

The Need for Access to Judicial Information and Its Impact on Society

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ABSTRACT

Access to judicial information in Afghanistan is highly limited due to the absence of a dedicated law addressing this issue. Thus, I decided to conduct research on this topic, titled "*The Need for Access to Judicial Information and Its Impact on Society*", to shed light on its ambiguous aspects. The significance of this topic is evident, as individuals encounter numerous challenges in daily life, some of which are personal, while others are societal. Among societal challenges, certain issues cannot be resolved without a judicial ruling.

For instance, when disputes arise between individuals, where each party claims their right to the disputed matter, the judge must determine who is entitled and who is not. However, some individuals do not accept the judicial ruling, prompting the government to intervene and enforce the decision using its authority to resolve the issue.

To ensure the validity of claims and for judicial decisions to be transparent, just, and trustworthy in the light of Sharia law, it is essential that people are informed about these proceedings. This information and awareness have significant positive effects on society, steering it toward constructive change. These benefits have been thoroughly explored in the thesis's discussions and text.

Based on this foundation, this research delves into the definition, types, historical background, principles, and boundaries of judicial information; the methods for accessing such information; its necessity, limitations, and benefits.

In the absence of judicial information, trust in the fairness and legitimacy of judicial decisions cannot be established. The right to access information is enshrined in both national and international legal frameworks. Methods of accessing judicial information include attending court sessions, taking notes during sessions, recording audio, filming, and interviewing judges.

I conducted this research using explanatory, inductive, and library-based methodologies. In collecting topics, I first prioritized utilizing credible sources, and where such sources were unavailable, I referred to alternative references.

At the conclusion of this research, I examined the definition, types, history, methods of access, necessity, limitations, and benefits of judicial information. Additionally, the presence of judicial information in national and international documents was clarified, as well as its impact on Afghan society.

Keywords- Information and Judicial Information, Methods of Access to Information, and Benefits of Accessing Judicial Information.

I. INTRODUCTION

Praise belongs to Allah; we praise Him, seek His help and forgiveness, and ask for His guidance. We seek refuge in Allah from the evils of ourselves and the misdeeds of our actions. Whomever Allah guides, none

can misguide, and whomever He lets go astray, none can guide. I bear witness that there is no deity but Allah, alone, without partner, and I bear witness that Muhammad is His servant and messenger.

As humans are social beings created by Allah Almighty, He sent prophets to guide them toward

righteous actions and to deter them from engaging in evil deeds. Certain matters that regulate various aspects of human life have been entrusted to mankind so they may reflect and create laws that improve their lives, provided these laws do not contradict Islamic Sharia. Among such significant issues is access to judicial information, a subject requiring research and detailed analysis. This research explores topics such as the definition of judicial information, its necessity, methods of access, its impacts on society, and other related matters.

I am deeply grateful to Allah Almighty for granting me the ability to complete this work and pray that He counts it among my good deeds.

II. REASONS FOR CHOOSING THE TOPIC

The primary reasons for selecting this topic are as follows:

1. **Lack of Knowledge:** A major reason for undertaking this study was the lack of understanding regarding judicial information, the methods of accessing it, and the limitations surrounding it.
2. **Clarifying Doubts:** To address doubts in people's minds about the necessity or lack thereof for access to judicial information.
3. **Positive Social Impact:** To investigate the societal benefits of access to judicial information and its role in fostering positive societal change.
4. **Personal Interest:** Based on my own personal interest (a crucial factor in choosing a topic), I selected this subject for research.

Objectives of the Research

1. To define judicial information.
2. To encourage all Muslims, especially in the current circumstances where non-Muslim systems conflict with Muslims, to understand judicial information. These systems often seek to portray Islamic judiciary as corrupt, unjust, and unreliable.
3. To highlight the necessity of access to judicial information.
4. To demonstrate the benefits of access to judicial information and its positive impacts on society, among other objectives.

III. METHODOLOGY & APPROACH

1. **Credible Sources:** During the writing process, I relied on credible and authoritative sources and references to gather information. This approach was aimed at producing a scientific, research-based, and logical thesis.
2. **Scientific Method:** I adopted a scientific methodology in collecting data, attributing each statement to its original source. Whenever necessary, I engaged in constructive debate among the views of legal scholars and determined the stronger and

weaker opinions based on the strength or weakness of their evidence.

3. **Analysis and Discussion:** Whenever a topic required analysis or debate, I explored it to the best of my ability.
4. **Reference Organization:** I arranged the list of sources and references alphabetically.
5. **Concluding Sections:** At the end of the research, I included conclusions, recommendations, and a comprehensive list of sources and references.
6. **Citation Style:** After referencing information from sources and references, I included in footnotes the author's popular name (if available), full name, title of the book, publication year, place of publication, and volume and page number. For repeated references, I only mentioned the book title, page number, and volume.

This research adheres to a structured, scholarly approach aimed at contributing to the understanding of judicial information and its importance in shaping a just society.

IV. REVIEW OF PREVIOUS WRITINGS

Several articles on the right to access information have been published in journals. However, I could not find anything specifically addressing judicial information and its impact on Afghan society. Furthermore, every country has its law regarding the right to access information, and Afghanistan is no exception. Afghanistan has a law titled "**The Law on Access to Information**" that deals with this matter. The following articles, which discuss the right to access information, have been published in journals and are noteworthy:

1. **Judicial Information Collection** by Masoud Rahmanian, Manouchehr Ghaemi, and Morteza Nasiri.
 - This book extensively discusses judicial information in Iran.
2. **The Relationship Between Freedom of Information and Privacy** by Hossein and Ali Jafari.
3. **Judiciary and the Advancement of Information and Communication Technology** by Hassan Mohseni and Homayoun Rezaei.
 - This article mainly focuses on the information, management, and leadership of courts and prosecutors' offices in Iran.
4. **The Role of Access to Information in Good Governance** by Engineer Abbas Noyan.
5. **Lectures on Judicial Science** by Abdul Aal Ahmad Atwa.
 - This book covers topics related to judiciary and judges, such as definitions, prerequisites, pillars, and the rules concerning judicial rulings.

All the above articles discuss general circumstances and instances related to access to information or judicial information in specific countries.

However, my dissertation is focused on the **definition of access to judicial information and its impact on Afghan society.**

Key Questions of the Topic

1. Is access to judicial information a fundamental right of individuals?
2. What are the benefits of accessing judicial information?
3. What are the disadvantages of not having access to judicial information?

Research Challenges

The following challenges inspired me to undertake this topic:

1. Lack of awareness regarding access to judicial information as a principle of justice within the community.
2. Absence of books on this subject in the Pashto language.
3. Public unfamiliarity with the concept of access to judicial information.
4. Loss of public trust in the judiciary due to the lack of access to judicial information.

Significance of the Topic

Today, access to judicial information, particularly in Afghanistan, remains a challenging task. There are significant barriers to obtaining judicial information for the public and media. However, under the **Right to Access Judicial Information**, these barriers can be overcome. Proper understanding of methods, boundaries, and principles for accessing judicial information ensures an easier and more transparent process. It also prevents future issues related to the dissemination of judicial information.

The significance of this topic can be summarized in the following points:

1. The right to access judicial information is a fundamental right of individuals.
2. Access to judicial information is a critical need, as people encounter related issues in their daily lives.
3. Identifying the methods for accessing judicial information.
4. Understanding the benefits of judicial information, as people tend to overlook matters whose advantages they are unaware of.

Research Hypotheses

- Have people been introduced to access to judicial information as a fundamental right?
- Clarification of the methods for accessing judicial information.
- Clarification of the limitations on access to judicial information.

V. DEFINITION OF INFORMATION

According to Afghanistan's **Access to Information Law**, information is defined as:

"Any type of recorded or documented information, specimen, or model."

Definition of the Right to Access Information

The term "Right to Access Information" is a relatively new concept introduced into Afghanistan's legal system with the adoption of the **2004 Constitution**. The Constitution provides the following clarification:

"Citizens of Afghanistan have the right to access information from governmental institutions within the limits prescribed by law. This right has no boundaries unless it causes harm to the rights of others or public security."

Definition of Access to Judicial Information

To date, there is no formal definition of judicial information. However, definitions play a significant role in academic research, making it necessary to define the term. Additionally, the types of information within the judiciary are highly significant and beneficial for media professionals.

- Judicial information encompasses data such as:
- Records maintained by judges, courts, or judicial authorities.
 - Case files under investigation or already adjudicated.
 - Scales of rights and obligations.
 - Movable and immovable assets of judges and judicial authorities.
 - Resolutions issued by judicial authorities.
 - Judicial necessities and requirements.
 - Budgets associated with the judiciary.

Legal Framework for the Right to Access Information in Afghanistan

Afghanistan's Constitution acknowledges the right to access information. Article 50 of the Constitution states:

"Citizens of Afghanistan have the right to access information from governmental institutions within the limits prescribed by law. This right has no boundaries unless it causes harm to the rights of others or public security."

In addition to the constitutional provisions, Afghanistan has enacted the **Access to Information Law**, passed by the National Assembly on **October 18, 2014**, under decree number **137**, comprising **6 chapters and 32 articles**. This law was signed into effect by the President on **November 15, 2014**.

Methods of Accessing Judicial Information

Following the acknowledgment of the right to access judicial information, questions arise regarding the methods of obtaining such information. Some of these questions include:

- Is mere attendance at court hearings sufficient?
- Is preparing written reports from court sessions adequate?
- Do individuals have the right to take photographs?
- Can audio recording devices be used?
- Is it permissible to film court sessions?

- Can court proceedings be broadcast live via television or radio, or recorded and aired later?
- Do individuals have the right to obtain information from plaintiffs, witnesses, or their families?
- Is interviewing judges or judicial staff permitted?

The answers to these questions depend on the principles, boundaries, and available capacities for accessing judicial information. These issues will be explored in detail in subsequent discussions.

Essentially, the methods for accessing judicial information emerge from a combination of principles and boundaries. In some countries, access to judicial information has reached an advanced level with extensive methods, while in others, these methods remain limited.

Obtaining Maps and Images from Defendants

One method of accessing judicial information involves obtaining maps and images related to defendants. The following types of data are typically included:

1. **Videos showing crime scenes.**
2. **Videos highlighting confiscated or frozen assets and properties.**
3. **Recorded testimonies presented in court.**
4. **Photos and videos depicting the initiation of criminal activities.**
5. **Access to court records**, which is also a component of the right to access judicial information.

This comprehensive access ensures that judicial transparency is upheld and contributes to strengthening public trust in the judiciary.

Attendance in Court Hearings

The arrangement of court hearings in general and the unrestricted attendance of the public at these hearings are among the key and primary elements of the transparency of the judiciary. Those who attend a hearing must have the intention to record and document information. This allows individuals to record and document information during court hearings, making it nearly impossible to later declare such sessions as non-public.

Recording Notes from Hearings:

- **Audio Recording, Filming, and Photography**
- **Interviewing Judges Regarding the Case in Question**

VI. THE NEED FOR ACCESS TO JUDICIAL INFORMATION

Transparency and justice in judicial decisions and rulings are requirements of Islamic Sharia. Allah Almighty states in the Quran:

“O David! We have made you a successor on the earth, so judge between people in truth and do not follow desires, lest they lead you astray from the path of Allah.” (Surah Sad: 26)

In another verse, Allah says:

“Judge between them with justice.”
(Surah Al-Ma'idah: 42)

Based on these commands, access to judicial information is essential because it enhances the credibility of the judiciary in society, resolves doubts and suspicions that people may have about the judicial process, and strengthens public trust.

However, certain judicial matters should not be disclosed as they may harm the judiciary's credibility. These include confidential judicial information or instances where disclosure could damage the reputation and status of jurors, prosecutors, judges, witnesses, parties to a case, defendants, or defense attorneys.

Therefore, access to judicial information must be governed by principles, boundaries, limitations, and other regulatory rules to ensure that, on one hand, information is accessible, and on the other, the reputation and credibility of those involved in judicial matters remain intact.

The Positive Impacts of Judicial Information Access

Access to judicial information positively impacts society. When people and media outlets have access to such information, public confidence in the fairness and impartiality of judicial decisions increases. Consequently, people are more inclined to resolve their disputes and conflicts through the judiciary.

This prevents the occurrence of tribal or informal courts, which, unfortunately, are still conducted by powerful individuals in some regions of our country. Such informal courts negatively impact society as they are often biased in favor of the strong and against the weak.

In contrast, when disputes are resolved through the judiciary, rightful claims are fairly addressed. The parties involved are more likely to accept the verdict because:

1. The verdict aligns with Islamic law, which Muslims are inherently inclined to follow.
2. A just judicial ruling ensures that individuals receive their rightful claims while understanding that any claims denied were not permitted under Islamic law.

Moreover, even if one party is powerful, the implementation of judicial decisions through government mechanisms ensures justice. Strong individuals cannot challenge the government's authority, whereas informal courts often leave weaker parties vulnerable.

Hence, public and media access to judicial information, within the framework of principles, boundaries, and limitations, is necessary to foster public confidence in the judiciary and its decisions.

Boundaries of Access to Judicial Information

While the benefits of public and media access to judicial information are evident, uncontrolled access may lead to interference in judicial affairs. For instance:

- It could contradict the principle of presumption of innocence and fair adherence to all court laws.
- It may violate the privacy of litigants or participants in court hearings.
- It could threaten individuals' personal security.

- It might harm commercial interests or disrupt the order and discipline of court proceedings.
- It could also conflict with public morality.

Therefore, it is essential to establish clear boundaries for public and media access to judicial information. A balance must be struck between the benefits of access and the advantages of restricting or prohibiting access in certain cases.

VII. OBSERVANCE OF THE PRINCIPLES OF FAIR TRIALS

1. *Presumption of Innocence and Media's Role in Its Violation*

The media can violate the principle of presumption of innocence in two ways:

a) *Accusation by the Media:*

This can occur in two forms, either individually or combined. In media trials, individuals may demand actions that contradict the presumption of innocence. Before determining the guilt of an accused person, and prior to any investigation to verify whether the individual committed the crime, the media should refrain from disclosing the individual's name.

Thus, media outlets must avoid portraying the accused as guilty before the case is processed, investigated, and resolved.

2. *Impact on Both Parties in the Case*

The presence of media and the public during court proceedings, including the use of recording, photographing, or filming devices, can significantly affect both parties in the dispute, particularly the defendant's right to a proper defense.

For example:

- The sounds of audiovisual equipment.
- The flashing lights during photography or videography.
- The congestion caused by journalists and their equipment.

These factors can disrupt the focus and composure of the parties involved. This is especially true for the defendant, whose ability to defend themselves effectively can be impaired under such circumstances, making it difficult to articulate their case thoughtfully and clearly.

3. *Effect on Prosecutors*

The public nature of court sessions can also negatively influence prosecutors. The presence of media may create a perception that the prosecutor must "perform well" in front of cameras. This can divert attention from their primary role, potentially causing them to prioritize public appearances over their legal responsibilities.

4. *Impact on Witnesses*

Witnesses play a crucial role in judicial systems as they often provide key evidence. However, exposing the identity or statements of witnesses through the media can lead to significant risks, such as intimidation or

manipulation. Public disclosure of their testimony may also compromise the integrity of their contributions.

5. *Influence on Jury Members*

In jury trials, where jury members are often selected from diverse societal backgrounds with little legal knowledge, media exposure can unduly influence their judgments. For example, disclosing a defendant's prior records, or broadcasting images portraying their physical appearance, may bias jury decisions.

A study in Australia demonstrated this effect by conducting two mock trials:

- In one trial, the defendant was shown in disheveled clothing and poor physical appearance.
- In the other, the defendant appeared in appealing attire.

Survey results revealed that 40% of viewers who saw the defendant in an unkempt state deemed them guilty, while only 29% of those who saw the well-dressed defendant reached the same conclusion.

VIII. LIMITATIONS ON ACCESS TO JUDICIAL INFORMATION

a) *Judicial Information Access Constraints*

Access to judicial information is essential and beneficial to society, but it must adhere to specific limitations to prevent negative consequences. When such access disregards these constraints, it can lead to various issues. Therefore, laws have outlined restrictions on accessing judicial information to prevent:

- Risks to individuals' property, reputation, and dignity.
- Hindrance to the discovery of crimes.
- Disruption in the pursuit or arrest of suspects.

b) *Benefits of Access to Judicial Information*

Transparent decision-making in judicial processes is a core requirement of Islamic jurisprudence. Allah states in the Quran:

1. **Surah Sad, Verse 26:**

"O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your] desire, as it will lead you astray from the way of Allah."

2. **Surah Al-Ma'idah, Verse 49:**

"Judge between them by what Allah has revealed."

3. **Surah Al-Nisa, Verse 58:**

"Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice."

4. **Surah Al-Nisa, Verse 105:**

"Indeed, We have revealed to you the Book in truth so you may judge between the people by that which Allah has shown you."

When conducted appropriately, access to judicial information yields the following benefits:

- Enhances public trust in the judiciary.
- Promotes judicial impartiality.

- Ensures satisfaction among both parties involved in the dispute.

Proper access to judicial information not only upholds fairness but also strengthens the judicial system's credibility and fosters societal trust in its processes.

IX. CONCLUSION

After conducting research on access to judicial information, the following findings emerge from the study:

1. The right to access judicial information is a fundamental right of the people. If it were not a recognized right, states would not have enacted independent laws regarding the right of access to information. States have established specific laws concerning access to information, among which judicial information is a distinct category.
2. The research reveals that some legal scholars have written articles on this topic. These articles also confirm that access to judicial information is a fundamental right. However, these articles have not addressed all dimensions of the right to access judicial information, whereas this study has comprehensively examined all aspects and angles of this right.
3. The right to access judicial information is among the modern and contemporary legal rights. In some countries, this right has been officially recognized, and specific laws have been enacted under the title of the right to access information, which also includes judicial information. Similarly, Afghanistan has a law under the title of the Right to Access Information. This law, officially published in 2014 under the consecutive number (1156), decree number (137), and within 32 articles, includes judicial information as it is a general law on the right to access information, encompassing all forms of information.
4. The study concludes that the right to access judicial information is based on legal and political principles.

X. DISCUSSION

Although there are no significant academic studies available that directly address access to judicial information for comparison, the principle of discussion is an essential element of research. Nevertheless, this topic, titled "Access to Judicial Information," is relatively new, emerging, and contemporary, necessitating further research to illuminate all its hidden dimensions and clarify the subject.

Additionally, Afghanistan currently lacks an independent law specifically concerning access to judicial information that has been approved by Parliament and officially published. However, there is a law titled the Right to Access Information, which also encompasses judicial information. Judicial information is considered a category of general information, and the Right to Access

Information law regards access to information as a recognized and universally accepted right of the people.

Therefore, access to judicial information is also considered a fundamental right of the people. The law includes general principles regarding access to information, some of which are also applicable to the right to access judicial information.

RECOMMENDATIONS

1. I urge all individuals to gain awareness regarding judicial information and to adhere to the provisions mentioned in the law concerning judicial information. Access to judicial information benefits the public, the media, and the judiciary itself.
2. I specifically request scholars and legal experts to clarify and explain matters related to the right of access to judicial information for Muslims, utilizing every possible means to achieve this.
3. I recommend researchers to conduct further studies and investigations on judicial information and continue exploring this area. Our country still requires significant efforts in this regard.

May Allah's peace and blessings be upon our Prophet Muhammad, his family, and all his companions!

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