



Mains Practice Question

Q. Examine the rationale of 'Official Secrets Act' for a democratic country like India and challenges arising due to this. (250 words)

12 Mar, 2019 GS Paper 2 Polity & Governance

Approach:

- Give a short introduction of 'Official Secrets Act'.
- Examine the rationale of 'Official Secrets Act' for a democratic country like India
- Enumerate the challenges arising

Introduction:

- The **Official Secrets Act (OSA)** was first enacted in 1923 and was retained after Independence. The law, applicable to government servants and citizens, provides the framework for dealing with espionage, sedition, and other potential threats to the integrity of the nation.
- After Independence in 'free India' it was amended and **made 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").

Body

The rationale of 'Official Secrets Act'-

- **Unauthorized access to information:** The law makes spying, sharing 'secret' information, unauthorized use, withholding information, interference with the armed forces in prohibited/restricted areas, among others, punishable offences. If guilty, a person may get up to 14 years' imprisonment, a fine, or both.
- **Not all information is in public domain:** Information, such as troop movements in wartime or confidential trade negotiation positions, obviously needs to be secret and needs to be protected under OSA.

Against the rationale-

- **Colonial era legislation:** The 2nd Administrative Reforms Commission (ARC) report, 2006 stated that as the OSA's background is colonial climate of mistrust of people and the primacy of public officials in dealing with the citizens, which created a culture of secrecy.
- **In conflict with the RTI Act:** ARC Report suggested that the Act should be substituted by a chapter in the National Security Act that incorporates the necessary provisions as it had become a contentious issue after the implementation of the Right to Information Act.
- **Vast ambit:** The OSA does not define "secret" or "official secrets". Public servants could deny any information terming it a "secret" when asked under the RTI Act.

Challenges arising out of it:

- **Against principal of Transparency:** The primary critique of the Act is that it flips the constitutive logic of a democratic republic, where the state is supposed to be transparent to its citizens.
- **An authoritative rule:** The state is given wide powers to place information off-limits to citizens, simply by stipulating that certain documents are secret — and then draconian powers to punish them in case it is made public, regardless of the public interest involved.
- This makes whistle-blowing and investigative journalism a perilous enterprise, no matter how critically important it might be to have the information public.
- **Misuse:** Section 5, which deals with potential breaches of national security, makes it a punishable offence to share information that may help an enemy state. But it is used for booking journalists when they publicise information that may cause embarrassment to the government or the armed forces.
- **Against the fundamental right of freedom of speech:** If government is indeed for the people, it has a solemn obligation to keep the people well informed.
- **Frequent use:** Recent, high-profile cases involving the OSA include that of the journalist Iftikhar Gilani (the case was withdrawn), the diplomat Madhuri Gupta (who was convicted of espionage charges), and the scientist Nambi Narayanan (who was charged, tried, and acquitted of espionage charges — and later directed to be paid compensation by the Supreme Court).

Conclusion/Way forward

- In 2006, the Home Ministry recommended substantial changes to the OSA, in line with the privacy regime established by the RTI.
- From time to time, there are calls to repeal the OSA and replace it with a National Security Act that is more consistent with the aspirations of an open, democratic republic.
- We must try to achieve a balance between the public interest and national security.

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