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Centre for Peace and
Development Initiatives

CPDI Op-Ed Articles on Right to Information

Articles discussing various aspects of
right to information issues in Pakistan

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**This Publication is Supported by
Foundation Open Society Institute Pakistan
(FOSIP)**

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A Matter of Implementation

Dawn

October 25, 2011

By: Zahid Abdullah

THE Right to Information Bill 2011 submitted recently before the National Assembly by former information and broadcasting minister Sherry Rehman envisages the office of the federal ombudsman as an appellant body. The largely ineffective and widely criticised Freedom of Information Ordinance 2002 also directed information-seekers to approach the federal ombudsman if they felt aggrieved by public officials' decision on their requests. At an international conference held recently on the Right to Information: Legal Regimes, Citizens and Institutions in Islamabad, Ms. Rehman cited the need for the allocation of resources for the establishment of an information commission as a reason why the government might not admit her bill for discussion in the Assembly. This, she said, was why her proposal also stuck with the federal ombudsman as an appellant body. She was of the view that once the bill was sent to the committee concerned, citizens would have the opportunity to express their opinions and demand any changes required. The good points of the bill notwithstanding, its reliance on a weak implementation mechanism will turn it into a dead law.

Empirical data pertaining to the submission of information requests to government departments shows that the federal ombudsman's office is a toothless appellant body in terms of making effective intervention and helping citizens gain access to information when such a request to public bodies is unlawfully and wrongfully denied. The Freedom of Information Ordinance 2002 does not empower the federal ombudsman to impose any penalty on public officials for wrongfully denying access to information. Data also reveals that the federal ombudsman deals with complaints through the narrow prism of maladministration and not as a denial of citizens' fundamental right which it is entrusted to protect. A case in point is the decision made by the federal ombudsman on a request pertaining to the Ministry of Information and Broadcasting's special publicity fund.

Instead of instructing the ministry to provide the required information, the federal ombudsman denied the request on the technicality that the special publicity fund had been declared a secret expenditure by a federal secretary. The ineffectiveness of the Freedom of Information Ordinance 2002 and the role envisaged therein of the appellant body can be gauged from the fact that even when the federal ombudsman directed public bodies to provide information, the path these bodies took was to file representation with the president of Pakistan. At the office of the president, it takes an eternity to decide on such representations. One such representation filed by the Ministry of Law and Justice against the federal ombudsman's decision in favour of the Centre for Peace and Development Initiatives has been pending since June 6, 2009. Then, the continuation of this practice of filing representation with the president is undesirable from the standpoint of conflict of interest. How is the president going to decide judiciously if the request for information pertains to a scandal involving members of his own party holding public offices? Furthermore, how will the section dealing with representations with the president established at the law ministry going to move those representation files in which the ministry is itself a party, as is the case with an information request about the fee paid to lawyers by the law ministry?

The argument that the establishment of a new entity will incur extra expenditures does not really hold water. The benefits of an accountable and transparent government resulting from the efforts of a powerful information commission will far outweigh the costs of establishing such an institution. It has also been suggested that we should stick to the federal ombudsman's office as an appellant body and make it more effective by introducing relevant changes in the Establishment of the Office of the Wafaqi Mohtasib (ombudsman) Order, 1983. Those who subscribe to this opinion

Furthermore, the role of the appellant body pertaining to the right to information is not just to decide disputes regarding access to information which often involves vested interests and powerful mafias, and requires certain skills and competencies; another of its functions is to ensure the proactive disclosure of information, issue guidelines in this regard to the government and present an annual 'state of right to information' in the country to the legislative body. It is therefore important to bring about the relevant changes in Ms

fail to appreciate the fact that taking decisions on contentious matters pertaining to the right to information is a specialised job which should only be entrusted to a special body. Furthermore, the role of the appellant body pertaining to the right to information is not just to decide disputes regarding access to information which often involves vested interests and powerful mafias, and requires certain skills and competencies; another of its functions is to ensure the proactive disclosure of information, issue guidelines in this regard to the government and present an annual 'state of right to information' in the country to the legislative body. It is therefore important to bring about the relevant changes in Ms Rehman's bill.

As an appellant body, the federal ombudsman should be replaced with an effective and autonomous information commission with the powers of imposing penalties on officials who wrongfully deny access to information. The decisions of the proposed information commission should be legally binding and not recommendatory, as is the case of the office of the federal ombudsman. This way, the trend of filing representations to the president will be arrested and public bodies will not be able to deny citizens access to information by employing delaying tactics. Members of such an information commission should be drawn from the judiciary and civil society. It is hoped that members of the Standing Committee on Information and Broadcasting will consider these suggestions so that a right to information law with an effective implementation mechanism is enacted to ensure the transparent functioning of public bodies and private entities.

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The Right to Information

Dawn
July 10, 2011

By: Zahid Abdullah

IF only good intentions could be translated into concrete actions, the functioning of the Punjab government would be more open and transparent and its bureaucrats and public bodies would be much more accountable to the people of Pakistan. As the cliché goes, the path to hell is paved with good intentions. This is so true and applicable in the case of Punjab. The Punjab chief minister has repeatedly given expression to his good intentions and has made tall claims about good governance. However, in the absence of a provincial right to information law through which citizens could verify these claims by having access to documents pertaining to the functioning of the provincial government and the way public funds are being utilised, these claims lack legitimacy in the eyes of the public. As a result of the persistent efforts of concerned citizens, the Punjab government has done some work in the shape of a draft law — the Punjab Freedom of Information Act 2010. However, the Punjab government is dilly-dallying on the issue of turning this draft into law by putting it up in the provincial assembly for approval. What are the provincial government and bureaucracy afraid of? Are they afraid of citizens coming to know how much funds are siphoned off from development schemes? Are they afraid of light being shed on files containing incidents of maladministration? Are they afraid of irrefutable documentary evidence coming to the fore showing how the luxurious lifestyle of the ruling elite and their cronies is supported by citizens of the province, financed by taxes paid through the nose? There are many instances of such grandiose lifestyles but the scarcity of space warrants just one example: spend just one night in any 'rest house' and see how the ostentatious lifestyle of the provincial rulers, their wives, offspring, siblings, relatives and cronies is being subsidised by the poor of the province. On a

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tangent, our civil, military and political elite has built these rest houses where they ‘rest’ when they are tired of (mis)ruling us, where they are fed at the expense of the poor. Their energies thus revitalised, they start (mis)ruling us with a vengeance. This is why laws pertaining to the right to information are important as they provide us evidence about the deeds of elected and public representatives — evidence that is strong enough to withstand the rigours of any court of law.

Power and information are intrinsically linked. The greater hold on information and its resources means a greater level of emasculation of power and secrecy in the way it is wielded. In other words, the democratisation of information or free flow of information in the public domain results in the sharing of power and knowledge about the way it is exercised. That is why ruling elites everywhere in the world have resisted the enactment of the right to information laws. In this backdrop, flimsy as it may sound, the excuse offered by Rana Sanaullah, the provincial law minister, for not enacting Punjab’s right to information law is hardly surprising. At a seminar held in Islamabad some time ago, he told the audience that the Punjab government is awaiting the enactment of a federal information law so that the provincial information law could be enacted in line with the spirit of the federal law. Is the Punjab government incapable of enacting an effective right to information law for its 100 million citizens? Now that Article 19A has been inserted in the constitution, the right to information is a constitutional right of the citizens of Pakistan. Instead of offering lame excuses, the Punjab government should enact a right to information law which can serve as a role model for other provinces as well as the federal government. In this regard, the draft freedom of information law can be a good starting point. In its title, it should be

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referred to as the Punjab Right to Information Act and not as the Punjab Freedom of Information Act as is presently the case. Furthermore, the preamble should specifically mention that it is the constitutional right of the people. The draft law restricts access to information to the residents of the province whereas it should give access to all citizens of Pakistan. As it stands at the moment, only residents of Punjab can have access to information. Furthermore, its scope needs to be broadened and NGOs should also be brought within the purview of the law.

In India, the right to information law is being used as an anti-corruption tool. Ordinary citizens submit information requests to get things done for which they had to bribe public officials prior to the enactment of the law. For example, people have submitted information requests demanding access to certified information pertaining to steps taken on their applications regarding pensions, gas/electricity meters, passports etc. Using the right to information law, a poor woman sought certified information about the steps taken on arresting the murderer of her husband, which gave impetus to the investigation efforts. Now that the people of Pakistan have the constitutional right to have this anti-corruption tool, the federal and provincial governments are duty-bound to legislate on this issue. The challenge for our federal and provincial governments is to enact effective and powerful right to information laws, just as in India, if they are serious about eradicating corruption and improving service delivery of public bodies.

Public and Secret Funds

Dawn

December 07, 2010

By Zahid Abdullah

An executive order passed by a federal secretary supersedes the collective will of the country's parliamentarians. Shocking as this may sound, the observation is based on evidence. Invisible bureaucrats that lurk behind politicians decide how our resources are to be put to use. Politicians complain about the unbridled power wielded by bureaucrats but have done little effectively to reduce these powers. Consider, for example, the following tale that unfolded when I submitted a request for information in the context of the Special Publicity Fund, under which the Ministry of Information and Broadcasting spends over Rs20m every year.

I asked for certified copies of the strategy and advertisement plans to spend under the Special Publicity Fund from Oct 1, 2002 to March 20, 2008, in addition to certified information about the names and addresses of the media houses, public relations firms, consultants or journalists that received funds under this head during this period. Further, I requested certified copies of the contracts under which the Ministry of Information and Broadcasting had released funds from the Special Publicity Fund to such recipients during the same period. The ministry did not provide the information within the 21 days stipulated by the Freedom of Information Ordinance 2002. Consequently, a complaint about the ministry's failure was lodged with the federal ombudsman's office and on Sept 29, 2008, it directed the ministry to submit a report. Nearly a month later, on Oct 24, 2008, the ministry replied that the Special Publicity Fund is similar to the secret fund provided to any government organisation, as are allocations made under the head of 'A03914 — Secret Services Expenditure'. Furthermore, the ministry maintained, the Special Publicity Fund is "strictly utilised in accordance with the rules and regulations governing the Secret Services Expenditure issued by the Financial Division from time to

time". An analysis of the budget books revealed that the Special Publicity Fund was included in the 'Others' category in the 2008-09 budget. Other allocations in this category were to the Pakistan Institute of National Affairs, Internews, the Institute of Regional Studies and News Network International. When this issue was raised with the ministry, it responded that the fund had been declared 'secret' by the Finance Division through a letter dated April 29, 1976. Yet when access to it was sought, the ministry said that the letter was not available with it. The federal ombudsman determined that the allocation for Secret Service Expenditure had the ID 1358 while the Special Publicity Fund had the ID 1357. Furthermore, it determined that on the New Item Statement for the Special Publicity Fund the entry against ID1357 had been titled 'Secret Service Expenditure'. Here the plot started to really thicken. Through the federal ombudsman's office, we demanded that details pertaining to the utilisation of the Special Publicity Fund be provided to us. But the Ministry of Information and Broadcasting did not provide the letter under which this budget head had been declared secret expenditure. It maintained that the information could not be provided since it was secret expenditure, and had been declared thus through an executive order of the federal secretary of the ministry, under powers vested in him by the Cabinet Division. Yet the fact is that parliamentarians approved the Special Publicity Fund as a normal budget item, just as they did other budgetary allocations for the Pakistan Institute of National Affairs, Internews etc which were also placed in the 'Others' category of the 2008-09 budget. The Special Publicity Fund was not passed as a secret service expenditure item. Therefore, the federal secretary's executive order that treated it as such is in conflict with the collective will of parliament. In a parliamentary democracy it is the collective will of the people, as represented by parliament, and not a federal secretary's executive order, that should have supremacy.

The Special Publicity Fund was not passed as a secret service expenditure item. Therefore, the federal secretary's executive order that treated it as such is in conflict with the collective will of parliament. In a parliamentary democracy it is the collective will of the people, as represented by parliament, and not a federal secretary's executive order, that should have supremacy.

This entire exercise, with the Special Publicity Fund as a case study, raises three important questions: first, how many budget items are passed by parliament as normal items but treated as secret expenditure? Secondly, how can the political leadership exercise its authority in the way in which public funds are utilised? And third, how can the judicious utilisation of public funds be ensured? The prerogative to declare any public fund secret expenditure should rest with parliament alone. Powers vested in this regard with federal secretaries should be revoked through an act of parliament. Furthermore, the relevant parliamentary committees should exercise their powers to oversee how the funds are being utilised. As things stand, a federal secretary submits a certificate to the accountant general of Pakistan containing one line about how many funds have been utilised.

We need to enact effective laws regarding the right to information to ensure the transparent functioning of public departments. Such laws have been adopted in over 90 countries.

It is about time the two major political parties made good on the promise they made in the Charter of Democracy about enacting an information law and repealing the ineffective Freedom of Information Ordinance 2002, the Balochistan Freedom of Information Act 2005, and the Sindh Freedom of Information Act 2006. The new information laws should provide easy access to information. The ombudsman's office, which is toothless as an appellant body, should be replaced with an information commission as is the case in many countries round the world. Being the most populous province, Punjab needs to enact a right to information law that can serve as an example for the other provinces.

Much Ado about Noting on the File

The News

January 01, 2007

By: Zahid Abdullah

Freedom of Information Ordinance 2002 was ostensibly promulgated to give citizens better access to information. Its preamble states: 'It is expedient to provide for transparency and freedom of information to ensure that the citizens of Pakistan have improved access to public records and for the purpose to make the Federal Government more accountable to its citizens, and for matters connected therewith or incidental thereto'. Indeed a very noble sentiment and the explicit understanding of the link between the accountability and access to information is, no doubt, a major development, especially when seen in the context of plethora of laws aimed at denying the information to the citizens. However, the good intentions alone are not enough and what needs to be looked into is the implementation mechanism put in place to translate these seemingly good intentions into an environment in the corridors of power wherein the citizens actually have 'improved access to public records'. It is in this connection that the FOIO 2002 leaves much to be desired and that too on many counts. However, necessitated by the space constraints and for the purpose of focus, we will only be debating as to whether or not the noting on the file and the minutes of the meeting should be made available to the public. In its present shape, the ordinance does not allow the citizens to have an access to these two public documents. What are the pros and cons of making these documents public and what are trends in the world in this regard?

As we all know, when a public authority reaches on a decision, it goes through a process wherein a file moves from official to the other and each one gives his opinion on the matter at hand which is referred to as 'noting on the file'. In other words, file notings are "a generic term used to refer to the opinions, advice and recommendations recorded on file by officers involved in the process of decision-making on any matter under the consideration of Government offices". Those who want noting on the file to be

exempted from public disclosure maintain that the bureaucrats should be judged by the decisions taken by them rather than the process adopted to reach the decision. It is argued that disclosure of notings would inhibit officers from expressing themselves freely and frankly. As a result, it would slow down the official machinery as the officials would hesitate to take positions on contentious matters. On the other hand, those who maintain that file notings should be made accessible to public argue that people have the right to know as to what transpired between the decision and the proposal. Their argument is premised on the assertion that noting on files, minutes and interim orders are important to find out as to who opposed a certain project on what grounds and who overrode the objections and on what grounds. Where does the truth lie and what are international best practices in this regard?

In Albania, India, Germany, Israel, South Africa, Turkey, Uganda and several other countries with functional information access laws, file notings have not been given a blanket exemption. The rationale behind disclosing the file noting is that people have a right to know whether the Government had the benefit of accurate and legally defensible opinion from its own officers while formulating a policy or contemplating action. Furthermore, access to file notings and minutes of the meetings can go a long way in fixing accountability on a public official and determining whether he was above board or whether he was acting on extraneous considerations while taking a particular decision. Take for

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example what Barrister Zafar Ullah Khan had to say in a seminar on freedom of information in Islamabad on September 20, 2006. He said that his law firm was associated with Pakistan Steel Mill case, we tried to get any meaningful information from the government of Pakistan but we could not. Stressing the need for declaring file notings and minutes of the meetings as public documents, he shared with the participants that, 'in Steel Mill case, on April 10, 2005, there was a special meeting headed by the Prime Minister of Pakistan in his chamber wherein a new board was constituted, instructions were given to dissolve the old board and decision pertaining to the full privatization of the mill was made'. He argued that the document containing the minutes of that meeting was a public document and people should have access to it. Imagine if that document were accessible, we could have known as to what really had transpired in that meeting, or for that matter, in all such meetings. Not only this, disclosure of these documents would provide a support mechanism to honest officials and serve as deterrent against corrupt practices. There is a strong likelihood that the possibility of such a disclosure would serve as deterrence as the dishonest and corrupt officials would fear that there was mechanism put in place through which their actions could eventually come under public scrutiny. Similarly, the honest officials would exercise their opinions freely as they would always feel the presence of support mechanism in the shape of possible disclosure of file notings which is not the case at the present.

It is often said that if the file notings were to be made available for public gaze, the officials would hesitate to take unpopular decisions on contentious matters. Matters pertaining to defense and security of the country are understandably exempted under this ordinance, and if we are going to exempt file notings and minutes of the meetings under this pretext, it would only mean that we are patronizing inefficiency and lack of sound judgment on the part of our officials.

Freedom of Information Ordinance 2001 is very diluted one in its present shape and if we want to move from rent seeking and patronage based government to one based on rule of law wherein officials give primacy to public interest and adhered to principles, we will have to make file notings and minutes of the meetings public documents. The way

forward could be debate on this issue in the national media. This piece is an attempt to break deafening silence on this issue and the writer invites the opinion leaders, especially former bureaucrats turned columnists to refute and reject or accept and agree to arguments made in favour of disclosing file notings and minutes of the meetings in this article.

Much Ado about Notings of the File (2)

The News
January 15, 2007

By: Zahid Abdullah

This article is primarily continuation of the one published in this newspaper, with the same title, on January 1, 2007. The basic objective of the earlier article was to initiate debate on the issue as to whether or not file notings and the minutes of the meetings should be declared public documents. The response that the article generated was of two-fold in nature: some people asked questions aimed at understanding the concept of making file notings available to the citizens and the officials raising concerns, suggesting the possibility of the whole official machinery crumbling down if the citizens were allowed to lay hands on the file notings. Whereas the former can be attributed to the relative lack of debate in the national media on the linkage between the accountable officials and the degree of access to public records enjoyed by the citizens, the latter has roots in the colonial legacy due to which the bureaucracy has not been able to replace 'the ruler and the ruled' relationship between an official and the common man with that of 'the public servant and the citizen'. The explicit manifestation of the latter can be found in the letter carried by this newspaper on this issue on Saturday, January 6, 2007. Nevertheless, it is a highly encouraging sign that the bureaucracy wants to be engaged on this issue and this article attempts to address the concerns raised in the letter, along with answering other queries made through electronic mail.

The central theme of Mr. Sharif's letter to this paper is that file notings should not be made available to the citizens and, in order to drive home his point, he puts forward different arguments. Responding to our example of the countries which have functional access to information laws, Mr. Sharif writes in his letter: 'The example of some countries appears to have been misquoted (as the information access laws of these countries also contain exemption clauses) besides ignoring the majority of other countries, who do not even have such legislation'. This argument seems unconvincing on two counts. First of all, how could the example of the countries lagging behind in

terms of putting in place legislative mechanism to give citizens access to information factor into deciding the merits and demerits of making file notings available to common people? Furthermore, does the presence of exemption clauses in the laws of the countries which have enacted information laws mean that file notings should not be declared public documents at all, or, should we look into the specific circumstances in which file notings should not be made available to the public? Had Mr. Sharif exercised the latter option, he would not have to give vent to the misplaced fears of bureaucracy when he wrote: 'An official may jot down notes or comments purely on merit and in the public interest against some individual or firm. But if these are handed over to the latter, there could be recrimination against the official.... Making the process of decision-making public would only result in the sabotaging of decisions by vested interests.' For, a closer scrutiny of information laws enacted by different countries establishes the fact that access to file notings is denied whilst the matter is being debated. File notings are only declared public documents and made accessible to general public once the decision making process has run its full course and final decision has been made. Furthermore, we all know that 'the vested interests' exercise various ways and means to keep track of the whereabouts of the concerned files and employ different tactics to manipulate decision making process whereas the general public, the tax payers and the ultimate owners of the resources, remains in the dark about the role played by different officials regarding different matters directly impacting their lives, even long after a particular decision has been made.

What are going to be the consequences if the file notings are made available to citizens? Heavens would not fall as Mr. Sharif implies when he says: 'If notes on files and minutes of meetings are made public documents, nobody would dare to speak or write in favour or against a matter under consideration, thereby forcing decisions to be made without debate'. The official machinery has not crumbled down in the countries where the citizens have the privilege to view file notings once the decision has been reached. The crux of the problem is that bureaucracy finds it extremely difficult to transform itself from colonial mode of thinking to the necessities of the present day governance structures wherein people are real masters and officials are public servants assigned to put the public funds to judicious use on the behalf of the general public

rather than managing 'the ruled' whilst extracting money from them and exploiting their resources at the behest of foreign rulers as was the case in the gone by days. Even in India, which has a similar colonial experience, file notings were originally declared public documents in Right to Information act but the Indian bureaucracy tried to have them exempted through a cabinet proposal. However, the move was thwarted, thanks to the strong opposition mounted by the civil society organizations. At the end of the day, it is the question of making

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those accountable who manage public funds. It has to be ensured that decision making process is not only fair but also the one in which the officials are bound to do proper home work and give sound and expert judgments regarding the use of public funds. Access to file notings is important to determine the quality of the input that goes into arriving on a particular decision. It is only through access to such information that we will be able to take those to task who contribute to the wasting of the public money either through negligence or personal greed.

Information: a right denied

Dawn

May 27, 2010

By: Naeem Sadiq & Zahid Abdullah

SWEDEN passed the world's first freedom of information (FOI) law in 1766. Pakistan enacted one in 2002, thanks to the conditions imposed on it by the Asian Development Bank's \$350m Access to Justice loan. However, like all other funded projects, our focus was more on the release of dollars and less on the release of information.

Although Pakistan is ahead of many other countries of the region (India promulgated the law in 2005 and Bangladesh in 2008), its FOI ordinance remains a largely unused and rarely responded to document. The 18th Amendment added more weight and value to the ordinance through its provision, 'Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law'. However the only useful purpose the ordinance and the constitutional amendment serve is to impart the same lesson we have learned over the years — 'Our problem is not the shortage of laws. It is the lack of and contempt for their implementation'.

—Democratic progress requires the ready availability of true and complete information. In this way people can objectively evaluate their government's policy.

To act otherwise is to give way to despotic secrecy. 'These words of the late Canadian premier Pierre E. Trudeau have little relevance or value in Pakistan.

The 18th Amendment added more weight and value to the ordinance through its provision, "Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law". However the only useful purpose the ordinance and the constitutional amendment serve is to impart the same lesson we have learned over the years — 'Our problem is not the shortage of laws. It is the lack of and contempt for their implementation'.

The standard operating procedure is to deny all information, however harmless. If the information seeker insists, he is dragged into an unending bureaucratic loop. If he makes the mistake of going to the ombudsman, he is asked to appear again and again until he runs out of steam and patience. This article aims to briefly discuss how the government is itself the biggest hurdle in the way of implementing the FOI law and how it could be used for enhancing the democratic process in Pakistan.

On June 26, 2008, an Islamabad-based citizen submitted a request to the information and broadcasting ministry for information about money paid by the ministry from its 'discretionary funds' to journalists between October 2002 and March 2008. In a curt response received on July 18, 2008, the ministry refused to provide this information, stating that it came under the category of 'classified' information.

The ministry was repeatedly explained how and why this information could not be considered 'classified', and a fresh request was sent in September 2008. However, despite the passage of two years and many interventions by the federal ombudsman, the ministry continues to withhold the information which should have in fact been provided within 21 days from the date of the initial application.

In September 2009 a request from a Karachi citizen was submitted to the federal interior ministry, under the FOI ordinance, asking for information relating to MNAs, MPAs and senators who hold the nationality/green card/passport or permanent status for countries other than Pakistan. After a lapse of five months and only after an intervention by the federal ombudsman, the ministry sent a one-line reply — 'the information called for does not relate to this ministry, and it falls under the jurisdiction of the ministry of law, justice and parliamentary affairs'.

There was no choice but to approach the law ministry that after sitting on the request for two months sent a one-liner: —The said information is neither available nor falls under the ambit of this ministry. The applicant should contact organisations such as the cabinet division, the National Assembly or the Senate secretariat || . The comical but

dangerous conclusion of this exchange is that neither the interior ministry nor the law and parliamentary affairs ministry have any clue if our MNAs, MPAs and senators are in fact Pakistanis, foreigners or dual nationality holders.

The provinces are worse with regard to the FOI. In September 2009 the Sindh education ministry was sent a request under the Sindh FOI Act 2006 asking for the number of ghost (non-functioning) schools and the expenditure made on these schools in 2006, 2007 and 2008. After no response was received for four months, the provincial ombudsman was approached who ordered a hearing.

Three such hearings were held. The applicant requesting the information turned up at all three hearings. The education ministry neither responded to nor appeared in any of the three hearings, making it absolutely clear what it thought of the ombudsman and the FOI law.

Pakistan would do well to learn from its neighbour India. Pakistan's FOI law is threatening in nature. Complainants may be subjected to a fine of up to Rs10,000, if the complaints are deemed by the ombudsmen to be frivolous. The Indian Right to Information (RTI) Act, on the other hand is supportive and even allows applicants to get travel and accommodation costs while appearing for RTI hearings.

The ombudsmen in Pakistan seem helpless, as all they seem to have done so far is to send out letters to the concerned department. In sharp contrast, the Indian information commissioner, in numerous cases, directly fine the officials responsible for delay in providing information. The Indian information commissioners also have the powers of financial compensation for any loss or damage suffered by the complainant.

Pakistan needs to go far beyond the cumbersome procedures of citizens making futile efforts of begging for information. A new chapter of accountability and democracy could be opened, if only the freedom of information law was to be implemented in its true

spirit. Central and provincial information commissioners should be appointed exclusively to oversee its effective implementation.

They should have the powers to award fines, penalties and jail terms to officials who delay or refuse to provide information. A pro-active web-based display of information should be made mandatory for all government departments. A dedicated FOI website managed by the FOI commission should display complete requests, responses, time taken, results and decisions on all cases initiated under the FOI law.

We can truly enter a new era of democracy and accountability. Are we willing to unlock the tightly shut doors, and make information easily available to all citizens?

Media and Its Discontents

Dawn

Tuesday, September 2, 2008

By: Zahid Abdullah

PRAISES have been heaped on the media and at the same time abuses have been hurled at it for its coverage of events that have unfolded in the recent past. The media coverage of the lawyers' movement has especially been a bone of contention between the lawyers and the Musharraf camp. The latter condemned the media vehemently as though the entire judicial crisis was its creation. The lawyers eulogised the media projection so profusely that it led one to believe that the movement would fail without the blessings of the media. But on taking a closer look at the matter one finds that the criterion underlying this qualified denunciation and appreciation of the media has been the degree to which it has served the interests of one side or the other. This approach to news coverage has swept under the carpet the real problems that are plaguing the print and electronic media.

Some of the basic issues that are being questioned are the graphic depiction of the gory details in the aftermath of a suicide bombing, lopsided time and space allocation to a particular story, monopolisation of the national debate on key issues by a few intellectuals and the lack of investigative reporting. In this context, the performance of the media as the fourth pillar of the state has come under intense scrutiny. There is a strong case for media self-censorship insofar as the depiction of suicide bombing scenes on television is concerned. The objective of the masterminds of suicide bombings is not limited to killing people. They also want to instill terror in the heart of the government and the people. The media has unwittingly been playing into the hands of these terrorists by showing terrifying images on television and spreading panic and despair. Furthermore, death is a private affair and news channels violate the right to privacy when they display horrible images of the dead or dying. Let alone children, some of the images are too horrific to be handled by adults. Interestingly, one news channel has started employing 'bombing' vocabulary in its reporting of price hikes in

different items that we have witnessed recently. "Another bomb falls on the poor: prices of petrol raised by Rs5". Or "After price hike in petrol, people become victims of yet another bomb: prices of gas also raised". A couple of points need to be made here with regard to this kind of reporting. One, with the media employing such extreme language, how would the horrifying scenes of suicide bombings impact on the common people in their daily lives? Second, it is easier to sensationalise an issue than to look deep into the structural issues through investigative reporting. Take for example the issue of a petrol price hike. It is easier to equate it with the falling of a bomb than to investigate how the hike in international crude oil prices by one dollar per barrel translates into the price of one litre of petrol at petrol stations. What is the share of the marketing companies? What is the share of the government in the shape of the taxes that it collects on petrol? The investigation of these and other problems requires time and resources which most media houses are not willing to provide journalists with. In such a scenario, it is not surprising that the majority of journalists are unfamiliar with the existence of the Freedom of Information Ordinance 2002. Not surprisingly, they are unaware of how to submit information requests to the federal ministries and provincial departments under this law in order to gain access to public documents for investigative reporting. Related to this is the issue of time and space allocation to particular stories by both the electronic and print media. Reporters and anchor persons give most time and space to stories pertaining to political developments than to reporting and discussing systemic issues of governance. Instead of analysing governance-related structural issues, our anchor persons find it easier to wax eloquent about political developments by inviting politicians from different political parties for discussion. Take the example of the various news channels that love to invite the information minister to share her thoughts on the emerging political scenario. However, they have never invited Ms Sherry Rehman to discuss the draft of the Freedom of Information Bill 2008 that her

Interestingly, one news channel has started employing 'bombing' vocabulary in its reporting of price hikes in different items that we have witnessed recently. "Another bomb falls on the poor: prices of petrol raised by Rs5". Or "After price hike in petrol, people become victims of yet another bomb: prices of gas also raised".

ministry recently prepared. For this to happen and for a qualitative discussion on the subject, it would require an extensive study of the existing legislation on the issue and of internationally accepted principles of freedom of information. It would also require a comparative study of different laws enacted by other countries. Ironically, the media has largely ignored an information law that aims to promote transparent and accountable government by giving citizens access to public documents -- a goal that elevates the media to the level of the fourth pillar of the state. Lastly, news channels have restricted themselves to a handful of intellectuals who keep going from one channel to the other. We are not an intellectually bankrupt nation. There are so many academicians, civil society activists and other individuals who might not be otherwise educated in the conventional sense but are wise enough to give fresh perspectives on national as well as international issues.

The media stands indicted on all the issues raised above. The readers of newspapers and viewers of television are also consumers. As things stand, they have been left to the mercy of market forces as the media gives primacy to selling time and space at the expense of quality of coverage. Protecting corporate interests and establishing and maintaining high standards of quality reporting, both in the print and electronic media, are not mutually exclusive. The issue is that of striking a balance.

The question as to how this balance can be achieved needs to be looked into by the media managers themselves. Civil society organisations working in the area of consumer rights need to intervene and determine how they can mobilise people in order to exert pressure on the media managers to strike this balance.

Right to information remains off limits to many

The News

October 25, 2010

By: Zahid Abdullah

More things change, more they remain the same. This cannot be more applicable to anything than our bureaucracy. Perennially subservient to its masters, whether political or dictatorial variety, it refuses to be open and transparent in its functioning. This is ostensibly done on the pretext of following rules and obeying the dictates of the rulers. Loot and plunder the public money and then cite the rules if the information is sought about the way public money is spent seems to be the order of the day as far as the nexus between the corrupt is concerned. Preoccupation of print and electronic media with putting to microscopic scrutiny deeds of politicians has resulted in devoting far less attention to those of the bureaucrats. While politicians as elected representatives will always have greater visibility and accessibility, and, therefore, will be subjected to greater level of public scrutiny, we will have to find ways and means for greater public accountability of invisible and elusive bureaucrats. One way of promoting public accountability of elected and public representatives is putting in place right to information law under which a mechanism laid down for providing information to citizens on demand as well as making information public through proactive disclosure. Over 100 countries have enacted such laws. Closer at home, Bangladesh and India have enacted effective information laws, especially the one in India is being used as a powerful tool to make politicians and bureaucrats accountable and check corruption. Our bureaucracy could not remain aloof to the demands for an information law. However, it came up with a very weak law in the shape of Freedom of Information Ordinance 2002 and whatever effectiveness it had was watered down through its subordinate rules which were framed in 2004.

Whenever yours truly sought information using this law, bureaucrats denied information requests paddling excuses which one does not know whether to call them flimsy or

pathetic or both. Same happened to the information request filed by Mukhtar Ahmed Ali, a citizen based in Islamabad. On January 13, 2010, he filed an information request to Federal Bureau of revenue (FBR) under Freedom of Information Ordinance 2002 asking the FBR to provide certified information about the names, addresses and the fee paid to the lawyers by FBR to represent it in courts from January 1, 2004 to December 21, 2009. On February 22, 2010, FBR provided an answer in one liner: "The required information does not come within the ambit of section 7 of Freedom of Information Ordinance 2002". On the intervention of Federal Ombudsman, FBR explained its position on March 4, 2010 and took the plea that the requested information was part of file noting which were exempted under the FIO. (Interestingly, the requester had sought access to the contracts between lawyers and FBR and had never demanded file notings in the first place). FBR also maintained that "it invaded the privacy of the individual. "The constitution of Pakistan gives protection to the privacy of individuals and the complainant is desirous of violating this fundamental right". No one can claim right to privacy when paid from public funds but look at the great lengths FBR bureaucracy is willing to go, even invoking constitution of the country, to protect information about the fee it paid to the lawyers from public funds.

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No wonder, the Federal Tax Ombudsman after hearing both parties on May 10, 2010, in its finding said, "The requested information falls in the category of public record," and that "FBR is wrong in presuming that complainant is requesting information which is excluded under section 8(a) of FOI Ordinance." Since decisions of Federal Tax Ombudsman are recommendatory in nature, therefore, it recommended FBR to provide information to requester within 21 days. Instead of compliance, the FBR chose to file representation to the President of Pakistan and prayed him to set aside the information request "in the name of law".

A similar information request was submitted to the ministry of law and justice by yours truly in May 2008 asking certified copy of the list of names and addresses of the lawyers hired by the ministry to represent the Federal Government in the Supreme Court and the fee paid to each lawyer. The grounds on which the requested information was denied were even flimsier. The Ministry commented to the Ombudsman that "if the required information is provided to the applicant, the same would create unnecessary problems and will open a Pandora's Box..." The information request was termed as "indirect interference into the working of the government".

Politicians need to make bureaucratic functioning open and transparent by making bureaucracy subservient to the will of people. The government is moving in the right direction as it is in the process of finalising the draft of Freedom of Information Bill 2010. Bureaucracies in Bangladesh and India, still prisoners of the past and living in colonial era, resisted the enactment of right to information laws and our bureaucracy is not going to be any exception. The challenge for politicians will be to sift bureaucratic shenanigans from legitimate concerns as they finalise the Freedom of Information Bill 2010. Their counterparts in India held bureaucrats at bay and sought an acted upon expert advice from the right to information activists. Congress party is still reaping dividends for enacting a powerful right to information law and hopefully this fact is not lost to the present government.

Investigative Journalism and Right to Information

The News

August 29, 2007

By: Zahid Abdullah and Reshmi Mitra

Notwithstanding relatively open debates on private TV channels which, in itself is quite a recent phenomenon, in Pakistan, since independence in 1947, the pattern of governance in a way remains plagued by a colonial mindset and shows an obvious lack of strong foundations for open, regular and liberal political discourse and governance. Furthermore, despite its key role in the recent lawyers' movement for the restoration of the Chief Justice of Pakistan, media, both print and electronic, in its role as the forth pillar of the state, has not used the existing freedom of information laws, in the shape of the Freedom of Information Ordinance 2002, at the federal level, and, the Local Government Ordinance 2001, at the district level, in order to make the political elite and bureaucracy accountable to the people by having access to public documents under these laws. Therefore, it is pertinent to analyse the linkages between democracy and the right to information and the role of media thereof.

The preamble of the Freedom of Information Ordinance 2002 and various provisions of the LGO 2001 pinpoint the linkages between access to information and transparency as well as public accountability. The preamble states: It is expedient to provide for transparency and freedom of information to ensure that the citizens of Pakistan have improved access to public records and for the purpose to make the federal government more accountable to its citizens, and for matters connected therewith or incidental thereto". Under section seven of the FOI Ordinance, citizens can have access to certified copies of policies and guidelines issued from time to time by federal ministries and their attached departments. Moreover, they can now demand, and get information about transactions involving acquisition and disposal of property and expenditure undertaken by a public body. Not only this, under the same section, citizens can claim information regarding grant of licences, allotments, other benefits, privileges, contracts

and agreements made by a public body. Lastly, we can now access to information about the final decisions that have been reached and orders that have been passed in different ministries and departments. Similarly, this theme is easily discernable in some of the provisions of the LGO 2001. Article 137 states: "Every citizen has the right to access information regarding any office of the district council, tehsil municipal administrations, and union administrations. All offices of the district council will provide the said information on receiving the relevant form along with the required fees unless the required information has been declared secret by law at that time." Article 114 (4) says: "The district government will paste the details of its monthly and annual expenditures as well as other important reports at prominent places". In 2004, the federal government notified rules under this ordinance in order to facilitate the process of imparting information to the citizens. In short, hitherto zealously guarded information can be had access to. Since, for the first time, citizens can exercise the right to demand the certified copies of public records, critical information contained in these public documents can lead to unmasking corruption cases and corrupt officials and public representatives can be taken to task. More importantly, the threat that these public documents can be brought into the open could act as a deterrent against corruption. Has investigative journalism in Pakistan equipped itself with the right to information tools on behalf of the citizens?

The forth estate model "dictates the press to make the government accountable by publishing information about matters of public interest even if such information reveals abuses or crimes perpetrated by those in authority". From this perspective, investigative reporting is one of the most important contributions that the press makes to democracy and, resultantly, to the citizens. When we take into consideration the fact that most people do not exercise their right to the freedom of information in a direct and personal way, the significance of investigative reporting becomes all the more important. People are dependant on mass media: newspapers, radio, television and, increasingly, the internet, in order to have access to information. Therefore, it is the responsibility of the journalists to empower the citizens by exercising the right to information on their behalf, in matters pertaining to public interest, through investigative reporting. That is why

journalists are not only supposed to use their access to information laws to inform themselves but also to better inform the public. So far, journalists in Pakistan have not started using their right to information instruments to unearth corruption cases and thereby holding public officials accountable. Elsewhere, journalists are digging deep and coming up with potentially embarrassing stories for the ruling elite. Such is the power of the right to information tools which is begging to be used by journalists in Pakistan.

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Empowerment and media

The News

April 02, 2008

By: Zahid Abdullah

With apologies to Shakespeare, the hurly-burly of elections is done, and the candidates have lost and won. People have put an end to the doubts that they cannot exercise their vote power in a wise and judicious manner. Well, they have. However, the democratic process is long-drawn-out and casting of votes is just one component. In other words, if we take empowerment of the masses as the key objective of the democratic process, the exercise of the right to vote on the polling day is a means to empower the masses, not an end in itself. It does not require rocket science to figure out that people enjoy a sense of empowerment when they have a stake in the system of governance; when they can have access to healthcare, education and other basic necessities of life. The corresponding link between the ability to exercise the right to information and the level of the quality of life enjoyed by the citizens has long been established by researchers and acknowledged by the UN. In other words, the assumption is that those who have greater access to information have a better quality of life, compared to those who have lower access to information. The question arises as to how people can have access to key information that determines whether or not will they be able to lead quality life. When we take into consideration the fact that people are largely dependant on the media for the exercise of their right to freedom of information, the significance of the media in disseminating pertinent information becomes all the more important. Therefore, it is the responsibility of journalists to empower citizens by exercising the right to information on their behalf, in matters pertaining to public interest, through investigative reporting. Is the media informed enough to carry out this task?

At the very outset, it needs to be understood that the freedom of the media is not an end in itself. It is desirable because a free media, in its role as the fourth pillar of the state, monitors the performance of public institutions through investigative reporting, shares with the citizens, who are not either skilled enough or do not have time to exercise their

right to information, the findings of any wrongdoing and thus ensures the judicious use of public resources. Our recent interaction with journalists in the four provinces and in the nation's capital itself has led to three distinct impressions about the way journalists access information and their sources of information. First, journalists (especially from rural districts) are not skilled enough to access information through formal sources. Second, let alone using them, journalists are largely unaware of the existence of the country's freedom of information laws. Consequently, journalists have access to only that information which officials deem fit to share, or that information which is divulged to them, not as a right but as a favour, and that too when someone wants to settle scores with somebody. Third, journalists work under pressure of deadlines. Newspapers do not provide them breathing space in the shape of time and money to conduct investigative reporting. In such a scenario, journalists do not demand certified copies of documents containing key information pertaining to the way the nation's resources are supposedly committed and actually spent, which they can have access to under the Freedom of Information Ordinance, 2002, the Sindh Freedom of Information Act and the Balochistan Freedom of Information Act, and under Article 137 of the Local Government

Ordinance, 2001. As a result, document-based information identifying official negligence, incompetence, maladministration or the one related to the weaknesses in the governance structures stays largely buried in the official files.

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Information, when seen in the context of the media, has two distinct features. One, it has to be retrieved, and, two, it has to be shared. So far as the latter is concerned, the recent convergence of interests with the political parties notwithstanding, media organisations will have to continue guarding jealously the space they have and, at the same time, they will have to mount pressure for the repeal of those draconian laws that hamper media freedom. The former necessitates self-analysis on the part of the media organisations. With the introduction of the electronic-media factor, how long will newspapers be able to survive by publishing the stories that become public knowledge long before the newspapers hit the newsstands? It is quality information retrieved through investigative reporting which will enable the print media to compete with the electronic media. Similarly, TV channels will have to realise that their viewers will soon be fed up with them if they continue feeding them political talk shows and horrific pictures. They will have to realise that investigative reporting, using formal and informal sources of information, can also give an edge to a channel over its competitors. Only through investigative reporting will the media be able to perform its role of the fourth estate. The correlation between the survival of the press and the empowerment of the masses augurs well for the country. Media organisations will not only have to equip their reporters with freedom of information tools but they will have to launch a concerted campaign to reform the information laws as well so that the journalists will be able to dig deep for stories which will help ensure judicious use of public funds and proper functioning of public institutions.

Development Budget and Right to Information

The News

July 3, 2007

By: Mukhtar Ahmed Ali and Zahid Abdullah

Each year, in the month of June, the government of the day, puts forward sets of proposals containing as to what would be the likely sources of the income, what would be the total income and how it would be spent, in the next financial year, to run, protect and develop the country and the masses living within it. This is called national budget. Each year, there are lots of tall claims by the treasury benches on budgetary allocations for the next financial year and deafening silence as to what was actually spent the preceding year in areas like health and education. Are there any gaps between the proposed allocations for the development of the people and actual spending to materialize this development? Who is responsible for these gaps? How could it be ensured that not only what is due for the development of the masses is allocated but it is actually and efficiently spent on the ground? These are pertinent questions as they pertain to issues related to our basic human rights and impact us all on daily basis. Answer to the first question is an emphatic yes. However, answers to the last two questions lie in our ability to exercise our right to information, a right so singularly important in realizing other basic rights like right to education, right to healthcare, right to breathe in clean air, right to life and property, so on and so forth that United Nations General Assembly, in its very first session, adopted resolution 59(1) which stated: Freedom of information is a fundamental human right ... the touchstone of all the freedoms to which the UN is consecrated“. Unfortunately, this year again, parliamentarians have showed little interest in exercising their right to information which is quiet evident the way budget session has been conducted and the way budget has been passed without any qualitative debate. Therefore, it is all the more important that the civil society remains vigilant right from the start of the financial year in order to

ensure that the allocated amounts for development are actually spent this time around. This article spells out how it could be done.

First of all, we need to establish the under-utilization of development funds. For this, we analyzed Data related to the Public Sector Development Program (PSDP) for the Financial Year 2006-07 which suggested that, until the end of 3rd quarter, many Federal ministries and departments had failed to efficiently utilize the funds allocated for various development projects. As a result, the original allocations for a large number of projects were revised downward in sectors like Education; Labour and Manpower Division; Interior Division; Women Development; and Local Government & Rural Development; Environment Division; Food, Agriculture & Livestock Division; and Housing and Works Division. In the 3rd Quarter Review, serious concern was expressed on the slow progress of the ‘Access to Justice Program’. The Law, Justice and Human Rights Division was reportedly told during the Review that, if it was unable to handle the project, the project should be terminated in order to save the commitment charges that are being paid to the Asian Development Bank (ADB). For the Education sector, excluding the Higher Education Commission and Special Education, the total PSDP allocation for the Financial Year 2006-07 was RS 6560 millions. However, the Education Division was able to utilize only RS 1281 millions by the end of 3rd quarter i.e. March 2007. It means that the total spending in 9 months was only 20% of the total original allocation. By the end of 3rd quarter, even the total amount released to the Education Division was only RS 2124 millions. In relation to the Labour and Manpower Division, the major development project planned for the year 2006-07 was ‘Vocational Training for Skill Development’ involving RS 1000 millions. However, the allocated amount could not be spent and the allocation was revised to RS 488 millions during the Mid Year Review and RS 12.5 millions in the 3rd Quarter Review. The total original allocation of RS 8000 millions for the Interior Division was reduced to RS 7684 millions in the Mid Year Review. Major projects that faced downward revisions included ‘Raising of Balochistan Constabulary’ (RS. 1000 millions to RS 836 millions); ‘Addition of 3rd and 4th Lanes to Kashmir Highway from Peshawar More to Golra Mor’ (RS 200 m to RS 5m); and ‘Construction of Road from Karal Chowk to Tramri’ (RS 129 m to zero). Major projects witnessing downward revisions in the Women Development Division included

‘Gender Reform Action Plan’ (RS 104 millions to RS 86 millions); ‘Women Centres’ (RS 73 m to RS 31 millions) and ‘Aman Skill Development Centre Alipur, Islamabad’ (RS 9.4 m to zero) during the 3rd Quarter Review. Progress of 13 out of 17 development projects was reportedly not satisfactory due to low absorption capacity and ineffective project management. The Ministry of Local Government and Rural Development had envisaged projects; one of which has failed to show any progress, while the other one also lagged behind. The Ministry could not spend even a penny out of the total allocation of RS 500 millions for the ‘Participatory Development through Social Mobilization Project’, and the whole amount was surrendered in the 3rd Quarter Review. Whereas, the original allocation of RS 4920 millions for the ‘Khushal Pakistan Program - 1 (KPP-1)’ was revised to RS 2620 millions at the 3rd Quarter Review. Many projects related to the Environment Division suffered from delays or slow progress in implementation. By the end of March 2007, the Environment Division had spent only RS 74 millions against the revised allocation of RS 1762 millions. At the end of 3rd Quarter, original allocations for several projects witnessed significant downward revisions or surrendering of whole amounts. These included: ‘Damage Control through Environmental Improvement of polluted Ravi River’ (125 millions to zero), ‘Environmental Improvement of Swat River’ (RS 75 millions to zero), ‘Environmental Improvement of other Water Bodies throughout the country’ (RS 100 millions to zero), ‘Indoor Air Pollution Monitoring in Pakistan’ (RS 17 millions to zero) and ‘Activity Based Capacity Development Project’ (RS 68.4 millions to 39.5 millions). In the Food, Agriculture and Livestock Division, projects that witnessed slow implementation and, therefore, substantial downward revisions during the 3rd Quarter included ‘Land and Water Resources Development Project for Poverty Reduction in Pakistan’ (RS 100 millions to 2 millions), ‘National Agricultural Research Program’ (RS 400 millions to 200 millions); ‘Special Program for Food Security and Productivity’ (RS 300 millions to 100 millions); ‘Water Conservation & Productivity Enhancement through high Efficiency Irrigation System’ (RS 1000 millions to 647 millions). Other projects that witnessed delays or slow progress leading to substantial downward revisions during the 3rd quarter review included ‘Establishment of Institute of Post-Graduate Studies, Sheikh Zayed

Hospital, Lahore’ (RS 144 millions to zero) and ‘Tax Administration Reform Project’ (RS 1329 millions to 1056 millions).

This analysis of PSDP 2006-7 shows that there are many a slip betwixt the cup and the lip and the promised sums, announced in the budget speech, are not spent in their entirety either because the money thus promised is not made available in the first place, at least on timely basis, or, the concerned

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ministries are unable to spend them because administrative reasons. How could it be ensured that there are no gaps between the allocated money in PSDP 2007-8, at the start of the financial year, and, the development funds actually utilized at the end of the financial year would be the subject of the article next week.

Partners in Social uplift

The News
July 15, 2010

By: Zahid Abdullah

Notwithstanding the justifiable reasons for perennial cynicism most of us are afflicted with, our politicians, generals and bureaucrats can get their act together and deliver. Of course some of the generals have transgressed and tried to govern the country, some of the politicians have hob knobbed with the generals and some of the bureaucrats have acquiesced to the illegal demands of the rulers. Failures in their respective domains are in plenty and much talked about. Dwelling upon them often leads to blame game which has no role in taking the country forward. In this prevailing doom and gloom, what we need to remember is that men in uniform have paid ultimate sacrifices for the country, politicians and political workers for the democracy and bureaucrats have faced hardships for taking stand on principles. In other words, it is because of our generals and bureaucrats that we have well disciplined and trained armed forces and bureaucracy, and democracy because of politicians which is holding together a country with federating units belonging to diverse nationalities. This is what we need to build upon as army, bureaucracy and democracy are not end in themselves but they are there for the protection and well being of the common man. So far, well being of the common man has been the residual outcome of the efforts of generals, politicians and bureaucrats which have been primarily geared towards jealously protecting their institutional interests from one another. Growing numbers of ill-educated and malnourished Pakistanis struggling for survival on daily basis are neither in the best interest of the barrel-chested generals, glib-tongued politicians or the shock-proof bureaucrats. Solution oriented structured dialogue amongst the players of these three entities, aimed at putting the available resources to best use for the well being of the common man, is the need of the hour. In other words, civil-military relationship needs

to be redefined and turned into civil-military partnership. Before launching into how it can be done, let's analyse why it needs to be done.

Under the existing arrangements, weakest links of the society get the least from the budgetary allocations in each fiscal year and what is actually spent is far less than what is allocated. Every year, far less than what is actually required for the educational and healthcare needs of absolute and relative poor Pakistanis is promised in the national budget. Every year their week voices articulated through their ministries demanding the release of the promised funds are lost in the corridors of Ministry of Finance which is more receptive to the stronger voices. Furthermore, the increase in the education and health sector budget is nominal and not in real terms. In 2009-10, the government reduced the original current allocation of RS 627.7 millions for the education sector to RS 591 millions. Similarly, in 2010-11, the total development budget of the education division is RS 5 billions, as compared to RS 8 billions allocated in 2009-10. However, the original allocation of RS 8 billions in

2009-10 had been subsequently reduced to RS 5.5 billions. Hence, the development allocation for 2010-11 is significantly less than 2009-10, especially when the impact of inflation is also discounted. The current budget of Higher Education Commission (HEC) has been increased from RS 21.5 billions to RS 23.2 billions, which is a nominal increase of 7.8 percent. This is also insignificant in the face of high inflation rate prevailing in the country. The current budget for universities under HEC has been increased only by 4 percent i.e. from RS 12795 millions to RS 13313 millions. The increase in the current allocation of technical universities is only 3 percent. This means that the budget has actually been significantly decreased in real terms as the inflation

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rate is over 12 percent. The total current budget allocated for health sector in 2010-11 is RS 5436 millions, as against RS 4913 millions in 2009-10. This is an increase of 10.6 percent, which is also nominal. Within the overall health budget, the current allocation for public health has been increased from RS 407 millions in 2009-10 to RS 450 millions in 2010-11. The increase in the budget of medical services is also nominal, which has increased from RS 4258 millions to RS 4698 millions. This is an increase of 10 percent; again below the prevailing inflation rate – hence it actually means decrease in real terms. Total development budget of health sector in 2010-11 is RS 16.9 billions, as against RS 23.2 billions allocated in 2009-10. This is a substantial decrease, especially if we discount the impact of inflation as well.

The ground realities necessitate civil -military partnership for the social sector uplift. The idea may sound odd to both the generals and politicians. However, educational and healthcare needs of poor Pakistanis cannot continue to be sacrificed till the day when politicians will be able to exercise civilian supremacy over defense budget. Similarly, no matter how much funds nation may allocate for defense, they will be consumed by this bottomless pit. Generals can definitely divert precious billions for social sector by making military machine more efficient and without compromising legitimate requirements for protecting territorial integrity. They can demand from politicians through bureaucrats to spend funds thus diverted specifically on health and education.

Poor Police Performance

Dawn

June 24, 2010

By: Zahid Abdullah

IT is generally assumed that the less than satisfactory performance of the police in protecting the lives and property of citizens is caused by the scarcity of human and financial resources. However, the budget books tell an entirely different story so far as the Islamabad Capital Territory (ICT) police is concerned. According to 2009 estimates, the total population of Islamabad was 1.21 million. In 2009-10, the total strength of the Islamabad Capital Territory Police was 10,700. This included 238 officers and 10,462 staff. The ratio of one policeman per 113 persons is far better than the one-policeman-per-600 citizens ratio that law-enforcement experts recommend. Similarly, the dearth of resources does not seem to be a plausible argument if we take into account the exponential raise witnessed in the budget allocated for ICT police. For

the dearth of resources does not seem to be a plausible argument if we take into account the exponential raise witnessed in the budget allocated for ICT police. For example, the total budget allocated for the Islamabad police was Rs3.65bn in 2009-10, as compared to Rs0.6bn in 2003-04. This means that, over these years, the budget allocation for the Islamabad police went up by 508 per cent! For the financial year 2010-11, a hefty amount of Rs4.13bn has been allocated for the ICT police.

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As a nation, we wait for push to come to shove and then start the process of rectifying the wrongs. Such a push came for the inspector-general of police, ICT, last year when he counted his men in the wake of deadly terrorist attacks in the capital and found to his displeasure that over 150 orderlies assigned to the inspectors were tilling the fertile plains of Punjab or driving taxis on the roads of Islamabad. The privilege was withdrawn and the men were called back to active duty — a commendable act for which the IGP should be congratulated. However, one would respect him more if the disproportionately high number of policemen deployed for the protection of the elite that is unwilling to pay its taxes is recalled to protect the common people. The logic for such action lies in the fact that it is the common man that fills the government coffers through direct taxes. It is because of the common people and not the elite of this country that from 2003-04 to 2009-10, the total increase in staff-related allocations for the Islamabad police was 542 per cent, which amounts to 90 per cent per year on average. Furthermore, the disproportionate deployment of junior police staff is playing havoc with both the quality of life enjoyed by the policemen as well as the level of protection enjoyed by the citizens. After being robbed in F-10 Markaz last July, when I went to the police station to lodge an FIR, I felt sorry for the inspector on duty despite being the victim myself. I knew there and then that I had a lost case. How could you expect your case to be solved by a man on duty for the last 12 hours and dozing on his makeshift bed? It is about time that the police bigwigs start treating their junior staff as human beings, give them eight-hourly shifts and get the best out of them by giving them breathing space. As a starting point, the IGP needs to know how official letters from one police station to the other are delivered. He would come to know that for this very basic and important operation, the assigned constables either take lifts from the public or drive their own taxis as travel expenses are not reimbursed. We have brave men working for our protection and their services can be better utilised by reforming the system. The recent salary increase is implemented through an increase in allowance which might not benefit police employees in terms of annual increments or post-retirement benefits. Their pay structure needs to be improved.

As things stand, the top-down approach is adopted while making the budget for the police. As a result, there are either no allocations for basic functions like communication

and travel for junior police staff or else the process is so cumbersome that they find it easier to get things done by extorting money from the citizens. That is why it is important that the police budget be prepared in a way that has benefits for the lowest levels, while ensuring the input of all ranks. This process will ensure that senior officers in the concerned ministries at least know what the staff at the lowest level needs and demands, and the extent of the gap between needs and the availability of funds. Furthermore, in each police station, there should be appointment of accounts staff to manage accounts locally. After all, if the accounts can be managed at the school level, why can they not be managed at the police station level?

Therefore, Station Head Officers (SHOs) should be given drawing and disbursing powers in the interest of the delegation of authority and efficiency. Only then would junior police staff be given equal access to resources allocated for travel and communications. Lastly, effective protection of life and property of citizens is only possible if the police stay one step ahead of criminal elements. This is only possible if adequate funds are allocated to computerise the police department and organise it on modern lines, so that it could use modern techniques to protect the people and investigate crimes.

Right to Information in South Asia

The News

Monday, March 26, 2007

By: Zahid Abdullah and Reshmi Mitra

A system where the poor remain poor is not inevitable but man-made, particularly where the government and its instrumentalities remain essentially rooted in the secretive colonial model of governance that treats citizens as subjects. In such a style of governance, citizens are largely excluded from governance in absence of informed and meaningful participation in the decision making process. They are unaware of their rights, and are therefore oblivious of what is happening in governance, they do not know how to speak out to ask; and they will conveniently not be told. These two factors — secrecy by the bureaucracy and silence by the public — reinforce each other with the result that there is little accountability of bureaucrats.

It is in this environment of a lack of transparency, accountability, responsibility and responsiveness in the governance that unrelenting problems of poverty, mass corruption and embezzlement of public funds flourish. Rarely does the behaviour of bureaucrats come under scrutiny unless there is a huge siphoning of money or a major scandal, but once the clamour dies down no one knows how the matter ended. However, no matter how imperceptible the change may be, it is taking place both in India and Pakistan, the countries with shared legacy of colonial experience. Access to information is widely recognised as an effective anti-corruption tool.

In India, the introduction of the Right to Information Act (RTI Act) in 2005 has placed a duty on the government to provide the public with information. Citizens from all walks of life whether in rural or urban settings are all using the law to uncover corruption and misuse of public funds at all ranks of the bureaucracy, forcing change and promoting accountability in the working of every public authority. In Hasdeo, a small town in the Indian state of Madhya Pradesh, a constructive use of the RTI Act requesting information from the only primary health care centre run for its employees

by one of the biggest public sector units of mining for coal revealed that aphrodisiacs (euphemistically called 'vitality restoring tonics') were stocked instead of the common life-saving drugs. In addition it was also found that such purchases were made at exorbitant rates. A vigilance inquiry proceeding is said to be going on against the officers. Moving to western India, Mohanbhai used RTI to pull up fair price shops in

Kalol Taluka of Gujarat, and was successful to make the Public Distribution System (PDS) work. PDS is a programme of the government for provision of subsidised rations (food grains in a fair-price shop) for poor families. Mohanbhai was refused the information on the grounds that the application was not made in the prescribed form.

Little did the officer imagine that Mohanbhai would take the rules to point out the error to the officer that no form was required. The episode is indicative of how serious governments are in implementing this Act — but an informed citizen can make a difference to make public service delivery mechanisms perform better. In Maharashtra, a RTI request filed by a resident of Mumbai unearthed another scam on misuse of the amount of money disbursed by the revenue department for flood relief in Mumbai last year. Following which the Anti-Corruption Bureau arrested five government staffers. Again a pioneering example was set by vigilant citizens in Mumbai who similarly used the RTI Act to unearth a scam showing that successive governments have been doling out public land to various private bodies for shops and businesses.

The land grab has cost the city administration more than a billion dollars in lost revenue. Simple tasks like renewing a passport, obtaining a driver's license or a subsidised food card, have historically been very hard to achieve without paying a substantial amount as a bribe to public servants. However, it appears that the RTI Act had an answer for 80-year-old Laxmi Devi. Her passport being unduly delayed and asked to pay bribe of an exorbitant amount she filed an RTI application with the Public information Officer (designated as such under the RTI Act, responsible to receive information requests) enquiring the status of her passport. Believe it or not in a matter of two days her passport was delivered promptly to her address.

In Pakistan, the Freedom of Information Ordinance was promulgated in 2002. It divided the civil society groups into two; those who rejected it out of hand saying it was too restrictive and those who thought that, its shortcomings notwithstanding, it did provide a foothold through which freedom of

Simple tasks like renewing a passport, obtaining a driver's license or a subsidised food card, have historically been very hard to achieve without paying a substantial amount as a bribe to public servants. However, it appears that the RTI Act had an answer for 80-year-old Laxmi Devi. Her passport being unduly delayed and asked to pay bribe of an exorbitant amount she filed an RTI application with the Public information Officer (designated as such under the RTI Act, responsible to receive information requests) enquiring the status of her passport. Believe it or not in a matter of two days her passport was delivered promptly to her address.

information movement in the country could be taken forward. The latter started demanding framing of the rules under the FOI Ordinance so that it could be implemented. Interestingly, even in the absence of rules, one civil society group started submitting information requests to different ministries and when some ministries denied access to public records, it took them to the ombudsman office.

When they took the plea that they could not provide the information, as the rules were not framed under the ordinance, the ombudsman gave the ruling that failure to frame the rules was in itself a proof of maladministration and instructed it to provide the information. One such information request submitted to the Capital Development Authority (CDA) in 2004 pertained to the cost involved in planting date palm trees in Islamabad. At that time, the rumour windmills were churning out different stories. Some would say these trees had been imported from Dubai, others would say they had been taken from interior Sindh and yet others would say they had come from the farm of that particular feudal lord. Speculation on the cost of a single tree ranged from 5,000 to 100,000 rupees.

The information provided on the intervention of the ombudsman established that CDA actually spent Rs2.4 million on the whole initiative and the cost of one tree was 990 rupees. Civil society and people confronted the chairman CDA, demanding why this much money was spent on trees which were not likely to grow given the climate of Islamabad. The land mafia often operates in collaboration with corrupt elements in the government agencies. In Karachi, there was a case regarding the commercialisation of government-owned land which was essentially a residential area.

A building was demolished and somebody wanted to build a commercial building on it. People wrote to the authority concerned, seeking information as to whether the plot on which the commercial building was planned was residential or commercial. They were first asked under what authority they were seeking this information. Then they got the answer that most of the agencies have agreed to commercialise it. Finally, they said that others have commercialised it. Under the FOI Ordinance of 2002, a Karachi based civil society group filed an information request of the same nature with the ministry concerned. Again, on the intervention of the ombudsman, they shared the information that it was a residential plot. A case was filed based on this information and the construction on that plot had to be stopped.

A new beginning has ushered with the enactment of the RTI Act and the FOI in India and Pakistan respectively. People's involvement and participation with correct information has immense potential to bring about the much needed change to bureaucratic functioning. These success stories may be limited in scope, but they do highlight the potential of freedom of information laws in making bureaucracy accountable and ensuring the judicious use of public money.

Disability and Information Access Barriers

The News
September 25, 2006

By: Zahid Abdullah

World Health Organization puts the number of disabled people in the country around 10% of the total population. What accounts for the dichotomy between WHO and official figures that put the number of disabled at slightly less than 3% of the total population, a number vehemently contested by disability organization? Even if the margin of error is only that of 1% on the part of the government, it means that it denies the fact that there are potentially 150,000 people with disabilities. Dichotomy between these figures demonstrates that people with disabilities are mostly 'nameless, faceless and uncounted persons in Pakistan'. Who are these people, where and how do they live as they are not represented in the mainstream national life in accordance with their corresponding share in the over all population of the country. More importantly, looking beyond cold statistics, how could these people be given names and faces and brought into the mainstream national life?

Technology is a great leveler. As you read these lines, rest assured that the thoughts contained in them have been articulated, typed and sent to the editor by a blind person. This proves beyond any shadow of the doubt that visually impaired can join the mainstream national life provided that they have access to sensory substitution technologies. The question arises as to what are these technologies and how could they be made available to our blind people so that their isolation could be put paid an end to and they could work side by side with their sighted counterparts. These technologies primarily refer to those products and devices that try to replace sight with speech, sound and touch. They are a complete departure from sensory augmentation technologies that try to enhance whatever sight is available. The cheap laptop, PC, scanner, OCR software, graphics software and sound card provide a firm base on which the visually impaired person is able to build a complete kit of sensory substitution facilities. Of

these, Perhaps the most powerful and most effective is the screen reader that has profoundly influenced the lives of visually challenged. Through a speech synthesizer, a screen reader gives voice output and the visually challenged can access the computer very effectively. Moreover, blind can scan books that in turn are read by these screen readers. These screen readers are extremely popular amongst the blind community. Most popular of these screen readers are Window Eyes and JAWS. They have helped them join the mainstream life and they can easily access newspaper and the textual material on the Internet. They have also brought the blind community together and by forming groups on the net they are helping the cause of the blind. Through these groups they disseminate information, exchange ideas and expertise. What is the role being played by the government to make this technology available to the visually impaired and equally importantly what policy initiatives have been undertaken To create a conducive environment so that this technology could play its optimum role in improving blind people's access to information.

So far, only half measures have been taken to make this technology available and that too in few selected schools for the blind. Blind people themselves have shown great resilience and have greatly contributed to the spread of this technology in the blind community. Nevertheless, a growing number of disabled people in Pakistan are using screen reading softwares in order to have access to information on the internet. However, technology alone cannot guarantee full access to information, for, it can only yield desired results when complimented with relevant standards. These standards pertain to those technical details while designing a web page or displaying or putting information on web site that cater to special needs of people with different disabilities. In the absence of these standards, special needs of physically handicapped, blind and speech and hearing impaired are not contextualized. Comprehensive information, tools and training to make internet accessible can be obtained from Web Accessibility Initiative web site at <http://www.w3.org/WAI/>. Many countries have framed necessary laws and operationalised standards to give equal access to their citizens with disabilities. In Pakistan, however, in the absence of web accessibility policy, all most all of the official web sites are inaccessible, in varying degrees, to the disabled people.

This digital divide can be abridged only by framing comprehensive web accessibility policy and enactment of relevant laws in this context. Through such a policy, government should make it binding on all private sectors institutions and organizations to make their web site accessible. Since, one of the initiatives of the present government is to have 'paperless government', therefore, it is all the more important that it puts in place the web accessibility standards so that disabled people have equal access to information. Access to information is one of the key determinants of well being of any group of people. Access to information is one of the key determinants of well being of any group of people and it is through equal access to information that the state can provide equal opportunity environment to the disabled citizens.

Many countries have framed necessary laws and operationalised standards to give equal access to their citizens with disabilities. In Pakistan, however, in the absence of web accessibility policy, all most all of the official web sites are inaccessible, in varying degrees, to the disabled people. This digital divide can be abridged only by framing comprehensive web accessibility policy and enactment of relevant laws in this context.

The new information bill

DAWN

July 25, 2008

By Zahid Abdullah

THE content of the draft Freedom of Information Bill 2008 provides an interesting insight into the interplay of political will and bureaucratic shenanigans on the vital issue of transparent governance and public accountability. Notwithstanding polarisation on different national issues, the political will has manifested itself unequivocally across the board on the issue of ensuring transparent functioning of the government by allowing citizens to exercise their right to information. The Charter of Democracy signed by the two major political parties acknowledges citizens' right to information. The prime minister, in his very first speech to the parliament, stressed the need for good legislation on freedom of information and ever since has made frequent references in this regard. Sherry Rehman, minister for information and broadcasting, has been a great advocate of the right to information. In fact, in 2004, she introduced in parliament a private member's bill on freedom of information which was never taken up for discussion. Never a perfect document incorporating international principles of freedom of information, the bill was a definite improvement on the Freedom of Information Ordinance 2002. The proposed FOI Bill 2008 is better than the existing FOI Ordinance 2002 but fails to incorporate some good provisions of Ms Rehman's own private member's bill of 2004. This clearly suggests there is a dichotomy between what she wanted when she was in the opposition and what the bureaucracy at the ministries of information and law is willing to concede to her in terms of putting in place an information law that makes bureaucrats and public representatives accountable to the public. It also shows the kind of power wielded by a civil bureaucracy that needs to be made subservient to the political will, the debate on which is often drowned in the din of the civil-military relationship discourse. We congratulated the information minister through these pages for taking this initiative and had urged her to incorporate in the proposed law widely accepted principles of freedom

of information which, barring some, have largely been ignored. This is yet another attempt on our part to contextualise the whole debate as we believe such an opportunity to enact an effective information law may take a long time to come again and we may end up with an albatross around our necks in the name of freedom of information.

When juxtaposed with the existing freedom of information legal framework, the proposed bill has some good points. Its scope has been broadened and encompasses provinces and local bodies. However, the bill proposes to repeal FOI Ordinance 2002 but makes no mention of the Balochistan Freedom of Information Act 2005 and the Sindh Freedom of Information Act 2006. As it stands at present, the bill will create legal confusion as the federal ombudsman, the appellant body, has jurisdiction only over federal ministries and attached departments according to the existing legal arrangements. So the issues pertaining to the broadening of scope need to be given careful consideration. The political will to provide citizens better access to information seems to be prevailing as the list of records to be published and made available to the public has also been broadened. Disclosure of file notings, a long-standing demand of civil society, has been accepted along with the relevant correspondence and summaries. However, the definition of public records conflicts with Section 7 that describes records created by the federal and provincial governments as public records.

This is going to create confusion when citizens submit requests to access information. What does and what does not constitute public record needs to be looked into carefully and spelled out clearly. Another positive feature of the bill is the declassification of records 20 years after initiation. Furthermore, reasons will have to be provided while classifying the documents. The time limit for providing information has been reduced from 21 days, as was the case in FIO 2002, to 14 days. On the surface it may seem an improvement but this deadline may not give reasonable time to the concerned officer to collect information and share it with the person requesting it. Furthermore, there is no provision for speedy disposal of information requests pertaining to urgent matters. The bill overrides all other laws. The blanket overriding of all laws shows that legal

repercussions of such a provision have not been taken into consideration. Rather than providing blanket jurisdiction, the bill should specifically mention the Official Secrets Act and other such laws that restrict the right to information. Surprisingly, the whistle-blower protection clause included in the 2004 document fails to find place in the present bill. Is the bureaucracy afraid of its own honest officials leaking information of wrongdoing by corrupt officials in its rank and file?

Taking decisions on contentious matters pertaining to the right to information is a specialised job which has again been entrusted to the federal ombudsman.

If we are serious about creating a culture in which information flows freely, we will have to establish an independent information commission, vesting it with powers to ensure that government departments disclose information proactively. The commission must also have the authority to initiate disciplinary action against officials who wrongfully deny information. The benefits of an accountable and transparent government resulting through the efforts of such a powerful commission will far outweigh the costs of putting such an institution in place. Even if the establishment of such a commission is deemed unfeasible, relevant changes can be introduced in the law dealing with the office of the federal ombudsman in order to make it more effective.

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Though the political will to come up with an effective information law has been demonstrated, the lacunae that have been identified clearly suggest that certain people at the ministry of law, where this bill was sent for comments, are either not doing their jobs properly or have deliberately injected legal confusion, as is quite apparent from its content. There is a need for consultative meetings with right to information experts before the bill is submitted for cabinet approval. That consultative meeting should not be like the one I attended a few months ago when the declared objective of discussing freedom of information was completely overshadowed by journalists' concerns about the Wage Board Award and the relationship between journalists and media owners.

Whither Freedom of Information Law?

DAWN

April 21, 2008

By: Zahid Abdullah

RIGHT to information legislation ensures that citizens have access to official records. It is through access to public records that we can determine how the nation's resources are being utilised and thus make the functioning of governments transparent and its functionaries accountable to the citizens.

In the absence of such a law, journalists feed the masses with guesstimates. Alternatively they rely on informal sources to lay hands on official documents which they should be able to get as their right in the first place by submitting information requests to the concerned ministry or the department.

That is why the freedom of information movement has gained momentum in the last ten years and now over 65 countries have enacted access to information laws. More importantly, the right to information movement has established benchmarks to determine the effectiveness of information laws enacted by different countries.

Pakistan has not escaped the impact of these developments. In fact, it was the first country in South Asia to have such a law in the shape of the Freedom of Information Ordinance 2002 (FIO 2002). However, it is a weak law with many loopholes.

It is through access to public records that we can determine how the nation's resources are being utilised and thus make the functioning of governments transparent and its functionaries accountable to the citizens. In the absence of such a law, journalists feed the masses with guesstimates. Alternatively they rely on informal sources to lay hands on official documents which they should be able to get as their right in the first place by submitting information requests to the concerned ministry or the department.

It is in this context that Information Minister Sherry Rehman's promise at a press conference on April 2 is exceedingly important. She said that access to information for the media as well as the people would be ensured. During the tenure of the previous government, PPP parliamentarians had thrice attempted to table a freedom of information bill for transparency and accountability. This bill is to be revived in consultation with civil society stakeholders, the information ministry and the media.

It is heartening to note that the government is willing to work on a freedom of information law through a consultative process. A brief analysis of the existing freedom of information law with reference to international practices is in order so that past mistakes are not repeated while making the new law. Reforming a bad law is more difficult than enacting a good law in the first place. FIO 2002 has many anomalies that become all the more glaring when juxtaposed with ten principles that have evolved over the years and are considered to be at the heart of good legislation on freedom of information.

According to the first principle, 'everyone' has the right to information. FIO 2002 gives this right only to the 'citizens' of Pakistan. In other words tourists, businessmen, foreign nationals employed within Pakistan or others living in the country for different purposes are excluded from the purview of this law. The second principle says that access is the rule and secrecy the exception. It is vice versa in the case of FIO 2002. The list of exemptions is very long. Even file notations and minutes of meetings which are deemed, with certain qualifications, to be public documents under information laws framed by different countries have been given blanket exemption from disclosure.

The third principle pertains to the jurisdiction of information laws and says that the right to information applies to all public bodies. In line with this principle, certain countries have brought into the purview of their information laws even those private entities which are substantially funded by the government. However, FIO 2002 is applicable only to the federal ministries and attached departments.

Making requests simple, speedy and free is the essence of the fourth principle. Under FIO 2002 the process is neither simple, nor speedy nor free. The requester has to

declare the purpose of seeking information. The designated officer is bound to provide information within 21 days of the receipt of the information request. In case the information is denied, the requester can lodge a complaint with the head of the organisation who can decide the matter within 30 days.

If the head of the organisation feels that the information is not to be disclosed, the requester can lodge a complaint with the federal ombudsman who is not bound by any time frame. The fee for seeking information is high. The initial fee for copies is Rs50 which covers only the first ten pages of the public record. For any extra page, Rs5 will be charged per page which is even higher than the market price.

The ordinance takes into account the fifth, sixth and seventh principles. In accordance with the fifth, it makes the provision that assistance will be given to the requester. Similarly, the sixth principle is encapsulated by the provision that makes it binding on the designated officer to give, in writing, the reasons for denying information. The seventh principle pertains to the right of appeal against an adverse decision and FIO 2002 grants this right.

The eighth principle, that public interest takes precedence over secrecy, is not adhered to by the ordinance. Proactive disclosure, the ninth principle, is incorporated in FIO 2002 and makes it binding on federal ministries and attached departments to publish core information. The tenth and last principle, establishing an independent body to guarantee the right to information, is overlooked by the ordinance. In the absence of an information commission, which many countries have set up, the requester has to look to the federal ombudsman when information is denied. Determining the validity of information requests and ensuring the free flow of information is a specialised job which may not be properly carried out by the already overburdened federal ombudsman's office.

This juxtaposition of FIO 2002 with principles pertaining to freedom of information shows that the federal information law is very restrictive and riddled with many anomalies that need to be done away with. No wonder empirical data suggests that it is extremely difficult to retrieve information from official quarters under this law.

We have meagre resources and can ill afford the squandering of the past. As it has already proven in many countries, a just freedom of information law can be a potent tool in the hands of journalists and citizens groups to access public records and thereby make officials and public representatives accountable.

Will the government and civil society be able to enter into a dialogue resulting in such a law? The answer to this question will determine how, as a nation, we are going to get rid of corruption, maladministration and injudicious use of public resources.

Access to information

The News

August 17, 2006

By: Zahid Abdullah

Those who desire to give up freedom in order to gain security will not have, nor do they deserve, either one."

-- Benjamin Franklin

Access to information is now widely accepted as a fundamental human right. Its first acknowledgement by the world community can be traced back to 1941, when in its very first session, UN adopted resolution 59(1) which stated: 'Freedom of information is a fundamental human right ... the touchstone of all the freedoms to which the UN is consecrated'. What is the logic of attaching importance to people's access to information to an extent that it is not only regarded as a fundamental human right but it is also identified as a yardstick to measure other freedoms? What is the state of freedom of information in Pakistan? Do we have effective laws ensuring freedom of information in the country, and, more importantly, how does state establish a balance between its legitimate security needs and people's right to information?

Lack of transparency in public affairs invariably results in poor governance, owing to inability of citizens, civil society groups and public representatives to effectively monitor the performance of public institutions. Therefore, there is close correlation between degree of good governance and the level of access to information enjoyed by the citizens. In other words, when people have better access to information, they can bring about improvement in the functioning of public institutions. For example, if people know the total budget of a dispensary or of a school in their area, they will demand corresponding quality in the services.

Similarly, if they know the total cost to be incurred on the proposed road in their area, they will create immense public pressure on their representatives and officials if the

quality is compromised because of the kickbacks. For this to happen, public institutions will have to be made transparent in their functioning. Ironically, the first major effort to this end came in the shape of the freedom of information ordinance (FOI) promulgated by a military ruler. However, this is not the only irony surrounding the state of freedom of information in Pakistan.

The FOI Ordinance 2002 acknowledges our 'right to know' but paradoxically a thumping majority of people do not know that their 'right to know' has now been acknowledged and they can have access to public records. It is highly unfortunate that even the educated amongst us do not know that cabinet division has designated information officers in all ministries to facilitate people's access to official records. Similarly, Article 114 (5) and Article 137 of LGO 2001 are aimed at providing greater transparency and encouraging public participation in the functioning of the local government but there is a general lack of awareness about these articles.

Article 114(5) says: "A statement of monthly and annual accounts and such other necessary statements shall be placed at a conspicuous place by the local government concerned for public information". Similarly Article 137 says "every citizen shall have the right to information about any office of the district government, tehsil municipal administration and union administration". It further provides that "information about the staffing and performance of the office of a local government during the preceding month shall, as fast as possible, be displayed at a prominent place within the premises of the office for access by citizens". The awareness or lack of it pertaining to the relevant laws is not the only aspect of the story of freedom of information in Pakistan.

The plot thickens and the ironies become even more pronounced when we see the implementation side of these laws. Exercising powers conferred by section 25 of the Freedom of Information Ordinance 2002, on June 18, 2004, the federal government made Freedom of Information rules. The main objective of these rules was to put in place a mechanism through which citizens could have an access to official information. However, there are serious problems in these rules. For instance, under these rules, citizens requesting information have to pay a fee of Rs50 for each request with the entitlement to receive information only up to 10 pages. If the requested information

exceeds 10 pages, the requester has to pay an additional fee at the rate of five rupees per page. These fee and photocopying charges seem to be in violation of Article 3 of the ordinance, which explicitly provides that it will be interpreted so as to 'facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information'.

Furthermore, the format given in the rules for information requests requires citizens to describe the purpose of the information requested. In addition, the declaration part of the format requires requesters to declare that the "information obtained would not be used for any purpose other than specified above." This requirement is against the spirit of the FOI ordinance and amounts to putting additional restriction on citizens' right to information.

The most serious irony in the FOI ordinance is that it does not override the plethora of existing laws, which actually hampered access to information. There are plenty of these but the one that is frequently misused is the Official Secrets Act of 1923. Given the colonial context in which it was framed, it confers unchecked powers to state functionaries, which are often used for the suppression of freedom of information. This is where the quotation cited in the beginning of this article comes into play. The Official Secrets Act needs to be repealed immediately.

It is time we moved on and stopped hanging on to the crutches of our colonial legacy. We are a free people and we should demonstrate it by creating a balance between freedom of information and our national security needs. Furthermore, the government can give impetus to the process of creating freedom of the information culture in the society by widening the scope of the FOI ordinance. In its present shape, the ordinance excludes several vital areas from access, such as noting on files, minutes and interim orders which are important to find out as to who opposed a certain project on what grounds and who overrode the objections and on what grounds. In a nutshell, if

It is time we moved on and stopped hanging on to the crutches of our colonial legacy. We are a free people and we should demonstrate it by creating a balance between freedom of information and our national security needs.

its anomalies are removed, the Freedom of Information Ordinance of 2002 can go a long way in establishing a society wherein free flow of information would enable citizens to make their public institutions and functionaries accountable to them.