

## PROBING THE PRESS

Relevant for: Indian Polity | Topic: Separation of powers between various organs

The essential distinction between public interest and the interest of the government of the day seems to have been lost on the [Attorney General. K.K. Venugopal's claim that documents pertaining to the purchase of Rafale jets](#) published by the media, including this newspaper, have been “stolen” amounts to a definitive admission that they are genuine. The documentary evidence published so far indicates that “parallel parleys” held at the behest of the Prime Minister’s Office undermined the Indian Negotiating Team’s discussions with the French side; that internal questions had been raised about the absence of bank guarantees to hedge against possible default by the vendor; and that this had an adverse effect on the pricing of the 36 jets to be bought in fly-away condition. Few can doubt that these revelations advance the public interest, and have no impact on national security. The publication of the documents and news reports based on them constitute the legitimate exercise of the freedom of the press. The threat of a criminal investigation under the Official Secrets Act, 1923 (OSA) is disappointing, if not downright perverse. The government is also on weak legal ground when it claims the court should not rely on “stolen” documents while hearing petitions seeking a review of its judgment declining a probe into the Rafale deal. As the Bench, headed by Chief Justice of India Ranjan Gogoi, pointed out, the manner in which a document has been procured is immaterial, if it is relevant to an adjudication. As one of the judges asked, can the government seek shelter behind the notion of national security if a corrupt practice had indeed taken place?

All you need to know about the Official Secrets Act

It is to the credit of successive governments that the OSA has rarely been used against the press. The law primarily targets officials entrusted with secret documents, codes and other material, but Section 5 criminalises voluntarily receiving and possessing such documents, if given to them in contravention of the Act. In a limited examination of this section, the Law Commission observed in a 1971 report that its wording was quite wide. However, it left it to the government to decide against prosecution, if the information leak did not materially affect the state’s interest. There is undoubtedly a case for distinguishing between an act that helps the enemy or affects national security, and one that advances legitimate public interest. In times when information freedom is seen as salutary for democracy, laws such as the OSA should yield to the moral imperative behind the Right to Information Act. This reasoning is embedded in Section 8(2) of the RTI Act, which says that notwithstanding the provisions of the OSA, “a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.” The government should refrain from using its secrecy laws to contend with embarrassing media revelations. It would do well instead to respond responsibly to questions thrown up by the revelations.

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