

Jammu and Kashmir RTI Amendments – Urgent Action Appeal

Dear all,

I hope you received our urgent action appeal sent last week regarding the proposed amendments to the *Jammu and Kashmir RTI Act, 2004* (principal Act). The State Government pushed the *Jammu and Kashmir Right to Information (Amendment) Bill, 2007* through both Houses of the Legislature even though MLAs and MLCs called upon the Government to refer the Bill to a joint select committee of both houses. The Amendment Bill is likely to be presented to the Governor soon.

To access CHRI's analysis of the Amendments please click on
<http://www.humanrightsinitiative.org/programs/ai/rti/india/states/jk/jk_rti_bill_2007_chri_submission2.pdf>

The Amendments are inadequate because they do not provide for the citizens seeking information from the public bodies in Jammu and Kashmir the same guarantees and protections available to citizens in other parts of the country under the Central Right to Information Act, 2005:

- 1) The definition of the term 'information' is restrictive and will allow citizens access only to those records and documents that are 'readily available' with a public body. Citizens will not be able to obtain information in a form of their choice.
- 2) There is no provision in the principal Act or in the amendments that bars officers from compelling applicants to disclose reasons for seeking information.
- 3) The High Court of Jammu and Kashmir is not covered by the principal Act or in the amendments. There is a strong likelihood that the judiciary in Jammu and Kashmir may remain outside the purview of any RTI Act in India.
- 4) Citizens may not be able to access information about private entities collected by public bodies under any other law as neither the principal Act nor any of the amendments contains a reference to accessing such kinds of information.
- 5) There are about 18 categories of information in the principal Act which will be kept out public scrutiny till eternity. The amendments add two more categories of information to this list. It is important to note that the Amendments seek to completely exclude opinions and advice of officers (file notings) on any matter before a decision is taken.
- 6) There is no public interest override on exempt information in the principal Act or in the amendments. Intelligence and security organisations will be completely excluded from giving any information whatsoever. They will not be required to disclose information about allegations of corruption or human rights violations like in the Central RTI Act.
- 7) There is no provision in the principal Act or in the amendments for transferring information requests from one public body to another if the desired information is not available with the public body that received the application first.
- 8) The time limit for disclosing information is 30 working days and not 30 calendar days as provided for in the Central RTI Act. There is no time limit specified for rejecting an information request. The Departmental Information Officer can reject a request if collecting the requested information will involve considerable expenditure for the public body. There is no provision that requires information concerning life and liberty of any person to be given within 48 hours. The amendments do not rectify these anomalies.

9) The procedure for dealing with requests for information relating to third parties is not clarified in detail.

10) The members of the State Information Commission will be selected by a government controlled committee. Apart from the Chief Minister and the Leader of the Opposition the Chief Secretary will be the other member.

11) The members of the Commission will be appointed for a 3 year term only unlike their counterparts in other states. Their salaries and allowances will be lower than that of their counterparts at the Centre and in the States.

12) The amendments prescribe much lower penalties for contraventions of the Act. The State Information Commission can impose a fine of only Rs. 50/- per day up to a maximum of Rs, 5,000/-. This is much lesser than the figures prescribed in the Central RTI Act.

What is CHRI's view?

CHRI believes, the amendments do not adequately secure the fundamental right to access information for citizens in Jammu and Kashmir. If the Amendment Bill becomes law, citizens will have inferior rights in matters relating to seeking and obtaining information as compared to that enjoyed by citizens in other parts of the country. Furthermore the amendments will create a weak enforcement mechanism for securing compliance of public bodies with the provisions of the J&K RTI Act. The Amendment Bill requires several changes if it is to bring the Jammu and Kashmir RTI Act at par with the Central RTI Act.

CHRI urges the Honourable Governor of Jammu and Kashmir to use his powers under Section 78 of *The Jammu and Kashmir Constitution, 1956* to withhold assent to the *Jammu and Kashmir Right to Information Amendment Bill, 2007* for reasons cited above.

CHRI urges the Honourable Governor of Jammu and Kashmir to use his powers under Section 78 of *The Jammu and Kashmir Constitution, 1956* to send the *Jammu and Kashmir Right to Information Amendment Bill, 2007* back to the State Legislature for reconsideration.

CHRI has drafted the sections and clauses necessary to strengthen the J&K RTI Act to bring it at par with the Central Act. CHRI urges the Honourable Governor of Jammu and Kashmir to use his powers under Section 78 of *The Jammu and Kashmir Constitution, 1956* to send the recommended changes for the consideration of both Houses of the Jammu and Kashmir Legislature.

What can you do?

You can raise your voice to express solidarity with citizens living in Jammu and Kashmir whose fundamental right to seek and obtain information from Government is being weakened. You may urge the Governor of Jammu and Kashmir to withhold his assent to the Amendment Bill and return the Bill to the Legislature for reconsideration.

Whom do you contact?

You may like to convey the following message to the Honourable Governor of Jammu and Kashmir :

Your Excellency / Dear sir,

“We strongly urge you to use your constitutional powers and withhold assent to the Jammu and Kashmir Right to Information (Amendment) Bill, 2007 passed recently by the

Jammu and Kashmir Legislature. The proposal to amend the Jammu and Kashmir Right to Information Act, 2004 is indeed commendable and long overdue. However the amendments fall short of the standards of guarantee and protection provided for the citizens' right to information in other parts of the country under the Central Right to Information Act, 2005. There has been no visible public consultation on these amendments. We urge you to return the Amendment Bill to the Legislature for reconsideration."

By Email to

rajjk@nic.in

By Fax, Telephone or Surface Mail (speed post / courier / inland letter / post card) to

*Lt. Gen (retd.) S K Sinha
The Governor of Jammu and Kashmir
Governor's Secretariat
Raj Bhavan
Srinagar – 190 001
Fax:0194-2501414
Email: rajjk@nic.in*

With a copy to the Governor's Principal Secretary

*Dr. Arun Kumar, IAS
Governor's Secretariat
Srinagar – 190 001
Fax: 0194- 2501414*

Local Contact

Dr. Muzaffar Bhat
Convener, Jammu and Kashmir Right to Information Movement.
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E mail at budgamsocial@rediffmail.com .

**Please share this appeal within your networks as widely as possible.
Apologies for cross posting.**

Venkatesh Nayak
Programme Coordinator
Access to Information Programme
Commonwealth Human Rights Initiative