

Jammu and Kashmir Right to Information (Amendment) Bill, 2007

Submission by

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Background

The Legislature of Jammu and Kashmir passed the Jammu and Kashmir Right to Information Act (J&K RTI Act) in December 2003. It was formally gazetted in 2004. Rules for implementing this Act were notified by the State Government in 2005. This law is closely modeled on the erstwhile Freedom of Information Act (FOI Act) passed by Parliament of India in 2002 (now repealed). The Government of India never implemented the Central Act. Subsequently in 2004 when the United Progressive Alliance (UPA) came to power at the Centre it issued a Common Minimum Programme (CMP) for governance and development. One of the promises contained in the CMP was to make the FOI Act more participatory, progressive and meaningful. Within a year of coming to power, the UPA Government involved civil society organisations and advocates of right to information (RTI) around the country to craft a new information access law. Parliament passed the Right to Information Act in May 2005. This law was gazetted in June 2005 and fully enforced in October the same year. The FOI Act was repealed. Owing to the unique constitutional position of the State of Jammu and Kashmir, Parliament is not competent to extend the RTI Act to this State. Therefore it became necessary to amend the J&K RTI Act to strengthen it along the lines of the Central RTI Act. Civil society organisations, votaries of transparency and eminent persons have advocated with the State Government to make amendments to the J&K RTI Act. A private member's Bill to this effect was introduced by Shri Yusuf Tarigami in the J&K Legislative Assembly. This Bill was drafted with substantial inputs from civil society organisations like the Commonwealth Human Rights Initiative and was aimed at bringing the J&K RTI Act on par with the Central Act. However the State Government of Jammu and Kashmir has tabled a separate set of amendments in the Assembly and seeks to push it through without any public consultation.

The suggested amendments, save some positive features listed immediately below, are a half hearted exercise towards strengthening the J&K RTI Act. The constituent political parties that have formed the Government in Jammu and Kashmir are also coalition partners in the UPA Government at the Centre. The UPA Government repealed the FOI Act and brought in new legislation that guarantees much stronger protection for every citizen's fundamental right to information held by public bodies. However the ruling coalition in Jammu and Kashmir is proposing mere cosmetic changes to the J&K RTI Act which was an adaptation of the erstwhile FOI Act. It appears that the citizens of Jammu and Kashmir are not entitled to benefit from the promise of the UPA Government even though two of its coalition partners – the Congress-I and the J&K People's Democratic Party have formed the Government in the State of Jammu and Kashmir.

Positive features:

The J&K RTI Act Amendment Bill, 2007 may be commended for proposing to set up an autonomous State Information Commission (SIC) along the lines of similar bodies established at the Central level and in the States. The SIC is to be mandated with the task of receiving and inquiring into complaints and second appeals received from citizens aggrieved by the decisions of public bodies withholding access to the information requested by them. The existing version of the J&K RTI Act does not have such a mechanism.

A second commendable feature of the proposed amendments is the fixing of a time limit for the disposal of all complaints and second appeals received by the SIC. The Central RTI Act does not fix any such time limit for the information commissions operating at the Central or State level. This is a welcome improvement as a complainant/appellant in Jammu and Kashmir will be certain of receiving a decision from the SIC within a maximum of 60 days.

The other major change which the amendments seek to bring about is a re-designation of officers tasked with the responsibility of processing information requests and first level of appeals received from citizens.

Main Drawbacks in the Amendment Bill and the J&K RTI Act:

1) Need to cover the High Court of Jammu and Kashmir:

In the existing version of the J&K RTI Act the definition of the term 'public body' which is primarily responsible for making decisions on the information requests of citizens, is not wide enough. It does not seem to cover the High Court of Jammu and Kashmir. The Central RTI Act does not apply to Jammu and Kashmir. So unless the definition of the term 'public body' contained in Section 2(f) of the J&K RTI Act is amended to include the High Court and all the subordinate courts, an entire arm of the State will be left out of the purview of any transparency law in the country. This is not a desirable situation when the Supreme Court of India, all High Courts and subordinate courts throughout the country are covered by the Central RTI Act and are required to provide access to information held by them.

2) Access to information and not merely access to records:

The existing version of the J&K RTI Act defines the term 'information' in Section 2(e) as meaning "any document or information relating to the affairs of the State or a public body." The definition in the Central RTI Act is much wider and covers a whole gamut of materials which qualify to be called 'information' – this includes records, circulars, memos, emails, log books, contracts, models and even samples of materials used in public works. Equally importantly, it includes any information about a private body that a public authority is empowered by law to collect and maintain. The J&K RTI Amendment Bill does not

propose any change to this definition. This is a major draw back as it will restrict the scope of information that citizens of J&K can access from public bodies directly and seek about private bodies indirectly.

3) Proactive disclosure is not comprehensive enough:

Section 3(b) of the existing version of the J&K RTI Act requires public bodies to publish some information about their constitution and working in a proactive manner. This list is meagre compared to the much bigger list of 16 points of information that public authorities at the Centre and in other States are required to disclose voluntarily under the Central RTI Act. The proposed amendments do not expand this list like in the Central RTI Act to include information such as salaries and emoluments of officers, the budgetary allocations and disbursements of all public bodies, the manner of execution of subsidy schemes and their beneficiaries and consultative and advisory mechanisms set up within the public bodies. Experience from other developed countries like USA, Canada, Australia and the United Kingdom and developing countries like Mexico, South Africa and Jamaica clearly demonstrate that the more information public bodies disclose voluntarily, lesser the need for people to make formal requests and therefore lesser the burden on Departmental Information Officers. Section 3(b) of the existing J&K RTI Act needs to be amended to cover all the points of information required to be proactively disclosed under the Central RTI Act.

4) Reasons should not be required to be given for seeking information:

Section 6(3) of the Central RTI Act makes it crystal clear that a citizen applying for information is not required to give any reason as to why he/she needs that information. This is in keeping with international best practices. No citizen should be compelled to give reasons for exercising his/her fundamental right to seek and obtain information from Government. The existing version of the J&K RTI Act does not contain such a provision nor is it proposed in the Amendment Bill. This is a major lapse. In the absence of a clear provision against disclosure of reasons, bureaucrats are likely to compel citizens to give reasons for seeking information and are wont to deny access simply because an applicant has not given proper reasons for seeking information.

5) Too many exemptions to disclosure, no public interest override or sunset clause:

Even though the proposed amendments aim to delete one exemption they add two more to the already long list of exemptions in the existing version of the J&K RTI Act. The Central RTI Act contains only 10 exemptions and is much less restrictive of citizens' access to information. It also contains a clause that requires public authorities to disclose even exempt information if it is prudent to do so in the larger public interest. Furthermore it contains a sunset clause where 7 out of the 10 exemptions will not apply for information that is more than 20 years old. The proposed amendments to the J&K RTI Act do not contain any such public interest override or sunset clauses. The Government and all public bodies covered by the J&K RTI Act will be able to keep an unacceptably long list of categories of information forever hidden from

public scrutiny. This is in complete contrast with international best practices in countries like the United Kingdom and South Africa.

6) Pro-government bias of the committee for selecting Information Commissioners:

According to the J&K RTI Amendment Bill, the members of the proposed State Information Commission are to be nominated by a Committee of three members which include the Chief Minister as its Head, the Leader of the Opposition and a Cabinet Minister to be nominated by the Chief Minister. No doubt, this is in line with the scheme of the appointing process contained in the Central RTI Act. But experience at the Central and State levels over the last two years has shown that governments have mostly appointed retired bureaucrats as Chief Information Commissioners and Information Commissioners who found favour with them while in government service. During the public debates on the Central RTI legislation in 2004-05, RTI advocates had strongly recommended that the selection committee include the Chief Justice of the High Court in the States and the Chief Justice of India at the Central level to bring in balance and increase the possibility of nominating non-partisan individuals who would be champions of transparency. J&K now has a chance to improve upon the Central RTI Act and set a new standard for the whole country by changing the composition of the selection committee. The Chief Justice of the High Court of Jammu and Kashmir should be the third member of the selection committee in place of the cabinet Minister. This will ensure that no political party or alliance will hijack the selection process. Similarly the Amendment Bill should include a time limit of, say, 3 months within which vacancies in the State Information Commission should be filled up on the retirement or exit of any member.

7) Toothless State Information Commission:

If the Amendment Bill goes through Jammu and Kashmir will have the weakest State Information Commission in the country. Under the proposed amendments the State Information Commission will only have the power to recommend to the concerned department, disciplinary action against officers found violating the RTI Act. This is in complete contrast to the powers given to the Central and the State Information Commissions under the Central RTI Act. Under the Central Act the Information Commissions can impose penalty from Rs. 250/- per day up to a maximum of Rs. 25,000/- on information officers for serious violations of the law. The proposed State Information Commission in the J&K will remain toothless in the absence of such powers to penalize errant officers. It is the threat of penalty that has played a deterrent role against the general tendency of officers to refuse access to information in an unreasonable manner and ensured compliance with the Central RTI Act in other parts of the country. The proposed State Information Commission should have the power to impose monetary penalties of the kind provided for in Section 20(1) of the Central RTI Act, if its writ is to run in the State of J&K.

8) Monitoring role for the Information Commission:

The proposed amendments do not provide the State Information Commission with anything more than an adjudicatory role in information access related disputes between the citizen and a public body. This is not in line with the powers of the Information Commissions provided under the Central RTI Act. Under the Central RTI Act, Information Commissions have the important responsibility of monitoring implementation of the RTI Act in every ministry, department and public authority. All public authorities are required to submit annual reports on the implementation of the Central RTI Act to the respective Information Commissions. These Commissions in turn report to Parliament or the appropriate legislatures, every year, on the progress made towards implementing this Act. This is a healthy practice which ensures legislative scrutiny over the seriousness of government and public bodies in implementing this democratising legislation. The proposed State Information Commission in J&K should be given similar powers as its counterparts in other States.

9) Compensation for loss suffered by citizens:

The Central RTI Act empowers the Information Commissions to award compensation to citizens who have suffered losses or detriment because of the unreasonable refusal of public bodies to part with information. Public authorities are required to compensate the complainant for such loss suffered. The proposed amendments to the J&K RTI Act do not contain such a clause. This is another serious drawback as citizens must be provided some form of remedy in the event of unreasonable denial of access to information.

10) Responsibilities of the State Government:

The Central RTI Act places an important responsibility on the respective Governments – educating people about the legislation and the value of right to information. This is in keeping with the objective of that law i.e., “to create an informed citizenry and to make the government and its instrumentalities accountable to the governed”. Such noble objectives are not only missing from the preamble of the existing J&K RTI Act but they are also absent in the Amendment Bill. The J&K Government should be vested with the statutory responsibility of educating people about the RTI Act with particular focus on the disadvantaged sections of society who suffer most from lack of access to crucial information. The State Government should also be made statutorily responsible for training officers in all public bodies to implement this Act in letter and spirit.

Concluding recommendation:

The proposed amendments to the J&K RTI Act are only a half-hearted attempt to strengthen it. The Government has tabled these amendments in a hurry without any kind of public consultation. This is also in complete contrast with the practice that was followed when the Central RTI Act was drafted. There were informal consultations with RTI advocates prior to the tabling of the Bill in Parliament. There was a

formal process of public consultation during the consideration of the Bill when it was referred to the Standing Committee of Parliament attached to the Ministry of Home Affairs. This consultation which facilitated detailed examination of every provision of the Bill was instrumental in expanding the coverage of the law to include State Governments as well. This major recommendation along with many others was made only because Parliamentarians were given enough time to discuss it and hear the views of civil society and citizens. CHRI strongly recommends that the existing RTI Act along with the proposed amendments be referred to a joint select committee consisting of members of the Legislative Assembly and the Legislative Council for a detailed discussion. It is necessary to strengthen the J&K RTI Act much more than the proposed amendments aim to do if it is to be brought on par with the Central RTI Act. Access to information held by public bodies is a fundamental right of all citizens of India. There is no reason why citizens living in the State of Jammu and Kashmir should not enjoy the same guarantees and protection of their fundamental right to information as their brothers and sisters living in other parts of India.

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