

Implementation of Right to Information in Letter and Spirit

----- Suresh Chowdhary, SCIC Rajasthan

The Right to Information defined in RTI Act, 2005 is an implied right that follows from Article 19(1)(a) of the Constitution, i.e. the fundamental right of freedom of speech and expression— as without information, citizens cannot be expected to form opinions or express themselves. In itself, the RTI Act is a revolutionary step for strengthening and bolstering democracy, where people must be supreme and have the right to know about the functioning of all central and state authorities, so that they can supervise the same.

The Government is large storehouse of important and useful information which is essentially a national resource owned by the citizens of the country but held and maintained by various administrative instrumentalities of State called Public Authorities. The RTI Act provides legal right to the citizens and lays down the procedure for them to obtain information under the control of these Public Authorities. RTI has empowered the public by enforcing accountability in governance. The transparency it has brought in has effectively checked arbitrariness in the actions of officialdom.

Of course, there are many problems that need to be overcome for effective implementation of the RTI regime. These have been repeatedly listed out by diverse experts in all manners of RTI forums and include poor record keeping and records management in government, work overload in public-dealing departments and offices, lack of infrastructure and manpower resources in field offices, administrative apathy and non-cooperation, patronising attitude of public functionaries, drive for control through hoarding of information by bureaucracy and their fear of loss of power leading to resistance to parting with information etc. etc. Solutions to such problems, like corrections in systems and procedures, provision of fiscal outlays to augment resources, attitudinal training for administrators, adequate emphasis on digitisation as a way forward, etc. are, however, either not forthcoming, or have yet to show real results.

The RTI Act's major impact has been a shift of power from public functionaries to the actual citizen in the matter of access to public information. This has led to increased sense of entitlement in some segments of the general public and consequent aggressive behaviour on their part in confronting public officials and also to certain defensiveness on part of the concerned public officials and consequent lack of genuine cooperation on their end in disclosure of sought-after information. The adversarial positions often taken are marked by mutual acrimony and dysfunctional behaviour that side-track the real issue of transparency in government and instead get caught up in frivolous demands on one hand and determined stone-walling on the other.

Meanwhile, two developments are clearly visible:

- 1) steady increase in the use of RTI over the years testifies to its utility and worth, and
- 2) steady growth in the case law on the subject has reduced grey areas and laid down bounds on the use and practice of RTI, thereby putting it on sound operational footing.

The need of the hour is an RTI regime that takes the shortcomings of the system in account while delivering transparency and accountability to the extent possible without compromising on efficiency in governance. It must be kept in mind that the preamble of the RTI Act talks about the need for harmonisation of conflicting public interests in a practical manner.

As stated in the preamble the RTI Act is "... an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of Public Authorities, in order to promote transparency and accountability in the working of every Public Authority..."The preamble further states – "... now therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it."It is clear that the Act provides two different systems for providing information to the public –

1. proactive disclosure of information by government itself relating to promotion of transparency and accountability in the working of every Public Authority; and
2. disclosure of information on request by individual citizens who desire to have some information.

Also, the information to which the Act applies fall into two categories–

1. information which promotes transparency and accountability in the working of every public authority, disclosure of which helps in containing or discouraging corruption as enumerated in clauses (b) (c) of section 4 (1); and
2. other information held by public authority not falling under section 4(1) (b) (c).

In regard to information falling under the first category, the public authorities must widely disseminate the information *suomotu*, so as to make it easily accessible to the public. **It is important to note that multifarious duties/obligations are imposed on Public Authorities under Section 4 of the RTI Act-**

1. Every public Authority must maintain all its records duly catalogued and indexed. This is to be done in such manner and form as would facilitate the right to information. The public authority must ensure that all the records which can be computerized are computerized and connected through a network for access by all, across the country. The Act says this must be done by the public authority within a reasonable time, subject to the availability of resources (section 4(1) (a)).

2. Every public authority must publish all relevant facts while formulating important policies or announcing the decisions which affect public (section 4(1) (c)).
3. It must also provide reasons for its administrative or quasi-judicial decisions to the affected persons (section 4(1) (d)), and
4. Further, the public authority must -
 - **Suomotu** act to provide such information (section 4(2));
 - Ensure wide dissemination and easy access of information (section 4(3)); and
 - Disseminate information cost effectively, in local language and through the most effective method of communication (section 4(4)).

A very important point to note is that the RTI Act ultimately requires that everything or every information or complete record of the public Authority must be converted into electronic form.

Unfortunately, the implementation of Section 4(1)(b) of the Act that laid down a time-frame for publication of various categories of public information has been inadequate. This important provision of RTI Act has been honoured more in breach than compliance by the authorities, perhaps because of the simple fact that it is non-penal. Proactively disclosed information is also not updated regularly. As per the provisions of the Act, the information has to be updated annually, however, a lot of information actually needs to get updated on “real time” basis. Further, the quality of information disclosed suomotu is rather low and does not adequately cater to the information needs of the citizenry.

To overcome the situation, it is suggested that -

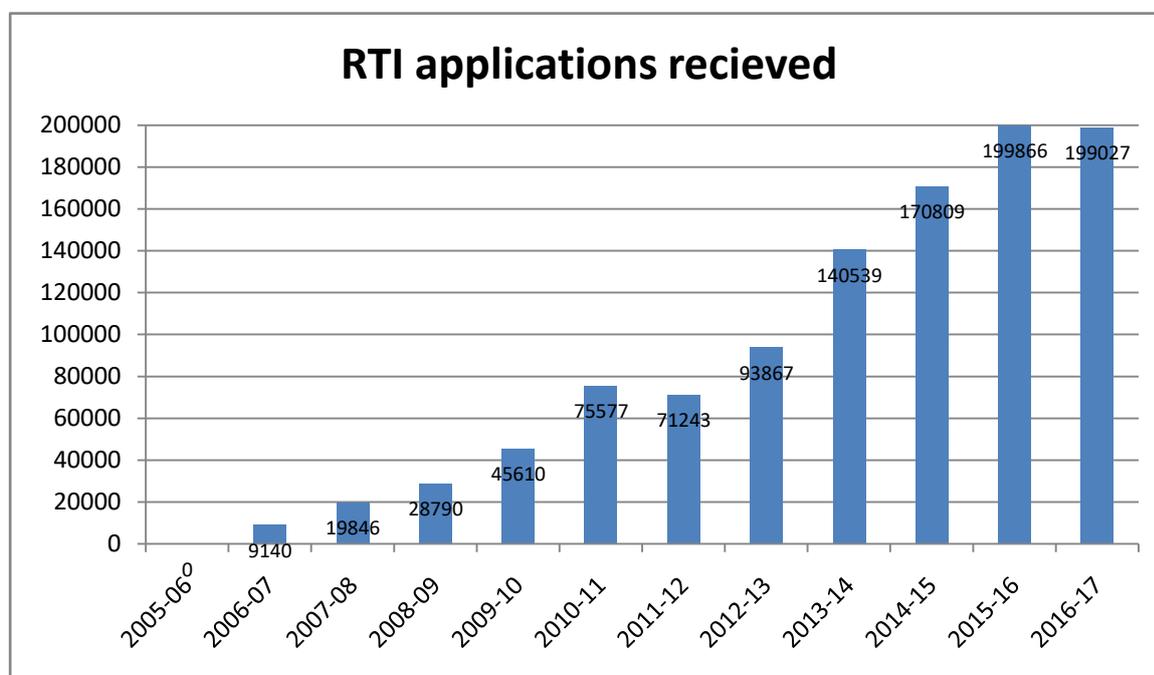
1. Annual audit of proactive information disclosure must be made mandatory and every public authority must display such audit reports on its website.
2. State governments should ensure comprehensive monitoring of proactive information disclosure.
3. Furthermore, state information commissions must lay stress on strict compliance of RTI Act Section 4(1)(a) (b) and 4(2) in their decisions and advisories.

Apart from the information proactively disclosed by public authorities, if any citizen desires to seek some information from any public authority, he/she has to follow the procedure prescribed by the RTI Act. There is a three-tier system for providing information –

1. filing of application before the Public Information Officer;
 2. filing appeal before the First Appellate Authority on inadequate response by PIO;
- and

3. further filing second appeal before the State Information Commission, if aggrieved by the decision of the FAA.

The number of RTI applications being received annually by PIOs is increasing steadily. To take the example of Rajasthan, the position is as reflected in the chart below:



Currently, about two lakh RTI applications are registered annually in Rajasthan. Inadequate response to these results in about fifty thousand first appeals and aggrieved by the response of the FAAs, roughly ten thousand second appeals are filed before the State Information Commission, every year.

Experience in the State has been that the PIOs and FAAs, despite being the main pivots for implementation of the Right to Information Act, look at this responsibility as a burden. Their priority remains their regular work and primary assigned duty and their interest in RTI work is limited to the minimum. Shortcomings in their work include –

1. Non-friendly attitude – as per provisions of the Act (section 5(3)), it is assumed that the PIO will behave in friendly manner with the applicants and provide necessary assistance, but this is rarely so.
2. Lack of motivation – the PIO can be penalized for non-compliance of the Act but he hardly ever gets any incentive for working as PIO in the organization, leading to poor motivational levels, especially in situations of work-overload.
3. Inadequate training – PIOs and FAAs rarely get opportunity to attend regular RTI training courses and mostly learn from precedence or trial and error. In particular, there is lack of attitudinal and behavioral training.

4. Lack of clarity on jurisdiction—Most public authorities have appointed scores of PIOs, resulting in citizens having to run from office to office seeking out the correct PIO, sometimes in vain.
5. Resort to stone-walling—the quality of information provided is poor and frequently responses to RTI applications are given in one word or one sentence using technicalities and loopholes to avoid meaningful or helpful answers.
6. Abdication of role by FAA—often the First Appellate Authorities do not decide first appeals in time or in judicious manner, thereby frustrating the very purpose of this Act.

Towards this end, it is suggested that the following steps could be taken as correctives:

1. Rigorous RTI training to government officials with need to pass departmental exams in the subject.
2. Behavioral and attitudinal training for government officials, so that the mindset can be changed.
3. Provision for adequate infrastructure to the public authorities.
4. Proper record keeping by experts so that information can be retrieved as per the requirement of the information seekers.
5. Digitalization of government records, so that the bogey of missing files is eradicated.
6. Availability of adequate staff in the public authorities for proper functioning of RTI.
7. Facilitative role by State Governments through issuance of supporting rules/circulars/orders to the public authorities.
8. Initiation of incentives for Public Information Officers and First Appellate Authorities who dispose RTI applications and first appeals in due time with due diligence.
