

Operationalizing the Right to Information Act

in Sri Lanka: Comparative Experience and Good Practice



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ABBREVIATIONS

CIC	Central Information Commission
CHRI	Commonwealth Human Rights Initiative
DO	Designated Officer
IO	Information Officer
PIO	Public Information Officer
RTI	Right to Information
UN	United Nations
UNDP	United Nations Development Programme

FOREWORD

The recently introduced Right to Information (RTI) is a vibrant part of the Fundamental Rights chapter of the Constitution of Sri Lanka. The Universal Declaration of Human Rights recognizes that the freedom of expression includes the right 'to seek, receive and impart information'.¹ RTI is also key to ensuring equal access to education, healthcare, clean water and housing, among other basic necessities.

Sri Lanka's RTI Act was approved by Parliament in June 2016, and came into full effect in February 2017. The legal framework is ranked 3rd in the Global Right to Information Rating by the Centre for Law and Democracy in Canada. The law serves as a key entry point to strengthen transparency and accountability in government, address corruption – and ultimately increase trust between people and the state.

Laws are only as good as their implementation and enforcement. UNDP, as part of the UN system, has provided preliminary support for implementation of the RTI law, in collaboration with the Ministry of Mass Media. UNDP has also engaged the Commonwealth Human Rights Institute (CHRI), the Sri Lanka Press Institute (SLPI), and the Centre for Policy Alternatives (CPA), to assist in this preliminary phase of support.

Each of these partnerships has resulted in a better understanding of the Act, and how it may best be implemented and utilized by the people.

For instance, UNDP supported the Ministry of Mass Media to conduct trainings for a pool of master trainers consisting of Public Information Officers from each province and district. This was done with a view to ensuring that training filters down to the furthest level in an effective, systematic and sustainable manner. CPA has assisted in an analysis of existing legislation that conflicts with the recently introduced RTI Act. The Sri Lanka Press Institute is working on a training module for journalists. UNDP's collaboration with CHRI has culminated in the preparation of this Guidance Note, which consolidates some of the good practices adopted the world over in relation to the effective use and implementation of RTI.

Successful implementation of RTI depends on how people choose to use it. There is evidence to show that the proactive exercise of RTI can contribute to improving equality of access to basic services, transparency in governance institutions and processes, and ultimately to building a just society. We hope that this commentary on comparative experience and good practice serves as a quick reference guide to the RTI Act, and the ways in which it may be used and implemented by state and non-state actors.



Una McCauley
UN Resident Coordinator and UNDP Resident Representative

INTRODUCTION

Sri Lanka's Right to Information Act was unanimously approved by Parliament on 24 June 2016, following over 20 years of advocacy by civil society organizations and media groups. Its provisions came into full force on 3rd February 2017.

This note aims to provide technical guidance for the establishment of a practical regime of transparency as envisaged by the RTI Act. The Guidance Note puts together a repertoire of possible solutions to various challenges Sri Lanka is likely to face, based on comparative experience in South Asia and other jurisdictions with a long history of implementing similar transparency laws.

The recommendations for effective implementation of the RTI Act based on these good practices are arranged in the following thematic order:

1. Developing an inventory of all entities covered by the RTI Act;
2. Appointing and empowering key duty-holders in public authorities;
3. Implementing key provisions relating to proactive disclosure of information;
4. Creating convenient modes of seeking and providing access to information;
5. Clarifying issues regarding the payment of fees;
6. Applying exceptions to information disclosure and the public interest override;
7. Detailing internal and external appeals procedures;
8. Improving records management to facilitate access to information;
9. Monitoring the implementation efforts of public authorities;
10. Desisting from marketing re-use of information released under RTI;
11. Building the demand for information; and
12. Role of non-state actors for ensuring the effective implementation and use of the RTI Act.

Resources illustrating examples of good practice under each of these 12 areas are referred to in the footnotes, with a summary of good practices provided under each topic.

A preliminary draft of this Guidance Note was provided to the Ministry of Mass Media and the RTI Commission in early 2017.

RTI REQUIRES CHANGE MANAGEMENT IN GOVERNANCE

The right to seek and receive information is guaranteed under Article 14A of Sri Lanka's Constitution. The RTI Act provides the legal framework within which this fundamental right shall be exercised.

Unlike other laws which seek to increase the coercive or regulatory power of the State, RTI laws seek to empower the people. Its primary purpose is to shift the paradigm of governance from secrecy to transparency.

The RTI Act makes every public authority directly accountable to the people. Every public authority is required to be proactively transparent about its functioning and provide access to information to citizens on demand. However, transparency as a matter of routine is not easy to accomplish in the absence of adequate guidance from the highest level.²

The RTI Act of Sri Lanka requires the Government and the RTI Commission to jointly steer this process of transformation. Change management in the routine affairs of government and other public authorities is crucial to the successful implementation of this law.

Some useful guidance for effective change management based on comparative practice from other countries that are implementing RTI laws are given below.

² For a practical guide dealing with macro-level issues of change management, see Implementing Access to Information: A Practical Guide for Operationalising Access to Information Laws, CHRI, New Delhi, 2008, at: http://www.humanrightsinitiative.org/publications/rti/implementing_ati.pdf, accessed on 30 March, 2017.

1. DEVELOPING AN INVENTORY OF PUBLIC AUTHORITIES COVERED BY THE RTI ACT

Section 43 of the RTI Act provides the criteria for determining whether an entity is a duty-holder under the law. This includes all bodies and offices created or established by or under the Constitution or any other written law - ministries, departments (Central and Provincial), public corporations, companies financed (minimum of 25% equity participation) or controlled by the State, local authorities, courts and tribunals - become public authorities under the Act.³

In countries like Canada⁴, New Zealand⁵ and the United Kingdom, a schedule attached to the body of the law lists all entities that will be covered by the obligation of transparency. However, in recent years, it has become common practice to indicate the criteria for entities covered by the RTI law and leave it to the Government or Information Commission to list them out during the implementation process.

However, experience from South Asia shows that the paradigm shift required under the law, coupled with a deep rooted mind-set of secrecy, means that all entities in the State sector will not automatically commence implementation upon publication of the official gazette. Hence, it is essential for the Ministry of Mass Media (nodal Ministry on RTI), to take steps to compile an inventory of all 'public authorities'.

This is helpful for ensuring compliance with the provisions in the RTI Act⁶ on:

- (i) appointment of Information Officers (IOs) and Designated Officers (DOs);
- (ii) disclosing all information required to be voluntarily placed in the public domain; and
- (iii) reporting implementation-related statistics annually to the RTI Commission.

3 See, Schedule I of the Access to Information Act, 1982 for the list of institutions it covers at: <http://laws-lois.justice.gc.ca/eng/acts/a-1/page-12.html#h-31>, accessed on 30 March, 2017.

4 See Schedule I of the Official Information Act, 1982, for the list of institutions it covers at: <http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM65921.html>, accessed on 30 March, 2017

5 See Schedule I of the Freedom of Information Act, 2000 for the list of public authorities covered by it at: <http://www.legislation.gov.uk/ukpga/2000/36/contents>, accessed on 30 March, 2017.

6 See S.8,9,10 and 23 of the Right To Information Act, No. 12 Of 2016, Sri Lanka



Comparative Experience

India

Initially the Second Administrative Reforms Commission recommended that the Central Government require all ministries and departments to prepare an inventory of all public authorities covered by The Right to Information Act, 2005.⁷

When compliance was inadequate, the Central Information Commission (CIC) required all public authorities under its jurisdiction to register themselves for the purpose of reporting in compliance with the provisions of the Act. As a result, a long list of public authorities, with their nodal information officers, is now published on the CIC's website.⁸

Bangladesh

The Information Commission took steps to identify public authorities coming under its jurisdiction at various levels of the administration, for the purpose of ensuring compliance with the provisions of its own RTI Act.⁹

Suggestion

The Ministry of Mass Media can work with the RTI Commission to prepare and display an inventory of all public authorities and their respective IOs and DOs on an official website within the implementation deadline of one year stipulated in the RTI Act.

⁷ See Office Memorandum issued by the Department of Personnel and Training, dated 31 July, 2007 at:

http://document.ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/1_12_2007_IR.pdf, accessed on 30 March, 2017.

⁸ See list of public authorities uploaded at: http://cic.gov.in/sites/default/files/Rtinodalofficer_0.pdf, accessed on 30 March, 2017.

⁹ See list of authorities and their information officers from the national to the district level uploaded at: http://old.infocom.gov.bd/ic/index.php?option=com_officers&task=listOrgs&org_level=1&lang=bn&Itemid=103, accessed on 30 March, 2017.

2. **APPOINTING AND EMPOWERING KEY DUTY- HOLDERS IN PUBLIC AUTHORITIES**

a. **Appointing Information Officers and Designated Officers**

Section 23(1)(a) of the RTI Act provides for the appointment of one or more IOs and DOs in every public authority. The head or chief executive officer of a public authority becomes the IO by default, until such time as a regular IO is appointed. No guidance is available in the Act as to whether the IOs and DOs will be newly recruited, or if existing officers will be designated tasks under the Act. Further, there is no guidance in the Act as to the rank at which officers may be appointed for dealing with information requests and appeals.

Making decisions on information requests and appeals is often a quasi-judicial function, especially when a request is to be rejected by invoking one or more of the exemptions provided in the law. This requires due application of mind in the decision-making process without being subject to any form of influence.

The common practice, across South Asia in particular and elsewhere in general, is to designate existing officials or officers as the point persons to receive and make decisions on information requests. Such officers handle duties under the RTI law in addition to other routine tasks assigned to them by the public authority.

Experience from other developing countries, especially in South Asia where the bureaucracy is strictly guided by hierarchies of power, indicates that appointing IOs and DOs at very junior levels of the bureaucracy is counter-productive. They often do not exercise their statutory powers independently, as they often seek instructions from their seniors. Therefore, it is advisable that officers with sufficient authority and experience in a public authority be appointed as IOs in Sri Lanka.

Appointing Designated Officers:

India

Section 19(1) of India's RTI Act specifies that the appellate authority who shall hear internal appeals against the actions or omissions of a public information officer shall be senior in rank to him or her.

Bangladesh

Section 24 of Bangladesh's RTI Act requires that the first level of appeals be disposed of by an appellate authority senior in rank to the officer-in-charge who handles the information requests.



Comparative Experience

India

Section 5(1) of the Indian RTI Act enables the designation of as many public information officers (PIOs) as may be required in all the offices and administrative units of a public authority.¹⁰

Bangladesh

Section 10 of the RTI Act states that designated officers have been appointed in all units of every authority.¹¹

Pakistan

Section 6 of the RTI Act of Khyber Pakhtunkhwa province in Pakistan requires every public body to designate an official for dealing with people's information requests.¹²

Appointing Sufficient Information Officers and Designated Officers - Seniority:

In appointing IOs it is important to make sure that they are located in the office of the public authority that holds the information that it creates, collects or collates. This will help decentralize the decision-making process.

If an officer receives a request for information that he does not have custody of, he is required to transfer the request to the relevant office without delay. However, given the 14-working day deadline (unless extended in Sri Lanka's RTI Law), it is important to appoint as many IOs as may be necessary to process and address information requests quickly.

Suggestions:

- The criteria for designating IOs and DOs can be circulated in the form of guidance notes by the Ministry of Mass Media so that all public authorities are clear on the manner in and levels at which such officers must be designated.
- Training institutions must be encouraged to develop curricula that clearly explain to trainee IOs and DOs that they are required to exercise their powers and perform their duties under the RTI Act independently, without being influenced by extraneous considerations, opinions or orders, other than those issued by the RTI Commission or Courts.

¹⁰ See the text of India's Right to Information Act, 2005 at: <http://righttoinformation.gov.in/rti-act.pdf>, accessed on 30 March, 2017.

¹¹ See the text of Bangladesh's Right to Information Act, 2009 at: http://infocom.portal.gov.bd/sites/default/files/files/infocom.portal.gov.bd/law/ec81a874_3b89_498c_92b5_be30da12af3c/Right%20to%20Information.pdf, accessed on 30 March, 2017.

¹² See the text of Khyber Pakhtunkhwa's Right to Information Act, 2013 at: <http://www.kprti.gov.pk/documents/1464163228574557c812356.pdf>, accessed on 30 March, 2017.



Comparative Experience

India

In the Indian State of Uttarakhand, the State Government issued the following guidelines to public authorities about the manner in which PIOs must be designated.¹³

- In every public authority, as many PIOs may be designated, as may be required.
- Every Department may appoint as many PIOs as required, keeping in mind its dimensions, activities, the number of offices, nature of work and the information needs of the people. PIOs may be appointed at the level of the government, the Head Office, the Mandal, the district, the sub-division and the Block, as per the requirement.
- PIOs should be officers who are not required to undertake a lot of field visits as part of their main responsibilities. As far as possible, PIOs may be Heads of their offices, so that they are capable of providing information which is under the control of their office to the common people easily.
- The counterparts of Sri Lanka's DOs are called First Appellate Authorities (FAAs) in India. Officers senior in rank to the PIOs¹⁴ are designated as FAAs. Sri Lanka's RTI Act empowers DOs to review actions of IOs at the first appeal stage. Therefore, every DO must be senior in rank to the IO.
- No individual incumbent of an office is designated as a PIO or an FAA. Instead, the Director or Deputy Secretary in a division is designated as the PIO. Similarly, a post that is superior in the bureaucratic hierarchy to the post designated as the PIO is designated the FAA.¹⁵
- This is convenient as requestor or appellant may address their request to the PIO or the FAA, as the case may be, ensuring that the request is processed by whoever is the incumbent of that post.

¹³ See the unofficial English language translation of the guidelines from the Hindi original on CHRI's website at: http://www.humanrightsinitiative.org/old/programs/ai/rti/india/national/uttaranchal_govt_rti_orders_2005_english.pdf, accessed on 30 March, 2017.

¹⁴ See the text of India's RTI Act, 2005 above at f.n. #9.

¹⁵ For a clarification that the office is designated as a PIO and not the incumbent, see circular uploaded on the website of the Department of Commerce at: http://commerce.gov.in/writereaddata/aboutus/right_to_info/rticpiolist.pdf, accessed on 30 March, 2017. Similar principle is clarified in relation to FAAs in the circular of the Department of Commerce uploaded at:

http://commerce.gov.in/writereaddata/UploadedFile/NTESCL_636015019181964123_RTI_AppelateAuthority8thMar2016.pdf, accessed on 30 March, 2017.

b. Empowering the IOs

Section 23(3) of Sri Lanka's RTI Act enables an IO to seek the assistance of any other officer in the public authority to deal with an information request, and it is the duty of such officer to provide such assistance. Such a provision is included in RTI laws for several reasons:

First, the IO may not be the actual custodian of the records. The relevant files or records may be in the custody of a colleague of equal rank, or a senior or junior colleague who may not always be cooperative. This may put the IO in danger by inviting penal action.

Second, providing access to information or rejecting a request involves several contributory tasks, such as typing the response, collecting the fees payable for reproducing the information, depositing it with the exchequer, and sending the information to the requestor by post or email.

Third, an IO may consult a colleague who may be of equal or senior rank, or the legal cell of the public authority, about the sensitivity of the information being sought, having regard to the exemptions provided for in the RTI Act.

However, there could be multiple reasons why Section 23(3) may not work in actual practice:

1. An IO appointed at a junior level in the bureaucracy may hesitate to requisition records held by a senior officer; or
2. In-service rivalry can result in delayed response to a colleague's requests.

The primary responsibility for making information accessible to citizens is with the public authority. It is indeed the collective responsibility of all officers working in that authority. The IO should not be held solely responsible for inefficiency on the part of the public authority. This is the reason why Section 39(2) of the Act provides for a penalty of up to Rs. 10,000/- when another officer refuses to assist an IO without reasonable cause. The public authority is also at liberty to initiate disciplinary action against the errant officer. However, there is no enforcement mechanism prescribed for ensuring that such disciplinary action is initiated by the public authority. Nevertheless, the RTI Commission is empowered to initiate penalty proceedings against such officer in a Magistrate's Court.

India

India's RTI Act states that an officer, whose assistance has been sought by the PIO to deal with a request, is equally liable for penal action for any contravention of the law.¹⁶

The impending threat of sanctions makes other officers more cooperative. Training programmes for PIOs place heavy emphasis on these statutory powers.

Suggestions:

Regulations may be put in place requiring the RTI Commission to make a recommendation to the concerned public authority, to initiate disciplinary proceedings against an errant officer who fails to assist an IO without reasonable cause, under Section 23(3) of the Act. Where the public authority refuses to concur with such recommendation, the Regulations may clarify that such public authority may submit an appeal against such recommendation before the Court of Appeal in accordance with Section 34 of the Act, along with written intimation to the RTI Commission, within a period of one month.

Training curricula should be designed to educate IOs and other officers of every public authority about their statutory powers and duties under the Act, to better enable them to fulfil their obligations.

¹⁶ See India's RTI Act, 2005 above at f.n. #9. Section 5(4) of the Act empowers a PIO to seek the assistance of any other officer for the purpose of dealing with an information request. Section 5(5) of the Act casts a duty on such officers to render all reasonable assistance to the PIOs. Section 20 of the Act contains a penal provision which enables the Information Commissions to impose monetary penalties on IOs and such other officers who unreasonably failed to provide the requested assistance. Under this provision repeated contravention of the law by all such officers can invite a recommendation for initiating disciplinary action under the civil service conduct rules applicable to such officers.

3. **IMPLEMENTING KEY PROVISIONS ON PROACTIVE DISCLOSURE OF INFORMATION**

a. Delegating Responsibility for Implementation¹⁷:

It is obligatory for every Minister to place information about the structure, organisation, workings, budgets and expenditure of one's ministry or department in the public domain. This information is required to be updated twice every year. This obligation applies to Ministers of Provincial Councils as well. Regulation No. 20 under Sri Lanka's RTI law, also indicates categories of information that ought to be proactively disclosed by such bodies.

Further, every Minister whose ministry or department is responsible for implementing development projects, involving the spending of public and foreign funds above the specified thresholds, has a duty to proactively disclose information about those projects.

The RTI Commission is empowered to issue guidelines for this purpose. However, the volume of information that needs to be disclosed, combined with the short time-frame within which it must be shared, makes it a difficult task to complete. Therefore, it is essential that Regulations provide for the delegation of the responsibility for implementing the proactive information disclosure requirements to competent officers within every ministry and department.¹⁸

¹⁷ See S.8(1) and S.9 of Right To Information Act, No. 12 Of 2016, Sri Lanka

¹⁸ It must be clarified that ordinarily, powers vested in a public functionary may be delegated to another person only if the principal Act contains a specific provision for delegation of powers. However there is no illegality committed if responsibilities for the implementation of specific provisions of a law are delegated to other persons even in the absence of a provision for delegation of powers. The principle behind such an arrangement is that power vested in a functionary must be exercised only by him or her with an independent application of mind for the purpose of ensuring accountability. When it is evident that the onerous tasks under Sections 8 and 9 cannot be performed by one individual, there is no harm in delegating such responsibility.

India

India's RTI Act, makes every public authority responsible for placing in the public domain, 16 categories of information, (largely similar to those specified in Section 8 of Sri Lanka's RTI Act), and update them once a year. However, the Indian law does not clarify who in the public authority shall be responsible for ensuring compliance.

As a result, compliance with this provision was very poor. Consequently, the Central Information Commission (CIC) required every public authority to appoint a Transparency Officer, thereby ensuring that the responsibility for non-disclosure rests with a particular officer of a public authority during an appeal or complaint proceedings brought before the CIC.

Suggestions:

The Ministry of Mass Media may include a specific clause in the Regulations that permits every Minister to delegate the responsibility for preparing the information required to be proactively disclosed under Sections 8 and 9 of the Sri Lankan law, to a team of senior and experienced officers in the ministry or department.

b. Developing Guidelines for Proactive Information Disclosure:

At first glance, Section 8 of Sri Lanka's RTI Act appears easy to implement. However, the actual task of placing this information in the public domain is daunting. Most of the information has not been consolidated or is only available in technical language that is difficult for people to understand.

Further, every Ministry has been made directly responsible for proactively disclosing similar categories of information about all public authorities falling under its jurisdiction. Without adequate guidance as to how to flesh out the bare-bone structure of Section 8(2), or decentralize the responsibilities from the Ministries to the public authorities themselves, this provision will face challenges in implementation.

Suggestions:

Every Ministry may be required to develop guidelines for implementing Section 8 of the RTI Act.

This could be done by constituting a consultative committee in each Ministry comprising of senior officers who have deep knowledge of its functions and responsibilities, and representatives of the clientele that the Ministry serves.

Subsequently, all public authorities may constitute committees of their senior and experienced officers, to disclose information proactively about their organisations and work, in accordance with these guidelines.



Comparative Experience

India

India's RTI Act also lists categories of information to be proactively disclosed. However, this is rarely complied with. Surveys conducted by government appointed agencies as well as civil society¹⁹ organisations pointed to the lack of guidance, for example, on the powers, duties and functions of officers, or the norms laid down for the discharge of the functions of a public authority, being a major reason for non-compliance.

In 2011, the Central Government appointed a Task Force to recommend a detailed framework to guide public authorities to fulfill their proactive disclosure obligations. In 2013, the Central Government notified these guidelines for improving proactive disclosure of information in two tranches.²⁰

In 2016, the Task Force decided to further decentralize responsibility. It was recommended that all ministries and departments set up consultative committees, with representation from the bureaucracy and the clientele they serve, to identify the most commonly sought categories of information and make the effort to disclose them proactively.²¹

The first set of guidelines (that correspond to Section 8(2)(b) of Sri Lanka's RTI Act) refers to providing information in simple language about the powers, duties and functions of officers; the procedure for decision making; norms for discharging official functions in a public authority; and the budget allocation and spending functions in public authorities.²²

A second set of guidelines; along with detailed templates for disclosing information by public authorities at their village, sub-district, district and State level offices; was recommended by the Task Force, and approved and circulated by the Central Government a few months later. However, even these guidelines have not been fully complied with by a large number of public authorities.²³

19 See a study conducted by PriceWaterHouse Coopers under a commission from the Central Government in 2009 at: <http://rti.gov.in/rticorner/studybypwc/index-study.htm> and another contemporaneous study conducted by RTI Assessment and Advocacy Group (RAAG) at: <http://www.rti-assessment.com/raag-rti-study-2005-2008.html>, accessed on 30 March, 2017.

20 See the complete text of the guidelines on the website of the Department of Personnel and Training at: http://document.ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/Suo_moto_disclosure-15042013.pdf, accessed on 30 March, 2017.

21 These guidelines were developed in consultation with civil society members working at the grass roots level for the effective implementation of the RTI Act.

22 See the complete text of the guidelines on the website of the Department of Personnel and Training at: http://document.ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/1_6_2011-IR-21112013.pdf, accessed on 30 March, 2017.

23 See the complete text of the latest guidelines on website of the Department of Personnel and Training at: http://document.ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/1_34_2013-IR-16032016A.pdf, accessed on 30 March, 2017

c. Disseminating the Information Required to be Proactively Disclosed:

The Sri Lankan RTI Act stipulates that all information required to be proactively disclosed by each Ministry must be prepared in the official languages (Sinhala and Tamil). It must also be made available in electronic form for people to access through various modes. However, the Act provides no further guidance on how this might be implemented across all institutions.

The RTI Act also recognizes the right of a citizen to seek information about a development project, during the period of its implementation and execution. The duty of disclosure is placed on the Minister-in-charge of the ministry or department that is responsible for executing or implementing the development project.

As the primary means through which the RTI Act requires information to be proactively disclosed under Sections 8 and 9 is electronic, internet websites are likely to be the first choice of all, if not most, ministries.

However, in many developing countries, websites are treated as dumping grounds for information, without proper categorization or simplification of language to enable easy access. This is often likely to occur if uploading of information is not done in keeping with the requirements of the general public.



Comparative Experience

United Kingdom

A good example of well-designed proactive disclosure of information is the Government Information Portal developed in the United Kingdom.²⁴

This web portal is arranged thematically, keeping in mind the need to make information available on a diverse range of services provided by various ministries, departments and public authorities.²⁵

There are similar examples of Government websites providing information in a people- friendly manner in other developed countries, like Canada²⁶ and Australia²⁷, which can serve as good models for Sri Lanka.

While placing information on a website makes it public, it does not necessarily make it accessible to everybody. Internet penetration in Sri Lanka is less than 30%, and initiatives must be taken to enable large segments of the citizenry to access information via convenient access points.

India

India's RTI Act provides for the dissemination of information through a variety of methods, including notice boards in the office of the public authority, newspaper advertisements, radio and TV broadcasts, and even public announcements.²⁸

If resources are limited, all the information to be proactively disclosed may be neatly type-written in simple language, and made accessible in the office of the public authority that can be accessed by any citizen without hindrance. Citizens are allowed to access this information free of charge. If a citizen wants a copy of any of the information, it may be supplied on payment of the reproduction charges.

Suggestions:

- It is recommended that each Ministry establishes a consultative committee comprising of senior officers with an understanding of the Ministry's mandate and responsibilities (see page 17). These consultative committees may assist in identifying information that can be provided on the Ministry website in a user-friendly manner.
- In addition, information units could be created to provide assistance in contacting relevant IOs, and in providing specialized training to IOs on assisting people under Sri Lanka's RTI Act. Information Officers operating at the divisional and district level could also become 'facilitators' of access to information that is required to be proactively disclosed under Sections 8 and 9 of the RTI Act. As part of their duties, they may also supply the forms for access procedures under the RTI Act, regulations and rules. With increased investment of resources to ensure that 100% of such units are computer and internet enabled, these units can become access points for citizens to the information disclosed proactively in accordance with the Regulations notified under the RTI Act. Citizens may be guided to surf the websites for the information they require.
- If people require copies of such information, reasonable assistance may be provided to help them obtain web printouts on payment of the charges stipulated in the Right to Information Rules of 2017 (Fees and Appeal Procedures).

24 See <https://www.gov.uk/>, accessed on 30 March, 2017.

25 For example, see the alphabetical arrangement of topics of interest regarding the thematic- 'Disabled People' at: <https://www.gov.uk/browse/disabilities>, accessed on 30 March, 2017.

26 See Canada's bilingual Government Information Portal at: <https://www.canada.ca/en.html>, accessed on 30 March, 2017.

27 See Australia's Information and Services related Portal at: <http://www.australia.gov.au/>, accessed on 30 March, 2017.

28 When the author of this visited Aizawl, the capital of the State of Mizoram, situated in the remote north-eastern part of India, he came across announcements of vacancies in government offices and the last date for submitting applications for recruitment through loudspeakers situated in the heart centre of the town. This information would be accessible even to the visually disabled persons as well.

4. CREATING CONVENIENT MODES OF SEEKING AND PROVIDING ACCESS TO INFORMATION

a. Facilitating Submission of Information Requests through the Electronic Means

The Sri Lankan RTI Act allows a citizen to seek information electronically. This implies that a request for information may be sent to an IO via email. No further guidance is available in the Act.



Comparative Experience

Mexico

INFOMEX or the National Transparency Platform permits citizens to submit information through a portal to any public authority under the Federal Government in Mexico. However, a citizen is required to register on this portal first.²⁹

India

The Government of India has also created an online facility for submitting information requests to public ministries and departments under its jurisdiction.³⁰ Any citizen may use this facility without having to register on this portal.

Operationalising an online request submission facility has multiple advantages, such as reducing the cost burden on the requestor, time taken to process and make decisions on an information request, issuing acknowledgement of receipt of the request, transfer of a request from one public authority to another, and sending reminders to IOs about pending information requests that are nearing the deadline for disposal. If a citizen is not comfortable visiting the office of a public authority to submit a request for information in person due to a perception of threat from various sources, online information request submission facilities will allow them to do so.³¹

29 See: <https://www.infomex.org.mx/gobiernofederal/home.action>, accessed on 30 March, 2017.

30 See: <https://rtionline.gov.in/>, accessed on 30 March, 2017.

31 Unfortunately, in India during its 11-year long implementation experience, the media has reported more than 300 cases of attacks on citizens who sought information from public authorities. More than 50 of these requestors are alleged to have been murdered for seeking information by vested interests who benefit from continued secrecy. Often, the information request was aimed at exposing corruption or abuse of power by public functionaries acting alone or in league with other vested interest groups. For a compilation of these cases of attacks on RTI users in India, see: Hall of Shame- Mapping Attacks on RTI Users at: <http://attacksonrtiusers.org/>, accessed on 30 March, 2017.

b. Expanding the RTI Website into a RTI and Open Government Data Portal:

The Sri Lankan Ministry of Mass Media is developing a dedicated website for RTI. The Strategic Plan for implementing the RTI Act also contains specific suggestions for developing a dedicated website through which people may access information. Various ministries and departments hold in their custody a lot of numerical and statistical data that can be made accessible to the people in the form of open datasets. This RTI website may be designed to function as an RTI Portal to achieve multiple purposes as suggested below.

Suggestions:

It is suggested that the Ministry of Mass Media considers expanding the dedicated RTI website into an RTI Portal, allowing people to:

- Access information proactively disclosed by the ministries, departments, local authorities and other public authorities under the Act. The Portal can act as a gateway for all official websites of the public authorities covered by the RTI Act.
- Submit online requests and appeals for information directly to the public authorities. This could be done by linking the email addresses of all IOs and DOs through an interactive facility on the portal.
- Access the monthly 'action taken' reports received from the divisions and districts and display the government's open data sets (machine readable, and analysable numerical and statistical data) collected by various ministries and departments in the course of their routine work, for public use and free of charge in accordance with the RTI Regulations.
- Access the RTI applications received and the response or information provided by various public authorities, that will eventually be uploaded on their websites under the "release to one, release to all policy."

c. Informing the Requestor about the Status of the Action Taken on a Request in Real Time:

Section 24(4) of the RTI Act enables an IO to furnish information upon receipt of a request immediately, if it is possible to do so. The IO is required to maintain a record of all such responses provided to requestors on the spot. This is a novel provision not found in other RTI laws enacted around the world. The same principle may be applied to updating a requestor on the status of action taken on his or her information request where the processing and decision-making may require 14 working days or more, as provided in the Act.

United States of America

Some public authorities under the federal Freedom of Information Act, 1966 of the United States of America update action taken on a formal request for information, every evening on their dedicated website.³² Updating in real time increases levels of confidence in the public authority processing the information request.

Given the widespread use of mobile phones in Sri Lanka, the potential for creating such a practice using mobile applications already exists.

Suggestions:

When an online RTI application submission facility is created, it may be linked to the mobile phone number of every requestor. Mobile applications may be developed for providing updates in real time to every requestor about the action taken on the information request or appeal. Until such time that a facility of this kind is created, public authorities may provide status updates on their dedicated websites which can be accessed through the RTI Portal recommended above (see page 22). This requires personnel well versed with information technology that can provide back office support to the IOs and the DOs.

³² For example, see the FOI-related webpage of the Department of Homeland Security, USA at: <https://www.dhs.gov/foia-status>, accessed on 30 March, 2017. A requestor may check the status of action taken on his or her information request using the unique number issued to him or her by FEMA, US Coast Guard or Immigration and Custom Enforcement, amongst others public authorities falling within the jurisdiction of this Department.

5. CLARIFYING ISSUES REGARDING THE PAYMENT OF FEES

a. Creating a more convenient mode of fee payment

Section 25 of the RTI Act requires an IO to supply information sought on payment of a fee. Every public authority is required to prominently display on its premises the fee rates payable for obtaining information, in addition to the name and contact details of the IO and the DO. Rates and procedures for fee payment have been notified through Rules gazetted in February 2017.



India

India's RTI Act requires every public information officer (PIO) to conform to the fee-related rules formulated by the government and published in the official gazette. The Act also requires that all fees charged under the Act are reasonable, including fees for providing information through electronic form.³³

The Central and State Governments have permitted multiple modes of fee payment such as:

1. Cash against proper receipt issued by the public authority;
2. Bank draft or pay order;
3. Postal order (payable through electronic means as well) or unclassified fee receipts issued by the post offices;³⁴
4. Money order made through post offices; and
5. Court fee stamps and non-judicial stamp paper. It is up to the citizen to choose the most convenient method from the permissible modes of fee payment.

Suggestions:

The RTI Commission, in consultation with the Ministry of Mass Media may consider amending RTI Rules relating to payment of fees to permit the following additional modes of fee payment:

1. Money order through post offices payable to the IO; and
2. Revenue stamps purchased from officially recognised vendors.

The choice of mode of fee payment must be left to the requestor.

³³ See the text of India's RTI Act at f.n. #9 above.

³⁴ See: <https://www.epostoffice.gov.in/eipo/Loginpage.aspx>, accessed on 30 March, 2017. A citizen is required to register with the Department of Posts in order to access the e-IPO facility.

b. Ensuring that the Fee Rates are Reasonable, and Defining the Circumstances under which Information may be Supplied Free³⁵

The Sri Lankan RTI Act requires the RTI Commission to issue guidelines for payment of fees by notifying Rules in consultation with the Ministry of Mass Media. The Act requires the Commission to adhere to the principle of reasonableness while determining the fee rates. Accordingly, there are 3 circumstances under which information may be supplied free of charge:

- (i) Where information is already being supplied free to any requestor prior to the enactment of the RTI Act;
- (ii). If the information sought can be supplied in not more than 4 pages; and
- (iii) If during an appeal proceeding, the RTI Commission rejects the decision of a public authority not to supply the information and directs that the same be disclosed.

Suggestions:

The RTI Commission may consider adding more grounds for exemption from payment of fees based on the principles described below.

There could be other circumstances in which information may be supplied free of charge to a requestor.

³⁵ See S. 14(c) and S. 25 of the Right To Information Act No. 12 of 2016, Sri Lanka

India, Austria, Maldives, Trinidad and Tobago, Antigua and Barbuda, Malta and Sierra Leone

The first principle is to provide information free of charge to indigent requestors. For example, Section 7(6) of India's RTI Act exempts citizens living below the official poverty line from payment of fees for information. Similarly, the access to information law of Australia empowers a minister or public authority³⁶ to waive charges for obtaining information if it is likely to cause financial hardship to the requestor.

The second principle, requiring the supply of information free of charge,³⁷ is if a public authority fails to adhere to the stipulated timelines for making a decision on a request for information. For example, Section 7(6) of India's RTI Act requires a public authority to provide information free of charge if it is supplied after the stipulated deadline of 30 days. Similarly, the RTI law of the Maldives³⁸ requires information to be provided free of charge if it is supplied after the stipulated time limit. The RTI law of Trinidad and Tobago contains an express provision requiring a public authority to refund any fee paid by a requestor if it fails to supply the information within the specified time limits³⁹.

The third principle requiring the supply of information free of charge is if it is personal information of the requestor. This is the case in the RTI law of Antigua and Barbuda. The logic being that a requestor should not be burdened with costs for seeking his or her own personal information.

The fourth principle is if the information is likely to be of interest and benefit to the public, then fees shall not be charged for providing such information. For example, the RTI laws of Antigua and Barbuda⁴⁰, Malta⁴¹ and Sierra Leone⁴², require disclosure of information that has larger public interest implications, free of charge. For example: information pertaining to environment, public health, public safety, and public order.

36 See Section 29(5) of Australia's Freedom of Information Act, 1982 at: <https://www.legislation.gov.au/Details/C2016C01042>, accessed on 30 March, 2017.

37 See the text of India's RTI Act at f.n. above.

38 See Section 19(d) of Maldives' Right to Information Act, 2014 at: <http://www.right2info.org/resources/publications/laws-1/maldives-rti-act-2014/view>, accessed on 30 March, 2017.

39 See Section 17(5) of Trinidad and Tobago's Freedom of Information Act, 1999 at: <https://nationalarchivestt.wordpress.com/2010/07/15/freedom-of-information-act/>, accessed on 30 March, 2017.

40 See Section 20(2) of Antigua and Barbuda's Freedom of Information Act, 2004 at: <http://laws.gov.ag/acts/2004/a2004-19.pdf>, accessed on 30 March, 2017.

41 See Section (5)(c) of Malta's Freedom of Information Act, 2009, at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962, accessed on 30 March, 2017.

42 See Section 6(4)(c) of Sierra Leone's Right to Access Information Act, 2013 at: <http://www.sierra-leone.org/Laws/2013-02.pdf>, accessed on 30 March, 2017

c. Accounting for Fee Recipients and the Manner of their Utilization

The Sri Lankan RTI Act does not provide much guidance for IOs on how to account for the fee received under the Act or find resources to spend on photocopying. The receipt and use of fees collected under the RTI Act, therefore, present a major challenge to IOs in Sri Lanka as they are not permitted to use them directly for the purpose of reproducing the information or posting it to a requestor. Accounting for the receipt of fees is also important for the purpose of reporting implementation statistics to the RTI Commission annually under Section 10(b) of the Act.

Suggestions:

- The apex agency in Sri Lanka for accounts purposes may be required to create a new account head for depositing fees received from the citizenry under the RTI Act.
- In order to create convenience for the IOs, a personal deposit account along the lines of the General Financial Rules #88 and #89 in India may be created for every IO for depositing and utilising the RTI fees, under the supervision of the DO.



India

The rules notified under the RTI law had to specify the actual account head in which all fees collected should be deposited by the public authority. A special account head was created as existing common practice for photocopying charges⁴⁵ is that the public information officers draw funds from the imprest account permitted for the public authority in order to meet emergent and unforeseen expenses in a financial year. On the other hand, where a government officer is required to deposit and expend sums of money for public purposes on a regular basis, the financial rules permit the opening of a Personal Deposit Account to be operated by such officer⁴⁶. A ledger is maintained for money received and spent for accounting purposes. Such a system may be suitable for the use of IOs in Sri Lanka.

45 For example see the specification of the account head for depositing RTI fees in Rule 3(2) of the RTI Rules notified by the State Government of Gujarat at: http://www.humanrightsinitiative.org/programs/ai/rti/india/states/gujarat/gujarat_rti_rules_2010_english.pdf, accessed on 30 March, 2017.

46 See Rules 88 and 89 of the General Financial Rules, 2005 operational at the Central and State level in India at: http://finmin.nic.in/the_ministry/dept_expenditure/GFRS/GFR2005.pdf, accessed on 30 March, 2017.

d. Unforeseeable Delays in Fee Payment and Time Limits Under the RTI Act

There is little guidance in the Sri Lankan RTI Act on time limits for providing information in relation to the system of fee payment. Given the short duration of 14 working days available for the IO to provide the information, there must be clarity on how such timelines will be calculated.

As the IO is open to legal action⁴⁷ for failing to adhere to time limits to provide the requested information, it is important that the IO is protected from legal action in the case of delays caused by the requestor's failure to pay the prescribed fees. It may also be recollected that a requestor has the right to seek a review of the fees charged by an IO if he or she thinks the amount is exorbitantly high. This will also cause delays in the payment of the fee until the matter reaches resolution.



India

India's RTI Act makes it clear that the time taken between the dispatch of the letter requiring a citizen to pay the reproduction charges for obtaining the information and the date of actual deposit of such fees, shall not be included for the purpose of calculating the deadline for providing

Suggestions:

The RTI Commission may clarify in the Rules that the time taken between the intimation of the fee payable by the requestor and the date on which such payment is actually received, shall not be included for the purpose of calculating the timelines stipulated in the Act for furnishing information.

⁴⁷ See S. 38(1)(a)(iv) of the Right to Information Act No. 12 of 2016, Sri Lanka

6. APPLYING EXCEPTIONS TO INFORMATION DISCLOSURE AND THE PUBLIC INTEREST OVERRIDE⁴⁸

The Sri Lankan RTI Act provides a list of grounds on which access to information shall be refused, as an exception to the general rule of transparency. Requirements for both disclosure and maintaining confidentiality of information are included in the Act.

Section 5(1) contains 14 clauses that specify the grounds on which access to information may be legitimately denied to a citizen under the RTI Act. On a cursory examination of Section 5(1), at least 41 grounds for rejecting access to information can be identified. Four of these clauses provide for disclosure of information, despite the exemption, in the larger public interest or where a third party waives one's right to keep the information confidential.

Additionally, Section 5(2) has been designed to limit the operation of the exemptions specified in 8 clauses (i.e., clauses 5(1)(a), (b), (d), (e), (f), (g) and (j)) for a period of 10 years maximum.

In other words, if the requested information is more than 10 years old, it will not be legitimate for a public authority to invoke any of these specified clauses to deny access to a requestor.

Clauses (c), (h), (i), (k), (l), (m) and (n) of Section 5(1) will continue to apply to exempt information eternally, under ordinary circumstances. Similarly, according to Section 5(3), information about trade negotiations that remain incomplete will not be disclosed even after 10 years.

Section 5(4) requires that where the public interest in disclosure outweighs the harm to any of the interests protected under various clauses of Section 5(1), access to such information shall not be refused.

The bureaucracy has a tendency to strictly maintain the confidentiality of unpublished official information, as required under the Establishment Code and other similar laws. Hence, there is a very real risk that for several decades, secrecy will continue to remain the default option for a public authority, if there is not enough guidance about the manner in which the exemptions must be invoked to refuse access to information lawfully.

a. Duty to Confirm or Deny the Existence of the Requested Information

Unlike the information access laws enacted in some jurisdictions like the United Kingdom, every public authority⁴⁹ covered by the RTI Act in Sri Lanka, must confirm or deny that it holds the information or record that a person may request, even if it seeks to invoke one or more exemptions to refuse access. In other words, it is not permissible for any public authority in Sri Lanka to keep a requestor guessing about the existence of a record or information being sought.

⁴⁸ See S. 5 of the Right to Information Act No. 12 of 2016, Sri Lanka

⁴⁹ For example, see Section 30(2) of UK's Freedom of Information Act, 2000 does not place a duty to confirm or deny the existence of records relating to criminal investigations at: <http://www.legislation.gov.uk/ukpga/2000/36/section/30>, accessed on 30 March, 2017.



Comparative Experience

Norway

Norway has undertaken a novel initiative to give effect to the duty of public authorities to confirm the existence of a record proactively under its transparency law, and information and communication policy.⁵⁰

The Electronic Public Records Portal developed by the Government, with the participation of a large number of public authorities, contains a well indexed and catalogued list of official documents created and held by them. The portal displays only metadata⁵¹ about information or records held, without disclosing the contents online. In addition to the title of the official document, the number assigned to it and the date on which it was created, the portal also provides information about the originating source of every document and whether or not any exemption applies to it under Norway's RTI law⁵².

Any person can not only access the metadata, but can also place a request for copies through this portal. If a request for a record is covered by one or more exemptions under the RTI law of Norway, the concerned public authority holding such record sends a reply within a week about its exempt nature and that the requestor may file an appeal against the refusal to disclose, with the King of Norway who is the appellate authority under the law. Where information may be supplied electronically, it is sent to the requestor by email free of charge.

50 See Norway's Central Government Information Policy, 2001 at:

https://www.regjeringen.no/globalassets/upload/fad/vedlegg/informasjonspolitikk/infopol_eng_orig.pdf, accessed on 30 March, 2017.

51 See: <https://oep.no/?lang=en>, accessed on 30 March, 2017. For a third party analysis of this initiative, see Dr. Anne Thurston, "Openness and Information Integrity in Norway", 2013, at: <http://www.opengovpartnership.org/blog/dr-anne-thurston/2013/10/15/openness-and-information-integrity-norway>, accessed on 30 March, 2017.

52 For the complete text of Norway's Freedom of Information Act, 2006 see: http://www.nfi.no/english/incentive/_attachment/146506?_download=true&_ts=152a1e3f0c8, accessed on 30 March, 2017

The Advantage of Setting Up a Portal of the Kind Developed by Norway are several:

First, it ensures that every public authority adheres to its duty to confirm the existence of official records in its custody. The kind of official records held by every public authority, becomes public knowledge.

Second, it removes the uncertainty caused by situations where files go missing from the custody of a public authority. Placing metadata about every official record in the public domain ensures accountability of every public authority for the safe-keeping of official records.

Third, it improves the confidence levels of the citizenry about the commitment of public authorities to implement the RTI Act by acknowledging what records they hold in their custody.

Fourth, it enables citizens to identify the public authority where the information they seek is being held, and make targeted requests for access. This reduces the burden on a public authority to transfer requests for information or records that may be held by other public authorities.

Fifth, in the event the existence of a record is disputed by a public authority, it helps the RTI Commission to perform its mandated task of adjudication better and quicker by simply referring to the portal.

Sixth, this initiative can act as a push factor for the cataloguing, indexing and eventual digitization of official records and files. This is a mandatory requirement for every public authority under Section 7(1) and (5) of the Sri Lankan RTI Act. Eventually, it should become possible to receive and dispose of all information requests through the Internet.

Suggestions:

- The Government may consider investing in the development of a national portal for all State sector public authorities to display the metadata of all files and records they hold in their custody, and make it accessible to citizens free of charge. This could be linked to the RTI Portal discussed above.
- In the initial phase, this facility may cover the public authorities under the central government, and eventually be extended to Provincial Councils and local government authorities.

b. Duty to Classify Sensitive Records in Accordance with the RTI Act⁵³

Every Government observes a set of rules and procedures to ensure the security of official records containing sensitive information. Sri Lanka's Official Secrets Act (OSA) defines "official secrets" as any secret official code word, countersign, or password or information relating to the armed forces, or implements used for the purpose of the country's defence⁵⁴. This law also covers "secret documents" such as sketches, maps, plans, blueprints, photographs, paintings, models or other forms of representation of prohibited places relating to defence matters.

In addition to the OSA, there may be other rules and procedures that provide for classifying sensitive official records which may not be in the public domain. The Establishment Code of Sri Lanka⁵⁵ places several restrictions on the disclosure of unpublished information from official records in the public domain.

Section 4 of Sri Lanka's RTI⁵⁶ law gives overriding effect on other provisions in any written law in the event of inconsistency. In such circumstances, public authorities and the RTI Commission are required to reconcile conflicting provisions with the provisions of the RTI Act. Where this is not possible, access to requested information will have to be provided. In the absence of guidance on dealing with inconsistencies between provisions of the RTI Act and earlier laws, IOs and DOs are likely to err in favour of secrecy.

The RTI Act places a statutory duty on the RTI Commission to monitor the performance of public authorities covered by the Act and ensure compliance with its provisions. They are obligated to issue guidelines for proper management of records of public authorities. The commission may also issue recommendations of a general or specific nature to public authorities for reforming internal practices and procedures vis-à-vis the requirements of transparency under the RTI Act. This will include providing guidance for ensuring that all public authorities classify sensitive information in line with the exceptions to disclosure in Section 5 without overdoing it, as was past practice.

Suggestions:

- The RTI Commission and Ministry of Mass Media should identify official records and files that attract exemptions specified in Section 5 of the RTI Act and categorize them accordingly. A senior-level committee of experienced officers may be formed for this purpose.
- New records - every public authority must establish a mechanism for assigning security labels in accordance with Section 5 of the RTI Act.
- No exemption may be made for records/ information that disclose or relate to human rights violations or crimes against humanity.

⁵³ See S. 4 and 14 of the Right To Information Act. No 12 of 2016, Sri Lanka

⁵⁴ See 'Interpretation' clause in Sri Lanka's Official Secrets Act, 1955 at: http://www.commonlii.org/lk/legis/consol_act/os50199.pdf, accessed on 30 March, 2017.

⁵⁵ For example see, Chapters VI and XXVIII of the Establishment Code, Vol. I, 1985, at: <http://www.govdoc.lk/establishments-code->

[http://www.govdoc.lk/establishments-code-](http://www.govdoc.lk/establishments-code-%E0%B6%86%E0%B6%BA%E0%B6%AD%E0%B6%B1-%E0%B7%83%E0%B6%82%E0%B6%9C%E0%B7%8A%E2%80%8D%E0%B6%BB%E0%B7%84%E0%B6%BA/)

[http://www.govdoc.lk/establishments-code-](http://www.govdoc.lk/establishments-code-%E0%B6%86%E0%B6%BA%E0%B6%AD%E0%B6%B1-%E0%B7%83%E0%B6%82%E0%B6%9C%E0%B7%8A%E2%80%8D%E0%B6%BB%E0%B7%84%E0%B6%BA/) accessed on 30 March, 2017.

⁵⁶ For example, in India, the Manual of Departmental Security Instructions, 1966 as amended from time to time, contain the criteria, rules and procedures for according security classification to official records containing sensitive information. However this Manual is itself labelled 'confidential' and is not placed in the public domain. For a discussion of these matters see: VenkateshNayak, "Right to Information and OSA", The Hoot, currently accessible at: <http://www.freedominfo.org/2015/05/rti-and-the-indian-official-secrets-act/>, accessed on 30 March, 2017.

Nepal

Every public body is required to align its practices of classifying official records, for the purpose of ensuring their security, with the exemptions to disclosure mentioned in the RTI Act. No other ground for refusing access to information is permissible.

A 3 member high-powered committee is required to be set up under the chairpersonship of the highest ranking bureaucrat in the country for classifying all official records in accordance with the exemptions specified in the law.

However, before implementation, the list of classified records and files must be approved by the National Information Commission (NIC)⁵⁷ - the counterpart of Sri Lanka's RTI Commission. Any citizen may file an objection against the classification of any such record with the NIC. The NIC may direct the disclosure of the requested information if it makes a determination that the security classification accorded was not justified.⁵⁸

Mexico

The Mexican Federal Access to Information Law requires every covered body to classify its sensitive information in accordance with exemptions listed in that law. Further, the law requires that information should not be classified as 'secret' before it is actually created by a public authority. Every document that is classified for security reasons must contain a description of the document on the front page, the date on which it was classified, the legal basis on which it is classified secret (with reference to one or more exemptions enumerated in the RTI law) and the period for which such classification shall apply. The National Institute of Transparency, Access to Information and Protection of Personal Data (Mexico's counterpart of the RTI Commission), has the power to revoke the security classification accorded to an official document during adjudication proceedings and order its disclosure. Further, where any record contains both sensitive and non-sensitive information, everyone covered by the law is required to provide a public version of such record. The Mexican law also states that no exemption is permissible for information that relates to human rights violations and crimes against humanity.

c. Retention and Destruction of Classified Records:

Section 7(3)(a) of the Sri Lankan RTI Act requires every public authority to maintain records already in existence prior to its enactment, for a period of at least 10 years. Records created after the coming into force of the Act are required to be retained for a period of at least 12 years. Public authorities are free to decide how much longer they may retain such records beyond the timelines stipulated. However, where a record is the subject of a request under the RTI Act, it must not be destroyed until the request has been met. Additionally, the National Archives Act, 1973 requires that all records that are more than 25 years old be transferred to the Archives for safe keeping.⁵⁹

It is clear that the aforementioned retention schedule for official records also applies to sensitive records that are accorded security classifications such as 'top secret', 'secret' or 'confidential'. It is quite possible that several official records may remain classified for the entire duration of 10 or 12 years. There is a very real possibility that they may be destroyed by the concerned public authority without ever declassifying them and making them available to the public.

57 See Section 27(1) of Nepal's Right to Information Act, 2064 B.S. (2007) at: <http://www.moic.gov.np/acts-regulations/right-to-information-act.pdf>, accessed on 30 March, 2017. Ibid., sub-Sections (2) to (4) of Section 27.

58 See Article 100 in The General Law of Transparency and Access to Public Information, 2015 in Mexico at: <http://inicio.ifai.org.mx/Publicaciones/LEY%20GENERAL%201.pdf>. For an English translation of the relevant provisions see: http://www.rti-rating.org/view_country/?country_name=Mexico, both accessed on 30 March, 2017.

59 See text of the National Archives Act, 1973 at: http://www.commonlii.org/lk/legis/num_act/nal48o1973234/, accessed on 30 March, 2017.



Comparative Experience

USA, Australia and India

Governments in the USA⁶⁰ and Australia⁶¹ amongst others, provide for the destruction of classified records in a secure manner without ever revealing their contents.

The laws and rules relating to declassifying public records in India require every public authority to transfer records that have preservation value to the National Archives.⁶² However, no record bearing a security classification may be transferred to the Archives.

Every public authority is required to undertake an annual exercise to review the security classification accorded to its 'top secret', 'secret' or 'confidential' records and downgrade the security label as may be appropriate or even remove any classification, implying that it may be released to the general public.⁶³ The officer responsible for downgrading or removing the security classification of a record must be senior in rank to the officer that initially classified the record.

Suggestions:

When the public authority has no use for such classified records, it is advisable for it to make an electronic copy of such record after appropriate redaction in accordance with Section 5, and transfer the same to the National Archives. Where resources are available, the redacted records⁶⁴ may be digitized and made accessible to citizens and researchers.

The RTI Commission may review the provisions of the National Archives Act in consultation with other relevant ministries, and issue guidelines regarding the preservation and transfer of redacted versions of classified records to the National Archives for safekeeping without destroying them. This exercise may be conducted in consultation with the Director, National Archives.

60 See "Destruction of Classified Information", CFR 2400.31 at: <https://www.law.cornell.edu/cfr/text/32/2400.31> read with chapters 21 and 33 of title 44, United States Code, at: <http://uscode.house.gov/view.xhtml?path=/prelim@title44/chapter33&edition=prelim>, both accessed on 30 March, 2017.

61 See section on destruction of classified official records under guidelines for "Destruction of Records" published by the Government of New South Wales, Australia at: <https://www.records.nsw.gov.au/recordkeeping/advice/retention-and-disposal/destruction-of-records>, accessed on 30 March, 2017.

62 See Section 10 of India's Public Records Act, 1993 at: http://nationalarchives.nic.in/writereaddata/html_en_files/html/Public_Records93.html, accessed on 30 March, 2017.

63 See Rules 7 and 9 of the Public Records Rules, 1997 formulated under the Public Records Act at: http://nationalarchives.nic.in/writereaddata/html_en_files/html/public_records97.html, accessed on 30 March, 2017.

64 Censor or obscure (part of a text) for legal or security purposes.

d. Invoking the Exceptions and Applying the Public Interest Override

Invoking Exceptions:

According to Section 5 of the Sri Lankan RTI Act, access to information may be refused on grounds that one or more exceptions listed are applicable. The law does not specify who may invoke these exceptions. Section 5(5) empowers the IO to seek the advice of the RTI Commission prior to invoking any of the exceptions. Further, several exceptions listed in the RTI Act contain harm tests. Applying the harm test is a quasi-judicial function which every executive officer appointed as an IO or DO may not be equipped to conduct. Section 32(4) states that during an appeal before the RTI Commission, the onus of proving that action taken in relation to any matter under the RTI Act was in line with its provisions, is on the public authority whose decisions are challenged before it.

Applying the Public Interest Override:

Sections 5(a), 5(d), and the overarching Section 5(4), permit disclosure of exempt information without specifying who in the public authority may make such a decision and at which stage. The RTI Commission has the power to direct disclosure of exempt information in the public interest through an appeal. This involves the statutory requirement of balancing competing public interests, i.e., those best served by keeping information confidential vis-à-vis other public interests that favour disclosure. In other words, weighing the pros and cons of disclosure of the exempt information and deciding where public interest lies.

Severing Exempt Information:

Section 6 of the RTI Act permits severing of exempt portions and supplying non-exempt portions to the requester, without specifying who should take such a decision and at what stage. In the absence of clarity regarding these matters, there may be delays in making decisions on complex information requests involving exempt information. In addition, the RTI Commission may become the sounding board in the case of every information request as IOs may be reluctant to make a decision.

Seeking the Advice of the RTI Commissions:

Section 5(5) specifically provides for consultation with the RTI Commission while invoking one or more of the exceptions. However, in actual practice, this will render the second appeal process nugatory. For example, if the IO decides to accept the RTI Commission's advice not to disclose the information, the requestor's right of appeal will become redundant as both the DO and the RTI Commission are likely to uphold the decision later on. If new facts are presented during the appeal proceeding, it may have to change its earlier advice to an affirmative decision allowing disclosure. This poses a risk of creating an impression among the public that it had not applied its mind properly to the case in the first instance. These are serious issues that need to be addressed urgently.

Applying the Harm Test While Invoking Exemption:

Exceptions to disclosure contain only a general principle about when or what kind of information should not be disclosed. Adjudicators of access to information disputes and public authorities have prepared Guidance Notes for IOs to apply exceptions in specific cases. Of particular interest to those in Sri Lanka will be the manner in which harm tests must be applied when circumstantial exemptions are to be invoked. Invoking class or category exemptions is much easier as the IO or DO is only required to justify how the requested information falls in the class or category of documents exempt from disclosure under the law.⁶⁵ A public authority which collects, collates, generates or creates the requested information is best placed to judge the harm likely to be caused by the disclosure of exempt information. This principle is recognised in developed and developing countries. As stated it is common practice for access to information dispute adjudicators to issue Guidance Notes for public authorities. For example, the Scottish Information Commissioner's office has issued Guidance Notes on how exemptions may be invoked, the harm test to be applied, and what considerations are relevant and which are not for making a decision on an information request.⁶⁶ Similarly, the Office of the Information Commissioner of the United Kingdom has published practical advice on invoking exemptions.⁶⁷

65 For example, information relating to the privileges of Parliament or the Provincial Councils are exempt as a class of information under Section 5(1)(k) of the RTI Act. Similarly, cabinet memorandum in relation to which a decision has not been taken is exempt from disclosure as a class. If a request is made for such information, the IO needs to only demonstrate how it falls under these categories in order to lawfully refuse access. There is no need to apply any harm test to examine the consequences of disclosure.

66 See "Exemption Briefing Series" on the Scottish Information Commissioner's website at: <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Briefings.aspx>, accessed on 30 March, 2017. See "Exemption Briefing Series" on the Scottish Information Commissioner's website at: <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Briefings.aspx>, accessed on 30 March, 2017.

67 See: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/> and "The Prejudice Test: Freedom of Information Act" at: https://ico.org.uk/media/for-38-organisations/documents/1214/the_prejudice_test.pdf, both accessed on 30 March, 2017.

Balancing Competing Public Interests:

Although RTI laws expect information officers to balance competing public interests that favour secrecy⁶⁸ on the one hand and disclosure on the other, common tendency is to err in favour of secrecy. Being an interested party in the access to information dispute, a public authority may not be able to independently judge where the balance lies between competing public interests. This is why an independent adjudication machinery in the form of an Information Commissioner as in Canada, United Kingdom and the Maldives or a multi-member Information Commission as in Bangladesh⁶⁹, India, Indonesia and Nepal, amongst others, are created by the respective RTI laws. Published guidance notes on applying the harm test for the reference of public authorities or future incumbents of the office of the Information Commission(er) are available in many jurisdictions. A good example of guidance on how to apply the public interest test is available on the website of the Information Commissioner of the United Kingdom.⁷⁰

A useful compilation of jurisprudence from Australia, Canada, New Zealand and the United Kingdom on how public interest issues were decided in cases on disclosure or confidentiality, has been published by the University College London.⁷¹ This case law compilation is a useful resource for public authorities and access to information dispute adjudicators. It contains not only case summaries, but also a listing of the grounds for favouring disclosure and confidentiality in the public interest.

Severing Exempt Information:

Section 10 of India's RTI Act clarifies that the decision, to sever non-exempt information from the exempt portions of a record for the purpose of supplying to a requestor, is that of an officer other than the public information officer (PIO) who receives the request. The PIO merely conveys the decision of partial disclosure to the requestor.⁷²

Redacting Exempt Information:

Sometimes, severing non-exempt portions from the exempt parts of an official record may require recreation of a portion of the record as it may not be possible to physically separate the two categories of information. This may lead to disproportionate diversion of the resources of a public authority, and is not permitted under Section 27 of the Sri Lankan RTI Act.⁷³ In such situations, it is common practice to redact the copy of the record by blacking out the exempt portions. Some guidance is available from the United States Department of Justice as to how such redaction may be done for exempt portions of a record.⁷⁴

Seeking the Advice of the RTI Commissions:

Few RTI laws lay down a requirement for IOs to consult with the Information Commission(er) about the applicability of exceptions to the information sought by a requestor.

68 For example, in a judgement, the Supreme Court of India commented on the tendency of Public Information Officers in the following words: "64. In the context of above questions, it had long since come to our attention that the Public Information Officers (PIO) under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to." See Reserve Bank of India vs Jayantilal Mistry & Ors., (batch of 11 matters) at:

<http://judis.nic.in/supremecourt/imgs1.aspx?filename=43192>, accessed on 30 March, 2017.

69 Indonesia has a 7-member Central Information Commission. See the text of Indonesia's Public Information Disclosure Act, 2008 at:

<http://www.right2info.org/resources/publications/laws-1/Indonesia-Public-Information-Disclosure-Act-2008.doc/view>, accessed on 30 March, 2017.

70 See "The Public Interest Test: Freedom of Information Act" at: https://ico.org.uk/media/for-organisations/documents/1183/the_public_interest_test.pdf, accessed on 30 March, 2017.

71 See Megan Carter and Andrew Bouris, Balancing the Public Interest, University College London, London, 2006 at:

<https://www.ucl.ac.uk/political-science/publications/unit-publications/134.pdf>, accessed on 30 March, 2017.

72 See the text of India's RTI Act, 2005

73 Section 27(1) of the R2I Act removes the ordinary obligation on an IO to provide access to information in the form in which it has been sought by the requestor, if it would be detrimental to the safety or preservation of the relevant record. However Section 27(2) makes it mandatory for the IO to provide access to such information in an alternative form after due consultation with and providing assistance to the requestor.

74 See FAQs on USA's Freedom of Information Act, 1966 at: <https://www.foia.gov/faq.html>, accessed on 30 March, 2017.

Bangladesh

In Bangladesh, the officer-in-charge (of receiving and making decisions on information requests) is required to consult the Information Commission before invoking exemptions permissible under the law.⁷⁵

India

In India, some public information officers approached the Information Commission for advice during the initial years of implementation. However, such practice was discouraged, as the Information Commissioners did not want to be prejudiced about the cases which were likely to come before them during the second appeal stage.

Suggestions:

The RTI Commission may develop Guidance Notes by incorporating best practices from other jurisdictions with a longer history of implementing RTI laws. These Guidance Notes may not only contain practical advice on procedures, but also specify the principles that must guide the application of harm tests, public interest override and how to redact records for the purpose of partial disclosure.

In order to ensure that Section 5(5) of the RTI Act is both complied with and does not result in rendering the appeals process nugatory, the RTI Commission may restrict itself to providing advice on the broad principles that an IO must be guided by when invoking the exemptions, without going into the specifics of a particular case.

⁷⁵ See the proviso underneath Section 7(t) in Bangladesh's RTI Act, op. cit., f.n. #10. While the Bangla version of the Act makes this proviso applicable only to Cabinet papers and decisions, the English version makes it applicable to all exemptions listed in Section 7. However, in actual practice, the Information Commission does not tender advice in specific cases leaving it to the best judgement of the officer-in-charge dealing with the request.

7. DETAILING THE INTERNAL AND EXTERNAL APPEALS PROCEDURES

Section 31 of the Sri Lankan RTI Act lists 7 grounds on which an appeal may be submitted to the DO by an aggrieved citizen requestor. These grounds relate to the action or inaction of the IO in relation to a request for information. Section 32 permits an aggrieved citizen requestor, who is not satisfied by the decision of a DO, to submit a second appeal to the RTI Commission.

Section 25(3) read with Section 24(5)(c) of the RTI Act empowers a requestor to seek information concerning the personal life or liberty of a citizen within 48 hours. While there is a time limit placed on the IO to respond, the Act is not clear on when the DO may make a decision on a first appeal or when a second appeal will be disposed of by the Commission. Appeals relating to such urgent information requests may be disposed of in a routine manner, defeating the very purpose of that provision. The RTI Act is also silent about the necessary qualifications for appointing a person as the DO. The only requirement specified in the Act is that he or she must be an officer of the public authority. (See Section 2(a) for more information about the appointment of DOs.)

Section 38 of the RTI Act empowers the RTI Commission to make a recommendation to the relevant public authority to take disciplinary action concerning an IO for acts or omissions under the law. Section 39 empowers the RTI Commission to launch a prosecution against any person for a series of acts or omissions under the law, including an aggrieved appellant who refuses to appear before the Commission when summoned by it. A close reading of the Act indicates that prosecutions may be launched not only against the IO and DO, but also any other officer who acts in contravention of the Act.

Under Section 34, decisions of the RTI Commission may be challenged before a Court of Appeal. This right of appeal is available not only to an aggrieved citizen requestor, but also to a public authority or a third party whose information is directed to be disclosed by the RTI Commission.

a. Procedures for Deciding First Appeals

India

The RTI Rules notified by the Government of Uttarakhand in India provide guidance as to how first appeals must be received, registered and disposed.⁷⁶ The requestor must furnish a copy of the decision of the PIO against which the appeal is made. The first appellate authority (FAA) may, at his or her discretion, invite the appellant for a hearing on the matter. The FAA may seek the views of the PIO during the proceedings, if necessary.

The FAA is also vested with the power and duty⁷⁷ to determine whether exempt information may be disclosed as public interest, if doing so outweighs harm to the protected interests. The executive directions issued by the Government of India regarding the manner in which first appeals must be disposed, require an FAA to either supply the information if it is fit for disclosure or direct the PIO to furnish information within the time limit. As the FAA performs a quasi-judicial function while deciding appeals, he or she is required to observe the principles of natural justice.⁷⁸

⁷⁶ See RTI rules notified by the State Government of Uttarakhand at: http://www.uerc.gov.in/RTI/6jan16/RTI_Rules2013_Hindi.pdf, accessed on 30 March, 2017.

⁷⁷ In administrative law “power coupled with duty” means, an officer who is vested with a discretionary power by virtue of a statutory provision, must exercise such power or else, the purpose for which such power was vested in such officer would remain unfulfilled. For a discussion on the meaning of this phrase in the Indian context see: Karan Lahiri, “Does Article 16 impose a “power coupled with duty” on the State”, 2015 at:

<https://indconlawphil.wordpress.com/2015/11/13/guest-post-does-article-16-impose-a-power-coupled-with-a-duty-upon-the-state-i/>, accessed on 30

⁷⁸ see: <http://www.justice4you.org/natural%20justice.php>, and <http://ijtr.nic.in/articles/art36.pdf>, both accessed on 30 March, 2017

b. Procedures for Deciding Appeals by Information Commissions

India

The RTI Rules notified by various governments in India, at the Central and the State level, provide a bare-bones structure of the procedure that the Information Commissions must follow while deciding appeals from aggrieved citizens⁷⁹. These rules clarify the order in which information pertaining to an appeal must be submitted, along with copies of documents that the appellant relies upon. Formats may be prescribed although this is not compulsory. Most Governments and Information Commissions do not demand fees for deciding appeals as there is no provision in the RTI Act to collect such fees from aggrieved citizens.⁸⁰ In Uttar Pradesh, where appeal papers contain technical defects, the Information Commission is required to maintain a register of defective appeals so that there is a record of such matters.

The RTI Rules notified in various jurisdictions⁸¹ across India leave it to the discretion of the appellant whether or not to attend the appeal proceedings in person. It is not permissible for the Information Commissions to reject an appeal simply because the appellant is not present in person at the hearing.

Hearings of the Commissions are open to the public, including the media, unless the Commission decides to examine exempt documents or receive evidence on sensitive matters involving women and children on camera. Because of the overwhelming case load in several Information Commissions⁸², each Information Commissioner in India is assigned specific ministries, departments and public authorities to hear and decide appeals. The entire Commission⁸³ rarely meets to decide an appeal matter. This ensures speedy disposal of cases despite the growing numbers of RTI-related grievances. The first copy of decisions of Information Commissions in India are supplied proactively and free of charge to all concerned parties. They are required to pay nominal reproduction charges if they want more copies. Parties are entitled to examine the contents of files pertaining to their appeals held by the Commissions during the pendency or after the completion of a case.

79 For example see the RTI Rules notified by the Central Government at: http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/1_35_2009-IR-1.pdf; the RTI Rules notified by the State Government of Gujarat at:

http://www.humanrightsinitiative.org/programs/ai/rti/india/states/gujarat/gujarat_rti_rules_2010_english.pdf, both accessed on 30 March, 2017.

80 There is no requirement for Information Commissions in India to be self-financing like courts and tribunals. The concerned legislatures ensure that there is adequate budget for the Information Commissions to cover their administrative expenses including salaries paid to Commissioners and staff.

81 See Form 11 notified in the Uttar Pradesh Right to Information Rules, 2015, at: http://upic.gov.in/StaticPages/RTI_Rules.aspx, accessed on 30 March, 2017.

82 State of Information Commissions and Use of RTI Laws in India: Rapid Study 3.0, CHRI, 2015 at: <http://humanrightsinitiative.org/publications/rti/ICs-RapidStudy-finalreport-NDelhi-ATITeam-Jun15.pdf> and CHRI's analysis of the RTI trends at: <http://thewire.in/71390/data-indicates-regional-disparity-in-the-number-of-rti-applications-filed/>, accessed on 30 March, 2017.

83 See example of the current work distribution at the Central Information Commission India at: <http://www.cic.gov.in/sites/default/files/Work-Allocation.pdf>, accessed on 30 March, 2017.

c. Launching Prosecutions

United Kingdom

In countries like the United Kingdom, the Information Commissioner has the power to move courts for the enforcement of his or her decisions issued in an appeal matter. However, examples of Information Commissions (ers) prosecuting errant officials of public authorities for contraventions of RTI laws are hard to come by. The RTI Commission in Sri Lanka will be required to establish a prosecution wing comprising of competent investigators and prosecutors for the purpose of initiating legal action against IOs, DOs and any other officer or person for contravening the RTI Act.⁸⁴

Suggestions:

- Regulations may be drafted to specify that only an officer senior in rank to IO be appointed as DO. Regulations may be drafted to specify the procedure that the DO is required to follow in deciding an appeal in accordance with the laws and principles of natural justice.
- An appeal having technical defects must not be rejected solely on that ground. Instead, the Regulations may require that the appellate authorities provide reasonable assistance to rectify the technical defects, while a register regarding defective appeals is maintained.
- Appellants must not be required to pay any fee for submitting appeals as there is no such provision in the RTI Act.
- Time limits for receiving and disposing appeals by the DO and the RTI Commission regarding urgent matters concerning life and liberty may be laid down clearly in the Regulations and Rules.
- The hearings of the RTI Commission may be conducted in open proceedings, unless it is necessary to examine an exempt document or receive evidence on sensitive matters.
- The RTI Commissioners could be enabled to hear appeals both in collegium and individually, as may be required.
- The RTI Commission may launch an investigation wing for the purpose of collecting prosecutable evidence against persons contravening the RTI Act. The Commission may also launch a prosecution wing to take such errant officers to be tried in the Magistrate's court. Rules and Regulations, as appropriate, may be drawn up to facilitate the aforementioned matters.

⁸⁴For an example of how an Information Commissioner's office investigates matters in relation to a pending complaint see: http://www.oic-ci.gc.ca/eng/inv_inv-gui-ati_gui-inv-ati.aspx, accessed on 30 March, 2017.

8. IMPROVING RECORDS MANAGEMENT TO FACILITATE ACCESS TO INFORMATION

a. Records Management

Section 7(1) of the Sri Lankan RTI Act requires every public authority to maintain all its records, duly catalogued and indexed in a form consistent with its operational requirements, which would facilitate people's right to access information. Section 14(h) vests the power coupled with a duty on the RTI Commission to issue guidelines to public authorities for the proper management of their records.

Records management is one of the major factors that can contribute to the successful implementation of an RTI law. A public authority that manages its records in a systematic manner will be better placed to process information requests quickly.

Whilst, every government follows some system of records management and maintenance, express provisions in RTI laws require efforts to be made by public authorities to facilitate easy access to citizens seeking information. This requires a change in the approach to records management from storage driven mode to easy retrieval mode. Records must be easily accessible to IOs and DOs within a public authority in order to make a decision whether or not information must be disclosed.

Several RTI laws in other countries empower high level authorities, including the Information Commissions/Commissioners, to issue practice guidelines to public authorities to improve records management.

b. Recording Reasons for Administrative Actions

Section 35 requires every officer in a public authority, who makes a decision in an official capacity, to supply the reasons for arriving at such decision. The reasons must be provided in writing to any person affected by such decision.

In Sri Lanka, the term 'information' is defined similarly to that in India (see comparative experience). It applies only to such information that is held in material form at the time of making the request. Further, the IO processing the request for information may not be the officer who took the decision on the matter in the first place. Therefore, the IO should not be compelled to create justifications for decisions taken by other officers. The duty of furnishing reasons under Section 35 of the RTI Act can be complied with, only if every officer who takes a decision affecting any person(s), records the reasons in writing in the file at the time of arriving at such a decision.

Records Management

United Kingdom, Ireland and Bangladesh

The Freedom of Information Act requires the Minister for the Cabinet Office to issue a code of practice to public authorities for the purpose of keeping, managing and destroying official records.⁸⁵ Consequently, a framework code of practice was issued to all public authorities soon after the enactment of the FOI Act to enable them to set their house in order regarding the maintenance and management of records. Later, the UK Information Commissioner⁸⁶ supplemented the code with a practice note detailing the policy for managing, storing, retrieving, securing and disposing official records.⁸⁷ Similar codes of practices for records management have been issued by the Information Commissioner of Ireland⁸⁸, and the Bangladesh Information Commission.⁸⁹

Recording Reasons for Administrative Actions

India

Thanks to the rich jurisprudence developed by the constitutional courts in India, it is mandatory for government servants to record reasons for their administrative or quasi-judicial decisions.⁹⁰

As the RTI Act applies only to ‘information’ that is ‘held by’ or is ‘under the control of’ a public authority, these reasons need not be supplied post facto because a request has been made under the RTI Act.⁹¹

85 See Section 46 of UK’s FOI Act, 2000 at: <http://www.legislation.gov.uk/ukpga/2000/36/section/46>, accessed on 30 March, 2017.

86 See Lord Chancellor’s Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000, at: <https://ico.org.uk/media/for-organisations/research-and-reports/1432475/foi-section-46-code-of-practice-1.pdf>, accessed on 30 March, 2017.

87 See Section 46 Code of Practice – records management at: <https://ico.org.uk/media/for-organisations/research-and-reports/1432475/foi-section-46-code-of-practice-1.pdf>, accessed on 30 March, 2017.

88 See Chapter 5 – Records Management in The Freedom of Information Act: Compliance by Public Bodies, at: <http://www.oic.gov.ie/en/Publications/Special-Reports/Investigations-Compliance/Compliance-by-Public-Bodies/Chapter-5.html>, accessed on 30 March, 2017.

89 See the Information Management Regulations in Bangla at: http://infocom.portal.gov.bd/sites/default/files/files/infocom.portal.gov.bd/law/6f839735_7f75_4360_8eb8_dd8494e50d8c/Information%20Management.pdf, accessed on 30 March, 2017.

90 For example, in the matter of Maneka Gandhi vs Union of India & Anr., [AIR 1978 SC597], the Supreme Court of India ruled as follows: “At first, the passport authority exercising its power under Section 10(5) of the Act refused to furnish to the petitioner the reason for which it was considered necessary in the interests of general public to impound her passport. But those reasons were disclosed later in the counter-affidavit filed on behalf of the Government of India in answer to the writ petition. The reasons, if disclosed being open to judicial scrutiny for ascertaining their nexus with the order impounding the passport, the refusal to disclose the reasons would equally be open to the scrutiny of the court; or else, the wholesome power of a dispassionate judicial examination of executive orders could with impunity be set at naught by an obdurate determination to suppress the reasons. Law cannot permit the exercise of a power to keep the reasons undisclosed if the sole reason for doing so is to keep the reasons away from judicial scrutiny.” The duty to give reasons for all decisions that affected the citizenry is now firmly established in the jurisprudence relating to administrative law.

91 For example, the Supreme Court of India ruled in 2011 that “opinion and advice” as defined in Section 2(f) of the RTI Act only applies to such material that already existed in material form on record at the time of the presentation of the information request under the RTI Act. There is no statutory duty placed on the public information officers by virtue of the RTI Act to create such information for decisions already taken by a public authority. See: Central Board of Secondary Education and Anr. vs Aditya Bandopadhyaya and Ors., judgement dated 09/08/2011 [(2011) 8SCC 497].

Suggestions:

- The RTI Commission may develop guidelines for the State sector for the purpose of improving records management and aligning it with the requirements of the RTI Act, by examining the existing practices and international standards.
- Simple guidelines for improving records management may be developed for non-State authorities that do not involve an undue cost burden on them.
- Ministries and departments may issue guidelines, to all officers empowered to take decisions that affect other persons, to record reasons for arriving at such decisions on file.
- Training institutes like the Sri Lanka Institute for Development Administration may be engaged to provide training for officers in this regard.

9. MONITORING THE IMPLEMENTATION EFFORTS OF PUBLIC AUTHORITIES

Section 10 of the RTI Act requires every public authority to submit an annual report to the RTI Commission about the action taken to implement the Act, containing a range of statistical data. Additionally, Section 37 requires the RTI Commission to prepare a report of its activities for every year and submit the same to Parliament. All these reports of the public authorities and the Commission are required to be proactively disclosed on the respective official websites. However, it is not clear whether the RTI Commission is required to include the statistics and feedback submitted by the public authorities in its annual report to Parliament.

Change management from the paradigm of secrecy to transparency requires systems and procedures for monitoring to be set in place to evaluate the quality and adequacy of efforts put in by public authorities to implement the RTI Act. Stock-taking of the efforts for implementation are an indispensable requirement, it must become routine in order to be able to apply course corrections and provide guidance to public authorities for improving the implementation of the Act in real time.



Comparative Experience

The RTI laws in several countries place reporting requirements on public authorities and Information Commissions(ers), and such reports are tabled in Parliament. Collecting such statistical information is a gigantic task, given the sheer number of public authorities even in small countries.

The Central Information Commission (CIC) in India has devised a Management Information Systems (MIS) approach to data collection about implementation. Every public authority is required to register on this MIS facility through the CIC's website.⁹² Bare statistics of the kind required under Sri Lanka's RTI law is submitted to the CIC electronically every quarter.

Additionally, many ministries and departments voluntarily publish quarterly reports on their websites. These reports contain statistics about information requests received, disposed and those which are pending at the end of the reporting period.⁹³ The CIC and other State Information Commissions submit a combined annual report, comprising of data about implementation submitted by public authorities under their jurisdiction as well their own functioning, to the respective legislatures every year. These reports are published on their respective websites soon after, and hard copies are made available to the citizenry on request.⁹⁴ However, there are several thousand public authorities across India, particularly at the village and sub-district level, that are not connected to the Internet.

As such, some State governments have issued detailed proforma for such public authorities to record statistics about the implementation of the RTI laws in the form of a register that the public information officer and the first appellate authority are required to maintain.⁹⁵ These public authorities fill up these proforma and submit them in hard copy to the concerned Information Commission, which in turn includes them in its annual report.

92 See MIS registration page on the CIC's website at: <http://www.rtiar.nic.in/rtiar09/login.asp>, accessed on 30 March, 2017. Further information about how the MIS operates at the backend and generates annual reports for the CIC may be obtained from the Joint Secretary (MR) in charge of the Monitoring and Reporting Cell of the CIC.

93 For example see the quarterly RTI report of the Directorate of Commercial Intelligence and Statistics, Government of India for the quarter- October- December 2016 at: http://www.dgciskol.nic.in/rti_quarterlyreport.asp, accessed on 30 March, 2017.

94 See the Annual Reports of the Central Information Commission at: <http://www.cic.gov.in/reports/37>, accessed on 30 March, 2017. Some Information Commissions publish annual reports in English and the official language of the State.

95 For example see Form 3 for the register of RTI applications and Form 15 for the register of first appeals notified by the State Government of Uttar Pradesh at: http://upic.gov.in/StaticPages/RTI_Rules.aspx, accessed on 30 March, 2017.

Suggestions:

- At the macro-level, the RTI Commission and the Ministry of Mass Media can jointly develop templates for use by public authorities to submit implementation data in a periodic manner. An internet based MIS may be developed to submit such statistics electronically.
- At the micro-level, it is suggested that the heads of the Divisional and District administration include “status of RTI implementation” in the agenda of their monthly meetings, where the responsible officers of all departments and public authorities report on the progress made in the implementation of the economic and social development programmes funded by the State. Every public authority represented at such meetings may be required to report summary statistics in relation to the following parameters:
 - (i) Action taken to update the information required to be proactively disclosed under the RTI Act;
 - (ii) Number of formal information requests received, disposed and pending, along with the number of instances in which the exemptions were invoked to deny access to information;
 - (iii) Number of appeals received, disposed and pending, along with the end result of every such proceeding;
 - (iv) Number of instances in which public authorities have been summoned to appear before the RTI Commission in second appeal proceedings and the outcome of such cases, including details of prosecutions launched by the RTI Commission against errant officers.
- The Heads of Divisional and District administrations may be required to submit monthly reports on these matters to the Ministry of Mass Media and the RTI Commission using appropriate proforma that may be developed. The Ministry of Mass Media may take steps to place these reports in the public domain proactively, in order to report to the citizenry about the manner of implementation of the Act.
- The RTI Commission may submit to Parliament a combined report, comprising data and feedback given by various public authorities along with a detailed report of its own work. As such reports will not contain exempt information they may be made public through official websites as soon as they are submitted to Parliament. These reports may be published in the Sinhala, Tamil and English languages, as in the case with other reports.

10. **DESISTING FROM MARKETING RE-USE OF INFORMATION RELEASED UNDER THE RTI**

The RTI Regulations notified in February 2017 contain clear provisions about how the information accessed under the RTI Act may be reused. Clarifying the manner in which such information may be reused by the citizenry, the social and the private sectors as well as the mass media is desirable.

However, care must be taken to ensure that the government and public authorities do not market or endorse such re-use of information by private persons, without ascertaining the authenticity of the re-worked or re-presented information or data by private actors. The Government's responsibility stops at the point of ensuring that it places all information and data that is required to be made public under the RTI Act. How such information or data may be used and by whom, is not an area in which public authorities must interfere, given the burden of work already assigned to them.

Suggestions:

It is advisable that the Government and public authorities do not take upon themselves any responsibility for marketing or endorsing the re-use or re-presentation of the information or data released under the RTI Act. As the information and the data released under the RTI Act are collected and maintained using taxpayer funds during the routine course of business, the government or the public authorities need not have any further pecuniary interest in the same, beyond collecting the charges payable by requestors for accessing such information, wherever applicable. So long as the Regulations authorize citizens or private entities to re-use or re-present the data with value additions, the Government's responsibility is limited to oversight functions such as ensuring that the information is not used for any unlawful purposes.

Open Government Data licensing policies are reasonably broad and allow users to make use of the information or data according to their interests, provided such use is for lawful purposes. For example, government information or data may not be misused to incite hatred or violence by anybody. However, it is also necessary to ensure that this oversight function is not turned into an excuse to impose pre-publication censorship on the use of government information or data.

11. BUILDING THE DEMAND FOR INFORMATION

Section 22 of the RTI Act requires the RTI Commission to widely publicize the procedural requirements regarding submission of appeals within 6 months of its establishment. Other than this provision, there is no requirement or guidance in the Act for creating awareness about the rights of citizens to seek and obtain information from public authorities.



India

Section 26(1) of India's RTI Act places a statutory obligation on the Central and State governments to take steps to spread awareness about the procedures for seeking information, with particular focus on disadvantaged segments of society. All public authorities are required to provide assistance in developing such targeted awareness programmes. However, this requirement is subject to the availability of resources.

Additionally, Section 26(2) of India's RTI Act requires every government to publish a guide for citizens explaining the procedures for accessing information, and the name and contact details of public information officers of various public authorities. The nodal Ministry for implementing the RTI Act in the Central Government has floated a centrally sponsored scheme, year after year, for the State Information Commissions to conduct public awareness events to spread knowledge on the use of the RTI Act.⁹⁶

Despite these statutory requirements, only a few initiatives have been taken to create awareness about the RTI laws in India. One such initiative is the audio-visual clips commissioned by the Central Government.⁹⁷

Some State governments also took similar initiatives, but these clips were aired only a few times due to the high cost of air time. A programme that has successfully contributed to spreading awareness about the RTI laws is a 30-minute news programme Janane ka Haq (the right to know)⁹⁸ aired on weekends on the government-owned DD News Channel. As this programme is aired on the widest TV network, awareness about the RTI law has reached rural areas.

⁹⁶ For example, see the circular inviting call for proposals to conduct awareness programmes on the website of the Department of Personnel and Training at: http://document.ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/1_6_2012-IR-19042016.pdf. Information regarding release of funds of various Information Commissions may be accessed on the same website at: http://ccis.nic.in/CP_Circular_Report.asp?MinCode=2&DepCode=2&DivCode=7&SecCode=%280%29&CNCode=1&MctCode=0&SctCode=0&ArchCode=2%20, accessed on 30 March, 2017.

⁹⁷ See these audio-visual clips at: http://www.rti.gov.in/rti_anthem.asp, accessed on 30 March, 2017.

⁹⁸ See past episodes of Janane ka Haq at: https://www.youtube.com/results?search_query=janane+ka+haq+%2B+DD+News, accessed on 30 March, 2017.

Bangladesh and Nepal

In their Annual Reports, several Information Commissions have recommended that RTI be included as a subject in school curricula.⁹⁹ Government-funded universities and education boards have worked with civil society organisations to include RTI in school and university curricula.¹⁰⁰ State-controlled legal services authorities have mainstreamed RTI training in their legal awareness and human rights awareness programmes.¹⁰¹

The Bangladesh Information Commission regularly holds programmes at the district level to spread awareness about the RTI Act. It also conducts training for officers tasked with the responsibilities of dealing with RTI applications and appeals.¹⁰²

The National Information Commission of Nepal has facilitated the dissemination of citizens' charters from the district level, right up to the villages, detailing the services and related norms that every public office is expected to provide to citizens. This Commission has also ensured proactive disclosure of information¹⁰³ relating to budgets and development programmes at the municipality and village level in Nepal. The Commission was also successful in getting a chapter on RTI included in the school syllabi across the country.

Suggestions:

The RTI Commission, in collaboration with the Ministry of Mass Media, can work with the government at the national and the provincial levels to develop targeted educational programmes for disadvantaged segments of society for spreading awareness about the procedures for seeking information under the RTI Act.

Audio-visual content may be developed for airing through radio and TV channels for maximum outreach.

In order to inculcate appreciation for RTI as a basic human right amongst children and youth, it may be included in the syllabi of schools, colleges and universities. RTI training may be mainstreamed in the legal empowerment programmes run by the government supported by international development agencies in Sri Lanka.

99 For example, see Annual Report of the Kerala Information Commission for 2007-08, page 15 at: http://rti.kerala.gov.in/annualreport2007_08.pdf, accessed on 30 March, 2017.

100 For example, the University of Mumbai has launched a certificate course on RTI practice and procedures open to all citizens on a first-come-first-serve basis. See: <http://www.thehindu.com/news/cities/mumbai/Mumbai-University-to-offer-course-on-RTI-Act/article13997338.ece> and <http://www.thehindu.com/news/national/other-states/rti-act-to-be-included-in-school-curriculum/article6776490.ece>, both accessed on 30 March, 2017.

101 The author of this paper has worked with the Delhi Legal Services Authority to spread awareness about the RTI Act in colleges in Delhi. NGOs have worked with similar bodies in other States to spread awareness about RTI amongst the most disadvantaged segments of society. For example see: <http://lawmin.nic.in/doj/justice/undp/NGOdetails.htm>, accessed on 30 March, 2017.

102 For example, See chapter 3 of the 2011 Annual Report of the Bangladesh Information Commission on its website accessible at: http://infocom.portal.gov.bd/sites/default/files/files/infocom.portal.gov.bd/annual_reports/4078b890_d5bb_49b6_b7ea_edb44dd86dea/annual_report_2011_english.pdf, accessed on 30 March, 2017. Subsequent reports are available only in Bangla.

103 See Slide #22 of the MS PPT of the Chief Information Commissioner on the NIC's website accessible at: <http://nic.gov.np/page/ppt-for-interaction-program-on-1st-august-by-chief-information-commissioner>, accessed on 30 March, 2017.

12. **ROLE OF NON-STATE ACTORS FOR ENSURING EFFECTIVE IMPLEMENTATION AND USE OF THE RTI ACT**

a. Non-State Actors as Public Authorities: Clarifying the Problems Posed by the RTI Act

An in-depth examination of the definition of the term ‘public authority’ under Section 43 of the Sri Lankan RTI Act reveals certain difficulties regarding extension of the coverage of the law to non-State actors. For example, according to the broad definition given to a ‘public authority’, a private entity or organization that is carrying out a statutory function or a public function or service under a contract, a partnership, an agreement or license from the government or its agencies or from a local body, will also be responsible for providing access to information under the Act to the extent of such statutory function or public function or service.

Further, according to this definition, non- governmental organisations that are substantially funded by the government or any department or other authority established or created by a Provincial Council or by a foreign government or international organization, rendering a service to the public, will be ‘public authorities’ responsible for providing access to information under the Act to the extent of the service that is rendered to the public.

However, this definition excludes entities created or established under the Companies Act (No. 7 of 2007), unless the State or a public corporation, jointly or individually, hold at least 25% of the shares or a controlling interest.

There are several entities in the private sector and the social sector in Sri Lanka that are registered under the Companies Act (No. 7 of 2007), where the State or a public corporation does not have equity participation or a controlling interest. Several companies in the private sector provide a range of services that are of use and interest to the general public such as communication services, public transport, health services, hospitality services, garbage disposal, etc. Often, they are granted a license for performing these operations, or have entered into a contract or agreement with the government or a public corporation or a local authority to carry out their assigned tasks.

Similarly, several civil society organisations that are part of the social or ‘NGO’ (non- governmental organizations) sector are registered as companies that may or may not be permitted to earn profits in the course of their operations. Many such NGOs work on spreading awareness about people’s rights or carry out developmental activities at the community level. Similarly, several media houses also have obtained legal status by registering themselves under the Companies Act (No. 7 of 2007). The activities of all these entities in the private and the social sectors have a bearing on the larger public interest.

Going by the criterion provided under Section 43 of the RTI Act, such bodies will not become ‘public authorities’ for the purpose of implementing the obligations of transparency under the Act. However, they will qualify to be treated as serving a ‘public function’. This will lead to difficulties in the implementation process because many private entities or NGOs registered as a company under the Companies Act (No. 7 of 2007) are highly likely to claim that they be exempted from the obligations of transparency that is required by other clauses discussed above. A further contradiction would be when for example, a private entity not registered as a company is performing public services like providing transport or garbage disposal facilities will be treated as a ‘public authority’ while a larger entity registered as a company will escape the coverage of the Act. This defeats the very purpose of keeping the scope of the term ‘public authority’ so wide in the Act.

Suggestions:

- a) In the short term, the Ministry of Mass Media, may issue a Regulation under Section 41 stating that for the purpose of determining whether or not a private entity or an NGO is a 'public authority' under the RTI Act, it will be adequate if such body satisfies any one of the multiple criteria laid down under the Interpretations Section. As Section 41 empowers the Ministry of Mass Media to make Regulations for giving effect not only to the provisions of the Act but also to the principles underpinning the Act, such a Regulation is not likely to fall foul of the scheme or the objectives of the Act. The principle underpinning the RTI Act does appear to be to cover a host of private and social sector organisations under the regime of transparency that the Act seeks to establish; or,
- b) In-the-long term, when adequate experience of implementation has been gathered through evidence-based research, and initiatives are taken in positive spirit to strengthen the implementation of the Act by amending any of its provisions, the phrase "...other than the Companies Act No. 7 of 2007 except to the extent specified in paragraph (e)..." may be omitted from clause (b) of the definition of the term 'public authority' in Section 43 through an amendment approved by Parliament.

b. Criteria for 'Public Services', and Substantially Funded Non-State Actors

For ensuring compliance of non-State actors with their obligations under the RTI Act, it is important that the meaning and scope of the phrases – “public services”, “public functions” and “substantially funded”- used in the definition of the term "public authority" are clarified in an objective manner.

Liberia

Liberia's RTI law includes, within the definition of "public service", services such as sanitation, health, transportation, banking, education, broadcasting and telecommunications, irrespective of whether they may be provided at a cost to the consumer or provided gratis.

Similarly, "public function" is defined as, such functions normally carried out by the Government or any of its agencies or institutions.¹⁰⁴

"Public services" and "public functions" ordinarily carry 2 kinds of implications, namely:

- (i) such services and functions that are carried out by the State or a governmental agency; and
- (ii) such services and functions that affect the public at large or a segment of the public in particular.

With the increasing tendency of privatisation of public functions and services, it is becoming common practice to include such bodies under RTI laws in the same manner as State agencies.

This would include a wide range of services that benefit the people in general, or one or more segments of the citizenry. In addition to the categories of services specified in the Liberian RTI law, agencies engaged in garbage collection and disposal, mining or other kinds of extractive industries, hospitality and entertainment industry, private courier and security agencies, funeral services, supply of essential commodities such as milk and groceries or supply of luxury and exotic items like furniture, antiques, gems and jewellery, and other similar service providers may be considered for inclusion in the list of Non- State actors required to comply with the RTI Act.

However, there is a real danger of stretching this category of non-State actors to include a roadside tea stall or eatery, and even shoemakers and vegetable and fruit vendors.

South Africa

South Africa designed its information access law to cover all entities in the private sector. However, it was soon realised that the task of implementation would be extremely challenging. As such, a moratorium was imposed by the implementing Ministry for a few years on the compliance of private sector entities with the law.¹⁰⁵ Subsequently, the deadline was extended. Specific criteria for limiting the application of the transparency law to private entities in each sector of the economy was developed in consultation with the South Africa Human Rights Commission, the oversight body for this law. Private entities with 50 employees or more, or those with annual turnover limits specified by regulations, are now required to comply with the provisions of the Act.¹⁰⁶

104 See Section 1.3.9 of Liberia's Freedom of Information Act, 2010 at: <http://www.freedominfo.org/regions/africa/liberia/>, accessed on 30 March, 2017.

105 For a discussion on the issue of coverage of private sector entities under the Promotion of Access to Information Act, 2000, see the Annual Report of the oversight body, namely, the South Africa Human Rights Commission for 2011-12 at:

<https://www.sahrc.org.za/home/21/files/PAIA%20Annual%20Report%20201112.pdf>, accessed on 30 March, 2017.

106 For an elucidation of the criteria and the extended deadline for implementation of South Africa's transparency law by private sector entities see: <http://www.saipa.co.za/page/416583/promotion-access-information-act-paia-deadline-31-december-2015>, accessed on 30 March, 2017.

c. Substantial Funding / Financing

India

The term “substantial funding” is a matter of considerable debate in India¹⁰⁷, where the RTI Act covers NGOs that are financed directly or indirectly by the government or its agencies. Until September 2013, “substantial financing”¹⁰⁸ was interpreted by various High Courts as funding that is not trivial in volume. Consequently, jurisprudence that developed since the commencement of the implementation of the RTI Act in October 2005, brought the following kinds of financing of non-State agencies under this category¹⁰⁹:

- Investment by the Government in a company (50% or lesser equity participation).
- Public funds or grants-in-aid provided to private bodies.
- Public funds provided for constructing buildings or infrastructure facilities.
- Lease of public land for use at concessional rates of rent.
- Permitting use of public buildings or infrastructure free of charge over long periods.
- Exemption from payment of taxes.

Suggestions:

- The Ministry of Mass Media can develop a set of clearly distinguishable criteria by way of Regulations to identify non-State sector agencies that qualify for coverage under the RTI Act, that is in consonance with local expectations.
- These expectations may be ascertained through a process of consultation with the RTI Commission and other stakeholders in civil society.
- A circular may be issued to all ministries and departments as well as local authorities to identify such bodies matching these criteria that fall under their regulatory jurisdiction.

107 According to Section 2(h) of India's Right to Information Act, 2005, only “substantially funded non-government organisations are to be treated as “public authorities”. See the text of the Act at: <http://righttoinformation.gov.in/rti-act.pdf>, accessed on 30 March, 2017.

108 See CHRI's analytical note- “Non-governmental organisations recognised as public authorities under the RTI Act: A compilation of judgements of Various High Courts”, at: <http://xa.yimg.com/kq/groups/17896509/718664262/name/CHRI%20note-substantially%20financed%20orgns-caselaw-Oct2013.pdf>, accessed on 30 March, 2017.

109 However, in October 2013, the Supreme Court of India reversed this jurisprudence in one stroke by holding that “substantial” implied “astronomical”, in other words, the funding should be so large in volume that in its absence the NGO would struggle to exist or carry out its functions effectively. See, *Thalappalam Ser. Coop. Bank Ltd. and Ors. vs State of Kerala and Ors.*, Civil Appeal Nos. 9020, 9029 & 9023 of 2013, judgement dated 07/10/2013 [2013 (12) SCALE 527]. The subject matter of this case was the omnibus circular issued by the Government of Kerala holding all cooperative societies as public authorities under the RTI Act. The Supreme Court struck down this circular holding that the coverage of cooperative societies must be decided on a case by case basis looking into the proportion of government financing in the budget books of each body.

d. Making Fee Payments to Non-State Actors

Private entities covered by the RTI Act may be governed by their own set of financial procedures, instead of the financial and accounting rules laid down for State sector agencies. Provisions will have to be made in the Rules to allow adequate freedom for such private entities to collect and spend fees in accordance with their established procedures.

e. Spreading Awareness About RTI and Creating the Demand for Information

RTI laws are only as good as their use. Unlike other laws which are implemented by designated authorities within government, the driving force behind the effective implementation of an RTI law is the citizenry. Non-State actors in civil society and the mass media have a major role to play in the spreading of awareness about RTI and the procedures for seeking and obtaining information.

Suggestions:

While the fee rates notified in the Rules prepared by the RTI Commission apply uniformly to the private sector agencies covered by the RTI Act, they may be permitted to establish systems for receiving and utilising fees for providing information in accordance with their internal procedures. However, every such private entity must be required to proactively display at its premises and on its website fee payment procedures as required under Section 26(1)(d) of the Act.

South Asia

The tallest contribution to spreading awareness about the RTI laws in South Asia has been made by civil society organisations working at the grass roots and policy level. They have played a key role in spreading awareness about RTI procedures. This has been done through, for instance, holding workshops and sensitization camps, and roadshows distributing ICT material to explain the procedures for seeking information in simple and in local languages. They have published and disseminated user guides, pamphlets, or commissioned and performed skits through street theatre or using local folk art forms to spread awareness about RTI. Several NGOs run RTI clinics to provide advice and assistance in real time to citizens who face obstacles while seeking and obtaining information from public authorities.¹¹⁰ Often such activities are conducted with meagre funds, but the impacts are visible in the statistics. For example, between October 2005 and October 2016, more than 20 million information requests were reported to have been filed across India.¹¹¹

The privately owned print media has contributed immensely to the spreading of awareness on RTI since 2005. Not only English language newspapers, but also regional language dailies report on stories of success and challenges faced by RTI users and activists. One popular national level daily- the Indian Express- has established an investigative team of its staff who use RTI for the purpose of investigative journalism. Several regional language dailies like Amar Ujala (Hindi) have followed suit. The reporting of their own investigations, and the stories of success and challenges of other RTI users, are highlighted in their web editions as well, which facilitate discussions in cyberspace.

A civil society study conducted between 2011 and 2014 across India found that newspapers were the primary source of awareness about RTI in rural areas whereas TV channels were the primary source of awareness in low income households in urban areas.¹¹²

Australia, Canada, UK and USA

In countries like Australia, Canada, the UK and the USA, several popular dailies and TV news channels have formulated a policy of using RTI laws for the purpose of investigative journalism.¹¹³

They use RTI laws frequently, contributing to the popularity of these laws.

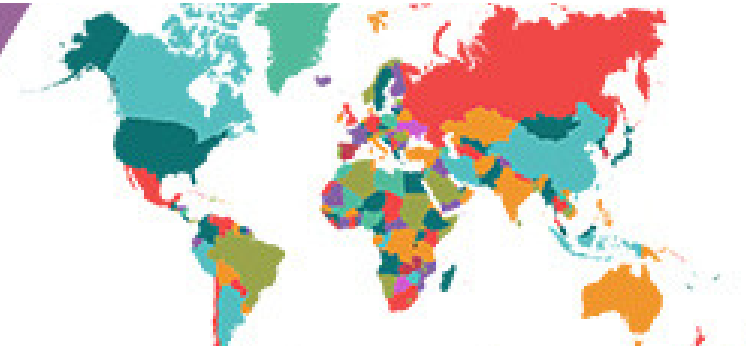
110 For example, see the list of activities engaged in by a network of independent RTI activists in the State of Maharashtra to spread awareness about the RTI Act and help people with the access procedures at: <http://mahitiadhikarmanch.ngo/>, accessed on 30 January, 2017.

111 See CHRI's analysis of the RTI trends over 12 years at: <http://thewire.in/71390/data-indicates-regional-disparity-in-the-number-of-rti-applications-filed/>, accessed on 30 January, 2017. If data is made available from more of the larger sized States that have not published any annual report, this number is likely to rise up to 40-50 million requests across the country during this period.

112 See RAAG's People's Monitoring of the RTI Regime in India: 2011-13, pp. 55ff at: <http://nebula.wsimg.com/93c4b1e26eb3fbd41782c6526475ed79?AccessKeyId=52EBDBA4FE710433B3D8&disposition=download&origin=1>, accessed on 30 March, 2017.

113 See articles and scholarly studies on the use of RTI laws by the media at: <https://www.theguardian.com/media/2015/oct/30/freedom-of-information-act-chris-grayling-misuse-foi>, <http://www.pressgazette.co.uk/foi-10-how-all-journalists-can-use-freedom-information-act-find-great-exclusives/>; https://publiceditor.blogs.nytimes.com/2014/12/09/free-flow-of-government-information-yawn/?_r=0;

<http://ricksnell.com.au/resources/Taylor%20Bildstein%20Mjms%20thesis.pdf>; and <http://www.cjfe.org/access-information>, all accessed on 30 March, 2017.



Comparative Experience

Suggestions:

- Resource support is crucial for civil society organisations to spread awareness about RTI across Sri Lanka. Both domestic and foreign donors may like to consider extending resource support to community-based organisations and the mass media to conduct outreach programmes.
- CSOs may be equipped with resources and technical support to set up and run RTI clinics at the district and divisional level for the underprivileged to seek information under the RTI Act.
- Training programmes may be organised for journalists to use RTI for the purpose of investigative journalism, to track public finance spending and monitor the implementation of social development programmes.

f. Demonstrating Effective Implementation of the RTI Act through Pilot Projects

The RTI Act does not provide for a staggered implementation programme, as is the case with the RTI laws in a few other countries like the Cayman Islands and Jamaica in the Commonwealth.

This could result in the Ministry of Mass Media and the RTI Commission spreading themselves thin to ensure implementation across the hundreds of public authorities in Sri Lanka. While simultaneous implementation across all public authorities is required by the law, it is advisable to launch some pilot projects to demonstrate how the law can be implemented effectively by focusing more resources and energies on key public authorities.

Suggestions:

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- CSOs may be equipped with resources and technical support to set up and run RTI clinics at the district and divisional level for the underprivileged to seek information under the RTI Act.
- Training programmes may be organised for journalists to use RTI for the purpose of investigative journalism, to track public finance spending and monitor the implementation of social development programmes.

CONCLUSION

RTI laws afford governments and public authorities an opportunity to reform the way they function, to strengthen synergies with each other, and to foster trust and confidence of citizens in the state.

RTI laws derive their impetus for implementation from the demand for access to information from the public. As such, it is not only a citizen empowering law, but also a demand driven law. Unless sufficient demand for the law is created, the implementation of an RTI law is not likely to be effective.

Channeling government information to the people in an easily accessible manner, strengthens the state-citizen relationship, and contributes immeasurably to making a democracy truly meaningful, functional and effective. RTI has the potential to upgrade democratic governance from a representative one to a participatory one.

Sri Lanka has taken the right step in this direction by enacting an RTI law. Now the government and public authorities must invest time, energy and resources to make RTI work, and non-state actors must play their part in realizing its full potential.

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