

Arrest of journalist under Official Secrets Act

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Official Secrets Act is a colonial legacy. Though the law has been in force to protect the state confidentiality, many a times it has been blamed as unsuitable for a democratic society. It is necessary to know contentious issues regarding the act.

In news: A Delhi journalist has been arrested under Official Secrets Act

Placing it in syllabus: Law and policy

Static dimensions

1. History of the Act
2. Provisions of Official Secrets Act (OSA)
3. Its usage in the past

Current dimensions

1. Recently in news
2. Criticisms

Content:

Recent news:

- The Delhi police recently arrested a strategic affairs analyst, Rajeev Sharma and two others – a Chinese woman and her Nepalese accomplice under the OSA.
- The analyst has been blamed for passing on information such as the deployment of Indian troops on the border to Chinese intelligence officers.
- The other two have been arrested for allegedly supplying him huge amounts of money routed through hawala channels for conveying sensitive information to Chinese

intelligence.

History of the Act:

- The Official Secrets Act (OSA) has its roots in the British colonial era.
- Its **predecessor law, The Indian Official Secrets Act, 1904** was enacted during the time of **Lord Curzon**.
- It was an amended and more stringent version of **The Indian Official Secrets Act of 1889**, brought in at a time when a large number of powerful newspapers had emerged in several languages across India.
- One of the main purposes of the Act was to muzzle the voice of nationalist publications.
- **In April 1923, the Indian Official Secrets Act (Act No XIX of 1923) replaced the earlier Act and was extended to all matters of secrecy and confidentiality in governance in the country.**

Provisions of the Act:

- The secrecy law broadly deals with two aspects –
 1. **Section 3** deals with spying or espionage.
 2. **Section 5** deals with disclosure of other secret information of the government. Both the person communicating the information, and the person receiving the information, can be punished by the prosecuting agency.
- The secret information can be any **official code, password, sketch, plan, model, article, note, document or information**.
- For classifying a document, a government Ministry or Department follows the **Manual of Departmental Security Instructions, 1994**, not under OSA.
- It is the **government's discretion to decide what falls under the ambit of a "secret" document** to be charged

under OSA.

Its usage in the past:

1985- In Coomar Narain spy case, twelve former staff members in the PMO and Rashtrapati Bhavan Secretariat were sentenced to 10 years' imprisonment in 2002 for being found guilty of entering into a criminal conspiracy with officials of the French, Polish and German embassies.

2002 – Kashmir-based journalist Iftikhar Gilani was arrested under the Act for downloading a document from the internet. But he was later discharged by the courts.

2011- Journalist Tarakant Dwivedi was booked for criminal trespass under the Act after he wrote an article in “Mid-Day” about how sophisticated weapons bought after 26/11 were being stored in a room with a leaking roof at the Chhatrapati Shivaji Terminus in Mumbai.

2018 – A Delhi court sentenced former diplomat Madhuri Gupta, who had served at the Indian High Commission in Islamabad, to three years in jail for passing on sensitive information to the ISI.

Criticisms:

- It is the **government's discretion to decide what falls under the ambit of a “secret” document** to be charged under OSA.
- Since the classification of secret information is so broad, it is argued that the colonial law is in direct conflict with the Right to Information Act.

RTI Act and OSA – which has primacy?

- Section 22 of the RTI Act provides for its primacy vis-a-vis provisions of other laws, including OSA which

gives the RTI Act an overriding effect.

- If there is any inconsistency in OSA with regard to furnishing of information, it will be superseded by the RTI Act.
- But under Sections 8 and 9 of the RTI Act, the government can refuse information by classifying the document as “secret” under **OSA Clause 6.**

Similar laws in other countries:

- Countries like the United Kingdom, Malaysia, Singapore, and New Zealand, use the legislation to protect state secrets.
- In 2001, Canada replaced its OSA with a Security of Information Act.
- The “official secrets” come under the Espionage Act in the U.S.
- In 2018, a Myanmar court awarded seven years’ jail to two Reuters journalists for illegally possessing official documents on the military’s alleged human rights abuses against Rohingya Muslims.
- Malaysia has been long accused of using the OSA to silence dissidence.

Way forward:

In 1971, the Law Commission in its report on ‘Offences Against National Security’, observed that merely because a circular is marked secret or confidential, it should not attract the provisions of the Act. But it did not recommend any changes to the Act. It called for an “umbrella Act” to be passed to bring together all laws relating to national security.

In 2006, the Second Administrative Reforms Commission (ARC) recommended that OSA be repealed, and replaced with a chapter in the National Security Act containing provisions relating to official secrets.

In 2015, a committee was set up to look into provisions of the OSA in light of the RTI Act. In its report submitted to the Cabinet Secretariat in 2017, it recommended that OSA be made more transparent and in line with the RTI Act.

Mould your thought:

1. The Official Secrets Act has been often blamed for being incongruent with a democratic society. Why is it criticised? What can be done in this regard?

Approach to the answer:

- Introduction in 2-3 lines
- Mention the contentious sections of the act
- Mention the criticisms
- Write about the recommendations of different committees and write conclusion