



RTI vs. OSA

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Recently, the government has sought action against The Hindu newspaper and news agency ANI under Official Secrets Act, 1923 for publishing documents related to India's deal to buy 36 Rafale jets from France.

In this context, we will look into the debate on the **Official Secrets Act, 1923 (OSA) in light of the Right to Information Act, 2005 (RTI)**.

Legal Position

- Whenever there is a conflict between the two laws, the provisions of the **RTI Act override those of the OSA**.
- **Section 22 of the RTI Act** states that its provisions will have effect notwithstanding anything that is inconsistent with them in the OSA.
- Similarly, **under Section 8(2) of the RTI Act**, a **public authority may allow access to information covered under the OSA**, "if the public interest in disclosure outweighs the harm to the protected interests".

Issues with OSA

Colonial Legacy

The OSA was enacted in 1923 by the British to keep certain kinds of information confidential, including, but not always limited to, information involving the affairs of state, diplomacy, national security, espionage, and other state secrets.

- **Vague Terms**

- The **OSA has provisions that are too broad and vague, often leaving room for arbitrariness**.

For instance, under Section 2(8)(d) of the Act defining a "prohibited place", "any railway, road, way or channel or other means of communication by land or water..." can be notified by the Central government as a 'prohibited place'.

- **Section 3 provides for a penalty for spying to be imposed on anyone who is even found in the 'vicinity' of a prohibited place.**
- It **punishes the communication of any information obtained in contravention of the Act**, which could prejudice the security of the state or friendly relations with foreign states. This **provision targets whistle-blowing and investigative journalism**, no matter how critically important it might be to have the information public.
- Former Army Chief, General V.K. Singh, who wrote a book detailing instances of corruption, nepotism, and negligence within the Research and Analysis Wing, was charged with an offense under the OSA.
- **Against the Constitutional Values**
OSA is against the **constitutive logic of a democratic republic, where the state is supposed to be transparent to its citizens.**

Reforms within OSA

- **Second administrative reforms** commission submitted the report "Right to Information: Master Key to Good Governance", which said that "**The Official Secrets Act, 1923 should be repealed.**"
But the **government rejected the recommendation**, saying "**The OSA is the only law to deal with cases of espionage, wrongful possession and communication of sensitive information detrimental to the security of the State.**"
- In **2006**, the **Home Ministry recommended substantial changes to the OSA**, in line with the privacy regime established by the RTI.
- **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.