

## **Amend RTI Act, Azad told**

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The Central Information Commission (CIC) has advised the Jammu and Kashmir Chief Minister to bring an amendment to the State Right to Information Act, 2004, and bring it in conformity with the RTI Act, 2005.

The CIC's decision has come on an application made by R.C. Pandita, a resident of Roop Nagar, Jammu.

Pandita moved an application to the President's Secretariat in July last year, seeking information on Jammu and Kashmir's ranking as the second most corrupt state in India.

When he did not hear from the President's office, he moved the Central Information Commission.

In response to a notice issued by the CIC to the President's Secretariat, central public information officer Nitin Wakankar described Pandita's complaint to the CIC "premature" and said that the complaint is liable to be dismissed and the notice sent to him be withdrawn.

At the same time, the CPIO attributed the delay in reply within the stipulated time under the RTI Act to a clerical error.

Regretting the error, the CPIO explained that Pandita's letter was put on file without realising that it was in pursuance of the RTI Act, 2005. The said clerical error occurred since the earlier letter from Pandita addressed to the President of India had already been sent to the state government concerned for appropriate action.

The chief information commissioner Wajahat Habibullah has observed that although J&K has a Right to Information Act, 2004, it is regrettable that citizens in that part of India are denied the benefits of the Central Right to Information Act, 2005, available to their fellow citizens.

Habibullah's decision reads, "The Chief Minister of Jammu and Kashmir would be well advised to bring an amendment to the J&K RTI Act 2004 bring it in conformity with the RTI Act, 2005, guaranteeing to all citizens residing in J&K the basic liberties to which all Indians except those dealing with the state government of J&K have come to acquire the right."

In his decision, the chief information commissioner has directed the CPIO in the President's Office to inquire into the failure, fix responsibility and initiate action under Section 20(2) of the Act against the delinquent and intimate to the CIC within 20 working days.

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# DAILY EXCELSIOR

JAMMU (JAMMU & KASHMIR) INDIA

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(Lead Editorial Article)

## We have right to be well informed

It is widely admitted that democracies die behind closed doors. They instead work on the premise that nothing shall be hidden because nothing can be hidden. The people have every right to know that their government acts fairly, lawfully and accurately. At the Central level we already have a fairly strong legislation called the Right to Information Act (RIT) that enables every citizen to force the men at the helm of the administration to dust off their pigeonholes. Unfortunately, however, in the State it remains a weak instrumentality. We have chosen a dispensation in which we can't immediately gain from even the most beneficial Union laws. What a pity! The State got the Jammu and Kashmir Right to Information Act in 2004. As an expert noted in this newspaper later, "the rules were not issued for 18 months rendering the Act nothing more than scrap of paper." In any case it was toothless. It contained absurd provisions like stating that the first appeals lie with the "controlling officer" of the concerned department and the second appeals with "the Government." How could such partisan umpires be expected to take action against their own colleagues withholding the desired information? Another equally ridiculous clause was that the officers failing to provide the information in stipulated time-frame would be "liable after such inquiry as may be required under rules pertaining to disciplinary action applicable to him for imposition of such penalty as may be determined by the disciplinary authority under such rules." Where the need for a probe was after the failure to give information was established? Why should there be a cumbersome process of proving whether or not there was breach of discipline? Subjecting a simple matter to bureaucratic wrangles defeated the laudable purpose of the law. Ironically, the Act had left out the far more relevant effective provisions of the Central Government's Freedom of Information Act, 2002, even though claiming to have followed its spirit. It is only recent history that the Union law itself was found inadequate and faced resistance from champions of open and transparent government functioning. It has since been modified as the Right to Information Act, 2005, and drawn wide praise for the country in responsible international forums for having strengthened its democratic fervour.

As the pressure also piled up on the State Government to bring its Act on par with the Central law it too amended its legislation and called it the Jammu and Kashmir Right to Information (Amendment) Bill, 2007. Defending the bill Mr Taj Mohiuddin, Minister for Consumer Affairs, admitted in the legislature that the State Government had not copied the Central Act keeping in consideration "our own requirements and sensitivities". Nevertheless he described the amended measure as "revolutionary" and "a step towards greater transparency and accountability." However, the amendments fell short of expectations. These did seek to usher in some improvement but on the whole left gaping holes. In a detailed analysis the Commonwealth Human Rights Initiative (CHRI) which along with other public-spirited persons and organisations was involved in consultations during the formulation of the Central legislation, described the amendments "a half-hearted measure". It noted three "positive features": setting up of an information commission, role of appellate authority in identifying errant officers and statutory requirement on the State Government to educate citizens about RTI. On the other hand, it pointed out at least a dozen shortcomings like, for instance, "the High Court is not covered,

definition of information is inadequate, private bodies have been left out, reasons should not be required for giving information, too many exemptions, no public interest override or sunset clause, pro-government bias of the committee for selecting information commissioners, inadequate penalties and exclusion of intelligence and security agencies." To its credit the CHRI carried out extensive comparative study. To cite an example, it said the J&K law defined the term "information" as meaning "any document or information relating to the affairs of the State or a public body." The definition in the Central Act was much wider and covered a whole gamut of material which qualified to be called "information" --- records, circulars, memos, emails, log books, contracts emails, opinions, press releases, reports and models. The CHRI reasoned: ""In the absence of a comprehensive definition of the term 'information' in this manner bureaucrats are likely to deny access to many categories of information whose disclosure may be inconvenient to their vested interests. There is a serious danger of the Act becoming restricted to providing copies of only papers and documents held by public bodies. The Amendment Bill does not rectify this situation....The definition of information should clearly include samples of materials used in public works. .. It is well known in the public domain that one of the ways of making money through corrupt means in the execution of public works is to make use of materials of inferior quality. If citizens living in Jammu and Kashmir have the same right as citizens living in other States they will be able to seek samples of materials used in public works and offices and verify them against the quality specifications mentioned in the contract. Corruption can be contained with the help of people's participation." With Central Information Commissioner Wajahat Habibullah echoing it the voice for honing the State RTI Act to perfection has gained strength. There is no doubt about it.

Now by returning the Amendment Bill to the legislature, State Governor Lt Gen S.K. Sinha (ret'd) has given it an opportunity to take the remedial step. Since there is already a model available in the form of the Central Act the legislators should have little difficulty in adopting it in toto. Prima facie there does not appear to be any necessity of losing more time by referring the bill to a select committee or holding a public debate. People have every right to know and being informed about what their ruling apparatus is doing in their name. The United Nations has noted in one of its reports: "Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is, therefore, to be strongly checked."

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