

Legal Framework on Information Transparency in the Discharge of Public Projects; A Comparative Analysis in the SAARC Region

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Abstract

Making the particulars of public construction contracts is one proven way to help citizens to get what they are searching for in the discharge of public projects. There is considerable evidence that information transparency is potentially a powerful tool to reduce the impact of corruption. This research is to explore the legal patronage given to uphold the concept of information transparency and deepen the understanding of the level of information transparency in public sector projects in the SAARC region. The research entailed a thorough desk review on the existing legislative provisions for information transparency. It was proffered that transparency is driven by a gamut of factors and the level of transparency is found to be widely varying even with the region. The legislations have been observed to hold out solutions to some extent, but not without challenges.

Introduction

Transparency is one of the core principles of good governance. Information regarding public projects should be readily available to the interested parties such as parliamentarians, taxpayers as well as the general public. The notion is that there are a lot of hidden costs in the

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discharge of public funded projects and the process of contracts award, fund allocation, fund release is not that transparent. With this backdrop, one of the main legislations namely, Right to Information (RTI) Act No 12 of 2016 came into effect in Sri Lanka. However, there is no recorded comparison made to detect in terms of how each country has given emphasis. As such, this research problem is **“what extent the existing laws are efficacious in ensuring transparency in respect of their domestic public construction projects?”**.

Aim

The aim of the research is to find the ways of improving the information transparency of public sector projects in Sri Lanka. The

following objectives were set out in achieving this aim:

- Identify project information that are legally required to be released to the public as per the Right to Information Act 2016;
- Identify the regional benchmarks concerning information transparency in public sector projects;
- Map the information transparency requirements specified in the existing legislative provisions (mainly considered 5 South Asian countries, namely India, Pakistan, Bangladesh, Nepal and Maldives) and determine whether these requirements have been adequately met in the Sri Lankan legal arena.

Research Methodology

This research started with a qualitative method of desk review on the Right to Information Act 2016 of Sri Lanka with regard to public access of information and benchmarks of information transparency established in neighbouring countries. This desk review wholly depended upon the government published data online and the government websites that are mostly free to access and contains most prominent information.

Novelty of the research

The aim of this study is to examine whether laws related to information access indeed foster active transparency in its strictest sense and not just responsiveness. This paper details the findings from a qualitative research on the project information that are legally required to be released to the public followed by a discussion on regional benchmarks widely acclaimed in the SAARC region. Despite some obvious contextual differences between countries, there is no a priori reason to believe the outcomes will be different. The study will shed more light on the information disclosure, specifically across the different stages of construction projects. It will show the current level of adherence to information transparency. The work is novel providing meaningful insights into conceptual basis for a future detailed empirical analysis. Being a pioneering study, further research tailored to compare the approaches towards information transparency

in various sectors of the Sri Lankan economy would be novel. It also provides an impetus for necessary legal reforms in future.

Research limitations

This research is focused on the issue of transparency in the access, exchange and dissemination of information related to public funded projects exclusively from the public perspective. The nature of the research is review and explanatory without an empirical analysis to support the discussions. The results may not be generalized on a broader context of public procurement, either.

Literature survey

Freedom of Information (FOI) laws are the legal backbone for creating and safeguarding a basic level transparency. It is an essential right for every person¹. FOI- type laws have been adopted by most countries across the globe².

Transparency is ‘the availability of information about an organization or actor allowing external actors to monitor the internal workings or performance of that organization’³. This definition is generally in line with how

1 David Banisar, *Freedom of information around the world 2006: A global survey of access to government information laws* (Privacy International 2006)

2 Jeannine E Relly and Meghna Sabharwal, *Perceptions of Transparency of Government Policymaking: A Cross-National Study* (Government Information Quarterly vol 26, 2009)

3 Stephan Grimmelikhuijsen and Albert Meijer, *Effects of transparency on the perceived trustworthiness of a government organization: Evidence from an online experiment* (Journal of Public Administration Research and Theory 2014) p129

transparency is defined in the literature. A systematic literature review on 187 studies on transparency⁴ reveals that most definitions address some core components, such as the availability of information to ‘outsiders’, who use openness mechanisms to gain an insight into decision-making processes, operations, budgets or performance of a governmental body.

Providing information directly to a single requester is a rather narrow view of transparency. Generally, transparency refers to broader public and pro-active access to information. This can provide insight into how effective the chain of request to response is and offer a snapshot of the strength of openness culture within an organization. So far only the Worthy experiment included both of these critical elements of transparency: measuring public access via the law as against a non-legal ask, and also measuring the quality of the response to see if the organization goes further than the law requires.

With regard to public construction works, there is a strong case for governments to publish critical documents in the public contracting, including the contracts themselves. Such “open contracting” can improve decision making within the government, level the playing field for contracting firms, increase trust and competition, reduce prices, and ultimately improve the value for money of

4 M Cucciniello G Porumbescu and S Grimmelikhuijsen , '25 Years Of Transparency Research: Evidence And Future Directions' (Public Administration Review vol 77 2017)

outcomes⁵. While the contract itself is only one document in the cycle of contracting, it holds critical details about the terms of the deal: what goods, services, or assets were bought or sold and for what price, and who the contractor is.

As Oyegoke⁶ explains, transparency in procurement processes and procedures is essential because of the restrictions placed by national security, complex and continuously changing needs of government as well as the need for openness, competitiveness, accountability and non-discrimination. According to OECD (2003), transparent procurement procedures can contribute to a more efficient allocation of resources through increased competition, higher quality procurement and budgetary savings for governments and thus for taxpayers. Having the details of contracts in the public domain can improve competitive tendering by attracting bidders and demonstrating that the outcome is fair. This is critical for achieving value for money. Further, Oyegoke⁷ elaborates that, procurement transparency is important in creating business excellence. The researcher highlights that, business excellence is satisfying the related stakeholders and by being transparent at both public and private sector procurement, organizations can achieve business excellence as well.

5 Kenny, Charles and Jonathan Carver, *Publish What You Buy: The Case for Routine Publication of Government Contracts. CGD Policy Paper 011*

6 Deng X and others, *Transparency in The Procurement of Public Works* (Public Money and Management 2010) p23

7 Ibid

However, the emphasis given to various elements in project progress varies globally. For example, UK procurement regulations and sample projects mainly focus on transparency during the competitive elements of procurement e.g., prequalification and tendering as opposed to transparency during the initial project identification and later post-completion project review phases⁸. There is a close relationship between the construction contract bonding system and transparency in public works, which policy-makers and officials need to be more aware of Xiaome et al, 2003. Well-organized works procedures, strict enforcement of rules and regulations, and transparent management of a project are important elements to discourage corruption⁹. Whereas, the EU public procurement rules seek to ensure that public sector bodies award contracts in an efficient and non-discriminatory manner. The directive imbibes the principle of equality and non-discriminatory. Moreover, for a system to be transparent, it should be accessible and generally available. Oyegoke¹⁰ explains the EU procurement regulations where in Article 42 stipulates that all communication and information exchange chosen must be generally available and thus not restrict economic operators' access to the tendering procedure. Therefore, the tools to be used for communicating by electronic

8 M Dickson and others, '*Transparency in UK public construction procurement*' (CIB World Building Congress 2010)

9 Rumaizah, '*Transparency Initiatives (TI) In Construction: The Social Psychology of Human Behaviours*', (ASEAN Conference on Environment-Behaviour Studies 2012)

10 Ibid 9

means, as well as their technical characteristics, must be non-discriminatory, generally available and interoperable with the information and communication technology products in general use.

When elaborating the literature, it is evident that governments world-wide have adopted access-to-information laws. Especially with regards to public projects to demonstrate efficiency in government for the purpose of attracting investment critical to economic development. However, scholars have argued on the definition of transparency and it is evident that information transparency is being undertaken as an important aspect in public projects by world-wide governments.

Desk review

A desk review was undertaken to find out existing legislative provisions on Right to Information Act 2016 in Sri Lanka and the relevant information Acts in SAARC countries. The reason of selecting SAARC countries is because the sameness in social, cultural and economic background and most of the public project are undertaken more or less similar to Sri Lanka. Table 1 below shows the salient provisions cited in the RTI, 2016 in championing the right to information among citizens and fostering a disclosure friendly administrative culture among public authorities.

Table 1: Summary of right to Information Act 2016 in Sri Lanka

Article	Short title	Descriptor
3.1	Right of access to information	Every citizen shall have a right of access to information which is in the possession, custody or control of a public authority
5.1	When right of access may be denied	Personal information, the disclosure of which has no relationship to any public activity or interest, unwarranted invasion, undermining defence, territorial integrity or national security, is likely to be seriously prejudicial to Sri Lanka's relations with any State
7	Public authorities to maintain and preserve its records	It shall be the duty of every public authority to maintain all its records duly catalogued and indexed in such form as is consistent with its operational requirements

8.1	Ministers duty to publish a report	It shall be the duty of subject Minister to publish biannually a report in such form as shall be determined by the Commission as would enable a citizen to exercise the right of access to information granted under section 3 of this Act.
9.1	Duty of the Minister to inform public about the initiation of projects	It shall be the duty of the subject Minister, to communicate, three months prior to the commencement of a given project, to the public generally, and to any particular persons who are likely to be affected by such project all information relating to the project that is available with the Minister
23.2	Appointment of Information officers and designated officers	Every information officer shall deal with requests for information and render all necessary assistance to any citizen making such request to obtain the information
24.1	Procedure for obtaining information	Any citizen who is desirous of obtaining any information under this Act shall make a request in writing specifying

		the particulars of the information requested for.
27.2	Manner in which information is to be provided	Where an information officer is unable to provide the information in the manner requested for, it shall be the duty of such officer to consult the citizen and render all possible assistance to the citizen to determine an appropriate alternative means of providing access to the information and to facilitate compliance with such request
27.3	Entitlement	A citizen, whose request for information has been granted, is entitled to <ul style="list-style-type: none"> (a) inspect relevant work, documents, records; (b) take notes, extracts or certified copies of documents (c) or records; take certified samples of material; (d) obtain information in the form of diskettes, floppies, tapes, video cassettes or any other electronic mode or through printouts where

		such information is stored in a computer or in any other device
39.1	Offences	<p>Every person who</p> <p>(a) deliberately obstructs the provision of information or intentionally provides incorrect, incomplete or inaccurate information;</p> <p>(b) destroys, invalidates, alters or totally or partially conceal information under his or her custody, or to which he or she has access to or knowledge of due to the exercise of his or her employment in such public authority;</p> <p>(c) fails or refuses to appear before the Commission when requested to do so by the Commission;</p> <p>(d) appears before the commission, and fails or refuses to be examined by the Commission or to produce any information which is in that person's possession or power or deliberately provides false</p>

		<p>information under oath or affirmation;</p> <p>(e) fails or refuses to comply with or give effect to a decision of the Commission;</p> <p>(f) resists or obstructs the Commission or any officer or other employee of the Commission, in the exercise of any power conferred on the Commission or such officer or employee, by this Act;</p> <p>(g) discloses any information in contravention of the provisions of section 12(7) of this Act, commits an offence under this Act.</p>
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Findings and discussion

Requirements that enhance information transparency were mapped with the existing Right to Information Act 2016 against the regional benchmarks (5 South Asian countries) and determined whether these requirements have been adequately met in the Sri Lankan law. Table 2 shows the pattern of existing Right to Information Act 2016 with the regional benchmarks.

Table 2: Comparison of Benchmarks

	Short Title	Sri Lanka	India	Nepal	Pakistan	Bangladesh	Maldives
1	Right to Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	When Access is denied	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Public Authority	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Publishing of Records	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Appointment of Officers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Process of Obtaining Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	Protection of Individuals	x	x	x	x	x	x
8	Declaration of Public Record	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	Computerization and Voluntary Disclosure of Information	<input type="checkbox"/>	x	x	<input type="checkbox"/>	x	x
10	Excluded Organizations	x	<input type="checkbox"/>	x	x	<input type="checkbox"/>	<input type="checkbox"/>
11	Compensation for incorrect information	x	x	<input type="checkbox"/>	x	x	x
12	Information Correction	x	x	<input type="checkbox"/>	x	x	x

13	Partial Disclosure	x	x	x	x	<input type="checkbox"/>	x
14	Offenses	<input type="checkbox"/>	<input type="checkbox"/>	x	<input type="checkbox"/>	x	<input type="checkbox"/>

It seems few important aspects with regard to transparency have not been addressed by the Right to Information Act in Sri Lanka. None of the countries emphasizes on individual protection via Right to Information Acts.

The implementation of Right to information Act is mainly focused a transparency, accountability and good governance to ensure the rights of the citizens of the country. It shows country driven by democratic principles. With this environment, recently introduced Right to Information (RTI) Act No 12 of 2016 came into effect. This research is focused on the issue of transparency in the access, exchange and dissemination of information related to public funded projects exclusively from the public perspective.

Conclusions and Recommendations

Transparency is defined here as providing insights into matters that are relevant for the parties involved. Parties such as public and private clients, general contractors and subcontractors can, with the right information, make well-founded decisions with regard to the transactions that they agree with one another. Moreover, the transparency contributes to being answerable to the government and the general public. In this article we focused on the

transparency issues between public clients and executing parties in the Sri Lankan construction sector.

Gauging the perception of industry practitioners as to sufficiency of information transparency requirements specified in local laws in achieving “transparency” could be a further research in order to locate whether the legal requirements have not been met, the barriers to be dealt with and what kind of initiatives to be taken up. This could be the centrepiece of the next analytic process, because it allows moving from simple description of the theory to explanations of why the public interests matter at all times. A questionnaire survey helps validate the findings and in addition, a series of in- depth face to face interviews and group discussions could be conducted, where appropriate, with selected key informants and stakeholders in the construction sector and public procurement regime, in order to identify the barriers and initiatives to remedy the situation.