

A CRITICAL OVERVIEW OF THE IMPLEMENTATION OF RIGHT TO INFORMATION IN SRI LANKA

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ABSTRACT

The Right to Information (RTI) is integral to the concept of democracy today, as it embodies key democratic principles including good governance, transparency, and accountability of public authorities. In Sri Lanka, the Right to Information Act No. 12 of 2016, introduced through the 19th Amendment to the Constitution in 2015, stands as a significant initiative within the country's legal framework. Despite being ranked as the world's 4th best mechanism, the practical implementation of Sri Lanka's RTI regime faces several shortcomings even nearly after a decade. Hence, the objective of this research is to critically evaluate the practical application of the Black Letter Law related to the right to information in Sri Lanka. This literature-based qualitative research is a comparative study of jurisdictions. Right to information laws, conventions, legislation, case law, and scholarly publications were used to analyse and identify gaps and propose recommendations based on global best practices to create a robust implementation mechanism for RTI. The study reveals that language barriers, rejection of information on unreasonable grounds, lack of knowledge and awareness, exclusion of NGOs and private organizations from RTI coverage, inadequate media intervention, and misuse of legal provisions are key barriers for coherently executing the right to information in Sri Lanka. Adhering to the principle of maximum disclosure, establishing strong oversight mechanisms, implementing effective records management, fostering supportive political and civil society cultures, and providing training for information officers are recommendations for building a robust RTI mechanism in Sri Lanka. Sri Lanka can also gain insights from India to follow innovative approaches for public awareness at grassroots levels. Thus, it can be concluded that despite a strong legal framework, overcoming implementation barriers requires coordinated efforts and close monitoring.

KEYWORDS: RTI application, Right to Information in Sri Lanka, Implementation of RTI

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1. INTRODUCTION

The concept of human rights has evolved from the past to present with the addition of various new dimensions to the law. Even though information was considered as a wealth, limited to the ruling class in early kingdoms, today along with the advancement of technology and media, people are interested in receiving information. Especially, due to globalization, today the channels of information have widened their parameters by extending to the international level. Currently, we are discussing the right to information while internet users are facing a potential risk of leaking sensitive personal information (Masur et al, 2023).

In 1946, during the inaugural session of the UN General Assembly, Resolution 59(1) acknowledged the significance of the freedom of information on a global level. This recognition laid the groundwork for the right to information, which is considered foundational and essential for upholding various other freedoms. The Universal Declaration of Human Rights, specifically Article 19, identifies the Freedom of Information as a subset of the broader freedom of expression.

The possibility of incorporating the right to information as a fundamental right is a controversial issue. In the present context, bribery, corruption and lack of transparency have become huge barriers in exercising the virtues of democracy. However, when the citizens are equipped with the right to information, it helps to maintain good governance, transparency and accountability since the government is answerable to the public (Right to information Act No 12 of 2016). Also, the right to information ensures better record keeping and proper decision making in the institutions. Moreover, the right to information encourages the proactive citizen participation and oversight. Through exercising the right to information, the public has the opportunity to get to know about their personal grievances, delays and reasons for delays in administrative procedure (Roberts, 2001). This inclusiveness of citizens in the governance will provide a strong support for the upliftment of democracy within the country. Currently, the right to

information has been utilized for revealing necessary information in several sectors such as public service delivery, issues related to governance process and accountability, missing cases during the civil war, corruption scandals and mishandling public money (Pinto-Jayawardena, 2019). Hence, in the present context, the right to information (RTI) is considered as a very significant right of a citizen in a democratic country. At present many countries have included the right to information as a fundamental right recognized by their constitution, and it plays a major role in creating the checks and balances of the power. This right also helps to maintain the true essence of sovereignty vested on the citizens.

Although Sri Lanka has recognized the right to information, there is still a dilemma as to whether the citizens are properly benefiting from the practical application of this right. Mainly as a developing country, many procedural barriers, bottlenecks and technical obstacles can adversely affect exercising the right to information. Although there are many past research about the application of right to information in Sri Lanka, some gaps in the literature can be identified. Specially there is a lacuna in the literature that connects the best practices of the international level, to fix the issues connected to right to information in Sri Lanka.

Hence, this research intends to assess the practical application of the right to information in Sri Lanka while drawing best practices from other jurisdictions in order to establish a robust mechanism for ensuring the Black Letter Law related to right to information. This research is significant in addressing the practical barriers to the application of right to information in Sri Lanka and helps to explore the relevant innovative ideas in legal, policy and administrative structures. It is intended to identify a strong legal and regulatory mechanism which uplifts the right to information of the Sri Lankan citizens, from rural and marginalized communities as well.

2. METHODOLOGY

This research is conducted according to the qualitative approach. A literature-based comparative study was conducted by comparing the legal and regulatory frameworks of similar jurisdictions, that have

incorporated the right to information. Conventions, domestic and international legislation, case law, journal articles, research papers and other scholarly publications were included in the analysis. The researcher analyzed the current literature on the right to information in Sri Lanka to identify the existing gap in the literature. Furthermore, the researcher analyzed the regulatory frameworks of other countries to identify the best practices related to the right to information. A literature-based comparative study was suitable to achieve the research objective since it helps to identify the loopholes in the existing structure while finding recommendations from global best practices.

3. RESULTS AND DISCUSSION

Legal Framework for Right to Information in Sri Lanka

Following the example set by neighboring countries like India, Sri Lanka has also successfully initiated to draft the relevant legal provisions for safeguarding the right to information. As per the 19th Amendment to the Constitution of the Democratic, Socialist Republic of Sri Lanka, right to information was recognized as a fundamental right (Constitution of Democratic Socialist Republic of Sri Lanka, 1978). The Article 14(2) of the Constitution clearly states the right to access to information.

The Right to Information Act No 12 of 2016 was enacted as a supportive legislation for protecting the right to information and through section 41(2) this right was highlighted. Accordingly, the Gazette No 2004/66 of 03.02.2017 of the Democratic Socialist Republic of Sri Lanka was issued to affirm the above-mentioned legislation. According to the preamble of the Act it is clearly indicated that the Act intends to promote the right to access to information with an effective citizen participation while ensuring the good governance. With all the implications related to the right to information, Sri Lankan legal framework is among the top ten countries due to the supportiveness of the legal structure. It is commendable that Sri Lanka has gained 131 marks out of 150 in the Global Right to Information Rating, 2023.

Implementation of the Right to information

In terms of the supportive legislations, a strong institutional architecture is essential for effective implementation of the right to information. This may comprise of a collaborative approach maintained by oversight and capacity-building agencies such as training institutions and RTI commissions. There should also be implementing agencies such as ministries, departments and enforcement agencies such as judiciary. All these institutions should play their role homogenously in order to enhance the implementation of the laws on right to information. For an example, in the United Kingdom, the Department of Justice acts as an executive oversight body while the Information Commission has the mandate as an independent oversight body. A key feature is that the U.K Information Commission has the power vested in it to initiate its own motions (Roberts, 2001). Similarly, it is important that the oversight of the right to information should be carried out without a fall continuously. However, the global as well as Sri Lankan experiences depict that maintaining sustainability in the oversight procedure has been challenging.

Recent Landmark Decisions

There have been many landmark decisions regarding the right to information in Sri Lanka. In *Gamini Karunaratne Vs. Information & Communication Technology Agency of Sri Lanka (ICTA)* the appellant requested a full disclosure of the staff member information of ICTA. However, the information officer and the designated officer failed to respond to this request and only a website link was provided, without any formal release of information. Hence it was decided that the public authority should release the aforementioned information requested by the appellant before 24.05.2023 and the failure to comply with that will cause the information officer and the public authority to be prosecuted according to the section 39 of the Right to Information Act No 12 of 2016.

According to *Center for Environmental Justice V. Ministry of Investment Promotion*, the appellant requested for a copy of the tripartite agreement related to Port City Project. However, it was rejected relying

on Section 5(1)(b)(ii), Section 5(1)(c)(v), Section 5 (1) (i) and Section 5(1)(d) mentioning the confidentiality clause in the Tripartite Agreement. The public authority mentioned that there can be a potential breach of confidentiality as certain aspects of this agreement are still 'ongoing' even if the Agreement itself is signed and finalized. However, when this was appealed it was declared that the information requested by the Appellants does not fall within the exempted categories in Section 5(1)(b)(ii) as the relevant Agreement is not encompassed within its ambit. It was held that Section 5(1) (c) (v) is inapplicable as no 'premature' disclosure of an overseas trade agreement is evidenced on the facts.

In *Sajeewa Wijeweera V. Sri Lanka Telecom PLC*, some website domain information from Sri Lanka Telecom was requested. However, it was argued that Sri Lanka Telecom is not a public authority. However, it was pointed out that since Sri Lanka Mobitel is an affiliated institute under Sri Lanka Telecom, it is a public authority falling under the purview of the Act No. 12 of 2016. Also, it was held that the connection between Sri Lanka Telecom and Sri Lanka Mobitel is irrelevant in fulfilling this request. Likewise, when considering the above cases, it is evident that there have been many progressive decisions related to the right to information in Sri Lanka.

Challenges in Implementing the Right to Information in Sri Lanka

Since there is a favorable legal background in the country, it cannot be concluded that there are no barriers for implementing the right to information. Most probably the issues arise in the implementation level of the right and those cannot be traced at the initial stage of legal drafting.

Language Barriers

The basic problem faced in the right to information practice in Sri Lanka is the language barrier. As per the National Language Policy, the government institutes are bound to adhere to the requirement of using both Sinhala and Tamil Languages as the national languages. It is mandatory for the public officers in Sri Lanka to achieve the national language proficiency. It is expected that the officers have a

capacity to address the concerns they receive from the language other than their language of recruitment. Also, when considering the supreme law of the country, Article 12(i) of The Constitution of Democratic, Socialist Republic of Sri Lanka also highlights the right to equality by stating that all citizens are equal before the law and are entitled to get the equal protection of the law.

Given the fact that these requirements are laid out one may argue that the citizens are capable of requesting the information from the national language they are comfortable with. However, in practice it is observed that the government institutions do not always address the RTI requests in the language requested by the applicant (Gunatilleke, 2014).

Due to this reason, the minor communities will experience several communication problems and hardships in this process. Furthermore, the aggrieved citizens cannot get a binding decree through the Right to Information Commission since it can only give recommendations for adhering to the national language policy when working on the requests for right to information.

Rejection of Information on Unreasonable Grounds

One main issue faced when submitting the RTI applications is that officers are discouraging the practice of forwarding the requested information. Although the Act affirms that the RTI requests should not be rejected, if there is no reasonable ground, in the practical sense this is not implemented as suggested by the Act (Annual reports, Right to Information Commission, 2021). Moreover, the ancient roots of state bureaucracy in the Colonial Period are followed even today in some of the government entities. Due to this mindset, the public officers may see the right to information as a threat for the authority executed by them. Hence it is essential to educate the public officers about the grounds on which the applications for the right to information can be rejected.

Also, in many occasions the requested information will not be available, because the authorities have discarded those documents or because they have been ruined by the cause of time or due to adverse weather

or flood conditions. This affirms the fact that the right to information should go in line with a proper archive maintenance in the public offices.

Lack of Knowledge and Awareness

When following the law on the right to information another major challenge is the lack of knowledge and awareness among the citizens regarding the parameters of this right. Basically, both the public masses and the public officials lack this awareness and knowledge on the right to information. In relation to the government institutions, it is essential to give a proper training to the information officers about their duty and responsibility in safeguarding the right to information (Centre of Policy Alternatives, 2018).

Similarly, while taking examples from India, it will be very useful to create the citizen awareness even in the grassroot level in order to get the maximum usage of the legal provisions. The pathetic situation is that the majority of the rural community in Sri Lanka are also not familiar of right to information (Singh, 2016). As a result, they may be going through many discriminations and difficulties and still they are helpless without a remedy. Information literacy and the ability to achieve the right to information are two concepts which have a very close relationship (Eltemasi, 2024). Thus, in the Sri Lankan context it can be observed that more than the public, media and civil society organizations are interested in gaining the maximum benefit of the right to information.

RTI which does not cover the NGOs and Private Organizations

Sri Lanka, as a developing country faces severe threats of corruption; hence, it is important to have a proper oversight of government and non-government sectors as well. However, as per the legal capacity of the Right to Information Act of Sri Lanka, the citizens are not entitled to request information of the NGOs and other private entities (Gunatilleke, 2014). Therefore, this may create malpractices in the public and private partnerships in Sri Lanka. However, the Act also mentions that the 'institutions whose shares are held at least 25% or more by the government or controlled by a government-owned companies should comply with the provisions of the Right to Information Act'.

However, in practice it is observed that these private organizations in Sri Lanka which fall into the purview of this legal provision have not followed this by appointing the information officers to disseminate the requested information.

Inadequate Intervention by Media

Right to information has been a newly introduced segment to the classical fundamental rights in Sri Lanka and due to this reason, it is very important to create awareness and knowledge about the parameters of this Law. In this process the mass-media can play a vital role. Unfortunately, this media responsibility is not properly fulfilled by the public and private media organizations. Mainly the television and radio channels can organize special programmes to make officers and citizens aware about the right to information. However, it is the high time to think creatively and establish a platform to create awareness even by using social media. Through these initiatives, a positive change in the attitude regarding the right to information can be made among the younger generation.

Misuse of the Section 05

Interpretation of legal phrases is an issue encountered when exercising the right to information. Misuse of the Section 05 of the Act to reject the information is a common example.

Section 5 (1) of the Right to Information Act clearly defines the grounds for the denial of access to the information. As per the provisions of Section 05 of the Right to information Act, a request for information can be rejected based on the ground that the relevant information amounts to personal information.

It is fair that the information cannot be revealed when the opinion of the Attorney General is sought regarding a matter of an ongoing court case. However, the public authorities cannot misuse the section 5(1) which states that where the public interest in disclosing the information outweighs the harm, that would result from its disclosure, such information should be provided according to section 5(4).

However, if this provision is misused in a broader sense as an excuse to refrain from revealing the

requested information, then the objectives of this law will not be properly achieved. Also, when rejecting such requests, it should be clearly indicated that which subsection of the Section 05 has been taken into account. Although, the law also provides that even the personal information can be revealed for the sake of the common welfare of public it is questionable whether the authorities are making use of this provision to facilitate the requests of the public. Therefore, the public authorities should always be mindful of the fact that the rule is to disclose, while exclusion from disclosure is the exception according to Section 51 (a).

Misuse of the Section 09

RTI Act of Sri Lanka intends to promote the citizen participation in public life and for this purpose the Section 09 of the Sri Lankan RTI Act states that the relevant minister has a duty to inform the public about the initiation of the development projects above the given value, at least three months prior to its commencement. However, the Section also enables to disclose the information about urgent projects, a week prior to its commencement. This legal provision can be misused when the politicians want to cover up some scandalous projects from the public and the expected outcome will not be reaped. Therefore, when exercising the right to information in the practical sense, there are several barriers faced by the citizens as well as administrators.

Best Practices around the Globe

Even though the right to information has become a controversial in Sri Lanka recently, there have been best practices around the world over a long period of time. For an example in 1766 Sweden enacted its 'Freedom of the Press Act' from which the right to information was recognized as a fundamental right (Dokeniya, 2013). In the year of 1966, Mexico launched its legislative framework enshrining the right to information (Dokeniya, 2013). When compared to the other developing regions in the world, SAARC has been keen on protecting the right to information. Countries such as Maldives, Bangladesh, Nepal and India have successfully enacted required legislation incorporating the right to information (Ackerman & Sandoval, 2006). By 2024 all the South Asian

countries except Bhutan were among the top 40 according to the Global Right to Information ranking map (Kundu, 2023).

Even it is commendable that Afghanistan while going through harsh political turmoil was able to embrace the right to information through the legal provisions (Ackerman & Sandoval, 2006). However, in 1990 only 13 countries had recognized right to information, yet by 2012 this escalated to 90 countries including Asian, African and Latin American regions reflecting the global revival on right to information (Freedominfo.org, 2024). In 2005 Uganda being a lower income country, enacted the Access to Information Act and the lower middle-income countries like Albania and Moldova progressed with right to information in the years of 1999 and 2000 respectively (Freedominfo.org, 2024). India has gone one step further from classical legal implications for ensuring the right to information. Specially, when addressing the citizens of grassroot level, the Black Letter Law will not suffice, and there should be a proper implementation mechanism. In the Indian context the call for right to information revolved around the slogans 'We will know, we will live' and 'Our money our account'. India has introduced Dial.gov web portal to easily access common government information (Singh, 2016).

Most interestingly through the 'RTI on Wheels' project India has been able to disseminate the knowledge on right to information (Jenkins & Goetz, 1999). Through this mobile vehicle operated by solar, battery or generator power, 3-4 volunteers can help the public for filing RTI applications, providing awareness and legal help (Dokeniya, 2013). Through this innovative approach India has been capable of creating an educated citizen forum even in the rural areas. Also, with the collaboration of Commonwealth Human Rights Initiative, the Right to Information awareness is created by writings on the walls of public places to provide the necessary guidance to citizens as well as administrators.

Recommendations for a Strong Practice of Right to Information in Sri Lanka

Currently Sri Lanka has legally recognized the right to information through Constitution and the relevant act.

However, for its effective implementation and practice special measures are to be taken.

Adhering to the Principle of Maximum Disclosure

According to the set of global standards laid out regarding the maximum disclosure, it is expected that the right to information should be interpreted in a broader sense. By the end of 2021 the Commission had received 202 complaints on non-compliance of RTI (Annual Report, Right to information Commission, 2021). Also, according to the statistics of the Annual Report of the Right to Information Commission, 46.7% of the public authorities were at the moderately unsatisfactory level in terms of adhering to proactive disclosure of information. Therefore, if Sri Lanka also follows this maximum disclosure principle, then the right to information can be enhanced while minimizing the unreasonable denials of information.

Establishing a Strong Oversight Mechanism

For the smooth operation of the right to information, it is required to have both executive oversight bodies and independent oversight bodies. In the Sri Lankan context the essential need is an executive oversight wing and an independent oversight wing to operate in a good co-operation.

Raising Awareness in the Implementation Process

As per the Section 02 of the Right to information Act, Minister of the Ministry of the subject of mass media is responsible for the effective implementation of the Act. Therefore, the Ministry can take proactive decisions to establish public awareness by using the mass media to disseminate this message about the right to information. Currently, guidelines on Proactive Disclosures for Public Authorities have been compiled and the officers should be educated enough to follow these guidelines when answering the requests (Jayawardena, 2019).

Following Effective Records Management Techniques

Although the Act supports a strong legal backing for the right to information, the administrative structure and the officers in different levels of the government should follow an effective records management

system in order to get the real use of these legal provisions. Mainly, if the records are maintained in a systematic manner, it helps to fulfill the requests of the citizens within the given timeframe. Therefore, as the Section 07 of the Act highlights, it is the duty of the public authorities to maintain and preserve their records. However, the Commission has not chosen to go for legal action under Section 39 against the non-compliance of the provisions in the Act. If sanctions are granted against the officers who have violated the Act, it will create a culture which recognizes a systematic archive and records management.

Creating a Supportive Culture from Politicians and Civil Society

It is praiseworthy that the RTI Commission has prepared a three-year strategic implementation plan with the assistance of UNDP (Jayawardena, 2019). However, for the practice of the right to information in Sri Lanka, the legal framework and the administrative support will not be sufficient. The country should embrace the right to information and create a supportive culture for safeguarding the right to information.

In Japan the legal system addresses the issues related to personal autonomy and right to information (Murata & Orito, 2008). This will be a useful practice for Sri Lanka to facilitate a robust disclosure principle without undermining citizens' other rights. Moreover, the politicians should support to uplift this right by maintaining transparency and accountability. It is important to raise Sri Lankan's awareness through the involvement of the civil organizations as well.

Training the Information Officers

According to section 24(2) of the RTI Act the information officer should assist the citizens to make an information request in compliance with the provisions of the Act. Therefore, as the law provides the information officer is expected to render a proactive role in safeguarding the right to information (Gunatilleke, 2014). Hence, the information officers and designated officers should be given an extensive training for ensuring this right (Gunatilleke, 2014). Through this Sri Lanka can combat the lack of awareness among the officers regarding RTI.

Due to the bottlenecks which provide required information, sometimes the citizens may try to deal with their requirements informally through personal contacts. This will adversely affect the equal protection of the right to information. Through training and awareness, the bureaucratic mindset of the authorities can be changed and the information requests can be accommodated without a delay.

4. CONCLUSION

When considering all the above facts it can be concluded that although there is a strong legal framework in Sri Lanka to support the right to information, still there are some barriers at the implementation level. Hence by close supervision, by oversight and harmonized approach, the institutions and public could be monitored in order to establish these legal wordings as a reality.

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