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RIGHT TO INFORMATION

How the weakening of Right to Information in Kashmir makes the fight against Covid-19 more difficult

By replacing the erstwhile state's strong RTI Act with the central legislation, the Modi government has made it difficult to access information, say activists.

Athar Parvaiz

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RTI activists protesting in favour of traditional forest dwellers in Jammu and Kashmir. | Athar Parvaiz

One of the important lessons from the Covid-19 pandemic is that an enabling atmosphere for effective use of information technology can be decisive in situations where awareness plays a key role, said Right to Information activist Raja Muzaffar Bhat.

“The understanding about the importance of digitisation of information and its online dissemination existed earlier also, but we had never imagined how crucial it can become till the pandemic struck us,” he observed.

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“Even some administrative departments such as Rural Development and Panchayati Raj department had no dedicated websites until recently [in Jammu and Kashmir],” Bhat observed adding that the central Right to Information Act of 2005 clearly emphasised the digitisation of government records and updating of websites.

“In this pandemic situation, the citizens should have been able to access information about the availability of vacancies, oxygen and ventilators in their area online,” said Bhat. “But that is not happening.”

He had taken up the issue of updating information with the Jammu and Kashmir administration. “But, there is no progress on that despite the lieutenant governor’s assurance to us in January this year and a subsequent government order asking the heads of the departments to update the websites by February 18,” he lamented.

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According to Bhat, on the one hand, “the government seeks to use information technology when its officials utilise social media, but, on the other hand, it has

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A Kashmiri man at a protest against the scrapping of the special constitutional status for Kashmir by the central government. Photo credit: Danish Siddiqui/Reuters

Denial of information

Bhat said that since August 2019, when [Article 370 was scrapped](#) and Jammu and Kashmir Right to Information Act, 2009, was subsequently replaced with the Centre's 2005 legislation, the government offices are even denying information sought through the applications.

“I had filed applications several months back asking information about how much funding was allotted district-wise for dealing with the Covid-19 situation and how it was spent,” Bhat said. “But, I am yet to get answers.” Bhat added that he has appealed to the central RTI commission about it, but nothing has happened so far.

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For example, Mushtaq Ahmad, an activist from Budgam district in Kashmir, recently said that he was denied information after he sought some basic details when his wife was denied treatment in a local government hospital twice under the garb of coronavirus pandemic.

He said that he sought information under the central RTI Act, 2005, in September 2020 from the district administration, but was not given any information even after filing an appeal before the First Appellate Authority.

This was the contrast of one of his earlier applications filed under the erstwhile state's RTI Act, 2009, after his family's name was mysteriously removed from the beneficiaries list of subsidised rice through a government scheme. His RTI application was responded to within days revealing that half a dozen undeserving families of his village were adjusted in the list of beneficiaries thereby depriving the poor of their rights.

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“In our own Jammu and Kashmir RTI Act, 2009, our appeal would be heard within 60 days,” Sharma said. “But, in the central Act, the appeal can linger on for up to even one year or more – there is no limit. And then, we have to go all the way to Delhi to file the appeal.”

“This is a huge hassle,” Sharma said and added: “This has made the officials in Jammu and Kashmir quite confident that they can easily get away if they deny the information or sit over the RTI applications.”

Abid Jeelani, a young lawyer and RTI activist who has helped hundreds of citizens to get information in Ganderbal and Srinagar districts using Jammu and Kashmir’s RTI Act besides filing around 100 RTI applications himself, said that the number of people who used to seek his help regarding RTI has entirely dried up.

“Before August 2019, I used to help an average of 40 people in a month getting information through RTI,” Jeelani told *Scroll.in*. “All of that changed after our own RTI Act, 2009, was abolished.”

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“The robust right to information movement that Jammu and Kashmir’s strong Act had triggered has died a silent death,” Jeelani observed.

Centre vs state RTI

Early this year, the Central Information Commission [published](#) the annual report (2019-'20) about the central RTI Act. In this report, department-wise data about the RTI applications filed in Union Territories including Chandigarh, Delhi and Pondicherry is available, but in the case of Jammu and Kashmir, only data about Central University Jammu and Central University Srinagar has been given. There is no information about RTIs with reference to various departments of the Jammu and Kashmir government.

Analysing the annual report of Central Information Commission [in a blog](#), Venkatesh Nayak, RTI research scholar and programme coordinator of Commonwealth Human Rights Initiative, has written:

Even though the [Department of Jammu and Kashmir and Ladakh Affairs](#) was created in the Union Ministry of Home Affairs by amending the [Allocation of Business Rules, 1961](#) on October 31, 2019, there is no mention of the RTI data from this Department. Although the central RTI Act became applicable to Jammu and Kashmir and Ladakh from that date, the annual report does not contain any statistics about the manner of use of this law in those jurisdictions except in the

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“So, where has the integration of Jammu and Kashmir gone?” Nayak asked. “It does not reflect even in the RTI report.”

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Nayak said Jammu and Kashmir had its own RTI Act prior to the abrogation of Article 370. It was much stronger than the central RTI Act, 2005, which has now been implemented in the region.

Bhat argued that if the central government has retained 166 laws of the erstwhile state after abrogating Article 370, why was the RTI Act of Jammu and Kashmir replaced with a weaker Central RTI Act?

“Union minister Jitendra Singh has claimed that the Centre brought the RTI Act in Jammu and Kashmir following the removal of the special status,” Nayak observes. “This is a grossly incorrect statement. There was already a very strong RTI Act in the erstwhile state. If they [the Modi government] have only weakened it by removing the state’s own legislation Act.”

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“In reality, the erstwhile state already had a strong RTI Act, much stronger than the Centre’s legislation and there was no need for repealing Jammu and Kashmir’s Act,” Khan said. “Instead of empowering us, replacing our own law with the central law is nothing, but our disempowerment considering how strong our own law was.”

No time limit

Before the abolition of Jammu and Kashmir’s [semi-autonomous status](#), the erstwhile state had a State Information Commission that had the powers to penalise Public Information Officers and helping the citizens to get information within a specific time limit. State Information Commission would issue summons and notices to Public Information Officers or even First Appellate Authorities. But now, this is not possible as the post has been abolished after the abrogation of Jammu and Kashmir’s special status.

If anyone now wants to complain about denial of information by the authorities, that person has to approach the Central Information Commission in New Delhi

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Nayak said. “In the state Act, there was an information Commission and the tenure of the information commissioners was fixed within the Act itself [five years]. This is not the case in the central Act wherein it depends on the Centre to decide the tenure and salaries of the members.”

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“Similarly, in the state Act, the Chief Information Commissioner was equal to the rank of chief election commissioner and the members were equal to the rank of chief secretaries,” he said. “Under Jammu and Kashmir’s own RTI Act, citizens were getting information easily.”

“And if they had any grievance, that grievance was getting addressed by the State Information Commission within a time-frame,” he said. “But, not anymore.”



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In the absence of an online platform, how can citizens get postal stamps for filing the RTI application whenever there is a lockdown? Photo credit: Tauseef Mustafa/AFP

No online facility

The Jammu and Kashmir government has not even done some basic things to facilitate the implementation of the central RTI Act in the region, Nayak said.

“The Union Territory administration has neither made citizens aware about the central Act nor has created an online facility for seeking information through the central RTI online portal,” Nayak observed. “So, the citizens of Jammu and Kashmir cannot apply online,” he said and added: “If you submit an RTI through the central RTI online portal requesting in the application that you need a certain information from the UT, that application gets rejected.”

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The appeals pending before the State Information Commission were [transferred](#) to the central commission after a lot of dilly-dallying by the Union Territory administration. “But, those appeals are now being dismissed one after another without facilitating the dissemination of information.”

“In short, the Right to Information Act has been turned into a puppet in Jammu and Kashmir,” Nayak said. “It is not being implemented – if anything it is being treated in a cosmetic manner.”

Scroll.in repeatedly sought the reaction of the Jammu and Kashmir administration on these allegations. This article will be updated if they respond.

Good old Act

“It would sound unrealistic that a faith healer (or peaeer in Kashmiri), also an RTI activist from Budgam, has spread awareness about RTI Act, 2009, among thousands of his disciples. But he has done so without spending a penny,” says Sheikh Ghulam Rasool, mentioned above in this article.

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right to information and has explained to thousands of people in simple language’,” recalled Rasool.

“A school drop-out, Nazir Ahmad of Shunglipora in Budgam, is now a big name in the district because of the RTI Act, 2009,” Rasool told *Scroll.in*.

And the simple reason for the passion regarding the right to information, he said, is a great success the movement had achieved through RTI applications (under RTI Act, 2009) in the Budgam district. He was referring to the multiple applications the RTI movement had filed in various departments of the Jammu and Kashmir government about the land transfer to the Army for artillery training in the forests of Budgam (Tosamaidan) and its impact on people, livelihoods and environment.

One of those applications revealed that [at least 65 civilians](#) were killed by unexploded shells over the years besides maiming over 150 people and killing livestock of farmers, it evoked public anger and the government had to [finally end](#) the land-lease to the army and open Tosa Maidan to public.

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use of Jammu and Kashmir's RTI Act that informed Kashmiris that Shiekh Muhammad Abdullah was [not a signatory](#) to the Instrument of Accession.

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Athar Parvaiz is an independent journalist based in Kashmir.

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