

Right to Information: Issues and Challenges of Policy and Implementation

A Commentary based on the recent use
of the RTI Act by journalists

C P A

CENTRE FOR POLICY ALTERNATIVES
விவரணை மற்றும் மாற்றம்
மற்றும் செயல்பாடுகள்

Centre for Policy Alternatives
December 2021

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மையம்

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Sri Lanka

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CENTRE FOR POLICY ALTERNATIVES
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UDIT: 2021



The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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RTI as an evaluation tool for policy and planning

There is a complex dilemma in the policy making process in Sri Lanka. This predicament in policy making at the national level has existed over many decades since independence. At present as a nation, we are faced with numerous challenges at the national level. In the context of the discussion on organic agriculture, there have been a series of decisions based on various policy frameworks. However, such policy decision-making without a process of reaching conclusions through a wider consultation with experts in the subject as well as communities affected by such policy decisions regarding the diverse nature of the ecological conditions prevailing in different parts of the country, the requirements of the different climatic and weather conditions as well as adaptation process of the soil to the different geographical conditions and the extensive subject-matter research on a wide range of critical factors, including soil composition, has spiralled into a succession of enduring issues.

There are three structural layers in the overall governance framework of our country to reach a consensus and a conclusion on policy related matters through discussions, discourse, and debates. There is a committee mechanism process in the three structures of local authorities (Municipal Councils, Urban Councils and Pradeshiya Sabhas), Provincial Councils and Parliament to deal with issues that require the adoption of the previously mentioned policy decisions or frameworks at the local, provincial, or national level. However, the current structural layers of governance do not provide evidence of a process or methodology to entertain or inquire into queries, ideas, suggestions, opinions, or criticism pointed out by any researcher, journalist, or expert on the subject, or a group or organisation consisting of such persons, relating to the life and livelihood of the public in a particular area, region, or at the national level and all such related rights.

We do not evidence good practises in the country of the existence of such systems and therefore, the legal and policy frameworks are formulated without a wider comprehensive consultative process. For example, if it is solely up to the officials of the Ministry of Finance to decide on all matters, including how taxes are levied, the procedures to be followed, the level of simplicity to be exercised and the implications for the citizen stemming from those decisions, then invariably these lead to conflicts. Furthermore, there is no evidence that these policy decisions are formulated in a transparent manner in a formal and acceptable process based on research and scientific criteria and facts.

In addition, in the case of the Provincial Councils, their committees are limited to a namesake structure. A process to discuss the issues of the society in a formal dialogue with the respective groups including professional networks in the area, researchers, and expert groups to formulate relevant policy and laws, cannot be seen at present. Even in the case of Parliament, it is imperative for the committees to inculcate a conducive environment and create an ongoing system so that the respective subject matters take into account the professional knowledge of their members in the respective disciplines and conduct scholarly discourse and discussions with experts regarding the complications and issues in the related fields.

There is a need for active participation of the citizens in an inclusive participatory process in formulating laws and policies in the country in line with democratic principles and this process can no longer be a mere theoretical prospect but needs to be a firm reality.

The process underpinned in compiling this report, through 16 articles written by Sri Lankan journalists is an attempt to highlight the practical realities, legal and policy background concerning a number of social issues that were expected to be addressed through the practical application of the fundamental right to information in Sri Lanka and to provide a brief overview of the suggested reforms.

It highlights the significant importance of exploratory findings, research and the analysis of information in the process of policy making. These journalists present their personal opinions and views based on their analysis of various social issues, and some of these issues may relate only to a particular area or

community. However, what is highlighted is a review of the sectors requiring policy reform based on the questions emerging through the issues surfacing in these series of articles published in the mainstream and/or new media through various media platforms. These experimental and investigative articles have used the Right to Information Act No. 12 of 2016 as a tool to access information that would be the subject of discussion.

In a democratic governance framework, there is a need to effectively implement the committee system in the three structural layers described earlier by providing special attention to exploring the existing potential through the aforementioned triad of governing bodies, namely, the local government, the provincial councils and the central government.

There is no tradition of implementing decisions restricted to the ideas of one individual or a limited group in the current context of global democracy. The accepted and most effective methodology today is a decision-making process based on consultation, diversity, dialogue, critique, recognition and acceptance.

As a start, I hope that this publication will provide an impetus for a journey that provides the opportunity through the realities generated by the research efforts of these journalists, to present to society the greater need and aspiration to expand the boundaries of democracy.

I want to thank the journalists for their articles, which were not publicized via any other media, mainly based on which this publication is presented. I appreciate the commitment of those journalists to be the pioneers of using the right to information as an effective tool to raise concerns on a range of policy positions and their implementation, highlighting the paradox between policies in books and experiences in practice. I would also like to thank Thusitha Siriwardana, Attorney-at-Law, for his contribution to this publication with a brief overview of the legal and policy issues in selected issues raised by the journalists in their articles.

Lionel Guruge

Senior Researcher

Centre for Policy Alternatives

List of Acronyms

AG	Attorney General
CBSL	Central Bank of Sri Lanka
CEB	Ceylon Electricity Board
CGAP	Consultative Group to Assist the Poor
COPE	Committee on Public Enterprises
CPA	Centre for Policy Alternatives
CIABOC	Commission to Investigate Allegations of Bribery or Corruption
CID	Criminal Investigations Department
DO	Designated Officer
EPF	Employees' Provident Fund
FTZ	Free Trade Zone
GoSL	Government of Sri Lanka
HRCSL	Human Rights Commission of Sri Lanka
IO	Information Officer
LG	Local Government
LMFC	Licensed Microfinance Company
LMPA	Lanka Microfinance Practitioners' Association
MC	Municipal Council
MOH	Medical Officer of Health
MOU	Memorandum of Understanding
NBRO	National Building Research Organisation
NCDF	National Collaboration Development Foundation
NCPA	National Child Protection Authority
NWSB	National Water Supply and Drainage Board
OLP	Official Languages Policy
PA	Public Authority
RTI	Right to Information
RTIC	Right to Information Commission (Sri Lanka)
SLLRDC	Sri Lanka Land Reclamation and Development Corporation
TID	Terrorist Investigation Division

Introduction

The Universal Declaration of Human Rights (UDHR) has enshrined, inter alia, the right to information as a universal human right and has proclaimed that all member states should take progressive action to protect it. Article 19 of the UDHR stipulates that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹

While the Constitution of Sri Lanka² has guaranteed several fundamental rights to citizens, a long-standing struggle and sustained advocacy of various human rights actors has led to the landmark decision to introduce the Right to Information (RTI) as an integral part of the Fundamental Rights chapter of the Nineteenth Amendment to the Constitution.³ Subsequently, the Right to Information Act. No. 12 of 2016 was passed in Parliament and the implementation of the said Act commenced with effect from 03.02.2017 as per

- 1 The United Nations, Universal Declaration of Human Rights (UDHR), 1948, Article 19. https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf
- 2 The Constitution of the Democratic Republic of Sri Lanka (as amended up to 29th October 2020), Revised Edition, 2021. <https://www.parliament.lk/files/pdf/constitution.pdf>
- 3 14A. (1) Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen’s right held by:- (a) the State, a Ministry or any Government Department or any statutory body established or created by or under any law; (b) any Ministry of a Minister of the Board of Ministers of a Province or any Department or any statutory body established or created by a statute of a Provincial Council; R(c) any local authority; and (d) any other person, who is in possession of such information relating to any institution referred to in sub-paragraphs (a), (b) or (c) of this paragraph. <https://www.parliament.lk/files/pdf/constitution.pdf>

regulations promulgated by the Minister under Section 41 (2) of the Right to Information Act, No. 12 of 2016.⁴

The right to information always plays a significant role as an effective tool, in strengthening the good governance of any society, creating ample space for questioning the transparency and accountability of actions of public authorities. Therefore, the decision to include the right to information as part of the fundamental rights of citizens is, in turn, a significant move to empower citizens, enabling them to be active citizens rather than passive recipients of governance processes.

Despite the constitutionally guaranteed fundamental right of access to information supplemented by the subsequent gazette notification,⁵ through which it came into force in 2017, the actual realisation of the said law has not been implemented as was envisaged. This may be mainly due to the ingrained culture of non-disclosure of information by the public authorities of the Sri Lankan style of governance. Furthermore, the public officials' lack of knowledge and understanding about the provisions of the RTI Act and their stubborn attitude of concealment of information affecting the lives and livelihoods of people have made people in turn hesitate to exercise their right to information.

The right of access to information is intrinsic to active citizenship. At the same time, it is essential to guarantee that citizens have the lawful mechanisms essential to corroborate the correctness of the information, make informed choices, and hold rulers and administrators to account.

However, a meaningful right to information regime will only be reflected with effective implementation, including sanctions where necessary for matters that prove a violation of the provisions of the Right to Information Act. The extent to which the officials of Public Authorities (PAs),⁶ within the meaning of the Act, are willing to abide by the requirements of the law, particularly the decisions of

4 Gazette (Extraordinary) No. 2004/66 of 3rd February 2017. http://documents.gov.lk/files/egz/2017/2/2004-66_E.pdf

5 Section 12(1) Micro Finance Act, No. 6 of 2016

6 Section 43, Right to Information Act, No. 12 of 2016. https://www.rti.gov.lk/images/resources/RTI_Act_Sri_Lanka_E.pdf

the Right to Information Commission,⁷ is very crucial in ensuring consistency of the progressive paradigm shift RTI law made in the sphere of rights of citizens in Sri Lanka. Additionally, it is questionable as to whether Public Authorities that were at the receiving end of many right to information requests were prepared with essential elements such as human resources, physical resources, capacity development including knowledge building through training – that were needed in responding to RTI requests.

In this context, while a substantial degree of interest on the part of broader civil society and citizens in general in exercising the right of access to information is visible today, there are situations where access to information is still a challenge. Accordingly, the power given to ordinary people by the RTI Act to question authorities that are run on the tax money of the public is, on the one hand, an exceptional opportunity for establishing a culture of transparency and on the other hand, has all potential to be effectively used to impose liabilities for those who act in contravention of the provisions of the Act.⁸

The global RTI Rating⁹ carried out by the Centre for Law and Democracy (CLD), measures the strength of the legislative framework for the right to access information. In this ranking, Sri Lanka is placed amongst the top ten countries in the world, standing at the fourth place in the global ranking, which is a welcoming indicator.¹⁰

7 Section 11, *ibid.*

8 Section 39, *ibid.*

9 Centre for Law and Democracy, <https://www.law-democracy.org/live/rti-rating/>

10 Global Right to Information Rating, <https://www.rti-rating.org/>

**RTI Legislation Rating Methodology – Centre for Law and Democracy,
September 2020**

Section	Max Points	Sri Lanka
1. Right of Access	6	5
2. Scope	30	28
3. Requesting Procedures	30	26
4. Exceptions and Refusals	30	23
5. Appeals	30	29
6. Sanctions and Protections	8	4
7. Promotional Measures	16	16
Total Score	150	131

However, any assessment or rating of the RTI Law will undoubtedly reflect its actual value based upon the enforcement and implementation of such a legal framework. Therefore, the RTI regime in the socio-political context depends entirely on the government's public policy stance in relation to the disclosure of information. Further, the RTI regime has to be seen from the perspective of numerous other items of legislation that impose provisions for prohibition of disclosure of information that may, in practice, contradict the spirit of the RTI law leaving the matter for the RTI Commission and the Courts to decide the scope of the primary objective of the fundamental right of access to information in Sri Lanka.

Right to Information as a Fundamental Right

With the introduction of the Nineteenth Amendment to the Constitution,¹ the right to access information was made an integral aspect of the fundamental rights under Chapter III of the Constitution. This enabled citizens to ask for information as a fundamental right and seek legal remedies when public authorities act in contravention of the provisions of the Act. The preamble of the RTI Act states that:

“WHEREAS the Constitution guarantees the right of access to information in Article 14A thereof and there exists a need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.”²

Making it clear that the aim of the right of access to information is to ‘... promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.’.

The procedure for obtaining information as stipulated by Section 24 of the Act refers to identifying the nature of the form and language in which the citizen prefers access³ to information, thereby indirectly implying the definite need for ensuring the language rights of the citizen in order to exercise the right

1 Article 2 of the Nineteenth Amendment to the Constitution, May 15, 2015. <https://www.parliament.lk/uploads/acts/gbills/english/5974.pdf>

2 Preamble, Right to Information Act, No. 12 of 2016.

3 Section 24(5)(b), Right to Information Act, No. 12 of 2016. https://www.rti.gov.lk/images/resources/RTI_Act_Sri_Lanka_E.pdf

to information effectively. Even though citizens are able to make preference of language to request information, the absence of compelling and mandatory provisions within the legal framework of the RTI Act requiring public authorities to provide information in the language of the applicant's choice is a continuous hindrance for citizens in a multi linguistic society to equally exercise the right of access to information as a fundamental right. This, in turn, is linked to the “fundamental right to equality guaranteed by the Constitution which enshrines that *“all persons are equal before the law and are entitled to the equal protection of the law”*⁴ and *“no person shall, on the grounds of race, religion, **language**, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.”*⁵

The legal obligation of the respective public authorities is to give the information in the language in which the same is maintained. Thus, information received by all citizens may not be in the same language of their preference, making it difficult for them to make optimum use of the benefit of the right to information as a fundamental right.

This brings the attention of policymakers to understand the need for multifaceted policy and practice related reforms within the overall premise of implementing the right to information law in the country. Ensuring language rights is undoubtedly a prerequisite to enabling citizens to enjoy the right to information. Regrettably, the mandate of the Right to Information Commission,⁶ is not broad enough to make directions in that regard.⁷ However, as per the provisions made in Section 37 of the Act, the Commission can provide recommendations on the impact of implementation gaps of other policies such as the ‘Official Language Policy’ and propose potential measures to be addressed by the legislators in its annual report⁸ to the Parliament.

4 Article 12(1), Chapter III of the Constitution. <https://www.parliament.lk/files/pdf/constitution.pdf>

5 Article 12(3), *ibid.*

6 Section 11, Right to Information Act, No. 12 of 2016.

7 Section 15, *ibid.*

8 Section 37, ‘Commission to prepare a report of its activities’, *ibid.*

Challenges faced by citizens in exercising the fundamental right of access to information include, but not are limited to, the deep-rooted practice of secrecy of information in the state bureaucracy, and the resentment reflected by public authorities to disclose information. Further, the ingrained attitude of perceiving disclosing of information as equivalent to revealing state secrets and the lack of resources to respond to information requests efficiently are also concerns.

Therefore, while acknowledging and welcoming the progressive move made in 2015 through the Nineteenth Amendment to the Constitution, which remained unchanged in the Twentieth Amendment to the Constitution,⁹ to introduce the right of access to information as a fundamental right; the concerns of genuine commitment from both policymakers and decision makers in public authorities to addressing emerging policy and practice related issues and barriers, remain valid.

Structure of the report

This report consists of three sections. Chapter one first presents a commentary on the implementation of RTI law, key policy and practice issues and the reforms needed in several selected policy areas. These were identified based upon a series of articles written by several journalists, a series of radio programs on the effective use of RTI law to divulge information that matters to lives and livelihoods of people, as well as a knowledge building initiative. Chapter one will also outline some of the best practises that demonstrate the effective use of RTI law and the power of citizens with their constitutionally guaranteed fundamental right of access to information. Secondly, it presents a series of articles by journalists followed by a brief overview of the issues and core discussion points related to the effective use of RTI law in Sri Lanka.

Accordingly, the first Chapter highlights issues, policy implementation gaps and areas of necessary reforms in relation to separate issues being discussed in various articles. The core issues include:

9 Twentieth Amendment to the Constitution, October 29, 2020. <https://www.parliament.lk/uploads/acts/gbills/english/6176.pdf>

Core issues highlighted in articles by journalists

- Lack of legislative and policy frameworks to regulate microfinance services and the ineffective implementation of the existing regulatory mechanism.
- Lack of transparency and non-adherence to the obligations of the Right to Information Act, No. 12 of 2016 by public authorities.
- Implementation gaps in National Policy on Waste Management in Sri Lanka.
- Complicated regulations and the consequences on the fisher folks and fishing industry.
- Lack of implementation of the constitutionally guaranteed fundamental right to 'Freedom from Torture' and the underutilisation of the provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.
- Corruption in development projects.
- Violation of legal obligations imposed under the RTI law and the undermining of fundamental rights of access to information due to the culture of secrecy.
- Lack of willingness and interest of public authorities to comply with the provisions of the RTI law and the need for resources and mandate to the RTI Commission to take legal action against offenders.
- Lack of compliance with Declaration of Assets and Liabilities Law, No. 1 of 1975 and the consequences of absence of legislation for election campaign finance regulation.
- Lack of a legislative framework for election campaign finance regulation and its detrimental consequences on suffrage, level playing field in election contests and space for bribery and corruption in election campaigning.
- Implementation gaps of available legal provisions for the protection of child rights
- Malpractices and potential bribery and corruption in real estate businesses together with lack of proper implementation of regulations of local authorities pertaining to granting approvals for such businesses.

It should be noted that this is neither a comprehensive analysis of the implementation of RTI Law nor an extensive legal and policy analysis of the issues highlighted both in case of the articles authored by the journalists and the radio programs telecast. Accordingly, Chapter One provides a brief overview of several issues highlighted by journalists in their respective articles. The aim of Chapter One is to highlight some overarching legislative, policy and practice-related gaps and challenges for which it is essential to introduce reforms.

The second chapter of articles written by journalists consists of evidence-based case studies revealed via the practical application of the right of access to information as per the provisions stipulated by the RTI Act. Various types of injustices, discriminations, the disproportionate use of power by law enforcement agencies as well as the lack of regard for the rights of citizens have been raised in the public domain by the authors of these articles. Many of these issues would indeed have not emerged if the right of access to information was not in place. The culture of considering non-disclosure of information on the part of the public authorities as to the norm for decades was expected to change completely, making disclosure of information the norm as required by the new RTI law in the country. The content of these articles demonstrates the ingrained attitude and practises of the majority of the public authorities which consider the 'secrecy' of information as the norm to remain active. This is the tip of the iceberg of the issues and challenges faced in ensuring effective implementation of RTI and in full realisation of the fundamental right of access to information. Accordingly, the series of articles provide robust evidence of effective use of the RTI law, not only in revealing covert information but also in creating a societal discourse through media, preventing the perpetrators from misusing the deep-rooted culture of non-disclosure to ensure injustices remain hidden.

The third chapter briefly focuses on the knowledge building efforts via radio programs towards creating a better comprehension of the scope of RTI as a fundamental right, together with its effective use to raise voice against injustices and hold mandated public authorities to account. Further, the focus of these radio programs has also been given to convey to respective public authorities, a diverse range of issues faced by communities, while clarifying legal and policy opinions from different expertise in respective sectors. These radio programs have also promoted the use of the RTI Hotline established by CPA in its capacity building and outreach section, and thus has presented a summary of the type of issues raised by citizens through the said hotline.

Chapter 1

A brief observation on the implementation of RTI Law, emerging policy and practice issues on selected topics, and the corresponding reforms needed.

This chapter will focus on several selected policy and practice issues identified, through a series of articles written by journalists entirely based on information sought under the provisions of the RTI Act. Accordingly, some of the articles highlight important policy and practice related issues of several subject matters questioned based on information accessed and obtained using the provisions of RTI law. Others reiterate the need for strong policy positions and a great deal of attitudinal transformation of officials of public authorities due to either the reluctance to disclose information or a conflict between the provisions of RTI and a range of other complex legislative barriers to the divulging of information.

Unregulated Microfinance services in Sri Lanka and adverse consequences on the lives of people

Legislative background

Microfinance is an essential aspect of the economy where low-income people often lack access to basic financial services. Improved access to microfinance services among the low-income population assists specifically towards poverty reduction, enabling the underprivileged to build assets, increase their income, and reduce their vulnerability to economic recessions. Further, the Consultative Group to Assist the Poor (CGAP, 2006) has defined microfinance as “provision of financial services to low-income people” and further states that “*microfinance services help people fight poverty on their own terms, in a sustainable way*”.¹

1 Central Bank of Sri Lanka, <https://www.cbsl.gov.lk/en/financial-system/financial-system-stability/microfinance-sector>

The Microfinance Act, No. 6 of 2016² is the key piece of legislation that provides provisions for, inter alia, the licensing, regulation and supervision of companies carrying on microfinance business. As per the provisions of Section 11 of the Act,³ the Monetary Board of the Central Bank of Sri Lanka (CBSL)⁴ may issue directions to licensed microfinance companies or any single licensed microfinance company or to any group or category of microfinance companies as to how any aspect of the business and corporate affairs of such a company are to be conducted. Under sub-section (1)⁵ and (2) of section 12 of the Act, the Board may issue guidelines on monitoring compliance and in case of failure to adhere, it may cancel the licence of said microfinance company under the provisions of Section 17, respectively.⁶

Core Issues

Despite these legislative provisions placed to ensure proper and fair functioning of microfinance institutions, the issues faced by communities as service recipients of such institutions witness the gaps in law enforcement and regulation. For instance, Regulation No. 2 of 2019 issued by the Monetary Board of the Central Bank of Sri Lanka which sets the maximum interest rate on microfinance loans⁷ appears to have been violated by a number of institutions providing microfinance loans. The said regulation aims to protect the customers from being charged with exorbitant interest rates⁸ on microfinance loans granted by licenced microfinance companies.

Ground realities and desperate stories being heard from communities, especially women, of various areas of the country where microfinance loan services

2 Microfinance Act, No. 6 of 2016. https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/laws/acts/en/Micro_finance_act_6_2016_e.pdf

3 Section 11, 'Directions to and rules governing licensed microfinance companies', *ibid.*

4 Monetary Law Act (Chapter 422)

5 Section 12 (1), *ibid.*

6 Section 17, 'Ground for cancellation of a license', *ibid.*

7 Regulation issued under Section 11 of the Microfinance Act, No. 06 of 2016. https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/laws/cdg/Microfinance_Act_Directions_No_2_of_2019_e.pdf

8 Regulation No. 2.1 "LMFCs shall not charge a rate exceeding 35 percent per annum (effective annual rate), inclusive of all other charges for Microfinance loans", *ibid.*

are prevalent, show that the interest rates charged well exceed the maximum ceiling rate imposed by the Central Bank through its regulations. Additionally, whereas the law specifies that only Licenced Micro Finance Companies(LMFCs) are eligible to carry out microfinance services, mainly including microfinance loans, and list only four companies as LMFCs,⁹ case studies from communities show that several other institutions conduct functions including the granting of microfinance loans. Further, many institutions delivering microfinance related services are part of the Lanka Microfinance Practitioners' Association¹⁰ under two categories: 1). Ordinary Members and 2). Associate Members. This results in many institutions primarily engaged in money lending, escaping the regulatory framework of the authorities. This state of affairs, in the face of lack of awareness among communities about such factors as the money lending criteria, method of interest calculation, legal repercussions of defaulting that result in additional charges for delays, together with the absence of information concerning the functions and legitimacy of institutions providing microfinance loans, have made the issue a minefield for the unwary.

Further, the issues that emerged due to lack of monitoring and regulation of the activities referred to as 'microfinance services' of various institutions are even more complex as the granting of loans, simply referring to them as 'microfinance loans' may not bring them under the definition of "Microfinance Loans."¹¹

Reforms needed

One of the main policy issues is the gap in implementing an effective and robust regulatory mechanism that meaningfully standardises the functions of the microfinance sector in Sri Lanka. Such regulatory policy should prevent

9 Licensed microfinance companies registered with the Central Bank of Sri Lanka as at June 30, 2021: Berendina Micro Investments Company Limited; Lak Jaya Micro Finance Limited; Dumbara Micro Credit Limited; and Sejaya Micro Credit Limited - <https://www.cbsl.gov.lk/en/authorized-financial-institutions/licensed-microfinance-companies>

10 The Lanka Microfinance Practitioners' Association is incorporated as a non-profit organisation under the Companies Act No. 7 of 2007, <https://www.microfinance.lk/membership/>

11 Regulation No. 3.1 "Loans granted for individuals/individuals under the Group Lending System for income generating activities, which include loans for establishing and managing Micro Enterprises..."

individuals or institutions from illegally operating in the guise of licensed microfinance companies and exploiting underprivileged communities desperate to seek financial assistance for their income-generating activities. Accordingly, immediate action is needed to table the proposed draft Credit Regulatory Act, designed by the CBSL, in the Parliament and to make it an enforceable law.

The CBSL should revisit its regulations, issued under the provisions of Section 11 of the Microfinance Act in the context of higher demand from larger numbers of low-income persons; capacity of the licenced companies to meet the financial needs of such communities; and leaving many institutions out of the existing regulatory systems, which result in increasing the risk of communities being caught in such unscrupulous schemes.

The Microfinance Act Directions No. 01 of 2016¹² of the Monetary Board of the CBSL sets the minimum core capital limits¹³ to be maintained at all times. The Central Bank should look into why, whereas a large number of institutions engage in microfinance activities, mainly including lending, only four companies have fulfilled the directions and criteria stipulated under the Microfinance Act and registered as LMFCs as of June 30, 2021.

Criteria for regulations through the Microfinance Act or any future legislation to be issued thereunder should necessarily include guidelines to respect the language rights of service recipients of microfinance institutions enabling money lending. Unjust contract terms and conditions presented in a language that cannot be read and understood by the signees is a violation of the provisions stipulated in the Unfair Contract Terms Act, No. 26 of 1997.¹⁴

The CBSL, the Monetary Board, in particular, should effectively use its mandate to issue directions under the provisions in Section 11 of the Microfinance Act and address the issue of exclusion of a large number of institutions providing microfinance services resulting in exploitation of low-income persons through unfair lending methods.

12 Microfinance Directions No. 01 of 2016, Minimum Core Capital, issued under Section 11 of the Micro Finance Act, No. 06 of 2016. https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/laws/cdg/Microfinance_Act_Directions_No_1_of_2016_e.pdf

13 Directions No. 1.1 and 1.2, *ibid*.

14 Section 8, the Unfair Contract Terms Act, No. 26 of 1997 <https://www.lawnet.gov.lk/unfair-contract-terms-3/>

Ingrained culture of ‘secrecy’, potential corruption, and non-compliance with obligations of the RTI Act by public authorities.

Legislative background

After a long period of civil society advocacy, Sri Lanka is privileged to have the right to information as part of its fundamental rights with the introduction of the Nineteenth Amendment to the Constitution. Subsequently, the RTI Act¹⁵ was formulated in 2016 and it came into force with the Gazette notification issued by the Minister in charge of the subject in 2017.¹⁶ Since then, citizens of Sri Lanka had the novel experience of asking for information as a right from public authorities and many citizens, mainly including several journalists involved in investigative journalism, started exercising this right for matters related to both personal lives and of public interest.

Accordingly, it is stated in the Constitution¹⁷ by *Article 14A. (1) Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen’s right held by:- (a) the State, a Ministry or any Government Department or any statutory body established or created by or under any law; (b) any Ministry of a Minister of the Board of Ministers of a Province or any Department or any statutory body established or created by a statute of a Provincial Council; (c) any local authority; and (d) any other person, who is in possession of such information relating to any institution referred to in sub-paragraphs (a) (b) or (c) of this paragraph.*

Further, the provisions of Section 3. (1) of the RTI Act states that, *“subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority.”*¹⁸

While RTI law has provided for specific instances of ‘denial of access to information’,¹⁹ it also promotes ‘proactive disclosure.’²⁰ Further, the RTI

15 Right to Information Act, No. 12 of 2016.

16 Gazette (Extraordinary) No. 2004/66 of 3rd February 2017.

17 Article 2, Nineteenth Amendment to the Constitution.

18 Section 3(1), Right to Information Act, No. 12 of 2016.

19 Part II, Section 5, *ibid.*

20 Section 14(e), *ibid.*

legislative framework has imposed a duty on every public authority to maintain all its records duly categorised and indexed in an appropriate manner enabling exercising citizens' fundamental right of access to information.²¹ The Act provides provisions directing public authorities to take necessary steps to preserve all such records in electronic formats for a reasonable time while considering the availability of resources to do so. This reiterates the intended aim of RTI law to broaden its scope of availability of information in different forms to facilitate better access to information when required.

In order to ensure the consistency of the procedure for obtaining information, public authorities have been imposed with the duty of acknowledgement of information requests from citizens.²² Further, decisions of relevant public authorities are expected to be communicated as expeditiously as possible to the citizen who made the respective information requests.²³ Therefore, it is obvious that the intended aim of the RTI law is to ensure access to information and thereby promote a society in which citizens of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.

Additionally, the RTI Act makes provisions for the appointment of information officers (IOs) to provide information and designated officers (DOs) to hear appeals.²⁴ Under this Act, public authorities can appoint more than one information officer depending on the need.

Despite this progressive move as far as the fundamental right of access to information is concerned, there are challenges when accessing mainly the information linked with matters and decisions of serious public concern or interest. The operationalization of the RTI law demonstrates the definite need for reforms in the existing policy frameworks due to the deep-rooted attitudes derived from the practice of maintaining secrecy of information in public authorities for decades. Any progressive legislation may not bring envisaged results until an effective policy implementation plan is executed. Therefore, to

21 Section 7, *ibid.*

22 Section 24(3), *ibid.*

23 Section 25(1), *ibid.*

24 Section 23(1)(a), *ibid.*

prevent disillusioning citizens who access information and actively take part in public life while opposing corruption, implementation gaps and challenges should immediately be addressed.

Core Issues

Citizens who have so far exercised their fundamental right of access to information from various public authorities have experienced a range of issues and challenges.²⁵ The core issues faced in implementing RTI law since it came into force, are of extreme significance in lessons learned and bringing necessary policy and practice related changes to both the content of the legislative framework and the processes being followed in implementation.

Officials of many public authorities do not comply with the provisions of the law. This is one of the critical issues identified in implementing the RTI Law. Section 23(1)(a) states the need for appointing information officers and designated officers. Compliance with this is a fundamental prerequisite of effective implementation of the RTI Act. The law categorically states that such appointment should be made within three months of the date of this Act coming into operation. However even as recently as October 5, 2021,²⁶ some public authorities were found not to have appointed an information officer. This shows both the apparent irresponsibility of public authorities and the lack of understanding about the basics of RTI Law. Additionally, as all information officers or the designated officers may not have direct access to all information sought by citizens, this together with the potential lack of cooperation and assistance from other officers²⁷ may become a considerable hindrance in responding to information requests.

Misinterpretation and misuse of Section 5 of the Act, in the guise of, inter alia, national security, defence of the State, international agreements, serious prejudice to the economy, communication between a professional and a public authority, are serious concerns of emerging trends in implementing the RTI law. It is observed that the tendency of applying the provisions of Section 5 of the Act, at the outset, to refuse access to information in unwanted or irrelevant

25 Schedule of Articles authored by journalists

26 Article on 'Lak Sathosa trying to hide information', by journalist, Bingun Menaka

27 Section 23(3), Right to Information Act, No. 12 of 2016

contexts is turning into a significant barrier in exercising the constitutionally guaranteed fundamental right of access to information.

There has also been a tendency for refusal to disclose information, at the first instance by the information officer and later the designated offices on the grounds of Section 5 and subsequently agreeing to disclose the same information upon the direction of the RTI Commission. This demonstrates a few dimensions of the issue. On the one hand, it reflects that most of the justifications used by the IOs and DOs to refuse to divulge information are not within the scope of Section 5 of the Act while on the other hand, it also shows the consequences of lack of comprehension of the duties imposed by the RTI Act on the part of such officials. Most crucially, it is a point to scrutinise whether such reluctance of 'reactive disclosure' is due to the fear factor of potential disclosure of information linked with corrupt acts in the public domain. Further, the operation of many other laws that conflict with the provisions of the RTI Law is also a concern as the IOs and DOs may have barriers to disclosure of information under such laws. Therefore, the legal barriers that hinder and limit the operational scope of the RTI Act need the attention and action of the policymakers.²⁸

Many public authorities, despite the provisions in Sections 24(3)²⁹ and 25(1),³⁰ do not adhere to the procedures provided by the law. Public authorities have either taken those for granted or delayed providing information in a disagreeable manner undermining the core of the fundamental right to access information. If officials of public authorities continue to act in this manner, such non-compliance shall undoubtedly constitute an offence under Section 39

28 Review of Legislation for Consistency with the RTI Legal Regime, UNDP. https://www.lk.undp.org/content/srilanka/en/home/library/democratic_governance/Review-of-Sri-Lankas-RTI-Regime.html

29 Section 24(3) Right to Information Act, No. 12 of 2016, "On receipt of a request, an information officer shall immediately provide a written acknowledgement of the request to the citizen."

30 Section 25(1), *ibid*, "An information officer shall, as expeditiously as possible and in any case within fourteen working days of the receipt of a request under section 24, make a decision either to provide the information requested for on the payment of a fee determined in accordance with the fee schedule referred to in section 14(e) or to reject the request on any one or more of the grounds referred to in section 5 of this Act, and shall forthwith communicate such decision to the citizen who made the request."

of the Act, and the Commission has due powers to deal with such offences. The RTI Commission has, so far, shown a great deal of commitment through its decisions to promote the right to information of citizens, which is a very positive trend. However, one observation is that no such prosecution has been instituted by the RTI Commission so far under Section 39. Leaving space for such non-intervention to become established as a norm may undermine the RTI regime in the long term.

Lack of training and orientation on the RTI law, in areas including but not limited to: regulations and their scope, duties of public authorities, and directions for information officers and designated officers, are areas of concern when experiencing the nature of responses from public authorities. For instance, an information officer and a designated officer had instructed a citizen who requested information about clinical waste disposal to produce their National Identity Card and prove citizenship to provide information. However, upon appeal to the RTI Commission, the decisions of the Commission for the appeal bearing number 71/2021 stated that *“the proof of citizenship is not required when requesting information on a person's right to information, except where the public authority has a practical suspicion that the applicant is not a Sri Lankan citizen.”* There are thus serious concerns about the level of comprehension of the public authorities about RTI law and the lack of commitment to facilitating citizens to more fully participate in public life through combating corruption and promoting accountability and good governance. Therefore, leaving such issues unaddressed could inflict consequences and undermine the fundamental rights of citizens.

Reforms needed

Considering the issues and challenges that emerged in implementing the RTI Act, the observations are identified as highly significant in fostering a culture of transparency and accountability in public authorities.

Well-coordinated and island-wide training and sensitization program for officials in public authorities on, inter alia, the objectives, scope, duties, offences, powers, and mandate of the RTI Commission should be designed and implemented.

Adherence to the regulations issued under Section 41(2) of the RTI Act, No. 12 of 2016 should be monitored and action should be taken against public authorities for non-compliance. Accordingly, all public authorities should appoint information officers and designated officers as required under Section 23 of the RTI Act and supplemented by Regulation No. 21 of the Gazette (Extraordinary) No. 2004/66 dated February 3, 2017.

The RTI Commission in collaboration and with support of other public authorities, should take steps to compile a list of public authorities, and with the Ministry of Mass Media, design criteria for identifying and appointing information and designated officers, and collect contact details of information officers and designated officers. Such information should be published on the RTI Commission website in all three languages and updated periodically, enabling citizens to access it.

In serious cases of undue delays and refusals to disclose information by information officers and designated officers, further regulations, orientations and coordinating systems should be put in place to ensure the effective operation of Section 23(3) of the RTI Act.

Training and orientations for officials of public authorities should essentially include a comprehensive module on the *'Effective application of Section 5 of the RTI Act'* to minimise the prevalent issue of potential misuse of provisions under this Section with its detrimental consequences on the fundamental right of access to information.

Further, as even the 'Reactive Disclosure' shows slow progression in the face of RTI law, action should be taken to comprehensively implement Regulation No. 20, which is about the 'principle of Proactive Disclosure'. At the same time, it is also vital to make a robust and pragmatic policy framework, as determined by the RTI Commission, to implement an action plan to realise the intended objectives of Section 8 of the RTI Act.

Key areas of concern*	Relevant provisions of the RTI Act
Misuse of the provisions pertaining to denial of access to information on unreasonable grounds.	Section 5
Delays in appointing Information Officers and Designated Officers in Public Authorities.	Section 23 (a) and (b)
Non-compliance with the duty of written acknowledgement of the receipt of information requests from citizens.	Section 24(3)
Undue delays in responding to information requests made by citizens.	Section 25(1)
The impact of official language policy implementation gaps on the exercising of the fundamental right of access to information in the language preferred by citizens representing minority communities.	Section 24(5)(b)
Lack of efforts to comply with the principle of proactive disclosure.	Section 14(e)
Challenges faced by information officers and designated officers in seeking assistance from other officers for the purpose of discharging duties imposed under the RTI Act.	Section 23(3)
Lack of commitment to facilitate access to information through electronic means in all relevant instances within the scope of the RTI Act.	Section 7(5) Section 8(4)(a) Section 24(6) Section 27(3)(d)

* This only serves as a non-exhaustive list of concerns in relation to implementation of the RTI Act.

Tendency of automatically denying access to Information by IOs who first resort to citing Section 5 without seeking the advice (as per subsection 5) of the RTI Commission as to whether information can in fact be released	Section 5(5)
Absence of prosecutor action against officers of public authorities who act in contravention of the provisions of the RTI Act.	Section 39(4)

Overall, the effective implementation of the RTI law, and thereby promoting a society in which the citizen of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance, will indisputably need a paradigm shift of the “ATTITUDES” of policy makers, officials of public authorities and citizens of Sri Lanka.

Unregulated election campaign finance, bribery, resultant violation of election laws and the need for specific legislation on election campaign finance regulation.

Legislative background

In Sri Lanka, currently, no specific legislation or regulatory mechanism is in operation in relation to the finance used in election campaigns by political parties or candidates contesting elections. However, in terms of the overall legislative framework³¹ that entails conducting elections at national, provincial, and local government authority levels, and other laws³² specific references are made in relation to directions when engaging in election related activities. Accordingly *'every person who commits, inter alia, the offence of treating, undue influence or bribery'...and 'is convicted of a corrupt practice shall, on conviction, become incapable for a period of seven years from the date of his conviction, of being registered as an elector or of voting at any election under this Ordinance or of being elected as a member of a local authority, and if at that date he has been elected as a member of a local authority his election shall be vacated from the date of such conviction.'*³³ The use of this legal provision in practice was witnessed with a landmark court decision issued by the Additional High Court Judge Monaragala on 13th September 2021.³⁴ In this election petition, it was ruled that D.M. Tharanga Harshaka Priya Prasad Dissanayaka contesting on the Sri Lanka Podujana Peramuna (SLPP) ticket for the Madurutetiya ward of the Monaragala Pradeshiya Sabha was offering goods and services to voters as

31 Parliamentary Elections Act, No. 1 of 1981, <https://www.lawnet.gov.lk/parliament-elections/>; Presidential Elections Act, No. 15 of 1981, https://elections.gov.lk/web/wp-content/uploads/publication/acts/15-1981_E.pdf; Provincial Councils Elections Act, No. 2 of 1988, <https://www.ifes.org/sites/default/files/el00109.pdf>; Referendum Act, No. 7 of 1981, https://elections.gov.lk/web/wp-content/uploads/publication/acts/07-1981_E.pdf; Local Authorities Elections Ordinance, No. 53 of 1946, <http://www.mediareform.lk/wp-content/uploads/2020/03/153-Local-Authorities-Elections-Ordinance-No.53-of-1946.pdf>

32 Assets and Liabilities Law, No. 1 of 1975.

33 Section 82E, Local Authorities Elections Ordinance, No. 53 of 1946.

34 Election Petition 01/2018 filed by W. M. Sunil Shantha Wanasinghe, available at <https://economynext.com/sri-lanka-ruling-party-local-govt-member-disqualified-in-landmark-verdict-86134/>

bribes during the election period in violation of the provisions stipulated under Section 82 of the Local Authorities Elections Ordinance and thus defendant's election was made vacated.

The election campaigning culture of Sri Lanka, over decades, has demonstrated adequate evidence, though not legally challenged, of using the money power to exert undue influence and commit bribery during election campaigns. However, the lack of legal initiatives against such conduct has paved the way for many election candidates to use unlimited finances with no corresponding legal consequence for their acts, that cause detrimental effects on the electoral integrity and underscore the fundamental need for a level playing field in election campaigns.

Additionally, the Assets and liabilities Law provides for requiring the '*elected members...of local authorities*'³⁵ and '*candidates nominated for elections at elections to be held under the Presidential elections, Parliamentary elections, Provincial Councils elections and the Local Authorities Elections Ordinance*;³⁶ to make declarations of assets and liabilities. While it is noteworthy to mention that this law has not been effectively implemented for decades, the absence of legislation that makes it mandatory for candidates to submit their records of spending for election campaigning leaves ample space for unlimited use of money in elections.

Recently, following long-standing civil society advocacy, a Parliamentary Select Committee³⁷ was appointed under the Chairmanship of Minister Dinesh Gunawardena to identify appropriate reforms of the election laws and the electoral system and to recommend necessary amendments. Proposals, mainly the need for legislation to regulate election campaign finance, were submitted by various civil society organisations and election observer groups.

Core Issues

The adverse impact of unlimited and unregulated finance in election campaigning is multifaceted. It mainly undermines the electoral integrity and

35 Section 2(d), Assets and Liabilities Law, No. 1 of 1975

36 Section 2(dc), *ibid.*

37 <https://www.parliament.lk/news-en/view/2158>

leaves hardly any space for a level playing field for most candidates. Further, the absence of campaign finance legislation or an enforceable governing mechanism to regulate political finances or campaign finances is a serious issue in ensuring free and fair elections and electoral integrity and fostering democratic values in Sri Lanka.

The main issue of unregulated campaign finance is not the question of which party or candidate has access to the most money, but rather the voter knowing how much money has been utilised and for what purpose. Often financial support is followed by favours to the sponsors once elected and further institutionalisation of corruption in the body politic. Whilst the issue of how much money a candidate or party has access to may well be a consequence of their popularity, the transparency of finance goes to the very heart of inclusiveness and representativeness in a democracy. Finance should not be allowed to deter candidacy in an election or determine the success thereof.

Additionally, one of the critical issues in initiating litigation in cases of unlimited finance in election campaigning used to treat, exert undue influence, and fund bribery, is the lack of credible information available in the public domain. However, in the recent landmark judgments of the Monaragala High Court, the benefit of the fundamental right of access to information has been a decisive factor through which the necessary credible and corroborative evidence of “bribery” was gathered which was highly crucial in proving the case by the petitioner.³⁸

Unlimited and unregulated campaign finance has also become one of the serious issues adversely influencing citizens’ ability and freedom to make informed decisions during elections. Concerns about unlimited and unregulated campaign finance are directly or indirectly connected to corruption including utilising black money to exert undue influence.

The adverse impact of unlimited and unregulated campaign finance, in turn, brings detrimental repercussions in the forms of biases in policy formulation and implementation, and favouritism to specific interest groups as well as undue

38 Election Petition 01/2018 filed by W. M. Sunil Shantha Wanasinghe, available at <https://economynext.com/sri-lanka-ruling-party-local-govt-member-disqualified-in-landmark-verdict-86134/>

influence in relation to appointing for decision making positions, offering public contracts and tenders, tax concessions, and undermining the rule of law and the independence of the judiciary in investigations against allegations against those who have financed election campaigns.

Direct or indirect voter buying takes place during elections in Sri Lanka by providing incentives such as gifts, cash, food, alcohol, legitimate expectations of employment opportunities and often funds mobilised from illegal sources have a higher potential to be spent for such voter buying purposes.

Reforms needed

The major reform that is indispensable in ensuring free, fair and credible elections to be conducted on a level playing field is either the formulation of new legislation specifically on regulating election campaign finance or bringing robust amendments to existing election laws.³⁹ The draft bill on '*Regulation of Election Expenditure Act, 2018*' designed by the Election Commission of Sri Lanka should be the basis for the Parliamentary Select Committee to identify appropriate reforms of the election laws and the electoral system in drawing recommendations on campaign finance regulation.

Such legislation should include provisions connected to transparency and accountability of reporting the income and expenditure of political parties; disclosure of election accounts, assets and liabilities by candidates, parties and supporters mobilising funds on candidates' behalf; and contribution limits or bans and the responsibility of disclosing financial or in-kind contributions with sources thereof. Any such legislation or regulatory mechanism should be an integral part of the overall electoral reform process in Sri Lanka.

Introduce financial regulations through the central bank to track funding sources, illicit forms of finance, including from foreign sources channelled to election campaigns, and address money laundering issues.

It is important to broaden and strengthen the institutional mandate of the Election Commission of Sri Lanka, with powers, upon the receipt of complaints

39 The scope of such legislation should be inclusive of the regulation of political finance also.

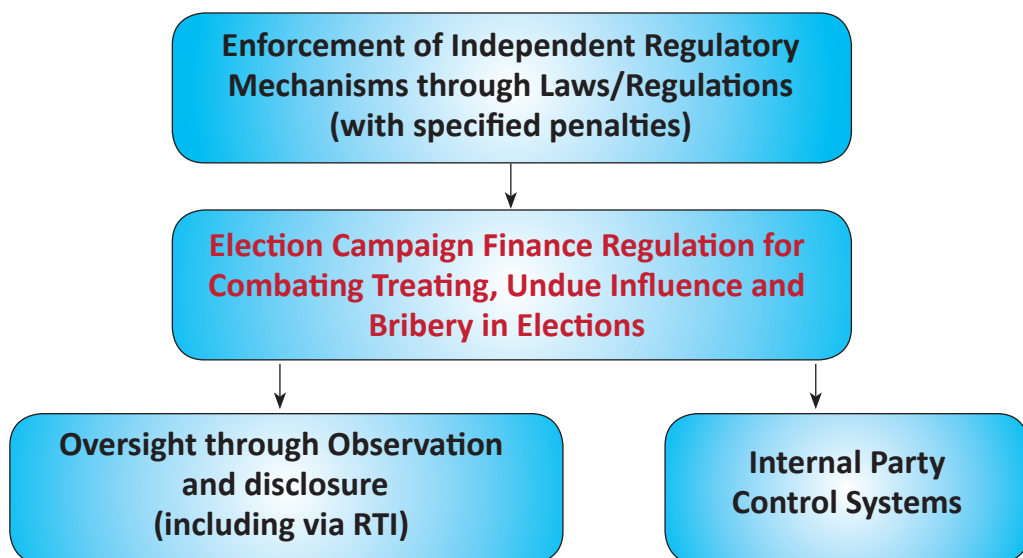
related to violation of election laws, to initiate litigation on its own. For example, the Election Commission should proactively take legal action against misuse of state property by political parties, candidates and their supporters for election campaigning. Further, it should impose guidelines to make election candidates bound to disclose contributions received and costs incurred for election campaigning.

The Election Commission should influence policymakers to take immediate action to amend the Assets and Liabilities Law, No.1 of 1975, making it mandatory for candidates and political parties to submit declarations of assets and liabilities and making that information available in the public domain.

However, to act against bribery and other offences related to elections, an overall legislative and policy reform process is essential and to increase the effectiveness of election campaign finance control mechanisms and combat against treating, undue influence and bribery; it is essential to have:

Effective enforcement by regulatory mechanisms

- Proper internal political party control
- External stakeholder oversight and disclosure (including through the effective use of RTI Law)



Underutilisation by the NCPA of available legal provisions for the benefit of child protection.

Legislative background

The National Child Protection Authority (NCPA)⁴⁰ was established for the purpose of advising the government on policies and laws on the prevention of child abuse,⁴¹ the protection and treatment of children who are victims of such abuse and the co-ordination and monitoring of action against all forms of child abuse. The broad scope of the functions⁴² of the NCPA provides ample space for it to take a wide range of actions in delivering its mandate and those specifically includes “*monitor the implementation and progress of laws relating to all forms of child abuse.*” Additionally, the mission of the NCPA is ‘*to ensure children are free from all forms of abuse*’ and thus, it categorically shows how significant the roles and responsibilities of NCPA are, in terms of child rights in Sri Lanka.

Even before the right to information was recognised as part of the fundamental rights chapter of the Constitution, functions of NCPA were inclusive of providing information and education to the public regarding the safety of children and the protection of the interests of children.⁴³

The Guiding Principles and Values of the National Child Protection Policy⁴⁴ elaborates on the ‘Privacy of child and media’. In terms of the law enforcement the NCPA, having established a separate legal unit,⁴⁵ with the role of making appropriate interventions on preventive and responsive mechanisms, has the

40 National Child Protection Authority Act, No. 50 of 1998. <https://www.childprotection.gov.lk/images/pdfs/acts-guidelines/National%20Child%20Protection%20Act,%20No.%2050%20of%201998.pdf>

41 Section 39, *ibid.*

42 Section 14, *ibid.*, Functions of NCPA, <https://www.childprotection.gov.lk/about-us/about-ncpa>

43 Section 14(p), *ibid.*

44 National Policy on Child Protection, October 2019, <https://www.childprotection.gov.lk/images/pdfs/acts-guidelines/2020.12.31%20National%20Policy%20on%20Child%20Protection.pdf>

45 Legal Unit, NCPA. <https://www.childprotection.gov.lk/what-we-do/legal-services>

mandate, inter alia, to ‘monitor the criminal proceedings of child abuse’ and to ‘monitor the legality of media reporting on children’.

One of the serious issues in relation to incidents of child abuse is the irresponsible way media – both mainstream and social media – conducts reportage that does not respect the existing legal framework of the Penal Code⁴⁶ of Sri Lanka. According to the Section 365C of the Penal Code, under the heading ‘of publication or matter relating to certain offences’ of the Penal Code,

(1) Whoever prints or publishes, the name, or any matter which may make known the identity, of any person against whom an offence under section 345⁴⁷ or section 360A⁴⁸ or section 360B⁴⁹ or section 363 or section 364A or section 365 or section 365A or section 365b, is alleged or found to have been committed (hereinafter in this section referred to as "the victim") shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

(2) Nothing in subsection (1) shall apply to the printing or publication of the name or any matter which may make known the identity, of the victim, if such printing or publication is-

(a) by or under the order of the officer in charge of the police station or the police officer, making investigation into such offence, acting in good faith for the purposes of such investigation; or

(b) by or with the authorization in writing of the victim; or

(c) by or with the authorization in writing of the next of kin of the victim where the victim is dead or the parent or guardian of the victim, where the victim is a minor or is of unsound mind: Provided no such authorization shall be given by such next of kin to any person other than to the Chairman Secretary or Manager, how so ever described, of any welfare institution or organization recognized by the State,

46 Section 365C, Penal Code (Amendment) Act, No. 22 of 1995.

47 Sexual harassment

48 Procuration

49 Sexual exploitation of children

(3) Whoever prints or publishes any matter to relation to any proceeding in any court with respect to an offence referred to in subsection (1), without the previous permission of such court, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

Section 37(4) of the NCPA Act⁵⁰ provide ample space for “every officer of the Panel or an officer or servant authorized in writing by the Authority shall be deemed to be a public officer within the meaning of section 136 of the Code of Criminal Procedure Act, No. 15 of 1979, for the purpose of instituting proceedings in respect of offences under laws relating to children.”

After a long silence since NCPA was established in 1998, it has taken steps to formulate a national policy on child protection in 2019 and the section nine elaborated under “Guiding Principles and Values” states;

“9. Privacy of Child and the Media: *Privacy and confidentiality relating to an individual or group of specific children shall be ensured at all times in the context of service provision or sharing of public information. The government actively discourages reporting and giving publicity on individual instances to child abuse over mass media. In instances where there is compelling evidence based on primary observations that reporting is much more beneficial than non-reporting (for example, locating a missing child), the media may report on specific cases of child abuse. Reporting shall not take place under any circumstance on child victims, children who have lost their lives due to abuse or vulnerable children in a manner that reveals their identities or places them at greater risk. Further, all electronic and printed mass media and new media including social media shall not publish any forms of abuse, violence, exploitation, risk, malice or neglect and harm to child's personality by any advertisements, programs and all kinds of other media creations involving children.”*

50 Section 37, National Child Protection Authority Act, No. 50 of 1998. <https://www.childprotection.gov.lk/images/pdfs/acts-guidelines/2020.12.31%20National%20Policy%20on%20Child%20Protection.pdf>

Core Issues

The lack of effective use of the provisions mentioned above by the NCPA in favour of the protection of children facing child abuse and safeguarding them from getting unwanted exposure in society through media, is an issue that needs immediate attention. Endless media reports carrying the identities of victims of child abuse is an area NCPA can take action under its mandate of preventing child abuse and the protection and treatment of children who are victims of such abuse.

As Section 14(e) has provided provisions, inter alia, to consult public and private sector organisations and recommend that all such measures are necessary for the purpose of preventing child abuse and for protecting and safeguarding the interests of the victims of such abuse, lack of proactive action on the part of NCPA may affect its credibility. This provides a sufficient mandate for the NCPA to collaborate with relevant state and private sector media outlets and make policy recommendations to the line ministry to formulate necessary regulations to prevent the publishing of identities of victims of child abuse and safeguard their interests.

Despite the formulation of the National Policy on Child Protection in 2019, even after 15 months, no effective proactive measures have been taken by the NCPA to prevent exposing victims of child abuse in media.

Reforms needed

Implementation of the provisions of the National Child Protection Authority Act, No. 50 of 1998 with a due commitment by the members of the 'Authority'⁵¹ and the 'Panel'⁵² should be ensured.

Experts representing the sectors of medical, legal, law enforcement, child welfare together with any other relevant member of the authority should ensure the effective application of provisions of the Section 365C, Penal Code (Amendment) Act, No. 22 of 1995 to ensure the safeguarding of the interests, including the identities, of victims of child abuse.

51 Section 3, NCPA Act.

52 Section 16, *ibid.*

NCPA should design an action plan through which the policy framework elaborated in the National Policy on Child Protection can be effectively and efficiently implemented. A robust monitoring and evaluation mechanism should be placed to review and assess the performance of the NCPA in implementing the said policy.

As part of the commitment made concerning the 'Privacy of Child and the Media' under the section of 'Guiding Principles and Values' of the National Policy, NCPA should immediately formulate appropriate regulatory guidelines covering publishing information related to victims of child abuse. Thus, NCPA should provide necessary policy advisory insights to the line ministry and ensure such guidelines are translated into enforceable regulations in terms of Section 38 of the NCPA Act.

In conclusion, NCPA should evaluate its journey for the last two decades, draw lessons learned and use such insights to ensure the effective delivery of functions stipulated in the NCPA Act.

Unrealised objectives of the Declaration of Assets and Liabilities Law No. 1 of 1975.

Legislative background

In the context in which the ‘principle of proactive disclosure’ is only an extremely sporadic experience, the declaration of assets and liabilities, mainly by public officials and public representatives is one of the best practises, if effectively implemented, to address issues relating to misuse of power, unjust enrichment, corruption, and misuse of state resources. The Assets and Liabilities Law, No. 1 of 1975⁵³ is in operation in Sri Lanka to tackle issues related to the legitimacy of assets and liabilities of certain specified categories of persons, in and outside Sri Lanka, and the matters connected to sources of wealth gained.

Section 2 of the Assets and Liabilities Law.⁵⁴ stipulates persons belonging to different classes and descriptions to whom this law is applicable. Section 4 of the Assets and Liabilities Law⁵⁵ specifies the provisions with regard to whom declaration of assets and liabilities are to be made.

Section 3 (1) “Every person to whom this Law applies shall, within three months after the appointed date, make, in such form as may be prescribed, a declaration, hereinafter in this Law referred to as a “declaration of assets and liabilities”, of all - (a) his assets and liabilities; (b) the assets and liabilities of his spouse; and (c) the assets and liabilities of each of his children, as on such date as may be prescribed by resolution of Parliament.”

Core Issues

Lack of implementation, of even the available provisions of the Assets and Liabilities Law, is one of the main issues.

Even in the face of having the right of access to information as a fundamental

53 Declaration of Assets and Liabilities Law No. 1 of 1975, <https://www.lawnet.gov.lk/declaration-of-assets-and-liabilities-law-2/>

54 Section 2, *ibid.*

55 Section 4, *ibid.*

right in Sri Lanka, disclosing information related to assets and liabilities of persons specified by the law⁵⁶ has merely been an expectation. It is because the disclosure of information has been restricted by the Assets and Liabilities Law itself.

Regarding sanctions against offences, provisions of the existing Assets and Liabilities Law do not match the country's current socio-economic and political context. As per the provisions of Section 9 of the Assets and Liabilities Law, a person who acts in contravention of the provisions of this Law, upon conviction after trial by a magistrate, be liable to a fine not exceeding one thousand rupees, or imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment. Even though some of the Members of Parliament have come forward respecting the 'principle of proactive disclosure' by publicising their assets and liabilities, the overwhelming majority does otherwise, leaving no space for constituents to access such information in the public domain.

Further, some of the existing legal provisions⁵⁷ of the Assets and Liabilities Law prevents the Commission to Investigate Allegations of Bribery or Corruption(CIABOC) from prosecuting for any offence under this law except with the prior sanction of the Attorney General.⁵⁸

Reforms needed

This outdated legal provision has obviously been taken for granted as the fine for failing to make the declaration is only Rs. 1,000.00. Thus, in the absence of severe punishments, one may opt to pay this nominal fine instead of adherence to the legal obligation of declaring assets and liabilities. This entirely nullifies the objectives of the Assets and Liabilities Law and therefore, such outdated provisions should undoubtedly be amended. Severe penalties and sanctions should be imposed in any amendment or new legislation about declaration

56 Ibid.

57 Section 9(5) of the Assets and Liabilities Law, No. 1 of 1975.

58 Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994.
https://www.ciaboc.gov.lk/images/Publications/Commission_Act_english.pdf

of assets and liabilities and effective implementation of such laws should be ensured to establish a coherence of policy and practice.

Given the level of corruption alleged against various government officials, the ambit of Section 2, which refers to “*person to whom this Law applies,*” should be expanded to specifically include officials of diplomatic service, ministers, deputy ministers, state ministers, commissioners of a diverse range of commissions, the president and others who are paid from the tax money of people, as appropriate.

It is important to bring amendments to repeal any provisions of the current law which prevent people with access to information about assets and liabilities, from disclosing said information. Further, the current Assets and Liabilities Law imposes penalties on individuals who disclose information secured or received in terms of the Law.⁵⁹ Accordingly, amendments or any new legislation should include provisions that further strengthen the fundamental right of access to information of citizens and enable them to use such information in the public domain.

Further, repealing the provisions of Section 9(5) which, states “*No prosecution for any offence under this Law shall be instituted except with the prior sanction of the Attorney-General*” is essential to ensure effective functioning of the CIABOC and enable it to execute direct prosecutions for persons acting in contravention of the Assets and Liabilities Law.

59 Section 7(5) of the Assets and Liabilities Law, No. 1 of 1975.

Lack of effective implementation of the National Policy on Waste Management and related local authority laws in Sri Lanka.

Legislative background

Waste management is an issue of considerable significance in Sri Lanka. Lack of effective and systematic management of waste has destroyed the lives and livelihoods of people in Sri Lanka and remains a serious health risk to many.⁶⁰ Even over a century ago, waste management was a matter that has been addressed through legislation due to its importance and the potential consequences it could bring if left unaddressed. Thus, from the introduction and implementation of the Nuisances Ordinance (as amended later), No. 15 of 1862, several laws govern the matter of waste management in Sri Lanka.

Accordingly, as far as the legislative framework related to waste management is concerned, there are several laws and a number of regulations that provide mandate and powers to respective authorities⁶¹ to formulate necessary policy frameworks⁶² and use public resources to implement such policies at national and local government levels. The responsibility of solid waste management is mainly on local government authorities.

Key legislation that consists of provisions related to waste management mainly include:

- Nuisance Ordinance No. 15 of 1862
- Police Ordinance No. 16 of 1865

60 Geotechnical Assessment on the Failure at Meethotamulla Waste Fill, National Building Research Organization, May 2017. https://www.nbro.gov.lk/images/2016_pdf/Final-Report-of-Meethotamulla-to-Megapolis-PDF.pdf

61 Including, but not limited to, Municipal Councils, Urban Councils, Pradeshiya Sabhas, Central Environmental Authority, Department of Police, Urban Development Authority, National Solid Waste Management Centre, Western Province Waste Management Authority.

62 The Ministry of Environment developed a National Strategy on Solid Waste Management in 2000 and a National Policy on Solid Waste Management in 2007 with a view to facilitate solid waste management with more emphasis on municipal waste.

- Section 129, 130 and 131 of the Municipal Council Ordinance, No. 16 of 1947
- Section 118,⁶³ 119⁶⁴ and 120 of the Urban Councils Ordinance No. 61 of 1939.
- Urban Development Act, No. 41 of 1978
- National Environmental Act, No. 47 of 1980

According to the interpretation of the National Environmental Act, “waste” includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous, or radioactive, which is discharged, emitted, or deposited in the environment in such volume, constituency or manner as to cause an alteration of the environment.

Therefore, in the current legislative and policy context concerning waste management, there is a range of institutions with the mandate of working in close collaboration to find a sustainable solution for these never-ending issues and waste management challenges.

Core Issues

Lack of effective implementation of the respective laws and regulations related to solid waste management at national and local levels.

Lack of a coordinated approach and consistent strategy from different government institutions mandated to address issues related to solid waste management.

63 Section 118 of the Urban Councils Ordinance No. 61 of 1939. “It shall be the duty of the Urban Council, so far as is reasonably practicable, to take all necessary measures in every part of the town - (a) for properly sweeping and cleaning the streets, including the footways, and for collecting and removing all street refuse; (b) for securing the due removal at proper periods of all house refuse, and the due cleansing and emptying at proper periods of all latrines and cesspits; and (c) for the proper disposal of all street refuse, house refuse, and night-soil.”

64 Section 119, *ibid.* “All street refuse, house refuse, night-soil, or other similar matter, collected in any Municipality under the provisions of this Part shall be the property of the Council, and the Council shall have full power to sell or dispose of all such matter and the money arising therefrom shall be paid to the credit of the Municipality.”

Due to gaps in implementation strategies, even programs such as *'Pilisaru'*, implemented to ensure a waste free Sri Lanka by 2018, have not been able to achieve expected results. A notable issue in failures in the past is the lack of commitment of all stakeholders associated with this issue, ranging from policymakers to the public in general.

Additionally, the lack of coherence of strategies in implementing mandates of the respective local government authorities on 'conservancy and scavenging' for which all local authorities collect tax and other levies from people in respective constituencies.

On the other hand, adopting issue based ad hoc project centred initiatives instead of robust efforts to design and implement a long term plan translating the policy positions and objectives of the national policy on waste management into realities, is a serious concern.

Lack of knowledge and understanding of people, waste collectors and other workers, members of local government authorities, corporate sector institutions engaged in waste management and all other persons in policy making and administrative structures on the waste management.

Ineffective use of public funds allocated for the implementation of waste management programs and unaccountability of institutions having mandate to address the subject matter.

Reforms needed

Effective implementation of existing legislation and regulations by corresponding institutions mainly including local government authorities and other national and local authorities.

Enforcing the environmental accountability and social responsibility of all concerned parties considering that 'waste management' is an issue with great national significance in the country's development discourse.

All stakeholders should genuinely respect the constitutional provision of "Fundamental Duties" as stipulated in Article 28(f) to *'to protect nature and*

*conserve its riches*⁶⁵ and perform their duties with the highest degree of responsibility and accountability.

All stakeholders should work in close collaboration to implement the policy positions stipulated in the National Policy on Waste Management effective from October 1, 2019 and achieve the goal thereof.⁶⁶

Effective law enforcement should be ensured to enhance the upstream and downstream accountability of citizens, institutions, waste managers and service providers throughout the life cycle of products, production processes and related services.

A robust monitoring, evaluation, lesson sharing, and accountability mechanism should be established with necessary mandate and powers together with human and physical resources to ensure periodic assessments of the implementation of laws and policies while making recommendations, including those on behavioural transformations needed for a successful and accountable waste management system in Sri Lanka.

Public attitudes on the importance of responsible waste management should be shaped from an early age, and emphasis placed in school curriculums.

65 Article 28(f), Fundamental Duties, <https://www.parliament.lk/files/pdf/constitution.pdf>

66 The Goal of the National Policy on Waste Management, Ministry of Environment, Sri Lanka: "To provide coherent and comprehensive directions for waste management in the country covering all forms of waste to meet the acute short term challenges in line with medium and long term sustainable solutions up to 2030 with entrusted accountability."

Ineffective implementation of laws related to torture, disregard for international commitments and undermining of the constitutionally guaranteed fundamental rights to “Freedom from Torture”.

Legislative background

The universally recognised right to be free from torture is an integral element of the supreme law of this country. The Constitution of Sri Lanka has recognised ‘Freedom from Torture’ as part of its Chapter III, on fundamental rights.⁶⁷ This right is inherently linked with a person’s dignity. Further, in terms of the remedies for infringement of the right enshrined in Article 11 of the Constitution, every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement by executive or administrative action.

As part of the commitments of Sri Lanka towards international obligations,⁶⁸ too, ensuring freedom from torture is the responsibility of the state. Further, the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment,⁶⁹ has entered into force for Sri Lanka with effect from February 2, 1994. Article 2(1) of this Convention imposes a legitimate responsibility of all member states to take effective, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.⁷⁰ Given the necessity to make legislative provision to give effect to Sri Lanka's obligations under the said Convention, Sri Lank Parliament passed the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.

The emphasis on the importance of the right to be free from torture is reflected by Section 2(5) which states that “*an offence under this Act shall be*

67 Article 11, Constitution of Sri Lanka, <https://www.parliament.lk/files/pdf/constitution.pdf>

68 Article 7 of Part III, International Covenant on Civil and Political Rights (ICCPR), <https://www.ohchr.org/documents/professionalinterest/ccpr.pdf>

69 Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, in accordance with Article 27 (1). <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

70 Article 2(1) of Part I, *ibid.*

a cognizable offence and a non-bailable offence, within the meaning, and for the purposes, of the Code of Criminal Procedure Act, No. 15 of 1979.” Further, Section 3(a) and (b) states that “...any act constituting an offence under the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994, was committed (a) at a time of state of war, threat of war, internal political instability or (b) any public emergency or on an order of a superior officer or a public authority shall not be a defence to such offence.”

The Human Rights Commission of Sri Lanka (HRCSL) is another institution mandated to inquire into and investigate complaints regarding infringements or imminent infringements of fundamental rights.⁷¹ Further, Section 11(d) states that the HRCSL will “*monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention, and to make such recommendations as may be necessary for improving their conditions of detention.*” At the same time, Section 28 of the HRCSL Act elaborates the duty to inform the Commission of arrests and detentions under the provisions of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 or a regulation made under the Public Security Ordinance;⁷² with power being given to the Commission to inspect to obtain information⁷³ and impose sanctions on any person who wilfully omits the duty imposed by Section 28(1). Official data of HRCSL indicates that in 2018, it received 449 complaints, of which 400 were of torture (physical and mental) cases and 49 were incidents of degrading treatment.⁷⁴

This reiterates the fact that several legislative frameworks provide ample space for law enforcement authorities to ensure the right to be free from torture. Despite these legislative provisions and institutional establishments such as the HRCSL being in place, many victims of torture remain helpless and lack access to justice.

71 Section 10(b), Human Rights Commission of Sri Lanka Act, No. 21 of 1996. <https://www.hrsl.lk/wp-content/uploads/2020/01/HRC-Act.pdf>

72 Section 28(1), *ibid.*

73 Section 28(2), *ibid.*

74 HRCSL, Details of Complaints received by HRCSL, Head Office and Regional Offices. <https://www.hrsl.lk/wp-content/uploads/2020/01/Annual-Report-2019.pdf>

Core Issues

One of the critical issues faced by victims of torture is the lack of space to effectively bring their grievances to the relevant law enforcement structures in the existing legal framework. This is because the investigative functions and provision of redress to victims of torture are far from adequate, mainly because most such incidents of torture are alleged to originate from institutions *themselves* within law enforcement, including but not limited to the police/CID/TID.

Absence of a well-planned strategy and a corresponding action plan to ensure collaboration of the police, medical officers, officials of the Attorney General's Department and the judiciary to act against infringements of the right to be free from torture is another challenge.

Lack of training and sensitisation on the legislative framework and the obligations of various stakeholders combating torture, for officers in law enforcement institutions, medical personnel, officials of relevant public institutions who may be involved in matters connected to arrest, interrogation, detention, treatment and imprisonment.

Lack of legal actions initiated by the Attorney General's Department against persons who have violated the fundamental right enshrined in Article 11 of the Constitution, under provisions of the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994.

Lack of comprehensive knowledge building programs for judges and lawyers about the domestic and international commitments towards victims of torture, the responsibility of the State to protect the right to be free from torture and to promote the application of all potential legal provisions and principles against acts of torture.

Lack of legal assistance to survivors of torture to initiate civil litigations seeking compensation from perpetrators of torture.

Further, the lack of resources of the HRCSL to effectively address issues related to torture is also a concern.

Reforms needed

Conducting public awareness on the available legal remedies for persons subject to torture and promoting a zero-tolerance policy towards torture.

Introducing necessary policy reforms to the law enforcement sector to ensure that the victims of torture are not unduly influenced or intimidated by the officials of law enforcement institutions when making complaints or prevented from accessing justice against acts of torture. Accordingly, considering the allegations mainly against the Police being a gatekeeper of lodging complaints, an independent public complaint system should be designed and implemented.

Further, the policymakers should thoroughly assess the discretionary power vested in the Attorney General to decide whether to indict the perpetrators and accordingly introduce necessary reforms to bring checks on decisions of the Attorney General not to indict specific alleged perpetrators, particularly with political affiliations and influence.

Comprehensive training and sensitisation programs on the legislative frameworks, domestic and international commitments and the value of respecting fundamental rights should be conducted consistently for judges, lawyers, officials of law enforcement agencies and other personnel involved in arrest, detention, treatment, interrogation, litigation and imprisonment. Officers of the police department and the other relevant institutions thereunder who may be involved in interrogation should be provided training on proper and legal investigation procedures and techniques instead of using torture to obtain confessions.

The HRCSL should be further strengthened to conduct investigations, on its own motion, in regard to infringements or imminent infringements of the right to be free from torture as provided by Section 14 of the HRCSL Act. The Sub-Committee on 'Prevention of Torture and Custodial Violations' appointed by the HRCSL in 2016 should further be resourced to make a rigorous assessment on the status quo of torture in Sri Lanka and make recommendations to enhance the role of HRCSL in combating torture.

Lack of coherent policy framework for the regulation of the illegal fishing methods and the impact on livelihoods of small-scale fisher-folk and aquatic resources.

Legislative background

The legislative framework of the fisheries sector in Sri Lanka ranges from constitutional provisions to diverse laws, policies and regulations. Under the Thirteenth Amendment to the Constitution, fishing and fisheries beyond territorial waters comes under the 'Reserved List' while fisheries other than fishing beyond territorial waters in 'Concurrent List'.⁷⁵

The Fisheries and Aquatic Resources Act, No. 2 of 1996⁷⁶ provides for the management, regulation, conservation and development of fisheries and aquatic resources in Sri Lanka. Successive governments and corresponding ministers in charge of this subject have imposed a range of regulations with regard to the fisheries sector in Sri Lanka. Accordingly, fisheries management areas and fisheries management authorities have been introduced by Sections 31 and 32 of the Act, to manage the country's fisheries resources. Additionally, seven management areas had been declared under the Act for the management of fisheries resources through community participation. A range of regulations have been placed for resource conservation and regulatory functions.⁷⁷

The legislative and regulatory frameworks regarding the fisheries sector consist of a diverse range of regulations, some of which are not coherent in

75 <https://www.parliament.lk/files/pdf/constitution.pdf>

76 Fisheries and Aquatic Resources Act, No. 2 of 1996, <http://extwprlegs1.fao.org/docs/pdf/srl4092.pdf>, as Amended by Act, No. 4 of 2004. <http://citizenslanka.org/wp-content/uploads/2016/02/Fisheries-and-Aquatic-Resources-Amendment-Act-No-4-of-2004-E.pdf>

77 Registration of fishing craft Section 15 & 16 of the Act and Regulations imposed by Gazette No. 109 dated 03.10.1980, No. 1055/13 dated 26.11.1998, and No. 948/24 dated 07.11.1996; Fishing operation licences Sections 6–14 of the Act and Regulation 948/25 dated 07.11.1996; Prohibition of destructive fishing practices and dynamiting of fish Sections 27–29 of the Act; Prohibition or Regulation of export and import of fish Section 30 of the Act; Declaration of closed and open seasons for fishing Section 34 of the Act; Declaration of fishing reserves Sections 36–37 of the Act; Aquaculture management licences Sections 39–43 of the Act.

addressing the core issues faced by the fisher communities using a range of fishing methods.

Core Issues

Even though upon the recognition of the significance of the fisheries sector and allocating a specific cabinet ministerial portfolio, the issues faced by fisher communities and the risks of aquatic resources of the country are areas of serious concern establishing a valid question of the effective delivery of the functions and mandates of policy and administrative frameworks related to the sector.

One of the major issues relates to illegal fishing methods and the resultant clashes among different fisher groups in the country. This is mainly due to the loopholes in existing regulations some of which do not correspond to the pragmatic realities on the ground. For instance, Section five of the Gazette Notification No. 437/1987 about the *'Purse-seine net Fishing Regulations'*, as amended, states *'a fee of Rs. 20,000 shall be charged for each permit issued...'* but this provision is outdated and also does not serve the purpose of discouraging the use of illegal methods for fishing. Further, the Regulation No 13 specifies that *'no persons shall use a purse-seine net the mesh size of which is less than 3/8 inches'* but in practice the gaps in a proper Monitoring, Control and Surveillance (MCS) system and a vessel monitoring system (VMS) are a concern and thus many cases escape from the regulations confined only to laws but not effectively implemented in practice.

Lack of fair and proper implementation of the regulations related to the fishing activities using purse-seine nets have led to inter-community unrest between the groups using purse-seine nets and the small-scale fisher folk. Such usage allegedly has a detrimental impact on the livelihood of the small scale fisher communities in many areas⁷⁸.

Arbitrary application of regulations on the use of purse-seine nets and the use of prohibited explosives (including dynamite) have caused destruction to the

78 Ref Chapter 2 of this document, article written by journalist Lakmal Baduge on "Small Fisher Folks confined by the purse-seine nets-gaps in Regulations issued through various Gazettes"

aquatic resources and thus small-scale fisher folk have faced severe challenges, mainly including the diminishing of fish particularly in the Northern and Eastern coastal area.

Lack of awareness raising among fisher communities about various regulations that aim at protecting aquatic resources, is a concern and has led to continuous practises that unnecessarily destroy small fish in the sea. Despite substantial legal action taken against persons exploiting the licence issued under purse-seine nets and regulations and violations of provisions thereof, the absence of robust reforms to existing policy and regulatory frameworks has caused irreparable damage to the aquatic resources of the country. Similarly, these have caused adverse impacts on the livelihoods of small-scale fisher communities.

Reforms needed

Promote the enhancement and conservation of coastal and aquatic resources through integrated and participatory management.

Rectify the gaps in various regulations which people use to exploit technical factors of such regulations for short-term benefits, to avoid severe negative implications on the long-term sustainability of the country's aquatic resources. For instance, mandated authorities should review the regulations related to the use of purse-seine nets considering the recent impacts on lives and livelihoods of fisher communities and the impact on the country's aquatic resources.

Introduction of regulations should only be done following proper consultations of communities affected by such policy positions—an analysis of the potential impact on the livelihoods of people concerned needs to be carried out during implementation. Further, imposing and implementation of said regulations should be complemented with an effective monitoring and evaluation plan enabling consistent assessing of the social and economic impact through lessons learned.

Adequate training should be given concerning the preservation of aquatic resources, to law enforcement authorities and the officials in charge of ensuring the proper implementation of the regulatory mechanism of the fisheries sector.

Awareness raising amongst the fisher communities about new regulations, their scope, limitations and long term benefits is of utmost significance to achieve the objectives of regulatory mechanisms mainly related to inappropriate fishing methods.

Thusitha Siriwardana

Attorney-at-Law

Schedule of articles by journalists: Summary of key issues raised through RTI

No.	Focus of the Article	Writer	Key issues highlighted
1	Microfinance nightmares from loan shark infested villages.- RTI exposes loopholes in microfinance claims.	Lasantha de Silva	<ul style="list-style-type: none"> * Lack of legislative and policy frameworks to regulate microfinance services. * Illegal money lending and debt collecting mechanisms with no monitoring, supervision. * Violation of language rights of borrowers through loan agreements.
2	Customs losses thousands of millions on palm oil	Lasantha de Silva	<ul style="list-style-type: none"> * Lack of transparency in the Department of Customs in revealing information of public significance. * Lack of adherence by the officials of the Department of Customs to provisions of the RTI Act. * Misusing of the Section 5 of RTI Act and non-disclosure of information in the guise of exemptions therein.
3	The Monaragala Election Petition, - A historic victory through the right to information	Lasantha de Silva	<ul style="list-style-type: none"> * Violation of legal provision of Section 82D (e) of Local Authorities Elections Ordinance, No. 53 of 1946. * Absence of election campaign finance regulatory mechanism or legislation to tackle matters related to bribery and undue influence during elections.
4	RTI revives child protection law suppressed for over two decades <i>-No legal action taken yet against common offences committed</i>	Bingun Menaka Gamage	<ul style="list-style-type: none"> * Ineffective implementation of/compliance with existing legal provisions by the NCPA. * NCPA has only taken indirect action to revitalise the essence of the Section 365 C of the Penal Code (Amendment) Act, No. 22 of 1995 after two decades by designing a guideline for media reporting on matters pertinent to child abuse.

5	<p>Lanka Sathosa hides from RTI</p>	<p>Bingun Menaka Gamage</p>	<ul style="list-style-type: none"> * Non-appointment of 'Information officer' of Lanka Sathosa for an unduly long time. * Non-disclosure of information as per the provisions and duties provided by the RTI Act. * Lack of transparency and accountability of officials of Lanka Sathosa in their functions.
6	<p>Is Sri Lanka's RTI Act properly implemented? <i>And do the Information Officers care?</i> <i>Will giving more power to the RTI Commission help safeguard Citizens RTI?</i></p>	<p>Rahul Samantha Hettiarachchi</p>	<ul style="list-style-type: none"> * Concerns of efficiency of the procedure adopted by the RTI Commission in Sri Lanka in appeal processes (Appeals are heard only on Mondays and Tuesdays). * Time consuming process for a decision for appeals (almost a year at times). * Lack of compliance to RTI Act by officials of public authorities. * Lack of implementation of the sections 24(3) and 25(1) of the RTI Act. * Lack of knowledge and understanding of officials of public authorities on the RTI Act.
7	<p>The doomed elephants of Horowpathana <i>...captured and starved when no one is monitoring</i></p>	<p>Rahul Samantha Hettiarachchi</p>	<ul style="list-style-type: none"> * Misusing of the provisions stipulated in Section 5 of the RTI Act. * Lack of proactive policy decisions and implementable action plans to prevent loss of habitat for elephants and natural resources such as water and food for elephants and the persistent and wilful reduction of spaces habitable to elephants.

8	<p>Declaration of Assets – have we achieved the objectives through the legal provisions?</p>	Chamara Sampath	<ul style="list-style-type: none"> * Lack of enforceable legal provision against non-declaration of assets and liabilities. * Lack of policies and practises that translated available legal provision on assets and liabilities into a reality. * Absence of election campaign finance regulatory mechanism or legislation. * Paradox of the legislature – enacting the RTI law and refusing to disclose information by itself.
9	<p>200 garbage dumps across the country <i>RTI queries raise a stink</i></p>	Chamara Sampath	<ul style="list-style-type: none"> * Inactive National Policy on Waste Management in Sri Lanka 2020. * Lack of strategic plans for effective waste management policy. * Lack of meaningful implementation of provisions related to waste management of local government laws.
10	<p>Studying by lamplight after paying for three-phase electricity <i>RTI shines a light on shady collaboration between LG bodies and real estate agents</i></p>	Chandanie Dissanayake	<ul style="list-style-type: none"> * Land sale companies misusing the local government laws. * Non-compliance of local government regulations for approved infrastructure facilities for land sales. * Non-adherence to regulations related to approval processes of various government institutions such as Provincial Steering Committee, environmental authority, Commissioner of Agrarian Development, Director of Coast Conservation, Land Reclamation and Development, Electricity Board, National Water Supply and Drainage Board.

11	<p>The Case of the Chunnakam Post Office</p> <p><i>Corruption hidden in a half done building.</i></p>	Dileep Amudan	<ul style="list-style-type: none"> * Alleged misuse of public property/resources. * Alleged corruption involved in district development activities in Jaffna. * Manipulation of information to mislead audits and investigations. * Non-compliance with the provisions of RTI Act. * Lack of space in the Establishment Code to take action against public officers manipulating information.
12	<p>Holes in gazettes cause deadly conflict</p> <p><i>Small scale Fisher Folks tangled by erroneous regulations on purse-seine nets</i></p>	Lakmala Baduge	<ul style="list-style-type: none"> * Using prohibited methods for fishing. * Lack of implementation of provisions in Fisheries and Aquatic Resources Act, No. 2 of 1996. * Devastation to aquatic resources due to unaccountable supervision of mandated public officials of the fisheries sector. * Conflicting regulations/orders through gazette notifications with no consistency in addressing the core issue. * Lack of policy reforms and corresponding monitoring mechanisms that protect aquatic resources and small scale fisher folks.
13	<p>The truth about the death of Sunil</p> <p><i>- Possible medical negligence revealed through the RTI Act</i></p>	Asela Kuruluwansa	<ul style="list-style-type: none"> * Non-disclosure of medical information. * Lack of space to challenge medical negligence due to hiding of medical information.

14	Housing projects grind to a halt in the plantations <i>-Irregularities and neglect surrounding the projects to provide housing for disaster-affected.</i>	K. Prasanna	<ul style="list-style-type: none"> * Politically motivated decisions override the policy positions and the mandate of regulatory mechanisms of the National Building Research Organisation. * One of the functions of the National Building and Research Organisation is to <i>“Carry out research and provide guidelines on planning and development of sustainable housing and safe human settlements in disaster-prone areas and in areas endangered with climatically varying conditions”</i> but political decisions undermine the guidance and recommendations of such policy advisory bodies. * Lack of transparency in using public funds.
15	Is ‘Freedom from Torture’ a distant dream in Sri Lanka? <i>800 official complaints of torture in two years but the AG takes legal action for only seven.</i>	Samanthi Upeksha Weerasekara	<ul style="list-style-type: none"> * Lack of commitment to ensure constitutionally guaranteed fundamental right to freedom from torture as stipulated by Article 11, <i>“No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”</i> * Lack of compliance with provisions in the Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment Act, No. 22 of 1994. * Lack of coordination among law enforcement authorities and the Human Rights Commission of Sri Lanka in making a committed effort to foster freedom from torture. * Lack of knowledge and understanding of citizens on legislative framework of ‘Freedom from Torture’ together with dormancy of law enforcement agencies undermining the fundamental rights.
16	Recent use of RTI in environmental activism	Risidra Mendis	<ul style="list-style-type: none"> * Analysis of several cases relevant to Environmentalists including the Port City matter

Chapter 2

Series of Articles by Journalists – Media and RTI as effective advocacy tools to combat corruption and promote accountability

Microfinance nightmares from loan-shark infested villages

RTI exposes loopholes in microfinance claims.

“I took a loan intending to earn a living by operating a small shop. Until last May, the loan instalments were settled on time. When I found out that my husband had cancer, I closed the shop for several months. The balance outstanding at that moment was a small amount. So, when I received letters demanding the settlement of ninety-three thousand rupees including interest, I was shocked. My heavens, what can I do? The husband was still sick,” even as she struggled to speak any more filled with emotion another woman opened up with her story “I was working in Colombo, but everything changed with covid. How can I go to work? I went to Colombo because the salary I got from working in the garment factory close to our place was not sufficient. Now I am helpless. I have come to the point of ending my life because of the loans I have taken mainly for consumption.” Her story ended with another painful sigh. “The biggest mistake we made was borrowing money to buy a dairy cow on the advice of the government Samurdhi scheme. The animal died a year later because it was not suited for the climate of the province. We are left with a mountain of debt instead of milk and cow dung that could have earned us a profit. We took more loans to pay off those debts and have become indebted to microfinance companies ”

Hundreds of such stories can be heard from all the districts of Sri Lanka and contribute to a mega public chronicle of desperation and suffering. Large and

medium-scale finance companies, now known as microfinance institutions, are spreading like cancer in every nook and corner of Sri Lanka, consuming the lifeblood of the people. These are usually not even finance companies registered with the Central Bank. There are nearly twenty such companies in the Ampara, Polonnaruwa, Monaragala and Trincomalee districts where rural Tamil and Sinhala women are being squeezed out of the last penny left for survival. The exorbitant interest charged by these companies put regular loan sharks in the shade.

Suranga Rupasinghe of the Kantale National Collaboration Development Foundation (NCDF) is well versed in the subject. He worked with the Centre for Policy Alternatives to formulate a policy proposal at the end of the research on women enslaved in the microfinance debt trap. “This is a social disaster. Now several families have split. Every social tragedy that occurs when a family unit is dysfunctional can be seen in most of the rural areas of Sri Lanka. With the government unable to regulate the process, the microfinance companies that portrayed great altruism and love for humanity have ended up strangling people mercilessly. We were influenced to look into this matter due to this inhumane treatment and consequences.” said Suranga Rupasinghe.

Family dignity on the streets

While expressing her grief at the untimely death of her husband and the loss of the cattle purchased under an allegedly sinister scheme of the government, another woman said passionately, “The debt trap has managed to turn the mothers, respected as the deity of the family, into vagabonds. She publicly states that the debt trap leads to prostitution behind the scenes. Bathiyagama Nalika that we met in Kantale Wekanda says that women in her village, including herself, have taken loans from more than 15 microfinance companies.

“We still do not understand why we took loans. You would think that no one is given loans by force, so we are at fault for borrowing. That story could be true. But you need to look at our situation with compassion. Because everyone collectively cheated us. We were not made aware of these exorbitant interest rates. No one said whether these companies were registered or not. We had no way of finding the details. In the meantime, we became defaulters because of

the economic downturn in the country.” She tries to explain the essence of the debt stories of thousands of women.

Nirosha Kumari of Polonnaruwa started receiving letters threatening to take her to court. She has fallen into the defaulters category after closing her grocery store when she found out that her husband had cancer. The husband of Dinesha Prabhani of Kantale earns his livelihood by fishing in the lake. Dinesha is in a terrible debt trap after obtaining an initial small loan to buy essential fishing nets. She has got herself into this mess after obtaining loans that she was encouraged to obtain by officers who visited her house. “Now the debt outstanding is more than 1.5 million. I am the debtor because I have taken all these loans in my name. My husband earns around Rs. 25,000 to Rs. 30,000 a month with his fishing. This is not even enough to live on, and it is difficult to repay the loan, the interest keeps accumulating day by day. It's like a death trap.” At home, we talk about how to pay off debts. My husband says that since the loans are in my name, I have to come up with a strategy to pay off the debts. I feel like committing suicide when he says that and walks off. Of course, all I have left is to take my life.”

Debt collectors of financial companies roam the villages on their motorcycles every day. Some women are in the habit of staying out of the house all day because these loan collectors look like monsters on iron horses. "But it can't be done now. They remain seated in the backyard of our houses saying that they will not leave until we make the payments. As women, we do not even have a chance to take a shower since they are in front of us, we can't even eat. They are asking why we cannot pay the loans if we can eat and drink. It is no secret that sometimes loan instalments are settled by satisfying the physical needs of these loan collectors,” says an unnamed woman from Dehiattakandiya.

Central Bank regulation?

Lawyer Thusitha Siriwardena travelled to remote areas on behalf of the Centre for Policy Alternatives to investigate the debt crisis that has plagued rural women. “Most of these so-called microfinance institutions operate in economically distressed villages in the Uva, East, North Western, North Central and Northern provinces. Especially in the post-war period they deceived the

government, promoting loans as the source of upliftment of the rural areas, enticed the people with attractive advertisements, and started administering loans. Our research shows that about 20 large and small companies offer loans at daily interest rates. When these daily or weekly interest rates are calculated as an annual rate, it reflects a higher rate of 60 to 70 percent. It is an unreasonable predicament. Therefore, we can say that there is no systematic regulation on the part of the government. These should be regulated by the Central Bank. However, it is doubtful whether some of these companies are registered with the Monetary Board of the Central Bank. It is not unreasonable to say that the authorities have had a deal to act as if they were not aware of such high-interest rates being charged even though these institutions were registered. Now, this issue has reached unmanageable proportions. If immediate solutions are not instituted there could be a social catastrophe like the farmers in Polonnaruwa committing suicide when they could not pay their debts," states Attorney-at-Law Thusitha Siriwardena.

Analysing the problem further, he points out that a gender crisis has also emerged in this situation. "Women are not the biggest borrowers anymore but the only borrowers constituting 100 percent. There are no men who have been included as members of credit groups. Companies are chasing behind women to repay loans. As a result, rural women are becoming victims of abuse. Some companies are outright abusing these women. Companies have gone to court against women in some provinces. They have the right to go to court to recover their debts. The women possess very limited knowledge and or understanding to go before a judge and tell their story about the exorbitant interest rates and the unjust loan conditions. These women do not understand why they signed saying that they read and understood all the rules and regulations that have been presented in English. They can't afford legal costs like a company. Therefore, the whole issue needs to be studied from a separate perspective and policy actions implemented," says Attorney-at-Law Thusitha Siriwardena.

Namesake ministry

What is required to address the microfinance debt problem is decisive policy. Information about the existing problem is needed since it requires a conscientious approach. There is no response when inquiries are made about the registration status of the companies, the loan interest rates they are

allowed to charge, the terms of the loan, etc. Therefore, the information has to be obtained using the Right to Information Act. Since there is a separate nominal State Ministry for Microfinance at present, the relevant information was requested from them. The reply received was that their Ministry does not know about the relevant matters and these matters should be inquired from the Ministry of Finance. Commenting on the response, Seetha Ranjane, a Member of the Kantale Pradeshiya Sabha said that it was clear that the State Ministry of Microfinance was just a namesake entity. At the very least, it is clear that the relevant institutions do not have an up-to-date database on lending and recovery. It seems that the authorities have not taken a policy decision after three years of setting up the ministry in line with the election promises, especially on debt regulation and relief to the people.

The Deputy Governor, K.S. M. M. Siriwardena, who is the designated Information Officer, replied to the information request sent to the Central Bank. He points out the provisions of Act No. 02 of 2019 issued in terms of the MicroFinance Act No. 06 of 2016. Accordingly, microfinance companies are allowed to charge an interest rate of not more than 35 percent per annum including all other fees on their loans. Licensed finance companies can also charge an interest rate of not more than 35% per annum including all fees. The Finance Business Act No. 42 of 2011 and the Order No. 10 of 2018 state these regulations. However, according to the information, it shows that they have failed to comply with the legal requirements set out in the relevant Acts. Some lending institutions, especially in the Eastern Province, are merely businesses that are registered with the Registrar of Companies and not registered with the Monetary Board of the Central Bank. One such institution has launched its operations from Bandarawela, focusing on the Uva Province. Some of these institutions are registered as co-operative societies and their nefarious microfinance mafia is covered in an altruistic veil. One such institution, which has launched operations in the Uva Province, provides loans at daily interest rates and is owned by a Member of Parliament, as stated by the Opposition at a recent Parliamentary session. When the annual interest rates are calculated based on the daily and weekly rates charged it is clear most of these institutions have charged an exorbitant rate exceeding the boundaries set by the Central Bank.

There is also a deception and a violation of the Official Languages Act when the agreements with the people are signed only in the English Language.

Rushdie Habib, a lawyer, emphasises the importance of going to public litigation to save people from the hot lava flow of the microfinance volcano that is already erupting. He says that he will have to seek the help of the Supreme Court of Sri Lanka for a policy settlement. "When we look at the agreements that these companies have entered into with the people, it is clear that the companies have acted contrary to the Central Bank circulars," he said. The terms of those agreements show that companies have attempted to make undue gains and have done so. It is illegal. Most companies are not regulated and they do not register. The police do not see this as a crime. Therefore, the complaints of the people are not entertained or accepted. But the authorities need to open their eyes regarding this matter. We need to move into a broader legal process and pave the way for policy change. What people need to do is to write to the Financial Ombudsman. I also believe that more RTIs should be directed to the Central Bank seeking information about each of these companies. They should be publicly available to the people. Policies cannot be changed by hiding or ignoring facts. Most companies make their contracts in English that include complicated words and technical jargon that people predominantly familiar with Sinhala and Tamil do not understand. We as a society should come to a place where these are questioned and challenged. Finally, accurate information is required if a lawsuit is to be filed against public harassment. That is why I request to use the Right to Information Act," said Attorney-at-Law Rushdie Habib.

He points out that accurate information is required to prosecute. In the past, it was a very difficult task to obtain accurate information. Most of the information was secured and under lock and key and inaccessible to the public. People now have a key in hand that they can open any database. That is the Right to Information. It is up to the people to use that key to get the information they need.

■ **Lasantha de Silva**

Lasantha de Silva : He is the current convener of the Free Media Movement with over 22 years of experience in the media field as a radio, newspaper and web journalist. He is a trainer and a lecturer at the Sri Lanka College of Journalism. He is an activist regarding the Right to Information and compiles training modules for the same. He has authored several investigative articles using RTI and has produced 60 radio programs on the subject.

Millions lost by Customs on palm oil

During the previous Sinhala and Tamil New Year, people who were planning to prepare traditional 'Konda Kavum' were greeted with the startling revelation that coconut oil contained a poisonous substance called Aflatoxin. Authorities stated that this was in the imported coconut oil. This persuaded people to shift to palm oil because they could not prepare most of the food without oil. Sri Lanka imports palm oil since the local palm oil production, also known as vegetable oil, is unable to meet the market demand. Sri Lanka produces approximately 165,000 metric tons of palm oil annually. Palm oil, which is primarily manufactured by two companies, is used for other products and part of it is exported and does not come to the market as edible oil used by the average man. Therefore, palm oil has to be imported in large quantities. Many hotels and restaurants, as well as companies that produce items such as ice cream, chocolates, and biscuits, and cannot use coconut oil in their products, use palm oil. So do roadside vendors who use the oil to fry their patties and other savouries. Accordingly, a significant amount of foreign exchange has to be utilised to import palm oil which is included in the list of essential food items in Sri Lanka. Accordingly, 185,000 metric tons of palm oil has been imported in 2021, with 95,000 metric tons in 2020 and 120,000 metric tons in 2019. A metric ton of palm oil has been sold in the world market for around US \$ 950 during this period. Therefore, a significant amount of foreign exchange has been

paid to import palm oil. The Committee on Public Enterprises (COPE) states that traders have exploited the public given the current foreign currency rates and the shortage experienced in the country. Thereby palm oil has also added to the existing burdens of the people. This is an extraordinary exploitation because the name of the Sri Lanka Customs is mentioned in the statements made by COPE.

Whose palms are the customs oiling?

A report by COPE raises suspicions that Customs may have contributed for someone to make an undue gain from the oil. The COPE Committee stated that Sri Lanka Customs had incurred a loss of Rs. 6,130 million due to two companies importing palm oil from 2013 to 2016. Sri Lanka has imported from 2013 to 2016 palm oil to the volumes of 142,000, 162,000, 121,000 and 195,000 metric tons respectively. It also shows a sudden increase in imports to 217,000 metric tons in 2017. However, if the Customs had incurred a loss of Rs. 6130 million due to the conduct of the two companies during this period, it is important to query as to how this loss was possible. Furthermore, if the Customs had incurred the loss of Rs.6,130 million, the real loss was not to the Sri Lanka Customs but to the country and the people. However, when disclosing these matters, the COPE did not reveal the names of the two companies or the reason for this loss. The COPE Committee stated that this loss was mentioned as a query in the audit statement of the Sri Lanka Customs. In such a context, this writer had to use the Right to Information Act No. 12 of 2016, since the Sri Lanka Customs, being a state institution, is bound to answer inquiries under the Act. The information sought in the application was - whether the Customs was aware of the alleged loss mentioned by the COPE Committee. What are the names of the two companies mentioned by COPE ? What is mentioned in the relevant audit report referred by COPE? Why were steps not taken to prevent these losses? What action would be initiated to recover the losses? M.A.A. Shantha, who was the designated information officer II, the Superintendent of Customs of the Policy, Planning and Research Division, of the Sri Lanka Customs, responded to the request for information. His response dated 27 January 2021 simply states that the application for information will be forwarded to the Staff Services Division of the Sri Lanka Customs and once their response is received it will be intimated to the information seeker. The response by the Staff Services Division states

“The information requested therein has been discussed by the Public Accounts Committee and since the investigation into this incident is ongoing, kindly note that it is appropriate to inform the applicant that there is a possibility to provide the relevant information after the conclusion of the said investigation.”

Customs has deliberately overlooked two areas in providing this appalling reply. The Act does not have any provision to suggest that information on a matter discussed before the Committee on Public Accounts cannot be provided when requested through the RTI. Although it is logical to assume that a response should be provided at the end of the investigation, it is clear that providing the requested information does not impede a continuing investigation. It is clear that there was an attempt to withhold information when considering the response to the appeal by the Customs.

The cat is out of the bag

The Right to Information Act No. 12 of 2016 enshrines the rights of the citizen. It is a constitutional right. Therefore, this right cannot be snatched away or violated. The Customs or any other government agency is not empowered to withhold or conceal information other than restrictions specified by Section 5 of the Act. When inquiries were made, Dr. Charitha Herath, Member of Parliament stated that the releasing of information should not be delayed just because it has been discussed at the Committee on Public Accounts. Accordingly, the writer filed an appeal to the nominated officer, stating the reasons indicated for the delay in providing information were not justified among several other matters while highlighting the observation of MP Charitha Herath that being subject to discussion at the Committee on Public Accounts was not a reason for non-disclosure of information.

The cat jumps out of the bag with the response to this appeal by the Customs. The receipt of the appeal on 15 February 2021, which was confirmed in writing, was replied more than a month later, on 17 March 2021. The response letter was signed by the nominated officer Director of Customs (Appeals), W.W. R. D. de Alwis. He states that the requested information is denied under subsection 5 (1) (d) of the Information Act. "Your request is denied because the subject matter for which you have requested information is being investigated by the

Tax Appeals Commission" was given as the reason for the denial of the request to provide the relevant information.

The Customs was careful not to state that they are refusing to provide information since it is being discussed before the Committee on Public Accounts. This is because the appeal states the position of Dr. Charitha Herath among other matters. In addition, there was no mention of the Tax Appeals Commission in previous responses by the Customs.

What does sub-section 5 (1) (d) of the Information Act, quoted by the Customs actually state? The clause states that the request for information can be denied if the disclosure of any information could cause serious prejudice against the prevention or detection or prosecution of a crime. Therefore, the Customs is presenting a baseless argument. It is a cover-up to protect certain stakeholders. According to them, this is an attempt to investigate an appeal filed before the Tax Appeals Commission. Attorney-at-Law Jagath Liyana Arachchi explains that it is not justifiable for the Customs to refuse information under the relevant clause since only an appeal has been filed before the Tax Appeals Commission. The respondents in this instance are the companies mentioned in the audit report, referred to by the Committee on Public Accounts, and mentioned in the audit report, therefore considering this context it is apparent that the attempt is to conceal the names of the said companies.

Attorney-at-Law Jagath Liyana Arachchi also points out that although a case has been initiated in this regard, there is no reason to refuse the requested information since it will be anyway revealed in the judicial process.

Finally, the Sri Lanka Customs has slipped in trying to cover up certain stakeholders. However, it must be noted that it is the ordinary people who are further burdened through these actions. Authorities who try to protect the reputation of such companies disregard their public responsibility and send the public down a slippery slope. The Customs receive salaries from public funds and there should be accountability to the public in these matters. There was also a wider discussion recently regarding the garbage containers brought to Sri Lanka from the United Kingdom. The containers were returned but the public scrutiny and focus were heightened when it was revealed that the businessman responsible for the imports was contemplating running for the presidential

election. If he had not said so, the public would still be in their usual slumber. Customs is an institution that is required by the people and the country. If their work and responsibilities are to be pure just like their white uniforms, a policy change is inevitably needed.

■ ***Lasantha de Silva***

The Monaragala Election Petition

A historic victory through the right to information

"Providing safe drinking water facilities at a cost of Rs. 7 million to the helpless people in Madurai Katiya who were without a drop of water" was not a phrase contained in a campaign leaflet listing the work implemented using public funds during the past term of a candidate contesting a parliamentary election. This phrase was found in a promotional leaflet distributed before the local government elections of Monaragala, scheduled for February 10, 2018, with the image of Tharanga Dissanayake, a candidate of the Podujana Peramuna contesting for the Monaragala Pradeshiya Sabha. Tharanga contested as the candidate for the Maduruketiya division in Monaragala. This was not a division of great political significance, greater than any other local government electorate in the island or a decisive political stronghold required to secure an election victory.

"It is a very surprising move. I wonder why that happened. Why would a candidate resort to spending so much money for a local government election? Even if the top political leaders had promised to grant him the post of Chairman of the relevant Pradeshiya Sabha, this is still a colossal amount. The candidate would have to resort to illegal practises and transactions to recover such spending" said Rohana Hettiarachchi, the Executive Director of an election monitoring organisation, People's Action for a Free and Fair Election (PAFFREL).

He was commenting during a media briefing convened by the Free Media Movement, after the landmark judgement was issued by courts in the bribery case filed regarding the election in the Maduraketiya Division of Monaragala. Rohana Hettiarachchi stated that Tharanga Dissanayake who was elected as the People's Representative of Monaragala in the 2018 Local Government Elections may have spent approximately Rs. 35 million for his election campaign since there is no formal legal framework to control election campaign finances.

Even an average citizen who looks at this objectively will understand this situation. A candidate that spends such a colossal amount for an election campaign to win a seemingly insignificant electorate will devise a sinister scheme to recover his money. The common experience in the country is that such a move and motive would often result in extremely corrupt and fraudulent outcomes. However, even if such post-election possibilities are left aside, candidate Tharanga has violated election laws and thereby committed election fraud.

Complaint to the Election Commission

Manjula Gajanayake of the Centre for Monitoring Election Violence (CMEV) was the first to lodge a complaint with the Elections Commission regarding the massive distribution of goods and the money spent by candidate Tharanga during the 2018 local government elections to induce voters. "Before the election on 20 January 2018, we complained that this candidate was distributing goods and spending large amounts of money. We stated in our complaint that he was violating election laws by bribing and soliciting voters," Gajanayake said. The day before the election on 9 February 2018, PAFFREL lodged another similar complaint. However, court records state that the Commissioner of Elections had not conducted a detailed inquiry into the allegations and that the officials who visited had acted in a very lenient manner. Only those officials will be able to give an account of whether any political affiliation to candidate Tharanga was responsible for the leniency.

The challenge against the attempt to bribe and rob the peoples' mandate

Tharanga's rival Sunil Shantha Wanasinghe, who contested from the United National Party, was placed second in the polls and was not elected to the

Pradeshiya Sabha. By this time, PAFFREL and the CMEV had lodged complaints with the Assistant Commissioner of Elections and the UNP contestant Sunil Shantha Wanasinghe agreed to appear as the plaintiff in a case filed in the Monaragala High Court regarding election fraud.

Accordingly, a case was filed in the Monaragala High Court bearing case number 01-2018 under the category of an election petition. Petitioner Sunil Shantha Wanasinghe testified that the first respondent, Tharanga Dissanayake, had committed an offence that falls under the category of 'bribery' described in Section 82(d) of the Local Government Elections Ordinance. Accordingly, in this election, it was pointed out that *'the first defendant Tharanga Dissanayake directly or indirectly by himself or by any other person on his behalf, had attempted to induce voters by offering a pledge or agreeing to provide a loan, reward, gift, goods, valuables or money'*. Therefore, he was to be convicted for a punishable offence under sub-section (e) of Section 82 (d) of the Local Government Elections Ordinance.

Payment for water connections

It was evident how Sunil Shantha was attempting to provide evidence before courts to prove his allegations from the commencement of the case. He clearly stated how the first respondent, Tharanga Dissanayake, in addition to providing money and goods to voters in the Maduruketiya area, had also given other bribes. It was established and proved that the respondent had paid for water connections with his finances for those who did not have water connections in the relevant electorate. It was also revealed that a public servant bearing National Identity Card number 812811402V had gone to the bank and deposited money on behalf of Tharanga for 30 beneficiaries for their water connections. He was an employee of the Moneragala District Medical Officer of Health Office and had assisted in the election campaign. Anura Shantha Kumara, who is a public official according to court records, was also involved in this election violation by distributing goods. Providing a statement to the police he had stated that since 28 November 2017 he had been paying for water connections to various people with Tharanga's money.

The High Court judge citing evidence has noted in his judgement that in addition to spending Rs. 7 million to provide water connections, the Podu Jana

Peramuna candidate Tharanga Dissanayake has provided other forms of bribes in this election, offences that are considered as election fraud. Distribution of cement, food parcels and money during door-to-door campaigning as well as distributing building materials, cash and alcohol has been noted. It has been reported that cattle had also been purchased to distribute among voters. The respondent candidate has paid for 96 water connections and 09 electricity connections to solicit less than 2,000 votes in a small electorate in a Pradeshiya Sabha election which can be considered as the starting point of the election process in Sri Lanka.

Where was the information obtained to win the case?

After considering the evidence presented, the Monaragala High Court Judge delivered a landmark judgement. It is likely to be used as a precedent in future litigation. Most importantly, the ruling comes at a time when there is no law in place to regulate election campaign expenses. After considering all the evidence presented, the High Court Judge declared that the election of the first respondent, Tharanga Dissanayake to the Maduruketiya electorate with the highest number of votes, would be annulled. Accordingly, the petitioner Sunil Shantha Wanasinghe, who received the second-highest number of votes, was ordered to be appointed to fill the vacant position.

However, obtaining information that led to such a landmark decision by courts was not a simple and easy task. Podu Jana Peramuna candidate Tharanga Dissanayake is a political heavyweight. He was a politician who spent a lot of personal money on his campaign and had connections with powerful politicians in the area. He continued to fearlessly distribute goods, money, and even alcohol when election monitoring organisations lodged complaints against him and the court ruling states that the people were scared to testify against him. The judge also stated that the Monaragala Headquarters Inspector of Police (HQI) had also been reluctant to enforce the law against the respondent. The judge goes on to state that it was a dereliction of duty to a certain extent by the HQI who admits that distributing money during the election campaign is an election bribe, but still resorted to seeking the advice of the Attorney General instead of arresting the respondent.

"It is in such a backdrop that we had to take this case forward. People were scared to testify. Despite being government institutions the Water Board, the Bank and the Electricity Board were reluctant to provide information. This made it very difficult to obtain official information. The reason is political power and influence. However, if we were unable to prove our allegations with substantial evidence there was a risk that we could have lost the case," said petitioner Sunil Shantha Wanasinghe at the end of the judgement.

Sunil Shantha was not aware of the RTI Act. PAFREL and the CMEV encouraged him about the use of the right to information as the parties supporting this case.

The power of the right to information

"At one point we were really in a difficult situation. We knew who spent the money on water and electricity connections. However, in order to verify the data, it was necessary to obtain official payment source documents. It was extremely important to obtain and present those data as official documents from the relevant government agencies. However, these institutions did not or were reluctant to provide us the documents containing that data" said PAFREL Executive Director Rohana Hettiarachchi.

"Finally, we decided to use our right to information established by Act No. 12 of 2016, which we had placed our faith in, to resolve the issue." Rohana Hettiarachchi commented referring to the strategy used to obtain and strengthen the evidence in the case. Accordingly, petitioner Sunil Shantha and his associates exercised their right to information by requesting the information they wanted.

"Finally, we were able to get the information we needed. That information helped us to win the case. The judge has also stated this matter in his judgement. This also means that we would not have been able to win this case without using the right to information. I think the right to information not only won this case but also helped to take an important step towards the integrity of the electoral system in Sri Lanka," said Rohana Hettiarachchi.

"The documents submitted by the petitioner at the time of providing evidence are the documents obtained from the Monaragala District Office

of the National Water Supply and Drainage Board (NWSB) under the Right to Information Act. The court states that the documents have been confirmed by the Civil Engineer of the Monaragala Regional Office of the NWSB who testified on behalf of the petitioner confirming that the documents were issued by the Monaragala District Office of the NWSB. The acceptance of these documents as official documents by the court is a pivotal point in this case, which guarantees that this case would be strengthened with acceptable evidence.

■ ***Lasantha de Silva***

RTI revives child protection law suppressed for over two decades

-No legal action taken yet against common offences committed

The victimisation of plaintiffs in the criminal investigation process is a fundamental weakness in the state institutional structure of Sri Lanka. This accusation is seriously levelled against the Sri Lanka Police especially in the case of crimes committed against women and children. Our special attention in this article is focussed on child protection. The National Child Protection Authority (NCPA) was established to fulfil the primary national responsibility of protecting the child from all forms of abuse. Unfortunately, this institution has not yet succeeded in fulfilling its mandated responsibility towards the children adequately. We inquired under the Right of Information Act regarding the primary objectives that have remained elusive for over two decades even after this state institution was empowered by Act No. 50 of 1998.

The identity of the victims

Disclosing the identities of victims in child abuse cases is a punishable offense. However, the Sri Lankan media has been ignoring such legal provisions paying scant respect in their reporting for a long time. Therefore, the child who is already a victim becomes repeatedly victimised before society. With the digitalisation of the media field and the advent of social media, this situation has deteriorated further. This law was introduced in 1995, way before the

digitalisation trend of the media industry. In legal terms, revealing the identity of the victim in child abuse cases is a punishable offense under Section 365C of the Penal Code as amended by Penal Code (Amendment) Act, No. 22 of 1995. However, traditional media continues to operate in absolute defiance of this legal provision and today this violation takes place on a daily basis through social media platforms. This is actually a form of child abuse and exploitation. The National Child Protection Authority is the body instituted to take the primary lead in taking legal and administrative action to address this situation. However, when we inquired, it was revealed that the NCPA has not initiated any legal recourse against such offences committed so far. This is not a relatively mundane situation. This effectively means that the law introduced by the Chandrika Kumaratunga government in 1995 has not been enforced for over 26 years. When inquiries were made it transpired that the authority was not able to provide a reasonable answer neither was it aware of the numbers since they had not even been collating or identifying the number of violations of the legal provision by the media and other Institutions. Accordingly, this author had to resort to obtaining information under the Right to Information Act.

Accordingly, disclosure of the identity of the victim in cases of child abuse is a punishable offense under Section 365C of the Penal Code (as amended by Act No. 22 of 1995). However, despite this legal backdrop, the violation continues at the hands of the media and other institutions. The questions referred to the National Child Protection Authority in this regard included - Has the National Child Protection Authority resorted to taking recourse regarding these blatant violations? If not, will any action be initiated in the future?

Guidelines

Accordingly, the NCPA said that it had developed a guideline in 2017 regarding the areas that the media fraternity needs to be aware of when reporting on child abuse incidents. The authority stated that a final draft has been submitted to the Ministry of Women and Child Affairs for submission to the Cabinet after amendments were made to the first draft taking into consideration the suggestions of government officials, journalists and other relevant stakeholders in the field of child protection including the public. There are two basic conclusions that we can derive from the action of the NCPA. The first is that it

has taken over twenty years for even an indirect action to be initiated under the legal provision established in 1995. Secondly, the authority has not even penetrated to the surface level of the primary purpose of taking legal action against the perpetrators.

However, the Auditor General's special audit report released recently concerning the role of the NCPA, communicates a different story. The report states that the Authority has failed to submit to the Cabinet, the final draft of the Guidelines on matters to be adhered to by the media for reporting on child abuse incidents, which has been submitted to the Secretary to the Ministry.

However, the NCPA has stated that a specific mechanism has already been established to show if the identity of the victims is disclosed when reporting child abuse incidents. The NCPA has stated that it has already taken steps to call explanations from institutions regarding five cases that have been observed. Therefore, this request for information has given life and revived the legal provisions that have been dormant for twenty-six years. This is a positive step in the administration of justice for the children of this country who are victimised. The question remains as to how far these initiatives will proceed.

Reality Shows and child protection

The discrimination and exploitation of children in certain reality shows and competitions organised by certain television reality shows that involve children can be cited as an example. It was the NCPA that said in 2018 that these TV shows indirectly violated the rights of the child and abused children. The Chairman of the NCPA at the time, Attorney-at-Law H.M. Abeyratne stated to the media that these reality shows have reached the point of violating several national and international legal conventions created to protect the rights of children. Therefore, he stated that the NCPA is in the process of drafting standards to be followed when organising such events. He alleged that the rights of children were being violated during rehearsals as well as during the judgments, emphasising that there was a tactical evasion of the law for commercial purposes. Similar to the case of the victim disclosure, the finger is yet again pointed at the media. However, after that statement, the National Child Protection Authority did not engage in the process. The competitions continued to be organised with the applause of the adult community, ignoring and questioning the validity of the authority's awareness regarding the unnecessary physical contact by the

various people that the children were exposed and subjected to in such events.

Emotional abuse can sometimes be worse than physical abuse. According to psychologists, the statements made by members of certain adjudicating panels are emotionally abusive and this could have a profound effect on the mental health of children. However, the authority does not appear to have taken any concrete steps regarding this process. We have stated this example to highlight the policy of the National Child Protection Authority concerning the so-called public and mainstream media. At the very least, the authorities who consume the airtime of these media institutes while participating in their programs should pay attention to highlight these issues even on those occasions.

The dispute of the NCPA, which escalated into an administrative crisis in 2017 and 2018, created an environment in which child protection officers themselves were exhausted. After resolving some of the internal disputes of the Board of Directors to some extent, the NCPA, which has been dragging its feet, once again had new aspirations with a fresh administration taking over in 2019. Today there is a new Chairman in the authority. It is in this context that we strive to revive a law that has been dormant for twenty-six years, to make it a reality. The National Child Protection Authority will have to show great commitment to be the guardian of the nation's children in the fullest sense of the word. It is not easy to heal the long-term injuries caused. Ironically, the media, which should be at the forefront to highlight these prejudices and discrepancies on behalf of the children, are the very source of violating the rights of children and victimising them further.

■ **Bigun Menaka Gamage**

Bigun Menaka Gamage : In journalism for nearly fourteen years having started his media career with the 'Lankadeepa' newspaper, currently the news editor of the 'Mawbima' newspaper. His focus is on investigative journalism covering both news and feature articles. The series of articles he did with journalist Tharindu Jayawardena in the Lankadeepa newspaper for about five years under the title 'Sathya Gaweshana' is a classic example of his keen interest. He also won the Sri Lanka Editors' Guild Award for penning articles using the Right to Information Act. He conducts a series of interviews on contemporary socio-political issues on the popular YouTube channel 'Satahan Radio'.

He is a member of the Sri Lanka Young Journalists Association and the Sri Lanka Working Journalists Association.

Lak Sathosa hides from the RTI Act

A joint Cabinet paper was presented on 7 June 2021 with the objective of providing essential food items to the public at reasonable prices without any difficulties. Rohitha Abeygunawardena, Minister of Ports and Shipping and Bandula Gunawardena, Minister of Trade presented the Cabinet paper. The focus of the paper was the stranded essential food items left at the Sri Lanka Ports Authority and private terminals as well as essential food items confiscated from Sri Lanka Customs. The proposal was to purchase these essential food items for the Lanka Sathosa without offering it for auction by the relevant institutions.

According to the cabinet paper, Lak Sathosa had implemented a scheme to *“provide essential food items to the public without any shortage,”* during the pandemic. The plan to purchase these stocks was to further facilitate the distribution of the food items to the public. According to Cabinet Paper 2.1, the Tender Board of the Sri Lanka Ports Authority in consultation with representatives of the Lanka Sathosa would determine the prices of these essential food items while a parallel process would be initiated to obtain the other quality inspection reports and approvals. The amount agreed by Lanka Sathosa would be paid to the Sri Lanka Ports Authority and then the relevant goods will be released

from customs subject to recovery of customs duties. This Cabinet Paper had taken into consideration and incorporated the suggestions stemming from the discussion held on 07.06.2021 under the patronage of the two Ministers with the participation of representatives of the Ports Authority and the Customs Department. Accordingly, the letter of approval signed by Secretary to the Cabinet Office W.M.D.J Fernando was forwarded on 8 June 2021.

Correspondence of the heads

Meanwhile, during this period the controversial garlic ship arrived at the port. According to the import company, its value was around Rs. 20 million. The stock of garlic also ends up stranded at the port due to the crisis over the clearance of imported goods with foreign exchange shortages. As a result, this consignment of garlic also came under the Ports and Lak Sathosa agreed joint program. As per the agreement, the Ports Authority has informed Lak Sathosa about this stock of garlic on 07.09.2021 and quality inspectors had inspected it. The consignment of 56,000 kilograms of garlic contained in two containers arrived at the port on 14 July and was certified to be fit for human consumption. Most importantly, according to Lak Sathosa internal documents, there has been an exchange of views between its top officials on the findings and recommendations of this quality inspection of garlic. A letter from Assistant Manager (Quality Assurance) Dulanji Randeniwela with quality inspection conclusions and recommendations has been sent to Deputy General Manager (Procurement) Ms. Chamila Asuramana and Senior Manager (Supplies) R.S. Fernando through Senior Manager (Quality Assurance) Chamila Botheju.

Subsequently, according to a letter sent by Senior Manager (Supplies) R.S. Fernando, it had been decided to hand over the stock of garlic as per their discussion to M/s NS Enterprises the highest bidder with Rs. 135.00 per kilo. According to the letter, M/s SK Traders and M/s V Helabima Trading Pvt. Ltd. had made bids for Rs. 125.00 and Rs. 128.00 per kilo respectively. It is stated that the copies of this letter addressed to Deputy General Manager (Finance) Susiri Perera sent through Deputy General Manager (Procurement) Ms. Chamila Asuramana was forwarded to the Chief Executive Officer Ranjith G. Rubasinghe, Deputy General Manager (Operations) T.D. Kulatunga and Senior Manager (Procurement) Lakshman Kumara.

Thushan Gunawardena's revelation

However, with comments made by Thushan Gunawardena, the former Executive Director of the Consumer Affairs Authority, a few days later there was a wider discussion in society regarding this deal.

“On the morning of September 9, I received a call from Lanka Sathosa. I was with the Chairman at the time. The information was that a stock of more than 50,000 kilos of garlic was being illegally taken from a Welisara warehouse. I immediately sent one of our teams there and instructed them to take photographs of the documents related to the work. According to the information, two containers of garlic had been secretly released to a businessman the previous day and forged documents were prepared by those who had gone from the Lanka Sathosa head office. This stock of onions was to be sold to the public. Because now there is a cabinet decision to provide to the public through retail means without selling it to wholesalers. The most serious issue here was selling at Rs. 135 per kilo to the wholesaler without issuing any bills and receiving 7.3 million rupees in cash. Someone at the CWE head office had instructed to take the money and put it in the safe.”

According to Thushan Gunawardena, he was the first to receive a tip about this illegal transaction. He also said that attempts to obtain the assistance of the CID for the raid had failed. After the statement made by the former Executive Director of the Consumer Affairs Authority that such a transaction could not have taken place without the knowledge of the top management, the Minister of Trade Bandula Gunawardena and the top management of Lak Sathosa refuted it. The Minister was quick to refute this incident without even conducting a preliminary inquiry.

Four suspended

Following media reports of this incident four people, including Lak Sathosa Deputy General Manager (Finance) Susiri Perera, were suspended on September 13. Three days later, Susiri Perera was arrested by the police on the 16th and remanded after he was produced in court. The letter stating that it has been

decided to hand over the stock of garlic to the highest bidding company M/s NS Enterprises was sent by Senior Manager (Supplies) R.S. Rajapaksa.

The letter was forwarded to Deputy General Manager (Finance) Susiri Perera through Deputy General Manager (Procurement) Chamila Asuramana. The letter states that it was copied to CEO Ranjith G. Rubasinghe, Deputy General Manager (Operations) T.D. Kulatunga and Senior Manager (Procurement) Lakshman Kumara. In addition, the letter sent by Assistant Manager (Quality Assurance) Dulanji Randeniwela on September 7 with the conclusions and recommendations of the quality inspection regarding the garlic transaction has been copied to Lak Sathosa Chairman Ananda Peiris.

Accordingly, no one can say that there has been no communication regarding the garlic deal from the initial stage. However, even before the conclusion of the investigation process, the Minister of Trade from the outset made a great effort to claim that the top management of Lak Sathosa was not involved. However, the CID has so far arrested three persons involved in this correspondence. Although reporters emphasised this point from the beginning, the Lak Sathosa chairman subsequently said that the term 'top management' had been misused by the media. These basic correspondences alone are sufficient to disprove the Minister's erratic conclusion.

A Chairman who does not read his emails

“This happened on Friday. The week before that I had been out of Colombo for a week since Tuesday. I do not know anything let alone the email. I do not have time to check the mail. I went around Sri Lanka looking for Sathosa outlets. Some may read an e-mail the moment it comes, and others may not even read. First thing is that I did not read the email because I did not have the opportunity. When I was on the phone talking about something else, I got the news. I need to tell the truth, I heard about the incident. I received a SMS on Friday or Saturday. When an officer who is currently suspended called me, he told me about this matter earlier. This has happened while I had given him specific instructions. Only the Executive Director and I are above the Deputy General Manager (Finance) Susiri Perera. Ask the police about our relationship status.

Minister Bandula responds

The Chairperson of Lak Sathosa says that since he was out of Colombo from September 7 to 14, it was practically impossible to check emails. On the same day, Assistant Manager (Quality Assurance) Dulanji Randeniwela forwarded a letter to the Chairman and Management regarding the findings and recommendations of the Quality Inspection regarding the Garlic transaction. If it is practically impossible for a chairperson of a government agency to check his email for official correspondence, then there is a serious concern. The response of Ananda Peiris further questions the role of a chairperson of a state institution. Trade Minister Bandula Gunawardena, who fought to save the top management of Lak Sathosa even before the conclusion of the investigation, recently brought this debate to a very good position in Parliament. The Minister was trying to say that the emails sent to the Lak Sathosa Chairman and the Chief Executive Officer in this regard had been sent to a different email address, which they did not use. The manner in which the Minister attempts to save the officials reveals a bigger problem than the garlic issue.

Digital governance?

There is a government policy on the use of digital technology, including the use of e-mail, of which the Trade Minister seems to be unaware. Former Secretary to the President Lalith Weeratunga has issued the relevant directives in a circular issued on 31 May 2010 entitled 'Policies and Procedures for the Use of Information and Communication Technology in the Public Sector'. Accordingly, each government agency should make adequate financial provisions in its annual budget for the ICT procurement activities and the existing ICT equipment, systems and network maintenance of the institution. According to those procedures, the use of email will be mandatory for all government agencies for official communication. The Information and Communication Technology Agency of Sri Lanka has compiled this e-government policy in detail. Now it seems that Minister Bandula Gunawardena and the top management of Lak Sathosa are trying to save themselves by making hollow arguments without any awareness of this e-government policy. However, it is clear that by attempting to cover one crack they have exposed another hundred.

Lak Sathosa without an information officer

The author can prove that the arguments of Lak Sathosa and the Minister of Trade regarding digital governance are baseless and false. It is as follows: The author attempted to obtain the following information under the RTI Act on September 26: The quantities and prices and the list of essential food items obtained by Lanka Sathosa, under the agreement to purchase stranded food items left at the Sri Lanka Ports Authority and private terminals, and essential food items confiscated from Sri Lanka Customs without an auction process. The number of Lanka Sathosa branches that these stocks were distributed, and the prices at which they were distributed, and if it was sold to wholesalers, the price list and the documentation. However, the Lak Sathosa website did not mention the name of an information officer or a contact telephone number. When contacted on its 1998 hotline number, it was said that it was a system designed to deliver goods to homes.

The author then forwarded the relevant information request to the Additional Secretary of the Ministry of Trade in charge of Lak Sathosa. The next day, the official sent an email to the Lak Sathosa chairman and CEO, asking them to provide the relevant information with a copy to the author. However, Lak Sathosa did not inform the author in terms of the RTI Act, therefore the chairman Ananda Peiris was contacted on October 5 at 3.36 pm over the phone to inquire about it. His answer was that he could not check the emails. Accordingly, the Lak Sathosa chairperson did not check his official messages for nine days from 27 September to 5 October. Let alone the garlic deal, it is such a chairperson that the Trade Minister is so desperately trying to protect in Parliament and in front of the media. Chairman Ananda Peiris further stated that Lak Sathosa has not yet appointed an information officer.

To enforce the provisions of Act 23 (1) (a) of the Information Act, each Public Authority shall, within three months of the enactment of this Act, appoint one or more officers as the Information Officers of that Public Authority and an officer nominated to hear appeals. Article (b) of the Act states that until such an information officer is appointed, the Head or CEO of a public authority shall be deemed to be the Information Officer of that public authority for this Act. However, these responsibilities have not been fulfilled in relation to Lak Sathosa.

The author then forwarded the relevant legal sections of the Information Act through WhatsApp to the Chairman and the responsible officials to make them aware of the Act and to rectify their ignorance. (Such a step is not required under the RTI Act, but it was done as a step towards better access to information culture)

Cannot remember if an officer was appointed

After thanking the author for reminding the management of the RTI Act through a request for information, he called again within half an hour and informed that Senior Manager (Legal) Sugath had been appointed and requested the information to be obtained from him. When Senior Manager Sugath was contacted over the phone, he requested a short time to look into the matter. He was asked again on the 9th about the request for information and he said that the Information Officer was Sanjeev, the Senior Manager (Operations) and requested to obtain further information from him. However, when asked on the 22nd, it was clear that he too was not sure whether he was an information officer or not. "I remember vaguely that I was appointed. There were some letters. Let me go through them," he said when the author reminded him that the request for information was sent by email.

Lak Sathosa has not been able to provide information even though it is required to give information within 14 working days (in other words by October 14) according to the RTI Act. Accordingly, the author appealed to the Chairman of Lak Sathosa regarding this situation in accordance with the Act. This reveals that there is no proper internal communication between the top management of Lak Sathosa regarding administrative decisions. Society in its entirety is being encouraged at the state level to make the most of digital technology, including online methods, to achieve productivity. In such an environment, the management of Lak Sathosa still operates in the 19th century. The administrative nightmare and communication capacity of Lak Sathosa higher management can be understood from this communication process. On the other hand, there is a reasonable doubt whether the release of vital information relating to this fraud is being delayed with the intention of destroying it. This is the more serious matter.

An independent inquiry is required

What would they say regarding this top management that the Minister of Trade is trying to protect? Is the Minister of Trade still anxious to say that the communication process regarding the garlic deal has changed?

We emphasised from the beginning that an investigation with the management responsible for the decision to purchase these essential stocks, retained in their positions, would not be an independent process. However, the authorities only criticised the messenger instead of looking into the content of what was said. Today, the CID itself has proved that what we emphasised was correct. The letter to communicate the decision to award the consignment of garlic to the highest bidder, M/s NS Enterprises was sent by Senior Manager (Supplies) R.S. Fernando. The letter was forwarded to the Deputy General Manager (Finance) Susiri Perera through Deputy General Manager (Procurement) Chamila Asuramana. The letter states that it was copied to CEO Ranjith G. Rubasinghe, Deputy General Manager (Operations) T.D. Kulatunga and Senior Manager (Procurement) Lakshman Kumara. It was at this point that the decision was taken to sell wholesale food items in violation of the Cabinet agreement to provide goods through Lak Sathosa branches at reduced prices to the public. According to the revelations at the CID, an attempt has been made to obtain a commission of Rs. 30.00 per kilo of garlic. That is the garlic chapter of this story.

Still, the focus of society is only on the garlic deal. The author goes beyond that and asks for information about the rest of Lak Sathosa's transactions. It seems that the Lak Sathosa authorities are still following a non-transparent policy in this regard. It is the responsibility of the Lak Sathosa management to release information on these transactions as soon as possible without violating the RTI Act. According to the Constitution, this information is now public property. Concealing it is also an offence punishable by law.

■ *Bigun Menaka Gamage*

Is Sri Lanka's RTI Act properly implemented?

With the emergence of republics in the world, the concept of state ownership by the people emerged. Government and state institutions are maintained by the people's tax money. Therefore, the basic concept is that the people should have a right to know about the activities of the government operating from public funds. This is also a basic feature of a democratic country.

Right to Information is a human right and citizens must have a right to information of a government that is accountable to them. The right to access official documents and the concept of the freedom of information is growing rapidly in recent years, however, it is by no means a new concept.

The primary purpose of the Right to Information (RTI) Act is to empower citizens. It also promotes transparency and accountability in the work of government, controls corruption and implements democracy in the true sense of the word. At the same time, the RTI Act provides citizens the opportunity to be aware of the actions of the rulers and to ensure that they are true to their responsibilities and accountable in the public administration of their duties. The RTI Act is a huge step towards making citizens aware of government activities.

The RTI Commission of Sri Lanka is an independent statutory Commission established under the RTI Act No. 12 of 2016, providing citizens the legal

recourse to successfully exercise the right to information in this country. It has an important role to play in ensuring the right to information of citizens and in fostering an administrative culture conducive to the disclosure of information among the public authorities covered by the RTI Act.

The Information Act focuses on three basic requirements for the proper protection of the right to information of the people. Mainly:

1. Provide access to information – This refers to the ability of the public to access the information they need without hindrance. The idea is that information should be freely available and that the process of obtaining information is actively practised by society without hindrance. Sub-sections under Section 7 of the RTI Act have also stated the requirements regarding this purpose.
2. The responsibility of government agencies to make information public
3. The responsibility to present information is also among them.

According to the Global Right to Information Rating website, Sri Lanka ranks fourth in the world in terms of information laws because of the composition of Sri Lanka's Information Act. (<https://www.rti-rating.org/>). RTI Rating is a leading global tool for assessing the strength of national legal frameworks for accessing information held by public authorities.

How the rankings work

The most notable change in the latest rankings is that Mexico has overtaken Serbia, which has been at the top of the rankings since its inception in 2011 until last year. Mexico has significantly restructured and amended its 'General Act of Transparency and Access to Public Information', thus scoring 136 points out of a total of 150 possible. This is a significant improvement over their previous score of 117.

India was ranked 4th with 128 points before Sri Lanka approved the RTI Act and overtook India securing 131 points. Afghanistan ranks first in the top 10 list in the global rankings as of 2020 with 139 points followed by Mexico 136, Siberia 135, Sri Lanka 131, Slovenia 129, Albania 127, India 127, Croatia 126, Liberia 124 and El Salvador 122.

The RTI Act of India has secured 26 marks in the Exceptions & Refusal category since all exceptions fit within established categories. It states that a harm test applies to all exceptions so that it is only where disclosure poses a risk of actual harm to a protected interest that it may be refused. India had the highest score on appeals (29 out of 30) with the provision that the law offers an internal appeal that is simple, free of charge and completed within clear timelines (20 working days or less). India has scored 5 out of 8 as the Sanctions category does not have strong legal protection. India has secured 13 out of 16 in the Promotional Measures category since there are no specific standards for the management of records and they are not practically followed. At the same time, Sri Lanka has been able to surpass India based on the Accessibility of information provided to the citizen in a way that is not even contained in the Information Act of India.

However, despite the strengthening of the right to information in Sri Lanka with the establishment of an Act, the information obtained by forwarding a similar questionnaire to several other information commissions around the world, including the Information Commission of Sri Lanka, reveals that Sri Lanka still does not have a conducive environment for practical implementation of the legal provisions.

Sri Lanka is ranked fourth in the same year, while Albania, which is ranked sixth, is ahead of Sri Lanka in terms of commission activity as well as the practical process of access to information for the citizen.

Considering the number of appeals received by the Information Commissions of several countries in 2018 and 2019, the RTI Commission of Sri Lanka has received 800 appeals in 2018 and 1089 in 2019. The Information Commissioner Office of Albania received 820 complaints in 2018 and 786 in 2019. In Germany, there were 291 appeals in 2018 and 461 appeals in 2019.

The main reason for the increase in the number of such complaints to the RTI Commission of Sri Lanka is that many public authorities refuse to act in compliance with the RTI Act and to provide information.

Albania has five days a week allocated to hear such complaints, while the RTI Commission of Sri Lanka hears appeals only on Mondays and Tuesdays.

Therefore, there are instances where it has taken over a year to hear the appeals and provide a decision. This shows that despite being high in the rating, in practice Sri Lanka has a lower level of RTI than some of the other countries in the global rating index who are below Sri Lanka.

Public authorities violating the RTI Act

The analysis of more than 2,000 requests for information over the past four years has revealed that most public authorities in the country are not complying with the provisions of the RTI Act. The lack of attention paid to information timelines is a key concern. In accordance with Section 25 (1) of the RTI Act No. 12 of 2016, the applicant must be notified within 14 days of any decision made in providing information or the decision on the application for information. However, it is observed that many public authorities are violating these rules and timelines and disregarding the citizen's right to information.

A fine example of this was evidenced when the request for information was avoided regarding the number of people arrested by the IGP's Office and other relevant SPs' offices for holding election campaign rallies in violation of health guidelines and without prior information as stated in the guidelines of the gazette notification issued by the Ministry of Health during the 2020 Parliamentary Elections.

There were 42 information applications sent to SPs' offices on September 14, 2020, and only 8 SPs' offices provided information according to the exact timeline. These were the SPs' offices in Kankesanthurai, Mullaitivu, Vavuniya, Kuliypitiya, Kalutara, Kandy, Batticaloa and Tangalle, while 34 SPs' offices including the office of the IGP failed to provide information.

From the balance 34 SPs' offices that did not provide information, the SPs' offices in Ampara, Galle, Anuradhapura and Badulla acknowledged the request. All other SPs' Offices are also required to notify through the Information Officer in accordance with Section 24 (3) of the RTI Act No. 12 of 2016 acknowledging the receipt of the information application form, and as this has not been done, the law has been blatantly violated.

After appealing to the RTI Commission against the public authorities that did not provide information, it took about eight months for the Commission to take up the matter. Although most of the SPs' offices provided information according to the decisions given at the commission, the Nikaweratiya, Anuradhapura, Colombo and Colombo South SPs offices have not yet provided the information and the Ampara SSP's office has requested a fee of Rs. 12 to provide the information in a letter dated 18.10.2021.

Rule 17 of the RTI Act in particular, as well as Sections 15 (e) and (g) of the relevant Act, clearly emphasise that a public authority or relevant information officer is required to reimburse the fees charged to a citizen for non-receipt of the requested information on time. Several factors are reflected in this incident. There is no proper understanding among the officials of the public authorities and information officers regarding the provisions of the Act and the decisions given by the RTI Commission are treated casually.

Misuse of Section 5

Section 5 of the RTI Act identified the information that can be withheld. However, that information is also made available to citizens under Section 5 (4) (1) based on public interest. Despite such a legal provision in the Act, many public authorities refuse to provide information, claiming that the information requested comes under Section 5, without properly considering the provisions of Section 5 when citizens request information.

Accordingly, the SPs' offices in Embilipitiya, Kurunegala and Badulla, among others, refused to provide the information stating that the information requested belonged to Section 05, while the same information was provided by many other SPs' offices. However, the relevant public authorities provided the information following an order issued by the RTI Commission stating that the information did not fall under Section 05.

Information requests based on a single form were submitted to 322 Divisional Secretariats in the island seeking information on *birth certificate registration* and document errors. Ninety-nine Divisional Secretariats provided information while others refused to provide information stating that it was under Section 05.

This shows that the relevant public authorities are not providing information to the public in a systematic manner based on the provisions of the Act and that they also misuse regulations.

In addition, when information was requested on the salt production process from the Lanka Salt Company, information was denied stating that most of the requested information was subject to Section 5 (1) of the RTI Act No. 12 of 2016 and the other queries were denied on the grounds that it was not clear. Interestingly, it took Lanka Salt 10 months to respond even with this information.

The appeal was filed with the RTI Commission of Sri Lanka on 04 May 2021, emphasising the fact that it was in the public interest under Section 5 (4) (1) of the RTI Act of Sri Lanka. The Commission concluded the appeal after several hearings. The Lanka Salt Company subsequently provided the required information in a letter dated 22 September 2021 relating to questions excluding questions Nos. 1, 2 and 13. The letter did not provide the information on questions 1 & 2 stating that it falls under Section 5 (1) of the RTI Act while the Company also failed to provide a copy of the tender for the sale of salt requested by Question 13.

In this context, the order issued at the formal appeal hearing held by the RTI Commission on 24 September 2021 states, "*Section 5 (4) of the Act is central to the RTI Act in Sri Lanka. Further, the Commission is of the view that the disclosure of this information in accordance with Section 5 (4) of the Act is for the public interest and not for the personal interest of the appellant.*" The order stated that 90% of the shares of the company involved in producing and marketing salt was owned by the Employees' Trust Fund Board and subject to transparent administration, and the applicant has the right to know such information as requested since items 1, 2 are relevant to transparent administration.

Section 5 states that "request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure".

The Lanka Salt Company provided the information 21 days after the order, which said, "Accordingly, the information pertaining to Items Nos. 1 and 2 may be provided under the Act and it shall be given to the appealing party with

copies to the Commission within two weeks from the date of receipt of this order".

Similarly, when the Matara General Hospital was asked for information regarding the clinical waste disposal of the hospital on 4 December 2019, the hospital refused to provide the information responding on 23 December 2019 stating that there was an investigation and a court case. In response to an appeal made to the Ministry of Health on 28 December 2019, the hospital had informed in a letter dated 13 January 2020 that action would be taken to provide the information after completion of the relevant investigation.

However, the relevant public authority had informed in a letter dated 23 December 2019 that such information could not be provided under Sections 5.1 (d) (i) and (ii) (a) of the RTI Act No. 12 of 2016. The RTI Commission of Sri Lanka conducted a lengthy hearing to the appeal dated 17 January 2020 and highlighted the fact that it was in the public interest under Section 5 (4) (1) of the RTI Act. The Commission ordered the information to be provided to the applicant under Appeal No. 2083/2020 and the relevant public authority took action to provide the information within two weeks after receiving the order.

Reduced usage of email

There have been more than 650 information requests submitted by email, but fewer than 200 public authorities have responded. In particular, applications requesting information were submitted to 322 Divisional Secretariats and 362 Medical Officers of Health(MOH) Offices, but only 120 Divisional Secretariats and 144 MOH offices had responded.

The investigation also revealed that public authorities rarely use email addresses and that the email addresses change when officers are transferred. In this case, the applicant has to face a serious problem in requesting information via email. This is a common situation in many public authorities.

Requesting the identity and the purpose

It has been noted that when a citizen requests information, information officers and/or designated officers in most of the island's public authorities make

inquiries regarding the need for information. It is clear from this observation that inquiries into the need for information as well as requesting copies of the identity card to clarify the identity are practised.

When the Peradeniya Teaching Hospital was asked for information regarding the disposal of clinical waste, a copy of the National Identity Card was requested. In this instance, even after an appeal was made to the designated officer in accordance with the provisions of the RTI Act, the Additional Secretary (Administration II) of the Ministry of Health requested that the identity be verified, and the relevant answers provided.

The RTI Commission issued an order on 20 April 2021 to the appeal number 71/2021, clearly stating, “In terms of the Commission Regulations (Fees and Appeals Procedure, Gazette No. 2004/66, 03.02.2017, RTI 1), the person requesting the information should state only whether he is a Sri Lankan citizen and the answer in the form should be marked ‘yes’ or ‘no.’” The person requesting information can be required to confirm citizenship only in limited circumstances when citizenship is being questioned for reasonable reasons. The Commission has also highlighted that confirmation of citizenship is not required when a person requests information through the RTI Act, except where the public authority is in doubt of citizenship status due to practical issues. Subsequently, the relevant public authority, the Peradeniya Teaching Hospital, provided the information.

Jagath Liyana Arachchi, an Attorney-at-Law and an advisor on the RTI Act, points out that when a citizen requests information, it is contrary to the RTI Act to ask the person why he is requesting such information. He also points out that a requirement or provision for clarification of the identity is not mentioned in the RTI Act and the only mandatory requirement is to be a Sri Lankan citizen. In addition, if the applicant has stated in the RTI application that he is a citizen, the relevant information officer should provide the information based on that confirmation and if a non-citizen in any way has provided false information claiming to be a citizen of Sri Lanka, it is an offence under the criminal law of Sri Lanka.

Failure to respond within the stipulated time as per the provisions of the Act, backdating and delays in replying is a well-established fact in most cases when studying the envelopes of the replies sent.

It is mandatory to indicate the name of the designated officer when providing information, issuing a notification of the receipt of information request as well as in the case of refusal to provide information. However, most Divisional Secretariats as well as many other public authorities appear to have violated these regulations. This shows that even after five years of the establishment of the RTI Act in Sri Lanka the information officers of the public authorities are either not well versed regarding the provisions of the RTI Act properly or do not pay proper attention to the provisions. It is also the responsibility of a democratic government to make policy changes to formulate appropriate procedures in this regard.

Obtaining permission from higher officials

It was revealed during the investigation that when information is requested according to the RTI Act, it is still the practice of the Information Officers as well as the designated officers to obtain permission from senior officials, heads of ministries and departments before providing information. This illustrates the procedure followed by the relevant public authorities in seeking prior permission of higher officials, unaware of the freedoms and responsibilities granted to them by Section 30 of the RTI Act. This was also confirmed by the information requests sent to the schools in July 2021.

In order to further establish and strengthen the right to information of the public in the country, the relevant authorities should be made aware of the provisions of the RTI Act, and the law should be enforced against the Information Officers of the public authorities who violate the provisions of the Act. The 20th Amendment did not abolish the right to information, and it is the responsibility of a democratic government to strengthen the function of the Information Commission and to enhance the citizen's access to information.

Are there penalties for violating the Commission orders?

The failure of the RTI Commission of Sri Lanka to take any legal action for violating the commission's orders has severely hampered the citizen's right to information. This has undermined the right to information, which is also a fundamental right of citizens of this country. Interestingly, an inquiry by the

Albanian Information Commission revealed that Article 25 of their RTI Act provides the complainant the right to appeal to a court or public authority, and if the relevant public authority does not act within the time frame given by the Commissioner's decision, the Commissioner's Office can conduct an administrative inquiry and impose sanctions in accordance with the provisions of the RTI Act.

A survey of more than 2,000 RTI applications reveal that most public authorities in Sri Lanka limit the RTI to just another Act and have not yet developed their organisation's information structure so that it can be easily accessible to the public.

A citizen seeks information from a public authority regarding a grievance that affects them at a particular period. Therefore, the RTI Act No. 12 of 2016 provides for a period of 14 to 21 days for providing information. However, many public authorities take months and sometimes years without providing information to the applicants for various reasons, which has severely affected citizen's right to information.

It is also the responsibility of all public authorities to act as soon as possible without delay to comply with the decision of the RTI Commission. If not, the Commission should take steps in accordance with the provisions of Section 39 (4) of the Act. Anyone who fails or refuses to comply with a decision of the Commission shall be liable to an offence punishable by imprisonment for a term not exceeding two years and or a fine of fifty thousand rupees if found guilty by a hearing at the magistrate's court. However, the RTI Commission has so far failed to take legal action against any public authority that has violated regulations. This is since the government has not made policy changes even though legal changes have been implemented. At the same time, the government should take immediate steps to empower the Commission to set up a law enforcement mechanism.

■ **Rahul Samantha Hettiarachchi**

Rahul Samantha Hettiarachchi : A leading journalist in using the Right to Information Act towards more effective journalism. He has so far submitted around 3200 applications for information under RTI and has compiled approximately 310 news and feature articles since 2016. Rahul, who has been a journalist since 2004, holds a Master's Degree in Journalism.

The doomed elephants of Horowpathana

16 dead at Horowpathana, ten dead of starvation as food supplies mismanaged

Plans to build another elephant holding ground at Lunugamvehera

The increase in human-elephant conflict in Sri Lanka has been largely attributed to the lack of adequate food supply for wild elephants in the remaining reserves after the elephants had to forfeit their natural habitat. Ten of the 16 elephants captured and relocated to the Horowpathana Elephant Holding Ground have died due to malnutrition. This relocation had been taken as a solution to the human-elephant conflict caused by wild elephants roaming in search of food. The cause of death was revealed through the examination of the autopsy reports of the wild elephants obtained from the Wildlife Department using the Right to Information Act.

Wild elephants were captured and brought to the Horowpathana Centre from 13 districts where human-elephant conflict is intense. However, the loss of wildlife, as well as human lives, continues to increase rapidly with the wild elephants migrating in search of food back to their natural habitats, which have already been forcibly occupied by people.

There have been 327 wild elephants and 205 human lives lost in 2020 alone as a result of the human-elephant conflict, while authorities resort to failed

temporary measures. According to the Wildlife Department, 205 wild elephants and 83 human lives have been lost as of 25 July 2021. This in itself is a tragic example to substantiate the above statement.

Dr. Pruthviraj Fernando, a researcher on wild elephants, points out that in an environment where wild elephants are dying in their search for food, scientific methods should be adopted such as protecting their habitat, food and water resources, as well as ensuring ecological balance. However, failed methods such as capturing wild elephants and trapping them in places where there is no proper food have led to the starvation of wild elephants. The Horowpathana Elephant Holding Ground is a prime example of this tragedy.

Wild elephants alleged to have caused damages to property and life due to aggressive behaviour were captured from various parts of the country and relocated to the Horowpathana Elephant Holding Ground, which commenced operations on September 3, 2015. The first tusker aged 35 and 8.5 feet in height, was captured from Matale Palapathwela area on September 4, 2015, and relocated to this centre. The last time an elephant has been released from Horowpathana was in February 2021. According to the information obtained through the RTI Act from the Wildlife Department on 13 January 2021, it revealed that 64 wild elephants are currently being located at Horowpathana.

Political influence

“There was pressure from the political authorities and the community to capture the unruly wild elephants in the village. Initially, these elephants were taken to other wildlife sanctuaries. They placed radio collars on the elephants to see what would happen to them. According to the data, most of those elephants are trying to come back to their natural habitat and in so doing clash with people during this journey. This is because elephants love their habitat. What happened as a result of the relocation was that both the elephant and the issue were changed. The Department of Wildlife has taken steps to set up an elephant holding centre as a solution to this problem,” said Dr. Sumith Pilapitiya, a former Director-General of the Wildlife Department.

A large number of wild elephants have been trapped in this small area of 997 hectares (9.98 sq km) and it has come to light on several occasions that these

animals do not have sufficient food and starve to death as a result. However despite these revelations <https://www.lankaviews.com/horowpathana-elephants/> when inquiries were made from the Director-General of the Wildlife Department Chandana Sooriyabandara on 23rd March 2021, he denied this saying "We looked after the health of these animals, and there was no problem. This means there is food. Now we have stopped feeding because there is so much food in this area."

Therefore, an application for information was filed under the RTA Act and autopsy reports of 16 elephants were obtained. The examination of these reports revealed that 10 of the 16 elephants had died due to malnutrition. Three elephants had died due to electrocution and three others had been shot dead.

Death of wild elephants

The Auditor General's report IEN / F / DWC / 19 / PR / 11 released in October 2020 points to a number of large-scale frauds that have taken place. According to the Cabinet Memorandum No. 12/0151/549/001 dated 17 March 2012 an Environmental Impact Assessment Report should have been obtained for the construction of the Horowpathana Elephant Holding Grounds spanning an area of 997 hectares costing 345 million rupees. Although a contract of Rs. 26,133,700 has been awarded to provide food to 30 elephants at the holding grounds for the period from 1 November 2018 to 31 October 2019 there has been no supervision of the quality of the food provided or whether the elephants were actually consuming them.

According to the audit report, only five wild elephants have died due to malnutrition, but the autopsy reports at the Horowpathana holding grounds confirm that nine wild elephants had died of malnutrition from 2014 to 2019 due to shortages of food.

The Horowpathana wild elephant holding ground, which was opened in 2015, had relocated 64 wild elephants over a period of six years, but by August 15, 2021, there were only 18 wild elephants left according to an official who did not want to be named. There should be 45 elephants in the centre at present, however, there is no significant information in the Wildlife Department

regarding those elephants, as revealed by the Wildlife Department under the RTI Act, dated 13 January 2021.

A wildlife official, who did not want to be named, said the elephants currently living there were also malnourished. One of the reasons for this malnutrition is that the limited food supply from outside that was provided to these elephants has also stopped after the audit was conducted in 2019. "We have stopped feeding because there's enough food in the area" stated the Director-General of the Wildlife Department during an interview on March 23, 2021.

A contract worth Rs. 26,133,700 was awarded to provide food to 30 elephants at the Horowpathana Elephant Holding Grounds during the period from 1 November 2018 to 31 October 2019. It is also clear that the quality of the food provided has not been considered, or whether the elephants could eat the food provided. The relevant audit report also reveals that adequate monitoring has not been carried out in this regard. When inquiries were made 23 March 2021, from "Nissanka", who was awarded the tender to provide food for the wild elephants, he stated, "I fed the elephants with jackfruit leaves and Nuga. However, at that time the elephants were used to eating things like maize and bananas. That is why they did not eat other food."

Examination of the autopsy reports of wild elephants that died during that period also revealed that two wild elephants had died of malnutrition. The latest case of an elephant death at the Horowpathana Holding Grounds was reported on 12 July 2021. The dead elephant was about 30 years old and 8 feet 6 inches tall when captured for relocation from the Cement Village area in Puttalam on July 2, 2018. The 'Ada' newspaper reported stating that the elephant was malnourished after relocating to Horowpathana <https://tinyurl.com/5zwve2pz>. The wild elephant had to die of starvation since the authorities refused to pay any attention to this situation. The post-mortem examination of the elephant was carried out on 14 July 2021. Although more than 8.1 million rupees (8,187,986.20) has been disbursed during a period of four years from 2015 to 2020 to the Horowpathana grounds for feeding the elephants, the death of wild elephants from malnutrition reveals that these provisions have not been properly utilised for the benefit of wild elephants.

Unsuitable area for elephants

Meanwhile, an analysis using Google Earth of the period when wild elephant deaths were reported, reveals that it was a time of extremely dry weather in the area. It was also observed that water was drying up in the four small lakes in the area. “When I came here as the Director-General of Wildlife, I wondered why they chose this place. Because according to our research, the density of elephants in a primary or secondary forest system, i.e. in a low-lying forest system with tall trees, should be about 0.2 per square kilometre. In highly dense forest areas with coverage, the density of elephants is about 3 per square kilometre. Therefore, it is clear that the primary and secondary forests are not suitable environments for elephants. Because there is not enough food. The Horowpathana Elephant Holding Ground is also a place with primary and secondary forest features,” said Dr. Sumith Pilapitiya.

Dried up lakes

A resident of the area, W.J. Amarajeewa also confirmed this, stating “There is no rain here from July to September. At that time even the water in the large lakes and waterways was running low. The small tanks and lakes at the Horowpathana Holding Grounds would easily dry up. When the animals run out of food and water, they break through the elephant fence and migrate to find food, if not they will die. We do not know what happens to the animals inside the holding grounds.”

According to Dr. Sumith Pilapitiya, an adult elephant living in a forest travels between 20 and 25 km a day, while a wild elephant in season travels about 60 km a day on average. However, the total size of the Horowpathana Wild Elephant Holding Grounds is as small as 997 hectares (2,466 acres). Wild elephants are virtually caged here in a limited space and in doing so, the natural behaviour of the animals and their ability to live freely are completely restricted.

Elephants dying without food

Dr. Pruthviraj Fernando, a researcher on elephants, points out that a wild elephant should consume about 200 to 300 kilograms of food daily. Dr. Pruthviraj

Fernando also pointed out that since this is a part of the forest with secondary features, the required amount of food could not be obtained from the plants in these holding grounds. External food is mandatory in such a setting. However, it goes without saying that the wild elephants here are facing severe food shortages as the external food supply has been stopped.

Examination of the autopsy reports as well as photographs of the dead elephants revealed that the identity of the wild elephants could be ascertained. An autopsy was carried out on 6 February 2021 regarding a wild elephant that was found dead on 4 February 2021 at the Olagampitiya area in the Horowpathana Elephant Holding Grounds. It was revealed that this wild elephant bears a resemblance to the wild elephant captured on 25 November 2018 in the Mapakada area in Mahiyanganaya.

According to the information obtained from the Wildlife Department, the wild elephant was 8 feet 9 inches tall and between 35 and 40 years old when it was captured in the Mapakada area in Mahiyanganaya on 25 November 2018. When it was found dead on 6 February 2021 the elephant was 9 feet in height and 40 years old. In addition, the information provided by the Wildlife Department under the RTI Act, reveals that several wild elephants have died due to malnutrition based on the analysis of data on the elephants' height, age, captured date and date of death.

The wild elephant captured in the Matale Palapathwela area on 3 September 2015, the one brought from the Pinnawala Elephant Orphanage on 16 September 2015, the one captured from the Wambatuwewa area in Nikaweratiya on 12 November 2015, the one captured in the Thalawa Moragoda area on 19 December 2015, the one captured from Anuradhapura Purawasamkulam area on 17 November 2016, the one captured from Vilachchiya Mannar junction on 25 November 2016, the one captured from the Thanamalwila Meegaswewa area on 17 April 2017, the one captured from the Suriyawewa Dimuthugama area on 23 May 2016, the one captured from the Anuradhapura Katukeliyawa area on 23 January 2016, the one captured in the Sooriyawewa area on August 11, 2016, and the wild elephant captured in the Uhana Weeragoda area in Ampara on 4 December 2016 are among the wild elephants that have died due to lack of food and other causes at the Horowpathana Wild Elephant Holding Grounds.

Most of the elephants that have caused the greatest damage in the human-elephant conflict areas have been solitary male elephants. Individual elephants are those that are chased away from the herd when they reach a certain age, and they must have the space to join another herd. However, due to deforestation, random electric fences and development, these elephants remain as solitary elephants unable to join another herd. These elephants have been captured when they were aggressive and relocated to the Horowpathana Elephant Holding Grounds.

It is noteworthy that all the wild elephants that died at the Horowpathana Holding Grounds were males. Aggressive elephants, in particular, are active elephants with strong genes, and because of such restricted enclosures, they lose the opportunity to mate with females. Dr. Pruthviraj Fernando points out that this directly affects the elephant population resulting in a depletion of stronger genetic material from the lineage of elephants.

When inquiries were made from the Director-General of Wildlife, Chandana Sooriyabandara regarding the death of wild elephants due to malnutrition at the Horowpathana Holding Grounds, he said that the content was erroneous. “The animal has lost all its teeth and died since it could not eat. The animal was not starving. We decide whether or not to feed the elephants based on their physical health condition. We don’t just give food. When we looked at it, it was not that weak, it’s a scientific work and the Wildlife Department knows how to do it right.”

Missing teeth and elephant nutrition

According to the Director-General of the Wildlife Department, the wild elephants that die without food at the Horowpathana Holding Grounds could not eat due to the wasting of their teeth. However, according to autopsy reports, all the dead elephants were between the ages of 30 and 45. When asked about whether elephants die of starvation due to tooth decay at such a young age, Dr. Pruthviraj Fernando said, “Elephants’ first two sets of teeth are very small. The sixth set of teeth is very large. The first two sets of teeth can be considered baby teeth. They could last for a couple of months. The next two could be at around a year old. The next two maybe even longer. Somehow, the teeth are used during

the full life span of the animal. If you eat things like grass, the teeth will decay faster because the grass contains silica. If they eat branches of trees, the teeth will last longer. Elephants in the wild usually live for 50 to 60 years. However, an elephant must live to be at least 80 years old to lose all its teeth. Elephants do not live in the jungle for that long.

“So, during their lifetime, there are about six sets of teeth that are produced. If the animal lives until it has used up all six of those sets of teeth, theoretically we can assume that it will die without food because it cannot bite properly. However, elephants who are now over 70 years old, have not lost their sixth set of teeth. I have been researching elephants for about 30 years now. We have not yet found an elephant without teeth from those that have died of natural causes.”

Despite the wild elephants dying due to malnutrition at Horowpathana, higher officials of the Wildlife Department resort to relocating elephants from all over the country and detain them for political reasons and for various other requirements of officials. This will only result in these elephants dying of starvation. The Udawalawe ‘Rambo’ wild Elephant that was to be relocated in that manner is still living in the Udawalawe Reserve after protests by environmentalists, and the environmentally friendly public as well as local religious leaders against the imprisonment of Rambo at Horowpathana.

A similar holding ground is currently being set up in the Lunugamvehera National Park, and if wild elephants die of starvation in the same manner, would it not be an unfortunate situation that would have a severe impact on Sri Lanka's elephant resources?

"In my opinion, if another holding ground like this is to be developed, it should be identified and researched," he said. The elephant holding grounds are required because we do not resolve the human-elephant conflict properly. However, when this new elephant holding ground is being built, no study has been done on what happens to the elephants that use the ecosystem. Then the elephants will migrate to the villages. Therefore, we must study that area too." Dr. Sumith Pilapitiya emphasises.

■ ***Rahul Samantha Hettiarachchi***

Declaration of assets

have we achieved the objectives through the legal provisions?

Anyone who wishes to serve the people within the government maintained by the taxpayers' funds need to be accountable to the people. The objectives of a democratic society can only be achieved if this accountability mechanism is in place.

Accordingly, it is officially accepted that rulers (politicians) and higher authorities, who are paid and maintained by public funds, need to legally disclose their assets and liabilities to citizens. In such a backdrop, the process of disclosing assets and liabilities is viewed as a protective mechanism of the social contract between the public and the officials. However, in Sri Lanka, politicians do not seem to be committed to defending such social agreements while the public's interest to hold them accountable in safeguarding democratic values, is also relatively low.

Therefore, fraud and corruption are on the increase in the political domain while a group of politicians and top government officials have amassed wealth by exploiting and misusing public property. The weapon to control this illegal accumulation is through a mandatory declaration of assets and liabilities. In many countries, the assets and liabilities of politicians and government officials are published online, providing citizens an opportunity to monitor and take

appropriate action if required. However, various officials in Sri Lanka still treat the assets and liabilities statements as secret personal documents enabling them to conceal the fraud, corruption as well as illegal accumulation of wealth.

Who has to declare the statements of assets and liabilities?

The President, Members of Parliament, Judges, Officials of Public Corporations and Staff Officers, Provincial Councillors, Local Government Members, owners of print media institutes and editors are required to declare their assets and liabilities annually.

Candidates are required to submit a declaration of their assets and liabilities at an election, but the legal provisions in Sri Lanka are not strong or adequate to guarantee the authenticity of the submitted information. Additionally, there is also no annual inspection of the assets of these people's representatives.

A law was enacted mandating the declaration of assets of presidential candidates during the presidential election. Candidates, however, have a loophole to delay the declaration since they have been given three months to submit their statements of assets to the Election Commission. Therefore, the handing over of assets declarations of presidential candidates is limited to a symbolic act.

Although there is a law requiring all Members of Parliament to declare their assets and liabilities, according to reports only a few MPs submit declarations of their assets and liabilities while most MPs do not make any submissions.

Assets and Liabilities of MPs

Requests for a Statement of Assets of MPs must be forwarded to the Speaker of Parliament addressed through a letter requesting the Statement of Assets and Liabilities of the relevant Member of Parliament and should be mailed to the Speaker of Parliament with a payment of Rs. 750. The parliament then issues the statement of assets and liabilities.

Through this process detailed information about the assets and liabilities of the member of parliament, their children and his / her spouse, along with

details of how they acquired them, property details, bank accounts, shares purchased, securities purchased - loans and overdrafts, vehicles, jewellery etc will be provided.

They usually must give their declaration of assets and liabilities to Parliament before taking oaths as a Member of Parliament and need to update their assets and liabilities annually.

If this information is checked and found to be incorrect, there is an opportunity to lodge a complaint with the Commissioner of the Commission to Investigate Bribery or Corruption or the Commissioner General of Inland Revenue. If a complaint is lodged the authorities are mandated to investigate. However, in practice such investigations do not happen in Sri Lanka. The Assets and Liabilities Declaration Act of 1975 prohibits the exchange of information on assets and liabilities obtained by application. According to this Act a one-year prison sentence or a fine of rupees one thousand can be given for any violation.

Hiding assets

A common complaint is that politicians in most countries including Sri Lanka attempt to hide their assets. One way to hide the acquired wealth is to keep your property in the name of your family members or a proxy. Keeping money in overseas accounts is another way of concealing your wealth. Here are some well-known examples:

An anti-corruption court in Islamabad has sentenced former Pakistani Prime Minister Nawaz Sharif to seven years imprisonment for failing to disclose his total wealth. An American judge ordered President Donald Trump to pay eight years' worth of unpaid taxes to the relevant authorities in New York City.

The court rejected arguments made by his lawyer that Trump enjoyed "tax immunity" during his term of presidency. The names of former heads of state were mentioned in the Panama Papers revelation, as well as the information about their hidden assets.

Use of the Right to Information Act

The statement of assets and liabilities of each parliamentary member has to be obtained separately through the Assets and Liabilities Act and common lists will not be entertained when requesting information. When a list of MPs who submitted their declarations of assets and liabilities during the relevant year was requested, it was rejected.

Therefore, an appeal was lodged with the Right to Information Commission in this regard and the Commission ordered Parliament to provide the relevant information after a lengthy investigation¹.

The RTI Commission while delivering their order stated that in terms of the Assets and Liabilities Declaration Law of 1975, the parliamentary privileges of MPs do not hinder in any way the issuing of the list of Members who have submitted their declarations of assets and liabilities to the Speaker. The Commission also noted that the information requested was a matter of public importance in ascertaining the transparency and accountability of the elected representatives. The Commission stated that there is a concern as to why such data should be kept so highly confidential.

Recommendations

There should be a law regarding the amount of money a candidate can spend in an election. Although a law regarding this matter has been discussed, it has not yet come into force. Former Election Commission Chairman Mahinda Deshapriya once said that it was important to establish a code of ethics for candidates contesting elections and that action should be taken to abolish the civic rights of candidates who do not disclose their assets and liabilities. Therefore, the government should expedite enacting such legal provisions.

Seven members of parliament from various political parties made their assets and liabilities public for the first time in the political history of Sri Lanka. Tharaka Balasuriya, Vasudeva Nanayakkara, M. A. Sumanthiran, Vidura Wickramanayake, Eran Wickramaratne, Ranjan Ramanayake and Seyed Ali Zahir

1 Chamara Sampath a. Parliament of Sri Lanka RTIC 719/2018

Moulana disclosed their assets and liabilities for the year 2017/2018. All other MPs from the total of 225 should be encouraged to declare their assets and liabilities in this manner.

The public and civil society organisations should continue their work on obtaining and publishing declarations of assets and liabilities of officials and to guide the public in the use of the RTI Act to obtain relevant information.

The Government should create a website in the public domain to publish asset and liability information. The experience of other countries can be explored in this regard.

A change of attitude is required among certain information officers in the public service who are not proactive in providing information even though over four years have passed since the enactment of the Right to Information Act.

All clarifications regarding the Right to Information Act have been addressed by the Extraordinary Gazette Notification No. 2004/66 dated 03.02.2017 of the Rules of the Commission on the Right to Information. Accordingly, the information contained in one of the three features, in custody, in trust or in control of the public authorities should be provided if it can be provided using a reasonable effort. However, the information officers have forgotten these conditions. Therefore, steps should be taken to address these shortcomings.

The Assets and Liabilities Act, 1975 should be amended to make assets and liabilities applicable to the present context and to take it to the public domain.

Awareness should be created that an information request is a powerful right of the people and that public officials are mandated to provide information.

■ ***Chamara Sampath***

Chamara Sampath : A journalist of the 'Ada' newspaper. Has published numerous news and feature articles using information obtained under the Right to Information Act. He is a resource person for public awareness programs and training workshops on RTI. Chamara holds a degree in Mass Communication and a Master's Degree in Human Rights from the University of Colombo.

Two hundred mountains of garbage across the country

RTI queries raise a stink

Sri Lanka has still not moved adequately to address waste management correctly. The blame rests with both the public and the authorities. If waste management is addressed with proper systems, it can become a revenue-generating resource instead of an insurmountable issue.

Over 200 rubbish mountains have been created in the country through these landfills.

Dumping of waste and garbage can be observed largely in the wetlands and near reservoirs. Currently over 200 large rubbish mountains have been created in the country as a result. Sadly, the landfills are increasing and growing daily instead of decreasing.

A rubbish dump that caught fire in 'Kadolkele' situated in a well-grown mangrove area, near the Muthurajawela wetland, was an incident that sparked off a huge controversy. The Katunayake Expressway had to be closed for almost a day due to the fire. The garbage dump at the landfill site of the Katunayake Seeduwa Municipal Council (MC) caught fire in this manner. Investigations revealed that the Katunayake Seeduwa MC has not yet obtained a designated land to dispose of the daily collection of garbage. The garbage is dumped at a rented site known as Pilapitiya Kumbura. The land is located within close

proximity to the Katunayake-Colombo Expressway as well as the Muthurajawela wetland and has been used for dumping of waste without development of this land or of a proper waste management system.

This article is based on the information obtained through application through the Right to Information Act after the fire at the Garbage Dump.

On average 30-35 tons of garbage per month is dumped at this site by the Katunayake Seeduwa MC. In certain situations, these amounts have increased.

Segregated garbage dumped together

Local Government Authorities have taken various steps to direct the public to separate and dispose of garbage and have sent councillors and relevant officials for local and overseas training sessions. The Central Government has also introduced several projects for this purpose and has also provided several local and foreign training sessions for this purpose. Some foreign countries have even provided grants to Sri Lanka to formulate a proper waste disposal policy. Segregation of garbage is carried out correctly in some areas but in many areas, it is still not implemented properly. Although alternative measures can be used to segregate the garbage that has not been separated, all waste is brought together and disposed of in a landfill. In addition to creating garbage dumps, it also has several adverse effects.

According to the waste disposal policy, the local government bodies themselves have instructed the public to separate waste into categories such as food waste, polythene, paper, glass and electrical equipment. Although the people sometimes follow the instructions, separate the garbage, and give it to the Municipal Council, it can be observed that all the garbage is dumped at this site ignoring segregation. There have also been reports of garbage burning near garbage dumps.

Payment and disposal of garbage

The Katunayake Seeduwa MC spends more than Rs. 4.6 million a month on the garbage disposal process, according to information provided by the Information

Officer of the Katunayake Municipal Council. This includes employing vehicles and workers to collect garbage, their wages, as well as rent at the landfill. The council spends public money on waste disposal in this manner. The people could be happy if their money was used justifiably. However, it is unfortunate that such a thing does not seem to be happening. If this money is used for proper garbage disposal, then the creation of waste dumps in the environment will be minimised and there is still an opportunity to create a cleaner environment and a waste-free environment.

The Katunayake Seeduwa MC has spent the following amounts on garbage disposal during the last ten years and the amounts have gradually increased over the years:

2019	LKR 46,505,348
2018	LKR 43,319,551
2017	LKR 45,214,426
2016	LKR 31,702,807
2015	LKR 42,079,581
2014	LKR 33,753,168
2013	LKR 35,377,748
2012	LKR 28,450,838
2011	LKR 24,540,260
2010	LKR 22,515,650

Local government bodies have been entrusted with the task of waste management in the country and several local and foreign workshops have been conducted over the past 10 years to train them in this regard. Investigations conducted using the Right to Information Act have revealed that although a large number of officials from the local government bodies have participated in these workshops, only a handful have practically implemented the learnings.

Although environmentalists have repeatedly stated that the dumping of garbage on this land near the Muthurajawela mangrove forest will cause environmental damage, the Chairman of the Katunayake Seeduwa MC has expressed the following views regarding the dumping of garbage.

“These landfills do not belong to Muthurajawela. Environmentalists do not know the demarcations of the Muthurajawela Reserve. This land is called Pilapitiyakumbura. The Seeduwa MC has been dumping garbage here for 20 years. This was private land and vested with the Land Reform Commission under the government policy to acquire lands exceeding 5 acres,” says the Chairman. However, environmentalists say that such sensitive ecosystems are being used for landfill purposes in the vicinity and that this is just another facet of land grabbing.

Compost production

There are a lot of discussions currently about the production of organic manure or compost using waste. Meththika Vithanage, Professor of Natural Resources, University of Jayewardenepura, commented on this matter as follows:

I am conducting research regarding the garbage dumps in Sri Lanka. At present, there are more than 260 rubbish mountains in Sri Lanka. All of these are situated close to water sources. Compost is made from these mountains of rubbish, but the composts also contain heavy metals. Testing the water samples from the water bodies close to these garbage dumps has confirmed the presence of heavy metal particles in the water. Therefore, it is harmful to apply only compost as fertiliser. Do not take this matter to an extreme or out of context. A certain amount of compost can be applied. However, testing the water in the water bodies close to garbage dumps reveals that heavy metals have been added.

This problem is easy to solve if you follow a proper waste management policy. Many countries in the world make a profit from the garbage. Following the example of those countries, Sri Lanka has already undertaken several projects and some of them have been successful. Therefore, it is clear from

this information that it is necessary to introduce the right policies for waste disposal and to take the necessary action and introduce regulations for proper disposal of waste. There are many landfills all over Sri Lanka that harm the environment and instead of pursuing a proper waste management program these measures waste public finances. Therefore, if a proper plan is not factored for waste management at least now, there will be no environment left for future generations to live in.

■ ***Chamara Sampath***

Studying by lamplight after paying for three-phase electricity

RTI shines a light on shady collaboration between LG bodies and real estate agents

Three-phase electricity, all facilities with pipe-borne water, two minutes to the town and close to leading popular schools and wide streets.

“This was the message displayed on advertisements and posters. That is why we bought the land and now we have to use a bottle lamp even to read. Forget online education, our children are with their grandmother in a different house because there is no electricity and lights at night.”

This is only part of a long-drawn lament of a mother who has been suffering without electricity for years after buying a land with promises of all facilities.

Real estate agents who auction land are cleverly promoting and marketing land subdivided from large parcels of land, launching various advertising campaigns to entice customers. Land auctioneers, who used to advertise eye-catching leaflets and posters based on the needs of their customers, have now resorted to social media strategies to further develop their advertising more intentionally and attractively.

People who purchase land from some well-known real estate agents in Sri Lanka are faced with several issues and unable to obtain basic advertised facilities such as three-phase electricity and water. The main problem is electricity. In

addition, consumers face problems regarding pipe-borne water, road sizes that are contrary to approvals, and the non-allocation of land for common areas.

Although a typical buyer is primarily concerned with electricity and water when choosing residential land, some fraudulent agents in many parts of Sri Lanka have resorted to selling lands without even providing electricity and other basic amenities.

How do these real estate agents avoid the rules and regulations that must be followed concerning the development of land for sale? Are they not applicable to these agents at all? What about the responsibility of the local government bodies that make recommendations regarding the subdivision of these lands for development and sale? This investigation is to look into these matters.

Violation of basic rules and regulations

When partitioning a land for auction and development, approvals and recommendations should be obtained from several different agencies to proceed with the work. The relevant local government authority remains the lead actor in the list of institutions that need to approve such subdivisions and developments for land sales. Even though there are several conditions to be met according to the regulations and the legal provisions, some local authorities deliberately turn a blind eye to allow real estate agents to carry on their fraudulent business activities without the submission of compulsory documents or compliance to the recommendations. One of the main goals of these real estate agents is to get over the documentation hurdle and approvals for electricity. It is one of the most expensive and difficult processes for a land developer. This is the very area that has the greatest impact and causes major hardships to those who purchase these lands based on fraudulent promises regarding facilities.

P. Samarasekara filed a lawsuit against a real estate company named Onelta regarding the difficulties he faced after purchasing a land in 2016 from the Wellawa area.

Although he purchased the land paying the full price of the land, he did not receive the electricity connection he was entitled to as promised and had to

resort to litigation to get facilities including electricity. The court ordered the real estate company to pay the rent for the house where he lived for two and a half years during this time.

The pain of deception

Anoma Saman Kumari said that some of the occupants of the developed Werellawatta land, have been without electricity for more than eight years since 2013 and have resorted to using a bottle lamp to light the house. Some have abandoned their half-built houses after facing enormous hardships without electricity for many years. She commented on the pain of not being able to live with her children for eight years because of the electricity issue.

"Our children are studying, forget online learning, they don't have electricity even to study. The children are now with the grandparents as a result. We are struggling even as we have to use a bottle lamp to light our houses. The land developers advertised stating that they will provide electricity facilities, we still have those posters with us. Now their phone numbers are not working."

In 2013, a company called Wayamba Property Developers sold 38 plots of land without paying the Ceylon Electricity Board (CEB) to obtain electricity for the relevant land. However, the Ibbagamuwa Pradeshiya Sabha, the local government body, has given its approval to the land development and sale ignoring the regulations.

Tennakoon who purchased land from a real estate company called '*Winrose*' described the injustice she has faced.

"I bought a piece of land that was developed by a real estate agent in 2017. We have not received electricity even as of 2021. We submitted our applications for electricity in July 2020 to the CEB. The Provincial Electrical Engineer's Office stated that they could not supply electricity since the land developers had not submitted the applications to the CEB to obtain electricity. The Regional Electricity Authority and the Provincial Office only conducted field visits to prepare estimates. After confronting the company regarding the non-supply of electricity, the company placed a generator and gave some money for the expenses. We looked into this since it was very suspicious," she said.

All of these experiences show that the relevant local authorities have allowed these developers to evade the rules that must be essentially followed for the benefit of consumers, when developing and selling lands.

The legal provisions

Under the Right to Information Act, we inquired from the Commissioner of Local Government and the Local Government Institutions about the law and methodology for approving the subdivisions, development and sale of lands.

According to the by-laws of the Extraordinary Gazette Notification No. 1898/28 dated 20.01.2015, when proposing to develop a land with an extent of 2 -10 hectares, it should be carried out with the written consent of the Provincial Steering Committee.

The committee consists of the Provincial Secretary in charge of the subject, the Local Government Commissioner, the Deputy Chief Secretary, the Provincial Land Commissioner, the Director of the Environmental Authority and the Provincial Housing Commissioner. The real estate agents have to first pay an initial fee of Rs. 500,000 to the Office of the Local Government Commissioner and get registered.

When subdividing land or part of a land with an extent of eighty perches to four hectares, the relevant development plan should be submitted to the Housing Development Committee of the relevant local authority for approval.

When subdividing land with an extent of two hectares or more an Environmental Impact Assessment (EIA) report should be obtained from the Environmental Authority stating that there is no environmental damage caused by the proposed subdivision and development. If the proposed land is paddy land, the approval of the Commissioner of Agrarian Services should be obtained. Land in the coastal areas should have the approval of the Director of the Department under the Coast Conservation Act No. 57 of 1981. If a land is to be filled the recommendation of the Land Reclamation and Development Board should be obtained. If there is no pipe water facility in the proposed land, there should be a recommendation from the Water Resources Board stating that there is access to drinking water for the land.

If the proposed land is adjacent to a reserve or a sensitive area, a recommendation should be obtained from the State or Provincial Council. The proposed development of lands, which are registered after obtaining such recommendations, should be developed under the supervision of the relevant local authority. Technical officials should monitor the development to ensure compliance with the relevant recommendations.

According to Section 9.5 of the Extraordinary Gazette Notification dated 28 August 1929 No. 1929/45, three-phase electricity facilities should be provided on all the roads in the subdivided plots so that all lands have access to three-phase electricity facilities. When developing a land, the CEB estimate should be paid for the relevant project and the cash receipt submitted along with the report of the development project to the local authority. The local government body of the respective area gives the final approval for the project in compliance with all these recommendations in place.

Real Estate Agents must provide facilities, including water and electricity, for legally approved subdivided plots of land. A survey plan should be submitted before the subdivision of land. Technical officers are required to provide a report on whether the land is being subdivided according to the plan. This instruction is contained in By-Laws No. 1317 and amended By-Laws No. 1882/22 of 01.10.2014 and the Urban Development Authority Act No. 41 of 1978.

The number of applications received by the CEB Provincial Electrical Engineering Offices confirm that there is a large number of people who have been duped by real estate agents and have purchased lands outside these regulations.

When subdividing lands and auctioning them, a common land area should be vested with the relevant local authority. The Constitution states that 10% should be vested with the relevant Local Government Institution from lands that exceed one hectare in extent.

A "Housing Development Committee" should be set up by the relevant local authority to decide on the subdivisions or development of land. This committee consists of the Chairman of the Local Government Institution, its secretary and a group of officials.

Those that creep through the legal fence

Despite these provisions, the land developers evade the land allotment ordinance and sell off parts of the same land in stages with land extent less than 5 acres to avoid the regulations. In such cases, land developers tend to evade the law and regulations without allocating common public areas, paying electricity estimates and attaching receipts and constructing only a public well for water supply facilities. The people allege that responsible officials and heads of institutions are following a silent policy despite this blatant violation and evasion of all regulations.

The government must intervene to resolve the problems of the people, after many years of using public funds, due to the arbitrary actions of the officials of the respective local government bodies at the time who work in collusion with the developers. However, the response of real estate agents to these issues varies.

N. Kumara, a manager at the Winrose company, commented on the issues of their lands that have been sold.

"It simply does not happen in our company. However, due to some inexplicable reason, there has been a delay in providing electricity to the land. It is not our fault, the CEB has delayed supplying electricity due to the shortage of transformers and posts. They also change the laws from time to time. At one time it was stated that electricity should be provided through the Regional Electrical Engineering Office. However, according to a bill that was amended two or three months ago, electricity will be provided through provincial offices. We applied to the CEB in September-October 2020 and in March 2021 we paid around Rs. 2.5 million."

How electricity is denied

Although the survey of the lands mentioned by the Manager of Winrose was carried out in 2017, the money due to the CEB was paid only in 2021. This was also as a result of an intervention of the buyers and the ensuing investigation. By this time, they had completed the land sale. Even though the payments must

be made after submitting the applications before the development of lands, it is surprising how they were allowed to operate without paying the fees for over four years. When asked how the real estate company was able to develop the land without paying the CEB for over four years, he was unable to provide a reasonable answer. The attempt to speak to a few other real estate agents failed since their contact numbers had been changed.

The Chairman of the Electricity Board Vijitha Herath said that it would be a good decision to address this issue. The Chairman further stated that such frauds are taking place all over the country when it was mandatory to submit applications for their projects and obtain an estimate from the CEB. He said that there was no way to provide electricity after the land developers had sold the lands without paying CEB. He further stated that there was no shortage of poles, transformers, etc. in his company as stated by the developers.

Although the CEB has received a large number of applications for electricity from such haphazardly developed lands, it was not possible to supply electricity due to non-payment of fees by the developers of these projects, he said, adding that further confirmation could be obtained from the Minister and the Deputy General Manager.

Accordingly, we spoke to Wasantha Perera, Secretary to the Ministry of Power and Energy.

“When land is auctioned, the cost of the project should be borne by the respective developer to the CEB. However, some companies develop and sell lands outside these regulations and leave. There is no way to provide electricity when they have failed to pay the CEB,” the secretary said.

In conversations with several chairpersons of local government bodies that approve land developments, all that was heard was blame-shifting and blaming the former chairpersons, citing approvals given based on trust and relationships, etc.

No information on lands

It was revealed that there are similar issues in several lands auctioned in the Ibbagamuwa area. One of the buyers in the area had sent a letter to the

CEB requesting electricity. In response, the CEB had stated that they could not supply electricity since the real estate agent who developed the land in 2013 had failed to pay the estimated connection charge exceeding 1.4 million rupees for the subdivision and development of 38 plots.

The Department of Local Government and the Heads of Local Government Institutions have revealed that no government agency has statistics on the large number of lands in the Kurunegala area that have been subdivided and sold by agents. When asked about this, the Chairman of the Kurunegala Pradeshiya Sabha, Achala Nimantha Wickramasinghe, said that he deals with developers on trust and that these problems could arise from agents outside the area who come, sell these lands, and disappear. “In the absence of CEB receipts for approval for certain lands, the development has been approved after obtaining an affidavit based on trust. The problems surface when these people do not pay the money to the CEB.”

Former Chairman of the Mawathagama Pradeshiya Sabha Sanath Meegolla revealed that the Chairpersons and technical officers of the Pradeshiya Sabhas are the ones who are mainly involved in these fraudulent transactions when developing lands. “They not only make money by violating the provisions of the ordinance but also buy land. This is fraud.”

Responsibility of Local Government Institutions

We inquired from the Commissioner of Local Government, I.M.I. Illangakoon regarding his opinion on these allegations levelled against the local authorities.

“Lands have to be subdivided and presented to the committee of the Local Government Department and the recommendations of several institutions must be obtained before auctioning land. There will be no problem for any real estate company that falls in line with these regulations. Their customers will also not have any problems.

If a customer after buying land faces such a problem, the local authorities should take the blame. We have information on certain real estate companies that have been banned by certain local authorities. However, we do not have information on the extent of lands auctioned.

At a meeting of the Kurunegala Pradeshiya Sabha in March, it was confirmed that there were no accurate statistics on the lands vested with the local authority for common use during these auctions. (2021.03.29. Pradeshiya Sabha Report)

Before you are deceived ...

When a customer purchases a land, they should be aware if the relevant real estate company is registered with the Local Government and has obtained recommendations from the relevant local authority for the development. They also need to find out if the land has been developed in accordance with those recommendations. Consumers need to be aware that complaints can be made to the Consumer Affairs Authority and the Consumer Affairs Department, as well as to pursue litigation and complain to the Human Rights Commission.

However, this has not been highlighted so far since there is a perception in society that water and electricity should be provided by the respective institutions. Consumers have been suffering for years as developers and heads of local authorities have taken advantage of the situation by concealing how the companies should seek the recommendations of relevant agencies when developing land for sale. It is a tragedy that the consumers have to meet their basic needs with their own money, while the two parties concerned are making huge profits. A deceptive promotional apparatus has been developed in the society, which misleads the people with false advertisements using (electronic, print, social media, pamphlets) to the advantage of these fraudsters.

The majority of people who purchase a piece of land dream of having a simple shelter and are not necessarily the wealthy but ordinary people living in great hardship. Therefore, it is the responsibility of the government to protect them from further fraud and exploitation.

■ Chandani Dissanayake

***Chandani Dissanayake** : A journalist with a keen interest in reporting on problems and a thirst for seeking solutions. She has used information obtained through the Right to Information Act in compiling many articles and feature stories. Chandani, who has been involved in journalism for over 10 years, was recognised for her contributions, at the 2016 Presidential Awards and the 2021 Vanithabhimani Award ceremonies.*

The Case of the Chunnakam Post Office

Hidden Corruption in a half-completed building ...

During the Yahapalanaya Government, large sums of money were allocated to the Northern and Eastern Provinces, especially for the Jaffna District. Many development projects in Jaffna were launched making the most of this opportunity and the offices built are serving the people.

At the suggestion of Tamil National Alliance MP D. Siddharthan, Rs. 25 million was allocated through the Ministry of National Integration, Official Languages, Social Progress and Hindu Religious Affairs for the construction of the Post Superintendent's Office at Chunnakam. The project was scheduled to be completed and vested with the public on December 10, 2019. However, the construction work on the building has not been completed so far and has not been of any use to the public.

The errors and mismanagement of the Jaffna District Secretary have resulted in a waste of public funds. Such activities have also contributed to the current economic crisis. Since President Gotabaya Rajapaksa was elected, several departments have been militarised. Despite stating that it hopes for a successful, transparent, expeditious and corruption-free administration, the Jaffna District Secretary, Director-Planning, and the Project Contractor have reversed that objective of the government.

Although the relevant documents were obtained from the Jaffna District Secretariat after a lengthy tug of war on the above matter through the Right to Information Act, the information shared has been found to be fabricated.

It has also been revealed that a lot of information has been withheld from the district's internal auditor and the National Auditor's Office. The information provided under the Right to Information Act and the information submitted for audits are contradictory.

According to the Right to Information Act, an application was submitted on the second day of July for information on the above project, but the Information Officer did not respond in time. Therefore, an appeal was filed on August 03 which received a reply on August 06.

Two files

The submitted application requested information on the number of files maintained in connection with the above project, the start date of the project and the end date, the number of pages in the files and the details of the officers in charge of the files. According to the reply received, it was revealed that the District Secretariat had maintained two files.

The first file JF/DPS/MNIROL/POB/VI/02/2019 was opened on 22 July 2019, completed on 26 September 2019, and consists of 283 pages.

The second file JF/DPS/MNIROL/POB/VI/02/2020 was opened on 25 July 2020, had not been completed, and consists of 10 pages.

According to the Jaffna District Secretariat, the file JF/DPS/MNIROL/POB/VI/02/2020 had not been maintained. However, even though such a file does not exist, the reply sent by the District Secretariat states that there is such a file.

This project was started during the 2019 Yahapalanaya regime. The term 'MNIROL', which symbolises the first English letter of the then Ministry of National Integration, Official Languages, was used in the files. Following the change of regime in November 2019, the ministry was abolished and its subjects were brought under the purview of the Ministry of Justice. Even after the election of

a new government, the term MNIROL', which symbolises the name of a missing ministry, was used for the second file.

Those who try to justify the existence of a file forgot to change its name.

The closing date of the first file is 26.12.2019 and the closing date of the second file is 25.07.2020. Is it not fair to raise the question of whether anything happened during this intermediate period?

Correspondence has taken place during the intermediate period. Documents obtained using the RTI confirm the correspondence.

Minute sheets related to two files were requested under RTI. According to the information provided, a minute dated 31.12.2019 has been received.

Since the minutes from 21.08.2019 to 24.12. 2020 are in a single sheet of paper, the information provided by the District Secretariat regarding the second file is found to be false.

According to audit query 8 of the Internal Auditor, the letter dated 11.02.2020 sent by the Chief Engineer of the Building Department has been scrutinised. If so, the letter should have come under the scrutiny of the Audit Committee. The reply received under the RTI states that no file was maintained between the last date of the first file, 26.12.2019 and the opening date of the second file, 2020.07.25. If so, what is the file that the letter dated 11.02.2020 was filed, which came under the scrutiny of the Auditor? If there was such a file, what was the reason for refusing to provide it?

There is no mention of a second file in the observation of the internal auditor or the observations of the National Audit Office. However, the Jaffna District Secretary K. Mahesan in a letter dated 15.05.2021 sent to the Superintendent of Auditors, states that the second file was opened since he had filed a large number of documents in the first file.

If the second file had been prepared, why was it not submitted for the audit? Has it been done despite knowing very well that it is an offence not to submit the file for the audit?

Termination of Agreement

The Memorandum of Understanding (MoU) sent to the Chief Internal Auditor by the Chief Accountant on behalf of the Jaffna District Secretary states that the Memorandum of Understanding with the Contractor was terminated on 31.08.2020 due to the delay in payment for the work completed up to 30.12.2019.

In formulating the contract procedure, the regulations of the Construction Industry Development Authority (CIDA) were followed. Accordingly, the awarding party can terminate the contract. The contractor may also terminate the Agreement and seek compensation.

When concluding a Memorandum of Understanding, both parties can discuss and terminate the Agreement appropriately as required.

However, the agreement that was to expire on 10.12.2019 was extended to 30.12.2019 and then terminated. The Jaffna District Office, the awarding party of the contract, has taken this step on behalf of the contractor. What is the purpose of the District Secretariat acting in this manner?

Although the District Secretary stated that there was a delay in disbursing the finances, the financial allocation for the year 2020 had been released completely. If the contractor had complied with the terms of the contract, the construction would have been completed or if not, compensation could have been obtained from the contractor and the construction completed successfully. It is clear that the District Secretary's failure to follow procedures despite the availability of these methods is a deliberate attempt to disrupt this project.

Inconsistency of information and the revealed truth

In a letter dated 18.12.2020 sent to the Chief Engineer, Building Department, Jaffna by the Director Planning of the District Secretariat, it was noted that the above project should be 'completed' and therefore was seeking a recommendation for an estimate for the remaining work. However, according to the District Secretary, the Memorandum of Understanding was terminated on 31.08.2020.

Accordingly, if the Memorandum of Understanding had been terminated on 31.08.2020, would the Director Planning have been able to send a letter 4 months later, i.e. on 18.12.2020 titled 'The Memorandum of Understanding must be terminated'?

The National Audit Office has queried into this matter, but the District Secretary has not responded. Therefore, it has been proved that the information stating that the Memorandum of Understanding was terminated on 31.08.2020 is false. Further confirmation can be seen in the National Audit Office's observation.

In the letter dated 16.12.2020 sent to the Accountant of the Procurement Division by the Director Planning of the District Secretariat, he has stated that the contractor should be charged after the completion of the project for the work not carried out and requested the percentage that should be charged and the tender form. According to the District Secretary, if the relevant agreement has been terminated on 31.08.2020, there is no need to send such a letter after one month.

These two incidents reveal that the agreement was not terminated on 31.08.2020 as stated by the District Secretary.

The government incurs a loss

The charges for non-completion were not deducted from the final payments released at the conclusion of the agreement on 31.08.2020. It is clear from the above incident that the agreement was not terminated on the relevant date. Subsequently, a letter dated 16.12.2020 has sought compensation from the contractor, However, the District Secretary has acted in a manner favourable to the contractor (or to their advantage) by not taking action to charge the deductions.

A deliberate mistake

The Internal Auditor has pointed out to the National Audit Office that all the documents submitted by the Contractor and the Building Department after 31.12.2019 did not have the date stamp during the period when the contract

agreement was extended. The district secretary said it was a 'mistake'. If it happened once, it would be a mistake. It is clear that continuing to make the same mistake is a planned act of mischief.

When information was requested through RTI for a copy of the letters exchanged during this period, five letters were received in response and the dates and date stamps were recorded.

The District Secretariat had taken steps to conceal the dated letters obtained under RTI to the audit. The letters submitted to the audit had not contained stamped dates. It is clear that the District Secretariat has concealed information in one way or the other and therefore it can be concluded that a fraud has taken place.

The loss incurred

The Jaffna District Secretariat had initially failed to collect the late fees and fines in their attempt to defend the contractor. The reason given during the audit was the termination of the MoU. The District Secretariat has taken steps to get work done through the contractor that has not been provided for in the contract. The District Secretary's holiday bungalow, Additional Government Agent's official room, District Coordinating Committee Co-Chairman's official room are among this additional work. The contractor neglected the construction work of the Chunnakam Post Office to complete the above work. Therefore, the District Secretary, in gratitude, has taken steps to save the contractor and induced a financial loss on the Government.

The contractor should be charged Rs 1.68 million for non-completion of work according to the terms and conditions of the agreement. No action has been taken to recover this amount at the conclusion of the Agreement. When the Audit Office pointed this out, the District Secretary had responded that the amount had not been recovered since the MoU had expired.

However, the district secretary suddenly resorted to some action to recover the amount in September this year. This shows that the earlier statement made by the District Secretary that the Memorandum of Understanding was terminated is incorrect. Furthermore, this action confirms that the DS worked to save the contractor.

The amount of Rs. 1.16 million due for non-completion of work as per the agreement has not been recovered from the contractor yet. The loss to the government was incurred by the deliberate actions of the District Secretariat. Due to the non-completion of work as per the agreement, the District Secretariat had to convert the performance bond into an income. However, by not doing so, the government has incurred a loss of Rs. 0.84 million.

According to the agreement, the performance bond must be valid for 28 days from the date of termination of the agreement. The agreement may have been terminated by the District Secretariat on 30.07.2020 due to the expiration of the performance bond. Although the Jaffna District Secretariat has full authority to do so as the awardee of the contract, the Secretary has failed to take action.

If the agreement was terminated on the expiration of the performance bond, there was an opportunity to complete the remaining work of the post office by obtaining late fees, fines, etc. at the earliest date without terminating the MoU.

Knowing very well that the performance bond had expired on 30.07.2020, the allowances for the contractor had been recommended and paid by the District Secretariat on 31.08.2020 at the conclusion of the MoU. Therefore, this proves that the government has incurred a financial loss due to this planned action.

The contractor was paid Rs. 12.21 million for the work. The total loss to the government with the balance due from the contractor is Rs. 16.8 million.

Not only the financial loss but also the opportunity to serve the people has been lost due to the building not being completed and handed over to the people. What action will be taken against those who are responsible for this debacle?

The government has to spend a lot of money to complete the building work through another contractor incurring a further loss. The unfinished building may not be used for a long time as it has been informed that no funds will be allocated for development projects due to the current financial crisis facing the country. The damage caused should also be considered as an opportunity loss.

The agreement was terminated by the District Secretary on the presumption that the money for the above project would not be forthcoming with the change of government in 2019. Accordingly, it is clear that the District Secretary has done this to discredit the government.

The reply sent by the District Secretary to the National Audit Office states that the relevant payment made is less than the actual work completed. It is a fact that every contractor attempts to request more money than the value of the work done. If this was a methodical contractor, the rest of the work would have been completed with the assurance that he would receive the balance payment in the coming year?

The reply to the request for information on payments made through the RTI states that advance payment and the balance payment were made in three stages. However, according to the National Audit Office payments have been made in four stages. What is the truth here?

Irregular minutes

The reply given to the RTI requests states that two files had been maintained regarding the above matter. Relevant minutes were also provided for those files as requested. However, it is noteworthy that the minutes do not specifically mention the files.

The District Secretariat had given the names of three officers in response to a request for details of the officers in charge of the subject, but six different signatures were recorded in the minutes. If so, was the information about the officers in charge of the files concealed in the details given for the RTI request? Are the signatures on the minutes fake? What is the truth?

Although it was stated in the minute dated 30.12.2020 that an amendment had been made in the minutes, the information obtained through the RTI does not indicate the same.

Errors in the system

There was no action even after the National Audit Office and the Internal Auditor pointed out that there was a fault in the methodology of awarding the contract.

It is clear that the deliberate action perpetrated with an intention of obtaining undue privileges from the contractor has caused losses to the government and also deprived the people of Chunnakam of obtaining the relevant services they were entitled.

No one has been penalised for committing this fraud. However, a complaint has now been lodged with the Commission to Investigate Allegations of Bribery or Corruption and investigations are underway at present.

It is a serious offence for a government official to damage a file and change it. It has been proven with evidence that both acts were committed in this situation. Will this result in any action at least now?

An inquiry has commenced with an employee of the District Secretariat disclosing this matter to the Ministry of Public Administration and Home Affairs.

The need for legal provisions

There is an Establishment Code for public officers, which specifies the penalties for offences. The Jaffna District Secretary K. Mahesan and Nicholas Pillai, Director of Planning, have modified the office files. The establishment code of conduct is not powerful enough to penalise offences and misconduct promptly. Moreover, there is no legal provision to file a criminal case against such fraud or a criminal offence committed. (There is no facility to complain for the benefit of the public.)

Transfers have become the maximum penalty for officials for committing an offence. Therefore, these offences are repeated.

Furthermore, the officials resorting to providing falsified information through the RTI and the absence of legal recourse, enables them to continue to commit such offences.

If the objectives of the Right to Information Act are to be achieved in the near future, the authorities who provide false information through the Act should be severely reprimanded.

It is a difficult task for the average citizen to verify the accuracy of the information provided through the RTI.

There are no legal provisions that make it possible to take strong action through an independent party against financial losses incurred on the government by contractors and their failure to complete work on time. Contractors who are awarded contracts without regard to their capacity end up wasting public funds by not completing the work on schedule.

Strong legal provisions are required to stop the officials from receiving undue favours from contractors. Authorities accepting a favour or free service should be considered as a form of bribery.

■ ***Dileep Amudan***

Gunalan Dileep Amudan : A full time journalist for the past 12 years and the Deputy News Editor of the Uthayan newspaper published in Jaffna. He is a journalist who has used the Right to Information Act as a tool since RTI became the law of the land. He has submitted over 750 applications for information under RTI and based on those revelations, compiled numerous feature and news articles.

Holes in the gazettes cause deadly conflict

Small scale Fisher Folks tangled by erroneous regulations on purse-seine nets

Seine fishing is a method of fishing that employs a surrounding net, called a seine, that hangs vertically in the water with its bottom edge held down by weights and its top edge buoyed by floats. Purse seine nets are used in the open ocean to target dense schools of single-species pelagic (midwater) fish like tuna and mackerel. A vertical net 'curtain' is used to surround the school of fish, the bottom of which is then drawn together to enclose the fish, rather like tightening the cords of a drawstring purse.

While this is an approved method with permits issued under the provisions of the Fisheries and Aquatic Resources Development Act No. 02 of 1996, this method does not seem to be suitable in Sri Lankan waters and opposition has been reported from small scale fishermen which has been increasing day by day for nearly 35 years.

This method was introduced, and relevant orders were issued for the efficient harvesting of fish in the seas of Sri Lanka. However, frequent clashes between purse seines and small-scale fishermen can be witnessed due to the inconsistencies of the orders regarding the Purse seines nets contained in the Extraordinary Gazette Notification of 1986 subsequently amended by the Special Gazette Notification No. 859/3 of 20 February 1995. Two small-scale fishermen have gone missing in the last five years due to clashes with purse seine fishermen off the coast of Trincomalee.

In Trincomalee as well as in the Jaffna and Mannar districts, clashes between purse seine and small-scale fishermen appear to be intensifying. This conflict is due to purse seine fishermen engaging in fishing activities using approved fishing techniques and vessels approved by the Department of Fisheries based on the topographical features of the area.

Conflicts and fatal accidents

As a result, there are frequent clashes between small-scale fishermen and fishermen using purse seine nets in those areas. Purse seine fishermen violate the conditions stipulated when obtaining permits, by fishing in waters less than seven nautical miles out, using fine-grained nets. Therefore, in about two hours they can release a large fish harvest of about 2,000 kilos into the market. The small-scale fishermen who are out at sea for about five hours are unable to obtain a reasonable price for their catch due to the unlawful fishing practises of seine fishermen. This is the main reason for the clashes. Many fisheries organisations point out that the economy of small-scale fishermen is in danger of collapsing due to conflicts between fishermen.

Last month, a fisherman in Kuchchaveli was killed when dynamite exploded in his hands. There are also three fishermen whose hands were severed from the wrist due to dynamite exploding in their hands. Piyal Hemasiri, President of the Trincomalee District Fisheries Federation stated that there are more than 10 complaints lodged with the Police Headquarters and the Ports Police regarding disputes due to fishing by force and that the purse seines fishermen in the Kuchchaveli, Kinniya and Podawakattu areas are the ones causing most of the destruction to the sea life.

He further said that the North and East coasts have been destroyed due to the use of dynamite and fishing with small, perforated nets in gross violation of the conditions stipulated when obtaining permits.

“...In September, they caught a large number of small Linna fry and released more than 2,000 kilos of dead fish into the sea because there was no one to buy fish for even 20 rupees. Nobody buys the dynamite fish. These are very well known by the officials in the area though they turn a blind eye. We are just complaining to deaf ears...”

1392 people have violated the legal provisions

The Navy and Fisheries Officers have jointly arrested 587 purse seines fishermen in 2019, with another 504 in 2020 and 301 in July 2021 for violating the terms of the purse seines net order given in the Gazette and the permits issued. Investigations carried out through the Right to Information Act confirmed that fines amounting to nearly Rs. 13 million had been levied in 330 cases. There have been 107 pieces of illegal equipment belonging to these fishermen that have been confiscated after conviction. This shows the extent to which the purse seines fishermen are exploiting the conditions and destroying the sea life while constantly clashing with the small-scale fishermen.

The purse seines fishermen pose a serious threat to the coast since they violate the approved permit conditions set for purse seines net usage and because of the use of dynamite. A closer examination of the regulations stipulated in the Extraordinary Gazette No. 437/46 published dated 19th January 1987 by the Minister of Fisheries reveals that the purse seines net method is not suitable for the country.

Errors in the Gazette Notification

The 13th order stating that no one should use purse seines nets with 'eye' openings smaller than 3/8 inches should be changed. The Department of Fisheries has permitted all Assistant Directors to approve purse seines nets without light streams under Departmental Circular 01/2011 issued in 2011. Therefore, the size of the openings of the purse seines nets had to be more than 1.5 inches according to the Department of Fisheries as per a policy decision taken by the Ministry. Permits have been issued stating that the eyes of the nets should be more than 1.5 inches but if anyone requests a licence for a net of that size as mentioned in the gazette notification, it will not be possible to avoid being challenged in a court of law by not amending the erroneous gazette notification.

Using purse seines fishing nets within ten nautical miles off the coast of the Northern Seas and seven nautical miles off the Western, Eastern and Southern seas was prohibited since it was evident that this method of fishing caused

damage to the fish in the shallow sea areas. In addition, the large quantity of fish released to the market at once disrupts the economy of the local small-scale fishermen with the drastic drop in fish prices.

However, the main reason why some fishermen resort to fishing illegally in violation of these orders was due to the constant changes in the gazette notifications issued by the Fisheries Ministers from time to time.

According to the Fisheries Operational Regulations issued through the Extraordinary Gazette Notification No. 948/25 dated 07 November 1996, every fisherman should obtain a permit from the Department of Fisheries for fishing practises that are permissible for Sri Lankan fishermen.

The charges levied were cancelled with the Extraordinary Gazette Notification 2001 of 1398/13 dated 23 March 2011, which therefore made rule 5 of the 1986 purse seines fishing nets order null and void. This led to the fisherman seeking purse seines fishing permits without a limit, indirectly contributing to this entire issue.

Inquiries submitted through the RTI confirmed that this has led to several clashes in the small-scale fishing industry. A study of the gazettes related to the purse seines nets issued and the information obtained from the Department of Fisheries and Aquatic Resources through several RTI requests reveals that due to errors in the gazette notifications, Fisheries Inspectors, Police and Navy officers had to spend substantial extra time to protect the ocean and resolve conflicts and disputes between fishermen.

The apathy of the law

The majority of fishing organisations state that the fishing inspectors and the Navy are also responsible for the wider abuse of purse seines nets. They directly allege that Navy patrol officers protect fishermen using illegal nets and prohibited equipment, under the influence of bribes. Fishermen's organisations have repeatedly accused Fishing inspectors of not taking action against the use of prohibited nets whilst colluding with fishermen using purse seines fishing practises and taking their side in court cases.

Extraordinary Gazette Notification No. 859/3 of 20 February 1995 was issued amending the third regulation issued on 1986 regarding purse seines nets published in the Extraordinary Gazette No. 437/46 of 19 January 1987 prohibiting anyone who did not possess a permit from using purse seines fishing nets with lights at night. It also stated that no one without a permit should be in possession of purse seines nets or equipment with or without lights. It stated furthermore that those without permits should not be in possession of any equipment that can be used to deploy purse seines nets from the surface.

However, it is of great concern that a small number of fishermen who obtain permits are destroying fish stocks by using lights at night as well as by using the purse seines nets during the day. Although permits are not issued based on a policy decision for using purse seines nets to encircle a catch, the gazette notification gives legitimacy to utilise purse seines nets with light at night.

Allegations against the authorities

Therefore, if a fisherman requests a permit, the officials of the Fisheries Department have to issue it. Therefore, permits are issued by the Fisheries Officers and by the year 2019, the Department of Fisheries has issued 203 permits for purse seines nets in the Trincomalee District alone. The highest number of permits has been issued to the Kinniya Fisheries Inspector Division, which is 57. The second-highest number of permits which is 44 has been given in the Kuchchaveli North Fisheries Inspector Division. These two Fisheries Inspector Divisions have also arrested the highest number of people for illegally using purse seines nets in violation of permit conditions.

Sixty-one-year-old H. A. Sunil de Silva, Chairman of a Trincomalee '*Kuda Oru and Billy Pithi*' co-operative society, speaks about the tragic fate of small-scale fishermen due to illegal activities of the purse seines fishermen.

“..The purse seines net users apply dynamite before casting the nets. Dynamite is used after divers are deployed to see if there are any fish on the coral reef. Then they surround the area with nets and tanks are used to collect the dead fish, and the fish that cannot be taken is submerged, without any use to the marine life or the people. Dynamite destroys coral reefs, destroys marine life and causes extensive damage to the seabed. Sometimes Navy patrols overlook these illegal activities. They are helping these purse seines

net fishermen. In other words, the naval patrol teams are taking money from these illegal fishermen. We have taken more than 100 calls to the Eastern Naval Command Patrol Coordinator. We have informed the intelligence officers and the fisheries officers. We are just left with the polluted water and the mud after 40 years of engagement in this trade and there is no way to catch even five kilos of fish."

The issuing of permits at the discretion of the Ministers of Fisheries from time to time is another reason why this situation is difficult to control. The number of permits to be issued for each district has not been specified and the gazette notification states that it will be decided by the Minister of Fisheries although regulations have been specified for purse seines net users.

Authorities' response to the allegations

Anil Senaratne, Assistant Director, Department of Fisheries and Aquatic Resources of the Trincomalee District, in responding to the allegations said that despite the lack of provisions for their officers to conduct raids at sea, in partnership with the Navy they conduct raids and apprehend those who violate permit conditions and engage in illegal fishing activities.

"We will always do our best to remove illegal equipment from the sea to secure the livelihood of those involved in the small-scale fishing industry," he said. There are more than 50 items confiscated every year. This is not a conflict between two industries but a conflict within the industry itself. One group of fishermen puts out illegal gear, another group raises their voice against it. What the fishermen should do is to help control the situation rather than just blaming."

The Chairman of the Trincomalee District Fisheries Cooperative, Priyantha Malawennagoda stated that the future of the small scale fishermen cannot be secured since circulars and policy decisions pave the way for the continuous use of purse seines nets instead of correcting the erroneous gazette notification. Providing permits for purse seines fishing will continue to destroy the sea while creating division amongst the fishermen.

"If the Minister takes action to rectify the mistakes mentioned in this gazette notification, the disputes between the fishermen can be resolved and the sea can be made a peaceful place," he said. Ministers who come from time to time

issue gazettes like cassettes. They will not consider if the new gazette has a bearing on the previous one. This is the reason for this continued crisis.”

A sustainable solution instead of temporary plaster

To address this issue, it appears that new clauses have to be introduced amending certain sections in the 1986 purse seines net order amended by the Extraordinary Gazette Notification No. 859/3 of 20 February 1995 and the published in the Extraordinary Gazette Notification No. 437/46 of 19 January 1987.

Accordingly, the fee of Rs. 20,000 for the permit mentioned in Section 5 of the said Order should be increased to at least Rs. 100,000 or more to suit the present context. Also, the purse seines net order should be gazetted so that the 2001 Fisheries (Cancellation of Fees) Order amended by the Extraordinary Gazette Notification No. 1698/13 does not include purse seines nets. Then it will be possible to restrict the issue of permits for purse seines nets to some extent and avoid conflicts between fishermen.

In addition, it is imperative to cancel the regulation on net eye size mentioned in Article 13 as 1.5 inches and using lights at night should be strictly forbidden. If the permit holder or the vessel, or those in the vessel violate the conditions of the permit or commit any illegal activity, the permit needs to be revoked and all equipment confiscated.

The group of fishermen travelling in a licensed vessel must be of the same group and the net, engine and vessel must belong to one person. If the number of permits issued to a district is specified and gazetted, it will be possible to uplift the economy of the small-scale fishermen in this country and put an end to the conflicts in the industry. However, the sad reality is that no one responsible has ever paid attention to this matter or taken any action to resolve this issue.

■ **Lakmal K. Baduge**

Lakmal K. Baduge - He has been a freelance journalist in print and electronic media for nearly a decade. He is a journalist who makes optimal use of the Right to Information Act for investigative journalism. He is an executive member of the Federation of Media Employees Trade Unions, the national organiser of the National Association of Journalists and the President of the Trincomalee District Journalist's Association.

The Truth about the death of Sunil

-Revealed through the Right to Information Act

Sunil Jayatissa, a father of three was a resident of Danture, Pilimatalawa, Kandy. He was well seasoned in hard work and supported his family by working as a chef in a leading hotel in Kandy. He bid farewell to his work after 22 years and started a catering business. His tireless dedication and commitment to his work coupled with great-tasting food and a passion for cooking resulted in a successful journey as an entrepreneur. However, Sunil's long-standing hernia condition hampered his ability to work since it was difficult for him to lift heavy items. Therefore, he decided to go for an operation and was admitted to the Kandy Hospital on 27 June 2016 on the recommendation of the doctor that he consulted. Two days after he was admitted to the hospital, the doctors operated on him and recommended that he be sent home the following day, but Sunil refused to go home, pleading with the doctors to treat the unbearable pain he was going through.

Physicians' negligence

“My husband went to the hospital walking steadily. He shaved his beard on his own and took a bath and went to the hospital. The day before he left for the hospital, he provided catering for a wedding with two hundred guests. The doctors said that the hernia operation was a basic procedure and that he could

go home the next day. My husband was operated on and brought to the ward. When he regained consciousness, he started screaming that he had intense pain in his abdominal area. I went to the doctor and asked him to check on my husband. 'The doctor scolded me saying that's how you feel when you have an operation, isn't he a man, tell him to be patient if not give him a soother to pacify him,' Mrs. J.J. Jasmine said.

Sunil, who was informed to go home the day after the surgery, was operated on again by the doctors on 1 July 2016. He was then transferred to the intensive care unit, where he closed his eyes for good on the sixth day, leaving behind his wife, Jasmine, and his three children. The police commenced an investigation once Sunil's wife Jasmine alleged that her husband who was chirpy and light-hearted when he was hospitalised for a hernia operation, died as a result of the doctors' negligence. She had initially refused for the post-mortem to be conducted at the Kandy Hospital but subsequently gave her consent, believing that justice would be served by the Judicial Medical Officer. Jasmine's concern was further heightened when Sunil's body parts were referred to the Government Analyst for further examination, after pronouncing an open verdict without providing a definite cause of death.

Medical records concealed

"My husband had to face an untimely death because of the doctors' negligence. I thought to myself that I had to fight this so that something like this would not happen to anyone else. I needed information about my husband's medical diagnostics and treatment reports for this purpose. But obtaining them was just a dream. The hospital authorities only wasted my time and withheld the information. It was then that I came to know about the Right to Information Act from the Human Rights Office in Kandy. If it was not for the Right to Information Act, I would have had to stop pursuing justice for my husband at a halfway stage." Jasmine said.

Jasmine managed to collect all the information about the treatment given to her husband by the hospital from the time he was admitted to the hospital to the post-mortem examination as well as the reports of the tests performed.

Her struggle to obtain these records was not easy. She described her struggle as follows:

“Since I was suspicious about my husband's death, I requested his medical reports from the hospital. When I met the Judicial Medical Officer of the Kandy Hospital he said that all the reports had been sent to the court by the hospital. The police had reported the incident to the court. I went to court and filed a motion and obtained the file. There were no reports in the file. I received a blank file. My husband had life insurance. The hospital did not provide me any reports to even take that money. The hospital has a specific place to provide these records. When I went there, they said that all reports have been sent to court. Then I went to court to meet the Registrar. They said that they had not received any reports. When I went back to the hospital, they showed me a paper on which the Registrar had signed placing the seal saying that they received the file. I went to court again and told the Registrar that they have received the reports and had placed their seal and acknowledged receipt and also issued a letter. The Registrar's Office told me that it was a person named Jayantha who brought these reports from the hospital and handed them over to the court and therefore to ask him as to whom he had given this file. When I went searching for this Jayantha, I was told that there was no such person. They made me go from pillar to post like this for almost a year. If a case was not filed in the District Court seeking compensation within two years of death, then there is no opportunity to file a case after that. I had exactly seven months to file my case. I went to the Human Rights Office in Kandy and expressed my grief to Rev Fr. Nandana Manatunga. Following the guidance I received, I sent a letter to the Director of the Hospital requesting all documents, including my husband's medical records, under the Right to Information Act.

Application for information

There are instances when requested information under the Right to Information Act is withheld and they refuse to respond to requests. In such instances, one must persevere and continue to chase behind to get the information. The Act in itself has laid a process for such instances. If all fails, one can appeal to the Right to Information Commission. The Human Rights Office had provided the relevant guidance to Mrs. Jasmine to obtain information.

“I requested information under the Right to Information Act about all medical reports, including the reports pertaining to the two surgeries performed, as well as reports relating to the relevant scans and other tests, and details relating to the specialists who examined the patient Sunil Jayatissa who received treatment under Ward No. 18 Bed No. 101577 of the Kandy Hospital. However, I was not given the information on time. Therefore, I lodged an appeal with the Information Commission. Two days after I was informed that they had received the appeal, the hospital provided me 99% of the information requested. Although the Information Commission had given dates to hear the appeal regarding the non-provision of the relevant information, we did not need to go there.”

The Human Rights Office in Kandy is the organisation that assisted Sunil’s wife Jasmine in this matter. Suren D Perera from the organisation said the following.

No case without information

“After receiving all the medical reports, we had a doctor re-examine them and then filed a case in the District Court. Without these documents, it would not have been possible to file a lawsuit. This is truly a victory for us made possible because of the Right to Information Act. We do not know what happened in the hospital. This information provides us the opportunity to examine what happened to Sunil in the hospital. We received reports related to the tests, surgeries and examinations carried out from the time Sunil was admitted to the hospital. Many of the legal provisions in our country were established during the colonial period. Most of these are in place to control us. It is not incorrect to say that the Information Act is the only law that is there to empower the people. Politicians go to Parliament and exercise the sovereign power given by the people. The Information Act can be pointed out as our legal right and provision to examine whether the government mechanism led by these politicians is implemented duly.

Society considers doctors as demi-gods. This is because they give life to those who are sick and helpless. However, there are times when patients have to pay with their lives due to negligence and mistakes of doctors and medical personnel. We cannot say that such deaths do not occur in the hospital system

of this country. We do not have any alternative other than to obtain information from the doctors and medical personnel themselves to find out the truth when a death occurs in a hospital. There is a reasonable suspicion among the public that doctors will seek to save their colleagues in such instances. Sunil's wife and children also had reasonable suspicion in the case of Sunil's death since the hospital authorities continued to withhold information regarding his medical reports. If the Right to Information Act had not been in place, Sunil's wife would not have had the opportunity to file a civil case in the District Court.

“After my husband died, I suffered a lot along with my three children. The loss of a person can cause the life of another person to fall apart. Therefore, we must always understand the value of human life and act accordingly. All I wanted was to prevent a future occurrence of these unfortunate incidents. The case regarding the death of my husband is due to be heard next March. If I had not heard about the Right to Information Act from the Human Rights Office in Kandy, I would not have been able to seek justice for my husband,” says late Sunil's wife Jasmine.

■ ***Asela Kuruluwansa***

Asela Kuruluwansa : He is the Kandy correspondent for the Lake House. He has been active in the media sector for over 22 years and plays a significant role as a feature writer. He is a trainer in journalism, and in 2019 attended a study visit on conflict reporting offered by the American Embassy.

Housing projects grind to a halt in the plantations

-No financial allocation for completion

Contradictory views continue to surface regarding the Indian Housing projects as well as the single housing unit schemes implemented by the Ministry of Upcountry New Villages, Estate Infrastructure & Community Development. The painful reality is that the current government has abandoned many development projects of the previous regime.

Accordingly, work on the single-unit housing scheme implemented by the Ministry of Upcountry New Villages, Estate Infrastructure & Community Development in 2017 at the Emilina Estate, Maskeliya, Brunswick has been abandoned. Former Minister Palani Digambaram, embarked on a series of rapid development initiatives following his election victory in November 2017 in a bid to fulfil the promises made to the people of Maskeliya.

Foundation stones were laid for projects to provide safe drinking water, roads, playgrounds and housing schemes. According to reports, work had commenced in about 15 estates including Larchfield in Gartmore Estate, Lower Mocha Division, Lanka Division, Emilina Division, Bloomfield Division, Queensland Division, Cultural Centre at the Maskeliya Shanmuganathan Kovil, Gangewatte, lower division of the Laxapana St. Andrew's, Laxapana division and Nainsa estate.

Victims at risk again

One of the projects was the single housing unit scheme for 18 families affected by natural disasters at the Emilina Estate in Maskeliya. The project was launched in 2017 and was expected to be completed in 2018. However, even after four years (2021), no attempt has been made by former Minister Palani Digambaram or the current State Minister Jeevan Thondaman to complete this project.

According to information obtained from the request made to the State Ministry of Estate Housing and Community Infrastructure under the Right to Information Act, the National Building Research Organisation (NBRO) has approved the construction of only 10 houses on the Estate land No. 5E, provided by the Brunswick Estate Superintendent for the 18 families affected by the natural disaster at the Emelina Estate. However, the Ministry has taken steps to construct 18 houses. If so, who is responsible for the danger and the risk the families will be exposed because of this action?

How reasonable or rational is it to disregard the advice of the NBRO when the above housing project has been implemented for the 18 families living in the disaster-prone Emelina Estate? Meanwhile, the Indian Housing Scheme, funded by the Government of India being constructed in the Pundalu Oya Oya Dunsinane area has also been severely damaged due to the recent adverse weather conditions. Therefore, there is a need to look into the NBRO approvals for the housing schemes that have been constructed in the upcountry up to now. However, despite a request for information under the RTI Act on 15 September 2020, the NBRO is delaying in providing information.

The challenge of land acquisition

There are serious challenges in obtaining lands to complete the housing schemes since the government and the plantation companies separately own the lands in the plantation sector. Although most of the lands provided by the estate administration were low yielding areas, these lands are located a significant distance away from the present housing facilities. Therefore, there is a need to provide new infrastructure facilities for the above areas for construction. Many

proposed housing projects in the plantation sector have been delayed due to complex land ownership- and other land issues. Therefore, there is a need to build houses on the lands provided by the estate administration since it is their responsibility to allocate lands for housing projects.

Despite the requests for information from the NBRO under the RTI Act, clear copies were not provided. Therefore, it has been difficult to ascertain the additional shortcomings. The allocation for the housing project in Emelina Estate was 18 million rupees at a cost of one million rupees per house. In addition, Rs 2,375,047.64 was allocated for a safe drinking water project and Rs. 763,055.12 allocated for obtaining electricity. An electricity supply has not been provided so far even after making the payments for electricity. The power supply will be available only after the completion of the individual houses of the project. The 18-million-rupee allocation for the 18 houses has not been fully utilised. However, no one is aware of the fate of the remaining funds.

A bagful of unresolved issues

No funds have been allocated for road development in these projects. The main problem in the plantation sector is the lack of infrastructure. Even if houses are built, other infrastructure facilities are not provided. As a result, even though individual housing schemes are being implemented, the people have been forced to live with severe infrastructure limitations. Some people who are granted individual houses refuse to live there due to inadequate infrastructure facilities.

The Emelina Estate single housing unit scheme was launched in 2017 and scheduled for completion in 2018. However, even after 4 years this housing scheme has not been completed and handed over to the people. The State Ministry of Estate Housing and Community Infrastructure has requested additional funds from the Ministry of Finance to complete the relevant housing scheme, but the funds have not been provided yet. It has been reported that the housing project could be completed if additional funds are made available. In the budget proposal for the year 2022, there were proposals to allocate 500 million rupees for the construction of houses in the upcountry area. However, no allocation has been made for the development of infrastructure required

for projects which were initiated previously by the ministry and have been abandoned at present. Meanwhile, none of the budget proposals for housing construction in the upcountry has been implemented.

The Ministry of Finance has decided to suspend new development activities and postpone the ongoing activities due to the current financial difficulties faced by the country. As a result, there are doubts about the allocation of funds for the completion of the single housing unit schemes. It is reported that in the Emilina Housing Scheme, construction up to wall level has been completed in 13 houses and the preliminary work of erecting walls has commenced for 5 houses. However, these constructions took place 4 years ago. At present, there has been no development work in the housing scheme. The housing project has come to a standstill due to the non-allocation of additional funds.

This housing scheme was initiated for 18 families in the Emilina Estate affected by natural disasters. The Plantation Human Development Trust and the Estate Management made the final decisions in the selection of recipients for the houses. At present, the 18 families have been forced to live in the same housing units that were considered to be at risk since the housing project has not been completed. As a result, they are exposed to repeated risks.

Multiple abandoned projects

Most of the previous single housing unit schemes commenced under the provisions of the Ministry of Upcountry New Villages, Estate Infrastructure & Community Development have been abandoned. Non-allocation of additional funds, non-payment to contractors for completed work and the non-completion of work undertaken by contractors remain unresolved issues. There was a greater likelihood of obtaining additional funds from the previous government to complete the housing projects undertaken by the Ministry.

The main reason for the completion of Indian housing projects to a reasonable level was the awarding of contracts to reputable and internationally recognised companies. However, the Ministry awarded contracts for their housing projects to private representatives and close associates of the Ministry. Therefore, several shortcomings can be noted in the completion levels of the construction.

At present, no preliminary arrangements have been made for the housing projects implemented by the Ministry. Two years after the new government took office, the Indian Housing Scheme has already provided infrastructure to about 1,300 houses.

It remains a mystery as to how long it will take to complete 12,500 houses under the additional Indian Housing Scheme, to provide infrastructure facilities for the individual housing schemes implemented by the Ministry and to hand them over to the beneficiaries. It is not possible to say how many more line rooms will collapse due to natural disasters by this time. There is only a small number of single housing unit schemes currently in operation for the upcountry plantation community. It could take another 50 years for the entire population of the plantation areas to receive individual housing or it may never become a reality.

The dream of a single home and the reality

According to the 2020 progress report of the Ministry of Estate Housing and Community Infrastructure, only 39,799 individual houses have been completed on estates. (2020.12.31). There are 29,567 dual houses, 73,130 single-line houses, 68,628 dual-line houses, 1,637 line apartment units and 15,480 temporary units. Therefore, there is a need for about 186,805 individual houses for the people in the plantation areas. However, in the 2022 budget proposal, there was only provision for 500 houses. There is a concern whether the dream of living in single houses for the plantation community would at least become a reality in 2050?

Meanwhile, when the Indian Prime Minister Narendra Modi attended the opening of the Dickoya Glencairn Hospital, which was funded by the Government of India, there was a pledge for the construction of an additional 10,000 individual houses for the upcountry plantation community. It has taken six years to resolve the issues that have arisen in the construction of 4,000 houses and the 10,000 houses program has not yet been launched as a result.

From the 10,000 houses provided by the Government of India, 3,025 houses were to be completed by 2021, and 3,944 houses by 2022 and 2,531 houses

by 2023. A total of 9,500 houses will be completed and handed over to the beneficiaries. No information has been received about the remaining 500 houses. No one knows what will happen to those 500 units.

If the Indian government does not donate single housing units, it will be very difficult for the plantation community to obtain a single house. This is because the Ministries allocated for the people in the plantation areas are not implementing individual housing projects. The next government will abandon individual housing projects. Therefore, instead of laying the foundation stone for housing projects and advertising them, it is a timely need to complete them and hand them over to the beneficiaries.

■ ***K. Prasanna***

K. Prasanna : He is a journalist with the *Thinakkural* newspaper and a graduate of the University of Peradeniya. He has been involved in journalism for over ten years and is particularly interested in the exercise of the right to information in anti-corruption reporting work in journalism. He was the recipient of the award for 'Best Reporting using the Right to Information' at the 2018 Media Excellence Awards. He also received an award of excellence at the Purawesi Abhiman Awarding Ceremony 2019, conducted by the Ministry of Mass Media in 2019

Is freedom from torture a distant dream in Sri Lanka?

800 complaints of torture in two years

Only seven cases filed in five years by the Attorney General

The violation of human rights by torture has been witnessed throughout human history. Thirty-two types of torture practised in ancient Sri Lanka are mentioned in various records. At the time, torture inflicted by the King's men was considered legal. However, the torture methods were barbaric, inhuman, and degrading. In his book '*Historical Relation of Ceylon*,' Robert Knox mentions the torture inflicted during the reign of the Sinhala kings. Legal provisions to prevent torture in Sri Lanka are mentioned in ancient 'Inscriptions'. However, these were formally established by the British. Article 6 of the Kandyan Convention, a treaty signed between the British and the Kandyan aristocracy in 1815, states that "*Every species of bodily torture, and all mutilation of limb, member, or organ, are prohibited and abolished.*"

This is history but even today, there are endless stories of torture in Sri Lanka, both in public and veiled in secrecy. Most of the torture incidents are reported at the hands of the police. Harassment is often heard in prisons and schools.

Is this the 20 years of progress?

In Sri Lanka, cases related to the Torture Act have been pending in the High Court since 2000, and since then the Human Rights Kandy Office has acted

as a mediator to determine whether justice has been served to the victims of torture. Under the guidance of its director, Father Manatunga, its activist, Lucille Abeykoon, has inquired into the matter. She said that although the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 was enacted for the benefit of the people, it did not appear to protect the human rights of the people.

“Once a legal system is established in the country, it should be incorporated into state policy. Policy decisions should benefit the people. However, from 2000 to 2021, there has been no justice served to the victims of torture through the mediation of the Attorney General's Department. This is very clear when the number of complaints received by the Human Rights Office is compared with the information available in the Attorney General's Department.”

It is no secret that torture, such as assault, slapping, stripping, and beating, is carried out by law enforcement agencies. Most of these events go unreported. In the past, there have been reports in the media regarding people who were tortured to death in police custody. However, no one complained to the IGP or the Special Investigation Unit and requested justice. It is no secret that government officials obtain information from suspects or detainees through torturous interrogations. The victims do not even attempt to stand up or voice against it.

People who are tortured in such a way lose their self-confidence, become depressed and disillusioned. They refrain from developing relationships with others in society. There are instances where these victims are led to suicidal thoughts or suicide.

Extensive protection by law

Despite the increasing criticism against the police, no one who is being tortured goes to court to seek justice. The main reason for this may be that the people are not aware of the protection they are entitled to under the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment Act.

Since it is a precious life that is tortured, the public has a right to protect that life and to work towards forming a society that is free of torture. The law can be

enforced against perpetrators in Sri Lanka. The legal provisions are available for torture victims to end torture through litigation and to seek compensation. Sri Lanka has agreed to international conventions in this regard.

According to the constitutional provisions in Sri Lanka, Article 11 of Chapter III, the Fundamental Rights, states “No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

According to Article 17, if there is an infringement or imminent infringement by executive or administrative action of any fundamental right or language right declared and recognized by Chapter III or Chapter IV, the aggrieved person or his lawyer can file a complaint to the Supreme Court within one month as provided by Article 126. This 11th Amendment cannot be restricted in any way and it has placed a full stop to torture.

Under the Police Ordinance, steps can be taken to prevent the torture of arrested suspects. The Police Department regulations stipulate how detainees should be treated and sub-service orders state that detainees should be regularly monitored, and due consideration should be placed for their health.

The Human Rights Commission of Sri Lanka under Act No. 21 of 1996 has the power to investigate and prosecute cases of torture or imminent infringement. Article 28 states that when a person is arrested or detained under the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 or a regulation made under the Public Security ordinance, (Chapter 10) it shall be the duty of the person making such arrest or order of detention, as the case may be, to forthwith and in any case, not later than forty –eight hours from the time of such arrest or detention, inform the Commission of such arrest or detention as the case may be and the place at which the person so arrested or detained is being held in custody or detention.

Even though the legal framework to stand up against any torture is in place, people are still unaware of it. What is required now is to create broader awareness among the public regarding these provisions. Although we have this responsibility, there are serious challenges in gathering information, as the perpetrators are government officials themselves, and information about them must be obtained through government agencies.

Revelations through RTI

The best and only course of action in obtaining information in such difficult situations is to request information from the Information Officer under RTI. The Information Officer of the Attorney General's department on behalf of the AG had sent a response RI/29/2021 to the request submitted to the AG's office requesting information under RTI.

It states that the data available to the Attorney General's Department was insufficient to give an accurate estimate of the number of cases filed so far under the Torture Act No. 22 of 1994. They have stated that the last indictment under the Torture Act was filed in 2021. There were only four indictments filed in 2017, two indictments in 2018, one indictment in 2019 and one indictment filed in 2020.

However, considering the 2018 and 2019 annual reports on the complaints received by the Human Rights Commission, it is clear that there is a strong discrepancy between these figures. Annual reports confirm that the Human Rights Commission received 483 complaints of torture in 2018 and 400 complaints in 2019.

Therefore, this leaves a doubt regarding the data that states there were only two indictments filed in 2018 and one solitary indictment in 2019.

People's Ignorance

Suren D.Perera, Attorney-at-Law from the Human Rights Office says that there are several reasons for this discrepancy.

“When a person is tortured by the police, they have to go to the police itself to complain about the abuse they have suffered. Then there are the contradictions regarding the complaint noted and the investigation conducted by the officers. Because even when we seek refuge under the law, we approach without a proper understanding of the background or basis on which the law is enforced. Therefore, the police can avoid certain areas without the complainant noticing.

Although such complaints should be made to the IGP or the Special Crime Investigation Unit, only a few people go to Colombo and lodge complaints. If

we consider annual statistics, how many deaths have occurred while in police custody or while showing evidence of weapons? If the law is properly enforced in this regard, the police officers will have to present facts in a case heard in high courts regarding the death due to torture or in their custody. Then, if there is any misconduct, there is an opportunity for justice to be provided to the deceased. However, these cases are being heard and concluded in the Magistrate's Court itself.”

He further stated that if a public servant tortures a person, anyone has the right to take legal action against the person concerned and there should be a public discourse in society on this matter.

In this regard, Lucille Ambekoon of the Human Rights Office said that the public should be made aware of the need to protect their rights and the justice mechanism available to seek redress against injustice or torture.

Silent suffering

“The Human Rights Office has received information about people who were injured in police attacks in areas such as Batticaloa and Mullaitivu. In addition, in a month, about 50 people complained of torture. There is a difficulty for these people to continue to file complaints before the law and to seek legal redress. When someone commits a crime, they should be punished. However, to be punished, the complainant has to appear before the court. So far, this is not taking place in principle.

The law of a country is formulated for the people. However, if the people are not aware of this law, there is no practical fairness or benefit to the people with such a law. How do IGPs or Special Investigation Unit officers investigate complaints of torture? What is the mechanism adopted for it? If they do not directly intervene, is there any other option? We have several questions as to whether there is impartiality and independence when investigating the actions of their officers. We need to know information about these areas.

It was while filing the relevant information that we had to inquire from the Attorney General in this regard. We must question the justice served to the people in a backdrop where there are striking discrepancies between the

information in the Attorney General's Department and the statistics at the Human Rights Office. This is not a matter that people can be silent on, or ignore. In such a background, we have to ask whether a country without torture in the future is only a dream for us in Sri Lanka.

■ ***Samanthi Upesha Weerasekara***

Samanthi Weerasekera : A member of the editorial board of the 'Divaina' newspaper, she has been engaged in the field of journalism since 1988 and has worked as a journalist for the 'Lakbima' newspaper, Upcountry Service of the Sri Lankan Broadcasting Corporation (SLBC) and the Lake House. She has used the Right to Information Act for investigative journalism. She has traveled to Myanmar for the Indian and Myanmar Women's Collective at the invitation of the Indian Editors Guild.

Recent use of RTI in environmental activism

Very often seeking information on controversial topics and sensitive subjects can be a hard task, for those wanting to access such information for a number of reasons. Irrespective of whether you are a journalist, a religious figure, a person who works on behalf of the law or a public figure, you could face problems in accessing such information from the relevant sources. For many years those responsible for breaking the law and engaging in controversial activities were successful in withholding sensitive information that could in many instances have them arrested and put them behind bars. But today access to such information is possible after the Right To Information Act was enacted in Sri Lanka in 2016 and with it, opened many doors that otherwise would have remained closed forever. The Right to Information Act better known as the RTI enables individuals to obtain information from any government institution by following the required process given on the RTI website.

The importance of the RTI was further enhanced by the increasing number of people making use of the facility that was otherwise not available to them a few years ago. With the recent rise in environmental related issues in the country, the RTI facility has helped people to get the required information to solve problems in a short period of time. The first draft of an access to the information bill was approved by the cabinet in 2004, following which it was

tabled in Parliament. If the bill had been enacted then, Sri Lanka would have been the first country in South Asia to have a right to information law. But the then-president dissolved the Parliament before the bill could be debated. So the entire movement died a natural death at that point.

RTI Commission Website

The trilingual RTI Commission website can be considered one of the most informative and useful websites one can refer to for finding out information on a variety of topics and cases where orders were given by the use of the RTI. Some of the cases include that of “S. Mathanakumar V. the Divisional Secretariat Vavuniya North 9” where the Appellant, by application dated 10.06.2019 requested certain information regarding state forests (boundary stones have been constructed) located near the Vavuniya/Arasa Tamil Kalavan School which has been included in the 2019 Model Village scheme by the Nedunkeni Divisional Secretariat. When dissatisfied with the PA’s response, the Appellant preferred an appeal to the RTI Commission, Sri Lanka. At the appeal hearing, it was evidenced that the requested information is not within the ‘possession, custody or control’ of the PA as envisaged under Section 3(1) of the RTI Act. As such, the decision of the PA was affirmed, and the Appeal was concluded.

In this case the appellant did not give up when he received this unsatisfactory answer but proceeded with his case until he got a satisfactory answer through the Right To Information Commission Sri Lanka.

Geological Survey and Mines Bureau

In the case of “C. Jayananda v. the Geological Survey and Mines Bureau 19” the Appellant, by an information request dated 09.07.2019 applied for information regarding the instructions and orders to the Municipal Council issued by the Excavation Engineer of Matara Regional Office on the inspecting a site at Wakwella Road, Galle in accordance with an OIC’s letter. As the PA failed to respond to the Appellant within the stipulated time, he preferred an appeal to the Right To Information Commission Sri Lanka. At the appeal hearing, as the PA had provided the requested information and the Appellant was satisfied with the same, the RTI Commission moved to conclude the appeal.

This case was different to others in that the PA chose not to respond to the request made by the appellant but complied when an appeal was made to the RTI Commission. Which shows that the RTI Commission Sri Lanka is effective when it comes to cases where information is withheld for whatever reasons.

In the case of “N. W. C. P. Lanka v Geological Survey and Mines Bureau 29” the Appellant made information request dated 27.09.2018, requesting for inquiry reports, the final decision (if any) and relevant details under the Environmental and Mahaweli Development Ministry in relation to the large-scale disaster that occurred as a result of excavations in the Gampaha district (as identified within the information request). As the information and designated officers failed to respond, the Appellant appealed to the Commission. When the PA raised the objection at the first hearing that the information requested pertains to a third party, the PA was ordered by the Commission to follow the third-party procedure set out in Section 29 to release or refuse the information.

This case shows that irrespective of how many parties are involved in a RTI Commission incident, intervention by the Right to Information Commission Sri Lanka can help in solving the issue within a certain time period.

In the case of D. D. J. L. Priyalal v the Geological Survey and Mines Bureau 39 the Appellant made an information request dated 15.01.2019 in relation to the approvals and licensing of sand excavation and transportation which has caused a massive environmental hazard to a nearby waterway (identified within the information request). While the information and designated officers failed to respond, at the hearing before the Commission, it transpired that the PA has provided information relating to the first Point of Information, and made information relating to the second, available on its website. The Appeal was concluded as the information has been provided.

This is another case where the RTI Commission was used but the information was provided beforehand but unknown to the Appellant. The RTI Commission’s intervention in this case helped sort out the issue by providing relevant information required by the Appellant for his case.

In yet another environment related issue the Appellant, by information request dated 23.05.2018 requested several items of information with regard

to the technique of the trench/bund method implemented in peripheral areas of the Kahalla Sanctuary and Lunugamwehera including details of drawbacks in maintenance and costs. Dissatisfied with the response of the PA, the Appellant preferred an appeal to the RTI Commission Sri Lanka. At the appeal hearing, it was noted that the information requested has been provided to the Appellant. The RTI Commission affirmed the response of the PA and moved to conclude the appeal.

The RTI Commission can also be used in cases where the Appellant is not satisfied with the answer given by the PA. In this case it is clear that the Appellant was not satisfied with the answer given even though the answer could have been the truth. However the Appellant went ahead with appealing to the RTI Commission to look into the matter. But had to accept the response given by the RTI Commission.

Department of Wildlife Conservation

In the case of Rahul Samantha Hettiarachchi VS. The Department of Wildlife Conservation 59 The Appellant, by information request dated 2019.07.24 asked: how many identified Elephant Passes there were across the Southern-Expressway from Matara to Hambantota and to Mattala?, how many lands have been allocated in the year 2015 for the proposed Wild Elephant Management Reserve in Hambantota? And such other related information. As the IO and DO failed to respond to the Appellant within the stipulated time. The Appellant preferred an appeal to the RTI Commission. At the appeal hearing, the RTI Commission directed the PA to provide the information in its possession, custody and control to the Appellant. Subject to the direction of the RTI Commission, the Appeal was concluded.

The RTI Commission can be used even in the cases of development connected to Environment as in this case where an information request was made with regard to how many elephant passes there were across the Southern Expressway and how many lands had been allocated in the year 2015 for the proposed Wild Elephant Management Reserve in Hambantota.

Provincial Environmental Authority

Other cases where appeals were made to the Right To Information Commission Sri Lanka include Asela Niroshan Dharmadasa VS. Provincial Environmental Authority (North Western) 68 where the Appellant, by information request dated 2018.12.24 queried as to whether the relevant approval has been obtained from the Provincial Environmental Authority for the construction of a poultry farm in the second part (Udugodagama) of Gurugodawatta in the Ibbagamuwa Pradeshiya Sabha area by the Pussalla Meat Producers (PVT) LTD Gurugodawatta, Udugodagama Nikadalupotha, Head Office - Pelawatta, Battaramulla and as such other related information. Dissatisfied with the response of the PA, the Appellant preferred an appeal to the RTI Commission. At the appeal hearing, it was noted that the PA had already provided the requested information to the Appellant. As such the RTI Commission affirmed the decision of the PA and concluded the appeal.

MAERSK Lanka (Pvt) Ltd

In the case of the Appellant vs MAERSK Lanka (Pvt) Ltd, notice was issued to the Designated Officer, Marine Environmental Protection Authority (MEPA). The RTI Request was filed on 24.01.2020 and the IO responded on 11.02.2020. The First Appeal to the DO was filed on 21.02.2020, and the DO did not respond.

The Appeal to Right to Information Commission Sri Lanka was then filed. The Appellant by the above dated Information Request made to the IO, requested the below information: Debit notes of waste oil removal issued by the respondent (PA) in relation to all ships of the Appellant specifies in Annexure A (annexed therein) in the period from 1st January 2015 to 31st December 2019 and; Waste oil data sheets issued by the Respondent (PA) in relation to all ships of the Appellant specified in Annexure A (annexed therein) in the period from 1st January 2015 to 31st December 2019.

The IO responded on 11.02.2020 stating that the information requested by the Appellant is refused under Section 5 (1) (i) of the Act. The Appellant appealed to the DO. Subsequent to a meeting held between the parties, the PA's General Manager/CEO, wrote to the Appellant on 13.03.2020, stating that the information can be released if the Appellant can provide, the agreement

with Shanika Marine Company related to waste removal from MAERSK vessels and records of waste oil data sheets submitted by Shanika Marine in relation to all MAERSK line vessels.”

The Right to Information Commission of Sri Lanka, responding to this letter on 10.04.2020, the Appellant has stated that the information requested by the Appellant are those that the PA is statutorily obligated to retain, and that its request under the RTI Act is not subject to the precondition of the furnishing of documents to the PA by the Appellant.

Furthermore, the Ministry of Environment and Wildlife Resources had written to the Chairman of the PA on 03.03.2020, to undertake required steps in relation to the RTI request of the Appellant, with a copy to the Ministry of Environment and Wildlife Resources. By undated Appeal addressed to the Commission, the Appellant stated inter alia the following: the information requested by the Appellant is not encompassed within the scope of the exemption contained in Section 5 (1) (i) of the Act, the PA is a statutory authority which is “*obliged by law to ensure the proper disposal of waste removed from ships in such a way as not to affect the coastal ecosystem of Sri Lanka*” and the information request of the Appellant is well within the ambit of public interest as it would “*allow shipping lines to take any available and necessary steps to reduce the effect that it ships may have on the surrounding environment.*”

Central Environmental Authority

In the case of A. B. Stembo v Central Environmental Authority Right To Information Commission Sri Lanka Appeal 249/2018: the Appellant requested information in relation to the report of an inquiry conducted on a mini hydro plant. The PA refused the provision of such information on the basis that the information is related to a pending court case. At the hearing, the Commission highlighted the fact that the mere pendency of a court case does not result in the information requested falling within Section 5 (1) (j) of the Act. As such the Commission ruled that the overriding public interest mandates the disclosure of information and directed the PA to release the information.

Ministry of Megapolis and Western Development on the Port City

The Port City project was yet another issue that caused environmentalists to raise their concerns regarding the destruction caused to the ocean, marine life, coastal erosion and damage to the existing coral reefs. Large quantities of black rock and sand were also mined from the country's natural reserves for the Port City Project.

Environmentalists had raised their concerns that the project was undertaken without adhering to environmental laws and the main aim of the Government seemed to be to set up a luxury zone where the privileged sections of society could live in special comfort under different regulations.

The problems faced by the country's fisherfolk and the impact on the fish breeding areas, if the project went ahead, were ignored. While ignoring these issues raised by environmentalists the Government went ahead with the agreement with the Chinese Government backed company CHEC Port City Colombo (Pvt) Ltd.

Even though cases were filed in court regarding the destruction caused to the environment, the agreement between the Sri Lankan Government and the Chinese Government was not made public.

However after an Appeal was filed at the Right To Information Commission the agreement was released to the party that requested it. This is the first time that the Agreement between the Sri Lankan Government and the Chinese government was released to an outside party.

The RTI request was filed by M. F. A. Mansoor v Ministry of Megapolis and Western Development. The Appellant by request dated 15.11.2018 applied for a copy of the following; A Copy of the Tripartite Agreement together with all Appendices and Annexures signed by the Secretary, Ministry of Megapolis and Western Development, Urban Development Authority and the CHEC Port City Colombo (Pvt) Ltd for the development of a new Colombo International Financial City, replacing the Agreement signed by the GoSL and/or its representatives on 16th September, 2014 for the construction of a Port City, and Copies of all Environmental monitoring reports as specified in the Proposed Colombo Port

City Development Project Supplementary Environmental Impact Assessments of December 2015.

As the IO had not responded to the substantive request, the Appellant lodged an appeal with the DO 05/12/2018. The DO responded on 21.12.2018 stating that the Tripartite Agreement cannot be disclosed due to confidentiality clauses in the Agreement, as informed by the Director Legal Services of the Urban Development Authority (vide letter dated 14.12.2018 marked 05A). The Director Legal Services, UDA, has stated in his letter that by virtue of the aforesaid Tripartite Agreement (Clause 42) strict confidentiality clauses exist and therefore the information is denied in terms of Section 29 (2) (c) of the Right to Information Act No 12 of 2016.

Furthermore, it has been stated that in terms of Section 5 of the Act the disclosure of the information would cause serious prejudice to the economy of Sri Lanka by disclosing premature decisions to change or continue government, economic or financial policies relating to, entering into overseas agreements.

The PA therein further directed the Appellant to contact the Project Director of the Port City Development Project to inspect the other requested documents. The Appellant was directed to contact the IO of the Sri Lanka Land Reclamation and Development Corporation (SLLRDC) as the request relates to the SLLRDC. Dissatisfied with this response the Appellant lodged an appeal with the Commission on 14/01/2019.

The Appellant and the PA were both present for the hearing. The Appellant submitted that there is serious public interest in the disclosure of the information requested given that Sri Lanka had invested USD 4 Billion as capital in the Port City Project in comparison to the Chinese Government which invested only USD 500 million, and had obtained less saleable land in terms of the Agreement which prima facie appears to be detrimental to Sri Lanka.

It was further submitted that there is no evidence of proper independent consultancy obtained on the impact of the project, no statutory supervision has taken place in relation to the project and the only information the public has access to in relation to the project is the 2015 Supplementary Environmental Impact Assessment Report, which provides insufficient insight into the actual situation.

Thus, the Appellant submitted that given the fact that several legal requisites have been overlooked and the project commenced without a proper, lawful agreement in place, the information is requested in order to ascertain the actual nature of the contract. The Commission noted that there is sufficient public interest in the matter and questioned the PA on its stance in this context.

The PA reiterated the response of the DO, dated 21.11.2018 and submitted that the information was denied on the basis that there is strict commercial confidence required to be maintained in respect of the contract and claimed a fiduciary relationship existed, which prevents the disclosure of the information. It was further submitted on behalf of the PA that this is contained in a letter dated 24.06.2019 as well. The PA was also queried as to whether it had requested the consent of the third party to the disclosure of the information under and in terms of Section 29 of the Act on the assumption that Section 5 (1) (i) was applicable. The PA responding in the affirmative stated that one of the parties to the agreement (the UDA) had stated that the information should not be disclosed.

The Commission observed that the wording of the response of the UDA is not in accordance with Section 29 of the Act, and that a third party is required to arrive at its own decision vis a vis the provision of consent to the release of information rather than agreeing or disagreeing with the views of a PA.

The attention of the PA is drawn to the fact that the confidentiality clause in the agreement does not in itself bring into operation Section 5 (1) (d) of the Right to Information Act No. 12 of 2016. In order for the said exemption to apply the PA has to also demonstrate how the release of the information would harm the competitive interests of the third party.

When looking at the above cases where the RTIC has intervened, it is very clear that some relief was provided to the Appellants. Despite the different types of issues raised when requesting for the RTI every one of these cases has a clear conclusion issued by the Right to Information Commission Sri Lanka.

The Port City Project is an exemption in that the agreement details were not disclosed to anybody except the two parties who signed the agreement. But the RTI was able to solve even this exceptional case and have the documents released as requested by the Appellant.

The RTI facility can be used by anybody irrespective of whether it is in regard to a company or an individual. Some Journalists have also used the RTI facility to get the relevant information required for their investigative stories. Journalists reporting on environmental disasters have made use of the RTI facility and succeeded in bringing to light controversial issues and exposed cases that otherwise could have been swept under the carpet.

RTI in India

Neighbouring India is also well known for making use of the RTI facility to solve many cases on a variety of subjects including the environment. With the rise in environment related issues in the country, environmentalists and in some cases even journalists are finding it difficult to get the required information (controversial in some cases) needed. But only some of these people know that the RTI can be used in such instances. There still remain a large group of people who are yet to make use of this effective and efficient facility that can provide relief to many under dire circumstances.

The public need to be well versed in the use of the RTI to make life easy for them in the long run. Looking at the Right to Information Commission Sri Lanka website is one such way to get an idea as to how you can make use of the RTI when needed. However, it is possible that some may not be well versed with the website, or lack the knowledge of how to make use of the website and how to send an application to the RTI when needed. To assist with directions and clarifications, the Centre for Policy Alternatives has set up an RTI help desk hotline that can be contacted during office hours: **0113-030-463**.

■ **Risidra Mendis**

Risidra Mendis : She worked for Sunday Leader till 2009 and then for Ceylon Today from 2011. She has travelled to Malaysia and Singapore on official work and has covered many assignments on a variety of topics over the years for the print media. She writes mostly on issues of environmental and social justice and animal welfare.

Chapter 3

Series of Radio Programs – Knowledge building efforts on RTI and Facilitation through RTI Hotline of CPA - 2021

Summary of the Radio Programs conducted on promoting RTI as a fundamental right

Focus of the Radio Programs	Key Highlights
Improving knowledge on RTI Law and the process of exercising the fundamental right of access to information.	Proactive involvement of RTI can be used to reveal information about decisions of public authorities and it enables citizens of Sri Lanka to more fully participate in public life through combating corruption and promoting accountability and good governance.
Accessing information through the Right to Information Law that would otherwise have not been disclosed.	Imminent threat of facing injustice due to lack of information was tackled by accessing information needed to support relevant litigation.
Accessing Mahanama Thilakarathne Report on Free Trade Zone Killing of Roshen Chanaka in 2011 using the RTI Act.	Ability to use electronic forms to request information under the RTI Act. Lack of proactive measures from public authorities (PAs) in responding to information requests online.
Recognition and facilitation of exchange of data and messages and other communications in electronic forms in accordance with the Electronic Transactions Act, No. 19 of 2006.	Use of the RTI Act to access and obtain information pertaining to the protection of labour rights of FTZ workers.

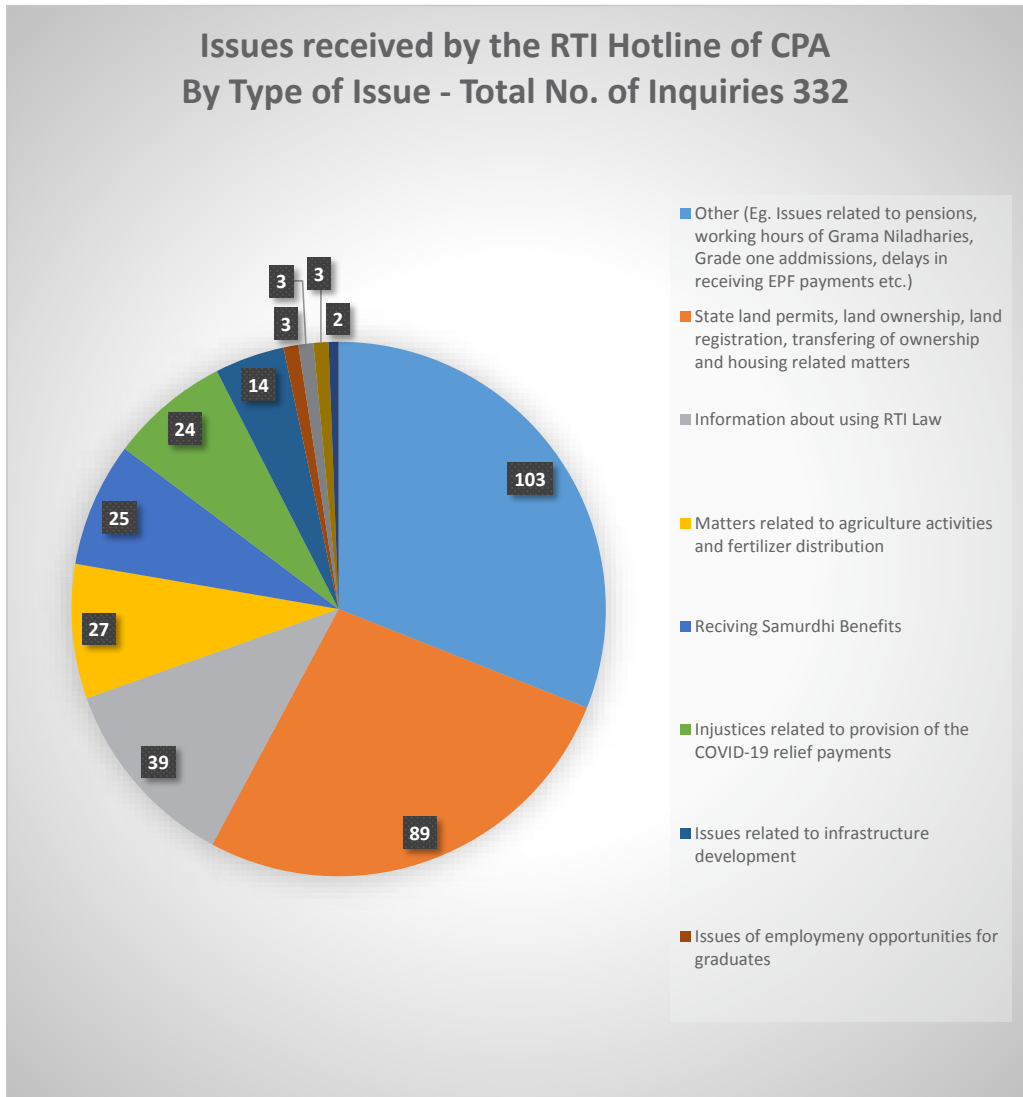
<p>Lack of knowledge of the public about the RTI Act.</p> <p>Not exploring all available steps provided by the RTI Act to access and obtain information.</p> <p>Adverse impact of the disinclination of public authorities to divulge information on initial information requests.</p>	<p>Incorrect application of and misusing the provisions of Section 5 of the RTI Act (Denial of Access to Information) to maintain the deep-rooted culture of ‘secrecy’ of information by some public authorities and refuse information requests from citizens.</p> <p>Innovative system established by the Naula Divisional Secretariat¹ Office by respecting the principle of “Proactive Disclosure” to ensure access to information by citizens.</p>
<p>Understanding the reality of issues related to the agriculture of Nuwara Eliya district through official data and information obtained via the RTI Act.</p> <p>Challenging decisions and building arguments only on evidence-based information received using the RTI Law.</p>	<p>The significance of studying the RTI Law by journalists and gaining more comprehension when raising crucial issues through media and releasing such information to the public domain.</p> <p>The importance of media as an influential tool to promote effective use of RTI Law and make information obtained through the RTI Act publicised, encouraging others to believe in the RTI as a fundamental right.</p>
<p>Best practises from communities in strategic use of RTI Law to access information on matters related to their lives and livelihoods.</p> <p>How communities suppressed for years without facilitating access to information on land ownership, matters related to waste disposal, local development plans and the use of budget allocations have been able to use RTI Law in obtaining important information they needed.</p>	<p>Some communities have formed movements as a result of the strength they gained from the RTI Law to access information, raise voice against injustices, influence decision makers, reveal injustices in the public domain. Eg: Actions taken by Paanam Paththuwa Surekime Sanwidanaya – emerged as a result of the RTI law.</p> <p>One concern related to the effective use of RTI is that many citizens do not send their RTI applications to the correct Public Authority to access information causing either long delays or not receiving information at all.</p> <p>More knowledge building efforts at local, provincial and national level is important to promote the use of RTI Law.</p>

1 <http://naula.ds.gov.lk/index.php/en/about-us/overview.html>

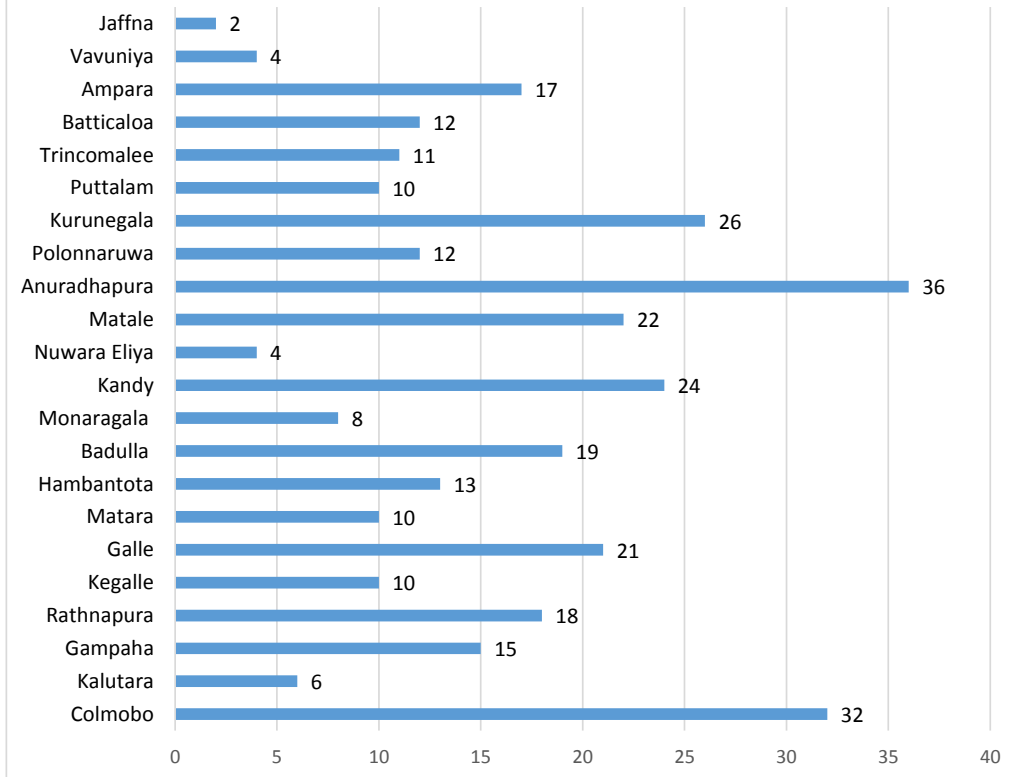
<p>RTI as a tool that empowers communities to 'ask questions from authorities', 'challenge inappropriate decisions of public authorities' and how effectively the communities can actively engage in governance.</p>	<p>Corruption in the public sector can be curtailed with the effective use of RTI Act.</p> <p>Citizens can use RTI to ensure transparency and accountability of decision makers and hold them to account when they act irresponsibly.</p> <p>Establishing a culture of respecting the principle of "Proactive Disclosure" by public authorities instead of maintaining the ingrained attitude of 'secrecy of information'.</p>
<p>Effective use of RTI Law to unveil the grievances faced by communities, mainly women in the Microfinance debt trap.</p>	<p>Adverse impact of unregulated Microfinance service providers and higher degree of exploitation of rural communities through microfinance loan schemes. No robust action due to lack of access to credible information on the legality of their operations and ineffective supervision on the part of the Central Bank of Sri Lanka.</p> <p>Violation of language rights of communities and the use of unfair contract terms to exploit poor communities in the guise of providing financial assistance to develop entrepreneurships of low-income communities.</p>

<p>Lack of comprehension of the objectives of the RTI Law on the part of public authorities and undue delays in receiving responses to RTI requests.</p>	<p>Experiences of long delays and the tendency to refuse disclosing of information for initial information requests to Information Officers in many public authorities.</p> <p>Lack of training on the RTI law and well-designed sensitization programs for officials of public authorities on how to manage information requests from citizens and the need for a change in the deep-rooted attitude of secrecy of information that affect the lives and livelihoods of citizens.</p> <p>Lack of proactive disclosure has compelled the public authorities, under the RTI Act to adopt at least the reactive-disclosure approach but even so, the manner in which public authorities act has mostly led to having to reach the RTI Commission level to access information.</p>
<p>Need for robust policy framework and implementation strategies to translate the objectives of the RTI Law into reality.</p>	<p>In a context people had no right to ask for information and question authorities for many decades, the introduction of the RTI as an embedded element of fundamental rights in the Constitution is per se a landmark paradigm shift.</p> <p>Timely response to emerging challenges and issues related to policy and practice related matters in exercising the RTI is essential and thus, citizens would be able to more fully participate in public life through actively combating corruption and promoting accountability and good governance.</p>

Issues and Inquiries received at the RTI Hotline of CPA based on the Radio Programs conducted on RTI - 2021



Inquiries received by the RTI Hotline of CPA By District- Total No. of Inquiries 332



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