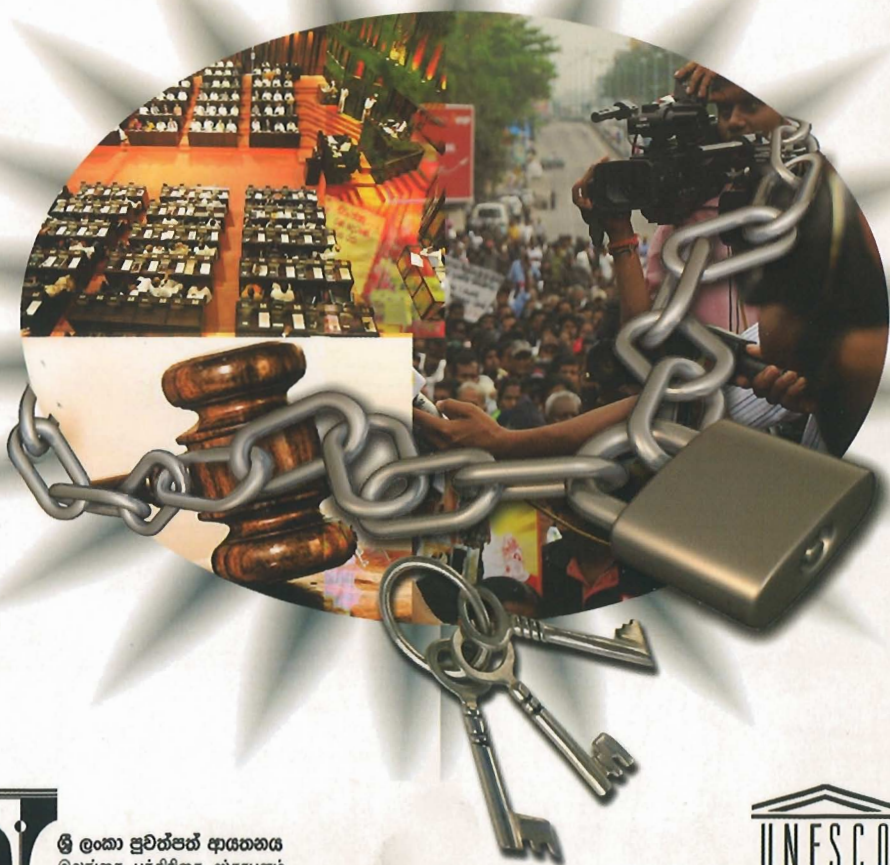


Right To Information

A Guide for Advocates



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இலங்கை பத்திரிகை ஸ்தாபனம்
Sri Lanka Press Institute



Right to Information: A Guide for Advocates

By
Gehan Gunatilleke

Right to Information: A Guide for Advocates

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Chapter 1

Introduction

Introduction

The Right to Information (RTI) is a central component of any modern democracy founded on people's sovereignty. The Constitution of Sri Lanka, in Article 3, vests power in the People and explicitly recognises the sovereignty of the People. The People can effectively exercise power through their representatives only if the system of governance is accountable and transparent. In this context, an important public debate on RTI has emerged in Sri Lanka.

The media is often described as the 'fourth estate' in a functioning democracy, due to its essential role in governance. Journalists play a critical role in providing information and analyses on government activity to the People. They are, therefore, vital to ensuring government accountability and transparency. For this reason, journalists are often at the heart of RTI discourse.

Meanwhile, civil society organisations have played a critical role in securing RTI around the world. Success stories from every region illustrate the value of civil society activism, particularly in respect of generating public awareness and lobbying policy makers.

This Guide aims to raise awareness on RTI and to equip and motivate advocates within the media community and within civil society organisations to campaign for RTI in Sri Lanka. The Guide is intended to serve as a resource for future conversations and as a tool for advocacy.

Chapter 2

What is RTI

What is RTI?

This section briefly introduces the concept of RTI, examines its philosophical roots, and traces its origins.

Definitions

RTI is the right to access and obtain information from public officials. This right serves a number of important purposes:

1. Improving public participation in policy making
2. Promoting transparency and accountability in government
3. Minimising corruption and wastage of state resources by public officials

The term 'RTI' is often used interchangeably with 'Freedom of Information'. However, there is an important distinction between the two concepts. 'Freedom of Information' implies a person's freedom to access and receive

RTI is the 'right of a citizen to be informed in writing if a governmental agency holds certain information, and to request its disclosure. If refused, he or she can demand to be given a refusal in writing.'

Businessdictionary.com

information upon request. The government is only expected to refrain from violating that freedom by restricting such access. The government's obligations are framed in 'passive' terms. The language of RTI, however, implies

that information is an inherent right of the People. The government is duty-bound to provide that information. Thus, under RTI, the government's obligations are framed in 'active' terms.

Laws that guarantee RTI allow public access to data held by the government. These laws establish a procedure under which requests for government-held information could be made at minimal or no cost. RTI is occasionally referred to as 'open records', or 'sunshine laws', as governments are typically bound by a duty to publish and promote openness.

Philosophy

A system of democracy is one in which the sovereignty of the People is foremost in all matters of governance; this is captured in the famous words of Abraham Lincoln, '[democracy is] by the people, for the people, and of the people'. In modern representative democracies, the People elect public officials to represent their interests in matters of governance and public policy, and to run the affairs of state on their behalf. As the People confer this authority on public officials, the information they deal with is the property of the People. Therefore, the People have a right to access that information. This is the foundation for RTI.

Origins

RTI is not a new right. Its origins in Europe date back to the 18th century, when the principle of 'Public Access'

(offentlighetsprincipen) first emerged in Sweden. Sweden was the first country to enact an official law on RTI – the Freedom of the Press Act of 1766. The Act granted public access to government documents and became a fundamental part of the Swedish legal system.

The principle of ‘Public Access’ in Sweden provides that the general public should be guaranteed an unimpeded view of activities by the government and local authorities. Moreover, all documents handled by the authorities are ‘public’ unless legislation explicitly and specifically states otherwise. Even when there is an exception, each request for potentially sensitive information must be handled individually, and a refusal is subject to appeal. The Swedish Constitution also grants the ‘Right to Inform’. According to this concept, government officials have the right to disclose sensitive information to the media in the public interest without risk of criminal charges.

RTI, however, is not a European idea. India is one of the main pioneers of RTI in Asia, particularly in the South Asian subcontinent. In India, RTI emerged as a direct result of public demand. During the 1990s, villagers from rural areas saw a practical benefit in securing RTI, and this demand spawned a large grass roots movement. A number of state governments, including Rajasthan, Maharashtra, Goa, and Tamil Nadu, adopted RTI laws in response to this grass roots demand. Eventually, in 2005, the central government passed the Right to Information Act.

Origins of RTI in India

During the early 1990s, the people of Devdungri, Rajasthan, were faced with chronic droughts and crippling poverty. The local government initiated public relief works in response to the problem. However, corrupt officials often stole public funds, which resulted in the further entrenchment of poverty. In 1994, the people of Devdungri attended public hearings organised by a civil society group called the Mazdoor Kisan Shakti Sangathan (MKSS) movement. Throughout these hearings, records connected to government projects were discussed in detail. Based on clear evidence of government corruption, the people began to demand for reform, and for a system that guaranteed RTI. This demand eventually grew into a state-wide movement, and resulted in the State of Rajasthan enacting one of the first RTI laws in India.

Chapter 3

Legal Framework in Sri Lanka

Legal Framework in Sri Lanka

This section discusses the constitutional, legislative and policy framework pertaining to RTI in Sri Lanka. The section also discusses briefly some of the key judicial pronouncements relevant to RTI.

Constitution

The Constitution of Sri Lanka implicitly recognises the Right to Information.

Article 10 of the Constitution guarantees to every person the freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice. This freedom, by implication, relates to RTI. All rights

Article 10:

Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.

guaranteed under the Fundamental Rights Chapter of the Constitution implicitly include certain other rights. E.g. a person cannot enjoy the freedom of religion guaranteed under Article 10 without having the right to access a place of worship. Thus, 'access to a place of worship' is implied under the freedom of religion.

Implicit in the freedom of thought, therefore, is access to information. Thus every person within the territory of Sri Lanka has the right to information, without which they cannot fully enjoy their freedom of thought.

Article 14 (1)(a):

Every citizen is entitled to the freedom of speech and expression including publication

There are some rights that are afforded only to a citizen of Sri Lanka, such as the freedom of speech and expression including publication guaranteed by Article 14(1)(a). Unlike rights under Article 10,

which cannot be restricted, the rights under Article 14 are subject to certain limitations. The freedom of speech and expression may be restricted by law in the interest of racial and religious harmony, parliamentary privilege, contempt of court, defamation or incitement to an offence, and national security.

Similar to the freedom of thought and conscience, the freedom of expression also requires access to information in order to be meaningful. As discussed later in this Guide, the Sri Lankan Supreme Court has recognised this principle on more than one occasion.

Laws and Regulations

Laws that Promote RTI

There are no specific laws in Sri Lanka that separately guarantee RTI. However, the Declaration of Assets and Liabilities Law, No.1 of 1975 and the Amendment Act, No.74 of 1988 provide a limited opportunity for citizens to access information.

The Law allows for individuals to access the asset declarations of certain public officials who are required to declare their assets. These officials include:

- Members of Parliament
- Judges
- Public Officers appointed by President or Cabinet Ministers
- Staff officers in ministries and government departments (i.e. additional secretaries, deputy secretaries, assistant secretaries and heads of departments)
- Chairmen, directors, board members, staff officers of public corporations
- Elected members and staff officers of local authorities
- Office bearers of 'recognised' political parties
- Executives of trade unions

The 1988 Amendment Act provides for 'any person' to pay a prescribed fee and obtain a copy of an official's asset declaration.

Any person shall on payment of a prescribed fee to the appropriate authority have the right to call for and refer to any declaration of assets and liabilities and on payment of a further fee to be prescribed shall have the right to obtain that declaration.

A Gazette Notification published in 1991 states the prescribed fee, which effectively enables people to access these asset declarations. The appropriate authority

with regard to Members of Parliament is the Speaker of Parliament. However, the law has very strict secrecy provisions, which render it somewhat ineffective

A person shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person to whom this Law applies, or which may come to his knowledge in the performance of his duties under this Law or in the exercise of his right under subsection (3) of section 5

Therefore, on obtaining the asset declaration of a public official, a person can only refer the declaration to the appropriate authority, which will then conduct an investigation or take further action. In the meantime, the person is prohibited from sharing that information or even making a statement regarding the ongoing investigation.

Laws and Regulations that Restrict RTI

There are several laws that restrict the constitutional guarantee to RTI.

Official Secrets Act, No.32 of 1955

The long title of the Act describes it as ‘an Act to restrict access to official secrets and secret documents and to prevent unauthorised disclosure thereof’. The Act prohibits entry into ‘prohibited places’ or places used for military purposes, and makes it an offence for any person entrusted with or in possession of an official secret or secret document to seek, obtain, deliver or communicate such secret or document.

This Act exerts considerable pressure on government officials to withhold any information that they may consider to be sensitive. The Act has established a 'culture of secrecy' in Sri Lanka, under which the default position of officials is to withhold all information unless instructed by a superior to release the information.

Sri Lanka Press Council Law, No.5 of 1973

Under this Act, it is an offence to publish or cause the publication of official secrets and information, which may 'adversely affect the economy' in any newspaper without prior ministerial approval.

Under the Act, it is also an offence to publish, in any newspapers, any matter which is (1) part of the proceedings of a meeting of the Cabinet of Ministers, (2) internal ministerial documents, or (3) decisions of the Cabinet, unless approved by the Secretary to the Cabinet.

Establishments Code of Sri Lanka

The Establishments Code, introduced in 1971, governs the conduct of public officials and comprises service conditions, privileges and rights of public officials. It includes provisions related to promotions, discipline and financial disclosure. The Code specifically states:

No information even when confined to statement of fact should be given where its publication may embarrass the government, as a whole or any government department, or officer. In cases of doubt the Minister concerned should be consulted.

(See Section 3 of Chapter XXX1 of Volume 1 and Section 6 of Chapter XLVII of Volume 2)

These provisions promote reluctance on the part of public officials to release information if there is any potential for embarrassment. Public officials therefore become overly cautious and insensitive to their public duties towards citizens. By its very nature, information requested from public officials may be embarrassing to the government. The information requested by the media for instance is likely to relate to a 'story' in which government malpractices would be exposed. Hence the Establishment Code places a barrier to accessing information relevant to good governance and transparency.

Other laws and regulations

Advocates should be mindful of others laws that place certain restrictions on the freedom of expression and have indirect implications on RTI. These include:

1. Profane Publication Act, No.41 of 1958
2. Public Performance Ordinance, No.7 of 1912
3. Obscene Publications Ordinance, No.4 of 1927
4. Prevention of Terrorism Act, No.48 of 1979

The Emergency Regulations periodically issued under the Public Security Ordinance, No. 25 of 1947 also placed serious restrictions on RTI. These regulations often provided for censorship on the grounds of national security. E.g. The Regulation 15(1) of the 2005 Emergency Regulations authorised the prevention or restriction of the publication of matters which ‘should or might be prejudicial to the interests of national security...’ Despite the fact that these regulations were withdrawn in 2011, they entrenched a culture of secrecy on the grounds of national security. This culture continues to prevail and forms one of the critical barriers to RTI in Sri Lanka.

Judicial Interpretation

The Supreme Court of Sri Lanka has interpreted the Constitution in order to implicitly recognise RTI.

Visuvalingam v. Liyanage (1984)

In this case, certain readers of a newspaper called The Saturday Review challenged the action of the Competent Authority appointed under Emergency Regulations to ban the newspaper and seize its printing press. They argued that Article 14(1)(a) implied their right to receive information and that the arbitrary sealing of the press violated their rights. The majority of the court held that the readers of the newspapers had legal standing to challenge the state's decision. The court held:

Public discussion is not a one-sided affair. Public discussion needs for its full realisation the recognition, respect and advancement, by all organs of government, of the right of the person who is the recipient of information as well. Otherwise, the freedom of speech and expression will lose much of its value.

Page 131 of judgment, [1984] 2 Sri.L.R. 123

Fernando v. the Sri Lanka Broadcasting Corporation
(1996)

In this case, the Court held that Article 14(1)(a) includes every form of expression and its protection may be invoked in combination with other constitutional guarantees, such as the right to equality. The Court also held that express guarantees extends to and includes implied guarantees necessary to make the express guarantees meaningful. Hence it was held that RTI was an implied guarantee which made the express guarantee of freedom of expression meaningful.

The Court also referred to the freedom of conscience, guaranteed by Article 10 of the Constitution. The following portion in Justice Mark Fernando's judgment is extremely important to RTI in Sri Lanka:

Information is the staple food of thought, and that the right to information...is a corollary of the freedom of thought guaranteed by Article 10

Page 179 of judgment, [1996] 1 Sri. L.R. 157

Environmental Foundation Limited v. Urban Development Authority (2005)

In this case, the 'Galle Face Green', a state owned property that was a place of recreation for the public, was given to a private company without the knowledge

Public Trust Doctrine: is the principle that certain resources are preserved for public use, and that the government is required to maintain them for the public's reasonable use

of the public. Environmental Foundation Limited, a civil society organisation, challenged the decision of the government based on the doctrine of Public Trust.

The Court held that, though there is no explicit right to information in the Constitution, the right to freedom of speech and expression and publication guaranteed by the Constitution under Article 14(1)(a) includes the right of the person to receive information on matters of public interest.

Chapter 4

International Standards

International Standards

International Recognition of RTI

In 1946, at the inaugural sessions of the United Nations, the General Assembly adopted Resolution 59, which recognised the freedom of information as a fundamental human right and as ‘the touchstone of all the freedoms to which the United Nations is consecrated’.

Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights recognise the right to seek, impart and receive information as a part of the fundamental right to freedom of speech and expression.

International Principles on RTI

There are nine key principles relating to RTI that are recognised internationally. Each of these principles should be incorporated into an RTI law.

1. Maximum disclosure
2. Obligation to publish
3. Promotion of open government
4. Limited scope of exceptions
5. Processes to facilitate access
6. Costs
7. Open meetings
8. Disclosure takes precedence
9. Protection for whistleblowers

Principle 1: Maximum Disclosure

Principle 1:

Freedom of information legislation should be guided by the principle of maximum disclosure

This principle requires the government to make public as much information as possible. As a general practice, all official information should be available to the people. The burden should therefore be on the government to justify the denial of information, and not on the requester to justify why the information is needed.

Principle 2: Obligation to Publish

Principle 2:

Public bodies should be under an obligation to publish key information

According to this principle, public bodies should not only have to respond to requests made by the public, but should also disseminate, of its own accord, information that is important to the public. The type of information to be published depends on the institution and the resources available. Such information may include operational information about how the public body works, including its functions, budget and accounts.

Principle 3: Promotion of Open Government

Principle 3:

Public bodies must actively promote open government.

If RTI legislation is to have any effect, it is essential that the public be made aware of the scope of their right, as well as how to exercise it.

Hence this principle requires the government to ensure public education on the law, employing a medium suitable to levels of literacy and comprehension amongst the population.

The government should also take steps to tackle the culture of secrecy, which typically characterises countries that have previously not implemented such legislation. In this regard, the government should provide training to public officials on how to handle requests that come in through the RTI law, and should explain the scope of ‘whistle blower’ protection. Moreover, public bodies should adopt codes of openness within their internal structures.

Principle 4: Limited Scope of Exceptions

Principle 4:

Exceptions to the right to access information should be clearly and narrowly drawn and subject to strict ‘harm’ and ‘public interest’ tests

According to this principle, all requests made to public institutions should be met, unless they fall under a specific and narrow set of exceptions. These exceptions should be listed in the law guaranteeing RTI. A decision on whether or

not to disclose information should pass a three-part test:

1. Legitimate aims justifying exceptions: A list of legitimate aims that justify the exception should be provided in the law. These categories may relate to national security and defence, individual privacy and safety, and commercial and other types of confidentiality. Exceptions should be specified based on 'content' as opposed to 'type', and should apply with a time limit. For example, information protected due to a national security threat should be accessible once that threat has passed. Restrictions that are designed to protect governments from embarrassment cannot be justified.
2. Refusals must meet a 'substantial harm' test: It is not sufficient for the public body to simply assert that a piece of information falls under one of the exempt categories. The public body must demonstrate that making the information public would cause a substantial harm to a legitimate aim.
3. Overriding public interest: Even if there is evidence that revealing this information would cause harm to a legitimate aim, there should be provision to disclose the information anyway if the public stands to benefit more from disclosure. Thus the net effect of the good or harm of revealing a given piece of information should be evaluated.

Principle 5: Processes to Facilitate Access

Principle 5:

Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available

According to this principle, the government should ensure access to information to those with disabilities or those who do not speak the language of record. Public bodies should appoint officers dedicated to dealing with requests and complying with the requirements of the law. For example, in India, Public Information Officers have been appointed to carry out this task. These officers assist people in drafting their requests if necessary. They are also trained to identify and deny frivolous requests, and to direct people toward sources that already contain the information requested.

Under this principle, the law should provide a strict time frame within which public bodies must respond to requests.

Moreover, a competent and independent body should be set up to review complaints by both public bodies and individual requesters. This body should have the power to dismiss the appeal, to direct public bodies to disclose information once an investigation is concluded, and to advise parties to go to court if a dispute cannot be resolved.

Principle 6: Costs

Principle 6:

Individuals should not be deterred from making requests for information by excessive costs

In keeping with the broad aims of an RTI law, the cost of making an information request should be minimal, so people are not discouraged from making requests. Hence a sound pricing structure should be adopted

to make the RTI system feasible. The system should be based on the belief that the benefits of an RTI system far outweigh the costs of administering it.

Principle 7: Open Meetings

Principle 7:

Meetings of public bodies should be open to the public

According to this principle, all meetings of government bodies should be made open to the public, as the people have the right to know what their representatives are deciding on their behalf. Notice about such meetings should also be given in

order to give meaning to the people's ability to participate in them. These meetings may be 'closed' to the public, but the public should know that such closed meetings were held. While the grounds for closing a meeting may be broader than those justifying the refusal of information, they cannot be unlimited.

Principle 8: Disclosure takes Precedence

Principle 8:

Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed

Following the enactment of RTI legislation, all existing laws should be interpreted in line with its provisions, and future laws should not make information exempt from disclosure. Laws should also not punish public officials for revealing information in good faith, even when the information is subsequently found to be exempt from disclosure. This guarantee will ensure that the culture of secrecy will not be promoted, since otherwise, officials may be overly cautious about the information they reveal.

Principle 9: Protection for Whistleblowers

Principle 9:

Individuals who release information on wrongdoing - whistleblowers - must be protected

Whistleblowers are individuals who reveal information about government malpractices to the public. These individuals are usually those who work within government and gain access to information due to their occupation. Whistleblowers should be protected from legal, administrative or employment related reprisals for revealing information that exposes wrongdoing. 'Wrongdoing' in this context will include the commission of a criminal offense, failure to comply with a legal requirement, a miscarriage of justice,

corruption or dishonesty, or serious maladministration concerning a public body. Whistleblowers should benefit from protection as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing. Such protection should apply even where disclosure would otherwise be in breach of a legal or employment-related requirement. Thus, for example, a public official in Sri Lanka who reveals government malpractices should be protected from reprisals despite the duty imposed by the Establishment Code not to reveal information that could embarrass the government.

Chapter 5
Value of RTI to the General Public:
Q&A

Value of RTI to the General Public: Q&A

The public stands to benefit greatly through RTI. As discussed later in this Guide, a successful campaign on RTI often hinges on public awareness of the practical value of RTI. Civil society organisations and journalists must relate RTI to the ground realities and the day-to-day lives and experiences of communities in order to generate such public awareness. This section of the Guide offers illustrations of the practical value of RTI from the perspective of the general public.

Illustration 1: Poor quality roads



Q: Does a person have a right to question what happened to the money allocated to repair the road in his or her town?

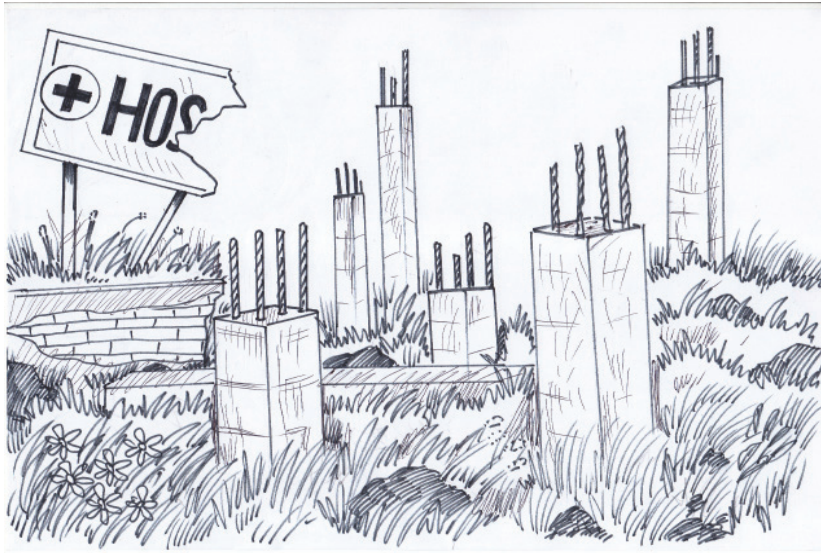
A: Through RTI, a person will have the right to question how much money was allocated and spent to repair the road. He or she will have the right to question how many people were paid wages to repair the road and how much the materials cost. He or she will then know if the money allocated for the road went to its repair or was siphoned off.

Illustration 2: School admission



- Q: Does a person have the right to question why his or her child was not accepted into a particular government school?
- A: Through RTI, a person will have the right to ask for details on the admission policy of a particular government school and for the criteria on which an application was rejected.

Illustration 3: Medical facilities



- Q: If the construction of a medical facility in a village was abruptly suspended, does a person have a right to question how much money was allocated by the Ministry of Health, who the contractor was, and why the construction was suspended?
- A: Through RTI, a person can submit a request for information on this project from the Ministry of Health or its Regional Office. The relevant officials will then have to provide all the information requested within a given time frame, or provide legitimate reasons for denying access to such information.

Illustration 4: Support for agriculture



Q: If funds for a new canal system were allocated to divert water to assist farmers in their cultivation, does a person have the right to find out why the canal was not built and what the funds were used for?

A: Through RTI, a person will have the right to question how much money was allocated, how it was ultimately utilised and why the canal was not built.

The illustrations are an adaptation of a document produced by the Sri Lanka Press Institute titled 'What is Right to Information? Frequently Asked Questions'.

Chapter 6

Value of RTI to Journalists

Value of RTI to Journalists

This section of the Guide discusses the value of an RTI law – specifically to journalists. The contents of this section are based on a consultation with a group of investigative journalists organised by the Sri Lanka Press Institute. The objective of the consultation was to capture the operational experience of investigative journalism in Sri Lanka, and to relate RTI to that specific experience.

There are three primary benefits to journalists in pursuing RTI:

1. Reliability and accuracy
2. A ‘good story’
3. Social value

These benefits, however, should be viewed in light of general ethical standards applicable to journalists. These standards are found in the Code of Professional Practice (Code of Ethics) of The Editors Guild of Sri Lanka adopted by the Press Complaints Commission of Sri Lanka (see Annex 1).

Reliability and Accuracy

Network of Information

The connections and networks that journalists make through RTI requests can provide them with reliable and official sources for news and information in the future.

These sources can be of great use to the journalist even in an unofficial capacity. For example, if legislation were to mandate the creation of Public Information Officers, these officials may be of great use to a journalist if a good rapport is built through information requests over a period of time. Legislative protection under RTI would also embolden public officials to release information to the public, as they would have an obligation to disclose information that is in the public interest.

Credibility

Information gathered through RTI requests could strengthen existing information with further facts, statistics and details. RTI legislation will therefore make it far easier for journalists to secure the documentary proof they need to add credibility to their stories. Moreover, greater insight into the issues through information obtained from RTI requests will enable journalists to produce more balanced and responsible reporting.

Language Barrier

RTI will help break barriers of language, particularly with regards to documents not available in all languages. Typical RTI legislation mandates the translation of documents into the language that the requester wants to receive it.

Efficiency and Currency

The short time frame within which authorities are expected to respond to information requests under RTI would save the time of journalists, therefore ensuring greater efficiency. Moreover, timely information would also ensure that high quality and comprehensive reporting occurs in or around the time that a given issue is current in the media.

A 'Good Story'

Information released under a broad RTI request can hold the potential to lead to compelling stories. The mere submission of a request can become a 'story' if the attitude adopted towards it signals something significant. For example, a story about a request that is rejected can be as powerful as the information that may have been obtained if the request were granted.

According to some members of the journalist community, the scope for investigative journalism has not been developed in Sri Lanka. This scope is likely to increase with the introduction of an RTI law, as it would be easier to access the information that would be needed for an investigative piece.

Moreover, journalists in rural areas will be able to take full responsibility for issues originating in the places in which they are based. Currently, the increasing trend of centralising the release of information means that journalists in cities get the 'scoops' even on rural issues. For instance,

the centralising of police information via the Police Media Spokesman results in the marginalisation of rural journalists. These journalists are unable to cite police sources from the region and must rely on their central counterparts to obtain information from the Spokesman.

Social Value

Information requests employed cleverly can help expose corruption, mismanagement and wastage of public funds. Such information fundamentally serves the public interest.

The more information that society is given access to, the more space is created for the People's wishes to be reflected in public policy. More thorough and in-depth coverage of various issues will attract a more discerning and intellectual readership, the likes of whom may not be satisfied by mere reportage of events. These trends will strengthen the media's reputation as an entity that is a credible democratic 'watchdog' that acts as a check on government.

Chapter 7

Campaigning for RTI

Campaigning for RTI

Success Stories

In this section, the Guide seeks to provide advocates with information on RTI success-stories both from the region and elsewhere. It is important to note that Sri Lanka is one of the only countries in the South Asian region that lacks a specific law on RTI. Bangladesh, Nepal and Pakistan (along with India) have laws that guarantee RTI. In this context, success-stories from the region and elsewhere are useful to understand the complexities inherent in campaigning for an RTI law and provide a strategic framework for such a law in Sri Lanka.

India

The struggle for RTI in India originated in the state of Rajasthan, and was spearheaded by the *Mazdoor Kisan Shakti Sangathan* (MKSS), as part of a people's movement for justice in wages, livelihoods and land.

The fight against corruption began with the simple process of a series of public hearings, in which important documents pertaining to the development projects mandated by the government in those areas (projects which the MKSS would inevitably take an interest in) were secured and read out for all to understand. These documents were the muster roll, which was a list of all the workers who were enrolled in the project, and bills and vouchers of the purchases of the materials that were used in the project. Equipped with

It is not as if they were unaware in the past that muster rolls are forged, that records are fudged, that materials are misappropriated, and so on. But these were general fears and doubts, and in the absence of access to hard facts and evidence, they were unable to take any preventive or remedial action. The public hearings dramatically changed this, and ordinary people spoke out fearlessly and gave convincing evidence against corruption.

Harsh Mander and Abha Joshi

(The Movement for Right to Information in India People's Power for the Control of Corruption)

this information, the people were able to unearth proof of corruption. For example, the muster rolls contained the names of people who were deceased, with reports that they had been paid wages for work done. The monies had in fact been siphoned off. Furthermore, the public discovered that a quantity of bags of cement, which would have been sufficient to build an entire new building, had been purchased merely for the repairing of a school. The entire process revolutionised the manner in which the public engaged government in that locality.

It was from these simple grass roots origins that the greater campaign for RTI began in India. After many years of frustration and non-violent action, the RTI Bill of 2005 was made into law.

Bulgaria

The RTI movement in Bulgaria began following the Chernobyl environmental disaster, when the government was seen to be withholding information about the scale and consequences of the catastrophe. It was also built on a post-communist desire for access to information and greater transparency, which was typical throughout the region at the time. A movement called *Ecoglasnost* (*glasnost* meaning ‘transparency’) was formed, which worked with international and regional organisations. Through its advocacy, the movement was able to get the Environmental Protection Act passed. The Act introduced for the first time, the principle of access to information in a legislative instrument, although it was restricted to environmental matters.

Subsequently, there was a second wave of demands for greater access to information and general transparency in Bulgaria. This movement was boosted by the formation of the Access to Information Programme (AIP), a non-profit organisation that comprised a wide cross-section of professionals, including lawyers, journalists, sociologists and economists. AIP worked towards promoting awareness about access to information, and began compiling a digital database of all the access to information requests that had been made and turned down. The persistent efforts of the AIP eventually led to the adoption of the Access to Public Information Act (APIA). Although the Act was watered down at first, it eventually became a strong legislative tool that enabled people to hold their government to account.

The success of the AIP campaign may be attributed to its connection to the issues that were deeply important to the general public at the time.

Mexico

The debate about access to information in Mexico began in 1977 when the new Constitution guaranteed the right to information. For 25 years, the question of how to give effect to that provision was debated by the government, academics, civil society groups and media practitioners. In 2000, when the Institutional Revolutionary Party was removed from power after 70 years, the newly elected president Vicente Fox declared access to information legislation as one of the priorities on his agenda. At the same time, Mexico became a part of the Organisation for Economic Co-operation and Development (OECD), the World Trade Organisation and the North American Free Trade Agreement (NAFTA).

The opportunity to discuss the contents of the legislation came when a draft bill was leaked to the public. While the bill was primarily designed as a method of combating corruption, because it was leaked to the public, it sparked a discussion about the law, and what changes ought to be made. Various local and regional groups joined in the debate.

A coalition of social activists, academics, mass media owners and journalists was formed, whose purpose was to bring about an RTI law. This group later called itself

the Grupo Oaxaca. The group set itself the short-term goal of creating an intense mass media campaign promoting the need for such legislation, and creating a model piece of legislation that would be used in forming the draft bill, which would be passed by Congress. Once these objectives were eventually achieved with the enactment of the Access to Information Law in 2002, the group ceased to exist. Other groups took its place afterward to ensure that the access to information regime in Mexico continued to function effectively.

The Sri Lankan Campaign

Several unsuccessful campaigns to introduce an RTI law have been launched in Sri Lanka. Advocates interested in supporting a new campaign may need to learn more about these past campaigns and what led to their failure.

In May 1995, a Committee to Advise on the Reform of Laws affecting Media Freedom and Freedom of Expression was appointed by the government and was headed by R.K.W. Goonesekera. The Committee recommended that there should be a Freedom of Information Act. Following the Committee's report published in 1996, there were three major attempts to introduce RTI legislation in Sri Lanka.

²See Kishali Pinto-Jayawardena and Gehan Gunatilleke, *Legal, Industry and Educational Reforms Pertaining to the Print Media*, Institute of Commonwealth Studies: August 2012.

The Law Commission Draft

In 1996, the Sri Lanka Law Commission, headed by Justice A.R.B. Amarasinghe prepared a draft Freedom of Information Bill. According to some commentators, the draft was conservative and fell short of international best practices enumerated above. The draft² continues to be in circulation, but was never presented in Parliament.

Constitutional Reform

From 1995 to 2000, there were several attempts to introduce constitutional reform, with draft constitutions presented in 1995, 1997 and finally in 2000. In 2000, a Draft Constitutional Bill was prepared with the intention of being presented in Parliament. The Bill made significant improvements to the existing framework, and included a 'right to information'. However, the Draft Constitutional Bill was never introduced in Parliament.

2002-04 Campaign

During the cohabitation government with Chandrika Bandaranaike Kumaratunga as the President and Ranil Wickremesinghe as the Prime Minister, civil society groups, including media organisations such as the Editors' Guild, spoke to the Prime Minister in an attempt to introduce a Freedom of Information law. A committee known as the Prime Minister's Committee on Media Law Reform was thereafter established to produce inter alia, a draft Freedom

of Information law. Representatives from the Editors' Guild and the Free Media Movement served on the Committee alongside representatives of the government, including the Prime Minister and his Secretary. Two representatives from the Centre for Policy Alternatives later joined the Committee. The Committee consulted the Attorney General, Secretary of the Ministry of Justice and the Assistant Legal Draftsman and prepared a draft Bill. This draft was an improvement on the Law Commission draft, though it still fell short of the international best practices. The draft did, however, provide for the establishment of an Information Commission, which would be responsible for receiving complaints.

During the negotiations between the government and media groups within the Prime Minister's Committee, the government raised certain practical concerns that needed to be constructively engaged. For example, the Prime Minister stated that he did not want all documents, papers and Cabinet memoranda to come under the purview of RTI, as some ministers may be deterred from presenting contentious ideas once they were aware that copies of their statements could be obtained by the public. Moreover, the Attorney-General wanted his legal opinions (communicated to the state) included in the exemptions list.

Meanwhile, media organisations emphasised on the practical problems of getting information, the right to

appeal, the Information Commission's powers of penalty, its independence and the ability to raise its own funds. The government conceded to these concerns. It was with much difficulty, and after much negotiation, that provisions to protect whistleblowers were also included in this draft. A final draft was prepared by the Legal Draftsman in January 2004 and eventually approved by Cabinet that year.

However, with the collapse of the United National Party (UNP) government soon after the early dissolution of Parliament, the Bill was never presented in Parliament and the campaign came to an abrupt end. The Bill, nevertheless, remains the only piece of draft legislation on RTI to receive Cabinet approval.

Other Campaigns

There were two other attempts to introduce an RTI law. In early 2010, the Ministry of Justice and Law Reform circulated a draft Freedom of Information Bill, which was a slightly improved version of the previous Law Commission draft. The Sri Lanka Press Institute was invited to make representations at this juncture. The organisation made its representations based on an updated version of the 2004 Bill, which was prepared by the Ministry of Justice. However, general elections were held later that year, and the Bill was never presented in Parliament. In 2011, opposition MP, Karu Jayasuriya introduced a draft Freedom of Information Bill in Parliament as a Private Member's Bill. This Bill was in fact the 2004 draft

that the UNP Government had approved. Although the government had made promises to introduce legislation to promote RTI, the Bill was defeated in Parliament.

Enact legislation to ensure the right to information

(LLRC Report, para.9.115)

In late 2011, the Lessons Learnt and Reconciliation Commission (LLRC) recommended that the government legislatively guarantee RTI. Hence RTI has re-entered public debate as part of the discussion on implementing the LLRC's recommendations. The National Action Plan (on implementing the recommendations of the LLRC) released in July 2013 includes this recommendation and mentions that the Cabinet is to decide the suitable time frame for drafting legislation. However, no progress whatsoever has been reported since the release of the Plan.

Chapter 8

Future Startegy

Future Strategy

Before delving into the possible strategies for reform, it is important to consider the perspectives of those who constantly make information requests under the current system.

Investigative journalists are amongst those who frequently require information in the possession of the government. In this context, the journalists consulted during the preparation of this Guide have the following insights to offer:

- Official channels are often a 'dead-end' in terms of seeking verification of stories, particularly when it comes to securing documentary evidence. A number of journalists confessed that they almost exclusively use informal channels to make inquiries and even to secure certain documents. Others approach helpful civil society organisations or individuals in relevant fields who have access useful information. It was also revealed that some officials with whom journalists have a good relationship might release information and documents on condition of anonymity.
- The culture of secrecy is so entrenched in Sri Lanka that even public documents are often difficult to obtain. The main tactic employed by government offices is to delay the process, as they know the journalists with impending deadlines will give up

eventually. Other offices feign ignorance or claim they do not have the information requested.

- There may be a bias in government offices toward journalists depending on what newspaper they are attached to. This bias emerges when officials, particularly in law-enforcement, usually requests the name of newspaper the journalist works for before entertaining an inquiry.
- Some journalists encounter difficulties in discovering which official in a given establishment should be contacted regarding an inquiry (whereas under an RTI regime, each office would have a Public Information Officer who is responsible for dealing with the public's requests for information on behalf of that institution).
- Interestingly, some journalists observed that regional departments were more forthcoming with information and official documents than their central counterparts. This observation raises the question of whether RTI is more likely to be accommodated by officials at the local or provincial level. If so, an RTI campaign must necessarily include a regional dimension, where officials in the regions are empowered to cooperate with public requests for information.

These observations give rise to three ideas relevant to a future reform strategy.

1. Re-envisioning the campaign as a social movement

Unlike in India, RTI is currently not an issue that appears to be important to the majority of people in Sri Lanka. Instead, past campaigns on RTI have been run by specific political parties or actors, with the support of mainly Colombo-based civil society and sections of the media. For RTI to gain traction, the new campaign has to be more rooted in the public demand for information, and strongly connected with the life and livelihood of the People. The illustrations in this Guide offer a brief glimpse into the practical value of RTI. Accordingly, an RTI campaign must relate to the real-life needs of ordinary people, so as to re-envision the campaign as a social movement to secure meaningful rights.

2. Regional campaigns

Similar to the incremental regional support gained in India, the new campaign in Sri Lanka ought to approach provincial administrations. Given the fact that opposition parties control some provincial administrations, a regional campaign may gain valuable impetus even in the absence of cooperation and support by the central government. It is noted that in India, state governments had enacted their own RTI legislation well before a nation-wide campaign for RTI began.

3. Engaging all stakeholders

A multi-pronged approach is needed to promote RTI in Sri Lanka. A grass roots social movement is necessary to generate interest and to capture the government's attention. Yet a simultaneous campaign targeting the business community is equally important, given the fact that the private sector has much to gain from transparency in governance and access to official documentation. 'Information' must also be framed as a 'prerequisite' for development and progress. In this context, substantial support from the business community must be secured.

Civil society organisations and the media have a critical role to play in giving effect to all three ideas presented above. They need to play a role in promoting grass roots-level awareness on RTI and campaigning for public support. Moreover, regional RTI advocates including journalists need to play a role in engaging provincial administrations and exploring practical ways in which RTI could be promoted in the provinces. Finally, civil society organisations and journalists need to play a role in engaging the business community – particularly in explaining how RTI promotes greater openness in decision-making, which encourages enterprise and entrepreneurship.

In this context, it is clear that advocates from both civil society organisations and the media remain indispensable to any successful campaign on RTI in the future.

Annexure 1
Code of Professional Practice

Code of Professional Practice of The Editors Guild of Sri Lanka adopted by the Press Complaints Commission of Sri Lanka

01. PREAMBLE

This code of practice, which is binding on newspaper publishing companies, Editors and their journalists and contributors both in print format and online, aims to ensure that the Sri Lankan press is free and responsible and sensitive to the needs and expectations of its readers, while maintaining the highest standards of journalism.

Those standards require newspapers to strive for accuracy and professional integrity, and to uphold the best traditions of investigative journalism in the public interest, unfettered by distorting commercialism or by improper pressure or by narrow self-interest, which conspires against press freedom. Newspapers and journalists, while free to hold and express their own strong opinions, should give due consideration to the views of others and endeavour to reflect social responsibility.

This code both protects the rights of the individual and upholds the public's right to know. It should be honoured not only to the letter but in the spirit – neither interpreted so narrowly as to compromise its commitment to respect the rights of the individual nor so broadly as to prevent publication in the public interest.

Editors should co-operate swiftly with the Press Complaints Commission of Sri Lanka (PCCSL) in the resolution of complaints. Any publication judged to have breached the Code must print the adjudication in full and with due prominence, including a headline reference to the PCCSL.

02. ACCURATE REPORTING

2.1: The media must take all reasonable care not to publish inaccurate, misleading or distorting news, photographs and other images. Any significant digital manipulation of images should be labelled.

2.2: Every reasonable attempt should be made by editors and individual journalists to verify the accuracy of reports prior to publication. Where such verification is not practicable, that fact shall be stated in the report.

2.3: Editors and their staff, including external contributors, shall not publish material in such a way as to endorse any matter which they know or have reason to believe to be false or inaccurate.

2.4: Plagiarism must be avoided. Legitimate use of other people's work should be duly attributed.

2.5: The press must distinguish clearly between comment, conjecture and fact.

03. CORRECTIONS and APOLOGIES

3.1: Where it is recognized by the editor that a report was incorrect in a material respect, it should be corrected promptly and with due prominence and with an apology where appropriate, except where the correction or apology is against the wishes of the aggrieved party.

04. OPPORTUNITY TO REPLY

4.1: A fair and reasonable opportunity to reply should be given to individuals or organizations in respect of factually incorrect statements endangering their reputation, dignity, honour, feelings, privacy and office. The reply should be confined to the complainant's version of the facts and no longer than necessary to correct the alleged inaccuracy.

4.2: Newspapers or journalists who respond to a complainant's reply other than to apologize or regret the error, must then be prepared to offer the aggrieved party a fresh opportunity to reply.

05. CONFIDENTIAL SOURCES

5.1: Every journalist has a moral obligation to protect confidential sources of information, until that source authorizes otherwise.

06. GENERAL REPORTING and WRITING

6.1: In dealing with social issues of a particularly shocking or emotionally painful nature – such as atrocity, violence, drug abuse, brutality, sadism, sexual salacity and obscenity – the press should take special care to present facts, opinions, photographs and graphics with due sensitivity and discretion, subject to its duty to publish in the public interest.

6.2: In reporting accounts of crime or criminal case, publications shall not, unless it is both legally permitted and in the public interest –

i. Name victims of sex crimes

ii. Knowingly name any young person accused of a criminal offence who is below the age of 16 and who has no previous convictions

iii. Identify without consent relatives of a person accused or convicted of a crime

6.3: A journalist shall not knowingly or willfully promote communal or religious discord or violence.

6.4: i. The press must avoid prejudicial or pejorative reference to a person's race, colour, religion, sex or to any physical or mental illness or disability.

ii. It must avoid publishing details of a person's race, caste, religion, sexual orientation, physical or mental illness or disability unless these are directly relevant to the story.

6.5: When reporting suicide, care should be taken not to give excessive detail of the method used.

07. PRIVACY

7.1: The press shall exercise particular care to respect the private and family lives of individuals, their home, health and correspondence, including digital communications. Intrusions on this right to privacy without consent could be justified only by some over-riding public interest.

7.2: The use of long-lens or other cameras to photograph people without consent on private or public property where there is a reasonable expectation or privacy is unacceptable, unless in the public interest.

7.3: Particular care should be taken to ensure that in cases involving grief or shock, inquiries and approaches are handled with sensitivity and discretion.

7.4: Young people should be free to complete their school years without unnecessary intrusion.

Publication of material concerning a child's private life would be acceptable only if there was some exceptional public interest other than the fame, notoriety or position of his or her family or guardian.

7.5: The restrictions on intruding into privacy are particularly relevant to inquiries about individuals in hospitals or similar institutions, unless it serves the public interest.

08. HARASSMENT and SUBTERFUGE

8.1: Journalists, including photo-journalists, must not seek to obtain information or pictures through intimidation or harassment or by misrepresentation or subterfuge. The use of long-lens cameras or listening devices, or interception of private or mobile telephone calls, e-mails or messages must also not be used unless this can be justified in the public interest and the material could not have been obtained by other means.

09. INTEGRITY

9.1: All journalists should act with integrity and honour in the performance of their work.

9.2: Conflicts of interest should be avoided. Journalists should inform their editor or responsible superior of any possible conflict, such as close personal connection with any story in which they are significantly engaged; or acceptance or offers of gifts that might compromise their integrity. If such conflict is unavoidable, it should normally be disclosed to the reader.

9.3: i. Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information for the profit of others.

ii. They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest, without disclosing the interest to the publisher, editor or financial editor.

9.4: Articles written for payment or other benefit from a commercial or other non-editorial source, such as in advertorials or promotions, should be clearly labelled as such. Payment should not be sought or accepted as a reward for including favourable – or excluding hostile – editorial material.

INTERPRETATION

1: Public Interest' means:

i. Protecting democracy, good governance, freedom of expression, human rights and keeping the people informed of the actions of their elected representatives and government.

ii. This also includes, but is not confined to:

- Detecting or exposing crime or the threat of crime.
- Disclosing a person or organisation's failure or likely failure to comply with any legal obligation to which they are subject.
- Disclosing a miscarriage of justice.
- Raising or contributing to an important matter of public debate, including serious cases of impropriety, unethical conduct or incompetence concerning the public.
- Disclosing concealment, or likely concealment, of any of the above.
- Protecting public health and security and social, cultural and educational standards;
- Protecting the public from being misled by some statement or action of an individual or organisation.

2: In any case where the public interest is involved, the Press Complaints Commission will be entitled to require a full explanation by the Editor and/or journalist demonstrating how the public interest was served.

ONLINE PUBLICATIONS

The provisions of this Code will also apply to the Online publications of the print media, where:

- The editor of the newspaper, magazine, or freestanding web publication is ultimately responsible for it and could reasonably have been expected both

to exercise editorial control over it and apply the terms of the Code before publication.

- The material used has not been pre-edited to conform to the on-line or off-line standards of another media regulatory body.

REVIEW

The Editor's Guild of Sri Lanka shall review the provisions of this Code from time to time, in consultation with a Code Committee comprising of members, and non-members appointed by the Guild.

The Code is supported by the following organizations:

- The Newspaper Society of Sri Lanka
- Free Media Movement
- Sri Lanka Working Journalists Association
- Sri Lanka Press Institute
- Sri Lanka College of Journalism
- Sri Lanka Tamil Media Alliance
- Sri Lanka Muslim Media Forum
- Federation of Media Employees Trade Union
- South Asian Free Media Association (SAFMA) – Sri Lanka Chapter

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The Right to Information (RTI) is a central component of any modern democracy founded on people's sovereignty. The People can effectively exercise power through their representatives only if the system of governance is accountable and transparent. In this context, an important public debate on RTI has emerged in Sri Lanka.

This Guide aims to raise awareness on RTI and to equip and motivate advocates within the media community and within civil society organisations to campaign for RTI in Sri Lanka. The Guide is intended to serve as a resource for future conversations and as a tool for advocacy.

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