**[No secret](https://www.dawn.com/news/1775403/no-secret)**

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RECENT amendments to the Official Secrets Act (OSA), 1923, have caused consternation in political and legal circles, and the media. There has been outrage despite the original amendments having been diluted in the face of opposition in the Senate. Setting aside the complications that have arisen after the controversy over the president’s ‘deemed assent’ to the amendments bill, it is worth reviewing the law as it stands.

The OSA was inherited by Pakistan at the time of its inception. Its lineage can be traced to the first ‘Official Secrets Act’ passed by the British parliament in 1889. That law criminalised espionage and the unauthorised disclosure of information as an extension of breach of trust. The UK’s latest secrets law, enacted in 1989, makes it applicable only to security and intelligence officials, Crown servants, government contractors and their abettors and confidants.

The thrust of the original OSA (Section 3) was to act against spies who violate the sanctity of a prohibited place; draw out a sketch, plan, model, or note that could be useful to an enemy; and obtain, collect, record or publish or communicate a secret code or password to put it in some form of documentation with the intention of benefiting an enemy.

The law was originally applicable only to government functionaries or outsiders involved in espionage with the intention of benefiting an enemy. The act of spying for military matters carries capital punishment or 14 years’ imprisonment. Punishment is three years in all other cases.

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The other major target of the law (Section 5) was state functionaries entrusted with state secrets who communicate that information to any unauthorised person or foreign power; who retain that information when they were not bound to do so; and those who fail to take proper care, endangering sensitive information. Penalties for unauthorised communication of information detrimental to state interests were largely applicable to state functionaries. Thereafter, an acknowledgement of the OSA’s applicability was included in the terms and conditions of certain classes of government servants.

The recent amendments to Pakistan’s OSA have redefined ‘enemy’ in overly broad terms. The enemy now includes “any person who is directly or indirectly, intentionally working for or engaged with the foreign power, foreign agent, non-state actor, organisation, entity, association or group guilty of a particular act tending to show a purpose that is prejudicial to the safety and interest of Pakistan”.

The inclusion of non-state actors involved in terrorism and insurgency in the definition of ‘enemy’ was perhaps the need of the hour. However, including “organisations, entities, associations or groups” within the purview of this definition has given leeway to the government to charge anyone oppo­sed to its policies and actions under this law.

Through another amendment, prosecution of unauthorised communication or leaks, which were hitherto invoked only during war, has also been made applicable to peace times. The amended law has also added imperilling public order and defence for any purpose prejudicial to the safety or interests of the state to its list of applicable offences. It has also made it a cognisable offence to expose officials and informants of the country’s two main intelligence agencies. The intelligence agencies have been given the authority to arrest anyone charged for spying and unauthorised disclosure without authorisation from a magistrate or warrant.

The new amendments also seem to be aimed at bringing persons not directly involved in spying or leaking in­­­formation within the am­­b­it of the OSA by including those who attack, des­troy or otherw­ise undermine a prohibited pla­ce. This seems indicative of the fact that the thrust of the law has shifted from those originally deemed to be under its operation.

The extensive involvement of intelligence officials in governance matters has made it impractical to protect their identity. However, instead of the state taking intelligence operatives to task for blowing their cover, anyone can now be arrested and punished for disclosing a spy’s identity. It would be a travesty to prosecute anyone for identifying intelligence officials while they continue to operate in full public view. Is it not more sensible to require intelligence operatives to remain anonymous and concentrate on their core functions of counterintelligence, counterterrorism, law and order, and security?

Clearly, the amendments have been heavily influenced by the events of May 9 this year. The objective seems to be to bring as many persons accused of various offences against military installations and interests within the ambit of military tribunals under the Army Act of 1952 by invoking provisions of the OSA.

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