Truth or Treason? The Tussle Between Secrecy and Security

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Abstract*: Sri Lanka has long standing legislation, protecting official secrets in the interests of national security. Yet, these laws are yet to clearly demarcate the boundaries of such terminology, which may result in the infringement of fundamental rights such as the right to expression, publication and dissemination, guaranteed in the Constitution of 1978; neither does Sri Lankan law permit the release of material it categorizes as 'official secrets' for the public good. Thus, if a public servant were to act as a whistleblower, she would not have the defence of public interest. To this end, the article seeks to analyse two recent case studies that occurred in the United States, prosecuted under the Espionage Act of 1917, a statute which could well be deemed Sri Lanka's counterpart. Through such evaluation, the writer seeks to caution against similar action being taken against any Sri Lankan citizen who might release information, to further accountability and transparency in the government. The writer posits that lessons could be learnt from such a comparative analysis, suggesting that the defence of public interest be made a part of Lankan jurisprudence when it comes to civic minded citizens and a clear definition be provided for pivotal terms such as 'official secrets' and 'national security.' Leaving room for ample interpretation of legal terminology might result in injustice, repression and legal uncertainty. Clarity and curtailment would aid greatly towards establishing trust in public authorities, the tri forces, state accountability and ultimately foster sustainable national security.*

Keywords: *Official Secrets, National Security, Whistleblowers, Public Interest.*

1. Introduction

States around the world have legislation governing what are termed 'official secrets' underscoring the importance of such communications, involving the higher echelons of governments, inter – State relations and government departments. There is increased importance when the 'secret' pertains to national security, armed conflict and the defence of the State. This article proposes to evaluate two Sri Lankan laws which pertain to this area, namely the Official Secrets Act and the Army Act, and other contemporary domestic legislation. The focus will be on position of a public official who is privy to classified information and seeks to make such available to the public, in the belief that the public is best served by that knowledge, that they have a right to know the manner in which the government makes decisions, which might not always be for the benefit of its citizens. It will be highlighted hereafter that such a hypothetical public spirited citizen will face criminal sanctions, under the Sri Lankan law. Further, there will be an analysis of two situatons that arose in the United States pertaining to offical secrets, under the Espionage Act of 1917, for comparative purposes. The writer shall aim to analyse the necessity for legislation relating to 'official secrets' overall, in the context of national security and the legal position of those who seek to divulge matters which are deemed highly classified. Finally, the article argues that

in order for national security to be sustainable and for it to have an organic and holistic growth, there must be legal clarity to concepts that are punitive in nature, and legitimate defences be permitted to an accused.

A. LEGISLATION IN SRI LANKA

1) The Official Secrets Act No. 32 of 1955

Closing in on 70 years, this piece of legislation is fast becoming archaic. It is purported to 'restrict access to official secrets and secret documents and to prevent unauthorized disclosure thereof' as stated in its preamble. Section 7 is of pivotal importance to the current discussion, as it seeks to outline the culpability of a person 'entrusted with an official secret or secret document' who 'communicates or delivers it to any other person who is not a person to whom he is authorised to communicate or deliver it…' As per section 7(2) even the unauthorized recipient of such secret or document, who will communicate such secret or document to another, shall be punishable. It is submitted that this section would apply to journalists in possession of such documents. Section 8 is even more unequivocally applicable to a recipient journalists, as it states, 'if any person receives any official secret or secret document or permits it to be communicated or delivered to him, having reasonable cause to believe that it is communicated or delivered to him in contravention of this act shall be guilty of an offence punishable…' The term 'having reasonable cause to believe' provides a requirement of knowledge that the missive communicated is in contravention of the law, and at least prevents receipt from being a strict liablity offence. Yet, the question arises – to what extent does this contribute to the protection of journalists and their rights? Fortunately, there is some leniency in section 8(2), where the recipient can provide a defence that the communique 'was not due to any soliciatation or demand on his part.' In that case, only a journalist who is surprised by the communication left on his table would be protected; yet what about the journalist who is informed verbally of an official secret by an individual and demands (justifiably) proof before publication and dissemination? Would such journalistic caution be rewarded with punishment? Thus, the function of the Act is two pronged, punish the individual 'leaking' the secret and the recipient of the secret. All forms of discouragement have been meted out. As per section 26, the punishment would be imprisonment for a term of 2 years and a fine.

It is of the utmost importance to consider the interpretations of words such as 'official secret' and 'secret document'defined in section 27 of the Act. The phrase 'offical secret' has been defined widely and the last subparagraph is telling; 'any information of any description whatsoever relating directly or indirectly to the defences of Sri Lanka.' This is an all encompassing definition and provides an extraordinarily wide berth for interpretation. A 'secret document' is defined as 'any document containing any official secret' which makes this clause dependant on the interpretation of what an official secret is. This wide ambit has led to academics arguing that this is a draconian piece of legislation (Jayawardena 2009). A further criticism levelled at the statute is that it does not permit defences such as public interest (a defence permitted in private law, such as for example, in actions for defamation). In such circumstances, it is clear that individuals who seek to make the government accountable for its failures or highlight human rights violations, will be punished, as many issues could be interpreted as protected under the Official Secrets Act. The Sri Lankan statute is modelled on the Britsh statute of the same name, which has also been decried at various points in history. The British government enacted a newer version in 1989 which

included an almost invisible appeasement to mounting criticism, by providing a shred of a defence in section 2(3), enabling an accused to claim that he did not know or have any cause to belive that the information, document or article in question related to defence or would have damaging consequences. Whilst it is deemed an improvement of sorts, it is submitted it would not protect an individual who is aware of the contents but publicizes it in the interests of the public, to ensure transparency and accountability in government. Britain, being a nation which has joined western coalitions in waging wars around the world, ought to have a more public interest oriented statute. The Sri Lankan statute then, is not far behind, as it contains sweeping terms, minimal restrictions in interpretation, ambiguous requirements as to *mens rea* and almost virtually no defence (an aspect that is not present in the Penal Code of the country). Is this position truly fair by an accused person? Should a public spirited citizen be denied such fundamental legal protections?

2) The Army Act No. 14 of 1949

It is unequivocally accepted that once one joins the armed forces, a very high standard of conduct and loyalty is expected; else it would lead to chaos, disarray and dangerous results to national defence and civilian life. The Army Act of Sri Lanka governs the areas that require strict obedience by officers, which are absolutely necessary in the interests of the nation. As per article 125, any person subject to military law should refrain from disclosing, either orally or in writing, the numbers or position of forces, preparations for movements or orders relating to operations or movements. If found guilty of such disclosure, he shall be deeed to have committed an offence, particularly if it is found to have been injurious to the forces. This is indeed a legitimate concern bcause the lives of other officers and the success of military operations should not be endangered. Nevertheless, the issue remains, what would the outcome be if an officer speaks out over a military decision that violated the norms of international human rights law and humanitarian law? Would the aforementioned legislation protect such officer's right to free speech and conscience? Such a situation has not arisen in the Sri Lankan context but has arisen in the global context, which shall be discussed in subsequent sections.

Furthermore, to what extent can the Official Secrets Act and the Army Act be reconciled with the provisions of the 1978 Constitution of Sri Lanka?

3) The Fundamental Rights Chapter in the 1978 Constitution of Sri Lanka

Our controversial 44 year old Constitution has a traditional set of fundamental rights which are justiciable in the Supreme Court, as per Articles 18 and 126. Chapter III of the Constitution lays down some detailed fundamental rights, notably the freedom of speech and expression, the right to publication (article 14(1)(a)) and the relatively novel right of access to information (article 14A), included through the nineteenth amendment to the Constitution in 2015. The relevant information being sought should be 'required for the exercise or protection of a citizen's right' which is held by the State, a government ministry, department or statutory body. This extends to provincial and local government bodies as well.

However, the rights enumerated in the Chapter III of the Constitution, including the pivotal rights mentioned in article 14 and 14A, are restricted. Such restrictions are laid out emphatically in articles 14A(2) and 15. These limitations are of great importance. Both articles 14A(2) and 15 state that the fundamental rights enumerated in Chapter III

can be restricted by laws prescribed in the interests of national security, territorial integrity and public safety, to name a few. Therefore, it is submitted that in the event of an 'official secret' being released to the public, a court of law *could* determine that such release breached (or did not) the restrictions laid out in the Constitution. The repeated issue is that there is no definition of key terms such as 'national security.' Again, as with the Official Secrets Act and the Army Act discussed above, there is no defence of public interest available to a defendant / accused. Ultimately, Lankan legislation and the Constitution provide no viable definitions and no legitimate defences to the releasing of information that the authorities could label as 'official secrets.' The public authorities are vested with a wide discretion in the interpretation of these terms, and that in itself, it is submitted, not conducive towards fairness, transparency and public utility.

Article 16 of the Constitution provides a further safety net to any laws that may be in existence that contradict the fundamental rights chapter. Through it, all existing written and unwritten laws shall remain operative, notwithstanding any inconsistency with the provisions of the fundamental rights chapter. Would this then provide for further restrictive interpretations of the Official Secrets Act, which definitely precedes the current Lankan Constitution?

It is submitted that Sri Lanka has very stringent laws on the release of official secrets. Constitutional gurantees of the right to freedom of expression, publication and information may not sufficiently safeguard those who seek to place certain vital information in the public sphere, in the public interest. Whilst it is conceded that certain secrets must always remain within the domain of secrecy in the national interest, how legitimate would it be to cower under the banner of 'official secrets' when governmental decisions impact on the rights of its citizens and blatantly violates fundamental human rights? To this end, two situations that occurred in the United States shall be evaluated, in the light of its legislation and the role of law in national security.

B. THE UNITED STATES, THE ESPIONAGE ACT OF 1917 AND THE TREATMENT OF WHISTLEBLOWERS.

The Espionage Act of 1917, a much maligned piece of legislation in the United States, known for its outdatedness, does not make a distinction between those who steal and leak government secrets to foreign governments and government employees who release documents to the national press in the public interest. Thus, one can observe that there is a broad criminlization of unathorized sharing of national defence information. The accused, in order to be convicted must have reason to believe that her actions would harm national security, yet in the cases that follow, this aspect was not considered. The prosecution is not required to prove that the accused foresaw harm or that harm to national security occurred in actuality. Thus, the burden is quite low; the prosecution should merely prove the release of documents it categorizes as classified. The approach seems to be similar to that of a strict liability offence, with no regard being paid to the mental element or public interest defence that an accused could bring forward. To this extent, one can see a striking similarity between this US statute and the legislation in Sri Lanka, meriting the following comparisons and case studies. If any similar occasions should arise in Sri Lanka, it would be pertinent to know how such were dealt with, in the US, considering the similarity of the two statutes.

1) The case of Chelsea Manning

Chelsea Manning (formerly known as Bradley Manning) was a highly skilled army intelligence analyst who stood trial for leaking government approximately 700, 000 files to the famous WikiLeaks and ushering in sensitive information to the public domain. Upon her disclosure, Manning wrote the following telling, pivotal words, '(T)his is possibly the more significant documents of our time, removing the fog of war, and revealing the true nature of assymetric warfare' (*United States v Bradley E. Manning* ARMY 20130739, 31st May 2018). It was alleged that she used her official status (an analyst working in Baghdad in 2010) to find documents suggesting that there were more than 15,000 unaccounted civilian deaths in Afghanistan and Iraq, all perpetrated by the US Army. It was also found that the US government failed to investigate allegations of torture and human rights violations of detainees. These were violations of the Military Rules of Engagement of the US Army. Her trial began in 2011 and concluded in 2013 [*Manning v United States DOJ* – 234F.Supp.3d 26 (D.D.C. 2017)], where she was ultimately found guilty of 20 counts of leaking State secrets to the website, under the Espionage Act of 1917, which criminalizes the leaking of such information (Pilkington 2013). Whilst she faced the prospect of 90 years of imprisonment, (incidentally being handed down 35 years) her sentence was commuted by President Obama to 7 years incarceration. She is now currently released and goes by the name of Chelsea, pursuant to a sex change procedure.

However, despite her new found freedom, the legal issues that led to her incarceration in the first place, merit attention. The Espionage Act was usually utilized to criminalise those who engaged in trading secrets with foreign, enemy governments and the criminalization of Manning was considered a violation of civil liberties by most. Manning was not convicted of 'aiding the enemy' (members of the European Union decried her being tried for such a crime) yet her sentencing was serious and lengthy. If one is to evaluate her conviction, one must analyse the nature of the leaked information.

Records showed that Manning was not meted out appropriate treatment during the early period of incarceration, awaiting trial, requiring that she sleep with no clothing and being isolated from other inmates for 23 hours a day (Cohen 2011). This begs the question – was the person who highlighted illegal actions, treated worse than the perpetrators of war crimes?

Manning maintained from the outset that her aim was not to commit treason against her country but to shed light on the day to day realities of the American war effort, and spark a domestic debate on its foreign policy. This led to many considering her as a true patriot as opposed to a traitor (The European Parliament Statement, 2013). One of the key information revealed by Mannning was a video dubbed 'collateral murder', where a military helicopter shooting at two vans, resulted in the tragic death of civilians, two Reuters journalists, accompanied by the hooliganism and inhumane mirth of US soldiers executing the strikes. Manning penned a letter to President Obama in 2013 which contained noteworthy sentiments. She wrote, 'It was not until I was in Iraq and reading secret military reports on a daily basis that I started to question the morality of what we were doing. It was at this time that I realized that in our efforts to meet the risk posed to us by the enemy, we have forgotten our humanity. We consciously elected to devalue human life both in Iraq and Afghanistan…whenever we killed innocent civilians, instead of accepting responsibility for our conduct, we elected to hide behind the veil of national security and classified information

in order to avoid any public accountability… patriotism is often the cry extolled when morally questionable acts are advocated by those in power… when I chose to disclose classified information, I did so out of a love for my country and a sense of duty to others…' (Rosenthal 2013).

It is well known that Manning's release of the relevant documents caused diplomatic embarrassment to the United States and resulted in many altering moments in international relations. The documents affected most relationships America had with the world, according to Crowley, a former State Department official. Due to the 'leaks' the US ambassador to Mexico resigned over comments he made via cable, on the Mexican government; the US ambassador to Libya was recalled after his detailed communications of the Gadaffi government. Some even credit the Tunisian uprising as the result of the 'leaked' cables, as one was about Tunisian politician, Zine el-Abidine Ben Ali (Shaer 2017). The Guardian newspaper opined that the leaked war logs 'show a conflict that is brutally messy, confused and immediate.' It was one of the primary news sources that published Manning's 'leaked' material, after having removed material which the editors deemed dangerous to the safety of troops, local informants and collaborators. This assertion in their editorial itself points to the fact that there may have been material injurious to the security and defence of US troops, which ought not to have been released by Manning. Yet, once such material were removed, the Guardian concludes that, 'the collective picture that emerges is a very disturbing one... a war fought ostensibly for the hearts and minds of Afghans cannot be won like this.' (Rusbridger 2010).

The Manning case brings to light the delicate dichotomy between the protection of official secrets and the protection of human rights. Did she place any of her own troops at risk, or did she publicise facts and events which should be posited within the catalogues of global knowledge? Interestingly, at Manning's sentencing, government witnesses testified that no American deaths could be attributed to the leaks. The words of Manning herself, are instructive, 'there are plenty of things that should be kept secret…lets protect sensitive sources. Lets protect troop movements. Let's protect nuclear information. Lets not hide missteps. Lets not hide misguided policies. Lets not hide history. Lets not hide who we are and what we are doing' (Shaer 2017). One then needs to take a clear look at the Sri Lankan law and evaluate whether there are any possibilities of concealing missteps and history, under the guise of official secrets, and how restrictions can hamper accountability and transparency. The story of Daniel Hale, another activis, as of Chelsea Manning, would be even further instructive.

2) The case of Daniel Hale

Hale's life took a similar trajectory to that of Manning. He was a former US Air Force signal intelligence analyst from 2009 to 2013, participating in the US drone programme, collaborating with the National Security Agency and the Joint Special Operations Task Force, in Bagram Air Base, Afghanistan. His role was to track the location of cell phones of enemy combatants, who would then be monitored and eliminated through drones. He was charged under the Espionage Act of 1917 (same as Manning) and found guilty of leaking numerous government documents, exposing the cost of civilian life and inaccuracies of the American Drone Programme. The US Drone Programme has often been dubbed America's assassination Programme. On March 2021, Hale was sentenced to 45 months in prison, by the District Court of Alexandria, Virginia (Weiner 2021). This begs the question – what

was the nature of the material given to the press and public by Hale, that merited such an arduous confinement? There are claims that he was being held in a room with 100 people, deprived of a change of clothes, bedding or visitors (Gibbons 2021), reminiscent of the inhumane treatment meted out to Manning. Again, begging the question – who was the true criminal here?

Hale's crime was, ostensibly, taking classified documents and handing them over to a journalist who published a series of articles at the Intercept, called 'The Drone Papers' in 2015. Hale's documents illustrated the fatal failures of the Drone Programme, in Somalia, Yemen and Afghanistan – one document highlighting that during a 5 month military operation in Afghanistan, nearly 90% of people killed were not the intended targets. This number is staggering in its tragic magnitude. There was other evidence - that the US military did not account for civilian deaths in Afghanistan, and any time military age males were killed, they were wrongly classified as 'combatants killed in action' or 'militants' (Schahill 2015). Those killed were also named as 'enemy killed in action' or EKIA by the military, and interestingly, presumed guilty unless posthumously found to be a non terrorist. Thus, the status of those killed were classified by the American military and the CIA in a manner that would soothe their conscience but had no basis in factual or legal reality. Targets were killed based on scant evidnce and were placed on kill lists loosely and denigratingly called 'baseball cards', studiously in keeping with the all American vocabulary (Schahill 2015). It is clear that the fundamental legal premise, presumed innocent until proven guilty, was a luxury not afforded to these victims. Hale strongly believed that these baseball cards were created utilizing utterly fallible data, subject to much human error. There was also the issue of people being killed by Drones, when they were not engaged in active warfare, which Hale felt was untenable. He was of the view that kill lists were made, targets followed and eliminated before they could be found guilty of any wrongdoing, in any court of law. Recall that under the laws of war, killing a combatant is permissible, yet those killed by Drones were not acting as combatants at the relevant time. The scarcity of evidence that they were combatants, and yet deserving of death through remote means, were arbitrary and violative of basic norms of law, to say the least. Those assassinated were assigned 'death sentences without notice, on a worldwide battlefield' (Scahill 2015). Hale continuously maintained that he could not keep silent due to his conscience. He stated to the judge, in a poignant letter that has received much acclaim that, 'not a day goes by that I don't question the justification for my actions… I am grief stricken and ashamed of myself' (Weiner 2021). Those familiar with all aspects of his trial have written how Hale frequently spoke of the crises with his conscience, in long speeches before the judge as well as carefully penned letters (Gibbons 2021).

President Obama and his tenure is well known for the proliferation of Drone warfare. He often spoke publicly of the precsion of Drone attacks, stating that there were zero civilian casualties, and that there was a 'near certainty' that civilians would never be killed by such attacks. These remarks struck a chord within Hale, as he had first hand knowledge of their fallacy. The other issue that plagued Hale was that far from fighting a war on principles, the war that he witnessed was profitable to weapons manufacturers – that it merely provided a platform for the weapons industry to thrive. This again showed the lack of accountability of the US government and its pandering to the weapons manufacturing industry, in clear violation of public interest. The collective idea

that the documents present is that, there was an over reliance on signals intelligence which was fallible, high and incalculable civilian death toll and an inability to obtain vital information from terror suspects, as the aim was assassination and not capture; overall, the futility of the Afghan war was obvious through these 'leaks' (Schahill 2015). It is not surprising then, that the US government saw Hale's actions as a public embarrassment. Hale states it unequivocally in his letter to the judge, 'it did not matter whether it was…an Afghan farmer blown in half, yet miraculously conscious and pointlessly trying to scoop his insides off the ground, or whether it was an American-flag-draped coffin lowered into Arlington National Cemetery…both serve to justify the the easy flow of capital at the cost of blood – theirs and ours.'

Daniel Hale had no option of a defence in his charge. In his simple yet powerful statement, he made the following plea, 'I am here because I stole something that was never mine to take: precious human life. I couldn't keep living in a world in which people pretend that things weren't happening that were. Please, your honour, forgive me for taking papers instead of human lives' (my emphasis).

3. Concluding Remarks

The recent extradition of Julian Assange (the founder of Wikileaks) to the United States has brought the US Espionage Act into the forefront. What was evidenced in the cases of Manning and Hale was the persecution, prosecution and punishment of 'leakers', which took on new numerical heights during the Obama administration. The Trump administration crossed a further frontier with the Assange persecution by seeking to punish the disseminator of the 'leaks'. Assange's trial, played out in public, signified the UK's obedient concurrence with the dictates of the US. It also highlighted the endorsement of the British judge and Priti Patel (Home Secretary of the UK) to extradite Assange, an Australian citizen, to the United States, to be tried under the Espionage Act. The silence of Australia is deafening in its lackeyed muteness towards the overarching policies of the US. This is all the more surprising given that in 1980, Justice Mason in the High Court of Australia held as follows, 'it is unacceptable in our democratic society that there should be a restraint on the publication of information relating to government when the only vice of that information is that it enables the public to discuss, review and criticize government action… unless disclosure is likely to injure the public interest it will not be protected.' (*Commonwealth of Australia v John Fairfax & Sons Ltd* (1980) 147 CLR 39, 52). Laudable Australian sentiments in 1980 which seem to have disintegreated in 2022. Now, the reach of the Espionage Act has expanded to punish the publisher, worrying independent journalists everywhere. Anyone familiar with modern history and international law would know that US military operations are hardly confined to its own borders. The erudite Daniel Larsen pens, 'the fearsomeness of the Espionage Act's draconian penalties arises from the sheer breadth of the statute's potential application. The Act provides no limits on who can be charged and it protects all information connected to "national defense"… the Act has morphed from a comparatively narrow but vigorous law primarily protecting the US military into a vague, highly punitive juggernaut of unrestrained government secrecy ' (Larsen 2021). As stated earlier, the pivotal term, 'national defense' is not subject to definition in any part of the Espionage Act, similar to the legislative intent and instruments in Sri Lanka.

This brings one to the ultimate aim of this article – how are we to bridge the dichotomy between protecting what truly harms national

security whilst espousing the causes of government accountability and respect for all human rights? It is by no means suggested here that restriction of the freedom of information and expression must not occur for the sake of national security. A State is responsible for the protection of the lives of the tri forces as well as the military successes of its operations. Even international humanitarian law has recognized this throughout the centuries of its development. In no way must the freedom of expression and information undermine the planning, course and conclusion of a military operation or place at risk those who are engaged in such. Sri Lanka faced such a tragic debacle when members of the coveted Long Range Patrol Unit were destroyed when details of their whereabouts were leaked to the LTTE (Athas 2002). One should never envisage this type of security compromise, and the protection of State combatants should be non negotiable. As Condon (2014) states, '… the justifications for secrecy are strong when certain national secrets are at issue, like those implicating military strategy, diplomacy, or the names of covert intelligence sources, the rationales lose force when illegal secrets are at issue' (my emphasis).

What this article aims to suggest is that there must be global transparency in matters which have no correlation to the security of troops, and where it is highly apparent that governments seek to hide behind the expansive façade of national security / official secrets. This is the purpose of enumerating the tragic situations of Chelsea Manning and Daniel Hale, and the brief comparative analysis of the US statute – the Espionage Act of 1917 – as a precedent not to be followed by any accountable government or a nation purporting to uphold the laws of war. There should be no draconian deterrence of government officials, from revealing government wrongdoing – wrongdoing that is detrimental to its own citizens.

Vagueness of definition and interpretation erodes legal certainty and government accountability (Nasu 2015). It justifiably gives rise to suspicions of extra judicial activity, human rights and international humanitarian law violations. The issue is then whether the legislature should provide a more comprehensive definition of 'national security' which is far seeing and clear, rather than leave an ambiguous phrase to be determined by judicial means. Lord Nicholls of the UK was of the opinion that generally the judiciary was ill equipped to 'second guess' the national security significance of certain information (*A v Secretary of State for the Home Department* [2005] 2 AC 68 (House of Lords), 128).

Condon (2014) further states, 'government secrecy and the abuse of power have long shared a symbiotic relationship'. This perception needs to be evaluated and rehauled. She further argues that secrecy leads to poor decision making by governments, and confers legitimacy on illegitmate actions. She suggests that if a Court finds *prima facie* evidence of unlawful conduct, then it should strongly consider the principle of democractic accountability and the privileges accorded to official secrecy should yield. It is submitted that this is a good suggestion – yet still places the burden on the judiciary, and presupposes a progressive, liberal judicial outlook. This may be problematic in a country like Sri Lanka which does not have laws or a culture of judicial review of legislation or certain executive actions. The concept of checks and balances is not delicately interwoven in the present Constitution. Whilst the Right to Information was newly introduced to the Fundamental Rights Chapter in the Constitution, (and one must be thankful for its novelty and utilization) – the Right to

Information Act details when information could be withheld. In Part II, denial of access to information, sections 5 (b) (i) and (ii) state that information which would undermine the defence of the State, national security or Sri Lanka's relations with another State, would be protected. As iterated earlier, it is not the author's intent to place national security and defence in jeopardy, but one must take issue with the blanket definitions which have no guidance for judicial interpretation, giving greater leeway for illegal secrets to be kept secret. In such a position, a Lankan Chelsea Manning and a Daniel Hale can be prosecuted in the same illegitmate manner, if the legitimate defence of public interest is disallowed by law. Thus, even though the public has had much access to information since the RTI Act and Commission came into being, the type of information released are outside the scope of this paper. The fundamental question this paper seeks to ask is, what would the position be if Sri Lanka had whistleblowers similar to Manning and Hale – and if we would take the same steps America took, under the Espionage Act, which also does not allow the defence of public interest? Would this be the best way forward towards ensuring democracy, government accountability and transparency? Is this the appropriate way to ensure sustainable national security? The general public will uphold and respect secrets which actually are pivotal for national security if illegitimacy, violations of human rights and the law of war are called out, at the appropriate time. This will only increase respect for the armed forces, the administrative and bureaucratic processes and the ultimate executive decision makers. Needless to say that Manning's and Hale's 'leaks' only served to undermine the American public's trust for the administration and the justifiability of wars carried out through the tax payer's money. Their 'leaks' also showcased that the US war atrocities would only breed more dissent and lead to insurgent / insurrectionist movements in the areas under siege. If one looks at the long term, larger picture, objectively, through the lens of true patriotism, one would see that delegitimizing illegality would ultimately be best for the upholding of national security. This ought to be the end goal for sustainability in national security – the sustainability one envisages for decades to come.

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