

# **Right to Information Movement in India**\*

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To intensify the process of paradigm shift from state centric to citizen centric model of development the Right to Information Movement in India came into existence in 1990s by resolving a major contradiction between the Colonial Acts, which prevents access to information and the post-independent Indian Constitution, which recognizes the seeking information as a fundamental right to promote transparent, accountable, responsible, participatory and decentralized democracy. As a result of grassroots movement for the Right to Information to combat the corruption, well informed citizens and to promote the Good Governance, the state has responded in the form of Right to Information Act – 2005. With the introduction of the Right to Information Act – 2005 the Colonial Acts such as the Official Secrets Act, Indian Evidence Act and the Civil Service Code of Conduct Rules, which contain provisions that restrict the Fundamental Right to Information as ensured to the citizens in the Constitution has become irrelevant.

## **Colonial Acts and Denial of the Information:**

The battle for appropriate legislation for the right to information has been fought on two main planks. The first is a demand for amendment of the draconian colonial Official Secrets Act, 1923 and the second, campaign for an effective law on the right to information. The Official Secrets Act, 1923, is a replica of the erstwhile British Official Secrets Act and deals with espionage on the one hand, but has the damaging “catch all” Section 5 which makes it an offence to part with any information received in the course of official duty, to non-officials<sup>1</sup>.

During the last decade, the focus of citizens’ groups has shifted from demanding merely an amendment to the Official Secrets Act, to the demand for its outright repeal,

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<sup>1</sup> Mander Harsh&Joshi Abha, People’s Power for the Control of Corruption. www.chri.org.

and its replacement by a comprehensive legislation, which would make disclosure the duty and secrecy the offence. Because even the powerful grassroots organisation like MKSS continues to experience enormous difficulties in securing access to and copies of government documents, despite clear administrative instructions that certified copies of such documents should be available to the citizen on demand. This highlighted to citizens groups how important it is that the people's right to information should be enforceable by law.

**Constitution and Right to Information:** As a result of the prolonged Indian national movement against the British imperialist colonial rule the liberal democratic political system with a written Constitution includes rule of law, social justice, development, adult franchise, periodic elections, multiparty system has come into existence<sup>2</sup>. For the transparent functioning of the democratic political system, the founding fathers of the Constitution included the provisions of the right to expression in part three of the Constitution in the fundamental rights.

While there is no specific right to information or even right to freedom of the press in the Constitution of India, the right to information has been read into the Constitutional guarantees which are a part of the Chapter on Fundamental Rights. The Indian Constitution has an impressive array of basic and inalienable rights contained in Chapter Three of the Constitution. These include the Right to Equal Protection of the Laws and the Right to Equality Before the Law (Article 14), the Right to Freedom of Speech and Expression (Article 19 (1)(a)) and the Right to Life and Personal Liberty (Article 21). The Right to Constitutional Remedies in Article 32, backs these that is, the Right to approach the Supreme Court in case of infringement of any of these rights.

These rights have received dynamic interpretation by the Supreme Court over the years and can truly said to be the basis for the development of the Rule of Law in India. As pointed out by H.M. Seervai<sup>3</sup>, "Corruption, nepotism and favoritism have led to the gross abuse of power by the Executive, which abuse has increasingly come to light partly as a result of investigative journalism and partly as a result of litigation in the Courts".

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<sup>2</sup> See for details, Kothari Rajni, Politics in India (1970), Boston: Little Brown Series.

<sup>3</sup> Foremost Constitutional expert

The legal position with regard to the right to information has developed through several Supreme Court decisions given in the context of all above rights, but more specifically in the context of the Right to Freedom of Speech and Expression, which has been said to be the adverse side of the Right to Know, and one cannot be exercised without the other. The interesting aspect of these judicial pronouncements is that the scope of the right has gradually widened, taking into account the cultural shifts in the polity and in society.

The development of the right to information as a part of the Constitutional Law of the country started with petitions of the press to the Supreme Court for enforcement of certain logistical implications of the right to freedom of speech and expression such as challenging governmental orders for control of newsprint bans on distribution of papers, etc. It was through these cases that the concepts of the public's right know developed.

**Supreme Court and Right to Information:** For more than two decades, the Supreme Court of India has recognized the right to information as a constitutionally protected fundamental right, established under the Article 19 (right to freedom of speech and expression) and article 21 (right to life) of the Constitution. The court has recognized the right to access information from government departments is fundamental to democracy<sup>4</sup>. Therefore, Justice K. K. Mathew of Supreme Court of India said that 'in a government... where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people... have a right to know every public act, everything that is done in a public way, by their public functionaries.... The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption'<sup>5</sup>.

**Progressive Politicians and Right to Information:**

For the first time, among the politicians of India, in 1990 Mr. V.P. Singh, the then Prime Minister of the Country headed by National Front Government stressed on the importance of Right to Information Act as a legislated right. Due to lack of political support and will the right to information Act was not materialized during V.P. Singh period.

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<sup>4</sup> Slough P and Rodrigues, C (2005) Indian's Right To Information Movement Makes A Breakthrough, Open Government: A Journal on Freedom of Information. Volume 1, Issue 1 published on 21<sup>st</sup> March, P. 1.

<sup>5</sup> Justice K.K. Mathew, Supreme Court of India: State of UP vs Rajnarain, AIR 1975 SC 865.)

The freedom movement, the Constitution of India, Supreme Court and some of the politicians supported for the right to information, but not materialized due to various reasons like policy support, institutional arrangements etc. Therefore, to achieve the right to information act, the strong grassroots level movement was needed. *The Mazdoor Kisan Shakti Sanghatana, Parivarthan etc* fulfilled the gap of grassroots level movement and intellectual pressure and input was given by the National Campaign for People's Right to Information and Common Wealth Human Rights Initiative.

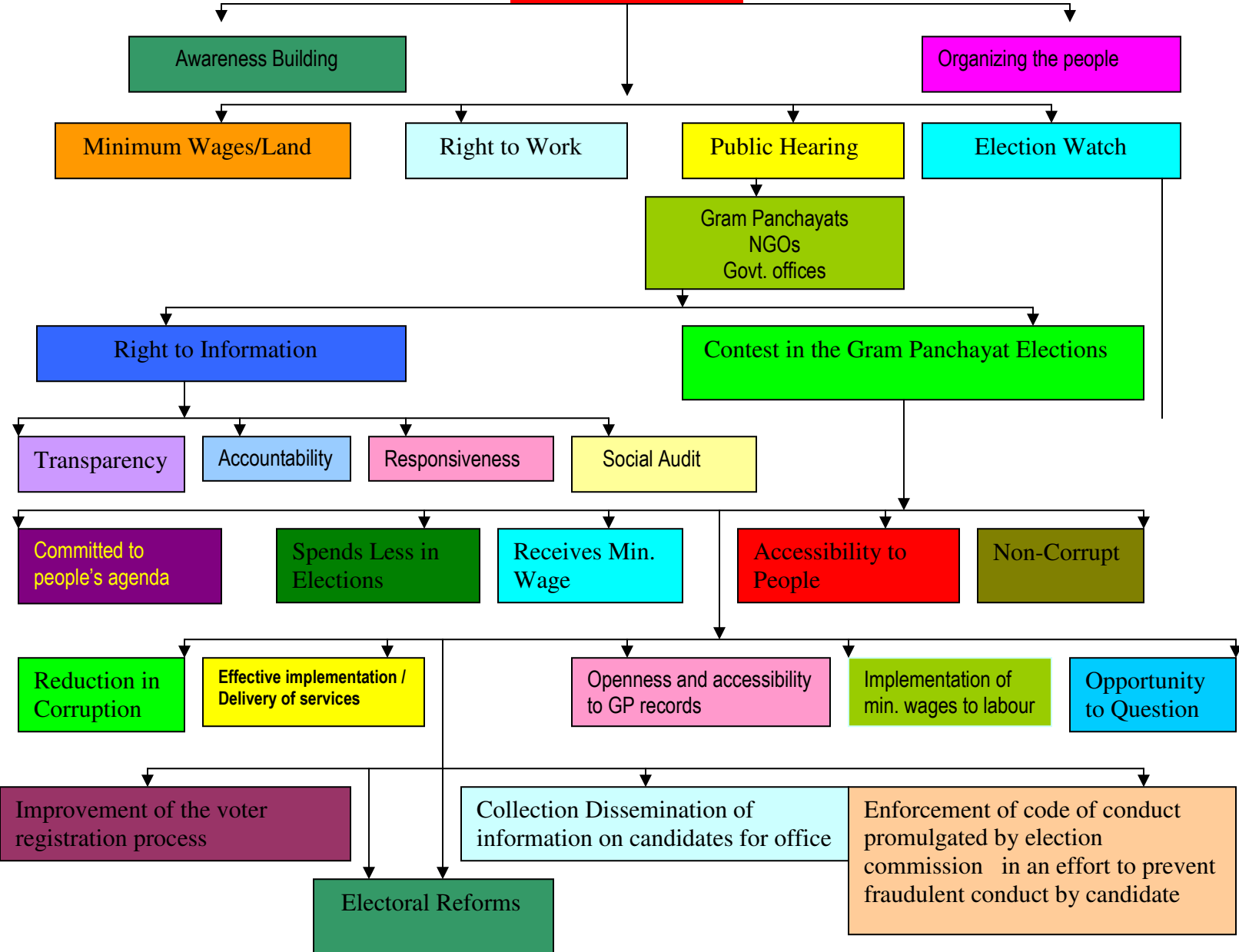
**Efforts of the MKSS towards Right to Information Act:** The Mazdoor Kisan Shakti Sanghatana (hereafter MKSS) is active for the last 15 years in mobilizing the grassroots level people includes peasants and workers for the issue-oriented campaigns in rural areas of Rajasthan. The MKSS is a peasant-farmer's collective that questions governance and policy making processes as they exist and attempts to influence them by mobilizing public opinion among its main constituents – peasants and rural workers<sup>6</sup>.

MKSS started its activities in 1987, but from 1990 onwards only one can see somewhat structured initiatives at the grassroots level. Among the important issues taken up and succeeded to some extent are minimum wages, right to work, right to food, right to information etc. MKSS is also having experience in contesting the local body elections for two times (1999 and 2005) and part of election watch in Rajasthan. The activities of MKSS can be explained with the help of following diagram.

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<sup>6</sup> See for details, study report on Establishing Transparent, Accountable and Responsive Governance Through the Participation of Non-Party Political Organisations in Electoral Politics, Centre for Panchayati Raj, National Institute of Rural Development, Hyderabad, 2005.

## MKSS Activities



**Public Hearing is the genesis of Right to Information Movement:** Public Hearing or *Jan Sunwais* is the origin point of the Right to Information Movement in India. The instrument of public hearing was initiated by the MKSS in some parts of rural areas of Rajasthan. In order to check the corruption with the involvement of the people the public hearing was begun. The public hearing is nothing but an open and democratic debate about the public issues. In this type of public hearings Elected Representatives, Government Officials, People, Local Intelligentsia such as lawyers, media persons, Non-Governmental Organisations, Community Based Organisations, External Observers, etc. will participate. In public hearings generally, after identifying issues for example, corruption in developmental activities further deliberations take place. The Mazdoor Kissan Shakti Sanghathan identified corruption, misuse, and nepotism in the drought relief works, which were sanctioned for the rural poor. Therefore, MKSS initiated the series of public hearings over the rural developmental activities with the substantial evidence of data and documents by involving cross section of the society. The public hearings are being conducted in Panchayati Raj Institutions, Government Offices and Non-Governmental Organisations, which are receiving the substantial financial support from the public authorities. In these public hearings in front of the public it is proved that a great deal of corruption and misuse is taking place. It was happened due to secrecy in the maintenance of records and registers and lack of accessibility to the public information for the citizens. Therefore, to combat the corruption in the developmental activities initiated either by the State Government or Central Government there is a need to have the Act support to access the public information which is national wealth generated by the citizens.

**Public Agitations for the Right to Information:** Along with the public hearings, the MKSS also launched the direct actions like *Dharnas*<sup>7</sup> for the Right to Information in various parts of Rajasthan such as Beawar in 1995. The demand was to press for the issue of administrative orders to enforce the right to information of ordinary citizens regarding local development expenditure. *Dharna* witnessed an unprecedented upsurge of homespun idealism in the small town of Beawar and the surrounding countryside.

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<sup>7</sup> Interview with Roy Aruna, De Nikhil & Singh Shankar at Devdunghri village of Bhim Block in Rajsmand district Rajasthan in May 2005.

Donations in cash and kind poured in daily from ordinary local people including vegetables and milk from small vendors, sacks of wheat from farmers in surrounding villages, tents, voluntary services of cooking, serving cold water, photography and so on, and cash donations from even the poorest<sup>8</sup>.

Even more significant was the daily assembly of over 500 people in the heat of the tent, listening to speeches and joining in for slogans, songs and relics. Active support cut across all class and political barriers. Rich shopkeepers and professionals to daily wage labourers, and the entire political spectrum from the right wing fringe to communist trade unions extended vocal and enthusiastic support.

However, no assurance from government was forthcoming, and therefore after completion of polling on 2 May 1996, while the *dharna* continued in Beawar, it spread also to state capital of Jaipur. In Jaipur, in an unprecedented gesture, over 70 people's organisations and several respected citizens came forward to extend support the MKSS demand. The mainstream press was also openly sympathetic<sup>9</sup>.

#### **State Government Response to the Right to Information Movement:**

In response to the public hearings organised by MKSS evoked widespread hope among the underprivileged people locally, as well as among progressive elements within and outside government. In October 1995, the Lal Bahadur Shastri National Academy of Administration, Mussoorie took the unusual step of organizing a national workshop of officials and activists to focus attention on the right to information.

Meanwhile, responding to the public opinion that coalesced around the issue, the Chief Minister of Rajasthan on 5 April, 1995 announced in the state legislature that his government would be the first in the country to confer to every citizen the right to obtain for a fee photo-copies of all official documents related to local development works. However, a year later, this assurance to the legislature was not followed up by any administrative order.

In Jaipur on 14 May 1996 on behalf of the Rajasthan state government. It stated firstly that the state government had taken a decision on the issue not because of the

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<sup>8</sup> Mander Harsh&Joshi Abha, People's Power for the Control of Corruption. [www.chri.org](http://www.chri.org).

<sup>9</sup> Ibid.

pressure of people's organisations, but because of the government's own commitment to transparency and controlling corruption. It went on to announce the establishment of a committee which within two months would work out the logistics to give practical shape to the assurance made by Chief Minister to the legislature, regarding making available photo-copies of documents relating to local development works.

Another year passed and despite repeated meetings with the Chief Minister and senior cabinet members and state officials, no order was issued and shared with the activists, although again there were repeated assurances. In the end, on a hot summer morning in May 1997 began another epic *dharna*, this time in the state capital of Jaipur close to the State Secretariat. The struggle saw the same outpourings of public support as had been seen in Beawar a year earlier.

At the end of 52 days of the *dharna*, the Deputy Chief Minister made an astonishing announcement, that six months earlier, the state government had already notified the right to receive photo-copies of documents related to *panchayat* or village local government institutions.

Nevertheless, the order of the state government was welcomed as a major milestone, because for the first time, it recognized the legal entitlement of ordinary citizens to obtain copies of government held documents.

**Pioneering States in Introducing Right to Information Act:** In response to the pressure of the grassroots movements as well as to satisfy the international money lending institutions to borrow the loans. Some of the State Governments such as Goa (1997), Tamil Nadu (1997), Rajasthan (2000), Karnataka, (2000), Delhi (2001), Assam (2002), Maharashtra (2003), Madhya Pradesh (2003) and Jammu, Kashmir (2003) introduced the Right to Information Act. Among all these Acts, Maharashtra Right to Information Act was considered as the model act in promoting Transparency, Accountability and Responsiveness in all the Institutes of the State as well as the private organisations, which are getting financial support from the Government. Tamil Nadu Act was considered as the most innovative one in how to refuse the information to the seekers.

Due to lack of awareness about the Right to Information Act among the grassroots level people, lack of institutional arrangements for the implementation and lot of

exemptions in the Right to Information Acts of some States led to non-achievement of the objectives. Despite, all these lacunas in the Act, still the State level Right to Information Acts provided the culture of transparency, accountability, Responsiveness, Social Audit, awareness among the people. These State Acts were the models for the preparation of National Right to Information Act. With the commencement of National Right to Information Act, 2005, some of the State Governments for example, Madhya Pradesh, Maharashtra repelled the state Right to Information Act and started implementing the National Right to Information Act 2005.

**Parivarthan in Delhi State:** Parivarthan a NGO working in the urban slums of Delhi on awareness building on Right to Information Act and using RTI as the potential instrument for transparent delivery of services like Public Distribution System, infrastructure such as public roads and buildings and electoral reforms. The Parivarthan also used the right to information in conducting the social audit in the urban areas on spending of the public investment. Parivarthan being a part of the National Campaign for People's Right to Information put consistent effort for the National Right to Information.

**Towards a National Right to Information Act:** For the introduction of National Right to Information Act, there have been efforts since 1996 onwards. The National Campaign for People's Right to Information (NCPRI) was founded in 1996. Its founding members included social activists, journalists, lawyers, professionals, retired civil servants and academics, and one of its primary objectives was to campaign for a national law facilitating the exercise of the fundamental right to information.

The international organisations like Common Wealth Human Rights Initiative strongly advocates that the Right to Information (RTI) is fundamental to the realization of rights as well as effective democracy, which requires informed participation by all. CHRI educates the public about the value of RTI and advocates at policy level for guaranteed access to information. The contribution of Common Wealth Human Rights initiative for the enactment of the national Right to Information Act in India was through providing aid to discussions, analysis of the Freedom of Information of Act and recommendations to the National Advisory Council, to all the Cabinet Ministers and members of the Parliament.

In response to the pressure from the grassroots movements, national and international organisations, the press council of India under the guidance of its Chairman Justice P.B. Sawant drafted a model bill that was later updated at a workshop organised by National Institute of Rural Development and sent to Government of India, which was one of the reference paper for the first draft bill prepared by Government of India. For some political and other reasons the bill could not be taken up by the Parliament.

Again, in 1997 the United Front Government appointed the working group under the chairmanship of Mr. H.D. Shourie drafted a law called “The Freedom of Information Bill-1997”. This bill was also not enacted. In 1998, though the Prime Minister Mr. Vajpayee announced that a law on Right to Information should be enacted soon, it did not materialize. In the year, 2000 the Freedom of Information Bill – 2000 was tabled before the Parliament. After some debate it was referred to the Parliamentary Standing Committee on Home Affairs for review. The Freedom of Information Bill was passed by the Parliament as the Freedom of Information Act 2002. However, it could not enter into force as the necessary notification was never issued by the then government. (Section 31 of the Right to Information Act 2005 repealed the Freedom of Information Act 2002.)

The coalition Government at the Centre led by United Progressive Alliance formulated an agenda called, “Common Minimum Programme”<sup>10</sup>. One of the agenda of the CMP was the introduction of “Right to Information Act.” The CMP stated clearly, “the Right to Information Act will be made more progressive, participatory and meaningful. In order to look after the implementation of the Common Minimum Programme the UPA constituted National Advisory Council. In the National Advisory Council some of the activists like Aruna Roy<sup>11</sup>, Jean Drez<sup>12</sup> who are associating with the National Campaign for Peoples’ Right to Information Act consistently put the pressure on the UPA Government to pass the bill and to enact a law. In response to these efforts the Parliament passed the bill and the President of India consented the Act on 15<sup>th</sup> June 2005

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<sup>10</sup> Consensus programme of the constituents of the UPA government at the centre

<sup>11</sup> Resigned IAS officer, MKSS activist and winner of the Ramanmagsaysays award.

<sup>12</sup> Prominent pro-working class economist

and implementation process of the Right to Information Act was started since 12<sup>th</sup> October 2005.

**Implications of the Right to Information Act 2005:** The coverage of the right to information act-2005 is wider. Several institutions build through the Constitution, Parliamentary Acts, State Legislative Assembly and Council Acts, Government Organisations, private organisations and NGOs, which are receiving substantial financial support from either state or central government come under the purview of the right to information Act. All these institutions are bound to give the required information to the citizens within a prescribed period of 30 days for the normal information, information relating to human rights within 48 hours and 45 days for the information from the third party. If the given time period is expired in giving the information to the concern citizens, then there will be a penalization of the Public Information Officer at the rate of Rs 250/- per day. The fine may be up to Rs 25,000/-. As a result of rigaracity in the act, there is every possibility for the citizens to get the information of the State documents and records

**Emerging Scenario in the Post –Right to Information Act 2005:** One important task of the State both at centre as well as at the state level is to appoint the Chief Information Commissioners and other Commissioners and it is clearly stated in the act that those people who will be appointed for these positions should have the background of social service, journalism, academics, jurist etc. But when we look at the persons, who are appointed for the positions of the Chief Information Commissioners and other Information Commissioners are having the background of bureaucracy, political affiliations etc. The second important point is that across the country from Gram Panchayati level to national level in all the offices an effective institutional arrangement is being made but there is a low level of awareness among the rural mass. Therefore, one-year experience of the Right to Information Act reveals that it has become a grievance redressal mechanism of the government employees

**Conclusion:** Until the introduction of the Right to Information Act, information was the property of those people who are in the ruling side and secrecy was maintained. With the commencement of the Act, now the people have got right to take, see, check and inspect any information, which is not coming under the exemption list. But at the same time it

require a lot of awareness campaign among the people in order to utilize the act to combat the corruption and get the services of the State, otherwise the present Right to Information Act 2005 will also become just like any other act.

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