

Religious Freedom Violations in Sri Lanka:

The Use Of Right To Information Law To Assess The
Response Of Law Enforcement Authorities And The
Judiciary
PHASE 1



**NATIONAL CHRISTIAN
EVANGELICAL ALLIANCE**
SRI LANKA

Religious Freedom Violations in Sri Lanka: The use of Rights to Information law to assess the responses of Law Enforcement Authorities and the Judiciary. Phase 1

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The Religious Liberty and Social Justice Commission (RLC) of the NCEASL monitors and documents incidents of violence, intimidation and discrimination against Sri Lanka's religious communities. The aim of the Religious Liberty and Social Justice Commission is to advance Freedom of Religion or Belief for all Sri Lankans through advocacy and lobbying, research and documentation and training and education.

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Foreword

The Freedom of Religion or Belief (FoRB) is a constitutionally guaranteed, fundamental human right. Over the past few years, however, the FoRB situation in Sri Lanka has been a cause for concern. From violence in the form of large scale, anti-Muslim riots in 2018 and 2019, the bloody Easter attacks of April 2019, to ongoing restrictions by way of the law, minority faith communities have continued to face intense challenges in relation to their right to religious freedom.

The law, but particularly the judiciary and law-enforcement authorities are places of refuge for those seeking redress and protection from right violations. Normatively, such systems and safeguards are designed to alleviate the issues of victims and create conditions for individuals to fully enjoy their rights guaranteed by law.

In Sri Lanka, victims of FoRB violations have often complained that instead of providing relief, legal systems, including law enforcement, have worked to add to their burdens in the pursuit of justice. As such, this research was undertaken to uncover the responses of the authorities in relation to FoRB related issues. In keeping with this, the research has sought to harness the Right to Information Act No. 12 of 2016 (the RTI Act), to gather information related to FoRB incidents as they stand before various forums such as at police inquiries, inquiries before the Human Rights Commission of Sri Lanka (HRCSL) and before the Courts of Law. The report, therefore, is purposed to determine the response from law enforcement and the judiciary to FoRB in Sri Lanka. Moreover, in extension, the research has also been conducted to ascertain the effectiveness of the RTI mechanism in accessing information related to issues of FoRB incidents placed before the authorities.

As the research developed, it was evident that seeking information was in itself a challenge, as bureaucratic processes, heavy paperwork and wariness of sharing information impeded the collection of data for the research. Hence, this research initiative will be presented in two phases, with Phase 2 of the research focusing on unpacking the investigation and justice process a victim navigates in seeking relief in relation to FoRB violations and more in-depth understanding into responses of the authorities in relation to such issues.

My sincere appreciation goes out to Sindhu Ratnarajan and Shenali De Silva, the researchers for the project, Shalomi Daniel and Jashan Jegasothy from the NCEASL team who coordinated the research and Deshamanya Godfrey Yogarajah, the CEO of the NCEASL for his guidance throughout. Finally, I want to express my gratitude to USAID for the support extended, without which, this project would not be possible.

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1. INTRODUCTION

One of the constitutionally vested freedoms in Sri Lanka is the freedom of thought, conscience and religion. This envisions a state in which its people have the individuality to think and maintain a series of beliefs for themselves. This stems from the recognition of people as the most important unit of a democratic society, recognizing the value of diversity, as opposed to a patriarchal state attempting to harness uniformity. Historically speaking religions have involved a degree of violence in their propagation and practice. While moving towards coexistence with pluralistic religious tendencies, the realities of maintaining a peaceful society for all, is acknowledged worldwide.

This report was commissioned by the National Christian Evangelical Alliance Sri Lanka (NCEASL) to use the Right to Information law, to assess the response of the law enforcement and judicial systems with regards to cases of religious freedom violations, challenges faced in pursuing litigation on religious freedom, and the delays and obstacles in obtaining justice for victims of religious freedom violations.

2. METHODOLOGY

This research used the Right to Information Act No 12 of 2016 (RTI Act) as the primary means of data collection to gather information on the current status of proceedings regarding religious freedom violations against Christians¹, Muslims, Hindus, and Buddhists. On a secondary level, journal entries and court proceedings, interviews, and focus group discussions were also used to complement the information sought to be gathered through the RTI Act. The information in the report with regards to religious freedom violations, is mostly drawn from documentation carried out by the NCEASL. This included conversations with victims and individuals related to an incident and follow up measures to monitor progress. Police complaint numbers and photographic evidence of the incidents were also provided to the NCEASL by victims of religious freedom violations. The NCEASL also engaged

¹ The NCEASL does not maintain a definition for what denominations are considered Christians. However, it is mostly evangelical Christians that are included within their purview.

in interviews with lawyers regarding certain incidents. The information obtained from the NCEASL has not been confirmed independently from third party sources, although clarifications have been made when needed with the NCEASL. In instances where primary research was not possible media reports have been utilized. Where media reports have been relied upon, it has been attempted as much as possible to rely on at least two media reports, together with corroboration from the NCEASL.

The Right to Information process was used as one of the main mechanisms of obtaining data for this research. Firstly, 28 incidents of religious freedom violations were selected for the purposes of sending in RTI requests. Incidents that had been documented by the NCEASL were selected. These were incidents where there was more information that was easily accessible by the NCEASL. The time period selected was incidents that were pending resolution as at March 2019. However, it was also noted that documentation of Hindu and Muslim incidents, have not been carried out on a systematic basis by any other party. However, since 2015, the NCEASL has begun documenting Hindu and Muslim incidents through its network of interreligious documentation officers. Thereby as there were not many incidents available for analysis within this timeframe, few incidents after March 2019 were also included.

Of the 28 incidents where RTI requests were filed, 20 related to Christian incidents, four related to Muslim incidents, two related to Hindu incidents, and two related to Buddhist incidents. Requests for information were made to the Information Officer (IO) of the relevant public authority (such as the relevant police station or the relevant court).² Where no response was provided, and after the stipulated time period for a response had lapsed, an appeal was made to the Designated Officer (DO).³

Although initially the incidents selected for this report only included the 28 incidents for which RTI requests were filed, it was noted that there was not a balanced number of incidents from

² An Information Officer is an officer appointed by the public authority to handle matters relating to information requests and provide assistance to citizens requesting information. Until an IO is appointed the Head/CEO of the public authority shall be considered as the IO. A Designated Officer is an officer similarly appointed to hear appeals. RTI Act No 12 of 2016, art 23(1), 23(2).

³ Of the 20 Christian incidents, an appeal to the DO was not made in two instances as the information requested was received through other means. (Incident 12/33 and incident 15/33).

all religions. In order to provide a more comprehensive incident analysis, other incidents were included. Presently 20 Christians incidents, two Buddhist incidents, five Hindu incidents and six Muslim incidents, amounting to a total of 33 incidents, were taken into consideration.

3. LEGAL FRAMEWORK

Sri Lanka is a signatory to many international conventions relevant to the protection of religious freedom. Further, Sri Lanka also has many domestic law provisions through the Constitution, Penal Code, and other legislation that uphold religious freedom.

3.1 Domestic law

3.1.1 Constitutional Provisions

Freedom of religion is considered in various provisions of the Constitution of Sri Lanka.⁴ Article 10 states that “Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.”

Article 14(1)(e), provides citizens “the freedom either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.” However, the right can be restricted, “as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.”⁵

Article 12, which speaks of equality, specifies that citizens shall not be discriminated on the grounds of religion and, further, that they shall not be subject to any “disability, liability, restriction or condition” with regard to access to “places of public worship of his own religion.”

Directive Principles, although not justiciable, impose a duty on the state, so that no citizen shall suffer any disability, including in relation to religion.⁶ The State is expected to strengthen national unity by promoting co-operation and mutual confidence among all sections of the

⁴ The Constitution of the Democratic Socialist Republic of Sri Lanka (1978) Herein the Constitution.

⁵ *ibid*, art 15(7).

⁶ *ibid*, art 27(6).

people of Sri Lanka, including religious groups.⁷ In addition, the State is also to “create the necessary economic and social environment to enable people of all religious faiths to make a reality of their religious principles.”⁸

3. 1. 2 PENAL CODE PROVISIONS

Chapter XV of the Penal Code⁹ is dedicated to offences relating to religion. Section 290 states:

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion or any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion shall be punished...¹⁰

Section 290A further states:

Whoever does any act in or upon the vicinity of a place of worship or object which is held sacred with intent to or in veneration by any class of persons, with the intention of wounding the religious feelings of any class of persons or with the knowledge that any class of persons is likely to consider such act as an insult to their religion shall be punished...

Any voluntary disturbance to any assembly lawfully engaged in the performance of religious worship or ceremonies is deemed an offence.¹¹ Moreover, the utterance of any word or sound or gesture or placing of any object in the sight of that person with the deliberate intention of wounding the religious feelings of any person;¹² deliberate and malicious intention of outraging religious feelings of persons by words, visible representations, insults

⁷ *ibid*, art 27(5).

⁸ *ibid*, art 27(11).

⁹ Penal Code Ordinance No. 2 of 1883.

¹⁰ *ibid*, s 290.

¹¹ *ibid*, s 291.

¹² *ibid*, s 291A.

or attempts to insult¹³ and trespassing in any place of worship or place set apart for performance of funeral rites are also considered offences.¹⁴

3 . 1 . 3 OTHER LEGISLATION AND GOVERNMENT CIRCULARS

The International Covenant on Civil and Political Rights Act¹⁵ states that “No person shall advocate religious hatred that constitutes incitement to discrimination, hostility or violence.”¹⁶

The Cemeteries and Burials Ordinance¹⁷ contains provisions permitting the erection of chapels and other buildings for the purposes of burial services or cremations and permits persons to officiate religious services.¹⁸

The Prevention of Terrorism Act¹⁹ states:

Any person who by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups shall be guilty of an offence under this Act.

A 2008 circular²⁰ issued by the Ministry of Religious Affairs and Moral Upliftment states that, prior to the construction of places of worship, an application needs to be made and approval is required from the Ministry. The approval is at the sole discretion of the Ministry. The

¹³ *ibid*, s 291B.

¹⁴ *ibid*, s 292.

¹⁵ International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007.

¹⁶ *ibid*, s 3(1).

¹⁷ Cemeteries and Burials Ordinance No. 9 of 1895.

¹⁸ *ibid*, s 9, s 11(1), s 13.

¹⁹ Prevention of Terrorism Act (Temporary Provisions) No. 48 of 1979 S2(1)(h); See also s 14(2)(a)(ii).

²⁰ Circular on Construction of New Places of Worship (16.10.2008) Ministry of Religious Affairs and Moral Upliftment.

purpose of this circular is stated as an attempt to curb any problematic situations that may arise from the unauthorized construction of new places of worship.²¹

A report produced by Verite Research based on information provided by the NCEASL, titled *Judicial Responses to Religious Freedom: A Case Analysis (2015)* argues that the legality of this circular is open to contestation as at the time of issuance, there was no specific law that permitted circulars to restrict rights under Article 14(1)(e) of the Constitution. Article 15(7) specifies that rights under Article 14 can only be restricted by “law”, including regulations. It is hence argued that these Circulars are not regulations and could not have been issued under the Public Security Ordinance as well. Therefore, it is debatable as to whether the Minister had a legal basis to issue these circulars.²² Further, in response to a RTI request sent by the NCEASL and the Muslim Council of Sri Lanka in 2017 to the Ministry of Buddhasasana regarding the applicability of the said circular, the Ministry responded that the circular is applicable only to Buddhist religious places.²³

As the findings of this report illustrate, this Circular is significant because the legitimacy of places of worship have been contested on this basis, with perpetrators claiming that certain places of worship are unauthorized constructions, which have failed to obtain the relevant approval.²⁴

²¹ *ibid.*

²² <<https://www.minormatters.org/storage/app/uploads/public/5b5/6f3/859/5b56f3859e9b2293487491.pdf>> accessed on 05 July 2020.

²³ Keeping in line with principles of transparency, the NCEASL is willing to share its records of documents relating to the RTI requests filed by the Organization, to interested parties on request.

²⁴ *ibid.*

3.2 International Law

Sri Lanka is a dualist nation; therefore, international law needs to be incorporated into local jurisdiction *via* enabling legislation. The ICCPR Act is one such example. However, even in the absence of enabling legislation, the Supreme Court has referred to international law in local judgements.²⁵ Therefore, internationally accepted standards hold normative value in Sri Lanka.

Various international conventions emphasize religious freedom, such as the Universal Declaration on Human Rights²⁶ (UDHR), the International Convention on Civil and Political Rights²⁷ (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁸ and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).²⁹ The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities³⁰ and Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief³¹ are two UN General Assembly Declarations that also seek to advocate religious freedom.

Article 18 of the UDHR states that “everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. This is also echoed in Article 18(1) of the

²⁵ *Bulankulama v Minister of Industrial Development* (Eppawala Case) SCFR 884/99 *Kavirathne v Commissioner General of Examinations* SCFR 29/2012, *Silva v Iddamalgoda* [2003] 2 SLR 63; *Abeysekera v Rubesinghe* [2000] 1 Sri LR 314.

²⁶ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

²⁷ International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

²⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

²⁹ UNGA International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.

³⁰ UNGA Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 3 February 1992, A/RES/47/135 (Adopted by General Assembly resolution 47/135 of 18 December 1992).

³¹ UNGA Declaration on the Elimination of all forms of intolerance and of discrimination based on religion or belief., 16 December 1976, A/RES/31/138 (Proclaimed by General Assembly resolution 36/55 of 25 November 1981).

ICCPR.³² The ICCPR not only provides a right with regard to religious freedom but also considers “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” to be “prohibited by law”, in effect perhaps considering it an offence. Further, discrimination on the basis of religion is also prohibited.³³ It is noteworthy that the ICCPR identifies that persons of minority religions are more susceptible to violations of the freedom of worship and vests with them the right to “practice their own religion.”³⁴ Article 18 of the UDHR and 18(1) of the ICCPR interlink Articles 10 and 14(1)(e) of the Sri Lankan Constitution. The UDHR also provides the freedom to change one’s religion or belief, while freedom of choice with regard to your religion is also implied in Article 18(2) of the ICCPR. The ICESCR holds that States Parties undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind including religion.³⁵ Similarly, the ICERD seeks to ensure that States Parties undertake to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, in the enjoyment of *inter alia* the right to freedom of thought, conscience and religion.³⁶

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities³⁷ notes the importance of effective implementation of human rights instruments with regard to rights of persons belonging to *inter alia* religious minorities. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on

³² ICCPR, art 18(1), 18(2),18(4). See also 1981 Declaration of the General Assembly, art. 1(1): Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice.

³³ ICCPR, art 26. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

³⁴ ICCPR, art 27. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

³⁵ ICESCR, art 2(2).

³⁶ ICERD, art 5(d)(vii).

³⁷ Adopted by General Assembly resolution 47/135 of 18 December 1992.

Religion or Belief³⁸ considers that “religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed.”

3.3 Adequacy of legal framework on freedom of religion protection

Sri Lanka has a wide range of protections available to safeguard its citizens, including ensuring the freedom to engage in religious worship.

The right to the freedom of thought, conscience and religion as affirmed in Article 10 of the Constitution, has been considered by academics, such as Asanga Welikala and Rohan Edrisinha as absolute and non-derogable by way of implication.³⁹ The Constitution also does not mention any permissible derogations pertaining to Article 10. This stands in contrast to Article 14, which conveys limitations in the manifestation of religion. While Article 10 appears to be a valuable right, it can also be questioned as to whether the absolute right to freedom of religion can be provided without an absolute right to its manifestation.

One of the bigger debates relating to religious freedom in Sri Lanka is the reference to Sri Lanka being a ‘Sinhala Buddhist’ State. This stems from the constitutional protection given to Buddhism, vesting on it “foremost place” and that the duty of the State shall be to “protect and foster the Buddhasasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e).”⁴⁰ The Constitution does not explicitly state that Buddhism is *the* state religion of Sri Lanka. Instead, the wording gives primacy to the religion without expressly stating that it is the official religion. The tension created by this provision is that, as long as the State is to provide the primary place to Buddhism, protection offered to all other religions may be

³⁸ Proclaimed by General Assembly resolution 36/55 of 25 November 1981.

³⁹Rohan Edrisinha and Asanga Welikala, 'Civil and Political Rights in the Sri Lankan Constitution and Law: Making the New Constitution in Compliance with the ICCPR' (2016) CPA Working Papers on Constitutional Reform No. 8 <<http://constitutionalreforms.org/wp-content/uploads/2016/06/Working-Paper-8.pdf>> accessed 5 July 2020; Centre for Policy Alternatives and Friedrich Ebert Stiftung, 'GSP+ and Sri Lanka: Economic, Labour and Human Rights Issues' (2008) <https://library.fes.de/pdf-files/bueros/sri_lanka/08684.pdf> accessed 5 July 2020.

⁴⁰ The Constitution, art 9.

considered secondary. Therefore, protection towards the freedom of worship afforded to all religions cannot, as a matter of fact, be considered 'equal'.

Similarly, in domestic law, while provisions upholding religious protection exist, other legal provisions which seek to detract from the full realization of these freedoms seem to lie in tandem. The Prevention of Terrorism Act and the 2008 Circular of the Ministry of Buddhasasana are relevant examples.

4. ANALYSIS OF RTI REQUESTS⁴¹

As aforementioned, 28 RTI requests pertaining to religious freedom violations, were sent to different Public Authorities as appropriate. This included thirteen Police Stations, ten Magistrate's Courts, three Regional Offices of the Human Rights Commission, and two requests to the Attorney-General's Department. The purpose of sending RTI requests was to find out the present status of the cases and reasons for delays and other steps taken or not taken.

The information requested from Magistrate's Courts were as follows;

- What is the current status of this case?
- How long has the case been pending before the Court?
- What are the reasons for the delays in hearing the case?
- When will the case be heard?

Similarly, the information requested from Police Stations were as follows;

- When did the Police Station receive and record the complaint?
- What steps have been taken to investigate the complaint?
- Has an inquiry been called? If so, when was it called?

⁴¹ Keeping in line with principles of transparency, the NCEASL is willing to share its records of documents relating to the RTI requests filed by the Organization, to interested parties on request.

- Have witness statements been taken? If so how many witnesses have been interviewed?
- What are the next steps in the investigation of the complaint?
- Has advice been sought from the Attorney General's Department? If so, what was the nature of the advice received?
- Has the complaint been referred to another entity? If so, to whom and for what reasons?

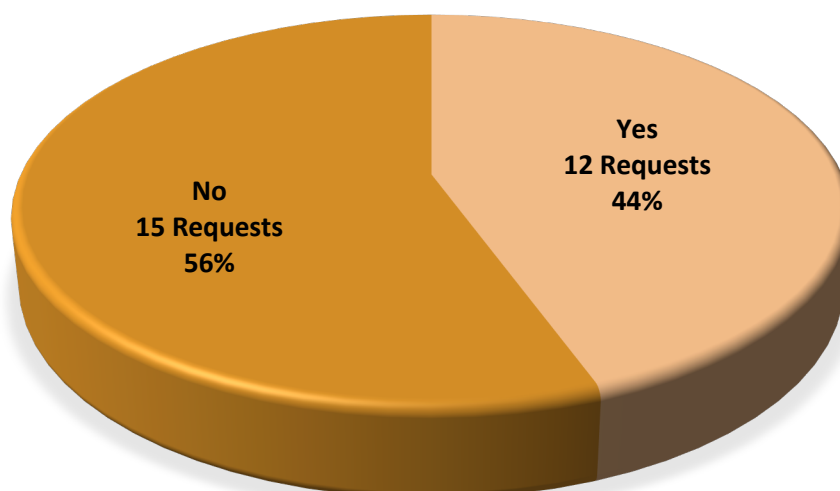
What is the current status of this complaint?

Information requested from the Attorney-General's Department included questions such as,

- When did your office receive the case?
- Has your office provided advice/made a decision about the case?
- If so, when was the advice provided/when was the decision made?
- If not, why has advice not been provided/a decision not been made about the case?
- If not, when does your office intend to provide the advice/make the decision about the case?
- What is the current status of this case?

4.1 Responsiveness of the Public Authority (PA)

Did the public authority respond to the information requests?



Although RTI requests in relation to 28 incidents were filed, the information requested in relation to two incidents⁴² were obtained from parties directly involved in the incidents, such as the pastors concerned or the lawyers handling the matter. Therefore, the NCEASL did not file an appeal to the DO regarding these two incidents, since information requested had been obtained. Of these two information requests, in one incident,⁴³ the PA responded eventually, after the expiration of the prescribed time frame. However, as a delayed response was received, this response has been included in the analysis of information requests. Therefore, this table includes 27 information requests.

For the purposes of this pie chart, any response received by the Public Authority, either the Information Officer or the Designated Officer has been considered as a response, including letters of acknowledgement, questions relating to the information, denial of the information requested, or the answer to the information sought.

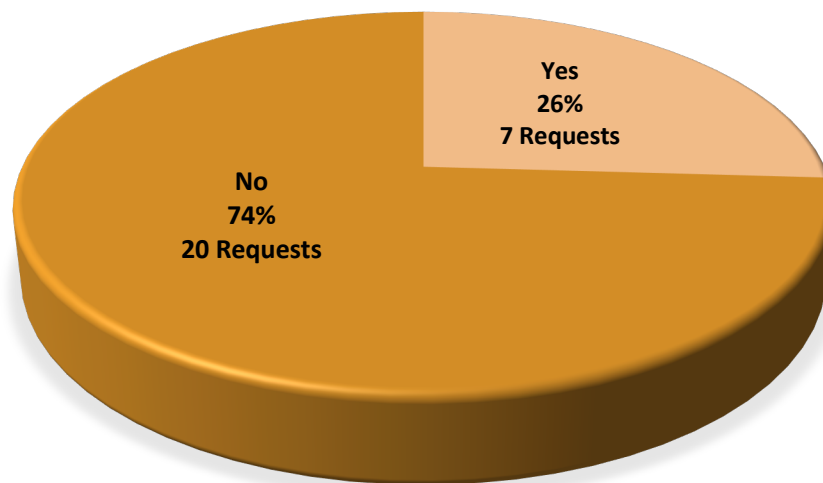
⁴² Incident No. 12/33 and Incident No. 15/33.

⁴³ Incident No. 15/33.

Out of the 27 requests for information made, in only 12 instances (44%) was there any kind of response provided by the Public Authority. For over half of the requests made, that is 15 of the 27 requests (56%), as at the time of writing this report, no responses have been received, including the standard acknowledgement of the request required under the RTI Act.

4.2 Types of Responses Received

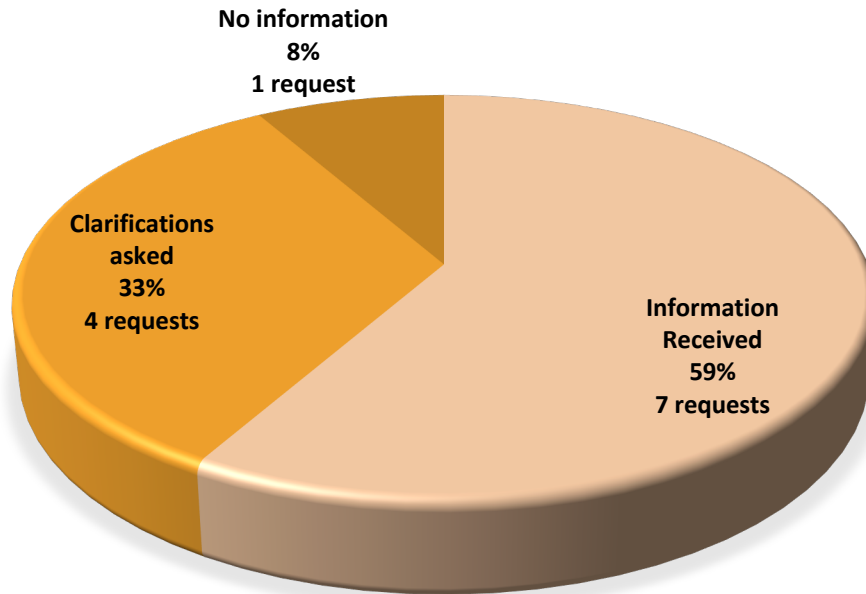
Was the information sought provided?



Out of the Public Authorities that responded (12), only in seven requests was the information sought provided. Thus, 74% of the information requests, which is 20 of the 27 requests, failed to provide the information requested.

Analysis on the progress of the cases is limited by the fact that, for the majority of RTI requests that were made, any response or information were not received.

Responses received by public authority



This pie chart seeks to analyse the 12 responses received by the Public Authority. In seven of the information requests filed, the information sought was received. In four of the information requests, a response was received from the Public Authority in the form of clarifications which were sought about the request. In one of the information requests, the Public Authority stated that they had no information in their possession pertaining to that request.

Of the seven responses that provided the information requested, it was revealed that in five instances, cases have been instituted in court, and the trial proceedings are presently ongoing in court. In two instances, the cases instituted, have been concluded.

In one RTI request sent to the Attorney-General's Department, about an incident concerning the Ruwanpura Kithunu Ekamuthu where there was a mob attack on a Church gathering for worship service,⁴⁴ the response was that the case had been received in 2015, however, as of

⁴⁴ Incident No. 20/33.

July 2019, no decision had been taken about how the case should proceed further. This suggests that for four years, although the file was with the Department for a decision, no progress had been made.

In the Weeraketiya, Hambantota incident about a mob attack on a worship service,⁴⁵ the Walasmulla Magistrate stated that the case was refixed for trial in November 2019. This case was originally set for trial in December 2012, therefore, the case has been pending for seven years without any progress. The incident in Beliatta Hambantota concerning a mob attack on a Church and worshippers during an ongoing service⁴⁶ began in the Tangalle Magistrate's Court in October 2018. The RTI request response stated that that evidence of the first prosecution witness had concluded and that the next court date was fixed for January 2020.

The incident in Galgamuwa, Kurunegala about a mob attack on a church preparing for worship service⁴⁷ began in February 2019 and was fixed for trial in December 2019. Regarding a Muslim incident in Moneragala involving discrimination at the workplace⁴⁸, the case was instituted before the Magistrate in May 2019 and was fixed for trial for April 2020.

In two responses, the cases were concluded by way of dismissal of proceedings or being settled. In the case relating to the incident in Sapugaskanda, Gampaha about the abduction and threatening of a pastor,⁴⁹ the case was referred to the Attorney-General's Department for advice by the Mahara Magistrate's Court in December 2016, in terms of proceeding with the charges under Section 291 of the Penal Code. The Department responded to the RTI request, stating that a decision was taken in May 2019 to discharge the accused due to lack of evidence, and that discharge papers were dispatched in July 2019. The timeframe suggest that the case was pending at the Department for two and a half years without progression, after which it was dismissed for a lack of evidence.

⁴⁵ Incident No. 11/33.

⁴⁶ Incident No. 16/33.

⁴⁷ Incident No. 19/33.

⁴⁸ Incident No. 30/33.

⁴⁹ Incident No. 13/33.

Two cases at the Magistrate's Court Marawila, which were instituted in April 2018 concerning an incident in Katuneriya, Puttalam⁵⁰ involving the harassment and threatening of Christian worshippers by villagers were said to have been settled in July 2019. The manner in which it was settled and whether it was a suitable remedy; however, are not known.

Of the four follow up questions, the NCEASL responded to two of the questions. There were no further replies received by the NCEASL following their clarification.

The first instance was a letter received from the OIC Bakamuna, Polonnaruwa concerning a Christian incident,⁵¹ requesting the dates on which the complaints were lodged. The NCEASL responded to this; however, no further information was received afterwards. The second instance was regarding the incident concerning Vijitha Thero,⁵² where the Kegalle Police Station responded requesting the date of the complaint and the name of the complainant. Though the NCEASL provided this information, no further response was received from the police.

At the time of writing, clarification with regards to a Christian incident in Padukka, Colombo, about mob attacks during a worship service and threats to a pastor, was yet to be provided.⁵³ The relevant PA responded that there were two sets of cases at the Magistrate's Court Pugoda with regards to this incident and asked that it be clarified regarding which case, the information was being requested.⁵⁴

The Teldeniya Police Station in relation to the Teldeniya attacks⁵⁵ of violence against Muslims, responded that a large number of persons who were suspected were arrested, and therefore the information request caused inconvenience. Thus, the applicant was asked to make the

⁵⁰ Incident No. 15/33.

⁵¹ Incident No. 5/33.

⁵² Incident No. 22/33.

⁵³ Incident No. 10/33.

⁵⁴ This query was not responded to at the time of writing this report, as clarification on this matter was being sought from the parties concerned.

⁵⁵ Incident No. 29/33.

request by providing specific details of the arrested persons with the date of arrest and other relevant details for the convenience of the police station.

The purpose of the RTI request appears futile in this instance, as the NCEASL was in essence being asked to provide the very information for which a request had been sent. While understanding that the information requested might be voluminous, this reflects the reluctance of the police station to proactively disclose information. The fact that many persons were arrested is not a valid reason to deny information requested under the RTI Act. It is also important to note that Section 5 of the RTI Act does not include the voluminous nature of information as a ground for denial of information. Further a citizen is expected to provide all information as is reasonably necessary to enable the Information Officer to identify the information.⁵⁶ It is questionable whether the request of the Teldeniya Police Inspector is reasonable, or was merely for the sake of convenience.

The Kandy Regional Office of the Human Rights Commission responded in relation to the Muslim incident about the discrimination of a teacher,⁵⁷ that occurred in Kurunegala, saying that there was no such a case filed pertaining to the specified case number. No further information was able to be ascertained about this incident and the Human Rights Commission complaint.

As mentioned, the purpose of sending the information requests was to ascertain official information, including the status of the various incidents in the police and judicial systems. Although 28 RTI requests were made, concrete information was received only in relation to the status of seven incidents (five cases were ongoing in the Magistrate's Courts and two cases were concluded).

⁵⁶ RTI Act, s 24(5)(a).

⁵⁷ Incident No. 31/33.

4.3 Observations Relating to the RTI Requests

The lack of responsiveness to RTI requests by the Public Authority is evident. On receipt of an information request, the Information Officer is required to provide a written acknowledgement of the request to the citizen.⁵⁸ However, only eight Information Officers of the 28 requests made provided a receipt of acknowledgement.

When filing an information request, a citizen is required to identify the language in which s/he prefers access.⁵⁹ The RTI Act does not make it mandatory that the answer should be given in the language requested. The Regulations gazetted under the RTI Act say that, if the information requested is available in more than one language, then the information shall be provided in the language requested.⁶⁰ The NCEASL had requested in most if not all of its information requests that the information be provided English⁶¹. However, there were at least four responses received which were in Sinhala. These four responses did not contain the information requested, but were clarifications, with one response being that there was no complaint registered under the number regarding which information was sought.

A series of questions were asked from the IO and DO in the information request; even in instances where responses were provided, answers to all questions were not provided. For example, PAs have failed to respond to questions like how long have the cases been pending before court, reasons for the delay in hearing the case or why a decision has not been made yet by the Attorney General's Department pertaining to a case. They have however responded to the status of the case and given the next dates for hearing.

The NCEASL received two responses pertaining to incidents 14 and 20, after the analysis and writing of findings for this report concluded. Thus, these two responses are not reflected in

⁵⁸ RTI Act, s 24(3).

⁵⁹ *ibid*, s 24(5)(b).

⁶⁰ *ibid*, Regulation No. 4(8).

⁶¹ See also the Constitution Article 18(3) English shall be the link language.

the data representation and analysis of this report. These responses will be considered in Phase 2 of this study.

5. FINDINGS AND CHALLENGES

5.1 Findings

The following conclusions were arrived at, taking into consideration the purpose of the report to use RTI law to assess the response of law enforcement authorities and the judiciary to religious freedom violations:

a) Compliance with RTI law on the part of public authorities is found wanting

As per Section 24 (3) of the RTI Act, the Information Officer is required to provide a written acknowledgement of the request for information. However, of the 28 RTI request made, only eight requests were acknowledged. In terms of the information that was sought to be obtained through the RTI requests, of the 28 RTI request made, only in seven requests was the information sought provided.

Thus, the research revealed that despite the introduction of the RTI Act in 2016, Public Authorities were either generally unaware of their duties with respect to the RTI Act, or were lax in their compliance with the requirements of the RTI Act. Such lack of interest or application in adhering to the law indicates not only their indifference to the RTI Act, but also lack of commitment towards ensuring the principle of transparency which underlies the RTI Act.

Hence, this underscores the need for greater awareness on the importance of transparency in the public sphere and on the duty of public authorities to abide by the RTI Act.

b) RTI law is inadequate to assess the response of law enforcement authorities and the judiciary

Non-compliance on the part of the Public Authorities to the RTI Act led to insufficient data available to assess the response of law enforcement authorities and the judiciary to religious

freedom violations. Therefore, the information had to be sought from the victims of religious freedom violations and lawyers handling such cases. Hence, the RTI requests alone could not be relied on to gather sufficient data to analyse the response of law enforcement and the judiciary and to gauge the challenges faced by victims pursuing justice for religious freedom violations, despite RTI requests and RTI appeal requests being sent to Information Officers and Designated Officers.

However, the laxity demonstrated by Public Authorities in responding to the RTI requests, raises the question as to whether such non-compliance is tied to the subject matter of the information requested, namely, religious freedom. Whilst a definite conclusion cannot be arrived at based on the data available for this particular report, this question as to whether the passive attitude towards responding to RTI requests is directly correlated to unwillingness to disclose information on religious freedom related issues, calls for further in-depth research into this matter.

c) Seeking justice for religious freedom violations is a long drawn out battle

General conclusions could not be drawn on the response of law enforcement and the judiciary to religious freedom violations, based on the information gathered through the RTI requests alone. However, based on RTI requests for which a response was received, it was observed that many of the trials spanned over several years. There were instances where a case was pending before Court awaiting advice from the Attorney General's Department for four years⁶², a case pending trial as of 2019 for an incident that had occurred in 2009⁶³ and the time period between two dates for a case to be called in Court was 11 months.⁶⁴ Thus, long delays have been witnessed in certain cases leading to victims of religious freedom violations having to endure long drawn out court proceedings in pursuit of justice.

⁶² Incident No. 20/33

⁶³ Incident No. 11/33

⁶⁴ Incident No. 30/33

A report produced by Verite Research based on information provided by the NCEASL, titled *Judicial Responses to Religious Freedom: A Case Analysis (2015)* found that:⁶⁵

Firstly, the Supreme Court is prone to a procedural approach when determining outcomes that protect minority religious rights, which results in a lack of substantive contribution to the expansion of jurisprudence on religious freedom. However, it was observed that the Court has adopted a substantive approach when dealing with cases that restrict religious rights.

Secondly, it was concluded that the Supreme Court has been reluctant to apply a meaningful proportionality test when determining outcomes. The Court has chosen rather to delve into the appropriate degree of interference by the State on an individual's religious freedom, than in considering if the State's interference meets the three-part test of proportionality.

Thirdly, the lower courts have not shown avid interest in mediating community level tensions to defend minority religious communities. For instance, violence that is religiously motivated, is viewed as general criminal offences, and not as offences that are religiously motivated.

5.2 Challenges

- One of the challenges encountered was selecting the required timeline for this research. Initially taking into consideration the time period at which this research proposal was conceived, it was decided that incidents of reported religious freedoms violations that were pending as of March 2019 were selected. However, when engaging in the project further it was identified that there was insufficient information for cases that fell within this timeline, due to the lack of response to the RTI requests that were sent. Hence, the timeline was extended to take more cases into consideration.
- A similar challenge was witnessed when considering the number of incidents utilized in this Research. RTI requests were sent for 28 incidents, but information was received

⁶⁵ <<https://www.minormatters.org/storage/app/uploads/public/5b5/6f3/859/5b56f3859e9b2293487491.pdf>> accessed on 17 July 2020.

for two of the 28 through other means so the next level of appeal, to the DO was not proceeded with. Of these two requests, in one instance, a response was received by the IO, although it was received at a much later point of time, and it was not in keeping with the stipulated time frames. Nevertheless, since a response was received it was considered as a complete appeal and included in the analysis.

- In certain instances, the RTI request was with regards to several incidents that occurred in a particular area. For example, in terms of the Hindu incidents, a general information request was sent to the relevant police stations relating to the destruction, theft or vandalism in kovils which were taking place in Kilinochchi and Mannar. Due to the lack of information relating to the specificities of incidents, the locality was considered as a specific incident and has been addressed thereby in this Report. This may result in causing confusion in terms of numbers when calculating statistics and drawing up graphs.
- The lack of access to information is a significant limitation faced at various stages of this Research. In addition to the lack of response to the RTI requests that were sent, when tracing the court proceedings of incidents of religious violence, access to case reports were limited. There were instances where lawyers were hesitant to provide case records and information pertaining to certain cases as they were yet pending in Court.

6. NEXT STEPS

Phase 2 of this project seeks to follow up further on the response of law enforcement officials and the judiciary to incidents of religious violence. The aim is to continue to collate data relating to the selected incidents within the present timeframe.

The data to be collected include progress on court proceedings, identifying the offences under which incidents have been charged and judicial responses to such incidents. As Phase 1 of the project reflects, it was doubtful as to whether complaints being made at Police Stations resulted in cases being instituted before courts. There were also various delays experienced in court proceedings and at the stage of inquiry. Further in instances where cases were closed or settled the reasons which prompted such settlements were unclear. The next phase of this Report seeks to find reasons for the above.

The methodology will involve the RTI process and interviews with persons concerned. In terms of the RTI mechanism, the next phase seeks to make appeals to the RTI Commission as well, in the event of a failure to receive responses from the Public Authority. Interviews with lawyers handling the relevant cases will also be scheduled, and access to documents relevant to the proceedings will be sought. Interviews with victims will also be held in order to better understand the process of investigation, inquiry and reparation received.

By the completion of Phase 2 of this Report, it is hoped that the response of law enforcement officials and the judiciary on incidents of religious violence, reparations to be made and interpretations of such freedoms will be presented.

7. ANNEXURE- RTI REQUESTS AND RESPONSES

	Incident	IO to whom RTI request was sent	Date of incident	Was the RTI acknowledged by the IO?	Response received by the IO	Was an appeal to DO made?	Response received by the DO	Was information requested received?
CHRISTIAN INCIDENTS								
1	Padukka- Colombo- mob attack on a religious gathering	Police Stations Padukka and Homagama	29-Apr-18	No	No	Yes		No
2	Kiran- Batticaloa- mob attack on a religious gathering	Police Station Eravur	8-Jul-18	No	No	Yes		No
3	Ambalangoda- Galle- mob gathering outside religious place of worship and threats to cease worship activities	Police Station Ambalangoda	15-Jul-18	No	No	Yes		No
4	Vahaneri- Batticaloa – Church set on fire	Police Station Valachennai	17-Aug-18	No	No	Yes		No
5	Bakamuna- Polonnaruwa- mob led by Buddhist monks threatening Ministry worker	Police Station Bakamuna	4-Nov-18	No	No	Yes	Letter from Officer in Charge (OIC) Bakamuna, asking when the two complaints were lodged. NCEASL responded 3/09/2019 with dates as requested.	No
6	Bakamuna- Polonnaruwa- AOG- Threats by Provincial Council Chairperson	Police Station Bakamuna	10-Aug-17	No	No	Yes		No

7	Serukelle- Puttalam- Opposition to using the public cemetery in burying the dead	Police Station Pallama	8-Jan-16	No	No	Yes		No
8	Aththimotti- Mannar- assault of pastor	MC Mannar	2-Dec-16	No	No	Yes		No
9	Kaluwanchikudi- Batticaloa- Opposition by villagers, assault	Police Station Kalawanchikudi	6-Jan-19	No	No	Yes		No
10	Padukka- Colombo- mob attacks during a worship service and threats to a pastor	MC Pugoda	-	Yes	No	Yes	Judicial Service Commission (JSC) wrote back asking which set of cases the relevant case in question referred to (05/02/2020)	No
11	Weeraketiya- Hambantota- mob attack on worship service	MC Walasmulla	2009	Yes	No	Yes	JSC (11 th Nov 2019) - <i>Date of institution- 11/12/2012</i> <i>Current status of the case 1st witness had not appeared when the case was called for trial on 19/10/2019 . Case refixed for 22/11/2019 and summons issued to 1st and 2nd witnesses.</i>	Yes (The questions not responded to were: How long has case been pending, reasons for delays in hearing the case)
12	Thenmaradchi- Jaffna- Allegations that Church was an	MC Chavakachcheri	26-Nov-2019	No	No	N/A		No

	unauthorized construction by Pradeshiya Sabha.							
13	Sapukaskanda-Gampaha-Abduction of a pastor and threats	AG's Dept (Mahara)	24-Apr-2018	Yes	Yes (11/07/2019)- <i>Decision taken 08/05/2019 to discharge accused due to lack of evidence. Discharge papers dispatched from department on 04/07/2019</i>	N/A		Yes
14	Global Impact-allegations of unauthorized religious place and obstacles towards construction of a training facility	HRC	-	No	No	Yes		No
15	Katuneriya-Puttalam-Harassment and threatening of Christian worshippers by villagers	MC Marawila	1-Apr-18	Yes	Yes- JSC (05/02/2020) <i>Date of institution of both cases- 27/04/2018, both cases were settled on 15/07/2019</i>	N/A ⁶⁶		Yes (The question not responded to was: What is the current status of the case?)
16	Beliatta-Hambantota- Mob attack on a Church and worshippers during an ongoing service	MC Tangalle	9-Sep-18	Yes	No	Yes	JSC (20/11/2019) <i>Date of institution- 18/10/2018, current status of case- evidence of 1st witness concluded, warrants issued to</i>	Yes (The questions not responded to were: How long has case been pending before court,

⁶⁶ No appeal to DO because the information was already received through other means. The PA however responded much later.

							<i>accused, sureties and 2nd witness on 07/11/2019 , Next date 23/01/2020</i>	reasons for the delay)
17	Vavuniya- Vavuniya- Case filed by Urban Council to demolish Church on allegations of unauthorized construction.	MC Vavuniya	Incident dates back to 2010 however the case came to us only in 2018	No	No	Yes		No
18	Markandura- Kurunegala- Pastor attacked by a man with a machete	MC Kuliypitiya	-	No	No	Yes		No
19	Galgamuwa- Kurunegala- mob attack on a church preparing for worship service ⁶⁷	MC Galgamuwa, PS Meegalawa	2019	Yes- MC	Yes <i>JSC Secretariat (11/11/2019) (responding on behalf of MC)</i> <i>Date of institution- 25/02/2019 , Current status, plaint filed 06/09/2019 . Case fixed for trial 06/12/2019 . Summons issued to 1st, 2nd and 8th witnesses.</i>	Yes- PS		Yes (The questions not responded to were: How long has case been pending before court, reasons for delays in hearing the case)
20	Ruwanpura Kithunu Ekamuthu – mob attack on Church gathering for worship service	AG's Dept (Ratnapura)	-	Yes	Yes(18/07/2019) - No decision has been taken. Dept	N/A		Yes (The questions not

⁶⁷ RTI requests were sent to 2 Public Authorities in this instance. Only the MC responded. The appeal to the DO was to the PS.

						<i>received case on 6/02/2015. Officer handling the case has been informed to conclude the matter expeditiously.</i>		responded to were: Why has a decision not been made yet, what is the current status of the case)
BUDDHIST INCIDENTS								
21	Mawanella – Damaging of Buddha statues in and around Mawanella	Police Station Mawanella		No	No	Yes		No
22	Vijitha Thero incident- Attacks upon a Buddhist monk	Police Station Kegalle, Police Station Peradeniya, TID Kandy		No	No	Yes	Response received by Kegalle Police Station requesting date of complaint, name of complainant and CIB number. NCEASL responded 16/09/2019	No
HINDU INCIDENTS								
23	Mannar – Attacks on Hindu temples- robberies and vandalism	Police station Mannar		No	No	Yes		No
24	Kilinochchi- Attacks on Hindu temples- robberies and vandalism	Police station Kilinochchi		No	No	Yes		No
25	Mannar- temples being built in kovils	No RTI Request sent – attempts were made to obtain case records instead						
26	Kinniya incident- Claim of a religious place of worship within the Kinniya	No RTI Request sent – case records were obtained						

	hot springs land by both the Hindus and Buddhists							
27	Mullaitivu incident-claim for land by both Buddhists and Hindus for a religious place of worship	No RTI Request sent – attempts were made to obtain case records instead						
MUSLIM INCIDENTS								
28	Digana incident-riots		6 March 2018	No RTI Request sent				
29	Teldeniya- Kandy-riots	Police Station Teldeniya	4 March 2018	No	No	Yes	HQ Inspector of Police-22/11/2019 - "Large number of suspects were arrested by the Teldeniya Police for various types of investigation and being in connection with them. Your request is somewhat inconvenient. Please be good enough to mention particular person with date and relevant other details for my convenience." (translated from Sinhala)	No
30	Moneragala-Discrimination at the workplace	MC Moneragala	May 2019	Yes		yes	Yes JSC replied 05/02/2020 - Date of institution	Yes

							03/05/2019 . Current status- case fixed for trial 28/04/2020		
31	Kurunegala- Discrimination of a Muslim teacher wearing	HRC (Kurunegala incident)	May 2019	No	No	Yes	Regional Coordinato r- HRC- <i>There is no complaint pertaining to that number (response given in Sinhala)</i>	No	
32	Rupavahini incident- Discrimination at the workplace of a SLBC employee	HRC (Rupavahini incident)		No	No	Yes		No	
33	Beruwala- Keells incident- Arbitrary search of a person in a hijab with allegations of robbery		1 January 2018	No RTI Request sent					

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