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The Most Underused Legal Weapon of India: A Critical Analysis of the Right to Information Act, 2005

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The Right to Information Act 2005 has been described as a transformative instrument of democratic accountability, a legal weapon placed directly in the hands of ordinary citizens to demand answers from the State. Yet nearly two decades after its enactment, this weapon remains conspicuously underutilised and systematically blunted. This article examines the structural, legislative, and institutional forces responsible for this paradox. It critically analyses the unresolved tension between the RTI Act and the Official Secrets Act, 1923, arguing that section 22's non-obstante clause achieves textual supremacy over the OSA but fails to produce operational certainty, as executive classification discretion recreates secrecy presumptions through section 8(1)(a). Through analysis of landmark judicial pronouncements from Raj Narain to Puttaswamy, the article demonstrates that while the Supreme Court has consistently affirmed the constitutional primacy of the right to know under Article 19(1)(a), institutional fragility has prevented this affirmation from translating into effective enforcement. The Right to Information (Amendment) Act 2019 further compromised institutional independence, and pendency figures approaching 4.13 lakh cases confirm that the appellate mechanism, the citizen's primary enforcement tool, has been rendered functionally inaccessible. The article concludes that India's most powerful transparency instrument remains its most underdeployed constitutional guarantee.

Keywords: *information, transparency, jurisprudence.*

INTRODUCTION

"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 PN Bhagwati

The right to information serves as a vital barometer for a nation's progress and development. Before 2005, Indian citizens lacked formal mechanisms to access records held by public authorities, making it difficult for the average person to obtain information on matters of public interest. This lack of transparency hindered civic engagement, as citizens struggled to contribute effectively to social, political, or economic discourse regarding the country's affairs.¹ The global momentum for transparency began with Sweden, which enacted the world's first right-to-information legislation in 1766, primarily driven by Parliament's desire to oversee royal records. This precedent remained unique for two centuries before the United States introduced its own version in 1966, followed shortly by Norway in 1970. A wave of Western democracies then adopted similar frameworks, including France and the Netherlands (1978), Australia, New Zealand and Canada (1982), Denmark (1985), Greece (1986), Austria (1987) and Italy (1990).² By 1990, the number of countries with freedom-of-information laws had risen to thirteen, with the European Union's Charter of Fundamental Rights provisions on access to documents marking a significant step forward. By 2010, more than 85 countries had adopted freedom-of-information laws, including Afghanistan, Bhutan, Kazakhstan and the Maldives.

Historically, the Indian Government operated behind a veil of secrecy, protected by the Official Secrets Act 1923. Despite the implicit right to information embedded in Article 19(1)(a) of the Constitution, the lack of transparency remained the norm for decades, effectively sidelining the public's right to know. The Right to Information Act replaced the Freedom of Information Act, 2002, and several other enactments and rules of the colonial era. The Official Secrets Act, 1923, however, was not repealed, because the RTI Act contains an override clause in section 22. This means that where there is any inconsistency between the

¹ Simi T B et al., 'Analysing the Right to Information Act in India' Briefing Paper 01/2010 <https://cuts-cart.org/pdf/Analysing_the_Right_to_Information_Act_in_India.pdf> accessed 26 May 2026

two laws, the provisions of the RTI Act prevail. Furthermore, section 8(2) of the RTI Act permits disclosure of information covered by the OSA where the public interest in disclosure outweighs the harm to protected interests. The RTI Act thus acts as a superior framework for transparency, but it coexists with the Official Secrets Act rather than abolishing it.

Thomas Jefferson famously described information as the “currency of democracy”, underscoring its necessity for a thriving civil society. This principle is codified in the preamble to the Right to Information Act, 2005, which recognises that transparency and an informed citizenry are indispensable for democratic governance, curbing corruption, and ensuring State accountability. Ultimately, access to information is not merely a democratic requirement but a fundamental human right that empowers the citizen.³ The Act provides for the appointment of a Public Information Officer (PIO) and an Assistant Public Information Officer (APIO) in every public authority, as well as in private aided and unaided educational institutions. The PIO and APIO are answerable to the public for information requests within thirty days. Where a PIO fails to provide the requested information within the prescribed period, the PIO concerned is liable to pay a penalty of ₹250 per day, subject to a maximum of ₹25,000.

The Indian judiciary has played a vital role in strengthening the spirit of democracy. The Supreme Court in *S P Gupta v Union of India* endorsed the view that, under a democratic setup, the people have a right to know about the functioning of the Government. Again, in *Prabhu Dutt v Union of India*, the Supreme Court held that the right to know news and information regarding the administration of government is included within the freedom of the press. Many further decisions have since reaffirmed the fundamental right to know and to access information.

TWO STATUTES, TWO PHILOSOPHIES: TRANSPARENCY VERSUS SECRECY

The conflict between the RTI Act, 2005 and the Official Secrets Act, 1923 goes beyond a simple legal clash⁴; it represents a clash of fundamentally different governance philosophies. The OSA, a remnant of colonial rule, functioned on the assumption that the State held all

³ Ravikumar M Vyas, 'Critical Analysis on Right to Information act and challenges against it' (Multidisciplinary National Conference on Law and Society, VT Choksi Sarvajanik Law College, Surat, 2025) <[https://www.vtclaw.ac](https://www.vtclaw.ac.in/upload/journal/issue-2/7- Right to Information and its challenges - Ravi vyas.pdf)

information in trust and that revealing it was a privilege granted at the sovereign's choice.⁵ The RTI Act reverses this entirely: transparency is the norm, and any refusal to provide information must be substantiated under section 8.⁶

Section 22 of the RTI Act contains what legal commentators refer to as a 'non-obstante clause', a provision ensuring that a specific law takes precedence over conflicting statutes. The phrase 'notwithstanding anything inconsistent therewith' indicates that, in the event of a clash between the RTI Act and other legislation governing the disclosure of information, the RTI Act prevails, with the Official Secrets Act 1923 expressly named as one such enactment.⁷ This provision represents a paradigm shift from secrecy as the default to transparency as the norm. However, this textual supremacy does not, on its own, translate into operational certainty.

THE INTERNAL CONTRADICTION: SECTION 8 AS AN OSA BACKDOOR

The most undervalued tension in this debate lies within the RTI Act itself. On one analysis of the Rafale review proceedings, where the Government classifies a document as secret under the Official Secrets Act, that document may nonetheless be kept outside the ambit of the RTI Act by invoking sections 8 and 9 of the Act, which permit the Government to refuse disclosure.⁸ This creates a structural paradox. Section 22 declares the RTI Act supreme over the OSA. However, section 8(1)(a)⁹ of the RTI Act exempts from disclosure information that would prejudicially affect national security, sovereignty, and strategic interests. Where section 8(1)(a) closes the door to disclosure, it becomes the re-entry point for OSA-style secrecy. The OSA is not so much overridden as absorbed and restated within the exemption framework of section 8.

Section 8(2) of the RTI Act seeks to resolve this by providing that, notwithstanding the Official Secrets Act, a public authority may disclose information if the public interest in disclosure outweighs the harm to the protected interest.¹⁰

⁵ Official Secrets Act 1923

⁶ Right to Information Act 2005, s 8

⁷ Right to Information Act 2005; Official Secrets Act 1923

THE DEFINITIONAL VOID AT THE HEART OF THE OSA

The Official Secrets Act does not itself define what constitutes a ‘secret document’ or an ‘official secret’; the matter is left entirely to executive discretion. Despite repeated attempts by RTI activists to obtain clarity, the Ministry of Home Affairs has provided no answer.¹¹

This definitional vacuum is constitutionally significant. The OSA's unclear definitions, broad executive powers, and colonial origins render it uncomfortably anachronistic for a modern democratic republic. Around fifty cases under the OSA were registered between 2014 and the early 2020s, including cases brought against journalists and students for filming outside a police station, confirming that the law's reach extends well beyond genuine espionage threats.¹²

JUDICIAL INTERPRETATION: AFFIRMATION IN PRINCIPLE, AMBIGUITY IN PRACTICE

The Rafale Proceedings (2019): In the Rafale review proceedings, Joseph J, having considered sections 8, 22 and 24 of the RTI Act together,¹³ concluded that the RTI Act prevails over the Official Secrets Act, holding that refusal to disclose information could occur only where public interest was genuinely at risk. He further observed that the RTI Act had effected a cultural shift, such that legal provisions must henceforth be construed in favour of transparency. This is an important judicial statement, but its limits must be acknowledged: it arose in a review petition and does not constitute a binding ratio specifically on the OSA–RTI conflict.

CBSE v Aditya Bandopadhyay: The Court articulated a public-interest standard for the release of information, holding that confidentiality cannot be asserted as an absolute principle but must be justified in each case by reference to the greater public benefit of disclosure.¹⁴

UPSC v Angesh Kumar: The Supreme Court emphasised that the exemptions in sections 8, 9 and 11 are not merely restrictive but are intended to promote effective government

¹¹ Second Administrative Reforms Commission, *Report No. 5: Right to Information: Master Key to Good* (2006)

¹² *Ibid*

¹³

functioning, safeguard sensitive information, and ensure the responsible management of public resources, supporting a purposive interpretation that balances transparency against other public interests.¹⁵

The Proportionality Standard: CPIO v Subhash Chandra Agarwal: In CPIO, Supreme Court of India v Subhash Chandra Agarwal (2020), the Court articulated a proportionality test for Public Information Officers: transparency is the norm, and privacy is an acceptable justification for non-disclosure, but it may be outweighed by a sufficiently significant public interest.¹⁶ Although this case concerned section 8(1)(j) and privacy specifically, the proportionality framework it establishes is directly relevant to the assessment of OSA-based secrecy claims under section 8(1)(a). The Supreme Court has consistently resisted broad claims of exemption under section 8: public authorities must demonstrate, with clear justification, that a claimed exemption genuinely applies to the information at hand,¹⁷ and generalised invocations of security or confidentiality will not withstand judicial scrutiny.

Bennett Coleman & Co v Union of India: While Bennett Coleman (1972)¹⁸ is widely celebrated as a triumph for press freedom, its most profound contribution to modern Indian governance is that it laid the constitutional foundation for the right to information. The Supreme Court used Bennett Coleman to read the 'right to know' directly into the fundamental rights of citizens, establishing that Article 19(1)(a) encompasses the public's right to receive information.

State of UP v Raj Narain: In State of Uttar Pradesh v Raj Narain (1975),¹⁹ the Supreme Court explicitly declared that 'the people of this country have a right to know every public act' — the historic constitutional milestone at which the Court first recognised the right to information as a fundamental right under Article 19(1)(a).

S P Gupta v Union of India (The Judges' Transfer Case): S P Gupta v Union of India (1982),²⁰ widely known as the First Judges' Case or the Judges' Transfer Case, is arguably the most significant pre-2005 judicial stepping stone for the right to information. The Court ruled that

¹⁵ *Union Public Service Commission v Angesh Kumar & Ors* (2018) 4 SCC 530

¹⁶ *Central Public Information Officer, Supreme Court of India v Subhash Chandra Agarwal*

open government is a direct emanation of the right to know, and that secrecy is the exception rather than the rule. While Raj Narain introduced the abstract concept of the citizen's right to know, it was Bhagwati J's judgment in *S P Gupta* that operationalised open governance and established transparency as an indispensable structural feature of Indian democracy.

Union of India v Association for Democratic Reforms (ADR): *Union of India v Association for Democratic Reforms* (2002)²¹ is the landmark decision that directly bridged the gap between political transparency and the right to information under Article 19(1)(a). While earlier rulings focused on enabling citizens to inspect government files, the ADR judgment took a significant further step: it established that the citizen's fundamental 'right to know' extends to the personal, financial and criminal antecedents of candidates contesting elections.

People's Union for Civil Liberties (PUCL) v Union of India: *People's Union for Civil Liberties v Union of India* (2003)²² is one of the most significant constitutional victories for the right to information. It marks the moment at which the Supreme Court protected the citizen's fundamental 'right to know' from a direct legislative attempt at reversal. Whereas ADR (2002) required political candidates to disclose their criminal, financial and educational backgrounds, the PUCL judgment defended and finalised that disclosure mandate against Parliament's attempt to nullify it.

Association for Democratic Reforms v Union of India (Electoral Bonds): In *Association for Democratic Reforms v Union of India* (2024),²³ the Supreme Court struck down the Electoral Bonds Scheme, which had permitted anonymous corporate donations to political parties. The five-judge Constitution Bench relied heavily on the 2002 ADR precedent, reaffirming that the voter's right to know who funds a political party or candidate is an unyielding and absolute aspect of Article 19(1)(a) that cannot be abridged by executive or legislative policy.

THE SECOND ARC RECOMMENDATIONS AND LEGISLATIVE INACTION

The Second Administrative Reforms Commission (2006) recommended that the Official Secrets Act be replaced by a National Security Act incorporating its legitimate provisions, describing the OSA as 'incongruous with the regime of transparency in a democratic society'.

²¹ *Union of India v Association for Democratic Reforms* (2002) 5 SCC 294

A committee constituted in 2015 to review the provisions of the OSA submitted its report in 2017. The continued non-implementation of this recommendation, almost two decades after the RTI Act was enacted, is itself a matter of both doctrine and governance. The lack of legislative action in amending the OSA diminishes the potential that section 22 represents in statutory language, a potential that is, in practice, hindered by executive classification methods.

CRITICAL ARGUMENT: SECTION 22 AS AN INCOMPLETE REVOLUTION

Section 22 achieves a textual transformation but fails to bring about an operational one. The non-obstante clause appears to subordinate the OSA in writing, but three structural deficiencies undermine this:

The Classification Gateway: The executive retains sole authority to classify information under the OSA, without any statutory definition of 'secret'. This makes section 8(1)(a) a practical restoration of OSA reasoning within the RTI structure.

The Institutional Gap: A Central Public Information Officer must balance competing fundamental-rights claims and apply the proportionality test established in Justice K S Puttaswamy (Retd) v Union of India (discussed above), raising the question whether it is realistic to expect a quasi-judicial officer to apply such a constitutional standard.

The Chilling Effect: The OSA has contributed to a reduction in transparency regarding matters such as defence procurement, and the law can be invoked against journalists revealing information that may not be inherently sensitive. This chilling effect operates independently of whether any particular RTI request is formally denied: it discourages the pursuit of information from the outset.

MODERN ISSUES FACING THE RTI FRAMEWORK: LEGISLATIVE WEAKENING, INSTITUTIONAL DECLINE, AND THE ENFORCEMENT CRISIS

The RTI (Amendment) Act, 2019: An Institutional Attack on Autonomy: The Right to Information (Amendment) Act, 2019²⁴ represents the most significant legislative change to the RTI framework since the original Act was enacted. Its effects, both stated and implicit,

²⁴ Right to Information (Amendment) Act 2019

have fundamentally altered the institutional framework on which the autonomy of the Information Commissions depended. Under the unamended sections 13 and 16 of the RTI Act²⁵, 2005, the term of office of the Chief Information Commissioner and Information Commissioners was fixed at five years, and their salaries and conditions of service were legally aligned with those of the Chief Election Commissioner and Election Commissioners, respectively, an equivalence intended to shield them from executive influence. This legal equivalence was the true foundation of the institutional independence of the Information Commissioners.

The 2019 Amendment removed this framework entirely. It grants the Central Government the authority to determine the term of office of the Chief Information Commissioner and Information Commissioners, eliminating the previous fixed five-year tenure,²⁶ and transfers to the executive the power to determine salaries, allowances and conditions of service. This change applies not only to the Central Information Commission but also to State Information Commissions, granting the Central Government authority over institutions operating at the sub-national level.

The constitutional implications of this reconfiguration are considerable. The changes are in tension with the constitutional principle of federalism, weaken the autonomy of the Information Commissions, and thereby significantly weaken the transparency architecture established by the RTI Act. The subordination of State Information Commissioners to central executive determinations raises serious federalism concerns, particularly given that the Information Commissions were intended to function as independent adjudicatory bodies within a constitutional framework of decentralised governance.

The amendment process was itself procedurally flawed: the amendments were passed expeditiously, without meaningful public consultation, and bypassed scrutiny by the relevant parliamentary standing committee, in apparent departure from the Government's own pre-legislative consultation policy. The Government's stated rationale that the Information Commissions are statutory bodies, fundamentally different from the Election Commission of India, a constitutional body, and therefore do not require equivalent service protections, met with significant academic and parliamentary opposition. Former

²⁵ Right to Information Act 2005, ss 13 and 16

²⁶ Right to Information (Amendment) Act 2019

Information Commissioners argued that the CIC and State Information Commissions are not, in terms of their constitutional responsibilities, fundamentally different from the Election Commission, and that this justified the original statutory equivalence.

The cumulative effect of the Amendment has been to transform Information Commissioners from constitutionally protected adjudicators into executive appointees whose continuation in office, remuneration and conditions of service are determined by the Government. This structural dependence sits uneasily with the quasi-judicial role these bodies are required to perform.

Vacancies, Appointment Delays, and Judicial Intervention: The structural compromise introduced by the 2019 Amendment²⁷ has been compounded by an ongoing executive failure to ensure the timely appointment of Information Commissioners, leaving numerous Commissions non-functional or severely understaffed. The seriousness of this problem prompted judicial intervention at the highest level. In *Anjali Bhardwaj v Union of India* (2019),²⁸ a public interest litigation was brought under Article 32 of the Constitution in which the Supreme Court addressed substantial delays in the appointment of Information Commissioners to both the Central and State Information Commissions, finding that unfilled vacancies had caused significant backlogs and impeded citizens' ability to exercise their fundamental right to access information. In its judgment of 15 February 2019, the Court directed the Government to fill vacancies in the Information Commissions and recommended that the selection process for the Chief Information Commissioner and Information Commissioners begin one to two months before any vacancy arose. The Court further held that selection should not be confined to serving or former government officials, emphasising the importance of diverse representation.

Compliance with these directions has been almost absent. In November 2025, petitioners informed the Supreme Court that the Central Information Commission had been without a Chief Information Commissioner for over two months, that eight of the ten sanctioned posts of Information Commissioner remained vacant, and that this had produced a backlog of almost 30,000 cases at the CIC alone.²⁹

²⁷ Right to Information (Amendment) Act 2019

²⁸ *Anjali Bhardwaj & Ors v Union of India & Ors* (2019) 3 SCALE 447

²⁹ *Report Card on the Performance of Information Commissions in India 2022-23* (Satark Nagrik Sangathan, 2024)

A similar pattern of delay has occurred at the state level: the Jharkhand State Information Commission had been defuncting for over five years and had ceased accepting new cases entirely, while the Himachal Pradesh Commission had been inactive for more than four months. This pattern of vacancy-driven dysfunction is not accidental. It represents a systemic approach that renders the right to information practically inaccessible to citizens without any formal legislative change, an outcome that is, in some respects, more damaging than legislative weakening itself.

The Pendency Crisis: Delayed Justice as Systemic Denial: The accumulation of appeals and complaints before the Information Commissions has reached crisis proportions and reflects a systemic breakdown of the RTI enforcement mechanism. Annual data compiled by the Satark Nagrik Sangathan (SNS) traces the trajectory of this decline.³⁰ Pendency stood at 2.18 lakh cases in March 2019, rising to 3.88 lakh by June 2023, to 4.05 lakh by June 2024, and to 4.13 lakh by June 2025³¹, with Maharashtra, Karnataka and Tamil Nadu accounting for the largest shares of the backlog. In West Bengal, the projected time to resolve pending cases exceeded twenty-four years, while several other States reported waiting times ranging from six months to four years. By June 2023, the Maharashtra State Information Commission had accumulated a backlog of 1,21,741 appeals and complaints, an increase of over 200 per cent in five years, producing an estimated waiting period of three years and seven months for a new appeal or complaint to be resolved. At the central level, the CIC was operating with only four Commissioners, with seven posts, including that of the Chief, remaining vacant.

These delays strike at the foundation of the RTI Act. An applicant refused information by a Public Information Officer, and who must then wait years for an appeal to be heard, has in substance been denied the right to information. The statutory assurance of a response within thirty days becomes meaningless once the appellate safeguard has been effectively disabled.

Composition of the Information Commissions and Bureaucratic Uniformity: A further structural concern relates to the composition of the Information Commissions. The RTI Act envisages that Commissioners may be drawn from diverse fields, including public administration, law, science and technology, social service, management, journalism and mass media. In practice, however, the selection process has overwhelmingly favoured retired

³⁰ *Report Card on the Performance of Information Commissions in India 2023-24* (Satark Nagrik Sangathan, 2025)

³¹ *Ibid*

government officials, particularly former officers of the Indian Administrative Service. An analysis of appointments shows that over 71 per cent of Information Commissioners have been former government officials, a substantial proportion of them former IAS officers, while only around 8 per cent had legal backgrounds. This bureaucratic uniformity raises legitimate concerns of institutional bias, given that the adjudicatory function of the Information Commissions frequently involves reviewing decisions taken by serving officials from the very administrative services from which the Commissioners themselves have retired. The Supreme Court in *Anjali Bhardwaj* specifically addressed this issue, directing that appointments should not be confined to government service, a direction that has largely gone unheeded in practice.

An Assessment of Diminishing Institutional Efficacy: Taken together, the legal changes introduced by the 2019 Amendment, the persistent failure to fill vacancies, the growing backlog of appeals, and the uniform composition of the Commissions reflect a single, coherent trend of institutional decline. Observers of the transparency regime have noted that, nineteen years after the RTI Act came into force, the functioning of the Information Commissions has itself become a significant obstacle to the effective implementation of the legislation.

The RTI Act was designed around a framework of administrative simplicity, citizen empowerment, and independent oversight. All three elements have been progressively eroded: the administrative process has become onerous owing to slow responses and protracted appeals; citizen empowerment has been undermined by the practical cost of pursuing appeals over extended timelines; and independent oversight has been fundamentally weakened by the executive's control over the conditions of service of those responsible for holding the executive to account. The gap between the statutory text and its practical operation is now so wide that doctrinal analysis conducted in isolation from this institutional context risks fundamentally misrepresenting the actual status of the right to information in India.

CONCLUSION

This article has shown that the conflict between the RTI Act and the Official Secrets Act is not resolved by the non-obstante clause in section 22 it is merely relocated. The site of tension

shifts from inter-statutory rivalry to intra-statutory uncertainty within section 8, where executive classification authority effectively reinstates the very presumption of secrecy that section 22 was intended to displace. This structural contradiction of textual dominance without operational assurance is compounded by the institutional decline brought about by the 2019 Amendment, which transformed Information Commissioners from constitutionally protected adjudicators into executive appointees.

The cumulative result is a transparency model that is doctrinally sound but institutionally fragile. The Supreme Court's proportionality jurisprudence, from *Puttaswamy* to *CPIO v Subhash Chandra Agarwal*, offers analytical tools capable of contesting both OSA-based classification claims and the constitutionality of the 2019 Amendment, but these tools require institutional actors willing and able to deploy them. Until the Official Secrets Act is reformed to incorporate a statutory definition of secrecy, and until the tenure provisions of the 2019 Amendment are either struck down or legislatively reversed, Indian transparency law will remain in a precarious position: constitutionally celebrated, yet institutionally weakened.