

**Implementation of RTI Act, 2005
in the State
Progress, Key Issues & Constraints**

Study Report



Prepared by
Dr. Jaya S Anand, Professor
Institute of Management in Government (IMG)
&
District Implementing Agencies
Under Government of India – UNDP Project on
Capacity Building for Access to Information

October 2008

Implementation of RTI Act in Kerala

Introduction

The Right To Information Act, 2005, which was implemented from 12th October 2005 is considered as landmark legislation in the history of Indian democracy. The second Administrative Reforms Committee Report (June 2006) remarks 'Right to Information' as the master key to good governance. Access to information can empower the people and particularly the weaker sections of the society, to demand and get information on various development schemes implemented for them thereby ensuring participatory governance and the effective and efficient use of public money. Experiences in the State in these years prove that the Act has the potential to bring about far reaching changes in governance, strengthening democracy and containing corruption, if used in its true letter and spirit.

However, the implementation has been fairly slow in Kerala with mixed trend. In spite of the earnest effort taken by the NGOs, RTI activists and the ATI (IMG), the Act was not so vibrant till 2007. The cases illustrated by few NGOs and citizens groups show instances where information sought using RTI (which were earlier denied) has helped in 'containing corruption' and making bureaucrats accountable for their action. However, no serious effort has been taken so far to document the success stories and also to find its impact on good governance. There is a general feeling among bureaucrats that the law is widely misused, and is only paralysing Government and has not been in any way contributed to improved governance. It is felt that only individual cases are taken up rather than macro level issues affecting larger interest of the society and the common man. A concerted collective effort is required for undertaking social audit using the information collected with RTI to highlight the existing flaws in the programmes designed for the poor or the society at large. The present study is expected to take a stock of the present situation in the State and to document cases, which have resulted in improving the quality of governance.

Objectives

The following are the objectives of the study

1. To undertake a survey in order to find the progress, issues and constraints in the implementation of the Act.
2. To assess the extent of awareness of RTI among citizens belonging to different strata of the society.
3. To collect the perception of all the stakeholders on the scope, utility and limitations of the Act, in terms of - timely availability of information, in combating corruption, change in approach, attitude and responsiveness of officials towards citizens etc.
4. To suggest measures for efficient and effective implementation of the Act.

Methodology

The study has used both qualitative and quantitative data. Secondary data from the official records maintained by Public Authorities (PAs) and the State Information Commission (SIC) on the details of RTI requests received and disposed, data relating to penalty etc were collected. Besides, in order to get a true picture on various dimensions relating to RTI Act implementation in the State, all the stakeholders both on the supply and demand side were contacted and details gathered. Appropriate tools like focus group discussion and interview schedules were extensively used for the survey for getting the response of the citizens. A multi stakeholder workshop for eliciting the views of different stakeholders (on the shortcomings in the implementation of the Act so far in the State and also for preparing a road map for the future) was organized in October 2008 and the recommendations have been included in this report.

A panchayat (Karakulam), a Municipality (Neyyattinkara) and the City Corporation of Thiruvananthapuram district were selected as the study area. A total of about 151 respondents belonging to different socio-economic backgrounds were randomly selected from these areas and interviewed for the study. Three types of questionnaires were used to collect data from the three categories of respondents viz. citizens, officials and NGOs. Three NGOs/CSO's who are active in promoting RTI in the

study area were also interviewed and their responses recorded. Besides this, details of the selected cases were collected from different Departments for preparing the case studies.

Progress in Implementation of RTI in the State-General

Though Kerala is among the handful of States where awareness of the Act is extensive, it has a mixed track record of making use of this potent weapon for public good. In spite of its high literacy rate and the deep reach of the mass media, the State has failed to make the best use of the Act to make a dent in corruption or to improve governance, says activists (The Hindu dated 20th October 08). At the same time, the growth in the number of RTI requests has been very high at nearly 2 lakhs in three years and this compared well with other States. The Chief Information Commissioner is of the view the Act has taken roots in the State and the people are generally aware of its existence. However the extent of awareness is doubtful as is evident from the field survey.

The progress is clear from the fact that all 98-99% of PAs have designated officers in all their administrative units under the Act. Most of the PAs over the last three years have learned how to dispose off even the so called 'nuisance requests' within 30 days which reflects a true proactive change in the administrative system in the State. It is further evident from the survey and official records that the level of compliance by PIOs had increased, the number of complaints and appeals had reduced and stonewalling by the bureaucracy had melted. (Quoted 'The Hindu')

The NGOs and activists generally feel that the tremendous potential to unearth corruption and hold PAs accountable for their underperformance is yet to be tapped. The functioning of the SIC has received the praise of all the stakeholders, as they feel that the strict measures taken including awarding of penalties had created a 'phobia' even among the officials who are negative towards the Act. As on 16-10-08, there were 68 cases in which penalty was awarded u/s 20(1) and 74 officials had been penalized u/s 20(1) and total amount received by way of penalty was reported as Rs. 8,36,750/- by the SIC.

Activists are of opinion that even backward States like Jharkhand had a fine record of using the Act to hold Government agencies accountable, which is not seen in Kerala. The NGOs in the State too are shy in using the Act when compared to Rajasthan or Maharashtra (probably may be due to the fact that NGOs in Kerala are not so active as in other States).

As per the Commission's report, public spirited requests formed only 2% of the total. It is generally felt that professionals and NGOs are not making best use of Act. A higher level of awareness on the proper usage of the Act is the need of hour.

PIO's Perception

Questionnaires were given to the PIOs during the training programmes organized in IMG. Also a few local administrative units were randomly visited and responses of PIOs and Appellate Authorities(AA)s collected.

The following observations and findings could be made. Generally 92% of the trainees during the training programme opined that they considered the Act as very positive except in few of the cases of 'regular nuisance'. All the PA's visited, have designated PIOs/ APIOs in all their administrative units. Few Departments like Stationery, Archives and some autonomous bodies reported that they had received very few requests under RTI so far.

52% of the PIOs interviewed reported that they had received formal training from IMG and 16% have been trained by other training institutes in the State. 12% reported that they have read the Act but not undergone any capacity building programme. Some PAs like KSEB, Water Authority had arranged inhouse training for the entire staff of the organization by inviting experts in the field including advocates while 20% have not read the Act or received any training. They managed to dispose off requests in consultation with the legal experts in their respective Department.

Regarding the profile of applicants, 43% of the requests were made by government officials highlighting the fact that the Act is widely being used by officials enquiring about the details of transfer and postings, promotion, enquiry reports, seniority list etc. Some PIOs are of the view that the tendency to use RTI for 'settling of scores' is on an increase. 2% of the total requests were made by political leaders. Social and RTI activists seemed to have filed 11% of the total requests. It is significant to note that a majority (44%) of the application were made by the category 'others' which includes the general public. This can be due to increased level of awareness among the general public. Alternatively the 'other' category can be any of the above also, as it is difficult to get the identity of the requestor, when they file applications giving their residential addresses. Requests given in the name of spouses are common. Giving requests in fake names and addresses are also common as reported by the PIOs.

Regarding the type of information requested, 2% related to issues of public interest and social aspects, 68% were of personal nature mainly service related and others of serving and retired officials. PIOs are generally of the view that some requests were meant for victimization of officials. The remaining 30% related to information of varying interests. The fact cannot be denied that some 'regular requestors' including advocates have been asking 'pages of questions' which could not be effectively answered within the time frame. This in fact has demotivated the officials in some cases. It is remarkable to note that the number of requests rejected due to non-availability/misplacement of documents was just 11%. The tendency to reject RTI applications quoting Sec 8(1) (j) is also on an increase.

The major hurdles in disclosure of RTI requests as pointed out by the PIO are:

- Repeated questions from different angles to receive a desirable answer from their point of view
- Increased workload due to absence of consolidated information at the HOD level.
- Seeking information relating to longer periods and in specific format.
- Difficulties while processing requests due to indifferent attitude/ignorance and non-cooperation of lower level staff.

The following suggestions were made by the PIOs

- Interim reply may be permitted in deserving cases.
- Periodic training for the entire staff of departments
- Create awareness among the public about the Act through mass media on the real scope and potential
- Misuse of the Act to be curtailed by making necessary amendments in the Act.
- Old records, order and circulars to be scanned and an archive created for easy retrieval of data.

Citizen's Perception

A significant majority ie. 70% of the total respondents reported that they were aware about the RTI Act and the remaining 20% were not aware. From the sample, it is evident that there is not much inter-area variation as the percentage of citizens who were aware of the Act was 72%, 81% and 69% in Corporation, Panchayat and Municipality respectively. However a further probe revealed that many had 'only heard' about the Act but had no clear idea as to what it is all about. It can be inferred that there may be due to the higher educational status and reading habits of the people in the State. (A recent survey in Kerala revealed that the percentage of people who read newspapers regularly is on a higher side (73%) compared to other parts of the country). Only 4% of the citizens got some sort of formal training on the above Act.

It is also interesting to note that more respondents from the panchayat area got the formal training than in the municipality and Corporation area. It may be due to the panchayat's role in conducting legal awareness classes among the local people especially among the Kudumbashree members. (Karakulam is one of the best panchayats in the State in terms of its activities and public participation). Such a high level of awareness may not be prevalent in other Panchayats in the State.

In the Corporation area, higher income group got awareness through the classes/seminars conducted by Rotary Club, YMCA etc. While a few reported that they

had read about RTI through printed media. The percentage of high income group (non-salaried) who utilized the Act was quite low (11% of the total).

However only 11% of the total respondents had used this Act. 8% used this Act only once and 3% used this more than once. Out of those respondents who used the Act more than once, 3% belonged to the general public category and while advocates formed 1% of the total.

It is evident from the survey that half of the respondents, used the Act for getting information, which are more or less of a personal nature rather than group or community issues. Only 4% of the citizens had used it for asking information relating to group/local issues.

Regarding the change in attitude, generally there is a mixed reaction and some feel that the approach of the officials had changed and were courteous in their behaviour. (Most of the respondents had not approached the PIO directly and had sent RTI requests through post).

Regarding the change in the attitude of officials, 9%of the respondents reported that the Act anyhow changed the attitude of officials towards the general public. 79% were neutral. Only 12% said that the officials had not changed at all.

67% of the respondents reported that they were satisfied with the reply while 33% were of the view that the reply was just for 'name sake' and they got only a vague reply and was not at all satisfactory, which made them go for an appeal.

General Findings

Even citizens belonging to the higher strata of the society are not fully aware of the potential of the Act. Though many people had read about Act in newspapers and magazines they had not used it. Doordarsan and the private T.V Channels had aired very

few programmes and that too was not properly publicized and hence could not create an impact.

The practice of the citizens approaching the advocates and middlemen for getting 'things done from the public offices' is still very common when the same could be done using RTI. Advocates have been cashing on the ignorance of the 'common man' on RTI. Several instances were reported by PIO/local people where they collected fees from these people and got the information easily collected using RTI from PAs. This highlights the need for a mass sensitization drive through the 3-tier structure of Local Self Government (LSG)s in the State.

NGOs pointed out that the Public Relations Department's (PRD) role in promoting the Act has been rather dismal. Copies of booklets printed have been kept in district offices without any publicity or distribution.

Very few instances were reported as to harassment faced by applicants. However some PIOs reported that citizens have been approaching the village offices now and then for inspection, which has created hardship and disruption to their routine work, mostly the delivery of services. Cases of citizens/NGOs threatening PIOs that they will take them to SIC and penalize them were reported even in the remote, hilly ranges of Idukki district.

When asked during the survey, PIOs were generally reluctant to disclose cases of irregularities, misappropriation and violation of norms brought out to public domain using RTI. A major Department even refused to disclose and to inspect cases which are considered as sensitive without getting the approval of HOD. A number of new societies have now been registered for helping citizens file their requests (by collecting a certain fee) & these societies have been regularly asking questions under the Act on behalf of citizens.

Recommendations

The following recommendations are made by the stakeholders for the effective and efficient implementation of the Act.

- ▶ It is observed that the procedure for collecting the cost of information often causes financial loss and hardships to the PIOs especially in the offices at the cutting edge level. Most of these offices like Krishi Bhavan, Village Offices etc have the maximum citizen interface and receives a lot of requests under the RTI Act. Inadequate infrastructure (like photocopy machine, etc.) and absence of sufficient staff in almost all the public authorities is a major hurdle. Most of the offices don't have a room or place for keeping their records. Hence it is suggested that such facilities may be made available for the effective discharge of duties of PIOs. Each department should propose a separate head of account for meeting RTI related expenses, which should be made available to all administrative units. A receipt account in each office for this would be a more practical approach.
- ▶ PIOs expressed their difficulty in complying with the provisions of Section 6(3) of the Act in many cases. The transfer of requests to another public authority within five days often created problems due to the intervening holidays. Hence it is suggested that the act may be suitably amended and made as five working days for transfer of requests.
- ▶ It is a fact that the number of requests received by the public authorities are on an increase. PIOs being officers senior in rank often are overloaded with a lot of other responsibilities. A suggestion put forward here is that considering the volume of requests received by the public authority, (especially in major Departments having large number of functions like Revenue, LSG, Health etc) an officer may be given the exclusive responsibility of PIO and he may be relieved of other duties.
- ▶ It has been criticized that the Commission takes a fairly longer period for disposing off the second appeal. The participants suggested that as in the case of Madhya Pradesh, there should be a time limit within which second appeal need to be disposed off.

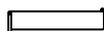
- ▶ On completion of three years, the participants are of the view that all code rules should be suitably amended in tune with the provisions of the act.
- ▶ The earlier practice of accepting photocopy of the ration card as evidence for being considered as BPL was hassle free and more simple. The present system of getting certificates from the BDO concerned, municipal secretary etc has complicated the procedure for applying for information under RTI for BPL.
- ▶ The multi stakeholder workshop has unanimously suggested that an RTI call center as in Bihar, Haryana and A.P for submitting applications and appeal may be setup, which will make the Act more vibrant and citizen-centric.
- ▶ Earlier the State Information Commission used to hold hearings at the regional and district levels which was subsequently stopped. This creates a lot of hardships especially for the citizens to come all the way from far off places for attending hearings when they are summoned. It is suggested that the hearings of the Commission should be made public to ensure transparency.
- ▶ The recently published Government of Kerala's 'Information Portal' (www.rti.kerala.org.in) has not received much publicity. Efforts may be taken to publicize all the positive outcomes and best practices through this website. The Public Relations Department may be entrusted with this responsibility.
- ▶ It may be noted that majority of the public authorities have not still complied with the provisions under section 4(1) (b) of, the Act. Efforts may be taken by the government to conduct an information audit as to the progress in this regard and for taking immediate action for enforcing the same.
- ▶ It has been suggested that a District Cell on RTI may be constituted in all the districts with the Collector as the chairman and representatives from PRD, Peoples organizations, NGOs, District office heads etc. A State level Council may also be formed at the State level (which will have an advisory nature) to oversee the implementation of the RTI Act. It will serve as a helping hand both for the citizen and for the officials, in monitoring progress, issues and constraints and for taking corrective steps periodically.

- ▶ Instances of temporary hands being appointed as PIOs were noticed. This practice may create problems when penalty for non-disclosure is imposed. Hence it is suggested that only permanent officers should be appointed as PIOs.
- ▶ A large number of PIOs are yet to be trained and similarly the potential of the Act is not known to many citizens and NGOs. The participants remarked that the Act has failed to make dent in corruption. It is suggested that the best practices in the State may be widely shared through media so that people will get a true picture of the scope and its utility for addressing issues of local concern. There is a need for mass sensitization on the need for using the Act in a positive way, which will help in strengthening democracy and ensuring participatory governance.
- ▶ Efforts may be taken for inclusion of RTI Act in the school and college curriculum.

Summing Up

No doubt, the Act could make the long cherished dream of ‘transparency in governance’ a reality. The Act has been barely used by the people belonging to lowest socio-economic status of the society & the marginalized for whom it is really meant. The survey findings highlight the need for further strengthening of -both the demand and supply side- on the potential, scope and utility of the Act. This calls for a focused intervention at each district administration level for the effective use of RTI with a view to contain corruption and to make citizens’ participate in the governance process.

The RTI activists in the State who have succeeded in getting almost all information from the government including income and wealth details of political leaders and bureaucrats, Confidential Reports (CR)s, documents from Registration Department (copies to title deed and building plan etc) are now in the dark and hardly know what is to be done next. The next phase should take concerted efforts to use this information for making qualitative changes in governance. It is hoped that RTI if implemented in true letter and spirit, could address the challenges of making governance *inclusive* and *participatory* through the strengthening of democracy and civil society.



Contents

- 1. Survey Findings –Conducted by SIA*
- 2. Survey Findings of DIA-Wayanad District*
- 3. Impact Assessment Study by DIA-Palakkad District*