

Final Report

Understanding the “Key Issues and Constraints” in implementing the RTI Act*

June 2009



“...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” – *Source: RTI Act 2005*

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Executive summary

Executive summary

Background

In order to promote transparency and accountability in administration, the Indian Parliament enacted the Freedom of Information Act, 2002, which was repealed later and a new act, The Right to Information Act, came into force on 12 October 2005. The new law empowers Indian citizens to seek information from a Public Authority, thus making the Government and its functionaries more accountable and responsible. The Act has now been in operation for over three years and has benefited many, including the poor and the underprivileged.

It has been highlighted in this report through various case studies that RTI Act has adequate “teeth” to bring in transparency and reduce corruption. At the same time it accepted that the Act has not yet reached the stage of implementation which was envisioned. However, it is still a matter of pride that we have given to ourselves, a tool which has the potential to usher in transparency, and reduce corruption. Notwithstanding the improvement requirements, the following achievements are undisputable:

- The basic tenets of the Act have been implemented and the institutional mechanism is in place and is in use by citizens
- The institution of Information Commission has assumed a pivotal position
- Civil society organisations have been, and continue to be, active in ensuring the implementation of the Act in letter and spirit
- Civil society organizations and the media have started using the Act for bringing in transparency and objectivity
- Centre and State Government departments have initiated the training of key functionaries to assume the responsibilities of PIOs and FAAs
- Government employees/Public Authorities are aware of the basic elements of the Act
- Various State Governments have taken up initiatives, which go beyond the stipulations of the Act, and further the spirit of the Act.

It is acknowledged by all stakeholders that substantial amount of work still needs to be done. Department of Personnel and Training (DoPT),

the nodal Department¹ or Government of India, also recognises that there are various issues and constraints involved in the implementation of the Act.

With this background, DoPT had engaged PricewaterhouseCoopers (PwC) for assessing and evaluating the level of implementation of the Act with specific reference to the key issues and constraints faced by the “Information Providers² and “Information Seekers”.

The Study

- This report has been prepared by PricewaterhouseCoopers (PwC) in association with IMRB (market research partner). This study takes into account the feedback³ of over 2000 information seekers and over 200 information providers across public authority (PA) at Centre, State, and local levels in 5 States. It also includes feedback of 5000 citizens with respect to their awareness of the RTI Act.
- As part of the study, the team also conducted four national workshops, in which Central Information Commissioners, State Information Commissioners, Civil Society Organisations, and the media participated. Apart from this, the team has also (i) participated in several seminars conducted by Civil Society Organisations, (ii) conducted various focused group discussions/one to one meetings with several stakeholders, including PIOs and first appellate authorities.
- The survey design was a consultative process involving various stakeholders such as media, Civil Right Activists, PIOs, FAAs, Information Commissions, Citizens etc. Thereafter, feedback was solicited by hosting the questionnaire on Ministry of Personnel, Public Grievances, and Pensions website (www.persmin.nic.in). The feedback was incorporated before rolling out the fieldwork.
- After the fieldwork was done by the team, the team was guided in the analysis by inputs received from select RTI Activists, Information Commissions from various States and the Consultative Monitoring Committee⁴

¹ The term Nodal Department is used for the Department of the appropriate Government, which is responsible to provide administrative support for the implementation of RTI Act.

² Information Providers comprise of PIOs, AAs, Information Commissioners, Nodal Agencies, and training institutes

³ The sampling methodology is detailed out in Chapter 1 of the report

⁴ The CMC committee was set up by the DoPT to facilitate the study and monitor the progress of the study. The CMC met six times during the course of this engagement

Key⁵ observations and recommendations:

Key findings and recommendations of this study have been presented across six broad areas relating to:

Enhanced Accountability and Clarity in role

For an Act to be successful, accountability and performance measures have to be unambiguously defined. In the absence of clear accountability and a measurement gauge, there is a high probability that the Act/Plan or Scheme would not be implemented in true spirit.

Key issues

During the study it was established that (detailed out in Chapter 3):

- There is variance in role/ownership of State Information Commissioners (SIC) and State Nodal Department in implementation of the Act, despite the fact that the appropriate Government's role is clearly defined in Sections 26, 27, and 28 and the Information Commissioner's role is defined in Section 19.
- There is inadequate planning at Public Authority level to proactively identify and address the constraints and ensure that citizens are provided the requested information (as per Section 4 and 5)
- There exist inadequate processes, infrastructure or resources with the Information Commission to measure the extent of implementation of the Act (for e.g. Section 4). Also, there is inadequate infrastructure, to measure the number of RTI applications filed/disposed and rejected on a real time basis for various Public Authorities (required as per Section 25 (3))

The study brought out the need for:

- Detailing roles and responsibilities and aligning them with the provisions of the Act; and the necessary Government support needed to be provided to the Public Authorities.
- The appropriate Government spelling out specific responsibilities and making people accountable for implementation of specific provisions of the Act. This is especially important since currently in most cases there is a lack of clarity/lack of ownership of planning to implement the provisions of the Act in totality at the Public Authority level or the appropriate Government level.

Recommendations

- At the State/Central level, there should be an RTI Implementation Cell headed by a senior bureaucrat (or any other bureaucrat, who will be able to coordinate among various Departments/Ministries), which should monitor the reports/status on various issues related to RTI based on inputs from SIC/CICs and the Public Authorities. However, from an operational aspect, the nodal (administrative) Department should be responsible for coordination and administration.
- It is implicit that at a Public Authority level, the implementation of RTI (especially Sections 4-5) is the responsibility of the administrative head. Given the (a) current low level of implementation of section 4(1)(b) and (b) low success in providing information within the stipulated time, there is a need for capacity-building within the Public Authority. The administrative head may constitute/appoint Public Authority's RTI Cell (PARTI Cell), to proactively address the issues pertaining to RTI implementation and develop a roadmap for implementation. The size of this cell/team will depend on the size of the authority and number of RTI applications received. Given that there are Public Authorities of various sizes, it is suggested that this PARTI Cell should start from a Ministry. The agencies/offices under its control may either be adequately represented or may have a different PARTI Cell of their own and so on, till all Public Authorities are covered.
- Capacity-building (through Knowledge Resource Centre (KRC) for RTI) has been recommended at the National level to facilitate the Central and State Governments towards providing guidelines, establishing templates of standard rules, templates of various forms, and suggested payment channels etc. The KRC, should be responsible for knowledge management, disseminating landmark cases, and developing common IT applications for Information Commissions and Public Authorities.

⁵ Note: These are key findings and recommendations. Detailed analyses leading to the assertion/recommendations are detailed later in this report.

Improving RTI Awareness:

This Act implies empowerment of the citizens of India. Hence there is a responsibility of the appropriate Government to create awareness among citizens on their rights under the Act,

Key issues

- The Act mentions the responsibility of the “appropriate” Government to develop and organise educational programmes to advance the understanding of the public, and the disadvantaged communities in particular, on how to exercise the rights outlined in this Act (Section 26(1) A). However, during the study it was established that:
 - Only 13% of the rural population and 33% in urban population were aware of RTI Act
 - Only 12% of the women and 26% of men were aware of RTI Act.
- In absence of any mass awareness campaign carried out by appropriate Governments, the current public awareness is primarily a result of media, “RTI investigations” done by the journalists and efforts of civil society organisations.
- Furthermore, the awareness level of the citizens regarding their rights as an appellant under RTI is minimal. During stakeholder consultation, the civil society organisations felt that there were instances when the principles of natural justice were not followed during the hearings. This could have been avoided if the appellants were aware of their rights as appellants during the hearing process.

Recommendations

- It is recommended that the Government of India (GoI) should establish RTI as a “brand” through a mass awareness campaign (there are already a few strong brands in Government schemes such as NREGS, family planning, consumer awareness etc). To take care of linguistic and local relevance, the awareness campaign has been recommended both at Central and State levels. The main objectives of the campaign should be to:
 - Increase public knowledge and awareness
 - Encourage citizen involvement and debate
 - Increase transparency within the Government
- Awareness could be created within the Government/Public Authorities by putting prominent displays at Public Authorities, and making citizens aware of their rights. Also, it has been suggested that the appellants be made aware of their rights and duties by putting up visual display boards at Information Commissions (template provided in Annexure 7).
- A publicity campaign has been recommended. The timing of this campaign has been suggested post implementation of the other recommendations mentioned in this report. It is expected that after implementation of the other recommendations, the Public Authorities, appropriate Governments, and Information Commission would be able to handle more “volume” that is generated through the awareness campaign.

Improving Convenience in Filing Requests

As determined by the survey, most of the applications (more than 70% of the people surveyed) for information are filed at the Government offices, a conducive and facilitative environment at Government offices is a necessary condition to ensure that citizens are able to apply and receive information in a convenient manner.

Key issues

As per sections 4(1)(b)xv-xvi, 6(1) and 5(3), the Public Authority is expected to proactively provide certain information/ facilitate the citizens in accessing the information as per the RTI Act. However, during the study, it was noticed that there was a wide gap in ensuring convenience to the citizens in filing requests for information. There were also anecdotal instances where the citizen was discouraged to file for information requests (for e.g., the form for requesting information is only a guideline, but at many places, the information requests were rejected if the applications were not in the prescribed format).

Key issues

Some of the key issues highlighted during the survey / Focus Group Discussions (detailed in Chapter 3) were:

- Submission at the PIO office is the most prevalent channel. However, over 26% of the citizens had to pay more than three visits to submit applications and 47% said no sign boards were present to help them with the process.
- Lack of an updated list of PIOs, which leads to citizen inconvenience (providing updated list of PIOs as per section 4(1)(b) (xvi)).
- The payment of cash is the most prevalent channel. However, it has the inherent limitation of requiring the applicant to be present physically, whereas as per the Act, there is no such restriction. Most of the payment modes accepted by the Public Authorities have this inherent limitation.
- Inadequate help was provided to applicants or the attitude of PIOs was non-friendly (assistance is expected from PIOs as per section 5(3) and 6(1)).
- Approximately 89% of the PIOs were not using the provision of inspection of records by citizens, which led to delay in providing information. (As per section 2(j)(1), “inspection of work, documents, records” is a means to provide information under Right to Information Act).
- Over 75% of the information seekers were dissatisfied with the quality of information provided.

Encouraging accessibility to information is one of the major change management issues among Government employees. For a Government servant, there has been a significant shift from the “Official Secrets Act” mindset to the “Right to Information Act” mindset.

Recommendations

In order to facilitate filing RTI requests/appeals, the following alternate channels should be considered.

- Common Service Centers (CSCs) is a scheme of the Government of India under which 1,00,000 CSCs are being created. This means that there would be approximately 1 CSC for every 6 villages. These CSCs are expected to act as front-end/single window outlets for many Government services. These are being operated by private agencies under the Public Private Partnership model. It is recommended that these CSCs should be used to collect applications (to act as APIO, as per Section 5(2)) and facilitate citizens in filing RTI applications.
- Department of Posts (GoI) is already a designated APIO under the Section 5(2) for Central Government. It is suggested that the State Governments also accord the status of APIO to post offices and designate staff to assist citizens in drafting and forwarding the applications/appeals.
- RTI Call Centers: these have already been implemented in some states or are in the process of being implemented (e.g. in Bihar, Haryana). This is a convenient channel wherein the RTI application is taken by the call centre and payment of fee is included in the telephone bill.
- RTI Portal: In this case the information request can be made through the RTI portal. Various State Governments have already started planning the implementation of this recommendation. The RTI portal should contain links to all Ministry/Department websites of the appropriate Government.
 - The Ministry/Departments should provide a comprehensive list of agencies/offices under its control and a link (or a webpage) which contains all the suo-moto information desired in Section 4(1)(b).
 - These agencies/offices should be categorised as recommended in ARC report, viz. (i) constitutional body (ii) line agency (iii) statutory body (iv) public sector undertaking (v) body created under executive orders (vi) body owned, controlled or substantially financed and (vii) NGO substantially financed by the Government.

The RTI application is made online by choosing the relevant Public Authority on the website owned by IC/appropriate Government. The information seeker has the option of making the payment of fee through a payment gateway.

- Also there are various e-Governance initiatives (such as e-District, e-Municipalities) which are proposed to have an RTI module in the software application being developed for this project. The role of e-District kiosks would be to act as APIOs for the other State Government departments.
- Further, it is suggested that the appropriate Government amend relevant rules so as to facilitate ease in paying the requisite fees from any part of the country, as per Section 6(1). Some of the recommendations are as follows:
 - Define certain minimum channels for payment, some of which are convenient to people residing in other parts of the

Recommendations

country. At the least, it should have the following channels:

- Indian Postal Order
- Demand Draft
- Cash
- Court fee stamps
- Non-judicial stamps
- Introduce RTI envelopes, which would have an inbuilt cost of application fee.
- Facilitate payment through Electronic Payment Gateway while submitting RTI application on the web.

At this stage, it would be pertinent to mention that some of the above channels may lead to revenue loss for the State Government (for example payment made through Indian Postal Order/RTI envelopes would result in revenue accruing to the Central Government, whereas the revenue should accrue to the State Government in case the RTI applications is for a Public Authority under the State Government. However, it may be noted that this loss would be insignificant and the revenue accruing to the Central Government would be utilised for strengthening the Act through awareness generation, Knowledge Resource Centre etc.

Common Infrastructure & Capacity Building

The study also focused on the Information providers to understand how well-equipped the Government/PA machinery is to respond to the needs of the RTI. This was studied from various aspects – training/knowledge, usage of IT, availability of basic infrastructure (like availability of photocopier at Panchayat level) etc, and whether adequate budgets existed to address the limitation.

Key issues

The key issues/findings based on the survey and Group Discussions are as follows:

- Record Management
 - More than 38% of PIOs stated ineffective record management system for delay in processing
 - Approximately 43% of the PIOs were not aware of the record management guidelines
- Training/Knowledge
 - Approximately 45% of PIOs mentioned that they had not been provided training in RTI
 - Approximately 43% of PIOs were not aware of the proactive disclosure of their PAs
 - Approximately 39% of the PIOs were not aware of key SIC judgments
 - Training was limited to the provision of the RTI Act. Key aspects related to public dealing, motivation, technology, service levels, etc were not addressed
- Usage of Information technology
 - Lack of software application capturing details mentioned in Section 25(3)
 - Lack of software application to improve efficiency at the Information Commission
- Low motivation of PIOs
 - Most of the PIOs have taken up the role unwillingly, leading to low motivation among them. Often, junior officers have been given the role of the PIOs and First Appellate Authority
 - There was a perception among PIOs that lack of adequate budget and infrastructure hampers RTI implementation
 - Approximately 89% PIOs said that there was no additional allocation of staff for RTI, while their work has increased

The gaps highlighted above, are partly due to lack of clear accountability established through appropriate Government rules and lack of controls to measure the level/effectiveness of implementation. This has been addressed in the report through detailing the roles and responsibilities of various entities and establishing a control mechanism through the use of IT and Third Party Audits

Recommendations

- Re-organisation of record management system to promote information management. A separate study is recommended to improve the current record management guidelines and make them “RTI friendly”
- The following interventions in training to be taken:
 - Knowledge Resource Centre should be the owner of developing and updating the training content
 - At the State level, the State Nodal Department Agency should design a training implementation plan with support from the State Administrative Training Institute and National Training Agency.
 - Head of the Public Authority should own the responsibility of training the officials in its Department through State Administrative Training Institute or State empanelled agencies.
- Preparation of RTI ready plan: It is suggested that each Public Authority should do a self evaluation and identify areas of improvements and budget requirements. This would help in meeting the infrastructural needs thereby meeting the requirements of the Act.
- In order to ensure good performance of PIOs in implementing the RTI Act:
 - Allocation of responsibility of PIOs and AAs to senior level officials in a Public Authority is required
 - A mandatory column on the PIO's performance must be added into the forms of Annual Confidential Reports (ACRs)/even if the posting as PIO is only a part of the overall responsibilities handled by him/her.
 - A monetary incentive for the PIOs may be considered at a PA level. Often, the PIOs are liable to pay penalty, for reasons beyond their control. So while a penalty has been mandated by the Act, the PAs should also get rewarded for a good performance. This is important at places where PIOs handle a high volume of RTI applications
- Specific software applications/“information request management” for implementation at Public Authority level and at the Information Commission.
- Usage of a RTI compliant standard template (Annexure 6) for quick and rationale responses to the applicant.
- The ARC report had suggested that as a one time measure, Gol should earmark 1% of the funds of all Flagship Programmes⁶ for a period of five years for updating records, improving infrastructure, creating manuals etc (an amount not exceeding 25% of this should be utilised for awareness generation). This was a good suggestion to address the above mentioned issues. On the same lines, it is suggested that all Central and State Ministries/Departments should earmark 1% of their planned budgets for implementing the recommendations suggested in this report.

Improving Efficiencies at Information Commission

The appeal process is a key component of the RTI Act. It is one of the controls established to ensure that the information is provided to common citizens.

Key issues observed

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 may, within thirty days from the receipt of decision, appeal to an officer who is senior in rank in each Public Authority – commonly referred as the First Appellate Authority (Section 19(1)). A second appeal against the decision shall lie within ninety days from the date on which the decision should have been made or was actually received, by the Central/State Information Commission (Section 19(3)). However, there are significant challenges observed at the Information Commission. The findings of the study were as follows:

- Large pendency of cases with a wait time of 4-12 months existed in most of the States. This discouraged people from filing appeals.
- Information seeker survey pointed out that 47% of the citizens did not receive replies to their RTI application within 30 days.
- Appellants had to incur expenses to attend the hearing of second appeals at Information Commission. As per Section 19(8) (b), the Information Commission may require the Public Authority to compensate the complainant for any loss or other detriment suffered. However whether this clause can be invoked for compensating the travel expenses of the

⁶ Eight flagship programmes are: Sarva Siksha Abhiyan, Mid-day Meal Scheme, Rajiv Gandhi Drinking Water Mission, Total Sanitation Campaign, National Rural Health Mission, Integrated Child Services, National Rural Employment Scheme and Jawarharlal Nehru National Urban Renewal Mission.

Key issues observed

appellants is an area of contention and was not observed during the study.

The adjudicatory role of the appellant authority is critical in making this Act a success. As per the estimates, projected numbers of the secondary appeals would grow to 2.5-3.0 lakhs by the year 2011. This would require developing innovative ways to dispose off cases, without diluting the rights of either party.

Recommendations

Improving the disposal rate of complaints/appeals by Information Commission through the following recommendations:

- Hearings through video conferencing: Since the Information Commissions are situated in State capitals (with exceptions like Maharashtra), it is inconvenient for applicants to be present during the scheduled hearing. This problem assumes significance in cases of matters pertaining to the Central Government, where the appellant has to travel to New Delhi. It is proposed that the Information Commissions use video conferencing (VC) as a mode of communication for such hearings. VC facility is available at each district headquarters which may be used for this purpose.
- The CIC, as per Section 12(7) and SIC, as per Section (15(7), with the approval of the appropriate Government should open offices at other locations, so as to reach out to the masses.
- Passing order on merit of the case without hearing. This would address issues of rescheduling the hearing, in case of absence of the appellant or the PIO.
- Usage of software application for managing the processes at the Information Commission. This application should assist in improving productivity/efficiency in disposal of cases, drafting of orders, day-to-day office administration etc.

Further the recommendations on other important issues are as follows:

- Composition of Information Commissions: As per the Section 12(5) and 15(5), the composition should be such that it should have people with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. To implement these sections in spirit, it is recommended that the people who have worked in Government should be restricted to 50% (if not less) as recommended in the ARC report.
- To facilitate the induction of the new Commissioner, where he/she does not have a background of law/quasi judicial role, he/she should go through an induction period before assuming full charge.
- Usage of RTI compliant standard templates (Annexure 6) should ensure quick and reasoned orders to the appellant. It may be noted that the templates have a strong linkage to the Act and leave little room for errors.

Institutionalising third party audit

It is strongly felt that in the absence of a strong review mechanism, there is a high probability that the level of RTI implementation would regress to lower levels.

Key issues observed

Some of the key facts observed during the study:

- Limited infrastructure/processes with SIC to carry out responsibilities under 19(8)(a), 25(1), 25(2), 25(3f) 25(3g) and 25(5), leading to non-compliance by PAs with regard to RTI provisions.
- No/inadequate mechanism for monitoring proactive disclosure, resulting in low compliance to Section 4(1b) of the RTI Act(65% of the PAs have not published their pro-active disclosure on the websites).
- Non-adherence to service levels of 30 days causing delay in providing information to the RTI applicant.

Recommendations

- To ensure better service delivery by authorities and officials, third party audits should be institutionalized to support the Information Commission in carrying out responsibilities under Section 19(8)(a), 25(1), 25(2), 25(3f), 25(3g) and 25(5). Institutionalising regular audits would facilitate the Public Authorities' compliance with the RTI Act (through the audit findings made available by Information Commission). In this context it is recommended to have a third party audit (at least annually) to support the Information Commissions and RTI Implementation Cell to monitor the performance of Public Authorities and to take appropriate action in case of any deviation.
- Moreover, it is also suggested that the SIC website should have a list of all the Public Authorities within the jurisdiction of the Information Commission. The website should have a feature for citizens to report noncompliance (through tick-mark options) for a Public Authority. The reports generated through this application, would be helpful for a Public Authority and the Information Commission to take appropriate actions.

Next steps

In the recommendations and at the end of the report, various indicative timelines/project plans have been provided with specific responsibilities. For effective implementation of the recommendations, these steps have to be taken in a time-bound manner by specific authorities/entities/Governments.