

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

An Analysis

With

Recommendations for Improvement

Submitted by

Ms. Maja Daruwala

Venkatesh Nayak



Commonwealth Human Rights Initiative (CHRI)

B-117, First Floor, Sarvodaya Enclave,

New Delhi – 110 017

Tel: 011-2685 0523 / 2686 4678

Fax: 011-2686 4688

Email: chriall@nda.vsnl.net.in

majadhun@vsnl.com

venkatesh@humanrightsinitiative.org

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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 notified in the Official Gazette 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is closely modeled on the erstwhile *Freedom of Information Act* (FOI Act) passed by the Indian Parliament in 2002 (now repealed). The Government of India never implemented the FOI 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. The Central Government consulted civil society organisations before and during the process of drafting the new legislation for ideas on who to make it stronger than the FOI Act. Parliament also invited citizens and civil society organisations to make representations on how best to strengthen the Bill introduced by the Central Government. After hearing the views of the public, a Standing Committee of Parliament made several recommendations for improvement and the Union Government incorporated them in the Bill. Consequently, in May 2005, Parliament passed a much stronger Right to Information Act (Central RTI Act). 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 The FOI Act was repealed.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 Yousuf 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 gave an assurance that it would come up with suitable amendments to strengthen the J&K RTI Act.

On 31st August the State Government tabled a set of amendments to the J&K RTI Act in the Legislative Assembly. The proposed amendments are only a half-hearted measure and do not go the whole length of

the way to bring the State RTI Act at par with the Central RTI Act. There was no visible public consultation conducted by the State Government prior to the tabling of the Amendments. Several MLAs including Mr. Yousuf Tarigami strongly argued for referring the Amendment Bill to a joint select committee consisting of members of both Houses of the J&K Legislature for detailed consideration of the Act and the amendments as this is an important law giving effect to a fundamental right of citizens. However the Government pressed for the passage of the Bill because of the majority it enjoys in the Assembly and the amendments were passed by voice vote. The next day the J&K Legislative Council gave its approval to the amendments. The Bill is soon to be presented to the Governor of Jammu and Kashmir for his assent.

CHRI had circulated a brief on the positive features and shortcomings of the Amendment Bill to serve as an *aide memoir* for legislators speaking on the floor of both Houses. The Amendments, save some positive features listed 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 has merely made 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

1) Setting up of an Information Commission for Jammu and Kashmir

The Amendments will facilitate the setting up of a State Information Commission (SIC) for Jammu and Kashmir along the lines of similar bodies established at the Central level and in the States under the Central RTI Act. The SIC will be mandated with the task of inquiring into complaints and second appeals filed by 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.

The Amendments will require the SIC to give a decision on an information access-related dispute within a maximum of 60 days. This is one of the two instances where the Amendments have gone beyond the Central RTI Act to protect the citizen's fundamental right to information. The Central Act does not require Information Commissions at the Centre or in the States to dispose of complaints and second appeals within a deadline. This has led to the accumulation of a backlog of cases and long periods of pendency which is frustrating citizens in many states. It is hoped that the statutory requirement on the SIC to give its decision within a prescribed time limit will enable speedy disposal of information access related disputes in Jammu and Kashmir.

However there are problems with the process laid down for appointing members of the SIC. The status of the SIC is also not at par with that of its counterparts in other States. These issues have been analysed in detail below at pages 10-11.

2) Role of appellate authority in identifying errant officers

The Amendments will require the Controlling Information Officer who is the authority competent to hear first level appeals, to make a reference to the State Information Commission about the actions of a Departmental Information Officer found to be willfully violating the provisions of the J&K RTI Act. The State Information Commission has been given the power to take cognizance of this reference and initiate proceedings to decide whether penalty should be imposed on the Departmental Information Officer or not. This is a welcome change and makes the J&K RTI Act more progressive than the Central RTI Act in one more respect. Under the Central RTI Act the appellate authority does not have such powers. It is hoped that this provision will give the Controlling Information Officer the necessary authority to ensure that Departmental Information Officers comply with the Act.

3) Statutory requirement on the State Government to educate citizens about RTI

The Amendments will require the State Government to launch programmes and develop public education materials like User Guides to educate citizens about their fundamental right to access information from public bodies. The State Government will also be required to organise training programmes for officers for implementing this law. The J&K RTI Act in its current version does not place any such responsibilities on the State Government. These Amendments are in tune with the public education and training related obligations of other State Governments under the Central RTI Act.

Major Drawbacks

1) The preamble of the Act does not clearly spell out its objectives

The opening line of the J&K RTI Act merely states that is “An Act to make provision for securing right to information...”. The preamble represents the soul of a legislation indicating its aims and objectives. The Central RTI Act clearly indicates the various public interests that it aims to protect chief of which are: creating an informed citizenry, making the Government and its instrumentalities transparent and accountable to the governed and containment of corruption in public bodies. The preamble of the Central RTI Act also recognises the existence of other public interests such as the efficient operations of public bodies, optimum use of limited fiscal resources and preservation of the confidentiality of sensitive information. It indicates how these conflicting public interests are to be harmonized – harmonization must be undertaken keeping the democratic ideal paramount. The J&K RTI Act does not contain any such formulation. **The Amendment Bill does not rectify this situation.**

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“The opening line of the principal Act may please be substituted with the following preamble:

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public bodies, in order to promote transparency and accountability in the working of every public body, the constitution of a State Information Commission and for matters connected therewith or incidental thereto.

WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold the Government and its instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.”

2) The High Court of Jammu and Kashmir is not covered

The High Court of Jammu and Kashmir is not included within the definition the term ‘public body’ of the J&K RTI Act. The Central RTI Act does not apply to Jammu and Kashmir. Therefore the High Court of Jammu and Kashmir is not covered by that legislation either. As a result, the High Court of Jammu and Kashmir will not have any responsibility for giving information under any law other its own rules and procedures. Access to information under these rules and procedures is limited only to parties to any suit filed before the High Court. Other citizens will not be able to access any information about the working of the High Court on the judicial or administrative side without proving *locus standi*. The main purpose of right to information laws is to give citizens access to information held by public bodies for the simple reason that they are primary stakeholders in a democracy. International best practices require even the judiciary to be transparent. This is why the Central RTI Act requires the Supreme Court of India all High Courts and the subordinate courts to provide citizens with access to information held by them unless a statutory exemption is applicable. By leaving the High Court out of the purview of the J&K RTI Act the State Government has restricted the fundamental right of citizens to access information from a constitutional body. **The Amendment Bill does not rectify this lapse.**

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“The following clauses may please be inserted below clause 2(f)(v) in the Act namely:

(vi) the High Court of Jammu and Kashmir;

(vii) all courts of law and tribunals of whatever name established in Jammu and Kashmir.”

3) Definition of information is inadequate

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 emails, opinions, press releases, reports and models. 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. The Amendment Bill does refer to the right of access to samples in Section 3(iv) but it must be specified in the definition of the term 'information' also, as has been done in the Central RTI Act [Section 2(f)]. 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. **The Amendment Bill does not include 'samples' within the definition of 'information'.**

4) Private bodies have been left out

The Central RTI Act recognises the right of citizens to seek and obtain information about private bodies that a public authority can access under any other existing law. This brings private bodies within the ambit of transparency requirements albeit in an indirect manner. While they do not have any direct obligation to provide information to citizens, government departments and statutory bodies that have regulatory control over their affairs would be duty bound to disclose information that they have legitimately collected about the functioning of such private bodies. Information about private bodies is collected and maintained by public bodies in the larger public interest and citizens should have the right to seek and obtain such information. **The Amendment Bill does not provide for accessing information about private bodies held by public bodies in Jammu and Kashmir.**

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

"Section 2(e) of the Act may please be substituted with the following:

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed

by a public body under any other law for the time being in force". ”

5) Proactive disclosure requirement is not comprehensive enough

Section 3(b) 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 longer list of categories of information that public authorities at the Centre and in other States are required to disclose voluntarily under the Central RTI Act. Unlike the Central RTI Act, the J&K RTI Act does not require public bodies to voluntarily disclose 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 committees and boards that they may have set up for the purpose of consultation and seeking advice. **The Amendment Bill does not rectify this situation.**

Experience from other developed countries like USA, Canada, Australia and the United Kingdom and developing countries like Mexico, South Africa and Jamaica shows 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. These must be disseminated widely through a variety of methods so that the outreach of such information may be maximized. The public bodies must be placed under statutory obligation to update the information at regular intervals.

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“After clause (vi) under Section 3(b) of the Act the following clauses may please be inserted, namely:

“vii) the procedure followed in the decision making process, including channels of supervision and accountability;

viii) a statement of the categories of documents that are held by it or under its control;

ix) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

x) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

xi) a directory of its officers and employees;

xii) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

xiii) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

xiv) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

xv) particulars of recipients of concessions, permits or authorisations granted by it;

xvi) details in respect of the information, available to or held by it, reduced in an electronic form;

xvii) such other information as may be prescribed; and thereafter update these publications every year.”

3(bb) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

3(bc) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

3(bd) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Departmental Information Officer or such other officer as may be designated by the public body, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.— For the purposes of sub-sections (bc) and (bd), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public body."

6) 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. In the absence of a clear provision against disclosure of reasons, bureaucrats are likely to compel citizens to give reasons for seeking information and may often deny access simply because an applicant has not given proper reasons for seeking information. No citizen should be compelled to give reasons for exercising his/her fundamental right to seek and obtain information from the Government. No citizen should be compelled to give any information about himself / herself other than contact details and the nature and description of the information being requested. The existing version of the J&K RTI Act does not contain such a provision. This is a major lapse. **The Amendment Bill does not rectify this situation.**

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

"The opening lines of Section 5 immediately preceding clause 5(a) in the Act may please be substituted with the following:

"A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, to the Departmental Information Officer of the concerned public body specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Departmental Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing."

"After the opening lines of Section 5 in the Act the following clause may please be inserted, namely:

"5(i) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him."

7) Too many exemptions, no public interest override or sunset clause

Section 6(1) of the J&K RTI Act excludes seven categories of information from disclosure. This is a blanket restriction and the public body need not give any reasons to citizens for not disclosing information covered by these categories. Additionally under Section 6(2) of the J&K RTI Act, the public body may withhold eleven categories of information after giving reasons for the same in writing. The J&K RTI Act seems more designed to deny access to information to citizens instead of facilitating access as it keeps 18 types of information held by public bodies beyond the reach of citizens. There is no requirement on the public body to disclose information if it serves the larger interest better despite being covered by one or more of the exemptions. All 18 types of information will be kept out of public scrutiny till eternity. This is a complete negation of the principle of transparency required in any mature democracy. **The Amendment Bill does not rectify this situation.**

The Amendment Bill seeks to add three more kinds of information to the 'restricted' category. The grant of secrecy cover to cabinet papers, trade secrets of public bodies and any information that a court or tribunal may have forbidden from disclosure may superficially seem to be in tune with the Central RTI Act. However these categories of information are only 'exempted' not 'restricted' from disclosure under the Central RTI Act. They are also subject to a public interest override clause. **The Amendment Bill does not include such progressive measures.**

Under Section 4 of the Amendment Bill the Government has sought to grant the cover of secrecy to all minutes, records of advice, opinions and recommendations of any officer in a public body during the decision making process. A proviso to this clause states that access may be given after the decision has been finally taken. This amendment runs contrary to Section 3(e) of the J&K RTI Act which states-

“before initiating any project, publish or communicate to the public generally or to the persons affected or likely to be affected by the project in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of maintenance of democratic principles.”

The Central RTI Act does not grant any exemption to the opinions or advice of officers before a decision is taken on any matter. In fact section 4(1)(c) of this law requires all public bodies to –

“publish all relevant facts while formulating important policies or announcing the decisions which affect public;

Citizens have a right to know the recorded opinion of officers while a matter is being decided especially where the larger public interest is at stake. **The Amendment Bill unnecessarily adds to the already long list of excluded information.**

The corresponding exemptions related provision in the Central RTI Act (Section 8) is more progressive and is based on international best practices. It allows public bodies the authority to keep information confidential if it is in the public interest to do so. However even exempt information may be disclosed if it

serves the larger public interest. The Central RTI Act also contains a sunset clause which ends exempt status for some kinds of information after the lapse of a sufficient period of time. Seven out of the ten exemptions contained in the Central RTI Act will not be applicable to information that is more than 20 years old. As a result the exemptions to disclosure are not absolute under the Central RTI Act.

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“Section 6 of the Act may please be substituted with the following:

“Exemption from disclosure of information:- (1) *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a public body or a third party;

(e) information available to a person in his fiduciary relationship;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual;

Provided that the information which cannot be denied to the Parliament or the State Legislature shall not be denied to any person.

(2) Without prejudice to the provisions of sub-section 1, a Departmental Information Officer may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

(3) Notwithstanding anything in the Official Secrets Act, 1923 nor anything contained in sub-sections (1) and (2), a public body shall allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(4) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any

occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 5 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Government shall be final, subject to the usual appeals provided for in this Act.”

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

According to Section 5 of 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 the Chief Secretary. Under the Central RTI Act a Cabinet Minister nominated by the Chief Minister is the third member of the selection committee [Section 15(3)]. Nevertheless, in both cases the selection committee will be dominated by the State Government. Experience at the Central and State levels over the last two years has shown that governments have in many cases ‘promoted’ to the Information Commissions recently retired bureaucrats who found favour with them while in service. **The Amendment Bill contains nothing to prevent this from happening in Jammu and Kashmir.**

During the public debate 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. Jammu and Kashmir 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 Chief Secretary. This will ensure that no political party or alliance will hijack the selection process.

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“Section 8A(3)(iii) of the Act may please be substituted with the following:

“the Chief Justice of the High Court”

9) Weak State Information Commission

If the Amendment Bill becomes law, the State Chief Information Commissioner will be entitled to receive the same salary and allowances as that of the Chief Secretary of the State while the State Information Commissioners will be entitled to receive the same salary and allowances as that of a Member of the Jammu and Kashmir Public Service Commission. It is common knowledge that in public administration

salary and allowances indicate the rank/grade of a public servant. **The Amendment Bill seeks to create the weakest State Information Commission in the country.**

Under the Central RTI Act a State Chief Information Commissioner is entitled to draw the same salary and allowances as the Election Commissioner of India while the State Information Commissioners are entitled to draw the same salary and allowances as the Chief Secretary of the State. This ensures that the status of the members of the State Information Commission is not lesser than the highest ranking officer in the State. This high status goes a long way in vesting the State Information Commission with the prestige that is necessary for such a quasi-judicial body to seek compliance with its decisions from public bodies. Furthermore the tenure of all members of the Information Commission is stipulated to be 3 years unlike in the Central RTI act where their counterparts enjoy a term of five years. **The Amendment Bill denies the members of the proposed State Information Commission of Jammu and Kashmir a status that is equal to that of their counterparts in other states.**

Neither the J&K RTI Act nor the Central RTI Act requires that vacancies created in the Information Commissions be filled up within a specific time limit so that the work of adjudicating over disputes does not suffer. The State of Jammu and Kashmir has the opportunity to set an example for the rest of the country by requiring the Government to fill up vacancies in the State Information Commission within a period of, say, three months. **The Amendment Bill does not contain such a provision.**

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“In para 5 of the Amendment Bill relating to the insertion of the new Section 8A in the Act, the phrase “the Chief Secretary of the State” mentioned in clause 8A(3)(iii) may please be substituted with the phrase “the Election Commissioner of India”

“In para 5 of the Amendment Bill relating to the insertion of the new Section 8B in the Act, the phrase “for a term of three years” mentioned in clause 8B(1) may please be substituted with the phrase “for a term of five years”

“In para 5 of the Amendment Bill relating to the insertion of the new Section 8B in the Act, the phrase “Member of Jammu and Kashmir Public Service Commission” mentioned in clause 8B(4)(b) may please be substituted with the phrase “the Chief Secretary of the State”

“In para 5 of the Amendment Bill relating to the insertion of the new Section 8A in the Act, a new sub-section (7) may please be inserted below sub-section 8A(6) namely:

“Any vacancy that may arise due to the retirement, resignation or removal of the State Chief Information Commissioner or a State Information Commissioner, appointed under this Act, shall be filled up as expeditiously as possible and in any case no later than a period of three months.” “

10) Inadequate Penalties

The Amendment Bill seeks to empower the State Information Commission to penalise officers responsible for contraventions of the law. This is a welcome move. However the quantum of penalty has been fixed at the rate of Rs. 50/- per day up to a maximum of Rs. 5,000. This contrasts with the powers given to the Central and the State Information Commissions in other parts of the country. Under the Central Act the Information Commissions can impose penalty from Rs. 250/- per day up to a maximum of Rs. 25,000/- on public information officers for violations of the law. 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 many parts of the country. The proposed State Information Commission should have the power to impose similar 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. **The Amendment Bill disempowers the State Information Commission in comparison with its counterparts in other States.**

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“In para 7 of the Amendment Bill relating to insertion of Section 12 (2) in the Act the phrase “penalty of fifty rupees each day” may please be substituted with “penalty of two hundred and fifty rupees each day” and in the same para the phrase “penalty shall not exceed five thousand rupees” may please be substituted with “penalty shall not exceed twenty five thousand rupees”

11) Fee related provisions are highly unsatisfactory

The fee related provisions in the J&K RTI Act have been left unchanged even though more progressive provisions are available in the Central RTI Act. The Central RTI Act requires that all public bodies charge only reasonable fees from citizens requesting information [Section 7(5)]. It also allows for fee waiver for people living below the poverty line [Section 7(5)]. If information is not provided within the time limit specified, citizens have the right to receive such information free of cost. While the J&K RTI Act empowers the public body to reject an information request just because a citizen has failed to deposit the requisite fee there is no such retrogressive provision in the Central RTI Act. The J&K RTI Act empowers the State Government to prescribe fees for admitting appeals. There is no such provision in the Central RTI Act. **The Amendment Bill does not rectify this situation.**

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“Section 10 of the Act may please be substituted with the following:

“Fee:- 10(1) Where a decision is taken to provide the information on payment of any fee representing the

cost of providing the information, the Departmental Information Officer shall send an intimation to the person making the request, giving—

(a) the details of the fees representing the cost of providing the information as determined according to the rates prescribed by the Government and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in sub-section 5(a);

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(2) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Departmental Information Officer, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(3) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section (1)(a) and sub-section (2) shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the Government.

(4) Notwithstanding anything contained in this Act, the person making request for the information shall be provided the information free of charge where a public body fails to comply with the time limits specified in sub-section 5(a).

(5) Notwithstanding anything contained in this Act, no fee will be charged in any matter relating to appeals and complaints specified in Section 9 of this Act.”

12) Procedure for disposing information requests is retrogressive

Longer waiting period for obtaining information:

Section 5 of the J&K RTI Act which relates to the procedure for supply of information has become obsolete in light of the progressive procedures of the Central RTI Act. The J&K RTI Act sets a deadline of thirty working days for the supply of information. However, under the Central RTI Act, an information request must be processed within thirty calendar days. There is no reason why citizens should wait for a longer period for obtaining information from public bodies in Jammu and Kashmir. **The Amendment Bill does not rectify this situation.**

No provision for dealing with urgent information requests:

The Central RTI Act provides for situations where people may require information urgently. In India it is common practice for high-handed law enforcement personnel to pick up citizens from their homes for one reason or the other without observing due process required under the laws of the land. It is often very difficult for the family members and friends of such persons to find out the whereabouts of persons picked up in this manner. Recognising that citizens should not be made to wait for long period to get crucial information in such circumstances, the Central RTI Act makes it mandatory for public bodies to provide information relating to the life and liberty of an individual within a period of 48 hours. There is no such provision in the J&K RTI Act. **The Amendment Bill does not rectify this situation.**

No time limit for conveying rejection order:

Under the Central RTI Act a decision rejecting the information request of a citizen must be communicated to him/her within a period of thirty calendar days. However under the J&K RTI Act there is no such stipulation. The Act merely requires that the decision of rejection should be communicated as early as possible. In the absence of a time limit, public bodies may simply not communicate a decision of refusal to the citizen at all. Furthermore there is no obligation on the public body to communicate to the citizen details of the appellate authority where an appeal against the decision of rejection may be preferred. **The Amendment Bill does not rectify this situation.**

Rejection of information requests on unreasonable grounds:

Under the Central RTI Act a public body may reject an information request only for reasons specified in the provision dealing with exemptions to disclosure [Section 8(1) and 9]. However under the J&K RTI Act in addition to the 18 types of information that will not be disclosed to citizens, under Section 5(c) a public body may reject an information request–

“if the information cannot be compiled without considerable financial expenditure or without considerable extra work...”

The Central RTI Act does not contain such a provision. Vague terms like ‘considerable financial expenditure’ without any bench marks for reference will be misused by unscrupulous officers to deny many a legitimate information request. While it is nobody’s argument that the public body should divert its resources completely to deal with information requests at the expense of all other mandated tasks, this cannot be a ground for denying an information request. The public body may conserve its resources by providing access to information in a form different from that which the citizen has requested and which is decidedly inexpensive. The cheapest way of providing access would be to allow inspection of the requested records. **The Amendment Bill does not rectify this regressive provision in the J&K RTI Act.**

No provision for transferring information requests:

The Central RTI Act places a mandatory obligation on the public authority to transfer an information request if the information is wholly or partially held by another public authority [Section 6(3)]. This procedure has been incorporated for the convenience of citizens who may not be knowledgeable about the exact public body that is likely to have the information they require. This is particularly beneficial to citizens who may not be highly literate. There is no provision for transfer of an information request under the J&K RTI Act. The Amendment Bill does not rectify this situation.

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“Section 5(a) of the Act may please be substituted with the following:

“If the Departmental Information Officer is in possession of the information requested he or she shall supply the information to the applicant or reject the request for any of the reasons specified in Section 6,

as expeditiously as possible and in any case within thirty days of receipt of the request;”

followed by the following proviso:

“Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.”

“Section 5(b) of the Act may please be substituted with the following:

Where a request has been rejected under sub-section (a), the Departmental Information Officer shall communicate to the person making the request,—

- (i) the reasons for such rejection;*
- (ii) the period within which an appeal against such rejection may be preferred; and*
- (iii) the particulars of the appellate authority.”*

“Section 5(c) of the Act may please be substituted with the following:

“An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.”

“A new sub-section may please be inserted in Section 5 of the Act as follows:

“5(ii)“Where an application is made to a public body requesting for an information,—

- (a) which is held by another public body; or*
- (b) the subject matter of which is more closely connected with the functions of another public body,*

the Departmental Information Officer of the public body, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public body and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.” ”

13) The Departmental Information Officer is not fully empowered

The J&K RTI Act designates the officer in-charge of a public body as the person responsible for making decisions on information requests received from citizens. This provision ensures that an officer with sufficient authority to requisition records and information will deal with the requests. However not all information held by the public body may be in his or her custody. When a request is made for information held in the custody of any other officer the officer dealing with the request may seek his or her assistance under sub-section 5(d). Under sub-section 5(e) it is the responsibility of the officer whose assistance has been sought to render such assistance. However there is no provision for ensuring compliance of any officer when such a request for assistance is made. The Central RTI Act provides for treating such an officer whose assistance has been sought as the deemed public information officer in that particular case [Section 5(4)]. Such officers are also liable for contraventions of the provisions of the Act [Section 5(5)]. In the State of Jammu and Kashmir there is no reason why a Departmental Information Officer should be penalised if some other officer is at fault for causing delays or non-disclosure of information on

unreasonable grounds. The J&K RTI Act does not provide such protection to the Departmental Information Officer. **The Amendment Bill does not rectify this situation.**

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“Section 5(e) of the Act may please be substituted with the following:

“Any officer, whose assistance has been sought under sub-section (d), shall render all assistance to the Departmental Information Officer seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Departmental Information Officer.”

14) Exclusion of Intelligence and Security Agencies

Section 8 of the J&K RTI Act excludes security and intelligence organisations from the requirements of being transparent. This amounts to providing blanket exclusion to these organisations which is not in keeping with the best traditions of mature democracies. As such organisations are set up and operate in public interest and are funded by the tax payer there is no reason why they should not be transparent at least about contraventions of the law committed by their functionaries. The Central RTI Act mandates similar organisations operating at the Central level and in the States to provide citizens information about allegations of corruption and human rights violation committed by their functionaries. While information about corruption allegations will be provided to the citizen directly information about human rights violations will be provided with the approval of the appropriate Information Commission within a specific time period. The J&K RTI Act does not contain such a provision. Furthermore the Central and State Governments are required to declare through a gazette notification as to which intelligence and security organisations are being partially excluded from the Central RTI Act. The J&K RTI Act does not place any such obligation on the State Government. **The Amendment Bill does not rectify this lapse.**

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“Section 8 of the Act may please be substituted with the following:

Act not to apply to certain organisations:- 1) *Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the Government, as that Government may, from time to time, by notification in the Official Gazette, specify.”*

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 5, such information shall be provided within forty-five days from the date of the receipt of request.”

2) Every notification issued under sub-section (1) shall be laid before the State Legislature.

15) The J&K RTI Act does not have overriding effect

The Central RTI Act is being implemented without much conflict with the provisions of other laws of the land as it clearly overrides them to the extent of any contradiction. The J&K RTI Act has no such overriding provision. This is likely to create situations where some bureaucrats may raise objections to disclosure of information by citing provisions in other laws which may require secrecy to be maintained for certain kinds of information. The purpose of having an overriding clause in an RTI Act is to enable maximum disclosure of information untrammelled by other statutes or legal instruments. All instances of refusal to disclose must be justified under the exemptions legitimately recognized within the RTI Act itself, no other reason for refusal is valid. The Central RTI Act has established this position throughout the country. The J&K RTI Act is not vested with such primacy over other laws in the State. **The Amendment Bill does not rectify this position.**

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“A new section may please be inserted after Section 14 in the Act as follows:

*“14A) **Act to have overriding effect:** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act in Jammu and Kashmir.”*

16) Third party information – inadequate procedure

Section 7 of the J&K RTI Act provides for protecting the interests of third parties when information relating to them or information supplied by them in confidence is sought by other citizens. However there is no definition of the term ‘third party’ in the Act. The procedure provided for dealing with requests for information relating to third parties is inadequate. When a citizen requests information from a public body that relates to a third party, the J&K RTI Act merely requires the Departmental Information Officer to invite a representation, if any, from such third party against the proposed disclosure. There is no further indication as to how such requests will be dealt with. The Central RTI Act not only defines the term third party [Section 2(n)] but also contains a detailed procedure for dealing with such requests (Section 11). The public body is given additional time for completing the process of inviting and considering the objections of the third party, if any, against the proposed disclosure. The Central RTI Act also clearly indicates what needs to be done if the third party objects to disclosing the requested information. The J&K RTI Act provides no guidelines to the Departmental Information Officer for making a decision if the third party objects to disclosure. **The Amendment Bill does not rectify this situation.**

Recommendation:

The Amendment Bill may please be returned to the Legislature with the following recommendation:

“A new sub-section may please be inserted below sub-section 2(g) of the Act namely:

“2(h) “third party” means a person other than the citizen making a request for information and does not include a public body.”

“Section 7 of the Act may please be substituted with the following:

“Third party information:- 1) *Where a Departmental Information Officer intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Departmental Information Officer shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Departmental Information Officer intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

2) *Where a notice is served by the Departmental Information Officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.*

3) *Notwithstanding anything contained in section 5, the Departmental Information Officer shall, within forty days after receipt of the request under section 4, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.*

4) *A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 9 against the decision.”*

Concluding Recommendation

The *Jammu and Kashmir Right to Information Amendment Bill, 2007* represents only a half-hearted attempt to strengthen the J&K RTI Act. The Government has pushed these amendments through the Jammu and Kashmir Legislature 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. The State Government has chosen not to adopt such a democratic process. Despite several legislators urging it to refer the Bill to a joint select committee comprising of members of both Houses of

the Legislature for detailed consideration of the Bill the Government has been steadfast in its refusal to undertake any kind of consultation.

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 to seek and obtain information and a weak enforcement mechanism as compared to the same right enjoyed by fellow citizens in other parts of India. 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 kindly 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 kindly send the *Jammu and Kashmir Right to Information Amendment Bill, 2007* back to the State Legislature for reconsideration.

A draft message and a detailed set of recommendations for amending the J&K RTI Act further has been annexed to this analysis for the consideration of the Honourable Governor of Jammu and Kashmir.

Jammu and Kashmir Right to Information Amendment Bill, 2007

**Recommended Message for the Honourable Governor and
Recommendation on Further Amendments for the Consideration of**

**The Jammu and Kashmir Legislative Council
and
The Jammu and Kashmir Legislative Assembly**

Recommended Message for the Honourable Governor

By virtue of the constitutional powers granted under Section 78 of *The Jammu and Kashmir Constitution, 1956*, I am pleased to withhold my assent to the *Jammu and Kashmir Right to Information Amendment Bill, 2007*. This Bill purports to amend the *Jammu and Kashmir Right to Information Act, 2004*. However the proposed Amendments do not provide the same guarantees and protections that citizens of India are enjoying under similar laws in other parts of the country. There is no reason why citizens in Jammu and Kashmir should be denied the fullest enjoyment of their fundamental right to access information from public bodies.

By virtue of the constitutional powers granted under Section 78 of *The Jammu and Kashmir Constitution, 1956*, I am pleased to return the *Jammu and Kashmir Right to Information Amendment Bill, 2007* with a request to the Jammu and Kashmir Legislative Assembly and the Jammu and Kashmir Legislative Council to consider further amendments to the *Jammu and Kashmir Right to Information Act, 2004* along the lines recommended below:

Recommendation on Further Amendments:

1) *The opening line of the principal Act may please be substituted with the following preamble:*

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public bodies, in order to promote transparency and accountability in the working of every public body, the constitution of a State Information Commission and for matters connected therewith or incidental thereto.

WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold the Government and its instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.”

2) Section 2(e) of the Act may please be substituted with the following:

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public body under any other law for the time being in force" .

3) The following clauses may please be inserted below clause 2(f)(v) in the Act namely:

(vi) the High Court of Jammu and Kashmir;

(vii) all courts of law and tribunals of whatever name established in Jammu and Kashmir."

4) A new sub-section may please be inserted below sub-section 2(g)in the Act namely:

"third party" means a person other than the citizen making a request for information and does not include a public body."

5) After clause (vi) under Section 3(b) the following clauses may please be inserted in the Act, namely:

"vii) the procedure followed in the decision making process, including channels of supervision and accountability;

viii) a statement of the categories of documents that are held by it or under its control;

ix) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

x) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

xi) a directory of its officers and employees;

xii) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

xiii) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

xiv) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

xv) particulars of recipients of concessions, permits or authorisations granted by it;

xvi) details in respect of the information, available to or held by it, reduced in an electronic form;

xvii) such other information as may be prescribed; and thereafter update these publications every year."

3(bb) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

3(bc) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

3(bd) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Departmental Information Officer or such other officer as may be designated by the public body, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.— For the purposes of sub-sections (bc) and (bd), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public body."

6) The opening lines of Section 5 immediately preceding clause 5(a) in the Act may please be substituted with the following:

"A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, to the Departmental Information Officer of the concerned public body specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Departmental Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing."

7) After the opening lines of Section 5 of the Act the following clause may please be inserted, namely:

"5(i) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him."

8) A new sub-section may please be inserted in Section 5 of the Act as follows:

5(ii) "Where an application is made to a public body requesting for an information,—

(a) which is held by another public body; or

(b) the subject matter of which is more closely connected with the functions of another public body,

the Departmental Information Officer of the public body, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public body and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application."

9) Section 5(a) of the Act may please be substituted with the following:

"If the Departmental Information Officer is in possession of the information requested he or she shall supply the information to the applicant or reject the request for any of the reasons specified in Section 6, as expeditiously as possible and in any case within thirty days of receipt of the request;"

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request."

10) Section 5(b) of the Act may please be substituted with the following:

"Where a request has been rejected under sub-section (a), the Departmental Information Officer shall communicate to the person making the request,—

(i) the reasons for such rejection;

(ii) the period within which an appeal against such rejection may be preferred; and

(iii) the particulars of the appellate authority."

11) Section 5(c) of the Act may please be substituted with the following:

“An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.”

12) Section 5(e) of the Act may please be substituted with the following:

“Any officer, whose assistance has been sought under sub-section (d), shall render all assistance to the Departmental Information Officer seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Departmental Information Officer.”

13) Section 6 of the Act may please be substituted with the following:

“Exemption from disclosure of information:- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a public body or a third party;

(e) information available to a person in his fiduciary relationship;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual;

Provided that the information which cannot be denied to the Parliament or the State Legislature shall not be denied to any person.

(2) Without prejudice to the provisions of sub-section 1, a Departmental Information Officer may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

(3) Notwithstanding anything in the Official Secrets Act, 1923 nor anything contained in sub-sections (1) and (2), a public body shall allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(4) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 5 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Government shall be final, subject to the usual appeals provided for in this Act.”

14) Section 7 of the Act may please be substituted with the following:

“Third party information:- 1) Where a Departmental Information Officer intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Departmental Information Officer shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Departmental Information Officer intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

2) Where a notice is served by the Departmental Information Officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

3) Notwithstanding anything contained in section 5, the Departmental Information Officer shall, within forty days after receipt of the request under section 4, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 9 against the decision.”

15) Section 8 of the Act may please be substituted with the following:

Act not to apply to certain organisations:- 1) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the Government, as that Government may, from time to time, by notification in the Official Gazette, specify.”

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 5, such information shall be provided within forty-five days from the date of the receipt of request.”

2) Every notification issued under sub-section (1) shall be laid before the State Legislature.

16) In para 5 of the Amendment Bill relating to insertion of the new Section 8A in the Act, the phrase “the Chief Secretary of the State” mentioned in clause 8A(3)(iii) may please be substituted with the phrase “the Election Commissioner of India.

17) In para 5 of the Amendment Bill relating to the insertion of the new Section 8A in the Act, a new sub-section (7) may please be inserted below sub-section 8A(6) namely:

“Any vacancy that may arise due to the retirement, resignation or removal of the State Chief Information Commissioner or a State Information Commissioner, appointed under this Act, shall be filled up as expeditiously as possible and in any case no later than a period of three months.”

18) In para 5 of the Amendment Bill relating to the insertion of the new Section 8B in the Act, the phrase “for a term of three years” mentioned in clause 8B(1) may please be substituted with the phrase “for a term of five years”.

19) In para 5 of the Amendment Bill relating to the insertion of the new Section 8B in the Act, the phrase “Member of Jammu and Kashmir Public Service Commission” mentioned in clause 8B(4)(b) may please be substituted with the phrase “the Chief Secretary of the State”.

20) In para 7 of the Amendment Bill relating to the insertion of Section 12 (2) in the Act, the phrase “penalty of fifty rupees each day” may please be substituted with “penalty of two hundred and fifty rupees each day” and in the same para the phrase “penalty shall not exceed five thousand rupees” may please be substituted with “penalty shall not exceed twenty five thousand rupees”.

21) Section 10 of the Act may please be substituted with the following:

“Fee:- 10(1) Where a decision is taken to provide the information on payment of any fee representing the cost of providing the information, the Departmental Information Officer shall send an intimation to the person making the request, giving—

(a) the details of the fees representing the cost of providing the information as determined according to the rates prescribed by the Government and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in sub-section 5(a);

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(2) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Departmental Information Officer, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(3) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section (1)(a) and sub-section (2) shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the Government.

(4) Notwithstanding anything contained in this Act, the person making request for the information shall be provided the information free of charge where a public body fails to comply with the time limits specified in sub-section 5(a).”

(5) Notwithstanding anything contained in this Act, no fee will be charged in any matter relating to appeals and complaints specified in Section 9 of this Act.”

22) A new Section 14A may please be inserted after Section 14 in the Act, as follows:

Act to have overriding effect: *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act in Jammu and Kashmir.”*
