

# **Legislating for the Citizens' Right to Information in Pakistan**

## **A Note on Legislative Competence**

Prepared by

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### **Background**

Pakistan is the first country in South Asia to adopt a law for guaranteeing people access to information from public bodies at the national level. In 2002 the Freedom of Information Ordinance (FOIO) was promulgated laying down procedures for citizens to access information held by ministries, departments and agencies of the Federal Government. At the provincial level, Balochistan and Sindh adopted freedom of information legislation modelled along the lines of the FOIO in the years 2005 and 2006 respectively. In 2010 with the adoption of the 18<sup>th</sup> amendment to the Constitution of Pakistan, the right of the citizens of Pakistan to access information of public importance from their governments has been enshrined in the fundamental law of the land. Pakistan is now the third country in South Asia where the right to information is explicitly guaranteed by the Constitution. In countries like Bangladesh, India and Sri Lanka the right to information is deemed to be a fundamental right within the meaning and scope of other fundamental rights such as the right to life, the right to freedom of speech and expression and the freedom of thought and opinion.

After the 18<sup>th</sup> amendment of the Constitution has come into force, efforts are underway to strengthen the FOIO to bring it up to par with the standards mentioned in the newly incorporated fundamental right to information. Meanwhile a Bill seeking to guarantee people access to information from the Government of Punjab is pending in their Provincial Assembly. In September this year, Ms. Sherry Rehman, MNA tabled the *Right to Information Bill, 2011* in the National Assembly seeking to strengthen the information access regime in Pakistan. It is against this background that the Consumer Rights Commission of Pakistan (CRCP) has approached CHRI with a request to provide advice on the competence of the Majlis-i-Shoora (Parliament) and the Provincial Assemblies to make laws for guaranteeing people access to information from public bodies in Pakistan. Consequently CHRI has prepared this note based on an appraisal of the relevant constitutional provisions and other related laws. Due to the shortness of the notice CHRI has not been able to consult any decision of the Supreme Court of Pakistan in this context. CRCP is advised to seek the opinion of constitutional experts in Pakistan in order to formulate its own position on the subject.

### **Issues framed**

- 1) Whether Parliament or the Provincial Assemblies have the competence to make laws to give effect to the right to information?**
- 2) Whether Parliament has the competence to enact a single law guaranteeing access to information binding all public bodies under both Federal and Provincial Governments?**

## Issue 1

### Whether Parliament or the Provincial Assemblies have the competence to make laws to give effect to the right to information?

#### **An examination of the Federal Legislative List**

Any discussion on the issue of legislative competence must begin with an examination of the list of topics on which Parliament and Provincial Assemblies are competent to enact laws. A combined reading of Articles 70(4)<sup>1</sup> and Article 142 of the Constitution indicates the following position:

- 1) Parliament has exclusive competence to make laws on topics mentioned in both Part I and Part II of the Federal Legislative List (Federal List) contained in the Fourth Schedule of the Constitution [Article 142(a) read with Article 70(4)]<sup>2</sup>
- 2) Where a law is required to be made on a topic not enumerated in the Federal Legislative List, the legislative competence lies with the Provincial Assemblies [Article 142 (c)]<sup>3</sup>

A careful examination of the Federal List indicates that the topic 'right to information' is not explicitly mentioned under any of the entries either in Part I or Part II. However the right to seek and obtain information relates to all entries mentioned in the Federal List as the entries fall within the jurisdiction of some federal ministry, department or agency. It is obvious that Parliament would have the competence to make a law for giving effect to the people's right to access information held by federal public bodies.

Similarly it stands to reason that the multitude of ministries and departments in the Provincial Governments would be responsible for providing information of public importance in relation to all other topics not covered by the Federal List as they fall under their jurisdiction.<sup>4</sup> The only exception to this inference is areas in the Federation that are not covered by any provincial administration. Under Article 142(d) Parliament has exclusive powers to make laws on all matters pertaining to such areas.<sup>5</sup>

**Ergo:** On the basis of the inferences drawn so far it may be argued that both Parliament and the Provincial Assemblies are competent to pass laws for providing access to information

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<sup>1</sup> "70. **Introduction and passing of Bills.**--- X X X  
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(4) In this Article and the succeeding provisions of the Constitution, "Federal Legislative List" means the Federal Legislative List in the Fourth Schedule." The Constitution of the Islamic Republic of Pakistan, 1973 accessible at: <http://pakistanconstitution-law.org/> as on 31 October, 2011.

<sup>2</sup> Ibid. "142. **Subject-matter of Federal and Provincial laws.**—Subject to the Constitution—  
(a) *Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List;*"

<sup>3</sup> Ibid. "(c) *Subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List.*"

<sup>4</sup> Ibid. Article 142(d).

<sup>5</sup> Ibid. "(d) *Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province.*"

held by the public bodies under their respective jurisdiction. This position obtains from a broad-based interpretation of the constitutional provisions cited above.

**Counter:** However a narrow interpretation of Article 142(c) namely, the absence of a specific mention of RTI under the Federal List, can be used to argue that only Provincial Assemblies can make laws guaranteeing access to information to citizens. This argument may be countered on two grounds:

- 1) The RTI laws enacted by the Provincial Assemblies will apply to the public bodies under their respective jurisdictions. However nothing in the Constitution indicates that Provincial Assemblies have the jurisdiction to make a law that will bind public bodies under the Federal Government. So public bodies under the Federal Government will continue to be covered by the existing FOIO. If not, the right to information guaranteed under Article 19A of the Constitution will be rendered meaningless for citizens in their relationship with the Federal Government. Parliament is competent to amend FOIO or replace it with a completely different law. Therefore it may be said that Parliament is competent to make a stronger law to replace FOIO at a later date.
- 2) The second argument to counter the narrow interpretation is based on a careful reading of Article 19A which is reproduced below:

*“19A. **Right to information.**---Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.”*

Article 19A states that the citizens’ right to information is subject to regulation and reasonable restrictions imposed by law. If this be so, a question will arise as to who is competent to make such regulations and also enact laws imposing reasonable restrictions. The text of this Article provides little guidance in this regard. Therefore it is important to examine the constitutional provisions that impose an obligation on specific entities to promote and respect the fundamental rights guaranteed under Chapter 1.

Article 8 of the Constitution prohibits the State from making laws that take away or abridge any of the fundamental rights guaranteed in Chapter 1.<sup>6</sup> The term ‘State’ as defined in Article 7 of the Constitution includes, amongst others, Parliament and all Provincial Assemblies.<sup>7</sup> Both bodies have a duty not to take away or abridge the rights through any law. Similarly both bodies have the competence to impose reasonable restrictions on the exercise of this right. Therefore it stands to reason that both bodies have the competence to make laws to give effect to the fundamental right to information in the manner described in Chapter 1.

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<sup>6</sup> Ibid. Article 8(2): “(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.”

<sup>7</sup> Ibid. “**7. Definition of the State.**-In this Part, unless the context otherwise requires, “the State” means the Federal Government, Majlis-e-Shoora (Parliament), a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess.”

This argument can be further supported by an examination of the term ‘regulation’ mentioned in Article 19A. In addition to reasonable restrictions imposed by law, RTI is also subject to regulation imposed by law. The term ‘regulation’ is not defined in the Constitution of Pakistan. Where terms are not specifically defined in a Constitution or an enactment, recourse must be taken to the relevant statute of interpretation in the country. In the context of Pakistan *The General Clauses Act, 1897* acts as the statute of interpretation of common terms undefined in any specific enactment relating to Federal Government. *The General Clauses Act* provides two interpretations of the term ‘regulation’:

*“Regulation” shall mean a Regulation made by the President (under Article 240 of the Constitution and shall include a Regulation made by the President under Article 243 thereof and) a Regulation made by the Central Government under the Government of India Act, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935.”<sup>8</sup>*

Additionally the definition of the term ‘rule’ contained in *The General Clauses Act* includes the word ‘regulation’ within its meaning:

*“Rule” shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.”<sup>9</sup>*

It is a general rule of interpretation that all meanings must be derived with reference to the specific context of the terms or words concerned. It is obvious that the definition of ‘regulation’ specifically mentioned in *The General Clauses Act* is not applicable to our case as Article 243 in the Constitution of Pakistan as it stands on 31 October 2011, relates to the Armed Forces. The general usage of the word ‘regulation’ included within the definition of the term ‘rule’ provides a more appropriate meaning. The term ‘regulation’ is included within the meaning of the term ‘rule’ in the General Clauses Acts of Punjab and West Pakistan as well.<sup>10</sup> As this definition applies to ‘regulations’ made under any enactment made by Parliament or the Provincial Assemblies, it may reasonably be inferred that the sense of that term used in Article 19A applies equally to regulations under laws made by both Parliament and the Provincial Assemblies. All legislatures in Pakistan are therefore competent to make laws to give effect to Article 19A.

### **Issue #1 is accordingly answered in the affirmative.**

In the event of any inconsistency between an RTI law passed by Parliament vis-à-vis a provincial RTI law, the provisions of Article 143 of the Constitution will come into play.<sup>11</sup> The law enacted by Parliament will prevail over the provincial law.

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<sup>8</sup> Section 3.

<sup>9</sup> Ibid.

<sup>10</sup> Section 2(55), *The West Pakistan General Clauses Act, 1956*, accessible at: [http://www.khyberpakhtunkhwa.gov.pk/Gov/files/v3\\_0021.htm](http://www.khyberpakhtunkhwa.gov.pk/Gov/files/v3_0021.htm) and Section 55, *The Punjab General Clauses Act, 1956*, accessible at: <http://www.punjablaws.gov.pk/laws/73.html> as on 31 October, 2011.

<sup>11</sup> “143.---**Inconsistency between Federal and Provincial law.**--- If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament) which Majlis-e-Shoora

## Issue 2

### **Whether Parliament has the competence to enact a single law guaranteeing access to information binding all public bodies under both the Federal and Provincial Governments?**

An examination of the Federal List above revealed that exclusive jurisdiction is not available with any single legislature to give effect to the fundamental right to information. However a uniform law guaranteeing RTI to all citizens at all levels of all governments is desirable for the following reasons:

- Establishment of uniformity in access procedures such as, the manner of seeking information, time limits and fee rates and dispute resolution procedures, is possible under a single law covering public bodies under both the Federal and Provincial Governments.
- A law giving effect to the fundamental right to information must create an equal degree of certainty and similar levels of convenience for all citizens who seek information from any public body and the outcomes of the process of seeking information should be predictable, irrespective of jurisdiction. It would be a violation of Article 19A if certain categories of information are accessible under the federal RTI law but exempted under one or more provincial RTI laws.

**Therefore it is advisable that all political parties and alliances in control of the governments at the federal and provincial level work together to build a consensus on the content of a strong model law guaranteeing access to information and pass them with adaptations specific to their jurisdiction. This would ensure that the legislative competence of both Parliament and the Provincial Legislatures is respected and also put to use. This indeed is the best option given the constitutional position discussed above.**

However political consensus on a model RTI law for the whole of Pakistan may be difficult to achieve given the fiercely competitive nature of politics. So other options may be explored.

#### ***The Article 144 route***

Article 144 of the Constitution as amended by the 18<sup>th</sup> amendment enables Parliament to make a law on a subject not mentioned in the Federal List, if a resolution to that effect is passed by one or more of the Provincial Assemblies.<sup>12</sup> Such laws will be applicable to the provinces that passed the resolution. By using this route Parliament could not only make an RTI law applicable to public bodies under the Federal Government but also to all public bodies under the Provincial Governments. This will require every Provincial Assembly to

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*(Parliament) is competent to enact, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.”* The Constitution of the Islamic Republic of Pakistan, 1973, op.cit., f.n.1.

<sup>12</sup> Ibid. “**144. Power of Majlis-e-Shoora (Parliament)] to legislate for one or more Provinces by consent.**—(1) If or more Provincial Assemblies pass resolutions to the effect that Majlis-e-Shoora (Parliament) may by law regulate any matter not enumerated in the Federal Legislative List in the Fourth Schedule, it shall be lawful for Majlis-e-Shoora (Parliament) to pass an Act for regulating that matter accordingly, but any act so passed may, as respects any Province to which it applies, be amended or repealed by Act of the Assembly of that Province.”

adopt a resolution authorising Parliament to pass an RTI law. However this route is beset with the following difficulties:

- a) Given the political realities in Pakistan and the rivalry between various political parties and alliances at the federal and provincial level, achieving a consensus on the contents of a model RTI law in all provinces will be time consuming. It may not be achievable for a very long period of time.
- b) Once enacted Parliament will lose exclusive control over the RTI law in the provinces. The Provincial Assemblies may use their powers to curtail the scope and ambit of the RTI law at a later date without making any reference to Parliament. Parliament will have no power to prevent a Provincial Assembly from taking such action.

Therefore the Article 144 route is not in the best interests of a uniform RTI regime across Pakistan.

### **Re-examination of the Federal List from a different perspective**

In order to overcome the difficulties posed by the Article 144 route, a different avenue may be explored for enacting a uniform RTI regime covering all levels of Government in Pakistan. Entry 3 of the Federal List empowers Parliament and the Federal Governments as the sole authorities to implement international treaties and agreements throughout Pakistan.<sup>13</sup> The right to information is a basic human right recognised in many international treaties acceded to or ratified by Pakistan. Article 19 of the *International Covenant on Civil and Political Rights* contains a reference to the basic human freedom to seek and receive information.<sup>14</sup> Pakistan acceded to this Covenant in 2010. *The United Nations Convention Against Corruption* makes it binding on States Parties to take multi-pronged action to eradicate corruption.<sup>15</sup> Measures such as providing people with access to information so

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<sup>13</sup> Ibid. Fourth Schedule, Part I, Entry 3: “*External affairs; the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to Governments outside Pakistan.*”

<sup>14</sup> Article 19(2) & (3): “2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.” – accessible at: <http://www2.ohchr.org/english/law/ccpr.htm> as on 31 October, 2011

<sup>15</sup> Article 13- *Participation of society*: 1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

that they may play an effective role in combating corruption and also participate in public decision-making processes are emphasised in more than one Article of this Convention. These measures are directly related to the enactment and operationalisation of RTI laws. Pakistan ratified this Convention in 2007.

The *International Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) contains specific provisions requiring States Parties to institute measures for enabling women's participation in public decision-making.<sup>16</sup> This can be possible only if there is transparency and a right to seek and obtain information about such processes. The *International Charter on the Rights of the Child* (CRC) also contains a specific provision requiring States Parties to guarantee children access to information from public bodies.<sup>17</sup> Pakistan ratified the CRC in 1990 and acceded to CEDAW in 1996.

Principle 10 adopted at the Rio Summit on Sustainable Development (Earth Summit) in 1992 also requires all States Parties to provide their peoples with access to information about laws, regulations, policies and enable them to participate in decision-making processes relating to sustainable development and protection of the environment.<sup>18</sup> Pakistan is a signatory to the Rio Declaration and has to report on the progress on implementing Agenda 21 made at the upcoming Rio +20 summit in 2012. Similarly the 2008 Declaration of SAARC Ministers for Social Development commits all SAARC member States including Pakistan to confer the right to information to their citizens through appropriate legislation.<sup>19</sup>

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(b) *Ensuring that the public has effective access to information;*" – accessible at: [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf) as on 31 October, 2011.

<sup>16</sup> Article 14: "2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:  
(a) To participate in the elaboration and implementation of development planning at all levels;  
(b) To have access to adequate health care facilities, including information, counselling and services in family planning;" – accessible at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> as on 31 October, 2011.

<sup>17</sup> Article 13: "1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.  
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:  
(a) For respect of the rights or reputations of others; or  
(b) For the protection of national security or of public order (*ordre public*), or of public health or morals." – accessible at: <http://www2.ohchr.org/english/law/crc.htm> as on 31 October, 2011.

<sup>18</sup> *Rio Declaration on Environment and Development, 1992*: "Principle 10: Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."- accessible at: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>

<sup>19</sup> New Delhi Declaration of Ministers of Social Development from South Asia, 2008: "We the Ministers for Social Development from South Asia meeting in New Delhi on 5 and 6 March 2008..."

Given these commitments in relation to the people’s right to information and transparency in governance made by Pakistan before the international community, the Federal Government is duty bound to give effect to its international obligations by enacting a domestic law to that effect. It has exclusive jurisdiction to make this happen under Entry 3 of Part I of the Federal List. Therefore, Parliament has the competence to make a uniform RTI law applicable to public bodies at the federal, provincial and district level in Pakistan.

**Issue #2 is accordingly answered in the affirmative.**

***Disadvantage of the Entry 3 route:***

Even though Issue #2 has been answered without room for doubt, its implications must also be considered. If the Entry 3 route is taken, it would imply that none of the Provincial Assemblies will be able to make RTI laws in future. The validity of the existing FOI laws in Sindh and Balochistan may also be called into question before the courts if the Entry 3 route is taken. However taking this route can ensure a high degree of uniformity in the RTI regime across the country and none of the provinces will be able to tinker with it.

**Uniformity in an RTI regime- the Indian experience**

While Pakistan enacted the first RTI law at the national level in 2002, two Indian States- Tamil Nadu and Goa had already adopted RTI laws during the late-1990s. Karnataka followed suit in 2000. However as far back as in 1975, the Supreme Court of India had recognised and situated the citizens’ right to know every action and decision of government as a fundamental right within the meaning and scope of the fundamental right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. Even as the Central Government dithered in its duty to enact a law to give effect to RTI, the States took the lead. None of the three lists in the Seventh Schedule of the Indian Constitution make any explicit reference to the right to information. In 2002 the renowned constitutional expert Mr. A G Noorani gave a legal opinion that RTI is covered under Entry 12 of the Concurrent List which pertains to public records and acts.<sup>20</sup> However none of the RTI laws passed by the States Legislatures made any reference to Entry 12 nor was their validity questioned on the ground of legislative competence before any court.

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X	X	X
AGREE TO:		
X	X	X

*Promote and facilitate through exchange of best practices, early adoption in accordance with national priorities, of appropriate legislation, conferring right to information for all citizens from the governments and public authorities, to eliminate arbitrariness, and corrupt practices, and improve governance at the regional national and local levels.” – accessible at:*

[http://portal.unesco.org/geography/es/files/8176/12148091961Delhi\\_Declaration.pdf/Delhi%2BDeclaratio n.pdf](http://portal.unesco.org/geography/es/files/8176/12148091961Delhi_Declaration.pdf/Delhi%2BDeclaratio n.pdf) as on 31 October, 2011.

<sup>20</sup> “12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.” Under Article 246 of the Indian Constitution both Parliament and the State Legislatures have the competence to make laws on a subject mentioned in the Concurrent List. In the event of a clash between a law passed by the State and a later Central law the latter will prevail. However if the State law had been assented to by the President of India then it would prevail despite the conflict with the Central law on the same subject. Ordinarily Governors give their assent to Bills enacted by the State Legislatures. However on occasion they may refer laws enacted on subjects in the Concurrent List to the President for assent.



In 2002 Parliament passed the Freedom of Information Act (FOI Act) which applied to public authorities under both the Central and State Governments in India. No consultation was held with any of the State Governments or Legislatures in this regard prior to its adoption. However this law was never operationalised by the Central Government due to lack of political will. As the rules were never notified under this law none of the States could take any action to enforce it within their respective domains. Meanwhile between 2002-04 States like Delhi, Assam, Madhya Pradesh, Maharashtra and Jammu and Kashmir enacted their own RTI laws. While States like Delhi and Maharashtra took serious steps to implement their RTI laws due to civil society pressure, similar laws in other States languished without any significant usage or impact.

In 2004 the United Progressive Alliance (UPA) defeated the ruling National Democratic Alliance at the electoral hustings. A promise to make the RTI Act more progressive, participatory and meaningful was included in the Common Minimum Programme (CMP) for governance, with the agreement of all alliance partners. After assuming power, the UPA constituted a National Advisory Council (Council) to give advice for and monitor the fulfilment of the promises contained in the CMP. Some of the members of the Council were ardent votaries of RTI. In collaboration with civil society organisations they took upon themselves the task of delivering on the promise made in the CMP vis-à-vis RTI. After a thorough examination of the FOI Act civil society representatives decided to draft a new RTI Bill to replace the FOI Act. This draft was further improved upon by the Council and submitted to the Central Government for consideration.

In December 2004 when the UPA Government finally tabled the RTI Bill in Parliament it covered public authorities under the Central Government only. The States had been left out of the jurisdiction of the Bill. However the last line of the Statement of Objects and Reasons attached to the Bill read as follows:

*“The proposed legislation will provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India.”*

Civil society advocates used this sentence as the mainstay of their argument to extend the coverage of the RTI Bill to the States as well. “As the Bill is intended to give effect to a fundamental right, Parliament is competent to make a law that will apply to the States as well”, it was argued. However this arrangement would not take away the power of the State legislatures to pass stronger RTI laws at a later date. The Parliamentary Standing Committee which vetted the Bill agreed with civil society’s submission that the entire country must have a uniform RTI regime.<sup>21</sup> The coverage of the Bill was expanded to all States except

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<sup>21</sup> “Para 14.4: The Committee held detailed discussion on this issue and heard the views/suggestions of prominent NGOs, social groups, experts and individuals and came to the conclusion that the proposed Right to Information Bill, 2004 assumed paramount importance as it was stated to be a touchstone for democracy and development. Not only that, by passing this legislation, India would join the world community having legislations guaranteeing access to information.

***“Para 14.5: The Committee is, therefore, of the view that passing a law with all India applicability will send a positive signal and would squarely serve the purpose of the proposed law.”: Report of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the Right to Information Bill, 2004 , April 2005.***

Jammu and Kashmir.

The RTI Act was passed by both Houses of Parliament in May 2005, assented to by the President in June and fully enforced from 12 October, 2005. Under the Indian Constitution there is no procedure for ratification of such laws by the State Legislatures. They apply to the State Governments automatically. Under the RTI Act, 2005 State Governments can make Rules to give effect to the provisions of the Act [Section 2(a) read with Section 27]. State Governments are responsible for establishing State Information Commissions in like manner as the Central Government which has established the Central Information Commission (Sections 12 and 15). The President appoints the members of the Central Information Commission based on the recommendations made by a 3-member selection committee dominated by the Central Government (Section 12). The Governors in the respective States appoint members of the State Information Commissions from a panel of names forwarded by the selection committee dominated by the respective State Governments (Section 15). The powers and functions, terms and conditions of service and the procedure for removal are the same for all Commissions at the Central and State level (Sections 13-14 and 16-17).

While the Central Government has made rules for regulating the appeals and complaints procedures for the Central Information Commission, the respective State Governments have made rules for regulating the appeals and complaints procedures in the respective State Information Commissions. Public authorities under the Central Government fall within the jurisdiction of the Central Information Commission irrespective of their geographical location within the territory of India. Public authorities under the State Governments fall within the jurisdiction of the respective State Information Commissions. Rules relating to fees, application formats, proformas for use by the public information officer and the appellate authority differ from State to State and are at variance with the Rules made by the Central Government. However these are minor variations only and do not make a substantial difference to the enjoyment of RTI in different States or at the Central level. No appeal against a decision of a State Information Commission is possible before the Central Information Commission. Appeals against the decisions of all Information Commissions lie first with the relevant High Court under writ jurisdiction<sup>22</sup> and later with the Supreme Court on appeal. While the Central Information Commission submits an annual report on the implementation of RTI Act within its jurisdiction to Parliament, State Information Commissions submit their annual reports to the respective State legislatures (Section 25).

Although some States ruled by non-UPA parties and alliances were slow in implementing the RTI Act, initially, today in 2011, all Governments have given effect to its provisions by making Rules and constituting Information Commissions. Budgetary provisions for the Information Commissions are made through the budgets of the respective governments. However, most States have not provided adequate budgetary support to their Information Commissions arguing that the Central Government has the responsibility of funding them as the Commissions are required to be established under a Central law. In recent years the Central Government has begun making grants for the establishment and running of State

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<sup>22</sup> Courts cannot interfere in the proceedings relating to RTI until an Information Commission has given a decision on an appeal or complaint. A decision of an Information Commission can be challenged in a High Court by invoking its writ jurisdiction under Article 226 of the Constitution.

Information Commissions through a special assistance scheme approved by the Planning Commission.

In Jammu and Kashmir (J&K) the Central RTI Act is not applicable due to the special status granted under Article 370 of the Indian Constitution. Parliament is not competent to make an RTI Act for J&K as this topic does not fall within the list of subjects handed over to the Central Government as per the terms of the Instrument of Accession signed in 1947. The J&K State Legislature enacted its own RTI Act in 2004 modelled along the lines of the Central FOI Act, 2002. Later in 2009 J&K replaced it with the new J&K RTI Act fashioned along the lines of the Central RTI Act 2005. This new law is now being implemented all over J&K. A 3-member Information Commission has also been established and is fully functional.

### **Concluding Remarks**

Laws enacted in a democracy reflect the political choices made by the concerned legislature. The aforementioned arguments and the brief overview of the Indian experience of implementing RTI are intended to serve CSOs and policymakers in Pakistan as well-meaning suggestions for making the right choice vis-à-vis their RTI regime. A choice that will ensure respect for the powers and authority of both Parliament and the Provincial Assemblies can be an ideal choice for Pakistan. Any restriction on the power of either Parliament or the Provincial Assemblies is not advisable in view of the spirit and practice of federalism supported by the Constitution of Pakistan.

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