

# THE GENESIS AND EVOLUTION OF THE RIGHT TO INFORMATION ACT IN JAMMU AND KASHMIR

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## ABSTRACT

*The Right to Information Act is a revolutionary step because it has made the administrative system accountable, transparent and almost corruption free. RTI Act needs to be implemented in true letter and spirit. It is the duty of every citizen to make the right to seek information simplistic, effective, purposeful, progressive and people-friendly. The Central and State information commissions are playing a key role in making RTI Act successful and fruitful. We know that, in a democracy as in India, all powers flows from the sovereign authority of the citizens. They constitute the supreme power by electing their representatives to run the administrative system and hence making the administration accountable to the political executive and to the general public. The civil society and other agencies are using RTI Act as a potent weapon to ensure accountability and transparency which are not only the element of good governance but a prime requirement for informed citizenship. The Jammu and Kashmir Right to Information Act was hailed as a major step towards democratization of the state as informed citizenry and transparency of information are vital to the functioning of a democratic government and also to contain corruption.*

**KEYWORDS:** Good Governance, Transparency, Accountability, Chief Information Commissioner,

## INTRODUCTION

Jammu and Kashmir is a multi-ethnic, multi-religious state with 64% Muslims, 33% Hindus, and 3% Buddhist, Sikhs, Christians and others. There are three distinct geographical regions-Ladakh (with 58% of the area and 3% of the population), Jammu (26% area, 45% population) and Kashmir (16% area, 52% population). (Khan, 2002, p01) The primary languages of Ladakh are Ladakhi and Balti, for Jammu Dogri and for Kashmir Kashmiri. In addition, (Kaur, 1996, p01) Gojri, Pahari, Punjabi, Shina, and various dialects and mixed languages are also spoken by different ethnic groups within the state. Of the 49% who reside in the Kashmir province, (Panikar, 1999, p 98) about 13 % are Shia Muslims. 14% of the people in Kashmir province are the pastoral nomadic Gujar and Bakarwal people. (Khan, 1980, p01) rules and procedures, complete transparency and pro-active dissemination of this relevant information amongst the public is potentially a very strong safeguard against Corruption. Ultimately the most effective systemic check on corruption would be where the citizen herself or himself has the right to take the initiative to seek information from the state, and thereby to enforce transparency and Accountability. (Sameer, 2011, p 03) It is in this context that the Right to Information Act is so

important. A statutory Right to Information Act Would is in many ways the most significant reform in public administration in Jammu And Kashmir State in the last 20 years. This is because it would secure for every citizen the enforceable right to Question, Examine, and Audit, review and Access government acts and decisions to ensure that these are consistent with the principles of public Interest, probity and Justices. It would promote openness, Transparency and Accountability in administration, by making government more open to continuing public scrutiny. (Kashmir Times, 24<sup>th</sup> april 2011)

In Jammu and Kashmir State has spread its tentacles to virtually every aspect of public life. The person on the street is condemned to grapple hopeless with corruption in almost every aspect of daily work and living. Most government offices typically present a picture of a client public bewildered and harassed by opaque rules and procedures and inordinate delays, constantly vulnerable to exploitation by employees and touts. In the quest for systematic answer to this chronic malasia, it is important to identify the sources of corruption inherent within the character of the state machine. These include a determined denial of transparency, accessibility and Accountability, Cumbersome and confusing procedure, proliferation of mindless controls, and poor commitment at all levels to

real results of public welfare.(Lateef,2011,p 04) In this section, we will argue that information is power, and that the executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power.

### **CORRUPTION IN JAMMU AND KASHMIR**

Time and again Corruption has been identified as the biggest challenge in development in Jammu and Kashmir. The culture of corruption has become well entrenched in the society and is expected to be a part of any transaction.(Times of India, 23 Jun 2006) In the past, People paid a bribe or an additional fee to get an illegal benefit, but now public servants have to be bribed even for a legitimate demand or for service citizens are entitled to. A number of government Commission have noted corruption as being systematic in Jammu and Kashmir because of the concentration of power among bureaucrats and politicians, “ *Who flourished on the basis of mutual dependence and institutional abuse of power structures*” Many trace the growth of corruption in Jammu and Kashmir to its militancy roots. They believe that culture of secrecy in governance, which began during the British rule and Continues now Jammu and Kashmir has perpetuated Corruption,(The Hindu, 28 April 2006) where large amount of public money is diverted from development projects and welfare schemes for private use by the authorities. Hence, it comes as little surprise that Jammu and Kashmir is ranked 2<sup>nd</sup> among 29 states in the Indian corruption Perception Index, which measure the perceived level of public sector corruption around the Jammu and Kashmir.(Kashmir Times,10 August,2012) With the growing concept of welfares’, Socio-economic justice to the people of suppressed and deprived groups, Transparency and Accountability in public administration and Peoples participation in policy making and its implementation, enormous changes have taken place in the field of public Administration. The Concept of development and Good Governance and the demand of Decentralization of power have brought about new approaches to public administration molding it from traditional approach to modern one. Now public administration is not hidden agenda, but it has become public in the real sense. It is the rights of the people to know what is administration, what is government thinks about public welfare and development and how does it perform the responsibility. Transparency as well as Accountability and information are the terms they are closely related. In fact, the concept of ‘Invisible

government’ has become obsolete in this age of liberalization and Globalization. The citizen, the stakeholders, the consumers of public services, the beneficiaries of public development programme, the civil society organization, the business and commercial houses must get information from the public authorities relating to their administration, operations or decisions.Untill the administration is transparent and accountable, this is not possible.(Geelani,2014,) Despite there being strong Constitutional and legal support for it, That is why the concept like Right to Information Act in Jammu and Kashmir has come into being only when civil society began to work with people in rural as well as urban in Jammu and Kashmir. Through grass roots mobilization, Coalition building, and Strong advocacy, civil society exerted pressure on the government to make the Right to Information Act in Jammu and Kashmir.(Kothari, 1988,p2177) The Jammu and Kashmir Right to Information has become a unique concept today and its demands openness in public policies and their implementation. It has been observed that a government which operates in greater Secrecy is more prone to corruption. With the advent of development administration corruption has penetrated into its root and has spread over every branches of administration. Jammu and Kashmir Right to Information Act is considered as a device to Control it.(Sondhi,2000)

### **EVALUATION OF JAMMU AND KASHMIR RIGHT TO INFORMATION ACT**

The Right to Information Act is a revolutionary step because it has made the administrative system accountable, transparent and almost corruption free. RTI Act needs to be implemented in true letter and spirit. It is the duty of every citizen to make the right to seek information simplistic, effective, purposeful, progressive and people-friendly. The Central and State information commissions are playing a key role in making RTI Act successful and fruitful. We know that, in a democracy as in India, all powers flows from the sovereign authority of the citizens. They constitute the supreme power by electing their representatives to run the administrative system and hence making the administration accountable to the political executive and to the general public. The civil society and other agencies are using RTI Act as a potent weapon to ensure accountability and transparency which are not only the element of good governance but a prime requirement for informed citizenship. The Jammu and Kashmir Right to Information Act was hailed as a major

step towards democratization of the state as informed citizenry and transparency of information are vital to the functioning of a democratic government and also to contain corruption.

Jammu and Kashmir RTI is a new concept. Participation in governance is at the heart of any successful democracy. As citizens, we need to participate not only at the time of elections but on a day-to-day basis - when decisions on policy, laws and schemes are being made and projects and activities are being implemented. Public involvement not only enhances the quality of governance but also promotes transparency and accountability in government functioning. But in reality the question arises how can citizens take part in governance. How can the public understand how decisions are being made? How can ordinary people find out how tax money is being spent, if public schemes are being properly run or whether the government is acting honestly and fairly when it makes decisions. How can government servants be made answerable to the public they are supposed to serve. One way of participating is by exercising the right to access information from bodies which spend public money or perform public functions. (Nayak And Sinha, 2012, p9)

Information may be defined as data that has been verified to be accurate and timely, that is specific and is organized for purposes; presented within a context that gives it meaning and relevance; and that lead to an increase in understanding and decrease in uncertainty. The value of information lies solely in its ability to affect behavior, decision or outcome. A piece of information is considered valueless if, after receiving it, things remain unchanged. With the dawn of the 'information society' freedom of access to information held by public bodies has increasingly been recognised as being crucial to any democracy. Democracy is political form of governance in which the governing power is derived from the people themselves. As a matter of fact, the term 'democracy' itself means rule of the people and equality and freedom are often identified as the two important principles of democracy since ancient times. These principles by themselves imply equality before law as well as equal access to power. (<http://businessdictionary.com/definition/information.html> Accessed on 12 Sep 2014)

The two instruments i.e. Transparency and Accountability, which run parallel to each other, prevail at the national and the local levels pertaining to economic development of Jammu And Kashmir State. The special

packages worth millions of rupees are announced by the union government from time to time to augment the economic development of the state. J&K is accorded a special treatment and is being dealt with differently than the other states of the country. On the other hand, the local perception prevails that the benefits of these special packages are hardly visible. The transparency and accountability of these initiatives have remained absent which has created a great deal of disenchantment and even alienation from the system. (Puri, 2007, p 02) The first initiative in this regard was enactment of Jammu and Kashmir RTI Act 2004.

### **JAMMU AND KASHMIR RIGHT TO INFORMATION ACT 2004**

The enactment of the Jammu and Kashmir Right to Information Act, 2004 is a historic event in the annals of democracy in state. Information is power and now a citizen has the right to access information "held by or under control of" the public authorities. Concurrently, it is the duty of all public authorities to provide information sought by citizens. A sea change can be achieved towards transparency and accountability in governance by implementing the Jammu and Kashmir RTI Act 2004 in letter and spirit. (Singh 2005) The Rules of the The Act were issued on 30 June 2005 the establishment of an unprecedented regime of right to information for the citizens of the state. It overrides the various law regarding the states related RTI such as Tamil Nadu (1997) Goa (1997) and Rajasthan (2000) with some similar laws/rules. It strikes at the heart of the paradigm long practiced by Government officials and public functionaries that 'confidentiality is the rule and disclosure is an exception'. The Act seeks to establish that "transparency is the norm and secrecy is an exception" in the working of every public authority. It aims to ensure maximum openness and transparency in the machinery and functioning of Government at all levels State, District and Local.

### **MAIN PROVISIONS OF 2004 ACT : DEFINITION**

In this Act, unless the context otherwise requires,-

- a)"Controlling Officer" means the immediate superior officer above the in charge of office, who supervises and controls the work of in charge office or such officer as may from time to time, be specified as such by the Government to the purpose of this Act ;
- b)"Department" means any department or office of the Government;

- c) "Government" means the Government of Jammu and Kashmir;
- d) "In charge of the Office" means officer/functionary of a department of the Government or a public body, who is in actual control of any office of the Government public body,
- e) "Information" means any document or information relating to the affairs of the State or a public body;(Draft Jammu and Kashmir Right to Information Rules,2004)
- f) "Right to information" means right to obtain information relating to the affairs of the State or Public bodies by means of,-
- (i) Obtaining certified copies of documents or records; or
- (ii) Inspection of accessible records and taking notes and extracts; or
- (iii) Inspection of public works; or
- (iv) Taking of samples of material from public works; and
- (v) Diskettes, floppies or in any other electronic mode or through print outs where such information is stored in a computer or in any other device.(Vide SRO181,Govt of J & K dated 30 Jun 2004)

The primary concern of the citizens in a good civil society is that their government must be fair and good. For this, it is essential that their systems and sub-systems of governance are efficient, economic, ethical and equitable. Besides, the governing process must also be just, reasonable, fair and citizen friendly. For all this, the administrative system must also be accountable and responsive besides promoting transparency and peoples' participation. The test of good governance lies in the goals and objectives of government, in its policies and programmes, in the manner of their execution, in the general perception of the people about quality of functioning of various agencies, their attitude and behavior towards the people, their sincerity, honesty and commitment towards the public duties. After the enactment of RTI Act 2005 at national level there was as urgent need that J&K state must have a similar RTI law because we see many weakness of the 2004 Jammu and Kashmir RTI Act which lacked proper assignment of responsibility to bureaucrat, proper appeals process against the denial of requests,(Bhat, 2009)

The inherent contradictions within 2004 Right To Information and subsequent demand of civil society and other stake holders for more strengthened information act on the pattern of central government's Right to Information Act 2005 got much support. In this background, the chairperson of the national advisory council, government of India(Letter to J & K Chief Minister re amended the J and K Right to Information Act2005), Mrs Sonia Gandhi wrote to the then chief minister of Jammu and Kashmir Government, Mufti Mohammad Syed in August 2005 that "in order to reinforce transparency, accountability and efficiency in governance you may like to initiate the processes of brining in state legislation in respect of Right to information Act, 2005".(Punjabi, 2011, p 3) With this regard that the Govt of Jammu and Kashmir thinking what are weakness of this Act, in this back ground they think that we should establish new law on the pattern of the central RTI Act.

The central RTI Act, 2005 applies to the union government of India and all of its state and union territories, but except to Jammu and Kashmir. Jammu and Kashmir is accorded special provisions under article 370 of the constitution of India, which exempts most legislation passed in the parliament of India from automatically applying to the state of Jammu and Kashmir(Bhat,2008). The Right to Information (Amendment) Act 2008 is a good move towards the building of governance in the state. But the condition is peaceful negotiation, consensus and also requires good attention of political parties to clauses that can help in safeguarding the life and property of the people, looking towards the present situation of the state in terms of need and importance of good governance. Lack of revenue records, misuse of govt. funds, disappearances etc. compels us to implement the RTI in an effective manner so that the common man can get benefit more and more. This can only happen when the citizen's of Jammu and Kashmir can fully enjoy the right to information about the revenue records and other govt. departments and the people will exactly know what is going on and what is the rationale of the decisions taken by the govt. or it's functionaries at different levels. The great democratizing power of information will give the people of the state all the chances to effect change and alleviate poverty in ways as they can like.(Bhat, 2009) The Act is based closely upon the central Right to Information Act 2005. Like all RTI legislation, it is intended to provide citizens legally mandate mechanism for obtaining government records. With the breakdown of coalition partners in Jammu and Kashmir PDP and

Congress this RTI amendment Act did not get sufficient place. With this scenario the new election time was held in Jammu and Kashmir, The Regional party of Jammu and Kashmir. The National Conference party led by Omar Abdullah announced that a new RTI Act was their part of “Election Manifesto”.

In December 2008, The National Conference was subsequently elected to power and Omar Abdullah became the state’s Chief Minister. A draft bill was tabled on 7 March 2009, and passed by the legislative assembly and the legislative council by the 12 March 2009. The Act was subsequently gazetted and came into force on 20 March 2009. The Act provided setting out the regime of Right to Information for the people of the state to secure access to information under the control of public Authorities in order to promote under the control of public Authority in the working of every public Authorities. The constitution of a state information commission and for matters connected therewith or incidental thereto.

The Jammu and Kashmir Right to information Act, 2009 repealed and replaced the erstwhile Jammu and Kashmir Right to information Act, 2004 and the Jammu and Kashmir Right to information (Amendment) Act, 2008. The Jammu and Kashmir Right to Information Act was hailed as a major step towards democratization of the country as informed citizenry and transparency of information are vital to the functioning of a democratic government and also to contain corruption. The Jammu and Kashmir right to information Act, 2009 is gradually being recognized as a new and assertive institution to bring about transparency and accountability in the state in general and Kashmir in particular. The institution of right to information RTI has empowered the young and educated activists in monitoring the development projects being carried out by the government the flaws and deficiencies in these activities. In fact, this process has already started and the activists are actively invoking the provisions of the RTI in seeking the information and the way to healing the J&k RTI act is in line with the central RTI act, 2005 which includes provisions supporting the use of RTI with respect to alleged human rights violations.

The activists have started taking recourse to these provisions which has further enhanced the confidence of the people in the institution. It may be pointed out that many government functionaries who are not comfortable with the transparency and accountability mechanism perceive the RTI as an anathema. However, the rising levels of enthusiasm and growing awareness about the RTI

is bound to bring revolutionary changes in the governance and administrative performance in the state.(Punjabi, 2011,p 4) The J&k RTI Act applies to the entire state. The J&K RTI Act specifically spells out The Government bodies from which you can and cannot get information. It also requires that bodies covered by the Act nominate Specific officers who will be responsible for receiving and processing your request for information.

- i. Established or constituted by or under the constitution of India or the constitution of J&K;
- ii. Established or Constituted by a law of Parliament or the legislature of J&K;
- iii. Established or constituted by a notification or under of the state Government;
- iv. Owned Controlled or substantially financed by the state government, including non-Government Organizations which receive substantial Funding from the State.(Nayak And Sinha, 2012,p08)

#### **MAIN PROVISIONS OF THE JAMMU AND KASHMIR RTI ACT 2009**

The act contains 28 sections divided into V chapters and in addition has a preamble and two schedules. First chapters titled ‘*Preliminary*’ contains two sections dealings with short title, extent and commencement, and definition. Chapter second is titled ‘*Right to Information and Obligation of Public Authorities*’ and contains nine sections (3 to 11) dealing with obligation of public authorities; designation of public information officer; request for obtaining information; disposal of request; exemption from disclosure of information; grounds for rejection to access in certain cases; severability; and third party information.

The third chapter is titled ‘*The State Information Commission*’ and contains three sections (12 to14) which deals with the constitution of central information commission; term of office and condition of service; and removal of State information commissioner or state chief information commissioner. The chapter fourth is titled ‘*Powers and Functions of the Information Commission*’ and contains three sections (15-17) dealing with appeals and penalties. The fifth chapter is titled ‘*Miscellaneous*’ and contains eleven section (18 to28) dealing with protection of action taken in good faith; bar of jurisdiction of courts; monitoring and reporting; power to make rules by competent authority; and laying of rules, power to remove difficulties, and Repeal and saving.( *The Jammu*

*and Kashmir Right To Information act 2009, Published By Dehat Sudhar Wing” Rural Development And Panchyat Raj Department Civil Secretariat Jammu and Kashmir,20 March 2009, P-8-10)*

### **Chapter First: Preliminary**

#### **Short title, extent and commencement.**

This Act may be called the Jammu and Kashmir Right to Information Act. 2009.

- (2) It extends to the whole of the State.
- (3) It shall come into force at once,

#### **Definitions of various terms used in RTI act, 2009:**

Information according to Section 2 (f) of RTI, 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 authority under any other law for the time being in force;

**Section 2(h)** deals with public authority, ‘Public authority’ means any authority or body or institution of self –government established or constituted;

- (a) By or under the constitution;
- (b) By any other law made by parliament;
- (c) By any other law made;( Jammu and Kashmir Right to Information act 2009)
- (d) By state legislature or by notification issued or under made by the appropriate government;

#### **Section 2 (i) Record:**

“Records” includes:

- (a) Any document , manuscript and file;
- (b) Any microfilm, microfiche and facsimile copy of a document;
- (c) Any reproduction of image or images embodied in such microfilm (whether enlarged or not);
- (d) Any other material produced by a computer or any other device;

#### **Section 2(j): what is Right to Information?**

“Right to information” means the right to information accessible under this act which is held by or under the control of any public authority and includes the right to

- (i) Inspection of work ,documents ,records;
- (ii) Talking notes, extracts or certified copies of documents or records;
- (iii) Talking certified samples of material;

#### **Section 2(n): Third Party**

“Third party” means a person other than the citizen making a request for information and includes a public authority.

### **Chapter Second: Right to Information and Obligations of Public Authority**

#### **Section 3 Right to information**

Subject to the provisions of, the Act, every person residing in the State shall have the right to information.

#### **Section 4(1) Obligation of Public Authorities:**

Every public authority shall;

- (a) Maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensures that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of Resources. Are computerized and connected through a network all over the country on different systems so that access to such records is facilitated;

**Section 4 (2):** 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 communication, including internet, so that the Public have minimum resort to the use of this Act to obtain information.

### **Chapter Third: The State Information Commission**

#### **The State information commission**

**Section 12(1):** The central government shall, by Notification in the official Gazette, constitute a body to be known as the Jammu and Kashmir state information commission to exercise the powers conferred on and to perform the functions assigned to it under this act.

**Section 12(2):**

The State Information Commission shall of:

- (a) The State Chief Information Commissioner;
- (b) Such number of central information commissioners, not exceeding ten, as may be deemed necessary.

**Section 12(3):**

The state chief information commissioner and state information commissioner shall be appointed by the governor on the recommendation of a committee consisting of –

- (i) The chief minister, who shall be the chairperson of the committee;
- (ii) The leader of opposition in the legislative assembly;
- (iii) A cabinet minister to be nominated by the chief minister;

**Section 12(4):**

The general superintendence, direction and management of the affairs of the state information commission shall vest in the state chief information commissioner who shall be assisted by the state information commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the state information commission autonomously without being subjected to direction by any other authority under this Act.

**.Section 13(1)**

The state chief information commissioner shall hold office for a term of five year as such after he has attained the age of sixty five years.

**Section 14(4)**

If the State Chief information Commissioner or any State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the government or participates in any way in the profit there of or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehavior.(Gupta, 2009, p 385)

**Chapter Fourth: Powers and Functions of the State Information Commission Appeal and Penalties:**

For effective implementation and supervision and control of various provisions of the Act, the commission has been given enough powers.

**Section 15: Receipt of Complaint and Inquiry**

**Section 15(1):** It shall be the duty of the state central information commission or state information commission receive and inquire into a complaint from any person related to the following.

- (a) On PIO not being designated
- (b) Refusal to accept the application by PIO

**Inquiry**

**Section 15(2)**

where the State Information Commission is satisfied that there are reasonable grounds to enquire into the matter, it may initiate an inquiry.

**Section 16 -Appeals**

**Section 16 (1)-**

Any person who, does not receive a decision within the time specified in sub-section(1) or clause (a) of sub – section(3)of section(7), or is aggrieved by a decision of the Public Information Officer or State Public Information Officer, may be, may within thirty days from the expire of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Public Information Officer or , in each Public Authority:

**Section 17 Penalties:**

Where the State Information Commission at the time of deciding any complaint, appeal or reference is of the opinion that the Public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees : Provided that the Public Information Officer shall be given a reasonable opportunity of being heard before any penalty is imposed on him.

**Chapter Fifth: Miscellaneous****Section 18: Protection of action taken in good faith:**

No suit, prosecution or legal proceeding shall be against any person for anything which is in good faith done or intended to be done under the act or any rule made there under.

**Section 19: Act to have overriding effect:**

The provisions of the act shall have effect not withstanding anything in consistent there with contained in the State official secrets Act, Samvat, 1977 and any other law for the time being in force or any instrument having effect by virtue of any law other than the Act.

**Section 20: Bar of jurisdiction of courts:**

No court shall entertain any suit, application or other proceeding in respect of any order made under this act and no such order shall be called in question otherwise than by way of an appeal under this act.

**Section 21: Act not to apply to certain organization:**

Nothing contained in this act shall apply to the intelligence and Security Organisation specified in the second schedule, being organization established by the government as the government may, from time to time, by notification in the government Gazette, specify,

**Section 22: Monitoring and reporting,**

The State Information Commission shall, as soon as practical after the end of each year, prepare a report on the implementation of provision of this act during that year and forward a copy thereof to the appropriate government.

**Section 23 government to prepare programmes:**

1. The government may, to the extent of availability of financial and other resources.
  - (a) Develop and organize educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this act.
  - (b) Encourage public authorities to participate in the development and organization of programme referred to in clause( a) and to undertake such programme themselves;
- 2 The government shall, within eighteen months from the commencement of the Act, compile in the official language of the state a guiding containing

such information, in an easy comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

3. The government shall, if necessary update and publish the guidelines referred to in sub – section(2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section(2).

**Section 24: power to make rules by government:**

1. The government may, by notification in the government Gazette make rules to carry out the provisions of the Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters.

**Section 25: power to make rules by competent authority;**

Subject to the provision of section 24, the competent authority may, by notification in the government Gazette, make rules to carry out the provision of this act:

- (a) The cost of the medium or print cost price of the material to be disseminated under sub-section (4) of section;(Government of Jammu and Kashmir Civil Secretariat Law Department, Jammu, 20 Mar 2009)

**Section 26: Lying of rules;**

1. Every rule made by the central government under this act shall be laid, as soon as may be after it is made, before each house of the state legislature while it is in session, for a total period of Thirty Days which may be comprised in one session or in two or more successive session, and if, before the expiry of the sessions aforesaid, both houses agree that the rules should not be made, The rule shall thereafter have effect only such modified from or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**Section 27: Power to Remove Difficulties:**

1. If any difficulty arise in giving effect to the provision of this act, the government may, by order published in the Government Gazette make such provision not



inconsistent with the provision of this act as appear to it be necessary or expedient for removal of the difficulty.

#### **Section 28:**

##### **Repeal and saving:**

1. The Jammu and Kashmir Right to information Act, 2004 and the Jammu and Kashmir Right to information (Amendment) Act, 2008 are hereby repealed.
2. Notwithstanding such repeal, anything done or any action taken or any order made before such be deemed to have been done taken or made as the case maybe, under the corresponding provisions of this Act.( The Jammu and Kashmir Gazette Vol 121 p 25-29)

The J&K RTI Act with various amendments was passed in 2009 but right from the beginning; it met with opposition from various government quarters. Demand has been made for removing file notings from the purview of the RTI Act. Such moves run counter to the principle of open governance. The efforts to bypass the RTI Act or to restrict the scope of the operation of the Act betray the government's resistance to transparency. RTI has extended the rights of people significantly. RTI activists have used the law to bring to light a whole host of scams in recent years. That proves the need for such legislation beyond all doubt. The great number of attacks on RTI activists is also evidence of its efficacy. Admittedly, it has to be acknowledged that the piling up of applications against RTI violations may stand in the way of government functioning speedily. Classification of government records may overcome this obstacle.

Non-sensitive government records can be put out on the web. The advanced countries follow the practice. As for sensitive government information, it may be kept under wraps for a period of time before divulging it to the public. In Jammu and Kashmir till 30 august 2012 people were filing RTI application under J&K RTI Act 2009 with provision of J&K RTI rules 2010. In J&K RTI rules 2010, there were 10 chapters and 51 rules clarifying a good satisfaction level of RTI users in Jammu and Kashmir. Numerous big scams were unearthed under J&K RTI rules 2010. Thousands of RTI applications were filed in various departments of State. There was a good response from civil society regarding the use of RTI. But unfortunately then came the era of repealing J&K RTI rules 2010.(Bhat, 2014) In this view we have a new rule of Jammu and Kashmir RTI Rules 2012.

#### **NEW RIGHT TO INFORMATION RULES IN JAMMU AND KASHMIR**

Till J&K RTI rules 2010 hundreds of scams were unearthed from last 2 years. During this period there were rays of transparency in state administration to some extent. But unfortunately J&K RTI rules 2010 were suddenly repealed by the present government. There was widespread condemnation on repealing of J&K RTI rules across the whole Jammu and Kashmir. There were protests against the Government of Jammu and Kashmir. The J&K RTI activists sit on Dharna for various days in summer capital of Jammu and Kashmir. Protests also came from college students. It would be worthwhile to mention that thousands of RTI activists were threatened by the unknown agencies. The civil society blamed the Government of Jammu and Kashmir is responsible for the repealing of J&K RTI rules 2010. What was left in J&K RTI rules 2012, only 13 rules as compared to J&K RTI rules 2010 in which there were 51 rules. The J&K RTI activists approached Government Authorities several times and even Other RTI activists from various states also raised voice against the repealing of J&K RTI rules 2010, but there requests were dashed to the ground. The most interesting thing was that leaders of opposition parties in Jammu and Kashmir also remain silent. Even in Jammu and State Legislature Assembly that also remain untouched regarding destruction of J&K RTI rules 2010. This clearly seems that Political setup and bureaucrats of Jammu and Kashmir are always looking for an autocratic setup in Jammu and Kashmir so that they can stretch their network of corruption.

#### **INCLUDED AND EXCLUDED IN THE JAMMU AND KASHMIR RTI ACT**

The J&K RTI Act gives you the right to access to information held by "public authorities" Public authorities include bodies which are:

- a) Established or constituted by or under the Constitution of India or the Constitution of J&K;
- b) Established or constituted by a law of Parliament or the Legislature of J&K;
- c) Established or constituted by a notification or order of the State Government; Owned, controlled or substantially financed by the State Government, including Non-government organisations which receive substantial funding from the State. (Section 2F of the J&K RTI Act)

Unfortunately the Criminal Investigation Department (CID) in J&K is exempted from the ordinary

obligations of transparency and disclosure of information unlike other public authorities. Under Section 21 of the J&K RTI Act, the State Government can notify any security or intelligence organization as being exempt from the obligations of disclosing information to people. However the CID is cannot deny access to information relating to allegations of corruption and human rights violation that is available with it. The CID is required to provide information about allegations of human rights violations only if the J&K State Information Commission gives its approval. This process must be completed within 45 days of receiving the information request.(Section 21)

### **JAMMU AND KASHMIR ACT APPLICABLE TO CENTRAL OFFICES**

What has sparked off a fresh debate on J&k Right to information Act 2009, the state information information commission has shot off a massive controversy by declaring that all the central government offices working within the territorial jurisdiction of the state, informing them that they were falling under the purview of the legislation. The J&K RTI Act 2009 provides public authority as any authority or body or institution of self-government established or constituted by or under the constitution of India or the constitution of India or the constitution of J&K, by any other law made by the parliament by any other law made by the state legislature, by notification issued or order made by the government and includes anybody owned controlled or non-government organization substantially financed, directly or indirectly by funds, provided by the government. Hence the j&k RTI Act 2009 brings in its sweep all the public Authorities functioning within territorial jurisdiction of Jammu and Kashmir. The SIC has asked the central departments that the applications from information seekers in J&K be entertained and provisions of the J&K RTI Act of 2009.

### **CONCLUSION**

From the above discussion it can safely be said that the Jammu and Kashmir Right to information is harnessed as a tool for promoting participatory development, strengthening democratic governance and facilitating effective delivery of socio-economic services. In the kind of society, in which we live today, acquisition of information and new knowledge and its application have intense and pervasive impact on processes of taking informed decisions, resulting in overall productivity gains. People who have access to information and who

understand how to make use of the acquired information in the processes of exercising their political, economic and legal rights become empowered, which, in turn, enable them to build their strengths and assets, so as to improve the quality of life.

In view of this, almost every society has made Endeavour's for democratizing knowledge resources by way of putting in place mechanisms for free flow of information and ideas so that people can access information themselves without asking government functionaries for every little bit of information. People are thus empowered to make proper choices for participation in the development process. The efforts made thus far to disseminate information and knowledge through the use of communication technologies such as print media, radio and televisions as well as internet have yielded positive results. Sharing of information, for instance, about the new techniques of farming, healthcare facilities, hazards of environmental degradation, opportunities for learning and earning, legal remedies for combating gender biases, etc. have made significant contributions to the well-being of the poor people. This is particularly so because every individual or sections of the society, whether working in the agricultural, industrial or services sectors, requires a wide range of information to be able to effectively function in the modern knowledge and technology driven economy.

Until 2004 in Jammu and Kashmir, an ordinary citizen had no access to information held by a public authority. Even in matters affecting legal entitlements for such subsidized services as food for work, wage employment, basic education in healthcare, old age pension and food security for destitute, it was not easy to seek the details of the decision-making process that affected him. Without access to relevant information, it was not possible for a common man to participate in a meaningful debate on political and economic options or choices available to him for realizing socio-economic aspirations. In this backdrop, the *Right to Information Act*, 2009, was passed by the state Legislature to dismantle the culture of secrecy and to change the mindset of the bureaucrats and political leaders and to create conditions for taking informed decisions. The major concern of the Act is to allow for greater probity in the functioning of the Government departments so as to promote transparency and accountability in the working of the public bodies and contain the scourge of corruption, which are critical for ensuring good governance and development. Government officials must also be sensitized about the Act and their

own roles and responsibility in making it operation.

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