

The Instrumentality of Right to Information

Natalia Tariq

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Introduction

The right to information movement has really gained momentum in Pakistan over the past few years, and has recently seen success in the form of the KPK RTI Law that has been passed in the Province. While the new law indicates the provincial governments commitment to promote transparency and accountability in the region, it has also raised questions regarding the actual benefit it would have for the people of Khyber Pakhtunkhwa. While the law may sound good on paper, people are skeptical of its effective implementation and use. Will it lead to meaningful engagement of citizens in the democratic process? Will it provide a framework for citizens to hold their representatives accountable? Will it facilitate citizens to realize some of their other basic rights?

It is not surprising that there is so much skepticism amongst the general public regarding the benefits of the right to information. From the very beginning, the RTI movement in Pakistan has been a relatively top down initiative. The Freedom of Information Ordinance was promulgated in 2002 under President Musharraf's regime and two key factors prompted the government to pass this legislation: "one, its desire to overcome international hostility stemming from its military background and lack of democratic roots; two, pressure from donors" (2, Idris 2010). A lack of consultative process with stakeholders led to the Ordinance suffering from serious design flaws that hampered, rather than facilitating access to information. Moreover, even the RTI movement in Pakistan over the last few years has been led by only a few civil society organizations and media elites, and unlike the grassroots demand for information in other parts of the region, such as in India and Bangladesh, there has been, "a strong tradition of 'personalization' of the FOI agenda, i.e. "it has been associated with a handful of key individuals rather than institutions" (12, Idris 2010). In such a context, where ordinary citizens are either unaware of the RTI law or don't see it as being relevant for their everyday struggles to access even some of their basic livelihood rights, it is not difficult to understand the lack of confidence amongst people that the new effective RTI

legislation in Khyber Pakhtunkhwa will bring real change and development in people's lives.

In this paper, my purpose is to demonstrate the instrumental value of right to information, and through practical examples show how this, "right to realize all rights" (Daruwala & Nayak 2007) has played a key role in helping people demand and realize their political, economic and social rights from their governments across the globe. I will be showcasing country experiences to illustrate how people have used right to information as a tool to improve access to services, unveil corruption and hold public officials accountable and ensure the equitable distribution of public resources. The paper will then move on to briefly highlight cases in Pakistan, where even in the absence of strong RTI legislation (prior to the enactment of the KPK RTI law), access to information has played a pivotal role in promoting effective state governance by allowing people to scrutinize the actions of their government. I conclude this paper by arguing that if the KPK RTI law is coupled with an effective implementation mechanism, it will democratize the use of information from a few selected civil society organizations and media groups to all the citizens of Pakistan, broadening its use and impact.

Intrinsic, Instrumental and Constructive Importance of Right to Information

Right to information has been recognized as a fundamental right in Article 19 of the Universal Declaration of Human Rights, which states 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". Post World War Two there has been a global movement to recognize this right (Roberts 2006) and countries have made efforts to enforce right to information legislation in order to operationalize this 'right' citizens have "to access government records, without being obliged to demonstrate a legal interest or standing" (1, World Bank 2012). In 1990 only 13 countries had right to information laws, most of them western liberal democracies. However, by 2010, this number increased to 90, with a large number of countries in Eastern Europe, Latin America, Asia and more recently Africa adopting laws promoting freedom of information.

Pakistan was the first country in South Asia to pass RTI legislation in 2002 when President Musharraf promulgated the Freedom of Information Ordinance. Unfortunately, even though Pakistan took the lead in the region to implement right to information legislation, the federal law is weak and, “does not conform to accepted principles for sound RTI legislation” (1, Idris 2010). It has very little room to access information from public bodies and does not allow citizens to access most of the information. Further it does not have any penalty regime and thus does not put any deterrence on public officials in case the information is denied or delayed. Its appeal mechanism is also very weak and it does not have any central information commissioner. However, after insertion of 19-A through 18th amendment to the constitution of Pakistan, right to information is now a constitutionally guaranteed right. There have also been repeated pledges by the government ministers for enacting new right to information laws to ensure access to information and the Khyber Pakhtunkhwa provincial government has delivered on this promise by recently passing an RTI law that has been ranked as one of top RTI laws in the world (Centre for Law and Democracy).

A citizen’s right to access information has intrinsic value and, “for much of its history the right to public information was considered a civic and political right of citizenship in liberal democracies, a necessary compliment to freedom of expression and media rights” (3, World Bank 2012). Right to information is a necessary precondition to democracy and is central to the proper functioning of a democratic regime (360, Peled & Rabin 2008). “Democracy depends on a knowledgeable citizenry whose access to a broad range of information enables them to participate fully in public life, help determine priorities for public spending, receive equal access to justice, and hold their public officials accountable” (5, Neuman 2002). Such political participation is impossible without people’s ability to obtain relevant information, which goes to show the strong link between peoples’ freedom of expression and access to information. Without access to information, citizens, civil society organizations and various other stakeholders are unable to actively participate in the public sphere and political debates. Roberts (2006) has talked about the crucial role information has played in the democratization of East European countries in the wake of the post Soviet Union transition process, in post revolutionary Arab countries as well as in South Africa in the wake of the apartheid.

When right to information is enshrined in the Universal Declaration of Human Rights, it is because it is recognized as having value in and of itself, and the struggle for freedom of information is an end itself because it has direct importance in human living by enhancing people's capabilities; facilitating their political and social participation (Sen 1999).

The recent wave of right to information activism, however, has focused more on the instrumental aspect of the law. Since the countries that are now adopting RTI legislation are from the developing world, and face more socio economic and governance challenges, the attention has been more towards how right to information can be instrumental in the realization of other rights, such as health and education. Calland (2003) notes that, "since the right of access to information empowers citizens to demand information from the state, it changes the balance of power between them – citizens can hold the state to account not only for information, but also for how it is delivering on its other obligations – including their social and economic rights." Right to information then, provides the enabling conditions for people to exercise some of their other basic political and human rights. Peled and Rabin (2008) state that, "In order for people to be capable of independently protecting their rights and thereby avoid dependence on the protections that the state professes to grant, they must have the tools necessary for such protection at their disposal" (363), and right to information is that tool available to them. In countries where people are unjustly being denied access to basic services and resources, right to information becomes the means through which these marginalized groups can leverage themselves to attain their socio economic rights.

When right to information is used in this context, i.e. in developing countries in order to promote access to resources, improved service delivery and as an anti corruption measure, it becomes more relevant to the masses. In the field of socio economic rights, "freedom of information creates a basis for contestation and justification of government decisions on resource allocation. It creates a basis for a fair and reasonable manner of decision making" (Dimba 2008). Through access to information, citizens are able to pressurize governments and draw attention to their needs and demand appropriate action. For instance, Sen (1999) talks about how countries with a democratic government and

free flow of information have never experienced a substantial famine because, “if there are no elections, no opposition parties, no scope for uncensored public criticism, then those in authority don’t have to suffer the political consequences of their failure to prevent famines” (180). On the other hand, availability of even basic information about the onset of famine in far flung areas at an early stage have the potential to prevent it by bringing out facts that may be embarrassing to the government and push them to proactively address the causes of famine.

Lastly, having access to information also plays a constructive role in society (Sen 1999). By this, I mean, acquiring and understanding information allows citizens to actually conceptualize and understand what their basic rights even are. Accessing documents relating to public financing has actually enabled people across the world to come to the realization that government budgets constitute of money raised through public taxation. It is in fact their money that is being spent and so they have a right to demand accountability of those funds and ask governments where and how that money is being used. Right to information sets the ground for open discussion, debate and dialogue, processes which are crucial not only to demand socio economic rights but are also central to their very conceptualization. For instance, disseminating information on the bad effects of high fertility rates in Kerala and Tamil Nadu, and generating public discussion on the basis of this information has lead to a fertility rate of 1.7 (similar to that in Britain and France) in the region, and this has been as a result of no coercion but mainly through a change in values in which access to information and social dialogue have played a major role (Sen 1999).

Right to Information as an Instrumental Right – Country Case Studies

There are many cases around the world that illustrate how people have used their right to information to demand the protection and realization of other rights, ranging from the right to life to the right to freedom of religion. The case of India and Thailand capture the use of right to information as a tool used for advocacy and promotion of right to life and right to education in these countries.

Fighting for the Right to Education – The Thai Experience:

Thailand has had a constitutionally guaranteed right to information since 1991. In 1997, the Thai National Assembly passed the Official Information Act providing the legal framework for people to exercise their right to information. While there are several weaknesses within the law, for instance, there are no time frames within which public bodies have to respond to information requests and there are a number of discretionary exemptions to disclosure, the Act has been instrumental in bringing about effective change in various policy circles in the country. One successful use of this Act has been in ensuring Thailand's constitutionally guaranteed right to education for children regardless of their socioeconomic background.

One of the first successful case under Thailand's right to information act was made by the mother, namely Sumalee, of a girl who failed the entrance exam of a well regarded state primary school; Katsetsart Demonstration School. When she asked the school to reveal her daughter's answer sheet and marks they refused to disclose the information. Two months later Sumalee used the Official Information Act to request access to this information and the Information Commission ruled that the answer sheet and marks of her daughter and the 120 students who were admitted to the school were public information and had to be disclosed. Despite this decision, the school and parents of the students who had secured admission to the school resisted giving out this information and eventually the school only offered to reveal the test results of the students that were granted admission but refused to make their names public. The list showed that 38 of these 120 students had in fact failed their entrance exam and had secured admission to the school because they were well connected and had paid hefty bribes (Calland 2002). It took Sumalee a two year legal battle to finally get the Supreme Court to rule that the complete list of all students, including their names be disclosed and, "this information led to a media and public outrage, and more families of children who were denied entry requested information from the school using the Official Information Act" (62, Daruwala & Nayak 2007).

In terms of policy change, Thailand's Ministry of University Affairs ruled that state schools would have to amend their admission procedures and make them more

transparent, as the Katsetsart Demonstration School's current admission process violated the country's constitutionally guaranteed Right to Education regardless of one's social or economic grounds. This historic ruling has, "undercut the nepotism and cronyism in the nation's schooling system" (62, Daruwala & Nayak 2007).

This case study goes to show how closely connected the right to information is to the right to education. Not only is information key to the educational development of youth and adults, but having access to key public documents can empower citizens to correct corrupt and discriminatory practices in the education sector and ensure equal access to this basic right. Sumalee's experience also goes to show that one person's struggle for right to information can fuel a public campaign for some common cause; "by using Thailand's Official Information Act to get these records, Sumalee prompted similar queries, breaking the habitual acceptance of unfair practices. Her actions catalyzed a nation wide campaign for better access to education for all children, not just for those from a privileged background" (62, Daruwala & Nayak 2007).

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

The right to information campaign in India has been linked to various other movements and in rural Central Rajasthan it has an integral relationship to the peoples struggle for their livelihoods. Mazdoor Kisan Shakti Sangathan (MKSS) is a union for the empowerment of peasants and workers in the area, and believes that information is an effective tool for citizens to assert their rights to their share of public resources.

MKSS has demonstrated the power and usefulness of information in ensuring that peasants and rural workers are able to secure minimum wage when working on government projects. In Rajasthan corruption is rampant at all levels of government and, "corrupt officials acting in collusion with their political benefactors siphon off large sums of the money intended for public works and then deny workers their legitimate claims. These actions are then veiled by official secrecy laws, which make records pertaining to government programs inaccessible to the public" (4, Ramkumar) and results in rural workers on these government projects being denied their minimum wages. An example of such corruption and denial of wages is through "ghost projects" that are shown on

paper but don't actually exist, for instance, "a veterinary hospital was shown in the records as built. In reality, the project managers siphoned off the entire amount allocated to the hospital" (4, Ramkumar).

To challenge such corrupt practices, members of the MKSS realized that, "it was only by obtaining the relevant documentation, in particular the muster rolls (a list of persons employed and wages paid), that they could be successful. The right to information and the right to survive thus became united in peoples' minds" (16, Calland 2002). The MKSS used various tactics to access information relating to these public projects as there was no right to information law in place at the time. Their right to information campaign involved a series of public meetings with government officials where they would demand access to these records and, "through the intervention of sympathetic officials, the MKSS was able to obtain copies of some records – including bills, vouchers, cash books, labour rolls and engineers' measurement books – showing details of employment generating projects" (5, Ramkumar). On the basis of the information obtained MKSS held public hearings called *Jan Sunwai* where they systematically presented the information collected to public officials and questioned them. The government, pressurized by these hearings and the media attention they were getting eventually took notice and instituted action on the basis of the findings presented at the hearings.

However, "even though the public hearings were a success, the MKSS realized that its dependence on the intervention of sympathetic officials to obtain records remained a significant barrier to broader engagement in public discussions of official programs" (6, Ramkumar). The need for right to information legislation became apparent and so began the campaign, "The Right to Know, The Right to Live" in Rajasthan which pushed for right to information legislation by linking public records, livelihoods and basic rights. After a four year struggle, their efforts were rewarded when in 2000 the Rajasthan State Legislature passed the Right to Information Act providing all citizens with access to public records.

This case study has revealed the immense power right to information has in promoting accountability of governments, protecting economic rights and fighting corruption. The people of Rajasthan, "by accessing government documents, were able to reconcile what

was claimed on paper with the reality on the ground” (Dimba 2008) have been able to reclaim their livelihoods. The impact of using right to information to improve governance and secure minimum wage in Rajasthan has been huge, for instance, “senior state bureaucrats concede that the number of complaints regarding the denial of wages has been drastically reduced as a result of the law and other disclosure policies that accompanied it” (6, Ramkumar). The case study also illustrates the interconnectivity and of rights, and how one right can be instrumental in the achievement of another right. In this case, right to information was an effective tool in advocating for peoples right to their livelihoods, but then the struggle for minimum wage rights also became the impetus for a campaign for right to information legislation in Rajasthan.

The Power of Information in Pakistan

Access to information in Pakistan has also been pivotal to unveiling corrupt government practices and giving citizens a voice. While there is criticism that the use of this information has been limited to media and civil society organizations, and has not seeped down to the masses like it has in other countries, even the limited use of right to information has led to success stories in the country. A recent example of this is the Supreme Court’s verdict to audit all secret funds to ministries and said all expenditures from the public exchequer must be made in a transparent manner and each rupee must be audited by the Auditor General of Pakistan in order to ensure compliance with the law. The media, by accessing and exposing information in the budget relating to the allocation of secret funds worth Rs. 3.5 billion to about 27 ministries (Dawn News 2013) was able to push for higher standards of public accountability of senior government officials. Similarly, the leaking of a document from Dir, Khyber Pakhtunkhwa, revealed an agreement between political parties in the area to bar women from voting in the recent elections. Once this information was leaked, civil society organizations rallied with the Election Commission of Pakistan to declare elections in these districts null and void and re polling, after ensuring the participation of women in the electoral process was announced and carried out. This is another example of how information was a catalyst to ensuring the voting rights of women that would have otherwise been overlooked.

Numerous other examples such as the ones stated above are testimony to the important role access to information can play in Pakistan for the overall transparency, openness and development of the country.

Conclusion

As this paper demonstrates, right to information can be an instrumental tool to address socioeconomic imbalances in countries such as Pakistan that are plagued by lack of accountability, human rights violations, underdevelopment and huge income disparities. It empowers people and enhances their capability to bring about a positive change in their lives by ensuring substantive social and economic equality.

Even in conditions where there has been no formal or effective right to information legislation in place, people has acquired information through informal means in order to attain their rights and expose corruption. With an effective and progressive right to information law in place in Khyber Pakhtunkhwa, and the likelihood of a good law in Punjab, Pakistan provides the right conditions for the benefits of right to information to start being reaped in practice. However, the practical benefits of right to information will only be realized by the masses, and the democratization of information from the civil society/media elites, will only truly happen if the legislation is coupled with effective mechanisms for enforcing the law. As Calland (18, 2002) notes; “there is no point in having a law that provides for the right to access to information, if there is not at the same time a clear and workable system of mechanisms to enable citizens to use the law”. There is now the burden of responsibility on the Khyber Pakhtunkhwa government as well as civil society and media in Pakistan to facilitate the public’s access to information. So that they not only understand that information is their basic human right, but also how public bodies function, and how they can effectively scrutinize public information in order to actively participate in decision making processes that affect every aspect of their lives.

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