

Right to Information and Sustainable Development: a Development Agenda for Sri Lanka

B Wickramasinghe
220/3, Katawala, Lewla, Kandy, Sri Lanka
bhagya913@gmail.com

Abstract - Right to Information has been accepted as a fundamental right in International Law. In the modern democracies right to information has emerged as a sine qua non of transparency and public participation and to encourage participation for better discourse in the development process to ensure sustainable development. The main objective of this research is to analyse the significance of right to information in environmental protection in Sri Lanka. The research problem is to identify why right to information law is crucial to attain the sustainable development goals and to identify the correlations between right to information and sustainable development in Sri Lanka. The research also would engage in an analysis of the existing framework of law in Sri Lanka relating to environmental protection to identify whether those laws have incorporated the principle of sustainable development. This research intends to focus on the concept of sustainable development as an important requirement of any development agenda and to analyse how right to information would be the stepping stone to realising the principles of sustainable development. For this end the research would also analyse the components of sustainable development, to identify the relevance of right to information in each component. The research will also analyse the conceptual relationship between sustainable development and right to information, through an analysis of the international instruments relating to sustainable development. Moreover the focus of the research would also include an analysis of the institutional structure relating to environmental protection and climate change with a view to appreciate how they have included public participation, good governance and free flow of information in to the system; and an analysis of the judicial decisions on the subject with the objective of critically analysing the attitude of the judiciary towards these concepts. The research methodology would involve the legal research methodology, based on qualitative data including the primary sources of law such as the international instruments and constitutional provisions, statutes and case law of the relevant countries; and secondary sources of law such as text books and scholarly articles on the relevant concepts of law and development.

Keywords: right to information, sustainable development, environmental protection

I. INTRODUCTION

The main objective of this research is to analyse the significance of right to information in environmental protection and combating climate change in Sri Lanka. The research problem is to identify why right to information law is crucial to attain the sustainable development goals and to identify the correlations between right to information and sustainable development in Sri Lanka.

The research also would engage in an analysis of the existing framework of law in Sri Lanka relating to environmental protection to identify whether those laws have incorporated the principle of sustainable development. This research intends to focus on the concept of sustainable development as an important requirement of any development agenda and to analyse how right to information would be the stepping stone to realising the principles of sustainable development. For this end the research would also analyse the components of sustainable development, to identify the relevance of right to information.

II. INFORMATION IN EACH COMPONENT

Link between right to information and sustainable development can be seen in a number of levels. While on one hand it is a mechanism for ensuring the implementation of sustainable development, on the other hand it is an integral part of the goals sought to be achieved. None of the possibilities envisioned through the implementation of the concept of sustainable development would be a reality without a cogent law on right to information.

Along with the significant step that Sri Lanka has taken towards recognition of the right as a fundamental right enshrined in the Constitution, through the 19th Amendment (Article 14A, as per the 19th Amendment to the Constitution), this recognition would be a practical reality only if there is a strong law that sets out the mechanism for implementation.

The research is focused on making a strong case for a law on right to information in order to give effect to sustainable development. The justification for the premise is that sustainable development is an umbrella concept which brings together a plethora of norms in to one whole.

This is evidenced through the fact that the three main pillars of sustainable development: economic development, environmental protection and social development again envision a host of other objectives to be achieved. Therefore the main grounds for introducing and ensuring the implementation are to be found within the three pillars of sustainable development.

The research methodology used in the research is the legal research methodology, based on qualitative data including the primary sources of law such as the international instruments and constitutional provisions, statutes and case law of the relevant countries; and secondary sources of law such as text books and scholarly articles on the relevant concepts of law and development.

III. RIGHT TO INFORMATION AS A FUNDAMENTAL RIGHT

Access to information is a different species of right, which involves a number of conflicting ideas and the need to balance a number of conflicting interests(Calland R., 2010). It has as its object (the thing which it is a right to) neither a concrete thing (such as healthcare or housing) nor the duty of forbearance on the part of the state and others (the hallmark of classic rights as freedoms)

It can be argued that this is right that empowers the right holder and creates a corresponding liability on the hands of the duty bearer. Hence in jurisprudential terms it can successfully be argued that RTI is a power, whereupon people gain much more confidence in the democracy they inhabit upon being granted this right. This is relevant for the research in light of the fact that RTI is a fundamental aspect in an effective and participatory democracy. It has also been noted that RTI is a multifaceted right and as would be dealt with in Chapter 3 the UN instruments have noted that it is a fundamental right in light of the fact that RTI gives rise to a number of other rights.

Furthermore RTI is an essential for the functioning of a democratic society. As noted by many commentators participatory democracy is founded upon free flow of information. In terms of the American context it has been observed in a democracy the citizens have a wider role to play than placing of the vote, each vote is supposed to have fullest possible participation and all citizens should

understand the issues of governance that affect their daily lives.(Muyot A.T., 1998)

It has also been noted by Emerson that the right to know can be used as a guideline for formulating affirmative government controls and the government is supposed to take direct steps in regulating the expansion of freedom of expression to maintain and ensure free exchange of ideas.

RTI has emerged in the recent years as a fundamental right as well as a democratic value that buttresses transparent and accountable governance. Therefore it is asserted that as the statement of ideals that the country is expected to uphold the values embodied in the constitution in lofty terms.

It has been noted that ‘depriving human beings of information is to rob them of an important opportunity to develop their potential to the fullest and is a violation of their human rights’(Reynolds M., 2003) For more than fifty years, the international community has recognized that the right to access information underpins the realization of other rights. Furthermore the right holds within it the right to seek information as well as the duty to enable access to information rests with the government. However the duty to release information is increasingly expanding to include multilateral organization, international financial institutions, commercial and corporate bodies and civil society organizations, where their activities affect the rights of citizens.

Right to information is well grounded in the international jurisprudence as it has been recognised as a core freedom since the inception of the United Nations, itself.

UNGA Resolution 59(1) has recognised that RTI has been in the forefront of debates since the inception of the UN, since its first session in 1946, RTI is a fundamental human right. Binding on all States as a matter of customary international law, UDHR guarantees the right to freedom of expression and information “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.”

The ICCPR Article 19 guarantees the right to freedom of opinion and expression, in very similar terms to the UDHR. Moreover in the recent most General Comment 34 on Article 19 the UNHRC has acknowledged that Article 19 embraces a general right of access to information held by public bodies. Drafters of international human rights

treaties were far sighted in their framing of the right to freedom of expression, including within its ambit the right not only to impart but also to seek and receive information and ideas. The importance of the right has been noted in the 1995 Report to the UN Commission on Human Rights, which stated: "Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked". UN Doc. E/CN.4/1995/32, para. 35. In the consequent reports by the rapporteur has stressed the various facets of RTI and significance of the right democracy and freedom, and also to the right to participate and to realization of the right to development. He also reiterated his "concern about the tendency of Governments, and the institutions of Government, to withhold from the people information that is rightly theirs". 1997,1998, 2000 Annual Reports by the UN Special Rapporteur to the Commission on Human Rights, Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/1998/40, 28 January 1998, para. 14, Report of the Special Rapporteur, *Promotion and protection of the right to freedom of opinion and expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 42

In Sri Lanka there was ray of hope shed on this right through the 19th Amendment whereby the right was recognized as a constitutional right enshrined in Chapter 3 of the Constitution. The Amendment also ensures that no restrictions can be placed on the right declared by the Article "other than such restrictions prescribed by law as are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals and of the reputation or the rights of others, privacy, prevention of contempt of court protection of parliamentary privilege, for preventing the disclosure of information communicated in confidence, or for maintaining the authority and impartiality of the judiciary"(Article 14 A (2), 19th Amendment). This article creates a wide range of issues for which the public authorities can restrict the right to information, making the working and implementation of the right very impractical.

IV. SUSTAINABLE DEVELOPMENT

In the international level, An important lesson from the MDGs has been the need for clear goals, targets and indicators that can be measurable in order to ensure proper and efficient tracking of the achievement of the goals. It is also important since governance is a complex

concept as envisioned in the post-2015 development agenda: For governance to have a credible place in the post-2015 agenda, goals and targets must be well understood by the relevant stakeholders , based on sound evidence as to their relevance, and politically feasible. Formation and ensuring a well grounded understanding of the concept of sustainable development goals among the relevant stakeholders therefore play an important role in ensuring the implementation of the sustainable development goals.

Right to information has an inherent connection to sustainable development in terms of environmental protection, social development and economic development apart from the overall connection to these aspects.

V. RIGHT TO INFORMATION , ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT: INTER-LINKAGES

Openness and transparency are essential to achieve sustainable development, they are also inherently linked to good governance and accountability. There is evidence that informed citizens and the private sector are better able to engage in developing policy; they are better collaborators and partners with government on service delivery, and also better able to hold governments to account, leading to improved development outcomes. (UNDP, 2014) Transparency in government sends a positive indicator for the citizens and investors, and evidence shows that the more information a government releases, the greater the investment and subsequent affect on growth (UNDP, 2014). There is also evidence that transparency in budget, expenditure and procurement processes lead to increases in service delivery. (UNDP, 2014) Transparency also has an intrinsic value (endorsed in various international conventions), namely, that citizens have a right to know how revenue and resources are being used in their name.

Justice and the Rule of Law , also have inherent links to the social justice component of suitable development. The rule of law is a principle of governance and is critical for sustainable development. It has been shown that countries adhering to the rule of law have higher levels of growth and investment through the protection of property rights. (UNDP, 2014) It can also contribute to promote equity, gender equality, and inclusion through, for example, the protection of legal identity and more equitable access to resources for both women and men(UNDP, 2014). Furthermore in view of the close linkages between rule of law and the aims of poverty eradication, is also linked up to property rights. In this respect it is essential that the relevant authorities are

accessible for the citizens and that they have a informed opinion about their rights.

The next aspect of sustainable development Participation is both a right, and a means to more sustainable development. Participation in policy development and the design of development interventions by communities and the society at large, in any society or community, enhances trust between those who decide, those who implement the decisions, and the population at large(UNDP,2014).

Political participation, right to information, freedom of association, freedom of speech and freedom of the press, are also fundamental human rights and are widely seen as development objectives and in ensuring public participation is effective. There have been many calls, not least from parliamentarians, for a governance goal to include targets on political and civil rights including, freedom of expression and access to information(UNDP, 2014)

In the international level, the link between right to information and one of the thrust areas of sustainable development, namely environmental protection has been established through a number of international documents, in a more substantive and grounded manner.

1992 Rio Declaration on Environment and Development, Principle 10: Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided Agenda 21, the "Blueprint for Sustainable Development", the companion implementation document to the Rio Declaration, states: [I]ndividuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information protection measures.

In 1998, as a follow-up to the Rio Declaration and Agenda 21, Member States of the United Nations Economic Commission for Europe (UNECE) and the European Union signed the legally binding Convention on Access to Information, Public Participation in Decision-Making and

Access to Justice in Environmental Matters [the Aarhus Convention].

This Convention, which is expected to come into force in 2001, will require State Parties to take legal measures to implement the Convention's provisions on access to environmental information. Another important aspect Cartagena Protocol on Biosafety to the Convention on Biological Diversity requires States Parties to promote and facilitate public awareness, education, and participation relating to the safe transfer, handling and use of GMOs.

VI. SRI LANKAN LEGAL FRAMEWORK ON RIGHT TO INFORMATION

Apart from recognising right to information as a fundamental right enshrined in Article 14 A of the Constitution, through the 19th Amendment, Sri Lanka has also taken steps to introduce the Draft Right to Information Law. The process of Right to Information as a Bill was not a recent attempt in Sri Lanka, there was a initial drafting process in 2003, which culminated through the Freedom of Information Act, No. of 2010 and this had many salutary features, as well as provisions which were inherently weak, such as RTI commissioners being under the control of the Ministers.

Any legislative at introducing a law would need to address the existing laws that act as a threat to free access to information in Sri Lanka, such as the *Official Secrets Act* No. 32 of 1955, *The Press Council Law* No. 5 of 1973, *Public Security Ordinance (PSO)* No. 25 of 1947, *Prevention of Terrorism Act (PTA)* No 48 of 1979, and other Administrative rules and regulations and public service culture that undermines access to free and easy access of information.

Despite the lack of a legislative initiative towards upholding the right to information, the judiciary has delivered a number of judgments which support the citizens right to access information. In *Visuvalingam v. Liyanage* (1984) *Wimalaratne J* held "Public discussion is not a one sided affair. Public discussion needs for its full realization the recognition, respect and advancement by all organs of government, of the right of the person who is the recipient of information as well. Otherwise the freedom of speech and expression will lose much of its value."

In *Galle Face Case*' the Supreme Court interpreted the constitutional right to free speech, expression and publication as including within its ambit, a right to information. The Supreme Court observed: lack of "This is an application filed in the public interest. ... the

Petitioner, being a well recognized entity working for the preservation of the environment is entitled to act in the public interest In several cases the Petitioner has assisted this Court in important matters with regard to the preservation of the environment. In this instance too the Petitioner has acted in the public interest and exposed acts on the part of the UDA that are clearly ultra vires”

VII. CONCLUSION

The core of sustainable development is meeting the needs of the present without compromising the ability of future generations to meet their own needs (Bruntland Commission Report).

The concept of sustainable development is a far reaching and a wide ranging concept. Achieving the goals that have been accepted upon by the states, would involve the participation of a wide spectrum of stakeholders.

Citizen and private sector participation is key to ensuring advancement of human life in the modern state. This wide participation and active involvement of all the parties would not be a reality without the proper infrastructure both in a social and a legal sense.

One of the key legal mechanisms that need to be in place is an effective and efficient way for the citizens to demand public information.

Governance and development is no longer the reserve of the state, especially in a country where the development efforts of the parties in power have had no or little effect , it is essential that people are integrally involved in the development efforts, and in the modern context, being a country that is doublyvulnerable to the adverse impacts of climate change, Sri Lanka needs to have a system of good governance and a cogent legal framework which underpins the principals of rules of law and transparency.

In the current context ensuring peoples rights and accountability of the government and rule of law are no longer luxury legal items in the check list for the elected representatives, this was clearly proven by the past Presidential Election where the mandate of the candidate who won the election, extensively dealt with ensuring good governance. It is indeed salutary that Sri Lanka has taken steps to constitutionally recognise right to information, however there is still a long way to go in practically implementing the right and guaranteeing the effectiveness of the rights.

It has been recognised that the developing countries have a good opportunity to not commit the same mistakes of

the developed countries which caused an irreversible destruction of the environment in their development efforts, therefore in order to ensure that the development efforts of the country to be more people centric right to information is key in any democracy.

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BIOGRAPHY OF AUTHOR



Bhagya Wickramasinghe LLB (Hons), Attorney-at-Law, LLM (Colombo) is keen on research relating to Environmental Law, Human Rights and International Law. This research deals with the cross cutting issues of human rights and sustainable development.