

THE RIGHT TO INFORMATION IN SRI LANKA: A COMPARITIVE OVERVIEW WITH DEVELOPMENTS IN SOUTH ASIAN COUNTRIES

Selvaras Janaha¹

Lecturer, Department of Legal Studies, The Open University of Sri Lanka.

INTRODUCTION

According to Seyoum Hameso, “Information has always been the basis for knowledge. Lack of information contributes to knowledge deficiency, leading to powerlessness. Freedom of information, in that sense, implies a form of empowerment or, better still, it signifies freedom from ignorance from servitude and ultimately the freedom to choose. An informed person is an empowered person”. In this modern era, democracy does not mean a mere representative but a participatory process. Without the right to information, it is not possible to have a democratic process such as participation and engagement in a country. Right to information is one of the most powerful tools that ensures democracy and good governance in a country by promoting public participation in the government. It empowers the citizen to act as an effective watchdog.

The right to information has been universally recognized as a human right in various UN Conventions such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic Social and Cultural Rights (1966), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). Subsequently access to information as a human right has gained a prominent visibility in the context of environment and sustainable development. The Rio Declaration on Environment and Development recognized that environmental issues were best handled with the participation of citizens and that each individual shall have appropriate access to information concerning the environment held by public authorities, including information on hazardous materials and activities in their communities and the opportunities to participate in the decision making process.

In Sri Lanka, there are no clear Constitutional provisions, which recognize the right to information. Article 10 of the Constitution recognizes that every person is entitled to freedom of thought, conscience and religion while Article 14 (i) (a) declares that, every citizen is entitled to the freedom of speech and expression including publication. This lacuna in the law compels the citizen to depend on interpretations of the above mentioned Articles adopted by the judiciary in fundamental rights case law.

OBJECTIVES OF RESEARCH

The objectives of this research are:

1. To examine the extent to which domestic laws of Sri Lanka have recognized the Right to Information and the manner in which the constitutional provisions have been interpreted by the judiciary
2. To carry out a comparative analysis of the Sri Lankan statutes in relation to other South Asian Countries on this topic.
3. To recommend a legislative framework on the Right to Information in Sri Lanka including amendments introduced to the Fundamental Rights Chapter of the Constitution of Sri Lanka (1978).

¹ Correspondences should be addressed to sjsjanah@gmail.com

METHODOLOGY

The study is based on normative research analyzing the effectiveness of the International Human Rights framework, foreign legislation on the subject, local Constitutional provisions and legal mechanisms. Extensive studies were carried out adopting analytical methods on current international law and local legislation and mechanisms for the recommendations with regard to legal reforms to be introduced in the future.

RESULTS AND DISCUSSION

The right to information can be guaranteed in different ways, either constitutionally or through legislation. This right could be implemented through executive actions too. Constitutional recognition of the right to information as part of the fundamental right to freedom of speech and expression or as a specific fundamental right is the most effective method of implementing the right. Though the fundamental rights chapter has no specific constitutional provision that has a direct bearing on the subject, the judiciary of Sri Lanka has recognized this right to a certain extent through judicial interpretation of the right to freedom of speech. But the inherent weakness of this method is that interpretation can be changed depending on the nature of the Bench of judges. In *Vishvalingam v Liyanage*, (1984) the Sri Lankan Supreme Court has underlined the importance of public discussion on this aspect which demanded that for its full realization, the right of the person to receive information should be recognized.

It was evident that the Constitutional provisions relevant to the right to information have been subject to limitation by other constitutional provisions in the same chapter and other legal restrictions on this issue. Article 15(2), 15(7) and (8) stipulate the Constitutional restrictions on the exercise of this right. These restrictions range from interests of racial and religious harmony, parliamentary privilege, contempt of court, defamation and national security, public order and the protection of public health or morality. Other legislation such as the Official Secrets Act No 32 of 1955, Official Publications Ordinance No 47 of 1946, Public Security Ordinance No 25 of 1947 and Prevention of Terrorism Act No 48 of 1979 too contain restrictions on the exercise of the right.

The Supreme Court of India has not only recognized the right to know as a part of freedom of speech and expression but also accepted the link between the right to know and the right to life and liberty. Thus, in *Reliance Petrochemicals Ltd V Proprietors of Indian Express Newspapers Bombay Pvt Ltd* the Indian Supreme Court opined that "... the right to know is a basic right that citizens of a country aspire under article 21 of our constitution." Research has shown that with the implementation of the Right to Information Act of 2005 of India, the quality of life of the people has been improved and the level of corruption has been reduced to a certain extent and also accountability on the part of public officials and politicians has been improved. There had also been an increase in the number of cases where the courts have given orders to provide details of the decision making process. Due to acceptance of the fact that constitutional provisions on the right to information alone is not sufficient to safeguard this right, many other Asian countries such as Pakistan, Bangladesh and Nepal have adopted separate legal frameworks such as 'Freedom of Information' or 'Access to Information' for the purpose of ensuring the right to information

The study revealed that the right to information does not have any meaning unless there are clear constitutional or statutory provisions on the exercise of that right. A law on Right to Information will set out the extent of information that can be provided and the mechanism to enforce the right. It was also been revealed that agitation on the part of the general public enforcing political parties to introduce a law on the right to information has not been successful. The development in other jurisdictions has proved that introducing the right will promote transparency, good governance and also minimizes bribery, corruption and waste in the public sector as the people get a right to question the practices of state officials and politicians.

CONCLUSIONS AND RECOMMENDATIONS

The experiences in other countries have shown that recognition of this right through constitutional provisions alone is not sufficient and that a separate legal framework needs to be introduced to strengthen the Constitutional provisions. An amendment introduced to Article 14 (1) (a) of the Constitution of Sri Lanka recognizes the specific right to information, and adoption of a separate law on the right to information introducing the mechanism to enforce the right is necessary. Introducing a separate law on the subject includes identifying the persons who are responsible in the state machinery to provide information within a compulsory time frame. An enforcement mechanism in the event of a contravention of the statutory provisions and the punishments that can be imposed for non compliance has become an essential part of the assertion of the right to information. A separate provision should be included in the proposed legislation regarding the security and safeguards afforded to mass media including print and electronic media and to the people who question with responsibility the corrupt practices especially those of politicians. Without such safeguards mere recognition of the right will be of no value, given the present situation in the country.

Under the proposed legislation all State Departments, Authorities, Statutory Boards, Commissions, Universities and local government authorities are required to appoint Public Information Officers in their respective organizations, to maintain and update their websites on a regular basis, and to use new information and communication technologies such as email facility to provide information. Since the right to information includes the right to receive information in one's mother tongue, relevant provisions in the Official Languages Act and other statutes should be enforced requiring public official to send prompt answers to queries made by the general public in the language used in the query.

In the context of global developments on this subject, introduction of separate legislation on the specific area of right to information has become the need of the hour in Sri Lanka to protect and promote the fundamental freedoms of thought, conscience, speech and expression including publication.

REFERENCES

Hameso S, Focus on International and Comparative Librarianship, Vol.26 No.3 of 1995

Universal Declaration of Human Rights 1948

The International Covenant on Civil and Political Rights 1966

The International Covenant on Economics Social and Cultural Rights 1966

The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950

Constitution of Sri Lanka 1978

Right to Information Act of Bangladesh, 2009

Right to Information Act of Nepal, 2007

Freedom of Information Act of Pakistan, 2002

Right to Information Act of India, 2005

Draft of Freedom of Information Act of Sri Lanka, 2004

Official Secrets Act No 32 of 1955,

Official Publications Ordinance No 47 of 1946,

Public Security Ordinance No 25 of 1947.

Prevention of Terrorism Act No 48 of 1979

Visuvalingam V Liyanage (1984) 2 SLR 123

Constitution Draft Bill of Sri Lanka 2000

Right to Information Draft Act of Sri Lanka 2004

Reliance Petrochemicals Ltd V Proprietors of Indian Express Newspapers Bombay Pvt Ltd
AIR 1989 SC190

Wickramaratne J, Fundamental Rights in Sri Lanka, A Stamford Lake Publication 2006

Fernando Vs The Sri Lanka Broadcasting Corporation (1996) 1 SLR 157

Environmental Foundation Limited Vs Urban Development Authority of Sri Lanka and
Others (2009) 1 SLR 123

Leander Vs Sweden 9 EHRR 433

www.humanrightsinitiative.org/chrinews/2007vti-in-south-asia.pdf

www.ftiindia.org/forum/forum/php

www.foiakistan.com

www.ccrinepal.org