and Right to information Ordinance 2013. He also said that as Coordinator, CRTI, he has been in touch with policy makers with regard to federal right to information and CRTI input has been provided on draft right to information laws.

Speakers of the first session of the conference

Mr. Shafqat Abbasi, Chairman, Press Council of Pakistan (Chairperson of the Session)

Mr. Mukhtar Ahmed Ali, Founding Director, Centre for Peace and Development Initiatives (CPDI)

Dr. Syed Ali Raza, SHEHRI

Senator Farhat Ullah Babar, Member, Senate Committee on Information and Broadcasting

Session 1:

Emerging Legal Regime: Issues and Challenges

Salient features of KPK Right to Information Ordinance 2013 and draft Punjab Freedom of Information Act 2013

Draft Federal RTI Law

Chair

Mr. Shafqat Abbasi, Chairman, Press Council of Pakistan

Mr. Adnan Rehmat opened the session and shared with the participants that civil society has been struggling for many years in Pakistan for the enactment of right to information laws. It is through these efforts that headway has been made in terms of enactment of right to information laws in Khyber Pakhtunkhwa and Punjab. He also shared that as a result of civil society efforts right to information has now been accorded constitutional protection after insertion of Article 19-A in the constitution. Sharing characteristics of a good right to information law, he said that an effective right to information law contains provisions pertaining to maximum disclosure, strong implementation mechanism, easy and cost effective process for filing information requests. Especially, a good right to information law provides an effective implementation mechanism.

Mr. Mukhtar Ahmed Ali, Founding Director, CPDI

Mr. Mukhtar Ahmed Ali shared with the participants that citizens form the government which functions on the taxes paid by them, therefore, citizens have the right to know how their taxes are being put to use by their elected representatives and public officials. He also shared with the participants that there prevailed culture of secrecy in the bureaucracy. As a result, information is not shared with the citizens of the country. He was of the view that right to information is a prerequisite for good governance and politicians will have to fulfill their promises made on different forums for many years pertaining to the enactment of right to information laws. Giving an overview of legislative landscape in the country, he said that first law to be enacted in Pakistan was Freedom of Information Ordinance 2002 and its replicas were enacted in Sindh and Balochistan in the shape of Sindh Freedom of Information Ordinance 2006 and Balochistan Freedom of Information Act 2005. Mr. Ahmed further shared with the participants that KPK law provides good definition of information but it needs to be improved. The major problem with KP Right to Information Ordinance 2013 is that it excludes Peshawar High court from its purview. He shared with the participants that its provisions pertaining to proactive disclosure of information need to be expanded and enquiry reports should also be proactively shared with the people. He appreciated the easy and cost effective process of filing information requests under KP RTI Ordinance 2013. There is no fee for filing information requests and no fee for first twenty pages and only the actual cost will be charged for the requested information. The KPK RTI law empowers the information commission to impose penalty on public official for unlawfully delaying or denying access to information. The penalty for delay is Rs 250 per day which can go up to a maximum of Rs. 25000. He was of the view that fine of Rs. 250 needed to be replaced with one day salary of the public official. The retirement age of the member of the information commission is fixed as 66 years. He shared with the participants that if a member is 64 years old at the time of appointment, he/she may not complete his/her constitutional tenure. Therefore, this provision of the law needed to be looked into and changed. Commenting on the draft Punjab right to information law, he said that members of the Punjab Information commission will be appointed after consultation between chief minister and leader of the opposition. This needs to be reviewed as there is no way out in case of a deadlock. The issue of imposing penalty will be decided in the rules which will be prescribed later. He was of the view that the fine should be mentioned in the law. He shared that rumor prevail in the society in the absence of right to information laws. He shared the example of his information request. He said that there was a time when date palm trees were planted in Islamabad. There were rumors circulating in the city that these date palm trees were planted to oblige some landlords as the climate of Islamabad did not suit for the plantation of such trees. At that time different names of politicians were quoted and it was alleged that millions had been made through the plantation of these trees. He collected the information from Capital Development Authority under Freedom of Information Ordinance 2002 and it transpired that these were merely rumors and no politician was involved in the tree plantation. He also shared that he had asked the information from head of KP police under KP right to information law about the mode of payment of salaries to police staff. The requested information has not been provided yet.

Dr. Ali Raza, SHEHRI, Karachi

Dr. Ali, sharing Shehri experience of using existing information laws said that these were ineffective and needed to be repealed. He was of the view that these were donor driven laws and civil society was not taken on board while putting in place these laws. He also said that the process of filing information requests under these laws was lengthy one. The Ombudsman is not time bound to decide on complaints lodged under Sindh Freedom of Information Act 2006 and Freedom of Information Ordinance 2002. He also said that there was no provision of

imposing penalty for unlawfully delaying or denying access to information. As a result, public officials take eternity in providing information to the citizens. He said that SHEHRI filed 240 information requests to different public bodies during the course of last year.

Mr. Shafqat Abbasi, Chairman, Press Council of Pakistan

Mr. Abbasi highlighted the significance of the conference as it was being held on the eve of International Right to Know Day which is celebrated every year on 28th September. He appreciated the role of parliamentarians for inserting Article 19-A in the constitution and according right to information constitutional protection. Dwelling on the role of press as the fourth pillar of the estate, he said that press was given this status as it helped in ensuring public accountability by exercising right to information on the behalf of citizens. He said that press in Pakistan was performing a better role when compared with other countries of the region. He was of the view that civil society in Pakistan needed to be more active in protecting and promoting right to information as was the case in India. He also said that elections were one way of ensuring accountability and during the intervening period citizens needed to be involved to ensure public accountability of elected representatives. He also highlighted the role of Press Council of Pakistan in the enactment of right to information laws in the country. He stressed that media could not be regulated through outside interventions and media organizations needed to come up with code of conduct to regulate themselves.

Senator Farhat Ullah Babar, Convener, Senate Sub-Committee on Information and Broadcasting

Senator Babar acknowledged the contribution of Mr. Zahid Abdullah, Coordinator, Coalition on Right to Information to right to information movement in the country. He also highlighted the fact that this conference was timely intervention as International Right to Know Day will be observed tomorrow on September 28. Senator Babar shared with the participants that through the eighteenth constitutional amendment, Right to Education, Right to Fair Trial and Right to Information have been acknowledged as fundamental rights of the people of Pakistan. He shared with the participants that Senate Committee on Information and Broadcasting had finalized draft right to information law which will be presented in the Senate in the next session. Senator Babar said that KP government had done good job in terms of having right to information law for the province but it would have been better if this law had come about as an Act of KP Assembly rather than as an ordinance. He also hoped that Punjab will soon enact law on right to information. Senator Babar said that Senate Committee on Information and Broadcasting took 18 months to finalise the draft right to information law. He said that while drafting right to information law, the consideration had been given to have a strong appellate body and the changes introduced in the Ombudsman law will make this appellate body effective in terms of facilitating access to information. He also said that after every 20 years even the exempted information will be declassified. Senator Babar said that notion has gotten strength in the country that only judges are men of integrity in the country. As a result, judiciary was expanding its sphere of influence which needed to be challenged. That is why role of appellate body has been entrusted to Federal Ombudsman. He also agreed with other speakers that there existed culture of secrecy in the country which needed be dealt with. He shared some pertinent examples to illustrate the extent to which this culture of secrecy prevailed in the country. He said that once Parliament asked under which law Inter Services Intelligence Agency was operating and this information was not provided citing it to be information of 'sensitive' nature. Similarly, it was asked from Army whether there existed a mechanism to collect asset details of senior Army officers, and though the details of these assets were not sought, this

information also was not provided on the grounds of national security. Members of the Parliament asked whether enquiry was held about Cargill debacle, and though even the enquiry report was not requested, this information was also turned down on the pretext that it pertained to national security. A question was asked from Supreme Court about the total number of suo moto cases taken up during the course of a year. This information was not provided citing that it was interference into the functioning of judiciary and challenged its independence. Senator Babar said that in order to end the culture of secrecy, it was important to keep on asking questions. Each time a question will be asked, it will be denied but it will cause embarrassment.

Mr. Abdullah shared with Senator Babar that Federal Ombudsman was a toothless appellate body. He also shared that it was not that Army and judiciary were alone in not providing information to citizens. He shared with the participants that recently Federal Ombudsman decided in favour of National Assembly Secretariat in information filed by CPDI seeking attendance records of parliamentarians on the grounds that it would violate their privacy. He was of the view that the culture of proactive disclosure of information needed to be promoted. He shared with the participants findings of CPDI research study which showed that public bodies were not willing to provide requested information filed under right to information laws of the land. A total of 70 information requests were filed at all three tiers of government under different right to information laws of the land asking information about allocated and spent budget for the first quarter of financial year 2012-13. Only six public bodies provided the requested information.

Session 2

Democratization of Information:

- RTI in action-success stories
- Strengthening the demand side of the Information
- Role of media in creating awareness about RTI Law

Speakers of the Session:

Ms. Natalia Tariq, Open society Foundation Pakistan

Mr. Rasheed Chaudhry, Director Program, FAFEN

Mr. Shafiq Butt, Punjab Lok Sujag

Chair

Mr. Faisal Bari

Ms. Natalia Tariq

Ms. Natalia based her presentation on her paper titled 'Instrumentality of Right to Information'. She shared with the participants that right to information was primarily an instrumental tool which could be used for achieving other fundamental rights. She observed that RTI movement in the country was getting momentum; there was law in place in Khyber Pakhtunkhwa and Punjab was on the verge of having one. Once these RTI laws are in place, will this legislative

framework lead to realization of basic rights of the people? She was of the view that so far top-down model was operational in the use of right to information legislation and greater participation of people was the need of the hour. Natalia Tariq shared with the participants of the conference that RTI is a fundamental right according to Article 19 of UN Declaration on Human Rights. She shared with the participants that the acknowledgment of civic and political rights of the people is a necessary precondition of democracy. Ms. Natalia Tariq dwelt at length how right to information can lead to the realization of other civil, political, social and economic rights. She also said that right to information brings about conceptual clarity about other rights. She shared with the participants that fertility rates in Kerala and Tamil Nadu were brought down to 1.7 as a result of value change through social dialogue. Such process we need to initiate in here too, Ms Natalia said.

Right to Education: Thai Experience

Ms. Natalia Tariq shared with the participants the experiences of RTI in Thailand. She said that The RTI legislation in Thailand has been instrumental protecting right to education. Ms. Natalia Tariq shared a story of Sumalee, mother of a girl who 'failed' the entrance exam, requested for her daughter's answer sheet and marks to be made public. Refusal from the school to disclose this information, led her to use the Official Information Act to request this information. Information Commission ruled that answer sheet and marks of her daughter and 120 students that were granted admission be made public. 38 out of 120 students who had failed had secured admission on the basis of bribes and connections. After 2 year legal battle – SC gave a ruling that the complete list of all students and their names be revealed. The Information led to a media and public outrage. This led to Historic ruling by Ministry of University Affairs that admission procedures in this and other schools be amended and made more transparent. RTI was used to disclose corrupt practices in the education sector that were denying the basic right of access to education for ALL. Ms. Natalia Tariq stated that one person's struggle for information can translate into a nationwide campaign.

The Right to Know is the Right to Live – Indian Experience

Ms. Natalia Tariq shared with the participants the RTI experience of Mazdoor Kisan Shakti Sangathan (MKSS) in rural Central Rajasthan. Ms. Natalia Tariq shared with the participants that RTI ACT was promulgated in Rajasthan in 2000. It was through the exercise of right to information that led to the securing peasants and rural workers minimum wage on government projects was accepted. The right to information led to exposing corruption and denial of wages – ghost projects, false promises were exposed.

Power of Information in Pakistan

Ms. Natalia Tariq shared with the participants that the issues of secret funds, barring women voters in Dir, and Shahzadi murder case have been exposed through the power of right to information.

Mr. Rasheed Chaudhry, Director Program, FAFEN

Mr. Rasheed Chaudhry thanked CRTI for providing an opportunity to participate in a conference of great significance. Mr. Rasheed Chaudhry shared with the participants that FAFEN implemented governance related project in 239 constituencies of Pakistan. He was of the view

that New RTI laws are needed and demand side needs to be strengthened. He shared that patron-client relationship between citizens and state institutions has led to trust deficit experienced on daily bases by citizens in their interaction with state institutions. He said that FAFEN has submitted around 1200 information requests with the technical expertise of CPDI. These information requests have been followed up at all levels. He shared with the participants that courts initially declined to provide requested information. However, when we kept on submitting information requests consistently, courts started sharing requested information proactively through their web sites. He also said that we requested Election Commission of Pakistan to share all election related data and information on their website for public consumption. He shared that one of FAFEN information request revealed that in the cattle market of Rahim Yar Khan, fee per cattle being charged was many times higher than the prescribed fee. He was of the view that right to information can be used to highlight instances of maladministration and corruption. He also said that right to information in Pakistan needed to be popularized.

Mr. Shafiq Butt, Lok Sujag

Mr. Butt shared with the participants that Lok Sujag came to know about right to information through FAFEN. He shared with the participants that Lok Sujag was practicing RTI at the local level and so far 54 information requests have been filed. He shared with the participants that Haji Abdul Rehman noticed, a citizen living in Sahiwal, the heavy expenses are made on the renovation and maintenance of Commissioner's residence and wanted to know the exact amount of the spending. He wanted to seek this information under Right to Information guaranteed under Section 19-A of the Constitution of Pakistan. He filed an application to local Building department on April 6, 2011. In his application, Haji Abdul Rehman requested for details of expenditures incurred on construction, maintenance, repair, addition/alteration, renovation along with furnishing of Commissioner's House. Building Department did not entertain RTI Request and declined the request. Haji Sahib followed up RTI process for six months, sending letters and reminders to different officials including the Punjab Secretary, Communication & Works Department on May 16, 2011, Chief Engineer, Punjab Building Department on May 26, 2011 and Chief Secretary, Punjab Civil Secretariat on July 11, 2011. Reminders were also sent to all these departments. But neither anyone responded nor bothered to reply to a citizen who was legally seeking information under guaranteed constitutional right. Haji Sahib approached The Provincial Ombudsman, Lahore, on September 27, 2011, keeping on board Punjab Lok Sujag and CPDI, Islamabad. The Provincial Ombudsman called each party and started proceeding on Haji sahib's complaint. The Provincial Ombudsman held several hearings dated, October 21, 2011, February 2, 2012, March 15, 2012, April 26, 2012, May 17, 2012, May 25, 2012 and June 6, 2012. Mr. Abd-ul-Rehman attended all dates of hearings, but the other party did not bother to provide information. This proceeding continued for nine months. On July 30, 2012 Mr. Abdus Salam Khawar, Consultant XI, The Provincial Ombudsman Court, Lahore decided in Haji sahib's favor and ordered The XEN Building Department, Sahiwal to provide requisite information to Haji abdul Rehman without any further delay. The Ombudsman in his order against complaint No 3802/11 dated July 31, 2011 clearly writes,

“The Buildings Department's refusal to provide information demanded by the complainant is, considered a violation of article 19-A of the constitution and therefore an act of maladministration. The XEN Provincial Buildings Sahiwal is directed to furnish certified copies of documents related to the project of conversion of Canal Rest House into the Commissioner's House, to the complainant within a period of one month.”

Later on, the buildings department made an appeal to the Governor of Punjab against the decision of Provincial Ombudsman. Governor Punjab appointed a Grade 22 office, provincial Environment Secretary, a body, and directed him to hear the case and submit the report within 60 days. Finally On Sep 18, 2013, the governor Punjab decided our request for information, in the favor of information seeker. But this whole process has taken a long period of 29 months, during which Haji Abdul Rehman travelled more than 8000KM, and appeared before different departments for twenty times. He said that an RTI activist has to be persistent and keep proper record of information requests.

During the questions-answers session, participants shared that in Pakistan, There prevails an institutionalized corruption, therefore, a joint effort by the civil society needed to be initiated to face the nexus between corrupt officials and different mafias. It was also shared that Indian RTI law does not include Indian held Kashmir. Azad Jammu and Kashmir is not part of Pakistan according to the constitution therefore Pakistan RTI law does not apply there either. The conference participants suggested that RTI should be made applicable to FATA and Gilgit Bultistan. It was also said that discussion is primarily taking place in the urban centers of the country and that such discussions and debates should also be initiated in the rural areas. It was suggested that youth committees and groups need to be established in the rural part of Pakistan to benefit from RTI laws. Mr. Bari closed the session with a note of thanks to everyone for participating in the conference organized by Coalition on Right to Information.

Closing note by Mr. Zahid Abdullah

In his closing remarks, Zahid Abdullah, Coordinator, CRTI, thanked everyone for sparing time and attending the conference. Mr. Abdullah thanked Mr. Bari for chairing and moderating the second session, and also for his input in the conference. Mr. Abdullah appreciated highly useful and insightful discourse in both the sessions. Mr. Abdullah commented that initiatives taken by KP and Punjab provinces looked promising but right to information legislation was not being taken seriously at the federal level. Commenting on proposed RTI law for the federal tier of the government, he said that it envisaged a weak implementation mechanism. Mr. Abdullah thanked Mr. Mukhtar Ahmed Ali, Mr. Adnan Rehmat, Senator Farhat Ullah Babar, Mr. Shafqat Abbasi, Mr. Rasheed Chaudhry, Ms. Natalia Tariq, Dr. Syed Ali Raza and Mr. Shafiq Butt for their insightful contribution to the conference.