

Freedom of Information laws (FOI laws):

A Comparative Analysis between Pakistan and Germany.

Dr. Abdul Sattar

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1. Introduction

The right of access to information held by government and other powerful bodies (right to information) empowers individuals and communities to be able to engage and participate in decisions that affect their lives. It has been widely recognized around the world as a fundamental human right, as well as an important tool for promoting the rule of law, fighting corruption and ensuring other rights. The right to information has been a key element of sustainable development since the 1992 Rio Declaration. In the Sustainable Development Goals (SDGs), access to information held by public bodies has been recognised as a necessary enabling mechanism for public engagement across the goals and specifically incorporated into Goal 16 as well as implicitly as into many other goals and targets.¹ An indicator adopted by the UN Statistics Commission in 2016 and approved by ECOSOC earlier this year considers that at least initially this should be measured by review of the legal instruments - laws, policies and constitutions in place in countries and their implementation.

The right of access to information held by public bodies (RTI) is essential to the democratic functioning of societies and the well-being of each individual. It enables the strengthening of citizen participation and the exercise of socio-economic and political rights, fosters development, economic performance and makes national authorities accountable for their actions and management of public finances and public services.

Savoir estpouvoir (knowledge is power) is a French saying. Today information is power. The right to information will enable the citizens to criticize comments and approve policies and programmes of the rulers. The right to information has been recognized in a various countries by either incorporating it in the constitution itself or by enacting a separate legislation on the subject or by both.

The paper aims at comparing Right of Access to Information or Freedom of Information laws (FOI laws) between Pakistan and Germany by employing the approach of comparative law. Comparative law methodology is hereby employed because it helps to understand better the study of differences and similarities between the laws of different countries. It includes the description and analysis of foreign legal systems, even where no explicit comparison is undertaken. The importance of comparative law has increased enormously in the present age of internationalism, economic globalization, and democratization.

The paper examines the development of laws in relation to the access to Information enacted or amended in Germany and Pakistan. This work will also help to understand the circumstances and democratic structure in which this law has been evolved and developed. It will be very interesting to analyse this specific law in this regard because both countries Germany and Pakistan have different legal traditions, different specific rules of private law, and different systems of private law, all of which are administered by court systems similarly subject to different rules and traditions of procedure. Each country's legal system reflects its society's values. As a result, national laws and the structure of domestic judicial systems vary considerably from country to country.

Freedom of Information laws (FOI laws) allow access by the general public to data held by national governments. The emergence of freedom of information legislation was a response to increasing dissatisfaction with the secrecy surrounding government policy development and decision making. In many countries there are constitutional guarantees for the right of access to information, but these are usually unused if specific support legislation does not exist.

Germany's Freedom of Information Act (or Informationsfreiheitsgesetz, "IFG") was passed by the Federal Government in June 2005, coming into force on 1 January 2006, while in Pakistan the Supreme Court ruled in 1993 that Article 19 includes a right of citizens to receive information.¹ In October 2002, then President Perviz Musharraf promulgated the Freedom of Information Ordinance 2002.

Right to information is a fundamental requirement for transparency and good governance. An informed citizenry is expected to make better political choices and monitor the performance of

¹ Sharif v. Pakistan, PLD 1993 S.C. 471.

public bodies more efficiently. A well deliberated Right to Information legislation, effective implementation mechanisms and matching political will can play a significant role in achieving this goal. “Freedom of Information” (FOI) or now increasingly referred to as “Right to Information” (RTI) is a universal fundamental right. It can be defined as the right to access information held by public bodies. This right is recognized under Article 19 of the Universal Declaration of Human Rights (1948), which states that the fundamental right of freedom of expression encompasses the freedom “to seek, receive and impart information and ideas through any media and regardless of frontiers”. It is also an integral part of the fundamental right of freedom of expression, as recognized by Resolution 59 of the UN General Assembly adopted in 1946.

2. Access to Information in Germany:

The Act to Regulate Access to Federal Government Information was adopted in June 2005 and went into force on 1 January 2006.² It gives any person a right of access to official information from agencies of the federal government or those organizations or persons conducting public duties. Information must be provided within one month. It can be provided orally, in writing or electronically.

There are extensive exemptions in the law. Drafts or notes are not included in the definition of official information. There are exemptions for information the disclosure of which would have a detrimental effect on international relations; military interests; internal or external security interests; duties of regulatory authorities; external financial control; prevention of prohibited foreign trade; ongoing legal, criminal or administrative proceedings; jeopardize public safety; subject to secrecy or confidentiality by another law or state secrets regulation; impair the fiscal interests of the federal government; third party confidential information or relates to the intelligence services or the Security Screening Act.

There is no right of access if it conflicts with intellectual property rights. Requestors can appeal denials internally. They can then complain to the Federal Commissioner for Data Protection and

² Gesetz zur Regelung des Zugangs zu Informationen des Bundes (Informationsfreiheitsgesetz – IFG) http://www.informationsfreiheit.info/files/foia_germany_final_june05_clear.pdf (unofficialtranslationof final draft).

Freedom of Information.³In Germany, the federal government passed a freedom of information law on September 5, 2005; it was last updated on August 7, 2013. The law grants each person an unconditional right to access official federal information. No legal, commercial, or any other kind of justification is necessary.

Twelve of the sixteen Bundesländer—Baden-Württemberg, Berlin, Brandenburg, Bremen, Hamburg, Mecklenburg-Vorpommern, Nordrhein-Westfalen, Rheinland-Pfalz, Saarland, Sachsen-Anhalt, Schleswig-Holstein and Thüringen—have approved individual "Informationsfreiheitsgesetze" (Freedom of Information laws).

According to law: "Everyone is entitled to official information from the authorities of the Federal Government in accordance with the provisions of this Act. This Act shall apply to other Federal bodies and institutions insofar as they discharge administrative tasks under public law. For the purposes of these provisions, a natural or legal person shall be treated as equivalent to an authority where an authority avails itself of such a person in discharging its duties under public law".

3. The Evolution and Development FOI Law in Germany

Freedom of Information laws allow access by the general public to data held by national governments. The emergence of freedom of information legislation was a response to increasing dissatisfaction with the secrecy surrounding government policy development and decision making.

Despite the extensive list of exemptions, since 1 January 2006 the principle that granting access to official information is the rule and denying access is the exception. In particular since the introduction of the IFG federation in the year 2006, similarly freedom of information and transparency laws (IFG) also enforced in Germany. They are regarded as an important prerequisite for the effective exercise of citizens' rights. They are a constituent prerequisite for an open and transparent opinion-forming process in a modern democracy. This is a paradigm shift; previously, the principle was that official information is not public in principle, unless there is a special statutory standardized information claim.

³ Homepage: http://www.bfd.bund.de/EN/Home/homepage__node.html

In December 2008, on the initiative of the Bavarian Prime Minister Horst Seehofer a change in the law was sought, which should exclude the general inspection of acts of banking supervision from the right of access to information.⁴

As the only change to date, the word "official acts" was replaced by the words "individually attributable public services" in 2013 as part of the structural reform of the fee law in § 10

3.1. The development in Saxony

In the constitution of the Free State of Saxony, Art. 34 guarantees a fundamental right to free information about Environmental data. The three largest Saxon cities, Dresden, Leipzig and Chemnitz, have adopted so-called information access statutes. In accordance with the Freedom of Information Act, these grant a right to sovereign information.⁵

3. 2 Saxony-Anhalt

In the constitution of the Land of Saxony-Anhalt, Article 6 (2) guarantees a fundamental right to information about environmental data. The right to information is, however, as well as Art. 34 of the Saxon Constitution is bound to a particular interest, i. here too, the data must concern the person entitled to receive information in his / her area of life.

3.3 Recent developments

In August 2011 Open Knowledge Foundation developed "Frag den Staat" ("Ask the State").⁶ Based on the UK's 'Whatdotheyknow.com', the website provides an easy way for FOI requests to be made in Germany. Because use of Germany's FOI has been so minimal since 2006, the website was established in the hope that it would make people more aware of their right to access information and encourage people to make requests. Furthermore, by publicising all responses to

⁴https://web.archive.org/web/20110915003010/http://www.bundesrat.de/cln_099/SharedDocs/Drucksachen/2008/0801-900/827-1-08,templateId=raw,property=publicationFile.pdf/827-1-08.pdf

⁵Troidl, SächsVBl 2015, 233 (239); in Bayern haben davon über 70 Gemeinden derartige Satzungen.

⁶Right2Info, 2011. <https://www.right2info.org/recent/germany-civil-society-website-makes-it-easier-to-ask-for-government-information>.

requests, the website will make information accessible to all (not just the requester) at the same time as easing the burden on public authorities.

In July 2010 the State of Berlin amended its FOI Act, allowing citizens to access information relating to "public-private partnerships" i.e. contracts between the State of Berlin and private contractors.⁷ The change was made to increase transparency of decisions made and measures taken by public authorities and was sparked by the partial-privatisation of the agency which owned the city's water supply system and works in 1999.

4. Right to Access to Information or Freedom of Information in Pakistan

The Constitution of Pakistan does not expressly give a right of access to information. Article 19 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.⁸

The Supreme Court ruled in 1993 that Article 19 includes a right of citizens to receive information.⁹ In October 2002, President Pervez Musharraf promulgated the Freedom of Information Ordinance 2002, largely at the urging of the Asian Development Bank.¹⁰ Although the Ordinance should have lapsed within 6 months, the President has issued a constitutional decree which has ensured the continuance of the Ordinance. The Ombudsman ruled in April 2004 that the Ordinance still was in force even in the absence of the regulations.¹¹ Rules were issued in June 2004, but without any input from stakeholders.¹² Civil society groups have since lobbied the Government to implement Model Rules, but to no avail. It allows any citizen access to official records held by a public body of the federal government including ministries,

⁷Dix, A., 2011. Proactive Transparency for Public Services: the Berlin Model .<http://www.freedominfo.org/2011/10/proactive-transparency-for-public-services-the-berlin-model/>.

⁸ Constitution of the Islamic Republic of Pakistan. <http://www.pakistani.org/pakistan/constitution/>

⁹ Sharif v. Pakistan, PLD 1993 S.C. 471.

¹⁰ Freedom of Information Ordinance 2002, No. XCVI of 2002. F. No. 2(1)/2002-Pub. Islamabad. 26 October 2002. http://www.crcp.sdnpc.org/ordinance_of_2002.htm

¹¹WafaqiMohtasib, Failure to Provide Information Under the FOI Ordinance 2002, 6 April 2004. <http://www.crcp.org.pk/ombudsman.htm>

¹² Freedom of Information Rules 2004. <http://www.crcp.org.pk/PDF%20Files/FOI%20Rules%202004.PDF>

departments, boards, councils, courts and tribunals. It does not apply to government-owned corporations or to provincial governments. The bodies must respond within 21 days.

More recently, by virtue of the 18th Amendment of 2010, article 19A has been inserted in the Constitution of Pakistan. It gives the right to access to information the status of a fundamental constitutional right. Article 19A "Right to Information" reads: "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".

4.1 Development of FOI in Pakistan

Pakistan: National Context

The RTI movement in Pakistan gained momentum in the late 1980s and 1990s, when there was growing concern about the rampant corruption plaguing the country. The first initiative was taken in 1990 when a Jamaat-i-Islami senator moved a private bill on freedom of information in the Senate. In 1996, a freedom of information bill was drafted by the caretaker government. A diluted version of this bill was promulgated as the Freedom of Information Ordinance in 1997. However, this proved to be a temporary success, as the succeeding government of Nawaz Sharif failed to get the ordinance enacted by Parliament. In 2001, the Asian Development Bank approved a comprehensive action plan for Pakistan that included judicial and administrative reform. Freedom of information legislation was considered part of the reform program. It was against this backdrop that the military government of General Pervez Musharraf promulgated the existing Freedom of Information Ordinance in 2002. It was later sanctified by Parliament through a constitutional amendment that validated all laws promulgated by the military dictator.

Because the law was promulgated through an ordinance, it has never been debated in Parliament. It remained inoperative for two years until its rules were formulated and published in 2004, following a sustained campaign by civil society and key stakeholders. The Ordinance is believed to be a very weak law, and in view of its lacunae, the government introduced a bill in Parliament in 2008 to improve the existing legislation. That bill is yet to be approved. At the provincial level, Balochistan and Sindh replicated the Freedom of Information Ordinance 2002 in the form of the Balochistan Freedom of Information Act 2005 and the Sindh Freedom of Information Act 2006. At a district level, the Local Government Ordinance 2001 also contained provisions

supporting the right to information; however, even this has only been operational in Punjab province. Notably, in 2013, the provinces of Khyber Pakhtunkhwa and Punjab enacted RTI legislation. The Khyber Pakhtunkhwa Right to Information Act 2013 and the Punjab Transparency and Right to Information Ordinance 2013 have been lauded as strong laws that herald an era of RTI renewal in Pakistan.

Constitutional Framework OR Legislation

Under Article 19-A of the Constitution of Pakistan, people have a right to access information held by public bodies

The 1973 Constitution of Pakistan does not explicitly recognize citizens' right to access information as it states 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". As Pakistan signed the International Covenant for Civil and Political rights (ICCPR), it is required to issue its citizens such right. The right to access information was further specified in the 2010 constitutional amendment, which declared that under Article 19-A "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." Both federal and provincial governments issued various laws in order to allow Pakistani citizens to exercise their right to access public data.

FOI at Federal Level

The FOI Ordinance authorizes Pakistani citizens to gain access to data held by the national government. The Ordinance only pertains to the Federal Government organizations and does not apply to any provincial governments or private entities funded by the national government. The Freedom of Information Rules 2004 details the procedure through which the governmental data can be requested: applicants must pay a fee and enclose the purpose of their inquiry by providing specific reasons as to why they need the information. If the requested information is not provided in 21 days, the applicant may file a complaint to the head of the public body.

FOI at Provincial(States) Level

The FOI Ordinance of 2004 laid the basis for the following two provincial laws: The Baluchistan Freedom of Information Act in 2005 and Sindh Freedom of Information Act in 2006. In addition, the Khyber Pakhtunkhwa Right to Information Act (KPK RTI) and the Punjab Transparency and Right to Information Ordinance were both passed in 2013. The KPK RTI Act covers not only official governmental bodies, but also non-governmental entities that are funded by the government (for example, locally funded public service organizations). The Punjab RTI Act can be used not only by the citizens of Pakistan, but also by legal bodies that are registered within Pakistan territorial borders.

Data protection laws

Pakistan does not at present have direct data protection legislation. As noted above, the Constitution limits the individual's protection of privacy in cases related to the "proper discharge" of the duties of the Armed Forces or the police. In the absence of direct data protection legislation, data privacy and protection is theoretically regulated through provisions in the following pieces of legislation.

Under Article 19-A of the Constitution of Pakistan, people have a right to access information held by public bodies. This constitutional right is often violated by the very public bodies entrusted to uphold it. Two instances are noteworthy here: first, the Centre for Governance and Public Accountability (CGPA) filed an information request to all district courts in K-P under the Khyber-Pakhtunkhwa Right to Information (RTI) Act of 2013. The information sought from the district courts were related to the number of information requests the district courts had received last year such as how many of these were responded to and how many complaints were filed against district courts in the information commission. Only two district courts responded within 10 working days, as required under the K-P RTI law. Despite filing complaints and waiting for a mandatory period of two months, at least five district courts did not bother respond to a simple request for information.

Chronology of FOI in Pakistan

- 1990: First attempt was made by Professor Khurshid Ahmad, Senator JI.
- 1994: Senator Malik Qasim, made the second attempt in 1994.

- 1997: FIRST FOI LEGISLATION, an ordinance is enacted by Malik Mairaj Khalid. • 2000: Federal Minister Javed Jabbar made public a draft FOI Bill.
- 2002: Gen. Pervez Musharraf promulgates the FOI Ordinance. (26-10-2002) • 2004: Federal FOI Rules & Regulations, 2004. (18-06-2004)
- 2005: Balochistan Freedom Of Information Act, 2005. (06-12-2005) • 2006: Sindh Freedom Of Information Act, 2006. (22-12-2006)
- 2007: Balochistan FOI Rules & Regulations, 2007. (20-11-2007) • 2008: Sherry Rehman's RTI Bill.
- 2010: Article 19-A, in the 18th Amendment to the Constitution. (08-04-2010)
- 2013: The Sindh Local Government Act, 2013. (16-09-2013)
- 2013: KP Right To Information Act, 2013. (05-11-2013)
- 2013: Punjab Transparency & Right To Information Act, 2013.

Does every citizen have the right to know?

29 April 2014 6 “ Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law” Article 19A of the constitution of Pakistan.

2013: Sahibzada Muhammad Khalid appointed as the KP CIC.

- 2014: J: Mazhar Minhas as Punjab CIC, Ahmed Raza & Mukhtar Ahmed as IC.
- 2015: Punjab Transparency & Right To Information Rules, 2014. (04-01-2015)
- 2015: KP Right To Information Amendment Bill, 2015.

7.NGOs and Civil Society Role

The effective implementation of RTI is a prerequisite for the effective participation of the population and their ability to have a voice, which are necessary for democratic societies.

ARTICLE 19 is an independent human rights organisation that works globally to protect and promote the right to freedom of expression and information. It takes its name from Article 19 of

the Universal Declaration of Human Rights, which guarantees free speech. Established in 1987, ARTICLE 19's mission is "to promote, protect, develop and fulfil freedom of expression and the free flow of information and ideas in order to strengthen global social justice and empower people to make autonomous choices." In accordance with its mandate to promote freedom of expression and transparency, including the right of access to information as a supporting mechanism, ARTICLE 19 is monitoring and supporting international and national actors who are working for the advancement of the right to information. ARTICLE 19 through its regional offices and in collaboration with other civil society organizations is committed to informing the debate on this right and developing tools to ensure that national constitutional and legislative frameworks meet international standards and for their application to be effective to facilitate the action of member states in meeting their all of their commitments under the 2030 Agenda.

The Coalition on Transparency and Access to Information (C-TAI) undertook yet another attempt to convince the government to pass the Sindh Right to Information (RTI) Bill, 2015.

Members of C-TAI, which is a coalition of 26 Sindh-based NGOs, gathered at an advocacy and consultative session to discuss the draft of the bill at Movenpick hotel on Saturday afternoon. They presented their demands before deputy speaker Shehla Raza.

Referring to Article 19-A of the Constitution, the charter of demands said that every citizen has the right to access information in all matters of public importance, subject to regulations and reasonable restrictions imposed by the law. This right is also upheld by various UN resolutions and declarations that Pakistan is signatory to.

Campaign for Freedom of Information, Pakistan aims at facilitating the citizens lobby for effective and operational access to information regime in Pakistan. To reach this aim, the organization informs the public about their right to information and trains advocates who encourage people in their communities to file information requests and campaign for the implementation of the right.

Centre for Peace and Development Initiatives 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. Special focus is given to transparency and access to information.

Transparency International - Pakistan

Pakistan Press Foundation

5. Right to Access to Information or Freedom of Information in Austria

Access Info Europe and the International Press Institute (IPI) welcome the initiative of the Austrian government to reform the current legal framework governing the right of access to information. This reform includes not only the development of a new access to information law (“Informationsfreiheitsgesetz”), but also changes to the Austrian Constitution, which until now has severely restricted access to information held by Austrian public bodies.

On a positive note, the draft Austrian access to information law applies to all individuals (not just Austrian citizens), extends to state-owned companies, and includes a provision, albeit basic, directing public bodies to proactively publish information of general interest. Access Info and IPI also welcome a provision that allows for the submission of requests in “any technically possible and provided manner”, which brings Austria into the 21st century.

However, there are many aspects of the law that fall seriously short of international standards. As it stands, the current draft would not permit Austria to ratify the Council of Europe Convention on Access to Official Documents.

Access Info and IPI recommend that Austrian legislators make the following changes to the draft text so as to ensure that it meets international standards and to permit ratification of the Council of Europe Convention.

In order to reflect international standards, Article 2 should define “information” to comprise all information held by public bodies, including correspondence and other documents that are not

necessarily treated as “official”. In order to ensure the fundamental nature of the right of access to information, changes should be made to the draft constitutional reform as well as Article 5 of Austria’s draft Informationsfreiheitsgesetz so that the right of access to information held by statutory associations of employers, employees and professionals (gesetzliche berufliche Vertretungen) is extended to everyone, not just the members of such associations.

The Austrian Informationsfreiheitsgesetz should only include exceptions that are in line with international standards such as the Council of Europe Convention on Access to Official Documents, and must ensure that the application of any exception is made following harm and public interest tests.

Legislators should shorten the two month time frame in which public bodies must answer requests for information to a maximum of 15 working days, in line with European norms. Regardless of the time frames permitted by law, Austrian public bodies should ensure they answer requests as soon as possible.

The Austrian draft law must ensure that consultation with third parties does not negatively affect the maximum time limit for answering requests. Article 10 should also ensure that whilst third parties may be consulted, their opinions do not constitute an automatic veto over the provision of information, and that any limitation on the right of access may only be justified on the basis of the exceptions set out in the law, subject to a harm test and public interest test.

Article 11.2, which enables the public administration not to issue rulings in cases in which access to information regarding legislative acts is denied, should be removed. All decisions by public bodies should be explained and justified and should grant a right of appeal, which does not exist if a ruling is not issued.

The draft Informationsfreiheitsgesetz should ensure that companies using public money or those that carry out public functions are included in the law with the same expectations and obligations towards transparency as public institutions. In addition, the appeals mechanism regarding information denied by such companies should be modified. Applicants should not be forced to take initial appeals directly to the civil courts.

The Austrian Informationsfreiheitsgesetz should include a provision that sets out the creation of an independent oversight body that can hear appeals and make binding decisions on public authorities to disclose information.

Austria should ensure that the new Constitutional provision on access to information is consistent with international standards and European case law, and in particular with Article 10 of the European Convention on Human Rights.

5.1 Exceptions and harm and public interest tests

The draft law at Article 6.1 sets out a series of interests that may be used as the basis for denying access to information. Whilst this list is broadly in line with the exceptions to be found in international standards and other freedom of information laws, there are ways in which the proposed provisions in Austria are out of line with these standards in ways that would place illegitimate limits on the right of access to information.

In the first instance, the law fails to establish a clear presumption of openness, whereby all information held by the state is public by nature unless disclosure would prejudice or harm a legitimate protected interest (the ‘harm test’), and where there is no overriding public interest in its disclosure (the ‘public interest test’).

Furthermore, the draft law is out of line with international standards, such as the Council of Europe Convention on Access to Official Documents, because it establishes exceptions that are overly broad or not permitted under international law, as set out further below and in the table on page 7.

Protection of international relations from harm is a legitimate exception to the right of access to information but this provision in the draft Austrian law, Article 6(1)1 is structured in a problematic way.

In the first instance, rather than denying access on “foreign affairs and integration grounds”, there should be a clear test for where publication of the information would cause harm to foreign affairs, and this harm test must be balanced by a strong public interest test.

The second clause of Article 6(1)1 refers to the “directly applicable provisions of European Union or international law”. The Ministry for European and Foreign Affairs has suggested that the exemption be rephrased to state "on compelling foreign affairs and integration grounds, with special regards to international commitments of Austria on the basis of legal provisions of the European Union or other international law."

In other words, that where an international treaty requires information to be kept secret, that treaty will override the Austrian Freedom of Information law. This clause is likely to lead to confusion as it conflates protection of international relations with supposed secrecy obligations international treaty obligations and EU law.

Such a clause is not typical of access to information laws and is not required by international standards. Indeed, although the Ministry has made a reference to the European Convention on Human Rights, there is nothing in that Convention that requires exceptions to be broader than the limited list set out in the Council of Europe Convention on Access to Official Documents.

Indeed, just as no other national law should override the limited exceptions of the access to information law, similarly no international provision should threaten to undermine Austria’s protection of the right of access to information. Hence this clause should be removed from the list of exceptions.

6. Comparison:

A comparative analysis about the laws of access to information between the Pakistan and Germany will be drawn. For example the democratic situation in Pakistan is much different than that of Germany and this law is attached to the democratic development. There is no political awareness in the developing countries like Pakistan as compared to the strong democratic system of Germany. The institutional structure will also be discussed.

Pakistan’s current right to information or RTI law, giving citizens the right to access information held by public bodies, the 2002 Freedom of Information Ordinance, is by any measure a very weak enactment. It earns only 67 points out of a possible total of 150 on the RTI Rating, an internationally recognised methodology for assessing the strength of the legal framework for RTI, putting it in 91st position globally out of the 111 RTI laws currently assessed on the RTI Rating. In 2013, the Pakistani province of Khyber Pakhtunkhwa showed important leadership in

this area by adopting a very strong right to information law, scoring 137 points on the RTI Rating and creating pressure for improvements in other jurisdictions in Pakistan.

The 1973 Constitution of Pakistan does not explicitly recognize citizens' right to access information as it states 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". As Pakistan signed the International Covenant for Civil and Political rights (ICCPR), it is required to issue its citizens such right.

Article 19 of the Ordinance allows individuals whose request for information has been refused to appeal to the Mohtasib or, if the original request dealt with the Revenue Division or its subordinate departments, to the Federal Tax Ombudsman. Before an appeal may be made to either of these two authorities, the applicant must have first resubmitted its request to the head of the public body that originally refused the application. ARTICLE 19 welcomes this element of Pakistan's freedom of information regime. However, the right of appeal could be improved in a number of ways. First, the Ordinance does not set out clear timeframes for the re-submission of the original application to the public body, before an appeal may be filed with the Mohtasib or Tax Ombudsman.

Furthermore, where the head of the public body is also the designated official responsible for managing access requests, as permitted by section 10, this requirement is clearly unnecessary and will simply deal requests considerably. Section 19 fails to specify the nature of the Mohtasib's or Tax Ombudsman's investigative powers. Section 19(2) states that both the applicant and the designated official will be heard by the Mohtasib or Tax Ombudsman. However, no procedure for a hearing is provided for by the Ordinance, nor are specific investigative powers – such as the ability to compel witnesses or review the requested information – granted by the Ordinance. In addition, the Ordinance is silent on the matter of appeals to the courts. It should be clear that there is a full right of appeal to the courts. The courts have authority to impose standards on the governing authorities and they are in a good position to ensure that due attention is given to resolving difficult questions and that a consistent approach to freedom of information issues is promoted.

Democratic, Cultural and social Difference

German-Pakistani relations cannot be analyzed in isolation of the larger domestic and international trajectories, democratic, economic and political, on both sides of the partnership. After a recent democratic power transfer in 2013, Pakistan continues to face complex challenges. The instable security situation in the region exerts pressure on the Pakistani state, multiplying domestic challenges like macroeconomic and trade instability, societal conflicts and crises in energy supply and infrastructure. In light of these aspects, this paper explores the magnitude and development of German-Pakistani relations, focusing especially on trade, economic cooperation and strategic interests on both sides. The analysis of the German-Pakistani Access to Information Law over the last decade show only very moderate volumes with room for expansion.

Democratic Law

In fact political awareness and knowledge of rights is the first and foremost prerequisite in a democratic state order. According to Art. 20 II GG, this is articulated in elections and votes, and thus in the result of the parliamentary decision-making and decision-making process. At the same time, the members of parliament should reflect the diversity of the diversity of opinion of a society and have an integrative and pacifying effect on society as a whole.¹³ People are more aware of their rights and have political awareness in the country like Germany, while on the other hand this lacks in Pakistan because majority of people have no knowledge about their rights and no political awareness, only few educated section of society as people relating to law profession, professor, scholars etc. Therefore democratic system is not so mature to exercise such democratic law in Pakistan.

7. Theories

Transparent Governments

There is little empirical research on how RTI laws have worked in practice, whether or not they have been adequately implemented and enforced, and whether they have been effective in fulfilling their stated goals of improving transparency, accountability, and service delivery, and consequently reducing opportunities for corruption (Dokeniya 2013).

¹³Schuster, Simon. 2018.

There is also little empirical evidence on whether access to information has led to corruption being de facto punished, the establishment of prevention mechanisms and safeguards, and the adoption of better policies and legislation in general. The majority of empirical studies available aim at investigating the links between RTI laws and governance indicators, including corruption. However, the results are mixed. For instance, Islam (2006), upon investigating whether more transparency in the form of access to information affects governance, found that countries with RTI laws have lower corruption levels.

Mungiu-Pippidi (2013) found that the existence of the Freedom of Information (FOI) Act is positively associated with lower corruption and a significant positive trend in controlling corruption. Studies have also shown a positive correlation between control of corruption and years of implementation of RTI laws. The older a RTI law in a country, the more the country tends to have lower corruption levels (Tandoc 2013). While investigating the impact of switching from a weak to strong RTI law on corruption convictions for state and local government officials in the US, Cordis & Warren (2014) found that stronger RTI laws actually led to higher corruption conviction rates. Other scholars found that RTI laws have a positive impact in curbing corruption if other conditions for accountability, such as media freedom and free and fair elections, are also satisfied (Lindstedt&Naurin 2010).

RTI and service delivery

In Pakistan, while implementation has been slow, an increasing number of RTI requests have been formulated by non-governmental organisations (NGOs) and activists supporting poor and marginalised groups to access social programmes and public services such as health, housing. Prior to the enactment of the RTI law, these individuals were unlikely to access such services without bribing public authorities (Institute of Informatics and Development 2012).

In India, studies and media reports show that RTI is being used by citizens, civil society and the media as a remedy to individual injustices, to obtain access to government programmes, investigate government policy and decision-making, and expose corruption and misuse of public resources (Surie 2011). For example, in the education sector, the disclosure of information relating to attendance of staff in schools has helped to assess teachers' absenteeism and students' dropout rates, leading to effective reforms in the schools involved (Ansari 2008). Furthermore,

the RTI law is also used by local NGOs to support poor families to gain access to public schools by enquiring about the availability of seats for the poor and the criteria for eligibility (Dokeniya 2013).

Similarly, the RTI law was used to assess doctors and nurses' attendance at health centres in the rural areas, leading to an improvement in health care facilities (Ansari 2008). Finally, the disclosure of the list of beneficiaries of the government's social programmes (unemployment benefits, gas subsidy, and grain subsidy, among others) has helped to identifying inconsistencies and wrongdoings in the programme (Ansari 2008).

RTI and good governance

There is also anecdotal evidence on the broader impact of such laws with regard to more sustainable changes. There have been cases where public officials and Ministers have been expelled from government due to information disclosed through RTI requests, and instances where RTI findings have triggered reforms and created broader civil society mobilisation against corruption, such as in India, among others. In the UK, NGOs and investigative journalists have used freedom of information requests to investigate the expenses of members of parliament.

The information was leaked prior to the official response, but nevertheless helped to identify wrongdoings and led to the conviction and suspension of several members of parliament (Dokeniya 2013). In Romania, the use of the RTI law by a coalition of civil society organisations (CSOs) for the creation of an integrity ranking of Romanian Universities led to an immediate improvement in university transparency.

As of 2013, as a result of the study and the information disclosed, more than 25 percent of universities in the country have been proactively publishing procurement expenses on their website and advertising teaching jobs openly. The action also played a key role in the adoption of a new education bill in 2011, which introduced measures to limit nepotism. Unfortunately, according to CSOs in the country, this action has helped to achieve specific reforms and improvements but not to change the culture of favouritism and the broader corruption problems that permeates Romanian society. The problem is that without further systematic and sustainable

change, the improvements achieved in the higher-education sector are now threatened (Romania Academic Society 2013).

8. Conclusion

The paper compared Right of Access to Information or Freedom of Information laws (FOI laws) between Pakistan and Germany by employing the approach of comparative law. The paper examined the development of laws in relation to the access to Information enacted or amended in Germany and Pakistan.

Access to public information compels governments and public officials to be accountable and transparent. RTI allows better control of state action by the population who can learn about decisions taken on their behalf by public officials. This allows citizens to be more involved in evaluating the management of public affairs. RTI helps to develop a culture of accountability among public officials, who are obliged to put their actions at the service of the public interest.

RTI is a practical means of enabling citizens to control government action and enhance the transparency of the state and the accountability of civil servants and elected officials. RTI enables individuals to better enjoy their civil and political, economic, social and cultural rights insofar as it enables them to make more informed choices. It has implications for individuals and groups in any society, ranging from their enjoyment of basic services (health, education, housing, work, etc.) to their place in public life (voting rights, participation in public and political life, accountability of elected and state officials, etc.).

The paper examines the development of laws in relation to the access to Information enacted or amended in Germany and Pakistan. This work will also help to understand the circumstances and democratic structure in which this law has been evolved and developed.

It will be very interesting to analyse this specific law in this regard because both countries Germany and Pakistan have different legal traditions, different specific rules of private law, and different systems of private law, all of which are administered by court systems similarly subject to different rules and traditions of procedure. Each country's legal system reflects its society's values. As a result, national laws and the structure of domestic judicial systems vary considerably from country to country.

Pakistan was the first South Asian country to enact a law on freedom of information, when it passed the Freedom of Information (FOI) Ordinance at the Federal level in 1997. This Ordinance was later revoked and a new Freedom of Information Ordinance was issued in 2002, which has a legal status to this day as it was covered under the 17th Amendment to the Constitution. In 2004, the Freedom of Information Rules 2004 was enforced by the Federal Government, which described the procedural aspect of the Freedom of Information Ordinance.

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10. Appendix

Comparison of Access to Information Act between Pakistan and Germany:

Features:

Pakistan:

Although the Ordinance should have lapsed within 6 months, the President has issued a constitutional decree which has ensured the continuance of the Ordinance. The Ombudsman ruled in April 2004 that the Ordinance still was in force even in the absence of the regulations. Rules were issued in June 2004, but without any input from stakeholders.

- It allows any citizen access to official records held by a public body of the federal government including ministries, departments, boards, councils, courts and tribunals. It does not apply to government-owned corporations or to provincial governments. The bodies must respond within 21 days.
- There is some ambiguity about what information is accessible. The Ordinance allows access to “official records” and then sets out an exceptions regime subject to a harm test for international relations, law enforcement; invasion of privacy; and economic and commercial affairs of a public body. However, it also allows access to “public records” which it specifically defines as only policies and guidelines; transactions involving acquisition and disposal of property; licenses and contracts; final orders and decisions; and other records as notified by the government.
- It then makes these public records subject to mandatory exemptions for: notings on files; minutes of meetings; any intermediary opinion or recommendation; individuals’ bank account records; defense forces and national security; classified information; personal privacy; documents given in confidence; other records decreed by the government.
- Government bodies are required to appoint an official to handle requests. They also have a duty to publish acts, regulations, manuals, orders and other rules that have a force of law, and maintain and index records. It specifically requires that those records covered by it are computerized and networked throughout the country within a reasonable time, subject to finances, to facilitate access.

- The law says that it applies notwithstanding other laws such as the Official Secrets Act, which is based on the original UK OSA 1911 and sets broad restrictions on the disclosure of classified information. The Consumer Rights Commission of Pakistan has called for the repeal of the OSA to facilitate freedom of information.

- The Act gives any person a right of access to official information from agencies of the federal government or those organisations or persons conducting public duties.
- Information must be provided within one month. It can be provided orally, in writing or electronically.
- There are extensive exemptions in the law. Drafts or notes are not included in the definition of official information. There are exemptions for information the disclosure of which would have a detrimental effect on international relations; military interests; internal or external security interests; duties of regulatory authorities; external financial control; prevention of prohibited foreign trade; ongoing legal, criminal or administrative proceedings; jeopardise public safety; subject to secrecy or confidentiality by another law or state secrets regulation; impair the fiscal interests of the federal government; third party confidential information or relates to the intelligence services or the Security Screening Act.
- Drafts and resolutions can be withheld if they would prevent the success of the decision or pending matters. This does not include results of evidence gathering or opinions of third parties.
- Access to another person's personal data can only be given if the interest outweighs the other person's interest or the person consents to the release. Sensitive personal data can only be released with consent.
- There is no right of access if it conflicts with intellectual property rights.
- Authorities are required to maintain indexes of information and their purposes. Indexes and other information should be made available on government websites.

Overseer/Appeal

Wafaqi Mohtasib (Ombudsman), or for tax-related matters, to the Federal Tax Ombudsman. The Ombudsmen have the power to make binding orders. Officials who destroy records with the intention of preventing disclosure can be fined and imprisoned for up to two years. The Mohtasib can fine requesters Rs10,000 for making "frivolous, vexatious or malicious" complaints.

Issues:

The Act has not been fully implemented and access is still difficult. In March 2006, the Centre for Peace and Development Initiatives held a workshop for the Cabinet Division of Government following which it commented that many information officers are still not fully aware of their roles and responsibilities and implementation of the Ordinance still requires a major cultural and attitudinal shift on the part of government officials.

Germany Features:

- The Act gives any person a right of access to official information from agencies of the federal government or those organisations or persons conducting public duties.
- Information must be provided within one month. It can be provided orally, in writing or electronically.
- There are extensive exemptions in the law. Drafts or notes are not included in the definition of official information. There are exemptions for information the disclosure of which would have a detrimental effect on international relations; military interests; internal or external security interests; duties of regulatory authorities; external financial control; prevention of prohibited foreign trade; ongoing legal, criminal or administrative proceedings; jeopardise public safety; subject to secrecy or confidentiality by another law or state secrets regulation; impair the fiscal interests of the federal government; third party confidential information or relates to the intelligence services or the Security Screening Act.
- Drafts and resolutions can be withheld if they would prevent the success of the decision or pending matters. This does not include results of evidence gathering or opinions of third parties.
- Access to another person's personal data can only be given if the interest outweighs the other person's interest or the person consents to the release. Sensitive personal data can only be released with consent.
- There is no right of access if it conflicts with intellectual property rights.
- Authorities are required to maintain indexes of information and their purposes. Indexes and other information should be made available on government websites.

Overseer/Appeal

Federal Commissioner for Data Protection and Freedom of Information

- There has been little media attention or discussion of the law and little effort by the government to promote the law.
- Some agencies such as the Foreign Office have announced that they are planning to charge large fees for access to information.
- The Stasi Records Act allows access to

the files of the secret police of the former German Democratic Republic (East Germany). The law created a Federal Commission for the Records of the State Security Services of the Former GDR which has a staff of 3,000 piecing together shredded documents and making files available. There have been two million requests from individuals for access to the files and three million requests for background checks since the archives became available.

Country	Legislation	Date	Features	Overseer/Appeal	Issues
Pakistan	Freedom of Information Ordinance	2002	<p>The Ombudsman ruled in April 2004 that the Ordinance still was in force even in the absence of the regulations •</p> <p>It allows any citizen access to official records</p> <ul style="list-style-type: none"> • It does not apply to government-owned corporations or to provincial governments. The bodies must respond within 21days. • There is some ambiguity about what information is accessible. • It then makes these public records subject to mandatory 	<p>-(Ombudsman), for tax-related matters, to the Federal Tax - disclosure can be fined and imprisoned for up to two years. The Mohtasib can fine requesters Rs10,000 for making “frivolous, vexatious or malicious” complaints.</p>	<p>The Act not fully implemented and access is still difficult.</p> <ul style="list-style-type: none"> -many information officers are still not fully aware of their roles and responsibilities and implementation of the Ordinance still requires a major cultural and attitudinal shift on the part of government officials.

			<p>exemptions</p> <ul style="list-style-type: none"> • Government bodies are required to appoint an official to handle requests. •it applies notwithstanding other laws such as the Official Secrets Act. 		
Germany	Act to Regulate Access to Federal Government Information	2005	<ul style="list-style-type: none"> • The Act gives any person a right of access to official information public duties. • Information must be provided within one month. • There are extensive exemptions in the law. • Drafts and resolutions can be withheld if they would prevent the success of the decision or pending matters. • Access to another person's personal data can only be given conditionally • There is no right of access if it conflicts 	Federal Commissioner for Data Protection and Freedom of Information	<ul style="list-style-type: none"> • little media attention or discussion of the law and little effort by the government to promote the law. •charge large fees for access to information. •. A large numbers of requests

			<p>with intellectual property rights.</p> <ul style="list-style-type: none">• Authorities are required to maintain indexes of information		
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