

# **THE OFFICIAL SECRETS ACT, 1923**

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# THE OFFICIAL SECRETS ACT 1923

## Introduction

While managing the affairs of the country, the Government has to face the menace of spying by the citizens of the country may be in Government service or in private business or just thriving over this nefarious act. Spying has also being done by foreigners settled in the country, by visiting tourists, by the staff and officers employed in foreign missions, by missionaries and by organisations of Indian or foreign origin. To combat this nefarious act Government had been adopting various measures by making various provisions in different laws. The first step in this direction was the enactment of the Indian Official Secrets Act, 1889 which was amended by the Indian Official Secrets (Amendment) Act, 1904. Later, the Official Secrets Act, 1911 (1 and 2 George V.C. 28), a British Act was brought into force in India. But it has been recognised that it is unsatisfactory to have two separate laws in force simultaneously in India. Further, although the British Act of 1911 was in force in India, difficulties arose in applying it because of the use in it of English common law terms and so on. For these reasons it was felt desirable that there should be a single consolidated Act applicable to Indian conditions. To consolidate and amend the law relating to official secrets the Official Secrets Bill was put before the Legislature. It was passed in the year 1923 and received the assent on 2nd April, 1923.

## Statement of Objects and Reasons

The position in regard to the protection of official secrets in India is briefly as follows: The provisions of the law which are now in force are : (a) An Act of the Legislature in India—The Indian Official Secrets Act, 1889, as amended by the Indian Official Secrets (Amendment) Act, 1904; and (b) A Statute of Parliament—the Official Secrets Act, 1911 (1 and 2 George V.C. 28). The provisions of the British Statute have, as a result of experience gained during the War, been considerably modified by the enactment of the Official Secrets Act, 1920 (10 and 11 George V.C. 75), but the latter Statute does not apply to British India.

It has, for some time past, been recognised that it is unsatisfactory to have two separate laws in force simultaneously in India. Further, although the British Act of 1911 is in force in India difficulties arise in applying it because of the use in it of English common law terms and so on. For these reasons it is desirable that there should be a single consolidated Act applicable to Indian conditions, and the desirability of this has been emphasised by the passing of the British Act of 1920 which has considerably amended the Act of 1911, but is not applicable to India.

The provisions of the British Act of 1911 are more effective, particularly in the matter of the protection of military secrets than the Indian enactments, and they have been further strengthened by the enactment of the amending Statute of 1920, which is based on experience gained during the War. It is considered desirable, therefore, that the law in India should be assimilated to that in force in the United Kingdom, and the object of this Bill is to consolidate the provisions of this British Acts of 1911 and 1920 and to enact them in a form suitable for India.

## 1. Short title, extent and application —

(1) This Act may be called the Official Secrets Act, 1923.

(2) It extends to the whole of India and applies also to servants of the Government and to citizens of India outside India.

## 2. Definitions —

In this Act, unless there is anything repugnant in the subject or context,—

(1) any reference to a place belonging to Government includes a place occupied by any department of the Government, whether the place is or is not actually vested in Government;

(2) expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself, or the substance, effect or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model article, note or document;

(3) "**document**" includes part of a document;

(4) "**model**" includes design, pattern and specimen;

(5) "**munitions of war**" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine intended or adopted for use in war, and any other article, material or device, whether actual or proposed, intended for such use;

(6) "**Office under Government**" includes any office or employment in or under any department of the Government ;

(7) "**photograph**" includes an undeveloped film or plate;

(8) "**prohibited place**" means—

(a) any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of Government, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;

(b) any place not belonging to Government where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, Government, or otherwise on behalf of Government;

(c) any place belonging to or used for the purpose of Government which is for the time being declared by the Central Government, by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(d) any place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(9) "**sketch**" includes any photograph or other mode of representing any place or thing; and

(10) "**Superintendent of Police**" includes any police officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by the Central Government.

### 3. Penalties for spying —

(1) If any person for any purpose prejudicial to the safety or interests of the State—

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States, he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document, information, code or pass word shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

### Comments

(i) Spying has not been defined in the Act but its meaning can be gathered from section 3. It means that if any person for any purpose prejudicial to the safety or interests of the State approaches, inspects, passes over, or is in the vicinity of, or enters, any prohibited place or makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy, or obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States, he performs the act of spying.

(ii) The word 'enemy' includes unfriendly State; *Ram Swaroop v. State*, 1986 Cr. LJ 526 (Del.).

(iii) Secret information is an information which may not be secret but relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India the security of State or friendly relation with foreign State or useful to an enemy; *Ram Swaroop v. State*, 1986 Cr. LJ 526 (Del.).

(iv) Offence under section 3(1) (c) is triable by court of sessions alone; *Frank Dalton Larkins v. State Delhi Administration Delhi*, (1985) 1 Recent CR 473: 1985 Cr. LJ 377 : (1985) 1 Crimes 1060.

(v) The words "**obtain, connects, records or publishes or communicates**" cannot be interpreted to include the future or prospective acts of the person who is charged with such acts; *State of Haryana v. Rakesh Sood*, 1976 Cr. LT 176 (Punj.).

#### 4. Communications with foreign agents to be evidence of commission of certain offences —

(1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without India shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provisions,—

(a) a person may be presumed to have been in communication with a foreign agent if—

(i) he has, either within or without India visited the address of a foreign agent or consorted or associated with a foreign agent, or

(ii) either within or without India, the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person;

(b) the expression "**foreign agent**" includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without India, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without India, committed, or attempted to commit such an act in the interests of a foreign power;

(c) any address, whether within or without India, in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

## **5. Wrongful communication, etc., of information —**

1) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been, employed under a person who holds or has held such an office or contract—

(a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a court of Justice or a person to whom it is, in the interest of the State, his duty to communicate it; or

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or

(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information, he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

## **6. Unauthorised use of uniforms, falsification of reports, forgery, personation and false documents —**

(1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State—

(a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document) or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under Government, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp, he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State—

(a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, for, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, wilfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of Government, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section.

#### **7. Interfering with officers of the police or members of the Armed Forces of the Union —**

(1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police officer, or any member of the Armed Forces of the Union engaged on guard, sentry, patrol or other similar duty in relation to the prohibited place.

(2) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to three years, or with fine, or with both.

#### **8. Duty of giving information as to commission of offences —**

(1) It shall be the duty of every person to give on demand to a Superintendent of Police, or the police officer not below the rank of Inspector, empowered by an Inspector-General or Commissioner of Police in this behalf, or to any member of the Armed Forces of the Union engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence, under section 3 or under section 3 read with section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information.

(2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to three years or with fine, or with both.

#### **9. Attempts, incitements, etc.—**

Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

## **10. Penalty for harbouring spies —**

(1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section.

(2) It shall be the duty of every person having harboured any such person as aforesaid, or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid, to give on demand to a Superintendent of Police or other police officer not below the rank of Inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

## **11. Search-warrants —**

(1) If a Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search-warrant authorising any police officer named therein, not being below the rank of an officer in charge of a police station, to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a police officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any police officer the like authority as may be given by the warrant of a Magistrate under this section.

(3) Where action has been taken by a police officer under sub-section (2) he shall, as soon as may be, report such action, in a presidency town to the Chief Presidency Magistrate, and outside such town to the District or Sub-divisional Magistrate.

## **12. Provisions of section 337 of Act 5 of 1898 to apply to offences under sections 3, 5 and 7**

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The provisions of section 337 of the Code of Criminal Procedure, 1898 shall apply in relation to an offence punishable under section 3 or under section 5 or under section 7 or under any of the said sections 3, 5 and 7 read with section 9, as they apply in relation to an offence punishable with imprisonment for a term which may extend to seven years.

## **13. Restriction on trial of offences —**

(1) No court (other than that of a Magistrate of the first class specially empowered in this behalf by the Appropriate Government which is inferior to that of a District or Presidency Magistrate, shall try any offence under this Act.

(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed, claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that court, notwithstanding that it is not a case exclusively triable by that court.

(3) No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the Appropriate Government or some officer empowered by the Appropriate Government in this behalf:

(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in India in which the offender may be found.

(5) In this section, the appropriate Government means—

(a) in relation to any offences under section 5 not connected with a prohibited place or with a foreign power, the State Government; and

(b) in relation to any other offence, the Central Government.

### **Comments**

Court of Sessions Judge is competent to try the offence under the Official Secrets Act, 1923; *Sama Rayab Saheb v. State of Gujarat*, (1994) 1 CCR 93 (Guj.).

#### **14. Exclusion of public from proceedings —**

In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

#### **15. Offences by companies —**

(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation —**For the purposes of this section—

(a) "**Company**" means body corporate and includes a firm or other association of individuals; and

(b) "**Director**", in relation to a firm, means a partner in the firm.

#### **16. Repeals —**

*Rep. by the Repealing Act, 1927 (12 of 1927), sec. 2 and Sch.*

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