

# “Right to Information - Global Experiences and Lessons for Pakistan”

- Lecture by Toby Mendel, INP



The right to information is a hallmark of liberal democracies the world over. Voters armed with information can make better electoral choices. Informed taxpayers can ensure that the resources meant for them are spent for them. Citizens with information on budgets and public spending can hold service providers to account.

Close to a hundred countries have enacted and implemented a right to information law. Any right to information law is meant to eliminate corruption, establish transparency, accountability and good governance, through the enforcement of the rule of law. In Canada, the Access to Information Act allows citizens to demand records from federal bodies. The act

came into force in 1983. The Indian Right to Information (Indian RTI) is a comprehensive law which came into force on 12 October 2005. The Indian RTI states: 'Whereas the Constitution of India has established a democratic republic; and whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed'.

Pakistani citizens were first granted access to Public Information through the "Freedom of Information Ordinance 2002". The law was applicable only to Federal government departments. Although a step in the right direction, the Ordinance failed to achieve its goals. There was no policy or planning to guide implementation. Officials were not assigned to serve information requests. They were not made aware of their new responsibilities or

trained to perform them. There was also very little demand from citizens to use the law, as most ordinary Pakistanis remained unaware of it. More recently, Sindh and KP introduced provincial laws on access to information. Derived from the federal legislation they inherited most of its weaknesses – as well its failures.



The law allows any citizen access to public records held by a public body of the federal government including ministries, departments, boards, councils, courts and tribunals. It does not apply to government owned corporations or provincial governments. The bodies must respond within 21 days. Under this law, any citizen can seek any information or record from any public body, except for information categorized by law as exempt from disclosure. The law also provides a grievance

redressal mechanism for those who have been denied information:

'In case the designated officer of a public body fails to provide the requested information/record within 21 days. The requester may, in terms of Section 19 of the Ordinance, file a complaint with the head of the public body, who shall dispose of the complaint within 30 days of its receipt'. In case the competent authority fails to redress the grievance of the requester within 30 days of the filing of complaint or refuses to provide him/her the requested information within time, the requester may file a complaint with the Wafaqi Mohtasib. But the reform was again let down by implementation failure. It did not deliver actual access to information for ordinary Pakistanis.

However since the arrival of Article 19-A on the scene and the subsequent judgment of Lahore High Court the whole scenario has changed, with right to information on matters of public importance becoming a fundamental right.<sup>1</sup> This means that now a citizen of Pakistan may inquire on a matter of public importance as a matter of right, failing which he or she can file a constitutional petition asking for the enforcement of this fundamental right.

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<sup>1</sup>Ataullah Malik v. Federation of Pakistan as aforesaid

The background for the introduction of the right to information as a fundamental right is that in 2010, the parliament passed the Constitution (18<sup>th</sup> Amendment) Act 2010 which made the “Right to Information” a fundamental constitutional right under Article 19-A<sup>2</sup>. This was a highly progressive policy reform. In terms of the law it expanded the scope of public interest litigation.<sup>3</sup> The fundamental right affords an opportunity for any citizen of Pakistan to bring a constitutional action on the grounds of access to information i.e. Article 19-A.



**Article 19A** *Right to Information of Constitution of Pakistan states “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”.*<sup>4</sup>

<sup>2</sup> Constitution (18<sup>th</sup> Amendment) Act 2010

<sup>3</sup> Atallah Malik v. Federation of Pakistan PLD 2010 Lah 605

<sup>4</sup> Constitution of Pakistan – Fundamental Rights Chapter.

## Role of Civil Society & Right to Information

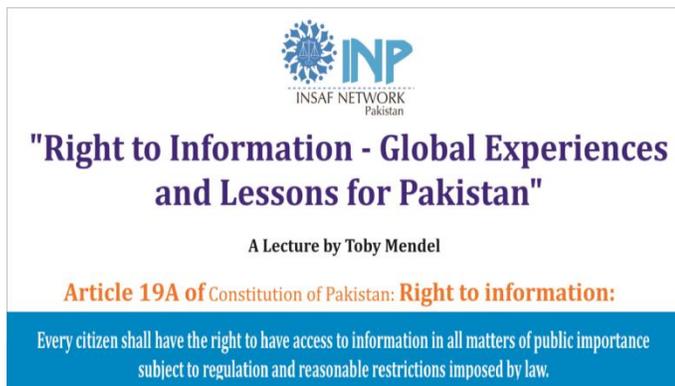
Civil Society in Pakistan intends to raise awareness among citizens on their legal and constitutional rights to information. They also advocate for measures by the government to implement laws on ground. More people using the law to request information will build pressure on service providers to make their functions transparent. Civil society and media lead this push.

INSAF NETWORK PAKISTAN (INP) as Civil Society Network also plays an important role in this effort. INP envisions a society, which promotes rights and legal empowerment of its citizens and disapproves of all forms of abuse, neglect and violence. One of the fundamental rights that Insaf Network Pakistan focusing is Article 19A Right to Information of Constitution of Pakistan.

Since start of 2013, INP is promoting and giving awareness on Right to Information, organizing Lectures, running social media campaigns and creating video messages on constitution fundamental right 19A “Right to Information”.

To understand Right to Information - Global Experiences and Lessons for Pakistan, Insaf Network Pakistan organized a

Lecture by Toby Mendel on 6<sup>th</sup> May, 2013. Mr. Mendel is the Executive Director of the Centre for Law and Democracy, Canadian-based international human rights NGO that focuses on providing legal expertise regarding foundational rights for democracy, including the right to information, freedom of expression, the right to participate and the rights to assembly and association.



Participants in the event included members of the civil society, law colleges, bar associations, donors, lawyers, and students. The discourse proved to be greatly enlightening; Mr. Mendel spoke of the three steps to effectively ensure and protect the fundamental rights of citizens: efficient legislation, commitment from officials with regards to implementation of legislation, and efforts to generate awareness of these fundamental rights as provided, amongst the public. He stressed that effective provision of

rights through the law would first require efficient legislation to be in place, and through a statistical study, highlighted that Pakistan falls relatively low on a list ranking countries by efficiency of their legal framework. More people need to be aware of their right to demand information from government officials, so as to push towards a more responsible, accountable and efficient government. The event was a major success.

INP is also filing critical constitutional challenges under Article 19-A as public interest litigation.<sup>5</sup> INP supports under this banner not just government accountability through citizen's requests for information of public importance but also internet freedom as a necessary corollary to the right to information.

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<sup>5</sup> This includes two writs in the Peshawar High Court as part of its Adl-o-Insaf Project.