



**BRIEF NOTE**

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# **LAWS AFFECTING THE RIGHT TO INFORMATION (RTI) REGIME IN SRI LANKA**

## ABBREVIATIONS

ACA - Anti-Corruption Act

CBA - Central Bank Act

CIABOC - Commission to Investigate Allegations of Bribery or Corruption

IMF - International Monetary Fund

OSA - Online Safety Act

PDPA - Personal Data Protection Act

RTI - Right to Information

RTIC - Right to Information Commission

UNDP - United Nations Development Programme

## INTRODUCTION

Following the debt repayment crisis that led to the country's declaration of bankruptcy in April 2022, Sri Lanka's legislature has entered a heightened phase of passing laws.<sup>1</sup> While the majority of the laws are focused on restructuring the national economy in terms of the Government's International Monetary Fund (IMF) commitments, some others regulate personal freedoms such as the freedom of expression and association.

Upon initial analysis, it appears that the economy-focused laws such as the Central Bank of Sri Lanka Act, and the Parliamentary Budget Office Act have prioritized the Right to Information (RTI) regime, and RTI has been enmeshed in the drafting process. Reforms such as the Anti-Corruption Act (ACA), No. 09 of 2023, while acknowledging the RTI law, provide autonomy to the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) for reasons of secrecy, which sidelines the RTI law. Further, the laws which seek to regulate freedom of expression and association, and personal data, appear to sideline the prevailing RTI regime. This study aims to identify and document whether and how laws passed since 2022 in Sri Lanka relate to the RTI regime.

This sets a negative example to the efforts to increase the transparency of governance in Sri Lanka, and encourages other institutions to resist compliance. This new trend is concerning given the fact that a United Nations Development Programme (UNDP) study has already identified 105 laws that pre-date RTI Act of No. 12 of 2016 as clearly or potentially falling outside the ambit of the RTI regime. Against this backdrop, Sri Lanka's democratic space is under threat of erosion, and requires persistent interventions to prevent further decay.

This study builds on a previous study by the UNDP titled "Review of Legislation for Consistency with the RTI Legal Regime", published in 2018 (UNDP, 2018). The proposed study will map and analyze how laws that have been passed since 2022 can conflict with the 2016 RTI Act. Accordingly, the study identifies:

1. A list of laws that affects the RTI regime in Sri Lanka, by analyzing all laws passed since January 2022 until May 2024.
2. A typology of their impact, based on the categorization in line with the UNDP-CPA study.
3. A discussion of their potential impact on the RTI landscape in Sri Lanka.
4. Emerging trends in bypassing RTI and the threat to democracy.
5. Recommendations and strategies to engage in reforming laws that affect RTI regime.

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1. The Parliament passed 34, 45 and 28 laws in the years 2022, 2023 and until May 2024. This is a significant surge of legislative activity compared to years preceding these.

## SALIENT FEATURES OF THE RTI REGIME IN SRI LANKA

Sri Lanka has a robust legal regime to safeguard the right to information. Article 14A introduced by the 19th Amendment to the Constitution, and the subsequent Right to Information Act, No. 12 of 2016 (RTI Act) have had a significant impact on strengthening governance in Sri Lanka, both in terms of access to information and accountability. A multitude of factors have contributed to these gains, including orders with lasting impacts by the Right to Information Commission (RTIC), proactive declaration by some public institutions, favorable Supreme Court determinations, and civil society's concerted efforts to increase governance and transparency.

The RTI Act is in accordance with Article 14A of the Constitution, part of the Nineteenth Amendment to the Constitution in 2015, which recognizes every citizen's right to access "information as provided for by law" (UNDP, n.d., p. 4). The Act defines the scope and mechanisms by which citizens can exercise this right.

The non-obstante clause in the RTI act states that "notwithstanding anything to the contrary in any other written law, the RTI Act shall prevail in situations where there is an inconsistency or conflict between it and any other written law" (UNDP, n.d., p. 4). Nevertheless, there have been occasions where the provisions of the RTI Act to override other laws do not prevail, due to circumstances of the legal regime allowing a wide discretion for the RTI Commission and Judges of the Supreme Court to interpret this clause.

The Sri Lankan RTI legal framework is ranked 3rd in the Global Right to Information Rating. Nearly eight years of implementation has proved the strength, as well as limitations, of the RTI law in Sri Lanka. While its strengths as a singular piece of legislation is evident, the success of the RTI regime has been limited due to various factors, that include the lack of familiarity and use of RTI by citizens, public servants' attitudes to transparent governance, and the Supreme Court Determination on Election Expenditure Bill.

Supreme Court establishes RTI as law as the 'applicable law' in terms of Article 14A of the Constitution that safeguards the right to information as stipulated in "14A. (1) Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen's right"

Referring to Section 4 of the RTI Act which provided that the provisions of the RTI Act shall prevail over any other 'written law' in the event of any inconsistency with the same, the Court pointed out that Clause 7(3) of the Bill ran contrary to Section 4. The RTI Act is the 'applicable law' in terms of Article 14A of the Constitution which secures the right to information of citizens as 'provided by law.'

The RTI Act in Sri Lanka is significant for its "public interest override" clause as outlined in Section 5 (4) of the Act. This section clearly states that "a request for information shall not be refused where the public interest in disclosing the information outweighs the harm that would result from its disclosure". This means that, even if an exemption is applicable, a prevailing public interest in disclosure can override these exemptions.

## CATEGORIZATION OF LAWS THAT CONFLICTS WITH RTI LAW

In determining the nature of the potential conflict with the RTI Act, this study adopts the categorisation adopted by the 2018 UNDP study, and uses a threefold typology of the impact of laws passed since 2022:

### **Category 1: Direct violation**

This category encompasses laws that directly contradict the provisions of the RTI Act. These laws either explicitly declare their supremacy over any other law, including the RTI Act, or they don't address their compatibility with it. These conflicting laws pose the most significant obstacles to implementing the RTI regime effectively.

### **Category 2: Indirect violation**

This category comprises laws containing provisions that contradict or have the potential to contradict the RTI Act. However, these laws explicitly state that such provisions are subject to other legal requirements. This allows for the implementation of the prevalence clause in the RTI Act, meaning that public institutions cannot use these laws as a justification for withholding information.

### **Category 3: Potential interpretation as non-compliant with RTI**

This category encompasses laws that might contradict the provisions of the RTI Act depending on the interpretation favored by the relevant authority and the specific circumstances of each case. Additionally, these laws either explicitly declare their independence from the provisions of any other law or remain silent on the issue of prevalence.

## LAWS CONFLICTING WITH RTI REGIME

This section tabulates all laws passed in the Parliament of Sri Lanka from 2022 till May 2024, and identifies which laws conflict with the RTI Act, and categorizes them by the nature of their potential conflict according to the typology outlined in the previous section.

In analyzing acts of Parliament that introduce an amendment to a prevailing Act, this study adopted a two-step approach. First, it verified whether the passed amendment could conflict with the RTI regime. When no such conflict is observed, the predecessor act was checked in terms of the RTI regime (based on previous studies). If these predecessor acts were in potential conflict with the RTI regime, and if the present amendment had not rectified such conflicts, 'no progress' was marked to highlight the gap.

## DISCUSSION & ANALYSIS

In this section, the laws are discussed in terms of their potential conflicts with the RTI landscape in Sri Lanka. This includes analysing the emerging trends in bypassing RTI and the threat to democracy. In this study, we observed that the Personal Data Protection Act (PDPA), No. 9 of 2022 and the Anti-Corruption Act (ACA), No. 9 of 2023 are in Category 1 violation, i.e., directly contradicting the provisions of the RTI Act. Meanwhile, the Online Safety Act (OSA), No. 9 of 2024 is a Category 2 violation, i.e., contains provisions which may contradict or have the potential to contradict the RTI Act. It is observed that the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023 amounts to a Category 3 violation, depending on its potential to be interpreted in specific circumstances in ways undermining the RTI law.

In terms of dealing with the RTI regime, some laws clearly stand out in terms of how they relate to the RTI regime. Some examples include the Central Bank of Sri Lanka Act, No. 16 of 2023, Anti-Corruption Act No. 09 of 2023, National Hydrographic Act, No. 7 of 2024 or the Parliamentary Budget Office Act, No. 6 of 2023, where specific reference is made to the Right to Information Act, No. 12 of 2016.

The Central Bank Act (CBA), for instance, under section 119 sets out its relationship with the RTI regime. While acknowledging the confidentiality requirement of the Central Bank, its monetary board, and employees, as provided for by Section 5 (1) of the RTI law, clearly sets out in section 119 (6) that:

The provisions of the Right to Information Act, No. 12 of 2016 shall have effect notwithstanding anything to the contrary in this Act, and accordingly in the event of any inconsistency or conflict between the provisions of the Right to Information Act and this Act, the provisions of the Right to Information Act shall prevail in relation to any information of the Central Bank.

This provision makes the RTI Act prevail in matters of disputes as an exemplary measure to prioritize the constitutionally guaranteed right to information. However, the RTIC will have to decide on individual cases of RTI appeals with regard to the definition of public interest vs confidentiality.

Apart from these, many laws that have been amended have not removed their contradicting status with the RTI law, as had been identified in the UNDP study. Each conflicting law is discussed in the section below.

### **5.1. Personal Data Protection Act (PDPA), No. 9 of 2022 – Category 1 Conflict**

#### **5.1.1. Two fundamental democratic rights**

The tension between the need to protect personal data of natural persons and the right to know pertinent information related to matters of public interest represent two fundamental pillars of democracy – that of transparency and privacy. This is best exemplified in the often-quoted Statement by former Chief Justice of Canada, Right Honourable Beverley McLachlin:

“...for [Canadian] democracy to function well in the complex context of the modern world, two rights must be safeguarded – the right to access to information and the right to privacy” (Supreme Court of Canada, 2009).

It's important to recognize that while the PDPA safeguards all personal data, the RTI Act allows for the exemption of information from being disclosed if it is personal information not related to any public activity or interest, or if its disclosure would result in an unwarranted invasion of privacy. Undoubtedly, the PDPA offers broader protection of personal data compared to the privacy protections under the RTIC, since the PDPA specifically covers “personal data.” Any data that falls under the broad definition of personal data, in terms of Section 2 of the PDPA will be subject to compliance requirements, including but not limited to obtaining consent, as outlined in the Act. The RTIC orders mentioned previously encompass significant amounts of personal data.

Managing these two fundamental rights does not have to be diametrically opposed to each other or lead to compromised outcomes. The International Monetary Fund (IMF), in its Governance Diagnostic Assessment report highlights the need to balance these different fundamental rights:

“It will be important to establish policies and rules that properly balance protection of vital information rights with the state’s equally justifiable interest in protecting its security, the privacy of individuals, and the confidentiality of its investigations. If not, there is a significant risk that this outstanding example of transparency is stripped of its effectiveness” (IMF, 2023).

### 5.1.2. Conflicts between RTI and PDPA regimes

In this context, the exemption clause under Section 40 of the PDPA invites scrutiny. Section 40 states:

“Any exemption, restriction or derogation to the provisions of this Act shall not be allowed except where such an exemption, restriction or derogation is provided for in any law and respects the essence of the fundamental rights and freedoms and constitute a necessary and proportionate measure in a democratic society for– (e) the protection of the rights and fundamental freedoms of persons, particularly the freedom of expression and the right to information.”

Furthermore, Section 3 provides a non-obstante status to the PDPA, and asserts that the PDPA will prevail in case of any inconsistencies. The RTI Act’s Section 4 also contains an override provision. In this sense, the RTI Act and the PDPA are collusive in terms of which law takes precedence. However, the general exemption clause 40(e) offers some protection to the RTI, and since the right to information is constitutionally protected, it is reasonable to conclude that the PDPA does not override the right to access information. This blurs the boundaries between the two laws. While the PDPA is the more recent law and its overriding powers may be considered more relevant, the fact that the RTI Act operationalises the constitutionally guaranteed right to information may weigh the argument towards the RTI Act.

In situations of such conflicts, the Latin maxim *Generalia specialibus non derogant* has been used as an interpretive tool. It means that for the purposes of interpretation of two statutes in apparent conflict, the provisions of a general statute must yield to those of a special one. However, which law is the general one and which one is the special statute is not always easy to define.<sup>2</sup>

2. With regard to the question of what is the general and what is the special law, Ashwini Natesan, in a study for Sri Lanka Press Institute, quotes that the case: Supreme Court of India in LIC v. D.J Bahadur, as of relevance, wherein it has been held that in determining whether a statute is a special or a general one, the focus must be on the “principal subject-matter plus the perspective” (Natesan, 2023). For certain purposes, an Act may be general and for certain other purposes, it may be special.

### 5.1.3. Practical implications

Some pertinent questions arise from this conflict between the two laws. For instance, if an RTI application pertains to personal details such as travel or salary details of a public official, what parameters should the controlling officers apply? Or should there be a collective decision-making mechanism to decide on matters that may have implications for both Acts?

Looking to other jurisdictions can shed light on ways to find solutions. For instance, India's Digital Personal Data Protection Act, No. 22 of 2023 has amended Section 8(1)(j) of the RTI Act of India to simply state "information which relates to personal information" (RTI Foundation of India, 2023). Previously, denial of access to personal information was limited to instances where the information had no connection to public activity or interest, or its disclosure would cause unwarranted invasion of privacy. This broader amendment by the DPDP Act could potentially allow for a legal basis to deny access to any information related to an individual. This change has sparked significant criticism from various stakeholders. Meanwhile, while the PDPA in Sri Lanka includes an exemption provision, it still leaves open the possibility for conflicts and tension between personal data protection and the right to information. However, the Sri Lankan approach helps to develop a body of RTI regime in terms of its intersection with the PDPA, instead of squarely and broadly limiting the RTI from accessing any personal data.

The prevailing conflicting situation offers two paths ahead. First, the two laws can mark their boundaries by these potential collisions in future. The second path is to reach solutions not merely waiting for interpretations of the laws, but by applying other tests of public interests on the basis of merits of each case. The second path can be preferable as the two apex bodies can potentially work together to develop the theme proactively.

## **5.2. Anti-Corruption Act, No. 9 of 2023 (ACA) - Category 1 conflict**

### **5.2.1. Confidentiality vs. transparency**

The new Anti-Corruption Act (ACA) was welcomed by most parties when it was introduced as a progressive step towards curbing corruption. This includes the IMF Governance Diagnostics Report (IMF, 2023) that praised its potential for achieving real improvement in confronting corruption and building momentum for reform. Although the Commission to Investigate Allegations against Bribery or Corruption (CIABOC) established under the Act is an independent commission, it performs a function close to that of the police department (in terms of its investigations), and the Attorney-General's Department (in its prosecution role). Given this function of the CIABOC, it is fundamental that the institution has to ensure the confidentiality of some crucial information pertaining to the unconcluded investigations. While the demand for transparency of information mostly relates to the efficiency of CIABOC, and not to details that require confidentiality provisions, ACA provides broad cover to the CIABOC in terms of declaring information as confidential.

### **5.2.2. Conflicts between RTI and ACA regimes**

Section 161 of the ACA provides an unqualified overriding effect over other Acts, creating a direct conflict, classified as Category 1, with the RTI regime. Nevertheless, the RTI law implements the constitutionally guaranteed right to information. While the establishment of CIABOC is defined by Chapter XXIX of the Constitution, the ACA does not directly derive itself from a single constitutional provision, but contributes to the overall welfare of people as articulated in Section 27 (2b) under the Directive Principles of the Constitution.



Section 28 of ACA provides a strong confidentiality protection to all officers of CIABOC, including the commissioners and the Director-General. This reads:

“Any member of the Commission, the DirectorGeneral or any officer or employee of the Commission or any other person whose services are retained under section 27 shall not disclose any information received by him, or coming to his knowledge, in the exercise and the discharge of his powers and functions under this Act, except for the purpose of giving effect to the provisions of this Act or where provision has been made under this Act to share information.”

It is noteworthy that this provision is derived from the Commission to Investigate Allegations of Bribery or Corruption Act (No. 19 of 1994), which also constituted a conflict with RTI. In the present ACA, this confidentiality provision has been qualified by subsection 3 to accommodate the RTI law, as discussed below. However, it acknowledges the RTI and specifies further, in Section 28 (3) that, the Director-General may:

...subject to the provisions of subsection (1) of section 5 of the Right to Information Act, No. 12 of 2016 and with the permission of the Commission, disclose such information as the Commission considers necessary in the public interest, for the purposes of publication in the press, media and social media with a view of enhancing the transparency and accountability of the Commission towards the public.

The drafters of ACA have considered the RTI regime, and given sufficient safeguards in terms of RTI Section 5(1) to the CIABOC.

### **5.2.3. Practical and conceptual implications**

Orders delivered by the Right to Information Commission (RTIC) provide context to understand the operationalisation of the two legal regimes in their intersection. Although, no orders seem to have been delivered by RTIC appeals against RTI disclosures made by the CIABOC under current ACA, the approach of RTIC becomes evident in the order 558 /2018 of RTIC, requiring the CIABOC to disclose the information if the CIABOC considers such information as not a violation of Section 5(1) of the RTI Act.

The operational conflicts among these legal regimes are not easily reconciled. Insights for this can be drawn from the Court of Appeal’s judgment CA/RTI/0004/2021 by Justice Sampath B. Abayakoon and Justice P. Kumararatnam. In this judgment, when an RTIC’s order was denied by the Parliament’s Information Officer, claiming cover under the non-disclosure provision in the Declaration of Assets and Liabilities Act No.1 of 1975, the judges compared the purposes of the two Acts to draw on the parallels in the intentions of the two pieces of legislation. Both Acts, despite being 40 years apart in enacting, converge on the need to increase accountability and transparency of government and public officials.

In order to reconcile the conflict between the RTI Act and the ACA, it is worth comparing the preambles of the two Acts:

The preamble of the Anti-Corruption Act, No.9 Of 2023 reads as follows:

AN ACT TO GIVE EFFECT TO CERTAIN PROVISIONS OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION AND OTHER INTERNATIONALLY RECOGNIZED NORMS, STANDARDS, AND BEST PRACTICES; TO PROVIDE FOR THE ESTABLISHMENT OF AN INDEPENDENT COMMISSION TO DETECT AND INVESTIGATE ALLEGATIONS OF BRIBERY, CORRUPTION AND OFFENCES RELATED TO THE DECLARATION OF ASSETS AND LIABILITIES AND ASSOCIATED OFFENCES, AND TO DIRECT THE INSTITUTION OF AND INSTITUTE PROSECUTIONS FOR OFFENCES OF BRIBERY, CORRUPTION AND OFFENCES RELATED TO THE DECLARATION OF ASSETS AND LIABILITIES AND OTHER ASSOCIATED OFFENCES; TO PROMOTE AND ADVANCE THE PREVENTION OF CORRUPT PRACTICES; TO EDUCATE AND RAISE AWARENESS AMONGST THE PUBLIC TO COMBAT CORRUPTION; TO REPEAL THE BRIBERY ACT (CHAPTER 26), THE COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION ACT, NO. 19 OF 1994 AND THE DECLARATION OF ASSETS AND LIABILITIES LAW NO. 1 OF 1975 AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

The preamble of the RTI Act reads as follows:

AN ACT TO PROVIDE FOR THE RIGHT OF ACCESS TO INFORMATION; TO SPECIFY GROUNDS ON WHICH ACCESS MAY BE DENIED; TO ESTABLISH THE RIGHT TO INFORMATION COMMISSION; TO APPOINT INFORMATION OFFICERS; TO SET OUT THE PROCEDURE AND MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS the Constitution guarantees the right of access to information in Article 14A thereof and there exists a need to foster a culture of transparency and accountability in public authorities by giving effect to the right of access to information and thereby promote a society in which the people of Sri Lanka would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.

It is obvious that both laws intend to uphold and promote universally accepted norms of transparency and accountability of government, and reduce opportunities for corruption. In this sense, the apparent operational conflicts seem less important than the uniting purposes of these legislations. This mandates collaborative approaches based on mutually amenable frameworks such as public interest tests.

### **5.3. Online Safety Act, No. 09 of 2024 (OSA) - Category 1 conflict**

#### **5.3.1. Collusive approach**

Section 51 of the Online Safety Act (OSA) provides overriding powers and reads as follows: "In the event of any inconsistency or conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail." Considering that this Act was passed after the RTI Act, controversy occurs if this Act may supersede the constitutionally guaranteed right of access to information.

To complicate things further, the drafters of this law have not paid attention to how it relates to the RTI regime. The OSA was introduced among strong protests by civil society and concerns raised by the international community, quoting the potential challenges it may pose to freedom of expression in Sri Lanka.

### 5.3.2. Implications on transparency

The way forward for potential conflict between the RTI regime and the OSA can be collusive, given the OSA's exclusionary nature. For instance, the Online Safety Commission (OSC) is not bound, by way of the OSA, to disclose specific online posts or accounts that it blocks. In its annual report to the Minister in-charge of the subject, the Commission does not have to provide identifiable details of online materials or locations they have reported or taken down. Even if such data were to be obtained by Parliament, the process is too long and inaccessible to the public. If the OSC decides to adopt a non-collaborative approach, online content policing by OSC will be difficult to track, given that Section 24 of the OSA provides for any magistrate court to issue orders to stop circulation of online content. For the purpose of transparency, unless the Commission follows transparent mechanisms and proactive disclosure, the OSC has the potential to become a serious threat to the RTI regime and freedom of expression in Sri Lanka.

### **5.4. Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023 - Category 3 conflict**

This Act is a critical legislative piece in the justice and accountability framework in Sri Lanka. Section 96 of this Act provides for the secrecy of data in possession of the officials operationalising the provisions of this law, as follows:

(1) No person shall, in any proceedings, be compelled to divulge whether a victim of crime or witness is receiving or has received assistance or protection under this Act, unless it becomes necessary for the purpose of giving effect to the provisions of this Act or any other written law.

This section may not conflict with the RTI law as long as it is not interpreted narrowly. However, for the purpose of safeguarding the RTI regime, the marginal conflicts have been considered as potential conflicts. For preemptively ironing out any differences between the applications of these laws, respective bodies can develop a dialogue. The other path would be to await RTI appeals in the event of an RTI application to the respective Public Authority (PA) being rejected, where the RTIC would anyway issue a directive.

## CONCLUSION

This analysis delves into the potential conflicts between various Sri Lankan laws and the Right to Information (RTI) Act, assessing their implications for democracy, transparency and privacy. Notably, the Personal Data Protection Act (PDPA), the Anti-Corruption Act (ACA), and the Online Safety Act (OSA) pose direct challenges to the RTI regime, classified as Category 1 conflicts due to their overriding clauses. In contrast, the Assistance to and Protection of Victims of Crime and Witnesses Act indicates potential, yet less direct, conflicts categorized under Category 3.

Having gone through all laws passed since 2022, it is observed that most laws comply with the RTI regime. Particular progress can be observed in some new Acts that have been drafted to comply with Sri Lanka's IMF commitments. These laws have clearly mentioned how they relate to the RTI regime. When Amendments are made to existing laws, there is a window of opportunity

to add a section defining how they relate to the RTI Act. However, this has not been done in any amendment that was studied. This omission can be considered as a missed opportunity.

A crucial takeaway is the delicate balance between ensuring privacy and maintaining public access to information as highlighted by judicial interpretations and statutory provisions that prioritize transparency in governance while respecting individual privacy. The RTI Act's supremacy in matters of public interest is affirmed in several statutes, suggesting a legislative intent to uphold transparency despite newer laws that could contradict this principle. Moving forward, resolving these conflicts will require nuanced interpretations and proactive legal frameworks that harmonize the principles of transparency, accountability, and privacy. This approach will not only strengthen democratic governance but also safeguard the fundamental rights enshrined in the Constitution.

## RECOMMENDATIONS TO ENGAGE IN REFORMING LAWS THAT AFFECT RTI REGIME

A few recommendations are made as a way forward. These recommendations are made without consulting stakeholder institutions, and may require consultation before implementation.

### Public Institutions

1. Develop public interest tests for PAs where it matters, to define the ingredients of public interest. This is specifically relevant to the PDPA and the ACA, which are meant to safeguard important rights, and perform important functions of a healthy democracy.
2. Amend the OSA to incorporate the RTI regime to it, so that the obscurity of the OSA is mitigated.
3. Include an RTI clause on all future amendments to laws.

### Civil Society

4. Increase advocacy on the prevailing gaps and conflicts so that future amendments can address them.
5. Raise awareness about the prevailing gaps in laws in terms of RTI regime, so that RTI requests can be mobilized to compel institutions to engage, leading to improvements to the RTI regime.

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## ANNEX

Table 1: A list of laws that affects the RTI regime in Sri Lanka, by analyzing all laws passed since January 2022 until May 2024.

Act No.	Name of the Act	Category of Conflict	Clauses
<b>Year 2022</b>			
1	Mahapola Higher Education Scholarship Trust Fund (Amendment) Act, No. 1 of 2022	No conflicts	
2	Code of Criminal Procedure (Amendment)	No conflicts	
3	Prohibition of Anti-personnel Mines Act, No. 3 of 2022	No conflicts	
4	Judicature (Amendment) Act, No. 4 of 2022	No conflicts	
5	Civil Procedure Code (Amendment)	No conflicts	
6	Provincial Councils (Transfer of Stamp Duty) (Amendment) Act, No. 6 of 2022	No conflicts	
7	Fauna and Flora Protection (Amendment) Act, No. 7 of 2022	No conflicts	
8	Intellectual Property (Amendment) Act, No. 8 of 2022	No conflicts	

9	Personal Data Protection Act, No. 9 of 2022	Category (1)	<p>3. (1) The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law, relating to the protection of personal data of data subjects: Provided however, where a public authority is governed by any other written law, it shall be lawful for such authority to carry out processing of personal data in accordance with the provisions of such written law, in so far as the protection of personal data of data subjects is consistent with this Act.</p> <p>(2) In the event of any inconsistency between the provisions of this Act and the provisions of such written law, the provisions of this Act shall prevail.</p> <p>40. Any exemption, restriction or derogation to the provisions of this Act shall not be allowed except where such an exemption, restriction or derogation is provided for in any law and respects the essence of the fundamental rights and freedoms and constitute a necessary and proportionate measure in a democratic society for-</p> <p>(a) the protection of national security, defense, public safety, public health, economic and financial systems stability of the Republic of Sri Lanka;</p> <p>(b) the impartiality and independence of the judiciary; (c) the prevention, investigation and prosecution of criminal offences;</p> <p>(d) the execution of criminal penalties; and</p> <p>(e) the protection of the rights and fundamental freedoms of persons, particularly the freedom of expression and the right to information.</p>
10	Workmen's Compensation (Amendment) Act, No. 10 of 2022	No conflicts	
11	Land Development (Amendment) Act, No. 11 of 2022	No conflicts	

12	Prevention of Terrorism (Temporary Provisions) (Amendment) Act, No. 12 of 2022	No conflicts	
13	Value Added Tax (Amendment) Act, No. 13 of 2022	No progress	Secrecy sections under the Value Added Tax Act (No. 14 of 2002) Section 65 and 73 continue to pose Category 2 conflicts with the RTI regime.
14	Surcharge Tax Act, No. 14 of 2022	No conflicts	
15	Sri Shakyasinharama Viharastha Karyasadhaka Sanvidanaya (Incorporation) Act, No. 15 of 2022	No conflicts	
16	Sri Lanka Electricity (Amendment) Act, No. 16 of 2022	No progress	Disclosure provisions in the Electricity Reform Act (No. 28 of 2002) under Section 64 and Sri Lanka Electricity Act (No. 20 of 2009) under section 59(3), (4) and (5) with (1) remain in a Category 2 conflict with the RTI regime.
17	Civil Procedure Code (Amendment) Act, No. 17 of 2022	No conflicts	
18	Code of Criminal Procedure (Amendment) Act, No. 18 of 2022	No conflicts	
19	Industrial Disputes (Special Provisions) Act, No. 19 of 2022	No conflicts	
20	Mortgage (Amendment) Act, No. 20 of 2022	No conflicts	
21	Appropriation (Amendment) Act, No. 21 of 2022	No conflicts	
22	Industrial Disputes (Amendment) Act, No. 22 of 2022	No conflicts	



23	Termination of Employment of Workmen (Special Provisions) (Amendment) Act, No. 23 of 2022	No conflicts	
24	Industrial Disputes (Amendment) Act, No. 24 of 2022	No conflicts	
25	Social Security Contribution Levy Act, No. 25 of 2022	No conflicts	
26	Sri Lanka Rupavahini Corporation (Amendment) Act, No. 26 of 2022	No conflicts	
27	Petroleum Products (Special Provisions) (Amendment) Act, No. 27 of 2022	No conflicts	
28	Powers of Attorney (Amendment) Act, No. 28 of 2022	No conflicts	
29	Wills (Amendment) Act, No. 29 of 2022	No conflicts	
30	Prevention of Frauds (Amendment) Act, No. 30 of 2022	No conflicts	
31	Notaries (Amendment) Act, No. 31 of 2022	No conflicts	
32	Registration of Documents (Amendment) Act, No. 32 of 2022	No conflicts	
33	Small Claims Courts' Procedure Act, No. 33 of 2022	No conflicts	
34	Judicature (Amendment) Act, No. 34 of 2022	No conflicts	

35	High Court of the Provinces (Special Provisions) (Amendment) Act, No. 35 of 2022	No conflicts	
36	Civil Procedure Code (Amendment) Act, No. 36 of 2022	No conflicts	
37	Kandyan Marriage and Divorce (Amendment) Act, No. 37 of 2022	No conflicts	
38	Code of Criminal Procedure (Amendment) Act, No. 38 of 2022	No conflicts	
39	Children and Young Persons (Amendment) Act, No. 39 of 2022	No progress	Children and Young Persons Ordinance (No. 2 of 1978) - Section 11 and 20 of the Act constitute a Category 3 violation.
40	Dangerous Animals (Amendment) Act, No. 40 of 2022	No conflicts	
41	Poisons, Opium and Dangerous Drugs (Amendment) Act, No. 41 of 2022	No conflicts	
42	Appropriation (Amendment) Act, No. 42 of 2022	No conflicts	
43	Appropriation Act, No. 43 of 2022	No conflicts	
44	Value Added Tax (Amendment) Act, No. 44 of 2022	No progress	Secrecy sections under the Value Added Tax Act (No. 14 of 2002) Section 65 and 73 continue to pose Category 2 conflicts with the RTI regime.
45	Inland Revenue (Amendment) Act, No. 45 of 2022	No progress	Category 1 conflict arising from secrecy clause in Sections 5 on Inland Revenue (Regulation of Amnesty) Act (No. 10 of 2004), Section 203 to 209(1) – (13) on Inland Revenue Act (No. 10 of 2006) , and sections 173 and 178 (1) – (13) in Inland Revenue Act (No. 38 of 2000) remain unchanged.

<b>Year 2023</b>			
1	Recovery of Possession of Premises Given on Lease	No conflicts	
2	Bureau of Rehabilitation Act, No. 2 of 2023	No conflicts	
3	Regulation of Election Expenditure Act, No. 3 of 2023	No conflicts	
4	Inland Revenue (Amendment) Act, No. 4 of 2023	No progress	Category 1 conflict arising from secrecy clause in Sections 5 on Inland Revenue (Regulation of Amnesty) Act (No. 10 of 2004), Section 203 to 209(1) – (13) on Inland Revenue Act (No. 10 of 2006) , and sections 173 and 178 (1) – (13) in Inland Revenue Act (No. 38 of 2000) remain unchanged.
5	Rathanatissa Peace Foundation (Incorporation) Act, No. 5 of 2023	No conflicts	
6	Parliamentary Budget Office Act, No. 6 of 2023	No conflicts	Clearly sets out the RTI law in section 32. 32. The Right to Information Act, No. 12 of 2016 shall be applicable in respect of the matters connected with or incidental to the provisions of this Act.
7	Civil Procedure Code (Amendment)	No conflicts	
8	Carriage by Air (Amendment) Act, No. 8 of 2023	No conflicts	

9	Anti-corruption Act, No. 9 of 2023	Category 1	<p>Confidentiality Clauses:</p> <p>28. (1) Any member of the Commission, the Director General or any officer or employee of the Commission or any other person whose services are retained under section 27 shall not disclose any information received by him, or coming to his knowledge, in the exercise and the discharge of his powers and functions under this Act, except for the purpose of giving effect to the provisions of this Act or where provision has been made under this Act to share information.</p> <p>(2) Every member of the Commission, the DirectorGeneral and every officer or employee of the Commission or any other person whose services are retained under section 27 shall, before entering upon the duties of his office, sign a declaration to the effect that he will not disclose any information received by him, or coming to his knowledge, in the exercise and the discharge of his powers and functions under this Act, except for the purpose of giving effect to the provisions of this Act.</p> <p>(3) Notwithstanding the provisions of subsection (1), the Director-General may, subject to the provisions of subsection (1) of section 5 of the Right to Information Act, No. 12 of 2016 and with the permission of the Commission, disclose such information as the Commission considers necessary in the public interest, for the purposes of publication in the press, media and social media with a view of enhancing the transparency and accountability of the Commission towards the public.</p> <p>73. (1) Where the Commission confidentially receives information to the effect that an offence under this Act has been committed or suspected to have been committed or is likely to be committed, such information and the identity of the informer shall not be revealed and the informer and the matters relating to such information shall not be disclosed in any proceedings before any court, tribunal, or other authority.</p>
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10	Assistance to and Protection of Victims Of Crime and Witnesses Act, No. 10 of 2023	Category 3	<p>Secrecy</p> <p>96. (1) No person shall, in any proceedings, be compelled to divulge whether a victim of crime or witness is receiving or has received assistance or protection under this Act, unless it becomes necessary for the purpose of giving effect to the provisions of this Act or any other written law.</p> <p>(2) No person shall, otherwise than for the purpose of giving effect to the provisions of this Act or in compliance with the provisions of any other written law, divulge to any other person whether a victim of crime or witness is receiving or has received assistance or protection under this Act.</p>
11	Betting and Gaming Levy (Amendment) Act, No. 11 of 2023	No conflicts	
12	Appropriation (Amendment) Act, No. 12 of 2023	No conflicts	
13	Sri Lanka Institute of Taxation (Incorporation) (Amendment) Act, No. 13 of 2023	No conflicts	
14	Inland Revenue (Amendment) Act, No. 14 of 202	No Progress	Category 1 conflict arising from secrecy clause in Sections 5 on Inland Revenue (Regulation of Amnesty) Act (No. 10 of 2004), Section 203 to 209(1) – (13) on Inland Revenue Act (No. 10 of 2006) , and sections 173 and 178 (1) – (13) in Inland Revenue Act (No. 38 of 2000) remain unchanged.
15	Social Security Contribution Levy (Amendment) Act, No. 15 of 2023	No conflicts	

16	Central Bank of Sri Lanka Act, No. 16 of 2023	No conflicts	10. (1) The proceedings of the meetings of the Governing Board shall be confidential to the extent permitted under the Right to Information Act, No. 12 of 2016. The Governing Board may give publicity to any of its decisions on any matter, if it considers it necessary. (2) The minutes of each meeting of the Governing Board shall be signed by the person presiding at such meeting and the Secretary to the Governing Board. (3) The minutes of each meeting of the Governing Board shall be kept in writing, and retained at least for a period of twelve years.
17	Banking (Special Provisions) Act, No. 17 of 2023	No conflicts	
18	Chartered Institute of Transport of Sri Lanka (Incorporation) (Amendment) Act, No. 18 of 2023	No conflicts	
19	Ayurveda (Amendment) Act, No. 19 of 2023	No conflicts	
20	Civil Procedure Code (Amendment) Act, No. 20 of 2023	No conflicts	
21	Elections (Special Provisions) Act, No. 21 of 2023	No conflicts	
22	Sri Lanka Ports Authority (Amendment) Act, No. 23 of 2023	No conflicts	
23	Civil Aviation (Amendment) Act, No. 24 of 2023	No progress	Category 1 Secrecy Clauses in Sections 57, and institutional autonomy clauses in Section 60(3) with (1).

24	Balapitiya Sri Rahularama Purana Viharastha  Samanera Akalpa Sangwardena Bikshu  Vidyalaya (Incorporation)  Act, No. 25 of 2023	No conflicts	
25	Conferring the Honour of Senior  Instructing Attorneys-At- Law  Act, No. 26 of 2023	No conflicts	
26	Fisheries and Aquatic Resources (Amendment)  Act, No. 27 of 2023	No conflicts	
27	Anti - Corruption (Amendment)  Act, No. 28 of 2023	No conflicts	
28	Civil Procedure Code (Amendment)  Act, No. 29 of 2023	No conflicts	
29	Local Authorities Elections (Amendment)  Act, No. 30 of 2023	No conflicts	
30	Galaha Bhaddrawathie National Bhikkhu  Care Centre Trust Act, No. 31 of 2023	No conflicts	
31	Value Added Tax (Amendment)  Act, No. 32 of 2023	No progress	Category 2 Secrecy Clauses as per Section 65a, b, and c, and Section 73 1,2, 3, and 4.
32	Finance Act, No. 33 of 2023	No conflicts	
33	Appropriation Act, No. 34 of 2023	No conflicts	

<b>Year 2024</b>			
1	Office for National Unity And Reconciliation	No conflicts	
2	Mediation Board (Amendment)  Act, No. 2 of 2024	No conflicts	
3	Powers of Attorney (Amendment)  Act, No. 3 of 2024	No conflicts	
4	Prevention of Frauds (Amendment)  Act, No. 4 of 2024	No conflicts	
5	The Recognition and Enforcement of International Settlement Agreements Resulting From Mediation Act, No. 5 of 2024	No conflicts	
6	Notaries (Amendment)	No conflicts	
7	National Hydrographic Act, No. 7 of 2024	No conflicts	
8	Contempt of a Court, Tribunal or Institution  Act, No. 8 of 2024	No conflicts	
9	Online Safety Act, No. 9 of 2024	<b>Category 1</b>	51. In the event of any inconsistency or conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail.
10	Sri Lanka Baptist Sangamaya  (Incorporation) (Amendment)	No conflicts	
11	Sri Balabhivurdhi Wardana Society  (Incorporation) Act, No. 12 of 2024	No conflicts	



12	Samadhi Community Development Foundation (Incorporation) Act, No. 13 of 2024	No conflicts	
13	Dassana Bauddha Sanvidhanaya (Incorporation) Act, No. 14 of 2024	No conflicts	
14	Social Security Contribution Levy (Amendment) Act, No. 15 of 2024	No conflicts	
15	Value Added Tax (Amendment)	No progress	The original Value Added Tax Act (No. 14 of 2002) forms Category 2 conflict with RTI.
16	Secured Transactions (Amendment) Act, No. 17 of 2024	No conflicts	
17	Registration of Documents (Amendment) Act, No. 18 of 2024	No conflicts	
18	Trust Receipts (Amendment) Act, No. 19 of 2024	No conflicts	
19	Mortgage (Amendment)	No conflicts	
20	Finance Leasing (Amendment) Act, No. 21 of 2024	No Progress	Category 2 The Director or any officer authorised by the Director shall not disclose any information or matter acquired in the discharge of his duties under this Act, except- (a) when required to do so- (i) by a court of law; (ii) by the person to whom such information or matter relates; (b) in the performance of his duties under this Act; or (c) in order to comply with any of the provisions of this Act or any other law.
21	Inland Trust Receipts (Amendment) Act, No. 22 of 2024	No conflicts	

22	Companies (Amendment) Act, No. 23 of 2024	No progress.	<p>Secrecy provisions under Category 3</p> <p>(1) Where it appears to the Registrar that there is good reason so to do, he may appoint one or more inspectors to investigate and report on the ownership of the shares of the company and otherwise with respect to the company, for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or able to control or materially to influence its policy.</p> <p>(9) Where the Registrar considers that there is good reason not to divulge any part of a report made under this section, he may disclose the report under section 176 with the omission of that part.</p>
23	Banking (Amendment)	No progress	<p>Category 2</p> <p>Every director manager, officer or other person employed in the business of any licensed commercial bank shall, before entering upon his duties sign a declaration pledging himself to observe strict secrecy in respect of all transactions of the bank, its customers and the state of accounts of any person; and all matters relating thereto, and shall by such declaration pledge himself not to reveal any other matters which may come to his knowledge in the discharge of his duties except</p> <p>(a) when required to do so</p> <p>(i) by a court of law;</p> <p>(ii) by the person to whom such matters relate;</p> <p>(b) in the performance of his duties; and</p> <p>(c) in order to comply with any of the provisions of this Act or any other law.</p>
24	Code of Criminal Procedure (Amendment) Act, No. 25 of 2024	No conflicts	

25	Recovery of Loans by Banks (Special Provisions) (Amendment) Act, No. 26 of 2024	No conflicts	
26	Partition (Amendment) Act, No. 27 of 2024	No conflicts	
27	Shop and Office Employees (Regulation Of Employment and Remuneration) (Amendment) Act, No. 28 of 2024	No progress	Category 3  Confidentiality provisions under sections 47(3) and (4) with (1), and 56.

Notes - Acts were accessed from the parliament.lk website, section "Acts and Bills". Where endorsed acts were available online, their drafts were accessed.

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