

All you need to know about the Official Secrets Act

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Remarks made by the Attorney-General in the Supreme Court on March 6, of looking into “criminal action” against those responsible for making “[stolen documents](#)” on the [Rafale deal](#) public, have brought the Official Secrets Act into focus. The colonial-era law meant for ensuring secrecy and confidentiality in governance, mostly on national security and espionage issues, has often been cited by authorities for refusing to divulge information. Governments have also faced criticism for misusing the law against journalists and whistleblowers.

What is the Act about?

The [Official Secrets Act was first enacted in 1923](#) and was retained after Independence. The law, applicable to government servants and citizens, provides the framework for dealing with espionage, sedition, and other potential threats to the integrity of the nation. The law makes spying, sharing ‘secret’ information, unauthorised use of uniforms, withholding information, interference with the armed forces in prohibited/restricted areas, among others, punishable offences. If guilty, a person may get up to 14 years’ imprisonment, a fine, or both.

The information could be any reference to a place belonging to or occupied by the government, documents, photographs, sketches, maps, plans, models, official codes or passwords.

Has the law undergone any changes over the years?

No. However, the [Second Administrative Reforms Commission \(SARC\) Report, 2006, suggested](#) that the Act should be substituted by a chapter in the National Security Act that incorporates the necessary provisions. The reason: it had become a contentious issue after the implementation of the Right to Information Act.

The OSA does not define “secret” or “official secrets”. Public servants could deny any information terming it a “secret” when asked under the RTI Act.

The SARC report stated that as the OSA’s background is the colonial climate of mistrust of people and the primacy of public officials in dealing with the citizens, it created a culture of secrecy. “Confidentiality became the norm and disclosure the exception,” it said. This tendency was challenged when the Right to Information Act came into existence.

In 2008, during the first term of the UPA, the Group of Ministers that scrutinised the SARC report refused to repeal the Act but suggested amendments to do away with ambiguities. Even on Thursday, Congress president Rahul Gandhi was wary of scrapping the law. He was of the view that the legislation should not be used to harass journalists.

In 2015, the NDA government formed a high-level panel to look into the provisions of the OSA in the light of the RTI Act. No action has been taken on the panel’s report, which was submitted in 2017.

Is withholding information the only issue with the Act?

Another contentious issue with the law is that its Section 5, 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.

Journalist Tarakant Dwivedi alias Akela was booked for criminal trespass under the Official Secrets Act on May 17, 2011, 11 months after he wrote an article in *Mid-Day* about how sophisticated weapons bought after 26/11 were being stored in a room with a leaking roof at the Chhatrapati Shivaji Terminus in Mumbai. An RTI query later revealed that the armoury Akela visited was not a prohibited area and the Bombay High Court subsequently dismissed the case.

Kashmir-based journalist Iftikhar Gilani was arrested in 2002 under the OSA for downloading a document from the Internet. After spending seven months in jail, he was honourably discharged by the courts.

In a case pertaining to journalist Santanu Saikia, who wrote an article in *Financial Express* on the basis of a leaked Cabinet note, the Delhi High Court in 2009 ruled that publishing a document merely labelled as “secret” shall not render the journalist liable under the OSA.

Do other nations have similar laws?

Several countries, including the United Kingdom, Malaysia, Singapore, and New Zealand, continue to use the legislation to protect state secrets. In 2001, Canada replaced its OSA with a Security of Information Act. The “official secrets” come under the Espionage Act in the U.S.

On September 3, 2018, a Myanmar court awarded seven years’ jail to two *Reuters* journalists for illegally possessing official documents on the military’s alleged human rights abuses against Rohingya Muslims. Malaysia has also been accused of using the OSA to silence dissidence.