

CPDI Information Requests

Changing the Culture of Secrecy

Introduction:

It is free flow of information that ensures transparent functioning of the government and makes public institutions and public representatives accountable. However, a country that has oscillated between dictatorial regimes and short-lived democratic governments throughout its existence, free flow of information has largely been an elusive dream. Instead of enacting laws that would give citizens easy access to information, laws were framed that aimed at curtailing citizens' right to information. Prior to Freedom of Information Ordinance 2002, the state of Pakistan not only continued with the colonial laws that controlled the flow as well as the quality of the information, it also introduced further laws aimed at achieving the same end. When seen in context of citizens' ability to exercise their right to information in order to have access to the public documents and thereby make public institutions accountable and their functioning transparent, this state of affairs had two consequences for the citizens and their civil society organizations. Due to the lingering colonial legacy the bureaucracy has not been able to replace 'the ruler and the ruled' relationship between an official and the common man with that of 'the public servant and the citizen'. Furthermore, it also explains the cynicism with which civil society organizations greeted Freedom of Information Ordinance 2002-first law of the land that gave right to information rather than denying it, as was the practice in the past. The Centre for Peace and Development Initiatives, Pakistan (CPDI-Pakistan), unlike most organizations, did not reject this law outrightly. That is why CPDI-Pakistan is the only organization that has submitted a great number of information requests, seeking access to public documents from different ministries and departments of the government. This process of submitting information requests has enabled us understand the way bureaucracy functions, its mindset, and journalists' attitude towards right to information as a tool for investigative reporting. Above all, engagement in this whole process has enabled us understand the complexities involved in the implementation of a freedom of information law in Pakistani context. This report documents our learning experience of undergoing the process of submitting information requests. The objective of this report is to preserve the institutional experience of submitting information requests, gathered over many years, so that the right to information activists could learn as to what does and what does not work in the Pakistani context when information laws are used to have access to the information in the government files.

Legal Framework:

It is important to understand the legal framework in which CPDI has been submitting information requests to have access to information. Though Article 19 of our constitution does not explicitly talk about the right to information, it gives citizens of Pakistan freedom of expression. Furthermore, while interpreting this article, Supreme Court of Pakistan gave the verdict that freedom of expression is incomplete without the right to information. Despite this, there is a plethora of laws aimed at denying both the right to

information as well as right to expression. Successive governments have used these laws to curb freedom of expression and information. Many of these laws date back to the colonial era. They are as under:

- The Official Secrets Act-1923
- The Press and Registration of Books Act-1867
- The Telegraph Act-1885
- Press (Emergency Powers) Act-1931
- Control of Essential Commodities Ordinance-1956
- Newsprint Control Ordinance-1971
- The Associated Press of Pakistan (taking Over) Ordinance-1961
- Copyright Ordinance-1962
- Pakistan Broadcasting Corporation Act-1973
- the Maintenance of Public Order Ordinance 1960
- Sections 124-A (sedition), 153-A & B (promoting enmity between different groups and inducing students to take part in political activity), 292 (sale of obscene books), 499 to 502 (defamation), 505 (statements conducting to public mischief) of Pakistan penal Code-1860,
- section 99-A (power to declare certain publications forfeited and to issue search warrants for the same) of the Code of Criminal iv Procedure Act-1898
- the Contempt of Court Ac.

Freedom of Information Ordinance 2002

Against this plethora of laws that hamper freedom of information and expression, the first law that recognized citizens' right to information was the Freedom of Information Ordinance 2002. It came about as one of the policy actions attached to Asian Development Bank loan. It was first of its kind law in South Asia at the time. The civil society was not taken on board during the formulation of this law. Hence, it is weak law riddled with many anomalies. Nevertheless, it was the first law that acknowledged the right to information envisaged how citizens could have access to information.

Civil Society Response to Freedom of Information Ordinance 2002

When the Freedom of Information came about, the general reaction was that of reaction. People from the media completely rejected it, saying that it was not a good piece of legislation; the timing was not right, the way it was promulgated was objectionable as it came about a few days before the National Assembly was supposed to take oath. Civil society organizations working in the area of right to information also reject it taking the plea that it was too restrictive. Consequently, not many people were interested in

demanding for its implementation. That explains as to why no information requests have been filed by any other organization other than CPDI-Pakistan.

CPDI-Pakistan Response

We decided to analyze the Freedom of Information Ordinance 2002 in order to determine whether there was space available that could be utilized for the citizens. We concluded that it was definitely very restrictive, there were large numbers of problems with it but nevertheless, it was the first piece of legislation which was about access to information. We found out that in the presence of all the laws that have provisions about secrecy, confidentiality and restrictions, this was the only piece of legislation which at least in its preamble clearly stated that transparency and accountability were its objectives. It also declared some information as public information. So, we thought that we should get engaged and work for its implementation and at the same time keep demanding for its improvement. We also thought by demanding its implementation, we would be creating awareness and we would be collecting empirical evidence to support for the demand for change. We demanded that rules should be framed for its implementation. We started demanding that in accordance with this ordinance, officers should be designated to deal with the information requests. We also started creating awareness by talking to the members of the civil society, producing some material which we shared with them, explaining how information requests could be submitted.

Bureaucratic Functioning-Myths and Realities

There prevail many myths about the way bureaucracy functions. Two of the most common myths about bureaucracy are as under:

- Bureaucrats do not give a reply when you write to them.
- Bureaucrats behave as if they are still living in colonial era.

Another myth that prevailed regarding the bureaucratic functioning pertained to Freedom of Information Ordinance 2002. It was:

- Citizens can not get information under this law because rules have not been framed.

CPDI Understanding of Bureaucratic Functioning

The process of submitting information requests over the years has helped us appreciate the distinction between the myths and the realities about the way bureaucracy functions. Following are some of the findings of our analysis of bureaucratic functioning.

a) Myth about Handling Official Correspondence

It is a widely held belief that nothing happens when a letter is written to a ministry or department. People generally do not know that in each ministry and department there is

an issue and receipt section. Each letter that is sent and received is recorded in a properly maintained file. Furthermore, whenever a letter is sent, it becomes a part of a file and is handed over to the concerned official who has to take action on the file.

It is true that the baggage of colonial legacy is still there. It is one of the contributing causes of culture of secrecy in the bureaucracy. However, our interaction with the bureaucracy during the course of submitting these information requests has led us to believe that with the clear understanding about the bureaucratic functions and procedures, the bureaucracy can be engaged in the area of right to information. Interestingly, in the cases where our information requests were denied, we shared with the media our information requests related correspondence with ministries/departments and our complaints lodged with Federal Ombudsman. Thus, journalists were able to establish, through evidence based reporting that certain ministries/departments were trying to hide certain pertinent information.

b) Myth about the Framing of Rules and Filing Information Requests

Initially, since the rules were not framed, many people thought that, even those who were interested in accessing information under this ordinance, we cannot get information through information requests because the rules have not been framed. On a careful examination, we found out that though the rules had not been framed, but we could still file information requests because nowhere in the ordinance was written that information requests could not be submitted until and unless rules were framed. So, we started submitting information requests.

c) Impact of Colonial Legacy on Bureaucracy

The state of Pakistan has been unable to get rid of colonial legacy or, for that matter, has not brought laws of the colonial era in line with requirements of a free nation. Not only this, the coercive state apparatus falls back upon these laws from time to time to curb the dissenting voices and to deny people access to the pertinent information that may shed light on the public funds are being used by the ruling elite. The very existence and continued usage of these colonial laws have resulted in creating and nurturing a bureaucratic mind-set that still treats citizens of Pakistan as 'subjects' even long after independence. It is not merely an assumption. Documentary evidence gathered during the course of submitting these information requests and our experience of interacting with bureaucracy in the pursuance of these information requests supports this assumptions. There were very few cases where the officials responded to our information requests and gave a replied to our letters. In majority of the information requests, officials responded only at the intervention of the Federal Ombudsman.

Information Request-A Tool for Changing the Culture of Secrecy

Notwithstanding the limitation in the Freedom of Information Ordinance 2002, we thought it could be used as a tool bring about a change in the culture of secrecy that laws of the colonial era have helped prolong and nurture over the years. So, after

understanding the way bureaucracy functions, we started submitting information requests in order to fight for the right to information at bureaucracy's own turf. We found out that the over all environment in which bureaucracy is trained to use the colonial laws is not conducive to providing access to information declared public under this law. Nevertheless, our understanding of the bureaucratic functioning helped us in terms of having access to the information that exposed the injudicious use of public funds-information which otherwise would not have come to the fore. Following are some of the case studies of the process of submitting information requests.

Information Request Exposing Maladministration in Planting Useless Date Palm Trees:

The first information request submitted under this ordinance pertained to the big date palm trees which were planted in the Blue Area. Mukhtar Ahmed Ali, Executive Director CPDI, while working for another civil society organization at that time, sought information from the Capital Development Authority (CDA) as to how many trees were planted, how much money was spent. There was no response, and after 21 days he complained to the Ombudsman which is the procedure given under the law. On the intervention of the Ombudsman, they provided him the information. It was found out that they had actually spent 2.4 millions on the whole initiative and the cost of the one tree was 990 rupees. This information was shared with the media and the civil society and people confronted the Chairman CDA, demanding as to why this much money was spent on trees which were not likely to grow given the climate of Islamabad. It must be pointed out that before this information was divulged to the public, there were so many rumors being traded about the money involved in the plantation of the trees. Some would say these trees had been imported from Dubai, others would say they had been taken from interior Sin and yet others would say they had come from the farm of that particular feudal lord. Speculations on the cost of a single tree ranged from 5000 to 100000 rupees. As a result of this initiative, it was established that the cost was not that high as was being speculated. It was still very high, for in a capital city where we have still not been able to provide clean drinking water, it was simply scandalous. This initiative not only raised awareness about the law, but as a result of subsequent requests, there was realization in the Ombudsman office about the issue of information and guidelines were issued as to how the information complaints were to be handled, as prior to our requests there was no Information Request to such precedent.

Information Request Leading to Formulation of Rules of Freedom of Information Ordinance:

When we submitted an information request to WTO Wing of the Ministry of Commerce, they sought advice from the Cabinet Division as to how this particular information should be handled. They were advised by the Cabinet Division that they should not entertain the information request as the rules had not yet been framed. We took the matter to the Ombudsman and argued that the non-existence of the rules cannot be an obstacle as it is not written anywhere in the law, and, in any case, it is the responsibility of the government to frame the rules. We further argued that if this argument is accepted it

would mean that the non existence of the subordinate legislation is being used to effectively veto the law which has been promulgated by the President. In any case, the Ombudsman ruled in our favor and told the Ministry of Commerce and the Cabinet Division that non-formulation of rules is in itself a malpractice. This was clarified to all the ministries and later on no ministry took this position.

Information Request Exposing Scandalous Amounts Given as Fee to Lawyers in judges Case:

We submitted an information request to the Ministry of Law, Justice and Human Rights, asking them the following questions.

1. Certified copy of the list containing the names and addresses of lawyers hired by Ministry of Law, Justice and Human Rights to represent Federal Government/ Federation in Supreme Court of Pakistan from October 01, 2002 to March 20, 2008.
2. Certified information about the total amount paid by Ministry of Law, Justice and Human Rights as fee or in other heads to the lawyers who represented Federal Government/ Federation in Supreme Court of Pakistan during the same tenure.
3. Certified information about the fee paid by Ministry of Law, Justice and Human Rights to each lawyer from October 01, 2002 to March 20, 2008, to represent the Federal Government/ Federation in Supreme Court of Pakistan.

Ministry denied the information request, saying it would open a 'Pandora box'. CPDI remained undeterred and persisted to open this 'Pandora box'. We shared all the details with Ansar Abbasi, reporter 'The News International' and there was a front page story in 'Jang' and 'The News' on Monday, July 14, 2008 titled 'Law ministry protecting Musharraf's legal extravagance. Our endeavours in terms of taking initiative of submitting information request and launching media campaign on this issue paid off as MNA Begum Nuzhat Siddiqi asked the minister for law, justice and human rights the same question CPDI-Pakistan has been raising:" to show the names of lawyers, who pleased the cases on behalf of the government cases in the Supreme Court during the last five years and the total amounts of fees paid to them in each case." The Minister provided the information CPDI had been asking and details of scandalous amounts paid to the lawyers were divulged, injudicious use of public funds was exposed. The news item pertaining to these revelations was a major story carried by print and electronic on Tuesday, August 12, 2008.

Information Request Exposing Establishment of 'Secret' Fund at Ministry of Information and Broadcasting

Term 'Lifafa journalists' is quite common. It is a common knowledge that the successive governments have obliged journalists in different ways to make them toe the official line. We made some queries and came to know that there is a Secret Fund established at the Ministry of Information and Broadcasting. While establishing such a fund at Ministry of Interior or at other sensitive agencies is understandable, the very presence of such a fund at the Ministry of information and Broadcasting is mind boggling. We submitted an

information request to the Ministry of Information and Broadcasting seeking the following information:

1. Certified copy of the policy decision to establish 'Discretionary Fund' or 'Secret Fund' in Ministry of Information and Broadcasting.
2. Certified information about the total amount paid by Ministry of Information and Broadcasting from Discretionary Fund or Secret Fund to journalists from October 01, 2002 to March 20, 2008.
3. Certified information about the amounts paid by Ministry of Information and Broadcasting from Discretionary Fund or Secret Fund to each Journalist during the same period.

Information was denied and we lodged a complaint at the Federal Ombudsman where the ministry took the plea that this is classified information. The ministry admitted on record that they do not know about the whereabouts of the document that contains the policy decision about establishing such a fund at the ministry and they have written to the Ministry of Finance to guide them. This matter is still pending with the Federal Ombudsman and the verdict is awaited.