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**ANALYSIS OF LEGAL FRAMEWORK AND THE  
STRATEGIES PRACTICE BY THE SRI LANKAN  
GOVERNMENT TO IMPLEMENT  
RIGHT TO INFORMATION ACT, NO. 12 OF 2016 IN  
SRI LANKA**

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**ABSTRACT**

Access to information act may be a novel experience for Sri Lankan society, but although Sweden has passed a bill of right to information on 1766. After that many more countries acceded this fundamental right to their constitution to bring a change to their political culture and the civil society. However, Sri Lankan constitution has accepted right to freedom of expression under the article of 14 (1). But it does not contain any clause on right to information and instead of that public information has a number of legal provisions that limit the right to information. However due to pressure of political parties and political organizations, president Maithripala Sirisena's national government decided to include article 14 A of right to information for the 19th amendment which has certified on 28 of April 2015. Anyhow afterwards Sri Lankan present government decided to empower these legal provisions from passing an act on 4th of August 2016 known as Right to information act, No. 12 of 2016. However now there is an argument about this act in the present Sri Lankan society. At this backdrop it is important to analyze what is the legal framework of this act and what are the strategies practicing by Sri Lankan government to implement right to information act, No. 12 of 2016 in Sri Lanka. This paper is based on the secondary data which obtain by articles, research papers, books, websites and other extra.

**KEY WORDS:** *Citizen, Opinion, Right to information, Sri Lanka, Act*

## LITERATURE REVIEW

There are many more literature which related with concept of human right as well as fundamental right of Sri Lanka. So according to Kodikara, 2015 he has described that in 1946 united nations general assembly adopted resolution No. 59 (1) which recognized freedom of information as a fundamental human right. Also Sampath, 2016 explained in his article that the Sri Lankan constitution has accepted the right to freedom of expression under the article of 14 (1). But he deeply explained that it does not contain any clause on right to information and instead of that public information has a number of legal provisions that limit the right to information. However Sarvanathan, 2016 mentioned in his article that right to information act should be incorporated into the curriculum of the training programs for the public administrative officials: national, provincial, and local. Anyhow according to the 13 section of this act. Also he has explained that the Sri Lankan government appointed a commission on 3<sup>rd</sup> of February 2017 and launched commission website as [www.rti.gov.lk](http://www.rti.gov.lk). The above introduction and literature review concludes how important is to identify the legal framework of this act and what are the strategies practicing by Sri Lankan government to implement right to information act, No. 12 of 2016 in Sri Lanka.

### 1.0 INTRODUCTION

#### 1.1 Concept of Human Rights

Human rights are the basic principals that every human being deserves from born until the death. Also human rights will not be diverse according to the religious view, skin colour, sexuality, residency, nationality and etc. The main feature of human right is that anyone couldn't take away that from a human being. But under the restriction it can be limited from the government. As a example interest of National security (<http://www.ohchr.org>). There are seven basic characteristic of human rights. Those are Inherent-Human rights are inherent, because it has not been provided by any person or authority. Also it can't be bought, earned or inherited, Fundamental, Inalienable, Imprescriptibly, Indivisible, Universal and Interdependent.

When considering the history of Human rights the first chapter opened by "Achaemenid Empire" in Cyprus through "Cyprus cylinder" on 539 B.C. Also "Ashoka" empire in India during the period of 268 to 232 BCE adopted Buddhist concepts related with human rights to protect and develop democracy. During his time he prohibited slavery, religious discrimination, and cruelty against both humans and animals (<http://www.crf-usa.org>). Recently there are few landmarks of Human right concept as bellow mentioned.

- The Magna Carta of 1215
- The Habeas Corpus Act of 1679

- The Bill of Rights of 1689

Also outrage of Second World War made the protection of human rights in the international system. This was drafted by representatives in various kind regional organizations and countries. However this was drafted by the united nation general assembly its third session on 10<sup>th</sup> of December 1948 as resolution 217 at the Palais de Chaillot in Paris, France. On that historical day out of 58 members of the united nations, 48 voted in none against (<http://www.un.org>). This was consisted with 30 articles and also this was the first step to design the international bill of human rights, which was completed in 1966, and came into force in 1976. Above mentioned thirty articles can be divide as bellow:

- Articles 1—2 established the basic concepts of dignity, liberty, equality, and brotherhood.
- Articles 3—11 established other individual rights, such as the right to life and the prohibition of slavery.
- Articles 6—11 refer to the fundamental legality of human rights with specific remedies cited for their defense when violated.
- Articles 12—17 established the rights of the individual towards the community (including such things as freedom of movement).
- Articles 18—21 sanctioned the so-called "constitutional liberties", and with spiritual, public, and political freedoms, such as freedom of thought, opinion, religion and conscience, word, and peaceful association of the individual.
- Articles 22—27 sanctioned an individual's economic, social and cultural rights, including healthcare.
- Article 25 states: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services."
- Articles 28—30 established the general ways of using these rights, the areas in which these rights of the individual can not be applied, and that they can not be overcome against the individual (<http://www.un.org>).

Presently many scholars are arguing that this is binding with the customary international law. However now it has been translated to 500 languages. Also the united nation introduced special standards for for women, children, persons with disabilities, minorities and other vulnerable groups, ([www.equalityhumanrights.com](http://www.equalityhumanrights.com)).

Also there is a discussion of the categories of Human rights. Anyhow according to some scholars human rights divide as political and civil rights. Not only that but also Zech-French scholar "Karel Vasak" mentioned that there are three generations of human rights. Those are,

- First generation - civil and political rights (right to life and political participation)

- Second generation - economic, social and cultural rights (right to have a job)
- Third generation - solidarity rights (right to peace, right to clean environment).

Out of these generations, the third generation is the most debated and lacks both legal and political recognition. This categorization is at odds with the indivisibility of rights, as it implicitly states that some rights can exist without others. Prioritization of rights for pragmatic reasons is however a widely accepted necessity. The concept of human rights influenced by international law, global and regional institutions, states and non government organizations.

## 1.2 Universal Declaration and International scene of Right to Access

Right to access can be defining as freedom of information held by public organizations such as departments and ministries. It is a part of the fundamental right of freedom of expression, as recognized by Resolution 59 of the UN general assembly adopted in 1946, as well as by article 19 of the universal declaration of Human Rights (1948). It has been mentioned as “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”. It has been defined by other major instruments such as,

1. International Covenant on Civil and Political Rights (1966) and
2. American Convention on Human Rights (1969)

Above legal documentaries clearly explain that all the decisions and information which related to public organization have to be public. But they have mentioned that it have to be limited if it is harm for the national security and privacy. Over the past decades there were number of countries which have adapted right to information law for their constitution. When considering it that the first RTI law was adopted by Sweden in 1766, it has largely motivated by the parliament's interest in access to information held by the King ([www.unesco.org](http://www.unesco.org)). Finland is the second country which adapted right to information act to their country on 1951. And also United State of America has passed this law in 19766, and Norway passed this law on 1970. After that several European countries passed this law (France and Netherlands 1978, Australia and New Zealand 1982, Canada 1983, Columbia and Denmark 1985, Greece 1986, Austria 1987, Italy 1990). By 1990, the number of countries with RTI/FOI laws had climbed to 14. The fall of the Berlin Wall and the rapid growth of civil society groups demanding access to information - about the environment, public health impacts of accidents and government policies, draft legislation, maladministration, and corruption - gave impetus to the next wave of enactments, which peaked in the late 1990s and early 2000s. Also

between the period of 1992- 2006 nearly 25 countries in Central and Eastern and the former Soviet Union passed right to access law. During that same period through to the present, at least nearly 51 countries in other regions of the world enacted laws. However according to right to information organization up to September 2012, 93 countries have been adopted right to information act to their constitutions ([www.right2info.org](http://www.right2info.org)). Further, the relevance of FOI has also been highlighted in the Brisbane Declaration on Freedom of Information: The Right to Know (2010), the Maputo Declaration on Fostering Freedom of Expression, Access to Information and Empowerment of People (2008).

## 2.0 DISCUSSION

### 2.1 Context and the legal framework of Right to Information Act in Sri Lanka

Human Rights is a global context and fundamental rights, are which the countries have been adopted from the Universal Declaration of Human Rights. Fundamental rights are therefore those rights which are guaranteed by a constitution of a country for their citizens. The fundamental Rights declared and recognized by the constitution of Democratic socialist republic of Sri Lanka “shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied save in the manner and to the extent provided by the constitution” (Sri Lankan constitution, 1978). These rights are set out in chapter three of the constitution and it can summarize.

Passing the Bill of Right to information is result of struggle of a political phenomena in Sri Lanka. Under the restriction of universal declaration of human rights (1948), Sri Lankan government also adopted fundamental rights to the constitution of 1978 as above mentioned. Not only that but also Sri Lankan government has accepted the right to freedom of expression under the article of 14 (1) in the third chapter. But it does not contain any clause on right to information and instead of that public information has a number of legal provisions that limit the right to information (Sarvanathan, 2016).

After few years Sri Lankans print media industry understood the importance of the Right to Information Act and conducted several campaign to take it to the Sri Lankan constitution. After that prime ministerial committee drafted Freedom of Information Bill on 2004 and it was approved by the Sri Lankan cabinet and tabled in parliament. Anyhow the bill was not debated. However The minister of justice Milinda moragoda revised that bill on 2010 and as the general election intervened the bill was never presented to parliament. In 2011 Mr. Karu Jayasuriya presented the freedom of Information bill which was drafted in 2004 as a privet members bill. As per the previous situation this was not be debated in the parliament. Later on “The Lessons Learnt and Reconciliation Commission (LLRC)” recommended in their final report in 2011 that the government must introduce Right to

Information Act ([www.slpi.lk](http://www.slpi.lk)). After a difficult journey finally the Sri Lankan government enacted the Right to Information Act in 4<sup>th</sup> of August 2016. This Act does not give any right to the citizens. It only provides a process to exercise for the article 14 A of right to information included in 19<sup>th</sup> amendment which has certified on 28 of April 2015. However in the preamble of the Right to information Act express duty of it as bellow mentioned:

*“Its provide for the right of access to information: to specify grounds on which access may be denied: to establish the right information commission : to appoint information officers: to set out the procedure and formatters connected therewith or incidental there to” (Right to Information Act No. 12 of 2016, 2016).*

Presently the Minister in charge of the subject of Mass Media is given the responsibility of effectively implementing the Act. However presently this act is popular as “RTI ACT” in Sri Lanka. The web site of Sri Lankan press institute clearly explain what kind of information that the citizens can obtain through the right to information act No12 of 2016 as bellow mentioned;

*“The Asphalt used in the new road to your neighbour hood which is under construction seems to be sub-standard. Do you know that you have a right to request for a sample of the Asphalt to test its’ quality? Do you also know that you have a right to know why your child was not accepted to the closest public school? Not only that, you can ask the private company which operates a bottled water plant in your neighbourhood for its environmental safety compliance record provided that the company has at least twenty five per centum of its shares controlled by the State and/or a public corporation” (www.slpi.lk, N.D).*

Right to information act give the citizens to access information held by public authorities completely or partially. This freedom is supported as a constitutional right in many countries. This is also known as open record or ‘sunshine laws’ which giving parth to publish and protect transparency of the government. According to this law public officers have to give any information which requested by the citizens. But according to the second chapter, clause 5 (a-n) it mentioned the condions which right of access may be denied. Some of them are:

- Personal privacy
- National security
- Such information would cause serious prejudice to the economy of Sri Lanka (exchange rates or the control of overseas exchange transactions, the regulation of banking or credit, taxation)
- The information which in cabinet memorandum in relation to which a decision has not been taken
- Information is required to be kept confidential by reason of the existence of a fiduciary relationship (Act No.12 of 2016, 2016).

According to the act the accessible information include with printed documents, computer files, letters, e-mails, photographs, contracts, samples, models and sound or video recordings. Also in part 4 clause 11-22 clearly explain that the government establish a commission of right to information with five members. The duties and functions of the Commission shall be,

- (a) To monitor the performance and ensure the due compliance by public authorities, of the duties cast on them under this Act;
- (b) Make recommendations for reform both of a general nature and those in regard to any specific public authority;
- (c) Issue guidelines based on reasonableness, for determining fees to be levied by public authorities for the release of any information under this Act;
- (d) Prescribe the circumstances in which information may be provided by an information officer, without the payment of a fee;
- (e) Prescribe the fee Schedule based on the principle of proactive disclosure, in regard to providing information;
- (f) Co-operate with or undertake training activities for public officials on the effective implementation of the provisions of this Act;
- (g) Publicize the requirements of this Act and the rights of individuals under the Act;
- (h) Issue guidelines for the proper record management for public authorities (Act No. 12 of 2016, 2016).

Also according to the act within three months after the date of coming into operation of this act, every authority shall appoint one or more officers as information officers & one officer have to be appoint to hear apples. In fifth chapter clause 23 (b) clearly express till the appointing the head of that authority have to be practice the duties of the information officers. According to the clause 24 any citizen can obtain information in any organization under the written request. Due to any reason if the citizen is not able to provide a written request the responsibility of the information officer is to written the request which is giving by the citizen in orally ([www.rti.gov.lk](http://www.rti.gov.lk)). Also within fourteen (14) working days the information officer must provide the requested information by the citizen. But if the request is interact with the life and personnel liberty of the citizen, the response to it shall be made within forty eight hours since the receipt of the request. Also according to clause 26 every authority must display bellow information either in their website or in the conspicuous place.

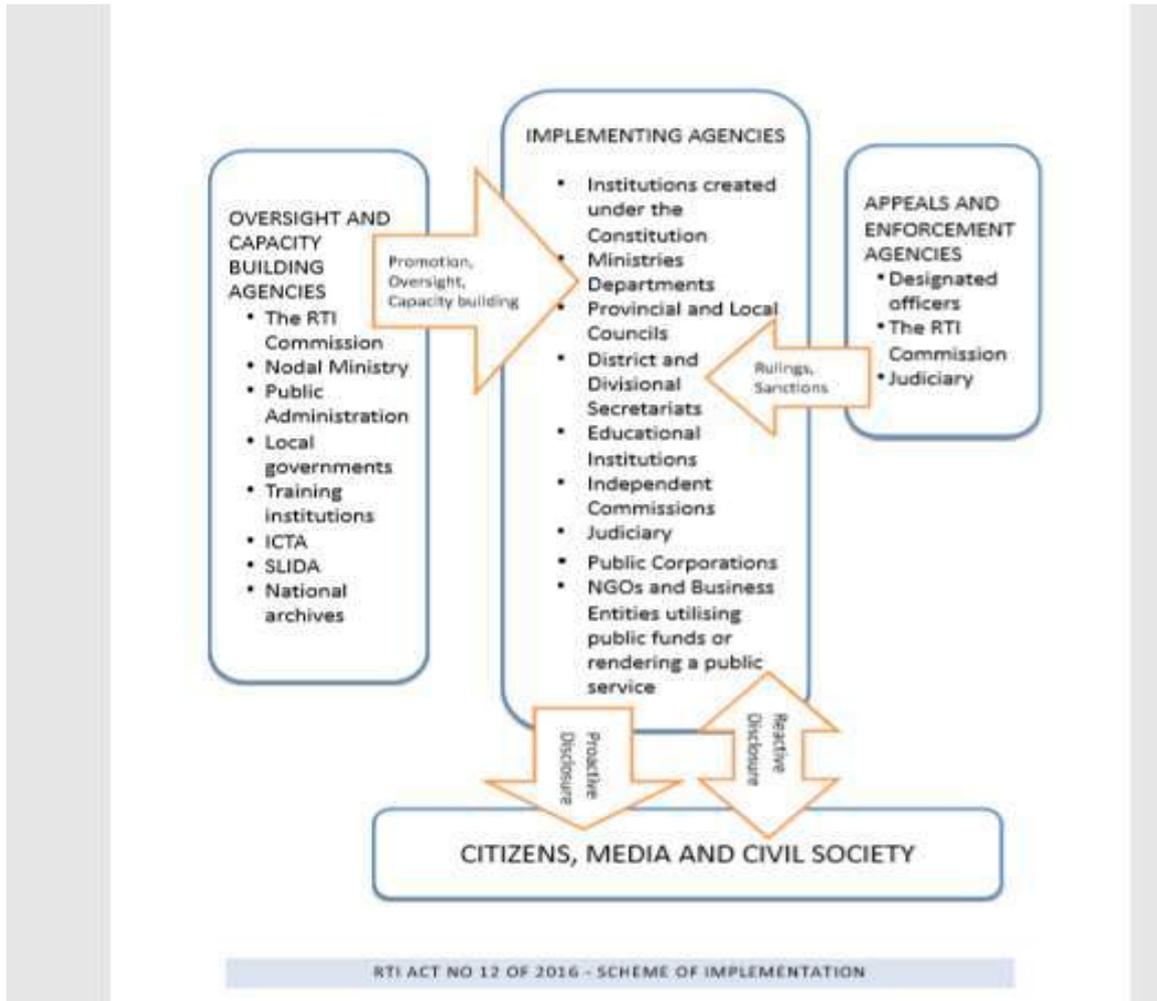
- (b) Contact details of the information officer;
- (c) Contact details of the designated officer;
- (d) Fees to be charged for obtaining any information from such public Authority. ([www.rticommission.lk](http://www.rticommission.lk)).

Also it clearly explain the citizen have a right to get relevant work, documents, records, take certified

copies and take certified samples of material. Bellow figure 01 express the scheme of implementation of

right to information No.12 of 2016.

**Figure 01: Scheme of implementation of right to information No.12 of 2016.**



(Source: [www.rti.gov.lk](http://www.rti.gov.lk))

**2.2 Strategies practicing by Sri Lankan government to implement Right to Information Act. No.12 of 2016 in Sri Lanka**

However, Sri Lankan government got many positive steps to implement this act. When considering on it the Sri Lankan government established special RTI Unit under the ministry of mass media in colombo, to ensure effective implementation of the RTI Act. Also on the basis of 61 indicators designed by centre for law and democracy of Canada, the law of Sri Lanka stood 3rd position in RTI law rating among the 111 countries of the world. This clearly express that how strongly designed this act in Sri Lanka by the government. Also the unit of RTI opened a official web site ([www.rti.gov.lk](http://www.rti.gov.lk)) and the citizens' can obtain any kind of details from this website (official website of commission of right to information is linked with this). Not only that but also another positive step of Sri Lankan government is to implement right to information act is establishing right to information commission at colombo 07. Also there the

government has opened a official web site of the commission and the citizen can contact it through [www.rticommission.lk](http://www.rticommission.lk). However the citizen can obtain any kind of details from this website such as regulation, rules and fees of appeals, rules on inquires and constitutional provisions.

Also according to the designed act the commission on right to information shall be consist with five persons appointed by the president upon the recommendation of the constitutional council. Those officers were already appointed by the government and those are, Mr. Mahinda Gammampila (Chairman), Justice P.R Walgama (member), Mrs Kishali Pinto-Jayawardena (member), M.R. S.G. Punchihewa (member) and Dr. Selvy Thiruchandran (member) ([www.rticommission.lk](http://www.rticommission.lk)). This organization is statutorily independent body which has powers to hold inquiries into complaints on non- compliance and to recommend disciplinary actions against offending officials (Source: [www.rti.gov.lk](http://www.rti.gov.lk)). However after adopting this act the main responsibilities of government is to establish the

commission, the RTI unit under the ministry of finance and mass media as well as appointing the officers according to the act within six months. However up to now more of the objectives were

fulfilled by the government and this is kind of a positive situation. Also the government has introduced a draft for the citizens' to request information from government authorities (table 01).

**Table 01: Application of Information Requests by citizens.**

| Reg. No. | Application Date | Name and Address of Requestor | Contact No. | Type of Information (in brief) | Manner in which information is requested under s. 27 (3) of the Act | Date of Receipt letter | Date of Decision Letter | Fee | Date Information Provided | RTI Form 05 date if information is denied |
|----------|------------------|-------------------------------|-------------|--------------------------------|---|------------------------|-------------------------|-----|---------------------------|---|
|----------|------------------|-------------------------------|-------------|--------------------------------|---|------------------------|-------------------------|-----|---------------------------|---|

(Source: www.rti.gov.lk)

Also presently the under the consideration of ministry of finance and mass media has arranged a series of awareness workshops on 8<sup>th</sup>, 7<sup>th</sup>, 3<sup>rd</sup> of August and 16<sup>th</sup> of July in 2018 regarding right to information act based on divisional sectarian level. The main objective of this workshop is to aware the government officers as well as community leaders about right to information act. Also parallel to "World Right to Know Day" which schedule to held on 28<sup>th</sup> of September 2018, right to information unit in ministry of finance and mass media has decided to organize "Right to Know week". So the unit has designs some activities for the citizens to aware of right to information act. Some of them are:

- Conducting debating and essay competition for all island school childrens
- Conducting international conference regarding the right to information act

(Source: www.rti.gov.lk)

Also after adopting this act the citizens have solved their issues using this act. As a example "Yakawawa" is rural village which situated in Anuradhapura. The villagers of "Yakawawa" were suffered because of lack of water supplying. However, the government has started project to supply water for the villages, but after a few months it was terminate. Afterthat by using this act the villagers were able to restart this project and fulfill their needlessness. Another victory that citizen got through from right to information act is renovation a "Hathamuna road" in " Unagala Vehera" village. According to present situation there are lots of appeals which requested by citizens for information from authorities. Bellow chart 02 clearly express that.

**Chart 02: Details of information requests by citizens**

|   | Quantity |
|---|----------|
| Quantity of registered requests by citizens | 214      |
| Responded requests by the commission        | 176      |
| Rejected requests                           | 12       |
| The requests which are not applicable       | 8        |

(Source: www.rti.gov.lk)

Finally above analysis concludes that the government taking many positive steps to implement and empower right to information act in Sri Lanka.

**3.0 CONCLUSION**

As a overall the study reveals that the Sri Lankan government practicing positive strategies to implement right to information act, No. 12 of 2016 in Sri Lanka. Also when examine the legal framework of the act it clearly express it has built up with strong restrictions. Although the above chart explain commission of right to information have been able to practice in a good manner for the requests which come through the citizens. Finally I recommend that the present government must aware the citizens about this act, regarding the commission as well as about the RTI unit through media.

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