

UNIT – 4

Related Laws and Official Secrets

Official Secrets Act • Public Records Act • FOI Act 2002 • Commission of Inquiry

Right to Information

Unit Overview

This unit examines the laws that interact with or preceded the RTI Act – the Official Secrets Act 1923, the Public Records Act 1993 and Rules 1997, the short-lived Freedom of Information Act 2002, and the Commission of Inquiry Act 1952 with its Rules. Understanding these statutes is essential for a complete picture of the transparency regime.

LEARNING OBJECTIVES

What You Will Learn

01 OSA 1923

Understand the colonial secrecy law and its present status

02 Public Records

Explain the Public Records Act and Rules on management of records

03 FOI 2002

Know why the 2002 Act failed and was replaced

04 Commission of Inquiry

Describe the role of inquiry commissions

05 Interface

Analyse how these laws interact with the RTI Act

06 Reform

Identify areas where further legislative reform is needed

Official Secrets Act, 1923

The Official Secrets Act is a colonial-era law that criminalises unauthorised disclosure of official information. It embodies the culture of secrecy that the RTI Act sought to reverse.

Key Provisions

Sections 3 and 5 – espionage and wrongful communication of official secrets

Scope

Very wide – any official information can potentially be covered

Criticism

Vague, outdated, used to intimidate journalists and whistle-blowers

Interface with RTI

RTI Act does not repeal OSA; both co-exist. Public interest disclosure under RTI can still face OSA risk in extreme cases

Reform

Repeated recommendations to amend or repeal; limited progress

PUBLIC RECORDS

Public Records Act 1993 & Rules 1997

Object

Regulation of management, administration and preservation of public records of the Central Government and Union Territories

Definition

Public records include any record in any form belonging to the government

Custody

Records must be properly maintained and transferred to archives as per schedule

Access

Rules provide for access subject to conditions; RTI now provides the primary access route

Importance

Good record management is a precondition for effective RTI

Freedom of Information Act, 2002

The Freedom of Information Act 2002 was the first central FOI law. It was weak, never fully notified, and was replaced by the stronger RTI Act 2005.

Weaknesses

Narrower definition of information, weaker penalties, more exemptions, no strong independent commission

Non-Operational

Rules were not framed; the Act remained largely on paper

Replacement

RTI Act 2005 expressly repealed the FOI Act 2002

Lesson

Design of the enforcement mechanism and penalty provisions is critical

Commission of Inquiry Act 1952

Object	Appointment of Commissions to inquire into matters of public importance
Powers	Civil court powers for summoning, evidence, discovery
Reports	Commission submits report to the government; government decides on publication and action
RTI Interface	Reports and related documents can be sought under RTI subject to exemptions
Rules 1972	Procedural rules for the functioning of the Commission

INTERFACE

How These Laws Interact with RTI

OSA	Creates tension; RTI disclosure may still attract OSA prosecution in theory
Public Records	Supports RTI by requiring proper maintenance of records
FOI 2002	Historical predecessor; lessons incorporated into RTI Act
Inquiry Commissions	Documents generated can become “information” under RTI
Overall	RTI is the primary access regime; other laws play supporting or conflicting roles

Relevant Cases and Developments

OSA Cases

Rare successful prosecutions; courts have read down vague provisions

Record Management

Commissions have repeatedly directed better record-keeping

Whistle-blowers

Interplay between RTI, OSA and the Whistle Blowers Protection Act

Reform Efforts

Second Administrative Reforms Commission and Law Commission recommendations on OSA

Salient Features of the Related Legal Framework

OSA	Colonial secrecy statute still on the books
Public Records	Statutory duty to manage and preserve records
FOI 2002	Failed experiment that paved the way for RTI
Inquiry Act	Tool for public inquiry; reports often sought under RTI
Tension	Secrecy laws vs transparency laws – ongoing balance

ESSENTIALS

Core Points

OSA 1923

Still in force; culture of secrecy

Public Records Act

Management and preservation of government records

FOI 2002

Repealed by RTI Act 2005

Commission of Inquiry

Public importance inquiries; reports accessible via RTI

Interface

RTI is the dominant access regime

Reform

OSA needs modernisation or repeal

Why the Official Secrets Act Survives

Despite the RTI Act, the Official Secrets Act has not been repealed. Governments retain it for national security and for residual control over official information. Courts and civil society continue to press for a narrower, modern secrecy law that is compatible with the constitutional right to information.

HIGHLIGHTS

Key Highlights

OSA

Colonial law; still a source of tension with RTI

Public Records

Supports the infrastructure of transparency

FOI 2002

Weak predecessor; replaced in 2005

Inquiry Act

Commissions of Inquiry generate important public records

Whistle-blowers

Related protection regime still evolving

Reform

OSA amendment remains unfinished agenda

Practical Implications for RTI Users

OSA Fear

Officials sometimes cite OSA to deny information – usually incorrectly

Record Quality

Poor record management is a practical barrier to RTI

Inquiry Reports

Often rich sources of information once the inquiry is complete

Strategy

Always frame requests under RTI; let the public authority justify any OSA claim

COMPARISON

Secrecy vs Transparency Statutes

OSA	Presumption of secrecy; criminal sanctions
RTI	Presumption of openness; civil penalties on officials
Public Records	Neutral – about management, not access
FOI 2002	Attempt at transparency that failed in design
Current	RTI is dominant; OSA is residual and contested

REFORM

Areas for Further Reform

OSA	Replace with a narrow National Security Information law
Record Management	Stronger enforcement of Public Records Act
Whistle-blowers	Effective protection and rewards
Digital	Update laws for electronic records and proactive disclosure
Harmonisation	Clear hierarchy when secrecy and transparency statutes conflict

SUMMARY POINTS

Must-Remember Points

- The Official Secrets Act 1923 remains a colonial secrecy law that co-exists uneasily with the RTI Act.
- The Public Records Act 1993 requires proper management and preservation of government records.
- The Freedom of Information Act 2002 was a weak precursor that was replaced by the RTI Act 2005.
- Commissions of Inquiry generate important public records that can be accessed under RTI.
- The overall legal landscape still contains tension between secrecy and transparency statutes.
- Reform of the Official Secrets Act remains an unfinished agenda.

SUMMARY

Key Takeaways

1. RTI does not operate in isolation; related laws still matter.
2. The Official Secrets Act is the main residual secrecy statute.
3. Good record management under the Public Records Act is a precondition for RTI.
4. The failure of the FOI Act 2002 taught important design lessons.
5. Further legislative reform is needed to fully align secrecy laws with the constitutional right to information.

Next Unit: Judicial Response and Best Practices.