Official Secrets Act

Why in news?

The Delhi police have arrested a strategic affairs analyst and two others under the Official Secrets Act (OSA).

What is the story behind?

- The police claimed that the analyst had passed on information such as the deployment of Indian troops on the border to Chinese intelligence.
- The other two have been arrested for allegedly supplying the analyst money routed through hawala channels for conveying information.

What is the Official Secrets Act?

- OSA has its roots in the British colonial era.
- The original version was The Indian Official Secrets Act (Act XIV), 1889.
- This was brought in with the main objective of muzzling the voice of a large number of newspapers that had come up in several languages.
- They were opposing the Raj's policies, building political consciousness and facing police crackdowns and prison terms.
- It was amended and made more stringent in the form of The Indian Official Secrets Act, 1904, during Lord Curzon's tenure.

What are the matters covered?

- The 1923 version of the Indian Official Secrets Act was extended to all matters of secrecy and confidentiality in governance in the country.
- It broadly deals with two aspects,
    1. Spying or espionage, covered under Section 3, and
    2. Disclosure of other secret information of the government, under Section 5.

What is secret information?

- 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.

- For classifying a document, a government Department follows the Manual of Departmental Security Instructions, 1994, not under OSA.
- Also, OSA itself does not say what a "secret" document is.
- It is the government's discretion to decide what falls under the ambit of a "secret" document to be charged under OSA.
- It has often been argued that the law is in direct conflict with the Right to Information (RTI) Act, 2005.

Between the RTI Act and OSA, which has primacy?

- Section 22 of the RTI Act provides for its primacy vis-a-vis provisions of other laws, including OSA.
- So if there is any inconsistency in OSA with regard to furnishing of information, it will be **superseded by the RTI Act**.
- However, under Sections 8 and 9 of the RTI Act, the government can refuse information.
- Loophole - The government can classify a document as "secret" under OSA Clause 6, that document can be kept outside the ambit of the RTI Act, and the government can invoke Sections 8 or 9.

Has there been any effort to change provisions of OSA?

- **Law Commission** - In 1971, it became the first official body to make an observation regarding OSA.
- It observed that merely because a circular is marked secret, it should not attract the OSA's provisions if the publication is in the public interest and no question of national emergency and interest of the State arises.
- But, the Law Commission did not recommend any changes to the Act.
- **ARC** - In 2006, the 2nd Administrative Reforms Commission (ARC) recommended that OSA be repealed.
- It wanted the OSA to be replaced with a chapter in the National Security Act containing provisions relating to official secrets.
- **Government Committee** - In 2015, the government had set up a committee to look into provisions of the OSA in light of the RTI Act.
- It reported to the Cabinet Secretariat in 2017, recommending that OSA be made more transparent and in line with the RTI Act.

What are the major instances when OSA has been invoked?

- One of the oldest and longest criminal trials involving OSA is the 1985 Coomar Narain spy case.
- The most recent conviction came in 2018, when a Delhi court sentenced former diplomat Madhuri Gupta who served at the Indian High Commission

in Islamabad.
- He was sentenced to three years in jail for passing on sensitive information to the ISI.

Source: The Indian Express

