

To serve the governed: on Official Secrets Act

This article is related to
General Studies-Paper-II
(Governance)

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"The Official Secrets Act has no place in a democracy, as the Goswami Commission had suggested in the late 1970s."

The constitutional freedom to use and publicise information is directly affected by the provisions of the Official Secrets Act, 1923, which as with most of British India enactments followed the Official Secrets Act, 1920, passed by the British Parliament. It was strict enough then but after Independence in 'free India' we amended it and made it 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").

Often misused

Whenever I think about the Official Secrets Act, 1923, I recall a scene from the son et lumière (sound and light show) at the Red Fort enacted almost every evening where 100 years of Indian history is brilliantly encapsulated in a one-hour show: in it the Emperor Aurangzeb (who reigned for 60 years) asks his courtiers, "What is this noise, that is troubling us from outside?" And the courtiers reply: "Your Majesty, it is music." And Aurangzeb's majestic response is: "Then bury it deep into the bowels of the earth."

I always thought — un-majestically, but seriously — that this should have been the fate of the Official Secrets Act, 1923, which has been so frequently misused, that it ought to have been repealed when India got independence. In fact when the Janata government which came to power at the end of the Internal Emergency, and set up what was then known (and is now forgotten) as the Second Press Commission, it was chaired by a great and good judge, Justice Goswami of the Supreme Court of India, whose common sense approach to all subjects greatly attracted me to him.

L.K. Advani, then Minister for Information and Broadcasting, requested me to be a member of the Commission, and I agreed. The Commission proceeded in great earnestness for months, and ultimately, when its report was ready in December 1979, a report that implored the government of the day to immediately repeal the Official Secrets Act, 1923, it never saw the light of day. Indira Gandhi, who came back to power in January 1980, wrote to the members a polite letter of thanks for our deliberations and promptly dissolved and disbanded the Justice Goswami Commission. It was replaced by the now officially known Second Press Commission presided over by Justice K.K. Mathew. The Goswami Commission and all its deliberations had been obliterated by a stroke of the pen. If Mrs. Gandhi had returned to power a few months later and our report had been accepted by the previous government, concerns in the context of The Hindu's exposé on the Rafale deal would probably not have arisen over what the Attorney General of India ought to have said or done or ought not to have said or done. The Official Second Press Commission (the Mathew Commission) did not recommend the repeal of the Official Secrets Act of 1923.

The press as champion

Since I still regard the press (and no longer the electronic media) as the champion of Article 19(1)(a) freedoms, I would like to say that the press must serve the governed, not those who govern. In his famous Gettysburg Address, Abraham Lincoln described good governance as "of the people, by the people and for the people". Centuries later we do understand the "of", and are willing to tolerate the "by" but unfortunately we keep forgetting the "for". If government is indeed for

the people, it has a solemn obligation to keep the people well informed.

Fortunately, the modern trend in today's world is towards less secrecy and more information. The International Covenant on Civil and Political Rights (ICCPR), adopted by the General Assembly of the United Nations way back in 1966, specifically includes the right to freedom of expression, defined as "the freedom to seek, receive and impart the information and ideas of all kinds".

The Janata government signed and ratified this Covenant in 1979, but none of the later Governments has lived up to its ideals. We have enacted Article 19(1)(a) in our 1950 Constitution with extremely limited restrictions — in Article 19(2) — but again only paid lip service to freedom of speech and expression.

GS World Team...

Indian Government Secret Act, 1923

Why in the discussion?

- At the time of the hearing of Rafale Purchase case in the Supreme Court recently, the Attorney General of India has requested that criminal prosecutions should be initiated against those who have stolen government documents.
- With this request, once again the country's old Act - Government Secret Act, 1904- has come in to the discussion.

What is it?

- This act was passed in the official functioning, especially regarding national security and secret information.
- This Act was passed to maintain confidentiality in 1904 when Lord Curzon was the Viceroy of India (1899-1905).
- This act was mainly brought so that the voices of nationalist publications could be suppressed.
- In place of the Act of 1904, a new Act was passed in 1923, namely - the Government Official Secret Act.
- By expanding the scope of privacy through this act, all the secret matters

related to the administration were included.

Why the review is needed?

- In the old Act, classification of confidential information is so elaborate that in many places it appears to be colliding with the Right to Information Act.
- Section 5 provides that the person who gives information and the person who receives information can be punished.
- A report of SAARC states that this act is in the form of a heritage of colonialism in which people were not believed and government employees were given importance.
- In section 5 of this colonial Act, there is a discussion of possible violations concerning national security for which there are different opinions. In this section, exchange of information that helps the enemy country is made punishable.
- Using this, journalists can easily be arrested on the charge that they have printed such information which can cause problems to the government or the military forces.

Expected Questions (Prelims Exams)

1. Consider the following statements regarding the Indian Government Secret Act, 1923-

1. This act was passed during the tenure of Lord Minto.
2. This act was passed to maintain confidentiality in the official functioning especially regarding national security and secret information.

Which of the following statements is/are correct?

- (a) Only 1
- (b) Only 2
- (c) Both 1 and 2
- (d) Neither 1 nor 2.

Expected Questions (Mains Exams)

- Q. Recently Indian Official Secrets Act, 1923 came into discussion due to the theft of documents related to Rafale. Critically analyse the provisions of this act.**

(250 Words)

Note: Answer of Prelims Expected Question given on 12 Mar. is 1(c)

