

IMPLEMENTING THE RIGHT TO INFORMATION ACT, 2005

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Introduction

UNDP recognizes the fact that the more readily official information is made available to the people, the more a governance system can be declared as democratic and open. Freedom of speech and expression under article 19 of the Constitution implies Right To Information, as without information freedom cannot be fully enjoyed by the citizens. Thus the enactment of RTI Act can be considered as a landmark in the history of governance in India

The Right To Information Act, 2005 'provide for setting out the practical regime of right to information for citizens to secure access to information which is held by or under the control of public authorities, in order to promote transparency and accountability in the working of every public authority'. The latest Administrative Reforms Commission (ARC) headed by Shri. Veerappa Moily in the report submitted to Prime Minister has recommended the Government to take immediate steps for effective implementation of the RTI Act, **which is the key to good governance**. Ever since the enactment of RTI Act, citizens have come to know more about the manner in which Government money is spent, whether there is corruption in financial dealings, manner in which welfare schemes are implemented and the details of its beneficiaries, and also about the general functioning of Government machinery. As a whole, the legislation has the potential to change the way the Government functions thereby leading to efficiency of operations in administration and socio-economic activities.

Historical Perspective

The earliest reference about the Act is found in Sweden where in 1766 the Freedom of the Press Act was passed. The last 10 years have seen a number

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of States striving to have free access to official documents. 55 countries all over the world already have similar legislations.

In India the present Act is the outcome of continuous struggle and efforts taken by various civil society organizations, NGOs and social activists. The demand for Government records and documents was initially raised by members of Mazdoor Kisan Shekti Sangathan (MKSS), Rajasthan wherein a simple demand for minimum wages became fight for the Right To Information. They took the initiative to assert the people to ask for copies of bills and vouchers and also copies of muster rolls. As per records, such projects were recorded as completed while in reality the people had not received the wages. This brought to light several incidents of gross misappropriation of funds. The Rajasthan experience provoked demand for information in other States as well. The Chief Ministers' Conference on 'Effective and Responsive Government" held during 1997 also recognized the need for enacting a law on Right to Information. The result was the passing of the Freedom of Information Law 2002. However this could not be brought into force as it was not notified in the Official Gazzette.

The present Right to Information Act (RTI Act) 2005 received the assent of the President on 15th June 2005. Some of the provisions like appointment of Public Information Officers/Assistant Public Information Officers by Public Authorities, constituting of Information Commissions etc came into immediate effect while the other Sections came into force from 12th October 2005.

Salient Features of the Act

The RTI Act applies to the whole of India and is applicable to all ' Public Authorities' (PA). PA as defined in the act include any authority or body or institution constituted by the Constitution, or any law made by the Parliament or the State Legislature or by notification issued by the Government organization, and also organizations which are substantially funded by the Government. Sec 2(f) also enables citizens to access information relating to private bodies

through their regulatory bodies. However the Act is not applicable to 18 Intelligence and Security Organisations (now 22) but for requests/issues involving corruption and violation of human rights, these Public Authorities will have to consider and process the request as per the provisions of the Act.

Section 2 of Act broadly defines 'Information' and 'Right to Information'. Besides getting certified copies of circulars, orders, reports, memos etc, etc, the Act gives citizens the right to inspect record, files, documents and works, take samples of materials, etc. All information held or under the control of public authorities can be accessed unless specifically exempted under Section 8 or 9 of the Act.

The Act requires the appointment of Public Information Officers (PIO) and Assistant Public Information Officers (APIOs) in all administrative units at the sub district and sub divisional levels. (Sec 5(1) and 5(2) The PIO are authorized to divulge the requested information within 30 days while the Assistant Public Information Officers(APIO)have to receive requests / appeal from citizens and forward/transfer the same to PIO/ Appellate Officer within 5 days. Denial of info / not responding, within 30 days is deemed as refusal on the part of the PIO and such denial entitles the citizen to get the entire information requested free of cost.

Under Section 4(1), all Public Authorities (PA) have to publish within 120 days, 18 sets of info relating to their organization, functions, duties and responsibilities of officers, etc. It also states that Public Authorities need to take steps in accordance with the requirements of the act to provide as much information suo motu to the public at regular intervals through various means of communication , so that the public have minimum resort to the use of this Act to obtain information.

Sec 5(4) of the Act enables the PIO to seek the assistance of any officer he considers necessary for the discharge of his duties under this act. Such officer

will 'step into the shoes' of PIO and will be treated as PIO for the purpose of any contravention of the provisions of the Act. The deemed responsibility clause under Section 5(5), has thus vested responsibility on all the other officers(non-PIOs).

Sec 6 deals with disposal of requests. A request can be rejected only if it is specially exempted under section 8 or 9 of the Act. The PIO is also expected to communicate the reasons for such rejection, period within which an appeal against such rejection can be preferred and details of Appellate Authority so as to enable him to file an appeal (Sec 7(8)).

Sec 8 deals with exemptions from disclosure. 10 sets of info (Section 8(1) (a) to 8(1) (j))are exempted. However the PIO can exercise his discretion and decide on these if public interest out weights protected interests.

Section 11 depicts the procedure while treating third party information while Section 19 describes the process of appeal, time limit, etc. Section 20(1) states that the PIO shall be liable to pay a penalty of Rs 250/per day for each day of delay subject to a maximum of Rs 25000. The Commission can also recommend disciplinary action against the officer and also request to compensate for loss if any incurred by the citizen due to delay/non receipt of info in time.

The Act has an overriding effect over any other law or rule for the time being in force (Section 22).

RTI Act In Kerala

This paper examines the present status of the Act in Kerala. Experiences of PIO/APIOs were collected during training courses conducted in Institute Of Management(IMG)- in Kerala. A pilot survey was also undertaken to get the response of the citizens. The following emerged as main areas of concern.

Though the Act came into force with effect .from 12 October 2005, it is still not *vibrant* as expected. It is true that in a cent percent literate state like Kerala, the Act can definitely bring about radical changes in governance. It had a very poor start and even the constitution of the State Information Commission took place only in December 2005. As on 1st March 2007, 5 officers have been fined so far and notice has been levied on 25 officials. As on 26th February 2007, the maximum requests were received from Trivandrum district – the capital of the State and the Education Department, Local Self Government Dept and Revenue Department reported to have received the maximum requests under this Act.

In Kerala, there is confusion in most of the departments as to the number of PIOs/ APIOs to be appointed. Though the process of appointing PIOs is almost over now, there are few Departments like Electricity Board, Kerala Water Authority etc. which have designated only skeletal staff at their Headquarters and Regional Offices. The unit offices at the taluk and Panchayat levels are yet to have PIOs or APIOs to receive applications under this Act. Similar is the case with Universities which handle numerous transactions relating to academic matters, conduct of exams, administrative matters, etc. There is only one PIO for the entire University.

The PIO being a senior officer has increased the workload of these officers. In few other Departments, there are PIOs only at the Directorate level while Assistant Public Information Officers (who are only expected to transfer requests received to the PIOs concerned)are posted at the district and lower levels, with the result that the PIOs are flooded with requests, which could be easily disposed off at the lower levels. However these issues are now being sorted out.

Kerala Government in its circular dated October 30th 2006,has directed the Public Authorities to display the names, addresses and contact details of PIOs,

APIOs and Appellate Authority, in front of all offices. It is yet to be done by majority of the Public Authorities.

Though as per Section 4(1) (b), PAs need to voluntarily disclose certain information, the progress on this front, based on the feedback received is far from satisfactory. While most of Central Government Departments and centrally owned PSUs have posted these 18 sets of information in their websites, very few State Government organizations have done this. Many are yet to initiate the process.

Issues in the Implementation

- A random survey conducted among citizens with different socio economic backgrounds showed that 56% of the middle and high-income urbanites are aware of this Act. 21% reported (all of them are Government employees) that they have used this for their personal purposes while even the RTI activists in the State have not used it for any productive cause. 72% of the rural people interviewed are not aware of this Act. Even those who are known to be ignorant of the potential of the Act, and the NGOs and RTI activists in the State are yet to use it for bringing to light issues relating to corruption, bribery etc.
- PIOs reported that almost all the requests are received from urbanites, politicians, advocates and media personnel. Around 62-65% of the requests relate to 3rd party or are purely personal information which has no relation to any public activity. A tendency to give interim reply with whatever information is available is on the rise on the part of the officials concerned.
- The PIOs opined that they are vulnerable to excessive public criticism when decisions taken strictly as per rules were not favourable to them. They viewed that the facility of inspecting note files seems to have opened Pandora's box. Inadequate infrastructures for complying

with the requirements of the Act quite often makes the time bound disclosure difficult.

- PIOs informed that quite often cases with personal vengeances are reported .Except in a very few exceptional cases the requests have no social concern or cause or public interest involved. These requests have only added to the workload of Government offices : Moreover many Departments have only meager provision for office expenses and this is quite inadequate to meet the expenses relating to disposal of RTI cases. (like payment of postage, stationery, etc.)
- IMG has been organizing a series of training courses for PIOs, APIOs and Appellate Authorities which itself is a herculean task considering the huge number involved. Transfer and retirement of trained PIOs have further necessitated the need for training the entire officers of the Departments. IMG is now in the process of conducting Training Of Trainers (TOT) programmes and developing **master trainers** in all Departments.
- PIOs need to be sensitise to the information needs of citizens. Civil servants who were used to the colonial legacy have to cope up with new environment of 'disclosure and transparency'. Training on attitudinal changes should also be an essential component along with training on RTI provisions
- Poor record maintenance and retrieval system existing in the Government makes it difficult to disclose the loads of info(in some cases) within the prescribed time limit. Scattered information at different levels and absence of efforts for consolidation made this task quite difficult.
- On an average the number of the requests received under the Act is hardly 25 per month, with some departments not having received any request so far. Efforts to sensitize citizens are yet to take off

successfully. It is worth mentioning that the earlier attempt in Kerala under the Panchayati Raj Act to disclosure information has not yielded any result.(there is a relevant provision where local bodies have to give records of information/details requested by citizens). Experience in the past shows that people were not aware of this and have not effectively used this provision of Panchayat Raj Act. As in other states, in Kerala too little effort has been taken by the Government to create awareness about this Act (under section 26). Of late the Kerala State Literacy Mission has planned a massive sensitization drive at district / panchayat level which is likely to reach the rural and the poor people at grassroot level who are the real beneficiaries of this Act.

Concluding Remarks

No doubt the Act is an effective tool, which makes the Government machinery accountable to the public for their decisions. Rampant corruption prevailing in public administration can be brought to limelight through public audit. RTI activists often quote this as the main reason why some bureaucrats strongly resist the implementation of this Act.

However, the successful implementation of RTI Act depends on the level of commitment of the political and bureaucratic executives, media and other stakeholders. The role of media in propagating and using this legislation is significant. Success stories on how this Act has proved itself as a powerful tool need to be documented and published through visual and other media. As highlighted in the National Convention (2006) it is now the civil society to build pressure on PAs to ensure the implementation of the Act in true letter and spirit. The Act has the scope for misuse and potential for good governance. Unless the Act is vibrant and all the stakeholders both on the supply and demand side are well versed and view this effectively, it may remain in papers thereby defeating the larger goals of participatory governance.

REFERENCES

1. Krishna, Dhirendra, 'Citizen Participation in Strengthening Public Audit and Anti-Corruption Measures: Right to Information Act 2005, Indian Journal of Public Audit and Accountability Vol. I, April 2006.
2. Outcome & Recommendation of the National Convention on 'One Year of RTI' organized by Central Information Commission, New Delhi during 13 – 15 to October 2006