

Key issues and constraints in implementing the RTI Act

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3.1. Introduction

As mentioned earlier, the “The Right to Information Act” became operational on 12th October, 2005. This law empowered Indian citizens to seek information from Public Authorities, thus making the Government and its functionaries more accountable and responsible. Unlike many other countries (for e.g. UK) which took several years to operationalise the Act post the enactment, India took only a few months to bring it into force. This time was inadequate to change the mindset of the people in Government, create infrastructure, develop new processes and build capacity to deliver information under this Act. This has led to implementation issues which need to be identified and addressed.

A preliminary list of issues was identified through discussions with various stakeholders¹² like the State and Central Information Commissions, Civil Society Organizations and Media Agencies. Issues identified through this exercise were compiled and made available on the Department of Personnel & Training website (www.persmin.nic.in), for review and feedback by a wider audience¹³. Thereafter, these issues were converted into hypotheses¹⁴ which were proved/ disproved through the field survey, results of which are provided in this chapter.

In this study, an attempt has been made to identify issues and constraints in the implementation of the Act. This has been approached from 3 dimensions:

Demand Side: This dimension pertains to the information seeker side and follows the issues and constraints faced by the information seeker, while filing for information request. The study of this dimension included a survey of:

- Citizens (irrespective of whether they have sought information under RTI or not)
- Past applicants

Attempt has been made to get feedback on various operational issues and constraints from various Civil Society Organizations and social activists who are contributing towards building awareness at the grassroot levels. While the survey has been the prime mode of data gathering, the study also encapsulates the relevant verifiable/obvious observations/conclusions.

Supply Side: This dimension pertains to the PIO, Nodal Department for RTI implementation and Administrative Training Institutes involved in imparting RTI training. This dimension covers the issues and constraints faced by the Public Authority from the point of receipt of a RTI request to the point when information is delivered to the applicant. The study of this dimension included

- Survey specifically for the PIOs and FAAs
- PIO Workshops
- Discussions with Nodal Departments and Administrative Training Institutes

Adjudicatory Side (Information Commission): The study of this dimension included one-to-one meetings with State Chief Information Commissioners, Survey of State Information Commission website and 4 national level workshops attended by the representatives of the Central Information Commission and Chief State Information Commissioners. The study also covered various Civil Society Organizations and social activists to study the experiences of citizens with the Information Commission.

¹² The Minutes of Meeting of the discussions are provided in Annexure 8

¹³ List of preliminary issues is provided in Annexure 1

¹⁴ List of hypotheses verified in the field survey is provided in Annexure 1

4.2. Issues faced on the demand side

4.2.1. Low public awareness

Low awareness level: Section 26 of the Act states that the appropriate Government may develop and organize educational programmes to advance the understanding of the public, especially disadvantaged communities, regarding how to exercise the rights contemplated under the Act. However, as per the survey it was revealed that only 15% of the respondents were aware of the RTI Act. During the awareness survey, it was also observed that the major sources of this awareness were:

- Mass media channels like television channels, newspapers etc
- Word of mouth

While on one hand the Nodal Departments (with specific reference to the State Governments studied) have not undertaken any substantial steps to promote the RTI Act, on the other hand, some SICs like SIC- Orissa and SIC- Andhra Pradesh have been promoting the usage of the Act through seminars and discussions at district level.

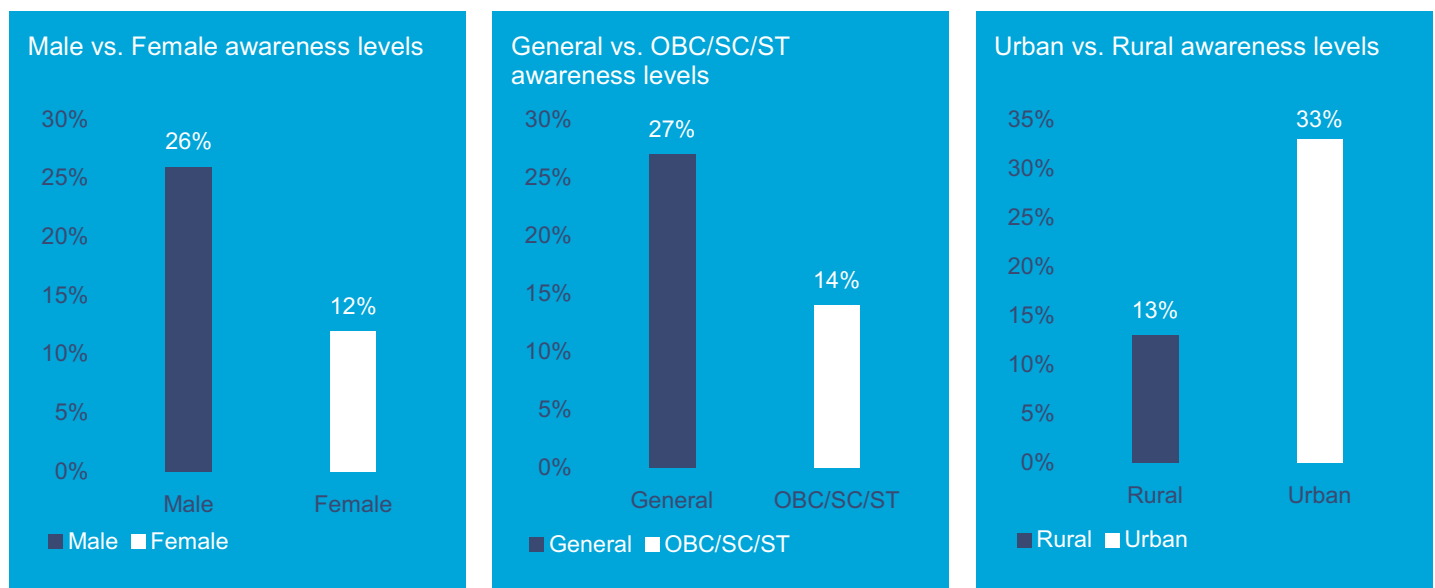
It was further observed that awareness level is low among the disadvantaged communities such as:

Women: In all the five states the awareness level among women was found to be low in comparison to men. The difference in awareness level between women and men ranged from 9% to 20%. The average awareness level among women was 12% in comparison to 26% awareness level among men.

Rural population: As observed in the previous case the awareness level in rural population was low compared to urban population. The difference in awareness level among rural population and urban population varied from 33% in Maharashtra to 5% in Andhra Pradesh.

OBC/SC/ST category: The awareness level among OBC/SC/ST category citizens was low when compared to awareness level among general category citizens.

Please refer Figure 3.1 given below for details



Quality of awareness

Awareness regarding types of organizations covered under the RTI Act: It is important to highlight that the quality of RTI awareness in common public is significantly low. The respondents claiming to be aware of the RTI Act were asked some “trap questions”. The table below illustrates the percentage of people who responded in affirmative to the questions analyzing the table below, one can calculate that there is a low quality awareness of the general public.

Table 3.1: Knowledge levels of RTI Act across the five states (% of people who responded YES to the questions)

	All Total	Assam	Andhra Pradesh	Maharashtra	Orissa	Uttar Pradesh
Answering Base – People who are aware	977	367	96	271	138	105
Right to ask for all information provided about any organization	59%	66%	23%	56%	64%	64%
Right to ask for information related to Government bodies	72%	87%	76%	48%	86%	60%
Right to ask for information about the private sector	40%	50%	32%	30%	43%	35%
Right to ask for information related to Media	42%	53%	26%	34%	41%	42%

Awareness on provisions of appeals and complaints: The Awareness on Section 18 was 48% amongst the citizens who were not satisfied with the response they got from the PIOs. Out of this 48%, who were aware of this provision, only 20% used it.

Analysis and Conclusion: While the Act has been clear in defining the responsibility of the appropriate Government, with respect to creating awareness on the Act, there has been lack of initiative from the Government’s side. The efforts made by appropriate Governments and Public Authorities have been restricted to publishing of rules and FAQs on websites. These efforts have not been helpful in generating mass awareness of the RTI Act. As compared to RTI Act the common citizens (and disadvantaged communities) are significantly more aware of other Government schemes focused on socio-economic development.

While this inadequacy can be linked to lack of accountability in the Government, it is also important to note that there are inadequate processes within the Government to highlight the success or failure in carrying out various activities mentioned in the Act, as a scorecard (including generating awareness, mentioned in Section 26). Further, similar measures/ scorecard are not available at a Public Authority level. Hence the appropriate Government or the Civil Society Organization is not in a position to have an objective measure to gauge the level of implementation of the RTI Act and its progress year-on-year.

3.2.2. Constraints faced in filing applications

The RTI Act under section 27(1) and 28(1), specifies to the appropriate Governments and the Competent Authorities to make rules pertaining to implementation of the Act. Under Section 6 of the RTI Act, PIOs are required to provide reasonable assistance to the applicant in drafting and submission of the application. This section attempts to provide the current levels of implementation of the Act and highlight the constraints faced by an applicant in filing applications.

- Non-availability of User Guides for RTI implementation for information seekers: Under Section 26 of the RTI Act, the appropriate Government is expected to publish and distribute user guides (within eighteen months of enactment of the Act) for information seekers. However, it was highlighted in the information provider survey that Nodal Departments have not published these guides in any of the five states. (It is interesting to note that in some cases, the SIC has published these Guides, though as per the Act, it is the responsibility of the “appropriate Government”). The Central Government (through the Nodal Department – DoPT) has published Guides for Information Seekers in 2007. Lack of user guides results in substantial efforts on the part of the information seeker to gather knowledge about the process for submitting a RTI request. This problem is further supported by the fact that 52% of the citizens surveyed requested availability of a user guide/ manual at all the Public Authorities. Table 3.2 below gives the details of information guidelines published by various agencies in a State.

Table 3.2: User Guides for information seekers issued by different agencies

State	Involved in publishing User guides for Information Seekers	
	Appropriate Government	SIC
Maharashtra	x	x
Orissa	x	✓
Andhra Pradesh	x	✓
Uttar Pradesh	x	x
Assam	x	x

- Standard forms for RTI application: There have been numerous debates on standardizing the RTI application form. While the Act does not necessitate having a standard application form, some States have provided a standard form using Section 26(3)(c) of the RTI Act. There are significant advantages of using a standard form¹⁵ for a RTI application. The standard form helps in getting basic information such as address/ contact numbers, form in which information is requested etc., which helps the PIOs in providing the requisite information and contacting the applicant for communication required under section 7(3) etc. Further, if basic information is available (and catalogued properly by the PIO/PA), it is helpful for the Public Authority to identify the nature of frequent information requests so that it can be provided as a suo-moto disclosure as per Section 4(2) of the Act. Amongst the 5 States surveyed; only 2 states have prescribed a standard form as illustrated in the table below.

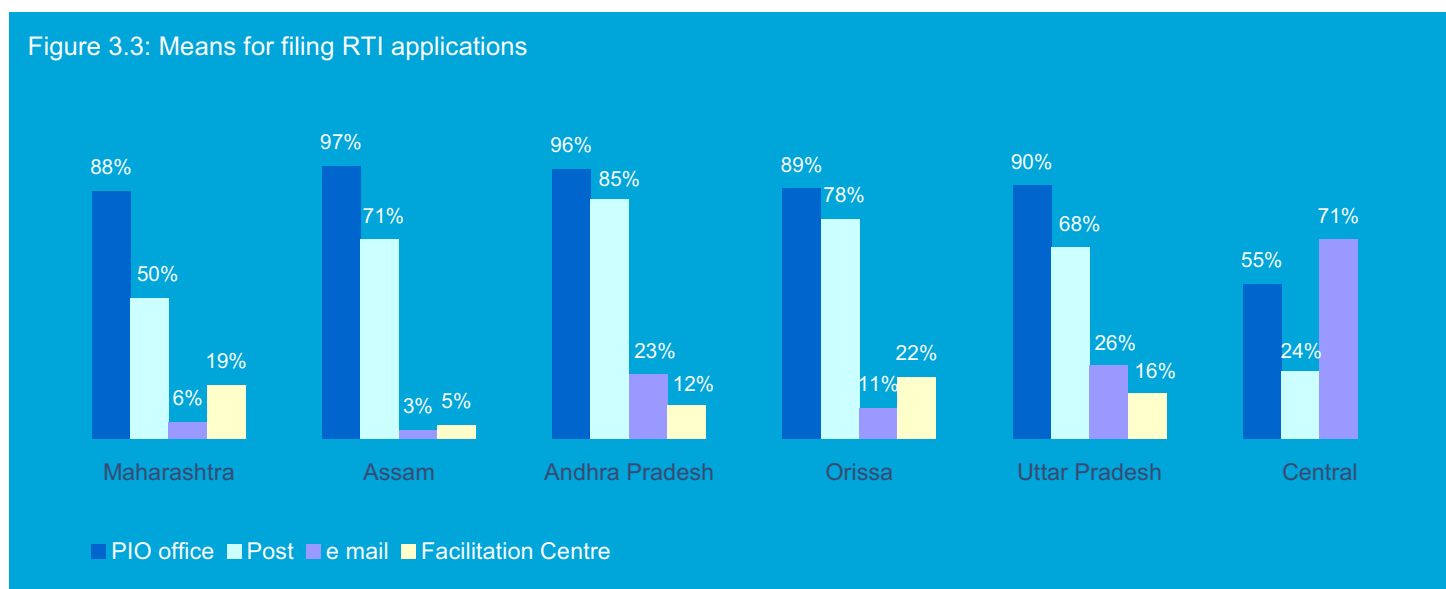
Table 3.3: Standard format for filing applications

State	Standard application form	Standard formats for PIO replies
Maharashtra	✓	x
Orissa	✓	✓
Andhra Pradesh	x	x
Uttar Pradesh	x	x
Assam	x	x

¹⁵ It is important to note that an applicant can apply for information without using the standard form and the PIO cannot reject the application, as per Section 6(2)

- Inconvenient submission channels for RTI application: As per Section 6(1) of the Act a citizen can make a request “in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made....”. However, inadequate efforts have been made to receive RTI applications through electronic means i.e., on email/ website etc, which can be done by the appropriate Government using Section 26(3c).
- Figure 3.3 given below depicts the response of information providers on the allowed procedures for accepting RTI application in their offices. (It may be noted that various channels may be allowed by a PA)

Figure 3.3: Means for filing RTI applications



- Inconvenient payment channels for submission of application fees: While it is desirable for the State Government to have various channels for fee collection; however, in the absence of clear guidelines and instructions, PAs have chosen a subset of the allowed payment channels¹⁶. It was noted in the information provider survey, that majority of PIOs used cash and demand drafts, which causes inconvenience to citizens. Further, collection of fee through cash necessitates the presence of the applicant in the State, whereas the Act does not provide for any such restriction.

Table 3.4 below provides the preferred channels for depositing fee in various States

Payment Channel	Maharashtra	Assam	Andhra Pradesh	Orissa	Uttar Pradesh	Central
Cash	2	1	1	1	1	3
Banker's Cheque	-	3	4	-	3	4
Demand Draft	3	2	2	-	2	2
Court fee stamp	1	-	3	2	-	-
Postal order	-	-	-	-	4	1

Another issue observed in the survey was that the payment mechanisms prescribed in some of the State rules are inconvenient to the citizens applying from locations outside the concerned State. For example, the application fee in Orissa can only be paid through treasury challans and bankers cheques. Also postal order, which is considered to be the easiest payment channel, is not an available option in Maharashtra, Orissa and Andhra Pradesh. Table 3.5: List of PIOs available on State and SIC portal

¹⁶ In accordance with State RTI rules

State	Complete list of PIOs on the State website	Complete list of PIOs on the SIC website
Maharashtra	x	x
Assam	x	✓
Andhra Pradesh	x	✓
Orissa	x	✓
Uttar Pradesh	x	x

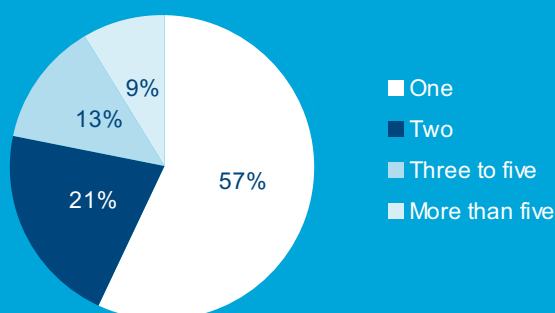
As mentioned in Figure 3.2, submission of applications through the PIO's office is the most prevalent submission channel, therefore proper signage with the location details and availability time of the PIOs is crucial. However, around 48% of the respondents in information seekers survey mentioned that no sign-boards are present, with 15% saying signage was present but with insufficient information. The lack of signage is a major problem in Assam where 85% of the information seekers said that no signage was present to locate the concerned PIO. Refer Table 3.6 given below for details.

The lack of signage could be a reason for multiple visits to the PIO office for submission of an RTI application. Here also the experience of OBC/SC/ST category of citizens was not significantly different from the general category of citizens. Refer to Figure 3.4 for details.

Table 3.6: Presence of signage for locating the concerned PIO at a Public Authority

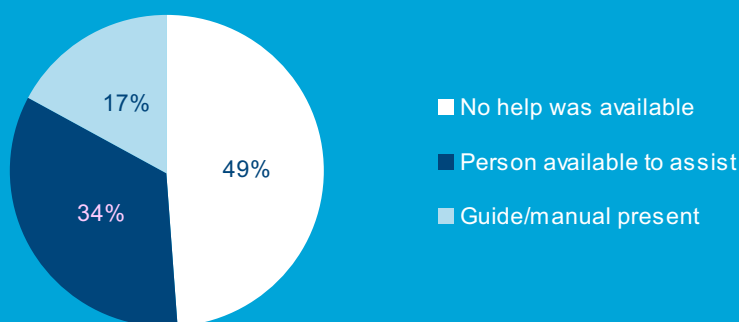
Presence of signage in concerned Government Department	All total	Assam	AP	Maharashtra	Orissa	UP
Answering Base	1,081	130	145	243	445	118
Proper signage was displayed	42%	6%	31%	40%	67%	5%
Very little signage displayed	11%	5%	12%	28%	4%	12%
No signage present	47%	89%	57%	33%	29%	83%

Figure 3.4: Multiple visits to Public Authorities for filing a RTI application



- Lack of assistance in filing the application: Under Section 5(3) of RTI Act, it is expected of the PIO to assist citizens in drafting RTI applications. However, it was observed during the Information Seeker survey that more than 49% of the respondents did not receive any assistance from the concerned PIO while drafting and filling RTI applications. The experience of OBC/SC/ST category of citizens was similar to general category citizens, the corresponding figure for OBC/SC/ST category stood at 48%. Refer Figure 3.5 for details.

Figure 3.5: Assistance provided by PIOs



- Non-friendly attitude of the PIOs: During the information seeker survey it was observed that 59% of the respondents ranked the courteousness of the PIOs as “poor” or “just fair”. This discourages the citizens from filing RTI applications. The mean satisfaction score for general category citizens stood at 2.46 slightly better than that of OBC/SC/ST category which stood at 2.35.

Table 3.7: Courteousness of PIOs

Courteousness	Mean Score	Excellent	Very Good	Good	Fair	Poor
All Total (1896)	2.40	4%	10%	27%	41%	18%
Assam (311)	2.31	1%	5%	27%	57%	10%
AP (410)	2.30	2%	10%	25%	42%	21%
Maharashtra (427)	2.73	7%	17%	33%	31%	13%
Orissa (449)	2.64	7%	11%	34%	36%	12%
UP (299)	1.92	0%	4%	10%	44%	41%

Analysis and Conclusion: Analysing the issues highlighted in the section, it is clear that the appropriate Governments and the Public Authorities have taken inadequate steps to make the RTI process citizen-friendly. The process of RTI application submission has not been designed keeping in view the needs and convenience of the citizens.

- This inadequacy can be attributed to infrequent reviews of RTI implementation at Public Authority levels by the SICs (or even by the administrative heads of Public Authorities) and the weak role played by Nodal Department for RTI implementation.

4.2.3. Poor quality of information provided

- During the information seeker survey, it was also highlighted that more than 75% of the citizens are dissatisfied with the quality of information being provided. The corresponding figure for OBC/SC/ST category of citizens stood much higher with 86% dissatisfied citizens. The percentage of people who said that incomplete information was provided to them was alarmingly high in Andhra Pradesh – 91% and Uttar Pradesh - 96%.
- Refer to Table 3.8 for details for the reasons of dissatisfaction. Also during the information provider survey it was observed that incomplete and inaccurate information provided by the PIOs was the most common reason for first level appeals. Refer Table 3.8 for details

Table 3.8: Incomplete and irrelevant information being provided by PIOs

Reasons for dissatisfaction	All total	Assam	AP	Maharashtra	Orissa	UP
Answering Base	784	125	135	235	171	118
Incomplete Information Provided	77%	58%	98%	77%	63%	94%
Irrelevant information Provided	46%	19%	82%	36%	24%	84%

Table 3.9: Top reasons for filing first level appeals

Reason for first level appeal	Rank
Given incomplete and inaccurate information	1
No response within 30 days	2
Application rejected under the act	3
Unable to submit RTI application	4
Unreasonable fee	5

Analysis and Conclusion: The quality of response provided can be a direct consequence of:

- The record management practices within the Public Authority
- The transparency in its processes
- The training provided to the concerned PIO
- Drafting of the RTI application itself

- Unless these problems are addressed comprehensively by the appropriate Government and Public Authority in tandem, it would continue to be an issue. The role of the Information Commission assumes importance in maintaining a process to continuously identify the Public Authorities that do not possess adequate processes and infrastructure for compliance to the RTI Act and making them comply with the provisions of this Act as per Section 19(8)(a).

3.2.4. Constraints faced in inspection of records

- Under Section 7(9) of the Act, information is to be provided in the form it is requested in, unless it would disproportionately divert the resources of the Public Authority. During our discussions with PIOs, it was highlighted that some information requests require the PIOs to do a collation and analysis of data for past 10 years or more. These cases are fit to use the provision in Section 7(9) and information in these cases can be provided through inspection of records¹⁷. However 89% of the PIOs said that they did not use the provision for inspection of records.

During the information provider survey it was noticed that Bombay Municipal Corporation (BMC) was using this provision to provide information to the applicants. This is an appreciable effort in generating transparency in the working of a Public Authority. If trained properly, the PIOs can provide an option to the citizens to inspect the records. This may help in providing timely and accurate information to the applicant.

Analysis and Conclusion: While analysing the above issue during discussions with Civil Society Organizations and PIOs, it emerged that there is inadequate awareness of this provision of the RTI Act. This inadequacy can be linked to inadequate awareness of the citizens and inadequate training of the PIOs to utilise this provision effectively.

3.3. Issues faced on the “Supply Side”

3.3.1. Failure to provide information within 30 days

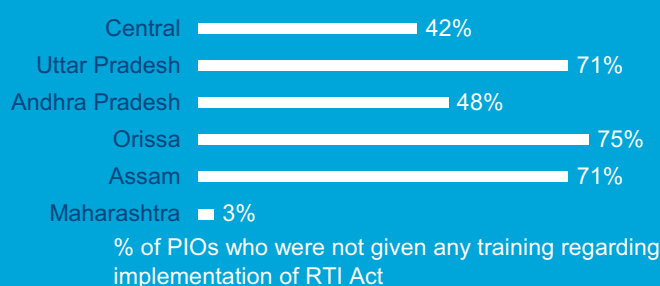
- Currently there exist inadequate measures and processes for an Information Commission to view the adherence levels of this important provision of the Act. The Information Commission gets to know the failure of the Public Authority in providing the information within 30 days (or 48 hours or 35 days or 40 days as may be the case) once the appeal or complaint is filed. During the study, more than 50% of the information seekers mentioned that it took more than 30 days to receive the information from the PIO. The experience of citizens from disadvantaged communities was similar to the overall experience levels.

Analysis and Conclusion: As per the Act, the information has to be provided within the stipulated time. However as per our survey it was highlighted by the PIOs that they are challenged to provide the information within the stipulated time due to inadequate record management procedures with the Public Authorities. It is a known fact that the record keeping process within the Government is a big challenge. This situation is further aggravated due to non-availability of trained PIOs and the enabling infrastructure (computers, scanners, internet connectivity, photocopiers etc.). Public Authorities need to meet the requirements of the RTI Act to review their current record keeping procedures and other constraints and plan out the resources.

3.3.2. Inadequate trained PIOs and First Appellate Authorities

- Low level of training: An in-depth understanding of the RTI Act is a basic requirement of a PIO to discharge duties effectively. However as per the findings of the survey conducted under this study, only 55% of surveyed PIOs had received RTI training. During discussions with the PIOs and the ATIs, it was highlighted that the frequent transfers/ changes in the PIOs adds to the challenge. This places additional work-load on the training institutes entrusted with providing RTI training. Refer figure 3.6 for details.

Figure 3.6: Training levels among PIOs



¹⁷ As per section 2(j)(1), “inspection of work, documents and records” is a means to provide information under Right to Information Act.

- Lack of refresher training and low level of awareness on key SIC judgements: RTI implementation is still in the process of evolution, resulting in new dimensions being added routinely. Hence RTI refresher training or central knowledge repository needs to be available to the PIOs. However, given the current levels of basic training of PIOs, the refresher training (covering the Key landmark orders passed by SIC) still seems a distant reality. A few initiatives have been taken by CIC (<http://cic.gov.in>) and Centre for Good Governance and a website for RTI (<http://www.rti.org.in>) has been created under Capacity Building project, wherein knowledge repositories and landmark judgements are provided. However the awareness of these initiatives/websites amongst the PIOs is significantly low.

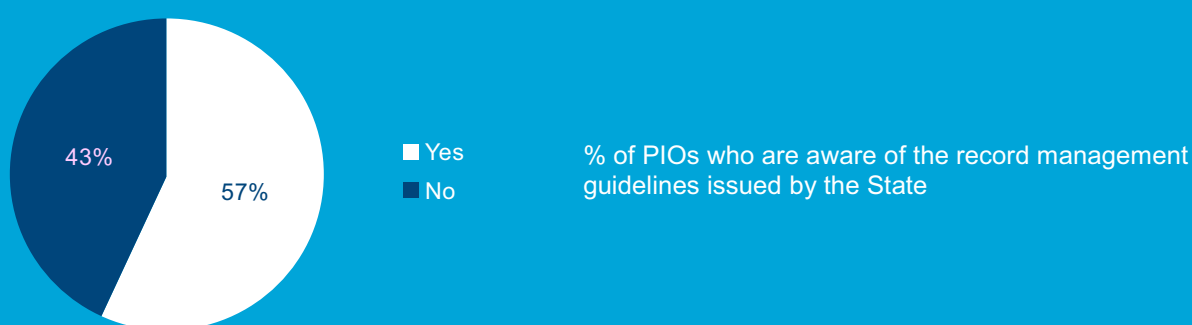
Figure 3.7: Awareness levels of Key RTI Order



- Lack of Behavioural training : During the information provider survey, it was observed that the training provided to the PIOs is restricted to RTI Act. While this is the bare minimum, the PIOs are expected to:
 - Provide assistance to the applicants as per the Section 5(3) of the Act
 - Manage official records as per the record management guidelines.

These areas require specialised training to equip the PIOs for the above mentioned role

Figure 3.8: Awareness levels of record management guidelines



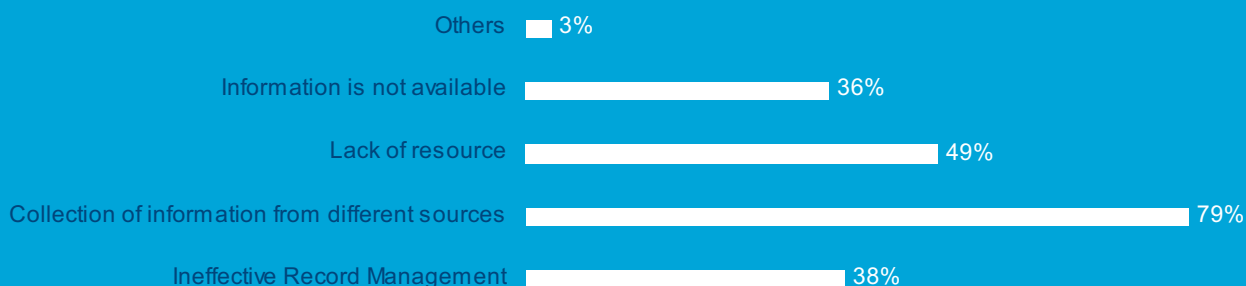
- Need an external agency for training: The ATIs surveyed and highlighted the resource constraint and need for external help to conducting RTI training. 8 out of the 9 Administrative Training Institutes surveyed said that they needed the support of an external agency for conducting RTI training of PIOs and AAs.

Analysis and Conclusion: The training of PIOs is a big challenge primarily due to a) huge number of PIOs to be trained b) frequent transfers of PIOs to other posts. The training institutions also possess a huge constraint with respect to the availability of training resources. Also, it was observed that in the current manner of providing training, there is a low involvement of the Public Authority and an inadequate sense of urgency in getting their PIOs trained. There is a significant dependence on the ATI institutes for training of the PIOs. At the same time it is also noted that there are a large number of non-profit organizations which are carrying out the trainings in official/ un-official capacities – these are untapped resources which could be utilized by the PA, appropriate Government and Training Institutes.

4.3.3. Obsolete record management Guidelines

- Ineffective record management system and collection of information from field offices leading to delay in processing of RTI applications: As per Section 4(1a) of the Act, a Public Authority needs “to maintain all its records duly catalogued and indexed in a manner and form which facilitates the Right to Information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated”. Information provider survey indicated that record management system plays a vital role in timely disposal of a RTI application. Yet, 38% of the PIOs cited record management system as a reason for delay in processing RTI requests. Further 79% of PIOs cited collection of information from field offices as a cause of delay. These findings point towards a weak record management system being followed where critical field level information is not available at the higher levels of hierarchy. Figure 3.9 given below gives the details of PIOs citing record management system as a major cause of delay.

Figure 3.9: Ineffective record management systems leading to delays in processing RTI applications



% of PIOs who said the major reason for delay in processing RTI applications were as follows

- It was noticed that even in Central Government Ministries, the status of recordkeeping is a problem area. In most of the places, the current rules pertaining to record management only cater to categorisation of records based on time period for storage before destruction. In most states, record keeping procedures have not been revised for decades. Most significantly the practice of cataloguing, indexing and orderly storage is absent, which is critical for quick-turnaround in case of information request under RTI Act. Even when records are stored, retrieval of intelligible information is a challenge. It is perhaps because of this situation that there is a tendency to give bulk unprocessed information rather than a relevant and pertinent information.

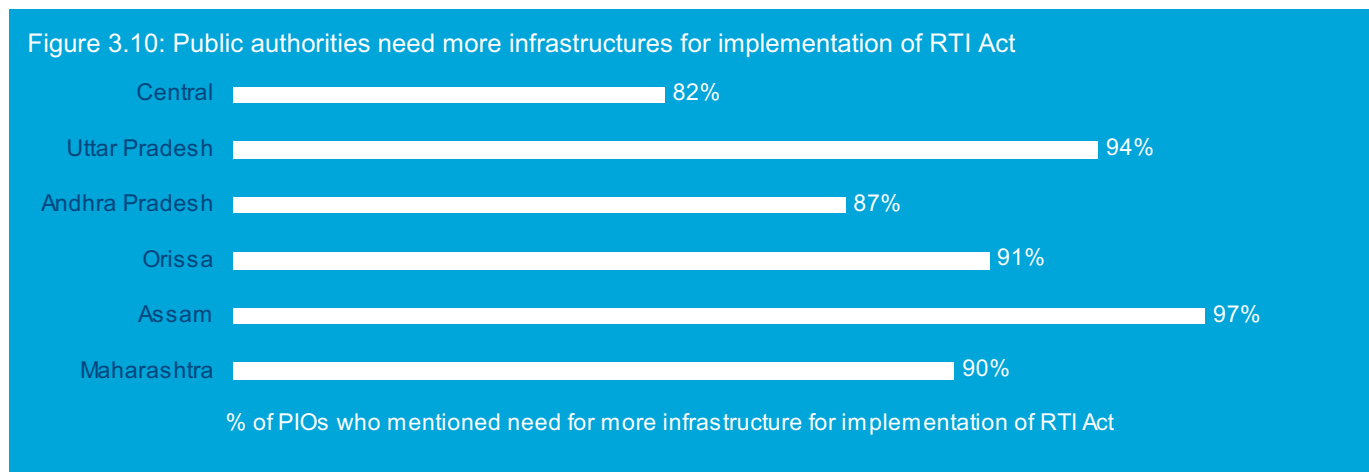
Analysis and Conclusion: The situation can be summarized as follows:

- The current record management guidelines at Centre and in most states are not geared to meet the requirements specified under the RTI Act
- There is lack of any electronic document management system in any of the Departments (basis the Information Provider Survey).
- Majority of the PIOs surveyed do not even maintain the list of RTI applications electronically

- Laying down detailed procedures by themselves would not suffice. A permanent mechanism with sufficient authority, expertise, and responsibility needs to be created in each Public Authority to coordinate and supervise proper record-keeping. It is appreciated that there may be resource constraints for a Public Authority to undertake comprehensive computerization, but the point which needs to be highlighted is that there has been limited effort being put in to plan out the initiatives (with or without computerization) so as to achieve the goal within a reasonable time. This inadequacy can be linked to absence of institutional mechanism in Public Authorities focusing on RTI and inter alia focusing on the record keeping guidelines.

4.3.4. Non-availability of basic Infrastructure

- Lack of infrastructure at PAs: The Implementation of RTI requires the PIOs to provide information to the applicant through photocopies, soft copies etc. While these facilities are considered to be easily available at a district level, it is a challenge to get information from Block/ Panchayat level. PIOs highlight that the lack of infrastructure hampers the RTI implementation at the PA level. In order to service RTI requests, basic infrastructure such as photocopier machines at each Public Authority and basic level of automation such as necessary applications and connectivity is required.



- Limited use of IT: The use of Information Technology in acceptance or delivery of RTI applications is minimal in the Public Authorities. Isolated IT solutions have been developed by a few Departments independently but these systems are just restricted to tracking the status of RTI applications. Some PAs like Kandivali Municipal Corporation and Kamrup Metro District have developed software applications for internal monitoring of the status of RTI applications; however no standard application has been developed at State level. At the Central level RTI MIS developed by NIC has been deployed in Central Ministries and Departments; this system has the following features
 - Facility to update the list of PIOs and AAs
 - Auto generation of responses for PIOs and AAs
 - Reporting and MIS generation

Currently efforts are underway to integrate this system with the appeal management system being used by the CIC to provide a seamless RTI workflow.

It was also observed that there is a fair amount of IT usage at the SIC level. Amongst those surveyed, Information Commissions Central Information Commission and SIC Andhra Pradesh have been the front runners in usage of IT. CIC has provided the facility of filing and tracking appeals and complaints online on its website. Similarly SIC Andhra Pradesh has also provided the facility for tracking of appeals and complaints online and through SMS. Barring SIC Uttar Pradesh, all the other SICs under survey have published their decisions on their websites.

Analysis and Conclusion: As has been mentioned earlier, the issue of implementation of the RTI Act at an operational level rest with the Public Authority. The appropriate Government and Information Commission can play only a facilitative and adjudicative role. Unless the Public Authorities assess the issues of implementation and identify resources required, there would not be any focus on implementation. The ARC report had mentioned that GoI may allocate one per cent (1%) of the funds of the 'Flagship Programmes'¹⁸ for a period of five years for improving the infrastructure requirements. However this has not been implemented.

4.3.5. Lack of motivation among PIOs:

- In addition to lack of resources, PIOs lack the motivation to implement RTI Act. During the RTI workshops organised in the surveyed states, PIOs cited that there were no incentives for taking on the responsibility of a PIO; however penalties were imposed in cases of non compliance. It was also observed that there is a wide variance in the seniority levels of PIOs. For example PIOs have been appointed at the level of school teachers in the School Education Department in Andhra Pradesh. During the information provider survey, 89% of the PIOs said that there had been no additional allocation of staff for RTI related activities.

Analysis and Conclusion: Appointing PIOs at a field level facilitates accessibility to the PIO. However this may also be counterproductive, as it may lead to dilution of accountability of senior officials.

Figure 3.11: No additional allocation of staff for RTI



4.3.6. Ineffective implementation of Section 4(1) (b)

- As per the Act, one of the basic responsibilities of the Public Authorities (PAs) is to disseminate information on suo-moto basis. Section 4(1)(b) sub clauses i-xvi; specifically mention the type of information which needs to be provided by the PAs. Beyond this stipulated information, the Act also mandates the PAs to provide other information as per Section 4(1)(b) sub clause xvii, Section 4(1)(c), Section 4(1d) and 4(2). As per our observations and interactions with several Government offices/Public Authorities, the key observations and assessment are as follows:
 - The internal processes within the Public Authorities are not defined, so as to take care of the requirement of the relevant suo-moto clauses. Various Departments and Ministries of Government of India have in the last one year posted the requirements specified under section 4(1)(b) on the website. However the status of the same in the State Government departments and websites is significantly poor (it is assumed that the availability of information on the website is a more convenient manner of disseminating and updating the information). During the course of the study (December 2008) a desk research on section 4(1)(b) compliance in 15 Government Departments in each of the 5 states was carried out (refer Annexure 3 for details). The results show that Maharashtra, AP, Orissa had information mandated under Section 4(1)(b). UP and Assam did not

¹⁸ Eight flagship programmes are: Sarva Siksha Abhiyan, Mid-day Meal Scheme, Rajiv Gandhi Drinking Water Mission, and Total Sanitation Campaign, National Rural Health Mission, Integrated Child Services, National Rural Employment Scheme, and Jawaharlaral Nehru National Urban Renewal Mission.

have the information as mentioned in the Act. Some important observations from this exercise have been provided below:

- None of the Proactive Disclosures on the websites had a time stamp on them to ascertain whether they had been updated or not
- Proactive Disclosure of Departments in Andhra Pradesh are available on SIC website
- In Orissa the proactive disclosure has been done at the State level only, whereas the proactive disclosure in Andhra Pradesh has been done till the Sub District level
- Information proactively disclosed is not updated regularly leading to obsolescence of information provided. As per the Act, the information has to be updated annually, however a lot of information needs to get updated on “real time” basis e.g. Details of the Officers, PIOs etc.
- The PIOs are also not aware that they can disseminate information on suo-moto basis. This leads to higher number of RTI applications. The PIOs could make use of this clause and disseminate information proactively and thus eliminating the need to file RTI applications
- At places where suo-moto information is being provided, the quality of disclosure is quite low and does not cater to the information needs of the citizens.

Analysis and Conclusion: There is no/ inadequate mechanism within the Public Authorities to implement the provisions of the Act. Neither the State Government nor the Information Commissions have taken adequate steps to ensure compliance of this basic minimum requirement for filing RTI applications.

3.4. Issues faced at Information Commissions

3.4.1. SIC Annual reports

Under Section 25(1) of the RTI Act SICs and CIC are required to submit an annual report on RTI implementation. The status and the frequency of the annual reports submitted by the Information Commissions are as follows:

Table 3.10: Latest SIC Annual Report

Information Commission	Latest Annual Report
Central	2005-06
Assam	2007
Orissa	2007-08
Andhra Pradesh	2007
Maharashtra	2007
Uttar Pradesh	Not submitted

- Section 25(3) mentions the details of information that should be available in the annual report i.e. As per Section 25(3), each report shall state in respect of the year to which it relates,—
 - a. The number of requests made to each Public Authority;
 - b. The number of decisions where applicants were not entitled to access the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;

- c. The number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;
- d. Particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
- e. The amount of charges collected by each Public Authority under this Act;
- f. Any facts which indicate an effort by the Public Authorities to administer and implement the spirit and intention of this Act;
- g. Recommendations for reform, including recommendations in respect of the particular Public Authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

It was noted that provisions under Section 25(3) are being met by the annual reports of SICs, however more information that can be included under Section 25(3f) of the Act should be made available. There is a need to clearly define the items under Section 25(3f). Table 3.10 given below compares the annual reports of SICs on some of the items that can be included under Section 25(3f)

Table 3.10: Key difference in annual reports

Annual Report Component	Maharashtra	Orissa	Andhra Pradesh	Uttar Pradesh	Assam
Status of proactive disclosure by PAs	x	x	✓	x	✓
Number of AAs in the State	✓	✓	x	x	✓
Key judgements of the SIC	x	✓	✓	x	✓
Number of RTI requests disposed in 30 days	x	x	x	x	x
Number of first level appeals disposed in 30 days	x	x	x	x	x

Analysis and Conclusion: During the information seeker survey it was noted that there is no centralized data base of RTI (at the State/Centre level) applicants (which was one of the reasons resulting in delay in conducting the survey). A centralized database of all RTI applicants with their information requests and responses from information providers would enable the Information Commission to publish more accurate numbers in the annual reports. Given the current situation, neither the State Government nor the State Information Commission is in a position to confirm the number of Public Authorities within a Department and therefore the details on the number of applications filed. Hence if a Public Authority possesses a centralized & web-based data, it can send the information to the State Information Commission for accurate timely compilation and reporting.

4.4.2. Perception of being “lenient” towards PIOs

- Perception of less number of penalties being imposed: As per Section 20 of the RTI Act “Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer 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.....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”

During discussions with the Civil Society Organization and as also determined by the survey, the penalty is imposed is in a very few cases. Given that more than half of the RTI applications get processed after 30 days, there is a very strong perception in the citizens and the Civil Society Organizations that the Information Commission is lenient towards the erring PIO. The activists and Civil Society Organizations have been emphatic in demanding that the Information Commissions should implement section 20 in all cases of default. Refer Table 3.11 for details (responses of all SICs which replied to our questionnaire)

Table 3.11: Penalties as a percentage of appeals disposed¹⁹

State	% Penalties
Maharashtra	3.6%
Assam	NA
AP	0.045%
Orissa	1.3%
Himachal Pradesh	0%
Uttarakhand	0.048%
Meghalaya	1.16%
Total	1.74%

Under utilization of Section 19(8)(b) : The Information Commission has the power to instruct the Public Authority to compensate the complainant for any loss or other detriment suffered. However the Information Commissions in each of the 5 States studied have rarely used this power.

Analysis and Conclusion: It is a matter of introspection for the Information Commission that in the cases where the citizen has not got the information within the stipulated time, then who should be held responsible. If PIO as a person is not responsible, then it has to be a systemic failure within the Public Authority. However as highlighted in the next subsection, the Information Commission does not possess adequate monitoring and review mechanism to track the failures of the Public Authorities in complying with the RTI Act.

4.4.3. Lack of Monitoring and Review mechanism

- Under Section 19(8a), the Central Information Commission or State Information Commission, as the case may be, has the power to require the Public Authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
 - i. By providing access to information, if so requested, in a particular form;
 - ii. By appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
 - iii. By publishing certain information or categories of information;
 - iv. By making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - v. By enhancing the provision of training on the right to information for its officials;
 - vi. By providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

However, there are inadequate processes and records available with the Information Commission to take the above-mentioned steps. A few States conduct reviews to understand issues leading to non compliance by Public Authorities. Among the surveyed States, only Andhra Pradesh has taken concrete actions for reviewing the implementation of RTI Act at the PA level. A committee with CIC Andhra Pradesh, Chief Secretary as members has been formed which reviews the implementation every quarter. In other four states, monitoring is done only through collection of statistics on RTI implementation. To exemplify further, there is no/inadequate mechanism for monitoring the implementation of Section 4(1)(b). Out of the states surveyed under the study, only Andhra Pradesh and Assam SIC annual reports had the status of proactive disclosure conducted by the Public Authorities. In Andhra Pradesh the Chief Secretary and Chief Information Commissioner had quarterly meetings with heads of

¹⁹ However this may not be a true indicator of levying penalty, as the denominator is the number of appeal cases disposed and not cases where the information was not provided / provided late.

Public Authorities to monitor the status of proactive disclosure. (However, it is important to note that monitoring the status of proactive disclosure in the annual report is a step in the right direction, but it alone doesn't guarantee an effective monitoring system for proactive disclosure).

Analysis and Conclusion: One of the most important roles of the Information Commission is to monitor and review the Public Authority and initiate actions to make them comply with the spirit of the Act. However this has been one of the weakest links in the implementation of the Act. It is acknowledged and appreciated that the Information Commissions have been primarily been spending most of their time in "hearings" and disposing off appeals. However monitoring the Public Authority for compliance of the Act is also an important aspect of the role of the Information Commission, which could result in reducing the number of appeals.

- Given the huge effort involved in the identifying the Public Authority & their non-compliance issues, it is imperative that the Information Commission mobilize the citizens/use third party agencies in identification of non-compliance by the Public Authorities.

4.4.4. High level of pendency

- The number of RTI Appeals with the Information Commissions is growing at a rapid pace year after year. In Maharashtra, the numbers of appeals grew to 15,959 in 2007; in the coming years this pace of growth of second appeals is expected to be sustained due to increasing awareness and usage of RTI Act by citizens. With current volumes of appeals, there seem to be delays in disposing off cases. In Maharashtra SIC, there is a "wait period" of more than 12 months, thus discouraging citizens from filing appeals. In fact, in all the states surveyed except Assam²⁰, the "wait period" is usually more than 3 months. This is a grave situation, which requires urgent intervention for the RTI Act to survive the threat of landing in a situation of "justice delayed".

Table 3.12: Pendency levels of second appeals at various states

	Appeals and complaints filed	Appeals and complaints disposed	Cumulative Pendency	% Pendency	Approx wait Period
Maharashtra	11579	3611	13949	120%	14.4 Months
Assam	189	189	0	0%	0 months
AP	2217	2217	804	36%	4.3
Orissa	2415	499	800	33%	3.9 months
Himachal Pradesh	306	306	0	0%	0 months
Uttarakhand	1349	1479	42	3%	0.3 months
Meghalaya	156	172	0	0%	0 months

As can be observed in table 3.12 (responses of all SICs which replied to our questionnaire), the disposal rate of appeals and complaints is quite low in Maharashtra, whereas they have disposed off the maximum number of appeals in the year. In 2007, 13,949 of the appeals and complaints were pending in Maharashtra. In other four states the pendency varies from 36% to 0%.

Analysis and Conclusion: The pendency at the Information Commission is a huge challenge. Unless and until the pendency is kept at manageable level, the objective of the Act would not be met. High pendency of appeals is due to non optimal processes for disposing off appeals and complaints.

4.4.5. Geographical spread of the Information Commissions

²⁰ Assam has low volumes of appeals, thus pendency is not an issue

- Majority of the Information Commissions are situated in the State capitals, which results in appellants undergoing an additional cost in order to attend the hearings. The RTI Act had envisaged such an issue and had mentioned the procedure to overcome it under section 12(7) for the Central Government and 15(7) for the State Governments. These provisions allow Information Commissions to set up regional offices with prior approval of State Governments. Maharashtra SIC has already set up regional offices across the State. The offices are present in Pune, Aurangabad, Nagpur, Konkan and Mumbai. As a result, an appellant approaches the nearest office thus saving considerable expenses and time. The Central Information Commission, which has jurisdiction over RTI appeals relating to Central Government Public Authorities spread across the country, is located in Delhi which results in wastage of considerable time/ expenses of PIOs and the appellants, who come from far off areas.

Analysis and Conclusion: The benefits of setting up regional offices far outweigh the initial capital costs involved in setting them up.

4.4.6. Variation in assumption of role by SIC and State Governments

- Chapter V of the RTI Act lays down the role of State Information Commission as a second Appellate Authority and activities like promotion of RTI usage and establishment of a monitoring framework have been entrusted with the appropriate Governments²¹. It was observed during the survey that there is no clear division of responsibilities between the State Information Commission and the Nodal Department in terms of monitoring the implementation of RTI Act. In some cases, State Information Commissions have been proactive in establishing a monitoring framework for RTI Implementation and implementing awareness campaigns (for e.g. Andhra Pradesh), and in some other cases, e.g. Orissa) the SICs have restricted themselves to the role of an Appellate Authority and the monitoring and promotional activities are being carried out by the Nodal Departments.

The following table illustrates the deviation in roles of SIC and nodal agencies from expectations mentioned in the RTI Act.

Table 3.13: Role of SICs and Nodal Departments across the states

State	Involved in monitoring of RTI Implementation		Involved in publishing guidelines for Information Providers		Involved in publishing User guides for Information Seekers	
	SIC	Appropriate Government	SIC	Appropriate Government	SIC	Appropriate Government
As per the RTI Act						
Maharashtra	X	✓	X	X	X	X
Orissa	X	✓	✓	X	✓	X
Andhra Pradesh	✓	X	✓	X	✓	X
Uttar Pradesh	X	X	X	X	X	X
Assam	✓	X	X	X	X	X
Central	✓	X	X	✓	X	✓

Analysis and Conclusion: The Act is quite unambiguous in terms of the responsibilities of the appropriate Government and the Information Commission. However, as per the current situation on the ground level currently the Information Commission is as effective as the support provided by the appropriate Government. The Information Commission is always dependent on the financial and infrastructural support from the Government. In some of the States, (like UP), the effectiveness of communication/guide from the State Government carries more emphasis than the communication by the State Information Commission.

²¹ Details in section 26, 27 and 30 of the RTI Act

3.5. Summarizing issues and constraints

While assessing the entire situation the following themes emerge:

- The Public Authorities have to enhance the level of ownership to ensure the RTI delivery happens as per the spirit of the Act. They have to be ultimately responsible for
 - Identifying the gaps in their offices in the delivery of the information, thereafter identify the resources needed and appropriately budget for it.
 - Maintenance of the information required to be furnished to the State Information Commission as per Section 25(3)
- The role of the Centre/State Government is to facilitate the Public Authorities in implementation of the Act. This can happen through providing support to Public Authorities for training, development of software applications, e-Training modules, generating awareness amongst citizens etc.

The role of the Information Commission has to go beyond the Hearing of the appeals. As per the Act, they are expected to issue orders/directions to the Public Authorities to carry out their duties as per the mandate of the Act. However till the time Information Commission assumes the role of ensuring the compliance of the RTI Act by the various Public Authorities, there would not be any control mechanism. The State Government has to play a facilitative role to the Information Commission through issuance of supporting rules/orders to the Public Authorities.