

Access to Information in Afghanistan: Issues and Challenges

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Abstract: *The right to information is one of the citizenship rights. On the other hand, this right is one of the fundamental elements of freedom of expression and an inalienable right. Information makes men wise and is competent enough to cope with the modern world. So it is the responsibility of the government to notify people of day to day activities within the country. The right to access information on human rights is enshrined in international law; everyone has the right to obtain information and data from government departments, it is one of the basic principles of democratic governance and one of the most relevant examples of guarantees of human rights and citizenship for the first generation. Occasionally, government officials' expediency can limit public efforts to obtain information from the government and government-owned information institutions. Governments and international organizations have adopted laws and outlines policies that each include arrangements for access to information. In the third paragraph, Article 50 of Afghanistan constitution, the right to access to information is enshrined and guaranteed, so this paper tries to highlight the Access to information in Afghanistan: issues and challenges.*

Keywords: Access to information (ATI), Right, Commission, Information

1. Introduction

Information is a natural and inalienable right of any human being. Each citizen in a democratic country has the right to freedom of speech and opinion. This privilege requires the ability to retain public opinion and the public authorities to try, obtain and impart information and ideas. The available and appropriate information helps people lead a dignified life in a civilized society. In addition there is a close connection between right to information and good governance. Good governance is characterized by transparency, accountability and responsiveness. Consequently, the citizen's right to information is increasingly recognized as an important mechanism in government administration for promoting openness, transparency and accountability.

In a representative form of government people are the only part. So they need to know all the functioning of government operations in order to frame a realistic system of good governance in administrative process.

Objectives

- 1) To explore the process of ATI in Afghanistan
- 2) To examine the implementation process of ATI in Afghanistan
- 3) To Examine the challenges of ATI in Afghanistan

2. Methodology

Data collection is very important in the researches. This research is a qualitative research, which relies purely on secondary data. The researcher has gone through different relevant books, articles, reports, newsletters and websites.

Access to information

The right to access information increases the level of knowledge and awareness of the people and enhances public

confidence in the state apparatus and encourages them to participate in national decisions and programs. Therefore, it is important to consider the concept of freedom of information and access to it from the perspective of the relationship between people and political power.

Access to information speeds up the process of innovation in the community, recognizes and promotes talent. On the other hand, power and information are organically and directly related to each other. A democratic system is possible when it is possible to reduce the extent of government power over citizens. People's sovereignty is strengthened by people being aware of, and able to respond to, government policies, programs, and decisions. Thus the right of access to information creates, on the one hand, the necessary mechanism for the realization of the citizens' rights and on the other, guarantees the rule of law and the exercise of government legitimacy. (Zaki, 2017)

Access to information: Barriers and Challenges

In some countries the lack of respect for the right to freedom of information, and the exercise of that right always faces various challenges and difficulties:

1) Political Challenge

The most important factor for people to lack access to government information is to impose political restrictions on governments and states. Political power and the type of political sovereignty in a country have a direct and unquestionable influence on how information flows in that country.

Sustainable and stable systems with acceptable levels of legitimacy strive to make people more aware of their decisions, policies and programs in order to increase transparency and enhance the accountability of government departments to the people and increase the level of legitimacy and trust. Government and benefit from the views

of citizens to amend laws and regulations and legal decrees, but in contrast to weak systems with a low level of legitimacy, they fear the free flow of information in their political realm and make it safer. The stability and stability of the system are considered dangerous. For this reason, in such systems, the law on access to information faces many limitations and challenges.

2) Cultural Challenge

In the developed world, citizens have a high level of knowledge and awareness, and citizens have enough knowledge of the laws and their constitution and therefore can benefit from the laws in their own interest, their country and their future order and in order to rule the law and Institutionalize the culture of legalism in society, but this is not the case in developing societies. In these societies, people's understanding of laws is low and their understanding of political and legal issues is poor.

The people in these countries are ignorant of the provisions of the law and do not know how to take advantage of the provisions of the law in their interests. These people both do not care about the laws at all and are tired or indifferent to them or they do not understand the laws properly and expect that they can access whatever information they want whenever they want.

3) Bureaucracy and the Inefficiency of the Administrative System

When the agencies are weak, such laws and many others are stuck in the bureaucracy of the bureaucracy and are not enforced after many years. In such countries, many laws are adopted and legally enacted, but in practice the administration does not care about them or refuses to enforce them.

4) Corruption in the government apparatus

Corruption in the state machinery causes these agencies to give information to the public and create obstacles in the way of legalizing and enforcing the freedom of information, because with public access to information, all Bureaucratic disruptions are revealed, and this is not in the interest of the power and economy mafia in the government.(Zaki, 2017)

Access to information in Afghanistan

Citizens need access to participation tools to actively participate in national processes. Access to information is one of the inevitable components of public participation in public processes. Journalists also need reliable and accurate information to reflect news and reports on internal affairs, and this information should be provided by government officials to the media, which unfortunately has not yet been established, and government officials have always been reluctant to provide information and refused the media.

In 2010 under pressure of public opinion, The government tasked the Ministry of Information and Culture to work with the trade unions and journalism federations to draft the Access to Information law and present to the cabinet, but the ATI law has been wandering in government offices for nearly four years and was not sent for approval to the House of Representatives.(Zaki, 2017)

ATI came into effect in December 2014, into 6 chapters and 32 articles and amended on March 31st, 2018 in 6 chapters and 41 articles. (Justice, 2018).

Adoption and promulgation of the Access to Information law, although welcomed by journalists and human rights organizations; But in practice the law failed to alleviate media and journalist problems with access to information, because the law did not provide practical solutions to the law, government officials and employees did not know what kind of information or conditions would be provided by them.

The Right to Access Information In addition to being mentioned in most international declarations and treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Corruption, many countries have also adopted national (domestic) laws. (Bahaduri, 2018)

The "Global Right to Information Rating" (GRIR) has recognized the ATI right, in legal system of Afghanistan, based on an assessment of the substance of this Law. (Nafas Gul Karimi, 2015)

In 2018 Afghan jumped to the top position of RTI rating with an outstanding score of 139 points out of 150 or 93%. (CLD_WPE, 2018)

"The citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provisions of the law. This right shall have no limit except when harming rights of others as well as public security", second paragraph of Article 50Afghanistan constitution. (Jirga, 2004)

Although the constitution recognizes freedom of expression, the media, and ATI right of the citizens, it has been ignored by government agencies and private institutions for lack of a legal mechanism.

There are currently two laws governing government agencies that report to reporters, one on media and another one is ATI law. But in many cases the government has failed to comply with the law. (Welle, 2017)

Method of Access to Information in Afghanistan

Article 5 of the Access to Information law declare that

- 1) An applicant is entitled to ATI right from institutions according the provisions of this law.
- 2) Institutions are responsible to provide required information to the applicants and the public according to provisions of this law.

The requested information can be given in writing or electronically in a manner accessible to the applicant. It means there is an ease of requesting the information electronically, and the authorities responsible for providing the information in writing within 10 days and if it has news value, should be provided to the applicant as soon as possible or at least within one business day. Based on this

law, an applicant does not need to provide a reason to the agencies that provide the information. (Bahaduri, 2018)

Request for information

Article 6 of the Access to information law:

- 1) The applicant shall request the information in writing or use the ATI form and refer to the relevant institution.
- 2) The information request form shall be prepared by the Commission and shall be made widely accessible to the public for free in both printed and electronic format.
- 3) The applicant is not required to give reasons for requesting the information or to name specific documents. The applicant shall be obliged to provide the appropriate details to identify the requested information and to provide it to the applicant.
- 4) Institutions shall respond to the applicants in written or electronic format, which is accessible to the applicant. (Justice, 2018)

Information Provision

According to the rule of law, all government agencies are required to establish responsible information authorities. These authorities should be specialized within the government departments and provide the applicants with access to information in accordance with specific duty bills. Information authorities can also request the requested information from the relevant agencies, which will create a systematic and systematic circle to facilitate access to information between government departments. On the other hand, it is responsible for informing the applicant of the necessity of cooperation in urgent cases, and if the request for information is not accepted by the authorities on any ground, the relevant department is obliged to provide reasons for refusing the request. (Bahaduri, 2018)

The law also requires agencies to publish, make available to the citizens and also create a Data Base for Maintains and records seventeen items of information, including all information in an office, once a year in a proactive and preventive manner.

These include the formation, tasks, competencies, development projects, financial status, including budget documents, financial reports and audits, procurement contracts, relevant legal documents, contracts, protocols and internal or international agreements, as well as other information to be identified by the Commission. In addition to the authorities responsible for submitting their annual performance reports to the Commission. (Eshani, 2019)

Establishment of the Commission

Although the Commission has not used the term independent information in the law, it has by nature made the commission a separate budgetary entity from each entity. The commission will have five members nominated by the president through a selection committee of 15 eligible people, of which the president will appoint only five as commission members.

The Commission is the only national body that has comprehensive oversight of the process of access to oversight information and the competence to set standards on how agencies regulate information. It is also the

responsibility of the Commission to handle all complaints about access to information or not. The commission has jurisdiction to prosecute serious anti-judicial measures against individuals and officials who disregard the right to access information.

The Information Access Commission will make the final decision on confidentiality or non-confidentiality after viewing the documents, and this decision is binding on all departments. (Bahaduri, 2018)

Procedure of handling the Complaints

Handling the complaints against failure to Access Information is one of the most important tasks of the Commission access to information

There are two types of complaints received under this law:

First type - the information applicant applies to the office where the authority responsible for information was located and requested information. At this stage, the complaint must be filed within five days of receipt.

Second step - In case of non-response and information provided by the office, the applicant may refer to the Supervisory Commission for access to information. This stage is considered as an appeal, layer or platform appeal and a second option to provide the applicant with access to information and to guarantee the rights of the applicant who must make a final decision within six business days.

The Commission is also well-known for providing corrective action to secure access to information. These include: recommendation, written warning, decision to deduct salary and if the violations of ATI law repeated, offer of conversion will be taken, so all agencies are required to submit corrective action in accordance with the provisions of this law and report it to the Commission. (Justice, 2018)

Finally, the strongest and most important point that makes this law more than any other law, is that the judicial bodies are required to comply with the law, provisions, and the rule of law to Prioritize and match ATI. It also continues to be subject to the provisions of this law regarding access to information in relation to other reference laws. This explicit ruling restricts ATI to all the ambiguities and complexities that judges and prosecutors may sometimes interpret as unprofessional and restricts and restricts ways to circumvent it. (Bahaduri, 2018)

Accesses to information in Afghanistan: Challenges

September 28 equals 6 coincides with World ATI Day. Access to information is one of the major challenges in developing countries, including Afghanistan.

Governments prevent citizens from Accessing information for a variety of reasons, including the confidentiality of information and protection of national interests, national security or privacy protection. However, the constitutional right to information has been recognized in these countries and governments have been obliged to provide citizens with the necessary information.

While the law on dissemination and access to information contributes to social cohesion and the development of national security and enhances transparency and accountability of public institutions and increases public confidence in the government, but in countries where there is weak rule of law, legitimacy, corruption, kinship, and ethnicity in the offices, etc. The ATI law faces serious challenges.

Despite the fact that President of Afghanistan in 2017 in legislative decree ordered to all government agencies to provide required and necessary information, in accordance with the provisions of the ATI law to the media; but such commands did not work as much as it was expected. The people and the media still face problems and are denied to Access to Information. (Zaki, 2017)

- 1) Severe restrictions on government access to information.
- 2) Incuriosity and Collision Deceptive government.
- 3) Deteriorating-access-to-the-information-government-has-dual-and-deceptive-approach. (etilaatroz, 2020)
- 4) Culture of secrecy and evasion of government information remains a tradition of the past.
- 5) Institutions are not interested to provide information and are not familiar with legal practices.
- 6) Another problem is the old sense of deprivation. People think they are slaves and doomed and the government is ruling and the people are accountable to the government. (Welle, 2017)
- 7) Journalists intimidation, threaten and harm by public officials and armed groups. In the past, there have been cases where journalists in Afghanistan have been subject to abuse and even beaten by government officials for doing their jobs. In 2019, according to the monitoring group Nai, ten journalists and media workers were killed in Afghanistan by armed groups, including the Taliban. In June 2019, the Taliban threatened to treat Afghan journalists as a military target in brazen violation of the laws of war. (amnesty, 2020)
- 8) Failure to submit the annual report on implementation of ATI law to commission; Key findings of majority government agencies have failed to submit annual report on implementation of information access law to Commission, (Mohammadi, 2019) while Article 5 of the Law on Access to Information of State Offices It is obliged to report to the relevant Commission on the implementation of the Access to Information Act.
- 9) Inadequate ATI by the Commission and the lack of credibility of reporters with regard to their complaints is Another ATI challenge which in many cases it has resulted in the plaintiff not being sued. (Mohammadi, 2019)
- 10) Lack of a specific person to inform in the departments; But based on the findings of Key Group, from 60 government agencies only three agencies (Administrative Reform Commission, Ministry of Higher Education and Electoral Complaints Commission) has hired its responsible agencies for information., lack of responsiveness of government agencies to the media, lack of documentation to applicants for documents, lack of attention to the criteria for submitting answers and documents to

applicants for information, especially the media, activities of the official websites of the agency concerned. (Mohammadi, 2019)

- 11) Failure to provide timely information to the applicant and the applicant's lack of awareness of the extension of time is another challenge.
- 12) Violating ATIlaw by the Information Commission.
- 13) Lack of public awareness regarding ATIlawand their rights in the society, based Integrity Watch Afghanistan survey (Afghan Access to Information), which was held and completed in six months in September 27th 2017. The survey was conducted with 3,510 people in nine provinces: Balkh, Bamyan, Herat, Kabul, Kandahar, Kapisa, Kunduz, Nangarhar and Paktia. Shows that most of the citizens don't know about the access to information. 79% of the people were not aware of the information access monitoring commission, while 67% of the people did not know if they had difficulty accessing government agencies where they file a complaint.
- 14) The level of actual use of ATI law and the information demand culture of government agencies is low. According the survey of Integrity watch Afghanistan declare that from each 10 participants 8 participants did not request for information. (Azizi, 2017)
- 15) Information secrecy, Although the law defines access to confidential information and requires government agencies to disclose other information to people and reporters, except in sensitive cases, but government agencies do not even provide non-sensitive information to reporters, Theyonly provide information that is publicly available to reporters and demonstrates government achievements, But if reporters seek to expose cases of corruption, they face a variety of dismissals. (Welle, Afghanistan, 208)
- 16) Unlawful and sexual requests to provide information, especially for female applicants, are challenges to access information in the country. (Haidari, 2020)

3. Recommendations

- 1) Access to information requires long-term efforts by all government agencies as well as civil society and the media. Particular attention will need to be paid to awareness rising among the illiterate and particularly in rural / remote areas and Making creative use of new technologies including the use of mobile or smart phones and hotlines to promote the exercise of their right by the public.
- 2) Incorporate awareness of ATI right in education curricula from primary to post-secondary education as well as in literacy programs.
- 3) As much as possible, set up specific identifiable information points or sections in governmental organizations with the main task of assisting the public in its requests for information.
- 4) Formalize the right of people to access information for public and state-related officials and institutions without getting a letter of ministerial approval, the current precondition for all government, semi-government, and certain non-governmental organizations to reveal information.

- 5) Conduct training programs for government and semi-government officials on their duties, rights, and implications of failing to act in compliance with the obligations laid down in the Access to Information Act.
- 6) In the sense of access to information, efforts should be made to define the law's limits more clearly on what constitutes public interest or personal freedom.
- 7) Improvement of the complaints process and complaints handling for easy tracking and follow-up of complaints.

4. Conclusion

Access to information as a human right and citizenship among countries with a democratic system has taken its place among the fundamental rights, and has attracted the serious attention of modern systems as a factor in good governance. In this respect, the fundamental debate in good governance and democratic systems is the public's confidence in the government. Governments strive to address the basic needs of the people and to protect their legitimacy by providing services and providing security to citizens.

Democracy is the accepted system in Afghanistan, and the Afghanistan government is committed to adhering to its principles and values. Securing Access to information as a value in an open and democratic society is one of the Afghanistan government's obligations under its constitution, which guarantees the right to Access information.

The ATI law is one of the best laws in the world. According to this law, Access to information from all public offices including the Presidential Office is free and available for all citizens and has obliged all departments and agencies to share all their decisions and their implementation and what goes on in the offices in accordance to this law and be responsive to the people. However, the right of Access to Information has been enshrined in the Constitution and the Access to Information Law, but the institutions which support journalists declare that the problem of lack of Access to Information has been rise in the country, and most public departments and agencies are accused of violating the law for not providing information to the media. On the other hand, the dilemma of not having access to information at security agencies under the pretext of government privacy, and this lack of access to information at a number of senior government institutions, is more in line with that of other institutions

Lack of a specific person for information in the departments, lack of accountability of government agencies to the media, lack of documentation to the applicants, lack of attention to the criteria for responding to the request, especially for the media, lack of official website activity and lack of reporting Implementation of this law by the relevant departments of the Commission is one of the problems with access to information reported by reporters, media outlets and the Commission on Access to Information.

References

- [1] Amnesty. (2020, February 5). *News*. Retrieved from www.amnesty.org
- [2] Azizi, W. (2017, September 27). *News*. Retrieved from www.iwaweb.org: <https://iwaweb.org>
- [3] Bahaduri, A. (2018, September 23). *Home*. Retrieved from www.8am.af: <https://8am.af/right-to-information-contemporary-democracy/>
- [4] CLD_WPE. (2018, September 28). *news-reports*. Retrieved from www.rti-rating.org: <https://www.rti-rating.org/news-reports/afghanistan-jumps-to-top-position-on-rti-rating/>
- [5] Eshani, J. (2019, December 31). *Home*. Retrieved from <https://8am.af>: <https://8am.af/a-look-at-afghanistans-access-to-information-act/>
- [6] etilaatroz. (2020, 02 04). *News*. Retrieved from <https://www.etilaatroz.com/>: <https://www.etilaatroz.com/92382/criticism-of-deteriorating-access-to-the-information-government-has-dual-and-deceptive-approach/>
- [7] *explore*. (2018, 01 23). Retrieved from www.article19.org: <https://www.article19.org>
- [8] Haidari, M. (2020, January 11). *News*. Retrieved from <http://www.cpawj.org/>: <http://www.cpawj.org/2020/01/11/%D8%B9%D8%AF%D9%85-%D8%AF%D8%B3%D8%AA%D8%B1%D8%B3%DB%8C-%D8%A8%D9%87-%D8%A7%D8%B7%D9%84%D8%A7%D8%B9%D8%A7%D8%AA%D8%8C-%D8%B9%D9%85%D8%AF%D9%87%E2%80%8C%D8%AA%D8%B1%DB%8C%D9%86-%DA%86%D8%A7%D9%84%D8%B4/>
- [9] *Jirga, L. (2004). Constitution of Afghanistan. Kabul: Ministry of Justice.*
- [10] Justice, M. o. (2018). *Access to information law*. Kabul: Ministry of Justice.
- [11] Mohammadi, B. (2019, May 19). *Researches*. Retrieved from www.tkg.af: <https://tkg.af/%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%AD%D9%82-%D8%AF%D8%B3%D8%AA%D8%B1%D8%B3%DB%8C-%D8%A8%D9%87-%D8%A7%D8%B7%D9%84%D8%A7%D8%B9%D8%A7%D8%AA%D8%9B-%D8%A7%D8%B2-%D8%AA%D8%B9%D8%AF%DB%8C%D9%84-%D8%AA%D8%A7/>
- [12] Nafas Gul Karimi, S. K. (2015). *ACCESS TO INFORMATION -A Preliminary Review*. Kolola Poshta, Kabul, Afghanistan: Integrity Watch Afghanistan.
- [13] Roesh, E. (2020, March 01). *Home*. Retrieved from www.8am.af: <https://8am.af/the-role-of-access-to-information-in-increasing-public-confidence-in-government/>
- [14] Welle, D. (2017, 08 13). *Afghanistan*. Retrieved from <https://p.dw.com/p/2i93s>: <https://www.dw.com/fa-af/%D8%A7%D8%B3%D8%AA%D8%B1%D8%A7%D8%AA%DA%98%DB%8C-%D8%AF%D8%B3%D8%AA%D8%B1%D8%B3%DB%8C-%D8%A8%D9%87-%D8%A7%D8%B7%D9%84%D8%A7%D8%B9%D8%A7%D8%AA-%D8%AF%D8%B1-%D8%A7%D9%81%D8%BA%D8%A7%D9%86%D>

8%B3%D8%AA%D8%A7%D9%86-

%D8%AA%D8%AF%D9%88%D

[15] Welle, D. (2018, 12 30). *Afghanistan*. Retrieved from
www.dw.com: <https://p.dw.com/p/3Amj0>

[16] Zaki, H. (2017, September 28). *Articles*. Retrieved
from www.dailyafghanistan.com:
http://www.dailyafghanistan.com/opinion_detail.php?post_id=141239