



Commonwealth Human Rights Initiative

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Press Statement

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Maja Daruwala

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CHRI welcomes the efforts underway in Sri Lanka to amend the Constitution in order to insert *inter alia* a provision recognizing people's right to access information (RTI). The recognition of RTI of not only natural biological persons but also artificial juridical entities such as corporations and associations and trade unions, is laudable because it is in tune with international best practice standards on information access laws.

However according to the current formulation of Draft Article 14A, RTI may be exercised only against public authorities such as ministries, departments, Parliament, courts and local authorities but not against any private body. In the 21st century several functions performed by the State, earlier, are being transferred to private bodies. There is no reason why private sector entities that perform public functions such as providing education or healthcare or transport and communications facilities should be left out of the ambit of people's RTI. Similarly, RTI must be available against any private body that utilises public funds or controls public assets such as land or infrastructural facilities. Transparency is the minimum requirement for people to be able to demand accountability from such private bodies when their actions impact upon their well being. CHRI calls upon civil society actors to impress upon Parliament the need for enabling people to demand access to information from private bodies as well especially for the protection of any of their rights recognized in law.

Further, some of the restrictions placed on RTI are overbroad, vague, outdated and wholly unnecessary. While it is reasonable to protect the confidentiality of sensitive information if disclosure will substantially harm national security or public health and safety or privacy of any person, it is entirely unjustified to prevent disclosure on grounds of protecting 'morals' or simply because 'information' has been received in confidence from any person. There can be no objective definition of 'morals' agreed upon by everybody even within a single generation let alone across multiple age groups. Preventing access to information on the ground that confidentiality was requested by a person would encourage the unreasonable practice of seeking all information from other persons 'in confidence' in order to prevent their disclosure to others. Further, parliamentary privilege must not become a ground for restricting access to information for two reasons-

- a) being the authorized representatives of the people, MPs cannot claim any greater privilege than what is enjoyed by the principals, namely, the people themselves; and
- b) conversely, all information that an MP can obtain must be accessible to the very people who elected them and authorized them to sit, speak and act in Parliament.

Similarly, making 'reputation' of other persons a ground for restricting RTI will only result in curbing people's constitutionally guaranteed right to freedom of speech and expression and its concomitant - the freedom of the press. There should be no restrictions on the dissemination of any information obtained through the exercise of

55A, Third Floor, Siddarth Chambers, New Delhi – 110 017, T +91 11 4318 0200, F + 91 11 2686 4688

info@humanrightsinitiative.org, www.humanrightsinitiative.org

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RTI. All these restrictions unreasonably curtail people's fundamental rights and must be dropped from the amendment proposals.

CHRI calls upon civil society actors in Sri Lanka to demand the roll back of these regressive restrictions on their RTI. Further, Draft Article 14A has not been placed in the public domain for obtaining people's views. As RTI is an empowering right, people must be involved fully in its formulation as it is their right. CHRI urges the Government to engage the people of Sri Lanka through a widespread consultative process on the language and contents of Draft Article 14A.

Sri Lanka could do well by avoiding half-hearted measures while incorporating a crucial fundamental right like RTI into the Constitution. No other country in South Asia has been parsimonious in guaranteeing RTI to its people.

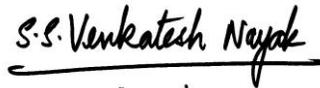
For more information please contact:

Venkatesh Nayak, Programme Coordinator, Access to Information Programme
(venkatesh@humanrightsinitiative.org)



Maja Daruwala

Maja Daruwala
Director



S.S. Venkatesh Nayak

Venkatesh Nayak
Programme Coordinator, ATI

