

Strengthening National and Provincial Legislative Governance Project

PROCEEDINGS

BRIEFING SESSION
FOR PARLIAMENTARIANS
AND PARLIAMENTARY STAFF

FREEDOM OF INFORMATION

June 28, 2004
Hotel Marriott, Islamabad

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Prepared By

Pakistan Institute of Legislative Development And
Transparency - PILDAT



As a Part of
Pakistan Legislative Strengthening
Consortium - PLSC



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Abbreviations & Acronyms

APNS	All Pakistan Newspapers' Society
APP	Associated Press of Pakistan
CPNE	Council of Pakistan Newspaper Editors
DCO	District Coordinating Officer
FOI	Freedom of Information
IMF	International Monetary Fund
MMA	Muttahidda Majlis-e-Amal
MNA	Member National Assembly
MQM	Muttahidda Qaumi Movement
PEMRA	Pakistan Electronic Media Regulatory Authority
PML	Pakistan Muslim League
PPO	Press and Publications Ordinance
PPPP	Pakistan Peoples Party-Parliamentarian
SAARC	South Asian Association for Regional Cooperation
SAFMA	South Asian Free Media Association
UN	United Nations

Acknowledgments

PILDAT acknowledges the support provided under USAID-project of Strengthening National and Provincial Legislative Governance - SNPLG for organising this Briefing Session on the Freedom of Information.

PILDAT owes special thanks to the Speakers of the Briefing for their overview of the subject and their insight and commentary on its various aspects for the benefit of the audience. We especially thank Syed Anwar Mehmood, Secretary Ministry of Information and Broadcasting; Ms. Sherry Rehman, MNA and Former Editor Herald; Mr. M. Ziauddin, Resident Editor Dawn and President South Asian Free Media Association (SAFMA) and Mr. Mujib-ur-Rehman Shami, Editor-in-Chief Daily Pakistan and Former President CPNE. PILDAT especially thanks Senator Nisar A. Memon, Chairman Senate Committee on Information & Broadcasting for chairing the Briefing.

Last, but not the Least, PILDAT acknowledges the participation and interest of participating Parliamentarians and Parliamentary Staff at the Briefing.

Disclaimer

PILDAT has made every effort to ensure the accuracy of views in compiling and editing these proceedings. It, however, does not take any responsibility for any omission or an error since it is not deliberate. The views expressed at the dialogue and presented in this report are those of the speakers and participants and do not necessarily represent the views of PILDAT, PLSC, or USAID.

Executive Summary

The Briefing on Freedom of Information was held to orient Parliamentarians on the Issue of Freedom of Information in Pakistan, details about the current ordinances dealing with freedom of information and media and how media, civil society and experts on the issue view the situation as it prevails in the country today.

According to Article 19 of the United Nations' Universal Declaration of Human Rights, everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers. How governments regulate this right differs from country to country. Syed Anwar Mehmood, Federal Secretary for Information & Broadcasting outlined the major features of the Freedom of Information Ordinance in Pakistan while Ms. Sherry Rehman, MNA, Mr. M. Ziauddin, President SAFMA and Mr. Mujib-ur-Rehman Shami, Former President CPNE articulated their views, and their reservations on it suggesting various amendments in the Ordinance.

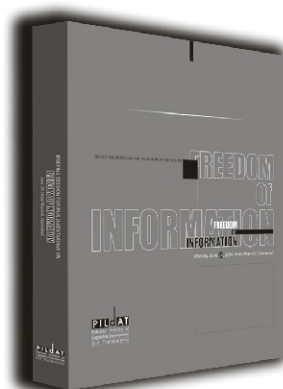
The major points presented by the speakers included acknowledgment of the passing of this ordinance in Pakistan as the first South Asian country to have done it. However, concerns were voiced that the ordinance's implementation was delayed for nearly two years due to lack of rules of business for this while its hasty creation led to many loopholes in the ordinance. The views of the speakers were followed by a Q&A/Comments Session.

Introduction

The Briefing Session on Freedom of Information was held by PILDAT as a part of the PLSC under the USAID-funded project of Strengthening National and Provincial Legislative Governance - SNPLG.

The objective of the briefing was to orient Parliamentarians on the Freedom of Information in Pakistan, the basic laws that govern it and how those laws are viewed by various stakeholders and segments of the society. A special briefing paper was commissioned, prepared in English and translated in Urdu, to provide background information to the participants. An Information Dossier for the briefing was also especially prepared that carried copies of papers and speeches of various resource persons and information on the subject to be used by participants.

Appendix A carries the Programme of the Briefing while **Appendix B** carries the Lists and the Profiles of Participants.



Profiles of Speakers

Senator Nisar A. Memon

Chairman Senate Committee on Information and Broadcasting

Former Federal Minister for Information

Senator Nisar A. Memon has served twice as Federal Minister for Information, Government of Pakistan in 1993 and 2002; Chairman ENGRO in 2001-02, President Overseas Chamber of Commerce and Industry, President American Business Council, Syndicate Member Karachi University and President of 'The Reformers'. He was born on February 15, 1942 at Karachi. He was elected as Senator from Sindh on a PML ticket. He holds an MSc. from Karachi University.

Syed Anwar Mehmood

Federal Secretary for Information and Broadcasting

Syed Anwar Mehmood has done his Masters in Economics and is currently the Federal Secretary Information and Broadcasting. He is also responsible for the establishment of the Press Council of Pakistan through Press Council Ordinance of Pakistan. He has been the Press Attaché at Embassy of Pakistan in Canada and has also been the Press Secretary to the Prime Minister from 1986-88. Mr. Mehmood has had the opportunity to travel extensively all over the world representing Pakistan in a large number of international conferences.

Ms. Sherry Rehman

MNA (NA-309, Women Sindh, PPPP)

Former Editor Herald

Ms. Sherry Rehman is a Member of the National Assembly of Pakistan. She is currently President of the Central Policy Planning Group and Foreign Relations Committee of PPPP. Ms. Rehman is also the chief Parliamentary Coordinator of PPPP. A journalist by profession, Ms. Sherry Rehman graduated with B.A. Hons. Degree from Smith College, USA in 1985. She has been Editor of Herald magazine and is a founder member of the Human Rights Commission of Pakistan. Ms. Rehman is an award winning journalist with wide experience in both the broadcast and print media, and was the first Pakistani media person to be recognised by the UK House of Lords for independent journalism in 2002. She is the architect of the first parliamentary charter and bill for women's empowerment as well as for freedom of information bill.

Mr. M. Ziauddin

Resident Editor Dawn
President SAFMA

Mr. M. Ziauddin is currently Resident Editor of The Dawn in Islamabad. After completing a Masters Degree in Journalism from Karachi University in 1966, his career as a journalist spanned over a period of 40 years with several different newspapers of which 20 have been spent with the Dawn. Mr. M. Ziauddin's areas of specialisation in the field of Journalism are Economic and Politics and he writes prolifically on both subjects.

Mr. Mujib-ur-Rehman Shami

Editor-in-Chief Daily Pakistan,
Former President Council of Pakistani Newspaper Editors - CPNE

Mr. Mujib-ur-Rehman Shami's career in journalism spans almost four decades. He is the Editor-in-Chief of daily 'Pakistan', and publisher of weekly 'Zindagi' and monthly 'Quami Digest'. Mr. Shami has served as an active member of the All Pakistan Newspapers Society (APNS) and the Council of Pakistan Newspaper Editors (CPNE), being elected the President and then Secretary General of the CPNE, and Senior Vice President of the APNS.

Welcome Remarks

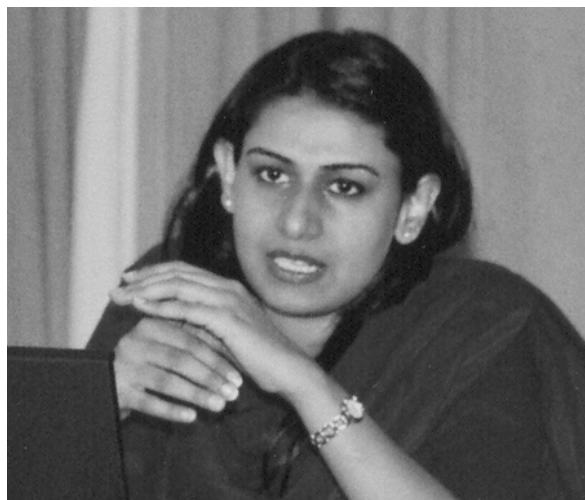
Mr. Ahmed Bilal Mehboob
Executive Director, PILDAT



Mr. Ahmed Bilal Mehboob, Executive Director PILDAT, welcomed the session chair, participating parliamentarians, speakers at the session and the observers. Acknowledging the developments carried out in the field of freedom of information in the World, he felt that it was necessary that an introduction of existing laws in Pakistan be given to Parliamentarians, who, together with stakeholders, should work for a refinement of these laws to serve the purpose and rationale for freedom of information.

Overview of the Briefing Session

Ms. Aasiya Riaz
Joint Director, PILDAT



Presenting an overview of the briefing, Ms. Riaz said that the briefing was organised so as to introduce available laws on freedom of information and available perspectives on them so as to aid parliamentarians to start an informed debate on the issue. PILDAT's objective in holding briefings to parliamentarians is to arm them with knowledge which is power, she added.

Discussing the role of PILDAT, she said that it is committed to strengthening democracy and democratic institutions in the country through building the capabilities and support infrastructure of elected legislators. PILDAT has carried out many technical and issue-based briefings and workshops for the aid of parliamentarians.

Discussing the funding sources for PILDAT which are sought in keeping with indigenously-carved agenda of PILDAT, she said that the briefing session was held under SNPLG project while PILDAT has also worked with organizations such as UNDP, DFID, FES and others.

Appendix C carries her complete presentation.

**Introductory Remarks
by the Session Chair**

Senator Nisar A. Memon
Chairman Senate Committee on
Information & Broadcasting



Commenting on the Freedom of Information Ordinance, Senator Memon said that it was a precise and a much needed step in the right direction for the future of the country. Access to information was now mandatory by the Constitution. He believed that there was a need for a debate to explore the workable options to come up with practical, balanced and possible solutions to gain momentum in efforts towards a strengthened democratic infrastructure. The democratic process entails the ruling coalition and the opposition to engage themselves in activities concerning good governance, he said.

An Overview of the Freedom of Information and Media Ordinances

Syed Anwar Mehmood
Federal Secretary for
Information & Broadcasting



mercifully removed in 1988 by a caretaker government, and was replaced by Press and Publication Ordinance which expired in 1997.

Earlier, he said, starting from 1947-48, and especially in decades of 1960s, 1970s and 1980s, much effort was made towards creating a regulatory body for newspapers. Unfortunately these efforts did not materialise leaving Pakistan as one of the very few democratic countries who, having relatively free press on the one hand did not have a state regulated law for the newspapers. There was much debate in the journalistic community for a defined law for the Freedom of Information which was finally introduced by the Government in 2002.

There was a demand by public to have a defamation law as average Pakistanis and even the government servants had a very little recourse to relief against defamation. Added to this was the media and general public's desire to have access to information laws and codes. Till 2002, the country did not have a law to allow private sector broadcasting television and radio stations. The military government, not being traditionally representative, still brought about all these changes in media laws in keeping with the wishes of the people, said Mr. Mehmood. It is a huge step forward, but despite passing of this ordinance, it remains to be seen how it is implemented and proves to be of any use to render a free and enabling environment for media operations in the country, he concluded.

Syed Anwar Mahmood believed that it was an excellent forum to discuss the situation of media and related laws with the public representatives. The freedom of information ordinance and much of the changes and developments in the media have taken place at a time of a non-representative military government when it was least expected, he said. There is a degree of the liberalisation of the media which was not seen in the previous 50 years existence of Pakistan as an independent country.

Pakistan did not have a law to register the Newspaper and Publications between 1997 and 2002. There was a vacuum as the infamous West Pakistan Press & Publication Ordinance 1967 was

Implementation of Ordinances on Freedom of Information and Media

Ms. Sherry Rehman
MNA (NA-309, Women Sindh, PPPP)



Ms. Sherry Rehman began by acknowledging the efforts made by PILDAT for holding the briefing on Freedom of Information in the face of what she termed a 'dire need to reform the ordinance.' The ordinance, she believed, needs to be viewed from the perspective of access to information by the general populace and players in the government.

Since the media is a platform for discussion and a vital guide of information and opinion, it is imperative that Parliamentarians should understand and use it as a tool for evolving a healthy relationship between the public and the state. In developing countries, especially South Asian countries, the access to information legislation is at the heart of the relationship between the citizens and governments of developed democracies, she said.

In Pakistan, a culture of apathy towards such ordinances prevails which has to be changed immediately. Discussing the proposed amendments that she has put forward in the National Assembly in the form of a bill on this issue, she said that her bill is put forward in the spirits of non-partisan politics and is in response to a genuine critique of the freedom of information ordinance intended in good faith.

Another major issue with the existing ordinance is the state withholding information on the grounds of national security, she said. This is a very

important clause that needs to be changed. It must be the responsibility of a public body, such as the Legislature, of the state to withhold the information about key installations and key foreign decisions, which might affect country's best interest in the current future. All other exemptions related to the national security have to be removed and kept under the terms of law, she said.

Ms. Rehman proposed another reform in the ordinance about the declassification of the state documents involving investigations or reviews. Declassification is essential to any Freedom of Information Law because it provides historical review and puts the affairs of the state in a clear perspective for the public and media to engage in a healthy debate, she said. If Freedom of Information Law was in place 20 years before, the Hamood-ur-Rehman Report would have been available to public explaining who was responsible for the fall of Dhaka, why Ojhri Camp blew-up and what actually happened in Kargil, she added.

Ms. Rehman believed that a committee should be formed to set right the historic record of the country. Those responsible for the distortion of the public record should be prosecuted and a clause for criminal liability for such individuals should be included in the new ordinance.

The existing ordinance includes too many government provisions standing in the way of an ordinary citizen wanting to access public records. If a designated official refuses to give information, the only recourse of a citizen is to the Wafaqi Mohtasib, who can only be approached under certain conditions. If a department head refuses on the basis of a person's entitlements, that too is a limitation or roadblock to the process. She strongly believed that no entitlement or any other qualification such as this should exist for a person to acquire information. All red tape should be minimised, which is not the case under the rules of the current law. In many countries, there is an additional or special ombudsman for information access, which might be a useful office to consider in the future, since the Ombudsman's offices in Pakistan is under-resourced and over-burdened,

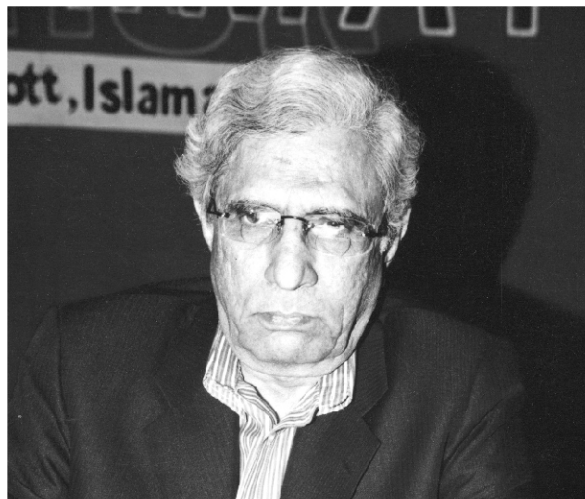
she said. Her bill presses the Ombudsman to ensure the information is provided within 14 days and the right for second court appeal if that does not materialise.

There is an urgent need of the computerisation and indexation of record for access and a public awareness campaign, as many do not understand that they have a right to access the required information, said Ms. Rehman. The campaign should explain to the public how they can effectively use these rights for accountability of the state and for improving governance. The government needs to start a staff training campaign as well. It is important to understand that stakes in good governance cannot be sidelined on grounds of low literacy rate of the country. As parliamentarians, she believed, we have to work together to put this structure in place that allows access to information to the individuals and helps them not only to participate in governance but maintain a check on state according to the true ideals of democracy.

Appendix D carries complete Paper of Ms. Sherry Rehman.

Freedom of Information and Media:
Overview of Ordinances and
Suggestions for Improvements

Mr. M. Ziauddin
Resident Editor Dawn;
President SAFMA



Mr. M. Ziauddin believed that since the inception of Pakistan there has been an ongoing debate about the promulgation of Press and Media Laws in Pakistan. Till the very recent years, there has never been a defined relation of media with the government except the efforts of a few naming Mr. Javed Jabbar, Mr. Nisar A. Memon, Mr. Anwar Mehmood and Gen. Pervez Musharaf. Many rules and regulations did emerge, over a period of time, including the most dreadful Press and Publications Ordinance, which although was repealed in 1987, there were instances where it was used after its repudiation. Mr. Ziauddin said that if the new ordinance and the PPO are to be studied and compared together, there is not much difference. For one thing, he added, the government remains, in the new ordinance, at the same level of authoritarianism as was the case in PPO-1967.

Mr. Ziauddin believed that there are many conflicting clauses in the Constitution of Pakistan. While one provides freedom of expression, the other says that if a person wants to publish a newspaper, he/she needs to request the government for registration. This rule expresses strange contradictions, because on the one hand, progress in democracy is bracketed with the freedom of information, but on the other hand, it binds newspapers with certain restrictions.

He said that there is a general sign of distress among the journalistic community about certain

elements which he termed as "black sheep of our own field" who have contributed to the disparity in whole system. The disturbing feature of the Press Council of Pakistan is that the Chief Executive of this Council is supposed to be appointed by the government. The funding to run the council will also come from the government. Only the publishers have been given representation in this council. This has no practical representation of working journalists like Pakistan Federal Union of Journalists (PFUJ), etc. In fact, he believed, only those journalists in the good books of the government will be appointed in the council. It implies that an institution responsible for imposition of the press code of ethics will be 100% under the government's control and is unable to strengthen the basic idea of press freedom, he said.

Referring to the statements made by Syed Anwar Mehmood, he said that he has brought to light an important fact that today in our country the judiciary is totally succumbed to the executive. Supreme judiciary of our country has not yet taken the oath under the Constitution. The Parliament itself does not possess the strength, which it deserves and requires. If the nation is given a chance to see the de-classified state records, all the current and former secretaries will have to face the wrath of the masses, he commented.

Giving his views about the system to get access to information, he said that every reasonable industrial and commercial institute has its lobbies in the government offices. They purchase the information contained in these summaries. Their lobbyists in these offices leak out information prior to its due release and it is unavailable for the press. This black market of information selling should end, he urged.

Mr. Ziauddin disagreed with Mr. Anwar's statement that in formulating this ordinance consultation with the stakeholders were held. No stakeholders, especially working journalists, were consulted. The government control is such that the country's biggest news agency Associated Press of Pakistan, even after its privatisation, has not been able to acquire a neutral status as promised as it still runs under the direct control of the Ministry of Information.

Enunciating his concerns on the Defamation Ordinance, he said that it ignores the recent judicial verdicts that protect journalists against defamation charges, erodes the universally accepted rejoinder and retraction, provides damages in monetary terms in a manner that could vitiate the principles of penalty being proportionate to the harm caused, and provides for imprisonment which is totally unacceptable in civil cases

On the issue of private sector broadcasting, he said that PEMRA projects that it is allowing operation of private channels and that there is freedom for expression. However the authority to issue license for a channel rests with PEMRA that has already imposed a lot of limitations on the new channels. The obligation imposed on private television channels to telecast programmes mandated by the authority appears to be a device to commission them for official propaganda. The ordinance is also silent on the decades' old and persistent public demand for freeing Pakistan Broadcasting Corporation and Pakistan Television Corporation of official control and shows little respect or concern for views, needs and tastes of Pakistan's pluralist society, he commented.

Appendix E contains the complete Paper of Mr. M. Ziauddin.

**Freedom of Information and Media:
Overview of Ordinances and
Suggestions for Improvements**

Mr. Mujib-ur-Rehman Shami
Editor-in-Chief Daily Pakistan;
Former President CPNE



Mr. Shami said that when the rules and regulations for the Freedom of Information Ordinance were being formulated, he was the president of the CPNE. APNS and CPNE were there in the meetings prior to the formulations of these rules. However CPNE was not involved in the issue of APP and the PEMRA. Mr. Shami believed that one thing worth noting in the freedom of information ordinance is the scope of improvement in these laws. The Press Laws, Freedom of Information Ordinance, the Law of Defamation cannot be declared as ideal laws and should be improved constantly in the light of fresh experiences.

Referring to PPO of 1967, he said that this was called a draconian law because it consisted of such a structure in which the executive itself held all judicial powers. The issuance of the declaration for publication had been made impossible by authorising district magistrate, but in fact the declaration was in reality to be allowed by the President of Pakistan or the Prime Minister. District magistrates were not bound to respond to or to reject the request. Such applications were kept pending for years and aspirants could get neither the declaration of the monthly nor that of a weekly publication. Journalistic organisations very vocally pressed upon the removal of this ordinance. This had also become part of manifestoes of many political parties. However, the same parties continued to protect this after coming to power, he quipped.

Talking about the role of the Federal Shariat Court, which was constituted in the time of President Gen. Zia-ul-Haq, he said that it was responsible for identifying the rules that were supposedly un-Islamic and remove them. According to the Constitution, if Federal Shariat Court recommended any law or part of it to be against Islamic teachings, it either had to be amended or if the amendment was not made, the parts in question were automatically be removed. The Press and Publication Ordinance was challenged in the Federal Shariat Court and many of its clauses were declared un-Islamic. After removal of these un-Islamic parts, the law became rather weak. Government went to the Shariat Bench of the Supreme Court which heard the case and upheld the decision of the Shariat Court. This process came to a final shape in 1988 when after the death of President Gen. Zia-ul-Haq, this ordinance was never taken up by any government. Ultimately courts decided that this could not be renewed any further. Its clauses, which have been dropped by the Shariat Court, will remain cancelled. A vacuum was created during this process which is why there is a need for the formulation of such regulations, he said.

Mr. Shami said that as pointed out by Mr. Ziauddin the urgency to formulate this law by the government does raise some suspicions compared to the attitude of governments over

the past 14 years. The basic position according to the new rule about declaration process is that the government authority has been eliminated. The DCO can authenticate the form submitted for declaration. If the DCO does not authenticate the form within 120 days, it will be declared approved automatically. If DCO refuses to authenticate without assigning any reason, appeal can be made in the High Court which is bound to decide within 60 days.

It is questioned here that why is the Press Council a statutory body? Formation of the Press Council was tried many times from the platform of the CPNE. Once we decided to establish it as a self-regulatory body and Justice Zakiuddin Pall was made its chairman. This gave birth to a few issues which could not be resolved and the Press Council died in its infancy. One of the issues was that if a person comes to the council with some complaint against a newspaper and the council declares it valid, the person could go to the court for compensation, and could claim high compensation as damage. In such a scenario when the Pres Council had already decided in the person's favour, there will be no need for any more evidence and this may prove to be an extremely expensive proposition for the newspapers. Another issue was that if a person drags even the Press Council into litigation as a party and challenge its decisions, the situation would become too complicated. Yet another reason was that the budget required for running this council ran into millions which the newspapers could not afford, said Mr. Shami.

Addressing Mr. Ziauddin he said that in fact newspapers as organisations are answerable to the Press Council and the only authority it has is to make the newspaper print contradiction to its news or story in question. If a newspaper continues to indulge in such irresponsible behaviour, the Press Council could suggest cancelling the declaration of that newspaper, he explained. That could also be amended to impose some other penalty instead of cancellation of the declaration. The newspaper industry also faces such a situation today where at the district or even the lower level, such newspapers are being published who cannot even pay a fine of Rs. 10,000. So when the

newspaper as an organisation is answerable to the Press Council, its editors and the publishers are answerable, not its employees, hence more weightage is given to them in constituting the Press Council. As far as funding is concerned, even judiciary is funded by the government and yet is supposed to maintain its independence, he argued.

Mr. Shami said that the reason the Defamation Ordinance was agreed to in a hurry was because Syed Anwar Mehmood told us that this has to be done under an IMF grant which is to lapse soon and any changes required by the stakeholders can be incorporated into this after. In the defamation ordinance too, if the newspaper prints a contradiction of a story against which a person gets into litigation, that contradiction will serve as a defence in the favour of the newspaper. Despite its strengths, there are weaknesses in this that a person who can file a case under this ordinance can also file a case against other laws. This and some other clauses still need improvement, he said.

Comments

Syed Anwar Mehmood
Federal Secretary for
Information & Broadcasting

Syed Anwar Mehmood made special comments towards the end of the briefing in response to the comments made by speakers.

Acknowledging the case put forward by Mr. Mujibur-Rehman Shami, he said that he agreed with him on the matter of continually revising the laws. Since the Parliament is in place, this can be achieved if we engage in a healthy dialogue, he said.

Referring to the comments made by Ms. Sherry Rehman, he said that the law for declassification of official documents exists and after a certain period the documents are declassified. He also cited an example of foreign office declassifying some of its documents. Responding to the comment made on misuse of the minutes of the meetings in governmental office, he said that he does not dispute the fact that there are corrupt elements within the system, but such elements are everywhere; just as the news is also sold and purchased in the press. He clarified that stealing minutes from these meetings does not influence the policy making process, but it does hamper the speed of the decision making process. If the minutes are included in accessible documents, no one would like to record their opinion owing to the pressure and will not put up any detailed comments required for true decision-making

process. The talented people in the bureaucracy will stop giving their input as they will certainly be sensitive that whatever they write is going to be published in the newspaper the very next day. He believed that before we suggest this, we need to consider the seriousness of the situation and its over all impact on our government's functioning.

Commenting on Mr. M. Ziauddin's query that why the developments towards this ordinance took place in such a short span of time, he said that the Legislatures were to take office soon, and it could have been waited till that time, but it was genuinely thought that many of the required laws were missing, such as those of Press Council, Defamation, and Access to Information. We seriously considered that if during the last 50 years, the civil government was unable to do anything in this regard, so why not to take a bold initiative formulating a basic law and leave the amendments to the legislature, he added.

Syed Anwar Mehmood said that Mr. Mujib-ur-Rehman Shami has rightly pointed out that the laws of defamation and access to information are related to a project entitled as "Access to Justice", which was funded by donors. These donors were pressing for a time schedule. They initiated Access to Information and Defamation Laws, so, in fact, these developments are not media specific, he added.

The Press Council consists of 19 members, none of which is a government representative, he said. There are 4 Editors, 4 Publishers, 4 Journalists and other components of the society such as lawyers, etc. It is a self regulated body. Agreeing with Mr. Ziauddin on the issue of funding, he said that it is a compromising factor because if money comes from the government, it really puts a check on press freedom. Government wanted to avoid funding it but it was the stakeholders themselves who suggested that if government does not provide funding, it will remain un-funded for ever because no organisation will like to shoulder this financial responsibility, he added. Whoever is going to head it, the Press Council will function as an autonomous organisation with this overwhelming majority of media people working in it, he said.



Q&A / Comments Session

Question

Mr. Farrukh Khan Pitafi
Columnist

Why the anti-trust law, which is to control and eliminate monopoly, has not been discussed in this briefing?

Answer

Mr. M. Ziauddin
Resident Editor Dawn; President SAFMA

This law has not been placed on agenda, as we are here to concentrate upon the freedom of information ordinance.

Question

Senator Rukhsana Zuberi
(Women, Sindh, PPPP)

My question is to Syed Anwar Mehmood who said that 15-20 % of the officials who make draftings and notings will be discouraged if the law includes minutes of the meetings to be declassified. I request him to respond to my comment as to why not exert more pressure on the rest of 85 %? About

the Press Council, you said that it has 4 publishers, 4 editors and 4 working journalists. I see another National Security Council in the making with so many uniformed officials and a helpless prime minister and chief ministers. The Press Council is also dominated by the owners not the professional journalists?

Question

Kunwar Khalid Yunus
MNA (NA-245, Karachi-VIII Sindh, MQM)

The Secretary Information has said that the training of the journalists is required. I want to ask that what he has in mind in this regard.

Answer

Syed Anwar Mehmood
Federal Secretary for Information & Broadcasting

In newspapers, the responsibility of the training rests on the press industry itself but we have government's approval to have a training institute at Islamabad with the name of National Institution of Mass Communication. It is going to be set up very soon. Government already has a TV

Academy. We are going to make these academies as satellite of Media University in which opportunities of training for the media persons will be provided. This will offer a variety of courses. We are in touch with the HEC to get the professional/technical guidance. We have already acquired a building, which is in the process of extension and is almost complete.

Answer

Mr. M. Ziauddin

Resident Editor Dawn; President SAFMA

The training which I have had, i.e., a Masters Degree in Journalism, a lot of journalists are already amongst us who have a reasonable academic qualification in the field. The point is that without providing the journalist with the access to information, no benefit can be driven from any sort and level of training. The Ordinance under discussion is not media/press specific and has come up very recently. In the light of that Ordinance even if someone claims and avails this facility; he/she will at least need 3 months to get the required information. The press, as such, is based purely on information, which determines our performance. The freedom, which according to Syed Anwar Mehmood, we have had since 1985, that is simply about expressing opinions. The opinions, which we put up, are half-cooked, and at times completely uncooked, form of information. This makes media totally irresponsible. The main reason of the present condition is not simply the lack of training but due to lack of access to information.

Question

Mr. Mutiullah Jan

Internews

Does the list of exemptions which has been given to us apply to the members of Parliaments in case they need to have some information? These exemptions do not apply to the Members of the Parliament on the floor of the house. Can the same information be asked for on the floor of the House?

Answer

Syed Anwar Mehmood

Federal Secretary for Information & Broadcasting

This is for every citizen of the country. The Rules of the Business of the Parliament are quite different.

Question

Ms. Samia Rahil Qazi

(NA-301, Women Punjab-XXIX, MMA)

Is it possible to declassify minutes of specific meetings? Secondly, certain laws are there to provide legal protection but explanatory rules for execution of these laws are missing. What is the possible procedure of the formation of these rules and what can be Parliamentarians' contribution in this regard so that these rules can be formed without further delay. Thirdly Freedom of Information is good and must be in place but what are the controlling restrictions on it such as the news that causes promotion of vulgarity. What should be the form of freedom of information which can prohibit such things?

Answer

Syed Anwar Mehmood

Federal Secretary for Information & Broadcasting

There are certain laws which demand rules, for example defamation law. Efforts had been made to include media representatives while framing these laws and we have had many sessions together between 2000 and 2002 at Karachi, Lahore and Islamabad. The laws of defamation were properly discussed and debated to minimise the differences.

For facility of reference, we have prepared a comparative statement of the laws on Freedom of information, which exist in Pakistan, India USA and UK. About the UK and USA. But the freedom of Information law needs explanatory rules, which have been formulated and are properly notified. The rules of Press Council are already framed; and are being submitted to the Law Ministry and will not be delayed any longer.

About access of information and its limits, the Press Registration Law is associated with a code of conduct. That contains all these things, like obscenity and vulgarity, etc. Laws similar to this are also available. CPNE should ensure the application of these laws. In Karachi, some papers were banned sometime ago on such issues and you might have seen that in this connection APNS or CPNE or PFUJ were on board regarding the decisions made about such cases.

As far as minutes of the meetings are concerned, that was my personal opinion as a civil servant. These are the views of the government and it was my moral duty to warn about possible complications. The ordinance shows an exemption in certain cases to withhold information. The main objective behind this is to ensure the freedom of opinion during decision-making process.

Question

Mr. Farrukh Nawaz

NNI

Freedom of Information gives a right of access to information to every citizen. I request you to suggest some strategy about giving awareness to common people about their right.

Answer

Mr. M. Ziauddin

Resident Editor Dawn; President SAFMA

I think you have joined us later and we have discussed that this law is not media specific and is about freedom of information for the Public.

I think we are indebted to PILDAT that they have provided us all, especially to the working journalists, government officials and CPNE and APNS representatives, with an opportunity to learn a lot. I believe this discussion will pave way for more constructive efforts in this regard. It was a big opportunity for us to understand mutual standpoints and thoughts.

Concluding Remarks

Mr. Ahmed Bilal Mehboob
Executive Director, PILDAT

In his concluding remarks, Mr. Mehboob thanked Mr. M. Ziauddin for conducting the later part of the session as its chair. He thanked all the other speakers and the participants for sharing their views and time at the briefing

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APPENDIX A PROGRAMME

Programme

MONDAY, JUNE 28, 2004

ITEM	Subject/ Topic/Activity	TIME	SPEAKER
1	Registration Session Chair Senator Nisar A. Memon Chairman Senate Committee on Information & Broadcasting	09:30 - 10:00 am	
2	Welcome Remarks	10:00 - 10:20 am	Mr. Ahmed Bilal Mehboob Executive Director, PILDAT
3	Overview of the Briefing Session	10:20 - 10:25 am	Ms. Aasiya Riaz Joint Director, PILDAT
4	An Overview of the Freedom of Information and Media Ordinances	10:20 - 10:40 am	Syed Anwar Mehmood Secretary Ministry of Information and Broadcasting
5	Implementation of Ordinances on Freedom of Information and Media	10:40 - 11:00 am	Ms. Sherry Rehman MNA, Former Editor Herald
6	Panel Discussion: Freedom of Information and Media: Overview of Ordinances and Suggestions for Improvements	11:00 - 12:20 pm	Panel of Speakers: Mr. M. Ziauddin Resident Editor Dawn President SAFMA Mr. Mujib-ur-Rehman Shami Editor-in-Chief Daily Pakistan Former President CPNE
7	Q&A/Comments	12:20 - 01:20 pm	
8	Comments by Session Chair	01:20 - 01:40 pm	
9	Lunch & End of Briefing	01:40 pm	

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APPENDIX B

Lists and Profiles of Participants

List of Participating MNAs

1	Gul-e-Farkhanda, NA-320	NA
2	Jamila Ahmad, NA-326	MMA
3	Kunwar Khalid Yunus, NA-245	MQM
4	Muhammad Farooq Sattar, NA-255	MQM
5	Samia Raheel Qazi, NA-301	MMA
6	Sherry Rehman, NA-309	PPPP

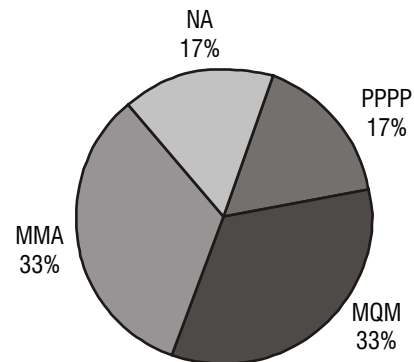
List of Participating Senators

1	Abdul Latif Ansari	PPPP
2	Bibi Yasmeen Shah	PML
3	Gulshan Saeed	PML
4	Kausar Firdaus, Dr.	MMA
5	Mohammad Saeed Siddiqui, Prof.	MQM
6	Mohim Khan Baluch	BNP(A)
7	Muhammad Abbas Kumaili	MQM
8	Muhammad Akbar Khawaja, Dr.	PPPP
9	Nighat Agha, Dr.	PML
10	Nisar Ahmad Memon	PML
11	Roshan Khursheed Bharucha	PML
12	Rukhsana Zubairi, Advocate	PPPP
13	Syed Sajjad Hussain Bokhari	PPPP

Profile of Participating MNAs

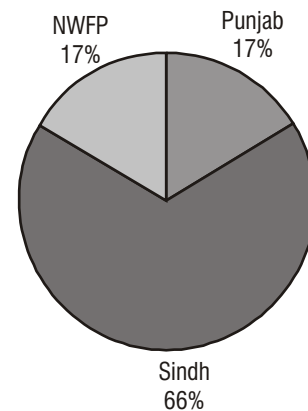
Party Wise Representation

Party	Representation in Briefing Session		Percentage in Assembly
	Number	Percentage	
PPPP	1	17	17
MQM	2	33	5
MMA	2	33	18
NA	1	17	4
Total	6	100	



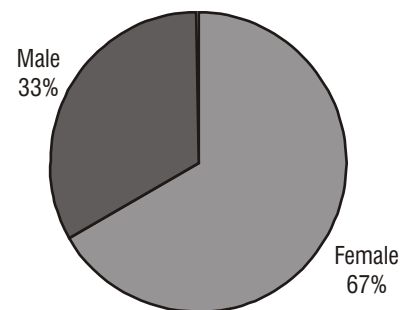
Province Wise Representation

Province	Representation in Briefing Session		Percentage in Assembly
	Number	Percentage	
Punjab	1	17	55
Sindh	4	66	23
NWFP	1	17	13
Total	6	100	



Gender Wise Representation

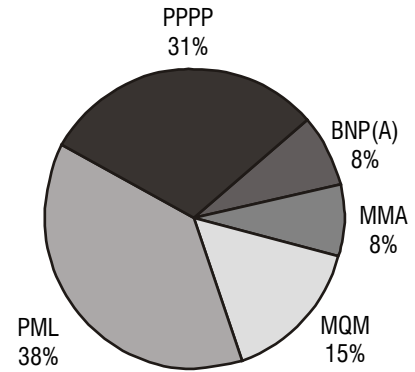
Gender	Representation in Briefing Session		Percentage in Assembly
	Number	Percentage	
Female	4	67	22
Male	2	33	78
Total	6	100	100



Profile of Participating Senators

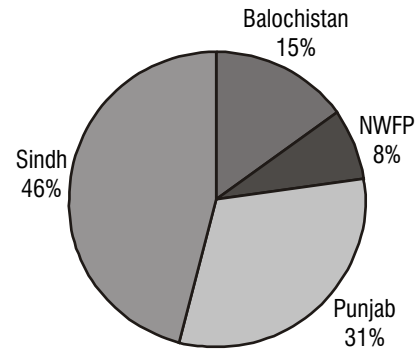
Party Wise Representation

Party	Representation in Briefing session		Percentage in Senate
	Number	Percentage	
BNP(A)	1	8	1
MMA	1	8	18
MQM	2	15	7
PML	5	38	37
PPPP	4	31	11
Total	13	100	



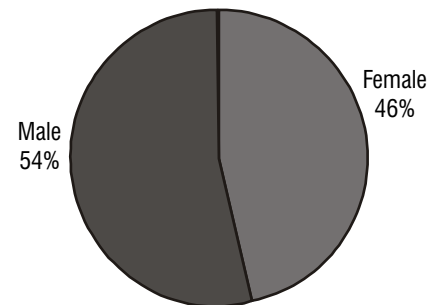
Province Wise Representation

Province	Representation in Briefing session		Percentage in Senate
	Number	Percentage	
Balochistan	2	15	22
NWFP	1	8	22
Punjab	4	31	22
Sindh	6	46	22
Total	13	100	



Gender Wise Representation

Gender	Representation in Briefing session		Percentage in Senate
	Number	Percentage	
Female	6	46	18
Male	7	54	82
Total	13	100	100



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APPENDIX C

Presentation by

Ms. Aasiya Riaz

Joint Director, PILDAT

Briefing for Parliamentarians on Freedom of Information

June 28, 2004

Welcome Remarks & Introduction

1

Welcome!

- ❖ Very warm Welcome to All
- ❖ Please Check out Contents of the Dossier
 - Papers/Presentations of Speakers
 - Briefing Paper (Urdu and English)
 - Official Standpoint of APNS & SAFMA
 - Text of Ms. Rehman's Bill
 - International Principles on FOI Legislation
 - Feedback Form & Publications Request Form
 - Data Form if not filled / Update required in Directory

2

The Programme Overview

- ❖ This is not a seminar or a *Ja/sa*; An organised & serious effort to learn & Discuss
- ❖ Topics Covered:
 - Overview of the Freedom of Information & Media Ordinances in Pakistan
 - Implementation Process and Issues
 - Overview of FOI Ordinance 2002 and Suggestions

3

Objectives

- ❖ Enhance awareness of Parliamentarians on the Need for Freedom of Information
- ❖ Make Parliamentarians aware of available perspectives on the issue
- ❖ Facilitate an Informed Parliamentary Debate and Review

4

Why we hold Training for Legislators?

- ❖ To empower legislators (Knowledge is power)
- ❖ To see Assembly Members participating in policy-making (Supremacy of Legislature)
- ❖ To see Democracy and Democratic Institutions strengthened in Pakistan

5

What is PILDAT?

- ❖ Independent, Non-profit, Research & Study institute
- ❖ Indigenous entity well-versed in local conditions
- ❖ Strictly Non-partisan: Values trust of all parties
- ❖ Dedicated to Parliamentary Strengthening
- ❖ Mission: Strengthening Democracy & Democratic Institutions for a better Pakistan
- ❖ PILDAT recently joined PLSC for SNPLG

6



Who Funds PILDAT?

- ❖ Seed money by Overseas Pakistanis
- ❖ Pilot project funded by UNDP
- ❖ Seek and accept support from all sources without any covert or overt strings (Pure PILDAT Agenda)
- ❖ So far events are supported by UNDP, FNS, FES DFID, The World Bank, IRI etc.
- ❖ Now many PILDAT events supported by USAID

7



What is PLSC?

- ❖ Consists of 2 International & 5 Pakistani Org.
- ❖ International Org: WV & IFES
- ❖ Pakistani Org:
- ❖ PILDAT: Legislative Training
- ❖ The Researchers: Heads CSAG & Sindh Chapter
- ❖ CCHD: Heads Punjab Chapter
- ❖ IRDO: Heads Baluchistan Chapter
- ❖ AWARD: Heads NWFP Chapter

8



What is SNPLG Project?

- ❖ Strengthening National & Prov Legislative Gov
- ❖ Started 29th Sep 03, Duration: 3 Yrs
- ❖ Components:
 - Legislative Training
 - Civil Society Action
 - Legislative Transparency
 - Research & Media
- ❖ Supported by USAID

9



Some Recent Activities of PILDAT

- ❖ Briefing Sessions for Parliamentarians on
 - Budget & Poverty Reduction
 - Effective Committee System
 - Implementation of International Treaties on Women
 - SAFTA
 - WTO
 - PRSP

10



Near-future Activities

- ❖ Workshop on Leadership Skills
- ❖ Provincial Briefings on Committee System
- ❖ Parliamentary Internship Programme
- ❖ Briefing on Constitutional Amendments
- ❖ Parliamentary Study Tours

11

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APPENDIX D

Paper by

Ms. Sherry Rehman

MNA (NA-309, Women Sindh, PPPP)

FREEDOM OF INFORMATION Why a New Law is Needed

By
Ms. Sherry Rehman,
MNA (NA-309, Women Sindh, PPPP)

What are the functions of such laws:

- To guard against abuses of power, and to provide citizens with the appropriate knowledge of the government's activities.
- To create essential involvement by civil society in public service issues by giving them access to the records of public bodies.
- To empower the public and citizens' groups to monitor the operations of government and public bodies.
- To create a culture of non-abusive, across-the-board accountability of governments and VIP elitist models of governance.
- To build trust amongst citizens in the value and power of democratic government.

What is needed from government?

- The government must provide access to and ensure free flow of information on the basis of public inclusion; not on the basis of a 'need to know model' that pivots on the principle of exclusion and knowledge for the few.
- It must provide for transparency, and seek to protect a culture of rights enforcement and public empowerment.
- Government must commit to the freedom of expression as a fundamental human right, and the touchstone of all freedoms as recognised in Article 19 of the International Covenant on Civil and Political Rights.
- It must recognise that information gives the public a fair opportunity to make informed choices.

Problems with the existing ordinance:

- The draft is sketchy, lacking in details which make actual access to information difficult.
- It was promulgated while the elected legislatures were in place; October 2000, and lacks the legitimacy and public consensus of parliamentary sanction.
- It is restrictive in scope, and lacks the public perspective so essential in the drafting of such a law.
- It is based on protecting the state against knowledge or information seekers, as opposed to protecting the citizen. It does this by creating a huge area of what is known in all such laws as exemptions, or information that is exempt from public record.

Problems with implementation:

- The 2002 FOI Ordinance dilutes the Definition of Public Record. This restricts the scope of information being sought to only federal records. The original 1997 draft by Fakhruddin G. Ibrahim covered provincial and local/municipal records as well. Any model law must amend that to cover all three tiers of governance.
- **Exemptions** cover too large an area for the FOI law to be effective in any real sense of the word. Sunshine laws are called what they are because they bring information lost to the

public eye in the light of broad daylight and make government subject to public scrutiny. While some exemptions can be justified, as FOI is a public right but not an absolute right, many exemptions in this ordinance cannot be justified in aiding the actual process of accountability. Broadly speaking, the most problematic exclusion is the one that covers National Security. The issue of National Security, and how it is defined, is critical to the effective operation of any FOI, because at its heart lies the relationship of the state to the citizen: any state that wishes to devolve power and appear less coercive in a 'soft state' model will invariably loosen its control on the security paradigm and extend that right of sharing in building security with its citizens. Unfortunately, the current ordinance limits access to any document declared as classified without even attempting to offer reasons, criteria or defined procedure. A model act, even a conservative one, would follow a standard template of minimal exemptions from public record. Matters relating to defence and national security are exempt in almost every state; but only so once an explanation is satisfactorily provided for that exemption. Other key exemptions in the current law cover critical areas like minutes of meetings, which would cloak forever the public right to know how certain decisions were made. This kind of secrecy can result in historical distortions, like how Dhaka fell in 1971, or withhold vital public health information like say, why a report on bottled water was not made public, particularly when the organisation examining it found the contents of such water severely contaminated.

- **Declassification of public records** is one of the most important services any FOI law should provide for, and the current ordinance is silent on this. All reputable FOI templates across the world, including the UK, USA laws, declassify documents after a certain period of time. In Pakistan, a clear case for declassification can be made in instances like the Hamood-ur-Rehman Commission Report, where historic information can be made public at least 20 years after the event. Without such a clause, in fact, no public body or individual can ever be held responsible for neither historic wrongs nor exemplary public service.
- **No protection from Destruction of Official Records.** Procedures accessing information can be further complicated by no offences earmarked for destroying public records, particularly when a controversial enquiry may be running parallel to the process. Watergate is one example where shredded or destroyed records nearly stopped the imminent impeachment of a President in the USA. The law must therefore provide for a strict criminal procedure in case of such destruction. This clause is more important than it actually seems, because without it, in theory any or all public records can be destroyed with impunity with or without immediate cause to do so, which would in itself negate the entire principle of access to information. Under a new law, any official attempting to destroy public records should be punishable by imprisonment and fines.
- **Exclusion of non-Pakistanis.** Given the record of censorship and changing official policies regarding the treatment of history in Pakistan, it is even more important that like everywhere else in the world, non-nationals/residents be allowed to access public records with the requisite permissions. Many research projects, biographies and other journalistic endeavours on Pakistan have been accomplished by foreign writers, who would be barred from accessing public records and writing up reports or articles that might not be possible for writers living in the country, for obvious reasons. They would of course be subject to the same exemptions that any Pakistani national would be, in terms of obstructing law, foreign policy under process etc.
- **The Right to Know is currently subject to too many Entitlements.** Basically, there are still too many government provisions standing in the way of an ordinary citizen wanting to access public records. If a designated official refuses information, then the only recourse is to the

Wafaqi Mohtasib, who can only also be approached under certain conditions. If a department head refuses on the basis of a person's entitlements, then that too is a limitation or roadblock to the process. First of all, no entitlement or any other such qualification should exist for a person to acquire information. Second, all red tape should be minimised, which is not the case under the rules of the current law. The creation of an additional department before an aggrieved person can go to the Mohtasib/ombudsman will invariably create delays and discourage information-seeking. In many countries, in fact, there is an additional or Special Ombudsman for Information Access, which might be a useful office to consider in the future, since the Ombudsman's offices in Pakistan are currently under-resourced and over-burdened.

- **Burden of Proof.** For all such appeals to a court, the burden of establishing that access to record should not be given should be on the public body which holds the record. Given that a citizen's resources will be weaker than a public body's, it will be much easier for the public body or government department to provide reasons for non-disclosure of information.
- **No provision for Appeal.** There is also no recourse to a second court of appeal after the ombudsman has given his ruling. Once the Mohtasib decides that an individual cannot be given the information she seeks, the door closes on any records that may be vital to an investigation or research. This totally negates the principle of information being a citizen's fundamental right. Given the failure of the internal review and redress mechanisms in Pakistan, even though it is not practical to clog the courts with more litigation than they can already handle, the courts must be allowed to serve as the last resort in these cases. To correct this imbalance or tilt in the law towards the state, recourse to a High Court is absolutely necessary. The US Freedom of Information Law, for instance, allows a requestor to go straight to the courts. In Canada, for instance, there is a unique two-tier judicial process, where the applicant can even go straight to the second tier, which is the Federal Court. In Australia, the ombudsman handles procedural failures only, while the rest of the complaints are handled by an Administrative Appeals Tribunal. In India, their draft law provides for intra-departmental appeals against the decision of Information Officers.
- **No Time-Frame for Disposal of Cases.** The current law faces severe implementation hurdles in terms of internal review without a specific time-frame designated for disposal of cases before the mohtasib. This means that under the principle of justice delayed as justice denied, the ombudsman can be leant upon, or may just ignore for various reasons, any such appeal for months and years on end. Any law seeking to provide information as a service to its citizens must build in a maximum time-frame of the standard fourteen days for disposal of matters. There should also be a penalty for each adjournment sought by any party after five adjournments have already been taken.
- **No Whistle-blowers clause.** In response to modern conventions, all information access laws should include what is known as a Whistle-Blower's Clause. This seeks to protect an official or citizen for disclosing information in the public interest, especially for those who are proactive about pointing out any malfeasance in their corporation or department.
- **Need to Rationalise Procedures for Obtaining Information.**
 1. Computerisation and indexation of records. The government needs to maintain access to information application forms and procedures easily available on departmental websites at no cost.
 2. Staff Training on Public Service.
 3. The clear Designation of Officials that will deal with information requests still has to be completed by various ministries, divisions and public corporations.
 4. Inexpensive service in accessing public records and the reduction of red tape and

bureaucratic hurdles.

Public awareness on how to use the FOI:

The concept of reviewing government decisions or a public body's decisions is almost alien to most citizens in Pakistan as they have been denied basic democratic rights for so long; consumer rights awareness is also very low, and a rights culture does not exist even among fairly educated and traditionally empowered groups. Pakistanis still see information as a commodity they can access only through informal channels such as personal or kin connections, not as an institutionalised right. A public awareness campaign to make citizens understand how they can use this right is essential to its proper utility. To make the concept non-abstract, the campaign will have to explain by specific example. The amount of money the Federal Government has spent on the development or electrification or sanitation of a municipal unit, can for instance, be matched to its utilisation; information about the money allocated for polio vaccination or reproductive health in a specific area can be obtained and matched against actual spending; ghost schools can be monitored; any form of accountability or stock-taking can be conducted.

Currently, only the independent media obtains information on behalf of citizens, but it has to restrict most of its investigation to informal means. A huge architecture of laws regulates and reduces the right of the media to obtain and even disseminate certain information. Given the crucial role of the press and electronic media in disseminating information on issues of public interest, a mechanism for obtaining laws through formal channels is also required. This absence of a structure for the media to obtain public records easily and inexpensively naturally restricts it to either speculative journalism or purely political or opinion-based reporting and analyses. Any media organisation seeking to conduct an investigation into how the Defence Ministry makes certain procurements, or how safe is the food served in bakeries, restaurants and hotels cannot do it unless it is prepared to commit a large portion of its resources to the investigation.

As it stands, the media is also unable to obtain information from the several regulatory bodies set up to protect the rights of consumers and stake-holders. These include PEMRA, NEPRA, PTA (Pakistan Telecommunications Authority) and the GRA (Gas Regulatory Authority). These are all bodies whose records should be available to the public but in practice are not.

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APPENDIX E

Paper by

Mr. M. Ziauddin

Resident Editor Dawn

President SAFMA

Freedom of Information and Media Overview of Six latest Ordinances and Suggestions for Improvements

by
Mr. M. Ziauddin
Resident Editor Dawn, President SAFMA

The expectations that the process of restoration of institutions of democratic governance should lead to enhance respect for the people's fundamental human rights and freedoms, including the right to know and freedom of expression, have not been realized. Instead, the series of new ordinances related to the media betray a lack of comprehension of the essential attributes of freedom of expression, constitute an attempt to abridge the concept of transparency and represent a substantial deviation from the spirit of the 1973 constitution.

The new media laws, being arbitrary, lack legitimate sanction. Some of these laws were issued on October 26, 2002, after the general elections when a new Parliament was about to meet and are, therefore, liable to rejection on this ground alone.

The Press, Newspapers, News Agency and Books Registration Ordinance is a rehash of the infamous Press and Publications Ordinance and retains the authoritarian regimes practice of treating a declaration as a license, brings the page editor of a newspaper under the purview of punitive measures, and fails to free the media of the constraints against which all sections of the media community have been agitating for decades.

The Press Council of Pakistan Ordinance is an example of the executive misappropriating the idea of an autonomous self-regulating body within the media community, for which there was considerable support in the media and outside, and designing a Press council under official hegemony. The fee for complaints are unnecessary and exorbitant and the punitive power of the Council excessive, to say the least. While all codes of ethics are attractive, all codes that infringe the principles of voluntary restraints and reflect the state's obsession with disciplinary mechanisms under its own aegis have nowhere produced results desired by the community.

The Associated Press of Pakistan Corporation Ordinance constitutes a blatant repudiation of the government's pledge made at the time of the news agency take-over under the APP (Taking Over) Ordinance of 1961 from a newspaper proprietor's trust. With the Information Secretary functioning as its Chairman and the Managing Director, the APP corporation will never be an independent organization and at best the news agency will join the PTV and PBC as a government controlled enterprise, in violation of the principles of freedom of the media and public demands.

The Defamation Ordinance constitutes an unnecessary innovation in as much as it is a special law targeting media persons while other laws also exist for them and the rest of the population. It ignores the recent judicial verdicts that protect journalists against defamation charges, erodes the universally accepted effects of rejoinder and retraction, provides damages in monetary terms in a manner that could vitiate the principle of penalty being proportionate to the harm caused, and provides for imprisonment which is totally unacceptable in civil cases.

The Electronic Media Regulatory Authority Ordinance is also arbitrary and in violation of the international standards for a free flow of information and retains the infamous system of licensing

without defining eligibility in unambiguous terms. The obligation imposed on private television channels to telecast programs mandated by the Authority appears to be a device to commission them for official propaganda. The ordinance is also silent on the decades old and persistent public demand for freeing Pakistan Broadcasting corporation and Pakistan Television corporation of official control and shows little respect or concern for views, needs and tastes of Pakistan's pluralist society.

The Freedom of Information Ordinance makes access to information extraordinarily difficult. The definition of public records have been diluted; the right to know has been made subject to entitlements and government instructions; the right to appeal against refusal to provide information has been limited to instances of rejection of an applicants entitlement and; no provision has been made for a challenge to decisions exempting public record from the principle of access to it or for a final appeal to a judicial forum against denial of information. In its present form the ordinance neither accords with the guarantees given in the constitution nor with the international human rights standards.

Apart from these new laws, there are numerous other laws that are enforced and are equally applicable to the media practitioners and have been used to pin down working journalists, often to implicate them in heinous crimes, such as the Official Secrets Act 1952, the Security of Pakistan Act 1952, the maintenance of Public Order Ordinance 1960, Section 123-A of the Pakistan Penal Code, Section 124-A of the PPC, Section 153B of the PPC, Section 295-C of the PPC, the contempt of Court Act and the Anti-terrorism Act. These laws also need to be appropriately amended to safeguard the right to know and freedom of expression, especially to allow media practitioners, creative writers/painters and producers/publishers to perform their professional duties without fear or intimidation.

The Newspapers, Newsagencies and Books Registration Ordinance

The Press, Newspapers, News Agency and Books registration Ordinance xcvi (118 of) 2002, says that the District Coordination Office (DCO) would issue declaration for the newspaper or news agency. The DCO has also been empowered to cancel the declaration of any newspaper or news agency on the application of the Press registrar either suo motu or based on the information through any person.

The person who would publish the paper or disseminate news in contravention of the provisions of the law could land in prison for six months. The law says, "whoever edits, prints or publishes any newspaper in contravention of the provisions of the Ordinance, or whoever helps to edit, print or publish, shall be punishable with fine not exceeding Rs 20,000 or with imprisonment for a term not exceeding six months or with both. "The page in-charge shall, in the supervision and superintendence of editor, be responsible for checking the contents of the pages and ensure due satisfaction of the material sent to the printer and publisher for publication," it says.

The law further provides that "every publisher shall submit the intimation in writing, as furnished by the editor, with respect to the responsibilities of page in-charge with his acceptance to the office of concerned District Coordination Officer and a copy to the Press registrar." There is no need to retain the omnipresent provision seeking authentication of declarations to be submitted by publishers and printers by a public servant who should only be maintaining a register to avoid duplicity of the title. But while the ordinance adds the office of the registrar with attendant paraphernalia to the long list of media controllers, the requirement for submission and authentication of declaration by the DCO (District Magistrate earlier) continues.

The Registration of printing press and the requirement of having an authenticated declaration for the same are also a colonial ploy to keep the printing industry under threat, even of closure. This has,

however, not prevented printing of counterfeit currencies, stamps and labels etc. The authorities' special focus and heat remains on the printers of newspapers. Many print industry managements, therefore, prefer to keep themselves clear of undertaking newspaper printing jobs. Harassment of publishers and printers is to increase further with the latest ordinance. There should be no media ad media-product specific restrictive or punitive law as the provisions of many a law are already attracted to the media-persons and products.

The government has added sub-clause (6) of section 6 of the ordinance providing for an undertaking to abide by the Code of Ethics, which is superfluous as this provision has already been made in the Ethical Code of Practice. The amendment to Clause-10(c) shall have very serious effects on the freedom of press. The phrase, 'any criminal offence' or 'a willful defaulter of public dues' will impose a wide restriction. For example, if a person is convicted under any traffic offence, he or she could also be refused a declaration. Even non-payment of utility bills will follow the consequences. Such provisions violate Article 19 of the Constitution of Pakistan.

The Press Council of Pakistan Ordinance

Under this ordinance, the president will appoint the chairman of the proposed Press Council in his discretion. Next, the federal government will appoint its first Registrar. Thirdly, all members of the Council, including members of its commissions and employees shall be deemed to be public servants within the meaning of section 21 of Pakistan Penal Code.

Besides, with the government providing the all-important financial resources to the Council for meeting the establishment, administrative and operating expenses, the Council cannot, but be beholden to the President and the government.

Clearly, the government is trying to assume, through the back door, a predominant role in the affairs of the press of the country by promulgating this ordinance. And it is being attempted to further camouflage the pre-eminence of the government by giving the management of the newspapers, a seemingly important role in the regulatory body in terms of its members' numerical strength. But then there is a catch here. Barring a couple perhaps, most newspapers are represented in the APNS and CPNE by the owners themselves who in times of crunch have been known to have behaved, more often than not, like pure businessmen and not as representatives of free media organizations.

It is quite interesting that under section 8(2), the ordinance provides that the Council may receive a complaint by a newspaper, a journalist or any institution or individual concerned with a newspaper against the federal government, a provincial government or any organization, including political parties, for interference in the free functioning of the press. But this section does not specify what the Council can do to stop such an interference and how can it provide any remedy if required.

Provisions of section 11/3 mean that the inquiry commissions/committees to hear an appeal will exclude members from amongst the journalists' bodies. Essentially, these will be commissions, consisting of the executives' and employers' nominees. And they will be hearing the appeals against the findings of the inquiry commissions and working journalists alone will be in the dock. Article 15 (section C) sounds like the pronouncement of "death penalty" for a non-complying news agency/newspaper for it empowers the Council to recommend a few days ban, even cancellation of a declaration.

There can be little difference of opinion over some of the functions that the Council is to perform, such as helping newspapers and news agencies to maintain their independence and keep under review

any development likely to restrict the dissemination of the news of public interest and importance.

However, the truth remains that the government-press relations in any functioning democracy are of an adversarial nature. The press has a duty to point out the follies or failures of a government, which creates tension between the two. Hence, it is a contradiction of sorts to expect the two adversaries to sit together at the same forum to decide what the press may or may not do. The authors of the ordinance, however, seem to think otherwise.

And this comes out clearly from some of the functions that are to be assigned to the proposed Council. For example, the ordinance says under Function (ii), that the Council "while preserving the freedom of the press shall maintain highest professional and ethical standards of newspapers and news agencies with a view to making them more responsive to the issues and concerns of society in Pakistan."

Needless to say, in a democratic polity, there can be no uniform response to public issues and concerns. There will be as many answers to such issues as are the shades of political opinion in a society. As if not enough, the Council has been authorized to "revise, update, enforce and implement the Ethical Code of Practice.

This provides the Council the room to further tighten the screws on the press. The ordinance says that the Council is also "to exercise such control and disciplinary power over the members and employees of the Council as may be prescribed to" undertake all research relating to the newspapers, including the studies of foreign newspapers, their circulation and impact; and to undertake any additional studies as may be entrusted to the Council by the government.

Those who prescribed these functions seem to view the national press as no different from the government-run public relations departments. The establishment of Press Council of Pakistan is actually an attempt to limit press freedom and assign it functions that have nothing to do with the responsibilities of the press, all in the name of public good. The press must have independence to decide what it regards as the public good and, therefore, fit to be printed in news and views of a paper/periodical or to be aired on the electronic media.

It is important for the press to resist any government-sponsored regulatory initiatives aimed at controlling its freedom through one device or another. That of course, is not to say that the government or the public can never have any reason for complaint against the press.

In fact, even responsible members of the media may cause grievance to the government or individuals on account of inadvertent mistakes. Besides, like any other profession, journalism too has its share of black sheep that resort to naked blackmailing or sensationalization of news related to sensitive matters in order to attain material gains.

Hence, there is a need to have a watchdog body to address problems arising either out of mistake or misconduct. But it must be self-regulatory, totally free from the interference of the executive. And in order to function effectively, there has to be a code of ethics drawn through discussion and consensus among the APNS, CPNE, PFUJ and other media bodies, as well as representatives of civil society.

As a matter of fact, all the media related bodies already have their own code of ethics, which may be

updated while keeping the ever expanding canvas of freedom in mind. The code of ethics that the Council is to see being practiced by the press should be a consensus document signed and sealed as such by all the national, regional and local newspaper editors and publishers, including the office-bearers of media bodies.

Associated Press of Pakistan Ordinance

Pakistan's premier news agency, the Associated Press of Pakistan (APP), was converted into a corporation and formally merged in the ministry of information. It marked the culmination of a process that began in 1961 when the government took control of the agency. The APP had started as a trust and heir to Associated Press of India. The board of trustees included editors of major newspapers in the country. When Ayub Khan took over APP in 1961, the agency was facing a severe financial crisis and the military regime promised to revive the independent character of the agency as a national institution after improving its finances. The APP taking over ordinance also reaffirmed that agency's staff would not be treated as government servants.

Though the measure coincided with takeover of Progressive Papers Limited, there was some kind of grudging acceptance of government's pledge that it wanted to make the agency once again viable. Between 1961-68 the government named as APP chiefs, A.K. Qureshi and Hamid Jalal, two of its best known officials with journalistic and literary backgrounds and impeccable reputation of professionalism and integrity.

Under them APP's dedicated journalists eminently demonstrated their skill, competence and courage to sift facts from propaganda, and by and large remained devoted to the ideals of objectivity and impartiality.

The slide began during Zia era when his media managers started more intrusive scrutiny and control on APP's policies and operations. It also inducted into the agency lesser people with much less commitment and courage to uphold its traditions and resist pressures.

Barring a few hiccups and very brief interlude, the APP has kept that downhill journey to decadence till the Musharraf government decided its fate on October 19, 2002. Since the 80's APP has become a target of its officers lusting for lucrative posts and perks, and a dumping ground of their school dropout relatives, cronies and domestic servants. Their induction in droves has compromised APP's professional standing and viability, caused despondency among the staff, fostered corruption and nepotism and immensely distorted its budget. The entire savings were consumed on salaries and purchase of luxury items. While the government had to foot the increased budget, the existing employees were dealt a serious blow by terminating the facility of gratuity, which was being paid for three decades. The artificially inflated budget has enhanced APP's dependence on the government which, in turn, further impinges on its freedom.

The agency has been reduced to be a post office for onward transmission of government handouts and propaganda material. The journalists are trained to kill stories, which are even slightly critical of the government. This has divested them of initiative and ingenuity. The latest ordinance converting the APP into a corporation marks the culmination of process of turning the agency into an extension of the ministry replicating its usual functions of government projection. Its structure is bureaucratic with total domination of the information ministry.

It appears that the professional character of the agency has been played down and finds little

mention in the ordinance. The word "journalist" does not appear anywhere. The employees have been categorised as "Officers and Servants" as defined in the Criminal Penal Code. The information secretary will be the chairman of the 11-member Board of Directors which has been stacked with 5 officials of the ministry, all of them being his appointees or subordinates. The Information secretary emerges in the ordinance as one of the most powerful bureaucrats in the country controlling three largest media organisations, the PTV, PBC and the APP as also several other related institutions.

Of the five non-official directors, the secretary will nominate two "renowned media persons" from the private sector. The panel currently under consideration shows how only those with reputation of being government toadies would adorn the board. Other three include the CPNE president and chairmen of departments of mass communication of Karachi and Punjab universities. Managing Director of the APP will be appointed by the secretary. In the past this authority had vested with the prime minister or the president. Now this appointment has been left to the discretionary power of the secretary and no criteria, qualifications or professional experience have been prescribed. Other appointments in the agency will also be made by the secretary. There is no mention of any charter, mission or vision that would guide the policies and operations of the agency.

In this context, there is only a vague reference in the one-para preamble of the ordinance which is designed more to justify agency's conversion into a corporation than assigning it a charter or spelling out its mission.

The poorly worded paragraph is vague and incoherent. It reads: "And whereas it is expedient to take steps for adding greater professionalism, to the APP and make its management more broad based allowing its professionalism independence autonomy with a view to enabling it to obtain from international news agencies services and create greater trust of its secrecy and credibility amongst people, and for matters connected thereto or incidental thereof.

"The operative part of the ordinance lays down that the Corporation would carry instructions of the Federal Government with regard to general pattern of policies in respect of announcements, news and views to be disseminated from time to time. It is apparent that those who have drafted the ordinance have no concept of a national news agency.

The Defamation Ordinance

The law of defamation is supposed to protect peoples' reputation from unfair attacks. But in practice, its main effect will be to hinder free speech and protect powerful people from scrutiny. Defamation Ordinance will act as a marked constraint on freedom of the press and, for that reason, it can constrain one of the public's most important safeguards against the abuse of power. The Defamation Ordinance ignores the judicial verdicts that protect media-persons against defamation charges. This law erodes the universally accepted effect of rejoinder and retraction. It provides damages in monetary terms in a manner that could vitiate the principle of penalty being proportionate to the harm caused, and provides for imprisonment, which is totally unacceptable in civil cases.

The Defamation Ordinance ignores the standards from the area of freedom of expression as well as the worldwide consensus in defamation. The defamation being civil offence should not be slapping a legal straitjacket on the press. This law, along with the other new press laws, has been vehemently rejected as "black laws" by CPNE, APNS and other press bodies. I see it as a special law, targeting media-persons only. It is an unnecessary innovation while other laws also exist for media-persons as well as rest of the population.

Section 499 to 502 of the Pakistan Penal Code already deals with defamation as it is also covered in the ethical code included in the Ordinance on the Press council. The linkage between defamation covered under Press council Ordinance as well as in Pakistan Penal Code with the under discussion defamation law is not clear. This situation will adversely affect the media interest. In a nutshell, the Defamation Ordinance is a bad and unnecessary legislation; therefore it should be scrapped immediately. And if it is not scrapped due to certain reasons, then following suggestion must be incorporated in the law in order to make it as standard legislation.

Defamation

a. The communication between two or more persons through the media other than newspaper, broadcast or internet should not be served as defamation. (Sub-clause (2e) should be amended accordingly). The publishing of reported speeches and public statements made or issued by political parties etc. should not be termed as defamation; (A new sub-clause (5i).

Publisher

a. To make the publisher liable for defamation is contrary to the demands of justice and logic besides denying the freedom of speech and expression. Therefore the publisher, printer, broadcaster or owner of any media should not be liable for defamation. (The sub-clause 5a, 12a, 12b, 12c should be deleted/amended accordingly). The definition of publisher should not be confined to print media only. It should also cater the electronic media, so that the government run PTV may not be spared. (Amendments in sub-clauses 2f, 4, 5e, 5f.)

Editor

In the context of present day complexity, advancement and modernization, the job of editor does not confine to a single person only. There are a number of editors responsible for different jobs in a present day newspaper; hence the word editor should be re-defined properly. (Sub-clause 2c)

Third party statements

The law of qualified privilege should be extended to cover a greater range of circumstances, especially the fair reporting of public comment, including third party statements. (A new clause as 5-i).

Trial and court

The trial should be in the lower court, not in the district court and should be in a routine way, not expeditiously or extra-ordinarily. (deletion of clause 13 & 14).

Punishment

All references to imprisonment should be deleted. (clause-9) A minimum amount of Rs. 50,000 as general damages should be replaced by maximum amount of Rs. 50,000 as fine. (clause-9) The judge alone should decide about the amount of fine whether it is acceptable to the plaintiff or not. (clause-9) Avoidance of jeopardy: In order to avoid jeopardy, the person who lodges complaint under defamation law, should not have the right to lodge the same complaint under other parallel laws. (Clause II) Press freedom and the present Defamation Ordinance may not go together. And we are confident that press freedom will win. The Defamation Ordinance without incorporating the above said amendments can never be a press friendly law.

The PEMRA Ordinance

As in all other instances, the ordinance is arbitrary and it violates international standards of freedom of

and free flow of information, besides negating the interests of real stakeholders, especially the civil society. Therefore, the PEMRA Ordinance must be opened to public debate, involving the public at large, especially all stakeholders, before being placed before Parliament.

The power of the federal government to issue directives on matters of policy as and when it considers necessary (Clause-5), provides the executive a free and long hand to scuttle freedom of media. Such directives will be binding on the Authority that will reduce PEMRA to the level of a rubber stamp of a powerful executive, instead of an autonomous body.

The Authority by virtue of the mode of appointment of its Chairman and other nine members (Clauses: 6-1, 6-2, 6-3, 6-4), including Secretaries of Interior Division, Information and Media Development and chairman PTA as ex-officio members, will be yet another bureaucratic body, services of whose members will be regulated as "public servants within the meaning of section 21 of the Pakistan Penal Code" (Act XL V of 1860).

Although information is a subject of governance at all levels, especially in a federation, the Authority has been granted exclusive powers in granting licenses to all categories of CTV stations (Clauses: 18, 19), even if they are local or provincial, specialised or community based, which is a flagrant violation of the principles of devolution and provincial autonomy.

Yet again an infamous system of licenses, for the establishment and operation of all broadcast stations, has been revived without even elaborating criteria in unambiguous terms (Clause: 19-1) which is a negation of the principles of freedom of media and accepted norms of de-regulation. Moreover, every license is to be subjected to such terms and conditions as may be prescribed (Clause: 19-3) which is discriminatory and prohibitive.

Under the terms and conditions a lot of restrictions have been imposed ((Clauses: 20, a to i) that also include rules, yet not framed, and a plethora of guidelines. As if not enough, it has been made mandatory for the private television stations to broadcast or distribute, at least, 10 percent of the programs in 'public interest' to be specified by the government or the Authority (Clause: 20-e) that provides the executive to turn private channels or networks into an instrument of its propaganda and that, too, without any payment.

Still, the Authority will frame the codes of programs and advertisements that the private producers will have to comply with, leaving no space for freedom of media and freedom of choice to the viewers. Since the licenses are subject to renewal on "such terms and conditions as may be described" by the Authority (Clause: 24-5) as the license is to be valid for "five, ten or fifteen years" (Clause: 24-4) that will provide the executive with a big handle to muzzle the freedom of any independent channel or network.

Freedom of Information Ordinance

- It should be regarded as a bad law in formation and content and in fact, it should be titled as the denial of information law.
- The addition of Federal Tax Ombudsman as a forum for redress (in revenue matters) is welcome, but it does not affect the design of the ordinance plus promotion of a parallel form of judiciary in the form of Mohtasib should be completely done away with. Also, once a final decision has been taken, like ECC & Cabinet summaries they should be made public.

- There has been over legislation in every aspect of the activity. Therefore, it should be simplified so that the authority residing within the relevant clause cannot be abused. Also it should be clarified as to who determines that it is necessary to withhold information.
- Exclusion of record: Since all governments have displayed a tendency to hide facts by terming it to be in the national interest to hold information, therefore after a stipulated period of say 20 years, these records should be made public. Also the standing committees of the parliament should be fully cognizant of these decisions.
- Section 10 denies public its right to decide through the parliament.
- Section 13(2) a and b are beyond the scope of common understanding and should be simply put. Also a seven days time period is sufficient from the filing date of the application.
- Sections 14, 15, 16, 17 and 18 added to the draft of 2000 enlarge the volume of information the government can withhold. Also, all of these should be subject to an agreement of the parliamentary committees. Clause 18 is redundant.
- Section 19: A High Court Judge instead of Mohtasib should be vested with the powers to decide in order to discourage parallel judiciary institution from flourishing. Therefore wherever the term Mohtasib has been used it should be replaced with that of a High court Judge.
- Offence (destruction of record): The provision is welcome, but it is inadequate.
- Unlike the original draft of the 1997 ordinance (drafted by the Fakhruddin G. Ebrahim) the ordinance makes no reference to the people's fundamental right to information as provided in the constitution (Article 19).
- That any freedom of information law should be premised on the basic right to know, is absolutely essential.
- The law applies only to federal records whereas the original draft of the 1997 law covered provincial and local records as well. Granted that information is a provincial subject, but it was not impossible to make the law applicable to provincial records in the manner used for local bodies legislation.
- The ordinance does not provide for appeal to judiciary, which is a matter related to a right, amounts to denial of that right.

Specific provisions:

- i) The preamble: The people's right to know must be included.
- ii) Section 7: The process leading to final orders must be included in public record. This is necessary to ascertain whether a final decision is based on reason and takes into consideration expert opinion and precedents.
- l) Section 11. The designated official is made subject to government instructions. This is opening a door for deviation from the law and rules.

- (i) a Bill which has been published under rule 64 or which has been introduced in the House;
- iii) (iii) any matter connected with the business pending before the House; and
Section 12: Reservation of the right to access information to Pakistani citizens is unfair as it will exclude foreign journalists, scholars and historians. The condition of a prescribed form and the obligation to furnish particulars are unnecessary and will only lead to red-tape and deter information seekers.
- iv) (a) which falls within the cognizance of a court of law having jurisdiction in any part of India or a court of enquiry or a statutory tribunal or authority or a quasi-judicial body, or a commission; Section 14, 15, 16, 17 and 18 create an extraordinarily large area of exemptions, which are couched in extremely general terms. While some exemptions can be defended in public interest most others can't be justified. International opinion has finalized concepts for exemptions, which Pakistan need not ignore.
(b) which should ordinarily be raised in a State Legislature,
(c) which can be raised on a substantive motion or resolution; or
- v) Section 19: Recourse to Mohtashib has been limited. He can be approached only if the designated official declines to give information on ground that the applicant is not entitled to receive that information. The question of entitlement is unjustified.

Petitions dealing with financial matters
The creation of another forum, the head of the department, before an aggrieved applicant can go to the Mohtashib is unnecessary. It will cause delays (and may frustrate the purpose) of article 110 or involving expenditure from the Consolidated Fund of India, shall not be presented to the House unless recommended by the President.

- vi). Section 20: Destruction of records in an unauthorized manner before and after a complaint has been filed/disposed of should also be an offence.

General form of petition

- vii). 161. (1) The general form of petition set out in the First Schedule, with such variations as the circumstances of each case require, may be used, and, if used, shall be sufficient.

- viii). (2) Every petition shall be couched in respectful, decorous and temperate language.
Section 23: The original draft of the 1997 ordinance provided that right to information law would override all other laws. This feature has been dropped and this abridges the right to information.
(3) Every petition shall be either in Hindi or in English. If any petition in any other Indian language is made, it shall be accompanied by a translation either in Hindi or in English, and signed by the petitioner.

Conclusion: The ordinance is flawed in terms of both concept and content. Unless it is drastically changed to accommodate public views it will serve only as a vehicle for denying information instead of making it accessible to the citizens.

Authentication of petition

162. (1) The full name and address of every signatory to a petition shall be set out therein and shall be authenticated by his signature, and if illiterate by his thumb impression.

(2) Where there is more than one signatory to a petition, at least one person shall sign, or, if illiterate, affix his thumb impression, on the sheet on which the petition is inscribed. If signatures or thumb impressions are affixed to more than one sheet, the prayer of the petition shall be repeated at the head of each sheet.

Documents not to be attached

163. Letters, affidavits or other documents shall not be attached to any petition.

Counter-signature

164. (1) Every petition shall, if presented by a member be countersigned by him. If a petition is made in any Indian language other than Hindi or English, its translation in Hindi or English shall also be countersigned by the member presenting it.



5-A, Zafar Ali Road, Gulberg V, Lahore-54000, Pakistan.
Tel: (+92-42) 111 123 345 Fax: (+92-42) 575 1551
E-mail: info@pildat.org URL: www.pildat.org