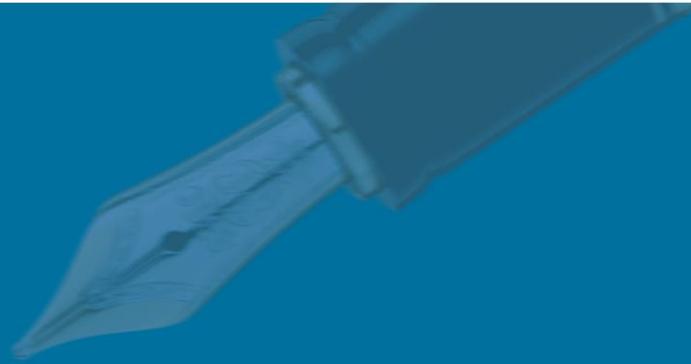




Centre for Peace and
Development Initiatives



Right to Information and Media Laws in Pakistan

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Right to Information and Media Laws in Pakistan

By

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ACRONYMS

CPDI	Centre for Peace and Development Initiatives
FAB	Frequency Allocation Board
FOE	Freedom-of-Expression
FOI	Freedom of Information
ICCPR	International Covenant on Civil and Political Rights
KP	Khyber Pakhtunkhwa
NTC	National Telecommunication Corporation
PEMRA	Pakistan Electronic Media Regulatory Authority
PNNBOR	Press, Newspapers, News Agencies and Books Registration
PTA	Pakistan Telecommunication Authority
RTI	Right to Information
UDHR	Universal Declaration of Human Rights
UK	United Kingdom

1. Executive Summary:

Freedom to hold opinion and free expression are fundamental for a thriving democracy. This right is recognized by various international instruments including the United Nations Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Right to information (RTI) is a primary element to hold an opinion and independent and diverse media also play central role in informing people and enabling them to hold their opinion. Nevertheless, an enabling legal framework to: promote and protect people's right to information; curb/ restrict secretive practices of the government; and ensure independence and diversity of media is essential.

In Pakistan, right to freedom of expression and speech had been recognized by the Constitutions of 1956 and 1962. The Constitution of Pakistan, 1973 includes a specific provision (Article 19) on freedom of expression and speech. However, right to information was recognized as a constitutional right through Eighteenth Amendment in 2010. Nevertheless, the information and media milieu in Pakistan have completely changed during past decade. At present more than 90 private satellite television channels and over 140 private FM radio stations are operating in the country. Eighteenth Amendment has made right to information a constitutional right of the citizens of Pakistan. Prior to this, freedom of information laws were in place in Baluchistan, Sindh and at federal level. However, Khyber Pakhtunkhwa (KP) and Punjab Provinces enacted right to information laws in their respective jurisdictions in 2013 after the Eighteenth Amendment.

As discussed above, media landscape of Pakistan has witnessed an exponential growth during past thirteen years. This expansion in media market can largely be attributed, along with various other factors, to the promulgation of the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance 2002. The government also promulgated a number of other media related laws such as the Press Council Ordinance, 2002, the Defamation Ordinance, 2002 and the Press, Newspaper, News Agencies and Books Registration Ordinance, 2002. In addition to these laws, the Newspaper Employees (Conditions of Services) Act, 1973 was also in existence. Besides these media specific laws, various other laws— such as the Pakistan Penal Code, 1860, the Telegraph Act 1885, the Post Office Act, 1898, the Contempt of Court Act, 1973, and the Pakistan Telecommunication (Re-Organization) Act, 1996 –also contain provisions dealing with the free expression and media freedom.

This report finds that all media related laws, specifically PEMRA, Press Council, Defamation and Press Registration laws, predate the Eighteenth Amendment – Article 19A – of the Constitution. Except a few piecemeal provisions, all these laws have very little reference to the right to information or freedom of information in these laws. Many of these laws require their respective public bodies to publish their annual report and make them public. One of the objectives of the PEMRA law was to “ensure accountability, transparency and good governance by optimizing the free flow of information.” Wherever, these laws provide for free flow of information, the provisions are either conditional or subject to certain limitations. Many pre-twentieth century laws such as Telecom Act, Telegraph Act, Post Office Act and Pakistan Penal Code are more tilted towards maintaining the secrecy than the transparency.

In view of these findings, the report suggests to revisit all these laws to align them with the Eighteenth Amendment – Article 19A – of the Constitution. The provisions restricting access to information in other laws, such as Telecom Act, Telegraph Act, Post Office Act and PPC, must be revisited and changed to

reflect the spirit of Article 19A of the Constitutions. The provisions relating to transparency and flow of information – annual reports etc., - in these laws must be highlighted and enforced.

2. Right to Information: Fundamental for Freedom of Expression

Freedom to hold opinion and free expression are fundamental for a thriving democracy. Article 19 of the United Nations Declaration of Human Rights (UDHR) states, "Everyone has the right to freedom of opinion and expression..." Article 19 of the International Covenant on Civil and Political Rights (ICCPR) reiterates the spirit of the above article of the UDHR. It says, "Everyone shall have the right to freedom of expression...". The UDHR further states that the right to free expression includes freedom 'to seek, receive and impart information and ideas through any media and regardless of frontiers'. As 'information' is a primary element to hold an opinion therefore, right to information is part and parcel of freedom/ right to hold opinion and its free expression.

Prior to the recognition of right to information (RTI) as a 'primary element to hold an opinion' through above two 20th century developments, two developments in 18th century are quite significant in this regard. First is the Sweden's Freedom of Information Law (1766) and second is the First Amendment in the American Constitution (1791). Sweden's law is termed as the premier legal instrument in the world on freedom of information. The First Amendment constitutionally guarantees 'freedom of speech', which necessitates free access to information. Similarly, a Latin American Country i.e., Columbia enacted law on publicity of official documents in 1888. Finland enacted a law on openness of government activities in 1951; however, this law came after the signing of UDHR (1948) but earlier than the International Covenant on Civil and Political Rights (ICCPR) (1966).

Principles on Freedom of Information drafted by the Article 19 – a UK based organization working on freedom of expression – and endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression in 2000 declare that "the law should provide for a number of mechanisms to address the problem of a culture of secrecy within government."¹ Besides, an independent and diverse media also plays central role in informing people and enabling them to hold their opinion. Therefore, an enabling legal framework to: promote and protect people's right to information; curb/ restrict secretive practices of the government; and ensure independence and diversity of media is essential.

In Pakistan, during past thirteen years, the information and media milieu have completely changed. Prior to 2002, the country did not have any law to provide freedom of information to the people. Similarly, there was only state-run/controlled electronic media available in the country. However, President General Musharraf introduced the Freedom of Information Ordinance, 2002 along with various media related laws/regulations in 2002. The promulgation of the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance, 2002, allowed private sector to own electronic media outlets like satellite TV and FM radio stations in Pakistan. At present more than 90 private satellite television channels and over 140 private FM radio stations are operating in the country. In 2010, through Eighteenth Amendment, right to information was recognized as a constitutional right of the citizens of Pakistan. Khyber Pakhtunkhwa (KP) and Punjab Provinces enacted right to information laws in their respective jurisdictions in 2013.

1 <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>

However, despite all this, freedom of expression and media’s independence is still a serious question in this country. Though right to information (RTI) laws in two of the provinces have witnessed a crucial paradigm shift from secrecy to transparency, media related laws are not very conducive to this change. Many of the media related laws are either silent or have very little reference to the right to information. Particularly the PEMRA law, which aims to “improve the standards of information, education and entertainment” and “ensure accountability, transparency and good governance by optimizing the free flow of information”, does not provide a single provision relating to the right to information. It is besides the fact that the Official Secrets Act, 1923 is still present on the statue books of the country.

This study is an effort to read through media related laws of the country with a view to see how much they speak about citizens’ right to information. The study also highlights, to what extent media laws hamper or allow free flow of information. Furthermore, it seeks to instigate dialogue on repeal of media laws that hamper free flow of information.

3. Constitutional Framework relating to Freedom of Expression and Right to Information

First, but a short-lived Constitution of Pakistan, 1956 and the Constitution of Pakistan 1962 mentioned a number of individual freedoms including freedom of speech and expression. Existing Constitution i.e., the Constitution of Pakistan, 1973 contains an explicit provision on freedom of speech and press freedom. The parameters of free speech and media freedom and limits on this freedom are mentioned in Article 19 of the Constitution. It states:

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, [commission of] or incitement to an offence.

Though the Article has a unique reference to the freedom of the press, it is silent regarding right to information or freedom of information. However, it was assumed that the freedom of information is given as part of the freedom of speech and expression. The Supreme Court (PLD 1993 SC 473, Muhammad Nawaz Sharif vs. President of Pakistan) held that “*right of citizens to receive information can be spelt out from the ‘freedom of expression’ guaranteed by Article 19 subject to inhibitions specified therein and such right must be preserved.*”²

Considering explicit absence of reference to ‘right to information’ (RTI) in Article 19, a new Article i.e., Article 19A was inserted in the Constitution through Eighteenth Amendment in 2010. As a result of this, Pakistan joined a small community of those countries, which recognized RTI as a constitutional right. Article 19-A states: “(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.” In famous Memo Gate Case (PLD 2012 SC 292), the Supreme Court declared that “*Article 19A of the Constitution has empowered the citizens of Pakistan by making access to information a justiciable right of people...*” The Court further stated that this Article has “*enabled every citizen to become independent of power centres, which therefore were in control of information on matters of public interest.*”

2 Relevant page(s) of the judgment are given as Annexure - I.

4. Legal Framework on Right to Information in Pakistan

The work on right to information in Pakistan dates back to 1990 when Professor Khurshid Ahmed, Naib Amir of Jamaat-i-Islami, introduced a Private Members Bill in the Senate in this regard. However, the Bill could not attract the attention of the House. Later in 1990s, the government of former Prime Minister Benazir Bhutto established an anti-corruption committee, headed by late Malik Qasim, to look into the causes of corruption and make recommendations. One of the key recommendations of the committee was enactment of a freedom of information act. Nevertheless, the caretaker government of Malik Miraj Khalid promulgated an ordinance on freedom of information in 1996-97. The Ordinance promulgated by the caretaker government of Malik Miraj Khalid lapsed, as the elected government of Nawaz Sharif (1997-1999) did not present it before the Parliament for enactment.

The Freedom of Information (FOI) Ordinance, 2002, was the first legal instrument, which recognized the freedom of access to information as a statutory right. The FOI Ordinance was promulgated by President General Musharraf in October 2002 and is applicable to the Federal government only. Similar laws (replicas of the Freedom of Information Ordinance, 2002) were also promulgated/enacted in the provinces of Balochistan (2005) and Sindh (2006). Being limited in scope and application, complicated in procedural aspects and restricted in providing access to information, these laws were termed as ineffective by civil society groups. Therefore, when the work on Eighteenth Amendment of the Constitution started, the civil society campaigned for recognition of RTI as a constitutional right and Article 19A was added in the Constitution of Pakistan in 2010.

The inclusion of Article 19A changed the paradigm and debate on access to information in the country. Previously, entire debate was revolving around the freedom of information. As a result of Article 19A, the discourse of information moved to 'right to information'. The Article 19A requires further legislation to detail out the process of access to information and list down 'exempted information'. Therefore, all provinces as well as federal government are supposed to enact right to information laws for their respective jurisdictions. In response to the requirement of this Article, KP and Punjab introduced progressive and robust right to information laws in 2013. The laws are known as the Khyber Pakhtunkhwa Right to Information Act 2013 and the Punjab Transparency and Right to Information Act 2013.

Centre for Peace and Development Initiative (CPDI) has developed a score-sheet to gauge the weaknesses and strengths of right to information laws in Pakistan.³ According to this Score-Sheet, RTI laws of Punjab and Khyber Pakhtunkhwa (KP) have scored 140 and 125 respectively, out of total 145 marks. Federal, Sindh and Baluchistan FOI laws could get only 32/145 marks according to this Score-Sheet. Moreover, the Punjab and KP laws are guided by the principle of maximum disclosure. These laws draw exceptions clearly and narrowly and provide easy and cost effective access to information. These laws provide dedicated and independent information commissions to deal with the complaints of information requesters. Furthermore, the laws provide penalty for non-compliance of orders of the information commissions. Under the law, all provincial public bodies as defined in the laws are duty bound to publish their annual reports. Similarly, these laws do not require description of specific interest when information

3 <http://www.cpdipakistan.org/wp-content/uploads/2015/06/CPDI-Score-Sheet-of-Right-to-Information-Laws-in-Pakistan.pdf>

is requested. These laws also provide for inspection of the documents. Having an overriding affect, these laws take precedence over all other laws contradicting their aim.

5. Media and Media Law in Pakistan: Legal Framework on Freedom of Expression (FOE)

The media landscape of Pakistan has witnessed an exponential growth during past thirteen years. This expansion in media market can largely be attributed, along with various other factors, to the promulgation of the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance 2002. The PEMRA Ordinance, 2002, allowed private sector to own electronic media outlets like satellite TV and FM radio stations in Pakistan. The government also promulgated a number of other media related laws such as the Press Council Ordinance, 2002, the Defamation Ordinance, 2002 and the Press, Newspaper, News Agencies and Books Registration Ordinance, 2002.

Nevertheless, this was not the first time when media related laws were promulgated in Pakistan. Various laws relating to media and journalists were introduced during the dictatorial regimes and the elected governments. The West Pakistan Press and Publications Ordinance, 1963 and the Newspaper Employees (Conditions of Services) Act, 1973 are among the most important legal instruments. However, except the Newspaper Employees (Conditions of Services) Act, 1973, none of the media related laws were debated in the Parliaments. The laws include the following:

- a) The Newspaper Employees (Conditions of Services) Act, 1973
- b) The Press Council Ordinance, 2002
- c) The Press, Newspaper, News Agencies and Books Registration (PNNBR) Ordinance, 2002
- d) The Defamation Ordinance, 2002
- e) The Pakistan Electronic Media Regulatory Authority Ordinance, 2002

In addition to the above list of laws, there are several acts and ordinances, which contain various provisions dealing with the media. These laws include but not limited to:

- a) The Pakistan Penal Code, 1860
- b) The Telegraph Act 1885
- c) The Post Office Act, 1898
- d) The Contempt of Court Act, 1973
- e) The Pakistan Telecommunication (Re-Organization) Act, 1996

Except the PNNBR Ordinance (registration of press, newspapers, books and new agencies) and PEMRA Ordinance (regulations of private broadcast/electronic media such as television, cable and radio) all the above laws are applicable to all kinds of media. These laws predate the inclusion of Article 19A. Except a few – PEMRA, Defamation, Press Council and PNNBR Ordinance – most of the laws were on the statute books before the promulgation of the Freedom of Information Ordinance, 2002. A careful review of the laws shows that these laws were mainly designed to regulate/control/manage media from government perspective. Citizens' right to information, however, was not the main target/purpose of these laws. Following sections of this report explain the state of media laws and right to information in Pakistan.

5.1 Print Media Laws

As mentioned above, there are many laws, which deal specifically with the print media; therefore, these laws can be termed as ‘Print Media Laws’. Here is an account of these Print Media Laws with reference to the right to information.

5.1.1 The Newspaper Employees (Conditions of Services) Act, 1973

The law deals with the ‘working conditions’ of newspapers’ employees including journalists. Therefore, there is no express provision relating to right to information given in this Act. However, it may be argued that the working conditions can have direct bearing on performance of the workers. Improved working conditions help journalists/workers to perform their duties with required zeal and satisfaction. Since the duty of the journalists is to keep people informed, an enabling work environment can help them perform this job appropriately.

5.1.2 The Press Council Ordinance, 2002

The Press Council Ordinance, 2002 primarily provides for the establishment of the Press Council of Pakistan. The purpose of the Press Council is “to implement the Ethical Code of Practice, as set out in the Schedule to the Ordinance.” The Press Council is also mandated to “maintain highest professional and ethical standards of newspapers and news agencies with a view to making them more responsive to the issues and concerns of the society in Pakistan.”⁴ The preamble of the Ordinance makes a reference to ‘public awareness’ and ‘free flow of information.’ However, it states that the ‘free flow of information and freedom of expression’ are subject to non-infringement of ‘national interest’, The Preamble of the Ordinance states:

“AND WHEREAS Freedom of the press and public awareness is the foundation of democracy and the function of democracy and the principles of accountability depend inter alia upon free flow of information and freedom of expression without infringing on national interest;”

Furthermore, Section 8 of the Ordinance mandates the ‘Council’ “to keep under review any development likely to restrict the dissemination of news of public interest and importance” and “act also as a shield to freedom of the press” in the country. However, there is no specific provision in the law relating to freedom of information or access to information. Nevertheless, Section 20 of the Ordinance requires the Press Council to prepare its annual report providing: a summary of its activities during the year; account of the standards of newspapers and news agencies and factors affecting them; and statement of accounts audited. The Council is under obligation to publish the report, forward it to the Federal Government and to make it available for the Public.

5.1.3 The Press, Newspaper, News Agencies and Books Registration Ordinance, 2002

The Press, Newspaper, News Agencies and Books Registration (PNNBR) Ordinance, 2002 is aimed at amending and consolidating “the law relating to [registration of] news agencies, publications and printing presses” in Pakistan.⁵ The Ordinance provides process and procedure for subscription and authentication of declaration for a newspaper. Besides, the Ordinance also deals with the registration

4 See Section 8, subsection 1 (i) of the Press Council Ordinance, 2002.

5 See Preamble of the PNNBR Ordinance, 2002.

of printing presses, news agencies and books. Section 5 of the Ordinance requires that “no newspaper shall be published except in conformity with the provisions of this Ordinance...” Similarly, the Ordinance states that “no news agency shall disseminate or defuse news except in conformity with the provisions of this Ordinance”. Nevertheless, the Ordinance is silent with reference to ‘right to or freedom of information.’

5.1.4 The Defamation Ordinance, 2002

The defamation Ordinance, 2002 is one of the laws, which were promulgated by President General Musharraf as a package of media laws in 2002. Prior to this Ordinance, ‘defamation’ was a ‘criminal offence’ under the Pakistan Penal Code (PPC), 1860. Sections 499-502 of PPC deal with the ‘criminal defamation’ and provide a procedure for its adjudication by Sessions Court as an offence. However, under the Defamation Ordinance, one can file a suit – a case of civil court jurisdiction – for damages as well. The Ordinance defines kinds of defamation i.e. libel and slander. It also provides defences in defamation proceedings. These defences include:

- a) Fair comment on the matter in the public interest;
- b) Truthfulness of matter made for public good; and
- c) Absolute or qualified privilege.

Section 6 of the Ordinance defines Absolute Privilege and Section 7 explains what constitutes Qualified Privilege. **Absolute Privilege** is “any publication of statement made in the Federal or Provincial legislatures, reports, papers, notes and proceedings ordered to be published by either house of the Parliament or by the Provincial Assemblies, or relating to judicial proceedings ordered to be published by the court or any report, note or matter written or published by or under the authority of a Government.” **Qualified Privilege** is “any fair and accurate publication of parliamentary proceedings, or judicial proceedings, which the public may attend, and statements made to the proper authorities in order to procure the redress of public grievances.” This means that if the matter falls under the definition of either of the privileges, absolute or qualified, it is legal to disseminate the information to the public.

5.2 Electronic Media Laws

5.2.1 The Pakistan Electronic Media Regulatory Authority Ordinance, 2002

The Pakistan Electronic Media Regulatory Authority Ordinance, 2002 is a special law for regulating airwaves of the country. The law aims to “improve standards of information, education and entertainment” and “ensure accountability, transparency and good governance by optimizing the free flow of information.”⁶ The Ordinance provides for the establishment of twelve-member, including chairman, Authority “responsible for regulating the establishment and operation of all broadcast media and distribution services in Pakistan.” The Authority is also mandated to “regulate distribution

⁶ See Preamble of the PEMRA Ordinance, 2002.

of foreign and local TV and radio channels in Pakistan.”⁷ No one is allowed to “engage in any broadcast media or distribution service except after obtaining a licence issued under this Ordinance.”⁸

The Ordinance provides process, procedures and qualification for grant of broadcasting and distribution licences. It also details out eligibility criteria to obtain a broadcasting media or distribution services licence.⁹ The Ordinance explains the terms and conditions – restrictions – of a broadcast media and distribution services licence.¹⁰ Moreover, the law provides for establishment of the ‘Councils of Complaints’ and elaborates the process of complaints against the licensees.¹¹ However, the Ordinance, beyond its preamble, does not provide any specific reference to the citizens’ right to information.

5.3 Laws Having Provisions relating to Media and Information

Besides the media specific laws, there are several other statutes, which have provisions relating to media. These piece-meal provisions mainly put curbs and restrictions on media and information. Below is a quick overview of these provisions.

5.3.1 The Pakistan Penal Code, 1860

The Pakistan Penal Code 1860 is a general criminal law, which defines crimes/offences and punishments thereof. However, the Code contains various provisions, which directly or indirectly affect free-flow of information. For example, Section 292 puts ban on sale, hiring or distribution of obscene books, pamphlets, papers, drawings, paintings, representation or figures or any other obscene objects. However, the Code does not define the term ‘obscene’. Similarly, Section 501 of the Code terms printing or engraving of the matter, which can be defamatory, as a crime. Moreover, Section 502 bans sale of such allegedly defamatory matter.

5.3.2 The Telegraph Act, 1885

The Telegraph Act, 1885 is perhaps the oldest law in the country relating to communication and transmission of information. The Act was designed to establish, operate and maintain telegraph in the country. According to the Act, ‘Telegraph’ means any apparatus, equipment or plant used for transmitting, emitting, making or receiving signs, signals, writing, speech, sound or intelligence of any nature by wire, radio or visual or electro-magnetic system.” The Act defines ‘Message’ as any communication, whether in written, printed, pictorial or spoken form, transmitted, emitted, made, received, or delivered by telegraph or given to a telegraph officer to be transmitted or omitted, and includes all content thereof.¹²

Sections 20 and 21 mention that ‘establishing; maintaining; working; or using a telegraph in Pakistan against the provisions of this Act is an offence punishable with imprisonment and fine’. Similarly, Section 24 of the Act states that unlawful learning of contents of any message is an offence, which is

7 See Section 4 of the PEMRA Ordinance, 2002.

8 See Section 19(2) of the PEMRA Ordinance, 2002.

9 See Section 25 of the PEMRA Ordinance, 2002.

10 See Section 20 of the PEMRA Ordinance, 2002.

11 See Section 26 of the PEMRA Ordinance, 2002.

12 See Section 3 of the Telegraph Act, 1885.

punishable with the imprisonment. Furthermore, transmission of false and fabricated, or a message, which is indecent or obscene, is an offence and punishable with imprisonment and fine.¹³ Interestingly, the terms ‘indecent or obscene’ are not defined in the Act.

5.3.3 The Post Office Act, 1898

Primarily, the Post Office Act, 1898 is designed to govern the ‘Pakistan Post Office’. However, the Act prohibits transmission by post of any indecent or obscene (a) printing, painting, photograph, lithograph, engraving, book or card or (b) any postal article having any words, marks or designs of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character.¹⁴ Similarly, the Act prohibits transmission by post of newspapers, which are printed and published in Pakistan without conforming to the rules laid down in the Press and Registration of Books Act, 1867.¹⁵ The Act authorises designated officer of the Post Office to detain any postal article in course of transmission by post which he suspects to contain (i) any newspaper or book as defined in the Press and Registration of Books Act, 1867 or (ii) any document; containing any treasonable or seditious matter, that is to say, any matter the publication of which is punishable under section 123A or section 124A, as the case may be, of the Pakistan Penal Code (45 of 1860).¹⁶

5.3.4 The Contempt of Court Act, 1973

1. Article 204 of the Constitution of Pakistan authorises the Supreme Court and High Courts to punish “any person who:
 - a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court;
 - b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;
 - c) does anything which tends to prejudice the determination of a matter pending before the Court; or
 - d) does any other thing which, *by law*, constitutes contempt of the Court.”
2. The *law* on contempt of court is further explained in the Contempt of Court Act, 1973. The Act defines the term ‘Contempt of Court’ in Section 3 which states:

“Whoever disobeys or disregards any order, direction or process of a Court, which he is legally bound to obey; or commits a wilful breach of a valid undertaking given to a Court; orders anything which is intended to or tends to bring 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, or to lower the authority of a Court or scandalize a Judge in relation to his office, or to disturb the order or decorum of a Court, is said to commit “contempt of Court.””

13 See Section 29 of the Telegraph Act, 1885.

14 See Section 20 of the Post Office Act, 1898.

15 See Section 27A of the Post Office Act, 1898.

16 See section 27B of the Post Office Act, 1898.

3. Section 9 of the Act prohibits publication of proceedings of ‘*in-camera hearing*’ of a case. However, the Act provides certain defences against the charges of contempt if the publication falls under instances mentioned in Section 3. These defences include but are not limited to the following:
 - a) Publication of a fair and substantially accurate report of any judicial proceedings.
 - b) Remarks made in an administrative capacity by any authority in the course of official business including those in connection with a disciplinary inquiry or in an inspection note or a character roll or confidential report.
 - c) True statement made in good faith respecting the conduct of a Judge in a matter not connected with the performance of his judicial functions.

5.3.5 The Pakistan Telecommunication (Re-Organization) Act, 1996

Commonly known as Telecom Act, the Pakistan Telecommunication (Re-Organization) Act, 1996 aims to re-organize telecommunication system in Pakistan. The Act provides for the establishment of various telecom related institutions such as the Pakistan Telecommunication Authority (PTA), Frequency Allocation Board (FAB) and National Telecommunication Corporation (NTC). The Act further provides for the regulation of telecommunication industry and transfer of telecommunication services to private sector. Before establishment of the PEMRA, the PTA was issuing licenses to cable operators in the country. The definition of the ‘telecommunication system’, as given below, includes “a cable transmission system, a cable television transmission system and terminal equipment.”

According to the Telecom Act, “*telecommunication system*” means any electrical, electro-magnetic, electronic, optical or optio-electronic system for the emission, conveyance, switching or reception of any intelligence within, or into, or from, Pakistan, whether or not that intelligence is subjected to rearrangement, computation or any other process in the course of operation of the system, and includes a cable transmission system, a cable television transmission system and terminal equipment.

The Act also defines the “telecommunication service.” It states that a “telecommunication service” means a service consisting in the emission, conveyance, switching or reception of any intelligence within, or into, or from, Pakistan by any electrical, electro-magnetic, electronic, optical or optio-electronic system, whether or not the intelligence is subjected to rearrangement, computation or any other process in the course of the service. As per the Telecom Act, “Intelligence” means “any speech, sound, data, signal, writing, image or video.”

The Telecom Act empowers the Federal Government to issue policy directives to the PTA relating to the matter of ‘national security’ and ‘relationships with other States and Governments/Territories outside of Pakistan’.¹⁷ Nevertheless, these terms are not expressly defined in the Act. Therefore, there is a possibility that while interpreting, the government may hinder citizens’ right to information. It is also pertinent to mention here that Federal government, in the interest of national security, can “intercept calls and messages or trace calls through any telecommunication system.”¹⁸

17 See Section 8 of the PTA Act, 1996.

18 See Section 54 of the PTA Act, 1996.

However, Section 18 of the Act requires the PTA to submit its annual “report to the Federal Government on the account of its affairs.” The Section also requires the Authority to place a copy of annual report along with copy of its audit before the National Assembly. Furthermore, Section 33E requires the maintenance and audit of the Universal Service Fund as well as submission of the audit report to the National Assembly along with the report of Auditor General of Pakistan. The Federal government is under the legal obligation to publish annual report on: the state of universal service and research and development.

6. Right to Information and Media Laws: Key Findings

- i. Media related laws, specifically PEMRA, Press Council, Defamation and Press Registration laws, predate the Eighteenth Amendment – Article 19A – of the Constitution.
- ii. The [Preamble of] Press Council Ordinance, 2002 makes a reference to ‘public awareness’ and ‘free flow of information’. However, it states that the ‘free flow of information and freedom of expression’ are subject to non-infringement of ‘national interest’.
- iii. Section 20 of the Press Council Ordinance 2002 requires the Council to prepare and publish its annual report providing: a summary of its activities during the year; account of the standards of newspapers and news agencies and factors affecting them; and statement of accounts audited. However, there is no specific provision in the law relating to freedom of information or access to information.
- iv. The Press, Newspaper, News Agencies and Books Registration (PNNBR) Ordinance, 2002 is silent with reference to ‘right to or freedom of information’.
- v. The Defamation Ordinance, 2002 terms ‘Absolute and Qualified Privileges’ to publish information as a valid defence against the defamation claim. Nevertheless, the law does not provide any specific reference to the right to information.
- vi. The Pakistan Electronic Media Regulatory Authority Ordinance, 2002 aims to “improve standards of information, education and entertainment” and “ensure accountability, transparency and good governance by optimizing the free flow of information.” Beyond its preamble, the Ordinance does not provide any specific reference to the citizens’ right to information.
- vii. Other laws, such as Telecom Act, Telegraph Act, Post Office Act and PPC, were introduced even much before the emergence of freedom of information law in 2002. The tilt of these laws is more toward the secrecy than toward transparency and free flow of information.
- viii. The Pakistan Penal Code 1860 is a general criminal law, which defines crimes/offences and punishments thereof. However, the Code contains various provisions, which directly or indirectly affect free-flow of information. For example, Section 292 puts ban on sale, hiring or distribution of *obscene book*, pamphlet, paper, drawing, painting, representation or figure or any other obscene object. However, the Code does not define the term ‘obscene’. Similarly, Section 501 of the Code terms printing or engraving of the matter, which can be defamatory, as a crime. Moreover, Section 502 bans sale of such allegedly defamatory matter.
- ix. The Telegraph Act, 1885 - Section 24 – states that unlawful learning of contents of any message is an offence, which is punishable with the imprisonment. Furthermore, transmission of false and fabricated or indecent or obscene message, is an offence and punishable with imprisonment and fine.
- x. The Post Office Act, 1898 prohibits transmission by post of any indecent or obscene (a) printing, painting, photograph, lithograph, engraving, book or card or (b) any postal article having any words, marks or designs of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character. Similarly, the Act prohibits transmission by post of newspapers, which are

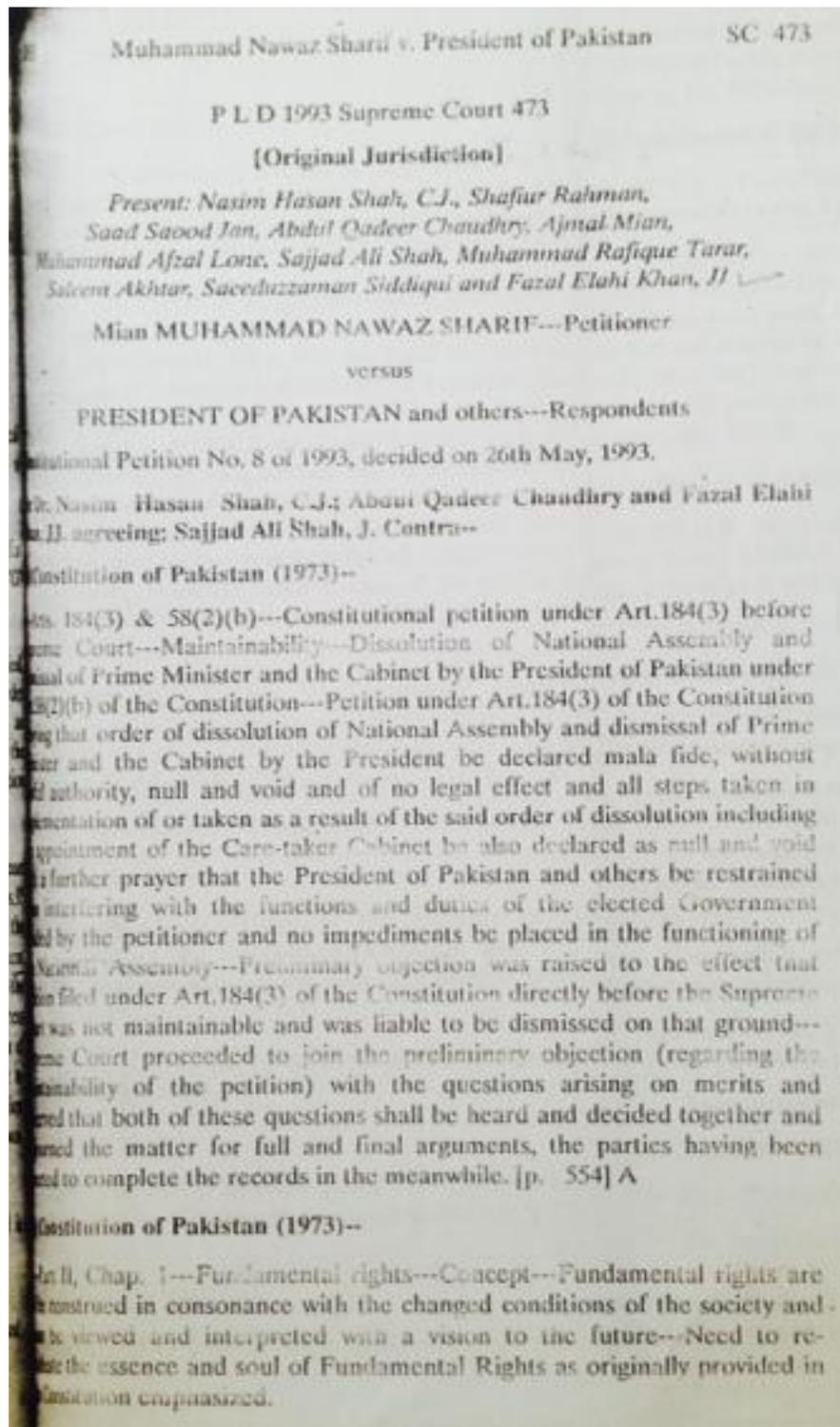
printed and published in Pakistan without conforming to the rules laid down in the Press and Registration of Books Act, 1867.

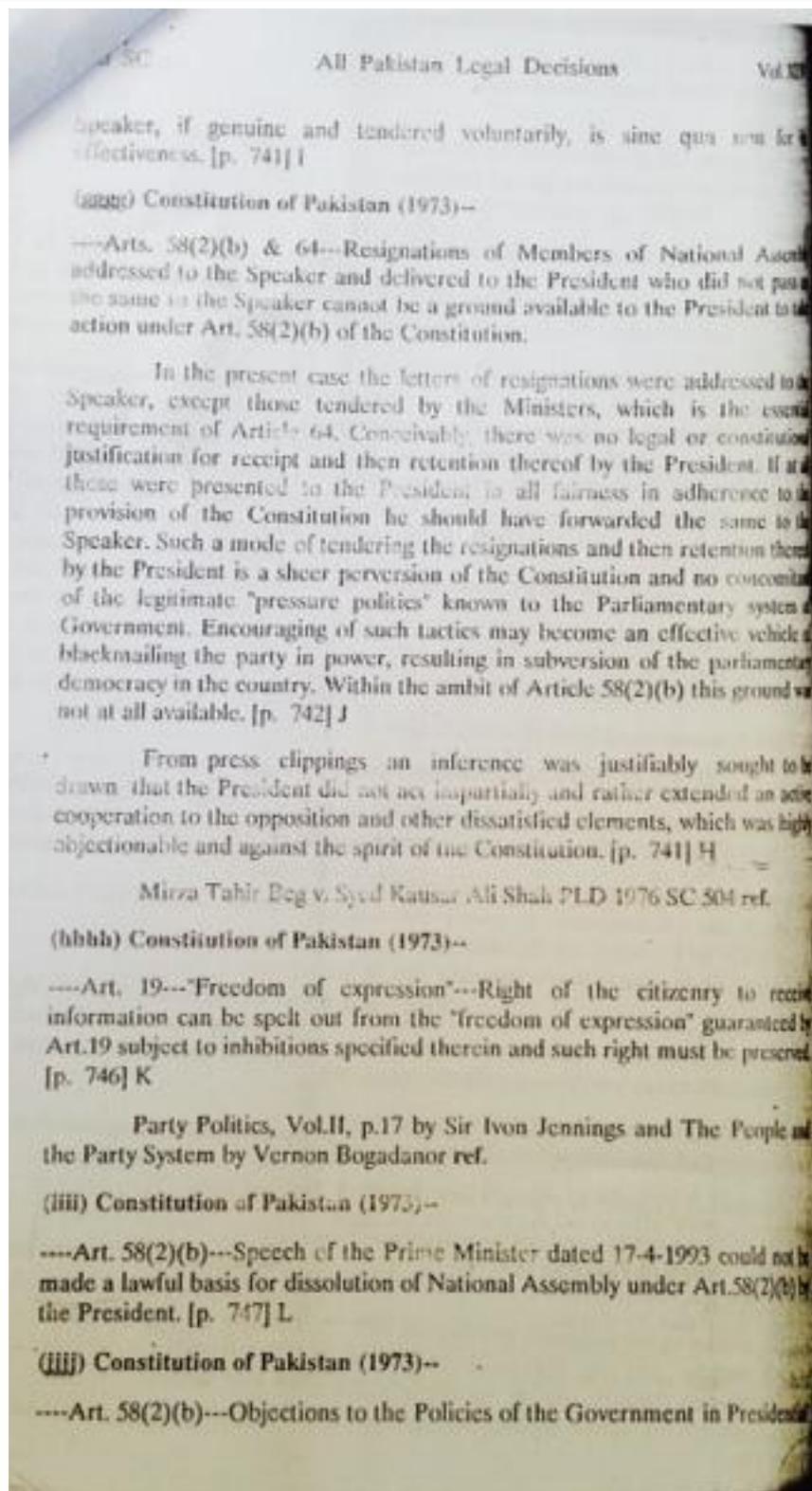
- xi. Section 9 of the Contempt of Court Act, 1973 prohibits publication of proceedings of '*in-camera hearing*' of a case. However, the Act provides certain defences against the charges of contempt if the publication falls under instances mentioned in Section 03 of the Act.
- xii. The Pakistan Telecommunication (Re-Organization) Act, 1996 – Section 18 – requires the PTA to submit its annual “report to the Federal Government on the account of its affairs.” The Act also requires the Authority to place a copy of annual report along with copy of its audit before the National Assembly. Furthermore, Section 33E of the Act requires maintenance and audit of the Universal Service Fund as well as the submission the audit report to the National Assembly along with the report of Auditor General of Pakistan. The Federal government is under the legal obligation to publish annual report on: the state of universal service and research and development.
- xiii. Most of the media laws were promulgated through Ordinances by the dictators and never debated upon in the Parliament.

7. Recommendations (way forward):

- i. Media related laws, specifically PEMRA, Press Council, Defamation and Press Registration laws, should be revisited to align them with the Eighteenth Amendment – Article 19A – of the Constitution.
- ii. The provisions relating to transparency and flow of information – annual reports etc., - in these laws must be highlighted and enforced.
- iii. The provisions restricting access to information in other laws, such as Telecom Act, Telegraph Act, Post Office Act and PPC, must be revisited and changed to reflect the spirit of Article 19A of the Constitutions.
- iv. A compendium of media laws, which facilitate freedom of information or restrict access to information, should be prepared. An agenda for reforms in the laws must be prepared. To advocate for these reforms, comprehensive campaigns, both at federal and provincial levels, are essential.

Annexure – I: Relevant Part(s) of the Judgment





Centre for Peace and Development Initiatives, (CPDI) is an independent, non-partisan and a not-for-profit civil society organization working on issues of peace and development in Pakistan. It is registered Under Section 42 of the Companies Ordinance, 1984 (XLVII of 1984). It was established in September 2003 by a group of concerned citizens who realized that there was a need to approach the issue of peace and development in a an integrated manner. CPDI is a first initiative of its kind in Pakistan. It seeks to inform and influence public policies and civil society initiatives through research-based advocacy and capacity building in order to promote citizenship, build peace and achieve inclusive and sustainable development. Areas of special sectoral focus include promotion of peace and tolerance, rule of law, transparency and access to information, budget watch, legislative watch and development.



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