



Secrets Are Not Sacred

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(This editorial is based on the article “Secrets are not sacred” which appeared in “The Indian Express” on 13th March 2019. The article talks about the Official Secrets Act of 1923 and looks into the act which is against the spirit of democracy.)

Recently secret documents related to Rafael deal went missing resulting in a widespread public attention. Attorney General for the day denied providing information on the deal as it could not be disclosed for national security reasons, cautioning judicial restraint, simultaneously threatening a media house for publishing the ‘secret’ information that was already in the public domain.

The constitutional freedom to use and publicise information is directly affected by the provisions of the Official Secrets Act, 1923.

The Official Secrets Act of 1923 (OSA) is one of many laws in Indian statute that is inherently colonial in nature and has no place in a free society like India. The law challenges the basic right of information, promoting the culture of secrecy and creating grounds for corruption.

Official Secrets Act: The Act We Know Today

- OSA has its roots in the British colonial era and was originally known as The Indian Official Secrets Act (Act XIV), 1889.
- The act was primarily mandated to gag the voice of a large number of newspapers that came up in several languages, and were opposing the Raj’s policies, building political consciousness and facing police crackdowns and prison terms.
- The act 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) was extended to all matters of secrecy and confidentiality in governance in the country.
- It was further amended after India got independence in 1951 and 1967. The act in its present form deals with two aspects — spying or espionage and disclosure of other

secret information of the government.

- Secret information can be any official code, password, sketch, plan, model, article, note, document or information. Under the act both the person communicating the information, and the person receiving the information, can be punished.

Blindfolding The Democracy

- **The Official Secrets Act which was intended to protect the British Empire from its enemies has been used as a way for silencing questioning citizens.**
- The law continues to remain in the statute book and finds inroads in every government irrespective of the political party in power, reinforcing the parent-child relationship between the state and its subjects.
- The idea that every information needs to flow from government to public with government getting to keep certain information away from the public domain in the name of national security, finds contradiction in the very idea of democracy where a true democracy stands to work for the people.
- 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.
- The act does not clearly give definition of "secret" documents or information, thus the Act can be misused with government authorities branding information or documents as official secrets as the government deems fit.
- The OSA has often been arbitrarily used against media houses and journalists who are found opposing the action of the government and questioning its policies.
- The law contradicts the Right to Information (RTI) Act that came into effect in 2005 and creates ample ground for corruption.

Voices Against The Act

- In 1971, the Law Commission became the first official body to make an observation regarding OSA. It observed that "just because a circular is marked secret or confidential, it should not attract the provisions of the Act". The Law Commission, however, did not recommend any changes to the Act.
- **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, calling OSA incongruous with the regime of transparency in a democratic society".**
- In 2015, a committee was formed 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.

Need for Transparency: Step Towards Good Governance

Transparency and accountability are essential tools at the disposal of public opinion in order to ensure that the requirements of secrecy are not over-stated and people are not misled.

Public welfare can best be served through the ability of the citizens to regularly question the policy and the intent behind its formulation.

Questions of Economic welfare, social reform, public justice and individual liberty cannot be solely left to the state whose foremost goal is the consolidation of power.

The media in today's time acts as the champion of freedom and it is important that it remains independent from any type of coercion and must serve the governed, not those who govern.

Information availability is not only a right of the people but an obligation on the part of the government to keep the people well informed.

Way Forward

- **Any law that favours the goals of few and work against the majority indicates the simplistic contradiction between the interests of the state and those of public welfare and is detrimental to good governance. Hence any such law should be repealed in the larger interest of the public.**
 - The modern trend in today's world is towards less secrecy and more information and India too should act in the same manner.
 - In his famous Gettysburg Address, Abraham Lincoln described good governance as “of the people, by the people and for the people”. In order to achieve the third paradigm of his definition, the state needs to start acknowledging the importance of informed public and the role that it plays in the country's development as a nation.
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