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Governance and the Right to Information Laws in Pakistan: A Gender Perspective

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Abstract: RTI laws have become a symbol of a country's commitment to good governance. Good governance means that there are fair laws, rules and regulations which are enforced impartially. This paper examines the legal frameworks of Right to Information Laws in Pakistan, and whether these have achieved the intended purpose of transparency, open government, and good governance. As the best RTI law in Pakistan was that of KPK province, therefore this paper will analyze its implementation since it was promulgated and especially analyze the gender disparity in the use and implementation of the KPK law.

Keywords: Governance, Right to information, Pakistan, Good Governance, Freedom of information

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1. Introduction

The concept of "governance" is as old as when human civilization developed. Simply "governance" means how decisions are made and whether decisions are implemented or not. Governance is not just in state level governments, but there is governance in local governments at the community level, in corporations, and at the international level in international institutions. The United Nations has spelled out eight major characteristics of good governance. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society (UNESCAP, 2008).

Good governance means that there are fair laws, rules and regulations which are enforced impartially. It also requires that human rights are upheld and protected fully. Internationally a strong link between effective RTI laws and good governance has been observed. RTI laws have become a symbol of a country's commitment to good governance. Before 1995 there were only 19 countries with RTI laws. Presently there are 115 countries that have enacted RTI laws. The purpose of these laws is to safeguard the right of citizens to have access to information. In case the government refuses to provide information, then citizens can send in their complaints to dedicated institutions set up for implementation of the RTI law which have the juridical power to hear cases against bureaucratic denial of information.



Figure 1: Good Governance

This paper exam the legal frameworks of Right to Information Laws in Pakistan, and whether these have achieved the intended purpose of transparency, open government, and good governance. As the best RTI law in Pakistan was that of KPK province, therefore this paper will analyze its implementation since it was promulgated and especially analyze the gender disparity in the use and implementation of the KPK law.

2. Literature Review

RTI is widely regarded as a fundamental human right, and under international law it falls within the scope of freedom of speech. Pakistan is a signatory to the International Covenant for Civil and Political Rights (which covers the freedom of speech), and as such is obligated to provide this right to its citizens. The 1973 Constitution of Pakistan did not recognize access to information as a constitutional right though Article 19 did provide for freedom of speech. Through the 18th Amendment in 2010, Article 19A was included to grant freedom of information and right to information as a constitutional right in Pakistan. The Article 19A reads as:

“Right to Information: Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law”.

Hence through the Article 19A, right to information, is a constitutional right of all Pakistanis. To actualize this right, various provincial and federal governments have promulgated laws so that citizens have access to public information and can exercise their right to get the information that they need.

In Pakistan the regime of laws related to right to information or freedom of information is quite recent. The earliest initiative dates back to 1990 when Professor Khurshid Ahmed, the Naib Amir of Jamaat-i-Islami, introduced a Private Members Bill in the Senate (upper house of

parliament). However the Senate did not take it seriously nor did the then Government pay any attention to it. Later in the 1990s, the Government of former Prime Minister Benazir Bhutto established an Anti-Corruption Committee, to look into the causes of corruption and make recommendations. One of the key recommendations of the Committee was enactment of a freedom of information act. However, this recommendation was not implemented due to strong resistance from vested interests.

In 1996, the law minister in the interim cabinet of President Farooq Laghari also introduced a law called Access to Information Ordinance 1996, but President Laghari never signed or promulgated the Ordinance. It was on 29th January 1997, under the care-taker Prime Minister Malik Meraj Khalid (late) that the Freedom of Information Ordinance 1997 was promulgated. This success was not to last long as the succeeding government of former Prime Minister Nawaz Sharif did not get the Ordinance enacted by the Parliament, hence the Ordinance lapsed. It is worthy to note that in those times such laws which promoted human rights or held the Government accountable, were shelved rather than promoted.

The Asian Development Bank, in 2001, approved a comprehensive action plan for Pakistan that covered the judicial and administrative reforms in the country. It was under this plan that Pakistan was obliged to improve the state of access to justice for the people and which included bringing in laws on freedom of information. Hence the military Government of General Pervez Musharraf promulgated the Federal Freedom of Information Ordinance in 2002. Before this Ordinance, the issue of public documents was dealt with under the provisions of the Qanoon-e-Shahadat Order 1984. Article 85 and 86 define public and private documents, but the purpose of these articles was to facilitate production of documents as evidence in courts, and not for ensuring transparency in the Government, or for granting right of information to the public.

Pakistan became the first country in South Asia to have an RTI, when the Federal FOI Ordinance 2002 was promulgated on 26th October 2002. Later on 18th June 2004, the Cabinet Division framed the Freedom of Information Rules to operationalize the law (Centre for Peace and Development Initiatives, 2015). The Federal FOI Ordinance was in force for 12 years before it was repealed and the new law on Right to Information Act 2013 was promulgated. The 2002 FOI Ordinance was a weak law by any standards followed globally on right to information. Besides having many lacunas, it was also not fully implemented. In retrospect, it seems that it only came into being because of the requirement of the ABD loan, and not for promoting the basic human right of access to information. What is more disconcerting is that it formed the basis and laid the ground for becoming the model for the provincial laws that followed. Hence the laws that were promulgated in Baluchistan (still in force) and Sindh (replaced with a new RTI law now) in the subsequent years were a ditto copy of this law, and suffered from the same gaps which also constrained their implementation.

2.1 Linkage between Access to Information and Corruption:

Countries with access to information laws are also believed to be less corrupt because these have the added tool with which they can demand information and thus make the Government more transparent. A cursory look at the 2016 report of Transparency International's annual Corruption Perceptions Index, show that the ten countries scoring best in Transparency International's annual Corruption Perceptions Index, also have effective legislation enabling the public to see government files. The same list also indicate bottom ten countries perceived to be the worst in terms of corruption, not even one country has a functioning access to information regime (Cabinet Division Government of Pakistan, 2015). These same countries are also faced with

internal turmoil, insecurity and domestic undemocratic political regimes. While Pakistan also faced insecurity, its ranking according to the Transparency International Perception ranking improved from 139 most corrupt country in 2012 (Transparency International, 2012) to 127 most corrupt country in 2013 (Transparency International, 2013), and to 116 most corrupt in 2016 (Transparency International, 2016). In another global report: World Justice Project Rule of Law Index, the Global ranking of Pakistan in its 2014 report was 96 (The World Justice Project, 2014), and in its 2016 report, the global ranking of Pakistan had improved to 79 (World Justice Project, 2016). One of the indicators that the report focuses on is “absence of corruption”. According to the 2013 Rule of Law Index, in “absence of corruption” category Pakistan ranked 90th out of 97 countries (The News, 2014). And in 2016 Rule of Law index, it ranked 97th out of 113 countries (World Justice Project, 2016). Overall even according to this report, the situation in Pakistan has improved from the previous years.

Table 1: Country RTI Rating Result, 2017 (Centre for Law and Democracy, 2017)

Top Ten Country Rating		Bottom Ten Country Rating	
Rating	Country	Rating	Country
1	Mexico	102	Belgium
2	Serbia	103	Uzbekistan
3	Sri Lanka	104	Taiwan
4	Slovenia	105	Germany
5	India	106	Jordan
6	Albania	107	Iran
7	Croatia	108	Tajikistan
8	Liberia	109	Philippines
9	El Salvador	110	Liechtenstein
10	Sierra Leone	111	Austria
57	USA		
71	Afghanistan		
91	Pakistan		

Source: Global Right to Information Rating (2017).

Table 2: Corruption Perception Index 2016

Top Ten Country Ranking		Bottom Ten Country Ranking	
1	Denmark	1	Venezuela
2	New Zealand	2	Guinea-Bissau
3	Finland	3	Afghanistan
4	Sweden	4	Libya
5	Switzerland	5	Sudan
6	Norway	6	Yemen
7	Singapore	7	Syria
8	Netherlands	8	Korea (North)
9	Canada	9	South Sudan
10	Germany	10	Somalia

Source: Corruption Perception Index (2016).

Table 3: Comparison of RTI Rating with Transparency International’s Corruption Perception Index Ratings, 2016

Country: Top 10	RTI Rating	CPI Ranking	Country: Bottom 10	RTI Rating	CPI Ranking
Mexico	1	123	Belgium	102	15
Serbia	2	72	Uzbekistan	103	156
Sri Lanka	3	95	Taiwan	104	31
Slovenia	4	31	Germany	105	10
India	5	79	Jordan	106	57
Albania	6	83	Iran	107	131
Croatia	7	55	Tajikistan	108	151
Liberia	8	90	Philippines	109	101
El Salvador	9	95	Liechtenstein	110	
Sierra Leone	10	123	Austria	111	17
USA	89	18			
Afghanistan	71	169			
Pakistan	66	116			

From the above we can see that those countries which enjoy higher RTI ratings mostly have more press freedom, access to information about public spending, and the judiciary is independent. While some of those countries which have a lower rank for RTI, people are faced with bribery and extortion, the basic services are undermined due to misappropriation of funds, and the public institutions such as police and judiciary are not trust-worthy. But when we compare the RTI rating with that of CPI ranking, it is difficult to see the co-relation. For example while Austria has very poor RTI rating, it enjoys a good CPI standing. Similarly Afghanistan is enjoying a good RTI ranking than Pakistan but its corruption perception index is poorer than Pakistan. Therefore we can safely say that while Right to Information Laws do play a role in discouraging corruption, but mostly these are tools which affect curbing corruption in the long term. Therefore right to information laws contribute to good governance in the long run.

2.2 Principles of Right to Information Law

Globally, the rights to information laws are analyzed through principles which determine if the law is a good one or not. The principles of freedom of information are derived from international and regional law standards, good practices of states and general principles of law (Mendel, 1999). Some of the basic principles are as follows.

1. Freedom of Information legislation should be guided by the principle of maximum disclosure.
2. Public authorities are obligated to publish key information of public interest about their organization.
3. Exceptions or exemptions should be clearly and narrowly drawn.
4. Requests for information should be processed fairly and rapidly.

Applying these principles we will see whether our federal and provincial laws come up to the international standards that exist for providing citizens with their right to access to government held information. We will start with the Baluchistan Freedom of Information Act.

2.3 The Baluchistan Freedom of Information Act, 2005

As a consequence of the Federal Freedom of Information Ordinance back in 2002, the provinces set out to bring their own Freedom of Information laws. Baluchistan was the first province to get its Act passed in 2005. The Baluchistan Freedom of Information Act is almost a replica of the Federal Information Ordinance, 2002 with minor language changes to reflect that it is a provincial law. If we are to apply the international principles for RTI, the Baluchistan Freedom of Information Act 2005 is a very poor law. The scope of this law is limited as it provides for a limited number of public bodies. It does not cover the private sector. The obligation to publish or proactive disclosure is only limited to acts and subordinate legislation such as rules and regulations; notifications; bylaws; manuals; orders having the force of law. The law does not oblige the Baluchistan government to proactively publish and make available for public use documents such as yearly development plans and budget; recruitment, transfers and postings or other government documents such as award of contracts etc.

Though the procedure for public to access government information is laid down in the law but it is not user-friendly. In Section 13, it is called ‘Procedure for disposal of applicants’. According to the law, the designated official is obliged to provide information within 21 days if s/he believes that it should be provided. Under this section the designated official is empowered to exercising his/her judgment in believing that information should be provided or not. Besides the list of exempt information, the designated official can refuse information on four other counts: (1) The application is not on the prescribed form, (2) The necessary particulars have not been furnished with the application, (3) The applicant is not entitled to receive such information, and (4) The information which is being sought is not as per public record. This provides so much leverage to the designated official either to cause delays or to refuse sharing of information.

There is also a long list of exemptions: meaning all that information which is exempt from sharing. The FOI law in Baluchistan has declared under section 8, ‘Exclusion of certain record’, which information cannot be shared. That is:

- a. Noting on files.
- b. Minutes of meetings.
- c. Any intermediary opinion or recommendation.
- d. Record of the banking companies and financial institutions relating to the accounts of their customers.
- e. Record relating to defense forces, defense installation or connected therewith or ancillary to defense and national security.
- f. Record declared as classified by Government.
- g. Record of relating to the personal privacy of any individual.
- h. Record of private documents furnished to a public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third person, and
- i. Any other record which Government may, in public interest, exclude from the purview of this Act.

Hence the Baluchistan Freedom of Information Act is a poor law as it discourages rather than encourages the public from demanding information from the Government. The Baluchistan Assembly has been working on drafting another Right to Information to replace the Baluchistan Freedom of Information Act, but thus far not much progress has been made.

2.4 The Sindh Transparency and Right to Information Act 2017

In 2006, the Sindh Province also had its law which was a replica of the Federal 2002 Freedom of Information Ordinance. Another legislation called Sindh Freedom of Information Bill, 2015, was drafted, which was only marginally better than the previous Act. But in the final analysis it made sure that the bureaucracy's hold on information is retained. The civil society groups, journalists and legal experts voiced their concerns against the draft, and so the government set up committee of the Sindh Assembly consisting both of the government and the opposition to jointly work on reviewing the draft and improving it. As a result a much better law was produced which come up to the international standards as it incorporates the spirit to facilitating public to access and get information. It was passed in March 2017 and became a law. It meets all standards of an effective RTI, such as maximum disclosure, minimal exemptions, obligation for proactive disclosure, and lays down a process which is easy and costs little for the public to get information from the government.

As the law is so recent, so it is too early to assess its implementation. But even before it could be implemented the Sindh Government needs to provide the infrastructure and personnel who will be responsible for its implementation such as a Commission, designated public information officers, and a budget.

2.5 The Punjab Transparency & Right to Information Act, 2013

When Baluchistan and Sindh had their Freedom of Information laws following suit to the Federal Freedom of Information Ordinance 2002, Punjab and KPK did not have. KPK was at time faced with the massive earthquake of 2005, so the provincial Government's focus and attention was on providing relief and later reconstruction services; hence little attention was paid to bringing improvements in the human rights laws such as freedom of information. But one fails to understand why Punjab did not make efforts for legislating freedom of information law. It was only recently that work on the Punjab law started in 2010 and was finally passed in 2013, when a member of the Pakistan Tehrik-e-Insaaf (PTI) Political Party not the ruling PML(N) introduced it in the Punjab Provincial Assembly, as Punjab Transparency and Right to Information Act (The Global Network of Freedom of Information Advocates, 2013). It seemed at the time to have enjoyed the political will of the PML (N) Government, as without their support in the Punjab Assembly, it may not have gotten through. After KPK, it is the best law on RTI in the country. Though it fulfills most of the international standards for RTI laws, it is silent on some issues and procedures, and has been left these to be decided through the rules and regulations. First there was fear that if the rules were not made in time, the law would face major implementation problems. However the rules were made and a Commission was set up when a Chief Commissioner and two other Commissioners were appointed in 2014. After completing their three-year tenure they retired. Since then the implementation mechanism of the Punjab RTI is struggling as for the past one year or so the Chief Commissioner has not been appointed (Naeem, 2018). The one who was appointed he left after two weeks as his appointment was challenged in court as not being on merit but politically induced. It seems that the Government is deliberately not filling up the posts because without Commissioners the Commission cannot function, and hence the people's right to information is denied. Just in a span of 5 months in 2017 eight hundred complaints were received by the Punjab Commission that the Government is not responding to their requests for information. However the Commission could not pursue these complaints as it is almost non-functional. It indicates that in Punjab even when good laws exist, the Government uses other tactics and means to circumvent those laws. This shows that the

intention of the Government is not to promote and support transparency, open government, or good governance. Despite legal framework there will be little change in the governance.

2.6 The Federal Right to Information Law

Though the Freedom of Information law was passed in 2002 at the federal level, but it was a redundant law more on paper than in use. In 2010 the 18th Amendment to the Constitution granted the right to information as a constitutional right. As such a draft Right to Information law was finalized by the Senate committee on Information and Broadcasting as early as July 2014 and approved by the Senate Standing Committee in May 2017. Since then the Federal Government has been delaying the enactment of right to information law, and hides behind the issue of “security” in the country as a reason for this delay. There is an exception clause in the proposed bill preventing disclosure of information that legitimately harms national security law. There are other countries whose RTI laws are rated good though they do have exemption clauses. For example, India has made exempt 18 civilian and military agencies performing intelligence and law-enforcement functions though the Indian RTI law is rated at fifth best in the world. So it appears that the PML (N) Government by deliberately delaying the enactment of the law, is not committed to transparency in the government, or to good governance.

2.7 The Khyber Pakhtun Khwa Right to Information Act, 2013

The province of Khyber Pakhtun Khwa became the first province to promulgate the Right to Information Act, 2013. In international echelons it was termed as one of the most progressive laws for recognizing the people’s right to know and accessing information. “The KP RTI Ordinance contains all the features that are vital for a strong RTI law. This is why it scores 143 and is positioned at the top of global RTI rankings,” commented a World Bank expert (The News, 2013). Because of the introduction of this law, the overall rating of Pakistan in UN measurements of development went up.

The Preamble of the KPK RTI sets out the tone of the law by mentioning that for democracy to function, transparency of information is vital. It further mentions that the law would help in improving governance, reducing corruption, and making the Government and other organizations more accountable to the public. It also recognizes the participation rights of the citizen so they can meaningfully contribute to the development of the democratic process, and considers that the law itself would help improve their involvement and contribution in public affairs.

The law has made it incumbent upon KPK Government Departments to proactively disclose information of their workings which may be of interest to the public on their websites. It has very few exemptions for disclosing information; and the process for asking information has been made very easy and public-friendly involving very little cost.

3. Discussion

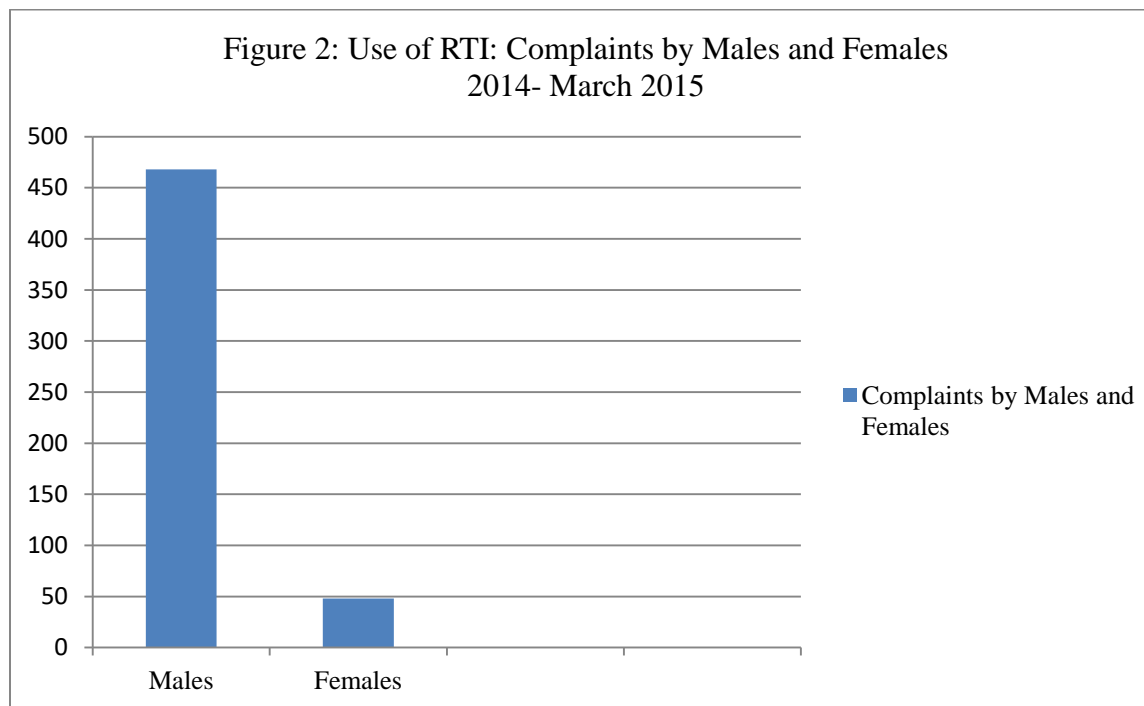
KPK RTI with a Gender Perspective

I will be providing and analyzing data from the past 3 years to see how the KPK RTI has been used by public and especially to get a gender perspective we will look at the complaints filed by men and women. For the year 2014-March 2015, the following complaints were received by the KPK RTI Commission (Table 4):

Table 4: Complaint Status of KPK-RTI Commission 2014-15

Complaints Status: 2014-2015	
Total no. of cases registered	516
No. of cases decided	434
No. of cases in process	82
No. of complaints by Females	48
No. of complaints by Males	468

Source: Annual Report 2014-2015, KPK RTI Commission, Govt. of KPK, pp. 27.

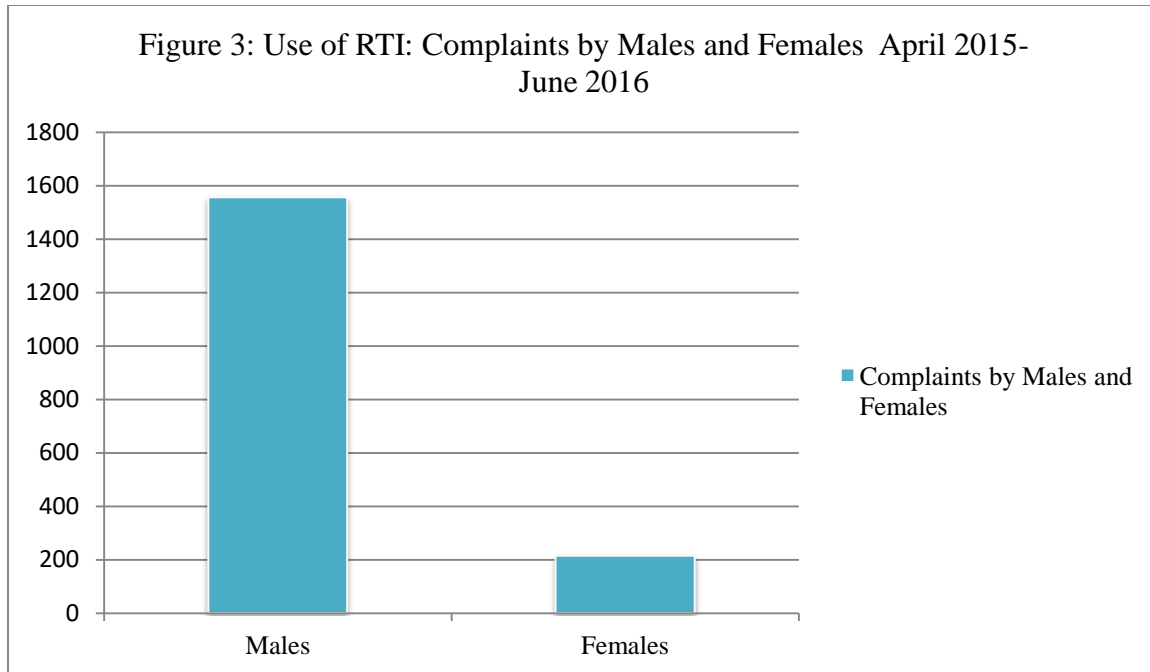


Similarly for the following year April-June 2016, the following complaints were received by the KPK RTI Commission:

Table 5: Complaint Status of KPK-RTI Commission 2015-2016

Complaints Status: April 2015-June 2016	
Total no. of cases registered	1771
No. of cases decided	1409
No. of cases in process	362
No. of complaints by Females	215
No. of complaints by Males	1556

Source: Annual Report 2015-2016, KPK RTI Commission, Govt. of KPK, pp. 15.

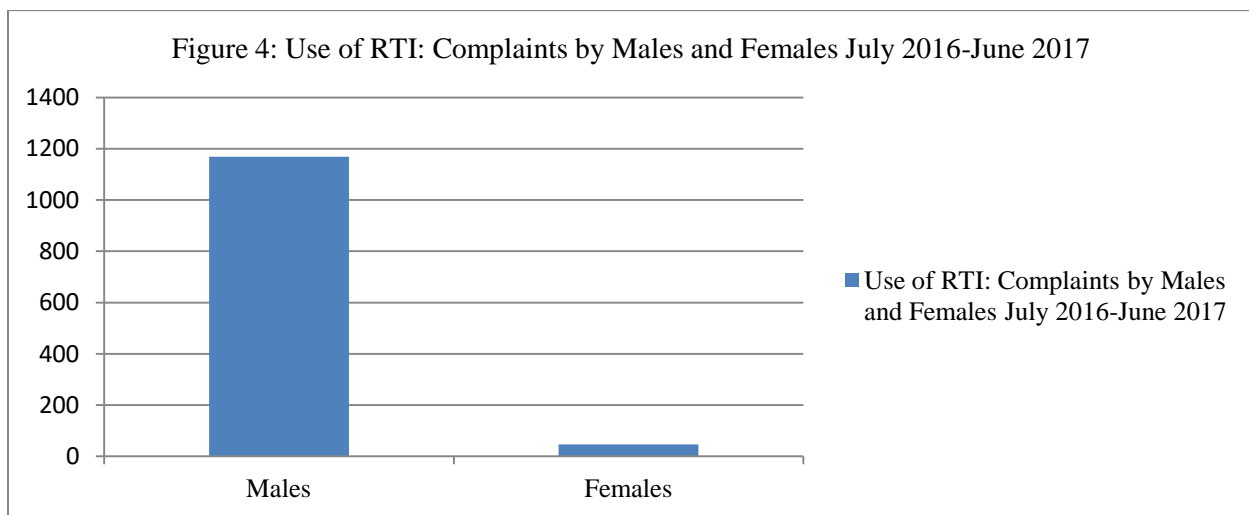


Again in the next following year July 2016-June 2017, the following complaints were received by the KPK RTI Commission (Right to Information Commission, 2017).

Table 6: Complaint Status of KPK-RTI Commission 2016-2017

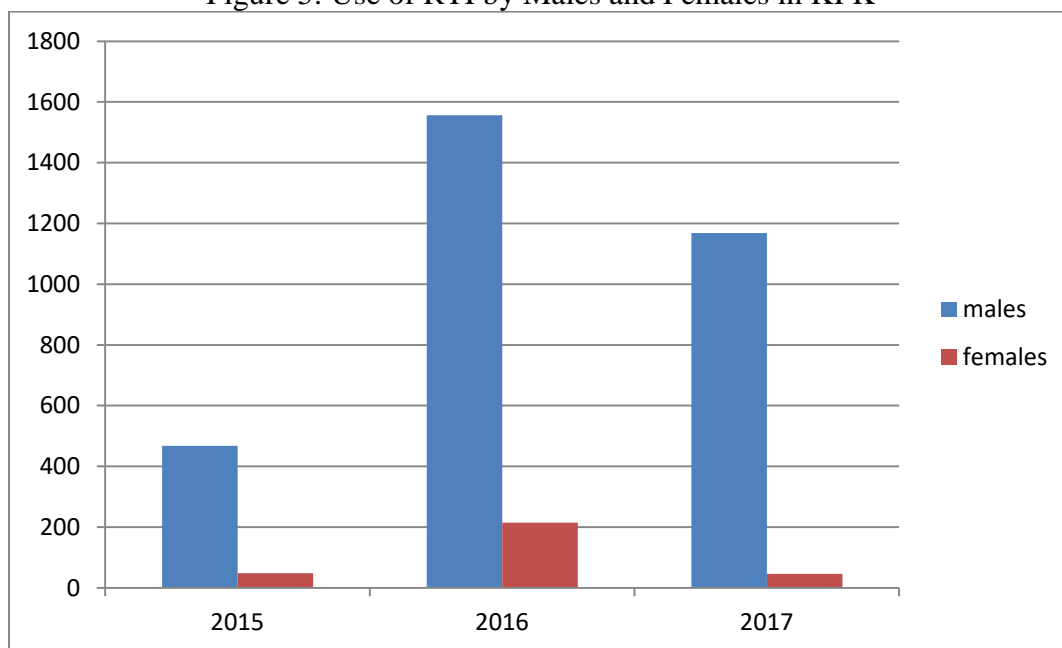
Complaints Status: 16th July 2016- June 2017	
Total no. of cases registered	1215
No. of cases decided	925
No. of cases in process	290
No. of complaints by Females	46
No. of complaints by Males	1169

Source: Annual Report 2016-2017, KPK RTI Commission, Govt. of KPK, pp. 12.



If we do a gender analysis of the use of RTI in KPK, we see that in the year 2014-March 2015, only 9.30% of the cases were filed by females, whereas the remaining 90.6% cases by filed by males. Similarly for the year April 2015-June 2016, we find that some improvement has taken place as 12.1% of the cases were filed by females, and the remaining 87.8% of the cases were filed by men. Then in 2016-2017, the number of cases filed by females dropped to the ultimate low of 3.7% as compared to males which was 96.2%. This shows that a great disparity exists between males and females use of RTI in KPK. What are the causes of females not asking the government for information? There could be many, but KPK being a traditional patriarchal society, with low literacy rate of females, and low participation in the job market as compared to men could be the likely reasons for women not accessing information.

Figure 5: Use of RTI by Males and Females in KPK



4. Conclusion

In countries like Pakistan, which are on the way towards development, there are factors and forces, which try to sustain and protect the little gains that have been made in the area of human rights and democracy. For more than 10 years the Freedom of Information Ordinance was in force in Pakistan, yet while the semblance of right to information existed, there was nothing to count towards its glory. In the absence of a vigorous right to information regime, the vacuum that existed for people to have their basic human rights protected has been filled up by other factors and forces such as the Supreme Court of Pakistan, the vibrant media, and the National Accountability Bureau (NAB). The Chief Justice of the Supreme Court of Pakistan Justice Iftikhar Chaudhary (retired) made extensive use of the *Suo Moto* jurisdiction granted under Article 184(3) and in conjunction with Article 199 of the Constitution of Pakistan for safeguarding the basic human rights of Pakistan. He took *suo moto* action on thousands of complaints received by the Human Rights Cell of the Supreme Court (The News, 2013). Most of these cases related to corruption and abuse of human rights. Even the current Chief Justice of the Supreme Court of Pakistan Justice Mian Saqib Nisar has taken up *suo moto* action on dozens of corruption and human rights issues since he took over in December 2016.

Similarly, the National Accountability Bureau (NAB) which is Pakistan's apex anti-corruption organization, has received hundreds of complaints, and continues prosecutions, investigations and recoveries involving billions of rupees. The media continues to play its part in exposing the corruption that prevails in the country. With the advent of better Right to Information Laws in Pakistan, people have more legal safeguards for accessing public information, and the Government has more obligations to share. People must have the awareness and the will to exercise their right to information.

For a country to have good governance and to develop, the first and foremost requirement is peace and security within the country, which can enable it to progress on the path of development. When a country is faced with internal insecurity, turmoil, and violence, which threatens the rule of law, even then good legislation on Right to Information cannot be very effective. What is paramount is the political will to end terrorism and insecurity which leads to weak institutions with its byproducts such as corruption, money laundering, nepotism etc. If the environment in which the political will is to exist, is itself hostile and insecure, then competing priorities of peace and security overtake the political will, and hence in all this chaos and disorder, the environment is ripe for corruption and mismanagement and bad governance. Therefore while it is essential for countries like Pakistan to have good RTI laws as a starting point, all other factors of peace and security, such as strong institutions, honest leaders, education and development must also be ensured for it to function well and produce the desired results of good management, good governance, and progress towards open and transparent government.

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