

SCOPE Society for Consumer Protection and Environment

7 Panj Bakhtar Road, Jammu-Tawi,
Jammu & Kashmir, INDIA
Phone 91-191-2548534 (India)

Website: www.scopeforchange.org
E-mail: scope@scopeforchange.org
Phone: 1-630-664-1149 (USA)

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Chief Minister
J&K State Government

Sub: Serious Deficiencies in the Jammu & Kashmir Right to Information Act

Respected Sir:

As an organization interested in good governance, SCOPE congratulates the Government of Jammu & Kashmir for recently issuing the Rules to the Right to Information [RTI] Act of 2004 (issued by the General Administration Department on 30th June, 2005, SRO No. 181).

To our regret, the Jammu & Kashmir RTI Act is marked by two major deficiencies that are not found in the RTI Acts which have been passed by the Legislative Assemblies of Maharashtra, Delhi, Karnataka, Goa, Madhya Pradesh, Assam, and Rajasthan:

1. **The J&K RTI Act does not have an independent appeals process.**

Under the RTI Acts of 1) Maharashtra, 2) Delhi, 3) Karnataka, 4) Goa, 5) Assam, and 6) Rajasthan, there are provisions for appealing denial-of-requests to an independent body. In contrast, in the J&K RTI, the first appeal lies with the Officer-in-Charge of the concerned Department, while the second appeal lies with “the Government.” See table below demonstrating how the J&K RTI Act differs from the rest of the country, as well as the comparison on Page 3 showing the difference in the appeals process between the J&K RTI Act and the Maharashtra RTI Act (as an example).

State	RTI Act	Appellate Body
Maharashtra	RTI Act of 2003	Maharashtra Lokayukta
Delhi	RTI Act of 2001	Delhi Public Grievances Commission
Rajasthan	RTI Act of 2000	Rajasthan Civil Services Appellate Tribunal
Karnataka	RTI Act of 2000	Karnataka Appellate Tribunal
Assam	RTI Act of 2002	Assam Administrative Tribunal
Goa	RTI Act of 1998	Goa Administrative Tribunal
Jammu & Kashmir	RTI Act of 2004	“the Government” (Sec. 9-2) ???

Under the present system of the J&K RTI Act, appeals lie with “the Government” (Sec. 9-2). Yet, the Government is not defined in either the Act or the Rules. Further, the premise that “the Government” is a legitimate appellate body is false, and violates the spirit of the Right to Information Act. Further, the present appeals process in the J&K RTI Act (as outlined in Section 9) contradicts the RTI laws of other states, as listed above and below. **Therefore, we demand that the Act be amended so that the J&K High Court is the appellate body for the J&K RTI Act.**

2. **The J&K RTI Act does not have a meaningful penalty clause.**

Under the RTI Acts of 1) Maharashtra, 2) Karnataka, 3) Goa, and 4) Madhya Pradesh, there are provisions for penalizing officers who a) abdicate their duty to the public under the RTI Act, or b) who falsify or destroy the requested public information. These penalties take the form of direct monetary fines and salary deductions leveled by the authorized appellate bodies. See table below demonstrating how the J&K RTI Act differs from the rest of the country, as well as the comparison on Page 4 showing the difference in the direct penalty clause of the J&K RTI Act and the Maharashtra RTI Act (as an example).

State	RTI Act	Direct Penalty Clause?
Maharashtra	RTI Act of 2003	Yes
Karnataka	RTI Act of 2000	Yes
Goa	RTI Act of 1998	Yes
Madhya Pradesh	RTI Act of 2003	Yes
Jammu & Kashmir	RTI Act of 2004	No Penalty Clause

In contrast to other states, the J&K RTI does not contain any meaningful penalty for officers who violate the law in respect of either (a) or (b). This is lamentable, since it effectively renders the J&K RTI Act useless. If there is no penalty for officers who violate the RTI Act, then there is no incentive for them to abide by this Act. For this reason, the present J&K Right to Information Act is unenforceable and therefore meaningless. **Therefore, we demand that the RTI Act be amended to include direct penalty clauses analogous to those of the Maharashtra RTI Act.**

Thanking you, we look forward to working with you to make J&K a better place to live.

Sincerely,



Dr. Kulwant Singh
Project Director
SCOPE, Jammu & Kashmir

Attached: Comparison of J&K and Maharashtra RTI Acts: (1) Appeals Process (one page)
(2) Penalty Clause (one page)

Deficiency 1: J&K RTI Act does not have an independent appeals process

Jammu & Kashmir

Right to Information Act of 2004

First published, after having received the assent of the Governor in the "Jammu & Kashmir Government Gazette," on the 7th January 2004

9. Appeals

(1) Any person aggrieved by the order of the incharge of the office or any person who has not received required information within the time stipulated under section 5, **may appeal to the controlling officer, within thirty days of the decision rejecting his request for information** or the expiry of period stipulated under section 5 for furnishing such information:

Provided that the controlling officer may entertain appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal.

(2) A second appeal against the decision under sub-section (1) shall lie within 30 days of such decision to the Government :

Provided that the Government may entertain appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal.

(3) The appeals preferred under sub -sections (1) and (2) shall be heard and decided expeditiously and by all means be disposed of within thirty days of presentation of appeal:

Provided that no order adversely affecting the person making the appeal shall be passed unless an opportunity of being heard is afforded to him.

(4) The appeal shall be accompanied with the proof of fee deposited or tendered in the manner provided in accordance with section 10.

Maharashtra

Right to Information Act of 2003

First published, after having received the assent of the President in the "Maharashtra Government Gazette," on the 11th August 2003

11. Appeals

(1)(i) Any person aggrieved by an order of the Public Information Officer may, within thirty days from the date of receipt of such order; or

(ii) any person who has not received any communication within the period of fifteen working days as specified in sub-section (2) of section 6 or the extended period as specified in the second proviso to the said sub-section (2), from the date of making such application; **may, appeal to the appellate authority, within a period of thirty days of the lapse of such period in such form and with such fees, as may be prescribed :**

Provided that, when the order of the Public Information Officer is passed under clause (a) of section 7 with the approval of the Committee referred to in the proviso to the said clause (a), the appeal against such order shall lie only to the Lokayukta or Upa-Lokayuktas.

(2) The appellate authority may, after giving the person or persons affected a reasonable opportunity of being heard, pass such order as it deems fit.

(3) Any person aggrieved by the order of the appellate authority under sub-section (2), may within thirty days from the receipt of such order, prefer second appeal to the Lokayukta or Upa-Lokayuktas, as the case may be, of the State.

(4) The appeals referred to in sub-sections (1) and (3) shall, as far as possible be disposed of within thirty days of the receipt of such appeals or within such extended period not exceeding a further period of thirty days, after recording the reasons for such extension of period.

(5) The decision of the Lokayukta or Upa-Lokayuktas, as the case may be, in appeals shall be final.

Deficiency 2: J&K RTI Act does not have a meaningful penalty clause

Jammu & Kashmir

Right to Information Act of 2004

First published, after having received the assent of the Governor in the "Jammu & Kashmir Government Gazette," on the 7th January 2004

12. Penalties

Where any person responsible for making available information under this Act, fails without any reasonable cause to furnish information sought by any citizen under the provisions of this Act within the time specified or furnishes any information which is false with regard to any material particulars and which he knows and has reasonable cause to believe it to be false or does not believe it to be true, **he shall 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.**

Maharashtra

Right to Information Act of 2003

First published, after having received the assent of the President in the "Maharashtra Government Gazette," on the 11th August 2003

12. Penalty

(1) Where any Public Information Officer has without any reasonable cause, failed to supply the information sought, within the period specified under sub-section (2) of section 6, **the appellate authority may, in appeal impose a penalty of rupees two hundred fifty, for each day's delay in furnishing the information, after giving such Public Information Officer a reasonable opportunity of being heard.**

(2) Where it is found in appeal that any Public Information Officer has knowingly given, -
(a) incorrect or misleading information, or (b) wrong or incomplete information ;

the appellate authority may impose a penalty not exceeding rupees two thousand, on such Public Information Officer as it thinks appropriate after giving such officer a reasonable opportunity of being heard.

(3) An appeal shall lie against the order of the appellate authority, with the Lokayukta or Upa-Lokayuktas and the provisions of sub-sections (3),(4) and (5) or section 11 shall *mutatis mutandis* apply to such appeal.

(4) The penalty under sub-sections (1) and (2) as imposed by the appellate authority, shall be recoverable from the salary of the Public Information Officer concerned, or if no salary is drawn, as an arrears of land revenue.

(5) The Public Information Officer on whom the penalty under sub-sections (1) and (2) is imposed shall also be liable to appropriate disciplinary action under the service rules applicable to him.