



Commonwealth Human Rights Initiative

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Press Note on the Amendments to Khyber Pakhtunkhwa's RTI Act

CHRI expresses its deep concern over the throttling of the *Right to Information Act, 2013* (KP-RTI Act) in Khyber Pakhtunkhwa, Pakistan. What was initiated as an exercise to iron out some of the problematic areas in the statute as identified by the Khyber Pakhtunkhwa Information Commission, has ended up amending the RTI Act in a regressive manner thereby curtailing the fundamental right of citizens of Pakistan in more ways than one. The amendments recently assented to by the Governor:

- 1) curtail the scope of fundamental right to information guaranteed by Article 19A of the Constitution. They not only make the KP Provincial Assembly and its members unanswerable and therefore unaccountable to the citizens between elections but also insulate the Secretariat from any obligation of transparency towards the people; and
- 2) provide a redress mechanism for citizens aggrieved by the non-disclosure or poor quality/quantity of information provided by a public body, that is in complete violation of the express provisions of the Constitution.

The problems posed by these amendments may be explained in detail as follows:

- a) The Preamble of the KP- RTI Act clearly states that its purpose is to give effect to the fundamental right of citizens to seek and receive information from public bodies in KP as guaranteed by Article 19A of the Constitution. Article 19A permits the regulation of this right by law which may also impose reasonable restrictions. Exempting the KP Principal Assembly, its members and the Secretariat from the scope and ambit of the KP RTI Act amount to an unreasonable restriction imposed on the citizens' fundamental right to know. Article 9(2) of the Constitution expressly prohibits the State – which includes the KP Provincial Assembly - from making any law that takes away or abridges the guaranteed fundamental rights. Unless withdrawn by the Provincial Assembly, this amendment deserves to be struck down by the constitutional courts for violating the fundamental right which is so central to participatory democracy and the rule of law in Pakistan.
- b) Further, the amendments make offences identified under Section 28(1) of the Act triable only in the court of the District and Sessions Judge. This appears to take away the constitutional remedies

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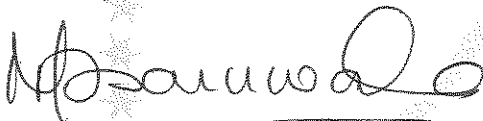
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guaranteed in Pakistan for the enforcement of fundamental rights. CHRI believes that while all kinds of criminal offences may be tried in the lower courts, only the constitutional courts have the jurisdiction to redress grievances arising from contraventions of people's fundamental rights even if they take the form of criminal offences. Constitutional courts have inherent powers to direct the law enforcement authorities to investigate such offences under their supervision and the appropriate courts to try them. According to Article 199(1)(c) of the Constitution, the High Courts in Pakistan have the power to issue appropriate orders to any authority on the application of any aggrieved person for the enforcement of the fundamental rights guaranteed by the Constitution, including the right to information. This mechanism ensures that the grievances of citizens whose fundamental rights are violated will not be handled in a cavalier or lackadaisical manner. Unless withdrawn by the Provincial Assembly, this amendment may be struck down by the constitutional courts of Pakistan for violating the express provisions of the Constitution - the basic law of the land which no statute can be permitted to supersede.

It is unfortunate that the Hon'ble Governor of KP has assented to these amendments without adequately reflecting on the grave implications of these changes.

CHRI joins civil society organisations in Pakistan and South Asia to demand the immediate withdrawal of these regressive amendments to the KP RTI Act.

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