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PAKISTAN – RIGHT TO KNOW
Role of Media and Legal Organizations

SEMINAR ON ASIAN MEDIA AND FREEDOM OF INFORMATION
May 8 –10, 2000, Bangkok, Thailand
PAKISTAN

RIGHT TO INFORMATION

Role of Media and Legal Organizations

Our capacity as human beings to acquire, use and store information is essential for our survival. At a practical level, disasters are avoided, accidents prevented and sustenance provided by our use of information. Hamlet's tragedy was that he was accurately informed; Othello's that he was not.

The Information millennium has fully dawned. National boundaries are no longer frontiers where the ingress and egress of information can be stopped or curtailed, much less checked. Like never before, the swift adoption of information technologies has left laws struggling to keep pace.

The importance of the nation state is diminishing in its interaction with information technologies. Secrets are coming to light, which may never before have seen the light of day.

However, this informal transmission, receipt and dissemination of information is not a substitute for credible, verified or acknowledged information. Information which is not adequately backed by legislation hinders the establishment of rights and obligations. Secret, sensitive or privileged information unofficially obtained or used exposes one to liabilities, including criminal prosecution. Laws must recognise the legitimate desire of societies and individuals to receive and use most information without hindrance, whilst safeguarding the receipt of sensitive information. Proscription and penalties must exclusively be retained for the latter.

The right to information must also be properly balanced with the right of privacy. Then again the information vehicle should not be driven to misinform or defame. To avoid frequent and vicious conflicts between different rights it is essential that contending rights are properly addressed, and if and when conflicts do occur a mechanism to resolve them exists. The right to or freedom of information must also take cognizance of the engrained value systems in different societies.

The unrestricted right to freedom of information does not exist in any society or country just like there is none which practices total or absolute control. However, there is a wide spectrum, between total freedom and total control, reflecting every colour and shade, except the absolute black or its opposite white.
COUNTRY STATISTICS AND MEDIA OUTREACH:

Pakistan comprises of four provinces, Federally Administered Tribal Areas (FATA) and the Capital territory of Islamabad of a total area slightly in excess of 800,000 square kilometers. It shares boundaries with Afghanistan, China, India and Iran. A land populated in excess of 138 million souls of which 41% are not over 14 years of age. A population of which the majority (62%) cannot read or write.

In such an environment of high illiteracy it follows that the broadcasting media is the principle source for information, news and entertainment. But few own radios or television sets. Every 13 persons share a radio and every 66 persons a television set amongst them⁴. The radio coverage on medium-wave is 95% of population and 75% of area, while coverage on short-wave is 100% of population and area⁵. Television broadcasts cover 86% of the population and 38% of area of the territory of Pakistan⁶.

Television is primarily government controlled but private concerns produce some programs and the government has announced a policy which will permit private stations. Major radio broadcasting is also done by the government controlled Radio Pakistan Corporation, however, in recent years private FM stations have been broadcasting very successfully and it is expected that the private sector will be making further inroads into this domain.

Every hundredth Pakistani buys a daily newspaper, from a choice of 1330⁷. A slightly larger number buys a non-daily publication from an available 1,623 publications⁸. The print media is virtually independent and its ownership is mostly in private hands.

The influence, which the print media exerts, is disproportionate to the number buying newspapers and other publications. Major issues of public concern are also addressed and debated through newspapers and it helps to mould and influence public opinion. In frequent and at times long absences of democracy and because of the hold government exercises over the broadcasting media, newspapers have become the de facto instruments of galvanizing change. A role not of their making and possibly not of their choice, but one granted to them by society.

The Internet is making steady gains in major urban areas, but still the number who use the Internet as an information medium is very small. There are about 200,000 Internet subscribers and an estimated one million users. The Government has, however, accepted the Internet as a form of interacting with it and there are a number of Government sites. Most of the Internet Service Providers (ISPs), are privately owned and there is healthy competition amongst them. There are about 140 registered ISPs, but about 70 are in operation.

‘Cable’ television is making rapid inroads into densely populated urban areas. This is largely happening in an informal manner. Poles carrying electricity wires are used as pegs to carry cables. The operators are small local entrepreneurs operating out of a shack or room with a small customer base. The monthly charge is small (Rs.100 to Rs.200, about
US $2 to 4) and about 40 or so channels are brought to largely low-income household viewers. The two government-controlled channels are being viewed less and less in the face of the huge choice offered by cable operators.

**GOVERNANCE:**

Pakistan is an Islamic Republic. A “state based on Islamic principles of social justice”³. No law can be made which contravenes any Islamic provisions. The Constitution of the Islamic Republic of Pakistan provides for a parliamentary system of government, based on the British pattern.

The bicameral Parliament consists of the Senate (indirectly elected by provincial assemblies). Each province elects an equal number of Senators for six years. The National Assembly is directly elected for a period of five years and comprises of 217 members. Each province also has an assembly which is directly elected.

The executive branch of the country stipulates a largely ceremonial Presidency (elected by members of the National and Provincial assemblies and the Senate), a prime minister and a cabinet, appointed by the prime minister.

The ceremonial head of the province is the Governor, appointed by the President on the advice of the Prime Minister. The provincial cabinet is presided over by its Chief Minister.

The Constitution details the subjects which (the Federal) Parliament can legislate. All other subjects are within the provincial domain. The Constitution guarantees Fundamental Rights and no law can be made or action taken in derogation therewith.

The Islamic Republic of Pakistan has frequently been subjected to crises in governance. Required to be governed in accordance with a Constitution adopted by elected representative on 10th April 1973, it got derailed by General Zia-ul-Haq on 5th July 1977, and did not return on track till 30th December 1985. The politicians who followed did not endear themselves to the people and were largely perceived as corrupt, therefore, when the Constitution was again held in abeyance on 12th October 1999, there was no popular upheaval or resentment. The fiercely independent Pakistanis, however, have not accepted this state of affairs, in which they have little say in the governance of themselves and expect a return to democracy, but with a better version of it. This is also the stated position of General Musharraf’s government.

Notwithstanding the abeyance of the Constitution Pakistan is to “be governed, as nearly as may be, in accordance with the Constitution.”⁴

**LEGAL SYSTEM:**

The legal system is mostly operated on the pattern as inherited at the time of Independence (14th August 1947). Each province has a High Court at its apex and there is
one Supreme Court with its principal seat in Islamabad. The High Court and in some cases (matters of public importance) the Supreme Court can directly enforce the prescribed Fundamental Rights. Any aggrieved citizen who seeks enforcement or protection of any of his Fundamental Rights can approach the High Court to redress his grievance. The Supreme Court can also be approached by anyone in this regard even though he or she is not an aggrieved person, but provided it is a matter of public importance.

CONSTITUTIONAL RIGHT TO INFORMATION AND SAFEGUARDS:

Whilst there is no specific Constitutional Fundamental Right to receive information Pakistan is a signatory to the Universal Declaration of Human Rights. Article 19 whereof reads: “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 and regardless of frontiers.”

However, there are a number of Fundamental Rights, which can be pressed into service for the protection of information related matters. The most important of these is Article 19 of the Constitution. This Fundamental Right specifically safeguards freedom of speech and expression. It provides, that:

“Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, or incitement to an offence.”

The Supreme Court of Pakistan has significantly observed, that: “The right of the citizenry to receive information can well be spelt out even from the freedom of expression guaranteed by Article 19 of the Constitution, of course, subject to inhibitions specified therein. Such right must be preserved.”

There are other Constitutional Fundamental Rights which the superior courts have expansively interpreted. In interpreting a Constitutional provision containing a Fundamental Right, the approach of the Court, in the words of the Supreme Court, “should be dynamic, progressive and liberal … so as to extend the benefit of the same to the maximum possible. This is also called judicial activism or judicial creativity. In other words, the role of the Courts is to expand the scope of such a provision and not to extenuate the same.”

Article 9 of the Constitution provides, that, “No person shall be deprived of life or liberty save in accordance with law.” The Supreme Court expanded the concept of the right to life and held that an individual should not only sustain but enjoy life, too. “Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally.” The Supreme Court cited the definition of
the term “life” protected by the Constitutional law in the United States of America, which included “acquiring useful knowledge.”

Another Constitutional Fundamental Right is found in Article 14, which provides, that: “The dignity of man and, subject to law, the privacy of home, shall be inviolable.” The Supreme Court has held that if the Constitutional guarantee of right to life and dignity of life are read together, “question will arise whether a person can be said to have dignity of man if his right to life is below bare necessity like proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment.” The right to information, which would help in making intelligent choices, could very easily be read into this open list.

Article 18 of the Constitution, which guarantees the freedom of trade, business or profession could also be pressed into service if any impediment is placed in the gathering, collection and or dissemination of information related to one’s business or profession.

In what can only be considered a revolutionary step, the Supreme Court of Pakistan has gone considerably beyond the concept of the right to seek information from government to one where the government is itself obliged to disseminate information. “The Government is the major source of information, which in the democratic set-up, it is duty bound to disseminate, for public awareness, to enable them to adjudge the conduct of those who are in office and the wisdom and folly of their policies.” And further, that, it is an “essential responsibility of the Prime Minister to cultivate knowledge in the populace and to enlighten them about burning issues.”

**ISLAMIC PROVISIONS:**

The Constitution acknowledges and grants a prominent role to Islam in governance. Article 227 of the Constitution requires that, “no law shall be enacted which is repugnant to the Injunctions of Islam.” The Constitution also stipulates observance of, “the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam (Article 2-A of the Constitution). These provisions permit the Courts a lot of room to manoeuvre and expand the scope of both laws and Constitutional provisions. In fact the Courts are interpreting and applying Islamic provisions.

Islam does not permit the curtailment of information. On the contrary to seek knowledge is an article of Faith. Not only the seeking but also the use of truth is prescribed. “The best form of jihad (struggle) is to utter a word of truth to a tyrannical ruler.”

The freedom of speech, opinion, and expression which the Muslims experienced in the earliest stages of their history represents an inspiring example which has hardly been surpassed in the subsequent periods of Islamic government.

The only restrictions on freedom of speech is the utterance, “of evil words, except by one who has been wronged.” “Those who love (to see) scandal circulate among the believer, will have a grievous Chastisement.” The scope of these verses is “broad
enough to include virtually all the specific violations of freedom of speech, including slander, insult, cursing, sedition, and so forth."

**MAJOR LAWS EFFECTING MEDIA:**

Virtually every aspect of media in Pakistan has laws governing it. The most comprehensive publication on the subject is the "Mass Media Laws and Regulations in Pakistan."24

**ELECTRONIC MEDIA:**

The Pakistan Broadcasting Corporation Act, 1973 provides for the operation, establishment and running of Radio Broadcasting. There is no specific law governing Television. Pakistan Television Corporation was incorporated as a Company in 1965 and its entire shareholdings vests with the Federal Government. Shalimar Recording Company Limited operates the STN TV channel and is incorporated as a company in which the Government holds 54% of the shares. The Shaheen Pay Television, the country’s first wireless cable TV System is also operated as a company in which a foreign investor holds 50% shares, a local group 25% shares and the Shaheen Foundation sponsored by the Pakistan Airforce for the welfare of the retired personnel, another 25% shares.

Electronic Media Regulatory Authority Ordinance, 1997 was enacted, “to regulate electronic media in Pakistan." The validity of an Ordinance (law made by the President when Parliament is not in session) is four months, and before expiry of this period Parliament can either repeal it or approve it and enact it as an Act of Parliament. Parliament did not pass this law and as such it ceased to exist after remaining on the statutory books for four months.

This Ordinance was an excellent step for the development of electronic media in Pakistan. The Ordinance contemplated the setting-up of an Electronic Media Regulatory Authority which would have the right to “issue licences for the establishment and operation of all privately-owned broadcast stations” (Section 8). Another salient feature was the curtailment of monopolies. “No person other than a national broadcaster shall be entitled to the benefit of any monopoly or exclusivity in the matter of broadcasting or the establishment and operation of broadcast stations" (Section 10).

**PRINT MEDIA:**

The last law enacted, “to regulate the matters relating to publication, printing presses” was the Registration of Printing Press and Publication Ordinance, 1997. This Ordinance, was a culmination of a number of Ordinances on the same topic, which had lapsed. The Supreme Court of Pakistan has held that repeated enactment of the same law through the device of an Ordinance is contrary to the Constitution. However, this did not deter the government from re-enacting the same law. The position with regard to the basic law now pertaining to the print media is ambiguous. However, in view of the fact
that such laws are primarily made to control and coerce printers and publishers this limbo is not a cause of public concern and probably is a blessing.

RESTRICTIVE LAWS:

The Official Secret Act, 1923 remains on the statute books but prosecutions thereunder are rare. This law primarily pertains to matters such as spying. Though the definition of a prohibited place mentioned in this law is very extensive.

Section 124-A of The Pakistan Penal Code, 1860 makes sedition a criminal offence with a maximum penalty of three years imprisonment. The Pakistan Penal Code also prohibits the sale and distribution of obscene books (punishable under Section 292) or which for instance promotes, “feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities” (Section 153-A).

Section 499 of the Pakistan Penal Code makes defamation a criminal offence and a statement made with the intent to create or promote on the ground of religious, belief, sect, language, cast, community or any other ground whatsoever, feelings of enmity, hatred or ill-will an offence attracting a maximum of seven years imprisonment (Section 505). There are some laws which restrict the right to use or obtain information. For instance, under Section 172 of the Customs Act, 1969 the Custom Authorities may detain any document containing treasonable or seditious matters.

If anyone brings, “the authority of a Court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings” can be proceeded against under The Contempt of Court Act, 1976. However, the law provides, that, “fair comments on the merits of a decision ... in good faith and in temperate language without impugning the integrity or impartiality of the Judge” will not amount to commission of contempt of Court. Article 204 of the Constitution also empowers the Court to punish any person who “scandalizes the Court or otherwise does anything which tends to bring the Court or a judge into hatred, ridicule or contempt”.

IMPORTANT COURT DECISIONS:

From time to time, interested citizens have filed cases before the superior courts of Pakistan where questions with regard to the State controlled electronic media have been adjudicated upon at some length.

Under the Security of Pakistan Act, 1952 the Central Government had prohibited the publication of a monthly periodical The Mirror of Karachi for a period of six months. This was a monthly publication, the editor of which was Begum Zaibunnisa Hameedullah. The Supreme Court struck down the Order of the Central Government and held, that, “Section 12 of the Security of Pakistan Act, 1952 in so far as it permits to
the Government to prohibit the publication of newspaper for any reason whatsoever, has, after the Constitution, became unenforceable and that accordingly action under that section could not be taken in the circumstances.” The provisions of the Constitution whereunder the Court struck down Government’s action was the Constitution of 1956 and its Article 8 which was similar to the Article 19 of the present Constitution, 1973.

Aslam Saleemi was a member of the opposition alliance to the then government, which was using the broadcasting media as its electioneering tool. He challenged the unfair control that Zulfiqar Ali Bhutto’s government was exercising over the government controlled broadcast media by filing a Constitutional petition. He succeeded and the Lahore High Court issued directives to the Pakistan Television Corporation and the Pakistan Broadcasting Corporation.

The Court observed, that “we do feel that since the respondent Corporations are required to be impartial and to maintain a balance, and since equality of time allotted to each side is one of the most important ingredients of impartiality, fairness and balance in connection with the dissemination of news about election campaign of the two major contending parties, we feel that the respondent Corporations should give equal time to the activities of each of these parties, in its news bulletins.” Accordingly, the Court directed both these Corporations to: “maintain balance in the news and other programs relating to the election campaign of the various political parties” and to, “bring to public awareness the wide range of the significant activities of the aforementioned election campaign and to present the news in relation thereto in as factual, accurate and impartial manner as possible.”

Article 19 of the Constitution has come up for interpretation before the courts in some very important cases. The most important of these cases was when the then Prime Minister of Pakistan made a speech on the floor of the National Assembly in the evening of 29th October 1997, criticizing the suspension by the Supreme Court of the 14th Constitutional Amendment, and received a contempt notice from the Supreme Court. If the Prime Minister was held in contempt he could have lost his seat in the Assembly, and thereby the position of Prime Minister, since Article 63(1)(g) of the Constitution stipulated that a member would be disqualified, “if he is prorogating any opinion, or acting in any manner, prejudicial to the ... integrity or independence of the judiciary of the Pakistan, or ... brings into ridicule the judiciary ... of Pakistan.”

The tension between the Supreme Court and the Government became acute and resulted in the storming of the Supreme Court by the Government’s supporters. The Prime Minister invoked the privileges of ‘member of Parliament’ as laid in Article 61 of the Constitutional and in particular that, “there shall be freedom of speech in Parliament and no member shall be liable to prosecution in any court in respect of anything said.”

The Supreme Court of Pakistan gave a comprehensive Judgment which disposed of a number of pending cases and included a former Prime Minister, sitting Prime Minister, Members of National Assembly, journalists, editors, printers and publishers of newspapers. This 400 pages Judgment covered issues of contempt and analysed the
reported cases not only of Pakistan but also of other jurisdiction (India, America, England, Australia, New Zealand, Canada and European Human Rights' cases). With regard to the then Prime Minister of Pakistan (Nawaz Sharif) and his colleagues, the Supreme Court held, that, “the tenor of the speeches was aggressive and fully charged with emotion. There is no doubt that they have used intemperate language against the then Honourable Chief Justice. I would have indicted them if the following special circumstances would not have been present.” These circumstances included the suspension of the 14th Amendment to the Constitution without hearing the concerned parties and the fact that they were under the mistaken belief that their address on the floor was protected under the Article 66 of the Constitution.

The Supreme Court took a forward looking approach and held that, “the power of contempt be used sparingly and only in serious cases and that the court should not be either unduly touchy or over-astute in discovering new varieties of contempt for its usefulness depends on the wisdom and restraint with which it is exercised.” The main Judgment concluded in the following terms:

“We as the Pakistani nation should learn tolerance and inculcate the habit of appreciating the opposite point of view. Furthermore, our approach should not be short-sighted or prompted by expediency, but should be oriented with the object to promote Islamic, social and political justice and to achieve the goal of establishment of an egalitarian society, which cannot be attained unless we strive to strengthen the institutions including the Judiciary. I may state that without any independent Judiciary neither there can be stability in the country nor the rule of law, which are sine qua non for a progressive State.”

The freedom of expression in Article 19 of the Constitution also received judicial interpretation in the case of Wukala Mahaz Barai Tahafaz Dastoor v. Federation of Pakistan. The 14th Amendment to the Constitution, which provided for disqualification of the Members on the ground of defection, was challenged. The 14th Amendment also contained provisions which stifled the freedom of speech of Members as they could not speak against their party. The Supreme Court held that this Article should be construed in such a way that it should preserve the right of speech of a Member in the House.

An interesting case where the right to freedom of speech was argued for an unlikely cause was in the case of Pakistan Chest Foundation versus The Government of Pakistan. In this case, the Pakistan Chest Foundation and the Pakistan Anti-Tuberculosis Association had sought to restrain the broadcast of cigarette advertisement on the Government controlled electronic media. The tobacco companies in their defence urged that if such restriction is imposed, it would violate Article 19 of the Constitution, which guarantees the freedom of speech and expression. The Court, however, held that such a contention was misplaced and freedom of speech was not restricted if cigarette related commercials of the tobacco companies were not shown on the television or aired on the Radio.
Article 19 of the Constitution also received judicial interpretation in another very important decision in *Benazir Bhutto versus President of Pakistan* \(^{41}\). In this case, the dissolution of the National Assembly by the President (on 5\(^{th}\) November 1996) and his further Order that the then Prime Minister (Benazir Bhutto) and her cabinet should cease to hold office was assailed. Amongst other allegations it was found that one of the things being indulged in by the Governemnt was the tapping of telephone and surveillance. The Supreme Court held that this, “alone was sufficient to dissolve the National Assembly since such an activity violated the Article 19 of the Constitution.” The Supreme Court further held, that, “once any person’s telephone is subjected to tapping, eaves dropping, intruding or interference of any kind is interference with the rights of freedom of expression.” In view of the fact that there was no law in the field which could have permitted ‘phone tapping, the Supreme Court stated that whenever any telephone is required to be tapped, intruded or eaves dropped or interfered with, it should be done with the prior permission of the superior courts or by the Commission constituted by the Supreme Court which shall examine each case on its merits.

Recently the Supreme Court took cognizance of the Government country wide ban on political activities (re: Suo motu Case No.1/2000; 2000 SCMR 770). The Supreme Court has admitted to regular hearing this matter and has raised the question whether, “the restrictions are ultra vires of the fundamental rights guaranteed under Articles 15,16, 17 and 19 of the Constitution of Islamic Republic of Pakistan, 1973?” \(^{42}\)

**FREEDOM OF INFORMATION LAW AND PRACTICE:**

Pakistan is a relatively open society and it does not take long for even confidential matters to find their way into the public domain. However, the absence of a specific freedom of information law is acutely felt. Very briefly Pakistan did have a Freedom of Information Ordinance, 1997 \(^{43}\), which was made during the tenure of a caretaker Government. This Ordinance lapsed after four months, as the same was not passed as an Act of Parliament. Under this Ordinance any person could, by making a written application and paying the prescribed fee, obtain a copy of any public record. “Public record” was defined (under Section 3) as:

(a) instructions, policies and guidelines;

(b) record relating to sale, purchase, lease, mortgage, acquisition or transfer in any other manner of properties both movable and immovable;

(c) record pertaining to approvals, consents, permissions, concessions, benefits, privileges, licences, contracts, permits, agreements, and any other advantages; and

(d) final orders including decisions taken at all meetings.

However, the following record could not be obtained (Section 4):

(a) notings on the files, minutes of meetings and interim orders;
(b) record of the banking companies and financial institutions relating to the accounts of their customers;

(c) record declared as classified under the policy made by the Government;

(d) record relating to the personal privacy of an individual; and

(e) record of private documents furnished to a public office either on an express or implied condition that information contained in any such document shall not be disclosed to a third person.

If any record was not given, which could be provided, a complaint before the Mohtasib (Ombudsman) appointed under the Ordinance could be filed.

FUTURE TRENDS AND LAWS:

The Government is considering to provide legal recognition for transactions carried out by means of electronic data and other matters pertaining to electronic filing of documents and acceptance of electronic record as evidence in the court. This proposed Information Technology Ordinance, 2000 is on the pattern of the Model Law on Electronic Commerce on International Trade Law (Resolution No.A/RES/51/162 dated 31st January 1997). Through this Ordinance electronic records are to be given legal recognition.

Another law on the anvil is the Protection of Software Ordinance, 2000 which grants protection to the rights of the authors of software and is in respect of other related matters.

CONCLUSION:

There is a pressing need for a Freedom of Information law, such as The Freedom of Information Ordinance, 1997 earlier enacted, because it is very difficult for citizens to gain credible information about even basic things let alone important governmental plans. The remarks made by Winston Churchill, in 1932, equally apply to the case of Pakistan. He said:

"Tell the truth to the British people. They are a tough people and a robust people. They may be a bit offended at the moment, but if you have told them exactly what is going on, you have insured yourself against complaints and reproaches which are very unpleasant when they come home on the morrow of some disillusionment."
Bibliography


10. Article 199 of the Constitution, supra.

11. Article 184(3) of the Constitution, supra.


15. Shehla Zia versus WAPDA, PLD 1994 Supreme Court page 693 at 712.


17. Muhammad Nawaz Sharif versus Federation of Pakistan, supra, at page 746.


22 The Holy Quran, verse 19 of Chapter 24 (Surah An-Nur), supra.

23 Freedom of Expression in Islam, supra, page 168.

24 Mass Media Laws and Regulations in Pakistan, Jabbar, Javed and Isa, Qazi Faez, Asian Media Information and Communication Centre (AMIC), Singapore, 1997.


26 Mass Media Laws and Regulations in Pakistan, supra, page 424.

27 Article 89 of the Constitution, supra.

28 Mass Media Laws and Regulations in Pakistan, supra, page 225.


30 The Pakistan Code, Volume I page 74, supra.

31 1970 PLD Central Statutes page 84.

32 1977 PLD Central Statutes page 18.

33 PLD 1958 Supreme Court page 35.

34 Muhammad Aslam Saleemi versus Pakistan Television Corporation, PLD 1977 Lahore page 852.

35 Masroor Ahsan versus Ardeshir Cowasjee, PLD 1998 Supreme Court page 823.

36 Masroor Ahsan versus Ardeshir Cowasjee, supra, at page 1121-1122.

37 Masroor Ahsan versus Ardeshir Cowasjee, supra, at page 1124.

38 Masroor Ahsan versus Ardeshir Cowasjee, supra, at page 1124.

39 PLD 1998 Supreme Court page 1263.

40 1997 Civil Law Cases 1379.

41 PLD 1998 Supreme Court 388.


43 Mass Media Laws and Regulations in Pakistan, supra, page 472.

44 Quoted from Party Politics, Sir Ivor Jennings, by the Supreme Court of Pakistan in the case of Muhammad Nawaz Sharif versus Federation of Pakistan, supra, at page 746.
FREEDOM OF INFORMATION ORDINANCE, 1997
ORDINANCE NO. XV OF 1997

WHEREAS transparency and freedom of information are the essence of good governance and improved access to public records is necessary to ensure that the people of Pakistan are better informed about the management of their affairs and the Government is made more accountable to the people;

AND WHEREAS the National Assembly is not in session and the President is satisfied that the circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance:-

1. **Short title, extent and commencement.**—(1) This Ordinance may be called the Freedom of Information Ordinance, 1997.

   (2) It shall extent to the whole of Pakistan.

   (3) It shall come into force at once.

2. **Definition.**—In this Ordinance, unless there is anything repugnant to the subject or context,--

   (a) "designated official" means an official of a public office designated under section 5;

   (b) "Government" means the Federal Government;

   (c) "Mohtasib" means the Wafaqi Mohtasib (Ombudsman) appointed under Article 3 of the Establishment of office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O.I of 1983);

   (d) "public office" means --

   (i) any Ministry, Division, department or office of the Government;

   (ii) Secretariat of the Parliament (Majlis-e-Shoora);

   (iii) Any office of any Board, Commission, Council, or other body established by or under a Federal law; and

   (iv) Any office of a body which is owned or controlled by the Government or which the Government has a controlling share or interest; and
(e) "record" shall include drawings, computer records, photographs, micro-films, cinematography films and audio and video recordings.

3. Declaration of public record.—Subject to the provisions of section 4, the following record of all public offices are hereby declared to be the public record:-

(a) instructions, policies and guidelines;

(b) record relating to sale, purchase, lease, mortgage, acquisition or transfer in any other manner of properties both movable and immovable;

(c) record pertaining to approvals, consents, permissions, concessions, benefits, privileges, licences, contracts, permits, agreements, and any other advantages; and

(d) final orders including decisions taken at all meetings.

4. Exclusion of certain record.—Nothing contained in section 3 shall apply to the following record:-

(a) notings on the files, minutes of meetings and interim orders;

(b) record of the banking companies and financial institutions relating to the accounts of their customers;

(c) record declared as classified under the policy made by the Government;

(d) record relating to the personal privacy of an individual; and

(e) record of private documents furnished to a public office either on an express or implied condition that information contained in any such document shall not be disclosed to a third person.

5. Designated Official.—(1) Every public office shall, within thirty days of the commencement of this Ordinance, designate an official for the purposes of this Ordinance.

(2) In case no such official has been designated or in the event of the absence or non-availability of the designated official, the person in-charge of the public office shall be the designated official.

6. Procedure for obtaining information, etc.—(1) Subject to the provision of sub-section (3), any citizen of Pakistan may, on the payment of the prescribed fee, make written application to the designated official for obtaining the information contained in any public record including copy of any such record.

(2) The designated official shall within twenty-one days of the receipt of the request supply to the applicant the required information including copy of such record.
The information from, or the copy of, any public record supplied to the applicant shall contain a certificate at the foot that the information is correct and that the copy is a true copy of the record and such certificate shall be dated and signed by the designated official.

(3) Nothing contained in sub-section (1) shall apply to such public record as has been published in the official Gazette or in the form of book offered for sale.

7. Recourse to the Mohtasib.—If the applicant is not provided the information or copy of the record declared public record under section 3 within the prescribed time or the designated official refuses to give the information or copy on the ground that the applicant is not entitled to receive such information or copy, the applicant may, within thirty days of the last date prescribed for giving the information or copy or the last date prescribed for giving the information or copy or the communication of the designated official’s order declining to give the information or copy, file a complaint with the Mohtasib.

(2) The Mohtasib may, after hearing the applicant and the designated official, direct the designated official to give the information or as the case may be, the copy of the record or may reject the complaint.

(3) The decision of the Mohtasib shall be final.

8. Ordinance not to override laws.—This Ordinance shall not override any other law.

9. Power to make rules.—(1) The Federal Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) The rules made under this section may, among other matters, provide for—

(i) the fee payable for obtaining information from, and copies of the public record;

(ii) the form of application for obtaining information from, and copies of, the public record; and

(iii) the form in which information from public record shall be furnished.

Farooq Ahmed Khan Leghari
President

Justice (Retd.) Akhtar Hassan
Secretary
PERSONAL INFORMATION:

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