

## Implementation of RTI Act

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Wajahat Habibullah's recruitment is an extraordinary coup for the Government. There are a number of eminent citizens from Jammu & Kashmir who could have served as the State's first Chief Information Commissioner, but none could ever match the experience and reputation of Mr. Habibullah. His 4 years of experience implementing the Central RTI Act of 2005 at the Central level provides him with unique and invaluable insight that will prove useful in coming months and years. There are 2 additional Information Commissioners who will serve on the Commission, and it is reported that their selection will be at the discretion of Mr. Habibullah. As citizen-activists, we feel greatly re-assured that J&K's Information Commission has been placed in safe hands, and will not meet the same fate of toothless or crony-packed institutions like the State Accountability Commission or the State Human Rights Commission.

However, we must also recognize that the implementation of the J&K RTI Act of 2009 by Omar Abdullah's Government has been unimpressive. The Act was gazetted more than six months ago on 20 March, and yet there are still large portions of the Government that are non-compliant with key provisions of the RTI Act. The failings have been highlighted several times in the past 6 months, including in several newspapers of the state. When we recently asked the Chief Minister about these failings, he replied that things would change after the appointment of the Information Commission. Yet, implementation of the RTI Act is the primary responsibility of the concerned Secretaries and their Ministers and the Government as a whole, and not the responsibility of Mr. Habibullah, whose primary task will be to address specific appeals and complaints. Once Mr. Habibullah is sworn in, the Government will no longer have any excuses, and will no longer be able to shift responsibility to the Information Commission. We would like to take a moment to list the eight areas where Mr. Abdullah's Government has not followed the letter and spirit of the J&K RTI Act:

First, many Public Information Officers [PIOs] and almost all of the required Assistant PIOs [APIOs] have not been appointed. PIOs are officers who are responsible for processing RTI applications. APIOs receive RTI applications at lower levels and forward them onwards to the PIO for processing. The Department can appoint as many PIOs or APIOs as it desires but: (1) there must be at least 1 PIO who is chiefly responsible for RTI in each Department who is not junior to an Under Secretary in rank, (2) there must be at least 1 APIO/PIO in every district where the department has an office, and (3) semi-autonomous agencies (Public Authorities) such as the ERA, JKPSA, BOPEE, J&K Bank must appoint their own PIOs and APIOs. The JKRTI-2009 specifies that the PIOs/APIOs must be appointed within 100 days of the enactment of the Act, a deadline that passed on 28 June 2009. The Departments were reminded of this deadline in a Circular No. 25-GAD-2009, dated 5 June 2009. At that point, the Government hadn't appointed a single PIO. Today, there are a total of 27 PIOs in 34 Departments. It has been more than 110 days since this deadline [i.e. up to 14 Oct.], and yet the Departments of (1) Agriculture, (2) Elections, (3) Estates, (4) Higher Education, (5) Hospitality & Protocol, (6) Ladakh Affairs, and (7) Public Works (8) Culture still do not have PIOs! And none of the Departments have the required APIOs in each district! This is a joke. During this period, we were contacted by a Kashmiri student aggrieved of a matter with the Department of Higher

Education. With no PIO for the Department, there was no one to receive his application! How can the RTI function like this?

Second, there have been no training sessions for senior government officers, including Secretariat-level staff and (of course) the PIOs and APIOs. Since March, repeated offers were made to the Government to organize workshops or training seminars for these officials. We offered to involve the expertise of Commonwealth Human Rights Initiative in Delhi and the Chief Information Commission. The Government never responded to offers. Consequently, we have found that a variety of mid- and high-ranking officials are clueless about key provisions of the JKRTI 2009.

Third, the Government is obliged to ensure that its officers follow in letter and spirit the law, and must take action on its own accord against violators.

Fourth, the Government is obliged under Section 23 of the Act to organize RTI awareness programmes for the public, particularly for "disadvantaged communities." The individual Departments/PAs are also called upon to "undertake such programmes themselves." This section also requires the publication of English, Hindi, and Urdu RTU user guides within 18 months of enactment. The Government has not taken any action to fulfill these obligations.

Fifth, almost all of the Departments and PAs have failed to abide by the suo moto provision of Section 4. This provision requires Departments/PAs to pro-actively disclose information about their function & organization within 120 days of enactment. This deadline passed on 18 July 2009. A similar provision was featured in the (widely-ignored) JKRTI Act 2004. The J&K Police has been the only PA to publish their information brochure, which is currently featured on their website. The State Vigilance Organization has no information brochure but they have a special page on their website disclosing the details and outcomes of RTI applications they've received. No other organization in J&K has done the same. Why is the rest of the Government being put to shame by the example of the J&K Police and the SVO?

Sixth, the Government must engage with civil society to plug lacunae in the Act and Rules. The Government released a draft bill on 20 February, but then provided only 7 days for comments. We submitted (1) an analyses of flaws in the Bill, and (2) recommended language to improve the Bill to the Law Department and the Chief Minister. These analyses and recommendations were also discussed in Op-Eds in several leading newspapers of the state between 23 and 25 February. To our horror, our recommendations were completely ignored. Not even typos in the draft Bill were corrected in the final version that was tabled & passed by the Legislative Assembly and gazetted on 20 March! As for the Rules, they were suddenly gazetted on 6 June 2009 without any public input. We submitted analyses of the Rules which were (of course) completely ignored.

Seventh, the Information Commission will require a respectable budget outlay from the Government, especially in its first year. The Commission will require offices in both Srinagar and Jammu. With three Information Commissioners, it is likely that the High Court model will be followed, wherein 1 commissioner will sit in Srinagar, 1 commissioner will sit in Jammu, and the Chief will alternate biannually along with the Secretariat and High Court. Through Sections 10-15 of the Rules, the J&K Information Commission has been uniquely endowed with special components, including: (1) a "Monitoring and Reporting Wing" responsible for monitoring RTI

implementation in the Government, (2) an autonomous "RTI & Transparency Institute" dedicated towards research and policy-making, and (3) a "Protocol & Public Relations Wing" for engaging the public. Since the year is 2009 and 1989, the Commission will require a fully computerized system for receiving, processing, and deciding appeals and complaints. All of these requirements necessitate adequate financing from the Government.

Eighth, the Government of J&K should "seize the moment" and implement innovative measures to improve RTI in the State. For example, under Rules Section 4(iii) the Government may choose to accept electronic payment of RTI applications. The Government is a majority stakeholder in J&K Bank and it remains feasible to establish a centralized RTI fee payment system through their expertise. For example, a special website might be established by the J&K Bank to accept all electronic RTI payments on behalf of the J&K Government. Payment to this system would generate an electronically verifiable receipt indicating (1) the name of the applicant, (2) the purpose, (3) the destination department/PA, (4) the amount of fee paid, (5) the date, and (6) a receipt number that can be verified by the PIO through the same site. This receipt could be included along with the RTI application, in lieu of the antiquated and 19th-century approach of using stamp paper, IPOs, and demand drafts.

These eight obligations are essential and--in some cases--required by law. We urge the J&K Government to Act upon them immediately rather than attempting to defer the issue or shift responsibility to the Information Commission. The selection of a highly respected gentleman for the Chief Information Commissioner of J&K does not mean that the Government of J&K has a licence to "play bunk" on the people's Right to Information.