

The access to Freedom of Information in the process of governance and in the formulation of state policy

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The representatives of the people including the President, the cabinet ministers, MPs, members of provincial councils and members of local government bodies are bound by the Declaration of Assets and Liabilities Law No. 01 of 1975 as amended by Act No. 74 of 1988 to declare their assets and liabilities.

According to Section 4 of the Act, all the candidates contesting under Presidential Elections Act No. 15 of 1981, Parliamentary Elections Act No. 01 of 1981, Provincial Council Elections Act No. 02 of 1988, Local Government Institutions Elections Act No. 20 of 1981, and according to Section 2 of the Act, all the Members of Parliament, Members of Local Government Institutions are bound by that law to declare their assets and liabilities.

The term assets and liabilities means the movable and immovable properties owned by the declarant and his wife and children in and outside Sri Lanka.

The candidates contesting the presidential elections, parliamentary elections, provincial council elections or local government elections must make their declarations on the date of submitting their nominations or within three months from then, while a winning candidate must make his or her declaration of assets either before he starts work in his post or before he uses his vote.

Thereafter the winning candidates must submit their declarations before March 31 of every year. The Speaker and the members of the cabinet must submit their declarations to the President while the MPs must submit them to the Speaker and the members of the Provincial Councils and members of local government bodies must submit their declarations annually to the ministerial secretaries.

According to Section 9 of the Act,

- (a) refraining from declaring the assets and the liabilities
- (b) deliberately withholding facts or distorting them

are offences punishable by 07 year's imprisonment under Section 139 of the Criminal Procedure Code No. 15 of 1979.

Under this law, an offender can be complained against to a magistrate or to the commission inquiring into Bribery or Corruption charges, set up under the Bribery or Corruption Charges Inquiry Commissions Act No. 19 of 1994. When a complaint is made to a magistrate, the magistrate does not need the attorney general's sanction to initiate an inquiry.

All citizens have the right to examine the declarations of assets and liabilities of any person who is bound by law to declare assets and liabilities under Section 5 of the Act, and to get a true copy of it by paying the additional fee due to be paid.

Although this law is a very vital and powerful one to prevent the possibility of the representatives of the people to amass wealth by improper means, it is not in a state of practicability. Many representatives of the people who are bound to declare their assets and liabilities under this law refrain from doing so. Although what they do is illegal, the authorities concerned do not take action under the law.

Even those who declare their assets and liabilities often distort the facts and deliberately conceal them.

The most serious matter is that although the people have been given the right to examine and if necessary get copies of the declarations of assets and liabilities of any person who is bound to make those declarations, the authorities do not respond to the requests made by the people and consequently the people are denied the right to examine the declarations.

Some of the experiences I, as a newspaper editor who made a powerful effort to give life to this law, had to face are as follows:

About 1992 I spoke on the phone to the secretary to the parliament and told him that I wanted to examine the declarations of assets of the members of parliament and to get copies of some of them. The secretary appeared to be dumbstruck by my request. He said that the statements of assets and liabilities of MPs had been sealed and kept under lock

and key and that their copies could be obtained only if there was a court order, and he replaced the receiver without leaving any room for further questioning.

From the very reply of the secretary to the parliament it was not difficult to see the state of this law. Thereafter I discussed the matter with Prof. G.L.Pieris who was the vice chancellor of the University of Colombo at the time, and later with Ms.Chandrika Kumaratunga. As a result the election manifesto of the People's Alliance for 1994 contained a promise about it. This is what that manifesto said:

' There is an established view in our country that while the political sharks who indulge in large scale acts of bribery and corruption are safe and sound, only the sprats are caught by the net of the law and are brought before the courts. There are fair reasons for such a view. Let us take steps to put an end to this state of affairs. Let us give to a permanent bribery and corruption commission a wide mandate and powers to inquire into the allegations of bribery against MPs, members of provincial councils, members of local government bodies, the officials in the ministries, departments, corporations and statutory bodies. Everyone of them must make a public statement every year about his or her assets and liabilities' (The Tenth Parliament of Sri Lanka Page 368)

After the People's Alliance came to power, only one minister (Lakshman Jayakody) gave a statement of his assets and liabilities to the media. However attractive the promises might have been this law was not operating about those who were at the top of the power pyramid. In order to find out, under the right given by the law, what the response would be to a request for the purpose, I named 10 cabinet ministers and requested the secretary to the President by a letter sent under registered cover, to make available to me copies of their statements of assets and liabilities. This request was made on December 01, 1998.

At the same time, in order to find out the situation in the parliament, I named 8 MPs and requested the Speaker by a letter sent under registered cover to get me their statements of assets and liabilities.

Although I received no reply from the secretary to the President, Speaker Mr. K. B. Ratnayake spoke to me on the phone and thanked me for reminding him about the law and said that, because of this request, he had to find out the position of the declarations of assets and liabilities, and that he had found that, although some MPs had handed over their declarations, some others had not, and that because only a few had made their

declarations, only their declarations could be given for the present, and that he would send a notice to the others too about it.

When there was no response at all from the President's secretary to the request made about 10 ministers, I had to contact the secretary on the phone and to complain to him. He requested me to fax a copy of the application immediately to him. That was on January 01, 1999. A copy of the application was faxed to him immediately but there was no reply. Thereafter, on July 16, 1999, I sent a reminder of the original request to the Presidential secretary under registered cover and informed him that if there was no reply to this letter too, I would have to take action under the law to get the declarations as requested. There was no reply to that either. Thereafter, taking with me the file containing copies of my request to the Presidential Secretary, I met three well-known lawyers and discussed the question with them. Although everyone of them said that it was possible to get a court order for the purpose of getting the required statements, none of them was willing to appear on that behalf. It may be that every one of them thought 'why get entangled in a question that could cause the ruler's hatred?'

The commissioner of elections is another authority involved in this subject. It is he who is entrusted with the job of getting the declarations from the candidates who contest the elections and from the people's representatives who are elected. In order to find out how the commissioner of elections was taking action in this regard, I requested him by a letter under registered cover on 28.10.1999 to send me copies of the statements of assets and liabilities made by the leaders of the two main parties (President Chandrika Kumaratunge and Opposition leader Ranil Wickremesinghe). The acting commissioner of elections sent a reply. He had said in it that the commissioner of elections had fallen ill suddenly and had been hospitalized, and that my request would be considered after he reported back to work. Thereafter, at the time of accepting nominations for the presidential election to be held at the end of 1999, I raised an objection in a letter to the commissioner of elections, and requested him to refrain from accepting nominations from candidates who had contested previous elections and had not submitted declarations of assets and liabilities.

Although the commissioner of elections had accepted the nominations disregarding that objection, it had perturbed the main candidates because of the publicity given to the objection by the media. I learnt later that both the candidates of the two main parties (Ms.Chandrika Kumaratunge and Mr.Ranil Wickremesinghe) had handed over their declarations of assets and liabilities, too, at the time they handed over their nominations.

Thereafter again, prior to the acceptance of nominations for the parliamentary election of 2001, I had to send a notice under registered cover to the commissioner of elections. By that notice I explained to the commissioner of elections his duty to get statements of assets and liabilities from candidates, protested against his non-compliance with that duty, requested him to enforce that law at the forthcoming election at least, and to inform the candidates about the matter at least by publishing advertisements.

I also gave him notice that if he failed, I would take action against him under the law.

Although the commissioner of elections did not send me a letter in reply, an advertisement detailing the legal obligation of the election candidates to declare their assets and liabilities was published in the newspapers. It may be considered the first instance when the commissioner of elections tried to fulfill his duty in this matter.

However, some time after the election, he had made a statement to a newspaper, which surprised me. In that statement he had said that he had informed the candidates about the need to submit statements of assets and liabilities under the law of assets and liabilities and that, accordingly, a certain number of candidates had handed over their statements but a certain number had not done it. He had also said that the law said nothing about the policy that should be followed about those who did not hand over those statements, and consequently, there was nothing he could do beyond it.

The law states clearly that all the candidates at elections must hand over their statements of assets and liabilities within a certain period of time. It also states that abstaining from handing over statements of assets and liabilities is a punishable offence under section 136(1) of the Criminal Procedure Code. It also details to whom complaints must be made about such offences. If the commissioner of elections had any doubts about it, what he should have done was to consult the attorney general, or to go to the supreme courts and get its advice. By saying, instead, that he could do nothing beyond because the law does not detail what he should do about those who do not give those statements, the commissioner of elections, as an officer in charge of this subject, has committed a serious wrong. It may be a policy he had adopted in order to evade the question due to his fear of getting involved in problems with the politicians on this sensitive subject, more than any doubts about the law.

As the commission for inquiry into allegations of bribery or corruption is the foremost institution which has to take action about offences that fall under the assets and liabilities law, I made an inquiry under registered cover, from the secretary to the President, whether the members of that commission had submitted statements of assets and liabilities, because I wanted to know whether they had done it. There was no reply. The Bribery and Corruption Inquiry Commission Act. No.19 of 1994 had been passed with a majority vote of 2/3. One of the two purposes of the setting up of that commission was to take action about offences that come under the assets and liabilities law.

Although it is also mentioned in the preamble to the Act, what is included is not the entire Amendment Act but the Assets and Liabilities Declaration Act No. 01 of 1975 which had existed before the amendment. It was a toothless Act and it was given teeth by the Amendment Act No. 74 of 1988. However, at every place in which the Assets and Liabilities Act is mentioned in the Bribery and Corruption Inquiry Commission Act, it is referred to not as the Act No 01 of 1974 of the National State Assembly as amended by Act No.74 of 1988, but as the Assets and Liabilities Declaration Act No. 01 of 1975 of the National State Assembly. It is not clear whether this is a mistake that has occurred due to carelessness or whether it is a mistake made deliberately to subvert the enforcement of the Assets and Liabilities law.

The assets and liabilities law is an important law enacted for the purpose of preventing improper earning of wealth by those who come under that law, and to ensure their transparency in the matter. However its usefulness rests not on the pretty words included in the law but on practical actions.

The authorities who are there to enforce the law as well as the powerful persons who come under it appear to be acting with mutual understanding to keep the law in a state of inactivity for the advantage of them all.

According to that law, only the state officials who fall within that law are in a position to declare their assets and liabilities. However, there they follow a policy of withholding and distorting facts. They are able to commit such offences without fear, because there is no likelihood of public scrutiny. It is the politicians who mostly follow a policy of abstaining from making declarations of assets and liabilities. However, the law does not operate against them.

The attention of those who are taking action to bring in new laws to guarantee the right to information must not be confined to new laws only, but must be directed to sectors like this for which purpose there is legal provision, which however is not in a state of practicability. If the right to information, which is available under the law, is in a state of inaction, the same thing can happen to new rules and regulations that are brought into existence. Even the 17th amendment to the constitution is in a state of inaction. What it confirms is that the politicians of Sri Lanka are able to keep even the constitution in a state of inaction. It is important, therefore, to combine the struggle to bring in new laws, with the struggle to make the laws already introduced enforceable.

Bringing the law on assets and liabilities to a state of enforceability alone can introduce a number of positive changes in political morality. To make it practicable, a course of action to bring awareness to the people, as well as a course of action in the courts of law will be necessary. Although a procedure to get statements of assets and liabilities of politicians might be secured without difficulty, the result will not be satisfactory if they are not subjected to public scrutiny. While the people should be told about the importance of examining them, it must also be possible to get copies of them without difficulty and at a fair price.

Under the present system a sum of as much as Rs. 750/= is levied for a copy of a declaration of assets and liabilities. However, the expense incurred on making a photocopy is less than Rs.50/=. The exorbitant price levied is obviously aimed at dampening the people's interest in examining them. What must in fact be done is to introduce a system by which the declarations of assets and liabilities of all who come under the assets and liabilities law are made available through websites. Then it will be possible, for all those who are interested, to examine the declarations of assets and liabilities of any person. It is then that they will be subjected to public scrutiny in the way they should.