Official Secrets Act - Rafale Deal Case

What is the issue?

With debate over 'stolen documents' in Rafale case, it is imperative to understand the Official Secrets Act (OSA).

What are the key features of OSA?

- The secrecy law broadly deals with two aspects:

1. spying or espionage, which is dealt with in Section 3 of the Act
2. disclosure of other secret information of the government, which is dealt with in Section 5

- The 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 by the prosecuting agency.

How did the Act evolve?

- The Official Secrets Act (OSA) has its roots in the British colonial era.
- Its predecessor law, The Indian Official Secrets Act, 1904 was enacted during the time of Lord Curzon, Viceroy of India from 1899 to 1905.
- It was an amended and more stringent version of The Indian Official Secrets Act (Act XIV) of 1889.
- The latter was brought in at a time when a large number of powerful newspapers had emerged in several languages across India, and editors -

i. opposed the British Raj's policies on a daily basis
ii. built political consciousness among the people
iii. faced police crackdowns and prison terms to uphold their mission and convictions

- So one of the main purposes of the Act was to suppress the voice of nationalist publications.
- In 1923, the Indian Official Secrets Act (Act No XIX of 1923) replaced the earlier Act.
- This was extended to all matters of secrecy and confidentiality in governance

in the country.

What are the notable convictions so far?

- The most recent conviction under the Official Secrets Act came in 2018.
- The Delhi court held former diplomat Madhuri Gupta, who had served at the Indian High Commission in Islamabad, guilty under the OSA.
- She was sentenced to 3 years in jail for passing on sensitive information to Pakistan's ISI.
- In 2002, the then Kashmir Times journalist Iftikhar Gilani was arrested and charged under the OSA.
- The case was in relation with allegedly possessing secret documents relating to the deployment of troops in the Valley. The state later withdrew the case.
- In 2017, journalist Poonam Agrawal was charged under OSA for conducting a sting operation on an Army official who criticised the sahayak system in the Army.

What had the contention been?

- As the classification of secret information is so broad, it is largely in direct conflict with the Right to Information Act.
- Moreover, examining the process of decision-making in a government involves looking for information, and documents.
- Records which are meant to be confidential are sometimes significant in bringing illegalities to public attention.
- This was true in the 1980s of irregularities in Bofors defence deal.
- More recently, in 2016, the Panama Papers involved the painstaking unveiling of offshore transactions in tax havens.
- This, significantly, resulted in hundreds of crores of undeclared assets being traced by the government.
- But in every other instance, the Official Secrets Act hampers the process.

What is the recent case?

- The recent case is in relation to the alleged irregularities in the Rafale aircraft deal between India and France, which was published in 'The Hindu' Newspaper.
- The Attorney General raised an objection in court seeking dismissal of the review petitions.
- This was on the ground that the reports cited documents "stolen" from the defence ministry.
- In other words, the Official Secrets Act was used as a shield against allegations of wrongdoing in the Rafale deal.

What is the Court's observation?

- The court questioned that if there was a corruption complaint, was it to be protected under national security.
- Certainly, the Court held that the Act did not offer the liberty to commit corruption.
- The Court dismissed targeting the messenger and criminalising the whistleblower under the cover of “national security” or “stability” of government or “official secrecy”.
- It called it an attack on the freedom of expression and the people’s right to know.
- Undoubtedly, the OSA in a democracy needs constant contest, and the need for official secrecy has to be weighed against the citizen’s right to know.
- The right to freedom of speech and expression, and information should be prioritised over the archaic Official Secrets Act.
- Notably, the apex Court has increasingly expanded the protections to whistleblowers, to ensure that those who expose corruption and wrongdoing are not vulnerable to any intimidation.

Source: Indian Express

