No. 2-12-/2023
GOVERNMENT OF THE PUNJAB
PUNJAB INFORMATION COMMISSION
64-Nursery Lane, Lawrence Road, Lahore
(pic.info.pk@gmail.com)
Tel: 042-99205794
Lahore, the 11TH Feb 2023

To,

The Excellency,
President of Islamic Republic of Pakistan.

Subject: Private Member Bill for Amendment of Section-2 (ix) (c) in The Right of Access to Information Act, 2017

Hon'ble Sir,

Your honour is part & parcel of Majlis-e-Shoora (Parliament) of Pakistan representing the Republic as Head of the State, therefore, your kind attention is beseeched in respect of above-mentioned private member bill **(Annex-A)** which is an attempt to encroach upon a sacrosanct fundamental human right and the foundations of Constitution of Pakistan.

2. Punjab Information Commission being custodian of Right to Information law, commonly known as RTI, is one of major stakeholders, therefore, solicits your benevolent intervention for safeguard of the Constitution the supreme law of the land. Parliament by inserting Article 19/A in the Constitution bestowed upon people a fundamental "Right to Information" but the private member bill aims at depriving the people from the fruits of said right keeping them out of the process of law-making and function of Parliament.

Analysis of the Private Member Bill

3. A copy of statement of objects and reasons of above-captioned private member bill is enclosed for your kind perusal. It aims at exclusion of the Secretariat of Senate & National Assembly from the definition of "public bodies" under self-styled argument that both secretariats are not "public bodies". This statement where smacks of the revulsion for any "public body", it also represents the denial of a bald fact. A public body is the one which deals with public matters and is run by public funds as such both secretariats of Senate & National Assembly

undisputedly qualify as public bodies. They rather deal with law making which is a matter of great public importance duly mentioned in Article 19/A of the Constitution as a condition precedent to exercise such right. People are directly influenced with law-making process, therefore, naturally interested in the functions of Parliament which is a direct product of the people whereas all other public bodies are manned by the executive. If private member bill is carried out, it shall be a solitary example in the comity of nations that Secretariats of Parliaments will be excluded from the definition of public body.

4. The other argument employed in the bill is that the work of parliament is extremely significant, highly sensitive involving privacy of the institution, therefore, liable to be excluded from the definition of public body. As already mentioned Article 19/A declares only such matters as subject of RTI law which are of great public importance, thus the functions of Parliament by all means qualify as such. However the movers of questioned bill have employed the same argument otherwise. The citizens are the ultimate beneficiary of law, therefore, they are most concerned to know the procedure, functions and product of Parliament and the law making process cannot be completed without their participation. The movers of bill need to take a holistic view of the Act which sufficiently addresses the stated concerns by keeping private matters out of the purview of RTI law under relevant exemption clause. RTI law also exempts from disclosure the information which is at pre-mature stage like ongoing proceedings of Standing Committees etc and the matters which are subject of free & frank advise or internal consultations. The Act aims at the disclosure of only such public information which is enforced, issued or used by the public body in the discharge of its functions. In addition any information relating to the use of public funds or exercise of executive authority is also liable to be disclosed. When Hazrat Umer (R.A) did not consider himself immune to disclose the source of cloth used for his dress by suspending Friday Sermon, how come Parliament being chosen representatives (agents) is privileged to withhold public information. The maximum disclosure of public information ensures credibility of public bodies in the eyes of public at large.

5. The 3rd argument employed in the private member bill is that Article 69 attaches a kind of sanctity with the parliament not rendering it amenable to RTI law. A bare perusal of Article 69 belies the argument as it immunes only to question any proceedings of Parliament before court of law. The disclosure of public information is however distinguished from calling in question before court of law hence Article 69 has no clash with Article 19/A of the Constitution. The civil society will never appreciate such contentions bill which challenges the wisdom of Parliament embodied under Article 19/A. All Provincial Assemblies while legislating RTI laws also followed the suit by including the Secretariats of their respective Assemblies in the definition of public body.

The Bill is at variance with the spirit of Constitution

6. The edifice of Constitution of Pakistan is standing on the pillars of its **Pre-amble** according to which the ultimate sovereignty including the authority to legislate belongs to Almighty Allah, that it is the will of people who acting as vicegerents of Allah Almighty exercise their power and authority through their chosen representatives. The said paradigm keeps the chosen representatives at 3rd lowest pedestal to act as agents of the Principle i.e. the People of Pakistan as vicegerents of Allah Almighty. The questioned bill envisages denial of said principle by not holding the chosen representatives answerable to the will of people are the principle. Such situation will surely be at variance with the spirit of **pre-amble** as a principle can curtail or revoke the authority of his agent but never ever vice-versa. Hence the questioned bill offends the *constitutional law of agency* and the basic principle of *participatory democracy*. The bill seeks disconnect of Parliament with the people of Pakistan and also Allah Almighty through the people of Pakistan. The bill, therefore, abrogates the constitutional principle and in all probability will be set aside by Hon'ble Apex Court, if at all carried out.

The Bill is hit by "participation of People", a fundamental of democracy

7. The democracy is not all about the physical structure provided under Constitution including the President, the Majlis-e-Shoora (Parliament) so on and so forth rather the essence of democracy is the discharge of functions according to the will of people and due regard for the fundamental human rights. Meaningful

participation of people who are ultimate beneficiaries or end-users of law ensures the environment conducive for democracy. Freedom of Speech & Expression under Article 19 and Right to Information under Article 19/A are those constitutional means which ensure the participation of people making the democracy a purposeful exercise. In case Secretariats of Senate & National Assembly are excluded from the definition of public body the bondage and connection of people with law-making bodies shall come to an end eroding the elements of participatory democracy. The private member bill however aims at blocking the supply of fresh air and blood to the heart of a living organ hence would be counter-productive. The bill will be taken by civil society as a death blow to the fundamental human rights and principles of participatory democracy.

Prayer

In view of above submissions, Punjab Information Commission being a major stakeholder solicits with utmost respect at its command for the highest office of President of Islamic Republic of Pakistan to kindly intervene employing his good offices for the safeguard of fundamental rights enshrined in the Constitution of Pakistan. The questioned private member bill will be taken as betrayal of the trust of people of Pakistan which they repose in their chosen representatives who exercise non-contractual & fiduciary authority on behalf of people of Pakistan.

WITH BEST REGARDS

(Mahboob Qadir Shah)
Chief Information Commissioner, Punjab

CC

1. **Chairman Senate of Pakistan;**
2. **Speaker National Assembly;**
3. **Chairman Standing Committee Concerned;**
4. **Secretary Law & Justice Division**
   (w.r.t a reference for legal opinion by Standing Committee)