



# Arrest Under Official Secrets Act

## Why in News

Recently, Delhi police has arrested a strategic affairs analyst under the **Official Secrets Act (OSA), 1923** for passing information such as the deployment of Indian troops on the border to Chinese intelligence officers.

## Key Points

### ▪ Official Secrets Act:

- OSA broadly **deals with two aspects** — **spying** or espionage and **disclosure of secret information** of the government.
  - However, the **OSA does not define the secret information**, the government follows the **Manual of Departmental Security Instructions, 1994** for classifying a document as secret.
  - Generally **secret information includes** any official code, password, sketch, plan, model, article, note, document, or information.
- If guilty, a person may get up to **14 years' imprisonment, a fine, or both**. Both the person communicating the information and the person receiving the information can be punished under the OSA.

### ▪ Background:

- OSA has its roots in the British colonial era. The **Indian Official Secrets Act (Act XIV), 1889** was brought in, with the objective of muzzling the voice of a large number of newspapers that had come up in several languages, and were opposing the British policies.
- The Act XIV was amended and **made more stringent** in the form of The Indian Official Secrets Act, 1904, during Lord Curzon's tenure as Viceroy of India.
- In 1923, a newer version was notified, the **Indian Official Secrets Act (Act No XIX of 1923)**.
  - It was **extended to all matters of secrecy and confidentiality** in governance in the country.

### ▪ Issues Involved:

- **Conflict with Right to Information Act:** It has often been argued that the OSA is in direct conflict with the [Right to Information \(RTI\) Act, 2005](#).
  - 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 So if there is any inconsistency in OSA with regard to furnishing of information, it will be superseded by the RTI Act.
  - However, under **Sections 8 and 9 of the RTI Act**, the government can refuse information. Effectively, if the government classifies a document as secret under OSA, that document can be kept outside the ambit of the RTI Act, and the government can invoke Sections 8 or 9.
- **Misinterpretation of Breach of National Security: Section 5** of OSA, which deals with

potential breaches of national security, is **often misinterpreted**.

- The Section makes it a punishable offence to share information that may help an enemy state.
- The Section comes in handy for booking journalists when they publicise information that may cause embarrassment to the government or the armed forces.

▪ **Suggestions Made:**

- 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 OSA 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 OSA**.
- In 2006, the **2<sup>nd</sup> Administrative Reforms Commission (ARC)** recommended that **OSA be repealed, and replaced with a chapter in the [National Security Act, 1980](#)** containing provisions relating to official secrets.
  - It observed that **OSA was unsuitable with the regime of transparency** in a democratic society.
- In 2015, the government had set up a committee to look into provisions of the OSA in light of the RTI Act which submitted its report in June 2017, recommending that **OSA be made more transparent and in line with the RTI Act**.

## Way Forward

- The definition of "secret" needs to be clearly defined in the OSA, so that there is no scope of misinterpretation. Also there is a need for OSA to be brought in line with the RTI Act.

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