

The Right to Information Act and Its Implementation in Sri Lanka: An Empirical Analysis

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Abstract

The Right to Information is the right to access to obtain information from public officials. This right serves several important purposes: Improving the participation of the public in policy-making, Promoting transparency and accountability of the government, minimising corruption, and wastage of state - resources by public officials. The Right to Information Act No. 12 of 2016 (RTI Act) was certified in Sri Lanka by the Parliament on the 4th day of August 2016, and published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka dated 5th August 2016 can be considered as one of the more meaningful and positive democratic measure passed during the period concerned. The RTI Act provides an operational administration to enforce the right to information (RTI). Although, it was ensured as a fundamental right in the Constitution of Sri Lanka through the Nineteenth Amendment passed on 28th of April 2015, the RTI Act has been facing challenges on implementing in the societies. Therefore, the main objective of the study is to identify challenges of the practical procedure stipulated in the RTI Act for public authorities who implement the said RTI and to provide recommendations to ensure the people's right to information. The author has used data such as Gazettes of Sri Lanka related to RTI as a primary sources and journals, reports, electronic resources and books as secondary sources. The publications of the Right to Information Commission of Sri Lanka have been used as a model, particularly for the collection of data. Finally, the paper concludes with suggestions towards minimizing Challenges affecting the institutions as well as the general public in complying with the RTIA whilst pursuing the maximum benefits of the Right to information.

Keywords: Right to Information Act, Transparency, RTI, Accountability, Sri Lanka, and Freedom of Expression

DOI: 10.7176/JLPG/121-04

Publication date: June 30th 2022

1. Introduction

The five pillars of a democratic government are good governance, transparency, accountability, participation and the eradication of corruption (Mohit Sharma, 2011). The above-mentioned pillars can be observed in a state on the implementation of the Right to Information Act. The concept of the right to information has been accepted with the emergence of Greek city-states as foundation of democracy. The Philosophers of Greek, such as Aristotle and Plato have stated “Disclosure of all information relating to the state and government and clarification of those details to the public are the core of democratic” (Thinaharan, 2018), this statement also has emphasized the above said concept. After the 19th century, The United Nations adopted the Universal Declaration of Human Rights in 1948 as an importance manifestation of the law to the world. The declaration in Article 19 states that “Everyone has the right to freedom of opinion and expression: this right includes the freedom to hold opinions without interference and to seek, receive, inform information and ideas through any media regardless of the frontier” (United Nation, 2021). September 28th has been declared as an International Day of Right to Information by the United Nation which is being commemorated annually.

There are around 123 types of RTI law are applied throughout the world (Global Rti Data, 2018). The people of Sweden are the people who enjoyed this law at first approximately 250 years ago. Sweden had passed “The Freedom of the Press Act” in 1766 and the same was declared as “The right to information is a fundamental right of the people”. Thereafter the said law was enforced in Mexico on 1966, the United States on 1976 and the law has been implemented in the SAARC region consisting of Maldives, Bangladesh, Nepal, Afghanistan, and India (2005). The Right to Information Act was imposed in Sri Lanka on 4th of February 2017 by the government, called as “good governance” (Ganathayalan, 2019). As a result of enforcement of RTI law, the Government of Sri Lanka was ranked with the index by the Global Organization for Law and Democracy as “4th” globally and 2nd in Asia (Global Rti Data, 2018).

The drafting process of the Right to Information Act in Sri Lanka was began in 2004 with the drafting of the Access to Information Act for which the approval of the Cabinet also was granted but the same had not been submitted to the Parliament due to political turmoil.

The amendments to the law were executed on 2015 by the Second Drafting Committee intending to make better than the previous one through which the Act No. 12 of 2016 was finalised. There were no any related laws to the right to information as to be exercised by the people in Sri Lanka.

However, The High Court has been applying the freedom of expression in some cases which includes the right to information under the Article 14 (1) (a) of the Constitution -1978. This right does not provide the rules to protect, promote, and recognize the fundamental rights of citizens of 21st century by obtaining information from public authorities but was limited and was criticized as a violation of the fundamental right. This right is necessary to determine the veracity of public information, access to the information and ensure a responsible government.

The Government of Sri Lanka has realized that the law is a milestone on balancing the power which was as an imbalance condition between the people and the government. The main promise of the Right to Information of a rule-based system is to empower the people. The government expects this initiative as to be a small tool on ensuring the full participation of people in terms of promoting the good governance across the country in their public life and encouraging to create a culture of transparency and accountability through the activities of the government. The purpose for which the Right to Information Act (RTIA) was created has been stated in the title and introduction of the Act where it has been mentioned clearly in the title that “The law is intended for receiving information, denial opportunities of the right to information, the establishment of the Information Commission, the appointment of information officers and procedures”

Further, the law states that this law has been established to create a society which ensure full participation of the people of Sri Lanka in their public life since the Constitution guarantees the right of access to information in Article 14 (A), adopting a culture of transparency and accountability in public authorities by providing access to right information and promoting the good governance.

The contradictions and the shortcomings are the common nature in the strategy plan of implementation when it is applied practically. The said nature has been identified by the researchers on the implementation of RTI Act. In Sri Lanka that and such nature affects the implementation of the law concerned. Therefore, this study is carried out to focus on the contradictions and the shortcomings.

2. Research problem

The Right to Information Act is legally applied in more than 40 countries around the world under various names (Ganathayalan, 2019). The Right to information has been ranked as next as to the parliament consisting the representatives of people which is the supreme legislative institution in order to provide the mechanism to the people for all walks of life with the power and sovereignty. These regulations are implemented properly and the benefits are enjoyed by the people in the developed countries. The implementation have not reached the stage of success but facing challenges and obstacles to practice properly in developing countries such as Sri Lanka.

The right to information gained by the people, followed by the political change after a considerable period when such right is not implemented properly the country will have to face an irreparable which would lead the country towards the executive system of governance. It is realized that regain the Right to information as an impossible process and predicted as a dangerous move. Therefore it is the need of the hour that the shortages should be identified methodically, eradicated such shortages and amended accordingly. The kind of situations have been viewed, realized and identified by the researchers as Reteach Problems.

3. Research objectives

- a. Identify the practical - challenges to implement the Right to Information Act in Sri Lanka
- b. Recommend the suitable suggestions and advisers as to prevent such practical – challenges.

4. Significance of the study

The RTI Act has been strengthened by the constitutions of the countries and international law. The existing good governance had pledged to the voters by their manifesto that they would implement such Act if they are given an opportunity to govern this country.

The good governance has legalized RTI as a democratic right of the people of Sri Lanka which ensure the public to take part in political process and to know on the activities of the political authorities.

Since such act has not been reached the stage of the success expected this study is considered as an important of the hour as it deals with the followings :-

- Evaluate the practical challenges faced by the people of Sri Lanka while implementing RTI which is one of the democratic right.
- Identifying practical challenges related to the law
- Finding the alternative solution to avoid those challenges
- Laying the groundwork for an effective and sustainable future to the implementation of RTI

many studies are available globally on this regard they are very rear in Sri Lanka. Hence. This study has an

important place on the field concerned which fulfils the gap related to the research in Sri Lanka.

5. Literature Review

As far as concern of literature related to the topic, it was found that a lot of researches have been conducted globally on the theme of the right to information Act. The research carried out in the Sri Lankan does not fulfil the knowledge that required for the objectives of research. Some the research conducted globally have been subjected to the readings and some of them are as follows:-

Mohit Sharma and Sajiv Singh Bhadavria (i) have conducted a study under the title “Right to Information: Pros and Cons,” which focuses on the Act No.22 introduced on 12th of October 2005 by the Indian government. The study analyses on what is the nature of the Information Act in good governance? the advantages and disadvantages of the right to Information Act in force. The study has been concluded that the Information Act under the Government of India differs from the theoretical norms of the Information Act under Good-Governance and differs from the purpose intended with the Act. As far as concern of the scope, objectives, and methodology it is reliable and comply with this study

Jaspal Singh has conducted a study “Right to Information Act: A Study about awareness,” aims to make awareness on the Right to Information Act among the teachers in India those who are working in Dr BR. Ambedkar Govt.College, Kaithal, and to evaluate the level of knowledge related to the Right to Information Act. The samples of this study are around 100 teachers having 50 as males and 50 as females. The exploratory study method has been used. According to the result of the internal study on the level of knowledge of the law among the teachers those who were subjected to the study was high. Although this assessment differs in scope of the subject, objectives, and methodology but in the sense of the assessment of the applicability of the law still pending as a question in Sri Lanka.

Rajarajeshwari, DV, Sowmya Bharadwaj and KV Ramamurthy have conducted a study under the title (i); “Use of the Right to Information Act to improve the access towards the better services in urban slums.” The research problem has been identified as “lack of knowledge on the Right to Information Act” among the people living in the undeveloped areas of India where the people could not reached the benefit of the welfare services implemented by the government. The purpose of the study was to identify the challenges faced by the people and to outline the steps to be taken regionally and nationally as well as by the states and to address them. Some parts of Bangalore were subjected for this study. At the end of the study it was found that the reasons for the challenges of health and medicine faced by the people are the status of illiteracy and inadequate knowledge of the RTI law. The study has determined that neither the people do not ask their needs from the government and no the Government does not care even to fulfil the basic needs of the public. Although this study differs in terms of the subject area, scope, purposes, and methodology but it is consistent with the study of the relevant law. The Knowledge of the law has been provided by this study.

6. Research Methodology

Since this study is conducted with methodology of qualitative the required data have been collected from secondary data sources such as journals, books, research articles and publications, etc. Specifically, the information has been obtained from the Gazette of the Democratic Socialist Republic of Sri Lanka and the Publication Books of the Information Commission as a collection of events occurred during the period between 04th of February 2017 and 04th February 2019. The study has been completed by reading the information published via Thinakaran, official publications of the Ministry of Mass Media and the official website of the Right to Information Commission.

7. Results and Discussions

Criticism is an activity which denotes the following of a party such as mistakes, shortages, contradictions and inappropriate activities concerned by placing the constructive ideas intending to bring the appropriate amendments and changes. The Right to Information Act applied in Sri Lanka is being developed and satisfied such kind of satisfaction will not bring the country to the stage of prosperous. Therefore the practical shortcomings discussed herein in this study intending to create the necessary awareness to the human resource that will create the future- policy.

7.1. Challenges related to the language

Even though the law allows a person who requests the information under the Right to Information Act to place the request by his/her (Section 24 (5) b) but there is no provision in the law regarding the choice of the language as to which language should be used. Thus, people who do not know the Sinhala language face many challenges on receiving information. Articles 18 (1) and 18 (2) of the 13th Amendment to the Constitution of Sri Lanka state that "Sinhala and Tamil should be the official languages" (State Language Policy and related laws,). Article 22 (1) of the 16th Amendment to the Constitution states that "Sinhala and Tamil shall be the

administrative languages throughout Sri Lanka." It was observed that despite the provisions of the law the practice of the Right to Information Act has not been followed accordingly. There are possibilities of discrimination and exclusion towards minorities living in the country by the existing practice of the Right to Information Act.

7.2. Dishonesty/Refusal of Information Without Valid Reasons

Basir Segudaoud v. Presidential Secretariat (Sri Lanka Right to Information Commission Appeal). The Appellant Mr Basir Segudaoud has sought the report of the commission which had conducted the investigation of the helicopter accident held in the year 2000 on which Mr M.H.M. Ashraf has demised who is the founder and the Leader of Sri Lanka Muslim Congress. The Appeal was filed on 20.03.2017 at the RTI Commission. The commission had replied to this request on 06.04.2017 stating that the reports of the Information Office of the Presidential Secretariat have been sent to the Department of National Archives on 08.05.2017, the Public Authority has sent another letter to the appellant stating that the request to secure the information had been rejected as the information could not find.

The appellant had filed an appeal on 27.03.2017 against the Hon. Secretary to the President who is the designated officer. The officer has rejected the request by a letter dated 25.04.2017 stating that the requested information could not be found and that such information is 12 years old. Further, the request does not require the publication of matters exempted under the Section 5 of the Act. It has been mentioned in the letter sent to the appellant by the Public Authority dated 20.03.2017 and the written explanation submitted to the Commission dated 18.08.2017 that the requested document could not be found. According to the amended law of 1948 state the All Amended Documents should be kept at the Department of National Traces Archives as per the Act No. 48 of since it is the custodian of all reports. However, the return of the request stating that the information requested could not be found has exposed the shortcomings of the Act.

7.3. This Access to Information is being not implemented by NGOs and The Private Sectors

NGOs are included in the Information Act only in the laws of the countries such as Sri Lanka and Bangladesh (Sri Lanka Right to Information Commission Appeal) In South Asia. "Every citizen has the right to access or secure the information held by a public authority (Section 3 (1)). The public authorities which have to abide by this Act are "The office of the Government, The office established by the Constitution or by written law or the decree of a Provincial Councils, Department of Governments, Public Corporations, Institutions whose shares are held at least 25% or more by the Government or controlled by a government-owned companies, The local councils as a private entity by law or public obligation which have contract by the government, Departments established by the Provincial Councils, The services provided by a government-funded NGO, Higher education institutions and the courts." The Gazette of Sri Lanka bearing No. 2004/66 dated 3rd of February 2017 clearly states that the all institutions mentioned above are bound to enforce the Information Act. However, the private sector and non-governmental organizations do not have the practice to appoint information officers or provide information (Attorney Jagath Liyanarachchi Director - National Media Centre, Dinakaran - Information, 2018). The law must be enforced properly for the benefit of the citizens of the country whether by public authorities or private organizations. The country will be developed when the rules of law are implemented accordingly.

7.4. Inadequate Knowledge on Information, Providing Information, Securing Information and Information Provision

When the information was sought by the members of the Northern Provincial Council on the travel of some ministers to abroad which was being denied to provide by the Provincial Council justifying as the members of the Provincial Council have privileges to not to reveal privacy. If such request was to be made they would have had the declaration of privileges in the Provincial Council. Since the council has no such declaration or the Law then the information act should be applied and cannot be denied. The ministers of the present Provincial Council can be questioned on the activities under the certain information Act. The members of parliament are protected with the Parliamentary Privileges Act. The recent of the chaos in the Northern Provincial Council was due to lack of proper knowledge on the Right to Information Act.

Since the disclosure is a rule the refusal would be an illegal act. On the other hand the authorities concerned comply with the violations. This kind of situations will not be eradicated unless the proper appointment with Knowledgeable and trained officers meantime the public also should be made aware of the law. The knowledge of the law is important to the authorities who enforce it and people also must be allowed to question the authorities to secure the complete knowledge. Government states that "However, it is clear from the consequences held in the past that politicians, civil societies and the media are more interested groups to secure the information through this law rather than our civilians." (Thiakaran, 2018). It is important to realize that a properly institutionalized right to information system can only be created as long as all the participants will extend their fullest cooperation to enforce the law properly.

7.5. The Section of The Law Which Is Beyond the Public Interest

Section 5 (4) of the Right to Information Act allows the Commission to accept the late-applications when the Commission is satisfied that the appellant has failed to register the appeal on time due to an incident occurred beyond his control even the strict law on time limit of the appeal is on account.

Hence, the above said privileges would lead to commit discrimination and biased conduct towards the public as there are possibly to convert the services in favour of a particular group by whom the law should be implemented without considering any kind of status. If such privilege or authority is removed the related discrimination can be omitted in future.

7.6. Lack Of Strong Support of Media by Disclosing on RTI Law

According to the gazette notification "Ensuring the effective implementation of the provisions of this Act is the responsibility of the Minister of Public Relations and the Ministry of Mass Communication" (Supplementary to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka dated August 05, 2016.). It is essential to educate the public on the concept of the Right to Information Act intending to achieve the objectives expected by the Right to Information Act and how it can be practiced. The year 2018 was declared as the Year of Public Awareness and various programs were conducted on this regard. However, these practices had been limited within the period of 2018 and have not been followed continuously which is considered as an unhealthy situation. The inquiry of "Treasury Commission" is an example of the impact of reliable media coverage on which the school children also were discussing about the fraud and the bail out. This experience proves the influence of the mass media in terms of making aware the public and convert them towards the targeted objective point. The media having such much of influence have isolated themselves from the obligation to create an adequate awareness among the public became main reason for the backward of the RTI. The role of the media is an important part to bring the people to participate with the law because it is the only source which can provide the clarity even to illiterate people. Therefore, the Sri Lankan Medias should play their roles intending to promote the right to information law in the country by following a well-planned strategy.

7.7. The Right to Information Commission Has No Power to Impose Punishment

The authority pertaining to the Right to information such as instituting cases, (against those who commit offences related to RTI) and determining the fee for issuances are new inversions which have not been practiced in other countries. The power for inspecting the public authorities, executing punishment for the offences, determine fines and claiming compensation have not been granted by law which are criticised as the shortfalls in said Act. It would be remarkable that the Information Commission has been empowered with the law by the government in many countries in the world (for an example- Afghanistan). The access to institute court case against the final decision made by the RTI commission is considered as an arrangement which weakens the commission indirectly.

7.8. Rejection of Request Due to The Section-5

The companies and officers have been using the article 5 of the relevant act as a way to escape from the obligation of accountability. The information authorities miscode the applications, enlist under the section 5 and refuse to provide the information or delay it as it is enlisted under the section 5 by informing the Applicant "As per the section 5 the information requested by you cannot be provided" and the request is rejected under the section 5(11) (A) as it is a personal information. Further, the request is rejected the information concerned under the Section 5 U and A as it is subjected in the case pending in the Court for which the Advice of Attorney General has to be sought and the request is rejected according to the Section 5(A) since the information concerned is provided with the 3rd party. The above mentioned practices have been followed by the officials concerned.

Although the information is classified under section 5, the application may not be rejected if it is considered as a very important to disclose for the common interest according to the section 5 (4) of the Act. Further, the officer concerned cannot reject the request for the information unless he mentions the Section 5 as well as the sub-sections. In case of rejection the applicant should be clearly notified for which section of 5 the rejection is made.

The Section 51 (a) of the Act states that even the information of an individual can be revealed on the ground of common welfare of the public. The lawsuit in the court on which the information is related would not be a reason to reject the application according to the section U of the Act. Since the information obstructs the activities of prosecution in the event of "adverse effect which may occur at the time of filing the lawsuit" the information is limited of pending cases and can be provided. In the event that the 3rd party has provided an information for a public institution does not mean that the information should be provided secretly (information provide to the CID, the public do not hear the information of Sri Lanka) the information of the government officials are also refused in the ground of confidential information such as the reports of Gramah Niladari and

Samurdi officials. It is remarkable that the information commission has revealed that the requests cannot be rejected due to the reason mentioned. It is remarkable that some officials have been punished by the courts as they were appealed.

7.9. Careless of the People to Use the Said Law on Public Affairs

It is to secure the information of developments and services carried with the tax-money of the people in the country. People are often interested in finding out about personal matters and things related to them. However, the usage of the law on public matters is being limited. The public should be interested particularly in the general development programs that are funded by the state (Daya Sri Narendra Rajapaksa, Dinakaran, and 28 September 2018). It is important the co-operation of public to implement the Right to Information Act in the country. The right to information focuses on public authorities. It is the duty of Citizens to exercise their right to information responsibly. The law must be practiced responsibly in a way reflecting the purpose of the Act. The said law is being used at present as a tool for political purposes or in order to revenge the public authority for the personal interest. The purpose and the objective of the law are to create a culture of transparency by allowing people to access the non-corrupted information and to create responsible governance in the public sector. Therefore, the law should be utilised to enhance the objective and should not be used to make disclosures to secure the inappropriate personal interests. Hence the law should be practiced intending to achieve the true purpose of the law.

7.10. The Law is Being Undervalued by The New Legislation

Another barrier to the Right to Information Act is the new law which are being created undervalue the existing laws. For an example, the National Audit Act No. 19 of 2018 recently enacted which allows for an exemption with Section 9 (1) (d) of the Freedom of Information Act. This means that the information is not allowed to be disclosed until the permission of the organization or the appropriate person who provided the information by in writing. If the report is written by the Accountant General, the information related is not allowed to be revealed until it is submitted to the Parliament in order to prevent of reaching the information investigated into the hands of inappropriate persons and the investigation also can be delayed. This kind of circumstances should be omitted from the Right to information Act, therefore Section 5 (1) (h) (i) should be amended as follows:-

The information related with the finance and civil which are being held have been excluded under this Act (only information related to the criminal investigations is excluded under this section at present). This can be easily handled instead of the enormous exemptions in the National Audit Act.

8. Conclusion

The study concludes that the right to information is a voice for the right of the people of Sri Lanka. It has been found during the implementation period of five years that practical challenges has created an obstacle to the future existence and effective usage of the law.

The shortcomings identified by the researchers should be eradicated in future in order to bring Sri Lanka to the first rank in the world for implementing the Right to Information Act.

9. Recommendation

1. To protect the right to information through justice, monitor the activities of the Public Authority and guide the people with awareness as well as providing prior information of disclosure on the matters related to the government.
2. The strategies of the development should be created with the government policy which enhance and support to RTI by coordinating the Institution (Ministry of Mass Media).
3. Training the Information Officers, high officials and officers handling the initial rejection of information requests as well as the heads of organizations.
4. Public authorities should accept and follow the official principles of the right to information Act, Issuance of circulars and guidelines.
5. Carrying out the awareness campaigns throughout the country intending to increase people's participation related the law.
6. Eradicate biased rules and ensure that the law is common to all.
7. Granting punishable authority to the Right to Information Commission.

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