



DAILY NEWSPAPER ANALYSIS

THE HINDU

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Topic: GS2 - Governance



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To serve the governed: on Official Secrets Act

Context:-

- Recently in the Supreme Court, the government threatened to invoke the Official Secrets Act against two publications that had run reports on the Rafale deal, on the basis of documents which, the government claimed, had been stolen from the Defence Ministry.

About Official Secrets Act (OSA):-

- Official Secrets Act, 1923, which as with most of British India enactments followed the Official Secrets Act, 1920, passed by the British Parliament. The Indian Official Secrets Act (Act No XIX of 1923) was extended to all matters of secrecy and confidentiality in governance in the country.
- It was strict enough then but after Independence in 'free India' we amended it and made it stricter in 1967, widening the scope of Section 5 ("Wrongful communication. etc., of information") and enlarging the scope of Section 8 ("Duty of giving information as to commission of offences").
- It broadly deals with two aspects — **spying or espionage**, covered under Section 3, and disclosure of other secret information of the government, under Section 5.
- Secret information can be any official code, password, sketch, plan, model, article, note, document or information. Under Section 5, both the person communicating the information, and the person receiving the information, can be punished.

Concern over Official Secret Act:-

- Against the Constitutional Freedom to Use and Publicise information (Article 19): For classifying a document, a government Ministry or Department follows the Manual of Departmental Security Instructions, 1994, not under OSA. Also, OSA itself does not say what a “secret” document is.
 - It is the government’s discretion to decide what falls under the ambit of a “secret” document to be charged under OSA.
 - Whereas often as the **4th pillar of the governance**, press play effective role. For examples
 - In the 1980s of irregularities in **Bofors defence deal**.
 - More recently, in **2016, the Panama Papers**, the painstaking unveiling of offshore transactions in tax havens, resulted in hundreds of crores of undeclared assets being traced by the govt.
- Conflict with RTI Act, 2005: As RTI is for transparency whereas OSA is for confidentiality gave rise to opacity.
 - However, Section 22 of the RTI Act provides for its **primacy vis-a-vis provisions of other laws, including OSA**. So 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. Effectively, if government classifies a document as “secret” under OSA Clause 6, that document can be kept outside the ambit of the RTI Act, and the government can invoke Sections 8 or 9.
- **Chances of Misuse in Name of National Security:** Governments is being accused for misusing the law against journalists and whistleblowers. For Example:
 - The other high-profile case was the ISRO spy case targeting scientist S Nambi Narayanan. Before his recent acquittal, he had faced a criminal trial under OSA, and was accused of passing on rocket and cryogenic technology to Pakistan for illegal gratification. In 2018, Supreme Court acquitted him.
 - There is high chance of misuse the act by corrupt officials in name of national security.

Various Commission Recommendation on OSA:-

- In 1971, the **Law Commission** in its report on ‘**Offences Against National Security**’, it observed that “it agrees with the contention” that “merely because a circular is marked secret or confidential, it should not attract the provisions of the Act, if the publication thereof is in the interest of the public and no question of national emergency and interest of the State as such arises”. The Law Commission, however, did not recommend any changes to the Act.

- **Second Press Commission, headed by Justice Goswami**, in 1979 recommended to immediately repeal the Official Secrets Act, 1923.
- **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. Observing that OSA was “**incongruous with the regime of transparency in a democratic society**”, the ARC referred to the 1971 Law Commission report that had called for an “umbrella Act” to be passed to bring together all laws relating to national security.
- In 2015, the present government set up a committee to look into provisions of the OSA in light of the RTI Act. It submitted its report to the Cabinet Secretariat on June 16, 2017, recommending that OSA be made more transparent and in line with the RTI Act.

Way Ahead:-

- In his famous Gettysburg Address, **Abraham Lincoln** described good governance as “**of the people, by the people and for the people**”. Centuries later **we do understand the “of”, and are willing to tolerate the “by” but unfortunately we keep forgetting the “for”**. If government is indeed for the people, it has a solemn obligation to keep the people well informed.
- As suggested by 2nd ARC, OSA must be repealed and should be replaced by National Security Act where “**Security**” must be defined objectively so that it can not be misused.