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Balancing Transparency and Security: The Right to Information Act in India and Global Perspectives

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The Right to Information (RTI) Act is of significant importance in promoting governmental transparency and openness, facilitating democratic decision-making and providing citizens with the opportunity to access information held by public bodies. However, the unrestricted distribution of information facilitated by the Right to Information (RTI) may, at times, pose possible risks to national security. The vulnerability arises from the potential disclosure of sensitive or classified information that is relevant to current or future governmental operations and intelligence activities. This empirical study is driven by the pressing necessity to understand the complex dynamics between the state and civil society in relation to the Right to Information (RTI) Act. The government, in its efforts to protect national security interests, seeks to moderate the consequences and terms of this legislation, while civil society strongly argues that it is an essential and fundamental right. In order to tackle this perplexing issue, the author utilises a thorough examination, supported by legal principles and a comparative study of international cases. Through a thorough analysis of relevant legal cases and the incorporation of international precedents, this study proposes a sophisticated resolution to the intersection of many interests. This strategy aims to reconcile the demands for transparency and national security, therefore enabling the ongoing development and effectiveness of the Right to Information (RTI) Act within the wider context of democratic governance.

Keywords: *rti, secret, information, transparency, accountability, national security.*

INTRODUCTION

'More the competition, happier will be the customer'. "Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing."

- Justice P.N. Bhagwati¹

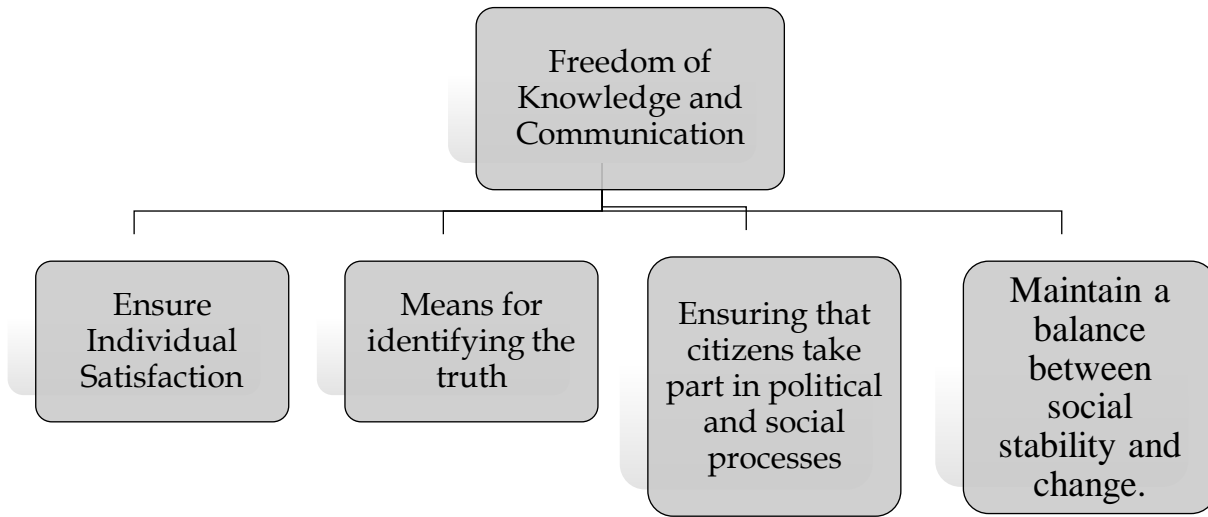
Everyone has an inalienable and fundamental right to access information. In a democracy, every individual enjoys the right to freedom of speech. This ensures the freedom to contact government agencies in order to obtain and share information and ideas, as well as the freedom to openly express one's opinions. For people to preserve their respectability in a civilised society, having access to accurate information is essential. Another issue is that efficient government is inextricably tied to the right to know. Good government is characterised by openness, accountability and responsiveness. In order to promote government accountability and openness, the public's access to information is now viewed as a potent instrument.

The Right to Information Act of 2005 (RTI)² is an act of the Indian parliament *'to establish a practical framework for the citizens' right to information.'* Until 2019, the Act applied to all Indian states and union territories with the exception of Jammu & Kashmir. The Jammu and Kashmir Right to Information Act was superseded by the RTI Act in 2019 after Article 370 was repealed.

Thomas Enderson noted that society uses freedom of knowledge and communication to defend four broad kinds of values.

¹ Neera Chandhoke, 'Our Latest Democratic Predicament' (2011) 46(19) Economic and Political Weekly <<http://www.jstor.org/stable/41152364>> accessed 13 November 2023

² Right to Information Act 2005



As a result of the RTI Act, citizens now have the legal right to request information from government agencies about the effectiveness or inefficiency of their services. Officials' efficiency and sense of duty increased as a result of increased accountability. With its current strength, the RTI Act is formidable enough to strike at the very foundations of corruption. As long as the seeds of corruption are planted at the top, they will continue to germinate at lower levels. By shedding light on these corrupt practises, the RTI Act can help rein in corruption at the grass-roots level.

JUDICIAL PRONOUNCEMENTS

1. Creating a Hub for Transparency:

S P Gupta v Union of India (1982):³ In this case, the Supreme Court decided that citizens have the right to know how their government works and that this right is essential for a democracy to function.

The Supreme Court ruled in 1995 that the right to communicate and receive information through electronic media is a part of the freedom of speech in **Secretary, Ministry of I&B, Government of India v Cricket Association of Bengal**⁴.

³ *S.P. Gupta v Union of India* AIR 1982 SC 149

⁴ *Secretary, Ministry of I&B, Government of India v Cricket Association of Bengal* (1995) SCC 2 161

The Election Commission of India was ordered by the Supreme Court to give information regarding candidates' criminal history in the case **Union of India v Association for Democratic Reforms (2002)**⁵. Citizens have a right to be informed about the criminal histories of the people who elect them, as was established in this case.

In the 2004 case **People's Union for Civil Liberties v Union of India**, the right to information was elevated to the status of a human right. This is essential for open and accountable governance. Cooperation in governance was also emphasised.

CBSE v Aditya Bandopadhyay⁶: In this case, the **Supreme Court** held that answer sheets are considered "information" under the RTI Act and directed the **Central Board of Secondary Education** to provide answer sheets to a student who had filed an **RTI application**.

Namit Sharma v Union of India (2018): In this case, the **Supreme Court** ruled that the Right to Information Act applies to the higher courts and ordered the Supreme Court and High Courts to release information about the **appointment of judges**.

RTI has evolved over the years to give citizens the right to know what is actually behind the political and bureaucratic curtain. There have been many attempts to weaken this act, one of them being the 2019 proposed amendments to the act. However, after massive outcry and protests, the government withdrew the proposed amendments.

Overall, the RTI Act has been an important tool for promoting transparency and accountability in India. It has been used to expose corruption, hold government officials accountable, and empower citizens to participate in the governance process. However, there have also been challenges to the implementation of the act, including delays in responding to information requests, harassment of citizens seeking information, and limited access to information in certain areas.

⁵ *Union of India v Association for Democratic Reforms (2002) 5 SCC 294*

⁶ *Central Board of Secondary Education v Aditya Bandopadhyay (2011) 8 SCC 497*

2. A Threat to National Security:

The primary objective of the Right to Information (RTI) Act is to foster transparency and accountability in governance. However, there have been occasions where the Act has been misused, giving rise to concerns pertaining to national security and unity. It is worth mentioning that there have been instances in which individuals have utilised the Right to material (RTI) to request access to confidential material, such as defence secrets and international defence agreements. These occurrences necessitate meticulous examination:

- A specific instance was the submission of a Right to Information (RTI) request, wherein the requester sought comprehensive information pertaining to the financial implications and technical characteristics of the Sukhoi-30MKI fighter aircraft. The Central Information Commission (CIC) rendered a decision in favour of disclosure, affirming that the disclosure of this information would not pose a threat to national security.
- An additional instance pertained to a Right to Information (RTI) petition regarding the procurement of 36 Rafale fighter aircraft by the Indian government. The request was dismissed by the Supreme Court on the grounds of probable harm to national security and strategic interests.
- In an independent occurrence, a Right to Information (RTI) application was filed to get details regarding the cost of the AgustaWestland VVIP helicopter agreement. The CIC has shown a preference for disclosure, placing significant emphasis on the public's entitlement to transparency, even at the possible expense of adverse effects on economic interests.

Although the Right to Information (RTI) Act includes measures to protect national security, these instances demonstrate the occasional convergence of information disclosure and national security considerations. The statement highlights the intricate equilibrium that exists between promoting transparency and protecting confidential national interests under the provisions of the Right to Information Act.

COMPARATIVE STUDY

“There is a fine balance required to be maintained between the right to information and the right to privacy, which stems out of the fundamental right to life and liberty. The citizens' right to know should definitely be circumscribed if disclosure of information encroaches upon someone's personal privacy. But where to draw the line is a complicated question.”

- Dr. Manmohan Singh⁷

RTI (Right to Information) and national security are two very different concepts, and it's not appropriate to make a direct comparison between them. However, it's worth noting that the implementation of the RTI Act can have an impact on national security.

In some cases, there may be tension between the right to information and national security. Moreover, there is a possibility that the misuse of the RTI act by individuals or groups with malicious intent can pose a threat to national security. For instance, a terrorist organization or a foreign state actor may use the RTI Act to gather sensitive information about the country's security infrastructure, military capabilities, or intelligence network⁸.

United States of America

The US has the Freedom of Information Act (FOIA)⁹ which is just like India's Right to Information Act (RTI). While the FOIA is a crucial tool for promoting transparency and accountability in government, it can also potentially pose a threat to American security in certain circumstances.

However, it's important to note that the FOIA includes exemptions to protect sensitive information related to national security, such as information related to intelligence activities,

⁷ 'RTI should be circumscribed if it encroaches on privacy: Prime Minister Manmohan Singh' (*The Economic Times*, 12 October 2012) <<https://economictimes.indiatimes.com/news/politics-and-nation/rti-should-be-circumscribed-if-it-encroaches-on-privacy-prime-minister-manmohan-singh/articleshow/16780108.cms?from=mdr>> accessed 13 November 2023

⁸ John M. Ackerman and Irma E. Sandoval-Ballesteros, 'The Global Explosion of Freedom of Information Laws' (2006) 58(1) *Administrative Law Review* <<https://www.jstor.org/stable/40712005>> accessed 13 November 2023

⁹ Freedom of Information Act 1967

law enforcement investigations, and confidential sources. The government may also redact or withhold information that is deemed sensitive or classified.

There have been several cases in the United States where the release of information under the Freedom of Information Act (FOIA) has been found to potentially pose a threat to American security. However, in each case, the court carefully weighed the right to information against the need to protect national security.

One such case is the 1986 case *CIA v Sims*¹⁰, where the court upheld the CIA's refusal to disclose certain information related to intelligence operations, citing the need to protect national security. Similarly, in the 2003 case *Electronic Privacy Information Centre v Department of Defense*¹¹, the court allowed the government to redact certain information related to intelligence activities, citing national security concerns.

Another example is the 2014 case of *Grieve v Information Commissioner*¹², where the court upheld the government's refusal to disclose information related to intelligence activities. The government argued that the release of such information could harm national security and compromise ongoing operations. The court agreed with the government's arguments and allowed the government to withhold the information.

Another example is the 2012 case *Judicial Watch v Department of Defense*¹³, where on March 23, 2004, Judicial Watch submitted a formal request in accordance with the Freedom of Information Act (FOIA) to the Department of Defence (DOD). The Freedom of Information Act (FOIA) request included seven discrete classifications of documents, with the principal objective of acquiring comprehensive data pertaining to several facets: The initial category focused on gathering information regarding the 'Empower Peace' website, which was established as an initiative with the purpose of addressing the perceived divide between the Muslim world and the United States.

¹⁰ *Central Intelligence Agency v Sims* 471 U.S. 159 1985

¹¹ *Electronic Privacy Information Centre v Department of defence* 241 F. Supp. 2d 5

¹² *Grieve v Information Commissioner* T.C. Memo. 2020-28

¹³ *Judicial Watch v Department of defence* Civil Action 05-00390

- DOD Funding and Sponsorship: The second category aimed to ascertain information pertaining to financial contributions or sponsorship extended by the Department of Defence to entities affiliated with the aforementioned website.
- The third category aimed to investigate any potential involvement or financial support provided by the Iraqi National Congress in connection with the website.
- The fourth category of analysis pertained to the engagement of the Rendon Group, a media consultant business tasked with the responsibility of managing the website, from September 11, 2001, until March 23, 2004.
- The fifth and sixth categories were designed to ascertain the full scope of corporations contracted by the Department of Defence for media consulting and activities pertaining to strategic influence, perception management, strategic information warfare, and strategic psychological operations. This analysis encompassed the time frame spanning from September 11, 2001, to March 23, 2004.
- The final category pertained to the acquisition of a document known as the "Information Operations Roadmap." This document was allegedly deliberated over by the Assistant Deputy Director for Information Operations during a conference that took place in London on July 3, 2003.

The purpose of this comprehensive Freedom of Information Act (FOIA) request was to obtain a deeper understanding of key elements related to the distribution of information and the manipulation of public opinion, particularly within the realm of global affairs and strategic communication. However, the court allowed the government to redact information related to operational details and sensitive information related to intelligence sources and methods.

United Kingdom

The United Kingdom has a **Freedom of Information Act (FOIA)**¹⁴ that provides a legal right for individuals to access information held by public authorities. The absolute exemption applies to all relevant information concerning security services, as outlined in section 23. This suggests that

¹⁴ Freedom of Information Act 2000

the authorities are exempted from the responsibility of verifying or refuting the presence of such information. As a result, every inquiry pertaining to the actions or data associated with security services will consistently be denied.

The imperative for information to possess a direct correlation with national security, accompanied by a tangible capacity to produce detrimental effects on national security when revealed, is readily apparent¹⁵. The use of the *'neither confirm nor deny'* approach necessitates a comprehensive and precise justification, which calls for careful scrutiny. The position expressed here is in opposition to the underlying assumption of the **Freedom of Information Act 2000**, which establishes disclosure as the default. Furthermore, this action is in opposition to the right enshrined in Article 10, as recognised by the European Court of Human Rights, which guarantees the right to access information¹⁶. Therefore, the adoption of such a position requires careful examination and substantiation in consideration of these established legal and procedural principles.

The legal precedent of *Christopher Martin Hogan and Oxford City Council v Information Commissioner* demonstrates the use of FOIA exemptions in protecting specific interests. In summary, although the Freedom of Information Act (FOIA) is based on admirable ideas that seek to benefit the general public, certain intricacies within its provisions make it less suitable for the particular aims being discussed in this context.

Letters written by Prince Charles to government ministers were made public in the 2012 case *R (Evans) v Attorney General*¹⁷ after a court order. The court determined that the letters were of public interest and that the general public had a right to view them. The government countered that the letters' dissemination may jeopardise the Prince's capacity to carry out his responsibilities impartially and possibly harm UK relations abroad. Despite the government's concerns, the court ordered the release of the letters with certain redactions.

¹⁵ *Philip Kalman v Information Commissioner and the Department of Transport* EA/2009/111

¹⁶ *Magyar Helsinki Bizottság v Hungary* App No 18030/11

¹⁷ *R (Evans) v Attorney General* [2015] 1 AC 1787

CRITICAL ANALYSIS

The **Right to Information (RTI)** is a crucial tool for promoting transparency and accountability in government. It empowers citizens to access information held by public authorities and promotes democratic decision-making. However, in certain circumstances, the release of information under the RTI can potentially pose a threat to national security. The potential threat to national security arises from the possibility of the release of sensitive or classified information related to ongoing or future operations or intelligence activities. Such information can be used by foreign state actors or terrorists to harm the country's interests or plan attacks. Therefore, the government may withhold certain information that is deemed sensitive or classified.

However, it is essential to note that the RTI includes exemptions to protect sensitive information related to national security such as information related to intelligence activities, law enforcement investigations and confidential sources. The government may also redact or withhold information that is deemed sensitive or classified.

Recently, there have been various arguments about whether RTI is or isn't a threat to national security. The armed forces account for nearly 15% of the government's expenditure which keeps on growing due to an ever-increasing budget allocation to the defense department of the country. Therefore, this makes it important for the citizens, and watch groups to know how and where this money (tax-payers money) is being spent.

But the government and even the defense forces have always contended that the armed forces be exempted from this and be included in Schedule 2 under Section 24¹⁸ on grounds of security and defending the unity and integrity of the nation. From minute-to-minute information like the disclosure of government emails to budgets and departmental information, the Central Information Commissioner (CIC) has been the judge of this issue for a long time.¹⁹

¹⁸ Right to Information Act 2005, s 24

¹⁹ Pankaj K P Shreyaskar, 'Known Unknowns' of RTI: Legitimate Exemptions or Conscious Secrecy?' (2014) 49(24) Economic and Political Weekly <<https://www.jstor.org/stable/24480193>> accessed 13 November 2023

While the veterans vehemently oppose the exemption of armed forces from this act because RTI is indeed a tool for the veterans. Most of the documents in the armed forces, for example, documents pertaining to disability, pay, promotions, pensions etc. are part of a complex organisational culture and obtaining these documents is highly difficult as they are marked as confidential. Cases for obtaining these documents get stuck in the Army Forces Tribunal (ATF) for years. This is when RTI helps out the soldiers and provides them with their necessary documents.

However, like there are 2 sides to a coin, RTI is being misused too, for gathering sensitive information.

“There have been instances of the RTI Act being misused to obtain inside information at the behest of inimical elements. We may not give out the number of soldiers deployed in a sector in response to an RTI query. But then we get queries on quantities of ration, fuel and vehicles. Responses to such questions can help those elements calculate backward.” This year, “The armed forces are learnt to have cited instances where RTI applications were filed simultaneously across various military bases/ agencies and were assessed as attempts at Intelligence gathering.”

- Gen. Bipin Rawat²⁰

RTI has become a point of tussle between the state and the society, where society contends that they should know where their money is being spent, they should be well aware of the corruptive practices that exist in the Indian Government. However, the government before 2005, used to take the defense of the Official Secrets Act 1923²¹ (a colonial law). However, after RTI came into force, OSA has mostly been washed away, since the provisions of RTI outweigh the provisions of OSA.

The government recently even attempted to add the Army, the Navy and the Air Force to the list of exemptions. This has largely been met with opposition while the government still cites it

²⁰ LT Gen HS Panag, ‘Don’t use Security excuse- Keeping Armed forces under RTI helps soldiers and veterans’ (*The Print*, 09 June 2022) <<https://theprint.in/opinion/dont-use-security-excuse-keeping-armed-forces-under-rti-helps-soldiers-and-veterans/989435/>> accessed 13 November 2023

²¹ Official Secrets Act 1923

as an important move for preserving the security of the country. But, neither the CIC nor the courts have mandated the release of any classified information that the military possesses as of yet. They have always bowed to the military's discretion in limiting access to information about national security.

CONCLUSION AND RECOMMENDATIONS

In essence, the Right to Information (RTI) serves as a crucial mechanism for promoting governmental transparency and accountability. It functions as a facilitator for the process of democratic decision-making and provides citizens with the opportunity to obtain information pertaining to public bodies. However, the disclosure of secret or highly confidential information pertaining to ongoing or planned intelligence operations presents a tangible risk to the security of a nation.

The successful execution and understanding of the RTI (Right to Information) are crucial in maintaining a delicate balance between the need for public access to information and the necessity to protect national security. When governmental agencies are involved in the dissemination of information to the public, it is crucial for them to carefully evaluate relevant exclusions and processes for redaction.

In order to promote the responsible utilisation of the Right to Information (RTI) while safeguarding national security, there is an urgent requirement for inclusive training programs and awareness campaigns aimed at the general populace. Moreover, it is crucial to establish a separate governing entity responsible for the supervision and regulation of the application of the Right to Information (RTI). The primary responsibility of this entity is to guarantee the fair and uniform implementation of redactions and exemptions. Concurrently, it is imperative for the system to offer direction and assistance to both public authorities and citizens in effectively implementing the Right to Information (RTI). It is imperative to maintain a state of constant vigilance in order to prevent the potential abuse of redactions and exemptions, which may be employed as a means to conceal unethical or criminal activities.