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## Is it counter-productive?

**Special status given to Jammu and Kashmir has allegedly led to the failure of the RTI Act in the state.**

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Autonomy that the state of Jammu and Kashmir enjoys and the demand for its enlargement would be justified only if it is used in the interest of the people and not merely to strengthen repressive and arbitrary powers of the rulers.

Exclusion of jurisdiction of the National Human Rights Commission, 73rd and 74th amendment to the Constitution to empower local self governments and Right to Information Act to the state are just a few examples of how Article 370 of the constitution guaranteeing special status to the state has been used to deny the people of their democratic rights.

The Right to Information (RTI) Act is the latest and glaring example of the misuse of Article 370.

The working group in its report on good governance in J&K presented to the third roundtable conference simply recommended that "there should be sensitisation of the RTI Act, to bring about transparency in government. "It should have investigated the reasons for its conspicuous failure in the state. In fact not a single case is reported or is known in which any person got redressal under the RTI Act.

The reason for the indifference of the people of the state to its RTI Act and seek information on any case is not merely due to lack of their interest in their problems or that they do not need such information. Lack of a strong voluntary effort to make people conscious of the right to information also does not fully explain why they are not asserting this right. The main reason is limitations inherent in the state act and lack of will of the state government to implement it.

The main difference of the state law with the central RTI act is that unlike the latter, it does not provide for the institution of the Information Commission. For the rest of the country, Information Commission is appointed at the Centre by the Pres-

ident on the recommendation of a committee consisting of the Prime Minister, leader of the Opposition in Lok Sabha and, a Union cabinet minister to be nominated by the PM. The state commissions have similarly been assured of their autonomous character and are appointed governor on the recommendation of a committee consisting of the CM, leader of the Opposition and a cabinet minister.

The commission headed by the Chief Information Commissioner is a vital link between the people and the government. It has the same powers as are vested in a civil court. It can summon and enforce attendance of persons and compel them to give oral or written evidence and to produce the document. The commission, during the inquiry of any complaint under the RTI Act, can examine any record which is under the control of the public authority and "no such record may be withheld from it on any grounds."

As J&K RTI act does not provide appointment of Information Commission, the complainant is not only deprived of any guidance about the procedure of filing a complaint, there is also no compulsion on public authority to supply the information sought. Most of the people, including educated classes, are unaware of the procedure for filing a complaint and patience to follow it up.

Further the list of subjects on

which the state government can withhold information is as long as fifteen. It includes advice, including legal advice, opinion or recommendation made by any officer of a public authority during the decision making process, information which would affect the enforcement of any law, information the disclosure of which would affect the government's ability to manage economy and in general "any record and information which under the Evidence Act is claimed to be privileged." The in-charge of an office can also regret to supply information to an applicant if the information cannot be complied without considerable financial expenditure or without considerable extra work. Further, a public authority can deny information if it would adversely interfere with its functioning.

There is no commission to which a person seeking information from the government can approach for guidance if his or her request is rejected. Nor any court "shall entertain any suit, application or other proceedings in respect of any order made under this Act and no such order shall be called to question"; the Act states categorically and somewhat ominously. The corresponding provisions in the central Act are far more liberal. In any case the Central Information Commission and the State Information Commissions have wide powers to force the public authorities to provide the necessary information sought by the applicant.

An additional factor to the same end may be the general practice of the ministers and legislators to hold *darbars* to listen to public grievances and offer redressal. But that is no substitute for institutional system for receiving grievances and their redressal. For everybody cannot have access to such *darbars*. In sum, as far as RTI Act in J&K is concerned, it is in every sense much worse and regressive than the central act.

Finally, people of J&K are in greater and not less in need of good and less corrupt governance through empowerment and information about administrative working to reduce the level of popular alienation that does exist there.

