



Centre for Peace and
Development Initiatives



Right to Information - An Enabling Right

Theoretical Discourse and International Case Studies

Supported by

Friedrich Naumann
STIFTUNG **FÜR DIE FREIHEIT**

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Theoretical Discourse and International Case Studies

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Abstract

Right to Information (RTI) laws, also known as Freedom of Information (FOI) laws, serve as essential instruments to provide people access to information (ATI) held by their governments. They enable people to be aware of their entitlements so that they can demand for the fulfilment of those rights. Access to information enables people to meaningfully participate in the affairs of the country. It helps citizens keep a check on governmental policies and actions and voice their concerns when their needs are not met. RTI has been acknowledged as a tool for ensuring good governance through invoking transparency. It is an underpinning of democracy and, therefore, is recognised as an essential feature of democratic societies of the world. It assists in alleviating poverty, ensures sustainable development and helps in realising other fundamental rights.

Although the first access to information legislation, Freedom of the Press Act, was adopted by the Swedish Parliament in 1776, however, it was not until 1990 that the global Access to Information regime picked up pace. By the start of 2012, over 90 countries had enacted legislations on RTI.ⁱ RTI has been recognised as a fundamental human right in various international as well as regional and thematic conventions, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American Convention of Human Rights,

the African (Banjul) Charter on Human and Peoples' Rights and the European Convention on Human Rights.

This document maps out the theoretical discourse that has emerged since the recognition of RTI as a right so vital so as to be called the touchstone of all freedoms by the United Nations, to the current trends of realising RTI as a pivotal ingredient of participatory governance. Moreover, the book highlights the practical application of RTI by presenting case studies from around the world, under a diverse set of scenarios, wherein this right was exercised by ordinary people and organisations to expose the unjust practices of governments, enable policy change, and assist in the realisation of other fundamental rights.

Introduction

If the sun does not come up and darkness prevails, life on earth would eventually cease to exist. Comparable would be the case if information were blocked and access to it were denied; pragmatic human decision would not be possible to make, thereby, undermining all societal functions. Information forms the bedrock of all the choices, judgments, planning and actions we undertake in our daily lives. From the rudimentary task of distinguishing between healthy and unhealthy diet to the more sophisticated choices to elect the country's leadership, information plays a pivotal role.

Information holds a vital responsibility in assisting people, groups, and communities to understand the functioning of government, realise their rights and responsibilities, strengthen transparency and accountability of the public departments that curtails corruption and mismanagement, and to enable the development a collaborative relationship with their government that supplements progress. Therefore, information is recognised as a key element that opens up avenues for promoting participatory democracy and good governance.

As of today, over 90 countries around the world have enacted laws that allow access to information to ensure need based and timely access to public records. The right of access to official information is now protected by the constitutions of some 60 countries. At least 50, and arguably 57 of these expressly guarantee a "right" to

“information” or “documents”, or else impose an obligation on the government to make information available to the public.ⁱⁱ With Yemen and Brazil – the latest to join in the list of countries with FOI legislations having strengthened legislation and accompanying initiatives to promote open government, the attainment of a global access to information regime, and that too in the not so distant future, seems promising.

The shift towards high paced adoption of access to information laws, throughout the world, can be attributed to numerous factors, most prominent being Civil Society Organisations’ (CSO) campaigning efforts, recognition of information as a constitutional right, pressure of international community demanding transparency in governmental procedures, global and regional conventions and treaties on information access and the enactment of information access laws linked as a prerequisite to donor funding.

This document aims to build an understanding of why and how Right to Information is an enabling right. Chapter 1 presents conceptual underpinnings on Right to Information and depicts its connectivity with other rights and liberties. It consists of a section specifically focused on the intrinsic connection between Freedom of Expression and Information. It builds up the association of information access with democratic governance; highlighting how information can serve as a mechanism for ensuring transparency, accountability, and enable public participation.

Chapter 2 traces the Access to Information regime globally. It scrutinises the progress made on RTI at all three levels; global, regional and nation state and also presents thematic conventions that include provisions on information access. It presents RTI legal frameworks’ ranking at nation state level that discusses the legal strengths of different access to information laws to depict the major trends observed.

Chapter 3 emphasises the importance of having strong supply and demand side mechanisms to realise the full potential of RTI in a country. On the supply side, the intention is to highlight the significance of having a model Right to Information law that serves the purpose of allowing information access along with the importance of having a legislative compliance. While on the demand side factors such as awareness of citizens, support by Civil Society Organisations, Rule of Law in the country and a supportive environment in terms of political rights and civil liberties to promote an effective access to information regime are discussed.

Chapter 4 offers case studies from around the world to enable the reader in understanding the power that access to information provides in a multitude of scenarios. The case studies have been selected on the basis of their magnitude of impact, relevance to the problems of today, and connectivity with issues emerging in the current era. While we realise that it is impossible to cover all the domains and levels of impact wherein information access plays a pivotal role, however, care has been taken to highlight maximum diversity of issues through case studies wherein access to information has had significant power and had played a crucial role in determining the outcome of the problems faced by the people.

Right to Information

Conceptual underpinnings

“A little sunlight is the best disinfectant”.

Justice Lewis Brandeis

Freedom of information is a fundamental human right and the touchstone of all freedoms to which the United Nations is consecrated.

The United Nations General Assembly in 1946 Resolution 59 (1)

Understanding Right to Information as an enabling right

Before we delve further into our discourse, it is important to understand what we mean when we recognise Right to Information as an enabling right. Our perspective of this recognition stems from the resolution 59 (1) of the UN General Assembly wherein information was regarded as the cornerstone of all freedoms to which UN is consecrated. Therefore, by recognising Right to Information as an enabling right, we establish information access as granting power to the people for actualising their political, civil, economic and cultural rights and liberties. Furthermore, our discourse is based upon the premise that access to public information supplements the empowerment of citizens by inverting the power relationship between them and their governments. This power shift assigns citizens an ownership role, wherein they have the authority to monitor government’s performance, participate mean-

ingfully in its affairs, hold state departments accountable, and, thus, exercise a degree of control over the state of affairs.

It is also important to understand why we identify information as a right rather than a freedom. The following section briefly elaborates the difference.

Differentiating between Information as a Freedom or a Right

In the simplest sense freedom requires that a person's free will is allowed to be exercised without interference of any agency, while a right requires that an obligation be placed upon an agency (government) to ensure that the entitlement is granted to the citizens. At the state level, information access from public departments requires that certain laws recognise the right of citizens to information held by public bodies. Without the presence of a legal framework that sets rules and procedures for access, the demand of the citizens for access to information holds no legitimacy.

It may be argued that freedom to receive information prevents public authorities from interrupting the flow of information to individuals and that freedom to impart information applies to communications of the individuals.

It may be argued that freedom to receive information prevents public authorities from interrupting the flow of information to individuals and that freedom to impart information applies to communications of the individuals. It would thus make sense to interpret the inclusion of freedom to seek information, particularly in conjunction with the right to receive it, as placing an obligation on the government to provide access to the information it holds.ⁱⁱⁱ

The recognition of information as a right rather than merely a freedom is, therefore, crucial to placing a duty upon the governments to take concrete actions to enable citizens to access information from public departments and making informed choices. Therefore, the difference between right and freedom is an important aspect to consider, as placing information under the category of freedom entails no responsibility upon the state to provide access, but only to ensure that no hindrances, barriers or obstacles exist in the free flow of information. However, once information is categorised as a right, it places responsibility upon the state to grant citizens access to public records.

Therefore, in practice, an effective FOI law legally enshrines:^{iv}

1. The public's right to request information from the government and even private bodies in some cases;
2. The duty on the government to supply the requested information, unless defined exemptions apply; and
3. The duty on the government to disclose proactively information that is of general public interest without the need for requests from its citizens.

Note: *Right to Information and Freedom of Information will be used interchangeably during this book, both referring to the citizens' entitlement to access information from government departments.*

Right to Information – a Fundamental Human Right

Right to Information confers people the entitlement to access information from government departments. It is an enabling right that, in principle, affords all people the opportunity to access information that can be used to respect, protect, promote and fulfil other human rights.^v

Information forms a premise to recognition of what rights and liberties a person is entitled to. As Saras Jagwanth (2002) says in her article, Right to Information as a leverage right, that “given that rights are interdependent, in order to be able to exercise our rights more generally, people must be given access to information”. Without any knowledge of what rights and liberties one is entitled to, a person can neither protect his or her own interests nor those of the community and society at large.

UDHR in its preamble stresses upon the importance of information to promote respect for the rights and freedoms (constituent of the declaration), stating that:

“...every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms...”

The importance of information does not end with the mere recognition of rights; the UDHR requires commitment from individuals and societal organs to work towards the promotion of respect for the rights and freedoms enshrined therein,

through teaching and education. A person does not only need to know what rights he or she holds but also what steps are to be taken for the fulfilment of those rights.

Countries around the world enact legislations for the protection of rights and liberties; however, unless citizens are aware of the presence of these legislations, they cannot stand up for their legitimate privileges. An example to highlight the significance of information is to consider the right to vote.

Countries around the world enact legislations for the protection of rights and liberties; however, unless citizens are aware of the presence of these legislations, they cannot stand up for their legitimate privileges. An example to highlight the significance of information is to consider the right to vote. Article 21 of the UDHR states that “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives”, it is the fundamental political right and forms the basis of democratic system. Imagine a person not knowing about the right to vote, he or she needs to be informed that there is a legal entitlement that grants him or her the power to do so. More-

over, a rational choice of whom to cast vote for cannot be made unless the candidate’s past record of public services, his or her manifesto and an accurate personal profile is available to the voter. The essence of democratic selection without information would fail to be realised.

Similar situations, as in the case of right to vote, are evident whatever scenario we scrutinise; may it be right to education, right to healthcare, or right to life etc. In all of these cases both the knowledge of the existence of entitlements along with the means to actualise them is imperative for their actualisation; the role of information access is, therefore, significant for every person in every domain of his or her life.

Right to Information enabling public participation and empowerment

“A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

– James Madison

The movement towards opening up government to allow for greater public participation has been a progress that started from the classical form of democracy

wherein citizens were recognised merely as voters, thereby, only allowing them enough influence to elect the representative of their choice. This model only enfranchised the citizens when it came to voting, but allowed them no control over the subsequent behaviour of their elected representatives. With advent of time this ‘primitive’ role of citizens shifted to recognising them as customers, thereby calling on for responsiveness of government to satisfy its people by offering need based works and services. It would be hard to suggest that government should not be as responsive as possible to the needs of the citizens. and surely anything that improves the quality of the government services is a good thing.^{vi} However, with the paradigm shift from “government” to “governance” and the rise of civil society during the third wave of democratisation, the terms “civil society,” “citizen participation” and “governance” are commonly heard today.^{vii}

Participatory governance has gained substantial popularity both in academic literature and practical application. In participatory governance, government has an obligation to provide information, receive feedback and complaints, give answers, enforce disciplinary, civil, and criminal sanctions, empower citizens, confer rights of civil, political, economic and social nature on the citizen, promote social capital, facilitate participation, promote collaboration and be inclusive, equitable, responsive, open, transparent and accountable to the people.^{viii} The importance conferred to the involvement of people in governance bases its premise upon the principle that citizens are the owners of the country and, therefore, their involvement ensures that the best decisions can be made in state’s functioning.

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Information held by public authorities is not acquired for the benefit of officials or politicians but for the public as a whole.^{ix} If people do not know what is happening in their society, if the actions of those who rule them are hidden, then they cannot take a meaningful part in the affairs of that society.^x The relationship that RTI forms with good governance is fairly simple. Information regarding the functions of the public sector allows people to scrutinise the actions of the government and forms the basis for a properly informed deliberation on those actions. Having the power to know why, how and what the government does, the citizens can indulge in an informed debate to weigh the intentions and scrutinise the actions and policies of their government based upon a factual analysis. Therefore, access to information

feeds into the wider development objective of empowering people by giving them the information that can help them gain control over their own lives. This empowerment supports participatory democracy by giving citizens the capacity to engage in public debate and to hold governments and its departments accountable.^{xi}

An example of public accountability through Right to Information can be taken from an Indian grass root civil society initiative by *Mazdoor Kisan Shakti Sangathan* (MKSS). MKSS focused its work around highlighting and combating corruption in use of public funds for service delivery through obtaining information from public departments. MKSS started its work in Rajasthan's district Rajamanand in the late 80s. The innovative method used was *Jan Sunwais* (public meetings), wherein information accessed through public departments was shared with the village residents and public was invited to give testament on the discrepancies in records. "Through this direct form of "social audit", many people discovered that they had been listed as beneficiaries of anti-poverty schemes, though they had never received payment. Others were astonished to learn of large payments to local building contractors for works that were never performed".^{xii} Such revelations embarrassed officials and led to apologies, investigations and in some cases the return of stolen funds.^{xiii}

Intrinsic linkage between Freedom of Expression and Information

A crucial element without which Freedom of Information would be ineffective is its connection with Freedom of Expression. Therefore, Article 19 of both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights provide that every person shall have the right to seek and impart information.^{xiv} Furthermore, these two freedoms are also found linked together as a meta-right in other conventions, which are discussed in the next chapter.

Information, unlike other rights such as health and education, does not provide a tangible outcome by itself. Therefore it is not an end but a means to get things done. The likelihood of gaining access to information is dependent thoroughly upon the linkage that RTI has with freedom of expression. The role of Civil Society Organisations in general and media organisations in particular, to allow people the leverage to disseminate their view points to a broader audience more effectively is nevertheless indispensable for positive change to take place. A free flow of information does not only allow the media to keep an eye on the government but also

enables the citizens to play the role of a watchdog itself through acquiring timely news. Therefore, to say that both Freedom of Expression and Right to Information are mutually supportive of each other is unmistakably true.

Moreover, the ability of individuals, interest groups, and organisations to actively participate in political debates deciding issues on the public agenda, as well as the very possibility of placing issues on that agenda, is inextricably linked to their ability to obtain relevant information.^{xv}

The pressure group formed as a result of an organised advocacy can prevent the government from taking decisions, actions and devising policies that people do not support. This ensures the abidance of governmental actions as per the obligations enunciated in the legal framework, i.e. laws, policies and procedures. The government is apt to become more responsible for its actions, and responsive to the needs of the general masses.

But for the realisation of this meta-right, i.e. Freedom of Expression and Freedom of Information, as Article 19 calls it, a legal and regulatory environment must prevail that allows for an open and pluralistic media sector to emerge. Political will to support the sector and rule of law to protect it must also exist. There should also be a law that ensures practical access to information, especially information in the public domain.^{xvi}

Access to Information Regime A global Perspective

“Making good use of both moral and efficiency claims, the international freedom-of-information movement stands on the verge of changing the definition of democratic governance. The movement is creating a new norm, a new expectation, and a new threshold requirement for any government to be considered a democracy.”

*Thomas S. Blanton,
“The World’s Right to Know”,
Foreign Policy, July/August 2002*

Freedom of Information Law – global regime

Freedom of Information was referred to as a fundamental right for the first time in Resolution 59 (I) of the UN General Assembly’s very first session, wherein it was stated that: “Freedom of Information is a fundamental human right and... the touchstone of all the freedoms to which the United Nations is consecrated.”

Universal Declaration of Human Rights (UDHR): The UDHR, which was adopted by the UN General Assembly on December 20, 1948, recognises freedom to seek, receive and impart information as included under freedom of opinion and expression in Article 19:

“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.”

International Covenant on Civil and Political Rights (ICCPR): The ICCPR was adopted by the UN General Assembly on December 16, 1966. The Covenant specifically focuses on elaborating both Civil Liberties and Political Rights enshrined in the UDHR. Article 19 (2) of the covenant focuses on Freedom of Expression and Information:

“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.”

United Nations Convention Against Corruption (CAC): This convention entered into force on December 14, 2005. There are 140 signatories and 160 parties to this convention.

Article 10 of the convention “Public Reporting” talks about Freedom of Information, stating:

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organisation, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organisation, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters: Also known as Aarhus Convention, named after the Danish city where it was adopted in 1998, is the world's leading international instrument on citizens' environmental rights. The convention is functional in Europe and has three broad pillars: information, participation and justice. Access to information is referred to in Article 1: Objective, wherein it is stated that:

“In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”

Article 5(1) (c) of the aforementioned Aarhus Convention, dealing with environmental information, provides:

“In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by public authority is disseminated immediately and without delay to members of the public who may be affected.”

Right to Information in Regional Systems of Human Rights: All three main regional systems of human rights – within the Americas, Europe and Africa – have formally recognised the importance of Freedom of Information as a human right.^{xvii}

American Convention of Human Rights: The convention was signed at the Inter-American Specialised Conference on Human Rights, San José, Costa Rica on November 22, 1969. Article 13 of the convention, Freedom of Thought and Expression, states that:

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.^{xviii}

European Convention on Human Rights: The European Convention on Human Rights^{xix} was drafted in 1950 by the Council of Europe and entered into force in

September 1953. Article 10 of the convention includes provision on Freedom of Information and Expression:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

African (Banjul) Charter on Human and Peoples' Rights: Article 9 of the Banjul charter^{xix}, adopted in 1981, encompasses both right to receive and freedom to impart information, stating that:

1. *Every individual shall have the right to receive information.*
2. *Every individual shall have the right to express and disseminate his opinions within the law.*

Apart from these international and regional conventions, International Financial Institutions, such as IMF, World Bank and Asian Development Bank etc, have also adopted laws allowing for access to information. It is worthy to note that the Right to Information has been linked with Freedom of Information in most of the conventions and treaties that we discussed earlier. It is better to clarify why these two are so closely related.

State level legislations on RTI

The world's first national Freedom of Information legislation was adopted by the Swedish parliament in 1766 (Freedom of the Press Act: Tryckfrihetsförordningen).^{xxi} Finland enacted its law "Act on the openness of government activities" in 1951; the United States enacted its Freedom of Information Act in 1966; Denmark and Norway in 1970; France in 1978; and Canada, Australia and New Zealand in 1982.^{xxii}

Freedom of Information (FOI) regime has gained a stupendous momentum in the global arena during the past two decades. While only 13 countries granted citizens the right to access information in 1990, today more than 90 countries have laws that grant right to information held by public bodies.^{xxii}

The list of countries with legislation on access to information is given below:^{xxiv}

Sr #	Country	Formal Approval	Came into Power	Latest Revision	Name of FOIA law
1	Albania	1999	1999		Law on Right to Information for Official Documents
2	Angola	2002	2006		Access to Administrative Documents
3	Antigua/ Barbuda	2004	2004		Freedom of Information Act
4	Armenia	2003	2003		Law on Freedom of Information
5	Australia	1982	1982	2009	Freedom of Information Act
6	Austria	1987	1987	2005	Federal Law on the Duty to furnish Information
7	Azerbaijan	2005	2005		Law on Access to Information
8	Bangladesh	2008	2009		Right to Information Act
9	Belgium	1994	1994	2000	Law on the Right of Access to Administrative Documents ...
10	Belize	1994	1994		Freedom of Information Act
11	Bosnia & Herzegovina	2001	2002		Freedom of Access to Information Act
12	Brazil		2012		Access to Information Act
13	Bulgaria	2000	2000		APIA: Access to Public Information Act
14	Canada	1982	1983	2006	Access to Information Act
15	Chile	2008	2009		Law of Transparency of the Public Function and Access ...
16	China	2007	2008		Open Government Information Regulations

17	Colombia	1985	1985	1998	Law ordering the Publicity of official Acts and Documents
18	Cook Islands	2009			Official Information Act
19	Croatia	2003	2003		Act on the Right of Access to Information
20	Czech Republic	2000	2006		Law on Free Access to Information
21	Denmark	1970	1970	2009	Access to Public Administration Files Act
22	Dominican Republic	2004	2004		Law on Access to Information
23	Ecuador	2004	2004		Organic Law on Transparency and Access to Public Information
24	Belgium	2010	2011		Ley de Acceso a la Información Pública
25	Estonia	2000	2001	2009	Public Information Act
26	Ethiopia	2010	2010		Freedom of Access to Information Act
27	Finland	1951	1951	2009	Act on the Openness of Government Activities
28	France	1978	1978	2010	Law on Freedom of Access to Administrative Documents
29	Georgia	1999	2000	2001	General Administrative Code Chapter III, Freedom of Information
30	Germany	2005	2006		Federal Act Governing Access to Information
31	Greece	1986	1986	1999	Code of Administrative Procedure
32	Guatemala	2008	2009		Law for Free Access to Public Information

33	Guinea [Conakry]	2010			Organic Law on the Right of Access to Public Information
34	Honduras		2006		Transparency and Access to Public Information Law
35	Hungary	1992	1992	2010	Act on the Protection of Pers. Data and Public Access to..
36	Iceland	1996	1997	2010	Information Act
37	India	2005	2005		RTI: Right to Information Act
38	Indonesia	2008	2010		Freedom of Information Law
39	Ireland	1997	1998	2003	Freedom of Information Act
40	Israel	1998	1999	2009	Freedom of Information Law
41	Italy	1990	1990	2005	Law on Administrative Procedure and the Right of Access to Information
42	Jamaica	2002	2004	2004	Access to Information Act
43	Japan	1999	2001	2003	Law concerning Access to Information
44	Jordan	2007	2007		Access to Information Law
45	Kosovo	2003	2003		Law on Access to Official Document
46	Kyrgyzstan		2007		Access to Information Law
47	Latvia	1998	1998	2006	Law on Freedom of Information
48	Liberia	2010			Freedom of Information Act
49	Liechtenstein	1999	2000		Information Act
50	Lithuania	2005	2005	2005	Law on the Provision of Informa- tion to the Public
51	Macedonia	2006	2006	2010	Law on Free Access to Informa- tion of Public Character
52	Mexico	2002	2003	2006	Fed. Transparency and Access to Publ. Govt. Information Law

53	Moldova	2000	2000	2003	Law on Access to Information
54	Montenegro	2005	2005		Law on Free Access to Information
55	Nepal	2007	2009		Right to Information Act 2007
56	Netherlands	1978	1980	2009	Wob: Act on Public Access to Government Information
57	New Zealand	1982	1983	2003	Official Information Act
58	Nicaragua		2007		Law on Access to Public Information
59	Niger		2011		Charter on Access to Public and Administrative Documents
60	Nigeria		2011		Freedom of Information Law
61	Norway	1970	1970	2006	Freedom of Information Law
62	Pakistan	2002	2002		Freedom of Information Ordinance
63	Panama	2001	2002		Law on Transparency in Public Administration
64	Peru	2002	2003	2003	Law of Transparency and Access to Public Information
65	Poland	2001	2002		Law on Access to Public Information
66	Portugal	1993	1993	1999	Law on Access to Administrative Documents
67	Romania	2001	2001	2007	Law on Free Access to Public Information
68	Russia	2009	2010	2011	Fed. Law on providing Access to Information
69	Serbia	2004	2004	2007	Law on Free Access to Information of Public Importance
70	Slovak Republic	2000	2001	2010	Act on Free Access to Information

71	Slovenia	2003	2003	2010	Access to Public Information Act
72	South Africa	2000	2001		Promotion of Access to Information Act
73	South Korea	1996	1998	2004	Act on Disclosure of Information by Public Agencies
74	St Vincent & Grenadines	2003			Freedom of Information Act
75	Sweden	1766	1766	1976	Freedom of the Press Act
76	Switzerland	2004	2006		Federal Law on the Principle of Administrative Transparency
77	Taiwan		2005		Freedom of Government Information Law
78	Tajikistan	2002	2002		Law on Information
79	Thailand	1997	1997		Official Information Act
80	Trinidad & Tobago	1999	2001		Freedom of Information Act
81	Tunisia	2011	2011		Decree on Access to Administrative Documents
82	Turkey	2003	2004		Law on Right to Information
83	Uganda	2005	2006		Access to Information Act
84	Ukraine	1992	1992	2011	Law on Information
85	UK	2000	2005		Freedom of Information Act
86	USA	1966	1967	2007	Freedom of Information Act
87	Uruguay	2008	2009		Law on the Right of Access to Public Information
88	Uzbekistan	1997	1997	2003	Law on the Principles and Guarantees of FOI
89	Yemen	2012			Access to Information Law
90	Zimbabwe	2002	2002	2007	Access to Information and Privacy Protection Act

Variance in Right to Information's legal framework across states

Having enacted an Access to Information legislation does not ensure uniformity in public departments of those countries to allow for an effective access to information. All the countries have laws that vary greatly in different aspects and provisions and, therefore, fall at different levels when gauged on international standards. The most recent and comprehensive study measuring the strength of legal framework (not quality of implementation) for guaranteeing right to information has been conducted by Access Info Europe (Spain) and the Centre for Law and Democracy (Canada) in 2011.^{xv} This study has been based upon data obtained from 89 countries, wherein 61 indicators were measured under the following seven categories:

1. Right of Access
2. Scope
3. Requesting Procedures
4. Exceptions and Refusals
5. Appeals
6. Sanctions and Protections
7. Promotional Measures

The main findings of the rating are as follows:

1. The top 20 countries with scores over 100, except for Finland, had comparatively younger laws (average age of just five years). Thus, depicting improvement in international standards and sophistication in the field of RTI;
2. Two third of the countries fell in middle range, i.e., 60–100 points;
3. Serbia topped the list with the best RTI legislation, scoring 130 points out of a total of 150 maximum points;
4. Austria scored the least with only 39 points.

For a complete scoring list please see Annex: 1.

The next section looks at the factors that are responsible for an effective RTI regime to take hold in a country. Without the presence of these features, RTI cannot prove to be an enabling right.

Factors complementing RTI as an enabling right

“Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked”.

UN Special Rapporteur

Strong Supply and Demand Side of RTI

Academic literature as well as experience from around the world suggests that ensuring an effective Right to Information regime broadly requires both a strong legislative mechanism on the supply side and a strong demand side seeking access. The weakness in any of these sides disallows the Right to Information to be actualised in the true spirit.

Ensuring the success of an Access to Information law is a matter of co-responsibility.^{xxvi} This means that on the supply side the responsibility for granting access to information rests with the governmental departments and state bureaucracy to legislate an effective RTI law and offer an environment conducive to practical realisation of this right. On the demand side, the role of citizens and CSOs is equally important to generate a strong demand for information release. In other words, the

demand and supply sides must match, and where they intersect will determine the quality of the transparency regime.^{xxvii}

This section presents a concise discourse on both the supply and demand side dynamics with respect to strengthening RTI regime and to assist the reader in understanding the significance of these elements in unleashing the power of RTI and recognising why their presence is vital.

A. Supply Side

I. A Model Right to Information law

Being a signatory to international conventions and treaties or even having constitutional provisions that grant access to information do not imply that citizens can access information. At the state level, RTI Legislation needs to be enacted to provide legitimacy to citizens' information requests and to obligate public departments to release information. However, in their 2004 Joint Declaration, the three special mandates on Freedom of Expression at the UN, OSCE and OAS stated:^{xxviii}

The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible, subject only to a narrow range of exceptions.

This joint declaration serves two main purposes. Firstly, it recognises that RTI should be given effect in a country through a comprehensive legislation and, secondly, that the legislation should be comprehensive and allows for maximum disclosure with only a limited set of exemptions.

This joint declaration serves two main purposes. Firstly, it recognises that RTI should be given effect in a country through a comprehensive legislation and, secondly, that the legislation should be comprehensive and allows for maximum disclosure with only a limited set of exemptions. The declaration is important as it highlights two major provisions for an effective RTI legislation, however, having maximum disclosure and narrow system of exemptions are the basic elements of a RTI legislation. To devise a RTI law, however, requires that a comprehensive set of rules and procedures are drafted.

This comprehensiveness allows both citizens and the governmental departments to understand their requirements to facilitate a free flow of information.

The most comprehensive set of principles for a model RTI law have been developed by Article 19 in 1999.^{xxix} These principles have also been endorsed by Abid Hus-sain, UN Special Rapporteur on Freedom of Opinion and Expression. These principles along with brief comments for understanding are presented hereunder:

PRINCIPLE 1. MAXIMUM DISCLOSURE

Freedom of Information legislation should be guided by the principle of maximum disclosure.

This principle means that the FOI legislation should allow for access to all the information held by government departments except for a limited set of exceptions as prescribed in Principle 4. .

PRINCIPLE 2. OBLIGATION TO PUBLISH

Public bodies should be under an obligation to publish key information.

The law should allow for the proactive dissemination/ publication of information held by the government departments as per the interests of the citizens with the department.

PRINCIPLE 3. PROMOTION OF OPEN GOVERNMENT

Public bodies must actively promote open government.

This principle places an obligation upon the government to take measures that promote the access to information regime more effectively. Recommended measures include public education about the presence of the legislation and the way it is to be exercised, awareness and training to the public servants to assist the public in granting access and tackling the culture of secrecy and offering protection to whistle-blowers, i.e. the people who speak up to highlight the wrongs in their organisations

PRINCIPLE 4. LIMITED SCOPE OF EXCEPTIONS

Exceptions should be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests.

This principle includes two important elements. Firstly, access to information should only be blocked if the information does not meet a strict three-part test:

The three-part test

1. the information must relate to a legitimate aim listed in the law;
2. disclosure must threaten to cause substantial harm to that aim; and
3. the harm to the aim must be greater than the public interest in having the information.

Secondly, no public department should be completely excluded from the ambit of this law, even if most of the information it holds falls into exceptions as per the three-part test.

PRINCIPLE 5. PROCESSES TO FACILITATE ACCESS

Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.

This principle stresses upon the presence of a strict time limit for processing requests and, in case of denial of information an independent review authority must be present to fairly deal with the matter. The law should allow for three staged evaluation: within the public body, appeals to independent administrative body and appeals to the courts.

PRINCIPLE 6. COSTS

Individuals should not be deterred from making requests for information by excessive costs.

Unnecessarily elevated costs to deter citizens from making access to information requests should be avoided. This would ensure that citizens would not be hindered due to fee charges associated with information requests.

PRINCIPLE 7. OPEN MEETINGS

Meetings of public bodies should be open to the public.

Transparency, public participation and open governance form the basis of access to information access regime. Therefore, this principle calls for open meetings of public bodies which citizens could attend as well. Notice of the meetings should be publicised in advance so that attendance could be ensured. In cases where meetings cannot be open, reasons for closure must be publicised.

PRINCIPLE 8. DISCLOSURE TAKES PRECEDENCE

Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.

The regime of exceptions provided for in the Freedom of Information law should be comprehensive and other laws should not be permitted to extend it. Over the longer term, a commitment should be made to bring all laws relating to information into line with the principles underpinning the Freedom of Information law.

PRINCIPLE 9. PROTECTION FOR WHISTLE-BLOWERS

Individuals who release information on wrongdoing – whistle-blowers – must be protected.

Provision to guarantee the protection of people who release information of commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body must be a part of the FOI legislation.

II. Ensuring Compliance with legislation

Even with the presence of RTI legislation in a country, non-compliance and discrimination in response to access to information requests are prevalent. Based upon 1926 information requests, a study, “Transparency and Silence”, conducted by Open Society Justice Initiative^{xxx} in 14 countries¹ during 2004, wherein all of the requests made pertained to the information that government departments hold or should hold. Following are a few of the findings relevant to our discourse:

1. **Discrimination plays a role:** People from excluded or vulnerable groups received much less response to their information requests (11 percent of the time) than those who identified themselves as business persons (19 percent of the time) or those who presented themselves as Journalists or NGO representatives (26–32 percent of the time);
2. **Civil society involvement helps:** Countries with more NGO involvement at the time of drafting, adopting and implementing the law had a better response rate than those that did not;
3. **Requests often met with silence:** 38 percent of requests made in countries with Freedom of Information laws remained unanswered.

¹ Countries included: Argentina, Armenia, Bulgaria, Chile, France, Ghana, Kenya, Macedonia, Mexico, Nigeria, Peru, Romania, South Africa and Spain.

Given the findings of the study, it may be recommended that governments should ensure that responsiveness must be made mandatory upon the public officials, irrespective of the profession and social or economic class of the person making the RTI request. Secondly, culture of secrecy in the government must be dismantled. Furthermore, government departments must realise that open government does not only facilitate the citizens, but also serves as an important tool in building the trust of the people towards the government. Fourthly, civil society must play an active part in advancing the RTI movement within a country during all the stages, from development of legislation to its implementation. Also, government officials must be imparted training and adequate resources have to be allocated to ensure that they can absorb the core spirit of RTI, be aware of their obligations in that respect and are not hindered by lack of resources. Governments have to maintain organised information records to serve the public's request for information with maximum speed and efficiency. .

B. Demand side

“Notwithstanding the emphasis on the ‘supply side’, ensuring the success of an [Access to Information] law is a matter of co-responsibility. Not all the burden lies with government: citizens, civil society and community organisations, media, and the private sector must take responsibility for monitoring government efforts and using the law. Without an adequately developed demand side, the law is likely to wither on the vine.”^{xxxii}

Unless a strong demand side to seek information from the public departments is intact, the access to information law fails to deliver any significant impact. The strength of the demand side is proportional to the number of information requests submitted by the citizens of the country. Many factors support or hinder the demand side dynamics, including the following:

A. Awareness of citizens of the presence of access to information law: The most prevailing problem hampering the emergence of a strong demand side, especially in the less developed countries, is the lack of awareness regarding the presence of access to information laws. This deficit of awareness can either be uniformly spread within the citizens or vary with respect to age, educational level, geographical setting (rural vs urban) and even on the basis of gender. A 2009 Research study conducted by the Indian government iden-

tified only 33 percent of the people having awareness of the RTI.^{xxxii} The 2008 Scotland's report on awareness of access laws points out that overall awareness stands at 78 percent, this figure falls to 69 percent for the elderly, 68 percent for those with disabilities, and 66 percent for people aged 18–24.^{xxxiii} Government, media and NGOs all have a significant role to play in generating awareness of people of the Right to Information.

B. Civil society support: As mentioned earlier, civil society plays a crucial role in facilitating a strong demand side of RTI. Another factor deterring the access to information is the inadequacy of information on how to actually file an information request, which is again more prevalent in the less developed countries. Very often people want to file an RTI request but they do not know how to do so or where to go to file it. People require to be assisted and trained on filing information requests and a major responsibility in this aspect is placed upon civil society organisations. NGO campaigns can train people and enable them to identify the connection of their problems with accessing information from specific departments and then assist them throughout the process. Media can disseminate the results of information access on a broader scale and support the actualisation of RTI as an enabling right for people on the one hand, while encouraging the information seekers by portraying their positive image in society that could inspire others to follow.

C. Rule of law in the society: The presence of adequate measures to safeguard information seekers is of pivotal importance. More than often, people refrain from submitting information requests due to the fear of government authorities, especially in cases where government performance and credibility is being questioned. In India alone, at least 12 RTI activists have been murdered for seeking information since 2010.^{xxxiv} It is important that legal protection must be provided to those seeking information. Otherwise, incidents where lives of the people are at risk because they dared to ask for information from the state authorities, are apt to deter others from exercising their right to access information.

D. Enabling environment: While access to information serves as enabling the actualisation of other rights and liberties, it can also be argued that the situation of civil liberties and political rights are a determining factor in gener-

ating an elevated demand for access to information. The common factor prominently evident in free nations around the world today is a facilitative environment, guaranteeing protection of civil liberties and political rights. Citizens of countries with adequate measures to safeguard their political rights and civil liberties are better informed and vigilant as to keep a check on their governmental actions than those who have their rights and liberties inadequately safeguarded by their own governments.

The following section aims to provide empirical evidence to this argument by observing the relationship between volume of freedom of information requests and freedom in the world according to the categorisation as per Freedom in the World survey.

A strong relationship between volume of information requests and freedom ranking² on Freedom in the World (FIW) survey³ – measuring both political rights and civil liberties – is evident when the data is cross tabulated for top 20 countries with highest information request per year per 100,000 inhabitants in 2011.⁴

² The ranking of freedom is from one to Seven, with one being most free and seven being the least free

³ The Freedom in the World survey provides an annual evaluation of the progress and decline of freedom in 195 countries and 14 related and disputed territories. The survey, which includes both analytical reports and numerical ratings, measures freedom according to two broad categories: political rights and civil liberties. Political rights ratings are based on an evaluation of three subcategories: electoral process, political pluralism and participation, and functioning of government. Civil liberties ratings are based on an evaluation of four subcategories: freedom of expression and belief, associational and organisational rights, rule of law and personal autonomy and individual rights. Each country is assigned a numerical rating from one to seven for both political rights and civil liberties, with one representing the most free and seven the least free.

⁴ Roger Vleguels' biweekly journal "Fringe Overview", October 9, 2011. The author says that this section is a bit outdated, experimental and based on a not matured, not balanced methodology. A lot of countries are not represented in this part of the overview because there are simply no request volume figures available or they are totally unreliable. The quality of the figures represented in this section is poor. Most sources that produce figures produce doctored figures. This is done by govt sources, campaigners, lobbyists and practitioners for political or propaganda reasons. Even figures produced by academics are often not wholly accurate, for instance because of a too small research scope.

Sr #	Countries	No. of Requests per year per 100,000 inhabitants	Political Rights	Civil Liberties	Status
1	Norway	1250	1	1	F (Free)
2	USA	492	1	1	F
3	Ireland	125	1	1	F
4	Bulgaria	120	2	2	F
5	Canada	106	1	1	F
6	Mexico	98	3	3	PF (Partially Free)
7	Japan	80	1	2	F
8	UK	72	1	1	F
9	Romania	68	2	2	F
10	Croatia	67	1	2	F
11	Turkey	56	3	3	PF
12	Israel	46	1	2	F
13	South Africa	45	2	2	F
14	Macedonia	30	3	3	PF
15	Australia	20	1	1	F
16	Jamaica	17	2	3	F
17	Finland	10	1	1	F
18	Peru	9	2	3	F
19	Netherlands	8	1	1	F
20	Serbia	7	2	2	F

As evident from the table, out of the top 20 countries with highest volume of information requests only three are partially free, while 17 are most free. Another important point to note here is that only four of the twenty countries have one point difference in freedom rating between political rights and civil liberties while the score of the rest of the 16 are completely identical. This is leading us to another conclusion, that civil rights and political liberties go hand in hand and progress in one aspect is dependent on the development of the other.

On the other hand, when we scrutinise the data available for the least free countries in the FIW survey, only nine out of 55 countries – Azerbaijan, China, Ethiopia, Jordan, Russia, Tajikistan, Tunisia, Uzbekistan, Zimbabwe – that are not free have an access to information legislation. Uzbekistan is the only state out of the worst ranking ten countries⁵ on FIW survey to have a legislation allowing Information access.

The number of information requests made in least free countries is also very low. The data available for five countries out of nine with information access legislations, under least free category, depicts all of them having less than one request per 100,000 inhabitants per year.

⁵ The least free countries as per 2011 report of FIW survey include: Burma, Equatorial Guinea, Eritrea, Libya, North Korea, Somalia, Sudan, Tibet, Turkmenistan and Uzbekistan.

Right to Information case studies

“Access to public records gives citizens the opportunity to participate in public life, help set priorities, and hold their governments accountable. A free flow of information can be an important tool for building trust between a government and its citizens. It also improves communication within government to make the public administration more efficient and more effective in delivering services to its constituency. But, perhaps most importantly, access to information is a fundamental human right and can be used to help people exercise other critical human rights, such as clean water, healthcare, and education. Access to information has been more recently recognised as an instrument that can be utilised to fight poverty in developing nations.”

The Carter Center

Recognising the Right to Information as an enabling right calls for deciphering the multitude of possibilities and benefits that can be derived out of it. This section offers a collection of case studies from different countries around the world that portray a variety of ways in which RTI has been utilised to directly or indirectly gain benefit, curtail harm or expose malpractices.

These case studies offer an elaboration of power of RTI in a systemised format. Each case study starts with an explanation of the right or the issue that access to information addresses in a broader perspective, outlining the major conventions and declarations that legitimise it. It then goes on to explore the background of the case study and offers a perspective at the national or local level at which the case study pertains. Next it highlights the role of information access in the case and at the end offers comments to outline important points for further understanding of the reader.

1. Right to Food: A young boy in Gujarat, India, utilises the power of RTI to help villagers get their food rations

The most basic of all human rights and needs is a right to have an adequate food supply that meets the individual's dietary needs. The multidimensionality of food insecurity is a widespread phenomenon. People around the world suffer from both chronic and seasonal food insecurities. As per FAO figures, the number of people suffering from chronic hunger in 2010 was 925 million worldwide.^{xxxv} The first Millennium Development Goal, recognising the dire need to address this catastrophe, attempts to eradicate extreme poverty and hunger by 2015, setting a target to reduce by half the proportion of people who suffer from hunger.

The first Millennium Development Goal, recognising the dire need to address this catastrophe, attempts to eradicate extreme poverty and hunger by 2015, setting a target to reduce by half the proportion of people who suffer from hunger.

There have been numerous landmark attempts, in the form of global conventions and treaties, to form a worldwide alliance to tackle the issue of hunger. States forming a party to International Covenant on Economic, Social and Cultural Rights are legally bound to ensure that steps are taken to respect, protect, facilitate and fulfil the Right to Food. Article 11 (Section 1) of ICESCR thus states that: *"The States party to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing..."* and also recognises *"the fundamental right of everyone to be free from hunger..."*.

Article 25 of the UDHR covers the Right to Food under broader parameters to ensure a standard of living that enables everyone to maintain health and well-being, stating that:

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The UN's committee on ESCR on 12 May, 1999 states in its general comment 12: Right to adequate Food, paragraph 5: "Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, inter alia because of poverty, by large segments of the world's population."

Background

This case study pertains to the state of Gujarat in India. Gujarat is a relatively well off state figuring among the top six states for per capita State Domestic Product. In a study done by Abusaleh Shariff, chief economist at the National Council for Applied Economic Research (NCAER), Gujarat surprisingly emerges as a state with high levels of hunger, while simultaneously boasting high per capita income and consistent income stability.^{xxxvi} To support people living in hunger, the state government issues food ration cards that correspond to the varying degrees of economic level of its citizens by categorising them as either Above Poverty Line (APL) or Below Poverty Line (BPL).

Case study

Our first case study deals with access to food question and takes into account the efforts of an 18 year old boy from India, utilising the power of Right to Information, to assist his villagers gain access to their rightful food and, more importantly, stimulate the state government to take a policy decision on the same.

The state government of Gujarat has to date issued nearly almost 9 million Above Poverty Line (APL) cards and 3.6 million Below Poverty Line (BPL) cards. In the latter category, about 8,000,000 cards fall under the Antyodaya Anna Yojna (AAY), which caters to the poorest of the poor. So, in all, nearly 13.3 million ration cards have been issued in the state to ensure the availability of wheat, rice, sugar and kerosene to the poorer sections of society at highly subsidised rates.^{xxxvii}

Bhadresh Wamja of Saldi village, at around 225 km from Gandinagar, Gujrat's state capital is a B.Com student. Falling in APL category, Bahdresh's family was entitled to receive 10 kg wheat (at Indian Rupees (INR) 10 per kg), 2 kg rice (at INR 7.25 a kg) and 2 litres of kerosene per person (at INR 12.53 to INR 13.43 a litre).^{xxxviii} On hearing his friends complain of never getting their rations, Bahadresh visited the fair price shop to try out his own ration card. Shopkeeper informed him that he had not received any stocks from the government for many months past. In February 2011, Wamja filed an application with the *tehsildar*, that is to say the district officer, but before inspection the shopkeeper had already moved the stock out of the shop. Wamja phoned an NGO in Ahmedabad which advised him to file a right-to-information request with the deputy *tehsildar* and make a police complaint. He also visited the office of the district supply officer (DSO) where he found out to his utter shock that the shopkeeper was supplied with 8,306 kg of wheat as regular supply and 1,599 kg as extra wheat between August 2010 and January 2011. According to the documents, the shopkeeper had supplied the entire stock to ration card holders, which indicated that the shopkeeper was lying to the villagers.⁶ The *tehsildar* was forced to investigate again, and he found that nine out of ten villagers had received nothing. Clearly, rations had been diverted. An adverse report was filed, an inquiry held, and the shopkeeper forced to mend his ways.^{xxxix}

In an order, dated March 4, 2011, the Food, Civil Supplies and Consumer Affairs Department directed all *tehsildars* and fair price shop licensees in Gujarat to proactively disclose ration supply information on the walls of fair price shops as well as at the tehsil level.^{xi}

Comments

This case study on the power of Right to Information has many dimensions.

1. The sense of responsibility that Wamja felt when hearing the plea of his friends is a point worth considering. It is a matter of active citizens to take charge in situations where others are in need;
2. To go undeterred while facing continuous threats, also requires courage in countries such as India, where RTI activists are even murdered during the pursuit of information access; "I was threatened several times, but I did not give up and kept up the fight. However, some of my relatives intervened to bring about a compromise", Bhadresh said;^{xli}

⁶ Ibid.

3. It also displays the significant role that NGO in Ahmedabad played in guiding Wajma to file the information request, without which the matter would have been left unresolved;
4. The responsive attitude of the Food, Civil Supplies and Consumer Affairs Department is worth noting. Once the problem was highlighted by the media, government used its authority to place appropriate legislation so as to curtail the happening of such incidents in the future.

2. Freedom from Discrimination (Religious Discrimination): Access to Information exposes New York Police Department's religious discrimination

The UDHR states in its Article 1 that *“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”* Equality before law and freedom from discrimination are the fundamental principles over which both ICCPR and ICECSR are structured. A comprehensive elaboration of what discrimination means can be recognised through General Comment 18, Paragraph 7 of the ICCPR:

The UDHR states in its Article 1 that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

“Any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”.

Article 2 of the UDHR states

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory

to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

Background

Terrorism as an evil has afflicted humanity for centuries but it assumed global dimension as a scourge of the new millennium only after the 9/11 tragedy.^{xlii} USA's lead war on terror has shifted the nature of global relations and has affected the lives of millions around the world, especially in the Muslim world. The heinous attacks of 9/11 have also had negative repercussions for Muslims residing within the USA who had no connections with these attacks. They have been subjected to hate, violence and discrimination in the American society. As per Thomas Perez, the assistant U.S. attorney general for civil rights, there has been a 150 percent jump in workplace discrimination against Muslims since 2001, often over religious dress and worship schedules, while Muslim youth can often become the victims of school yard bullying.^{xliii} While these acts of violence and discrimination by the non Muslim Americans are worrying, a few of the incidents highlighting the US government's discrimination on the basis of religion are the most troubling.

Case study

As per statistical figures of 2012, around 2.6 million Muslims live in the United States.^{xliv} The state's policies, if based on religious discrimination for the Muslims, are apt to have serious implications on the lives of this huge population. In this case study we look at how Freedom of Information helped unveil anti-Muslim sentiments ignited during counter-terrorism training given to around 1500 New York Police Department (NYPD) officers during 2010.

The news of NYPD officers being shown an anti-Muslim film during a counter-terrorism training was first revealed in January 2011 by *Village Voice*, a free weekly newspaper and news and features website in New York City. The whistle-blower was a non-Muslim NYPD officer who received the training. The film used in the training was "*The Third Jihad*", a 72 minutes of gruesome footage depicting Muslims as working secretly to impose a religious order in the USA. The film showed militants shooting Christians in the head, car bombs exploding, executed children lying covered by sheets and a doctored photograph of an Islamic flag flying over the White House.^{xlv} The high level of propaganda inflicted through this movie is evident from the comments of one of the trainees who after watching the footage said, "After it was over, I was thinking, 'What was that? It was so ridiculously one-sided. It just made Muslims look like the enemy. It was straight propaganda.'" ^{xlvi}

Initially the NYPD denied that such a film had been shown, however, when documents were obtained through Freedom of Information from the Police department they revealed that “*The Third Jihad*”, which includes an interview with Commissioner Raymond W. Kelly, was shown according to internal police reports, “on a continuous loop” for between three months and one year of training. During that time, at least 1,489 police officers, from lieutenants to detectives to patrol officers, had seen the film.^{xlviii}

This information attracted severe criticism from different segments of society, especially media, Muslim community members and ethnic and interfaith groups in USA. Faced with pressure, New York City Police Department’s Commissioner Raymond Kelly took an apologetic stance saying that: “I offer my apologies to members of the Muslim community, in particular, who would find the film inflammatory and its airing on department property, though unauthorized, to be inappropriate.”

Comments

1. This case study highlights how RTI act can be exercised to extract sensitive information from high profile government departments such as NYPD in USA;
2. The facts derived from the information request opens up room for people in USA as well as around the world to question the discriminatory actions of the US government on religious basis;
3. The case study highlights the importance of whistle-blowers to inform the public of acts that are not in accordance with moral and legal standards;
4. The most important point to consider is the supremacy of law that is evident in this scenario. While on the one hand the facts extracted make the situation look bad, however, on the other hand it highlights the primacy of law that is not hindered even knowing that releasing such information is apt to bring a bad name to NYPD, the largest police department in the USA. This is an encouraging feature of American RTI regime.

3. Freedom from Discrimination (Racial Discrimination): Access to Information Request exposes the extent of racism in Met Police Department

Article 2 of the UDHR confers equality of rights and freedoms irrespective of any discrimination.

The most thorough international instrument specifically dealing with racial discrimination is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted in 1965. The convention defines racial discrimination as

“Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

More importantly for our following case study, the preamble of the ICERD, along with moral, historical and scientific arguments to oppose racism, considers that *all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination. The convention places responsibility upon its member states to prohibit and eliminate racism in all its forms.*

Background

Cases of racism have been prominent in Met Police department for over a decade. As per the *Guardian's* (a leading newspaper in the United Kingdom) statistics, 51 complaints related to allegations of racism have been made to the Labour Chair of London's Police and Crime Committee, the police watchdog, in just two months (April–May 2012).^{xlix}

Case study

Channel 4 News obtained the figures of racist incidents in Met Police through Freedom of Information Act. The information received reveals that between 1999 and 2011:

- 120 police officers at the Metropolitan Police were found guilty of racist behavior;

- Of these, 21 received some kind of sanction, most commonly a fine;
- Six were forced to resign;
- Just one police officer of the 120 was dismissed.

According to the data, the majority (79) were police constables, 13 were police sergeants, four were detective inspectors and four were detective chief inspector and of higher rank.ⁱⁱ

The Met is now working with the Independent Police Complaints Commission (IPCC) to investigate the string of allegations which include the bullying of PCSOs by a number of police officers and staff over an 18-month period in Wandsworth, an assault involving five officers from the Territorial Support Group against several youngsters in Hyde Park last year and racist language by a Police Constable (PC) working in Westminster and by another PC in Islington.ⁱⁱⁱ

A secret Metropolitan police report warned police chiefs that they needed to take tougher action to stop officers discriminating against black people, and that a failure to do so would threaten a breakdown in community confidence. The report, obtained by the Guardian, warned top officers that innocent African-Caribbean people were being stopped too often by officers, who wrongly “racially stereotyped” them as criminals.ⁱⁱⁱ

The revelation of racist incidents in Met police has highlighted the issue in the public and has ignited a fury of criticism towards the department. As Yvette Cooper, Shadow Home Secretary and Minister for Women and Equality, said: “These allegations must be taken extremely seriously by the Metropolitan Police Service, the Crown Prosecution Service and the IPCC. The police must ensure there is zero tolerance of racism in their ranks, and must act fast to deal with any suggestion of racism that arises. It is vital for justice that everyone from every community can be confident in the impartiality of the police and their ability to enforce the law fairly.”^{iv} There have also been voices calling for a procedural transformation in Met police, as Leroy Logan, the founder of the Black Police Association, called for a “cultural change” in the police to root out racism.^{iv}

The police must ensure there is zero tolerance of racism in their ranks, and must act fast to deal with any suggestion of racism that arises. It is vital for justice that everyone from every community can be confident in the impartiality of the police and their ability to enforce the law fairly.

Apart from criticism, suggestions have also emerged to eradicate racism in the Met Police department. Keith Vaz, chairman of the Commons Home Affairs Select Committee, told BBC Radio 4's *"The World at One"* that the force still did not have "sufficient black and Asian officers. One of the ways of challenging any aspect of the canteen culture is if they [officers] live and work together and are able to share histories with people of different colour. When there are cases of this kind they have to be dealt with immediately and they have to be dealt with properly – otherwise there is a public perception that people don't care."^{lvi}

The negative publicity received has prompted a strong response from new Met Commissioner, Bernard Hogan-Howe, who was appointed in September 2011. Howe reiterated that he would not tolerate racism within his force and vowed to introduce changes to ensure that racist officers "know that they've got no home in the Met". Boris Johnson, London's Mayor, has admitted that there is more to do to tackle racism in Met Police. Due to the high criticism on the department in recent period, focus has also been shifted upon review of progress made on the recommendations of "Race and Faith Inquiry Report" published in July 2010, to tackle racism in the force.^{lvii}

Comments

1. The freedom of information request made by channels 4 brought into limelight both the extent of racist incidents in Met as well as the corrective actions taken thereof. Although it was not the only factor to initiate public debate and criticism for remedial action, it played a vital role in the overall process;
2. The exposure of these facts have led to further sensitisation of the public and have resulted in exploration of alternatives by public officials as well as stricter stance towards racism;
3. Media are keeping a stricter eye on the cases of racism being investigated, thus playing their important role of a watchdog;
4. This case illustrates that a Freedom of Information request in itself does not serve the purpose of achieving an end but plays an important role in the overall struggle for bringing a positive change in the society.

4. Right to Health: nurse Rab Wilson accesses National Health Service's documents to reveal malpractice in reporting of serious health incidents in Scotland

The Right to Health is considered of paramount importance, being the part of the UDHR. Its Article 25 states that:

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The Right to Health is further protected by article 12 of the ICESCR wherein highest standards of both physical and mental health are guaranteed:

1. *The States party to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

Health, irrespective of colour, race, religion, gender and socio-economic background, is one of the most important assets a person has. Different countries allocate diverse resources and utilise varying approaches to improve the quality of health of its citizens. While in the less developed countries, issues in healthcare pertain to lack of doctors, basic facilities, and funds in the hospitals, in the more developed parts of the world, the standards of healthcare are at a much higher level. Therefore, the Right to Health in developed countries is intrinsically linked with keeping abreast the obligatory standards set forth by their respective health authorities.

Background

Reporting critical incidents⁷ is one of the standards of health services in Scotland. Research from America, Australia and the UK indicates that around 10 percent of patient contacts result in harm to patients or staff. (IoM 1999, Dept of Health 2000). It is estimated that half of these harmful or adverse incidents are preventable.^{lviii} To maintain highest standards of healthcare, and more specifically to reduce such critical incidences from reoccurring and improving patient safety,

⁷ A critical incident is any event or circumstance that caused or could have caused (referred to as a near miss) unplanned harm, suffering, loss or damage to a patient.

National Health Service (NHS) Scotland has devised a set of standards for promoting effective safety culture.

Case study

NHS is made up of a number of different organisations all working together to improve health and provide health care to the people. The department NHS Ayrshire and Arran has come under severe criticism as its health board concealed more than 50 reports on serious incidents at hospitals and its clinics during five years. Serious Adverse Event Reports and associated action plans are used in the primary

Serious Adverse Event Reports and associated action plans are used in the primary care field as a structured way of investigating incidents and ensuring that lessons are learned. Claims that a Scottish health board tried to cover up information about critical incident reviews involving the deaths of 20 patients have been strongly denied by NHS Ayrshire and Arran.

care field as a structured way of investigating incidents and ensuring that lessons are learned.^{ix} Claims that a Scottish health board tried to cover up information about critical incident reviews involving the deaths of 20 patients have been strongly denied by NHS Ayrshire and Arran.^{ix}

The case emerged in the media after nurse Rab Wilson, who is employed by the health board, became concerned when he was involved in a critical incident, but never received a copy of the findings. He was told he was not entitled to read the report, and would have to apply under Freedom of Information (FOI) legislation. When Mr Wilson did make an FOI request, he was told by the health board that the reports were exempt from

disclosure because of patient confidentiality.^{ix}

However, given the potentially serious nature of the incidents which gave rise to Critical Incident Reviews, and the Board's stated policy on these reviews, the Commissioner challenged this position when the case was appealed to him, and over the coming months more than 56 action plans were found. The Commissioner ordered the Board to disclose anonymised versions of the reports and plans to Mr Wilson.^{ix}

The incidents, which at the most severe degree, "involved three missed chances to diagnose cancers, the death of a patient who was trapped in a faulty lift, a death which followed inadequate treatment of a leg wound, and two cases where psychiatric patients murdered or attempted to murder a relative"^{ix} were thus revealed. Mr Wilson told BBC Scotland, "I believe that in the new Scotland, which is a place

of justice and fair play and compassion, workers should not be afraid to speak out – especially about serious, serious issues like this that impinge on patient safety, patient care and staff safety as well.”^{lxiv}

The health board’s new chief executive, John Burns, who succeeded Wai-Yin Hutton in February 2012 insisted that board had not been attempting to suppress the critical incident reports, and said staff would now get copies of them.^{lxv}

He said, “We weren’t burying reports. I think what the report highlights was that our systems back in 2006 were not what they should have been. The reports were going out to managers, they were going out to be actioned but what we didn’t have was a proper closure in the system back to evidence that the actions and the learning had been taken from those reports, and that’s not right – we needed to have that.”^{lxvi}

Commenting on the publication of NHS Ayrshire and Arran’s review into their FOI procedures, Scottish Liberal Democrat leader Willie Rennie MSP said,

“The Health Secretary must instigate a Scotland wide review to ensure that other Health Boards are not making the same mistakes as NHS Ayrshire and Arran did. The report into the failure of clinical governance to learn the lessons has not yet been reported but it is vital that information is shared with staff so that, no matter how painful or embarrassing it may be, the lessons are learned and reforms put in place to safeguard patients.”^{lxvii}

Comments

1. The most prominent reflection in this case study is the importance of whistle-blowing. nurse Rab Wilson was employed by the health board whose actions he questioned. While being employed by the board he took a stand and filed an information request. He was suspended for three months by his bosses^{lxviii} but remained undeterred in his quest. It requires moral courage to consider responsibility for public good over one’s own interests;
2. Whistle-blowing would have been difficult to do if the UK did not have Public Interest Disclosure Act (1998) that offers a legal protection to whistle-blowers who report malpractice and matters of similar concern;

3. Another important dimension of this case is the support rendered by media. The continuous coverage provided by top notch print media agencies such as the BBC, *Daily Record*, *Scotsman*, amongst others, highlighted the case and raised its importance;
4. Another aspect is the stringent criticism by Kevin Dunion, the Scottish Information Commissioner who said in his last comments (before retiring in April, 2012), “As this is my last decision, I will recommend to the new Commissioner, who takes up post on May 1, 2012, that consideration is given to carrying out an assessment of NHS Ayrshire and Arran’s freedom of information practices.” And that the case will also be brought to the attention of Scottish Ministers and other relevant bodies.

5. Right to Water; USA’s political interests block provision of water in Haiti

“All peoples, whatever their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs”.

UN Water Conference (1977)

The UN General Assembly declared access to clean water and sanitation as a human right in 2010. Essentiality of water has been recognised by several international conventions; such as in Article 14 of Convention on the Elimination of Discrimination against Women (1979) and in Article 24 of Convention on the Rights of the Child (1989).

Millennium Development Goal # 7 sets the target of halving the proportion of people who cannot reach or afford safe drinking water and halving the number who do not have basic sanitation.

Background

Haiti ranked 158th on the Human Development Index in 2011.^{lxix} It is the poorest country in the Western Hemisphere with 80 percent of the population living under the poverty line and 54 percent in abject poverty.^{lxx} Amongst the myriad of problems that engulf Haiti, water shortage and quality has been the most prominent. More than 60 percent of Haitians do not have access to clean water. The country ranked

147th out of 147 countries in the 2002 Water Poverty Index, a measure of sanitation and water quality.^{lxxi} Besides breeding cholera, contaminated water is responsible for one of the country's most feared diseases, typhoid, and severe intestinal infections that are the leading killers of Haitian children less than 5 years old.^{lxxii}

Case study

Wòch nan dlo pa konnen doulè wòch nan soley. (The rocks in the water don't know the suffering of the rocks in the sun.) — Haitian proverb.

The current case study is based upon a report, “*Wòch nan Soley: The Denial of the Right to Water in Haiti*,” made by Robert F. Kennedy Memorial Center for Human Rights, Partners in Health and the Center for Human Rights and Global Justice at New York University. Evidence from confidential documents released under the Freedom of Information Act,⁸ legal analysis, and discussion of historical context demonstrated that actions taken by the international community through the Inter-American Development Bank are directly related to a lack of access to clean water in Haiti.^{lxxiii}

The report identifies the interference of USA in blocking millions of dollars of loans, which the Inter-American Development Bank (IDB) approved in 1998 for urgently needed water and sanitation projects in Haiti. The \$54-million project, approved in 1998, aimed at improving the drinking water systems and sanitation services in seven medium-size cities in Haiti: Cap Haitien, Les Cayes, St. Marc, Gonaives, Jeremie, Kenskoff-Laboule and Port-de-Paix.^{lxxiv} These loans were derailed in 2001 by politically-motivated, behind-the-scenes interventions on behalf of the United States and other members of the international community.^{lxxv} American interest at that time was the removal of then president Jean-Bertrand Aristide. Although the charter of IDB strictly prohibits the bank from letting politics influence its decisions, however, USA's political motives hindered the release of these much needed loans for Haiti.

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⁸ The information was accessed from U.S. Treasury Department and the office of the U.S. Executive Director at the IDB.

Dean Curran, who was the American ambassador to Haiti at the time, said publicly in 2001, “There now are a certain number of loans of the Inter-American Development Bank that are not yet disbursed with the objective of trying to request of the protagonists of the current situation, in the current political crisis, to reach a compromise.”^{lxxvi}

A top Treasury Department official then sent an e-mail message to staff members calling it a “major screw-up” for the ambassador to explicitly acknowledge a connection between the holdup in development loans and American political concerns in Haiti.^{lxxvii}

This case study places question marks on the credibility of the IDB as RFK Center director Monika Kalra Varma said,

“We need to keep a careful watch over the IDB because now they have a track record.”^{lxxviii}

Furthermore, it also questions the international community’s actions that undermine the provision of human rights. As Prof. Margaret Satterthwaite, Faculty Director of the CHRJG stated,

“The states that make up the international community have a duty not to harm or undermine human rights – including through their actions as members of international financial institutions. In this case, the international community effectively crippled the Haitian government’s ability to fulfil one of the most basic subsistence rights due to all people – the right to water.”^{lxxix}

The most troubling aspect of this case study is the inability of international financial institutions (IFIs) to stand up against the politically driven agendas of powerful member states, the USA in this case. This violates both the charter of the IFIs as well as acts as a deterrent in building trust of the international community in their role. It sheds light on how essential it is for IFIs to adapt greater transparency, accountability and especially uphold the highest ethical standards for the protection of human rights. It also opens up venues for the international community to understand the power politics that suppress the rights of the poor people around the world who need to be protected through a global commitment that supersedes individual interests of the nation states.

Comments

1. This case study elaborates the power of information access to unveil unjust practices prevailing in the international order and international financial institutions;
2. It is important as it broadens the perspective on how information requests can lead to tracing mistakes made in the past;
3. Case study elaborates the supremacy of rule of law and power of access to information in democratic countries such as USA where access to information of cases that might bring a bad image to International Financial Institutions and the country itself cannot be denied.

6. Corruption a global problem: Right to Information Unveiling Value Added Tax Scam in Nepal

“When public money is stolen for private gain, it means fewer resources to build schools, hospitals, roads and water treatment facilities. When foreign aid is diverted into private bank accounts, major infrastructure projects come to a halt. Corruption enables fake or substandard medicines to be dumped on the market, and hazardous waste to be dumped in landfill sites and in oceans. The vulnerable suffer first and worst”.

– *Ban Ki-Moon, United Nations Secretary - General,*
in his message on the occasion of the International Anti-Corruption Day 2009.

Recognising the requirement of an international legal instrument to combat corruption, in accordance with article 68 (1) of resolution 58/4, the United Nations Convention Against Corruption (CAC) entered into force on December 14, 2005. The chapters of the convention deal with prevention of corruption, set criminalisation procedures, utilise international cooperation to curtail it, and recognise the importance of asset recovery mechanisms. Currently there are 140 signatories and 160 parties of CAC.

Background

Nepal is a signatory to the United Nations Convention Against Corruption (UNCAC). And has also enacted Anti Money Laundering Act, Procurement Act, Right to Information Act and Good Governance Act to fulfil the legislative pre-requisites of UNCAC.^{xxx} Even after the enactment of these laws, Nepal is the second most cor-

rupt country in South Asia after Afghanistan, says Corruption Index 2011 by Transparency International.^{lxxxix}

Despite being guaranteed since the adoption of the 1990 Constitution, the Right to Information (RTI), was only given effect in July 2007 through the adoption of the RTI Act 2007 in Nepal.^{lxxxix} Since its enactment, the Right to Information has been used by CSO activists to expose corrupt practices in the government departments. One of the most highlighted cases of unveiling corruption occurred in March 2011, when a powerful former minister of the Nepali Congress, Chiranjivi Wagle, was taken into custody for embezzlement and misuse of power during his time in office over a decade ago.^{lxxxiii}

It first brought 385 firms under investigation and latter the number rose to 518. The issue became a hot topic after the immediate finance secretary, Rameshshwor Khanal, resigned from his post after he reportedly refused to get soft on the issue despite political pressure.

Case study

This case study is of the major VAT (Value Added Tax) evasion scam of 2011 in Nepal. Some 518 business companies were found using fake vat bills and evading tax worth Nepalese Rupees (NPR) 6.59 billion, as per the confirmation by the Finance Ministry.^{lxxxiv} The use of fake VAT bills to evade tax came to light when Inland Revenue Department (IRD) monitored suspicious bills found while taking action against two companies dealing in mobile handsets in 2009.

A team of the immediate deputy director general of IRD, Laxman Aryal, and under secretaries Dirgharaj Mainali and Kul Prasad Chudal identified such a mode of tax evasion. The department nabbed a few persons involved in fake VAT bill transaction in November 2010, who revealed that even big business houses' involvement in such an illicit practice. Then, IRD initiated investigation by forming a team under the leadership of Aryal. It first brought 385 firms under investigation and latter the number rose to 518. The issue became a hot topic after the immediate finance secretary, Rameshshwor Khanal, resigned from his post after he reportedly refused to get soft on the issue despite political pressure.^{lxxxv}

Taranath Dahal, the president of Freedom Forum, submitted an information request asking for the investigation report of the VAT scam. The 33-page report unveils the name of the firms involved in the VAT bills scam which was prepared by the committee and submitted to the Freedom Forum on March 4, 2011.^{lxxxvi}

The Finance Ministry has initiated the publication of the report "Study and Investigation of Fake and Fictitious VAT bills – 2011" of VAT bill defaulters following the directive of the National Information Commission (NIC). As per the report, the government has refunded the VAT to Sarita Enterprises (Pakistani Rupees PKR 5.04 million), Sarita International Business (PKR 5.31 million), Ashutos Impex (PKR 17.22 million), Shivashakti Impex (PKR 16.95 million), Digambar Trade House (PKR 11.26 million), Digambar Trade International (PKR 45.60 million), and Bhimeshwar Trade House (PKR 14.33 million).^{lxxxvii}

Taranath Dahal says,

"Because of using the right to information tools, lots of corruption-related cases were exposed. One is the very alarming VAT scam. Using the fraud bills, more than 500 industrialists and trading companies were taking million and millions money from the government treasury. I used the Right to Information Act for exposing the investigative report from the Finance Ministry. When the report has disclosed, the anti-corruption wave was there."

However after the scandal emerged, the government issued a new information policy. This increased the number of categories of classified information from five up to 140. This was considered a landmark case for Freedom of Information legislation in the country – although no arrests were made.^{lxxxviii}

Comments

1. The case study highlights the importance of having an independent information commissioner in assisting the release of VAT scam's investigation report by the Ministry of Finance. The ministry initially disallowed the release of the report on information request by Taranath Dahal, however, the information commissioner played the decisive role;
2. The success of this case would serve as an impetus for other individuals and organisations to expose corrupt practices prevailing in their country;
3. It highlights the power of the Right to Information to identify the VAT evaders, which included a lot of prestigious firms along with the linkages that the government might have with them. The negative publicity received by the case has exposed both these firms and the government to public and opposition criticism;
4. The measures of the government to take the categories of classi-

fied information from 5 to 140, following the VAT scam, raises question marks on the Nepalese government's sincerity to implementing the Right to Information laws.

7. Right to Privacy and Freedom of Expression: Social Media Monitoring by Department of Homeland Security, USA

Privacy is a fundamental human right. It underpins human dignity and other values such as Freedom of Association and Freedom of Speech. It has become one of the most important human rights of the modern age.^{lxxxix} It is protected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and in many other international and regional human rights treaties. Nearly every country in the world includes a right to privacy in its constitution, directly or indirectly.

Article 12 of the UDHR states,

"No-one should be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks on his honour or reputation. Everyone has the right to the protection of the law against such interferences or attacks."

The Right to Privacy is further protected in Article 14 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and Article 16 of the Convention on the Rights of the Child (CRC).

Background

"The makers of our Constitution understood the need to secure conditions favorable to the pursuit of happiness, and the protections guaranteed by this are much broader in scope, and include the right to life and an inviolate personality – the right to be left alone – the most comprehensive of rights and the right most valued by civilised men. The principle underlying the Fourth and Fifth Amendments is protection against invasions of the sanctities of a man's home and privacies of life. This is a recognition of the significance of man's spiritual nature, his feelings, and his intellect."

Justice Brandeis's dissent in Olmstead v. U.S. (1928)

Privacy was once a concept associated with just the physical domain, but with the advent of our modern era, offering multitude of technological advancements, privacy has evolved into a notion that has shifted to electronic domain as well. As per Internet World Stats, 53.9 percent of total population in USA uses the internet, amounting to 508,887,286 users in December 2011, while the number of Facebook users in the same year were 333,504,300.^{xc} With the strong interconnectivity amongst people offered by social media and other web platforms, the possibilities of data theft and privacy concerns are emerging at a rapid pace. However, the most pressing of these concerns are raised when the US government policies allow for online surveillance of social media users.

This case study is concerned with such privacy concern of social media monitoring initiated by Department of Homeland Security in USA.

Case study

In February 2011, the Department of Homeland Security USA announced that the agency planned to implement a programme that would monitor media content, including social media data. The proposed initiatives would gather information from “online forums, blogs, public websites, and messages boards” and disseminate information to “federal, state, local, and foreign government and private sector partners.” The programme would be executed, in part, by individuals who established fictitious usernames and passwords to create covert social media profiles to spy on other users. The agency stated it would store personal information for up to five years.^{xci}

Furthermore, it was publicised that the Office of Operations Coordination and Planning (OPS), National Operations Center (NOC), will launch and lead the Publicly Available Social Media Monitoring and Situational Awareness (Initiative) to assist the Department of Homeland Security (DHS) and its components involved in fulfilling OPS statutory responsibility (Section 515 of the Homeland Security Act (6 U.S.C. § 321d(b)(1)) to provide situational awareness and establish a common operating picture for the federal government, and for those state, local and tribal governments, as appropriate.^{xcii}

On April 12, 2011, the Electronic Privacy Information Center (EPIC) submitted a FOIA request to the DHS seeking agency records detailing the media monitoring programme. The request sought numerous types of documents, including contracts, proposals, communications, technical details and internal staff training

manuals pertinent to the Social Media Monitoring Programme. The EPIC further demanded for expedited processing of the request.

On April 28, 2011, the agency acknowledged the receipt of an EPIC's FOIA request, but denied the request for expedited processing and did not make any substantive determination regarding the FOIA request. The DHS did not disclose any records in response to the EPIC's FOIA request. On May 18, 2011, the EPIC appealed the DHS's failure to make a timely substantive determination as well as the agency's denial of the EPIC's expedited processing request. The DHS failed to respond to the EPIC's administrative appeal and to disclose any records.^{xciii}

On December 20, 2011, the EPIC filed a lawsuit against the DHS to compel the disclosure of documents relating to the agency's media monitoring programme. In January 2012, the DHS disclosed 285 pages of agency records in response to the EPIC's FOIA lawsuit.^{xciv} The report by the EPIC revealed that the DHS paid more than \$11 million to General Dynamics for a system to keep an eye on Facebook and Twitter public posts, as well as comment threads on major news websites.^{xcv}

EPIC's report found that the system watches public social media posts for comments that "adversely reflect" on the government, and for responses to proposed government plans.^{xcvi} As per the accessed documents, the DHS has identified 380 words, under ten categories: Department of Homeland Security and other agencies, Domestic Security, HAZMAT and Nuclear, Health Concern, Infrastructure Security, Southwest Border Violence, Terrorism, Weather/Disaster/Emergency, Cyber Security, and Others, that would be monitored on social media sites as well as the comments section of news agency sites.

Records reveal that the DHS intends to monitor internet for criticisms of the US government's policies and actions and reports that reflect adversely on the DHS.^{xcvii} Further sources provide more details on the agencies saying that the DHS instructed the social media monitoring company to generate "reports on DHS, Components, and other Federal Agencies: positive and negative reports on FEMA, CIA, CBP, ICE, etc. as well as organisations outside the DHS."^{xcviii}

The DHS instructed the company to "Monitor public social communications on the Internet." The records list the websites that will be monitored, including the comments sections of [The New York Times, The Los Angeles Times, The Huffington Post, The Drudge Report, Wired and ABC News.]"^{xcix}

The DHS needs to ensure that “the United States will not be Big Brother,” said Rep. Jackie Speier, D-Calif., the senior Democrat on the subcommittee, adding that she was “deeply troubled” by recent anecdotal reports on the monitoring.^c

Comments

1. This case study highlights how civil rights and liberties, especially privacy and Freedom of Expression are being put to test in USA. People posting on blogs and social media can neither enjoy their privacy nor freely write what they feel when they know that their status updates and public posts are under surveillance by Federal agencies;
2. It demonstrates once again the supremacy of law in USA, as although the information was denied at the first place, after following a law suit, the EPIC won its legitimate right of accessing information;
3. It demonstrates the myriad of issues that are being brought to limelight and subjected to public scrutiny through the utilisation of the Right to Information.

8. Right to Environment (Ecological Rights):

Access to Information request by Greenpeace reveals the extent of danger posed to endangered sea turtles by British Petroleum oil spill

Friends of the Earth, the world’s largest grassroots environmental network, defines environmental rights as access to the unspoiled natural resources that enable survival, including land, shelter, food, water and air. They also include more purely ecological rights, including the right for a certain beetle to survive or the right for an individual to enjoy an unspoiled landscape.^{ci}

Sustainable development recognises the crucial link between man, economy and environment, wherein man is considered to bear the responsibility for not only protecting, but also to improve the environment for the present and future generations.

Furthermore, the responsibility to protect and improve the environment for present and future generations is expressed in Statement of the first UN Conference regarding the Environment from Stockholm:

“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being. He bears a solemn responsibility to protect and improve the environment for present and future generations”.

Amongst the numerous environmental problems that the world faces today, pollution tops the list. Pollution is a vital threat to all life forms and the continued degradation of biological diversity owes significantly to the profit-driven motives of the globalised economy. Scientists now believe that the world’s flora and fauna are disappearing at rates greater than the mass extinction events that punctuate the fossil record.^{cii}

In the context of sustainable development, the Rio Declaration on Environment and Development of 1992 recognised the importance of environmental protection as an integral part of the development process:

“Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.... In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it....”

Rio Declaration, Principles 1, 4, and 5, Principles 1 and 4

Background

Offshore drilling spills pose multitude of dangers to the environment. Hazards to the aquatic environment include, amongst many, smothering of coral formations, infecting the food chain, layering vast areas of the ocean floor with tarry deposits, and affecting life forms in ways that can only be estimated.^{ciii}

On the evening of April 20, 2010, a gas release and subsequent explosion occurred on the Deepwater Horizon oil rig working on the Macondo exploration well for BP in the Gulf of Mexico.^{civ} This spill, commonly referred to as BP oil spill, is considered as one of the most severe offshore drilling spills in the history of the USA.^{cv}

About 50,000 barrels per day flowed from the well over the course of three months, according to a government-organised scientific team.^{cvi} Approximately 25 percent

of the oil was recovered, leaving more than 154 million gallons of oil at sea. In addition to the oil, nearly 2 million gallons of toxic dispersants were sprayed into the Gulf's waters.^{cvii}

Estimating the impact of the oil spill on the marine life in the Gulf of Mexico, the Centre for Biological Diversity says in its estimates released in April 2011 that more than 82,000 birds, about 6,000 sea turtles, nearly 26,000 marine mammals, including dolphins, and an unknown, massive number of fish and invertebrates may have been harmed by the spill and its aftermath.^{cviii}

Case study

This case study deals with the Access to Information request made by Greenpeace on July 30, 2010 to the National Oceanic and Atmospheric Administration (NOAA). The information request pertained to the release of details of any and all communications or information that mentioned 23 endangered and threatened species and species of concern in the Gulf region following the BP Deepwater Horizon disaster for the time period of April 20, 2010 to July 30, 2010. This request was amongst the 50 other FOIA requests made by Greenpeace to various agencies regarding the same incident.

After almost two years of submitting the request, pictures of oil covered Sea Turtles were received in May, 2012. These pictures released for the public by Greenpeace have stirred a new wave of criticism over offshore drilling. They sharply contradict the many pictures and stories of animals being scrubbed clean and released back into the wild which were published in 2010.^{cx} It should be noted that Gulf of Mexico is a home to five of the seven endangered sea turtles worldwide.^{cx} Kemp's Ridley sea turtles are one of them and are categorised as critically endangered.^{cxii}

As Greenpeace's John Hocevar stated in the organisation's press release, "While the White House was trying to keep the emphasis on rosy stories of rescued animals being released back into the wild, they were sitting on these images of garbage bags full of Kemp's Ridley sea turtles."^{cxii}

Kert Davies, Greenpeace Research Director highlighting the damage posed to natural environment by oil corporations said, "We remain concerned about what else BP and the government scientists saw, what else they documented but never showed the public. These photos are a grim reminder of the real damage that reckless oil corporations cause and also remind us never to stop pushing for trans-

parency and accountability from Big Oil and the government that supposedly regulates its activities.”^{cxiii} Since the spill, NOAA has collected 613 Dead Sea turtles from the northern Gulf of Mexico and relocated 274 turtle nests to Atlantic Ocean beaches in Florida.^{cxiv}

Greenpeace sent a letter to prosecutors at the Department of Justice and Attorney General Eric Holder, copied to the chairs of the Congressional Judiciary Committees, ensuring that they see these images and requesting that the Justice Department follow up in order to hold those responsible accountable for the disaster.^{cxv}

A preliminary approval to BP’s estimated \$7.8 billion settlement to resolve economic, property and medical claims by 125,000 individuals and businesses harmed by the spill has been granted.^{cxvi} As of June 2012 figures, Boycott BP page on Facebook has over 785,000 likes that clearly portray the growing resentment of people from USA and around the world towards the hazards posed by the BP oil spill incident. With the trial been delayed until 2013, environment groups are lobbying to build pressure and raise awareness of the consequences of the oil spill incident. The release of current pictures, along with 300 new aerial photographs received of the spill, have revitalised the impetus to hold BP accountable and more importantly to enact stringent precautionary measures on offshore drilling in the USA and around the world.

Comments

1. This case study highlights that diverse nature of records – photographs in this case – that can be accessed through ATI requests. While the most common requests for information are for texts and documents, however, pictures, videos, audio files and maps etc, subjected to the definition of record in country’s enacted RTI legislation, can be accessed through the information request as well;
2. The case study portrays how information access can play a critical role in depicting the true impact of environmental catastrophes;
3. It presents an account of how information of such nature can be used to lobby against issues that pose dangers to the environment;
4. It also outlines Greenpeace’s strategy to get BP prosecuted by sending these images to relevant agencies.
5. The case study also shows the power of such information (pictures) to sensitise the public to a greater extent and helps to ques-

tion why oil giants such as BP, earning billions of dollars per year, cannot spend on extra precautions and new clean-up technologies to avoid environmental catastrophes.

9. Right to Health: RTI requests shape policy decisions regarding Clinical Trials in India

One of the most common ways of assessing the effectiveness and safety of a particular drug or medical device are clinical trials. Clinical trials are defined as “Trials to evaluate the effectiveness and safety of medications or medical devices by monitoring their effects on large groups of people”.^{cxvii}

Acquiring informed consent of the patient before performing clinical trials on him or her has solid footing in both moral and, more importantly, legal doctrines.

The legal doctrine of informed consent clearly rests upon ethical principles of autonomy and self-determination. The ethical need for informed consent in medical practice was a salutary reminder to doctors that their patients were people and not cases and that the patient-doctor relationship needed to be open and honest in recognition of and respect for each patient’s autonomy (Thomson, 1979).^{cxviii}

Acquiring the consent of a patient before his or her treatment also has firm rooting in ethical guidelines in the medical field and is considered obligatory under the statutes of international law. The patient’s consent before treatment and experimentation is recognised under the Right to Health by the Centre for Economic and Social Rights (CESR) as

“The right to be free from non-consensual medical treatment and experimentation.” [CESCR GC 14, para. 8].

In general medicine, the standard for informed consent includes communicating the nature of the diagnoses, the purpose of a proposed treatment or procedure, the risks and benefits of the proposed treatment and informing the patient of alternative treatments so he or she can make an informed, educated choice.^{cxix}

The Declaration of Helsinki, adopted by the 18th World Medical Association (WMA) General Assembly in June 1964, serves as a statement of ethical principles for

medical research involving human subjects, including research on identifiable human material and data. The declaration states that

“Clinical research on a human being cannot be undertaken without his free consent after he has been fully informed; if he is legally incompetent, the consent of the legal guardian should be procured.”

The developing world, comprising a majority of poor and vulnerable populations, serves as a fertile land for clinical trials. Sonia Shah, author of “The Body Hunters: Testing New Drugs on the World’s Poorest Patients”, pointed out that up to 80 per cent of patients recruited in some developing countries are not informed about the nature of the study they are taking part in.^{cxx}

Background

The Indian clinical trials market is growing at an excellent rate and currently witnessing a large number of global pharmaceutical companies outsourcing trials to contract research organisations (CROs) in India.^{cxxi} Since restrictions on drug trials were relaxed in 2005, the industry in India has swollen to the point where today more than 150,000 people are involved in at least 1,600 clinical trials, conducted on behalf of British, American and European firms including AstraZeneca, Pfizer and Merck.^{cxxii} Noting the enormous ethical violations in India while conducting clinical trials, Jennifer Kahn, writer of WIRED magazine, labeled the country as a Nation of Guinea Pigs.^{cxxiii} Between 2007 and 2010, at least 1,730 people died in India while or after participating in clinical trials.^{cxxiv}

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Case study

In Madhya Pradesh illegal cases of clinical trials have been highlighted by a number of activists utilising the power of RTI. A whistle-blower, Anand Rai, a medical officer with Madhya Pradesh Government, filed 100 inquiries about trials in the state under India’s Right to Information Act (RTI). He received 20 responses.^{cxxv} The responses inform that both local and foreign companies are involved with drug trials in Madhya Pradesh. The list of eight domestic and 22 international companies include Cipla, Cadilla, and Himalaya as well as Pfizer, Merck, Novartis, Eli Lilly, GlaxoSmithKline (GSK),

Boehringer Ingelheim, and Johnson & Johnson, among many others.^{cxxvi} In June

2011 Anand Rai indicated that at least 81 patients, including 18 children, suffered serious adverse effects in the trials.^{cxxvii}

Government and private doctors in Indore, Madhya Pradesh, reportedly carried out clinical trials to check the efficacy of Dapoxetine, a drug to cure premature ejaculation, and some anti-depressants of various medicines on some 233 patients who had gone to them seeking psychiatric treatment. Following a huge public and media uproar over the trials and the related deaths, 12 doctors, including six involved in the trials on mentally ill patients, were fined just INR 5,000 each for not informing the parent hospital about the conduct of the trials and for ignoring protocols.^{cxxviii} Responding to media reports on the trials conducted on mentally ill patients, the National Human Rights Commission (NHRC), which addresses matters concerning morality relating to clinical trials, issued a notice to the state government on December 23, 2011, and demanded a report within four weeks.^{cxxix}

Dr. Rai alleged to the *Times of India*, a leading Indian newspaper, that these doctors took the approval from independent ethics committees to avoid disclosure of information under RTI. Furthermore, he also pointed out the illegality of these clinical trials by stressing that, “How can a mentally-ill patient tell doctors about the results of a drug, given that they are already disturbed? Did the doctors take the necessary informed consent of the mentally ailing patients or their guardians, is a big question.”^{cxxx}

On November 18, 2011, the Drug Controller General of India (DCGI), the country’s main medical regulator, announced new rules regarding compensation for trial victims. Under the new legal rule, failure to pay compensation in the event of an adverse effect or death will result in the companies being barred from conducting any further clinical trial in India.

Hearing a writ petition against the rampant illegal and unethical drug trials conducted in India, the Supreme Court has expressed serious concern over the issue and has asked government to take corrective measures.^{cxxxi}

As per the public interest litigation of March 2012 “Over 3,300 patients were tested. Approximately 15 government doctors were involved. About 40 private doctors in 10 private hospitals were involved. Clinical trials were conducted on 233 mentally-ill patients, 1,833 children in the age group one day to 15 years, where

approximately Rs [INR] 5.5 crore were paid to the government doctors alone. In 2008, there were 288 deaths, in 2009, there were 637 deaths, and in 2010, there were 597 deaths,^{cxxxii}

After the enactment of stringent clinical trial legislations in India during the recent years, the efforts in 2012 are aimed at strengthening the clinical trials regulation capacity.^{cxxxiii} With the public and CSOs sensitised and effective government responsiveness at hand all throughout the battle against unethical clinical trials, a less frightful future can surely be anticipated.

Comments

1. This case study highlights the power of the RTI in exposing malpractices in the multibillion clinical trials industry flourishing in India and raises question marks on the ethical and legal requirements surpassed by both Indian and foreign agencies;
2. It brings into limelight the power of the RTI in persevering individuals such as Anand Rai to supplement the shaping of laws through their informed advocacy;
3. It portrays the importance of responsible and responsive government machinery, especially the Supreme Court, to take corrective measures by taking notice of public interest litigation and ordering government to take corrective actions;
4. The enactment of stricter laws on clinical trials and the current efforts to strengthen the regulatory capacity of the related government departments are owed to the synergised effort and contributions of CSOs and activists such as Anand, through utilising the power of the RTI.

Annex: 1 – Global Right to Information Rating									
Country	Date	1: Right	2: Scope	3: Procedure	4: Exceptions	5: Appeals	6: Sanctions	7: Promotion	Total
Albania	1999	2	16	13	4	18	2	4	59
Angola	2002	4	26	11	18	18	0	5	82
Antigua and Barbuda*	2004	3	24	21	23	24	8	14	117
Armenia	2003	3	26	17	16	14	3	21	91
Australia	1982	2	10	21	15	24	4	10	86
Austria*	1987	4	23	8	2	2	0	0	39
Azerbaijan	2005	5	25	23	21	19	1	12	106
Bangladesh*	2008	2	25	17	20	24	6	15	109
Belgium	1994	2	13	10	20	11	0	0	56
Belize	1994	1	23	22	16	19	2	6	89
Bosnia & Herzegovina	2001	4	30	19	18	15	1	11	98
Bulgaria	2000	5	30	24	25	3	4	8	99
Canada	1983	3	13	15	11	22	6	15	85
Chile	2008	5	16	21	14	23	4	10	93
China	2007	1	11	18	15	13	1	13	72
Colombia	1985	5	17	19	17	14	2	8	82

Cook Islands*	2007	4	15	15	15	15	14	3	2	68
Croatia	2007	5	30	22	24	21	5	16	123	
Czech Republic	1999	2	28	13	12	10	0	4	69	
Denmark*	1970	1	21	11	13	20	0	0	66	
Dominican Republic*	2004	5	21	16	11	3	2	3	61	
Ecuador*	2004	4	27	10	14	8	3	9	75	
El Salvador	2011	6	30	26	22	23	4	16	127	
Estonia*	2000	4	20	21	22	11	2	5	85	
Ethiopia	2008	5	25	21	18	25	6	14	114	
Finland	1951	6	28	23	16	19	3	10	105	
France	1978	1	20	17	14	16	0	2	70	
Georgia	1999	0	28	17	17	20	1	7	90	
Germany*	2005	0	19	7	13	15	0	0	54	
Greece*	1978	0	9	5	10	0	0	0	40	
Guatemala*	2008	6	29	18	21	5	3	14	96	
Guinea-Conakry*	2010	2	27	16	9	4	2	6	66	
Honduras	2006	2	23	15	11	18	2	13	84	
Hungary	1992	2	22	12	13	24	0	6	79	

Iceland*	1996	0	10	20	17	12	0	4	63
India	2005	5	25	27	26	29	5	13	130
Indonesia	2008	4	28	11	16	25	3	15	120
Ireland	1997	2	23	18	3	23	3	14	86
Israel	1998	3	25	14	11	8	3	4	68
Italy	1990	2	21	7	6	15	2	7	60
Jamaica	2002	3	18	25	14	17	5	8	90
Japan	1999	3	14	15	21	9	0	5	67
Korea (South)*	1996	4	22	11	20	17	0	8	82
Jordan	2007	0	21	6	10	10	0	5	52
Kosovo	2003	2	25	23	22	21	2	11	106
Kyrgyz Republic	2007	4	30	26	13	19	3	8	103
Liberia	2010	5	30	21	27	20	7	16	126
Latvia	1998	4	22	19	14	4	2	0	65
Liechtenstein*	1999	0	17	11	7	1	2	4	42
Lithuania	2000	4	25	16	9	4	1	0	59
Macedonia	2006	4	30	18	22	16	4	14	108
Mexico	2002	6	22	25	22	26	3	16	120
Moldova	2000	4	26	23	20	11	4	10	98
Mongolia	2011	4	25	20	6	23	2	4	84

Montenegro*	2005	3	30	20	20	4	4	4	4	85
Nepal	2007	4	27	19	15	24	6	6	10	105
Netherlands	1978	4	20	22	16	14	4	4	2	80
New Zealand	1982	4	16	21	18	23	6	6	5	93
Nicaragua	2007	4	30	20	27	14	3	3	15	113
Niger	2011	0	27	13	13	17	6	6	6	82
Nigeria	2011	3	29	14	22	4	7	7	11	90
Norway*	1970	4	10	11	11	24	4	4	0	64
Pakistan	2002	4	22	7	10	19	5	5	3	70
Panama*	2002	5	28	14	16	6	2	2	3	74
Peru	2003	4	29	21	17	14	4	4	8	97
Poland	2001	2	26	19	10	4	1	1	0	62
Portugal*	1993	4	19	18	10	14	0	0	4	69
Romania	1993	5	29	8	11	4	6	6	9	72
Russia	2009	1	21	14	13	3	2	2	6	60
Serbia	2004	5	30	22	26	29	7	7	16	135
Slovak Republic*	2000	1	20	24	19	5	3	3	6	78
Slovenia	2003	3	30	27	25	28	4	4	13	130
South Africa	2000	6	25	22	25	14	6	6	14	112
St Vincent and the Grenadines*	2003	2	21	19	18	2	2	2	8	72

Sweden*	1766	5	19	15	14	4	0	2	59
Switzerland*	2003	3	16	17	13	13	0	10	72
Taiwan	2005	2	21	11	17	6	1	2	60
Tajikistan*	2008	4	26	19	16	2	0	2	69
Thailand	1997	4	22	17	16	12	2	10	83
Trinidad and Tobago*	1999	3	24	17	20	15	3	9	91
Tunisia*	2011	2	20	19	19	8	1	2	71
Turkey*	2004	3	24	11	17	4	2	5	66
Uganda	2005	6	26	23	23	11	5	5	99
UK	2000	2	25	20	12	23	7	6	95
Ukraine	1992	5	28	23	27	19	5	8	115
Uruguay	2008	3	26	17	20	11	2	12	91
USA	1966	4	18	19	16	14	4	14	89
Uzbekistan	2002	3	25	12	13	7	1	0	61
Zimbabwe	2002	2	16	12	14	22	1	5	72

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The Centre for Peace and Development Initiatives (CPDI) is an independent, non-partisan and a not-for-profit civil society organization working on issues of peace and development in Pakistan. It is registered under Section 42 of the Companies Ordinance, 1984 (XLVII of 1984). It was established in September 2003 by a group of concerned citizens who realized that there was a need to approach the issues of peace and development in an integrated manner. The CPDI is a first initiative of its kind in Pakistan. It seeks to inform and influence public policies and civil society initiatives through research-based advocacy and capacity building in order to promote citizenship, build peace and achieve inclusive and sustainable development. Areas of special sectoral focus include promotion of peace and tolerance, rule of law, transparency and access to information, budget watch and legislative watch and development.



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