

MONITOR

The State of Right to Information in Pakistan

August 2015

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Federal Right to Information Bill yet again Not discussed by the Cabinet

Despite its inclusion on the agenda of the Federal Cabinet meeting held on August 24, 2015¹ the Government of Pakistan's latest Right to Information Bill could yet again not be discussed and was deferred to the agenda of the next Cabinet meeting.² The Senate Committee on Information, Broadcasting and National Heritage, in a meeting chaired by Senator Kamil Ali Agha, on September 2, 2015, has expressed concerns regarding the Cabinet's failure to discuss the Bill, which has caused further delays in its eventual passage.³

The Bill, which was initially drafted in 2008, had reached a similar stage earlier as well, most recently on December 27, 2013 when the Ministry of Information, Broadcasting and National Heritage first moved a Summary within the Federal Cabinet for its eventual introduction as an Official Government Bill.⁴ It is unfortunate that more than 2 years on, a progressive law has not moved past the Federal Cabinet for its passage by the Parliament.

It is worth noting yet again that the draft Bill had been widely praised for being a modern and progressive law, with the potential to top Canada-based Centre for Law and Democracy's Global RTI Rating if passed in its current form.⁵

Sindh Information Minister assures early passage of new Right to Information Law

Sindh Minister for Information and Education, Mr. Nisar Ahmed Khuhro, MPA, said that Sindh would soon get a new and much improved Right to Information Law in place of the outdated Freedom of Information Act 2006. He was speaking to a delegation led by PILDAT President Ahmed Bilal Mehboob which called on him at his Sindh Assembly Chamber on August 19, 2015. Mr. Khuhro informed the PILDAT delegation that Sindh Information Department had finalised the draft of a new Right to Information Bill. He also informed the delegation that the new Bill had been vetted by the Law Department and a Summary had been moved for consideration and approval by the Sindh Cabinet. The Provincial Information Minister was hopeful that the Cabinet would discuss and approve the bill in the near future after which it would be tabled in the Provincial Assembly of Sindh. He said that the Government of Sindh was keen to bring its existing Freedom of Information Act 2006 in conformity with international standards and the Government of Pakistan's 18th Constitutional Amendment. The Secretary Sindh Information Department, Mr. Nazeer Jamali, was also present in the meeting. PILDAT is hopeful that the Sindh Government will facilitate the passage and promulgation of the draft Bill in a speedy manner.

Despite Promises, KP did not undo regressive changes to KP RTI Law

A clearer picture of the widely criticized amendments to the Khyber Pukhtunkhwa Right to Information Act 2013 has finally emerged, even though the amended Bill has yet to be published online on the Assembly's website. The amendments, which were passed by the Provincial Assembly of Khyber Pukhtunkhwa on June 23, 2015, include some noteworthy clauses:

- i. A new sub-section (3) has been inserted into Section 28, under which all offenses prescribed in Section 28 (1) of the KP RTI Act 2013 are now bailable, non-cognizable and triable by the District and Sessions Court.
- ii. The clause under Section 2 (i)(iii) which places the Provincial Assembly of KP under the ambit of the RTI Act 2013 has been deleted.
- iii. A new word has been inserted into Section 24 under which two Information Commissioners will be appointed to the KP Right to Information Commission instead of three in the original Act.

Of these amendments, the first two are the most problematic. The second amendment has already been widely criticized and pressure has been mounting on the Provincial Government with every passing day that it fails to honour public promises to repeal the controversial amendments. These include promises for an "immediate repeal" of the widely criticized amendments tweeted from the Pakistan Tehreek-e-Insaf official Twitter account on July 26, 2015, and similar assurances given by Chief Minister of KP, Mr. Pervaiz Khattak, in a meeting with PILDAT on July 30, 2015.

Since making these well-publicized promises, the Government of KP has yet to include an Order to repeal the amendments within the 15th Session of the Provincial Assembly, despite holding seven sittings between August 3,

1. Dawn, "Cabinet to review security situation today", August 24, 2015, Islamabad, Pakistan; [accessed online on August 26, 2015, at: <http://www.dawn.com/news/1202447/cabinet-to-review-security-situation-today>]
2. The International News "Fate of draft RTI law hangs in balance", August 25, 2015, Islamabad, Pakistan; [accessed online on August 25, 2015, at: <http://www.thenews.com.pk/Todays-News-13-39263-Fate-of-draft-RTI-law-hangs-in-balance>]
3. The Express Tribune (2015), "Summary for PEMRA chairman's appointment to be sent to prime minister by Sept 18", September 2, 2015, Islamabad, Pakistan; [as accessed online on September 3, 2015, at: <http://tribune.com.pk/story/949573/summary-for-pemra-chairmans-appointment-to-be-sent-to-prime-minister-by-sept-18/>]
4. National Assembly of Pakistan Standing Committee on Information, Broadcasting and National Heritage (2014): pg. 6; 31-21, "Special Report on Right to Information Bill, 2013", Islamabad, Pakistan; [online at: <http://naecomm-infohb.pk/Activities/Specialreports/SpecialReportonRighttoInformation.pdf>]
5. PILDAT (2015), "PILDAT Lauds Pakistan's Lead in the Global RTI Ranking; Demands early Passage of RTI Law at the Centre and in Sindh and Balochistan Provinces", July 22, 2015, Islamabad, Pakistan; [online at: <http://www.pildat.org/eventsdel.asp?detid=764>]

2015, and August 17, 2015,⁶ after which the Assembly Session was adjourned till September 7, 2015.⁷

These amendments, especially the first amendment listed above, must urgently be repealed as they dilute the powers of the Information Commission to prosecute a criminal offence under the law's provisions. In KP's original RTI law, there was no specific reference to cognizability of offences. However, now that offences under the RTI Act are non-cognizable under the new clause inserted into Section 28, arrests for violation of the law's provisions cannot be made without approval from the District and Sessions Court.

In comparison, the Punjab Transparency and Right to Information Act 2013 only allows courts to take cognizance of offences under it upon the explicit direction of Punjab Information Commission or one of its officers (Section 17), thereby preserving its status as an independent statutory body for enquiring into RTI-related offences and complaints.⁸

Under KP's controversial RTI Amendment Act 2015, offences under the RTI act may now also be tried within the District and Sessions Court. In the original RTI Act of 2013, under Section 25 (2)(f), offences such as obstruction of information disclosure by a public official could only be forwarded by the KP RTI Commission to the Peshawar High Court, which, according to Article 199 (1)(c) of the Constitution of Pakistan, is the initial forum for appeals or petitions against the violation of fundamental rights such as the right to information, which is enshrined under Article 19A of the Constitution. By declaring offences under the RTI Act as triable within lower courts, specifically the District and Sessions Courts, the RTI Amendment Act is in direct violation of the Constitution.

In comparison, Section 18 of Punjab's RTI law allows the decisions of the Information Commission to be challenged only through internal review, or through petition to the High Court. Thus this law is in accord with Article 199 (1)(c) of the Constitution as it contains no provisions allowing petitions or complaints to be heard in the lower courts.

The practical implications of this amendment have yet to be seen, and will be closely followed by PILDAT in the coming months. It is hoped that these amendments will finally be repealed once the current Session of the Provincial Assembly is adjourned on Monday, September 7, 2015, as per promises made by party leaders in the Government of KP.

Punjab Information Commission summons official to explain non-compliance of Punjab Governor's House under the Province's RTI law

In summons dated August 20, 2015, the Punjab Information Commission has called on Mr. Tariq Shehzad, Deputy Secretary (coordination) and Public Information Officer at the Punjab Governor House, to explain why its April 15 order⁹ requiring immediate disclosure of expenditure-related records held by the Punjab Governor House has still not been followed.¹⁰

Mr. Shehzad had earlier been issued a show-cause notice by the Punjab Information Commission on March 3, 2015 after repeatedly failing to appear before it during hearings. The Commission, in its most recent summons, has called on Mr. Shehzad to explain why his office has not complied with its orders.

PILDAT believes that compliance with the Commission's orders is essential for the Punjab Governor House. As a public body, the Governor House must restore public trust within it by committing to the proactive disclosure of all prescribed categories of information, including budgetary and expenditure-related records.

Controversial appointments to Khyber Pukhtunkhwa Right to Information Commission challenged

Two separate developments have cast doubts on the internal functioning of the KP RTI Commission. Both of these developments suggest discrepancies in the Commission's recruitment processes.

The first development involves the stay imposed by Peshawar High Court (PHC) in response to a petition submitted by certain contractual employees of the Commission seeking permanent service contracts. The PHC has stayed the filling of recent openings announced by the Commission on a permanent basis as these positions are currently being occupied by the petitioners.

The Additional Advocate-General of Khyber Pukhtunkhwa, Mr. Waqar Ahmad Khan claimed that the openings had been announced in accordance with established service rules to fill said positions on a permanent basis.¹¹ He added the petitioners may apply for these posts in competition with other candidates., Under the Khyber Pukhtunkhwa Civil Servants Act, 1973, appointment of the petitioners was made on an ad hoc basis, and, according to the Khyber Pukhtunkhwa Civil Servants Rules, 1989 Section 14 (1) such appointments may not exceed 12 months in duration.¹² However, since the case is before the court, only the court's verdict can resolve the issue.

The second development, on the other hand, provides greater cause of concern. It involves a writ petition submitted to the PHC by concerned citizens, in which they allege that senior-level appointments to the Commission were made against established service rules. These allegations extend to the appointment of Information Commissioner, Mr. Abdul Matin Khan, and the appointment of a consultant, who was later given the charge of Secretary, with all associated privileges.

This second appointment appears to be more contentious. It was allegedly made in violation of service rules pertaining to re-employment of retired persons, and the term of this appointment was also extended allegedly illegally by another year. As mentioned earlier, according to Section 14 (1) of the Khyber Pukhtunkhwa Civil Servants Rules, 1989, an ad hoc appointment, such as one made on a contractual basis, cannot have a term exceeding one year.

6. Provincial Assembly of Khyber Pukhtunkhwa (2015), "Session 15: Sittings", Peshawar, Pakistan; [accessed online on September 3, 2015, at: <http://www.pakp.gov.pk/2013/session/session-no-15/>]
7. Provincial Assembly of Khyber Pukhtunkhwa (2015), "Sitting of the Assembly has been Adjourned till 7th September, 2015 at 03:00 pm", Peshawar, Pakistan; [accessed online on September 3, 2015, at: <http://www.pakp.gov.pk/2013/notification-for-budget-2015-2016/>]
8. Government of Punjab (2013), "The Punjab Transparency and Right to Information Act 2013", Lahore, Pakistan.
9. Punjab Information Commission (2015), "Waseem Abbasi vs. Deputy Secretary, Governor House", April 15, 2015, Lahore, Pakistan; [online at: <http://rti.punjab.gov.pk/system/files/15%2004%202015%20Objections%20Petition%20by%20Secretary%20to%20Governor%20regarding%20Waseem%20Abbasi%20Vs.%20Tariq%20Shahzad%2C%20Deputy%20Secretary%2C%20Governor%20H.pdf>]
10. The International News, "Punjab commission summons Governor House official under RTI law", August 26, 2015, Islamabad, Pakistan; [as accessed online on August 26, 2015, at: <http://www.thenews.com.pk/Todays-News-13-39279-Punjab-commission-summons-Governor-House-official-under-RTI-law>]
11. Government of Khyber Pukhtunkhwa (1972): pg. 1, "Khyber Pukhtunkhwa Civil Servants Act, 1973", Peshawar, Pakistan; [online at: <http://www.khyberpaktunkhwa.gov.pk/Gov/KP-Civil-Servants-Act-1973.pdf>]
12. Government of Khyber Pukhtunkhwa (1989): pg. 9, "Khyber Pukhtunkhwa Civil Servants (Appointment, Promotion and Transfer), 1989", Peshawar, Pakistan; [online at: <http://www.khyberpaktunkhwa.gov.pk/Gov/KP-Civil-Servants-APT-Rules-1989.pdf>]

More facts are required to determine if the consultant's appointment also violated rules pertaining to the re-employment of retired government servants; namely, whether the appointment was made with the approval of a higher appointing authority, in this case the Chief Minister as the assigned post of Secretary is above BPS-17.

Disbursement of HEC Scholarships must be opened up to Public scrutiny

A meeting of the Senate Special Committee on the Issue of Lapse of Various Foreign Scholarships,¹³ was convened on August 12, 2015, to determine why funds allocated by various international agencies for Pakistani students seeking to study abroad had lapsed over the last 4 years.¹⁴

It was revealed during the meeting that while the HEC had processed 1,457 foreign-funded scholarships in the last four years, records on the number of scholarships that had lapsed were not available due to lack of a coordinating mechanism between the different bodies and Ministries involved in scholarship disbursement. However, upon authority of Senator Mushahid Hussain Sayed, PILDAT has learnt of substantial irregularities and flaws in the process of awarding these scholarships to students. According to the Honourable Senator, under the guise of a lack of coordination, these scholarships are neither being publicized properly nor being awarded on merit.

To ensure that these scholarships are awarded transparently to deserving students, the process of disbursing such funds must be opened up to public scrutiny. The Federal Right to Information Bill, once passed, will provide a powerful tool for achieving this purpose. Even if the bureaucracy successfully resists any measures taken within the Senate for ensuring transparency in the award of foreign scholarships, data and information on when and how these funds are being disbursed may be made available in a timely fashion through public information requests.

Data on Punjab schools still not accessible

A news report emerged on August 21, 2015,¹⁵ regarding the Failure of School Education Department, Government of Punjab, to meet its information disclosure obligations. Important categories of information have not yet been published on the Department website. Upon further review, PILDAT found that the Department has failed to proactively disclose information related to:

- i. The categories of information it possesses
- ii. Decision-making processes it follows
- iii. The amount of subsidies and details of beneficiaries of subsidies granted by it
- iv. Particulars of permits and authorizations granted by it
- v. The report also reveals the Department's failure to respond to information requests submitted by a concerned citizen on February 2,

2015, and August 3, 2015.

This failure to proactively disclose key categories of information specified in law diminishes the credibility of the widely heralded Punjab Education Sector Reforms Programme (PESRP). PILDAT feels that all organizations and public bodies involved in the PESRP should comply with provisions of RTI law, thereby removing public suspicion of this all-important Programme.

Khyber Pukhtunkhwa RTI Commission Complaints proceeding status: August 2015¹⁶

A total of 89 complaints were submitted to the KP RTI Commission in the month of August 2015. Of these a total of 9 cases were closed, of which one was beyond the Commission's jurisdiction. The remaining 8 closed cases all resulted in the provision of requested information within the prescribed time period. This is a much higher rate of disclosure than was observed in the previous month, in which only 10 out of 117 cases were closed, a majority of which were beyond the Commission's jurisdiction. For more details please see the previous issue of this Monitor.¹⁷

RTI Landscape in South Asia

Central Government of India calls for removal of Political Parties under RTI Act ambit

In response to a public interest petition submitted before the Indian Supreme Court on May 19, 2015 regarding inclusion of political parties within the ambit of the country's RTI legislation,¹⁸ the Central Government of India, on August 24, 2015, argued that political parties could not be considered public bodies under law, and therefore no information disclosure obligations could be imposed on them.¹⁹

Earlier, in July 2015, the Supreme Court summoned the Central Government of India and six national-level political parties – including the Indian National Congress, Bharatiya Janata Party, Bahujan Samaj Party, Communist Party of India (Marxist), Communist Party India and Nationalist Congress Party – to respond to a petition submitted by a civil society organization for disclosure of information on income and donations received by political parties.²⁰ This petition was placed before the Supreme Court after the abovementioned political parties refused to comply with orders issued by the Central Information Commission (CIC), India, for the disclosure of income and donations-related information held by them.

Political parties, both in general and within India, receive substantial public benefits, such as tax exemptions and grants of public land, and carry out an essential public function – marking them as public bodies by most modern definitions in law. If the Government of India begins ensuring political parties' compliance with the CIC's June 3rd order, the decision is likely to reverberate meaningfully within South Asia and the wider region. Until this decision is pending PILDAT has flagged this issue for future monitoring.²¹

13. Senate of Pakistan (2015), "Committee on Issue of Lapse of Various Foreign Scholarships", August, Islamabad, Pakistan; [online at: http://www.senate.gov.pk/en/details_standingcommittees.php?id=166]

14. Dawn, "Senate body seeks details of lapsed foreign scholarships", August 13, 2015, Islamabad, Pakistan; [accessed online on September 2, 2015, at: <http://www.dawn.com/news/1200185>]

15. The News International (2015), "Punjab schools data remains elusive", August 21, 2015, Lahore, Pakistan; [as accessed online on August 22, 2015, at:

<http://www.thenews.com.pk/Todays-News-5-335332-Punjab-schools-data-remains-elusive>]

16. Khyber Pukhtunkhwa Right to Information Commission (2015), "Statement of Complaints 2015", August, Peshawar, Pakistan; [as accessed on September 2, 2015, at:

<http://www.kprti.gov.pk/rti/documents/144042220855daf3257b5dc.pdf>]

17. PILDAT (2015): pg. 4, "State of Right to Information in Pakistan: July 2015", August 19, 2015, Islamabad, Pakistan; [online at:

http://www.pildat.org/Publications/publication/FOI/PILDATMonitorontheStateofRighttoInformationLegislationinPakistan_July2015.pdf]

18. Association for Democratic Reforms, "Political Parties under RTI Act: Roadmap of Complaint", New Delhi, India; [as accessed online on August 26, 2015, at:

<http://adrindia.org/content/political-parties-under-rti#roadmap>]

19. Times of India, "Political parties can't be brought under RTI, Centre tells SC", August 25, 2015, New Delhi, India; [as accessed online on August 26, 2015, at:

<http://timesofindia.indiatimes.com/india/Political-parties-cant-be-brought-under-RTI-Centre-tells-SC/articleshow/48660802.cms>]

20. Jagdeep S. Chhokar, "Dark secret: how six parties frustrated the bid to bring them under RTI", July 9, 2015, India; [as accessed online on, August 26, 2015, at:

<http://www.catchnews.com/politics-news/dark-secret-how-six-parties-frustrated-the-bid-to-bring-them-under-rti-1436454816.html>]

21. Times of India, "Political parties can't be brought under RTI, Centre tells SC", August 25, 2015, New Delhi, India; [as accessed online on August 26, 2015, at:

http://timesofindia.indiatimes.com/india/Political-parties-cant-be-brought-under-RTI-Centre-tells-SC/articleshow/486_GoBack_GoBack60802.cms]