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Editorial

Dear Readers!

The Pakistan Institute for Parliamentary Services continues its research and capacity building initiatives, as per its annual workplan (2023-24). PIPS has the role as a bridge between the people and their elected representatives by holding sessions on Constitution, Parliament and National Cohesion. In October-November, 2023, PDP wing held two sessions of ToTs for parliament officers in addition to Research wing hosting the ToT on Parliamentary Studies followed by MPs' Roundtable on Inclusive Democracy. We are pleased to inform that the Report of the International Online Conference on Parliamentary Research Mechanism held by the UK Parliament in collaboration with the AGORA Parliamentary Development Community of Practice including the PIPS presentation, attended by 198 participants from more than 60 countries, is now available at: <https://agora-parl.org/community-of-practice/news/198-participants-65-countries-mapping-and-connecting-parliamentary>, while its video recording can also be watched and referred to at: <https://www.youtube.com/watch?v=cvSBCcJGEBg&t=3s>.

This Issue of the PIPS Parliamentary Research Digest includes an absorbing report of the imperative PIPS cross-party National Roundtable on Inclusive Democracy that was attended by MPs from all major parties and the provinces; a book review on a recently publication Australia-China politics; and absorbing articles on Balochistan Right to Information Act 2021 and Role of Courts in interpreting laws.

We welcome feedback of our invaluable readers. Please do not hesitate to send your feedback or contact for any of our services at research@pips.gov.pk

Muhammad Rashid Mafzool Zaka
Director General (Research)



Group Photo of the participants of Roundtable on Inclusive Democracy in Election Manifestos at Pakistan Institute for Parliamentary Services on Thursday, November 23, 2023

BOOK REVIEW

Australia's Security in China's Shadow

Muhammad Rashid Mafzool Zaka

Director General (Research), PIPS

ABOUT THE BOOK AND THE AUTHOR: *The Adelphi Series 490-492, Australia's Security in China's Shadow* is authored by Euan Graham, (International Institute for Strategic Studies, London, UK - 2023: pages 1-293). The author is a Senior Research Fellow for Indo Pacific Defence and Strategy at the I.I.S.S in Singapore, having lived in Australia, Japan and Singapore, he has contributed widely for international media on range of regional security issues being a specialist on Australian Strategy who has also worked as a Researcher with the UK Government and the Commonwealth Office.

Australia's location away from geographic fault-lines, with great strategic depth, kept itself safe and without any major existential threat at all even during the cold war proxy wars. The author believes that Australia's perception of China is historically and mostly been affected by the prism of its relationships with the US and to a decreasing degree on the UK. It is in this context that the book shares how China-Australia relations were slow to commence as Canberra officially recognized the People's Republic of China only in December, 1972 largely due to the fact that Australia remained member of the US camp in the cold war era with suspicions about China.

However, in wake of the end of cold war era with Australia getting some respite for somewhat independent foreign policy, the story of last three decades since the 1990s by contrast has centred on China's economic rise and Australia transforming as a trade and economic partner of the Chinese. Demographics also encouraged the same as a large community of around a million people of Chinese origin living in the country of 24 million total population, there has been realization in Australia that having bilateral trade and financial ties with China independent of the US polar politics, can contribute appreciably in Australia's future prosperity.

Though the author argues that it has been a fluid relationship debated hugely amongst politicians in parliamentary debates as a largely contested context, China has emerged as Australia's major trade partner in last three decades as the Australian governments from both the left and the right of the political spectrum continued with a shared zeal to strengthen the partnership with China, making it a defining feature of Australia's diplomacy and international trade. In December 2014, both countries signed the significant Free Trade Agreement towards each other as President Xi Jinping became the third Chinese leader to visit Australia, and the second to address their elected Parliament.

In 2020-21, two-way trade was valued at Australian Dollars 267 bn as China was the destination for close to 39% of Australia's total exports. China's demand for iron-ore helped to drive global commodities "super cycle," following its accession to the World Trade Organization in 2001...for more than a quarter century, from 1992 to 2020, Australia enjoyed continuous economic growth, a unique feat among developed economies, and one fuelled by China's demand for Australian products, which is exceptional despite the two countries' political dissimilarity.¹

It is astonishing that the zenith of bilateral relationship between the two countries was reached during the Conservative Government in Australia whereas usually the Liberal Party traditionally has

¹ THE ADELPHI SERIES 490-492, Euan Graham, Australia's Security in China's Shadow, 2023 p. 16.

a proactive vision for a close relationship with Beijing as a source of great mutual opportunity for both Australia and China for enhanced trade, connectivity and bilateral ties.

The book spreading over six chapters, provides invaluable insights on the fascinating transformation of Australia-China relationship from a long-lasting mutual suspicion in the bipolar post 1945 divided world to an era of bilateral cooperation and trade boom in the last three decades (1990-2020) followed by another rise of suspicion in wake of Australia's rather quick call in April 2020 for inquiry by China on cause of coronavirus pandemic. Some believe it was clear endorsement of US president Trump's allegation in the international media on China as the cause for spread of Corona Virus (covid 19 pandemic) in the world. The title of the first chapter, "End of an Affair," itself explains author's subjective lens that presupposes and in fact sets the goal of identifying multifarious challenges that China supposedly poses to Australia's security and assessing the efficacy of Australia's policy response.

The book acknowledges that China-Australia evolved remarkably in an interdependent relationship where Australia found the biggest market of its exports in China in the post-cold war era where states became independent of the geopolitics of the western versus eastern or the capitalist vs communist blocks. The author however, seems hopeless as he terms it a "fatalistic," idea and belief that Australia's dependence on China as a market forms some kind of "permanent and irreplaceable fact of international relations," became the central idea amongst circles following closely the ties. Australia-China relations have in post 2014 scenario seeing a crest or a trough as Liberal-National Coalition Governments tried to "reset relations with China," under the Prime Minister ships of Tony Abbot (2013-15), Malcolm Turnbull (2015-18) and Scott Morrison (2018-22).

On an objective note, reading through the initial chapters of the book the readers can enumerate key reasons for a suspicion among Australia's conservative politics viz a viz the future of a long-term China-Australia relationship. These suspicions are debated at length in Australia, based on following premise:

- i. Government in Australia have been toeing the geopolitical line as set by the United States and endorsed by UK, due to the continued Canberra's membership in the Five Eyes Intelligence Sharing and the Australia-UK-US (AUKUS) strategic-technology partnership.
- ii. There have been allegations on the Communist Party of China CCP-led political interference and China's strategic plans to control East and South China seas. Australian security apparatus is apprehensive of Chinese military buildup and its expansionist behaviour and grey-zone operations, especially in the maritime domain, which it perceives as China's long-term intentions towards control over seas in the Southwest Pacific and southeast Asia.²
- iii. Australia's security circles became concerned about the scale and intensity of Chinese influence at the federal, state and local political levels within Australia, to an extent of equating the enhanced China-Australia political engagement as "political interference." In 2009, issuance of a harshly worded Australia's Defense White Paper against Chinese regional designs marred the confidence both states have had created in three decades of economic boost. However, the federal government in Canberra carefully tackled the agree reaction of the Chinese government that reflects that somewhere in Australia,

² Ibid. p.25.

- independent foreign policy free of US crutches is also finding some weight for atleast enhanced economic partnership with the Chinese.
- iv. Australian media, academic and diplomatic circles have traditionally been part and parcel of the US-backed cold world order, therefore, they leave no opportunity of undermining the benefits of an independent Australian policy of cooperation, trade and economic and political partnership towards China for sustainable and resilient future.
 - v. It seems that a revival of the cold war geopolitics is re-emerging as the prevailing paradigm as against the economic basis of Australian-Chinese cooperation that flourished from 1990-2020. It is yet to be seen that is this a local Australian phenomenon or a global compulsion where US-led western block is not ready to give up its influence around China. In 2018, the Turnbull government's terminal Act was passed to exclude Chinese firms such as ZTE and HUAWEI from bidding for Australia's future 5G communications network. Australian intelligence didn't give security clearance and Turnbull administration went on to allege that China was source of cyber espionage against Australia on an industrial scale.

The second chapter, "China's policy begins at Home," elucidates that there is growing presence of business men in Australia and politicians who are attracted to China's economic power. They equate cooperation with China to be the linchpin of Australians economic future due to clear commercial regions that can hugely benefit the people of both nations. The other local school of thought wants Australia to pursue an independent foreign policy that avoids direct involvement in Sino-US tussle for regional hegemony. These proponents favour Australia to formulate policies and pursue partnerships according to its national interests. They want US and its allies to follow the path of accommodation rather than a confrontational path leading to armed conflicts or war. The Australians know that China does not pose, unlike India and Veitnam, any direct military threat to Australian territory so it will be exaggeration of threat perception to unduly follow a path of non-cooperation or even disengagement or suspicion.

Another indigenous factor, remains the fact that the integration with Asia has emerged as an increasingly imperative project of Australian foreign policy where they look up for building partnerships with Indonesia, Japan and ASEAN as a whole. The author shares that Australian academic circles in universities as well as export industries focus on the Chinese market as focus of the State's economic-engagement strategy papers. There is greater acceptability of the idea that differences in type of regimes do not matter much in pragmatic relations as China has real as well as symbolic value in the Australian foreign policy debate as an alternative to the United States.

The book tries to build the argument that Chinese policies towards Australia became coercive in economic as well as diplomatic terms in 2020 so it was natural for Australian federal government to trigger a five prong "push back," policy viz a viz advances by the CCP influence in Australian business and social circles. The Australian government, meanwhile, continues to appease the US led west through reiterating its commitment to directly defend against any foreign interference by a coordinated government response including enforcement of counter-interference laws, by investigating and prosecuting breaches.³

However, the federal government has failed miserably in its domestic communications strategy to persuade the Australian-Chinese communities who term Sinophobia and "racist," orientation of federal governments who are bent upon continuing the war-mongering of the United States warning

³ Ibid. p. 52.

that independent Australian-Chinese partnerships will undermine Australian sovereignty and territorial integrity. The dominance of pro CCP Chinese-speaking media in Australia, according to the author, also helps and favours to influence first-generation migrants from China to Australia.

The third chapter discusses the political economy of Australia-China relations including structure of trade between the two countries and allegedly the “coercion campaign,” of China. China joined the WTO in 2001 and their trade with Australia started flourishing from Australian Dollars 8.8 billion in 2001 to A\$ 77.1 billion in 2011 and by 2007, China had become the principal trade partner of Australia. In 2020-21 besides Corona virus restrictive trade measures, trade with Australia reached A\$ 267 bn and in 2021-22 around A\$285 bn, ⁴ as 39% exports went to China whereas Australia accounts for less than only 2% of China’s total trade. Australia’s major exports to China include liquified natural gas (LNG) and iron-ore while both Australia and New Zealand are food suppliers also to China. The book narrates how the Chinese President Xi Jinping emphasized the deepening of all facets of economic relations and as partners he concluded in his November, 2014 speech to the Parliament of Australia, “we are not burdened by historical problems, with every reason to go beyond a commercial partnership to become strategic partners who have a shared vision and pursue common goals.”

The author smartly puts the whole blame of Chinese economic tariffs in post May 2020 on Australian exports including Barley (80% tariff imposed), wine (anti-dumping duties of 107% to 212%), wool, beef in addition to checks in service sectors, where Chinese will avail visits to Australia for the purpose of education and tourism adding invaluable dollars (A\$12 bn and A\$16 bn respectively) in Australia’s kitty.

The author is found expressing his bias at many occasions, as the book undermines the fact it was Australia that followed US President Trump’s allegations of corona being spread from China, through issuing public call to undertake enquiry in April 2020, which offended Chinese in a big-way. US also triggered an economic-war like coercion against China by violating trade agreements under the WTO negotiations. As a consequent, Chinese ambassador in Canberra, Cheng Jingye, reacted that in Australian media by an interview terming that the call for an enquiry was “politically motivated,” and inspired by the United States. It is easily seen that China was restless and reacted out of proportion by introducing tariffs to exports from Australia, that gave enough excuse to a US-friendly liberal democrat regime to look out for outreaching to other destinations such as Indonesia, Japan and India for its exports.

The fourth chapter focuses on China factor in Australia’s defence strategy and alliance making. In July 2020, Australia launched its Defence Strategic Update (DSU) that doesn’t see China as a direct threat to its security but it refers to “countries using mix of different coercive activities including espionage, interference and economic levers’ that clearly means China is among the impending threats in Australian defense planning. Accordingly, it proposes to enhance its defence capabilities in conventional forces especially spending A\$500 bn for a separate land-based anti-ship missile system to consolidate its maritime approaches and coastline that are well advanced to face any challenges of direct attack or any coercion felt in the strategic maritime region of Southeast Asia and Southwest Pacific. The DSU re-emphasizes that Australia remains among the states that rely on US for extended nuclear deterrence.

The fifth chapter of the book unveils the Australian security dilemma with regards to extensive national interests beyond Indo-Pacific and Southeast Asia. Rory Medcalf, an Australian analyst and

⁴ Ibid. p.56.

academic, terms Australia's challenge of safeguarding its vast interest-domain in terms of physical maritime area is acute due to small population, large landmass and cultural heterogeneity from most of its neighbours.⁵ The book vividly discusses the local debate to the extent of unveiling clear cleavages and differences in society as large number of influential Australians including businessmen and the opposition parties stress the continuation of Asia-focus foreign and trade policy rather than playing second-string to US interest and perceptions in the region.

The author informs the readers that the Foreign Policy White Paper FPWP (2017) of Australia had identified that China is gradually going to match, and in some cases, exceed the US in power and influence within Southwest Pacific and Southeast Asia. Therefore, FPWP called for enhanced bilateral relations with India, Indonesia, Japan and South Korea. It also highlighted need for tri-lateral security cooperation agreements with the US and Japan. Thus, the book draws and extends adequate justification for a continued geopolitical paradigm investing in missile systems, arms and ammunitions and preparedness for a war and conflict anytime in the future. The Department of Foreign Affairs and Trade (DFAT) of the Australian government was found lesser funded and some believe it has failed to build diplomatic-consensus on Australia's strategic and defence postures against impending threat of Chinese coercion against Australian interests. It has also not been able in addition to make intime procurements to keep Australian military in state of preparedness to the required levels. Skeptics of DFAT allege that defence needs of Australia go beyond raising the military capabilities. It must be an integral part of strategic policy through defence diplomacy, a bigger forward military presence and more operations in surrounding areas as envisioned by the DSU 2020.

Euan Graham, the author, in the sixth chapter draws the attention of readers that China and Australia can have competition for influence in Southwest Pacific region, which primarily builds again on the historical analogy that in the second world war it remained an imperative battle ground between the US and Japan for maritime control of the region. The author states that the Pentagon Annual Report cites a Chinese government document (2017) to share that Chinese military analysts have planned to build a Maritime Silk Route connecting the Pacific island countries through the Belt and Road Initiative (BRI) as their state media also mention Papa New Guinea (PNG) and Vanuatu as joint participants in the BRI. China has accordingly given grants and loans to build infrastructure in five Southwest Pacific states: Kiribati, PNG, Samoa, Soloman Islands and Vanuatu. China also donated 54 military vehicles to PNG in 2017 before President Xi's visit to the Asia-Pacific Economic Cooperation. Since 2017-18 till 2022-23, China supports PNG, Fiji, Tonga, Soloman Islands and Vanuatu for continued cooperation in law enforcement and anti-riot capacity building of local police authorities in respective countries.

Quite understandably seeing the enhanced interest and investment of China in the Southwest Pacific region, Australia's DFAT is now more resourceful to undertake Policy Step-up in the sub-region on a significant scale. Australian action to the Chinese effort may look primarily reactive and based on financial aid that reached US\$6.5 bn across the sub-region of the southwest Pacific. However, Australia demonstrates lofty pledges during the 2018 APEC summit that included electrification to 70% of PNG in 2030 that seems too ambitious and difficult to achieve. China at the same time pledged in the form of loans and grants around US\$ 246 mn in 2018 and US\$169 mn in 2019 so the risk of Chinese debt-trap for Southwest Pacific region is minimal as aid from China also seems to have declined.

⁵ Ibid. p. 110.

The construction of infrastructural projects through China's State-Owned Enterprises, (SOEs) continues with gradual zeal and it is almost six times greater than its foreign aid activities. Though the author believes that Australian diplomatic gains and counter-offers have reduced the Chinese options within the sub region. Still there is a possibility that as China builds the gradual infrastructure of airports, sea ports and roads in Southwest Pacific states, a deployment of the Peoples Liberation Army (PLA) may put Australian Defence Forces in enormous pressure that will constrain Canberra's options in crisis or wartime. In a nutshell, competition with China has led Australia to give more attention through resources and diplomacy within the Southwest Pacific that is a good omen for the region.

The concluding chapter of the book deliberates that Australia must be prepared to learn in living within China's shadow when it comes to greater influence and power of Beijing over the next years and decades in Southwest Pacific maritime region. The author appreciates how Australia being a medium power is trying to cope with Chinese interventions and coercion by investments and economic might, which he says can be learning case study for other states to protect themselves from Chinese pursuit of enhanced control. He also draws key lessons for Australian leadership, government and the society, that are as follows:

- i. Australia must devise China Policy at Home where it must demonstrate a vertical (federal to municipal) and a horizontal approach (govt departments) to build consensus as one group sees China partnership as an opportunity while another US-tilted conservatives portrays it as a threat.
- ii. The case study of Australia provides food for thought to other federal democracies as freedom of states (provinces) and territories to make their own trade and investment deals with international states such as Chinese SOEs has unearthed vulnerabilities in Constitutional Model in place in Australia where federal government has to devise way to take a protectionist stance and big national exchequer to stop Chinese expansionist designs.
- iii. Universities in Australia can play a futuristic role in helping the country to educate business elite, political leaders, diplomats and intelligence analysts on rebuilding expertise with regards to dealing challenges posed by Chinese party-state.
- iv. The success of China's pull in other countries rests mainly on its economic boom that gives the CCP substantial power and influence in democracies; just like how the western powers support and aid in the post 1945 era was perceived in newly independent states as greatest means of a socio-economic development renaissance.
- v. Australian experience also is an example that countries must have greater precautions like the 5G ban against Beijing telecoms by Canberra that led others to follow, Canada being the last among the Five Eye countries, which excluded in May 2022. ‘

The Book is a well-written commentary based on recent and authentic sources of literature that amply covers the various aspects, chronological developments as well as challenges in wake of transformation of China from little engagement in cold war era, to a major trade and investment partner of Australia (1990-2020). The book is written largely in a balanced tone where readers from both pro and anti-west angles, can approach the five decades of Australia-China relations.

The large part of the publication delves into how Australia yet again pulled back to the conservative and historical stance of being a secondar of US policy framework as part of return of geopolitical paradigm as against the economic cooperation paradigm that China focused and tried to exploit as a tool for socio economic uplift of Australia and the region at large. In this context, “Bipartisanship

on China Policy,” still holds in the Parliament of Australia as we see that former elected Prime Ministers Paul Keating and Kevin Rudd from Labor Party accused conservative coalition regime of mishandling China. At the same time, Prime Minister Turnbull, relying on small group of foreign affairs advisers, journalists and intelligence agencies reports, architected a protectionist pro US stance, where Australia builds its military capacity and reiterates its defence alliance with the US to provide it long term security to any threats of conflict in the region.

In a nutshell, the book Australia’s Security in China’s Shadow by Euan Graham published in 2022 provides invaluable insights on developments in Asia region that may seem like resurging of geopolitical fault lines between liberal democracies versus central-party governments; Yet the fact remains that in post covid pandemic times with harsh realities of human security challenges such as hunger, poverty and global climate change, economic cooperation paradigm offering enhanced trade, connectivity and investments, steered by China, couldn’t be overlooked. This needs to be studied transparently and objectively by academia and governance experts worldwide as it potentially holds to provide gateway to opportunities for the people of developing and developed world who have wasted precious time, resources and lives in unending proxy wars and conflicts on behalf of the major world powers.

PARLIAMENTARY ROUNDTABLE**Members of Parliament reiterate initiatives for Inclusive Democracy in election manifestos**

PIPS International Relations & Strategic Studies Desk

Islamabad, November 23, 2023: Pakistan Institute for Parliamentary Services (PIPS) organized a roundtable in collaboration with the Resilient Women Network (RWN) to deliberate on key interventions on Inclusive Democracy so that same is included in manifestos across all parliamentary parties. The roundtable was attended by more than 35 participants including 11 (eleven) cross party legislators (sitting Senators and former MNAs and MP), researchers, academics and members from civil society. The MPs who attended the roundtable discussion included: i. Hon. Senator Farhatullah Babar (PPPP); ii. Hon. Senator Afnan Ullah Khan (PML N), Former MNAs: iii. Hon. Ms Shahida Akhter Ali (JUI-P), iv. Hon. Ms. Asiya Nasir (JUI-P), v. Hon. Malik Uzair Khan (PML N), vi. Hon. Aisha Syed (JI), vii. Hon. Ms. Nisar Tanveer (PML N), viii. Hon. Ms. Surraiya Asghar (PML N) and ix. Ms. Sabeen Rizvi (PML N) and former MPA x. Hon. Ms. Samar Haroon Bilour (ANP) and former xi. Hon MNA Ms. Kisher Zara (MQM).

The primary objective of the roundtable was to have a cross party dialogue with stakeholders amongst minority communities to put forth their ideas for election manifestos regarding steps for inclusive democracy as common future based on Quaid e Azam Muhammad Ali Jinnah's founding principles of democracy, social justice, equity, fraternity, tolerance, egalitarianism and responsive welfare of people as given in the Constitution of Pakistan.

The event started with the recitation of verses of the Holy Quran by Mr. Fayaz Gul. Mr Muhammad Hanif Khan Nasar, DD (Research) PIPS explained the agenda of the roundtable discussion. He highlighted the importance of inclusivity in Pakistan and requested the panelists to prioritize this very important subject in their election manifestos. He introduced the panelists to the audience. Mr. Muhammad Rashid Mafzool Zaka, Director General (Research) PIPS gave the welcoming remarks on behalf of the Pakistan Institute for Parliamentary Services. He defined the concept of "inclusion," that refers to a well chalked out policy of ensuring that everyone living in our society has access to equal and equitable resources as well as opportunities, precisely to all members of marginalized communities including the women, minorities, people with special abilities, daily wagers and transgenders. Mr. Zaka thanked Hon Ms. Asiya Nasir, President RWN, for supporting the Institute to hold this imperative cross-party roundtable that saw a wholesome and interactive participation of MPs, faith leaders of Muslims, Christians, Hindus and Bahai community; academia, law experts, members of civil society, legal drafters and parliamentary experts working at PIPS.

Ms. Tehseen Khalid, Director (Research) PIPS moderated the two sessions of the Roundtable; She introduced three key questions that included What role political parties envisage to enhance inclusivity in society and what clear set of recommendations they foresee to be included in their respective manifestos for general elections 2023-24?

Hon. Senator Farhatullah Babar highlighted that exclusivity of Non-Muslims is worse than exclusivity of other marginalized communities. He suggested that there should be equal opportunity for all to compete in elections. He shared that 11.5 million women voters could not vote in 2018 elections due to not having Computerized National Identity Cards so the basic right of adult franchise was not practiced in an election where party having 17 million votes won. He said demonizing leaders, politicians and parties must be stopped and all parties should have even playing field in elections 2023-24.

He recommended that parties must voluntarily give some of the women-reserved 60 seats to their able women from minorities. Similarly, more parties must have women candidate competing on general seats. Lamenting the system of selecting women candidates for 5% quota on general seats and the reserved nominations, by sole discretion of the Party Chairman, he recommended that a committee of senior Members of Party must nominate women who have served at grass root level to represent party in elections and then the legislatures. He also added that minority's children shouldn't be forced to study religious subject of majority.

Hon. Senator Afnan Ullah Khan reiterated that Islam introduced an egalitarian society where women participation in politics, economy and all sectors are facilitated on day-to-day basis as integral part of the societal norms. He reiterated that following the same inspiration as envisaged in the Constitution, the PML N government introduced independent mobility of women by offering easy loans on installments in Punjab to enable women students, housewives and working women to buy "Scotties," in addition to introduction of an appropriate system of vocational and skills training. Micro-finance schemes were also commenced to provide easy loans to encourage women entrepreneurship. He emphasized that State and respective federal and provincial governments should prioritize implementation of women's right to inheritance, as it will go a long way towards empowerment of women financially. He concluded that youth is another imperative group making 65% of our society and PML N had created four lac national and international scholarships for them and 45,000 scholarships worth Rs. one billion were in fact awarded as per merit criteria and eligibility amongst deserving youth to ensure their higher education. Hon. Senator Afnan Ullah Khan expressed his strong resolve that PML N will yet again include all these schemes in manifesto to empower women and youth across the board.

Hon. Ms. Shahida Akhtar Ali, former Member of the National Assembly of Pakistan (MNA) from JUI, Pakistan, emphasized that concrete policy-directives must be chalked out in the form of a government policy or an Act of the Parliament so that institutions then fulfill their role to implement those in letter and spirit. She called upon that courts should give lawful decisions and the Parliament must urge upon government to make clear policies to empower minorities, women, youth and people with disabilities. She gave the example of the Constitutional amendment to allow 60 reserved seats that enabled more women participation in the legislatures. Consequently, the legislatures in Pakistan have around 22% women representation that is much better than many countries including national and provincial legislatures in India. The plight of minorities in India is worst as they are subject to worst persecution by state machinery to pressurize them to forced conversions. She shared that JUI Pakistan has gradually developed its separate women, lawyers, doctors and youth wings

that have made the party vibrant; She was of the opinion that manifesto is imperative document as it provides the ideological foundation for a party to attract its voters and fulfill their aspirations. She endorsed that education of minorities is State-responsibility and JUI Pakistan will include it in the manifesto.

Hon. Ms. Aisha Syed, former MNA from Jamaat e Islami (JI), was of the opinion that non-Muslims are our humanity brothers and State should respect and protect them as well as their rights. She expected that bureaucracy at all tiers of government should leave no stone unturned to implement the Constitutional guarantees to all individuals and marginalized people including women, children and our humanity brother of different faiths. She also reiterated that political parties have the prime responsibility to inculcate tolerance and mutual affection and national cohesion amongst the people especially the youth during the political movement and public gatherings before and after the elections. She said that political leaders should speak the language of affection and discourage hate speech. Similarly, she called upon electronic, print and social-media to evolve and mature itself to avoid mud-slinging against anyone especially demonization of the Parliament and its elected Members. Hon. former MNA, Ms. Aisha Syed was of the opinion that research think tanks must hold evidence-based research to monitor the performance of political parties viz a viz their implementation or otherwise of the pledged manifestos. She informed that “most laws made in post 2018 period were in the form of Presidential Ordinances that is an unhealthy trend that must be stopped.” She said that legislatures should take responsibility to perform and take proper time to draft, deliberate and legislate for all the people rather than rushing bills full of errors and having no consensus. Finally she expressed the desire that all parliamentary parties should also have clear mechanism of implementing their manifestos so that they can implement the same if they are elected as government or even on opposition benches.

Hon. Ms. Kishwer Zehra, former MNA from MQM eulogized the PIPS initiative of holding the cross-party consultative roundtable on such imperative theme on inclusive democracy. She said that Pakistan was envisioned by the Quaid e Azam Muhammad Ali Jinnah as a moderate, modern and progressive democracy and a welfare country providing equal and equitable opportunities for progress to all its people especially the poor and the marginalized communities. She gave example of the Prophet Muhammad (SAW) who ensured inclusion and practical participation of women in social, political and economic aspects of the country. Hon. MNA gave example of Hazrat Khadija (RA) who ran a successful trade and commerce across the Arabian Peninsula. She also discussed that the Prophet (SAW) gave huge importance to the womenfolk as He called upon the Jews to bring their families for an imperative dialogue between the two faiths.

Hon. Ms. Samar Haroon Bilour, former MPA Khyber Pakhtunkhwa from the Awami National Party (ANP) congratulated the Pakistan Institute for Parliamentary Services for holding such an imperative and very timely meeting of all parties and relevant stakeholders to sensitize them on key aspects of inclusive democracy so that same is included in their respective election manifestos. She said women must herself struggle and be brave to enhance her education. She stressed the need for the State machinery and the governments to ensure that the born right of inheritance is given to every woman. Similarly, she said that

freedom of movement of women must be facilitated to enable her reach out to the people and for doing any work and earning her living.

She endorsed that we have to break the stereotypes as presence of women in all tiers of decision making at local, provincial and the national level must be ensured. She informed that ANP has included the same in their manifesto to have three women representatives even at the union council. Hon. MPA Ms. Samar Haroon Bilour endorsed the view that Members of Parliament MPs should be held accountable by their parties for their performance so that the best performing people get the opportunity to be re-elected to serve the people. She seconded the proposal for minority and gender sensitive syllabus and an inclusive curriculum that all strata of society learn in a congenial environment where diversity is appreciated as a strength of the society. Those denying rights of inheritance to women must be punished without fail in the Court of Law.

Mufti Gulzar Ahmed, Principal Jamia Neemia, informed that Islam has given 12 statuses for women to have a claim over inheritance while men enjoy the right in 8 positions so if the Right of Inheritance Laws are implemented, it will have marked improvement towards actual empowerment of women.

Legal and human rights expert Ms. Huma Chughtai, legal and civil society expert, emphasized that majority has no right to persecute minority whatever the excuse, only then peace can be ensured. Pandit Rakesh Chan, Chairman Pakistan Sanatan Dharam, emphasized the need for implementation of Hindu Marriage Act to protect the community from forced conversions and other issues. He recommended that commissions for minorities must have all members from minority communities so that they can monitor the status of minorities and issues faced by them objectively.

The Meeting endorsed following key recommendations that may be incorporated by the parliamentary parties in their election manifestos before the February 2024 general elections for National and Provincial Assemblies as well as the Senate.

- i. **5% of GDP in Annual Budget for Education:** “Public representatives have fallen short in their duties to uplift Pakistan's education system. Politicians must play their role to ensure that their party manifestos reflect the urgency of diverting 5% of the GDP for Education.”
- ii. **CNIC for all Women:** The government must facilitate registration of all women through making the CNICs so that they are able to access all social security incentives and schemes.
- iii. **Implementation of Jobs-quota for Minorities and People with Special Abilities:** The newly elected governments be it any party or coalition must ensure that 5% quota prescribed for minorities and people with disabilities must be implemented and all vacancies must be filled in. Minorities should be encouraged to join in officer's and mid-staff cadres also rather than only being offered grade-4 employment.
- iv. **Enhanced Minority and Women representation:** Parties should encourage women to compete in the general seats. Parties may voluntarily choose able

- women in minorities to be given chance on reserved women seats at the National and Provincial legislatures.
- v. **Inclusive Curriculum and Civic Education:** Syllabus must be made inclusive for all citizenry and minority's children should not be forced to study majority's religion.
 - vi. **Women's Right to Inheritance:** Stringent Implementation of existing laws must be done to ensure the right of inheritance is ensured to every woman in the provinces. It is a must to empower women with financial resources of her own to help her stand in the society. Those denying rights of inheritance to women must be punished without fail in court of law.
 - vii. **Minority Commissions must have Members from minorities:** The Parliament and the governments must ensure that commissions formed for protection of minorities must have all members from minority communities so that inclusivity is ensured. Implementation of Hindu Marriage Act must be ensured by federal and provincial governments and the Parliament must play its role as the custodian of the Peoples' rights as enshrined in the Constitution.
 - viii. **Leadership and Political Training of Youth:** Political Parties have prime responsibility to inculcate tolerance and mutual affection and national cohesion amongst the people and especially the youth during the political movement and election public gatherings.
 - ix. **Merit in Recruitment of Teachers:** All parties endorsed that all recruitments of teachers at federal and provincial level must be done on merit so that competent teachers must play their role in developing a cohesive and inclusive school environment equally congenial for learning for all strata of students be it the majority or the minority community.
 - x. **Stop Hate-speech against Politicians:** Demonizing the political parties and leadership must stop to have a society that respects and appreciates the imperativeness of the "unity of diversity."
 - xi. **Even Playing Field for Free and Fair Elections:** All political parties should enjoy same level playing field to compete in general elections so that true representatives of people make it to the Parliament and then majority within elects the Executive.
 - xii. **Appropriate Legislation by the Parliament:** Legislatures should perform and take proper time to draft and legislate for all the people rather than rushing bills full of errors and having no consensus.
 - xiii. **Mechanism for Implementation:** Parties should also have clear mechanism of implementing their manifestos and year-wise review within party ranks to see progress.
 - xiv. **Accountability of Performance as Legislators:** MPs should be held accountable by their parties for their performance so that the best performing people get the opportunity to be elected again to serve the people.

ANALYSIS

Interpreting Constitution for Protecting Rights and Freedoms**Muhammad Fahd Amin**

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The Constitution is the cornerstone of a democratic polity and bedrock upon which rights and liberties of citizens are built. The Constitution gives certain basic guarantees to the citizens without which life would become unendurable in a community. The protection of individual rights often requires constitutional mechanisms that place checks upon the democratic governments to prevent misuse of governmental power. In most constitutional democracies, this power to scrutinize the actions of executive or legislative authorities is entrusted to the judicial branch. It is also common for the judiciary to interpret the provisions of the Constitution to advance and safeguard rights of the citizens. The tool through which judiciary exercises these powers is known as 'judicial review'. In Pakistan too, the Constitution provides an important role to judiciary vis-à-vis protection of fundamental rights of citizens. The constitutional design of Pakistan enables judiciary to scrutinize legislation and executive actions on the touchstone of fundamental rights.

It is noteworthy that the constitutional design in most democracies is based upon the concept of separation of powers. This concept entails that each branch of government must perform its role within its constitutional domain. In Pakistan (and some other countries), a new constitutional jurisprudence has become prevalent in which the judiciary partakes in matters that come within the specific domains of either the executive authorities or the legislative branch of government. This judicial overreach on the pretext of upholding fundamental rights tends to erode the separation of powers among the branches of state and puts judiciary in a supreme position. Not only is this practice against the constitutional dictates, it also leads to problems in democratic governance and creates political controversies. The challenge of judicial activism can only be addressed by implementing holistic constitutional reforms.

1. Approaches to Constitutional Interpretation

Traditionally, the constitutional courts interpret the provisions of the Constitution under their power of judicial review. The judiciary's dominant role vis-à-vis constitutional interpretation arose as a result of an historic American judgment namely *Marbury v Madison*¹ in which the Supreme Court of the United States struck down a legislation passed by the Congress by declaring it unconstitutional. The main premise upon which the power of judicial review rests is the assumption that the Constitution comprises a collection of rules which must be considered supreme.² As far as the question of approaches to constitutional interpretation is concerned, there are two predominant views:

i) Originalism

According to this approach, the interpretation of constitutional provisions must be in line with the intention of framers of the Constitution. This theory has been defined as, "judicial interpretation of the Constitution which aims to follow closely the original intentions of its

¹ 5 U.S. (Cranch) 137 (1803).

² Craig R. Ducat, *Constitutional Interpretation* (United States: Cengage Learning, 2009), 76-77.

framers.”³ Fundamentally, this approach to constitutional adjudication gives binding authority to the intention of the adopters of the Constitution.⁴

ii) Dynamic Interpretation or Living Constitutionalism

When judiciary interprets the constitutional provisions in the light of modern needs of society, such interpretation is termed as dynamic interpretation (also called living constitutionalism). According to this line of thinking, the Constitution is not a static document rather it is a living document that evolves with time. This theory has been defined as “Constitution is an adaptive document that responds to changing social and economic conditions through altered judicial interpretations of its central textual provisions.”⁵ Oftentimes, the judiciary seeks to interpret the Constitution based on theory of living constitutionalism. However, two important questions arises here; firstly whether judiciary can interpret the Constitution according to new social realities? Secondly, does it not defeat the democratic principles enshrined in the Constitution?

Constitutional Interpretation in Pakistan

By looking at the constitutional jurisprudence of Pakistan, it becomes clear that the superior judiciary prefers to treat the Constitution as a living document. Time and again the judiciary has expanded scope of the Constitution through dynamic interpretation of the Constitution. For example, in an important constitutional case the Supreme Court held that, “the fundamental rights in a living constitution are to be liberally interpreted so that they continue to embolden freedom, equality, tolerance and social justice.”⁶ However, it must be noted that sometimes the latitude taken by courts in constitutional interpretation tends to undermine the authority of the Parliament and the Executive branch of government. Furthermore, it may also sometimes lead the judicial branch to make decisions which are tantamount to rewriting of constitution.

A recent example in this regard is the opinion of the Supreme Court on the Presidential Reference vis-à-vis the scope of Article 63-A of the Constitution. The said Article provides defection as a ground for disqualification of a Member of Parliament.⁷ However, the Supreme Court provided a novel interpretation of this constitutional provision when it held that the said provision must be read with Article 17 of the Constitution (a provision which relates to rights of citizens to form political parties).⁸ In its decision, the Court maintained that the vote of members violating the provisions of Article 63A must be disregarded and such members could be disqualified from their seats as parliamentarians.⁹ Many commentators believe that this judicial opinion tantamount to rewriting of the Constitution.¹⁰ This is not the only example of the cases

³ *Originalism*, Oxford English Dictionary (2004).

⁴ Paul Brest, “The Misconceived Quest for the Original Understanding,” *Boston University Law Review* 60 (2) (1980): 204.

⁵ G. Edward White and John B Minor, *The Constitution and the New Deal* (Cambridge: Harvard University Press, 2000), 299.

⁶ *Jurist Foundation v. Federation of Pakistan* (PLD 2020 SC 1).

⁷ In case a member of a parliamentary party votes against directions of parliamentary part in a) elections of Prime Minister or Chief Minister, b) vote of confidence or no confidence or c) money bill or a Constitution Amendment Bill then such member would be declared to have defected from party. See Article 63A, *The Constitution of the Islamic Republic of Pakistan*.

⁸ Reference No 1 of 2022.

⁹ Ibid.

¹⁰ Yasir Latif Hamdani, “SC Verdict on Article 63-A—A Case of Rewriting the Constitution,” *The Friday Times* available at <https://www.thefridaytimes.com/2022/05/20/sc-verdict-on-article-63-a-is-a-case-of-constitutional-rewriting/> last accessed May 6, 2023.

in which Supreme Court has employed the constitutional interpretation as a pretext to redefine the Constitution. This trend violates the norms of a constitutional democracy, where the authority to amend the Constitution rests with the elected representatives of the people.

2. Public Interest Litigation

Judicial activism takes place when the courts do not limit themselves to the adjudication of legal disputes and venture to make social policies and partake in actions that come within the exclusive domain of the executive authorities.¹¹ Judicial activism can be gauged by the degree of power court exercised over citizens, legislature and executive branch of government. Usually, judicial activism emerges from the belief of judiciary that such activism would foster public interest. Public interest litigation begins when a matter involving legal rights of the community at large is brought before the judiciary.¹² The phenomenon of judicial activism is not new in Pakistan. The *suo moto* actions taken by the apex Court speaks volumes about this fact. In simple terms, *suo moto* action refers to a situation where parties do not bring a case to the court rather the court takes cognizance of the matter on its own accord. As mentioned before, the source of this judicial activism in Pakistan is public interest litigation.

The *Darshan Masih*¹³ case set the precedent for the *suo moto* jurisdiction of the Supreme Court of Pakistan. The Supreme Court took notice upon a telegram received from a bonded labourer and initiated public interest litigation. Before this case, there was no concept of *suo moto* jurisdiction of the Supreme Court of Pakistan. Many critics question new self-assumed judicial power of *suo moto*. These critics believe that there are no constitutional basis of *suo moto* jurisdiction and it is a self-created by judiciary.¹⁴ Some believe that this uncontrolled power poses a threat to rule of law.¹⁵ In one of its reports, the International Commission of Jurists (a reputed human rights organization) highlighted that the Supreme Court did not have a clear criteria for taking up a matter under its *suo moto* jurisdiction.¹⁶ The opacity in exercising *suo moto* powers under the original jurisdiction of the apex court gives rise to arbitrariness and ambiguity.

When jurisprudence on *suo moto* jurisdiction was conceived, the Supreme Court was chiefly concerned with protecting individual rights of citizens against executive authorities.¹⁷ However, gradually the Court began to use this jurisdiction to intervene in executive and legislative matters. During the time of former Chief Justice Iftikhar Muhammad Chaudhry, *suo moto* powers were routinely used to decide political cases. It has been argued that this shift in court's approach vis-à-vis grounds for *suo moto* jurisdiction can be attributed to a concerted strategy to establish

¹¹ Kenneth M. Holland, "Introduction," in *Judicial Activism in Comparative Perspective*, ed. Kenneth M. Holland (New York: Saint Martin's Press, 1991), 1.

¹² Pragya Sahu, "Public Interest Litigation and Judicial Activism," *Pen Acclaims* (July, 2018):1.

¹³ *Darshan Masih v. The State* (PLD 1990 SC 513).

¹⁴ Hassan Akhter, "Suo Moto Action, Discretionary Power of the Chief Justice of Pakistan," *SZABIST Law Journal* 3(4), (2022): 23.

¹⁵ Muhammad Waqar Rana, "The Power of Suo Moto," *The News International*, September 3, 2021. Available at thenews.com.pk/amp/887127-the-power-of-suo-moto, last accessed May 7, 2023.

¹⁶ International Commission of Jurists, *Authority without accountability: The search for justice in Pakistan*, (Bangkok: International Commission of Jurists, 2013), <https://icj2.wpenginepowered.com/wp-content/uploads/2013/12/ICJ-AUTHORITY-WITHOUT-ACCOUNTABILITY-PAKISTAN-FINAL-.pdf> last accessed May 7, 2023.

¹⁷ See for example, *Darshan Masih v. The State* (PLD 1990 SC 513) and *Shehla Zia v WAPDA* (PLD 1994 SC 693).

dominance of the court.¹⁸ As per the judicial record, the number of *suo moto* actions taken by the Supreme Court were 123.¹⁹ This is a staggering number because the original jurisdiction of the apex court should be sparingly used. Given the backlog of ordinary cases in the Supreme Court, questions arise as to the priorities of court in dispensation of justice when they look to resolve political controversies rather than adjudicating the disputes of litigants. Thus, it can be seen that *suo moto* powers led to judicialization of politics and a high level of judicial overreach. Here it is important to note that the *suo moto* power of judiciary is non-existent in many developed countries having a written constitution. In **Australia, Canada, the United States and Caribbean nations**, the constitutional courts lack *suo moto* powers and can only adjudicate a case that is brought before them by parties.²⁰ However, the South Asian countries including India, Bangladesh have developed jurisprudence on *suo moto* power, however, this power is sparingly used in these jurisdictions.

3. Towards a Specialized Constitutional Court

The idea of a specialized constitutional court is not novel. This type of Court is functioning in numerous jurisdictions of continental Europe. Such type of institution exists in a number of European nations including **Austria, Germany, Italy, France, Portugal, Spain and Belgium**.²¹ Furthermore, after the disintegration of Soviet Union, this institution spread to **Baltic countries, the Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia**.²² The system in these states gives exclusive power of constitutional review to a specialized court. The idea behind this development in Western Europe is that constitutional adjudication requires scrutiny of a legislative provision on the touchstone of the Constitution. These decisions may belong to different branches of law and the Court needs to see the constitutionality of a legislation purely from the lens of constitutional provisions and a determination of such matters by a specialized court stands at a higher pedestal than a determination made by a normal judicial body.²³ The European system of specialized constitutional courts is advantageous because; firstly, creation of such a body leads to specialization in constitutional matter and secondly, such forum operates transparently as it usually publish their decisions with detailed explanations. Presently, constitutional courts in Europe perform following three roles:

1. Scrutinize legislation on the touchstone of the constitutional provisions
2. Receive constitutional complaints from citizens
3. Act as arbiters of different organs of government²⁴

It is evident that unlike the Supreme Courts in many common law countries (including Pakistan), the special constitutional courts in Europe are specifically concerned with the implementation of

¹⁸ Asher A. Qazi, "The *Suo Moto*: Choose not to Legislate Chief Justice Chaudhry's Strategic Agenda," in *The Politics and Jurisprudence of Chaudhry Court 2005-2013*, ed. Moeen H. Cheema and Ijaz Shafi Gillani (Karachi: Oxford University Press, 2015), 283.

¹⁹ Ibid, 290.

²⁰ Khurram Hashmi, "The Power of *Suo Moto*," *The Express Tribune*, April 30, 2012. Available at <https://tribune.com.pk/story/372164/the-power-of-suo-motu> last accessed May 7, 2023.

²¹ Alec Stone Sweet, "Why Europe Rejected American Judicial Review: And Why It May Not Matter," *Michigan Law Review* 8(1), (2003):2745.

²² Ibid.

²³ Lech Garlicki, "Constitutional Courts versus Supreme Courts," *International Journal of Constitutional Law* 5(1), (2007):48.

²⁴ R. Navarrete and Ortiz Castillo, "Constitutional Courts and Citizens Perception of Judicial Systems in Europe," *Comparative European Politics* 18(2), (2020):1473.

the Constitution. The system seems to work well as the European Constitutional Courts are less inclined to assert their dominance and clash with legislatures. Through a harmonious interpretation of statutes, these Courts prevent confrontations with law-making bodies and seek to avoid problems caused by invalidation of legislative instruments.²⁵ This seems to be an effective adjudicatory system which gives due deference to the legislative institution.

4. Way Forward

The adherence to the constitutional principles is a *sin qua non* of democratic progress in Pakistan. Undoubtedly, an independent and fair judiciary is important in protection of fundamental rights of citizens. However, judicial decisions which promote judicial activism often tend to undermine the role of legislature and the executive. The trend of judicial overreach in the country leaves much to be desired as far as the constitutional future of Pakistan is concerned. The Constitution gives Parliament powers to resolve constitutional conflicts through constitutional legislation. Furthermore, the honourable Parliamentarians also have the unique capacity to suggest reforms for a balance of power among the branches of government. Following measures can have an impact on the constitutional trajectory of the country:

a. Establishment of a Constitutional Court

A measure to avoid future constitutional impasses, the Parliament may work towards establishment of a specialized constitutional court based on the European model. For the purpose of building consensus on this initiative, a grand dialogue can be held among all three branches of government. The Parliament may sort out a consensus-based formula for appointment of judges in this specialized constitutional court. The panel of parliamentarians may have equal representation from both treasury and opposition benches.

b. Abolition of *Suo Moto* Jurisdiction

There is no express constitutional provision which gives the Supreme Court *suo moto* powers. Pakistan's constitutional jurisprudence shows that this power has often been used for the aggrandizement of judiciary. Since there are no fixed principles for the exercise of this power, the judiciary may tend to make arbitrary decisions using it. The Parliament may abolish this jurisdiction altogether by specially mentioning it in the constitutional provision dealing with the original jurisdiction of the Supreme Court.

c. Formulation of Rules of Constitutional Interpretation

The absence of fixed principles vis-à-vis constitutional interpretation has often resulted in arbitrary constitutional jurisprudence. Since judiciary has the final authority to determine the meaning of the constitutional provisions, it is likely that the subjective preferences of judges may play a role in this exercise. This goes against the principle of democratic decision-making. By means of legislation, the Parliament may determine fixed principles of interpretation so that the judiciary can only make constitutional interpretation by looking into legislative intent of the lawmakers.

d. Transparent and Participatory Legislation

The rights of citizens hold pivotal importance in any democratic society. The right to make laws is vested in the elected representatives of the people. However, one way to avoid judicial interference in the lawmaking process is to involve public in the lawmaking process. Public

²⁵ Nausica Palazzo, "Judicial Activism in Europe: Not a Neat and Clean Fit," *ICL-Vienna Journal on International Constitutional Law* 14(4), (2021):409.

hearings on Bills is an effective method on soliciting public response on a proposed piece of legislation. A participatory legislation is expected to enjoy more public support and legitimacy. Parliament can evolve a framework in which Bills can be subjected to public scrutiny before passage.

e. Determination of Contours of Public Interest Litigation

A major problem in the constitutional jurisprudence of the country is that the scope of public interest litigation has never been determined. That is why the phenomenon of public interest litigation has gradually become the basis of judicial activism. The rights of citizens are paramount, therefore, it is necessary to ensure that they have adequate remedies when an executive authority or legislature attempts to infringe their rights. It is therefore necessary to specify the cases where the Court can invoke its original jurisdiction to safeguard citizens' rights. However, rules regarding public interest litigation may be designed in such manner that it could not be used as a pretext to exercise judicial overreach.

OPINION

Balochistan Right to Information Act 2021: An Overview

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Abstract

In the recognition of transparency and accountability within the governance context of the province, the Balochistan Right to Information Act of 2021 can be termed as a pivotal instrument. This act empowers citizens with the means to hold their government answerable and actively participate in the democratic process. While the Government of Balochistan has introduced several rights and initiatives over the past decade, the Balochistan Right to Information Act stands as the foundation of these rights, characterizing the government's commitment to its citizens. This article researches into an examination and analysis of the Balochistan Right to Information Act of 2021, its historical background, issues, and proposes measures to enhance its effectiveness.

Keywords: Right to information-Balochistan Right to Information Act 2021-Freedom of information-The Official Secret Act 1923- Public authorities-

1. Introduction:

Over the past Balochistan's administrative landscape has seen significant transformation, driven by factors such as globalization. These changes have seen an increased role in areas once exclusively governed by the state, while the state continues to provide essential services like health and education. Principles of efficiency, economy, and effectiveness from the private sector have influenced government operations, there persists a perception among the general public that government affairs are covered in secrecy, with insufficient sharing of critical information. This results in an administration that may not be as responsive and transparent as desired. In this context, the Balochistan Right to Information Act of 2021 assumes paramount significance, as it serves as a vital legal framework to ensure transparency, accountability, and access to information in Balochistan.

BRTI Act 2021 fundamentally personifies the concept of the citizen's entitlement to access information from government entities and entities significantly funded, directly or indirectly, by the government, commonly known as public authorities. This right, within specified timeframes, forms an essential cornerstone of transparency and accountability in the province.

2. Historical Background of Right to Information Act in Balochistan:

In 1946, the United Nations General Assembly made it very clear that having access to information is a basic human right and is like the foundation for all the other freedoms that the UN stands for¹. The United Nations Declaration of Human Rights in 1948, in Article 19, makes it clear that every person has the right to have their own opinions and share information and ideas freely through any means, without anyone getting in the way, no

¹ Shalu Nigam, *About Your Right to Information (Simplified)*, 2008.

matter where they are². In the international background Sweden was the first country to let its people access information freely in 1766, similarly Finland's Constitution 1919 though provides the right of access to public information, the Act on openness of public functionaries was passed in 1951. Several other states passed laws in relation to openness and access to public information, including the Australia (1982), South Africa (2000), United States (1966) and the United Kingdom (2000), have subsequently enacted similar laws. These laws, while sharing a common goal of promoting transparency, vary in their provisions due to the distinctive social, cultural, economic, and political contexts of each country³.

The Right to Information (RTI) is an essential human right that aligns with the international definition of freedom of speech. Pakistan made a commitment to follow RTI rule as part of a global agreement known as the International Covenant on Civil and Political Rights, which is like a promise between countries to ensure their citizens have certain rights and freedoms. At first, in the 1973 Constitution of Pakistan acknowledged freedom of speech as a constitutional right in Article 19, this means it was officially written in the country's social contract that people have the right to express their thoughts and opinions without fear, but there was an important change in 2010 with the introduction of the 18th Amendment.

The 18th Amendment introduced Article 19A, to the constitution, that gives the right to the people of Pakistan not only to have the freedom to speak their minds but also the right to access information in all important public matters. Article 19A of the Constitution states that every citizen has the right to access public information subject to fair rules and restrictions imposed by law.⁴

Before the enactment of BRTI Act in Balochistan there was an act named as The Balochistan Freedom of Information Act, 2005 which was deemed ineffective after the introduction of Article 19A in the Constitution. The BRTI Act became a law on February 1, 2021, after it was approved by the provincial assembly. Later, on the governor gave assent on February 15, 2021.

3. Right to Information and its importance:

In the Province of Balochistan, the necessity for the Right to Information arose largely due to the adverse influence of the Official Secrets Act (OSA) of 1923⁵, a colonial-era legislation enacted by the British. The OSA mainly deals with security concerns and creates a structure to deal with activities like spying, acts of betrayal, and other dangers to the country's safety and truthfulness. If we look back at history, during the time of colonial rule, there was a deep-rooted mistrust of the general public, and public officials held significant power in interactions with citizens.

This environment fostered a culture of keeping things secret, where privacy was the usual practice, and sharing information was a rare occurrence. Even the United Kingdom, which

² Pushpraj Singh, "Fifteen Years of Right to Information Act in India: A Long Way to Go," *The Age of Human Rights Journal* 17 (2021): 346-362.

³ David Banisar "National Right to Information Laws, Regulations and Initiatives 2023," Social Science Research Network, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1857498, Accessed on: 20th Nov., 2023.

⁴ Syed Raza Ali Shah, "Right to Information landscape in Pakistan," *The Reporters*, September 27, 2021.

⁵ "The Official Secrets Act, 1923," Pakistan Code, Pls. See at: <https://pakistancode.gov.pk/pdf/files/administrator46c9a3c62acc16428e73999e7d30ba2a.pdf> , browsed 18th Nov., 2023.

introduced the OSA in Sub-Continent during the colonial era, recognized the need for change. Back in 1971, the UK formed the Franks Committee to analyze some aspects of their Official Secrets Act. The committee made a deep observation, remarking that a government that relies too heavily on secrecy or has hidden agendas hazards losing the trust of its citizens and opening itself up to misguided and harmful criticism⁶.

Moreover, in the year 2003 the government of Balochistan introduced The Balochistan Consumer Protection Act, 2003⁷, a significant piece of legislation that granted Consumers the right to know important details about the products they buy, such as their quality, quantity, effectiveness, purity, standards, and prices. This development led to extensive questioning of why, if the government could enact the Consumer Protection Act, it could not enact the Right to Information Act.

This brand-new momentum reflected a desire to empower the less privileged sections of society to ask for information about the policies of the government and their actions. The Act encourages participatory form of democracy and strengthens the way government is run as James Madison wisely said, if a population intends to govern itself, they must equip themselves with the authority that comes from knowledge⁸.

Numerous non-governmental organizations (NGOs) advocated for the government to enact an RTI law such as CPDI (Centre for Peace and Development Initiatives)⁹. This movement finally led to the development of the National Campaign for People's RTI. Finally, in 2021, the Balochistan government enacted the Balochistan Right to Information Act, marking a weighty step towards transparency and accountability.

4. Salient Features of the Act:¹⁰

- i. The Act covers the right for all citizens to access information. It enables them to ask for information from any public authority, irrespective of extent of the governments' ownership, control, financial ties or financial influence.
- ii. Information, as defined in the Act, incorporates a wide range of materials that can be accessed or sought from a government department in various formats including contracts, reports, press releases, memos, circulars, orders, documents, logbooks, papers, samples, models, and electronic data materials.
- iii. Citizens can easily request information by submitting a written application, either on simple paper or electronically, in the official language or Urdu. They can also seek assistance from public information officers.

⁶ M Laxminknath, *Public Administration*, (New Delhi: Tata McGraw Hill Education Private Limited, 2011).

⁷ "The Balochistan Consumer Protection Act, 2003," see at:

https://pabalochistan.gov.pk/pab/pab/tables/alldocuments/actdocx/2021-04-01_08:32:09_c24d8.pdf, browsed 7th Oct., 2023.

⁸ Yasushi Watanabe and David L McConnell, *"Soft Power Superpowers: Cultural and National Assets of Japan and the United States"*, New York: ME Sharpe, (2008), p. 249.

⁹ Amer Ejaz, "Report on Advocacy Campaign for Right to Information Legislation in Balochistan", Centre for Peace and Development Initiatives (CPDI), January 10, 2021, <https://www.cpdipakistan.org/archives/portfolio/advocacy-campaign-for-right-to-information-legislation-in-balochistan>.

Browsed 8th Oct., 2023.

¹⁰ Heather Brooke, *Your Right to Know: How to Use the Freedom of Information Act and Other Access Laws*, New York: Pluto Press, (2005), pp. 236-239.

- iv. Public authorities are mandated to provide requested information within 15 days, with even stricter timelines (48 hours) for information related to an individual's life or liberty.
- v. The Act recognizes the need to protect certain information, especially about national security and the country's integrity, from mandatory disclosure.
- vi. Citizens have access to a redressal mechanism, including the option to file appeals and grievances if they do not receive the information within the required time frame.
- vii. The Act imposes penalties, such as fines of 25,000 rupees or two days salary, on officers who fail to comply with its provisions.

5. Implementation of BRTI Act - Proposals and Challenges:

The BRTI Act of 2021 has been in place for two years now, and it's a good time to assess it, there are still some noteworthy problems that need to be addressed. Here are the key concerns and proposals regarding the RTI Act.

- a. The Balochistan Right to Information Act of 2021 is presently in its initial stage of implementation, with the Government of Balochistan actively working to ensure its effectiveness. As awareness of the Balochistan Right to Information (BRTI) Act spreads among the public, it is anticipated that a significant outpouring in information requests and applications will be lodged against various government departments. While this reflects a positive engagement of citizens with the act, it also raises the prospect of a substantial increase in litigation within the courts.
To address this potential challenge, there is a persistent need to proactively resolve the issue by engaging additional information officers to handle the flood of complaints and applications. Expanding the pool of information officers will not only help streamline the process but also ensure that citizens' right to access information is met efficiently and without unwarranted delays. It is imperative for the government to take active steps to manage this increased demand and facilitate the successful implementation of the BRTI Act while upholding the values of transparency and accountability in Balochistan¹¹.
- b. However, the Balochistan Information Commission has not yet been established in the province and it remains needful on government funding for its creation and operational expenses. Addressing this challenge could take in granting constitutional recognition to the Information Commission, parallel to the status enjoyed by institutions like the Election Commission and the Auditor General. This step would concede the vital societal role played by Information Commissions in enhancing accountability and transparency within the governance framework¹².

¹¹ Zahid Abdullah, "Country Briefing Paper Evolution of the Enactment and Implementation Status of Right to Information Legislation in Pakistan," Center for Peace and Development Initiatives (CPDI), Islamabad, (2023) Available on <https://www.cpd-pakistan.org/publications>

¹² Syed Raza Ali, "Right to information," *The Dawn News*, November 27, 2021, Available on <https://www.dawn.com/news/print/1660521>

- c. There is need for greater public awareness about the BRTI Act, and this varies from place to place because of prevalent low literacy rates and limited advertising. To fix this, the concerned department of the government as well as civil society at large can introduce a major legislative-learning initiative in the entire province especially in the remote and rural areas. This could involve using newspapers, handing out pamphlets, and even radio broadcasts. NGOs can also help by going door-to-door to educate people about it¹³. Further at Union council, tehsil, district, division and likewise at provincial levels there should be a mechanism either via any state institute or the civil society to engage the masses to let them know about their fundamental right to know.
- d. Recently, there have been incidents where RTI activists and whistle blowers who seek information to expose corruption and misuse of power by government officials and influential elites, have faced physical harm. It is indeed a matter of grave concern that needs to be curbed. The government must ensure security to whistle blowers and citizens who seek information that can expose a wrong-doing, which is in fact the spirit behind RTI. Greater transparency can only be achieved through implementation of BRTI law along with protection of whistle blower be it a citizen, a media-men, a researcher from civil society or an investigative journalist.
The police and other law enforcement agencies should closely cooperate with the Information Commission. Additionally, those who harm RTI activists should face severe consequences to deter others. Creating a whistleblower law specific to RTI activists can also be an invaluable step in safeguarding their efforts to uncover the truth¹⁴.
- e. A significant issue for public authorities is managing their information effectively. Not all levels of government have fully incorporated information technology, and this means that a lot of data is still handled manually. This can lead to challenges in managing data. To address this, there is a pressing need to swiftly implement and expand e-governance across the country. This would involve computerizing records, workflows, and other processes, ultimately improving how offices manage their records¹⁵.
- f. Active and functional website of the Information Commission is necessary. Owing to technology developments, it has become easy to access the information, therefore, the government institutes should update their websites making the information easily accessible and quicker to the citizens.

¹³ Amer Ejaz, Amer Ejaz, "Report on Advocacy Campaign for Right to Information Legislation in Balochistan," 2020.

¹⁴ Sarmad Ali, "Protecting the Right to Information," *Daily Times*, April 18, 2008

¹⁵ Burhan Rasool, Ammar A. Malik, "The 8 Challenges in Pakistan's Digital Transformation Journey," Lakshmi Mittal and Family South Asia Institute, Harvard University, (2020) <https://mittalsouthasiainstitute.harvard.edu/2020/09/8-challenges-pakistans-digital-transformation-journey/> browsed 7th Oct., 2023.

6. Conclusion:

Certainly, this Act has already achieved significant milestones, but there are still important challenges that require our attention and resolution. Let's take a moment to review the journey so far and the path ahead. This law is like a flashlight that helps uncover the dark corners of government operations. It empowers citizens to seek the truth, ask questions, and demand answers.

However, our journey is far from over, there are challenges that need our collective attention. We must continue to work towards spreading awareness about the Act, especially in remote and rural areas. This will ensure that every citizen, regardless of their location or background, can exercise their right to access information.

Moreover, the safety of those who seek information, often at great personal risk, is a matter of utmost importance. Ensuring their protection and well-being is essential for the Act to achieve its intended goals.

As we move forward, let's remember that the BRTI Act is not just a legal document but a symbol of our assurance to transparency, democracy, and good governance. It's a tool that can transform the way our government operates, making it more responsive and accountable to the people it serves.

In the coming years, let's continue to build on the progress we've made, address the challenges that lie ahead, and try for a future where transparency and sincerity are the norm, and the right to access information is truly accessible to all.



Group Photo of the participants of 2nd Train the Trainer Workshop organized by Pakistan Institute for Parliamentary Services and Giz-Mustehkam Parlmaan Project on November 27 - December 01, 2023



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