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**Repeal J&K Right to information act**

**By Dr Kulwant Singh**

On the 15 June, the President gave assent to the Central Government's ground-breaking Right to Information Act of 2005. This Act, notified in the Gazette of India on 21 June, gives the citizens of India the right to request and receive public records from the Central Government so that they may hold government services and their bureaucrats responsible for their actions and inactions. As the Preamble to the Act eloquently observes: "democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed."

It is laudable the Parliament and the Central Government have officially recognized the importance of transparency in the Government. It is also laudable that the Central Government has now institutionalized the fundamental right of its citizens to obtain public records that would otherwise remain cloaked in the secrecy of the bureaucracy. Several states also deserve recognition for their earlier initiatives: Tamil Nadu and Goa passed such an act in 1997, Rajasthan and Karnataka in 2000, Delhi in 2001, Maharashtra and Assam in 2002, and Madhya Pradesh in 2003.

Unfortunately, nearly a decade after the Right to Information Act movement was launched across India, the Government of Jammu & Kashmir still does not have a meaningful Right to Information Act! On 5 January 2004, the Governor gave assent to the Jammu & Kashmir Right to Information Act of 2004, which was duly notified in the Gazette on 7 January 2004. However, the Rules were not issued for 18 months, rendering the Act nothing more than a scrap of paper! Only recently, on 30 June, the General Administration Department issued the Rules (SRO 181), which are expected to appear in the Gazette later this month, thereby enforcing the Act.

More importantly, however, the Jammu & Kashmir Right to Information act is a meaningless piece of legislation due to severe legal deficiencies. The Jammu & Kashmir Right to Information Act of 2004 was based upon the Central Government's moribund Freedom of Information Act of 2002, which lacked a) proper assignment of responsibility to bureaucrats, b) a proper appeals process against denial-of-requests, c) a direct penalty clause for officers who illegally withhold public information, and even lacked d) a proper notification in the Gazette of India. The Central Freedom of Information Act was so defunct that it was widely criticized in the media and by NGOs, and was later replaced earlier this year with the new Right to Information Act of 2005.

Similarly, the Jammu & Kashmir Right to Information Act of 2004 does not contain a proper appeals process or a direct penalty clause. For example, the J&K Right to Information Act of 2004 simply states that first appeals lie with the "controlling officer" of the concerned department, while second appeals shall lie with "the Government" [Sec. 9(1) and (2)]. It is absurd to presuppose that such an appeals process will favor the interests of the citizens of J&K, especially when there are vested bureaucratic interests within each department against the release of public information.

In another example, the J&K Right to Information Act of 2004 states that officers who fail to provide the requested information in the stipulated timeframe will 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" [Sec. 12].

Again, the burden is placed on the citizen to punish a law-breaking bureaucrat by seeking punishment through J&K's extraordinarily cumbersome and biased Civil Service Rules.

In contrast, under the Central Government's Right to Information Act of 2005, a citizen seeking information from the Central Government may submit a form and a nominal fee to the officially-designated Public Information Officer of each ministry, department, or semi-autonomous body. Citizens who are denied their requests or who do not receive the requested information within 30 days may appeal to the specially-constituted, independent, National Information Commission for reversal and/or punishment of the concerned officers (viz. Rs. 250 for each day of delay, with additional fines up to Rs. 25,000 as well as disciplinary action).

The Act also instructs the States to constitute State Information Commissions to review these requests at the State level. Already, the Governments of Goa and Karnataka have agreed to scrap their old laws in favour of the new Act, while Orissa and Meghalaya have agreed to implement the Central Act as their first Right to Information Acts. Meanwhile, there are media reports Delhi and Maharashtra plan to amend their old acts to conform with the new Act. Repeal J&K Right to information act

Therefore, it is high time for the Government of Jammu & Kashmir to follow the example set by the Central Government and these states by repealing the old, moribund, J&K Right to Information Act of 2004, and implementing the new Central Act of 2005. The citizens of Jammu & Kashmir deserve at least this much accountability from their Government.