

Official Secrets Act

Just recently it came to light that crucial documents regarding the Rafael deal have gone missing. Citing the Official Secrets Act, the Attorney General declined to provide any information as it was a concern of 'national security'.

The Official Secrets Act (OSA), like many other Legislations passed in British India, is inherently colonial in nature and has no place in contemporary Indian society.

What is the Official Secrets Act?

The Official Secrets Act of 1932 is India's anti-espionage. It states that actions which involve helping an enemy state against India are strongly condemned. It also states that one cannot approach, inspect, or even pass over a prohibited government site or area. As per the act, helping an enemy state can be in the form of communicating a sketch, plan, a model of an official secret, or of official codes or passwords, to the enemy.

Prosecution and Penalties

Punishments under the Act range from three to life imprisonment (if the intent is to declare war against India - section 5) imprisonment. A person prosecuted under this Act can be charged with the crime even if the action was unintentional and not intended to endanger the security of the state. The Act only empowers persons in positions of authority to handle official secrets, and others who handle it in prohibited areas or outside them are liable for punishment.

Journalists have to help members of the police forces above the rank of the sub-Inspector and members of the military with an investigation regarding an offence, up to and including revealing his sources of information.

Under the Act, search warrants may be issued at any time if the magistrate determines that based on the evidence there is enough danger to the security of the state.

How the Official Secrets Act has Affected Democracy

The original intent was to protect the British Empire from the clandestine acts of its enemies. Now the act is being used to silence citizens who ask too many questions.

As it is still present in the statute book, it finds its way into the hands of every government regardless of the political party's at the helm, thus enforcing the parent-child relationship between the state and its subjects.

1. The idea that every government getting to keep certain information away from the public domain in the name of national security finds a contradiction in the very idea of democracy where a true democracy stands to work for the people.
2. The law also finds itself in the crossroads of Article 19 (1) which gives every citizen the fundamental right of freedom of speech and expression.
3. The act does clarify what documents or information can be deemed “secret”, thus the Act can be misused with government authorities branding information or documents as official secrets as they see fit.
4. The OSA has often been arbitrarily used against media houses and journalist who are found opposing the action of the government and questioning its policies.
5. The law contradicts the Right to Information (RTI) Act that came into effect in 2005 and creates ample ground for corruption.

Reforms of the Official Secrets Act

Due to the draconian nature of the Official Secrets Act many efforts to reform it have been initiated.

- The Law Commission became the first official body to make an observation regarding the OSA in 1971. It stated that “just because circular or document is marked secret or classified, it should not attract the provisions of the Act”. No changes to the act were recommended by the commission however
- The Second Administrative Reforms Commission (ARC) in 2006 recommended that OSA be replaced with a chapter in the National Security Act containing provisions relating to official secrets. The commission described the OSA “being incongruous with the regime of transparency in a democratic society”.
- A committee formed in 2015 to look into the provisions of the OSA submitted its final report to the Secretariat on June 16, 2017. It recommended that OSA be made more transparent in line with the RTI Act.