



View Point 2

The Pathfinder Foundation

The Right to Information Act – Why?

It is encouraging that a recent parliamentary discussion both the Government and the opposition have signaled an interest in passing a Right to Information Law in Sri Lanka. The enactment of freedom of information legislation is bound to empower citizens and provide an essential element towards creating good governance. It is in this context that the Pathfinder Foundation is embarking on advocacy to accelerate the passage of this legislation.

The right to information is a fundamental right guaranteed to citizens by all democracies in the world- a focal right which assures basic freedoms of the people. In Sri Lanka too the 'Supreme Law' of the country or the Constitution recognizes this right in some form though it has not been guaranteed by the Constitution as an explicit right.

A recent judgment delivered by the Supreme Court specifies this right as a fundamental principle of Law and the corner stone of the legal framework in Sri Lanka that will enhance democratic rights enshrined in the Constitution.

The Supreme Court judgment stipulates that if the right to freedom of speech and expression including publication guaranteed by article 14(a) of the Constitution, is to be meaningful and effective, it should carry within its scope, an implicit right of a person to secure relevant information from a public authority in respect of a matter that should be in the public domain and that it should necessarily be so where the public interest in the matter outweighs the confidentiality that attaches to the affairs of the state and official communication..

The Court upheld the right to information, by pronouncing further that bare denial of access to official information amounts to an infringement of the rights guaranteed by article 14(a) of the Constitution of Sri Lanka. The Supreme Court judgment clearly spells out the dire need to introduce legislation, thereby giving the people the much needed right to have access to official information

This need was further emphasized by the present Chief Justice of Sri Lanka Mr. Asoka de Silva, delivering a keynote address at the launch of the “Justice” magazine published by the Ministry of Justice and Law Reform in October last year. Before an august audience The Chief Justice emphasized the need to enact relevant legislation to enhance this right recognized by the Constitution of Sri Lanka and to ensure transparency and accountability of all authorities which is a timely need.

He pointed out that in the Galle Face Green case, the Supreme Court interpreted the constitutional right of free speech and expression and publication to include the right to information. “Though there is no explicit right to information in the Constitution the article 14 was given an expanded interpretation by the Court,” he said emphasizing the need to introduce supplementary legislation to guarantee the rights of the people.

In Sri Lanka, the call for the enactment and the subsequent implementation of the Right to Information Act surfaced at the dawn of the new millennium somewhere in 2001. At that stage, the Law Commission of Sri Lanka put forward a proposal to introduce new legislation. Subsequently, several drafts were prepared with stakeholder consultations.

The draft law of 2003 proposed to establish a presumption in favour of disclosure on the part of all public bodies and to prevail over all other laws restricting information. An obligation was placed on the ministries and public bodies to make records and information coming under their purview available to the public. The public bodies were also called upon to give reasons for their decisions through an inbuilt mechanism in the draft law. However, there would be certain safeguards with regard to policy formulation and discussions to prevent any kind of impediment to the process of effective governance.

The law also envisaged transparency in government action so there is provision for the access to information required by the people regarding government transactions. The limitation of access to official information was subject to narrow and clearly defined areas such as matters relating to national security.

During the previous Parliament an attempt was made to revive the Law Commission draft and re-introduce the Right to Information Law to ensure good governance and transparency in governmental transactions.

The Legal Draftsman was instructed to benchmark the Sri Lankan Act on the Indian Law which has yielded impressive results. The draft Law, modeled on the Indian Right to Information Act, had the following salient features.

*To foster a culture of transparency and accountability in public authorities.

- Every citizen (which includes a body corporate and unincorporated) to have a right of access to official information in the possession, custody or control of a public authority.
- Provisions of the Bill to prevail notwithstanding anything to the contrary in any written law, other than where a public authority established by a written law is prohibited by such law from disclosing any information, in the performance of its duties.
- Request for access to information shall be denied, where:-
 - a) information requested for relates to a matter where a decision by the Government is pending;
 - b) disclosure of information could be an invasion of personal privacy of any person;
 - c) disclosure could cause serious harm to the defense of the State, danger to life or safety of any person or be likely to prejudice Sri Lanka's relations with any State or International Organization;
 - d) information relates to assessment or collection of revenue by the Inland Revenue Department;
 - e) disclosure could reveal trade secrets;
 - f) information could lead to the disclosure of medical secrets or medical records relating to any person;
 - g) information is subject to professional privilege;
 - h) disclosure could prejudice the prevention or detection of any crime or the apprehension of or prosecution of offenders;
 - i) information relates to an examination conducted by the Department of Examination or a Higher Educational Institution which is required to be kept confidential;
 - j) information requested for is to be kept confidential due to the existence of a fiduciary relationship.
- Disclosure of information prohibited from being disclosed, is to be an offence.
- Duty of a public authority to maintain and preserve its records in a manner consistent with its operational requirements.
- Duty of the President and of every Minister to publish once in every two years, a report containing particulars relating to the organization, functions, powers and duties assigned to the Ministry concerned and its officers and employees.
- Duty of the President and every Minister to inform the public about the initiation of any project by such Ministry.
- Establishment of the Freedom of Information Commission, its constitution and its powers and duties
- Duty of every public authority to submit to the Commission an Annual Report containing information on requests for information received by such public authority.
- Every public authority is required to appoint one or more of its officers as Information Officers of such authority.
- Information to be obtained only upon making a request for the same to the Information Officer of the public authority concerned.

- Manner in which official information requested for is to be provided.
- Rejection of a request made for information and its consequences.
- Where information requested for has been supplied by a third party, such third party to be given an opportunity of making his representations prior to the disclosure of such information.
- Protection from actions being filed against Information Officers.
- Right of appeal to the Commission and to the Supreme Court, against any rejection of a request made for access to information
- Certain actions of Information Officers to be an offence under the Bill.
- An employee of a public authority, who in certain circumstances releases or discloses official information, not to be subjected any punishment or disciplinary action for doing so (i.e. protection of "whistle- Blowers").
- Definition of the expressions "citizen", "official information", "project" and "public authority".

In order to promote the adoption and implementation of the Right to Information Act an interest group called the Coalition for the Right to Information (CRI) was established to lobby for the enactment of the legislation.

The draft Act, incorporated the views expressed by the main stake holders, such as the Sri Lanka Press Institute and the Editor's Guild of Sri Lanka. The task before the CRI now is to get the draft legislation approved by the Cabinet of Ministers and passed by the Parliament of Sri Lanka.

Sri Lanka's closest neighbour, India, has already implemented a Right to Information Act for the benefit of its people. The current priority in Sri Lanka is to raise awareness among all Parliamentarians, Civil Society Organizations and the public at large regarding the potential benefits of such legislation. The Press can play an important role in creating a conducive enabling environment. Experience from other countries demonstrates that a Right to Information Act empowers citizens and strengthens governance by reducing corruption and improving management in the state sector.

Please send your comments to pm@pathfinderfoundation.org