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Sri Lanka: A State Minus Information

Ravindra Ranasinha investigates in this article of how the citizen is barred of **right to information** and the dictatorial practices of those who are in governance stifling the free flow of information through ruthless action against the media. The deterioration of democracy in the country is painted with vivid examples and brings out the fact that State has determined to exist only with its own ideology leaving no room for constructive criticism, a result of autocracy.



Sri Lanka is extraordinarily stifling the right of its citizens to know of what is going on in the governmental sphere. The immediate source of information people have is the media and the few media institutions and personnel who provide alternative perspectives are now caught in the iron hand of the State. Therefore, serious self-censorship is visible in the country and one cannot find the difference between the stories given by the State and the private media. There is a cry for right to information among the masses but the non-democratic and irresponsible behavior of the people's representatives have never brought any positive action even to pass a law enabling the people to have the right to access official information. This gives a bleak picture of prevalent governance and corruption in the country. The people's participation in promoting transparency is thus devalued and one could see the misuse of public funds and property for the benefit of the elected representatives and therefore, it is high time to pass a law to this effect making the Government more accountable. Such a law will also make it much easier for socially responsible, pro-active citizens and the media to help protect the people's rights.

In 2004, the Supreme Court of Sri Lanka held that the freedom of speech and expression, including publication, guaranteed by Article 14(a) of the Constitution, to be meaningful and effective, should carry within its scope an implicit right of a person to secure relevant information from a public authority in respect of a matter that should be in the public domain and that it should necessarily be so where the public interest in the matter outweighs the confidentiality that attaches to the affairs of State and official communications. The Court held that a bare denial of access to official information amounts to an infringement of the rights guaranteed by Article 14(a).¹

The Government of Sri Lanka ratified the International Covenant on Political and Social Rights as far back as 1980 and, therefore, there is no legitimate excuse for the government for not making whatever new laws or amendments to existing laws that are required to implement the provisions of this Covenant. Lack of such a law has allowed free rein to politicians and public servants to indulge in all kinds of irregularities and misuse in relation to the expenditure of public funds, including criminal misappropriation, fraudulent investments and a whole host of related abuses.

It is especially important that the media should have the right to secure whatever information they require to keep the public informed of important facts which may have been suppressed, as invariably happens, regarding those highly questionable enterprises which are promoted by politicians and their officers for their personal gain, but under the guise of public demand. The need for timely access to information by the media is paramount when it comes to the critical study of project proposals and their viability, examination of intentionally skewed specifications and tender documents, evaluation of tenders, questioning of post-award modifications to tender conditions in favor of selected parties at the expense of the public, and so on.

In one Indian example, a private citizen applied for details of a project undertaken by a State government.

Several malpractices were detected, including the payment of salaries to non-existent workers. The persons involved in the fraud were later prosecuted. In another example, a peanut seller observed that the official car of a government officer was always on the run. The peanut seller applied for a copy of the car logbook which indicated that several unauthorised trips had been made. On the evidence thus revealed, the officer had to reimburse to the government the cost of all his unauthorised trips.

As Edirisinha² has noted, 'One of the major weaknesses in governance in Sri Lanka is the absence of transparency, and a strong culture of authority and secrecy rather than a culture of justification and transparency.'

Let us ask this question: Why freedom of information is important for the public?

"Information is the oxygen of democracy. If people do not know what is happening in their society, if the actions of those who rule them are hidden, then they cannot take a meaningful part in the affairs of that society. But information is not just a necessity for people — it is an essential part of good government. Bad government needs secrecy to survive. It allows inefficiency, wastefulness and corruption to thrive. Information allows people to scrutinise the actions of a government and is the basis for proper, informed debate of those actions."³

The Constitution of the Democratic Socialist Republic of Sri Lanka contains provisions which have a bearing on the mass media — both print and electronic. Article 10 of the Constitution guarantees to every person the freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice. There are, on the other hand, fundamental rights recognised by the Constitution which are available to the citizen of Sri Lanka only. The freedom of speech and expression including publication is one of them. Article 14 (1) (a) guarantees to every citizen the freedom of speech and expression including publication. However, this guarantee is subject to restrictions that may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence. Moreover, this freedom is also subject to restrictions that may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.

While the right to information is not specifically referred to in the constitution, some judgments of the Supreme Court, which functions as a constitutional court, have held that the right to information is implicit in the freedom of speech and expression.

Furthermore, in recent years, because of the ethnic conflict, the country has often been governed under a state of emergency. When a state of emergency is in force, the President is empowered to promulgate emergency regulations. Many of these regulations provide for censorship and restrictions on movement and information which have a serious bearing on the public's access to information. A trend in Sri Lanka is for such regulations often to be "overbroad" thereby preventing access to a wider range of information than may actually be warranted in the interests of national security.

The acute need for freedom of information legislation in Sri Lanka is also highlighted by the rising levels of corruption. In Transparency International's annual Corruption Perception Index, Sri Lanka has dropped from the 52nd least corrupt country in 2002 to 84th in 2006. This can be traced directly to the absence of effective freedom of information legislation in Sri Lanka, for as noted above, in the absence of information it is difficult to ensure public accountability, the lack of which leads to higher levels of corruption.

In India, although several States and Union Territories had passed their own right to information legislation, a national RTI law was passed in May 2005, which promised "to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority..." The passage of the landmark Right to Information (RTI) Act had far-reaching implications — the Act has the widest possible reach covering the Central and State governments, Panchayati Raj institutions (the third tier of governance), local bodies, and the recipients of government grants. Prime Minister Manmohan Singh acknowledged the power of the new law, stating that "In a nation synonymous with corruption and nepotism, citizens will be able to question the decisions of those in power and hold them to account. [The right to information] is a right that has the potential to shake the foundations of our very democracy and bring to book our elected representatives and bureaucracy."

There has long been recognition of the need for legislation on the freedom of information in Sri Lanka. The Committee to advise on the Reform of Laws affecting Media Freedom and the Freedom of Expression in 1995, chaired by RKW Goonesekere, recommended the enactment of a freedom of information of act and the inclusion of the right to information in the draft Constitutions which were being considered at the time. It recommended the following formulation "This includes the freedom to seek, receive and impart information and ideas, either orally, in writing, in print, in the form of art or through any other medium of one's choice. The current administrative policy appears to be that all information in the possession of the government is secret unless there is good reason to allow public access. This policy is no longer acceptable in view of the reasons adduced above. On the other hand, law reform which allowed for the principle that all information in hands of the government should be accessible to the public unless there is good reason to make it secret would also be inappropriate."

The introduction of the Bill was not pursued. In the years that followed various civil society groups engaged in serious discussions on alternative freedom of information legislation. During the period of co-habitation between President Chandrika Kumaratunga and Prime Minister Ranil Wickremesinghe, a space emerged which civil society groups decided to exploit. The government indicated willingness to revive the initiative to introduce a Freedom of Information Act. Its initial draft was conservative. The Editors Guild, Free Media Movement and the Centre for Policy Alternatives presented an alternative draft which was more in keeping with international best practice. Thereafter a series of meetings were held under the chairmanship of the Prime Minister after which a compromise third draft was agreed to. This draft was presented to and approved by the Cabinet of Ministers in February 2004. Unfortunately, Parliament was dissolved soon afterwards as the cohabitation arrangement collapsed. Further progress on the enactment of this important piece of legislation was stalled.

As a result, freedom of press and access to information had to face uneven and inconsistent realities in Sri Lanka. Free, independent journalism and unfettered access to information of public interest became virtually non-existent in this country and continuous threat could be seen on the lives of journalists, stifling of dissent, and

refusal to release information on public interest is for review or questioning now.

The alarming rash of assassinations of media practitioners in the country and the media ownership patterns that render the free press vulnerable to intertwined business and political interests, to the improbably worsening military conditions, the country experiences various trends and means by which journalists and communities in general are being forced to surrender their rights to information, and the free dissemination of news and opinions. It is seen that autocracy in the country has suppressed civil and political rights, including freedom of the press and the right to information. Draconian laws ranging from those that justify detention without trial to those that outlaw and severely punish "rumor mongering" is the norm in the country.

Today, statistics show that a considerable number of journalists have been murdered since Rajapakse came to power, and many journalists have been threatened, attacked, tortured, assaulted or harassed. The Committee to Protect Journalists (CPJ), in its 2010 Impunity Index, ranks Sri Lanka number four among countries around the world where journalists have been murdered on a regular basis without the killers being prosecuted.⁴ According to reports⁵ the Police in Sri Lanka say they have released 17 soldiers detained on suspicion of killing or attempting to kill journalists and editors. The men were accused of being involved in the 2009 murder of newspaper editor Lasantha Wickramatunga and for the other attacks on journalists. Police told a court that there was no evidence against the group of soldiers. But police say more soldiers are being questioned over the editor's murder and other attacks on media personnel. The Colombo magistrate has ordered the police to submit a report on the progress of the investigations.

According to www.lankanewsweb.com, popular Sinhala TV station Sirasa, popular Sinhala news web site Lanka E News and Sinhala language newspaper Siyatha were not allowed to cover the opening ceremony of new parliament held on 22 April 2010. All these media institutions are considered as not favorable to ruling party by its leaders.' The March issue of the Himal magazine and April 3 issue of The Economist were detained by the Customs Department due to two articles published in the two publications. The controversial article in Himal is a comparison of President Mahinda Rajapaksa and the late President JR Jayewardene while The Economist article deals with funds allocated through NGOs⁶ for projects in Sri Lanka. Even international media personnel are being blocked by the State and this was proved on April 8, 2010. As Tamilnet⁷ said Sri Lanka Defense Ministry has blocked 'Life Line' resident advisor of 'Internews' Fiona Partol from coming to Jaffna to participate in a five-day training course for local media persons. The Defense Ministry does not allow international media persons who are not supportive of the government to visit Jaffna and other areas in the North, the sources added. Recently a French journalist had been arrested and deported from Sri Lanka on the orders of Defense Ministry.

In April, just prior to the elections six journalists and five media workers have left the country fear of their lives and Siyatha, Sinhala language newspaper closed down as its proprietors have left the country for fear of reprisals. The newspaper was started by close associate of President Rajapaksa but the whole family left the country after they were informally accused of supporting opposition presidential candidate General Sarath Fonseka. Dozens of journalists and media workers lost their jobs as a result.⁸ Media minister Keheliya Rambukwella speaking to Sinhala language weekly Irida Lankadeepa⁹ said that he does not want exiled journalists coming back to Sri Lanka as most of them are anti-national persons.

It is evident now that the judicial and law-enforcement system is weak and prone to pressure from the wealthy and powerful, providing little protection for risk-taking journalists. For this reason, those who muzzle the press and silence journalists can operate with impunity. On April 5, 2010 Senior Daily Mirror journalist Sandun A Jayasekera was assaulted by some officers of the Presidential Security Division (PSD) in military uniform when he was covering an event attended by President Mahinda Rajapaksa at the Maharagama Cancer Hospital. According to Jayasekera the security officers had not allowed him to enter the premises to cover the event despite receiving an official invitation by the president's media unit.¹⁰ On May 30, 2010 a journalist working for the 'Lanka' newspaper who was campaigning for an art festival in Moneragala was assaulted by a group of thugs headed by a regional politician in the area, Lanka Editor Chandana Sirimalwatte had told Daily Mirror online. Sirimalwatte had added that after the journalist was attacked his mobile phone had been taken away. The assault had taken place after the journalist had taken a photograph of the vehicle the thugs had used.¹¹ Douglas Devananda, a minister in Mahinda Rajapaksa's cabinet and the leader of the paramilitary-cum-political party Eelam People's Democratic Party (EPDP), has publicly warned the editor of Yarl Thinakural K Vamathevan and its administrative manager A Nadarajah for having published front page news on the attack on Sri Lanka Freedom Party (SLFP) candidate Ankajan, stating that the reporting has negatively affected election propaganda for his party besides damaging his reputation.¹²

This behavior of the politicians and the law enforcing bodies show the mindset of those who are in power and even though they talk a lot on good governance, in practice, they have failed to adhere to the much valued principles of democracy, namely, accountability and transparency. What the State and its media do at present is nothing but systematically ridicule, demonise, isolate, and finally bankrupt government critics. The dissension of the political opponents are much hated by the Rajapakse State and that was recently witnessed with the media being used by the State to revile the opposition that challenged the government budget which was presented in the parliament in June 2010. This proves that the only democracy the State professes is the 'blind acceptance' of 'Mahinda Chinthana' or the ideology of Mahinda which defies all other thinking. Therefore, space is blocked in Sri Lanka for constructive criticism which is vital for all developmental action and active participation of the people towards 'sustainable democracy'.



Ahimsha Wickrematunge, daughter of slain newspaper editor Lasantha Wickrematunga, and his sister Rukmani mourn over his body at his residence in Colombo, Sri Lanka, January 11, 2009. Wickrematunga was slain by unidentified gunmen, and had been shot at and assaulted several times earlier. The assailants remain unidentified, but suspicion is widespread that Sri Lankan government forces or supporters were responsible. Wickrematunga, anticipating his possible murder, wrote a for posthumous publication only days earlier. (Photo Courtesy: Reuters / Buddhika Weerasinghe)

Meanwhile, there are new battles being waged in cyberspace: to exploit its powerful new and alternative medium for free, borderless expression on the one hand, and to keep it under a lid on the other. The country now sees an explosion in the phenomenon of blogging, podcasting, and online news in general, the same notorious tactics long applied against traditional media from the wielding of Internal Security Acts to threats of criminal defamation — are being transported to cyberspace. It was in this background that Lanka E-news journalist and cartoonist Prageeth Ekanaligoda disappeared on 24th December 2009. There is a climate of fear, almost self-censorship, because of the many threats and attacks on journalists and members of civil society. The numerous attacks on journalists are still to be seriously investigated. The demand by the civil society and the media is that the emergency regulations should be unequivocally removed and the Prevention of Terrorism Act be repealed. Further, the demand is for a proper, transparent investigation to identify and prosecute those responsible for attacks on journalists.

It was Lasantha Wickrematunge, who said: "No other profession calls on its practitioners to lay down their lives for their art save the armed forces and, in Sri Lanka, journalism." As in life, in death too, he was categorical: "It is well known that I was on two occasions brutally assaulted, while on another my house was sprayed with machine-gun fire. Despite the government's sanctimonious assurances, there was never a serious police inquiry into the perpetrators of these attacks, and the attackers were never apprehended. In all these cases, I have reason to believe the attacks were inspired by the government. When finally I am killed, it will be the government that kills me." Addressing the President by his first name, Wickrematunge added that it was ironical that "Mahinda and I have been friends for more than a quarter century" and went on to state: "In the wake of my death I know you will make all the usual... noises and call upon the police to hold a swift and thorough inquiry. But like all the inquiries you have ordered in the past, nothing will come of this one, too. For truth be told, we both know who will be behind my death, but dare not call his name. Not just my life, but yours too, depends on it."

Finally, this whole picture is a reflection of the ghastly progression of autocracy in the post-colonial island, Sri Lanka.

1 <http://www.lankanewspapers.com/news/2007/1/11439.html>

2 Edirisinha R, 'The Case for a Freedom of Information Act in Sri Lanka'

3 The Public's Right to Know: Principles on Freedom of Information Legislation available at www.article19.org

4 <http://www.srilankanewsnetwork.com/?p=1825>

5 <http://sunandadeshapriya.wordpress.com/2010/04/15/sri-lanka-accused-soldiers-freed-lasantha-murder/>

6 <http://www.thesundayleader.lk/2010/04/04/himal-and-the-economist-magazines-detained-by-customs-dept>

7 <http://www.tamilnet.com/art.html?catid=13&artid=31708>

8 <http://www.lankaenews.com/Sinhala/news.php?id=13661>

9 http://epaper.lankadeepa.lk/index.php?option=com_flippingbook&view

10 <http://www.dailymirror.lk/print/index.php/news/front-image/9914.html>

11 <http://www.dailymirror.lk/index.php/news/4035-lanka-scribe-assaulted-.html>

12 <http://www.tamilnet.com/art.html?catid=13&artid=31470>

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