

## Official Secrets Act - Rafale Deal Case

### What is the issue?

With debate over 'stolen documents' in Rafale case, it is imperative to understand the Official Secrets Act (OSA).

### What are the key features of OSA?

- The secrecy law broadly deals with two aspects:
  1. spying or espionage, which is dealt with in Section 3 of the Act
  2. disclosure of other secret information of the government, which is dealt with in Section 5
- The 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 by the prosecuting agency.

### How did the Act evolve?

- 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, Viceroy of India from 1899 to 1905.
- It was an amended and more stringent version of The Indian Official Secrets Act (Act XIV) of 1889.
- The latter was brought in at a time when a large number of powerful newspapers had emerged in several languages across India, and editors -
  - i. opposed the British Raj's policies on a daily basis
  - ii. built political consciousness among the people
  - iii. faced police crackdowns and prison terms to uphold their mission and convictions
- So one of the main purposes of the Act was to suppress the voice of nationalist publications.
- In 1923, the Indian Official Secrets Act (Act No XIX of 1923) replaced the earlier Act.
- This was extended to all matters of secrecy and confidentiality in governance

in the country.

### **What are the notable convictions so far?**

- The most recent conviction under the Official Secrets Act came in 2018.
- The Delhi court held former diplomat Madhuri Gupta, who had served at the Indian High Commission in Islamabad, guilty under the OSA.
- She was sentenced to 3 years in jail for passing on sensitive information to Pakistan's ISI.
- In 2002, the then Kashmir Times journalist Iftikhar Gilani was arrested and charged under the OSA.
- The case was in relation with allegedly possessing secret documents relating to the deployment of troops in the Valley. The state later withdrew the case.
- In 2017, journalist Poonam Agrawal was charged under OSA for conducting a sting operation on an Army official who criticised the sahayak system in the Army.

### **What had the contention been?**

- As the classification of secret information is so broad, it is largely in direct conflict with the Right to Information Act.
- Moreover, examining the process of decision-making in a government involves looking for information, and documents.
- Records which are meant to be confidential are sometimes significant in bringing illegalities to public attention.
- This was true in the 1980s of irregularities in Bofors defence deal.
- More recently, in 2016, the Panama Papers involved the painstaking unveiling of offshore transactions in tax havens.
- This, significantly, resulted in hundreds of crores of undeclared assets being traced by the government.
- But in every other instance, the Official Secrets Act hampers the process.

### **What is the recent case?**

- The recent case is in relation to the alleged irregularities in the Rafale aircraft deal between India and France, which was published in 'The Hindu' Newspaper.
- The Attorney General raised an objection in court seeking dismissal of the review petitions.
- This was on the ground that the reports cited documents "stolen" from the defence ministry.
- In other words, the Official Secrets Act was used as a shield against allegations of wrongdoing in the Rafale deal.

## What is the Court's observation?

- The court questioned that if there was a corruption complaint, was it to be protected under national security.
- Certainly, the Court held that the Act did not offer the liberty to commit corruption.
- The Court dismissed targeting the messenger and criminalising the whistleblower under the cover of “national security” or “stability” of government or “official secrecy”.
- It called it an attack on the freedom of expression and the people’s right to know.
- Undoubtedly, the OSA in a democracy needs constant contest, and the need for official secrecy has to be weighed against the citizen’s right to know.
- The right to freedom of speech and expression, and information should be prioritised over the archaic Official Secrets Act.
- Notably, the apex Court has increasingly expanded the protections to whistleblowers, to ensure that those who expose corruption and wrongdoing are not vulnerable to any intimidation.

**Source: Indian Express**

