LAW COMMISSION OF INDIA

FORTY-SECOND REPORT

INDIAN PENAL CODE

JUNE, 1971

GOVERNMENT OF INDIA, MINISTRY OF LAW

K. V. K. SUNDARAM

NEW DELHI,
June 2, 1971.

Dear Law Minister,

I have pleasure in sending herewith the Forty-second Report of the Law Commission on the Indian Penal Code. This brings to a conclusion the second major task of revision undertaken by the present Commission since its constitution in March, 1968.

2. The Law Commission in 1959 announced its intention to take up for revision the Penal Code and the Criminal Procedure Code and invited suggestions from the public. It was, however, only after the present Commission completed the revision of the Criminal Procedure Code and submitted our Report to the Government at the end of September, 1969, that we could get down to a detailed study of the Penal Code.

3. As we had done in our last Report on the Code of Criminal Procedure, we also have in this Report added a draft Bill to implement all our recommendations for the amendment of the Indian Penal Code, together with a draft of the consequential amendments which will be found necessary in the Criminal Procedure Code and other Central Acts.

4. Finally, we wish to express our appreciation of the assistance given to us by our Secretary, Shri P. M. Bakshi, in collecting and analysing the material for our discussions, particularly from foreign Codes and textbooks.

Yours sincerely,
Sd/-
(K. V. K. SUNDARAM)

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INTRODUCTION

Revision of the Indian Penal Code was undertaken by the Law Commission as part of its function of revising Central Acts of general application and importance. Though this project was announced, and the views and suggestions of the public were invited, as long ago as March 1959, it was not until the completion of the revision of the Code of Criminal Procedure in 1969 that a detailed study of the Penal Code could be taken up.

In the mean-time, the Commission was asked to consider whether it would be "desirable to add a new chapter in the Indian Penal Code bringing together all the offences in such special enactments and supplementing them with new provisions so that all social offences will find a prominent place in the general criminal law of the country."[1] After examining the subject in great detail, the Commission came to the conclusion that it was not feasible to include all such social and economic offences in the Penal Code.[2] The Commission, however, recommended certain minor amendments of the Code to deal with theft of public property and cheating of public authorities in connection with contracts.

The Commission was then asked by the Government to examine the question of the abolition or retention of capital punishment, and after an exhaustive consideration of the subject it gave a Report[3] recommending retention. We shall be referring to this subject later in this Report.

After the present Commission was constituted in March, 1968, we took up for urgent consideration a question relating to the sentence of imprisonment for life under the Penal Code and submitted a Report.[4] To this also we shall have occasion to refer later.

On a preliminary examination of the Code we thought it desirable to elicit public opinion on certain broad questions, and, with this object, prepared a questionnaire[5] which was sent out to High Courts, various bar associations and other legal bodies, and the State Governments. As it appeared to us that their views on the wide range of questions could be obtained more satisfactorily by personal discussion, Members of the Commission visited all the High Courts and held informal meetings with the Judges, representatives of the bar, academic lawyers and Government officials. These discussions have been of much assistance to us in deciding upon the additions and alterations to be made in the Code. We are specially indebted to the Judges of High Courts for readily sparing time for these discussions and giving us the benefit of their individual views on the questions raised.

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1. The suggestion was made by the Santhanam Committee on the Prevention of Corruption (1964) : See that Committee's Report, para 7.4.
2. 29th Report (February, 1966) on the Proposal to include certain social and economic offences in the Indian Penal Code.
3. 35th Report (December, 1967) on Capital Punishment.
4. 39th Report (July, 1968) on Imprisonment for life under the Indian Penal Code.
5. The questionnaire is appended to this Report: Appendix I.

CHAPTER I

PRELIMINARY

Criminal law in two Codes.

1.1. The Law Commissioners who laboured in the middle of the last century on the codification of the laws in force in British India, decided to put the criminal law of the land in two separate codes. The first to be placed on the statute book was the Indian Penal Code formulating the substantive law of crimes. This was enacted in October, 1860, but brought into force fifteen months later on the 1st January, 1862. Then came the first Code of Criminal Procedure enacted in 1861, which consolidated the law relating to the set-up of criminal courts and the procedure to be followed in the investigation and trial of offences. This division of the vast subject of criminal law for the purpose of codification is obviously convenient and useful.

Title of "Penal Code".

1.2. The title of "Indian Penal Code" given by the Law Commissioners to the basic criminal law aptly describes its contents. The word "penal" no doubt, emphasises the aspect of punishing those who transgress the law and commit offences, but it could hardly be otherwise, so long as punishment and the threat of it are the chief methods known to the State for maintaining public order, peace and tranquillity.

Territorial extent of Code.

1.3. As originally enacted, section 1 provided that the Code shall have effect "throughout the whole of the territories which are, or may become vested in Her Majesty by Statute 21 and 22 Vict. c. 106 entitled 'Act for the better Government of India', except the Settlements of Prince of Wales' Island, Singapore and Malacca". By an amendment made in 1898, the references to the three colonial settlements outside India were omitted. While the Code itself was not in force in any of the Indian States, its provisions were, in course of time, adopted with minor modifications in practically all of them. Upon the commencement of the Constitution, the Adaptation of Laws Order, 1950, changed the extent clause to "the whole of India, except Part B States".

1.4. Each of these States had its own version of the Penal Code, not materially different from the Indian Penal Code. Soon afterwards, the Part B States Laws Act, 1951 (3 of 1951) amended section 1 of the Code, substituting "the State of Jammu and Kashmir" for "Part B States" and repealed the Penal Codes of the former Indian States except that of Jammu and Kashmir.

Extension to Jammu and Kashmir recommended.

1.5. The Jammu and Kashmir Ranbir Penal Code, as it is called, is a replica of the Indian Code with the addition of half a dozen sections[1] relating to the dissemination of contents of prescribed documents, wrongful obstruction to the use of public

1. Sections 190A and 291A to 291D.

tanks and walls, and slaughter of cattle, and three sections[1] relating to whipping. It appears anomalous to have the punishment of whipping continued in only one State of India when it has been abolished in the rest of the country long ago. In our Report[2] on the Code of Criminal Procedure we have pointed out the anomalies and difficulties arising out of two different Codes operating in Jammu and Kashmir and in the other States and recommended that these should be removed, by first suitably amending the Constitution (Application to Jammu and Kashmir) Order, 1950 under article 370 of the Constitution, and then by extending the Indian Penal Code and the Criminal Procedure Code to this State.

Section 2—original object explained.

1.6. With reference to section 2, the Law Commissioners[3] stated :—

> "We do not advise the general repeal of the penal laws now existing in the territories for which we have recommended the enactment of the Code. We think it will be more expedient to provide only that no man shall be tried or punished (except by a Court Martial) for any of the acts which constitute any offence defined in the Code, otherwise than according to its provisions."

In other words, in so far as the provisions of the Code were applicable, they were to prevail in supersession of the penal laws previously in force. The Madras High Court observed[4] in a case of 1866:—

> "It must be borne in mind that, up to the date of the enactment of Act XVII of 1862, the Legislature took no steps towards expressly repealing the old criminal law. Possibly it may have been thought hazardous to repeal it wholesale and without such a careful scrutiny as would ensure the rescission of such parts alone of the old law as the Penal Code rendered superfluous. Whatever may have been the reason, the old law was left in the Statute Book, and but for the provisions of section 2, the great body of acts and omissions punishable under the Penal Code might have been still prosecuted under the old law."

> "As the Penal Code was intended to be general, it was necessary, while the old law was retained in the Statute Book, to provide against its continuing in operation in the very large number of cases in which the acts and omissions constituting offences under it were also violations of the provisions of the Penal Code. The old law was therefore rendered inoperative to this extent by section 2, except in so far as

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1. Sections 513, 514 and 515.
2. 41st Report, paragraphs 1.8 and 1.9.
3. Law Commissioners' 2nd Report on the Penal Code, sections 536—538.
4. (1866) 3 M.H.C.R. Appendix xi, xxii.

section 5 (which was perhaps too long to be introduced into section 2, parenthetically, and was on that account, and also perhaps for greater clearness, placed by itself) qualifies it and acts as a saving clause."

Relying on this section, the Calcutta High Court held[1] that the English common law cannot be followed in order to modify the offence of criminal defamation. It observed:—

> "The Penal Code certainly declares the law in respect of defamation. It contains a definition of defamation and sets out a number of exceptions. It appears to us that "it must be regarded as exhaustive on the point. Section 2 enacts that every person shall be liable to punishment under this Code, and not otherwise, for their acts. If there are a number of exceptions to the offence of defamation, other than those contained in section 499, it appears to us that an offender must be liable to punishment for defamation otherwise than under the Code. On principle, therefore, it would seem to us that section 498 is exhaustive, and that if a defamatory statement does not come within the specified exceptions, it is not privileged."

Deletion recommended.

1.7. Section 2, however, is not needed at the present day, and may be deleted. The old regulations or laws in force when the Code was enacted have mostly been specifically repealed. There can be no question as to the exclusive applicability of the provisions of the Code, subject to what is stated in section 5.

Section 3.

1.8. Section 3 provides that "any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India". Two conditions have to be fulfilled before this section is pressed into service for the purposes of a criminal case: first, there should be an allegation that a person (whether a citizen of India or not) has committed outside India an act which, if committed in India, would be punishable under the Code, and secondly, that person is liable under some Indian law[2] to be tried in India for that offence. When both these conditions are satisfied, the accused person is required to be dealt with according to the provisions of the Code in the same manner as if the culpable act had been committed in India. The practical utility of the section would seem to lie in the fact that *all* the general and ancillary provisions of the Code, like complicity in crime, general exceptions, abetment and attempts are expressly made applicable in relation to the ex-territorial, culpable act for which the accused person is liable to be tried and punished in India.

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1. *Kari Singh* v. *Emperor*, (1912) I.L.R. 40 Cal. 433, 439.
2. See definition in section 3(29) of the General Clauses Act, 1897, which by virtue of section 4A applies also to the Penal Code.

History of section 4.

1.9. While section 3 merely clarifies one aspect of the ex-territorial application of the Code, it is in the next section as expanded from time to time that this application is fully expressed. The history of section 4 is interesting from the constitutional angle. From 1860 to 1898, it stood as follows :—

> "4. Every servant of the Queen shall be subject to punishment under this Code for every act or omission contrary to the provisions thereof, of which, whilst in such service, he shall be guilty on or after the said 1st day of May 1861, within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any Government of India."

The ex-territorial application of the Code was limited to persons in the service of the Government and to offences committed by them, whilst in such service, in the territories of Indian States. This was in consonance with section 22 of the Indian Councils Act, 1861, which enabled the Governor-General in Council to make laws and regulations for all persons within British India "and for all servants of the Government of India within the dominions of Princes and States in alliance with Her Majesty". In 1898, section 4 of the Code was replaced by the following which gave it a much wider scope: —

> "4. The provisions of this Code apply also to any offence committed by—
>
> (1) any Native Indian subject of Her Majesty in any place without and beyond British India;
>
> (2) any other British subject within the territories of any Native Prince or Chief in India;
>
> (3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India.
>
> *Explanation.*—In this section, the word 'offence' includes every act committed outside British India which, if committed in British India, would be punishable under this Code."[1]

The Indian Legislature had by then been empowered by the British Parliament to legislate extra-territorially in respect of these three categories of persons.[2] In pursuance of section 99(2) of the Government of India Act, 1935, which enlarged that

1. Four illustrations were given at the end of the section.
2. See section 8 of the Foreign Jurisdiction and Extradition Act, 1879.

power, section 4 of the Code was amended in 1940,[1] by inserting, after clause (3), the following clause:—

"(4) any person on any ship or aircraft registered in British India, wherever it may be."

After the coming into force of the Constitution, the Adaptation of Laws Order, 1950, replaced the first three clauses of section 4 by one clause reading "any citizen of India in any place without and beyond India", and omitted the word "British" occurring in the fourth clause and in the explanation.

Enlargement of ex-territorial operation considered.

1.10. The extra-territorial operation of the Code at present is thus limited to offences committed by Indian citizens outside India and to offences committed on board Indian ships or aircraft. We have considered whether the field of such operation of the Code should be enlarged in any way. While common law countries consider the territorial principle basic for assuming jurisdiction in criminal legislation and admit the application of the personal principle very sparingly, civil-law countries emphasise the personal principle and also accept the territorial principle. International law, however, recognises several bases of jurisdiction for criminal legislation in the sense that the fact of legislation on any such basis or the prosecution of an alien under such legislation gives no right to another nation to enter a valid objection. The territorial principle which is universally accepted and acted upon by all States is, as Lauterpacht puts it, "a rule of convenience in the sphere of evidence, and not a requirement of justice or even a necessary postulate of the sovereignty of the State."

Territory of India includes territorial waters.

1.11. Before considering the adoption of other principles in order to enlarge the field of operation of the Code outside India, we think it necessary to refer to the question what is within India for the purposes of the Code. Section 18 defines India as meaning the territory of India, excluding the State of Jammu & Kashmir. Does the territory of India include the territorial waters of India, which according to a Presidential proclamation announced on the 30th September, 1967, extend into the sea to a distance of twelve nautical miles measured from the appropriate base line? The question may, for instance, arise in a concrete form if men in a foreign fishing boat wilfully attack men in an Indian fishing boat and cause hurt to them, or *vice versa*, when the boats are say 10 miles from the shore on the high seas. According to the International Convention on the Territorial Sea and the Contiguous Zone, 1958, "the sovereignty of a State extends beyond its land territory and its internal waters to a belt of sea adjacent to its coast, described as the territorial sea", but does the "territory of India" mentioned in section 18 of the Code comprise also the "territorial waters of

1. The Offences on Ships and Aircraft Act, 1940 (4 of 1940).

India" mentioned in the Presidential Proclamation? This doubt arises because of the importation of the common law theory accepted in Britain that the territory of the Realm includes the shore down to low water mark and internal waters only, but not the territorial waters forming part of the high seas. Indian legislation has not always been drafted on the footing that the territory of India necessarily includes its territorial waters. We recommend that, for the avoidance of any doubt in the matter, it should be made clear in section 18 of the Code that the territory of India includes the territorial waters of India.

Principles on which section 4 is based.

1.12. Clause (1) of section 4 of the Code, which makes all provisions of the Code applicable to offences committed by citizens of India in any place without and beyond India, is based on the internationally accepted principle that every sovereign State can regulate the conduct of its own citizens wherever they may be. Clause (2) of the same section is based on what is commonly, but not very correctly, referred to as the "floating territory" principle[1], *viz.*, a ship or aircraft under the flag of a State is under the protection of that State so that all persons on board such ship or aircraft, whatever their national status may be, are subject to the laws of that State.

Other principles for extra-territorial jurisdiction.

1.13. Other principles on which some States have assumed jurisdiction in their criminal laws may be briefly noted. Under the "protected interest principle", it is asserted that a State can punish actions committed beyond its limits if they impair an interest which it desires to protect. It has been noted[2] that the claim that a "State may exercise extra-territorial jurisdiction over crimes of aliens directed against its security, credit, political independence or territorial integrity—it is variously defined—has, though traditionally suspect in Anglo-American jurisprudence, a firm place in the practice of a number of States." It has, however, been observed that such exercise of the protective principle "in the modern world, which recognises the equality of States, is incompatible with the existence of a world society fundamentally grounded on the conception of the independence of the States."[3]

Passive personality principle.

1.14. Some States assert jurisdiction because the victim of a criminal act committed outside State territory is one of its citizens. This is sometimes described as the "passive personality" principle. This notion according to which a State claims the right to punish aliens for offences committed abroad to the injury of its own nationals has found no place in Anglo-American jurisprudence.[4]

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1. See Supplement to the American Journal of International Law, Vol. 29 (1935), pages 509, 510.
2. R. Y. Jennings, Extra-territorial Jurisdiction and the United States Anti-trust Laws, (1957) 33 British Year Book on International Law, 146, 155.
3. Garcia Moran, Criminal Jurisdiction over Foreigners, (1958-59) Pittsburgh Law Review, 567, 568.
4. See R. Y. Jennings, *op. cit.*

1.15. States can, and do, assume jurisdiction in relation to international crimes committed abroad *e.g.*, piracy *jure gentium*, slave trade, Geneva conventions relating to prisoners of war, suppression of immoral traffic in women, dangerous drugs etc. The basis of this jurisdiction is not territorial sovereignty or anything connected with it but the principle of universality. A great number of nations having agreed to treat such crimes as crimes against mankind, any State representing mankind is justified in assuming jurisdiction under its own laws to try the offender even if there be no other nexus between the crime (or the offender) and the State.

The Harvard Research Draft Convention.

1.16. Reference should be made in this connection to the Draft Convention on Jurisdiction with respect to crime proposed in 1935 by the Harvard Research in International Law.[1] It indicates the limits to which a State may go in assuming and exercising jurisdiction with respect to crimes committed outside its territory. (Incidentally, the Draft Convention defines a State's territory as comprising its land and territorial waters and the air above its land and territorial waters). The Draft Convention proposed for international recognition that a state has jurisdiction with respect to any crimes committed outside its territory—

(a) by an alien in connection with the discharge of a public function which he was engaged to perform for that State;[2]

(b) by an alien while engaged as one of the personnel of a ship or aircraft having the national character of that State;

(c) by an alien against the security, territorial integrity or political independence of that State, provided the act or commission which constitutes the crime was not committed in exercise of a liberty guaranteed the alien by the law of the place where it was committed;[3]

(d) by an alien which consists of a falsification or counterfeiting or an uttering of falsified copies or counterfeits, of the seals, currency, instruments of credit, stamps, passports or public documents, issued by that State or under its authority;[4]

(e) by an alien, which constitutes piracy by international law.[5]

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1. *See* Supplement to the American Journal of International Law, Vol. 29 (1935), pages 435—638.
2. Article 6 of the Draft Convention.
3. Article 7 *ibid.*
4. Article 8 *ibid.*
5. Article 9 *ibid.*

Extension to aliens in the service of Government, recommended.

1.17. We consider it desirable to extend the extra-territorial application of the Code to aliens in the service of the Government (Central as well as State), but not in respect of all offences punishable under the Code. Where an alien in Government service commits an offence outside India, the provisions of the Code do not apply to him, nor is he liable to be tried for the offences in India, even if he comes to India whilst in such service. If the offence committed abroad is connected with his service under the Government, such as bribery, criminal breach of trust, theft of Government property and the like, it is obviously desirable, even if not absolutely essential, that the provisions of the Code should be applicable and that the offender should be liable to be tried in India for the offence if and when he is brought back to, or is found in, India. While the foreign State in which the offence is committed is competent to prosecute and punish him for it, it may not have the same interest in such prosecution as it would have if its own governmental interests were affected. Assumption of criminal jurisdiction by the State employing the public servant "may be said to rest on the principle that each State has an unrestricted capacity to organize and control its own governmental agencies".[1]

While it is not necessary, nor even desirable, that the Indian Penal Code should apply as a whole to an alien in Government service where the offence is committed in his individual or private capacity, we think it would be quite justifiable and proper to apply it so far as the offences punishable under Chapter VI (Offences against the State), Chapter VII (Offences relating to the Army, Navy and Air Force) or Chapter IX (Contempt of the lawful authority of public servants) of the Code are concerned. Even though it might not be possible to say that the alien public servant committed such offences in connection with his service, their commission by a public servant could not be tolerated.

Section 4 revised.

1.18. We accordingly recommend that section 4 of the Code be revised as follows and placed immediately after section 1, as section 2 [2]:—

"2. *Ex-territorial application of the Code.* This Code shall apply also—

(*a*) to any offence committed outside India by a citizen of India;

(*b*) to any offence committed by an alien on any ship or aircraft registered in India, wherever it may be; and

(*c*) to any offence committed outside India by an alien whilst in the service of the Government, when such offence is committed in connection with such service or is punishable under Chapter VI, VII or IX of this Code.

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1. Supplement to the American Journal of International Law, Vol. 29, (1935), page 540.
2. The existing section 2 is proposed to be omitted: *see* paragraph 1.7. above.

"*Explanation.*—In this section, the word 'offence' includes every act committed outside India which if committed in India would be punishable under this Code."

Corresponding amendment in section 188, Cr. P.C.

1.19. When this amendment is made in the Indian Penal Code, it will be necessary to amend section 188 of the Criminal Procedure Code so as to cover the case of aliens in the service of the Government who commit outside India offences punishable under the Indian Penal Code. We have, in our Report on the Code of Criminal Procedure, recommended[1] that sub-section (1) of section 188 of that Code should be revised as follows:—

"(1) When an offence is committed outside India—

(*a*) by a citizen of India whether on the high seas or elsewhere, or

(*b*) by a person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at "any place within India at which he may be found :

Provided etc....".

We think, however, that instead of amending the sub-section on exactly the same lines as section 4 of the Penal Code, it would be desirable to generalise the provision and make it applicable to all offences committed outside when they are punishable in India under the Penal Code or any special law. The sub-section may be amended to read:—

"188. (1) When an offence committed by any person outside India is punishable under the Indian Penal Code or any special law such person may be dealt with in respect of the offence as if it had been committed at any place within India at which he may be found :

Provided etc....".

Section 5.

1.20. Section 5 expressly provides that nothing in the Code shall affect the provisions of any Act for punishing mutiny or desertion of officers, sailors, soldiers or airmen in the service of the Government of India or the provisions of any special or local law. The expressions "special law" and "local law" are definied in section 41 and 42 of the Code. Since the Acts providing for the discipline of the officers and men of the armed forces of the Union like the Army Act, 1950, the Air Force Act, 1950, and the Navy Act, 1957, are undoubtedly special laws within the definition, section 5 may be simplified to read:—

"5. Nothing in this Code shall affect the provisions of any special or local law."

Since section 4 is to be revised and placed as section 2, the revised section 5 may be numbered section 4.

1. 41st Report, paragraph 15.70.

CHAPTER 2

GENERAL EXPLANATIONS

Section 6—omission recommended.

2.1. Chapter II begins with a provision to the effect that every definition of an offence, penal provision and illustration shall be understood subject to the general exceptions contained in Chapter IV. Such a provision is hardly necessary as every relevant section in Chapter IV begins with the words "Nothing is an offence" which are sufficient to indicate that every provision of the Code relating to offences has to be read together with and subject to all relevant exceptions contained in that Chapter. Section 6 may therefore be omitted.

Application of General Clauses Act to the Code.

2.2. Neither the definitions nor the general rules of construction contained in the General Clauses Act, 1897, are applicable to the Indian Penal Code except to a very limited extent. The result is that there is an appreciable amount of overlapping between those rules and definitions and the definitions and general explanations contained in Chapter II of the Code. It is desirable to remove this duplication as far as possible by providing expressly that the General Clauses Act shall apply for the interpretation of the Code. If this is done, a number of sections in Chapter II of the Code can be omitted. We propose that in lieu of section 6 the following section may be inserted as the first section in Chapter II:—

"6. *General Clauses Act to apply for interpretation.*—The General Clauses Act, 1897, shall apply for the interpretation of this Code as it applies for the interpretation of an Act of Parliament."

Section 7.

2.3. Section 7 states that "every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation." This explanation itself may, at first sight, seem to be unnecessary in view of the well-known principle of interpretation that words and phrases[1] should be given the same meaning throughout an Act. But is useful in a few instances. For example, the definition of "election" given in section 21, Explanation 3, would, by its own force, apply only in deciding whether a person is a public servant or not, yet by virtue of section 7 it is applicable to the whole of Chapter IX-A dealing with election offences. It appears desirable therefore to retain section 7.

Sections 8 and 9—omission recommended.

2.4. Section 8 and 9 contain rules of construction as to gender and number which are the same as those found in section 13 of the General Clauses Act, 1897. Those two sections may accordingly be omitted.

1. Maxwell, Interpretation of Statutes (1962), p. 311.

Section 10.

2.5. The definitions of "man" and "woman" in section 10 as denoting a male/female human being of any age appear to be useful for removing any doubts as to the applicability of provisions of the Code in relation to children and infants of either sex. Thus with reference to the offence of assaulting a woman with intent to outrage her modesty (section 354), this definition of "woman" has been held by the Supreme Court[1] to be applicable in a case where the criminal force was used to a female infant of $7\frac{1}{2}$ months. The Court by a majority considered it unnecessary that the woman must be of such an age as to feel the outrage to her modesty. Though a child may not have developed any sense of shame and has no awareness of sex, nevertheless from her very birth she possesses the modesty which is the attribute of her sex. Sarkar C.J. did not agree with this view. While we shall advert to this point later[2] in the Report, the definitions in section 10 do not require any change.

Section 11—omission recommended.

2.6. Section 11 defines the word "person" as including any company or association or body of persons, whether incorporated or not. As an almost identical definition is to be found in the General Clauses Act[3], this section may be omitted.

Section 12.

2.7. Section 12 defining the word "public" as including any class of the public or any community does not require any change.

Section 14—omission recommended.

2.8. Section 14 defines "servant of the Government" as any officer or servant, continued, appointed or employed in India by or under the authority of Government, but this expression does not now occur in any other section of the Code. (Before 1950, the expression "servant of the Queen" occurred in section 4 and the definition in section 14 was of use.). The section may, therefore, be omitted.

Section 17—omission recommended.

2.9. As the word "Government" is defined in section 3(23) of the General Clauses Act, another definition in the Penal Code is unnecessary, and section 17 may be omitted.

Section 18.

2.10. Section 18 defines "India" as meaning the territory of India excluding the State of Jammu and Kashmir. We have indicated in the previous Chapter the need to amend this definition to make it clear that the Code "extends" to the territorial waters of India is exactly the same manner as it extends to the land territory and internal waters of India. We recommend that section 18 may be amended to read:—

> "18. 'India' means the territory of India including territorial waters, but does not include the territory of Jammu and Kashmir."

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1. *State of Punjab* v. *Major Singh*, (1966) Supp. S.C.R. 286, A.I.R. 1967 S.C. 63; an appeal from A.I.R. 1963 Pb. 443 (Mudholkar and Bachawat JJ. with Sarkar C.J. dissenting).
2. See paras 16.85 and 16.86.
3. See section 3(42).

Section 19.

2.11. According to section 19, every person "who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment" is a judge. Both the expressions "legal proceeding" and "definitive judgement" have presented some difficulty in interpretation and require to be considered.

Meaning of "legal proceeding".

2.12. In Madras case[1], the question arose whether the President of a Union Board, while accepting or rejecting nomination papers at elections to Taluk and Union Boards, was a judge within the meaning of section 19 of the Indian Penal Code, so that sanction under section 197, Criminal Procedure Code,[2] was necessary for his prosecution for defamatory statements made in connection with those proceedings. It was contended that "legal proceeding" in section 19, Indian Penal Code, is the same as a "judicial proceeding" as defined in the Code of Criminal Procedure, and, therefore, sanction was not required. The high Court held—

> "....as 'judicial proceeding' is an expression used in other parts of the Indian Penal Code, we are not at liberty to say, unless absolutely driven to it, that 'legal proceeding' is exactly equivalent to 'judicial proceeding' and that the legislature carelessly used two different expressions to convey exactly the same idea; nor is the definition of 'judicial proceeding' in the Criminal Procedure Code necessarily applicable to that expression when used in the Penal Code. If we confine ourselves to section 19, Indian Penal Code, 'legal proceeding' therein is obviously a proceeding in which a judgment may or must be given, a judgment being not an arbitrary decision but a decision arrived at judicially. In my opinion, 'legal proceeding' in section 19 , Indian Penal Code, means a proceeding regulated or prescribed by law in which judicial decision may or must be given.[3]"

The Court accordingly decided that the president of a Union Board, when accepting or rejecting a nomination, is giving a definitive judicial decision in a legal proceeding, and is therefore a "Judge" within the meaning of section 19.

What constitutes a "legal proceeding" has been considered in other judicial decisions, though they do not relate to the Code. Thus, the meaning of this term appearing in section 171 of the Companies Act, 1913 (which barred "suits or other legal proceeding" against a company in liquidation without leave of the Court) was discussed before the Federal Court[4], the question

1. *Abboy Naidu* v. *Kanniappa,* A.I.R. 1929 Mad. 175.
2. The definitions in the Indian Penal Code apply to the Code of Criminal Procedure also.
3. *Sarvothama Rao* v. *Chairman,* A.I.R. 1923 Mad. 475 was cited.
4. *Governor-General in Council* v. *Shiromani Sugar Mills,* A.I.R. 1946 F.C. 16, 21; (1946) F.C.R. 40.

being whether it included proceedings for the recovery of tax. The Federal Court observed—

> "Clearly it is not a proceeding in an ordinary court of law. But we see no reason why in British India no 'legal proceeding' can be taken otherwise than in an ordinary court of law, or why at proceeding taken elsewhere than in an ordinary court "of law, provided that it be taken in a manner prescribed by law and in pursuance of law or legal enactment, ...cannot properly be described as a 'legal proceeding'. If it be considered that the effect of the income-tax authorities putting the machinery of section 46, Income-tax Act, in motion for the collection of arrears of income-tax is to bring into operation all the appropriate legal enactments relating to the collection of land revenue in the province concerned, it is, in our judgment, very difficult to say that they are not taking a 'legal proceeding'."

In an Allahabad case[1], the question what constitutes a "legal proceeding", within the meaning of section 24 of the Trade Mark Act, 1940[2], was considered. Under section 46(2) of the Act, any person aggrieved by an entry made in the register without sufficient cause could appeal to the High Court. The High Court stated—

> "A proceeding cannot be held to be 'legal proceeding' simply because it is taken in a High Court, because there is no ban on a High Court being invested with jurisdiction over proceedings which are not 'legal proceedings'."

In the view of the High Court, proceedings for cancellation or alteration of the registration of a registered trade mark are of the same nature as proceedings for registration, which are departmental proceedings, and not "legal proceedings". On the other hand, proceedings for enforcement of the right conferred by the registration of the trade mark, or to prevent its infringement, or for punishment for the falsification of the register or for falsely representing the trade mark as registered, were held to be proceedings which are invariably to be taken in a court of law, and are undoubtedly "legal proceedings", in that they are proceedings to enforce the law in one way or the other.

In a Bombay case[3], the question arose whether the expression "legal proceedings" in section 48(2)(ii) of the Bombay Sales Tax Act, 1953 (which, while repealing the Bombay Sales Tax Ordinance, 1952, saved "legal proceedings" under the Ordinance, was confined to proceedings in a court or covered assessment

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1. *Ram Rakhpal* v. *Amrit Dhara Pharmacy*, A.I.R. 1957 All. 683, 701, paragraph 38.
2. The relevant portion reads—
   "....in all legal proceedings relating to a registered trade mark, the original registration of the trade mark shall, after the expiration of seven years etc., be taken to be valid....unless such registration was obtained by fraud etc."
3. *Abdul* v. *State of Bombay*, A.I.R. 1958 Bom. 279.

proceedings also. It was held that "legal proceeding", in its normal connotation, can only mean a proceeding in accordance with law, and there can be no doubt that an assessment proceeding under the Sales Tax Act is such a proceeding.

According to these decisions, "legal proceeding" is one which is authorised or prescribed by law, or which is taken in pursuance of a law or a legal enactment. It is not synonymous with a "judicial proceeding", or with a proceeding in a Court. Though in this view the scope of the expression may seem to be very wide, when read with the additional requirement in section 19 regarding the power to give a "definitive judgment", it gets restricted and the expression comes very near a judicial proceeding or a proceeding in which a jural relation is determined.

Meaning of "definitive judgment".

2.13. In considering the true scope and content of the expression "definitive judgment", judicial decisions on the interpretation of the word "judgment" will be helpful. The question whether the order of a Magistrate rejecting an objection to the initiation of a criminal proceeding against a public servant on the ground of want of sanction under section 197, Criminal Procedure Code, was a "judgment" for the purposes of section 205 of the Government of India Act, 1935, came up before the Federal Court[1], and that Court observed:—

> "In India, in the Code of Criminal Procedure, the word 'judgment' is used to indicate the termination of the case by an order of conviction or acquittal of the accused. The word is not defined in the Criminal Procedure Code, but that interpretation was put on the word in *Emperor* v. *Maheshwara Kondayya*.[2] The view appears to have been approved by Sulaiman J. in *Hari Ram Singh's case*.[3] . . . . In our opinion, the term 'judgment' itself indicates a judicial decision given on the merits of the dispute brought before the Court. In a criminal case, it cannot cover a preliminary or inter-locutory order."

In a Bombay case[4], the High Court opined that a "definitive judgement" meant a final judgement.

The Supreme Court, while deciding[5] that a Commissioner holding an inquiry under the Public Servants (Inquiries) Act, 1860, was not a "court" for the purposes of the Contempt of

1. *Kuppuswami Rao*, v. *The King*, A.I.R. 1949 F.C. 1, 5.
2. *Emp.* v. *Meheshwara*, I.L.R. 31 Mad. 543.
3. *Hari Ram Singh*, A.I.R. 1939 F.C. 43; (1939) F.C.R. 159.
4. *Emperor* v. *Shankar Sayaji*, A.I.R. 1938 Bom. 489.
5. *Brajnandan Sinha* v. *Jyoti Narain*, A.I.R. 1956 S.C. 66, 70, paragraph 14; (1955) 2 S.C.R. 955.

Courts Act, 1952, referred to section 3 of the Evidence Act and sections 19 and 20 of the Indian Penal Code and observed:—

> "The pronouncement of a definitive judgment is thus considered the essential *sine qua non* of a court, and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons, it cannot be predicated that he or they constitute a court."

Referring to the tests of finality and authoritativeness, the Supreme Court reiterated its view expressed in an earlier case[1]:

> "It is clear....that, in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

It would thus appear that while deciding the question whether a body of judges is a court, the emphasis is upon the requirement of definitive judgement and this principle would apply also in construing the word 'judge'.

Test of exercise of judicial power of the State.

2.14. Recently, in connection with the interpretation of the expression "Court", another test has come into prominence, namely, whether the body about which the question has arisen is or is not entrusted with the "judicial power" of the State. Thus, in an appeal before the Supreme Court[2], the question for consideration was whether the nominee of the Registrar of Co-operative Societies was a court within the meaning of section 195, Criminal Procedure Code. Holding this section to be inapplicable, the Supreme Court observed:—

> 'After carefully considering the powers conferred and the source of authority of the nominee, we have no doubt that the nominee exercising power to make an award under section 96 of the Maharashtra Co-operative Societies Act, 1960, derives his authority, not from the statute, but from investment by the Registrar in his individual discretion. The power so invested is liable to be suspended and may be withdrawn. He is therefore not entrusted with the judicial power of the State; he is merely an arbitrator authorised within the limits of the power conferred to adjudicate upon the dispute referred to him."

Suggestion for a different definition of "Judge" considered.

2.15. The various judicial pronouncements summarised above show that the terms "judge" and "Court of Justice" as defined at present in the Indian Penal Code are somewhat elastic.

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1. *S.A. Venkataraman,* (1954) S.C.R. 1150; A.I.R. 1954 S.C. 375.
2. *Ramarao* v. *Narayan,* (1969) 1 S.C.J. 945, 953, (Reviews cases).

We considered whether the amendment proposed by the Commission[1] in section 195 of the Code of Criminal Procedure should be taken as a guide and section 19 of the Penal Code recast as follows:—

> "The word 'Judge' denotes every person who is officially designated as a Judge or Magistrate, every presiding officer of a revenue Court, and every person acting under a Central, Provincial or State Act if declared by that Act to be a Judge for the purposes of this Code."

This would, no doubt, bring uniformity between the Penal Code and the Code of Criminal Procedure. But if the definition of "Judge" is thus narrowed down, the immunity conferred by section 77 of the Penal Code will not be available to some public servants who may now be regarded as giving "definitive judgments". In our opinion, the protection under section 77 should continue to be wide as at present and no amendment that may be proposed in section 19 should affect that position. It is for this reason that we would prefer not to alter the tests laid down in section 19, though they might appear to be somewhat unprecise.

Omission of first part of definition recommended.

2.16. As a part of the definition, the reference to "every person who is officially designated as a "Judge" hardly serves any purpose and should be omitted. Any such person would certainly satisfy the test of having power to give definitive judgments in legal proceedings.

Illustrations to section 19.

2.17. The four illustrations appended to section 19 appear to narrow down the scope of the section to some extent. Thus according to a Patna decision,[2] a Magistrate is not a "Judge" when he has not seisin of a case, and this is emphasised by illustration (b). If the Patna view is correct, then it is certainly desirable to widen section 19, so as to expressly include Magistrates. There is no justification for making a distinction between Judges and Magistrates in this respect.

Committing Magistrates not "Judges" within section 19.

2.18. Some difficulty is created by illustration (d) according to which "a Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge". A committing Magistrate, as such, is not eligible for the immunity conferred by section 77 of the Code, and it would be possible for any person, who suffers any injury as a result of what a Magistrate does in the course of

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1. See 41st Report, paragraphs 15.99 and 15.100. Section 195(2) is proposed to be revised :—

   "(2) In clauses (a) and (b) of sub-section (1), the term Court" means a civil, revenue or criminal court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section."

2. See *Ramchandra* v. *K.E.*, (1925) I.L.R. 5 Pat. 110, 115; A.I.R. 1926 Pat. 214.

commitment proceedings, to launch a prosecution for such injury. Doubtless, in respect of some acts he may obtain immunity from other provisions of the Code. For example, a censure passed in good faith on the conduct of an accused or a witness by a committing Magistrate may fall under the seventh Exception to section 499, Indian Panel Code, and he may be immune from a charge of defamation. But he runs the risk of prosecution for other offences, if the ingredients of those offences are made out.

Position in civil law in India.

2.19. It would appear that in Civil Law, committing Magistrates are as much entitled to immunity from suits for damages as trying Magistrates. The Judicial Officers' Protection Act[1] provides that "no Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of."

English law as to civil liability of Justices.

2.20. According to the English law[2] on the subject, immunity in civil cases would apply in regard to any proceeding before any court or tribunal recognised by law, the essential object being that Judges might exercise their functions free from any danger that they might be called to account for any words spoken in their official capacity. This has recently been ensured by the Administration of Justice Act, 1964,[3] which makes elaborate provisions for the indemnification of justices of the peace. They are entitled to be indemnified out of local funds in respect of costs, damages etc. "if in respect of the matters giving rise to the civil proceedings or claim they acted reasonably and in good faith."

Amendment of section 19.

2.21. Thus, both in England and in India, committing Magistrates enjoy adequate protection so far as civil liability is concerned. It appears to be unreasonable and illogical to deny them protection from criminal prosecutions in respect of those proceedings where they do not have to pass definitive judgments.[4] We, therefore, recommend that all Magistrates should be brought within the definition of "Judge" in Section 19. None of the illustrations is necessary, and they should all be omitted. Section 19 may be re-drafted as folllows :—

"19. *Judge.*—'Judge' means any person who is empowered by law to give, in any legal proceeding, civil or

1. Section 1 of the Judicial Officers' Protection Act, 1850 (18 of 1850).

2. See Stephen, History of Criminal Law, Vol. 1, pages 225, 227.

3. See section 27(1).

4. When committal proceedings are abolished as recommended by the Law Commission in its 41st Report, Judicial Magistrates will be functioning as "Judges" almost all the time.

criminal, a definitive judgment, or a judgment, which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment and includes a Magistrate".

Section 20—"court of justice".

2.22. Section 20 defines a court of justice as meaning a judge or body of judges empowered by law to act judicially when such judge or body of judges is acting judicially. It has been suggested that the wider definition of court given in section 3 of the Evidence Act should be adopted in the Penal Code. For the purposes of the Evidence Act, "court" includes all judges and magistrates, and all persons, except arbitrators, legally authorised to take evidence. The emphasis in the Penal Code is on the power to give definitive judgments, whereas in the Evidence Act, it is on the authority to take evidence. Although some quasi-judicial tribunals having legal authority to take evidence may not be courts of justice under the Indian Penal Code, we do not think it is necessary that they should be brought within the definition of that expression.

The definition is, however, unnecessarily lengthy. The word "judge" having been clearly and comprehensively defined in section 19, there seems to be no point in repeating in section 20 the idea that the judge or body of judges should have been empowered by law to act judicially, alone or as a body, as the case may be. It is sufficient to indicate in the definition that it is only when a judge or body of judges is acting judicially that he or it is to be regarded as a court of justice for the purposes of the Code. Thus an Executive Magistrate, while functioning judicially under the Code of Criminal Procedure, will be a court of justice but not when he is performing an executive or administrative function under that Code or some other law. We propose that the definition of "court of Justice" may be simplified to read, "the words 'court of justice' denote a judge or body of judges when acting judicially".

Section 21 "public servant"—importance of definition.

2.23. The definition of public servant in section 21 is important because there are numerous offences under the Code where the distinction between public servants and other becomes material. These offences may be broadly classified as follows :—

(i) offences which can be committed only by a public servant;

(ii) offences which are aggravated when committed by a public servant;

(iii) offences which can be committed only against a public servant;

(iv) offences which are aggravated when committed against a public servant; and

(v) offences committed in relation to public servants or their authority or connected with them in one way or another.

The Civil Procedure Code contains a definition of "public officer" which is similar to, but not exactly the same as, the definition of "public servant" in the Penal Code. We note that no material changes have been proposed in the former definition by the Commission in its Report on that Code.[1] When section 80 of the Civil Procedure Code is repealed as recommended by the Commission, the definition of public officer will lose most of its significance. For purposes of the Penal Code, however, the distinction between public servants and others will continue to be of practical importance.

Re-arrangement of clauses and shortening suggested.

2.24. The elaborate enumeration of various categories of public servants in section 21 is primarily based on the functions discharged by the public servant concerned. There is, however, considerable overlapping, particularly after the recasting of clause twelfth by the amending Acts of 1958 and 1964, and some of the clauses require drastic revision. Each of the clauses will now be considered separately.

Clause second omitted.

2.25. Clause second, which relates to commissioned officers in the Military, Naval or Air Force of India, may be omitted, as these officers are included in the twelfth clause.

Clause third.

2.26. Clause third relates to Judges, including persons empowered to perform adjudicatory functions. The word "Judge" gives colour to the added words referring to adjudicatory functions. A doubt may arise as to whether an arbitrator is a "judge" but in view of the express mention of an arbitrator in clause sixth, this clause may not include an arbitrator. No change need be made in this clause.

Any doubt as to whether a "tribunal" is included in this clause has been clarified by the judgments of the Supreme Court in the cases cited below[2] while construing the expression "tribunal" occurring in articles 136 and 227 of the Constitution. Hence no amendment to this clause is necessary.

Clause fourth.

2.27. Clause fourth relates to officers of a Court of Justice performing the specified functions. In part, it overlaps clause twelfth. In our view, it should be restricted to "every person specially authorised by the Court to perform any duties in

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1. 27th Report.

Cf. Bharat Bank v. *Employees of Bharat Bank*, A.I.R. 1950 S.C. 188, 189, 190, 196; (1950) S.C.R. 459; *Durgashankar* v. *Raghuraj*, A.I.R. 1954 S.C. 520; (1965) S.C.R. 267; *Harinagar Sugar Mills* v. *Shyam Sunder*, A.I.R. 1961 S.C. 1669, 1676, paragraph 16; (1962) 2 S.C.R. 339; *Associated Cement Co.* v. *P. N. Sharma*, A.I.R. 1965 S.C. 1595.

connection with the administration of justice[1], including a liquidator, receiver or commissioner."

Full-time officers of a Court of Justice are included in clause twelfth.

Clause fifth.

2.28. Clause fifth may be omitted. Jurors and assessors no longer exist in the criminal procedure after the abolition of trial by jury and with the aid of assessors.

Clause sixth.

2.29. No change is needed in clause sixth.

Clause seventh, eigth, ninth and then combined and simplified.

2.30. Clause seventh may be useful for convict-warders etc., who are not Government servants. We, therefore, propose to retain its substance, but in a different form in more general language.

Clause eighth relates to officers "of the Government whose duty is to prevent offences, to give information of offences, to bring offenders to justice or to protect the public health, safety or convenience." Case-law[2] relating to prosecutors, police patels, officers of the Society for Prevention of Cruelty to Animals, etc., shows its utility. We propose to retain it in substance, but in a different form. We may add that the words "of Government" are unduly restrictive in this clause. The test should be the nature of the duty, and not whether the office is under Government.

We also propose to retain clauses ninth and tenth (which relate to persons looking after pecuniary and proprietary interests of the State) in substance.

It seems to us, that, to cover the matters mentioned in clauses seventh, eighth, ninth and tenth, a new clause as follows should be substituted :

> "any person who holds an office by virtue of which he is authorised or required by law to perform any public duty."

It may be specially mentioned with reference to the above clause that the "public duty" must be one imposed by law. Such a requirement will prevent undue widening of the scope of the expression "public servant".

Clause eleventh.

2.31. Clause eleventh needs no change of substance.

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1. Other alternatives suggested were—
   (i) "functions of the Court",
   (ii) "any matter pending before the Court".
2. (a) *Butto Krishno Das*, (1878) I.L.R. 3 Cal. 497.
   (b) *Appaji*, (1896) I.L.R. 21 Bom. 517.
   (c) *Nataraja*, (1922) I.L.R. 46 Mad. 90.

Clause twelfth.

2.32. Clause twelfth is a residuary clause. The ninth clause (before the relevant portion was transferred from the ninth clause to the twelfth clause in 1964), emphasised the performance of a "public duty". The relevant words in the ninth clause (before 1964) were "and every officer in the service or pay of the Governments or remunerated by fees or commission for the performance of any 'public duty'". The words "public duty" seem to have been read in some cases as governing the whole of this residuary provision,[1] *i.e.* as also applicable to those in the "service or pay" of Government.

Sometimes, emphasis was placed on the word "officer". In a Bombay case,[2] it was observed—

> "There is a difference between an office and an employment, every office being an employment; but there are employments which do not come under the denomination of offices; such as, an agreement to make hay, herd a flock etc., which differ widely from that of steward of a manor. The first of these paragraphs implies that an officer is one to whom is delegated, by the Supreme authority, some portion of its regulating and coercive powers, or who is appointed to represent the State in its relations to individual subjects. This is the "central idea" and applying it to the clause which we have to construe, we think that the word "officer" there means some person employed to exercise, to some extent, and in certain circumstances, a delegated function of Government. He is either himself armed with some authority or representative character, or his duties are immediately auxiliary to those of some one who is so armed."

In a Calcutta case[3], a peon attached to the Superintendent of the Salt Department was found to have taken a bribe. When he was tried for an offence under section 161, it was contended that he was not an "officer" within the meaning of clause ninth of section 21 (as it stood then). Since he was not an "officer", he was not a public servant; this was the basis of the argument. The contention was rejected by the High Court, stating that even though the peon did not exercise any delegated function of the Government[4], yet his duties were immediately auxiliary to those of the Superintendent, who was performing such delegated functions. The Court added, that an "officer in the service or pay of Government", within section 21(9), is one appointed for the performance of some public duty.

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1. *Cf. Nazamud Din* v. *Q.E.*, (1900) I.L.R. 28 Cal. 344; 4 C.W.N. 798.
2. *Reg.* v. *Ramaji Rao,* (1875) 12 Bom. H.C.R. 1, 5 (West J.)
3. *Nazamud Din* v. *Q.E.*, (1900) I.L.R. 28 Cal. 344; 4 C.W.N. 798.
4. The test of "delegated functions of the Government" had been employed in the Bombay case, *Reg.* v. *Ramajirao,* (1875) 12 Bom. High Court Report 1. See also *Emperor* v. *Karam Chand,* A.I.R. 1943 Lah. 255.

But a different view was also prevalent. In one case, it was stated that in the case[1] of persons in the pay etc. of Government, it had been presumed that they are performing a public duty. In another case, it was clearly stated that the words "for the performance of any public duty" (in section 21, clause ninth, as it stood before 1964), governed only the words "remunerated by fee or commission".[2]

Two judgments of the Supreme Court seem to indicate that the requirements of pay and public duty are cumulative. In one case[3], the applicant was a class III servant, employed as a metal examiner in the Railway Carriage Workshop at Ajmer. He was convicted by the Special Judge, State of Ajmer, of the offences under section 161, Indian Penal Code for having accepted from one Nanak Singh the sum of Rs. 150/- as illegal gratification as a motive for securing a job for someone. He was also convicted of an offence under section 5(1)(d) of the Prevention of Corruption Act, 1947, for abusing his position as a public servant and obtaining for himself by corrupt or illegal means pecuniary advantages in the shape of Rs. 150/- from the said Nanak Singh. The case was taken up to the Supreme Court on appeal and the main question for consideration by that Court was whether a class III railway servant was an "officer" within the meaning of clause ninth as it stood prior to 1964.

The Court laid down two tests, namely, whether he is in the service or pay of the Government and whether he is entrusted with the performance of a public duty, and held that "if both these requirements are satisfied, it matters not the least what is the nature of his office, whether the duties he is performing are of an exalted character or very humble indeed". It further observed :—

> "If, therefore, on the facts of a particular case, the Court comes to the conclusion that a person is not only in the service or pay of the Government but is also performing a public duty, he has delegated to him the functions of the Government or is in any event performing duties immediately auxiliary to those of someone who is an officer of the Government and is therefore an officer of the Government within the meaning of section 21(9), Indian Penal Code."

In another case[4], the appellant was a teacher in a railway school and the main question before the Supreme Court was whether he was a "public servant" within the meaning of section 21. The Supreme Court reiterated the test laid down by it in

1. *Cf. Bansi Lal* v. *Mohammad Hafiz*, A.I.R. 1939 Pat. 77, 79 (Case under the Code of Civil Procedure).
2. *Jugal Singh* v. *Emperor*, A.I.R. 1943 Pat. 315, 316.
3. *G.A. Monterio* v. *The State of Ajmer*, (1956) S.C.R. 682.
4. *The State of Ajmer* v. *Shivaji Lal*, (1959) S.C.R. 912, 913.

C. A. Montorio v. *The State of Ajmer*[1], and held that the appellant was in the service of Government and was being paid by Government. The Court observed :—

> "It cannot, in our opinion, be doubted that he was entrusted with the performance of a public duty inasmuch as he was a teacher in a school maintained by Government and it was a part of his public duty to teach boys."

In clause 12(a), after the amendment of 1964, any person in the service or pay of the Government is a public servant and it is not necessary to consider whether he performs any public duty or not. But as regards those persons who are remunerated by fees or commissions, such as part-time public prosecutors, the performance of public duty is material.

Meaning of "public duty".

2.33. The expression "public duty" cannot be easily defined and no Court has attempted any such definition. A Sind case[2] contains an instructive discussion as to the import of the words "public duty". There, the Court was required to decide whether the Courts of Wards under section 4, Bombay Court of Wards Act, 1905, was a "public officer" or not. The Court referred to an old Bombay case[3] where the Bombay High Court had referred to the definition of the word "officium" or duty given in the Bacons' Abridgement at Vol. VI, page 2, and observed that an "officer" was one to whom was delegated, by the supreme authority, some portion of its regulating or coercive powers or who was appointed to represent the State in its relation to individual subjects, and that an "officer" in section 21, clause (9) Indian Panel Code, meant some person employed to exercise, to some extent and in certain circumstances, a delegated function of Government. The Sind Court then cited with approval a more comprehensive American definition[4] running as follows :—

> "It has been defined as the right, authority and duty created and conferred by law by which, for a given period, either fixed by law or ending at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the Government, either executive, legislative or judicial, to be exercised for the benefit of the public."

In a Rajasthan case,[5] the question was whether a Superintending Engineer and an Assistant Engineer, both officers of the State of Rajasthan and functioning on deputation with the Rajasthan State Electricity Board, a statutory corporation, were

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1. *C. A. Montorio* v. *The State of Ajmer*, (1956) S.C.R. 682 (*supra*).
2. *Vishnomal* v. *Court of Wards*, A.I.R. 1928 Sind. 76.
3. *Reg.* v. *Ramajirao*, (1875), 12 B.H.C.R. I (West J.).
4. Vol. III of Judicial and Statutory definitions of Words and Phrases, compiled by the Editorial staff of the American National Reporting System.
5. *Nand Lal* v. *Prithvi Singh*, I.L.R. (1965) 15 Raj. 1184; (1966) Cr. L.J. 868.

"public officers" within the meaning of section 56(2) of the Indian Electricity Act of 1910. (This Act does not define the words "public officer"). While not professing to lay down any precise test for ascertaining the "public nature of an office or duty", the High Court observed :—

> "The expression 'public officers' appear to refer to an officer who discharges functions or duties in relation to the public, and not in relation to private individuals. This may be accepted as a rough and general test for determining as to who should be treated as a public officer. All the same, it must be recognised that the expression 'public officer' cannot be held to have a precise meaning".

Referring to the definition of "public officer" in section 2(17), Code of Civil Procedure, and that of "public servant" in section 21, Indian Penal Code, the Court observed :—

> "The definitions of both terms are quite comprehensive and wide, and include all Government servants and other officers concerned in the performance of duties of a public nature..... They certainly discharge functions and duties in relation to the public and not in relation to private individuals."

A Patna case[1] illustrates the tendency of judicial decisions in interpreting the words 'public duty'. An issue in this case was whether an advocate engaged by the Provincial Government to conduct a civil suit for the recovery of public money was a 'public officer' within clause (h) of section 2(17) of the Code of Civil Procedure. The Court said :—

> "In the second category are those who are in the pay of the Government. Here the Legislature has not specified the work which these persons are to perform, that is to say, it has been presumed that when an officer is in the pay of the Government, he must have been performing a public duty. In the third category are those who are remunerated by fees or commission, and in order that they may be held to be public officers, it is necessary that the payment should be for the performance of any public duty. Conduct of a suit on behalf of the Government for the recovery of the public money is performing a public duty which an advocate undertakes."

Under English law also, no general definition of what is and what is not 'public duty' has been attempted by the Courts. The question has been decided in specific instances and in the particular context in which the word 'public' occurred. One of the tests laid down by the English Courts is that the duty must be legally enforceable. Thus the "public duty" referred to in section 1(a) of the Public Authorities Protection Act, 1893,

1. *Bans Lal* v. *Mohammad Hafiz*, A.I.R. 1939 Pat. 77, 79.

was held by Avory J. to mean[1] "a duty which can be legally enforced, having regard particularly to the succeeding words relating to neglect or default of the duty." Enforceability, however, may not be the only test. The position in England seems to be that Courts tend to visualise 'public duty' as a duty relatable to the sovereign functions of the Government in which the public are directly interested or which is for the benefit of the public; and one of the criteria for deciding this point is that the duty is enforceable by any member of the public, in his right as such member, in a Court of law, but this is not the only criterion.

Suggestion to add clause referring to other laws considered.

2.34. Apart from the twelve clauses, in some of the special and local acts, it is expressly declared in the statute itself that specified persons are "public servants" for the purposes of section 21 of the Indian Penal Code. This avoids unnecessary controversy and may be conveniently adopted in other statutes also. It is unnecessary to refer to such a provision in section 21 of the Code.

Members of Parliament, State Legislature and local authorities.

2.35. It was suggested that members of Parliament, State Legislatures and local authorities should be regarded as 'public servants'. Though the new test which we propose, namely, "any persons holding any office by virtue of which he is authorised or required by law to perform a public duty" should cover them, we think that it would be better to mention them specifically.

Explanation 1—deletion recommended.

2.36. Explanation 1 to section 21 is unnecessary. The substantive clauses of the section do not themselves require that the person concerned should be appointed by the Government. The Explanation should, therefore, be omitted.

Explanation 2—amendment recommended.

2.37. Explanation 2 needs no change of substance. The word 'situation' is, however, not expressive, and we propose to add the word 'office', to indicate the meaning more clearly.

Explanation 3—amendments recommended.

2.38. The definition of 'election' in Explanation 3 is not very happily worded. It speaks of "any legislative, municipal or other public authority". Though the residual item is wide enough to cover local bodies other than municipal corporations, the definition could more aptly and usefully refer to "local authority." The words "the method of selection to which is, by or under any law, prescribed as by election" seem rather tautologous, and the word "selection" is not very appropriate, when speaking of an election. It should be replaced by the word "choosing". The definition may be re-drafted as follows:—

> "The word 'election' denotes an election, by whatever system, held under any law for the purpose of choosing members of any legislature, local authority or other public authority."

1. *Martin* v. *London Court Council*, (1929), 141 L. T. 120. Cited in Roland Burrows "Words and Phrases Judicially Defined", (1944 Ed.), Vol. 4, page 424.

The definition could be appropriately placed in a separate section, as it is not confined in its application to section 21 but applies also to other sections of the Code[1].

Section 21—various suggestions considered.

2.39. We have considered various suggestions for extending the definition in section 21 and making it more comprehensive, *e.g.* so as to include—

(i) heads and executive authorities of public institutions and non-official bodies;

(ii) presidents of co-operative societies;

(iii) office-bearers, officers or servants of any society registered under the Societies Registration Act, 1860, or of any public or charitable institutions;

(iv) persons licensed to sell controlled commodities; and

(v) pleaders, advocates and attorneys.

In our view, it will be inadvisable to include these persons in section 21 of the Indian Penal Code. It must be left to the Legislature to expressly declare in the special or local laws dealing with the aforesaid persons, that they are "public servants" for the purpose of section 21, Indian Penal Code.

Redraft of section 21 recommended.

2.40. We recommend in the light of the above discussion that section 21 may be replaced by the following two sections:—

"21. *Public Servant.*—The words 'public servant' denote—

(a) any person who is a member of Parliament or of a State Legislature;

(b) any person who is in the service or pay of the Government, or who is remunerated by the Government by fees or commission for the performance of any public duty;

(c) any person who is a member, or is in the service or pay, of a local authority;

(d) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or of a Government company as defined in section 617 of the Companies Act, 1956;

(e) any Judge, including any person empowered by law to discharge, whether by himself or as a member or a body of persons, any adjudicatory functions;

1. e.g. Chapter 9A (sections 171A to 171 I).

(f) any person specially authorised by a Court of Justice to perform any duty in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such Court;

(g) any arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice or by any other competent public authority;

(h) any person who holds an office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election; or

(i) any person who holds an office in virtue of which he is authorised or required by law to perform any public duty.

Explanation.—A person falling under any of the above clauses by virtue of any office or situation he is actually holding is a public servant, whatever legal defect, there may be in his right to hold that office or situation.

21A. *Election.*—The word "election" denotes an election, by whatever system held, under any law for the purpose of choosing members of any legislature, local authority or other public authority".

Section 22—"movable property".

2.41. Section 22 defines "movable property" as "intended to include corporeal property of every description except land and things attached to the earth or permanently fastened to anything which is attached to the earth." This expression is important where any offence, involving theft is to be considered, as theft[1] can only be of movable property. The General Clauses Act[2] defines movable property as "property of every description except immovable property", and then says[3] "immovable property" includes "land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth." In terms, this definition in the General Clauses Act is wider than the explanation in the Code, but, for practical purposes, it seems to us that the General Clauses Act definition is adequate for the Code, and does not unduly widen the concept of "theft", as it has been all along understood. For other offences involving "movable property" also, that definition seems sufficient, and since we think that when the General Clauses Act contains a good definition of a particular expression, another definition in the Code should not be attempted, we propose to delete the provision in section 22 of the Code.

1. Section 378.
2. Section 3(36), General Clauses Act, 1897.
3. Section 3(27), General Clauses Act, 1897.

Sections 23 and 24— "Wrongful gain" "Wrongful loss" and "dishonestly".

2.42. Section 23 explains the terms "wrongful gain" and "wrongful loss", and section 24 says that a person does a thing "dishonestly" if he does it with the intention of causing wrongful gain to one person or wrongful loss to another. There has been no difficulty in understanding or applying these definitions.

Section 25— "frauduently".

2.43. The same cannot be said of the definition of "fraudulently" in the next section. Section 25 states that "a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". As early as 1897 this definition came in for criticism by the Calcutta High Court. Maclean C.J., delivering the unanimous judgment of five Judges of that Court, observed[1]:—

> "As a definition this provision is obviously imperfect, and perhaps introduces an element of doubt which did not previously exist; for it leaves it to be determined whether the word 'defraud' as used in section 25 implies the deprivation or intended deprivation of property as a part or result of the fraud. The word 'defraud' is of double meaning, in the sense that it either may or a may not imply deprivation, and as it is not defined in the Code, and is not, so far as we are aware, to be found in the Code, except in section 25, its meaning must be sought by a consideration of the context in which the word 'fraudulently' is found.
>
> The word 'fraudulently' is used in sections 471 and 464 together with the word 'dishonestly' and presumably in a sense not covered by the latter word[2]. If, however, it be held that 'fraudulently' implies deprivation, either actual or intended, then apparently that word would perform no function which would not have been fully discharged by the word 'dishonestly', and its use would be mere surplus age. So far as such considerations carry any weight, it obviously inclines in favour of the view that the word 'fraudulently' should not be confined to a transaction of which the deprivation of property forms a part."

Calcutta view.

2.44. In another Calcutta case,[3] it was held that the word "fraud" involves two conceptions, namely, deceit and injury to the person deceived, that is, an infringement of some legal right possessed by him, but not necessarily deprivation of property.

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1. *Q.E.* v. *Abbas Ali,* (1897) I.L.R. 25 Cal. 512 (F.B.).
2. The word "fraudulently" is used together with the word "dishonestly" in sections 209, 246, 247, 415, 421, 422, 423, 424, 464, 471 474, and 477. It is used by itself or in variations like "with fraudulent intent" or "with intent to defraud" in sections 206. 208, 210, 262, 263, 264, 265, 266, 477A, 482, 487, 488 and 486. It is used together with the expression "or with intent that fraud may be committed" in sections 239, 240, 242, 243, 250, 251, 252, 253, 261 and 463.
3. *Surendra Nath Ghose* v. *Emp.,* I.L.R. 38 Cal. 75.

Allahabad view.

2.45. In an equally old Allahabad case,[1] where the character roll of a police head constable was tampered with, by substituting a page containing favourable remarks, in order to increase his chances of promotion, the question was whether forgery had been committed. Bannerjee J. held that "where there is an intention to deceive and by means of that deceit to obtain an advantage, there is fraud, and if a document is fabricated with such intent it is forgery". It was further held that an offence is committed under section 471 whenever a document known or believed by the accused to have been forged is used as genuine with the intention that some person should be deceived thereby, and by means of that deception *either* an advantage should accrue to the person so using the document *or* injury should befall some other person or persons.

Bombay view.

2.46. In a later Bombay case[2], it was observed that, although there were conflicting rulings on the definition of "fraudulently", the consensus of opinion in the Bombay High Court was that there must be some advantage on the one side *with* a corresponding loss on the other.

View taken in England.

2.47. In England also, the precise legal meaning to be attached to the word "defraud", particularly in distinguishing between "intent to deceive" and "intent to defraud", has been a matter of controversy. Buckley J.'s dictum[3] which became classic was:—

> "To defraud is to deprive by deceit; it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action."

There has been much dispute in recent years as to what is meant by the words "deprive by deceit". The question whether these words meant the causing of an economic loss to some person by means of deceit, or merely the inducing of a person to act against his own interest, has been strongly debated. In a recent case, [4] the House of Lords decided that it is not necessary that there should be an intent to cause an economic loss. After reviewing judicial pronouncements up to and including this decision of the House of Lords, a learned writer suggested [5] that the intent to defraud which was necessary in English law to constitute forgery of private documents could be stated as "an intent by deceit the cause prejudice to any other either by causing damage to his person, property or reputation, or by affecting his rights whether by deprivation or concealment thereof, or by inducing him to act contrary to what would have been his duty had he not been deceived."

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1. *Q.E.* v. *Muhammad Saeed Khan,* (1898) I.L.R. 21 All. 113, 115, 116.
2. *Sanjeev* v. *Emp.,* A.I.R. (1932) Bom. 545.
3. *In re*: *London and Glove Finance Corporation,* (1903) All. E.R. 891, 893.
4. *Welham* v. *Director of Public Prosecutions,* (1960), 1 All. E.R. 805.
5. R.N. Gooderson, "Prejudice as a test of intent to defraud", (1960) Cambridge Law Journal 199, 213.

Exposition of the Supreme Court.

2.48. The Supreme Court[1] has, after considering relevant decisions on the subject, stated the legal position as follows:—

> "The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases, where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

In a later case, however, the Supreme Court observed[2]:—

> "The words 'with intent to defraud' in the section indicate not a bare intent to deceive, but an intent to cause a person to act or omit to act, as a result of deception played upon him, to his disadvantage. This is the most extensive meaning that may be given to the expression 'with intent to defraud' in our penal Code, and the words 'but not otherwise' clearly show that the words 'intent to defraud' are not synonymous with 'intent to deceive', and require some action resulting in some disadvantage which, but for the deception, the person deceived would have avoided."

Essential elements of "intent to defraud".

2.49. It would thus appear that the essential elements to constitute an intent to defraud are (i) an intent to deceive another, and (ii) an intent to cause, by that deception, injury to some person (ordinarily, but not necessarily, the person deceived). The injury intended need not necessarily be pecuniary or even economic, amounting to a deprivation of property, but may be any harm whatsoever to any person in body, mind or reputation. It goes without saying that the intention and object of the person accused of fraudulent conduct is to obtain a benefit or advantage to himself which he would not otherwise have got. Difficulty arises only in those cases where while this benefit or advantage to the deceiver is obvious, the injury or risk of injury to the person deceived, or indeed to any person, is not apparent.

Definition of "fraudulently" recommended.

2.50. We consider it desirable to replace the very unsatisfactory definition of "fraudulently" if it can be called a definition at all, by one which will at least state the essential requirements as indicated by the Supreme Court and furnish a guideline in doubtful cases. In such a definition, it would obviously be not sufficient to relate the second element to the deceiver's intention to obtain an undue benefit or advantage to himself by

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1. *Dr. Vimla* v. *Delhi Administration*, (1963) Supp. 2 S.C.R. 585.
2. *Dr. S. Dutt* v. *State of U.P.*, (1966) 1 S.C.R. 493, 502.

means of the deceit. To constitute culpable fraud there should either be an intention to cause by the deception injury in the wide sense to someone or, at any rate, an intention to induce the person deceived to act to his disadvantage. We recommend the following definitions:—

> "A person is said to do a thing fraudulently if he does that thing with intent to deceive another and, by such deceit, either to cause injury to any person or to induce any person to act to his disadvantage."

Section 26—"reason to believe"

2.51. Section 26 explains the meaning of the words "reason to believe", and emphasises that only if a person has sufficient cause to believe a thing can be said to have reason to believe it. The Code thus accepts only "rational belief" as something worth taking notice of; and that is how in law it should be, in order that needless controversy about the mere existence of a belief does not arise in courts. In actual working, the explanation has been found satisfactory, and we see no reason to disturb it.

Section 27—"possession of property".

2.52. Section 27 says:—

> "When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code."

This explanation is particularly useful in relation to the offence of theft, and two illustrations under section 378 (which defines "theft") bring out the point of the explanations:—

> "(d) A being Z's servant and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.
>
> (e) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return, A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It would not therefore be taken out of Z's possession and A has not committed theft, though he may have committed criminal breach of trust."

Section 27 is confined to a wife, clerk or servant, because of the close proximity of such persons to the person on whose behalf they could be holding property. The explanation is intended to do away with any argument based on any nice distinction between possession and custody, without, of course, obliterating that distinction. We think the explanation is helpful, and should be retained, although we do not suggest any extension of this principle to cover other persons, such as trustees, agents or bailees.

Section 28—"counterfeit".

2.53. Section 28 explains the word "counterfeit", used mostly in relation to offences governing coins, currency notes and revenue stamps. To counterfeit is "to make one thing to resemble another thing intending by means of that resemblance to practise deception or knowing it to be likely that deception would thereby be practised."

There are two explanations to the section, of these, the second explanation is important. It says, "when a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it should be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or know it to be likely that deception would thereby be practised."

Counterfeiting has, thus, two ingredients:

(1) actual imitation of something, and

(2) intention to induce a belief in others that the imitation is the genuine article.

The explanation directs that the fact of close resemblance sufficient to deceive another would be presumptive evidence that deception was intended. It was suggested that the presumption should not be obligatory, but left to the discretion of the court; but we think that there is little room for discretion here, in view of the terms of the explanation, and the presumption would arise only if the court in fact thought the resemblance close enough to deceive.

It may of course happen that an imitation prepared innocently has a close resemblance to the original. Such innocent imitations, however, are not "counterfeits", as there is no intention to deceive anyone, and that can be readily shown by disclosing the purpose of the imitation. We do not think that any innocent imitation can be brought within the meaning of "counterfeit" because of the explanation, although, of course, the innocent intention, in such circumstances, will have to be disclosed and the court persuaded that was so. In certain circumstances, proof of innocent imitation may be onerous, but that does not persuade us to water down the second explanation. We therefore propose to leave the section as it is.

Section 29—"document"

2.54. Section 29 defines a "document" thus:—

"The word 'document' denotes any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means intended to be used, or which may be used, as evidence of that matter."

This is followed by two explanations, the first of which states that "it is immaterial by what means or upon what substance the letters, figures or marks are formed or whether the evidence is intended for, or may be used in, a Court of Justice or not." The second provides that letters, figures or marks which have a special significance according to usage should be understood to have that meaning, "although the same may not be actually expressed." Half a dozen illustrations are attached.

Two other definitions of "document".

2.55. The Evidence Act has a definition of "document" which reads [1]:—

> "Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of these means, intended to be used, or which may be used, for the purpose of recording that matter.

Five illustrations are given of which two are practically the same as those given in the Code and the others are different.

The General Clauses Act also has a definition which is practically the same as the one in the Evidence Act. It reads[2]:—

> "Document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, which is intended to be used or which may be used for the purpose of recording that matter."

No illustrations are appended.

Definition Code to be retained

2.56. The main idea in all the three Acts is the same, and the emphasis is on the "matter" which is recorded, and not on the substance on which the matter is recorded. We feel, on the whole, that the Penal Code should contain a definition of "document" for its own purpose, and that section 29 should be retained.

The two Explanations attached to section 29 are, we think, helpful. The first Explanation helps to clear ambiguity about the import of the word "evidence" used in the section, and is in accord with the view of the Courts.[3]

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1. Section 3, Indian Evidence Act, 1872.
2. Section 3(18), General Clauses Act, 1897.
3. (a) *Dhormindra* v. *Rex*, A. I. R. 1949, All. 353.
   (b) *M. S. Iyengar* v. *Queen* I. L. R. 4 Mad. 393.

Amendment proposed.

2.57. The definition is wide enough to cover every kind of document. Some doubt has, however, been expressed whether it includes mechanical records of sound or image. We are anxious that it should, as such mechanical devices like "tape records" are now in frequent use. The Supreme Court has held[1] that a conversation recorded on a tape is good evidence, and obviously, if a person forges a tape record, he ought to be punishable the same way as a person preparing a false document. We intend to make this clear by adding an illustration to section 29. We propose, in fact, to delete some of the more obvious illustrations under section 29, and insert some more useful ones taken from the Evidence Act. Also we suggest a slight alteration in the language of the main section to make its intention clearer. The section should, we think, read as follows :—

"29. *Document.*—The word 'document' denotes any matter recorded upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice or not.

Illustrations

The following are documents—

(*a*) a map or plan;

(*b*) a caricature;

(*c*) a writing on a metal plate,[2] stone or tree[3];

(*d*) a film, tape or other device on which sounds or images are recorded.

Explanation 2.—Whatever is expressed by means of letters, figures or marks as understood by mercantile or other usage, shall be deemed to be recorded by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

1. *Pratap Singh Kairon* (1964) 4 S.C.R. 733; A.I.R. 1964 S.C. 72, 86, paragraph 15.
2. See section 3, Evidence Act.
3. As to trees, see *Emp.* v. *Krishnappa*, A.I.R. 1925 Bom. 327 (Letters imprinted on trees).

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement as understood by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature."

Section 30—"valuable security".

2.58. A "valuable security", mentioned in section 30, is one kind of document, the test being that it creates or deals with a "legal right". No difficulty has arisen about the meaning of this expression, although, of course, the question whether a document does or does not create a legal right has to be determined in each case according to the nature of the document. We do not suggest any change in section 30.

Section 31—"will".

2.59. Section 31 defines a "will". So does the General Clauses Act[1]. The term is now so well understood that a separate definition in the Code seems unnecessary, and the General Clauses Act definition ought to be enough. We would, therefore, delete section 31.

Sections 32 and 33—"act" "omission".

2.60. Section 32 merely says that "act" includes illegal omissions. The General Clauses Act[2] says the same thing, so that section 32 is now unnecessary. The same considerations apply to section 33, which explains that an act includes a series of acts, and an omission, a series of omissions,—exactly as the General Clauses Act does[2]. Both these sections can, therefore, be omitted.

Section 34.

2.61. A good deal of serious crime is the result of concerted action by several persons. Criminal law has, therefore, to deal with the problem of individual liability, where several persons are concerned in the commission of an offence. Sections 34 to 38 of the Code are designed for that purpose, but it is section 34 which is the most important and most frequently in use. The principle it enacts is quite simple. To borrow the words of a High Court Judge[3], the section "embodies the ordinary common sense principle that if two or more persons intentionally do a thing jointly it is just the same as if each of them had done it individually".

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1. Section 3(64), General Clauses Act, 1897.
2. Section 3(2), General Clauses Act, 1897.
3. *Waryam Singh*, I.L.R. 1941 Lah. 423.

Re-draft suggested to remove ambiguity.

2.62. The wording of section 34, however, is such that it has at times been misunderstood; and until the decision of the Privy Council in *Barendra Kumar Ghose*[1] cleared the whole ground, there was considerable difference of opinion regarding its meaning. The Privy Council view has been accepted by the Supreme Court so that about the meaning of section 34, there is now no doubt. It is, however, desirable that the ambiguity felt in the language of the section should be removed. At present, the section runs thus:—

> "34. When a criminal act is done by several persons furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

Stephen J. of the Calcutta High Court, in *Emperor* v. *Nirmal Kanti Roy*[2], found difficulty in regard to the true meaning of the phrase "criminal act done by several persons"; and although, in that case, two men, obviously acting in concert, had fired on a policeman, one hitting and killing him, and the other failing to hit him at all, the learned Judge directed the acquittal of the latter, holding that the criminal act, i.e., murder, was done by one man alone, and not by several persons. This view was overruled by the Privy Council[3]. In order to make the meaning easier to understand, we suggest the following re-draft of the section:—

> "34. *Acts done by several persons in furtherance of common intention.*—Where two or more persons, with a common intention to commit a criminal act, do any acts in furtherance of such common intention, each of them is liable for the criminal act done as if it were done by him alone."

Suggestion to equate with section 149 not approved.

2.63. One other suggestion in this connection needs to be considered. It will be noticed that section 34 is attracted only if several persons are acting in furtherance of a common intention. The suggestion is that such common intention is not easy to prove, and that the law regarding vicarious liability should be further tightened to make it correspond to section 149, which applies in case of an unlawful assembly and makes the prosecution of a common object the test of vicarious liability. We do not, however, think it wise to extend the rule applicable to the members of an unlawful assembly, to every person. A "shared intention" to commit a crime should, we think, remain the basis of liability in ordinary cases. There is, we feel, considerable difference between the furtherance of a "common intention" mentioned in section 34 and the pursuit of a "common object" mentioned in section 149, and a possible difficulty in proving one or the other need not demolish the distinction.

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1. *Barendra Kumar Ghose*, A.I.R. 1925 P.C. 1.
2. *Emperor* v. *Nirmal Kanti Roy*, I.L.R. 41 Cal. 1072.
3. *Barendra Kumar Ghose*, A.I.R. 1925 P.C. 1.

Section 35

2.64. Section 35 deals with a situation where an offence requires a particular criminal intention or knowledge and is committed by several persons. Each of them who joins the act with such knowledge or intention is liable in the same way as if it were done by him alone with that intention or knowledge. This is complementary to the main rule in section 34, and the two have to be read together. There is no need to clarify the position further, and we are suggesting only a small verbal alteration in the section[1], namely, for the words "several persons" the words "two or more persons" may be substituted.

Section 36.

2.65. Section 36, again, says what is plain common sense: if the causing of any effect by an act or an omission is an offence, the causing of the same effect partly by an act and partly by an omission would also be an offence. It was, perhaps, unnecessary to put such a proposition in the Code itself; but, since it is there, we do not think we should now delete it.

Sections 37 and 38.

2.66. Section 37 provides that when several acts are done so as to result together in the commission of an offence, the doing of any one of them with an intention to co-operate in the offence (which may not be the same as an intention common to all), makes the actor liable to be punished for the commission of the offence, while section 38 provides "that where several persons are concerned in the commission of a criminal act, they may be guilty of different offences". These provisions have presented no difficulty in actual working, and need not be disturbed.

Section 39—"Voluntarily".

2.67. No amendment is required in section 39 which defines the expression "voluntarily".

Section 40—"offence".

2.68. The three clauses of section 40 give three different definitions of the expression "offence". The first clause provides that except in the chapters and sections mentioned in clauses 2 and 3 the word offence denotes "a thing made punishable by the Code". According to clause 2, in chapters IV and VA and also in some 34 sections enumerated therein, the word offence denotes "a thing punishable under the Code or any special or local law". Clause 3 lays down that, in the eight sections mentioned therein, the word "offence" has "the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards whether with or without fine."

It appears to us that the present definition is rather awkward and is not conducive to either clarity or convenience. Whenever a question arises as to the meaning of the word "offence" appearing in a particular section of the Code, one has to go back to section 40 and wade through the clauses to find out where the

1. *Cf.* section 34 as proposed to be amended in paragraph 2.62 above.

section in question is mentioned. We feel that the simple definition of the word "offence" in the General Clauses Act[1] should be sufficient for the Code. If the word "offence" occuring in a particular section of the Code is intended to have a different meaning, the matter may be dealt with suitably in that particular section.[2]

"Capital offence".

2.69. The Code refers in several places[3] to "offences punishable with death or imprisonment for life", the obvious intention being to cover only those offences for which death is either the only punishment prescribed or at least one of the punishments permissible under the law. Though the expression is not intended to cover an offence for which one of the alternative punishments provided is imprisonment for life (e.g., the offence of sedition under section 124A), it is possible to argue that it does. Such an interpretation has been accepted by the Court in regard to section 497(1) of the Code of Criminal Procedure where this expression occurs. We therefore propose to add in the Penal Code a definition of "capital offence" as meaning any offence for which death is the only punishment, or one of the punishments, provided by law and use this expression instead of the longer and ambiguous phrase "offences punishable with death or imprisonment for life" in the relevant sections.

Sections 41 and 42—"special law" and "local law".

2.70. Section 41 and 42, which define the expressions "special law" and "local law", respectively, do not require any modification.

Section 43—"illegal" and legally bound."

2.71. Section 43 defines the expressions "illegal" and "legally bound" as follows :—

> "The word 'illegal' is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be 'legally bound to do' whatever it is illegal in him to omit".

According to the section a person is legally bound to do only what is "illegal" in him to omit and what is "illegal" is by definition what is an offence, or what is prohibited or what is actionable under civil law. The definitions are, as it were, in a circle and have led to difficulties.

Privy Council view.

2.72. In a case[4] which went up to the Privy Council, the question whether a person failing to furnish information required by a Wakf Committee under section 3 of the Mussalman Wakf

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1. General Clauses Act, 1897, section 3(38):—
"offence" shall mean any act or omission made punishable by any law for the time being in force.

2. See, for instance, sections 73 and 90.

3. See, for instance, sections 115, 118, 120B, 388, 389, 506.

4. *Ali Mohemed* v. *Emp.*, A.I.R. 1945 P.C. 147.

Act, 1923, (as amended in Bombay) could be proceeded against in the High Court for contempt under the Contempt of Courts Act, 1926. The objection taken was that, under section 2(3) of the latter Act, the High Court could not take cognizance of the contempt of a subordinate court, where such contempt is an offence punishable under the Indian Penal Code. It was argued, that the failure to furnish the information in question was an offence under section 176, Indian Penal Code. This argument was rejected by the Privy Council on the following chain of reasoning :—

(*i*) section 176 applies only where a person is "legally bound" to furnish information;

(*ii*) a person is "legally bound" to do only what is "illegal" for him to omit;

(*iii*) it is "illegal" for a person to omit that which is an "offence"; and

(*iv*) an "offence" in section 43 is only that which is punishable under the Indian Penal Code.

It was therefore held that section 176 applied only to a failure which is an offence under some section of the Indian Penal Code and not an offence under the Wakf Act.

"If no other section of the Penal Code dealt with the matter, then, one must conclude that the particular crime, though punishable under some other enactment, is not punishable under the Code, and would not fall under section 176. Therefore, the High Court was not prohibited from dealing with it under the Contempt of Courts Act."

In other words the Privy Council was of the view, that, in order to take action under the Penal Code against a person for not having done something he is "legally bound to do", it is necessary to show that the omission to do that thing amounts to an offence and further such "offence" should come within the definition of that expression in the Penal Code.

2.73. Our recommendation to omit the definition of the expression "offence" in the Penal Code, whereby the wider definition of the word in the General Clauses Act will come into operation, will obviate the difficulty pointed out by the Privy Council in taking action under the Code for "offences" under other Acts. However, difficulties would still arise if the omission to do what is enjoined by law is not made an offence under the particular Act in question. In other words, under the present definition of the term "legally bound", unless a law which enjoins a person to do a particular thing also lays down, in so many words, that the person shall not omit to do that thing, then the person cannot be considered "legally bound" to do that thing.

Amendment recommended.

The Law Commission had occasion to consider the matter in connection with the Commission of Inquiry Act, 1952, and a provision by way of clarification was recommended to be added to section 5 of that Act.[1] The matter, however, is of wider importance as similar difficulties may arise in respect of provisions in other laws.

We therefore recommend that the definition of the expression "legally bound" be widened so that it covers its primary significance of being bound by law to do a thing. Section 43 may be revised as follows :—

"43. (1) A thing is illegal if it is an offence, or is prohibited by law, or furnishes ground for a civil action.

(2) A person is legally bound to do a thing, when he is bound by law to do that thing, or when it is illegal in him to omit to do that thing".

Sections 44 to 47.

2.74. No change is needed in sections 44 to 47 which define the expressions "injury", "life", "death" and "animal".

Sections 48 to 50 omitted.

2.75. The words "vessel", "year", "month" and "section" are defined in the General Clauses Act[2] and the definitions can well apply where the words are used in the Code. Sections 48, 49 and 50 are accordingly unnecessary and may be omitted.

Section 51— "oath".

2.76. Section 51 defines "oath" as including "a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof whether before a Court of Justice or not". So far as solemn affirmations are concerned, the definition[3] in the General Clauses Act is sufficient to cover them. The second part of section 51 relating to various declarations does not seem to be appropriate or necessary. Most of the sections of the Code (sections 21, 178 and 181) where the expression "oath" occurs, use it in the context of the administration of the oath by a Court or public servant, and this part of the definition is hardly applicable to those sections. Even as regards section 191 which punishes false statements made on "oath", this part of the definition relating to declarations is not needed, as there are, in various special laws[4] provisions for punishing false statement in declarations. Further, there is a provision in section 199 of the Code which specifically covers

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1. 24th Report, pp. 18, 24, 28.
2. General Clauses Act, 1897, section 3, clauses (63), (66), (35) and (54) respectively.
3. Section 3(37), General Clauses Act, 1897, is quoted below :—

   "(37) oath shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;"
4. See, for instance, section 45 of the Special Marriage Act, 1954, section 277 of the Income-tax Act, 1961 and section 12(1) of the Passport Act, 1967.

false statements in statutory declarations. We consider that this definition of "oath" in the General Clauses Act is sufficient and that section 51 may, therefore, be omitted.

Section 52—"good faith"—definition in the General Clauses Act.

2.77. Section 52 defines the expression "good faith" as follows :—

> "Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention".

The definition of "good faith" in the General Clauses Act is very different. For purposes of laws other than the Indian Penal Code, "a thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not". When the two definitions are viewed in juxtaposition, it may appear that just as honesty of purpose alone is sufficient to make an act *bona fide* under other laws, due care and attention are necessary and sufficient under the Penal Code. The two definitions seem to approach the question from two different standpoints and to have nothing in common between them. As one writer has expressed it "while the general definition condones negligence and carelessness, if only there was honesty, the Code regards honesty as immaterial, and the presence of care and attention as all in all."[1]

Is honesty of purpose immaterial?

2.78. There is also an observation by the Supreme Court which may appear to support this view. In a case of defamation, the High Court of Punjab, rejecting the plea of good faith put forward by the accused, held[2] :—

> "Good faith therefore implies, not only an upright mental attitude and clear conscience of a person, but also the doing of an act showing that ordinary prudence has been exercised according to the standards of a reasonable person. 'Good faith' contemplates an honest effort to ascertain the facts upon which exercise of the power must rest. It must, therefore, be summed as an honest determination from ascertained facts. 'Good faith' precludes pretence or deceit and also negligence and recklessness. A lack of diligence, which an honest man of ordinary prudence is accustomed to exercise, is, in law, a want of good faith."

On appeal, the Supreme Court took a different view on the facts, and set aside the conviction. Though the judgment did not turn on the presence or absence of honesty of purpose, it contains the observation that "the element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the Code and we are

1. Gour, Penal Code (1961) Vol. 1, page 193.
2. *Harbajan Singh* v. *State of Punjab*, A.I.R. 1961 Punjab 215.

governed by the definition prescribed by section 52 of the Code"[1]. By this observation, the Supreme Court did not, we feel sure, intend to lay down a rule different from what was enunciated in the High Court as to the meaning of "good faith". It only wished to point out that the Code does not express the requirement of honesty.

It appears to us that the definition in the Code is merely emphasising the need for care and attention while not excluding the need for honesty of purpose, since honesty is implicit in the concept of good faith. It is difficult to imagine how a dishonest act can be said to be done in "good faith". The Code stresses the aspect of care and attention, because under the Code the fact that an act was done in good faith constitutes a defence either generally as regards criminal liability or specifically as regards particular offences. Even an act done with an honest purpose will, if done rashly and negligently, amount to an offence.

View taken by the Privy Council.

2.79. The view that honesty is implicit in the idea of good faith receives support from a number of reported decisions. In a case where section 499, ninth exception, was at issue, the Privy Council observed :—

> ".....it was accordingly this question, and this question only, which the jury charged by Sir Charles Fox had to try, namely, whether in publishing the libels admitted to be false, Mr. Arnold did so in good faith because he believed them to be true, having given due care and attention to seeing that they were so. If the jury were satisfied that he did give that due care and attention *and that he acted in good faith,* then the exception formed a good defence, and the accused would be found not guilty."

Amendment proposed.

2.80. It is therefore quite clear that the definition in the Code does not intend to exclude honesty. However, in view of the possibility of the observation by the Supreme Court noted earlier being taken as an expression of a different view of the matter, we feel that it would be better to make the definition more explicit.

We therefore recommend that section 52 may be revised as below :—

> "52. *Good faith.*—"A thing is said to be done or believed in good faith when it is done or believed honestly and with due care and attention".

Section 52A— "harbour".

2.81. Section 52A defines the expression "harbour", as follows:—

> "Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word 'harbour', includes the supplying a

1. *Harbajan Singh* v. *State of Punjab* (1965) S.C.R. 235, 243.

person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind, as those enumerated in this section or not, to evade apprehension."

Though the expression occurs only in six sections of the Code (sections 130, 136, 157, 212, 216 and 216A), the definition does not apply to all of them. As is indicated by the opening portion, it does not apply to section 157, and in regard to section 130, it is inapplicable in certain cases. In these two contexts, the meaning to be assigned to the expression "harbour" would apparently be the dictionary meaning, *i.e.* "to provide for, to shelter, to lodge, to entertain."

Now, if the meaning to be assigned to the expression in sections 130 and 157 is its dictionary or non-statutory meanings, then, it would be better to provide for it in those two sections rather than make a clumsy exception in the general definition. Section 52A may be revised as follows:—

> "52A. *Harbouring.*—The expression 'harbouring' means giving shelter to a person, and includes supplying a person with food, drink, money, clothes, arms, ammunition or means of conveyance, or assisting a person in any manner to evade apprehension."

Revision of whole Chapter recommended.

2.82. It will be noticed that this chapter of general explanations is lacking in systematic arrangement. Simple definitions of words like "animal", "'injury", "life", "man" etc., are interspersed between elaborate explanations of basic concepts of the criminal law. There does not seem to be any logical, or even alphabetical, order in setting them down. With the application of the General Clauses Act for the interpretation of the Code and the consequent omission of a number of sections, the chapter will have even more gaps and less orderliness than it has at present. We, therefore, recommend a revised and rearranged Chapter 2 in which the amendments proposed by us in particular sections have been incorporated and other formal or verbal changes, not affecting the substance, have also been made.[1]

1. See the proposed draft of the Indian Penal Code (Amendment) Bill, clause 5.

CHAPTER 3

PUNISHMENT

Existing punishments under the Code.

3.1. The punishments to which an offender is liable under the Code, as enumerated in section 53, affect his life, liberty or property. The corporal punishment of whipping, which was first added and regulated by the Whipping Act of 1864 (repealed and replaced by the Whipping Act of 1909), was abolished in 1955. Apart from the extreme sentence of death which is permissible under very few sections, the punishments provided in the Code either deprive the offender of his liberty or of his property or both. Loss of liberty may take the form of imprisonment for life or for a specified term; and the latter may be either rigorous, that is, with hard labour, or simple, that is, without compulsory labour of any sort. Loss of property may be caused either by directing forfeiture to the State of specific property of the offender or by ordering him to pay a specified sum as fine.

Certain additional punishments considered.

3.2. These punishments have been in vogue everywhere from ancient times and have come to be recognised as the normal methods available for dealing with criminals. While legal systems based on, or deriving from, English common law and jurisprudence have not adopted any other forms of punishments, we found that the penal codes of some European countries, particularly that of Russia, provided for certain additional punishments which appeared to be worth considering. We accordingly included in our Questionnaire a question in the following terms :—

> "The punishments provided in the Code are death, imprisonment for life, rigorous and simple imprisonment, forfeiture of property and fine. Do you consider it necessary or desirable to add any other punishments, *e.g.*,
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> banishment for a term to a specified locality thin India;
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> *b*) externment for a term from a specified locality;
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> (*c*) corrective labour;
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> (*d*) imposition of a duty to make amends to the victim by repairing the damage done by the offence;
>
> (*e*) publication of name of the offender and details of the offence and sentence;
>
> (*f*) confiscation.
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> "In respect of what offence or types of offences would such punishments be appropriate?"

As was to be expected, interesting, but widely differing, views are expressed by the Judges, lawyers and others consulted by us.

Banishment.

3.3. Banishment or exile from the king's realm was a recognised punishment in ancient and mediaeval times, mainly for the king's enemies and political offenders of a certain status. In modern conditions, however, it can hardly be contemplated as a judicial sentence following conviction for a crime, however serious that crime may be. It might indeed be regarded as a serious violation of a human right to provide by law for the banishment of a citizen from the country even as a punishment for a serious crime. The question was therefore limited to the desirability of punishing an offender with banishment for a certain term to a specified locality *within India.*

The Russian scheme.

3.4. Such a punishment is provided for in the U.S.S.R. under the name of exile. According to article 25 of the Russian Penal Code, 'exile shall consist in the removal of a convicted person from the place of his residence, with obligatory settlement in a certain locality. It may be assigned as a supplementary punishment for a term of two to five years, only in instances specially indicated in the Penal Code. The organisation of work of exiles shall be the responsibility of executive committees of local Soviets of working people's deputies. The procedure, places and conditions for serving exile shall be established by legislation of the U.S.S.R.

Banishment not recommended.

3.5. The suggestion did not find favour in any quarter. From the practical point of view, it almost necessarily involves the establishment of a penal settlement in each State, somewhat similar to the settlement in the Andaman Islands where convicts sentenced to transportation for life used to be sent. The running of such settlements and keeping effective control over the convict banished thereto will give rise to difficult problems of administration. If the control were to be strict, the settlements would degenerate into concentration camps. As an alternative to long-term imprisonment, banishment does not appear to have any appreciable advantage and cannot be recommended.

Externment.

3.6. Another possible punishment which we considered was externment of the offender for a term from a specified locality. The underlying idea was that, if the offender was dissociated from his surrounding, his capacity for committing crimes of a particular type would be reduced. For instance, where the crime is one which is facilitated by the bad influence which the criminal exercises over the community in an area, it might be useful to keep him out of that area for a specified period. Again, for offences under section 188 of the Code constituted by a violation of an order under section 144 of the Code of Criminal Procedure and similar offences against the public tranquility, an order of externment might be a more suitable and effective punishment than a sentence of imprisonment for a short period.

Divided opinion.

3.7. We found opinion on the subject more or less equally divided. Executive authorities were generally inclined in favour of such a punishment. The Bombay Act empowers the Commissioner of Police in the City of Bombay to pass externment orders against criminals as an executive measure, subject to review by the courts. While the State Government authorities thought this was a useful piece of legislation for keeping the goonda elements of the city under control, other expressed a contrary view doubting it efficiency and stressing the scope it affords for harassment and corruption.

Objections to the suggestion.

3.8. We think there are serious and basic objections to prescribing externment as a form of judicial punishment, whether in addition to, or in lieu of, imprisonment for a term. If externment is effectively enforced, it is bound to be harsh on the offender as well as his dependants. On being driven away from his normal environment, he will naturally find it difficult to rehabilitate himself and find honest means of livelihood. If, as is likely, it results in his living apart from his family, the psychological effect on him will hardly be towards reformation and turning over a new leaf. As regards the non-criminal, agitational type of offender who is bent on breaking lawfully promulgated order is for an ulterior object, the exterament order is more likely to be flouted than obeyed. On the whole, we think that the disadvantages and objections to this form of punishment are serious, and are unable to recommend its inclusion in the Penal Code.[1]

Corrective labour.

3.9. A current development in penology is the emphasis on reformation and rehabilitation of the offender instead of retribution. This has led to an increasing use of non-custodial measures of punishment as contrasted with imprisonment of the traditional pattern. One form is known as corrective labour, the main object being to make the convict work at his own place or at a work-centre outside the ordinary prison and thereby avoid the necessary evils of a prison life.

System in force in U.S.S.R.

3.10. This mode of punishment has been in force in the U.S.S.R. for a long time. Ideologically, it is traceable to the teachings of Lenin. According to Conrad's Crime and its Correction,[2] Lenin's "Summary of the Essence of the Section Concerning Punishments of the Party Programme of 1919 formulated four basic points :—

(*i*) The administration of criminal justice should rely on the principle of the conditional discharge of the offender.

(*ii*) Courts should express the attitude of society towards crime and the criminal through the exercise of social reprimand.

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1. This is the view of the majority. Shri R. L. Narasimham has given a separate note on the subject.

2. Conrad, Crime and its Correction, (1965) page 157.

(*iii*) Punishment should be without deprivation of liberty, *as, for example, corrective labour on special public projects.*

(*iv*) Prisons should be transformed into educational institutions in which offenders are educated rather than isolated.

These are impeccable ideals which can hardly be improved upon by any penal law reformer. The working of a corrective labour system in U.S.S.R. has been described[1] thus :—

"Corrective labour is claimed to be one of the most typical penalties in Soviet law. Its essential feature is that the offender is not deprived of his liberty. A corrective labour sentence is served either at the place of the offender's ordinary work, or in a special corrective labour institution in the locality where the offender is domiciled. The court decides which of these two alternatives will be applied. In both cases, a part ranging from five to twenty per cent is withheld from the "offender's salary." It is stressed, however, by Soviet authors that corrective labour should not be equated with a fine. The essential punishment is the work that has to be done; further, a fine is a fixed sum, while the amount of money withheld from one's salary alters according to his salary.

"Corrective labour is the standard penalty in most cases where the seriousness of the offence does not require the offender to be isolated from society. One year is the longest period for which it can be imposed; one month is the minimum.

"The lighter form of corrective labour is that under which the offender continues working at the same place as at the time of his sentence. The other form of corrective labour consists in assigning work to him in the locality where he lives; this will usually mean heavy physical work; the place where the offender is put to work must be within reach of his living quarters, because....the essential feature of corrective labour is that the offender is not deprived of his liberty and can go home after he has done his day's work. When the court has sentenced a person to corrective labour in a special corrective "labour institution, the selection of the institution rests with the corrective labour inspectorate, a branch of the Ministry of Internal Affairs."

To complete the picture from the legislative angle, we reproduce here articles 27 and 28 of the Criminal Code of the R.S. F.S.R. 1960 :—

"*Article 27—Correctional tasks without deprivation of freedom.*

1. Szi mai (Ed.), Law in Eastern Europe, (1964), pages 211, 212.

Correctional tasks without deprivation of freedom shall be assigned for a term of one month to one year and shall be served, in accordance with the judgment of the court, either at the place of work of the convicted person or in any other place determined by the agencies in charge of application of correctional tasks, but in the convicted person's district of residence.

Deductions from the wages of a person condemned to correctional tasks without deprivation of freedom shall be made at a rate established by the judgment of the court within the limits of five to twenty per cent of the wages, and shall be transferred to the State.

"For persons deemed incapable of working, a court may replace correctional tasks by a fine, social censure, or imposition of the duty to make amends for the harm caused.

The time of serving correctional tasks, including time served at the place of work of the convicted person, shall not be counted in job seniority.

If a convicted person serves correctional tasks under conditions of conscientious work and exemplary conduct, the court may, after the convicted person has served such punishment, upon petition of a social organisation or collective working people, include the time of serving correctional tasks in his job seniority.

Article 28—*Consequences of evasion of correctional tasks.*

In the event that a person evades serving correctional tasks at the place of work, the court may replace the sentence by correctional tasks at places determined by agencies in charge of application of such punishment. In the event of evasion of correctional tasks in the places determined by the designated agencies, the court may "replace the sentence by deprivation of freedom, with every three days of the unserved term of correctional tasks to be replaced by one day of deprivation of freedom."

Outline of separate legislation recommended.

3.11. While we consider that this system with the necessary modifications should be adopted and tried, we do not suggest any textual amendment of the Code for implementing it straightaway, as we are conscious that it cannot be worked without a host of provisions dealing with various administrative matters. Here we indicate, very broadly, the features of the punishment which we have in mind, and recommend that appropriate legislation should be undertaken separately on the subject :—

(1) Corrective labour, without deprivation of freedom, is intended to be a substitute for short term imprisonment, so that the defects of jail administration, like contamination by association with hardened criminals, may be avoided.

(2) The essence of the punishment will be working on reduced wages at a public work centre.

(3) The punishment will be awarded by the court, and not by the executive government or by prison authorities.

(4) This will be different from "work-release" (as employed in the U.S.A.), or "*semi-liberte*" (as in force in France or Belgium), under which the prisoner is released from confinement during specified hours of the day, usually for the purpose of private employment.[1] He returns to confinement during non-working hours. It is a mode of punishment for persons convicted of minor offences and sentenced to short-term imprisonment. Used as a sentencing procedure, work-release occupies a position somewhere between probation and full-time incarceration. The corrective labour system, however, involves no deprivation of freedom, whether total or partial.

(5) The punishment of corrective labour will be primarily suitable for persons belonging to the labouring classes.

(6) Offences punishable with death, imprisonment for life or imprisonment for a term exceeding 7 years should be excluded from this punishment.

(7) The maximum period of corrective labour will be one year and the minimum one month.

(8) There will be no deprivation of freedom. Work shall be assigned in accordance with the judgment of the court, either at the place of work of the convicted person, or in any place determined by the agencies in charge of administration of the law, but, as far as possible, in the convicted person's district of residence.

(9) Deductions from the wages of the person sentenced to corrective labour will be made at a rate laid down by the judgment of the court and credited to the State. The rate may be between 5% and 20% of the wages.

(10) If the convicted person evades correctional labour at the assigned place of work, then the court may direct him to undergo corrective labour at places determined by the agencies in charge of administration of this punishment, and if he evades this also, then the court may punish him with imprisonment in default.

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1. Stanley Group, "Work Release for short-term Offenders in France and the United States" (July, 1968) 10 Canadian Journal of Corrections, No. 3, page 490.

(11) The period of imprisonment in default will be so calculated that for every three days of the unserved term of corrective labour, there shall be not more than one day of imprisonment in default. The actual period will be fixed by the court on an application made to it after disobedience by the convict.[1]

Compensation for injury caused.

3.12. Reparation to the victim of an offence has been receiving increased attention in recent times. In part, this is due to a realisation that mere punishment of the offender, though it may exhaust the primary function of the criminal law, is not total fulfilment of the role of the law. It has been observed[2] :—

"The injured party is not always adequately served by civil courts, and in the criminal law he often takes a back seat. Having given his evidence, he stands aside and watches the offended majesty of public justice being satisfied by conviction and sentence. He himself is fortunate if he gets compensation, or even his expenses. Often, he must have recourse to the civil courts to reclaim his property, and, not infrequently, may have suffered a loss or injury for which he cannot be recompensed."

At one time in the evolution of criminal jurisprudence, the idea of reparation of the victim of the wrong occupied a major place in most legal systems. The punitive or criminal aspect of the wrong gradually claimed recognition and, for some time, the two were mixed or combined in the same proceedings. Later, the civil or reparation aspect became subordinate, and the criminal courts concerned themselves almost wholly with the punitive aspect. In recent times, however, the compensation aspect is regaining its importance, not of course as the principal aim of criminal proceedings, but as a recognised ancillary thereto.

Three patterns of compensation.

3.13. Three patterns of compensating the victim of a crime can be noted. The State may take upon itself this responsibility in defined classes of cases. Secondly, the offender can be sentenced to pay a fine by way of punishment for the offence and, out of that fine, compensation can be awarded to the victim. Thirdly, the court trying the offender can, in addition to punishing him according to law, direct him to pay compensation to the victim of the crime, or otherwise make amends by repairing the damage done by the offence.

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1. Legislation on the lines indicated above could be undertaken either by the Centre under entry 1 (Criminal Law) of the Concurrent List or by the States under entry 4, (Prisons, reformatories, Borstal institutions and other institutions of a like nature and persons detained therein) on the State List.

2. Note "Crime and Punishment—Reparation to the Victim", (1959) 227 Law Times 117.

Opinion in favour of proposal.

3.14. The question whether this direct method of compensating the victim of a crime should be adopted and provided for in the Penal Code was included in the questionnaire. Objection to this suggestion was voiced by a number of persons consulted, principally on the apprehension that it might convert the criminal trial into a protracted inquiry into matters of a civil nature. There was however a large body of opinion in favour of the proposal.

Provision for compensation in other legal systems.

3.15. We notice that in some European countries provision is made for payment of compensation to the victim of the crime in the course of the criminal proceedings. In France, they can be combined with the criminal prosecution, a claim—*actione civile*—by the injured party—*partie civile*—for compensation[1]. The guiding principle of the *actione civile* is that, as far as possible, the injured party should be put back into the position which he occupied before the offence took place. Damages are awarded to cover not only the loss actually sustained, but also potential loss or loss of profit consequential upon the injury. The damages must not, however, exceed the loss which they are designed to repair. Remedies other than the award of damages are also envisaged, such as the restitution of stolen property, closing of the premises where a trade has been carried on illegally, advertising the findings of the Court in suitable newspapers at the expense of the accused, and payment of the costs of the prosecution. While the *actione civile* can be brought only by the injured party, other persons concerned besides the accused, may be joined as defendants. It has been stated that a certain measure of immediate personal interest in setting the machinery of criminal law in motion can supplement the inadequacy of public action, that civil proceedings are costly compared with the criminal prosecution, and that to allow the victim to intervene is an expedient procedure[2].

Under the German Code of Criminal Procedure[3], the injured person or his heir may, in the criminal proceedings, assert against the accused a claim 'involving property rights arising out of the offence'. To facilitate the filing of such claim, the law provides that the injured party should be notified of the filing of the criminal proceedings. The claim can be made by oral or written motion and has the same effect as bringing an action in civil litigation. The injured party or his representative is entitled to participate in the main trial.

In Russia, one of the punishments prescribed in the Criminal Code is 'imposition of the duty to make amends for the harm

1. French Code of Criminal Procedure, articles 2, 3, 85 to 91, 114 to 121, 371 to 375.
2. Views of French Commentator Vabres, *Traite de troit, Criminal et de Legislation, Penal Comparee*, 3rd ed. paras. 1091, 1128, referred to by Howard in (1958) 21 Modern Law Review 387.
3. Sections 403 to 406a, German Code of Criminal Procedure.

caused[1]" Execution of this duty consists in (i) direct elimination, by one'sown resources, of the harm caused, or (ii)) compensation, with one's own means, for material loss, or (iii) a public apology before the victim or before members of the collective in a form prescribed by the court. Punishment in the first form may be assigned when the court considers that the offender is capable of making amends in the indicated manner. Punishment in the second form may be assigned if the loss caused does not exceed one hundred rubles. Punishment in the third form may be assigned if there has been an infringement of personal integrity or dignity or a violation of the rules of socialist communal life not causing material loss. If the convicted person fails to carry out the court's order within the specified period, the court may replace this punishment by correctional tasks, or a fine, or dismissal from office, or social censure[2].

Not suitable for our courts.

3.16. We do not think that any such elaborate procedure as is provided in France or Germany would be suitable for our criminal courts. It would be unwise to create a legal right in the person or persons injured by the offence to join in the criminal proceedings from the beginning as a regular third party. This would only lead to a mixing up of civil and criminal procedures which, in our legal system, are kept separate, a confusion of issues and a prolongation of the trial. The Russian model might be workable, but its field of application is obviously limited to minor offences where the harm done, or damage caused, is small. Further, it is not essentially different from compensating the victim of the offence out of the fine to which the offender could be sentenced under our law.

Payments of compensation out of fine.

3.17. We have a fairly comprehensive provision for payment of compensation to the injured party under section 545 of the Criminal Procedure Code. It is regrettable that our courts do not exercise their salutary powers under this section as freely and liberally as could be desired. The section has, no doubt, its limitations. Its application depends, in the first instance, on whether the court considers a substantial fine proper punishment for the offence. In the more serious cases, the court may think that a heavy fine in addition to imprisonment for a long term is not justifiable, especially when the public prosecutor ignores the plight of the victim of the offence and does not press for compensation on his behalf. Another limitation stems from the fact that the magistrate's power to impose a fine is itself limited. At present, a magistrate of the first class cannot impose a fine exceeding two thousand rupees and a Magistrate of the second class cannot impose a fine exceeding five hundred rupees. Further, under section 545(1)(b), the court has to be satisfied that *substantial* compensation is recoverable in a civil court by the person to whom loss or injury has been caused by the offence. In our last Report on the Criminal Procedure Code, we have

1. RSFSR Criminal Code (1960), article 21.
2. *Ibid.*, article 32.

recommended[1] that the word substantial" should be omitted from this section, and also that the maximum fine imposable by magistrates of the first class should be increased to five thousand rupees and the maximum fine imposable by magistrates of the second class should be increased to one thousand rupees.[2] When the law is amended as suggested by the Commission and a liberal use of section 545 of the Criminal Procedure Code is made by the courts, it would, in our opinion, go a long way to meet the complaint that the victim of the offence is ignored by the criminal courts and, if he wishes to recover damages, he has necessarily to resort to a protracted and costly civil litigation.

Additional punishment of "duty to make amends" not recommended.

3.18. We do not see any great advantage in providing an additional punishment on the Russian model. Whether it is called "duty to make amends for the harm caused", or "payment of compensation to the victim of the offence", the object of the punishment is much the same as is now achieved (or can be achieved) under section 545 of the Criminal Procedure Code. It is doubtful whether an order of the sentencing court to make amends in kind ("directly eliminate, by one's own resources, the harm caused", as the Russian Code puts it) will be easy to enforce or otherwise satisfactory from the point of view of the victim of the offence. There is no material difference between the court sentencing the offender to pay a certain sum as compensation for loss or injury caused, and the court sentencing him to a fine and simultaneously ordering that the whole or a specified part of the fine shall be paid to the victim of the offence by way of such compensation. It may be true that the latter often finds the procedure for obtaining this amount from the court, after the fine has been realised, long drawn, expensive and harassing, but he will probably find an order of the court directing the offender to pay up compensation equally difficult to execute. We are, therefore, unable to recommend this additional punishment for specific mention and inclusion in the Penal Code.[3]

Substantive provision for payment of compensation out of fine recommended.

3.19. We think, however, that the Penal Code should give prominence to this aspect of compensating the victim of the offence out of the fine imposed on the offender. At present the legal provision in this regard is tucked away in the last miscellaneous chapter of the Code of Criminal Procedure. It seems to us that, as a substantive power of the trial court, it deserves to be mentioned specifically in the Penal Code chapter on punishments along with the provisions relating to fines. We recommend the insertion of the following section immediately before section 63 of the Penal Code :—

"62. *Order to pay compensation out of fine to victim of offence.*—Whenever a person is convicted of an offence

1. 41st Report, Vol. I, paragraph 46.12 and paragraph 3.12.

2. These recommendations have been accepted *vide* clauses 31 and 365 of the Code of Criminal Procedure Bill, 1970 introduced in the Rajya Sabha.

3. This is the view of the majority. Shri R.L. Narasimham has given a separate note on the subject.

punishable under Chapter 16, Chapter 17 "or Chapter 21 of this Code or of an abetment of such offence or of a criminal conspiracy to commit such offence and is sentenced to a fine, whether with or without imprisonment,

and the Court is of opinion that compensation is recoverable by civil suit by any person for loss or injury caused to him by that offence,

it shall be competent to the Court to direct by the sentence that the whole or any part of the fine realised from the offender shall be paid by way of compensation to such person for the said loss or injury.

Explanation.—Expenses properly incurred by such person in the prosecution of the case shall be deemed part of the loss caused to him by the offence."

When this provision is made in the Penal Code, it will be necessary suitably to modify section 545 of the Code of Criminal Procedure, 1898, to bring it into line with this provision. It may be provided in the modified section 545 that, in every case where the new section 62 of the Penal Code is attracted, but the Court decides *not* to make an order for payment of compensation out of the fine, it should record its reasons.

State's responsibility for compensating victim of crime.

3.20. We have mentioned above[1] that one of the patterns of compensating the victim of a crime noticeable in other legal systems is the State undertaking this responsibility in defined classes of cases. According to traditional legal notions, the court's adjudication in a criminal trial is directed towards the sanction to be applied to the offender, and except in a few isolated cases when the law allowed the criminal courts to grant restitution, the victim of a crime could not seek compensation in the criminal court. The responsibility of the State ended with the prosecution and it was not to be regarded as under any legal obligation to protect the lives and property of its citizens from criminal depradations. Consequently, there could be no legal claim against the State for compensation.

With the emergence of the social welfare State, these traditional notions of State immunity are undergoing rapid change. The idea that the victim of the crime deserves as much attention

1. Paragraph 3.13, *supra*.

from the State as the criminal and that, if the State fails to protect its citizens against violence, it can legitimately be called upon to compensate the victim, is gaining ground in western countries.[1]

In England, for instance, the position was changed in 1964 when a non-statutory scheme of *ex gratia* payments by the State for compensating victims of violence took effect and the Criminal Injuries Compensation Board commenced its work.

The injured victim could apply to the Board for compensation in respect of personal injury if it was directly attributable to a criminal offence, or to an arrest or attempted arrest of an offender or suspected person, or to the prevention or intended prevention of an offence, or to the giving of assistance to a constable arresting an offender, or attempting to prevent an offence. Thus, not only the intended victim of the offence, but also any third party who becomes involved by being public spirited, can claim compensation. The payment of compensation by the Board is *ex gratia,* but the Board is "instructed and compelled to make payments to all who come within the ambit of the scheme."

Similar programmes for compensating victims of crime have been established by law in recent years in New Zealand,[2] and Northern Ireland[3], and in a few States of the U.S.A., *e.g.* California[4], Massachussets[5] and New York[6].

Public censure appropriate for certain anti-social offences.

3.21. Another punishment, which we included in our questionnaire, and considered in the light of opinions expressed, was publication of the name of the offender and details of the offence and sentence, or briefly, public censure. There are certain anti-social offences committed by persons belonging to the richer and more sophisticated sections of society in regard to which this punishment would appear to be particularly appropriate. While these offences affect a large number of people, the offenders are not readily brought to book. In such cases public censure is likely to act as a greater deterrent than fine or even

1. Reference may be made to the following articles:—

   Rupert Cross, "Compensation for Victims of Violence" (1963) 49 The Listener 815; E. L. Johnson, "Compensation for Victims of Criminal Offences", (1964) Current Legal Problems 144;

   "Criminal Law Reform—Great Britain approves compensation programme" (1965), 78 Harvard Law Review 1683;

   Yahuda, "Criminal Injuries Compensation" (1966) 116 New Law Journal 292;

   Hugh P. Price, "Compensation for victims of Crime of Violence" (Washington) Legislative Reference Service, Library of Congress (May, 1966).

2. New Zealand Public Act No. 134 of 1963.

3. (Northern Ireland) Criminal Injuries to Person (Compensation) Act, 1968 (16 & 17 Eliz. 2 c.9).

4. Cal. Pen. Code. Art. 13.600 (1966), Cal. Welf. & Insnt's Code art. 11211 (1966).

5. Massachussets General Laws (1968), Ch. 258A.

6. New York Executive Laws, sections 620--635, 1967 Suppl.

imprisonment. The fear of infamy resulting from the publicity given to their misdeeds and consequent loss of business should deter the offenders more effectively than the usual punishments under the Code.

Ancient Indian precedent—Narada Smriti.

3.22. In ancient India, public censure with degradation in some form was laid down as a suitable punishment for certain classes of offenders. Thus, the Narada Smriti, believed to have been composed in the sixth century A.D., prescribes for a Brahmin guilty of a violent crime (sahasa) that "shaving his head, banishing him from the town, branding him on the forehead with a mark of the crime of which he has been convicted, and parading him on an ass, shall be his punishment."[1] Apart from the degrading form given to the punishment which may not be acceptable to modern notions, the underlying idea of publicly administering social censure to the offender is worth noting.

Modern precedents.

3.23. Quite a few penal codes of the present day provide for the giving of publicity to the fact of conviction and sentence. Thus, the Columbian Penal Code provides for "special publication of the sentence as an accessory to penal servitude or imprisonment". The publication is made in an unofficial periodical of the township in which the offence was committed or the convicted person resides. It is made at the expense of the convicted or injured person; and if he fails to pay the cost, it is done by proclamation.[2]

Social censure is one of the prescribed punishments in the U.S.S.R. According to the Russian Penal Code, "social censure shall consists in a public expression by the court of censure of the guilty person and, if necessary, in bringing this to the notice of the public through the press or other means.[3]

Indian precedents.

3.24. In India, this form of punishment has been recognised by Parliament in the Prevention of Food Adulteration Act, 1954. Under section 16(2), "if any person convicted of an offence under this Act commits a like offence afterwards, it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the court may direct". A similar provision for publishing the name of a defaulting assessee is made in section 287 of the Income Tax Act, 1961.

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1. Sacred Books of the East, Vol. 33, Ch. 14, Sloka 10.
2. Columbian Penal Code, Articles 42, 52 and 54.
3. RSFSR Penal Code, Articles 21(9) and (33).

New section 75A recommended.

3.25. We consider that this additional punishment will be useful in the case of persons convicted for the second time of any of the following offences punishable under the Penal Code:—

(i) offences relating to currency notes, coin and stamps (chapter 12);

(ii) offences relating to weights and measures (chapter 13);

(iii) adulteration of food and drugs (sections 272 to 276);

(iv) extortion (sections 383 to 399);

(v) criminal misappropriation and breach of trust (sections 403 to 409);

(vi) cheating (sections 415 to 420);

(vii offences relating to documents (chapter 18).

We recommend the addition of a new section 76A as follows:—

"76A. *Public censure for certain offences after previous conviction* :

(1) When any person, having been convicted by a Court in India of an offence specified in sub-section (3), is convicted of a like offence, it shall be competent to the Court before which the conviction takes place, "to cause the offender's name and place of residence, the offence and the punishment imposed to be published at the offender's expense in such newspapers or in such other manner as the Court may direct."

(2) The expenses of such publication shall be recoverable from the offender in the same manner as a fine.

(3) The offences to which subsection (1) applies are any offences punishable under chapter 12, chapter 13, sections 272 to 276, sections 383 to 389, sections 403 to 409, sections 415 to 420 or chapter 18 of this Code."

Confiscation

3.26 Confiscation, in the sense of forfeiture to the state of *all* property belonging to the criminal, was provided for in the Indian Penal Code for a few offences. Thus, under section 124, as originally enacted, "whoever wages war against the Queen * * * shall be punished with death or imprisonment for life, and shall forfeit all his property". It was further provided in section 61 that, in such a case, "the offender shall be incapable of acquiring any property, except for the benefit of government, until he shall have undergone the punishment awarded or the punishment to which it shall have been commuted, or until he shall have been pardoned." Then, under section 62, "whenever

any person is convicted of an offence punishable with death, the Court may adjudge that all his property, movable and immovable, shall be forfeited to government." These draconian punishments were repealed in 1921 and, since then, forfeiture as a punishment is limited to specific property — usually property connected with, or acquired by means of, the crime — and retained only for three offences under the Code.[1]

It is of interest to find that the Code of Manu prescribed confiscation (*sarva-haranam*) for those traders who out of cupidity took away for export goods and animals of which the king had a monopoly, or of which the export was prohibited. The commentator Kullooka Bhatta gives elephants and horses as examples of the first category and grain during a famine as an example of the second.[2]

Of the opinions expressed on the question whether this punishment should be reintroduced in the code, there were not many in favour. We are also of the view that this harsh punishment, which will fall not only on the criminal but also on his dependent family, is not to be commended.

Minimum sentence.

3.27. We included in our questionnaire the following question:

"The Code lays down only the maximum punishment for offences, and no minimum punishment except in very few cases. Are you in favour of laying down a minimum term of imprisonment for any offences ? If so, for what offences?"

Present position in Indian legislation.

3.28. There are only five sections in the Penal Code which prescribe a minimum penalty. Waging war against the state (section 121) and murder (section 302) are punished with death or imprisonment for life. Under section 303, a person committing murder while undergoing a life sentence has to be sentenced to death. A minimum sentence of seven years imprisonment is provided in section 397 for a dacoit or robber using a deadly weapon, or causing or attempting to cause grievous hurd, and in section 398 for a dacoit or robber being armed with a deadly weapon.

But, as noticed by the Law Commission in a previous Report, "during recent years, several enactments have been passed by the State Legislatures or Parliament providing for minimum sentences. It is true that in some of these enactments the discretion of the court has not been completely fettered. Though the section provides for a minimum sentence, the court has been given the liberty, for sufficient reasons to be recorded, to award

1. See sections 126, 127 and 169.

2. *Manu Smritih*, Ch. 8, Sl. 399:—

rajnah prakhyata-bhandani pratishiddhani yani chatani nirharatio lobhat sarvaharam haren-nripah.

a lower sentence.[1] Instances of such legislation are section 5 of the Prevention of Corruption Act, 1947 (as amended in 1958), the Prevention of Food Adulteration Act, 1954, the Suppression of Immoral Traffic in Women and Girls Act, 1956, and the Bombay Prohibition Act, 1949. The principal reason for such provisions "appears to be a feeling that courts seldom award sentences which would have a deterrent effect, particularly in certain types of offences which are necessary to be dealt with sternly in the interests of society."[2]

Position in other legal systems.

3.29. While in the Anglo-Saxon legal system, minimum punishment is seldom prescribed by statute, the penal codes of many European countries lay down upper and lower limits for punishments in many cases. The usual formula in these codes is to say that the offence is punishable with confinement in a penitentiary (or jailing) for a term of x to y years. These codes, however, usually contain provisions enabling the court to pass sentences lower than the prescribed minimum in extraordinary cases or for special reasons.

Minimum sentence not desirable save in exceptional cases.

3.30. Most of the opinions expressed on the question were strongly opposed to laying down any minimum punishment. In particular, members of the judiciary at all levels regard any such amendment as totally unnecessary. Some of them are not happy about the working of the provisions made in special laws for imposing a minimum sentence.

The Law Commission in a previous Report observed:[3]—

> "The determination of what should be the proper sentence in a particular case has always been left to the court for the very weighty reason that no two cases would ever be alike and the circumstances under which the offence was committed and the moral turpitude attaching to it would be matters within the special knowledge of the court which has tried the case. There can be no rule of general application laying down a specific quantum of punishment that should be inflicted in the case of a particular offence. A sound judicial discretion on the part of the trial judge in awarding punishment can alone distinguish between case and case and fit the punishment to the crime in each individual case.
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> *** *** *** ***
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> However, the placing of restrictions on judicial discretion in the matter of the award of a sentence is, on principle, to be deprecated as a general practice. * * * Instances might have occurred occasionally where judges have failed to award sentences proportionate to the gravity of the offences. This cannot, however, warrant the assumption that the judiciary as a whole has failed to award adequate sentences or overlooked the need for passing deterrent sentences in appropriate cases."

1. 14th Report, Vol. II, page 840.
2. 14th Report, Vol. II, page 838.
3. *Ibid.*, pages 838, 841.

We agree with the above view and consider that, save in exceptional cases, there should not be any provision for minimum sentences in the Penal Code.

Section 53

3.31. We now proceed with the consideration of the provisions of chapter 3 section by section.

Death sentence.

3.32. The question whether the death sentence should be retained in the Code and various cognate matters have been considered in great detail in the previous Law Commission's Report on Capital punishment.[1] It is regrettable that although this report was made to the Government more than three years ago, it has not been placed before Parliament or otherwise published for the information of the public. That Commission has recommended that, in the conditions existing at present in India, the death penalty should not be abolished. We agree with this recommendation.

Minimum age for death sentence to be 18.

3.33. The previous Commission has also fully considered whether the Code should specify the minimum age of the offender who can be sentenced to death. After examining the position under the Children's Acts of various States, it has stated[2]:—

> "We feel that, having regard to the need for uniformity, to the views expressed on the subject, and to the consideration that a person under 18 can be regarded as intellectually immature, there is a fairly strong case for adopting the age of 18 as the minimum for death sentence. We are aware that cases will occasionally arise where a person under 18 is found guilty of a reprehensible killing, or, conversely, a person above 18 is found to be immature and not deserving of the highest punishment. A line has, however, to be drawn somewhere and we think that 18 can be adopted without undue risk.
>
> We, therefore, recommend that a person who is under the age of 18 years at the time of the commission of the offence should not be sentenced to death. A provision to that effect can be conveniently inserted in the Indian Penal Code as section 55B."

New provision recommended.

3.34. We agree with this recommendation.[3] There is, however, one section, namely section 303, in the Code under which the only sentence which can be passed on conviction is the sentence of death. It would be an extremely rare case where a

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1. 35th Report.
2. *Ibid.*, paragraphs 886, 887.
3. In this connection, reference may also be invited to the International Covenant on Civil and Political Rights (1963), Part III, Article 6, paragraph 5, which is as follows:

   "5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."

juvenile under the age of 18, being under sentence of imprisonment for life, committed murder or other capital offence. If ever such a case did occur, there would be a conflict between section 303 which makes the death sentence obligatory and the proposed exception in the case of any juvenile under the age of 18. We consider that the proposed exception should not apply where the offender is convicted under section 303. If at all there are any extenuating circumstances in his favour, the President and the Governor may be trusted to exercise their power of commuting the sentence to one of imprisonment for life. The new provision may accordingly be as follows:—

"The sentence of death shall not be passed on a person convicted of a capital offence if at the time of committing the offence he was under eighteen years of age and death is not the only punishment provided by law for the offence."

Imprisonment for life.

3.35. In a previous Report,[1] we considered various aspects of the punishment of life imprisonment and recommended that in view of the prevailing uncertainty on the point it should be expressly provided in the Penal Code that such imprisonment shall be rigorous. At the end of that Report we observed[2]:—

"Finally, while our present proposal is limited to the immediate problem of resolving the doubts that have arisen as regards the nature of this punishment, we have noted for future consideration the question whether it is at all necessary even in regard to capital offences and whether it should be retained without modification in regard to the numerous other offences now so punishable. It strikes one as extremely anomalous that an offence like sedition should be punishable with *either* imprisonment for life *or* with rigorous or simple imprisonment which may extend to three years, but not more. These questions will have to be considered when the Indian Penal Code is taken up for revision."

Should life sentence be replaced by specified long term?

3.36. Accordingly, one of the questions put forward in our questionnaire on the Code was whether imprisonment for life as the punishment prescribed for some offences should be replaced by imprisonment for a specified long term, e.g., 20 years. Various comments and suggestions were received indicating no clear preponderance of opinion one way or the other. While there were a considerable number who thought life imprisonment should remain and desired no change, there were others who considered this punishment wrong in principle. Some desired substitution of a fixed period on the ground that the existing practice in almost all States of granting remissions on a liberal

1. 39th Report (Imprisonment for life under the Indian Penal Code).
2. 39th Report (Imprisonment for life under the Indian Penal Code), paragraph 29.

scale reduced the period actually undergone by a lifer to something like 8 or 10 years. In their view, there should be a minimum period below which life imprisonment should not be reduced by the Government. Others favoured substitution of a fixed long period but saw nothing wrong in remissions being granted liberally by the Government at their discretion and were averse to any minimum period being fixed by law or otherwise. Opinions also differed as to what term of imprisonment would be suitable instead of imprisonment for life. Some other interesting suggestions were that the relevant sections should be made more elastic by providing for life imprisonment or a specified long term, in the alternative, that instead of life sentences in one continuous stretch, there should be imprisonment for broken periods, and that a long term of imprisonment followed by a period of surveillance would be a good substitute for a life sentence.

Existing practice in States.

3.37. It is of course true to say that a sentence of imprisonment for life is never carried out literally, though it may occasionally happen that a prisoner so sentenced dies in jail before his case comes up before the State Government for release. The actual period spent in jail by life sentence prisoners naturally varies a good deal and may be as short as 7 or 8 years. While the prison rules and practice obtaining in the States are not absolutely uniform, a life sentence is generally equated to imprisonment for 20 years and remission of different types are given in accordance with rules. The case of every life sentence prisoner is taken up with the State Government on his completing 10 to 14 years inclusive of remissions earned by him by then and the State Government decides whether he should be released, unconditionally or subject to conditions. A favourable decision is implemented by the State Government formally remitting the unexpired portion of the prisoner's sentence under section 401 of the Criminal Procedure Code and ordering his release. Since remission of sentence is entirely within the discretion of the Government under the Constitution as well as the Criminal Procedure Code, the court's power to detain dangerous criminals for longer periods remains unaffected.

Imprisonment for life to be retained.

3.38. It is possible that, owing to the increasingly generous application of the remission system in recent years to life sentence prisoners, the sentence has lost some of its deterrent effect, and criminals are not frightened by the possibility of a sentence of imprisonment for life to anything like the extent to which they were in the past by a sentence of transportation for life. We have, however, come to the conclusion that the punishment of imprisonment for life should be retained and should not be replaced by imprisonment for a specified long term like 20 years.

Restriction of Government's powers to order premature release.

3.39. In this connection we noticed that, when the death penalty for murder was abolished in England in 1965, the court sentencing any person convicted of murder to imprisonment for life was given the power to declare the period which it recommended to the Secretary of State as the minimum period which in its view should elapse before the Secretary of State ordered the release of that person on licence.[1] The same act further provided that no person convicted of murder should be released by the Secertary of State on licence unless the Secretary of State had prior to such release, consulted the Lord Chief Justice of England together with the trial judge, if available.[2] We considered whether it would be desirable to have some such provisions in the Indian Penal Code or the Criminal Procedure, but felt that, in view of articles 72 and 161 of the Constitution which confer full powers on the President and the Governors to grant remissions, provisions in the law fettering those powers might not be valid or proper.[3]

Reduction in number of offences punishable with life imprisonment.

3.40. Besides the four capital offences for which the Penal Code prescribes imprisonment for life as an alternative to the death sentence, there are more than 40 offences for which the punishment may be either imprisonment for life or imprisonment for a term which may extend to 14, 10 or 7 years. In one instance (sedition under section 124A), while the offender may be punished with imprisonment for life, he may not be sentenced to more than 3 years' imprisonment. We have, after a careful scrutiny of these sections, come to the conclusion that the life sentence is only necessary in 16 of them. In the other sections, the life sentence can be safely omitted, the maximum term of imprisonment provided therein being suitably increased.

Simple imprisonment.

3.41. While section 53 indicates that imprisonment for a specified term may be either rigorous or simple and that the former involves hard labour, nothing is said about the nature of simple imprisonment. This is left to be regulated by the Prisons Act, 1894. Section 36 of this Act requires that "provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work except by such alteration in the scale of diet as may be established by the rules of the prisoner in the case of neglect of work by such a prisoner". Under section 59, the State Government makes rules for classifying and prescribing the forms of labour and regulating the period of rest from labour, and presumably, the voluntary labour to which a prisoner sentenced to simple imprisonment may submit "as long as he so desires", is regulated in accordance with those rules.

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1. Section 1(2), Murder (Abolition of Death Penalty) Act, 1965.
2. Section 2, *ibid.*
3. See also 41st Report, Vol. 1, paragraph 29.4.

Compulsory light labour necessary.

3.42. It has been suggested from time to time that simple imprisonment should be abolished. The Madras Jail Reforms Committee reporting in 1951 pointed out that this class of prisoners cannot be compelled to work, idleness does no good to the prisoners themselves and it is also not conducive to jail discipline. An All-India seminar on Correctional Services held in 1969 in Delhi recommended that, as it was desirable to develop the work habit in a prisoner, simple imprisonment as a form of punishment should be abolished.

A life of complete idleness even for a short period would hardly be welcomed by a normal individual. The ideology of compelling prisoners to work in prison has undergone a radical change since the last century. Hard labour was extracted from prisoners mainly with the object of making them feel the punishment imposed on them by the courts. This idea gave place to some extent to making prison labour productive by introducing less harsh and more sophisticated forms of work. Later still, deliberate emphasis was laid on training the prisoner to a craft by disciplined labour. Work in prison is no longer designed principally as an instrument of punishment of the offender or as a direct source of profit to the State but as a method of reforming the prisoner and rehabilitating him on release.

Even where the offence does not carry with it a moral stigma and, either on what ground or some other, the offender is sentenced to simple imprisonment, there need not be any serious objection to his being required to do some work in prison as part of the punishment imposed on him. No doubt there may be special cases where, while the sentence of imprisonment is justifiable, the prisoner's antecedents, character and mental equipment and the nature of the offence committed by him are such that imprisonment coupled with hard labour would be too severe a punishment. We feel that in such cases, some form of light labour should be a part of the punishment of imprisonment to which the offender is sentenced.

Two kinds of imprisonment to remain.

3.43. We also considered a suggestion that the present distinction between simple and rigorous imprisonment should be done away with and all offenders deserving a jail sentence should be simply sentenced to imprisonment for a specified term, leaving it to the jail authorities and the prisons rules to regulate the kind of work to be taken from particular classes of prisoners. The penal systems of most countries provide for two or three different modes of keeping offenders under restraint and require the courts to decide which of them should be awarded in the particular circumstances of a case. Under the Indian Penal Code; the great majority of offences are punishable with "imprisonment of either description" and only a few with simple imprisonment. We think that the legislative policy underlying this classification is sound and should be maintained.

Amendment recommended.

3.44. We accordingly recommend that it should be made clear in section 53 of the Code that simple imprisonment means imprisonment with light labour. Section 36 of the Prisoners Act, 1894, should be suitably amended so that convicted persons sentenced to simple imprisonment could be compelled to perform light tasks regularly throughout the period of their incarceration, and not only "as long as they so desire."

Section 53 revised.

3.45. In the light of the foregoing discussion we propose that section 53 may be revised as follows:—

"53. *Punishments.*—The punishments which offenders are liable under the provisions of this Code are—

(i) death;

(ii) imprisonment for life;

(iii) imprisonment for a term, which may be—

(a) rigorous, that is, with hard labour, or

(b) simple, that is, with light labour;

(iv) forfeiture of property;

(v) fine."

Section 53 A.

3.46. Section 53A was inserted in the Penal Code by Act 26 of 1955 which formally abolished the sentence of transportation, whether for life or for a specific term. The new section laid down rules of construction for the expressions "transportation for life" and "transportation for a term" wherever these occurred in laws other than the Penal Code and the Criminal Procedure Code and in statutory instruments and orders in force on 31-12-1955. The section does not require any change.

Sections 54, 55 and 55A omitted.

3.47. In our last Report[1] on the Code of Criminal Procedure, 1898, we pointed out that the provisions contained in sections 54, 55 and 55A of the Penal Code relating to commutation of death sentences and sentences of imprisonment for life are repeated in section 402 of the Procedure Code but with some slight differences, and recommended that this duplication should be removed and the law stated at one place in the Criminal Procedure Code.[2] Sections 54, 55 and 55A and may accordingly be omitted.

1. 41st Report, Vol. 1, paragraphs 29.10 and 29.11.

2. This has been done in the Code of Criminal Procedure, Bill, 1970, *vide* clauses 442 and 443.

New sections 54 and 55.

3.48. As indicated above in paragraphs 3.34 and 3.35, the following new sections may be inserted at this place:—

"54. *Minors not to be sentenced to death.*—The sentence of death shall not be passed on a person convicted of a capital offence, if at the time of "committing the offence, he was under eighteen years of age and death is not the only punishment provided by law for the offence.

55. *Imprisonment for life to be rigorous.*—Imprisonment for life shall be rigorous."

Section 57

3.49. Section 57 provides a rule for calculating fractions of the punishment of life imprisonment whenever necessary under the Code, *e.g.*, with reference to the punishment for abetment or attempt. Since we are expressly making life imprisonment rigorous, its term equivalent should be rigorous imprisonment for twenty years. The word "rigorous" should be inserted after the words "equivalent to" in section 57.

Section 60.

3.50. Though section 60 which enables a court to direct imprisonment in certain cases to be partly rigorous and partly simple is seldom availed of an practice, we see no harm in retaining it in the statute book.

Section 63.

3.51. Section 63 needs no change.

Section 64 to 67 revised in one section.

3.52. Sections 64 to 67 provide for the imposition of a sentence of imprisonment in default of payment of any fine that an offender has been ordered to pay, and regulate the nature and period of such imprisonment. The arrangement and drafting of these four sections are rather cumbrous and difficult to follow. In a petty case[1] under the Madras Town Nuisances Act, 1889, that went up before the High Court in revision, the offender was sentenced to pay a fine of Rs. 8 and in default of payment to undergo simple imprisonment for a week. The punishment awardable under the Act was a fine not exceeding Rs. 50/- or imprisonment of either description not exceeding 8 days. The judges, after a not very convincing analysis of sections 64, 65 and 67, came to the conclusion that the case was covered by section 65 and not by section 67, and accordingly reduced the sentence of imprisonment in default of payment of fine from 7 days to 2 days'. The reference in section 65 to offences "punishable with imprisonment *as well as* fine" is liable to be understood as excluding offences which may be punished either with imprisonment or with fine but not with both. We therefore propose that the four sections should be combined and put in one section as follows:—

"64. *Sentence of imprisonment for non-payment of fine.*—

(1) In every case in which an offender is sentenced to a fine. it shall be competent to the Court to direct by the sentence

1. *Yakoob Sahib*, (1898) I.L.R. 22 Mad. 238.

that, in default of payment of the fine, the offender shall undergo imprisonment for a certain term.

(2) If the offence be punishable with fine only, such imprisonment shall be simple, and the term thereof shall not exceed—

(a) two months, when the fine does not exceed one hundred rupees,

(b) four months, when the fine does not exceed two hundred rupees, and

(c) six months, in any other case.

(3) If the offence be punishable with imprisonment or fine, or with imprisonment and fine.—

(a) the imprisonment in default of payment of the fine may be of any description to which the offender might have been sentenced for the offence;

(b) the term of such imprisonment shall not exceed one-fourth of the maximum term of imprisonment provided for the offence; and

"(c) such imprisonment shall be in addition to the imprisonment, if any, to which he may have been sentenced for the offence, or to which he may be liable under a commutation of a sentence."

It will be noticed that in sub-section (2) above, which corresponds to the present section 66, we have recommended a doubling of the amounts now mentioned therein.

Section 68.

3.53. Under section 68, imprisonment in default of payment of fine terminates when the fine is "either paid or levied by process of law". In the context it is clear that the word "levied" means realisation of the fine in full by process of law, and not merely taking the necessary steps authorised by law to enforce payment. These two different meanings that the word "levied" bears in legal usage[1] raise difficulties in interpreting section 70 which are discussed below. In regard to section 68, however, we suggest that the word "levied" should be replaced by the word "realised", and that the words "in full" should be added at the end for the sake of clarity.

Section 69.

3.54. Section 69, to which a lengthy illustration is appended, lays down the rule for termination of imprisonment in default when only a part of the fine is paid or levied. The underlying ideas which are simple enough are elliptically, and none too clearly, expressed in an attempt to make the section short, but the long-winded illustration more than counteracts the terseness of the section.

1. See Stroud, Judicial Dictionary (1952) Vol. II, page 1630.

Sections 68 and 69 combined and revised in one section.

3.55. We suggest that sections 68 and 69 may be combined and revised as follows in one section, and the illustration to section 69 omitted :—

"68. *Termination of imprisonment on payment or realisation of fine.*—

(1) Imprisonment imposed in default of payment of a fine shall terminate whenever that fine is either paid, or realised by process of law, in full.

(2) Whenever a part of the fine is paid or is realised by process of law, the term of imprisonment fixed in default of payment shall be deemed to be reduced by such number of days as bears to the "total number of days in that term the same proportion as the amount of fine paid or realised bears to the amount of fine imposed ; and if, at that time, imprisonment in default of payment is being suffered, it shall terminate on the expiration of the reduced term or, if the reduced term has previously expired, it shall terminate forthwith.[1]

(3) In calculating the reduction required under sub-section (2), any fraction of a day less than one-half shall be left out of account and any other fraction shall be counted as one day."

Section 70.

3.56. Under section 70, the fine or any part thereof which remains unpaid may be "levied" at any time within six years after the passing of the sentence. It is well-settled that this period of six years is to be counted from the date of conviction and sentence in the Court of first instance, unless the operation of the sentence has been suspended.[2]

Meaning of "levied".

3.57. But the word "levied" in this section is capable of two different interpretations. As observed by the Bombay High Court[3] in another context, the word has many connotations, and what particular connotation should be given to that word would depend upon the context. In a Peshawar case,[4] the the Judicial Commissioner took the view that the word means the actual realisation of the fine, so that, even if the application for process is made within six years but the fine is not realised within that period, further proceedings cannot be taken.

A different view has been taken in a Bombay case,[5] where it has been held that the section does not prescribe any limit

1. See section 67(2), (U.K.) Magistrates Courts Act, 1952.
2. *Palakdhari Singh* v. *U.P.*, (1962) Suppl. 2 S.C.R. 650; A.I.R. 1962 s.c. 1145 .
3. *Dialdas* v. *Talwalkar*, A.I.R. 1957 Bom. 71, 76.
4. *Mir Ahmed* v. *Collector*, A.I.R. 1943 Pesh. 56.
5. *Gopalan* v. *Union of India*, A.I.R. 1963 Bom. 21, 24, 25, paragraph 8.

of time for completing the proceedings taken for realising the fine through Court process. The High Court noted that, in sections 68 and 69, the term 'levied' is used in the sense of 'realised', but point out that the subject-matter of sections 68 and 69 was entirely different from that of section 70. Sections 68 and 69 dealt with termination of imprisonment which was being undergone in default, and necessarily it would terminate only when the fine is realised. But section 200 stood on a different footing. Once a party sets out to recover money through process of Court, it is not within his volition to bring the proceedings to an end. Where, for example, claims or objections are made in respect of the attachment, the proceedings might be protracted for a long time. "It is difficult to accept the view that the legislature prescribed an outside limit within which the entire process, commencing from attachment of the property and ending with conversion thereof in cash by sale, has to be completed. To hold so may result in tempting convicts to resort to questionable methods for preventing sale of their attached property by protracting the proceedings."

The same view is taken by the Allahabad High Court[1] which held :—

> "It is not necessary that the proceedings for levy of fine should terminate within six years of the passing of the sentence. On the other hand, what section 70 of the Indian Penal Code contemplates is that the proceedings for levy of fine should commence within that period."

Amendment of section 70 proposed.

3.58. We have no doubt that this is the right view to take. In order to make the position clear and avoid argument, we consider it desirable that the word "levied" should be replaced by a reference to commencement of proceedings for realising the fine. We further consider that since the object is to lay down a rule of limitation, the present permissive form—"may be levied at any time within"—is not appropriate and should be changed. Section 70 may be revised as follows :—

> "70. *Limitation for levy of fine.*—No proceedings for realisation of the fine or of any part thereof which remains unpaid, *shall be commenced*—
>
> (a) *at any time* after *the expiry* of six years *from the* passing of the sentence, or
>
> (*b*) if, under the sentence, the offender is liable to imprisonment for a longer period than six years, at any time after the expiry of that period.
>
> 70-A. *Death not to discharge property from liability.*—The death of the offender does not discharge from the liability for recovery of fine any property which would after his death be legally liable for his debts."

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1. *Keshav Datta* v. *The State*, A.I.R. 1967 All. 276, 278, paragraph 8.

Section 71.

3.59. Section 71 contains three propositions each of which limits the punishment for an offence when it is made up, in one way or another, of several offences. It should be noticed that the section confines itself to the punishment aspect, leaving procedural aspects like prosecuting the offender, framing charges against him and convicting him of those charges, to be dealt with in the Criminal Procedure Code.

First paragraph "offence" made up of parts.

3.60. As enacted in 1860, the section contained only the first proposition, namely that "where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided". Two illustrations are appended to this section but they hardly afford an adequate explanation of the major premise of the section, which is that the offence in question is "made up of parts". The first illustration assumes, without expressly saying it, that the fifty strokes are given to Z one after the other at what may be called one beating, and it proceeds to state that, although the offence of voluntarily causing hurt to Z may be analysed into fifty offences (of the same nature), A is liable only to one punishment. If, however, A gives Z twenty strokes in the morning, fifteen strokes in the evening and another fifteen strokes the next morning, A can, despite the illustration, be held to have committed the offence on three different occasions and be punished separately for each such offence. The procedural counterpart for such a case is in section 234(1) of the Criminal Procedure Code.

To take another type of case, if A, a pick-pocket, first takes a silk handkerchief, then a purse, and lastly a cigarette case, from Z's pocket by three separate acts, it would be an interesting exercise in semantics with reference to section 71 whether A should regarded as committing one offence of theft made up of three parts each of which parts is itself an offence of theft or as committing three offences of theft "in one series of acts so connected together as to form one transaction" within the meaning of section 235(1) of the Criminal Procedure Code. It is, however, hardly conceivable that in such a case three charges of pick-pocketing would be brought against A and the Court asked to convict him on those three charges separately.

Different views of High Courts.

3.61. Courts have taken different views as to when exactly it can be said that an offence is "made up of parts" and as to the precise effect of the words "shall not be punished with the punishment of more than one of *such his* offences". In particular, the question of punishment in cases of rioting and causing hurt has given rise to much controversy.

(i) Calcutta view.

3.62. In an old case,[1] the Calcutta High Court held that "the offence of voluntarily causing hurt under section 324, coupled with section 149, of the Indian Penal Code, of which these

1 *Nilmony Poddar* v. *Queen-Express*, (1889) I.L.R. 16 Cal. 442, 446 (F.B.).

appellants have been found guilty, is primarily made up of two parts *viz.* : (1) of their being members of an unlawful assembly, by which force and violence was used in prosecution of its common object, and the members of which were armed with deadly weapons ; and (2) of the offence of voluntarily causing hurt being committed by two other members of the unlawful assembly in prosecution of its common object. The first of the two parts is itself an offence, *viz.*, rioting armed with deadly weapons, under section 148 of the Indian Penal Code. It is nowhere expressly povided in law that, under the circumstances set forth above, the offender may be punished separately for the two offences constituted by the whole and the part respectively. Therefore, we find that all the conditions laid down in paragraph 1 of section 71 of the Indian Penal Code are present here. Consequently the infliction of separate punishments for the two offences is illegal under it."

(ii) Bombay view.

3.63. The Bombay High Court took a different view of the matter and held[1] that where a person is convicted of rioting and causing hurt, the conviction for causing hurt depending on the application of section 149, it is legal to pass two sentences provided the total punishment does not exceed the limit which the Court might pass for any one of the offences. But where the person has himself caused the hurt, the total punishment for the two offences can legally exceed that limit. Independently of the question whether the case fell under section 71, the proper course in a case where a person is convicted of two distinct offences, is to pass a separate sentence for each offence.

(iii) Madras view.

3.64. This view again was dissented from by the Madras High Court in a later case.[2] It held that "the view taken in Bombay is that section 71 is not one that gives directions about mere sentence, but that it only deals with punishments, and that therefore as long as the sentences passed on a conviction for rioting and some form of constructive hurt do not exceed the term that can be awarded for one of those offences, the provisions of sections 71 are complied with, in that the offender is not in the aggregate punished with more than the punishment which can be given to him for one of his offences. With respect I do not think the words 'the offender shall not be punished with the punishment of more than one of such offences' should be so interpreted, but I think rather that the correct view is that taken in Calcutta. Taking it that in the constructive offences with reference to section 149 the offence of rioting is included, as in my opinion it is, then a person who is sentenced for rioting receives by that sentence his punishment for that offence. Any further punishment that is given for a constructive offence under section 149 will again be a punishment for the rioting in that the rioting is included in the latter offence.

1. *Q.E.* v. *Bana Punja*, (1893) I.L.R. 17 Bom. 26 (F.B.),
2. *Pattiah Tope* v. *Emp.*, A.I.R. 1934 Mad. 388.

"I do not think that section 71 is intended to refer to the aggregate punishment, even though the section does not contain the word 'sentence' but only speaks of punishments."

(iv) Sind view.

3.65. A fourth view may also be noted. According to a Sind case,[1] section 149 creates a separate offence and, therefore, in a case of rioting and causing hurt, "where section 149 is applied, section 71, Penal Code must apply", and "though separate convictions may be recorded for these separate offences for which a man may be charged and tried at the same trial according to the provisions of section 235, Code of Criminal Procedure separate sentences should *not* be passed". The judgement, however, adds that each case depends on its particular facts. "It cannot be laid down as a universal rule that where an accused is convicted of offences under sections 147 and 149 read with other appropriate section, section 149 must always include the punishment for the offence under section 147. It might be proved that before a member of the unlawful assembly committed hurt, some members had already committed mischief or "otherwise used force or violence ; if before committing hurt, members of the assembly had broken the glass of shop windows or used force or violence, then they could be properly convicted and sentenced for rioting under section 147, Penal Code, and if thereafter they committed grievous hurt, then it appears to us they could further be convicted of an offence under section 325 read with section 149, Penal Code, and sentenced to separate, and even consecutive sentences, the aggregate length of the sentences not being in such a case a material question, except so far as section 35, Criminal Procedure Code lays down a limit of 14 years."

Amendment proposed.

3.66. This seems to us a needless controversy arising out of the wide wording of the first paragraph of section 71. We consider that this provision should be limited to those cases in which offences *of the same kind* are repeated in a series of acts which practically form one transaction, as indicated in the first illustration. In such a case, there should be no question of punishing the offender for each of the repeated culpable acts and he should be liable to be punished only for the total offence. We propose that the first paragraph should be revised as follows:—

> "Where anything which is an offence is made up of parts, any of which parts is itself an offence *of the same kind,* the offender shall not, unless expressly so provided, be punished *separately for such parts."*

After this amendment, the paragraph will not be applicable to cases falling under section 149 and will not operate as a bar to passing separate sentences on a person convicted of rioting and causing hurt, whether constructively or directly.

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1. *Haji* v. *Emperor,* A.I.R. (1943) Sind 212.

3.67. The second proposition in section 71 is that "whether anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the offender shall not be punished with a more severe punishment than the court which tries him could award for any one of such offences". Section 71, second paragraph.

3.68. It seems clear from the language that separate sentences are justified. In a case where the accused had been convicted and sentenced separately for transporting opium and possessing opium, the Supreme Court observed[1] :— Supreme Court decision that separate sentences are permissible

"As to the sentence which can be imposed, reference to section 35, Criminal Procedure Code and section 71, Penal Code, is necessary. Section 35, Criminal Procedure Code provides that where a person is convicted at one trial of two or more offences, the court may, subject to the provisions of section 71, Penal Code sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment, to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently. Section 35, therefore, permits the passing of separate sentences for different offences and for them to run consecutively, unless the Court directs that they shall run concurrently. This, however, is subject to the provisions of section 71, Penal Code.

It is clear from these provisions that where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. The maximum sentence which could have been imposed upon the appellant for any one of the offences of which he had been convicted was one year's imprisonment.

> "In other words, even if separate sentences were passed under section 9, sub-sections (a) and (b), the sum total of these sentences should not exceed one year's imprisonment. In the present case, the sentence imposed upon the appellant has been in all 6 months, 3 months' imprisonment under each count. It would appear, therefore, that the sentence passed upon the appellant did not contravene the provisions of section 71, Penal Code. In our opinion, the appellant was rightly convicted under section 9 (a) and (b) of the Opium Act, and there has been no illegality in the sentence imposed upon him."

1. *Puranmal* v. *State of Orissa*, (1958) S.C.R. 1162; A.I.R. 1958 S.C, 935.

Difficulty created by section 26, General Clauses Act.

3.69. Section 235(2), Criminal Procedure Code, provides that, "if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences". It therefore seems clear that separate convictions for the separate charges and separate punishments for the same are permissible, but it becomes less clear when we bring into the picture the similar provision made in section 26 of the General Clauses Act. This section reads—

> "Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished *under either or any of those* enactments, but shall not be liable to be punished twice for the same offence."

The wording of this section, particularly the italicised phrase, has led to difficulties in interpretation.

A Bombay decision.

3.70. In a Bombay case,[1] the accused were found travelling in a horse carriage which was also carrying two boxes containing salt and marked with the words "Gujarat Prantik Samiti". The Samiti had been declared an unlawful association under the Criminal Law Amendment Act, 1908. The accused were found guilty under section 47 (c) of the Bombay Salt Act, 1890, for being in possession of contraband salt and also for assisting the operations of an unlawful association and sentenced to a fine of Rs. 100/ on each charge. The court of Session, relying on section 26 of the General Clauses Act, was of the view that no one could be punished twice for the same offence, and made a reference to the High Court. Beaumont C. J. deciding the case said :—

> "The first point to determine is whether there were really two acts constituting two offences, or one single act constituting two offences.*** It seems to me that in this case there was only one act, that act consisting of being in possession of contraband salt. It may well be that the case might have been framed so as to constitute two acts. The evidence might have shown, first of all, that the accused were in possession of contraband salt, and, secondly, that they were taking that salt to the headquarters of an unlawful association with a view to enabling that association to dispose of the salt, in which case I think they would clearly have been guilty of the second offence of assisting the operations of an unlawful association. But here, as far as I can see, the only offence proved was that of being in possession of contraband salt, which happened to be in boxes with the name of the unlawful association upon it. I do not think that the last fact is enough to constitute a second act. That being so, the case falls precisely within the words of section 26, General Clauses Act.***

1. *Emp.* v. *Bhogilal,* A.I.R. 1931 Bom. 409.

"The word 'offence' at the end of that section read with the definition in section 3, sub-section (37), means, I think, an act or omission. In the present case you have got an act alleged to constitute an offence under two enactments, and section 26, General Clauses Act, expressly provides that the accused shall not be punished twice for the same act. I think therefore that the accused were only liable to be fined once, and that the second sentence of fine must be set aside."

Supreme Court decision.

3.71. In a recent case[1] where section 71 of the Code did not fall to be considered, the Supreme Court has held that section 26, General Clauses Act, is conditioned by the identity of the two offences which form the subject of the prosecution or prosecutions. Though in its opening words this section referes to the act or omission constituting an offence under two or more enactments, the emphasis is not on the facts alleged in the two complaints, but rather on the ingredients which constitute the two offences with which a person is charged, as is made clear by the concluding portion of the section, which contains the words "punished twice for the same offence". Therefore, the Court said, the ban imposed by section 26 could not be invoked where the offences are not the same, but are distinct.[2]

Two different situations considered (i) where ingredients of the two offences are identical.

3.72. It is necessary to consider the applicability of section 26 of the General Clauses Act and section 71 of the Penal Code to two different situations. First, where an act made penal by two or more statutory provisions ("enactments" as the General Clauses Act calls them) really constitutes the "same offence"— that is to say, though the legal labels are different, the ingredients are identical. It is by reason of the accidents of legislation that the act happens to fall under two enactments. Such cases, though infrequent, can arise because of the fact that one aspect of the act is dealt with more prominently in one enactment, while another enactment gives prominence to another. Essentially, there is only one culpable act, and though different legal labels lead to two different "offences", the offender should not receive punishment for more than one of them. In this situation, the latter half of section 26, General Clauses Act, should override section 71, Indian Penal Code. Though charges may be framed for each such offence under section 235(2), Criminal Procedure Code—such a course would facilitate consideration of legal aspects separately[3]— punishment should be for one offence only.

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1. *State of Bombay* v. *S.L. Apte*, (1961) 3 S.C.R. 107; A.I.R. 1961 S.C. 578, 581, paragraphs 13, 583, paragraph 16 (on appeal from I.L.R. 1956 Bom. 685).
2. See also *Manipur Administration* v. *Bira Singh*, A.I.R. 1965 S.C. 87, 90, paragraph 6; (1964) 7 S.C.R. 123.
3. *Cf.* section 221, Criminal Procedure Code.

(ii) where offences are not the same.

3.73. The second situation is where acts made penal by two or more statutory provisions constitute distinct offences. The nearness of the ingredients is there. but they are not identical. The offences being not the same, it is logical to permit separate punishments, as the existing law also does. At the same time, to avoid oppressiveness, the aggregate of such punishments should not exceed the maximum prescribed for any of the offences of which he is convicted.

Section 71, last paragraph.

3.74. While this is in fact the effect of the last paragraph of section 71, the wording is not unambiguous. It provides that "the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences". It implies, without expressly saying it, that separate punishments can be awarded for each of the offences. We think it is desirable to bring out this idea clearly. Secondly, it is not appropriate to refer to the punishing power of the particular Court which tries the offender since section 71 is concerned with the general limitation on punishment in two classes of cases.

Re-draft of section 71 suggested.

3.75. In the light of the above discussion, we propose that section 71 may be split into two and revised as follows :—

"71. *Punishment of offence made up of parts.*—Where anything which is an offence is made up of parts, any of which parts is itself an offence *of the same kind,* the offender shall not, unless expressly so provided, *be punished separately for such parts.*

Illustrations

(a) A beats Z twenty times with a stick. His offence of voluntarily causing hurt to Z is made up of the twenty strokes given, each of which is itself an offence of voluntarily causing hurt. A is liable only to one punishment for the whole beating.

"(b) While A is beating Z, Y intervenes, and A intentionally strikes Y. As this is no part of the acts whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z and to another for voluntarily causing hurt to Y.

71 A. *Punishment of offence made up of several offences.*—(1) Where an act constitutes an offence under two or more enactments but the *offences are the* same, the offender shall not be punished *for more than one of such offences.*

(2) Where an act constitutes an offence under two or more enactments and *the offences are not the same,* or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender *may be punished separately for each of such offences*, but shall not be punished *in the aggregate* with a more severe punishment *than could* be awarded for any one of such offences."

Section 72.

3.76. Section 72 relates to "cases in which judgement is given that a person is guilty of one of several offences specified in the judgement but that it is doubtful of which of these offences he is guilty." If in such a case, the same punishment is not provided for all the offences, the offender has to be punished for the offence for which the punishment provided is the lowest. The corresponding procedural provisions are to be found in sections 236 and 367 (3) of the Criminal Procedure Code.

Consonance with section 367(3), Criminal Procedure Code.

3.77. It appears that the framers of the Draft Penal Code intended to deal in section 72 with doubts of fact[1], but in most of the reported cases[2], the section has been interpreted as dealing with doubts about application of the law. We considered a suggestion that, in conformity with the original intention, section 72 might expressly refer to the cases where "the evidence does not enable the Court to pronounce with certainty of which of these offences the offender is guilty" but came to the conclusion that it would be better to relate the wording of section 72 more clearly with the situation referred to in section 367(3) of the Criminal Procedure Code, namely, where the Court passes judgement in the alternative. At the stage of punishment to which section 72 relates, the aspect of doubt loses its importance. Once the Judgement in the alternative is passed under section 367(3), Criminal Procedure Code, the only matter that requires to be provided for in section 72 is the limitation on punishment.

Applicability to offences under other laws.

3.78. According to the definition in section 40, "offence" in section 72 is now confined to offences under the Code. If the definition is omitted as suggested by us, the wider definition of "offence" as given in the General Clauses Act will become applicable. We see no objection, and indeed consider it desirable, that the principle underlying section 72 should apply, not only to Penal Code offences, but also to other offences.

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1. Draft Penal Code, (1837) Note A, Pages 13, 14.
2. *Queen* v. *Jamurha*, (1875) 7 N.W.P.H.C.R. 137; *Khan Muhammad* v. *Empress*, (1887) Punj. Rec. No. 11 (Cr.) page 19;
   Partap v. *Emperor*, A.I.R. 1914 Jahore 549, 550.
   Maktar Ali v. *Emp.*, A.I.R. 1945 Cal, 421 is a case to the contrary.

Amendment proposed.

3.79. In the light of the above discussion, we propose that section 72 may be simplified as follows :—

> "72. *Punishment where judgement in alternative.*—In all cases in which judgement is given in the alternative that a person is guilty of one of several offences "specified in the judgment*** and if the same punishment is not provided for all of them, the offender shall be punished for the offence for which the lowest punishment is provided."

Section 367(3) of the Criminal Procedure Code which is now limited to offences under the Penal Code will require to be amended as follows:—

> "When a person is *convicted* and it is doubtful under which *of two or more* enactments the offence falls, the Court shall distinctly express the same, and pass judgement in the alternative."

Omission of sections 73 and 74 relating to solitary confinement recommended.

3.80. Sections 73 and 74 provide for solitary confinement. We are of the view that this punishment is out of tune with modern thinking and should not find a place in the Penal Code as a punishment to be ordered by any Criminal Court. It may be necessary as a measure of jail discipline which is an entirely different matter, not governed by the same considerations that apply to punishments in the Code. We recommend that sections 73 and 74 may be omitted.

Consequential amendment of section 32, Criminal Procedure Code.

3.81. It will be necessary, as a consequential amendment, to omit the words "including such solitary confinement as is authorised by law", occurring in clauses (a) and (b) of section 32(1), Criminal Procedure Code.

Section 75 and the problem of habitual offenders.

3.82. Section 75 provides enhanced punishment for persons who commit offences against property or offences relating to coin and government stamps more than once. It is an attempt to deal with the problem of habitual offenders and recidivism. Other penal systems also have tried to grapple with this complex problem, but nowhere have the attempts met with marked success, perhaps because the causes of crime are themselves complex. Because the previous sentence has failed both in its object of reforming the offender and in its object of deterring him from crime, the law, as a measure of last resort, concentrates on protecting society from the offender by sending him to jail for a longer term than before. The protection of society against the offender comes in the forefront "by reason of his previous conduct and of the likelihood of his committing further offences," as the latest English provision[1] on the subject

1. Section 37(2), Criminal Justice Act, 1967. The section is considered at length by the House of Lords in *D.P.P.* v. *Ottewell,* (1968) 3 All E.R. 153.

puts it. Based on this policy of protecting the public, section 75 enhances the powers of the Court regarding the sentence to be imposed on the second or subsequent conviction for certain specified categories of offences. The necessity for such a provision in the Penal Code can hardly be disputed.

Offences to which section is applicable.

3.83. We, however, see no reason why the section should be limited in its application to offences relating to coin and stamps and offences against property. Since protection of society is the primary object in authorising the court to pass long sentences, all serious offences under the Code, *e.g.* those punishable with imprisonment for 3 years or more, should logically fall within the purview of the section. Offences under other laws are governed by special considerations and, where necessary, provisions similar to section 75 have been made by the Legislature in those laws[1]. But, so far as offences under the Code are concerned, section 75 is the only place where a provision for enhanced sentence could be made. Not only in the case of offences against the person (Chapter 16), but in the case of many other offences, there is need for special protection against persistent offenders, and there is no basis for making a distinction in this respect as between offences under the various Chapters. Even the present section does not require that the previous conviction should have been under the same Chapter; this shows, that it is not the policy of the law to place an emphasis on the repetition of the particular offence; rather, the policy is to have regard to the criminal tendency established by previous convictions.

We, therefore, recommend that section 75 should be extended to cover all offences under the Code which are punishable with imprisonment upto 3 years or more. We note in this connection that the corresponding provision in England[2] is not confined to offences of a particular character, but applies to every offender convicted on indictment of an offence punishable with imprisonment for two years or more.

Maximum punishment on subsequent conviction.

3.84. There is another point on which the section requires to be widened. The maximum punishment that can be awarded on a second or subsequent conviction under the section is imprisonment for life or for ten years. The period of ten years is, in our view, inadequate, since the longest period of imprisonment under the scheme of the Code is not ten years, but fourteen years. Even where the offender is convicted at the same trial of two offences, the Court is permitted to combine the imprisonment for the two offences, subject to a maximum of fourteen years.[3] We, therefore, recommend that in place of "ten years", "fourteen years", should be substituted.

1. E.g., sections 3 to 9, Suppression of Immoral Traffic Act, 1956.
2. Section 37(2), Criminal Justice Act, 1967.
3. Section 35(2), Criminal Procedure Code.

Maximum interval between previous conviction and second offence desirable.

3.85. While the section requires to be widened on the above points, it is also in need of being narrowed down on others. Even where the offender has, after his first conviction, led a blameless life for a long period but commits an offence thereafter, the relapse into crime entails liability to enhanced punishment. It is clearly desirable that the section itself should take notice of the interval between the previous conviction and the subsequent offence, and should not leave it entirely to the discretion of the Courts. It may be that in practice the Courts do take the length of this interval into account and moderate the punishment for the subsequent offence under section 75. Nevertheless, there is room for giving some indication of the legislative policy in this respect. We think that, between the release from the imprisonment for the previous conviction (or the release from imprisonment for the last conviction, if there be more than one conviction) and the commission of the present offence, the interval should not exceed three years[1], and recommend an amendment of the section to that effect.

Imprisonment on last conviction necessary.

3.86. At present it is not necessary that, at the previous conviction, the offender should have been *sentenced* to any term of imprisonment. All that is required is that the previous offence must have been punishable with imprisonment for three years or upwards, and the subsequent offence must also have been so punishable. We regard this as insufficient. If, on the previous conviction, the offender was not sentenced to imprisonment, (for example, if he was sentenced to fine or released on probation), then, *exhypothesi,* the offender was, on that occasion, regarded as not suitable for the punishment of imprisonment because of the circumstances of the offender or of the offence. The commission of another offence may, no doubt, show the desirability of prison treatment, but does not by itself demonstrate the need for an enhanced term of imprisonment. The maximum imprisonment provided in the particular section relating to the second offence should be more than sufficient. We recommend that section 75 should be amended requiring that, on the last occasion, the offender should, not only have been convicted, but also sentenced to imprisonment.

Conviction in foreign countries for certain offences.

3.87. We considered the question whether, in view of the Convention relating to the Suppression of Traffic in Person (1950), previous convictions in foreign countries for offences of the type dealt with in that Convention should be taken into account. Such offences are punishable under sections 366A, 366B, 367, 370, 371, 372 and 373 of the Code, besides the Suppression of Immoral Traffic in Women and Girls Act, 1956. Since Article 7(1) of the Convention only provides that "previous convictions pronounced in foreign States for offences referred to in the present Convention shall, *to the extent permitted by domestic law,* be taken into account for the purpose

1. *Cf.* section 37(4) (a), Criminal Justice Act, 1967.

of establishing recidivism", we do not consider it necessary to make any such special provision in section 75 of the Code.

Other minor points considered.

3.88. (i) It was suggested that the enhanced punishment of imprisonment for life provided under section 75 is rather harsh. Another point made was that the additional punishment should be relatable to the gravity of the second or subsequent offence. We think, however, that this part of section 75 has not created any difficulty, and the Courts should be left to exercise their discretion in the matter of sentence.

(ii) At present the section does not cover the case where the first conviction is for the abetment of or an attempt to commit, an offence punishable under Chapter 12 or 17 of the Code, and the offender is convicted of such an offence. Since we are proposing the extension of section 75 to cover all offences under the Code, including abetments and attempts, punishable with imprisonment for three years or more, this lacuna will disappear.

(iii) Under the section, the previous conviction must have been before a Court in 'India'. Since the Code does not extend to Jammu & Kashmir and 'India' excludes that State, a previous conviction in Jammu & Kashmir is not relevant for the purposes of section 75. This anomaly, which arises not out of section 75 but out of the extent clause, illustrates the need for extending the Code to Jammu & Kashmir[1].

Recommended redraft of section 75.

3.89. We recommend that section 75 may be revised as follows :—

> "75. *Enhanced punishment for certain offences after previous convictions.*—Whoever, having been convicted by a Court in India of an offence punishable under *** this Code with imprisonment of either description for a term of three years or upwards *and sentenced to imprisonment on such conviction, commits, within three years from the date of his final release from prison after serving that sentence,* any offence punishable under this Code with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to *fourteen* years."[2]

3.90. In view of the numerous amendments proposed in this chapter it will be desirable to replace it by a completely revised chapter in which the sections also are re-numbered in continuation of the sections in the revised chapter 2. The necessary draft[3] has been included in the Amendment Bill appended to this Report.

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1. *See* paragraphs 1.4 and 1.5 above.
2. A corresponding amendment will be necessary in section 348(1) of the Code of Criminal Procedure, 1898.
3. *See* the proposed draft of the Indian Penal Code (Amendment) Bill, clause 6.

CHAPTER 4

General Exceptions

Introductory.

4.1. Chapter 4 with the title "general exceptions", contains a set of rules which limit and override the verbal definition of every offence. The object of putting them together at one place, is, in the words of the Law Commissioners, "to obviate the necessity of repeating in every penal clause a considerable number of limitations".

Section 76.

4.2. Section 76 says that if a person is bound by law to do something and does it, he commits no offence, and similarly if a person believes in good faith, owing to a mistake of fact, but not of law, that he is bound to do something and does it, he commits no offence either. The principle governing the two propositions is sound and we do not propose to disturb it. Difficulties may, of course, arise when deciding whether a particular act was done in good faith or done because of a mistake of fact; but those difficulties do not affect the principle.

Illustration (a) ommission recommended.

4.3. Two illustrations are given below the section. The first, intended to illustrate the first proposition, runs thus :

> "A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence."

The illustration is not well-expressed. It is not clear whether it is the order of the superior officer that has to be 'in conformity with the commands of the law', or it is the soldier's firing on the mob that has to be in such conformity. Further, the situation imagined by this illustration raises controversial questions concerning the duty of a soldier. The proposition sought to be illustrated is self-evident and does not really need any illustration. We think, therefore, that this illustration should be deleted.

Section 79.

4.4. Section 79 which is complementary to section 76, is also in two parts. It says first that an act which a person is justified by law in doing is not an offence, and secondly, that an act that the person doing it believes in good faith, and by reason of a mistake of fact, to be justified in doing, is not offence.

Sections 76 and 79 formally revised.

4.5. While neither section 76 not section 79 requires any modification of substance, the four propositions contained in the two sections should, we think, be paired differently. The first parts of the two sections naturally go together, and may be combined in section 76 as follows :—

> "76. *Act done by a person bound or justified by law.*— Nothing is an offence which is done by a person who is bound by law to do it or is justified by law in doing it."

Similarly, the second parts of the two sections which have the common elements of mistake of fact and *bona fide* belief may be combined in section 79 as follows :—

"79. *Act done by a person by mistake of fact believing himself bound or justified by law.*—Nothing is an offence which is done by a person who, by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be bound by law to do it or justified by law in doing it.

"*Illustrations*"

(a) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

(b) A sees Z commit what appears to A to be a murder. A in the exercise, to the best of his judgement exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence."

Mistake of law under the Code.

4.6. Basing itself on the age-old maxim *ignorantia legis non excusat,* the Code does not recognise any immunity from criminal liability on the ground of a mistake of law. This is made clear by the express wording of sections 76 and 79 which, while allowing an exception for certain acts done under a mistake of fact, exclude acts done by a person who, by reason of a mistake of law, believes himself to be bound by law to do the act or to be justified by law in doing it.

Question of modifying present rule considered.

4.7. We have considered the question whether this position should be modified in any way, but have come to the conclusion that notwithstanding its rigidity, it would not be desirable to change the rule.

One of us, however, is of a different opinion which he has expressed in a separate note.[1] Broadly, his suggestion is that where the mistake of law relates to a provision of a rule, bye-law, order or notification made under an Act of the legislature, and the accused person's mistake is of such a nature that he could not have avoided it by due diligence, then the mistake should be a defence, but the burden of proving it should be on the accused person.

. See separate Note by Shri R.L. Narasimham,

Justification for the rule.

4.8. Various justifications for the rule have been advanced in the past by jurists. One is that the law is definite and ascertainable and everyone may therefore be presumed to know the law. If this is the basis of the present position, it is clearly inadequate. The vastness and complexity of penal legislation in the modern State is not to be denied and the presumption about everyone knowing the law cannot stand scrutiny for a moment.

If one could assert that every rule of criminal law represents what is morally right, it would naturally follow that a person violating the rule should not be allowed to plead ignorance, but such an assertion cannot be accepted as valid in regard to many injunctions of the criminal law. While, of course, many of them are based on undisputed moral principles, there are, on the other hand, a large number which one could only describe as a moral because they do not claim to be based on ideas of what is morally right and morally wrong.

The real justification for not allowing mistake of law as a defence seems to be that the operation of a provision of the law is intended to be independent of its being known to everybody and it ought to be so. If it were not so, great uncertainty will be introduced in the enforcement of the law and may well lead to injustice.

Practical difficulties in the absence of the rule.

4.9. But for the rule, many investigations into offences would have to branch off into collateral inquires because it would be obviously unfair to send up the person charged for trial when there is something in his plea of ignorance of the legal provision. Difficulties would be still greater when the accused is prosecuted. True, the Court has even now to inquire into the state of mind of the accused for various other purposes; but there are materials on which the court draws inferences as to mental states like fraud, dishonesty, malice and absence of due care. Subjective though these elements may be, they are investigated on the basis of objective facts. The position will be very different when the court has to determine whether the accused knew or correctly interpreted the content of a statutory provision or a provision of subordinate legislation. The accused has merely to assert in the witness-box that he did not know of it and the prosecution will immediately be faced with the task of disproving his assertion by cogent evidence.

Due diligence test not practical.

4.10. Would the case be materially different if, instead of allowing the plea of ignorance of law in all cases, it is allowed only when the accused could not have known the provision of law even with due diligence ? We are afraid that the difficulties of the trying court would not be substantially reduced. Unless every statutory rule, order, bye-law or notification has been translated into the language of the accused and widely published (and where the accused is an illiterate or semi-literate person, was also explained to him), he could say that even with due diligence he could not have known the law in question.

Subordinate legislation not to be excluded from scope of rule.

4.11. It is unavoidable in modern regulatory legislation that a great many details of the law have to be left to be prescribed by means of rules and orders. Enforcement of such statutory rules and orders is the very basis for the enforcement of the parent Act. To introduce the concept of "invincible ignorance" as a legitimate defence in relation to the former but not in relation to the latter might well result in rendering the latter largely ineffective. As a learned writer puts it, "such statutes are not meant to punish the vicious will but to put pressure on the thoughtless and inefficient to do their whole duty in the interest of public health safety or morals[1]." We do not, therefore, share the view that a possible area for allowing ignorance of law as a defence may include "misdemeanours punishable only by small fine, various ordinances and technical regulations of administrative boards", and in these cases "actual knowledge of the law should be required[2]." We think that the present rule of ignorance of such regulations affording no justification for contravening them has to remain.

Argument of stigma attaching to conviction considered.

4.12. It has been urged that even a conviction for a contravention of a statutory rule or order carries a stigma, and it is unfair that such stigma should attach to a person when he knew nothing about it and when he could not, with due diligence, have known sufficiently about it. We think this is somewhat exaggerated. The stigma arising out of a conviction for an offence like not fencing a machine in the prescribed manner, or not constructing a bath room in accordance with the municipal bye-law, or failing to file a tax return by the prescribed date, is negligible.

Majority of Judges against modifying present rule.

4.13. We should mention here that a majority of the judges of High Courts and of the members of the higher judiciary who gave an opinion on the question were against recognising mistake of law as a defence or even as a mitigating circumstance to be expressly provided in the Penal Code.

Foreign precedents may not be suitable.

4.14. We find that the penal codes of some countries provide for recognising ignorance of law as a proper defence. We feel, however, that the attitude of the courts towards such provisions in the code is of more importance than the provisions themselves. The magnitude of the population, the number of prosecutions involving such issues, the literacy of the citizens and other similar factors, which vary from country to country, will also have to be taken into account. What may have worked well elsewhere may not necessarily be suitable for India.

Modification of present rule not recommended.

4.15. One of us considered that to prevent hardship in extreme cases, there should be an express power given to the Court to award a punishment different in nature from the punishment prescribed in the law, or lower in degree than the minimum punishment. We think however that, even under

1. Roscoe Pound, the Spirit of the Common Law, p. 52.
2. Jerome Hall, General Principles of criminal Law, 1960, p. 404.

the existing provisions, where the Court is satisfied about the genuineness of the plea of ignorance, it takes that fact into account while passing sentence. We do not therefore recommend any change in the existing position.

Section 77.

4.16. Section 77, which protects a Judge while acting judicially, needs no change.

Section 78.

4.17. Section 78 protects acts done in pursuance of a judgment or order of a Court of Justice, although the Court may not have had jurisdiction to pass such judgement or order, so long as the person acting under it believes in good faith that the Court had such jurisdiction. This protection is obviously necessary if decisions of the Courts are to be promptly enforced. We feel, in fact, that there ought to be no right of private defence against the enforcement of a Court's decision—a matter we deal with later[1]. Section 78 should, therefore, stand as it is.

Section 80.

4.18. Section 80 says that a person is not liable for the unintended and unknown consequences of his 'lawful act, done in a lawful manner by lawful means and with proper care and caution'. The illustration to the section brings out the meaning clearly, and no change is required.

Section 81 revised.

4.19. Section 81 states that nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property. Then follows an explanation that it is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

The intention of this provision is clear enough. The main ideas being (i) the act which the law excuses is done in order to avoid other harm, (ii) the harm to be avoided must, in its nature and imminence, be such as to justify the risk of doing an act likely to cause harm, and (iii) the act is done in good faith without any intention of causing harm. One of these ideas is put in the Explanation, while the other two are in the main section. This splitting up does not seem to be necessary. The general exception will be easier to understand if it is stated as follows :—

> "81. Nothing is an offence which, though done with the knowledge that it is likely to cause harm, is done in good faith for the purpose of preventing or avoiding other harm to person or property, provided the latter harm is of such a nature and so imminent as to justify or excuse the risk of doing the act with such knowledge."

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1. See para. 4.

The illustrations help in understanding the meaning and should be retained.

Section 82.

4.20. Section 82 completely exempts children under 7 years of age from criminal liability in respect of any act done by them. The basis of this total exemption is the assumption that a child below that age does not realise, and consequently does not intend, the consequences of his act and the necessary culpable state of mind must be deemed to be absent. In recent years there has been an increased weight of informed opinion in favour of changes in our methods of dealing with delinquet children. This changed attitude is mainly due to the awareness that their deliquency stems largely from parental neglect, parental conflict, association with evil elements, poverty and similar factors which operate more intensively on children than on adults. Special legislation in the form of Children Acts provides for a variety of measures designed to correct, rather than punish, the erring child. The two main objectives of such measures are to take children as far as possible outside the ambit of criminal liability and the jurisdiction of the ordinary criminal Courts, and to make such arrangements for their correction, education and welfare as are appropriate.

Views on increasing minimum age of criminal responsibility.

4.21. Noticing that in many countries the minimum age of criminal liability is fixed higher than in the Indian Penal Code, we included in our questionniare, a question, "Do you consider that any increase is necessary in the minimum age of criminal responsibility which is 7 years at present. If so, what should it be ?"

Among those who expressed an opinion on this question, a small majority were against an increase in the age mentioned in section 82. But there were a considerable number who would have it raised to 10, and some who even favoured 12 years as the minimum age.

Judges of High Courts were mostly against any change in the minimum age. According to some of them, there was no scientific basis for associating culpability with a particular age in the development of a child. Some thought that raising the minimum age might lead to increase in juvenile crime. It was also said that this was not a very great problem and sections 82 and 83 could be left as they were.

A Sessions Judge stated that "in view of the fact that children are now being sent to educational institutions at comparatively early ages, it is not necessary to increase the age from 7 years in order to fasten criminal liability. Besides, the sooner the criminal habit of a boy is curbed, the better it would be. The curb may be enforced by sending the boy to a reformatory school or some such institution."

Per contra, another Sessions Judge stated that in his opinion a child upto the age of 10 years was not capable of understanding the gravity of an offence committed by him and therefore the minimum age of criminal responsibility should be 10 years.

Law in other countries.

4.22. The law in this respect varies considerably in other countries. In England the minimum age was raised to 10 quite recently in 1963. Under the Children and Young Persons Act, 1969, while the age of criminal responsibility remains unchanged, a child under 14 years cannot be charged and prosecuted for any criminal offence except homicide. A new concept of unenforceable criminal responsibility has been introduced in the case of children between 10 years and 14 years of age. The commission of an offence is, however, a possible pre-condition for a care or supervision order.

In Argentina, when a minor under 16 years of age commits a crime classified in law as a felony, a competent Judge proceeds to verify the crime and to obtain other information through the National Council of Minors, and if he considers it advisable, he may order the internment of the minor in an institution under the Council.

In Australia, the minimum age is 7 years in Queensland, Western Australia and Tasmania, and 8 years in New South Wales, Victoria and South Australia.

In Canada, the law is similar to ours. A child under 7 years is completely exempt, and a child between the ages of 7 and 14 is exempt unless he is competent to know the nature and consequence of his conduct and to appreciate that it was wrong.

In France, it would appear that a child below 13 years of age is not punishable. If from the circumstances and the personality of the offender, it has been decided to impose a penal sentence upon a minor above the age of 13, elaborate rules are laid down requiring the substitution of a lesser sentence for the normal sentence.

While the minimum age is 14 in the Federal Republic of Germany and in Norway, it is 15 in Denmark.

In the United States the age of absolute incapacity varies from State to State between 8 years and 12 years. In one State, New Jersey, it is as high as 16 years.

As regards Asian countries, the minimum age is 7 years in Thailand, Ceylon, Iraq, Syria and Lebanon; 9 years in the Philippines; 11 years in Turkey and Iran; and 14 years in Japan.

Increase of minimum age to ten recommended.

4.23. In view of this wide variation, we carefully considered the question whether any increase in the minimum age is necessary or desirable. The age at which a child can understand the nature of his act and its consequences is not necessarily 7 years it could be 8 or 9 or 10, or even more. The age of 7 mentioned in section 82 is in a sense arbitrary, but then any other age would be equally arbitrary.

With the establishment of juvenile courts and other agencies exclusively concerned with juvenile crime, the need for the application of the penal law in the ordinary sense decreases in the case of children. Society could well regard delinquent children, not as criminals in the sense in which adult offenders are regarded, but as persons requiring treatment. An amendment of section 82 could with some justification, be suggested on the ground that the stigma of a criminal conviction should not attach to any child below, say, the age of ten. The act of the child should not amount to an offence, the child committing the act should not be liable to arrest or prosecution, and the ordinary machinery of the criminal courts should not be applicable to him even in theory.

What higher age should be substituted from this point of view can be a matter of controversy. Having regard to conditions generally existing in Indian families, we are inclined to suggest 10 years as the minimum age. Upto that age parents, by and large, are still able to control the conduct of the child and no serious harm is likely to be caused if criminal liability is not attached to the child's act.

Amendment of section 82.

4.24. At the same time, it seems to us very necessary that legislation for the care and protection of children should be enacted in all those States[1] where it has not so far been enacted, and it should be properly enforced in the States where it has already been enacted. On the assumption that this will be done, we recommend that section 82 may be amended by substituting "ten years" for "seven years".

Section 83 omitted.

4.25. With the above amendment of section 82, section 83 will practically lose its utility. We do not think it is worthwhile retaining it for offending children between the ages of 10 and 12, and propose its omission.

Section 84 based on M'Naghten Rules.

4.26. Section 84 exempts the act of a person of unsound mind from criminal liability in the following terms:—

> "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

1. Bihar, Orissa and Rajasthan.

In his Draft Penal Code, Macaulay had suggested two sections (66 and 67), one stating that "nothing is an offence which is done by a person in a state of idiocy" and the other stating that "nothing is an offence which a person does in consequence of being mad or delirious at the time of doing it." The Law Commissioners, in replacing these two sections of the Draft Penal Code by section 84, appear to have adopted in a brief and succinct form the test laid down in England by the so-called "M'Naghten Rules"[1]. The essence of these Rules is contained in the following passage which is constantly quoted or referred to by judges:—

> "The jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong."

Rule criticised as based on misconception of nature of insanity.

4.27. The British Royal Commission on Capital Punishment, which made its Report in 1953, noted that this test "was strongly attacked almost as soon as it was formulated, mainly by members of the medical profession, but also by lawyers, notable by Fitzjames Stephen, and it has been subjected to constant criticism ever since"[2]. Doctors with experience of mental disease "have contended that the M'Naghten tes is based on the "entirely obsolate and misleading conception of the nature of insanity, since insanity does not only, or primarily, affect the cognitive or intellectual faculties, but affects the whole personality of the patient, including both the will and the emotions. An insane person may therefore often know the nature and quality of his act and that it is wrong and forbidden by law but yet commit it as a result of the mental disease. He may, for example, be overwhelmed by a sudden irresistible impulse; or he may regard his motives as standing higher than the sanctions of the law; or it may be that, in the distorted world in which he lives, normal considerations have little meaning or little value."[3] However, "the Court of Criminal Appeal has consistently uphold the validity of the Rules and refused to approve their extension to cover the 'irresistible' or 'uncontrollable' impulse. The Court has also declined to enlarge their interpretation in other respects. Thus it has held that the words 'the nature and quality of the act' must be taken

1. These are the replies of the judges to the five questions put to them in 1843 by the House of Lords in the case of *Daniel M'Naghten*. The passage quoted is from the answer to questions II and III.
2. Report, para. 227.
3. Report, para. 227.

to refer only to the physical character of the act and not to distinguish between its physical and moral aspects and that 'wrong' means in effect 'punishable by law'.[1]"

Tests recommended by a Royal Commission in 1953.

4.28. After a deep and extensive study of the laws of other countries as well, the Royal Commission came to the conclusion that the test of responsibility laid down by the M'Naghten Rules was so defective that the law ought to be changed. They suggested that, if the alteration were to be made by extending the scope of those Rules, the formula might be:—

> "The jury must be satisfied that at the time of committing the act the accused, as a result of disease of the mind or mental deficiency, (a) did not know the nature and quality of the act, or (b) did not know that it was wrong, or (c) was incapable of preventing himself from committing it."[2]

They, however, considered that it would be preferable to abrogate the M'Naghten Rules and leave the jury to determine whether, at the time of the act, the accused was suffering from disease of the mind or mental deficiency to such a degree that he ought not to be held responsible. Neither recommendation was accepted in Britain.

Provision in some Criminal Codes.

4.29. We find that the criminal codes of some of the Provinces of Australia provide for the plea of "irresistible impulse". Thus, the Tasmanian Criminal Code enacts in section 16:

> "(1) A person is not criminally responsible for an act done, or for an omission made, by him—
>
> (a) when afflicted with mental disease to such an extent as to render him incapable of—
>
> (i) understanding the physical character of such act or omission; or
>
> (ii) Knowing that such act or omission was one which he ought not to do or make; or
>
> (b) When such act or omission was done or made under an impulse which, by reason of mental disease, he was in substance deprived of any power to resist.
>
> (2) The fact that a person was, at the time at which he is alleged to have done an act or made an omission, incapable of controlling his conduct generally, is relevant to the question whether he did such "act or made such omission under an impulse which by reason of mental disease he was in substance deprived of any power to resist."

1. Report, para. 229.
2. Report, para. 317.

Similar provisions are to be found in the Criminal Codes of Queensland and of West Australia.

The American Law Institute has suggested[1] the following test:—

> "(1) A person is not responsible, for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality[2] [wrongfulness] of his conduct or to conform his conduct to the requirements of law.
>
> (2) As used in this Article, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct."

In France, article 64 of the Penal Code provides that "there is no crime or offence when the accused was in a state of madness at the time of the act or in the event of his having been compelled by a force which he was unable to resist."

Article 10 of the Swiss Penal Code is to the effect that "any person suffering from a mental disease, idiocy or serious impairment of his mental faculties who, at the time of committing the act, is incapable of appreciating the unlawful nature of his act or of acting in accordance with this appreciation cannot be punished."[3]

We may also refer to "the Durham Rule', followed in the District of Columbia (U.S.A.). The rule is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect. We use 'disease' in the sense of a condition which is considered capable of either improving or deteriorating. We use 'defect' in the sense of a condition not considered capable of either improving or deteriorating and which may be either congenital, or the result of injury, or the residual effect of a physical or mental disease.[4]

Questions on the subject and opinions thereon.

4.30. In view of the strong criticism to which the M'Naghten Rules have been subjected in Britain and in view of the recognition given to the plea of "irresistible impulse" in the penal laws of several countries we included in our Questionnaire the following question:—

> "12. (a) Should the existing provision (section 84) relating to the defence of insanity be modified or expanded in any way ?

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1. A.L.I. Model Penal Code, proposed Official Draft 1962—Section 4.01.
2. The choice between the words "criminality" and "wrongfulness" is left open by the Institute.
3. The law on the subject in some other countries is given in Appendix a of the Royal Commission s Report, *op. vit.* pp. 407 to 413.
4. *Durham* v. *United States.* (1954) 94 U.S. App. D.C. 228; 14 F. 2d. 862.

(b) Should the test be related to the offender's incapacity to know that the act is wrong or to his incapacity to know that it is punishable ?

(c) Should the defence of insanity be available in cases where the offender, although aware of the wrongful, or even criminal, nature of his act, is unable to desist from doing it because of his mental condition?"

The majority of the views expressed on part (a) of the question were strongly opposed to any change in the existing section. Most of these replies seemed to assume that, even theoretically, the present provision is adequate. They pointed out a number of practical difficulties which were likely to arise, if the provisions of the section were made more liberal. The decision would then have to depend on medical opinion to a greater degree than at present. Serious doubts were expressed as to whether medical experts of the requisite quality would be available all over India particularly in the districts. These opinions also stressed that the present provision caused no practical difficulty; and if in a particular case not falling strictly within the terms of section 84, the mental condition of the accused was such as to deserve special consideration, it could be left to the prorogative powers of commutation and remission vested in the President and the Governor.

As regards part (b) of the question also, the majority of the replies suggested no change. Some expressed the view that the test should be knowledge of what is "wrong", and others that it should be knowledge of what is punishable by law.

As regards part (c), there was little support for specifically including "irresistible impulse" in section 84. Some of the opinions considered that this was not strictly insanity. The main objection was that any such provision would make the trial of the issue more difficult for the judges than the present provision.

"Unsoundness of mind" covers mental disease and mental deficiency.

4.31. A few questions arising directly out of the wording of section 84 were considered by us. It will be noticed that while the M'Naghten Rules refer to "disease of the mind" the Penal Code uses the expression "unsoundness of mind". This appears to cover not only any form of insanity or mental disease, but also any form of mental deficiency, like idiocy, imbecility and even feeble-mindedness. A temporary delusion may also be regarded as unsoundness of mind. It might be more in accord with medical terminology to use both the expressions "disease of the mind" and "mental deficiency" instead of the somewhat vague and unprecise expression ,'unsoundness of mind". Since, however, no difficulty appears to have been felt in understanding the sense in which this is used in the Penal Code, we do not think it is worthwhile changing it.

Meaning of "Wrong" in M' Naghten Rules.

4.32. The crucial test under section 84 is whether the accused, at the time of committing the offence, is incapable of knowing "that he is doing what is either wrong or contrary to law." The M'Naghten Rules only refer to the accused not knowing that he is doing what is wrong[1]. The question whether the word "wrong" these Rules means legal wrong or moral wrong has been debated at length in Australia and in England. In Australia[2], the following direction to the jury given by Dixon J. is considered to be a correct statement of the law:—

> "The question is whether he was able to appreciate the wrongness of the particular act he was doing at the particular time. Could this man be said to know in this sense whether his act was wrong if, through a disease or defect or disorder of the mind he could not think rationally of the reasons which to ordinary people make that act right or wrong ? If through the disordered condition of the mind, he could not reason about the matter with a moderate degree of sense and composure, it may be said that he could not know that what he was doing was wrong."

In England,[3] however, it has been emphatically held by the Court of Criminal Appeal that "courts of law can only distinguish between that which is in accordance with the law and that which is contrary to law", and "there is no doubt that in the M'Naghten Rules 'wrong' means contrary to law and not 'wrong' according to the opinion of one man or of a number of people on the question whether a particular act might or might not be justified."

Ambiguity to "either wrong or contrary to law" in section 84.

4.33. Indian case law on the subject seems to leave the position obscure. In a Calcutta case[4], it was observed:—

> "We are satisfied that the appellant knew the nature of his act. What we have to see is whether he knew that what he was doing was either wrong or contrary to law. If he knew that what he was doing was wrong, then he will not be protected even if he did not know that it was contrary to law. If he knew that what he was doing was contrary to law, then also he could not be protected even though he did not know that what he was doing is wrong."

According to this view, it would be necessary for the accused to show that, by reason of unsoundness of mind he did not know that his act was wrong and also that he did not know that it was contrary to law.

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1. See para. 4.26. above.
2. *Porter*, (1933) 55 C.L.R. 192, 189; approved in *Stapleton*, (1952) 86 C.L.R. 358, 367.
3. *R.* v. *Windle*, (1952) 2 All E.R. 1 (Lord Goddard, C.J.).
4. Ceron Ali v. Emp., A.I.R. 1941 Cal. 129, 130 (Sen and Roxburgh, JJ.).

In a later case,[1] however, the same High Court observed:—

"Of the three elements necessary to be established under section 84, *any of which must be established by an accused to obtain the benefit of the provisions,* it appears that, first, the nature of the act was clearly known to the accused; secondly, that he knew that the act was contrary to law, or we have said this was probably known to him; but (the) third element on which the case really turned is, whether the accused knew that the act was wrong."

Curiously, no reference is made to the earlier judgment.

Inasmuch as it is for the accused to show that he comes within the general exception, or in other words he did not know *either* the wrongfulness *or* the criminality of his act, it appears to us that the earlier judgment states the position correctly. The view taken in the later Calcutta case was dissented from by the Allahabad High Court.[2]

"Diminished responsibility".

4.34. Although the M'Naghten Rules still hold the field in England despite the recommendations of the Royal Commission, a new defence to murder, known as "diminished responsibility", was introduced by the Homicide Act of 1957. If established, it entitles the accused to be found guilty of man slaughter instead of murder. Section 2 of that Act enacts :

"(1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

(2) *** *** ***

(3) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of man slaughter."

We considered whether it would be desirable to have some such provision in the Code, either restricted to culpable homicide or, more generally applicable to all offences, as a supplement to section 84, but decided against it, mainly because of the complicated medico-legal issues it would introduce in the trial. So far as murder cases are concerned, the Code already gives discretion to the Courts in the matter of sentences, the death sentence not being obligatory.[3] As regards other offences also,

1. *Ashiraddin Ahmed* v. *The King,* A.I.R. 1949 Cal. 182, 183 (Roxburgh and Blank, JJ.).

2. *Lakshmi* v. *State,* A.I.R. 1954 All. 534, 536.

3. *See* also 35th Report of Capital Punishment, paragraph 9.24.

there is no need to provide specially that, if the "diminished responsibility" is established, the offender will receive lesser punishment. The mental abnormality of the offender will naturally be taken into account by the court like any other extenuating circumstance while deciding upon the sentence to be awarded.

Section 84 to remain as it is.

4.35. In the result, our view is that, in spite of its shortcomings, section 84 need not be altered in any way.

Sections 85 and 86.

4.36. Section 85 equates involuntary intoxication with unsoundness of mind and lays down the same rule for excusing a person. The next section dealing with voluntary intoxication provides that "where an act done is not an offence unless done with *a particular knowledge or intent*, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the *same* "knowledge as he would have had if he had not been intoxicated". The effect is that voluntary intoxication cannot be pleaded as a defence on the ground that the intoxicated person did not have the particular kind of knowledge or intent mentioned in the definition of the offence with which he is charged.

Self-induced intoxication and punishment.

4.37. While the Code makes it clear that voluntary or self-induced intoxication does not constitute an excuse for committing an offence, it is silent on the point whether it should be treated as a mitigating or extenuating circumstance for the purpose of sentence. We included in our questionnaire the question:—

> "When a person commits an offence in a state of intoxication (self-induced), should that be made a ground for enhanced punishment ?"

Only a few were in favour of the suggestion as a general proposition applicable to all cases where a person commits an offence when in a state of intoxication. One or two were in favour of providing enhanced punishment in the case of offences based on rashness or negligence, since intoxication would probably have contributed to that mental state. Another suggestion was that enhanced punishment ought to be provided in those cases where the offender has deliberately intoxicated himself for committing the offence.

The majority, however, were not in favour of the suggestion. They were of the view that no special provision was necessary in the Code, that depending on the circumstances of the case, intoxication could be regarded as enhancing culpability (*e.g.*, where the offender put himself in that condition in order to commit the crime ruthlessly) or it could be regarded as extenuating the offence, and that these were matters of detail which should be left to the judge to take into account when deciding the appropriate sentence.

Agreeing with this view, we have come to the conclusion that a provision for enhanced punishment is not desirable and that the matter may be left to the discretion of the courts as at present.

Knowledge and intention under section 86.

4.38. The language of section 86 has caused some confusion. As mentioned by the Supreme Court, "while the first part of the section speaks of intent or knowledge, the latter part deals only with knowledge, and a certain element of doubt in interpretation may possibly be felt by reason of this omission. If in voluntary drunkenness knowledge is to be presumed in the same manner as if there was no drunkenness, what about this excuse where *mens rea* is required ? Are we at liberty to "place intent on the same footing and, if so, why has the section omitted intent in its latter part ?" To this question the Supreme Court's answer is, "So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober, but so far as intention is concerned, we must gather it from the attending circumstances of the case, paying due regard to the degree of intoxication."[1] We consider that it would be desirable to rectify this anomalous position by omitting the reference to intention altogether.

Sections 85 and 86 combined and revised.

4.39. We recommend that sections 85 and 86 which deal with the same subject may be combined in one section and revised as follows:—

"85. *Act of a person who is intoxicated.*—(1) Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law:

Provided that such intoxication was not self-induced."

"(2) Where an act done by a person in a state of intoxication which is self-induced will be an offence if done with a particular knowledge, he shall be liable to be dealt with as if he did the act with the knowledge he would have had if he had not been intoxicated.

(3) Intoxication is self-induced in a person when he voluntarily causes the state of intoxication in himself."

Sections 87, 88 and 89.

4.40. Sections 87, 88 and 89 deal elaborately with different situations where bodily harm is caused, but with consent given by or on behalf of the person to whom it is caused. After a close scrutiny of the sections we do not find any need to alter them.

1. *Basdev* v. *The State of PEPSU*, (1956) S.C.R. 363, 365.

Section 90.

4.41. Section 90 defines the situations in which the consent apparently to be given by a person is not sufficient for purposes of the Code. It was suggested that consent obtained from a person by putting him under hypnotic or other occult influence should be specifically mentioned in the section. We have little doubt that if ever a concrete case of this sort came up, the courts would have no difficulty in holding such consent to be insufficient even under the existing provision. The influence on the mind could be regarded as having produced either a misconception of fact or an inability to understand the nautre and consequence of that to which the person gives his consent. It does not appear necessary to amplify section 90 to cover such cases which in any event are not of practical importance.

Section 91.

4.42. No change is required in section 91.

Section 92.

4.43. Section 92 provides for a situation of emergency where there is no time to obtain the consent either of the person affected or of his guardian, and the law therefore says that, if the act causing harm or likely to cause harm is done for the benefit of the person concerned and done in good faith, it is no offence. The same safeguards as occur in section 89 are provided in this situation also, and the Explanation attached to the section says that pecuniary benefit is not "benefit" within the meaning of the section.

The type of case envisaged by the section is that of a surgeon who suddenly finds it necessary to perform an operation and has no time to obtain anybody's consent. He is protected, subject to the safeguards mentioned, if he acts in good faith for the patient's benefit. A suggestion was made that the power of a surgeon in such circumstances should be further widened, so as to do away with the requirement of consent altogether even if there be time to obtain consent. We feel no justification for such a change, since, under the law as it is, a surgeon has sufficient protection in suitable cases, and to widen that protection would be somewhat risky, apart from placing too heavy a burden on a surgeon. We are, therefore, not proposing any change in section 92.

Section 93.

4.44. Nor is any change needed in section 93, which protects a communication made in good faith for the benefit of the person to whom it is made.

Section 94 revised.

4.45. Section 94 embodies the principle that a person compelled by force or threat of force to do any act should not be punished for that act. To this there are two exceptions, namely, murder and waging war against the Government of India[1] (which is the only offence against the State punishable with death). Further, the threat must be of instant death to the person made to commit the offence.

1. Section 121.

Another condition is that the person so threatened should not have placed himself in that situation of his own accord. It is only right that the law should in no circumstance excuse murder or waging war against the State and, to that extent, the stringent rule contained in section 94 should remain as it is.

There are, however, two directions in which we feel that the defence of duress can be usefully extended. First, we think that for practical purposes threat of serious bodily injury can be, and usually is, as compelling as the threat of death. It may be mentioned here that in England in answering the question what is a sufficiently serious threat to amount to duress, "Blackstone refers to death or other bodily harm, Stephen to death or grievous bodily harm and Lord Goddard, C.J., in *Steane*[1] to violence or imprisonment.[2]" According to Russell, the view "is freely held that threats of immediate and serious physical suffering, such as death or grievous bodily harm, should excuse from liability a person who may have committed a lesser offence, though certainly not a grave offence such as murder[3]". A person threatened with grievous bodily harm should, therefore, be permitted to plead duress as an excuse in the same way as a person threatened with death.

Secondly, we think—and even more firmly—that threat of death or serious bodily injury to someone very near and dear to a person, can be even more compelling than threat of injury to a person himself. It has been said, and we agree, that "many a man who regards his own person safety as of little significance will be subjected to the most extreme stress of mind if confronted with a threat to kill or seriously injure his wife or child.[4]"

We propose, therefore, to include such a threat in the rule in section 94, limiting, however, the list of near relatives to the children, the parents and the spouse of the person threatened. The two Explanations should be put as illustrations, as they deal with special situations and do not contain a clarificatory provision.

In the light of the above, section 94 should be redrafted as follows:—

"94. *Act to which a person is compelled by threats.*—Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats which, at the time of doing it, reasonably

1. (1947) 1 All E.R. at page 816.
2. Smith and Hogan, Criminal law (2nd Edn.) page 144.
3. Russell on Crime, (12th Edn,) Vol. I, page 90.
4. Edwards, "Compulsion, Coercion and Criminal Responsibility." (1951) 14 Modern Law Review 296, 301.

cause the apprehension that instant death or *grievous bodily harm, either to that person or to any near relative of that person present when the threats are made,* will otherwise be the consequence :

Provided the person doing the act did not, of his own accord, or from a reasonable apprehension of harm to himself short of instant death *or grievous bodily harm,*[1] place himself in the situation by which he became subject to such constraint.

"*Explanation.*—In this section,—

(a) 'grievous bodily harm, means permanent privation or impairment of the sight of either eye or the hearing of either ear, or privation of any organ, member or joint of the body[2] ;

(b) 'near relative' means parent, spouse, son or daughter.

Illustrations

(a) A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception.

"(b) A smith seized by a gang of dacoits and forced, by threats of *instant death or grievous bodily harm,* to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception."

Section 95.

4.46. Section 95 is an application of the maxim *de minimums non curat lax* to the field of criminal law. If the harm caused by an act is so small that no man of ordinary sense and temper would complaint of it, the act does not amount to an offence. The object of this provision is "to exclude from the operation of the Penal Code those cases which, from the imperfection of the language, may fall within the letter of the law but are not within its spirit.[3] No charge is needed in the section.

Section 96 to 106—re-arrangement recommended.

4.47. Sections 96 to 106 which analyse and delimit the right of private defence come up before the courts for interpretation and application more frequently than the other sections in this chapter. After stating the general exception in section 96 that nothing is an offence which is done in the exercise of this right, the right is analysed in the subsequent sections from two aspects, namely, defence of the body and defence of property. Section 97 defines these two aspects. While sections 98 and 99 are

1. The expression 'grievous bodily harm' has been preferred to the expression 'grievous hurt', which, as defined in section 320, is very wide.
2. See the revised definition of "grievous hurt" proposed in chapter 16 below. Only the first two clauses of that definition are included in "grievous bodily harm". see paragraph 16.55, below.
3. *Veeda Menezes* v. *Yusuf Khan,* (1968) S.C.R. Supp. 123; A.I.R. 1966 S.C. 1773, 1774.

applicable in relation to both aspects, sections 100, 101, 102 and 106 are concerned with defence of the body and sections 103, 104 and 105 are concerned with defence of property. We propose below a re-arrangement of the provisions, bringing together those relating to the right to defend the body in one section and those relating to the right to defend property in another section. This would, it seems to us, make for an easier understanding of the provisions and facilitate their application in relevant cases.

Section 97.

4.48. In defining the right to defend property, section 97 uses the phrase "offence *falling under the definition of* theft, robbery, mischief or criminal trespass". The intention and effect of this formula is obviously to cover all aggravated forms of the offences named. There appears to be no particular point in using the words "any act which is an offence" in the second clause of section 97, since section 98 adequately covers all cases where the act is *not* an offence on the part of the doer but the right to defend still exists. The right to defend property may accordingly be defined as follows :—

> "Every person has a right to defend the property, whether moveable or immoveable, of himself or of any other person against any offence which is or includes robbery, theft, mischief or criminal trespass and any attempt to commit any such offence."

Section 98.

4.49. Section 98 does not require any change.

Section 99.

4.50. Section 99 has four paragraphs and two explanations. The first two paragraphs preclude the exercise of the right of private defence against acts done by, or under the direction of public servants, in certain circumstances, but this is subject to the two explanations, the first being relevant to the first paragraph and the second to the second paragraph.

The third paragraph altogether debars the right of private defence in cases in which there is time to have recourse to the public authorities. We consider this provision later at length as it is controversial and raises a question of policy.

The fourth paragraph contains the basic provision that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Right of defence against irregular acts of public servants.

4.51. The first paragraph refers to an act done by a public servant "though that act may not be strictly justifiable by law". These words have been uniformly construed by the High Courts to be applicable only to those acts which are irregular and not to those which are wholly illegal. For instance, if a sub-inspector of police armed with a search warrant from a magistrate attempts to search the house of a person and is resisted by

force, and it is subsequently found that the warrant was without jurisdiction, the sub-inspector cannot successfully raise the plea that there was no right of private defence against his action, even though he may have acted in good faith. The house-owner would be justified in using such force as may be necessary to turn him out of the house. This uniform judicial view has led to certain anomalies, and has also put public servants executing orders of courts of justice to unreasonable jeopardy in the execution of their duties. Under section 78 of the Code, an act done by a public servant in pursuance of the judgment or order of a court of justice gives him complete immunity from prosecution, even though the court may have had no jurisdiction to pass such judgment or order, provided he, in good faith, believes that the court had such jurisdiction. Though he is thus immune from prosecution for any offence, (if it is eventually found that the order of the court of justice is without jurisdiction), nevertheless, in view of the somewhat restrictive language used in section 99, he runs the risk of being injured as a result of the exercise of the right of private defence by the party against whom he attempts to execute the judgment or order of the court.

Public servants acting under orders of courts.

4.52. A study of the case-law under the first paragraph of section 99 shows how, in a large number of instances, public servants acting in execution of the court's orders have been badly injured, and the courts have acquitted their assailants on the sole ground that the court's order was without jurisdiction. Whether an order of a court is within its jurisdiction or outside its jurisdiction, is extremely difficult to decide, and, in many instances, there can be no final view in this matter until the dispute is taken up to the highest court. But a subordinate public servant executing that order should not be put in jeopardy of bodily injury so long as his action is in good faith. Public policy also requires that such protection should be given to facilitate the prompt execution of the court's orders. The orders of a court ought to be implicitly obeyed. We therefore recommend the insertion of a new provision in section 99 so as to make the immunity from prosecution conferred by section 78 co-extensive with the deprivation of the right of private defence against such action in the first paragraph of section 99.

We, however, consider that this extra-ordinary protection should be given only when a public servant acts in pursuance of an order of a court of justice. Where he acts in exercise of what he considers to be the power conferred on him by law, the existing provision will suffice, that is to say, if his action is irregular, there will be no right of private defence; but if his action is illegal, either owing to absence of jurisdiction or any other ground, there will be a right of private defence.

4.53. The same view will have to be taken in regard to the right of defence against an act done by the direction of a public servant when that direction is not strictly justifiable by law. The second paragraph of section 99 does not require any change of substance.

Acts done by direction of a public servant.

4.54. With reference to the third paragraph of section 99, we considered it desireable to include in our questionnaire the following question :—

Right of defence and recourse to public authorities.

> "There is, at present no right of private defence in cases in which there is time to have recourse to the protection of public authorities "(section 99). Do you think that this restriction is necessary or that it should be removed or that it should be modified?"

The views received by us on this question indicated that those in favour of retaining the present restriction were almost the same in number as those in favour of removing it. A much smaller number of persons favoured some modification in the existing provision.

The present restriction on the exercise of the right of private defence is considered necessary by some in view, it is said, of the growing tendency among the public to resort to self-help even where the protection of public authorities is available. It is also said that as at present there is increasing evidence of disrespect for law and order, the deletion of this restriction will only increase the number of crimes and will result in lawlessness.

On the other hand, some take the view that present conditions demand that an individual ought to have the right of private defence without waiting for the help of public authorities. It is said that experience shows that nobody can be sure of getting effective protection of the public authorities when sought for and the restriction tends to take away the right itself, and the very purpose of the section is defeated.

In the third category are those who suggest, not too clearly, some modifications in section 99. They point out the possibility of conflict between the third paragraph of section 99 and the second paragraph of section 105 and suggest that if the object of the former is different from that of the latter, the position should be made clear by suitably amending the sections. They also suggest that these two provisions may be combined. Another suggestion is that the condition of there being time for recourse to the protection of public authorities should apply only when the party gets information sufficiently early about the impending attack.

Deletion of third paragraph recommended.

4.55. As diverse views have been expressed, the choice between retention and deletion of the restriction is not easy to make. We, however, think that from the practical point of view, the balance lies in favour of deleting the third paragraph. The law may not encourage self-help for doubtful ends, but self-defence stands on a different footing. Experience shows that in many cases it is debatable whether there was sufficient time for seeking the protection of public authorities. Recognition of self-defence as a justification for committing an offensive act is the assumption that "detached reflection cannot be expected in face of the uplifted knife". If so, the law should not expect a person to consider carefully whether there is or is not sufficient time to seek the protection of public authorities. We have not been able to discover any such stringent restriction on the right of self-defence in the criminal codes of any other country. We recommend that the third paragraph should be deleted.

Section 99 revised.

4.56. In the light of the above discussion section 99 may be revised as follows :—

99. *Restrictions on the right of private defence.*—(1) There is no right of private defence against an act which does not reasonably cause an apprehension of death or of grievous hurt, if the act is done or attempted to be done—

(a) by a public servant acting in good faith in pursuance of the judgment or order of a court of justice, though the court may have had no jurisdiction to pass such judgment or order, provided the public servant believes in good faith that the court had such jurisdiction ;

"(b) by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law ; or

(c) by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

(2) A person is not deprived of the right of private defence by virtue of sub-section (1), —

(i) in a case falling under clause (a) thereof unless he knows or has reason to believe that the person doing the act is a public servant and is acting in pursuance of the judgment or order of a court of justice or unless that person produces, if demanded, the authority in writing under which he is acting ;

"(ii) In a case falling under clause (b) thereof, unless, he knows or has reason to believe that the person doing the act is a public servant ; or

(iii) in a case falling under clause (c) thereof, unless he knows or has reason to believe that the person doing the act is acting by the direction of a public servant, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces that authority, if demanded.

(3) The right of private defence in no case extends to the causing of more harm than it is necessary to cause for the purpose of defence."

Section 100.

4.57. Section 100 lists the offences against which the right of private defence of the body extends even to the causing of death of the assailant. It is noticeable that while the first, second and sixth items refer to a reasonable apprehension as to the consequence of the assault, the other three items refer to "assaults with a particular intention.[1]" We do not, however, consider it necessary to make any amendment in this respect in the third, fourth and fifth items of section 100, since section 102 makes it quite clear that the right of private defence of the body commences as soon as there is a reasonable apprehension of danger to the body from an attempt or threat to commit any of the offences described in section 100.

Fifth paragraph amendment proposed.

4.58. The fifth item covers "an assault with the intention of abducting." It has been held that any assault with the intention to abduct a person as defined in section 362 is enough to attract the right of private defence under section 100 and it is not necessary that the abduction must itself be punishable. Thus, if a wife is assaulted in her father's house by the husband with the intention of taking her away by force to the husband's house, the fifth paragraph of section 100 applies.[2]

An anomaly arises from the fact that, while kidnapping is an offence punishable under section 363, abduction is an auxiliary act not punishable by itself. It is an offence only when committed with one or other of the intents specified in sections 364 to 369. Hence, assault with the intention of abducting may, in some instances, be punishable only under section 352, and it looks anomalous that, for such a simple offence, the assailant may even be killed. While it may be said that the precious right of personal liberty is involved in any abduction, we do not think it proper that an assault with the intent of committing an act which is not an offence should justify defensive action to the extent of causing death to the assailant. We propose to limit the fifth paragraph of section 100 to cases where the abduction is punishable under the Code.

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1. The American Law Institute's Model Penal Code even dispenses with the reasonableness of the belief of the person defending against an assault: *see* section 3.04.

2. *Vishwanath* v. *State of U.P.*, (1960) 1 S.C.R. 646; A.I.R. 1960 S.C. 67.

Section 101

4.59. Section 101 imposes a restriction as to the voluntary causing of death to the assailant, but permits the *voluntary* causing of any other harm. It is silent as to the involuntary causing of death, *e. g.*, death by a rash and negligent act. We think it proper to include, within the scope of this section, those cases where death is caused, but not voluntarily.

Section 102.

4.60. Section 102 which defines when the right of defence of the body commences and how long it may continue requires no change.

Section 103, clause first.

4.61. Section 103 enumerates the cases in which the right of defence of property may extend to the causing of death. The first is robbery.

Section 103, clause secondly omitted.

4.62. Clause secondly of the section mentions house-breaking by night, but not lurking house-trespass by night which is as severely punishable as house-breaking by night. It is often difficult to decide whether the offender has committed lurking house-trespass or house-breaking. This point, however, becomes unimportant, as we are recommending certain amendments in Chapter 17 where under house-breaking by night will cease to be a separate offence. For that reason, we propose to omit clause secondly. All aggravated forms of criminal trespass will be governed by the general provision in clause fourthly, under which the test broadly speaking, is whether death or grievous hurt is a likely consequence.

Section 103, clause thirdly amplified.

4.63. We consider that in clause thirdly, (i) mischief by explosive substance should be added as it is just as dangerous as mischief by fire; (ii) mischief by fire or explosive substance committed on any vehicle should be added ; and (iii) places of worship should also be included along with dwellings.

We considered a suggestion to add mischief in respect of public property the object being to cover mischief to property used or intended to be used for the purposes of the Government, a local authority or a corporation established by or under a Central, Provincial or State Act, or a Government company as defined in section 617 of the Companies Act, 1956, where such mischief is committed by intentional destruction of, or damage to, to the property and is likely to result in general danger, loss of human life or other grave consequences. We, think, however, that clause thirdly is adequate for the purpose, and do not recommend any such addition.

Section 103, clause fourthly.

4.64. Clause fourthly of section 103 raises no controversy. We propose to substitute 'criminal trespass' for 'house-trespass' in this clause, as we think that there is no need to confine it to house-trespass.

Section 104.

4.65. As proposed above in section 101,[1] section 104 should be suitably modified to bring within its scope those cases where death is caused but not voluntarily.

Section 105, first paragraph.

4.66. The first paragraph of section 105 provides that the right of private defence of property commences as soon as a reasonable apprehension of danger to property commences. Unlike section 102, section 105 does not state that the apprehension of danger may rise from an attempt or threat to commit the offence. We considered a suggestion to bring section 105 in line with section 102. We do not, however, see any need to amend the first clause of section 105 in the absence of any practical difficulty.

Section 105, second paragraph.

4.67 The second paragraph of section 105 provides that the right of private defence against theft continues (i) till the offender has effected his retreat with the property of (ii) *either* the property has been recovered *or* the assistance of public authorities has been obtained. The first alternative denotes the primary and usual point of termination of the right of defence. But if before that point is reached, one of the two events mentioned in the second alternative takes place, then that event (recovery of the property or obtaining the assistance of public authorities) terminates the right. Thus, of the two alternative situations, the earlier one becomes the point of termination. The present wording does not bring out this idea with sufficient clarity, and we therefore, propose a slight verbal change to make it clear.

Incidentally, we note that the view expressed by Mayne[2] that the right of private defence is revived after retreat (in the sense that if the property is found in the possession of the wrong-doer, then the right of defence would revive for the purpose of its recovery has not appealed to the Courts.

We also note that the words "effected his retreat" are vague and courts have occasionally found it necessary to point out that they are not easy of application. It is however not easy to devise a better form of words to express the idea.

Our attention was also drawn to the right of recapture of chattels which is recognised[3] in England in the law of torts as a permissible species of self-help, though recent authority[4] on the subject is scanty. We do not, however, consider it wise to insert in the Code any provision on the subject. Such a provision may, if abused, create more problems than it would solve.

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1. *See* paragraph 44.59, above.
2. Mayne, Penal Code, (1867), page 75.
3. Winfield, Torts (1967), page 511.
4. For a historical survey, *see* Branston "Forcible re-capture of chattels" (1912) 28 L.Q.R. 262.

Section 105, third paragraph.

4.68. No change is needed in the third paragraph of section 105.

Section 105, fourth paragraph.

4.69. As to the fourth paragraph of section 105, we noticed that it does not provide for cases where the offence is yet in the stage of attempt. If a reasonable apprehension of danger to property arises from an attempt to commit the offence, the right to defend the property commences, but how long does it continue? We do not, however, think it necessary to make any amendment to clarify this point. In the first place, the first paragraph of section 105, which deals with commencement of the right, is silent about attempt, and it would not be appropriate to refer to attempt in a pointed way in the fourth paragraph. Apart from that, we think that, in practice, cases of attempt will hardly present any difficulty.

An alternative suggestion was to add a provision in the first paragraph to the effect that the right continues so long as the apprehension of danger to the property continues. But such an amendment, which will then govern all the remaining paragraphs of section 105, where the point of termination is defined on lines different from continuance of apprehension of danger.

Section 105, fifth paragraph.

4.70. It is proposed to omit the fifth paragraph of section 105 as it deals with house breaking by night which is not proposed to be retained as a separate offence.

Section 106.

4.71. Section 106 saves from liability harm caused to an innocent person. It permits a person acting in self-defence to "run the risk" of causing such harm, where the self-defence is against an assault causing a reasonable apprehension of death. We considered a suggestion that the provision of the section should be extended to assaults causing a reasonable apprehension of grievous hurt. And in support of the suggestion, it was pointed out, that we have reommended[1] the enlargement of section 94 to include serious bodily harm. It was urged, that section 94 related to compulsion by human agency, whereas section 106 related to compulsion by circumstances, and that the same principle should apply to both the sections.

It appears to us, however, that the legislature has, as a matter of policy, expected that where the harm apprehended is less than death, then the person exercising the right of self-defence should take reasonable care to avoid serious harm to an innocent person. Moreover, there is sufficient protection even now, because if the person acting in the circumstances mentioned in section 106 uses due care and caution, then he would also be able to take the aid of section 80 also.

No change is, therefore, recommended.

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[1] *See* recommendation relating to section 94.

4.72. In the light of the above discussion we propose that section 97 be omitted and sections 100 to 106 be replaced by four sections as follows :—

Sections 97 and 100 to 106 considered and revised.

100. *Right of private defence of the body.*—(1) Every person has a right to defend his own body and the body of any other person against any offence affecting the human body.

(2) If the offence which occasions the exercise of the said right is—

(a) such an assualt as may reasonably cause an apprehension that death or grievous hurt will otherwise be the consequence of the assault, or

(b) an assault with the intention of committing rape or carnal intercourse against the order of nature, or

(c) an assault with the intention of kidnapping, or

(d) an assault in such circumstances as may reasonably cause an apprehension that an offence punishable under any of the sections 364 to 369 of this Code is being committed, or

(e) an assault with the intention of wrongfully confining a person in such circumstances as may reasonably cause him an apprehension that it will not be possible to have recourse to the public authorities for his release,

the right of private defence of the body extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the assailant,

and, in any other case, it extends, under the same restrictions, to the voluntary causing to the assailant of any harm other than death.

(3) If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

101. *Commencement and continuance of right of private defence of body.*—The right of private defence of body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehensions of danger to the body continues.

102. *Right of private defence of property.*—(1) Every person has a right to defend the property, whether movable or immovable, of himself or of any other person against any offence which is or includes robbery, theft, mischief or criminal trespass and any attempt to commit any such offence.

(2) If the offence the committing of which, or attempting to commit which, occasions the exercise of the said right is or includes—

(a) robbery, or

(b) theft, mischief or criminal trespass in such circumstances as may reasonably cause an apprehension that death or grievous hurt will be the consequence if the right of private defence is not exercised, or

(c) mischief by fire or explosive substance committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place of worship or as a place for the custody of property, or on any vehicle,

the right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer,

and in any other case, it extends, under the same restrictions, to the voluntary causing to the wrong-doer of any harm other than death.

103. *Commencement and continuance of right of private defence of property.*—The right of private defence of property commences when a reasonable apprehension of danger to the property commences,

and it continues—

(a) against robbery, as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or of instant wrongful restraint continues ;

(b) against theft,—till the offender has effected this retreat with the property, or, if the property has been recovered earlier or the assistance of the public authorities has been obtained earlier, till such recovery of the property or the obtaining of such assistance ; and

(c) against mischief or criminal trespass, as long as the offender continues in the commission of mischief or criminal trespass.

CHAPTER 5

ABETMENT, CONSPIRACY AND ATTEMPT

A. Abetment

Scheme of abetment under three heads.

5.1. In devising a comparatively simple scheme of abetment, the first Law Commissioners made a radical departure from the complicated provisions of English Penal Law, which distinguished between principals in the first degree, principals in the second degree and accessories before the fact, and then again between incitement to felonies and incitement to misdemeanours. Section 107 classifies abetment under three heads, namely, abetment by instigation, abetment by conspiracy and abetment by intentional aid. The concepts underlying the first and third forms of abetment as explained in Sections 107 and 108, have not given rise to any difficulty in practice, and they seem to us to be clearly and adequately stated.

Abetment by conspiracy.

5.2. The second paragraph of section 107 defines abetment by conspiracy by stating that "a person abets the doing of a thing who engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing". Under Section 120A, when two persons agree to committing an offence or to cause an offence to be committed, they are guilty of a criminal conspiracy to commit that offence, whether or not any of the parties thereto does any act besides the agreement in pursuance thereof. Thus the persons who are initially guilty of conspiracy to commit an offence become guilty of abetting the offence as soon as an act or illegal omission takes place in pursuance of the conspiracy. After the enactment (in 1913) of Sections 120A and 120B making conspiracy itself an offence punishable in the same manner as abetment, abetment of an offence by conspiracy has lost its *raison d'etre* and could well have been taken out of Chapter 5 altogether. In fact, the co-existence of the two ideas in the Penal Code only leads to some confusion in applying them. Anglo-American legal systems which admit the idea of criminal conspiracy as such and make it punishable, do not contemplate abetment of an offence by mere agreement to commit it. We propose that the second paragraph of Section107 and all subsequent references in Chapter 5 to abetment by conspiracy should be omitted.

Abetment by aiding.

5.3. Under the third paragraph of Section 107, a person abets the doing of a thing who intentionally aids the doing of *that* thing. The language appears to indicate that, to constitute abetment of a offence, there must be aid in the commission of that particular offence. Knowledge that some offence is going

to be committed and aid given in that knowledge is not enough. At the same time it is not necessary that the person who gives the aid should know beforehand all details pertaining to the offence or the exact manner in which it is going to be committed.[1] We do not think, however, that the wording of the clause requires any modification.

Section 107 amended.

5.4. We accordingly propose that the main part of section 107 may be simplified to read—

> "A person abets the doing of a thing, who instigates any person to do that thing, or intentionally aids, by any act or illegal omission, the doing of that thing".

The two explanations and the illustration do not require any change.

Position of abettor withdrawing from complicity in the offence.

5.5. We considered the question whether a countermanding of abetment in time should relieve the abettor of criminal liability. The case law in India on the subject appears to be inconclusive. According to an old Bombay case,[2] if the abettor, before the accomplishment of his criminal purpose, abandons his object and withdraws from the further prosecution thereof, and the person abetted proceeds with the design on his own account, the abettor may not be held guilty under Section 114. But in a Calcutta case,[3] a person who, after consenting to form one of a party which committed theft, resiled from the agreement but was present at the theft, was regarded as guilty of abetment under Section 107, clause thirdly, read with Section 109, as having intentionally aided the commission of the theft.

It appears that, in England, in order that a person may be guilty as an accessory before the fact, the procurement must be continuing. If the procurer of a felony repents and, before the felony is committed, countermands his order, but despite that fact, the principal commits the felony, the original contriver will not be liable as an accessory.[4] The Court of Criminal Appeal has held[5] that, in order to escape from liability as an accessory, there must be an express and actual countermand or revocation of the order previously given.

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1. *See* article by R.J. Buxton, "Complicity in the Criminal Code" in Law Quarterly Review, Vol. 85 at pages 258—262; *R.* v. *Bainbridge*, (1959) 3 All E.R. 200; and *R.* v. *Bullock*, (1955) 1 All E.R. 15.

2. *Rex* v. *Amrita Govind*, (1873) 10 Bom. H.C.R. 497, 500 (West and Nanabhai Haridas JJ)

3. *Queen* v. *Budhan*, (1867) 8 Weekly Reports, Criminal 78, 79 (Grover J.).

4. Hale, 618, referred to in Archbold, (1966), para. 4144.

5. *R.* v. *Croft*, (1944) 2 All E.R. 483. 485; 170 L.T. 312 (C.C.A.).

We find that, in the Model Penal Code[1] prepared by the American Law Institute, the following provision is suggested as being suitable :—

> "Unless otherwise provided by the Code or by the law defining the offence a person is not an accomplice in an offence committed by another person if he terminates his complicity prior to the commission of the offence and—
>
> (*i*) wholly deprives it of effectiveness in the commission of the offence; or
>
> (*ii*) gives timely warning to the Law enforcement authorities or otherwise makes "proper effort to prevent the commission of the offence."

We considered whether a provision on these lines should be made in the Code conferring complete immunity on an abettor, who, prior to the actual commission of the crime, sincerely repents, dissociates himself from the participants and gives reasonable help to the authorities with a view to preventing the commission of the crime. But there are two objections to such a principle being recognised. First, it may be pleaded in every case by an instigator who, at the last moment, pretends to withdraw his association with the crime for fear or detection. Secondly, under the scheme of the Code, the offence of abetment is complete with the instigation or other act of the abettor; and the question whether or not the principal offence has been committed is immaterial except as regards the quantum of punishment under Section 109, 115 and 116. Countermanding or withdrawal is, therefore, out of the question, because what is complete cannot be withdrawn.

One of us was of the view that, though these difficulties show the need for some safeguards, they ought not to come in the way of accepting the basic principle, and if penitence was to be encouraged, there should be a provision giving legal recognition to it. Countermanding should be permitted only if the person countermanding makes his best efforts to prevent the crime from being committed. Such a provision would be beneficial, as it would offer an inducement to a prospective offender to desist from completing the offence, and may help in preventing the commission of the main offence.

The rest of us, however, were of the view that cases of sincere repentance were very rare, that it should be left to the discretion of the Court to deal leniently with such a repentant sinner, and that no special provision need be made in the Code.

1. Section 2.06, sub-section (6), clause (c), Model Penal Code.

Section 108, main paragraph amendment proposed.

5.6. In defining an abettor as a person who abets "the commission of an offence", Section 108 employs language which is not strict in conformity with that of Section 107 which defines abetment of "the doing of a thing" *i.e.*, of an act. The main paragraph in Section 108 may be reworded as follows :—

> "A person abets an offence who abets *the doing of an act which is that offence, or which would be that offence* if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor."

Section 108, latter half and negligence.

5.7. The latter part of the above definition deals with a case where a person may be guilty of abetting an offence though the person abetted may be incapable of committing that offence for any reason whatsoever. It says that the abettor in such circumstances should be held to be guilty of abetment of an offence as if it had been committed by the person abetted, with the same intention or knowledge as that of the abettor. This does not deal with a case where the person abetted has committed an act which amounts to criminal rashness or negligence, but does not amount to criminal intention or knowledge. Thus, if a driver of a motor car allows the car to be used by a lunatic or by a person who is made drunk against his will, and that person by his rashness and negligence causes the death of another person, can it be held that the abettor abetted the commission of an offence under Section 304A, I.P.C.? The question seems to be largely academic, because instances where a person abets the commission of a rash and negligent act and the person who commits that act is incapable in law of committing any offence, will be very rare indeed. We do not think it necessary to make any amendment in Section 108 to meet such cases.[1]

Section 108, Explanation 1.

5.8. The idea underlying the first explanation will, we think, be brought out better by rewording it as follows :—

> "To constitute abetment of an offence that consist of an illegal omission of an act, it is not necessary that the abettor should himself be bound to do that act."

Section 108, Explanations 2 and 3.

5.9. It is curious that explanation 2 refers to "the offence of abetment", while explaining what constitutes abetment of an offence. This is neither apt nor necessary. Explanations 2 and 3 may be combined and revised as follows :—

> "To constitute abetment of an offence, it is not necessary—
>
> (*a*) that the act abetted should be committed; or
>
> (*b*) that the effect requisite to constitute the offence should be caused; or

1. The cases reported in A.I.R. 1947 Nag. 113 and A.I.R. 1951 Punj. 418 deal with somewhat different circumstances. *See* also *Thorton* v. *Mithchell*, (1940) 1 All E.R. 339.

(*c*) that the person abetted should be capable by law of committing an offence, or should have any guilty intention or knowledge, or should commit an offence."

Section 108, Explanation 4.

5.10. Explanation 4 is somewhat ambiguously worded. It states, "The abetment of an offence being an offence, the abetment of such an offence is also an offence". Does the opening part refer to a legal proposition in the sense of "inasmuch as the abetment of an offence *is* an offence", or does it imply a condition precedent "if or when the abetment of an offence is an offence"? Further, the statement that the abetment of such an abetment is an offence gives no guidance as to the punishment to which the second degree abettor is liable in different circumstances. If, for instance, A instigates B to instigate C to commit murder, and B accordingly instigates C, but the murder is not committed,[1] then is the abetment by A punishable under section 109, or is it punishable under section 115? The answer to this question depends on whether the word "offence" in section 109 means the main offence ultimately committed or else whether it will include the intermediate offence of abetment of the main offence. The discussion in *Khuhro's case*[2] shows that A is liable to be regarded as abetting murder where B does not instigate C, and also where C does not commit the murder. The judgment emphasises that abetment of abetment of an offence is no more, and no less, than abetment of *that* offence. This appears to us to be right, and in order to bring out the idea clearly, the Explanation may be reworded as follows :—

"A person who abets the abetment of an offence abets that offence".

Section 108, Explanation 5 omitted.

5.11. Explanation 5 and the illustration thereto may be omitted as they relate to abetment by conspiracy which is proposed to be omitted.

Section 108A.

5.12. Section 108A is in substance another explanation of what constitutes abetment of an offence, and may accordingly be combined with section 108. Although according to section 40, section 108A applies only in relation to offences made punishable under the Code, there can be no objection to extending its application to offences punishable under any special or local law.

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1. This hypothetical example is based on a variation of the facts in section 198, Explanation 4, illustration.

2. *Muhammad Khuhro*, I.L.R. 1945 Ker. 275 (O'Sullivan J.).

Sections 108 and 108A combined and revised.

5.13. In the light of the above discussion, sections 108 and 108A may be combined and revised as below :—

"Abetting an offence".

108. (1) A person abets an offence, who abets the doing of a thing which is that offence or which would be an offence if done by a person capable by law of committing that offence with the same intention or knowledge as that of the abettor.

(2) A person abets an offence, who, in India, abets the doing of any act outside India which, if done in India, would constitute that offence.

(3) A person who abets the abetment of an offence abets that offence.

(4) To constitute abetment of an offence, it is not necessary—

(*a*) that the act abetted should be committed; or

(*b*) that the effect requisite to constitute the offence should be caused; or

(*c*) that the person abetted should be capable by law of committing an offence, or should have any guilty intention or knowledge, or should commit an offence.

(5) To constitute abetment of an offence that consists of an illegal omission of an act, it is not necessary that the abettor should himself be bound to do that act.

Illustration to sub-section (2)

(*a*) A, in India, instigates B, a foreigner in Nepal, to commit a murder in Nepal. A is guilty of abetting murder.

Illustrations to sub-section (3)

(*b*) A instigates B to instigate C to murder Z. B accordingly instigates C and C murders Z in consequence of B's instigation. B has committed the offence of abetting murder and is liable to be punished with the punishment provided for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

(*c*) If, in the foregoing illustration, C refuses to murder Z, B has committed the offence of abetting murder, and is liable to be punished with imprisonment which may extend to seven years and with fine;[1] and as A instigated B to commit the offence, A is also liable to the same punishment.

1. See section 115.

Illustrations to sub-section (4)

(*d*) A instigates B to murder Z. B refuses to do so. A is guilty of abetting B to commit murder.

(*e*) A instigates B to murder Z. B in pursuance of the instigation stabs Z. Z recovers from the wound. A is guilty of abetting B to commit murder.

(*f*) A, intending to kill Z, instigates B, a child under ten years of age[1], to do an act which A knows will cause Z's death. B, in consequence of the instigation, does the act and thereby causes Z's death. Here B was not capable by law of committing an offence, but since his act would be murder if it had been committed by a person of full age with the same intention and knowledge as that of A, A is guilty of abetting murder.

(*g*) A, intending to take dishonesty an article belonging to C out of his possession, induces B to believe that the article belongs to A and instigates him to take it from C's possession. B does so in good faith believing it to be A's property. Though B has no guilty intention or knowledge, A is guilty of abetting theft."

Section 109 revised.

5.14. The words "by this Code" in section 109 appear to be unnecessarily restrictive and should be omitted. There is no reason why in a case where express provision for punishing the abetment of an offence is made in a special or local law, that provision should not prevail.

In the explanation, the words "or in pursuance of the conspiracy" should be omitted.

Illustration (a) is out of date, since abetment of bribery is now specifically dealt with in section 165A of the Code. The other illustrations also do not appear to be of any value. All illustrations to the section may be omitted.

Section 109 may accordingly be revised as follows :—

"109. Whoever abets any offence shall, if "the act abetted is committed in consequence of the abetment, and no express provision is made for the punishment of such abetment," be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or with the aid, which constitutes the abetment."

1. As to age, see a section 82, as proposed to be amended, paragraph 4.24 above.

Section 110.

5.15. Section 110 needs no change.

Section 111—"probable consequence".

5.16. When exactly can it be said that an act done was a "probable consequence" of the abetment? In deciding this important question, courts have generally adopted the test of "the reasonable man". We considered whether an amendment should be made to the effect that the abettor should have known that the different act was likely to result in the circumstances. The reasonable man's foresight is, at present, attributed even in cases where the abettor, in fact, did not foresee the particular consequence—even though objectively it was a probable consequence. In our view, however, the present position gives a just and workable test, and need not be disturbed.

We also noticed that where the act done was not a "probable consequence" of the abetment, then neither section 110 nor section 111 would apply, though sections 115 and 116 could be invoked in such a case. We think that this position is satisfactory, and no amendment is required.

Though the second paragraph of section 111 appears as a proviso and is called one in the margin, it is not exactly a proviso in the usual sense. It expresses two essential conditions for the application of the main provision. Section 113 also ends with a clause reading "provided he knew that the act abetted was likely to cause that effect", although this is not printed separately as a proviso. The word "provided" here has the same meaning as "but only if". The meaning will be clearer by re-printing the section in the following form :—

"Liability of abettor when one act abetted and different act done.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it, provided the act done—

(*a*) was a probable consequence of the abetment, and

(*b*) was committed under the influence of the instigation, or with the aid, which constituted the abetment."

Although illustrations (a) and (c) are not particularly illuminating in regard to the meaning of "probable consequence", there is no harm in retaining them for what they are worth.

Sections 112 and 113.

5.17. No change is needed in section 112 or 113.

Section 114.

5.18. The need for section 114 which sets out a deeming provision is not very clear. Since the section postulates the actual commission of the act or offence abetted, the abettor is

liable under section 119 to be punished with the punishment provided for the offence. What more is gained by laying down that the abettor, if present, shall be deemed to have committed such act or offence?

It is possible that section 114 was of some significance *vis-a-vis* section 30 of the Evidence Act as it stood before the amendment made in 1891. Under that section, the confession of an accused person could, under certain conditions, be taken into consideration againt a co-accused if both were accused of "the same offence". As observed by Gour[1],—

> "Though an abettor may be legally tried jointly with the principal offender, it was formerly held, that as the abettor was not tried jointly with him for the *same* offence, a confession made by him was not "admissible in evidence againt his co-accused"[2]. This view was perfectly logical on section 30 of the Indian Evidence Act as it then stood, though even then the tendency was to strain the point in favour of their admissibility, for the Courts could not afford to lose so good a piece of evidence. It was consequently laid down in some cases, that *a present abettor*, tried conjointly with another, was really being tried for the same offence so that the confession of one was admissible against the other.[3] The amendment of the section in 1891[4] has now legalised this view, as the word 'offence', as used in that section, is enacted to include the abetment of or attempt to commit the offence."

Even assuming that section 114 of the Code could have been used to remove the doubt under section 30 of the Evidence Act, it is obvious that, after the amendment of the latter section in 1891, section 114 is not needed for this purpose.

In an old Bombay case[5], a curiously narrow view has been taken of the deeming provision in section 114 in the matter of liability to enhanced punishment under section 75. According to this decision, since section 114 does not say that the abettor "shall have committed such offence", it does not equate the abetment with the offence for the purposes of section 75 of the Code. This reasoning was, however, dissented from in a Rangoon case[6], and does not appear to have been followed in any subsequent decision. We do not think that any amendment of section 114 is required on this point.

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1. Gour, Penal Law, (1961) Vol. 1, page 549.
2. *Nur Ahmed*, (1874) P.R. (Cr.) No. 8; *Amrita Govinda*, 10 B.H.C.R. 497.
3. *Bag Shah*, (1879) P.R. (Cr.) No. 3; *Thakur Singh*, (1882) P.R. (Cr.) No. 32; *Tejo*, (1885 P.R. (Cr.) No. 39.
4. Act 3 of 1891.
5. *Emp.* v. *Kashia Antoo*, (1908) 10 Bom. L.R. 26, 7 Cr. L.J. 32.
6. *Emp.* v. *Maung Ln Kai*, A.I.R. 1929 Rang. 203, 206.

It is possible that if, under a special law, abetment of an offence is punishable less severely than the main offence even when it is committed in consequence of the abetment, section 114 may be useful as it provides that the abettor, if present when the offence is committed, shall be deemed to have committed that offence. But so far as we could ascertain, there are no provisions in special laws punishing abetment with lesser punishment than the main offence. Either there is no express provision at all in the special law as to abetment, or, if there is a provision, then it lays down the same punishment for abetment as for the principal offence. The utility of section 114 at the present day is, thus, not apparent.

Omission of "if absent" from section 114 recommended.

5.19. We notice that the section distinguishes between prior abetment and abetment by participation in the offence. Only the former falls within the section. Whether this reqirement of prior abetment is necessary, and why abetment at the time of the commission of the offence should not suffice for the purpose of section 114, is not at all clear. In fact, we see no justification for the distinction made in section 114 between prior abetment and abetment at the time of the offence. No doubt, mere presence at the time of the offence should not bring the section into play. There must be other evidence of abetment. But, in emphasising that aspect, the section has gone to the other extreme. The words "who, if absent, would be liable to be punished as an abettor", rule out any aid rendered at the time of the offence by an abettor, however, vital the contribution of the abettor may be. A minor instigation prior to the offence, followed by presence, is sufficient, while substantial assistance at the time of the offence does not suffice. (No doubt, in the latter case, section 34 will often come into play; but that is true even of the cases now falling within section 114). The emphasis, in our opinion, ought to be on presence coupled with abetment, and not on a particular type of abetment selected only with reference to its chronological order. We, therefore, recommend the deletion of the words "if absent".

Section 115 revised.

5.20. Section 115 deals with the punishment for unsuccessful abetment of offences punishable with "death or imprisonment for life". The words "death or imprisonment for life" are ambiguous and if the interpretation placed on similar words in section 497 of the Code of Criminal Procedure, is any guide, these words may cover even "sedition", for which one of the alternative punishment is only three years. As the section prescribes a fairly severe punishment, we think it proper to limit it to capital offences, *i.e.*, offences for which death is the only punishment or one of the punishment provided by law.

Imprisonment under section 115 should, in our view, be rigorous, and not "of either description", as at present. Since only rigorous imprisonment is possible for the main offence, the punishment for abetment also should be rigorous only.

The marginal note to section 115, second paragraph, mentions 'harm', but the section speaks only of 'hurt'. This discrepancy should be corrected.

Where punishment for abetment is provided by any other law, section 115 should not apply. Hence the words "by this Code" should be omitted from the section[1].

Accordingly, section 115 may be revised as follows :—

"Abetment of capital offences if offence not committed.

115. Whoever abets the commission of *a capital offence* shall, if that offence be not committed in consequence of the abetment, and no express provision is made * * * for the punishment of such abetment, be punished with *rigorous imprisonment* for a term which may extend to seven years, and shall also be liable to fine;

if act causing *hurt* be done in consequence.

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to *rigorous imprisonment* for a term which may extend to fourteen years, and shall also be liable to fine."

Section 116 revised.

5.21. Section 116 prescribes the punishment of offences punishable with imprisonment when the offence is not committed. In order to avoid any overlap between this section and section 115, it is desirable expressly to exclude capital offences. This may be done by inserting the words, "not being a capital offence", after the words, "an offence punishable with imprisonment".

It will be noticed that the abetment of an offence punishable only with fine is not punishable under section 116 or any other section in this Chapter. We consider that it is unnecessary to punish such abetment and the present position does not require any change in this respect.

Under the first paragraph of section 116, the maximum punishment for abetment, if the offence be not committed in consequence, is only one-fourth of the longest term of imprisonment provided for the offence. We consider that this is too low and propose that it should be increased to one-half of the maximum term provided for the offence.

The second paragraph of section 116 deals with two classes of cases, (i) where the abettor is a public servant whose duty it is to prevent the commission of an offence and the person abetted is a private individual, and (ii) where the abettor is a private individual and the person abetted is a public servant whose duty it is to prevent the commission of an offence. In both cases, the abettor is liable to heavier punishment than is provided in the first paragraph of section 166. We consider that in the first

1. See paragraph 5.14 above.

category of cases, *viz.*, where the abettor is a public servant, he should be liable to be punished with the full period of imprisonment provided for the offence instead of only one-half of the term. Thus, where a police constable, instead of preventing a dacoity of which he has information, aids and abets a gang of dacoits, but somehow the dacoity is not committed, he should be liable to be punished as if the dacoity had been committed. The act of the public servant being reprehensible in the extreme, there is no hardship if the law is fully applied for checking it.

In the other category of cases, *viz.*, where the abettor is a private person, the mere fact that he abetted a public servant whose duty it is to prevent the commission of an offence, the abettor need not, in our opinion, be dealt with more severely than in a case where the person abetted is also a private individual.

We accordingly propose that section 116 may be revised as follows :—

"Abetment of offence punishable with imprisonment— if offence be not committed.

116. Whoever abets an offence punishable with imprisonment, *not being a capital offence*, shall, if that offence be not committed in consequence of the abetment, and no express provision is made, for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to *one-half* of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

if abettor be a public servant whose duty it is to prevent the offence.

and if the abettor * * * is a public servant whose duty it is to prevent the commission of such offence, the abettor shall be punished with *the punishment provided for the offence*."

Of the four illustrations which are appended to the section, the first is obsolete inasmuch as abetment of bribery is now a substantive offence under section 165A. The last illustration also has to be omitted in view of the amendment in the second paragraph of the section. Accordingly, the illustrations to the revised section may be as follows :—

"*Illustrations*

(a) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(b) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to the punishment provided for robbery."

Section 117.

5.22. Section 117 applies to abetment of the commission of an offence by the public generally or by any number or class of persons exceeding ten. The section is not intended to bar the application of other provisions relating to punishment for abetment. In a Lahore case,[1] a doubt was expressed whether, where section 117 applies, the offence could fall under section 115. in that case, the accused had made a violent speech at a religious assembly of Sikks, in which he incited the audience to murder Englishmen and Government servants. The Magistrate convicted him under section 302 read with section 115 as well as section 117, and sentenced him to rigorous imprisonment for five years.[2] The High Court had doubts as to whether section 115 applied, the doubt being based on the fact that section 115 applies only when the abetment is not punishable under any other provision of the Code, and, if section 117 applies, then the offence would not fall under section 115.

In a Calcutta case,[3] however, it was pointed out, that the words "express provision" in section 115 do not refer to provisions like section 117, but to sections 121, 131 and the like which deal with abetment of offences punishable with death or imprisonment for life, *i.e.* the particular offences to which section 115 applies.

The question was considered at length in a Bombay case.[4] where the High Court agreed with the Calcutta view, and dissented from the doubt expressed in the Lahore case.

We agree with the Calcutta and Bombay view, and, after the elaborate discussion found in the Bombay judgment, we do not think that the doubt expressed in the Lahore case would survive. Hence no clarification is necessary in this section.

Abetting commission of offences by children.

5.23. In the course of our preliminary consideration of the Code, a suggestion was made that there should be a higher punishment for abetting the commission of offences by minors. It is a notorious fact that in every large urban centre, a number of persons can be found who train juveniles and children in criminal activities like pick-pocketing, pilfering and burglary and even live upon their earnings, keeping themselves in the background and escaping detection. We included in our questionnaire the question, "Where a person abets an offence by instigating a minor to commit it, should the abettor be punishable with a punishment higher than that prescribed for abetment in general?" A majority of the opinions received by us, particularly from State Government officers and members of the bar, was in favour

1. *Santa Singh* v. *Emp.*, A.I.R. 1933 Lah. 660 (Bhide J.).
2. Apparently, powers under section 30, Cr. P.C. were exercised by the Magistrate.
3. *Emp.* v. *Dwarka Nath,* A.I.R. 1933 Cal. 47, 48.
4. *Emp.* v. *Lavji Mandan*, A.I.R. 1939 Bom. 452, 453.

of the proposal. The opinions given by the Judges seemed to be evenly balanced. After a careful consideration in the light of these opinions, we are of the view that abetting the commission of any offence by a minor should be regarded as an aggravated form of the offence of abetment and punished more severely. As observed by the Judges of a City Civil Court in a collective opinion sent to the Commission,—

> "By instigating a minor, the abettor contaminates the mind of the child, and takes advantage of his immature understanding and diverts him to a wrong path, thus marring his future. The society has, in such cases, to shoulder the additional burden of reforming the minor. It is, therefore, necessary to provide higher punishment for such an offence, to deter anti-social elements from making use of such innocent children for their unlawful objects."

New section 117A recommended "Abetting commission of offences by a child.

5.24. We recommend the following new section for the purpose :—

> 117A. Whoever abets the commission of an offence punishable with imprisonment by a child under fifteen years of age, whether or not the offence is committed in consequence of the abetment, shall be punished with imprisonment of any description provided for that offence for a term which may extend to twice the longest term of imprisonment provided for that offence, and shall also be liable to fine."

Section 118 formally amended.

5.25. Voluntary concealment of a design to commit an offence punishable with death or imprisonment for life is punishable under section 118, if the concealment is done by an act or illegal omission with the intention of facilitating the commission of the offence or with the knowledge that such commission is likely to be facilitated by such concealment. It is not necessary that the concealment must actually facilitate the commission of the offence. No change of substance is required in this section, but the reference to 'an offence punishable with death or imprisonment for life' may be replaced by 'a capital offence', for the reasons mentioned above[1] under section 115.

Section 119. amended.

5.26. In the fourth paragraph of section 119 also, the words "punishable with death or imprisonment for life" should be replaced by the words "a capital offence". It is, however, not clear whether this paragraph applies only when the offence sought to be concealed is committed or also when it is not committed. The last paragraph would seem to cover all cases where the offence is not committed, including a capital offence, but before 1955, it could not be applicable to the offence of murder then punishable with death or *transportation* for life. The legislative intention was perhaps to make the fourth paragraph

1. Paragraph 5.20 above.

applicable in relation to a capital offence, whether or not that offence was committed. After 1955, however, it is possible to do without the fourth paragraph: if a capital offence be committed, the public servant concealing the existence of a design to commit the offence will be punishable under the third paragraph with rigorous imprisonment for a term which may extend to ten years (one-half of the 'longest term'), and if the capital offence concealed be not committed, he will be punishable under the last paragraph with rigorous imprisonment upto five years (one-fourth of the 'longest term'). It does not seem necessary that in the latter case also the public servant should be punished with rigorous imprisonment for ten years. We accordingly recommend that section 119 be simplified and made clearer by omitting the fourth paragraph. (Incidentally we notice that prosecutions under sections 118, 119 and 120 are very rare).

Section 120 formally amended.

5.27. No change of substance is required in section 120. But it is desirable expressly to exclude cases covered by section 118, and for this purpose after the words 'offence punishable with imprisonment', the words 'not being a capital offence' should be inserted.

B. Criminal conspiracy

Overlap between abetment by conspiracy and criminal conspiracy.

5.28. For more than half a century, the Penal Code only recognised abetment by conspiracy as defined in clause secondly of section 107, and not the offence of criminal conspiracy as such. The latter notion was introduced in the Penal Code by the Criminal Law Amendment Act of 1913, which inserted a separate. Chapter 5A consisting of two sections 120A and 120B. Despite the obvious and considerable overlap between the provisions of these two sections and the provisions governing abetment of an offence by conspiracy contained in Chapter 5, the legislature did not think it necessary to amend the earlier Chapter in any way. Thus, if a person is engaged with another or others in a conspiracy to commit an offence and if some act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of the criminal act, he is liable to be punished as an abettor .....directly under the relevant section in Chapter 5. But whether or not such act or illegal omission takes place, he is guilty of a criminal conspiracy as soon as he becomes a party to the agreement to commit the offence and is punishable under sub-section (1) or sub-section (2) of section 120B, as the case may be. So far as conspiracies to commit serious offences are concerned, section 120B(1) puts a party to the conspiracy in exactly the same position as an abettor of the offence for the purpose of punishment. Although it is theoretically possible to charge a person with conspiring to commit an offence even where no overt act in pursuance of the conspiracy has been done, it seldom, if ever, happens that two or more persons are prosecuted for a criminal conspiracy merely on the strength of evidence proving the agreement and nothing more.

Abetment by conspiracy omitted from Chapter 5 of the Code.

5.29. However that may be, there is no doubt that, after the enactment of Chapter VA, abetment by conspiracy is of little practical use, and is redundant as a criminal law concept. It may be noted, that in England there is no separate mention of conspiracy as a species of abetment. In English law, if a conspirator is to be regarded as an accessory before the fact, he should be one who counsels, procures, or commands the commission of the offence. If he is to be regarded as a principal in the same degree because of "aiding and abetting", the emphasis is on his presence, assistance or encouragement at the commission of the crime. We have accordingly at the beginning of this chapter recommended the omission of the second paragraph of section 107 and all subsequent references in Chapter V of the Code to abetment by conspiracy.

Wide sweep of "criminal conspiracy".

5.30. One is struck by the wide sweep of the definition of criminal conspiracy in section 120A. It covers not only (i) an agreement to commit an offence but also (ii) an agreement to commit an illegal but not criminal act, and (iii) an agreement to commit a legal act by illegal means. This distinction between (ii) and (iii) is obscure and may be without any real difference: achievement of any object by illegal means must involve the doing of something illegal, *i.e.* the committing of an illegal act. The act which is an offence punishable under sub-section (i) or sub-section (2) of section 120B is being a party to a criminal conspiracy as defined in section 120A. In other words, criminal conspiracy is not an offence ancillary to another offence, but an independent and substantive offence by itself.

Conspiracy on inchoate crime.

5.31. The stage at which a person becomes liable to be punished for a criminal conspiracy is much earlier than the stage when an attempt to commit an offence becomes punishable under the Code. A mere agreement to commit an offence is enough. No physical act need take place. No consummation of the crime need be achieved or even attempted. In fact, even preparation, in the sense of devising and arranging means for the commission of the offence, is not required. In this sense, conspiracy is an incomplete or inchoate crime. And when one considers a conspiracy to commit an illegal act which is not a crime, it is not even classifiable as an inchoate crime. The question arises whether it is proper for the law to intervence and use criminal sanctions at such an early stage.

Classification under section 120B.

5.32. It will be noticed that, for purposes of punishment, section 120B divides criminal conspiracies into two classes. Where the conspiracy is to commit a serious offence, (*i.e.* an offence punishable with imprisonment for two years or with a more severe punishment), a party to the conspiracy is punished in the same manner as if he had abetted the offence. In the second category there are included conspiracies to commit any other offence (including offences punishable only with fine) and conspiracies to commit illegal acts other than offences; and for

these, sub-section (2) provides a uniform punishment, *viz.* imprisonment of either description upto six months or fine or both. Recognising that it would be dangerous to leave these petty conspiracies to be alleged before courts by any person so minded, provision is made in the Criminal Procedure Code, section 196A, that no court shall take cognizance of them except upon complaint made by order or under authority from the State Government or some officer empowered in this behalf.

Criminal conspiracy in English Law.

5.33. We note that in England the law of conspiracy is not so widely drawn as in India. Conspiracy is a common law misdemeanour punishable with fine or imprisonment at the discretion of the court, except in the case of murder where by statute there is a maximum punishment of ten years. It consists in the agreement between two or more persons to effect some "unlawful" purpose. While the commission of a crime, even a non-indicatable crime, is naturally recognised as an unlawful purpose, there are no precise or clear rules in regard to non-criminal unlawful purposes of an indictable conspiracy. Conspiracies to defraud, to commit a tort involving malice, or to commit a public mischief, are, broadly speaking, indictable. A conspiracy to commit or induce breach of contract is probably not indictable at the present day.

Justice Wright's critical observations.

5.34. In his Law of Criminal Conspiracies and Agreements published in 1873, Mr. Justice R. S. Wright[1] distinguishes between (i) agreements for the commission of crimes, (ii) agreements for minor offences, and (iii) agreements for acts which would not be crimes or offences. He treats the first class of agreements as being merely auxiliary to the law which creates the crime. As to agreements for minor offences, he says:

> "It is next to be considered in what manner agreements ought to be treated when they are for offences punishable only on summary prosecution and by minor penalties. There is great difficulty in discovering the principles which are here applicable; but the difficulty will be diminished by dismissing at the outset all offences which ought in a good penal system to be treated as crimes, but which happen to be treated only as minor offences in any particular penal system. These being eliminated, the remaining offences consist in the production of results which, *ex hypothesi*, are not in themselves of grave enough consequence to be matters for indictment; and if so, it must in general be immaterial whether the results are produced by one person or by two or more persons. To permit two persons to be indicted for a conspiracy to make a slide in the street of a town, or to catch hedge-sparrows in April, would be to destroy that distinction between crimes and minor offences which in every country it is held important to preserve."

1. Extract from Lord Tucker's opinion in *Board of Trade* v. *Owen*, (1957) 1 All E.R. 414, 415 (H.L.).

In dealing with the third class, *i.e.* agreements for acts which in the absence of agreement would not be crimes or offences, after referring to two peculiar classes he proceeds:

> "Apart from cases falling within one or other of these two classes, there appear to be great theoretical objections to any general rule that agreement may make punishable that which ought not to be punished in the absence of agreement; for, if the act is one which can be done by a person acting alone, and when so done ought not to be punished, it is difficult to see at what point and on what ground criminality can be generally introduced by the fact that two or more persons concur in the act."

5.35. We consider the above criticism fully applicable to the agreements which are made criminal and punishable under sub-section (2) of section 125B, *i.e.* agreements to commit comparatively minor or petty offences and agreements to commit illegal acts which are not offences. Agreements to commit serious offences, however, stand on a different footing and may, with justification, be punished even when no other act is done by any of the parties in pursuance of the agreement, on the ground that 'to unite, back of a criminal purpose, the strength, opportunities and resources of many is obviously more dangerous and more difficult to police than the efforts of a lone wrongdoer."[1]

U. S. Supreme Court's view.

5.36. In the United States also, where the law of criminal conspiracy is the same as in England, it has come in for strong criticism from the viewpoint discussed above. Justice Jackson of the Supreme Curt said:[2]—

> "Conspiracy in federal law aggravates the degree of crime over that of unconcerted offending. The act of confederating to commit a misdemeanour, followed by even an innocent overt act in its execution, is a felony and punishable as such even if the misdemeanour is never consummated. The more radical proposition also is well established, that at common law and under some statutes a combination may be a criminal conspiracy even if it contemplates only acts which are not crimes at all when perpetrated by an individual or by many acting severally.
>
> "Thus, the conspiracy doctrine will incriminate persons on the fringe of offending who would not be guilty of aiding and abetting or of becoming an accessory, for those charges only lie when an act which is a crime has actually been committed.

1. *Krulewitch* v. *U.S.* (1949) 93, L.Ed., 790; 336 U.S. 440 (Concurring judgment of Jackson J.)
2. *Krulewitch* v. *U.S.*, (1949) 93 L. Ed. 790; 336 U.S. 440.

"Attribution of criminality to a confederation which contemplates no act that would be criminal if carried out by any one of the conspirators is a practice peculiar to Anglo-American law. 'There can be little doubt that this wide definition of the crime of conspiracy originates in the criminal equity administered in the star Chamber.' In fact, we are advised that 'the modern crime of conspiracy is almost entirely the result of the manner in which a conspiracy was treated by the Court of the Star Chamber.' The doctrine does not commend itself to jurists of civil law countries, despite universal recognition that an organised society must have legal weapons for combetting organised criminality. Most other countries have devised what they consider more discriminating principles upon which to prosecute criminal gangs, secret associations, and subversive syndicates."

Revised definition of criminal conspiracy.

5.37. We are strongly of the view that there is neither theoretical jurisdiction nor practical need for punishing agreements to commit petty offences or non-criminal illegal acts. In practice, few private prosecutions of such petty conspiracies are sanctioned by the State government or its officers under section 196A of the Criminal Procedure Code. We, therefore, recommend that section 120A which defines criminal conspiracy should be revised as follows:—

"Definition of criminal conspiracy.

120A. When two or more persons agree to commit an offence punishable with death, imprisonment for life or imprisonment of either description for a term of two years or upwards or to cause such an offence to be committed, the agreement is designated a criminal conspiracy.

Explanation 1.—It is immaterial whether the commission of the offence is the ulitmate object of such agreement or is merely incidental to that object.

Explanation 2.—To constitute a criminal conspiracy, it is not necessary that any act or illegal omission shall take place in pursuance of the agreement."

Though the present sub-section (1) of section 120B only refers to offences punishable with *rigorous imprisonment* for a term of two years or upwards, we think that offences which are punishable with *imprisonment of either description* for a term of two years or upwards should be brought within the definition of criminal conspiracies. The second explanation is on the same lines as the explanation to section 121A; though not strictly necessary, it seems desirable to have it in this section also.

Is person pretending to conspire guilty ?

5.38. We considered the question whether a person who pretends to join a criminal conspiracy, but does not in fact share the object of the other conspirators, is liable to be punished as 'being a party to the conspiracy' under section 120B. In

an old English case,[1] where a police spy pretended to aid the designs of conspirators for the purpose of betraying them, it was held that his evidence did not require corroboration as an accomplice since the complicity of such a person extend only to the *actus reus*, and not to the *mens rea*, and therefore he was not an accomplice. In a recent English judgment,[2] the point was made that if a person had never entertained any intention of going through with the project, then he cannot be convicted of a conspiracy to commit the crime. An agreement required an *intention* to carry out the unlawful purpose, and this element of *mens rea* would be missing so far as he was concerned. We think the same view should be taken in similar cases under section 120B.

Section 120B revised.

5.39. Under sub-section (1) of section 120B a party to a criminal conspiracy is liable to be punished in the same manner as if he had abetted the intended offence. This means that, in every case of conspiracy, the apropriate provision contained in Chapter 5 will have to be hunted out and applied. It would obviously be preferable to make the section self-contained. We recommend that section 120B should be revised as follows:—

"Punishment of criminal conspiracy.

120B. Whoever is a party to a criminal conspiracy shall, where no express provision is made for the punishment of such a conspiracy,—

(a) if the offence which it is the object of the conspiracy to commit or cause to be committed is committed in pursuance of the conspiracy, be punished with the punishment provided for that offence; and

(b) if the offence is not committed in pursuance of the conspiracy, be punished with imprisonment of any description provided for that offence for a term which may extend to one-half[3] of the longest term provided for that offence, or with such fine as is provided for that offence, or with both."

Consequential amendment in the Cr. P.C.

5.40. When criminal conspiracies are limited to agreements to commit serious offences as recommended above, there will be no need for section 196A in the Code of Criminal Procedure, 1898. This section will require to be repealed.

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1. *Mullins*, (1848) 3 Cox 526 (Maule J.) ; Archbold, (1966), paragraph 1294.
2. *Reg.* v. *Thompson*, (1966) 50 Cr. App. Rep. 1 (Nottinghamshire Assizes-Lawton J.), noted in (1966), Current Law, item 2182.
3. See paragraph 5.21 above and section 116, as proposed to be amended.

C. Attempt

Lack of definition in the Code.

5.41. Though the subject of attempt has been relegated in the Code to the very last chapter and section and dealt with as a residuary provision in an unsatisfactory manner, we propose to discuss it here in view of the importance of the concept and its close connection with abetment and conspiracy. Numerous sections in the Code, while defining the acts which constitute particular offences, put attempts to do those acts on a par with doing the acts themselves and make them punishable to the same extent. Thus, under section 121, with which the next chapter begins, waging war against the Government of India and any attempts to wage such war are both capital offences. Under section 130, one who attempts to rescue a prisoner of war is punished to the same extent as one who actually rescues a prisoner of war. If one were to construe section 511 strictly as a residuary provision, none of the ideas contained therein would be applicable for interpreting what constitutes an attempt to wage war under section 121 or an attempt to rescue a prisoner of war under section 130. These sections themselves do not furnish any guidance for this purpose.

Definitions in sections 307 and 308.

5.42. Then we have two seemingly more specific and comprehensive definitions of attempt, namely, section 307 which, without using the word attempt except in the margin, defines attempt to murder, and section 308 which similarly defines attempt to commit culpable homicide not amounting to murder. In both sections, the attempt consists in doing any act with such intention or knowledge, and under such circumstances, that *if the actor by that act caused death,* he would be guilty of murder or, as the case may be, culpable homicide not amounting to murder. The hypothetical condition if he *by that act* caused death" is not easy to apply in cases where the act done was physically incapable of causing any one's death. The question whether there could be an attempt to murder not falling within section 307, or an attempt to commit culpable homicide not falling within section 308, but punishable as such under section 511, the residuary section, is not entirely theoretical as it has been raised before the courts fairly often.

Attempts punishable under section 511.

5.43. Finally, there is section 511 which provides that "whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punhiment of such attempt, be punished etc.". The language used in this section is very confusing. (It may also be noticed that section 309 defines attempt to commit suicide in the same way—"Whoever attempts to commit suicide and does any act towards the commission of such offence"). To constitute a criminal attempt two requirements are apparently to be satisfied. The offender

must first *attempt* to commit an offence, which presumably he can only by doing some act, but that apparently is not sufficient. He must, in doing that act which is the attempt, also do something else towards the commission of the offence. Does it mean that the first act need not be towards the commission of the offence or that, even if it has to be followed by another act towards the commission of the act? Beyond indicating that there has to be some act done towards the commission of the offence, an idea that is hardly worth expressing, the section is of little assistance as a definition. It certainly cannot be the intention, as the wording would seem to suggest, that each and every act towards the commission of the offence is punishable as an attempt. Any such interpretation of section 511 or section 309 would obliterate the well established distinction between preparation and attempt.

Should it be left to commonsense ?

5.44. In a recent English case,[1] the Judge is reported to have observed, "There are some branches of the criminal law in which it is permitted for justices and juries to use their commonsense. I am glad to find that I am not constrained by the authorities to say that he law of attempt is excluded from those branches." It appears that the framers of the Indian Penal Code were inclined to leave the law of attempt to be regulated by basic concepts aided by commonsense, rather than by a precise definition.

Tests for determining what is attempt.

5.45. The crux of the problem of defining attempt seems to lie in stating with precision a test as to when the act has travelled beyond the preparatory stage. As Rowlatt J. put it,[2] "people in the street, before they begin to think about it, think it is a very easy thing to say what amounts to an attempt. but when you come to analyse it, it becomes a little difficult." As analysed by jurists, three or four tests emerge from judicial decisions to help determine at what stage an act or series of acts done towards the commission of the intended offence becomes an attempt.

Test of proximity.

546. There is first the test of proximity. The much-quoted dictum in an English case,[3] that "acts remotley leading towards the commission of an offence are not to be considered as attempts to commit it, but acts immediately connected with it are", states the proximity rule. There are other English cases[4] emphasising the proposition that to constitute an attempt, the act done must be immediately, and not merely remotely, connected with the commission of the offence.

1. *Davey* v. *Lee*, (1967) 2 All E.R. 423, 425 (per Diplock L.J.).
2. *Rex V. Osborn*, (1919) 84 J.P. 63.
3. *Eagleton*, (1885) 6 cox 559, 571; 169 E.R. 766.
4. See Archbold, (1966), paragraph 4104.

American view.

5.47. The view taken in the United States will appear from the following observations of Chief Justice Holmes in *Commonwealth* v. *Peasle*[1]:—

> "The question on the evidence, more precisely stated, is whether the defendant's acts come near enough to the accomplishment of the substantive offence to be punishable. The statute does not punish every act done towards the commission of a crime, but only such acts done in an attempt to commit it. The most common types of an attempt are either an act which is intended to bring about the substantive crime, and which "sets in motion natural forces that would bring it about in the expected course of events, but for the unforeseen interruption, as, in this case, if the candle had been put out by the police, or an act which is intended to bring about the substantive crime, and would bring it about but for a mistake of judgment in a matter of nice estimate or experiment, as when a pistol is fired at a man, but misses him, or when one tries to pick a pocket which turns out to be empty. In either case, the would-be criminal has done last act.
>
> 'Obviously, new considerations come in when further acts on the part of the person who has taken the first steps are necessary before the substantive crime can come to pass. In this class of cases, there is still a chance that the would-be criminal may change his mind. In strictness, such first steps cannot be described as an attempt, because that word suggests an act seemingly sufficient to accomplish the end, and has been supposed to have no other meaning. That an overt act, although coupled with an intent to commit the crime, commonly is "not punishable if further acts are contemplated as needful, is expressed in the familiar rule that preparation is not an attempt. But some preparations may amount to an attempt. It is a question of degree. If the preparation comes very near to the accomplishment of the act, the intent to complete it renders the crime so probable that the act will be a misedmeanour, although there is still a *locus paenitentiae*, in the need of a further exertion of the will to complete the crime."

Test of last act.

5.48. Another test adopted is known as the test of last act. In *Eagletion's* case[2], to which reference has already been made[3] Baron Parke said—

> "Acts remotely leading towards the commission of the offence are not to be considered as attempts to commit it, but acts immediately connected with it are; and if, in this case, after the credit with the relieving officer for the fraudulent overcharge, any further step on the part of the defendant had been necessary to obtain payment, as the making out a further account or producing the vouchers

1. 177 Mass. 267, 59 N.E. 55.
2. (1855) 6 Cox 559, 571; 169 E.R. 766.
3. Para 5.46 above.

to the Board, we should have thought that the obtaining credit in account with the relieving officer would not have been sufficiently proximate to the obtaining of the money. But, on the statement in this case, no other act on the part of the depfendant would have been required. *It was the last act, depending on himself, towards the payment of the money*, and therefore it ought to be considered as an attempt."

This test of last act has, however, obvious flaws. It cannot be applied to a situation where the accused intends to accomplish his object by degrees, such as, murder by slow poisoning. Moreover, as has been pointed out,[1] the act which remains to be done by the offender may be done by the victim, *e.g.* the offender puts poison in a glass and also intends to pour wine in it, but the wine is actually poured by the victim. Here the "last act" which the offender wished to do was not, in fact, done by him, but that need not prevent the act from being an attempt.

Test of *locus paenitentiae.*

5.49. A test which emphasises one aspect of 'last act' is that of the possibility of 'locus paenitentiae'. An Allahabad case[2] illustrates this test. The accused had made a false statment in order to obtain a certificate which would have enabled him to obtain a refund of octroi duty, but the certificate was not granted. The trial court convicted him of attempting to cheat. The Sessions Judges in his reference to the High Court said:

> "Even supposing that Dhundi (the accused) by false representation had succeeded in getting the refund certificate, yet he had a *locus paenitentiae*. He had to get it endorsed at the outpost, and had to present it on the following Saturday for encashment, before he finally lost all control over it, and could no longer prevent the commission of the offence. Before that time he might have altered his mind even from prudence, if not from penitence, and torn up the certificate and no cheating could then have happened."

The High Court accepted this view and acquitted the accused. The same view was taken by the Patna High Court[3]:—

> "We have to assume that better reasons would prevail at any moment and the man would change his intention to commit a [sin or][4] crime before the actual consummation thereof; and until he has done all in his power to let his action be out of his control, so that the commission of [the sin or][4] the crime would be a natural effect of the actions already committed, there is still a mere preparation for the commission and not an attempt to commit the offence [or the sin][4]."

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1. Williams, Criminal Law, (1951), page 623.
2. *Queen* v. *Dhundi*, (1886) I.L.R. 8 All. 304.
3. *Lakshmi Prashad* v. *Emp.*, A.I.R. 1923 Pat. 307, 308, 309.
4. Hardly necessary.

Test of unequivocal evidence.

5.50. We may also refer to another test known as the test of unequivocal evidence. If the object of the criminal law is to prevent not only consummated crimes, but also the completion of a proposed crime, then there is justification for punishing a person when the evidence leaves no reasonable doubt that his intention was to commit that crime. But unless the accused has come very close to accomplishing his object, the probative value of his conduct will be too slight to support conviction for an attempt.

In a New Zealand case,[1] it was said that "in order to constitute an attempt, the acts of the accused must be such as to clearly and unequivocally indicate of themselves, the intention to commit the offence." Salmond J., whose view is most frequently quoted, observed,—

> "An act done with intent to commit a crime is not at criminal attempt unless it is of such a nature as to be in itself *sufficient evidence* of the criminal intent with which it is done. A criminal attempt is an act "which shows criminal intent on the face of it....An act....which is in its own nature and on the face of it innocent....cannot be brought within the scope of criminal attempt by evidence *aliunde* as to the criminal purposes with which it is done."

Dr. Turner, in his edition of Russell on Crime, after an examination of the authorities, states[2] as follows:—

> "It is therefore suggested that a practical test for the *actus reus* in attempt is that the prosecution must prove that the steps taken by the accused must have reached the point when they themselves clearly indicate what was the end towards which they were directed. In other words, the steps taken must themselves be sufficient to show, *prima facie*, the offender's intention to commit the crime which he is charged with attempting."

A similar test was mentioned in the earlier editions[3] of Archbold. But in a later edition,[4] he states the rule thus:—

> "It is submitted that the *actus reus* necessary to constitute an attempt is complete if the prisoner does an act which is a step towards the commission of the specific crime, which is immediately and not merely remotely connected with the commission of it, and the doing of which cannot reasonably be regarded as having any other purpose than the commission of the specific crime."

1. *R.* v. *Barker*. (1924) N.Z.L.R. 865 (Quotations are taken from 'Words and Phrases Vol. 1, page 138).
2. Russell on Crime, (1964), Vol. 1, p. 184 (edited by Dr. Turner).
3. E.g. 33rd Edition (1954), p. 1489.
4. 36th Edition (1966), paragraph 4104.

The last twenty words in this passage achieve a happy synthesis between the test of 'proximity' and the test of 'unequivocal evidence'.

In a Rajasthan case[1], it was held:—

> "When a person intends to commit a particular offence, and then he conducts himself in such a manner which clearly indicates his desire to translate that intention into action, and in pursuance of such an intention if he does something which may help him to accomplish that desire, then it can safely be held that he committed an offence of attempt to commit a particular offence. It is not necessary that the act which falls under the definition of an attempt should in all circumstances be a penultimate act towards the commission of that offence. That act may fall at any stage during the series of acts which go to constitute an offence under section 511 of the Indian Penal Code."

View of the Supreme Court.

5.51. In *Abhayanand's case*,[2] the Supreme Court summarised its views about the construction of section 511 of the Code thus:—

> "A person commits the offence of attempt to commit a particular offence when (i) he intends to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission: such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence."

In a later case,[3] where a truck carrying paddy was stopped 14 miles away from the Punjab-Delhi boundary on the ground that it was in violation of the Punjab Paddy (Export Control) Order, 1959, and the driver was prosecuted for an attempt to contravene the Order, the Supreme Court held:–

> "On the facts found, there was no attempt on the part of the appellants to commit the offence of export. It was merely a preparation on the part of the appellants and as a matter of law a preparation for committing an offence is different from attempt to commit it. The preparation consists in devising or arranging the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is a "direct movement towards the commission after preparations are made. In order that a person may be convicted of an attempt to commit a crime, he must be shown first to have had an intention to commit the offence, and secondly to have done an act which

1. *State* v. *Parasmal and others*, A.I.R. 1969 Raj. 65 (V.P. Tyagi J.).
2. *Abhayanand* v. *State of Bihar*, (1962) 2 S.C.R. 241; A.I.R. 1961 S.C. 1698, 1703.
3. *Malkiat Singh* v. *State of Punjab*, (1969) 1 S.C.R. 157 (Ramaswami J.).

constitutes the *actus reus* of a criminal attempt. The sufficiency of the *actus reus* is a question of law which had led to difficulty because of the necessity of distinguishing between acts which are merely preparatory to the commission of a crime, and those which are *sufficiently proximate* to it to amount to an attempt to commit it. If a man buys a box of matches, he cannot be convicted of attempted arson, however clearly it may be proved that he intended to set fire to a haystack at the time of the purchase. Nor can he be convicted of this offence if he approaches the stack with the matches in his pocket, but, if he bends down near the stack and lights a match which he extinguishes on perceiving that he is being watched, he may be guilty of an attempt to burn it. Sir James Stephen, in his Digest of Criminal Law, article 50, defines an attempt as follows:—

> 'an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The point at which such a series of acts begins cannot be defined, but depends upon the circumstances of each particular case.'

The test for determining whether the act of the appellants constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. In the present case, it is quite possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their mind at any place between Samalkha Barrier and the Delhi-Punjab boundary and not have proceeded further in their journey."

Attempt and impossibility of achievement.

5.52. In some cases where the accused's objective is for one reason or another impossible of achievement, the question arises whether his act would amount to a punishable attempt. Two illustrations of such cases are appended to section 511. In both of them, it is stated, the person during the futile act is guilty of attempting to commit theft. It is interesting to note that in an English case[1] of 1864, it was held that where A had put his hand in another's pocket but found nothing, A could not be convicted of attempted larceny. This was apparently on the notion that an attempt was established only where, if no interruption had taken place, the attempt could have been carried out successfully but the decision was overruled in 1892.[2]

There are, however, other types of impossibility where the question presents difficulties. Thus if A who sees an umbrella kept in a stand resolves to steal it and takes it home only to find that it is his own umbrella, is he guilty of an attempt to steal?

1. *Collins*, (1864), 9 Cox C.C. 497.
2. *Ring, Atkins and Jacksons*, (1892), 61 L.J.M.C. 116.

If A with the intention of poisoning Z, buys what he thinks is arsenic and puts it in Z's food, but as the druggist suspecting A's design sold him sugar, Z is unharmed. Is A guilty of attempt to murder?

Again, if A, with the intention of poisoning Z, gets the poison but not knowing the lethal dose, uses a dose which is far too weak to kill anyone, is A guilty of an attempt to murder?

If A administers to W, a woman, who tells him she is pregnant but is not so in fact, a drug which is likely to cause abortion in a pregnant woman, is A guilty of an attempt to cause miscarriage?

Such cases, both real and hypothetical can be multiplied *ad lib.*

Definition of attempt in foreign codes.

5.53 We have had a close look at some foreign criminal codes which contain a definition of attempt. A few of these definitions which appear to us to be instructive have been extracted and given in the Annexure to this chapter for reference and comparison. A study of these precedents has persuaded us to think it is desirable and practicable to set out in our Penal Code the essential elements of attempts in the form of a definition instead of leaving the idea entirely in the air.

Recommendation.

5.54 We recommend that the last chapter of the Code Containing section 511 be omitted and, instead, a new chapter VB entitled "Attempt" consisting of two sections 120C and 120D be inserted after chapter VA as follows:—

"CHAPTER VB

ATTEMPT

120C. *Definition of attempt.*—A person attempts to commit an offence punishable by this Code, when:–

(a) he, with the intention or knowledge requisite for committing it, does any act towards its commission;[1]

(b) the act so done is closely connected with, and proximate to, the commission of the offence;

and

(c) the act fails in its object because of facts not known to him or because of circumstances beyond his control.

Illustrations

(a) A, intending to murder Z, buys a gun and loads it. A is not yet guilty of an attempt to commit murder. A fires the gun at Z, he is guilty of an attempt to commit murder.

(b) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A is not yet guilty of an attempt to commit murder.

1. See *Omprakash* v. *State of Punjab*, A.I.R. 1961 S.C. 1782.

A places the food on Z's table, or delivers it to Z's servant to place it on Z's table. A is guilty of an attempt to commit murder.

(c) A, with intent to steal another person's box, while travelling in a train, takes a box and gets down. He finds the box to be his own. As he has not done any act towards the commission of the offence intended by him, he is not guilty of an attempt to commit theft.

(d) A, with intent to steal jewels, breaks open Z's box, and finds that there is no jewel in it. As his act failed in its object because of facts not known to him, he is guilty of an attempt to commit theft.

120D. *Punishment for attempt*:—Whoever is guilty of an attempt to commit an offence punishable by this Code with imprisonment for life or with imprisonment for a specified term, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life, or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both."

Amendment of sections 307 and 308.

5.55 In view of this definition of attempt, which we feel could be applied in relation to murder and culpable homicide not amounting to murder without any serious difficulty, we do not consider it necessary to have a different formula to define attempt to commit either of these offences. Sections 307 and 308 may be revised as follows:-

"307. *Attempt to murder*:—Whoever attempts to commit murder shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender may-

(a) if under sentence of imprisonment for life, be punished with death; and

(b) in any other case, be punished with imprisonment for life.

308. *Attempt to commit culpable homicide*:—Whoever attempts to commit culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section."

CHAPTER 6

OFFENCES AGAINST THE STATE

Introductory.

6.1- With this chapter begins the definition of particular offences which the makers of the Code thought fit to include in it. Despite the large number—about 400—of such offences for which the punishment is prescribed in the Code, the compilation cannot in the nature of things be exhaustive. We have, and doubtless shall continue to have, other types of wrongful, injurious or antisocial conduct made punishable under other laws. While an enlargement of the scope of the Penal Code by including therein some of the offences now punishable under a special or local law may be desirable, it is neither necessary nor practicable to attempt to make the Code an absolutely complete law of crimes.

Analysis of offences included.

6.2. The title of this chapter—Offences against the State—does not appear to be a particularly apt description of the dozen offences brought together within its compass. The first five sections deal with what may be called acts of high treason—waging war against the Government of India, conspiring to wage war, preparation to wage war, misprison of such activities and overaweing the Government or the Head of State by force. Next we have a section punishing one aspect of sedition. Then three sections aim at preserving friendly relations with foreign States by punishing those who attempt to prejudice those relations by unwarranted aggressive action. The last three sections of the chapter, which relate to prisoners of war and state prisoners, are not of much practical importance during peace time, especially since the category referred to as "State prisoners" during the British regime no longer exists, having given place to the less dignified appellation of "persons under preventive detention".

Other Acts dealing with security and integrity of India.

6.3. This chapter is thus by no means a comprehensive, or even adequate, codification of treason, sedition and other kindred offences against the security and integrity of the Union of India and of the States comprising the Union. This wide field, however, is covered to some extent by a number of other Central Acts of which we may briefly notice the following:—

(i) The Foreign Recruitment Act, 1874. This Act empowers the Central Government to prohibit or control the recruitment in India of persons for the service of any foreign State in any capacity, whether civil or military. The British statute entitled the Foreign Enlistment Act, 1870, which was a law in force in the Dominion of India immediately before the commencement of the Constitution, is perhaps more relevant from this point of view. It prohibits British

subjects from enlisting in the military or naval service of any foreign State at war with a foreign State at peace with Britain. A law on these lines applying in relation to India and Indian citizens is an obvious desideratum.

(ii) The Indian Criminal Law Amendment Act, 1908, as enacted, provided in one part for the more speedy trial of persons committing violent crimes, and in another part, for the suppression of associations dangerous to the public peace. The first part of the Act was repealed in 1922. Under the second part, which is still in force, such persons as are members of, or in any way assist, an association which encourages or aids the commission of acts of violence or intimidation, or of which the members habitually commit such acts, are made liable to punishment. A severe punishment is provided for persons managing or promoting such associations. Where the State Government declares such an association to be unlawful, persons maintaining their connection with the association are liable to punishment.

(iii) The Official Secrets Act, 1923. Based on the English Acts of 1911 and 1923 on the same subject, this Act constitutes the chief legal weapon for fighting espionage in this country. It is, however, not confined to espionage in the strict sense; it prohibits a number of other acts prejudicial to public safety which could be broadly described as sobotage.

(iv) The Criminal Law Amendment Act, 1938, punishes a person who, with intent to affect adversely the recruitment of persons to serve in the armed forces of the Union, wilfully dissuades persons from entering any such force, or intigates persons to enter an armed force and then commit acts of mutiny and insubordination from within. *Prima facie,* this straightforward penal provision would appear suitable for inclusion in chapter 7 of the Code as an offence relating to the armed forces of the Union.

(v) The Criminal Law Amendment Act, 1961, makes it an offence for any one to question by speech or writing the territorial integrity or frontiers of India in a manner which is, or is likely to be, prejudicial to the safety and security of the country.

(vi) The Unlawful Activities (Prevention) Act, 1967, is an important piece of legislation dealing with treasonable acts affecting the territorial integrity and inviolability of the country. Any acitvity which is intended to disrupt the territorial integrity of India, as to bring about the cession of a part of the territory of India or the secession of a part from the Union is declared by the Act to be "unlawful", and punishments are provided for individuals and associations who indulge in such activities.

Consideration of law of treason, etc. to be taken up separately.

6.4. We notice that treason, sedition and cognate offences, which may be classified as offences against the security of the state, are dealt with in foreign codes in much greater detail than in our Penal Code. In particular, it is noticeable that treason and treasonable activities are spelt out elaborately, and not limited to waging war against the Government and assaulting the head of state. On a preliminary study of the problem, we have come to the conclusion that the strengthening, consolidation and revision of this important branch of the criminal law should be taken up as a separate project and studied in depth. We shall accordingly confine ourselves, in the present revision of the Penal Code, to an examination of the provisions of Chapter 6 as they now stand.

Treason in English law.

6.5. In their History of English Law, Pollock and Maitland[1] observe that "treason is a crime which has a vague circumference and more than one centre". This is illustrated by the first attempt to its definition in the Statute of Treason[2] which was enacted in 1352 to remove doubts about the meaning of the term, but which merely listed seven different activities as treason, namely:—

(1) to compass or imagine the death of the King, his Queen or eldest son;

(2) to violate the King's wife, or his eldest unmarried daughter, or his eldest son's wife;

(3) to levy war against the King in his realm;

(4) to be adherent to the King's enemies in his realm, giving them aid and comfort in the realm or elsewhere;

(5) to counterfeit the King's great or privy seal, or his money;

(6) to bring false money into the realm; and

(7) to slay the chancellor or treasurer or justices, being in their places, doing their offices.

To us, at the present day, there would not seem to be much inter-connection between these items, and apart from items 3 and 4,—levying war against the King in his realm and adhering to the King's enemies—the other items would hardly be regarded as treasonable acts. Pollock and Maitland refer to the two main items as constituting "the development of a new political idea. Treason has been becoming a crime against the state; the supreme crime against the state is the levying of war against it. A right, or duty, of rising against the King and compelling him to do justice can no longer be preached in the name of law; and this is well".[3] This was written in 1895, but it continues to be valid today, substituting 'government' for 'King' in regard to democratic regimes.

1. Pollock and Maitland, History of English Law (1968) Vol. 2, page 502.
2. 25 Edw. III, State. 5, Cap. 2.
3. Pollock and Maitland, History of English Law (1968) Vol. 2, page 503.

Section 121

6.6. Section 121 prescribes the same punishment, namely death or imprisonment for life, for the principal offence of waging war against the Government of India and for abetting that offence or attempting to commit that offence. The section does not require any change.

"Adherence" to India's enemies to be punishable.

6.7. It is curious that while waging war against India is dealt with in all aspects in sections 121 to 123, no mention is made of the other important aspect of treason, viz., "adhering to the King's enemies, giving them aid and comfort". Abetment of waging war which is punishable under section 121 may not cover all cases of such adherence. In the United States, the offence of treason is defined in the following terms:—

> "Whoever, owing allegiance to the United States, levies war against them, or adheres to their enemies giving them aid and comfort within the United States or elsewhere, is guilty of treason etc."[1]

Although this enactment (or re-enactment) is quite recent,[2] it reproduces the rather archaic words[3] of the English Statute of Treason. The Canadian Criminal Code[4] gives expression to the same idea in more precise and modern terms which we could well adopt. We propose that a new section may be added after section 123 reading as follows:—

> "123A. *Assisting India's enemies:*—Whoever assists in any manner an enemy at war with India, or the armed forces of any country against whom the armed forces of India are engaged in hostilities, whether or not a state of war exists between that country and India, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Section 121A—revision recommended.

6.8. Section 121A punishes two different kinds of conspiracy. The first is a conspiracy to wage war against the Government of India, and the second is a conspiracy to overawe by force the Central Government or any State Government. In view of section 120B, as proposed to be revised by us[5], there is hardly any need for a separate section to deal with the first kind of conspiracy. If any such conspiracy actually results in the waging of war against the Government of India, or even an attempt to wage such war, the conspirators will be punishable with death or imprisonment for life under section 121 read with section 120B; and if the conspiracy is infructuous, they will be punishable with half the longest term of imprisonment provided for the offence, that is, ten years, which should be sufficient.

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1 U.S. Code (as amended upto 1966), Title 18, section 2381.

2. June 25, 1948.

3. Articles 102(1)(d) and 191(1)(d) of the Constitution refer to "allegiance or adherence to a foreign state".

4. See section 46(1), clause (c).

5. See paragraph 5.39 above.

It is difficult to see what purpose is served at present by the words 'within or without India' which appear at the beginning of the section. When it was enacted in 1870, the exterritorial application of the Code was limited to offences committed by Government servants in the territory of any Indian State[1]. By referring to conspiracies entered into "without British India" the section was apparently intended to cover British subjects and not foreigners. "Even where a statute creating a criminal offence is clearly expressed so as to cover acts committed outside the jurisdiction, it will in the absence of further clear provision only be regarded as covering such acts when committed by British subjects."[2] In view of sections 1 and 4 of the Code as they stand at present, it is fairly clear that section 121A cannot apply to the acts of foreigners committed outside India. We consider the words "within or without India" are of no practical consequence or significance and should be omitted.

As regards the second kind of conspiracy, we think it desirable to extend the idea to overawe by criminal force or by show of criminal force, the Parliament of India or the legislature of any State in addition to overaweing the Central Government or any State Government. At present, the award of simple imprisonment is permissible under the section, which in view of the gravity of the offence is not appropriate. It should be rigorous imprisonment in all cases.

We accordingly propose that section 121A may be revised as follows:—

> "121A. *Conspiracy to overawe the Parliament or Government of India or the Legislature or Government of any State:*— Whoever conspires to overawe, by means of force or show of force, the Parliament or Government of India, or the Legislature or Government of any State, shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.
>
> *Explanation:*—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof."

Since this offence is akin to the one described in section 124, it would be logical to bring it *after* the three sections dealing with waging war and the proposed new section about assisting India's enemies, and to number it 123B.

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1. See paragraph 1.9 above for the text of section 4 as originally enacted.
2. *Per* Lord Morris in *Treacy* v. *D.P.P.*, (1971) 1 All E.R. 110 at 114.

Sections 122 and 123.

6.9. It has been suggested by a public prosecutor that a specific reference to nuclear weapons, besides arms and ammunition, should be made in section 122, and also that transport of men, arms, etc., should be mentioned, besides collecting them. We have, however, no doubt that the words "otherwise prepares to wage war" are wide enough to cover both ideas, and there is no need to amplify the section as suggested or in any other way.

The only change we propose in sections 122 and 123 is to replace "imprisonment of either description" by "rigorous imprisonment". Here again, for a grave offence affecting the security of the state, simple imprisonment is hardly an appropriate punishment.

Section 124 to cover also heads of legislatures and of the judiciary.

6.10. We considered a suggestion that the scope of section 124, now applicable only in relation to the President of India and the Governors of States, should be widened to cover certain other high dignitaries like presiding officers of legislative bodies and Chief Justices. We agree that, as symbolic heads of the trinity of state power, the use of force against them with the intention of compelling them to act, or not to act, in a particular way should be regarded as a treasonable act, and should be punished equally severely.

In regard to the substance of the offence, it does not seem necessary to cover expressly attempts to restrain wrongfully and attempts to overawe by force. These may be left to be governed by the general provision for attempts.[1] The section may accordingly be revised as follows:—

"124. *Assaulting President, etc., with intent to compel or restrain the exercise of any lawful power*:—(1) Whoever, with the intention of inducing or compelling any office-holder to whom this section applies, to exercise or restrain from exercising in any manner any of his lawful powers, assaults, or wrongfully restrains, or overawes by means of force or the show of force, such office-holder, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) The office-holders to whom this section applies are:—

(i) the President of India;

(ii) the Vice-President of India;

(iii) the Chief Justice of India;

(iv) the Speaker of the House of the People;

(v) the Governor of any State;

(vi) the Chief Justice of any High Court;

(vii) the Speaker of the Legislative Assembly of any State; and

1. See new section 120D proposed in para. 5.54 above.

(viii) the Chairman of the Legislative Council of any State."

Sedition.

6.11. Section 124A defines the offence of sedition. Despite the umbra of repression which a mention of this section is likely to evoke in one's mind, it is a provision which has to find a place in the Penal Code. As observed by Sinha C.J., in *Kedar Nath's case,*[1] "every State, whatever its form of Government, has to be armed with the power to punish those who by their conduct, jeopardise the safety and stability of the State, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption of the State or to public disorder".

English law.

6.12. In England, the crime was described by Fitzerald J. in the following terms:-[2]

"Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval....The objects of sedition generally are to induce discontent and insurrection and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbances, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitution of the realm, and generally all endeavours to promote public disorder.

Stephen defined the offence more closely as follows[3]:—

"Sedition may be defined as conduct which has, either as its object or as its natural consequence, the unlawful display of dissatisfaction with the Government or with the existing order of society. The seditious conduct may be by words, by deed, or by writing. Five specific heads of sedition may be enumerated according to the object of the accused. This may be either:—

(1) to excite disaffection against the King, Government or Constitution, or against Parliament or the administration of justice;

(2) to promote, by unlawful means, any alteration in Church or State;

(3) to incite a disturbance of the peace;

(4) to raise discontent among the King's subjects;

(5) to excite class hatred.

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1. *Kedar Nath Singh* v. *State of Bihar*, (1962) Suppl. 2 S.C.R. 769, 792; A.I.R. 1962 S.C. 955.
2. Address to the Jury in *Reg.* v. *A.M. Sullivan*, (1868) 11 Cox's Criminal cases, 44, 45.
3. Stephen, Commentaries on the Laws of England, (1950), Vol, IV, pp. 141, 142.

It must be observed that criticism on political matters is not of itself seditious. The test is the manner in which it is made. Candid and honest discussion is permitted. The law only interferes when the discussion passes the bounds of fair criticism. More especially will this be the case when the natural consequence of the prisoner's conduct is to promote public disorder."

Indian definitions narrower than the English.

6.13. It will be noticed that the definition of sedition in section 124A is much narrower than Stephen's definition. It is limited to exciting disaffection towards the Government established by law, which is only a part of the first item in Stephen's analysis. Exciting disaffection towards the Constitution or Parliament or the administration of justice is not considered a seditious activity in India. On the other hand, while promotion of public disorder in some form or other is considered an essential ingredient of seditious conduct in England, this idea is not brought out in the wording of section 124A.

Different interpretations of section 124A before the Constitution.

6.14. In the celebrated case of *Bal Gangadhar Tilak*[1] Strachey J. of the Bombay High Court said:—

"I am aware that some distinguished persons have thought that there can be no offence against the section, unless the accused either counsels or suggests rebellion or forcible resistance to Government. In my opinion, this view is absolutely opposed to the express words of the section itself which, as plainly as possible, makes exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt."

But in *Niharendu Dutt*,[2] Gwyer, C.J., of the Federal Court, relying mainly on English authorities, took the view that "public disorder or the reasonable anticipation or likelihood of public disorder is the gist of the offence. The act or words complained of must either incite to disorder or must be such as to satisfy reasonable men that it is their intention or tendency". This interpretation, however, did not hold the field for long. In *Sadashiv Narayan*,[3] the Privy Council expressly overruled it by saying that "it is sufficient for their Lordships to say that they adopt the language of Strachey J. as exactly expressing their own view on the point."

1. (1897) I.L.R. 22 Bom. 112.
2. *Niharendu Dutt* v. *K.E.*, (1942) F.C.R. 38.
3. *K.E.* v. *Sadashiv Narayan Bhalerao*, (1947) L.R. 94 I.A. 89; A.I.R. 1947 P.C. 82.

Validity under article 19(2) of the Constitution.

6.15. After the Constitution came into operation, the more fundamental question, *viz*, the constitutionality of section 124A *vis-a-vis* article 19, was raised in a few cases leading to a conflict of decisions in the High Courts. It was finally resolved by the Supreme Court in *Kedar Nath Singh*[1] in the following manner:—

> "In view of the conflicting decisions of the Federal Court and of the Privy Council, referred to above, we have to determine whether and how far the provisions of sections 124A and 505 of the Indian Penal Code have to be struck down as unconstitutional. If we accept the interpretation of the Federal Court as to the gist of criminality, in an alleged crime of sedition, namely, incitement to disorder or tendency or likelihood of public disorder or reasonable apprehension thereof, the section may lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Article 19(1)(a) read with clause (2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. x x x It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order."

As regards section 505 of the Code the constitutionality of which also was challenged, the Court held in the same judgment:—

> "It is manifest that each one of the constituent elements of the offence under section 505 has reference to, and a direct effect on, the *security of the State* or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression."

1. *Kedar Nath Singh* v. *State of Bihar*, S.C.R. (1962) Suppl. p. 808.

It should be mentioned here that when this decision was given, article 19(2) of the Constitution did not contain a reference to "the sovereignty and integrity of India", a phrase which was subsequently inserted by the Constitution (Sixteenth Amendment) Act of 1963.

Mens rea of sedition to be related expressly to article 19(2).

6.16. In view of the controversy which has raged round section 124A for all this time, it is clearly necessary to revise the formulation of the offence so as to make it a patently reasonable restriction under article 19(2). The elements mentioned in this article which are relevant to the offence of sedition are integrity of India, security of the State and public order. The section has been found to be defective because "the pernicious tendency or intention" underlying the seditious utterance has not been expressly related to the interests of integrity or security of India or of public order. We feel that this defect should be removed by expressing the *mens rea* as "intending or knowing it to be likely to endanger the integrity or security of India or of any State or to cause public disorder.

Disaffection towards the constitution, legislatures and Judiciary to be included.

6.17. Another defect we have already noticed in the definition of sedition is that it does not take into account disaffection towards (a) the Constitution, (b) the Legislatures, and (c) the administration of justice, all of which would be as disastrous to the security of the State as disaffection towards the executive Government. These aspects are rightly emphasised in defining sedition in other Codes and we feel that section 124A should be revised to take them in.

Punishment to be rationalised.

6.18. The punishment provided for the offence is very odd. It could be imprisonment of life, or else, imprisonment upto three years only, but nothing in between. The Legislature should, we think, give a firmer indication to the Courts of the gravity of the offence by fixing the maximum punishment at seven years' rigorous imprisonment and fine.

Section 124A revised.

6.19. We propose that the section be revised as follows:—

"124A. *Sedition.*—Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise,

excites, or attempts to excite, disaffection towards the Constitution, or the Government or Parliament of India, or the Government or Legislature of any State, or the administration of justice, as by law established,

intending or knowing it to be likely thereby to endanger the integrity or security of India or of any State, or to cause public disorder,

shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation 1: The expression "disaffection" includes feelings of enmity, hatred or contempt.

Explanation 2: Comments expressing disapprobation of the provisions of the Constitution, or of the actions of the Government, or of the measures of Parliament or a State Legislature, or of the provisions for the administration of justice, with a view to obtain their alteration by lawful means without exciting or attempting to excite disaffection, do not constitute an offence under this section."

Insult to the Constitution, national flag, emblem or anthem to be punishable.

6.20. The Code should, we think, contain a provision for punishing insults to the book of the Constitution, the national flag, the national emblem and the national anthem. Burning of the copies of the Constitution, desecration of the national flag or national emblem and offering deliberate insults to the national anthem, are not only unpatriotic acts but are also likely to cause a disturbance of public order. As such, they are reprehensible enough to be made offences in the Penal Code.

Legislative competence of Parliament in the matters is derivable from the entry relating to criminal law in the Concurrent List and from the residuary entry in the Union List. It could hardly be said that such a provision curtails the freedom of expression unreasonably, and the restriction would be clearly in the interests of public order.

After a study of the Madras Act[1] on the subject and the case-law thereon, and of the laws of a few other countries, we have come to the conclusion that a simple provision on the subject would suffice. It is not necessary that the offensive act should be done in a public place. We recommend that a new section be inserted after section 124A, as follows:—

> "124B. *Insult to the book of the Constitution, national flag, national emblem or national anthem.*—Whoever deliberately insults the book of the Constitution, the national flag, the national emblem or the national anthem, by burning, desecration or otherwise, shall be punished with imprisonment of either description for a term which may extend up to three years, or with fine, or with both."

Section 125 to be amended.

6.21. Section 125 makes it an offence to wage war against the Government of any Asiatic Power in alliance or at peace with the Government of India. The reference to 'Asiatic Power' is now meaningless, and the words "in alliance or" are unnecessary. It would be sufficient to refer to the Government of any foreign State at peace with India.

The punishment of life imprisonment for the offence is unduly severe; on the other hand, if ever the offence is committed, the offender ought not to be let off with a fine as now provided

1. The (Madras) Prevention of Insult to National Honour Act, 1957.

in the section. We propose that the punishment should be imprisonment of either description not exceeding ten years, and also fine.

The section may accordingly be revised as follows:—

"125. *Waging war against any foreign state at peace with India.*—Whoever wages war against the Government of any foreign State at peace with India, or attempts to wage such war, or abets the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Section 126.

6.22. The only change required in section 126 is to substitute for the words "any Power in alliance or at peace with the Government of India" the words "any foreign state at peace with India."

Section 127.

6.23. Section 127 needs no change.

Sections 128 to 130.

6.24. (i) The reference to "State prisoners" in section 128 and the two succeeding sections is a relic of the past. Since the State Prisoners Regulations of the three Presidencies made early in the last century have been repealed in 1952, the reference should be omitted from these sections.

(ii) As regards prisoners of war escaping from custody, the punishment of imprisonment for life provided in sections 128 and 130 is unnecessary and may be deleted. Imprisonment upto ten years and fine is adequate for both these offences.

(iii) In section 130, the word "harbours" has to be read in the light of the explanation given in section 52A, with the result that where the harbour is given by the wife or husband of the person harboured, it will *not* include the supplying that person with *shelter*, food, drink etc. It is difficult to see what else the harbouring in such a case will mean. If the wife of an escaped prisoner of war may be punished under the section for concealing him, there is no good reason why she need not be punished for "harbouring" him, in whatever sense we understand that term. We do not, therefore, propose any special explanation in section 130 for the word "harbours".

CHAPTER 7

OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE

Correlation with, Army Navy and Air Force Acts.

7.1. This chapter deals with certain offences which might be committed by the civilian population in relation to the defence service personnel. Since the same acts committed by the latter are punishable severely by the Act to which they are subject, it is provided in section 139 of the Code that they are not punishable under the Code for such acts. The provisions of this chapter are thus in aid and support, from the civilian angle, of the Army, Navy and Air Force Acts which are designed to maintain perfect discipline in the armed forces of the Union.

The correlation between the offences punishable under this chapter and the offences punishable by court-martial under the Army Act, 1950, is as follows:—

(i) Sections 131 and 132 of the Code punish abetment of mutiny and attempt to seduce defence service personnel from duty. Mutiny, including any endeavour to seduce such personnel from duty, is a capital offence under section 37 of the Army Act.

(ii) Sections 133 and 134 of the Code punish abetment of assault by any defence service personnel on any superior officer. Such assault is punishable under section 40 of the Army Act with imprisonment up to 14 years.

(iii) Sections 135 and 136 of the Code punish abetment of desertion and knowingly harbouring a deserter. Deserting and aiding deserters are punishable in the case of army personnel under section 38 of the Army Act with imprisonment up to 7 years.

(iv) Section 138 of the Code punishes abetment of an act of insubordination by a defence service personnel. Such insubordination is punishable under section 42 of the Army Act with seven years' imprisonment.

Chapter to apply to all armed forces of the Union.

7.2. It will be noticed that chapter 7 of the Code is at present applicable only in relation to Army, Navy and Air Force personnel. The explanation to section 131 expressly mentions persons subject to the Army Act, 1950, the Indian Navy (Discipline) Act, 1934, and the Air Force Act, 1950. (It also refers to the corresponding British Acts which are no longer relevant.) As there are a few other armed forces of the Union regulated by special laws, it is necessary that this chapter should apply in relation to all armed forces of the Union. We therefore

propose that the heading of the chapter be changed to "Offences relating to the Armed Forces" and that the expressions "armed forces", "officer and member" be comprehensively defined in a new section as follows:—

"130A. *Definitions.*—In this Chapter,—

(a) "armed forces" means the military, naval and air forces and includes any other armed forces of the Union;[1]

(b) "officer" means a person commissioned, gazetted or in pay as an officer of any of the armed forces, and includes a junior commissioned officer, a warrant officer, a petty officer and a non-commissioned officer;

(c) "member" means a person in any of the armed forces other than an officer."

Sections 131 and 132 revised.

7.3. While section 131 makes abetment of mutiny punishable with imprisonment for life or with imprisonment of either description upto ten years, section 132 makes such abetment, if mutiny be committed in consequence of that abetment, punishable with death or with imprisonment for life or imprisonment of either description up to ten years. It would therefore appear that section 131 applies to cases where mutiny is not committed in consequence of the abetment. Section 131 also makes any attempt to seduce any defence service personnel from his allegiance or duty punishable with imprisonment for life or imprisonment up to ten years. In cases where mutiny is not committed in consequence of the abetment or where it is only an attempt to seduce defence service personnel, the punishment of imprisonment for life appears to be unduly heavy. On the other hand, we see no justification for a sentence of imprisonment under either section being simple. We propose that the two sections may be revised as follows:—

"131. *Abetment of mutiny.*—Whoever abets the committing of mutiny by an officer or member of any of the armed forces shall—

(a) if mutiny be committed in consequence of such abetment, be punished with death or imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine; and

(b) in any other case, be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

1. *Cf* entry 2 of the Union List.

132. *Attempting to seduce an officer or member of the armed forces from his duty.*— Whoever attempts to seduce any officer or member of any of the armed forces from his allegiance or his duty shall be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine."

Sections 133 and 134 combined and revised.

7.4. Both sections 133 and 134 deal with abetment of assault by defence service personnel on any superior officer being in the execution of his office, the former section presumably providing for cases where such assault is not committed in pursuance of the abetment and the latter for cases where the assault is so committed. To make this point clear it seems desirable to combine and revise the two sections as follows:—

"133. *Abetment of assault on superior officer.*—Whoever abets an assault by an officer or member of any of the armed forces on any superior officer being in the execution of his office, shall—

(a) if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and

(b) in any other case, be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Section 135 amended.

7.5. Differing from the previous sections, section 135 does not distinguish between cases where the abetment of desertion is successful and where it is unsuccessful. In either case, the maximum punishment prescribed in section 135 is imprisonment of either description for two years. Under section 38 of the Army Act and the corresponding sections of the Navy and Air Force Acts, desertion while on active service is punishable with death, and in other cases, with seven years' imprisonment. We consider therefore that the punishment under section 135 of the Code should be increased to five years in cases where desertion takes place in consequence of the abetment. The section may be revised as follows:—

"135. *Abetment of desertion from the armed forces.*— Whoever abets the desertion of any officer or member of any of the armed forces shall—

(a) if the desertion be committed in consequence of such abetment, be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both; and

(b) in any other case, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Section 136 formally amended.

7.6. Section 136 which punishes the harbouring of a deserter from the armed forces, requires only a formal amendment. It may be amended to read as follows:—

"136. *Harbouring deserter.*—Whoever, knowing or having reason to believe that an officer or member of any of the armed forces has deserted, harbours such officer or member shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband."

Section 137 omitted.

7.7. Section 137 makes the master or person in charge or a merchant vessel, on board of which any deserter is concealed, liable to a "penalty" not exceeding five hundred rupees, even when he is ignorant of such concealment, if he might have known of such concealment but for some neglect of duty on his part. It is curious that the section uses the word "penalty" instead of the usual word "fine". The object is presumably to debar the court convicting the offender from imposing any sentence of imprisonment in default of payment of the "penalty". However that may be, the section does not appear to be of any consequence, and we suggest that it may be omitted.

Section 138 revised.

7.8. Section 138 deals with abetment of an act of insubordination by an officer or member of the armed forces, but only if the act of insubordination is committed in consequence of the abetment. The section should also provide for cases where the act of insubordination is not committed in consequence of the abetment. Considering that an act of insubordination is punishable with seven years' imprisonment under section 42 of the Army Act (and if such insubordination consists in disobedience of a superior officer, punishable with fourteen years' imprisonment), the punishment provided in section 138 appears to be low. It should, we think, be increased to two years when the abetment is successful and to six months when it is not. It may be revised as follows:—

"138. *Abetment of an act of insubordination.*—Whoever abets what he knows to be an act of insubordination by an officer or member of any of the armed forces, shall—

(a) if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and

(b) in any other case, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

7.9. We notice that an important offence relating to the armed forces which could appropriately have been included in this Chapter has been put along with certain other, not very closely connected, matters in section 505(1)(a) of the Code. Making, publishing or circulating a statement, rumour or report with intent to cause the armed forces to mutiny or otherwise fail in their duty is more germane to this Chapter than to Chapter 22 dealing with miscellaneous things like criminal intimidation, insult and annoyance. We, therefore, propose to add here a new section 138A as follows:—

"138A. *Incitement to mutiny or other act of insubordination.*—Whoever makes or publishes or circulates any statement, rumour or report, with intent to cause, or which is likely to cause, any officer or member of any of the armed forces to mutiny or otherwise disregard or fail in his duty as such officer or member, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanation.—A person making, publishing or circulating any such statement, rumour or report, who has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid, does not commit an offence under this section."

The offence should be cognizable.

Dissuasion from recruitment to armed forces.

7.10. In the previous chapter we have referred[1] to the Criminal Law Amendment Act, 1938, which punishes a person who, with intent to affect adversely the recruitment of persons to the armed forces, wilfully dissuades persons from entering such forces, or instigates persons to enter an armed force and then commit acts of mutiny and insubordination from within. Considering that the offence is clearly one relating to the armed forces of the Union and of the type dealt with in Chapter 7 of the Penal Code, it is difficult to understand why a separate Act was considered necessary for the purpose in 1938. We propose, by way of consolidation, that the following section may be added in the Code:—

"138B. *Dissuasion from enlisting and instigation to mutiny or insubordination after enlistment.*—Whoever—

(a) with intent to affect adversely the recruitment of persons to serve in the armed forces of the Union, dissuades or attempts to dissuade the public or any person from entering any such forces, or

1. See para. 6.3(iv).

(b) without dissuading or attempting to dissuade from entering such forces, instigates the public or any person to do, after entering any such force, anything which is punishable as mutiny or insubordination under the law relating to that armed force,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanation.—The provisions of clause (a) do not extend to comment on, or criticism of, the policy of the Government in connection with the armed forces, made in good faith without any intention of dissuading from enlistment, or to advice given in good faith for the benefit of the individual to whom it is given, or of any member of his family, or of any of his dependants."

The offence is, in our opinion, serious enough to merit a substantial sentence of imprisonment up to three years, instead of one year as at present provided in the Act. It is also desirable to make the offence cognizable. The Act requires the previous sanction of the State Government to any prosecution of the offence under the Act. After the offence is included in the Penal Code and made cognizable, we do not consider that any previous sanction for prosecution is necessary.

7.11. Section 139 requires to be formally revised as follows:— Section 139 revised formally

"139. *Persons subject to certain laws, not to be punished under the Chapter.*—No person subject to the Army Act, 1950, the Navy Act, 1957, the Air Force Act, 1950, or any other law relating to the armed forces of the Union is subject to punishment under this Code for any of the offences defined in this Chapter."

7.12. In regard to section 140, we considered a suggestion that it is only when the person wearing a garb, or carrying a token, resembling that used by a soldier etc., has a fraudulent intention, he should be punished under the section. As at present worded, mere intention that it may be believed that he is a soldier is sufficient to make him punishable, We do not think it is necessary to introduce the element of fraud in the *mens rea* necessary for the offence. Section 140 revised.

The section does not apply to wearing an officer's uniform, which appears to be an omission. There is no reason why a person who, not entitled to wear such uniform, wears it with the intention mentioned in section 140, should not be punishable. The punishment may also be increased to six months and unlimited fine.

The section may accordingly be revised as follows:—

"140. *Wearing garb or carrying token used by officer or member of the armed forces.*—Whoever, not being an officer or member of the armed forces, wears any garb, or carries any token, resembling any garb or token used by such an officer or member, with the intention that it may be believed that he is such an officer or member, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

CHAPTER 8

OFFENCES AGAINST THE PUBLIC TRANQUILLITY

Introductory.

8.1. This Chapter deals with what are commonly known as "group offences', *i. e.*, offences committed by a large number of persons which disturb the public tranquility or cause breach of the peace. The minimum number required (except in sections 153A, 159 and 160) is five. In other chapters also are included offences involving breach of the peace or disturbance of the public tranquility. But the essence of most of the offences under this Chapter is the combination of several persons united in the purpose of committing a criminal offence, and that consensus of purpose is itself an offence distinct from the criminal offences which these persons agree and intend to commit. The essential connecting link amongst the offenders is the existence of a common object to do any of the acts described in section 141 which makes all of them members of an unlawful assembly. Vicarious liability attaches to every one of the members of the assembly, not only for any offence committed by any member in prosecution of the common object of the assembly, but also for any offence committed by one member which the others knew to be likely to be committed in prosecution of such common object. Sections 153A, 159 and 160 are somewhat out of place in this Chapter except for the fact that they also involve breach of peace or disturbance of public tranquility.

Section 141 —Scheme analysed.

8.2. In order to constitute an unlawful assembly under section 141, the first requirement is that there should be at least five persons composing the assembly. The second requirement is that its common object should fall within one or the other of the types of activities described in the five clauses of the section. Four of these clauses envisage the use of criminal force or show of criminal force as an essential part of the activity, but clause third describes the unlawful object as committing "any mischief or criminal trespass or other offence", whether or not the offence involves the use of force or violence. In both respects, the concept of unlawful assembly under the Code differs from the concept in England. There "an unlawful assembly is a common law misdemeanour which arises where *three or more persons* either (i) assemble to commit, or when assembled do commit, a breach of the peace ; or (ii) assemble with intent to commit a crime by open force ; or (iii) assemble for any common purpose, whether lawful or unlawful, in such manner as to give firm and courageous persons in the neighbourhood reasonable cause to fear that a breach of the peace will occur[1]"

1. Hood Phillips, Constitutional Law (1967), page 492.

We do not, however, think that any radical change is called for in the Penal Code definition and there is no harm in keeping it somewhat wider than in England.

Clause first.

8.3. The first clause of section 141 requires no comments.

Clause Second.

8.4. The second clause applies where the common object of the persons composing an assembly is "to resist the execution of any law or of any legal process". There may be some difficulty in appreciating the exact scope of the words "resisting the execution of any law '. Where there is no officer to enforce a provision of law, but the provision is contravened, it is not clear whether such contravention would amount to "resisting the execution of any law". Apparently, though the act may amount to "contravention" of law, it may not amount to "resisting its execution' '. However, the point is not of practical importance because grave cases of contraventions of the law would fall under the third clause, as the contraventions would also amount to offences.

Clause third.

8.5. Under the third clause, an assembly is unlawful if its object is "to commit any mischief or criminal trespass, or other offence". The question arises whether the words "other offence" should be construed *ejusdem generis* with the two offences of 'mischief' and 'criminal trespass' expressly mentioned in the clause. Reported decisions do not show that such a construction was adopted by any High Court. Since the definition of 'offence' in section 40 is applicable to this section, all offences under the Code, irrespective of the extent of the punishment, would come within the scope of this clause, whereas only those offences under the special or local laws which are punishable with imprisonment for six months and upwards would come within its scope. This appears to be rather illogical. If petty offences under special or local laws are to be excluded, there is no good reason why petty offences under the Code should be included. Logically, therefore, offences under the Code punishable with fine or imprisonment for less than six months should be excluded. However, having regard to the fact that *all* offences under the Code are at present included, we propose as a *via media* that, in order to constitute an unlawful assembly, its object should be to commit an offence punishable with imprisonment, whether under the Code or under a special or local law. The clause may be simplified to read—

> "*Third.*—To commit any offence punishable with imprisonment ; or".

As we are recommending[1] the omission of section 40, "offence" here will cover offences under the Code and offences under special or local laws.

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1. See paragraph 2.68 above.

Clause fourth.

8.6. With reference to the fourth clause, we considered whether the expression "to enforce any right or supposed right" requires clarification, in view of the conflict of decisions on the question whether any distinction[1] should be drawn between enforcing a right and defending or maintaining a right. This distinction is, however, not very material, because section 141 is subject to the law of private defence (section 96), and where the right of private defence accrues, it is immaterial if the exercise of that right is described as enforcing a right or as defending or maintaining a right. Hence we do not recommend any amendment to this clause.

Fifth Clause.

8.7. No change is needed in the fifth clause.

Existing Explanation.

8.8. The existing Explanation, which provides that an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly, is useful and does not require any alteration.

Explanation of 'criminal force' to be added.

8.9. The expression 'criminal force' which occurs in the section half a dozen times is now construed in the light of the definition contained in section 350. As we are proposing[2] to simplify the sections relating to criminal force and assault and, in particular, to omit sections 349 and 350, it will be desirable to add an Explanation in section 141 as follows :—

> "*Explanation.*—Force is criminal when it is applied to any person with the intention of causing, or knowing it to be likely to cause, injury, fear of annoyance to that person, or in order to the committing of any offence."

Sections 142 to 145

8.10. Sections 142 to 145 need no change.

Section 146

8.11. Section 146 refers to "force or violence". Judicial decisions have construed force in the light of the definition in section 349. as meaning the use of force on a human being, and "violence" in a wider sense, as meaning the use of force on inanimate objects also,—an interpretation which appears to be right and need not be disturbed.

A suggestion was made that threat of force or violence should be added. Such an amendment would practically equate section 143 with section 146, because the threat of force or violence is almost always evident in the formation of an unlawful assembly and a necessary element of its common object. No such addition is, therefore, necessary in section 143.

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1. The distinction is rejected in *Canouri Lal* v. *C.E.*, (1889) I.L.R. 16 Cal. 206; and *Ghayasuddin*, A.I.R. 1932 Pat. 215, but *Dilian* v. *The State* A.I.R. 1958 Pat. 492, rests on the distinction.

2. See paragraph 16 below

Section 147

8.12. The maximum punishment under section 147 for rioting is imprisonment for two years. This appears to be adequate. We considered a suggestion that a sentence of imprisonment should be mandatory for the offence but decided that it would not be advisable to do so.

Preparation to commit rioting should be punishable.

8.13. We think, however, that preparation to commit rioting should be made punishable, as it is desirable that rioting should be checked at the earliest stage. Preparatory acts, like collecting sticks, knives and other weapons of offence, acid bulbs, brickbats etc., by anti-social elements bent on mischief may come to the notice of the police, but they may not be able to take any effective action even when the object of such activity is plain to them. We, therefore, recommend the insertion of a section after section 147 as follows :—

> "147A. *Making preparation to commit rioting.*—Whoever makes any preparation for committing rioting[1] shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Section 148

8.14. As regards section 148, the question whether the principle of section 149 should be applied to an offence under section 148 has been considered in several decisions. The majority of the High Courts have been held that section 149 is inapplicable to an offence under section 148. We agree with that view, and do not consider any amendment to be necessary. For this offence also, we do not consider that imprisonment should be made mandatory.

Section 149

8.15. Section 149, which imposes vicarious liability on every member of an assembly for certain offences committed by any member, consists of two parts. The first part deals with an offence committed by a member in prosecution of the common object of the assembly, while the second is concerned with an offence known to be likely to be committed in prosecution of that object.

In the first part, the offence is one which has already been agreed upon and is necessarily involved in the common object. The second part relates to offences not expressly agreed upon but known to be likely to be committed in accomplishing the common object. This dichotomy is in line with the scheme of the Code, which throughout mentions *specifically* cases of intention, and then deals with knowledge, for example, see the various clauses of section 299. This is also convenient in practice, because those who have to administer the law could place the case in the proper compartment. Therefore, though there may be theoretical objections to the existing wording, we do not consider an amendment to be necessary.

1. *Cf.* section 399 which defines the offence of making preparation to commit dacoity.

Where a major offence is committed by one member of an unlawful assembly, but the common object of the assembly extends only to a lesser offence, can the other members of the assembly be convicted of that lesser offence, by virtue of section 149 ? The question usually arises in rioting cases where one member of the assembly causes death of the victim, while its common object was only to cause him grievous hurt. There used to be a controversy on the subject[1] but now, the Supreme Court[2] has held that a conviction for the lesser offence is permissible. The principle of section 38 has been made applicable to section 149. No amendment is, therefore, required to clarify this point.

Section 150.

8.16. Section 150 consists of two parts. The first part punishes the offender who hires, engages etc. persons to become members of an unlawful assembly. This part apparently refers to section 143 and is non-controversial. The hirer is punishable as a member even though, in fact, he was not a member. In form, the liability is vicarious, but it is not objectionable in principle, because hiring persons to become members of an unlawful assembly ought to be punishable.

The latter part makes the hirer punishable also for any offence committed in pursuance of the hiring in the same manner as if he had been a member of the assembly, or as if he had committed the offence himself. The interpretation of this part of the section presents some difficulty. If a narrow view is taken, it may be urged that the hirer will be liable for the offence actually committed by the hired person as a member of the unlawful assembly in pursuance of such hiring, and *not* for an offence which the hired person can be constructively held to have committed under section 149 as a member of the unlawful assembly. If, however, a wider construction is given, the constructive liability of the hirer will attach itself, not only to the actual offence committed by the hired person, but also to an offence for which the hired person may be constructively liable as a member of the assembly. We, however, do not consider it necessary to alter the language of this section with a view to clarifying any doubt which may arise as to which of the aforesaid two constructions is intended. The paucity of decisions under this section is presumably due to the fact that very few cases of operating through hired men are brought to light. The hirer always takes care to remain in the background without disclosing his identity. In any case, the words "in pursuance of such hiring" occurring in this section clarify the position to some extent by narrowing the liability of the hirer to those offences of the hired person which can be said to be in pursuance of such hiring.

1. For example, see *Ram Charan Rai*, A.I.R 1946 Pat. 242, 246.
2. *Shambhu Nath*, A.I.R. 1960 S.C. 725.

Sections 151 and 152

8.17. No change is needed in sections 151 and 152.

Section 153 amendment suggested.

8.18. Section 153, in describing the *mens rea*, uses two expressions 'malignantly' and 'wantonly', neither of which is to be found elsewhere in the Code. Further, these expressions are imprecise. In particular, the adverb 'wantonly' is not a term of art ; the Shorter Oxford English Dictionary gives eight different meanings to the word—lewdly, lasciviously, aportively, lightheartedly, recklessly, unadvisedly, without regard for consequences and wilfully. The last is probably the only sense in which the word can be understood in the context of section 153.

Having regard to the further requirement under the section that there must be an illegal act intended or known to be likely to cause a riot, it does not seem to be necessary to have the requirements indicated by the expressions "malignantly" and "wantonly". In practice, these expressions do not add anything to the other requirements of the section. It may also be noted that the punishment under the section is not severe,—imprisonment upto one year or six months, according as a riot is or is not committed.

We, therefore, recommend that the words "malignantly or wantonly" may be omitted from section 153.

Section 153A.

8.19. Section 153A punishes (a) the act of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste, community or any other ground, and (b) acts prejudicial to the maintenance of harmony between different groups or castes or communities if the acts disturb the public tranquillity.

Legislative history of the section.

8.20. The section has a long history. It started as a provision designed to punish acts promoting enmity or hatred between "different classes of Her Majesty's subjects" which later became "different classes of the citizens of India". There was also an Explanation below the section, the effect of which was to save honest criticism without malicious intention. Barring the verbal adaptations made from time to time, the section retained this shape till 1961. The amendment of 1961[1] made three changes in the original section. The term 'classes' was replaced by religious, racial or language groups or castes or communities'. Secondly, the scope of the section was enlarged, by making it an offence also for anyone to do any act which is prejudicial to the maintenance of harmony between different religious, racial or language groups, or castes or communities and which is likely to disturb public tranquillity. Thirdly, the Explanation was omitted.

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1. Act 41 of 1961.

In 1969,[1] the section was expanded further, and the reasons for the amendment were stated[2] as follows:—

> "Promoting enmity between different groups on grounds of religion, race, language, etc., is made an offence under section 153A of the Indian Penal Code. It is proposed to include therein promoting enmity between different groups on grounds, such as, place of birth, or residence as well. It is also proposed to widen the scope of the provision so as to make promotion of disharmony or feelings of ill-will an offence punishable thereunder. Clause (b) of the said section provides for the punishment for doing acts prejudicial to the maintenance of harmony between different groups. That provision is also proposed to be widened so as to include acts prejudicial to the maintenance of harmony between different regional groups as well. It is also proposed to provide for enhanced punishment...for any such offence committed in a place of worship."

Validity under Article 19 of the Constitution.

8.21. Since section 153A constitutes a restraint on the freedom of speech and expression, the question may be raised with reference to clauses 1 (a) and (2) of Article 19 of the Constitution whether it is a reasonable restriction imposed in the interests of the security of the State or in the interest of public order, decency or morality, or in relation to incitement to an offence.

Though the constitutionality of the section has not yet been decided by the Supreme Court, two High Courts[3] have held that it imposes a reasonable restriction 'in the interest of public order', and is therefore, a valid law.

After the decision of the Supreme Court in *Kedarnath's case*,[4] interpreting section 124A and upholding its validity, it would appear that the validity of section 153 A could also be supported provided one reads into the section the likelihood of disturbance of public tranquillity—a requirement expressly mentioned in clause (b) of section 153A though not in clause (a). Reference may also be made to the Supreme Court judgment in *Ramjilal Modi's* case[5] in which the validity of section 295A was upheld on the ground that the section imposed

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1. Act 35 of 1969.
2. Gazette of India, 27th August, 1968, Part 2, section 2, Extraordinary, page 1052.
3. (a) *Debi Soren* v. *The State*, A.I.R. 1954 Pat. 254, 257, 258, paragraphs 10 to 13 (Das and Rai JJ.).
   (b) *Khan Gufran Zahidia* v. *State*, (1964) All. L.J. 545, 551; 1964 All W.R. (H.C.) 694.
   (c) *Wajih Uddin* v. *The State*, A.I.R. 1963 All. 335, 336, 337 (Jagdish Sahai and Ramabhadran JJ.).
   (d) *Sagalsem Indramani Singh* v. *State of Manipur*, A.I.R. 1955 Manipur 9, 15.
4. *Kedar Nath*, A.I.R. 1952 S.C. 965; (1962) Suppl. 2 S.C.R. 769.
5. *Ramjilal Modi*, A.I.R. 1957 S.C. 620, 623; (1957) S.C.R. 860.

a reasonable restriction in the interest of public order. We may, therefore, assume the constitutional validity of this section.

Need for the original Explanation considered.

8.22. Since Parliament has very recently[1] considered the section in detail and revised it, we do not think it necessary to scrutinise the substance of the provision. There is, however, one point which requires careful consideration. Before its amendment[2] in 1961, section 153A contained the following Explanation:—

> "*Explanation* : It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between different classes of the citizens of India."

This Explanation was omitted[3] by the amending Act of 1961. It was stated[4] by the Minister sponsoring the amendment that the intention in omitting the Explanation "was to cast the responsibility on the offender to prove that his intentions were not *malafide* or malicious". Before 1961, the majority of the High Courts had taken the view that, under section 153A, it was necessary that the purpose, or part of the purpose, of the accused was to promote feelings of enmity of the nature referred to in the section ; and, if it was no part of his purpose, then the mere circumstance that there may not be such a tendency would not suffice. It was observed by the Calcutta High Court[5]:—

> "It is settled law that section 153A, I. P. C. does not mean that any person who publishes words that have a tendency to create class hatred can be convicted under that section. The words 'promotes or attempts to promote feelings of enmity' are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or part of the purpose of the accused to promote such feelings, and if it is no part of his purpose, the mere circumstance that there may be a tendency is not sufficient."

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1. The Criminal and Election Laws Amendment Act (35 of 1969).
2. The Indian Penal Code (Amendment) Act, 1961 (41 of 1961).
3. The Indian Penal Code (Amendment) Act, 1961 (41 of 1961).
4. Lok Sabha Debates, Second Series (21st August, 1961 to 1st September, 1961), Vol. 57, col. 6220.
5. *P. K. Chakravarti* v. *Emp.*, A.I.R. 1926 Cal. 1133 (Rankin J.).

In several subsequent decisions it was held that intention was a necessary ingredient of the offence under section 153A.[1] Some of these cases laid stress on the Explanation as reinforcing the view that intention was essential to constitute the offence.

On the contrary, the Allahabad High Court had taken a different view. While the earlier Allahabad case[2] spoke merely of a presumption of intent, later cases[3] totally ruled out any question of *mens rea*. The leading decision in favour of this view is that of Sulaiman, C. J.[4] who observed,--

> "It is quite clear to my mind that there are many offences in the Indian Penal Code for which the proof of an express intention on the part of the accused is not at all necessary. Indeed, wherever it is necessary that intention should form a necessary part of the offence, the sections expressly say so."

Contrasting the language of section 153A with that of section 499 (where the word 'intended' appears twice), Sulaiman C. J. added :

> "It seems to me that it would be interpolating the words 'with intent to' in section 153A if one were to hold that the intention of the writer to promote hatred etc. must be established.
>
> "It would, therefore, seem to follow that the Legislature contemplates that the words spoken or written, which do promote hatred etc. would create sufficient mischief so as to fall within the scope of the section, and that it is not necessary for the prosecution further to establish that the writer had the intention to promote such hatred."

The Allahabad decisions related to sections 99A and 99B of the Code of Criminal Procedure, 1898, and the observations made there regarding section 153A could be regarded as *obiter*. But it is obvious that the view that section 153A does not require *mens rea* is, at present, firmly established in that High Court.

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1. (a) *Devi Sharan Sharma* v. *Emp.*, A.I.R. 1927 Lah. 594, 598. (Case law reviewed at page 602);
   (b) *Emp.* v. *Banomali Maharana*, A.I.R. 1943 Pat. 382, 386;
   (c) *Raj Paul* v. *Emp.*, A.I.R. 1927 Lah. 590;
   (d) *King Emperor* v. *Raj Pal*, A.I.R. 1926 Lah. 193, 196;
   (e) *Ishwari Prasad* v. *King Emperor*, A.I.R. 1927 Cal. 747 (Play), 'Balidan' about the murder of Swami Shradhanand was the subject matter of the prosecution because, the writer had argued in favour of the Shuddhi movement. Accused was acquitted, there being no intention to excite enmity).
2. *Kali Charan* v. *Emp.*, A.I.R. 1927 All. 649, 652 (S.B.).
3. (a) *M.L.C. Gupta* v. *Emp.*, A.I.R. 1936 All. 315, 316 (S.B.).
   (b) *Harnam Das* v. *State of U.P.*, A.I.R. 1957 All. 538, 540, paragraph 3 (S.B.).
4. *M.L.C. Gupta* v. *Emp.* A.I.R. 1936 All. 315, 316.

So far as could be ascertained, there is no later case of the Allahabad High Court to the contrary. In one case decided in 1964,[1] the question was considered whether members of a Hindu Mahasabha constituted a 'class' under section 153A. In that case, the High Court held them to be a class, but since the charge spoke of enmity between Hindus and Muslims, the accused was acquitted by the High Court. In the opening part of the judgment, after quoting the unamended section 153A (the case relates to a speech made before the amendment of 1961), the High Court observed, "The class or group can be based not only on grounds of religion, race, language, caste or community, but also on political or economic affiliation. However, the explanation to section 153A protects honest criticism or any act of the person criticising a political party without a malicious intention. In other words, therefore, even though promotion of feelings of enmity and hatred between different political parties would be punishable under section 153A, still any honest criticism without any malicious intention would be a good defence, as laid down in the Explanation thereto."

The absence of the Explanation (omitted in 1961) may add strength to the Allahabad view and weaken the majority view because the majority relied, to some extent, on the Explanation.

Mens rea under section 153A.

8.23. Three possible views can now be put forth as to the requirement of *mens rea* under section 153A. First, intention is still the gist of the offence, and has to be proved by the prosecution like any other fact, though it is open to the Court to infer it as is usually done in other cases. (Majority view before 1961).[2] Secondly, intention is still the gist of the offence but there is a rebuttable presumption about it. By virtue of section 81 of the Code, read with section 106 of the Evidence Act, however, the accused can rebut the presumption (view expressed in Debates in Parliament in 1961).[3] Thirdly, intention is not required and mere tendency to promote ill-will etc. is enough. (Allahabad view before 1961).[4]

Doubts likely in the absence of Explanation.

8.24. It is difficult to say what view the Courts will take in the absence of the original Explanation. Reliance on section 81 of the Code may not suffice.

If *mens rea* is not considered necessary, then any writing of a reasoned character, but containing a strong attack on a religion or its founder, written by way of comment with a view

1. *K.G. Zahidi* v. *State*, (1964) 62 Allahabad Law Journal 545, 547 (D.S. Mathur J.). (Case not reported in other series).
2. Paragraph 8.22, *supra*.
3. Paragraph 8.22, *supra*.
4. Paragraph 8.22, *supra*.

to inducing persons to effect social or religious reforms, may fall within the mischief of the section. It was precisely this situation which was sought to be avoided by the original Explanation.

"Intention" and "tendency" are entirely different concepts. While the former has reference to the state of mind of the actor, the latter has reference to the possible effect of the act. The tendency of an act may be, in fact, exactly the reverse of the result which the actor intended, should follow from the measure taken by him. Except for the offence of contempt of court, the effect or tendency produced by an act is not ordinarily considered as sufficient to make it criminal, unless it is accompanied by the necessary knowledge or intention.

We do not also think it fair to throw on the accused the burden of proving the absence of *mens rea*. This is against the general scheme of criminal law, and no strong reasons for departure therefrom exist.

Amendment proposed.

8.25. Hence we would support the first view, and recommend that the word 'intentionally' should be inserted before the word 'promotes' in section 153A to make it clear that *mens rea* is essential and has to be proved as in any other case.

Section 505.

8.26. Mention should be made here of section 505 (placed in Chapter 22) which punishes the making, publishing or circulating of any statement, rumour or report "conducing to public mischief". We have already recommended that the portion of this section which relates to statements made with intent to cause mutiny, dereliction of duty, insubordination etc. among the armed forces should find a place[1] in the Chapter relating to offences against the armed forces. The rest of the section really relates to public tranquillity. This section has been recently amended by the addition of two sub-sections relating to statements creating or promoting enmity, hatred or ill-will between classes. This part of the section is very similar to, if not wholly covered by section 153A, and it would be logical to include it in Chapter 8 immediately after this section. The subject matter of the two sections is quite different from the subject of unlawful assemblies and riots dealt with in the group of sections 147 to 158. It would be more appropriate, therefore, to renumber section 153A as section 158A, and to insert after it the following new section :—

"158B. *Statements conducing to offences against public tranquillity*—(1) Whoever makes, publishes or circulates any statement, rumour or report—

(a) with intent to create or promote, or which is likely to create or promote, on grounds of religion,

.1 See paragraph 7.9 above.

race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

(b) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community; or

(c) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public, whereby any person may be induced to commit an offence against the public tranquillity,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Exception.—A person making, publishing or circulating any such statement, rumour or report, who has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid, does not commit an offence under this section.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

Sections 154, 155 and 156—punishment enhanced.

8.27. Offences under sections 154, 155 and 156 are seldom brought to court, though, if these sections are strictly enforced in appropriate cases, they may effectively check rioting on account of land disputes, which are widely prevalent in some parts of India. The sentences provided in these sections are lenient. We recommend that a sentence of six months' imprisonment of either description or fine or both should be provided for each of the three offences.

Section 157 amended.

8.28. Amongst the acts punishable under section 157, one is that of 'harbouring' a person known to have been engaged to become a member of an unlawful assembly. The expression 'harbour' has been, defined in an earlier section,[1] in a wide manner. This definition is too wide for the purpose of section 157. In fact, existing section 52A, which defines 'harbour', excludes section 157 from its scope, and this indicates that the dictionary meaning of 'harbour' is intended for the purpose of section 157.

1. See discussion regarding section 52A, paragraph 2.81 above.

It appears to us, that the expression 'harbours' in section 157 can be easily avoided. We recommend that for the word 'harbours', the word 'shelters' be substituted.

8.29. No change is needed in section 158. Section 158.

8.30. Under section 159, two requirements are necessary in order that fighting may amount to an affray. The first is that the fighting must be in a public place, and the second is that it should be of such a character as to disturb the public peace. In a recent English case,[1] it appears to have been held that an affray can be committed in a private place, but we do not think this would be right for Indian conditions. The mention of 'public place' should be retained in section 159. It was suggested that the expression 'public place' may be defined as a place used by the public, whether they have a right of access to it or not; but, in our view, such a definition would not be of much practical utility, and would not solve actual problems which arise in practice as to whether a particular place is or is not a public place. Section 159.

8.31. It appears to us that the punishment for affray under section 160 (imprisonment upto one month or fine upto one hundred rupees) is grossly inadequate. Punishment under this section should be increased to 6 months' imprisonment; and, as regards fine, there need be no limitation on the amount. Section 160 may, therefore, be revised as under :— Section 160 amended.

> "160. *Punishment for committing affray.*—Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both".

1 *Button* v. *D.P.P.* (1965) 3 All E.R. 587 (H.L.).

CHAPTER 9

OFFENCES BY OR RELATING TO PUBLIC SERVANTS

Introductory.

9.1. Chapter 9 deals with offences which can be committed by public servants alone and also with those offences which relate to public servants, though not committed by them. The offences which are common between public servants and other members of the community are dealt with in the general provisions of the Code.

Section 161 and the succeeding sections relating to bribery were fully considered by us in the light of the decided cases and the provisions in the Prevention of Corruption Act, 1947 and the relevant comments made in some of the judgments. On a few matters, the law is inadequate, and we proceed to discuss them in the succeeding paragraphs.

Section 161 and the Prevention of Corruption Act.

9.2. There is considerable overlapping between sections 161 to 165 of the Code and some of the provisions of the Prevention of Corruption Act, 1947. That Act, however, was mainly intended to punish "habitual corruption" and it contains special rules of procedure and evidence. The Indian Penal Code, which constitutes the general criminal law, should also continue to retain provisions dealing with bribery. No change, is therefore, necessary in this respect.

Section applicable whether or not public servant is capable of doing official act.

9.3. The question whether section 161 applies where the public servant concerned has no power to do the act promised has now been settled by the Supreme Court. In *Mahesh Prasad* v. *State of U. P.*[1] the Court observed :—

> "It is pointed out that the appellant though employed in the Railway was not himself a person who was in a position to give a job to the complainant nor is it shown that he had any intimacy or influence with any particular official who could give a job. It is urged therefore that the offence, if any, committed by the appellant could only be one of cheating and not the receiving of a bribe. This argument is without any substance. By the terms of section 161 of the Indian Penal Code a person who is a public servant and accepts illegal gratification as a motive for rendering service, with any public servant as such, is guilty of the offence thereunder.

1. (1955) 1 S.C.R. 965; A.I.R. 1955 S.C. 70, 71.

To constitute an offence under this section, it is enough if the public servant who receives the money takes it by holding out that he will render assistance to the giver with any such public servant and the giver gives the money under that belief. It may be that the receiver of the money is in fact not in a position to render such assistance, and is even aware of it. He may not even have intended to do what he holds himself out as capable of doing it. He may accordingly be guilty of cheating. Nonetheless he is guilty of the offence under section 161 of the Indian Penal Code. This is clear from the fourth Explanation to section 161, I.P.C. Illustration (c) to section 161, also elucidates this.

Thus, where a public servant who receives illegal gratification as a motive for doing or procuring an official act, *whether or not he is capable of doing it* or whether or not he intends to do it, he is quite clearly within the ambit of section 161, I.P.C."

Applicability of section where public servant is *functus officio*.

9.4. An analogous question is, whether a public servant who is *functus officio* can be guilty of accepting a bribe. This question also arose in several cases before the High Courts. There are *obiter dicta* of the Supreme Court on the subject.[1] The question was not decided, but the following discussion in the judgment of the Supreme Court is of interest :—

"Dr. Ambedkar then submits that in this case no offence had been committed. He points out that it was Sri Gudi and not Sri Naik, who was authorised to seize the books. Sri Gudi directed Sri Naik to examine the books and make a report which the latter did on 12-3-1949, Ex. 10-A. After that date Sri Naik was *functus officio*, having fully performed whatever duty he had to perform, and, therefore, he was not the public servant who could, in the exercise of his official function, show any favour or render any service to the appellants. Learned counsel relied on the cases of *Shamsul Huq* v. *Emp.*,[2] In re *P. Venkatia*[3] and *Venkatarama Naidu* v. *Emp.*[4] A persual of the cases relied on by learned counsel will show that the question of law was not fully discussed, and the reasons in support of the conclusions arrived at are not clear or convincing. On the other hand, the High Courts of Allahabad, Lahore, Nagpur, Bombay and Orissa have disapproved of the decisions relied on by Dr. Ambedkar. See *Ajudhia Prasad* v. *Emp.*,[5] *Emp.*, v. *Phul Singh*,[6] *Ram Sewak*

1. *Mahadeo* v. *State of Bombay*, A.I.R. 1953 S.C. 179, 181.
2. A.I.R. 1921 Cal. 344.
3. A.I.R. 1924 Mad. 851.
4. A.I.R. 1929 Mad. 756.
5. A.I.R. 1928 All. 752.
6. A.I.R. 1947 Lah. 276.

v. *Emp.*,[1] *Gopeshwar Mandal* v. *Emp.*,[2] In re *Varadadesikachariar*[3] *Indur Devaldas Advani* v. *State*[4], and *State* v. *Sadhucharan Panigarahi*.[5]

The point of law appears to have been more fully discussed in these cases, and the reasonings set out therein appear to us, as at present advised, to be more convincing than those set out in the cases relied on by Dr. Ambedkar. It is, however, not necessary for the purposes of this case, to express any final opinion on this question, for we are satisfied, on the facts of this case, that Sri Gudi and Sri Naik had it in their power, in the exercise of their official functions, to show favour or render some service to the appellants.....".

9.5. We recommend that the conflict of decisions in the High Courts should be resolved by amending the fourth Explanation to read as follows :—

"A motive or reward for doing..." A person who receives a gratification as a motive or reward for doing what he does not intend *or is not in a position* to do or has not done, comes within these words.

Giving of bribe.

9.6. Bribe giving is described as abetment and made punishable under section 165A. Strictly speaking, this is not appropriate. The giver is as much guilty as the receiver and the offence of bribery should really cover both the giver and the receiver in the section. Reference may be made, in this connection, to section 171B (bribery at elections), where the same section covers both the giver and the receiver of the bribe.[6] As the point is not of practical importance and the punishment is the same for the substantive offence as well as for the abetment, we recommend no change in this respect.

Sections—165A.

9.7. No changes are required in sections 162 to 165A.

Section 166 punishment increased.

9.8. Section 166 punishes a public servant disobeying a law with intent to cause injury. As the offence is grave one, we consider that the punishment should be increased to "imprisonment of either description for a term which may extend to three years, or with fine, or with both".

1. A.I.R. 1948 All. 17.
2. A.I.R. 1948 Nag. 82.
3. A.I.R. 1950 Mad. 93.
4. A.I.R. 1952 Bom. 58.
5. A.I.R. 1952 Orissa 73
6. See also *Venkatarama Naidu* A.I.R. 1929 Mad. 757, where the need for amending section 161 in various respects was suggested.

Wilful misconduct of public servant should be punishable.

9.9. The Code does not take account of those types of misconduct by public servants where the misconduct does not take the shape of bribery or extortion or similar corrupt acts. There are several types of misconduct in the performance of official functions which may cause serious harm to the interests of a citizen. Inordinate delay, malicious and revengeful action, deliberate partiality and persistent harassment are examples which come readily to the mind. Such misconduct does not amount to a direct demand for gratification, though often the ultimate motive is to obtain such gratification. Section 166 is not adequate for the purpose because it is restricted to misconduct amounting to a violation of a specific direction of the law.

It is desirable to ensure that no public officer shall, in the exercise of the duties of his office or while acting under colour of his office, do any act which is wrongful in itself, or do an otherwise lawful act in a wrongful manner. We are fully aware of the practical difficulties involved in enforcing a statutory provision made to remedy this evil. For example, in public offices, it is often difficult to fix responsibility on a particular person, and it may also be difficult to prove a specific act of misconduct in the nature of oppression. There would also be difficulties of collecting the necessary evidence. Nevertheless, we consider that there ought to be a penal provision to punish acts of gross misconduct.

New section 166A recommended.

9.10. We, accordingly, recommend the insertion of a new section as follows :—

> "166A. *Public servant acting with intent to cause injury to any person.*—Whoever, being a public servant, wilfully conducts himself in the performance of his functions as such public servant, intending to cause or knowing it to be likely that he will by such conduct, cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Section 167 amended.

9.11. Section 167 punishes a public servant "charged with the preparation or translation of a document" who "frames or translates" a document in an incorrect manner with the requisite intent. There is some controversy as to whether the preparation of false uncertified copies falls under section 167.[1] In our view, there can hardly be any doubt that a copy, whether certified or uncertified, is a 'document' within the meaning of section 167. If a copy is knowingly prepared incorrectly, then the act should be punishable under section 166. It is desirable to make the position clear.

The word 'frames' in section 167 should be replaced by the word 'prepares' . The earlier part speaks of a person charged with the preparation of a document, and not with the framing of a document.

The expression 'preparation of a document' is comprehensive enough to cover preparation of the translation of a document.

1. Certified copies would be covered by section 197.

We propose to put that idea in an Explanation instead of specifically mentioning translation in the main section as at present.

Accordingly section 167 may be revised as follows:—

"167. *Public servant preparing an incorrect document with intent to cause injury.*—Whoever, being a public servant and being, as such public servant, charged with the preparation of any document, prepares that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he will thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanation.—The expression 'preparation of a document' includes the preparation of a copy or translation of a document."

Corrupt dealing of public servants in regard to government contracts.

9.12. The Law Commission had in an earlier Report[1] considered how to tackle the problem of cheating of government on a large scale by dishonest contractors while supplying goods or executing works, and recommended a specific provision penalising it as an aggravated offence of cheating. Considering the wide range of state activity at present (and it is likely to grow wider), there are, we think, sound reasons for enacting a special provision expressly covering such fraudulent conduct. We are also conscious that such conduct is facilitated and furthered by official connivance, and we should take note, not only of fraudulent contractors, but also of those public officials who assist them. The maximum punishment for such conduct, we think, could be more severe than that suggested in the 29th Report, and we propose a maximum of ten years' imprisonment. While the proper place for the provision for punishment of government contractors would be in Chapter 17 in the part relating to cheating[2], we propose the following section to punish the corrupt public servant who assists them :—

"167A. *Public servant knowingly authorising payment in respect of contracts, when the goods supplied or work done is not in accordance with the contract.*—Whoever, being a public servant competent to authorise payment on behalf of the Government or other public authority in respect of any contract for the supply of any goods, the construction of any building or the execution of other work, authorises such payment, knowing—

(a) in the case of a contract for the supply of goods, that the contractor has supplied goods which are less in quantity than, or inferior in quality to, those he contracted to supply or which are, in any manner whatever, not in accordance with the contract, or

1. 29th Report—proposal to include certain social and economic offences in the Indian Penal Code—paragraphs 137 to 139.

See paragraph 17.50 below.

(b) in the case of a contract for the construction of a building or execution of other work, that the contractor has used materials, which are less in quantity than, or inferior in quality to, those he contracted to use, or which are, in any manner whatever, not in accordance with the contract, shall, in the absence of lawful excuse, the burden of proving which shall be on him, be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—In this section, 'public authority' means.

(a) a corporation established by or under a Central, Provinical or State Act;

(b) a Government company as defined in section 617 of the Companies Act, 1956; and

(c) a local authority."

Section 168.

9.13. Section 168 deals with a public servant who unlawfully engages in any trade, when legally bound not to engage in that trade. The word 'trade' in this section was given a wide meaning in a Bombay case[1], as including any business carried on with a view to profit. No contrary view has been taken by any other High Court, and we do not consider it necessary to make any amendment to this section.

Section 169.

9.14. No change is needed in section 169.

Section 170.

9.15. Section 170 punishes a person who pretends to hold a particular office as a public servant, or falsely personates any other person holding such office and, in such assumed character, does any act under colour of such office. It is not necessary that the act should be done with a dishonest or corrupt motive. We considered the question whether the word 'dishonestly' or 'fraudulently' or 'corruptly' should be inserted to indicate the requisite *mens rea*. It was apprehended that, if construed without some such words, the section might create hardship; for instance, even a person who, in assisting law enforcement, has to pose as an officer of a particular category, may be held guilty of this offence. But we do not think that this point is of any practical importance. It is not likely that an *agent provocateur* who entraps an accused and makes him commit a crime by pretending to be a public servant, will ever be prosecuted.

Section 171 punishment increased.

9.16. With reference to section 171 also, it was suggested that expressions indicating the *mens rea* should be added; but we regard this as unnecessary.

The punishment provided in this section appears to be inadequate, and we recommend that it should be increased to "six months, or with fine, or with both."

1. *Mulshankar* v. *Government of Bombay*, A.I.R. 1951 Bom. 233.

CHAPTER 9A

ELECTION OFFENCES

Introductory.

9A.1. This chapter was inserted in the Penal Code in 1920 by the Indian Elections Offences and Inquiries Act, and for the first time, various corrupt and illegal practices liable to occur at elections were made punishable offences. The punishments prescribed for them were, however, light. Only three of these offences, viz., bribery, undue influence and personation, were considered grave enough to deserve imprisonment and that too upto only one year. The other three offences, viz., making false statements about the personal character or conduct of a candidate, illegal payments in connection with an election and failure to keep election accounts as required by law, were made punishable with fine only. A wide definition of 'election' as denoting any election to a legislative, municipal or other public authority of whatever character was inserted by the same Act of 1920 in section 21 of the Code as Explanation 3. By virtue of section 6 of the Code this definition applies to the whole chapter.

Fetter on prosecutions under s. 196, Cr. P.C.

9A.2. It appears that several local governments expressed the fear that the new penal provisions were likely to be abused, specially in rural areas, for putting one's personal enemies into trouble by foisting false cases on them after an election. In order to allay these apprehensions, section 196 of the Criminal Procedure Code was simultaneously amended making private prosecutions of election offences subject to executive control. Courts were debarred from taking cognizance of an election offence under Chapter 9A of the Penal Code except "upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government or some officer empowered by the Governor-General in Council in this behalf".

Recommendation in previous Report.

9A.3. As observed by us in our last Report[1] on the Code of Criminal Procedure, "it was thought that this would give some discretion to the Government to determine whether criminal proceedings were warranted in the circumstances of each case, so that vexatious proceedings instituted solely on the basis of political animosity by private individuals could be avoided. This secondary object was certainly achieved but it is doubtful whether the penal provisions ostentatiously put in the Penal Code, but effectively blunted by section 196 of the Procedure Code, helped to maintain the purity of elections to any appreciable extent.

1. 41st Report, pages 113, 114.

This difficulty was realised in some provinces in regard to the offence of personation punishable under section 171F of the Penal Code. Even a person blatantly committing this offence at the polling booth could not be arrested or otherwise proceeded against on the spot since the offence was non-cognizable and the complaint of an empowered officer was required for prosecuting the offender in court. The Criminal Procedure Code was locally amended by four provinces excluding this offence from the scope of section 196 and making it cognizable. This lead was followed up in the Representation of the People Act, 1951, and the amendment became applicable throughout India.

The experience of the last 20 years in the field of country-wide democratic elections shows that, unless these impediments to prosecution are removed, the mere fact that bribery, undue influence, character assassination etc., are punishable on conviction by a criminal court makes little difference and these corrupt practices are indulged in with impunity. The number of complaints lodged by the Government or empowered officers in regard to election offences (apart from personation) is naturally very small. Under the party system of government prevalent throughout the country it will, no doubt, be embarrassing for the State Government to decide in the first instance whether a complaint ought to be lodged in a particular case. Whichever way it decides this question it is most likely that political motives and prejudices will be attributed to it. It is possible that if the bar containod in section 196 of the Code is removed there will be a spate of private complaints, including quite a few vexatious ones for the sake of harassment, but we feel that this possibility must be faced in the interest of free and fair elections. We recommend that all election offences should be excluded from the purview of section 196."[1]

Section 171A—definition of "electoral right" amended.

9A.4. Section 171A defines "candidate" and "electoral right". While the first definition does not call for any comment, we notice that the definition of "electoral right" does not expressly refer to the right of a person *not* to withdraw his candidature in an election. This was considered to be a lacuna in section 79(d) of the Representation of the People Act, 1951, which originally defined "electoral right" in the same way as section 171A(b) of the Code, and in sub-clause (B)(a) of section 123(1) of that Act which defined bribery. With reference to the latter definition, as it stood before 1966, it was held that an inducement offered to a candidate *not* to withdraw his candidature did not amount to the corrupt practice of bribery. In order to bring such an inducement within the definition, the aforesaid provisions of the Representation of the People Act, 1951, were amended in 1966.

1. This recommendation has been accepted *vide* clause 197 of the Code of Criminal Procedure Bill, 1970, introduced in the Rajya Sabha.

For the same reason, we propose that clause (b) of section 171A should be amended to read:—

> "(b) 'electroal right' means the right of a person at an election to stand or not to stand as a candidate, or to withdraw or not to withdraw his candidature, or to vote or to refrain from voting".

Suggestion to include right to nominate in "electoral right" considered.

9A.5. We considered an odd suggestion that the right of a person to nominate anyone as a candidate at an election should also be mentioned in the definition of "electoral right". The object is apparently to punish any attempt to bribe or exercise undue influence over a person in relation to the act of nominating candidates at an election, but this is clearly far-fetched. It is unlikely that any person entitled to nominate a person will demand, or be given, an illegal gratification for this simple service; and it is even less likely that a person who cannot get himself nominated as a candidate without a bribe to his proposer will be optimistic enough to stand for the election.

Sections 171-B and 171-E combined and amended.

9A.6. Section 171B gives a comprehensive and satisfactory definition of the offence of bribery. The punishment for this offence, the punishment for the offence of bribery by treating and a definition of "treating" are given in section 171E. It will be clearer to all concerned if these matters also are included in section 171B itself as sub-section (4), making that section complete.

We have already remarked on the lightness of the punishment provided for election offences in this chapter. Even after allowing for the fact that the chapter is applicable to all kinds of elections, from elections to Parliament down to elections to a village panchayat, we feel that, if purity of elections is to be maintained, we cannot afford to take such a lenient view of these corrupt practices. While in the last resort, the efficacy of these penal provisions depends on public opinion, the law should indicate to the courts and the public that these rules of conduct are essential for democratic elections and their infringement will be severely dealt with. We recommend that the offences of bribery (other than bribery by treating), undue influence, personation and making false statements about a candidate's personal character or conduct should all be punishable with imprisonment of either description which may extend to two years or with fine, or with both.

Accordingly we propose that section 171E be omitted, and the following sub-section be added to section 171B:—

> "(4) Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that bribery by treating shall be punishable with fine only.

Explanation.—"Treating" means that form of bribery where the gratification consists in food, drink, entertainment or provision."

Section 171C undue influence at an election.

9A.7 The offence of undue influence at an election is defined very widely in section 171C to cover any kind of voluntary interference with the free exercise of any electoral right. Two kinds of such interference are specially mentioned in sub-section (2) without prejudice to the wide scope of the general definition given in sub-section (1). These are, threatening any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, and inducing a candidate or voter to believe that he or any person in whom he is interested will become an object of divine displeasure or spiritual censure. There is, of course, no doubt that when the interference takes the form of using, or threatening to use, force or violence, it will be regarded as a blatant form of the offence.

Difficulty of interpreting "interference" canvassing by Ministers.

9A.8. The Supreme Court observed in *Babu Rao* v. *Zakir Hussain*[1] that "it is difficult to lay down in general terms where mere canvassing ends and interference or attempted interference with the free exercise of any electoral right begins. That is a matter to be determined in each case; but there can be no doubt that if what is done is merely canvassing, it would not be undue influence." After reviewing previous decisions of election tribunals and courts on this subject, the Court observed "that it has been consistently held in this country that it is open to Ministers to canvass for candidates of their party standing for election. Such canvassing does not amount to undue influence but it is proper use of the Ministers' right to ask the public to support candidates belonging to the Ministers' party. It is only where a Minister abuses his position as such and goes beyond merely asking for support for the candidates belonging to his party that a question of undue influence may arise."

Pusblishing false statements and undue influence.

9 A. 9. [2]In the more recent case of *Shiv Kirpal Singh V.V. Giri*, one of the questions related to the distribution of an anonymous pamphlet which alleged gross immorality to a candidate at the presidential election. The distribution of the pamphlet clearly came within the mischief of section 171G of the Code, but the controversy before the Supreme Court was whether it also came within the mischief of section 171C and amounted to undue influence. The Court, by a majority, held[2]:–

"From a reading of section 171G it is clear that in pursuit of purity of elections the legislature frowned upon attempts to assail such purity by means of false statements relating

1. (1968) 2 S.C.R. 133, 146.
2. A.I.R. 1970 S.C. 2097, 2113.

to the personal character and conduct of a candidate and made such acts punishable thereunder. But the fact that making of such a false statement is a distinct offence under section 171G does not and cannot mean that it cannot take the graver form of undue influence punishable under section 171F. The false statement may be of such virulent, vulgar or scurrilous character that it would either deter or tend to deter voters from supporting that candidate whom they would have supported in the free exercise of their electoral right but for their being affected or attempted to be affected by the maker or the publisher of such a statement. Therefore, it is the degree of gravity of the allegation which will be the determining factor in deciding whether it falls under section 171C or section 171G. If the allegation, though false and relating to a candidate's personal character or conduct, made with the intent to affect the result of an election, does not amount to interference or attempt at such interference, the offence would be the lesser one. If, on the other hand, it amounts to interference or an attempt to interfere, it would be the graver offence under section 171F read with section 171C."

We think, with respect, that the line of demarcation indicated in the last two sentences is very thin and does not appear necessarily or logically to follow from the wording of either section 171C or of section 171G. Whether the false statement is grossly vulgar and scurrilous or only moderately so cannot, it seems to us, make any difference to the question whether the person publishing the false statement has or has not attempted to interfere with the free exercise of the right to vote at the election. Bhargava J. took the view that mere false propaganda as to the personal character of a candidate cannot amount to the corrupt practice of undue influence; that false statements about the personal character or conduct of a candidate may, of course, be scurrilous and foul but even then the offence committed would fall under section 171G.

Definition of "undue influence" in the British R.P. Act.

9A.10. On comparing the definitions of undue influence in the Penal Code with the definitions in the British, Canadian and Australian election laws, we find that our definition is unduly wide and vague, giving rise to the difficulties of interpretation referred to above. Under the British Representation of the People Act, 1949,

> "A person shall be guilty of undue influence—
>
> (a) if he, directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of, any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting; or

(b) if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents the free exercise of the franchise of an elector or proxy for an elector, or thereby compels, induces or prevails upon an elector, or proxy for an elector either to vote or to refrain from voting.[1]"

The definitions in the Australian and Canadian election laws are on the same lines.

Narrower definition recommended.

9A.11. We consider that, in the Indian Penal Code also, the offence of undue influence should be more strictly defined. Besides the two types of undue influence mentioned in sub-section (2) of section 171C, the definition should expressly mention, making use of, or threatening to make use of, any force, violence or wrongful restraint on any person as the really important type to be covered. Any such violent method of interfering with the free exercise of an electoral right should be made punishable more severely than the other two objectionable methods. There does not seem to be any need to cast the penal provision or, for the matter of that, the definition of this corrupt practice, — more widely so as to cover every interference and leave it to the courts to find out whether the interference in the particular circumstances of a case was due or undue, proper or improper.

Undue influence at elections.

9A.12. We accordingly propose that section 171C be revised as follows:—

"171C. *Undue influence at elections.*—(1) Whoever, with intent to interfere with the free exercise of any electoral right at an election,—

(a) makes use of, or threatens to make use of, any force, violence or wrongful restraint on any person, or

(b) inflicts, or threatens to inflict, on any person, injury of any kind (including social ostracism and expulsion or ex-communication from any caste or community), or

(c) induces, or attempts to induce, any person to believe that he will become object of divine displeasure or of spiritual censure, commits the offence of undue influence at an election:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

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1. Section 101(2).

(2) Whoever commits the offence of undue influence at an election shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both; and if the offence is committed in the manner specified in clause (a) of sub-section (1), the imprisonment may extend to three years."

Section 171D and section 171F combined and amended.

9A.13. Section 171D defines the offence of personation at an election; and under section 171F, the punishment for the offence is imprisonment up to one year, or fine, or both. No change of substance is needed in section 171D. But the maximum punishment for the offence should be increased to two years' imprisonment, and, instead of having in a separate section, the punishment provision should be put in section 171D itself as sub-section (2).

Accordingly, we propose that section 171F be omitted, and the following sub-section be added to sub-section 171D:—

"(2) Whoever commits the offence of personation at an election shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Section 171G revised.

9A.14. Section 171G punishes the making or publishing of false statements in relation to the personal character or conduct of any candidate with intent to affect the result of the election. The offence is, however, punishable with fine only which, as already pointed out, is to take a very lenient view of the offence. "Character assassination" at an election seems to us to be as reprehensible as exercising undue influence on electors or bribing them, and should be punished just as severely.

We notice that under section 123(4) of the Representation of the People Act, 1951, it is a corrupt practice to make or publish a false statement in relation to the candidature or withdrawal of candidature of any candidate. Such false statements are likely to cause irreparable damage to the candidate concerned and to falsify the election as a whole. We think they should also be brought within the purview of section 171G.

This section may accordingly be revised as follows:—

"171G. *False statement in connection with an election*:— Whoever, with intent to affect the result of an election, makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of candidature of any candidate, shall be punished with imprisonment of either description which may extend to two years, or with fine, or with both."

Sections 171H and 171-I omitted.

9A.15. Section 171H penalises any person who, without the written authority of the candidate, incurs any expense for the purpose of promoting or procuring the election of that candidate. The punishment provided under the section is fine not exceeding five hundred rupees. While this provision has some meaning in relation to an election for which the relevant election law provides a limit on the permissible expense of candidates, it is anomalous in relation to the much larger number of elections for which there is no such limit. Even in regard to the parliamentary and assembly elections this section is a dead letter. We propose that it can safely be omitted from the Penal Code. It should be left to the law governing a particular election to create this offence if considered necessary or desirable.

For similar reasons we consider that any penal provision on the lines of section 171-I should be made in the law which requires candidates to keep accounts of election expenses, and it need not find a place in the Penal Code.

CHAPTER 10

Contempts of the lawful authority of Public Servants

Introductory.

10.1. This Chapter deals with contempts of the lawful authority of public servants and is meant to enforce obedience and respect to their lawful authority. The penal provisions in this Chapter are in addition to, and not in derogation of, the powers and methods of enforcing such obedience as provided for in the laws conferring such powers, e.g., by attachment and sale of property, cancellation of licences and permits etc. It will be noticed that practically every section in this Chapter is linked with substantive provisions to be found in other laws which confer the relevant powers on public servants. This is indicated by the use of expressions like "legally competent", "legally bound", "lawfully empowered", "lawful powers", "lawful authority", "exercise of public functions", and so on. In any concrete case falling under a particular section of this Chapter, it will be necessary to read it with the provisions of the substantive law from which the public servant derives his authority and power to act. Consequently, many questions which arise in trials for offences under this Chapter turn more on an interpretation of the provisions of such substantive law than on an interpretation of the provisions of this Chapter. Some controversies which have arisen under the individual sections, however, require to be considered and will be dealt with in the succeeding paragraphs. One general observation which we may make at the beginning is that the punishments provided in the several sections err on the side of leniency and, in our opinion, require to be increased.

Section 172 amended.

10.2. Section 172 punishes any person who absconds in order to avoid service of summons or other proceeding. The word 'absconds' in this section has been given a wide meaning by the courts so as practically to cover cases of evasion. We regard this to be satisfactory and do not consider that any clarificatory amendment is required.

It is noticed that the second paragraph refers only to the production of documents in court, not to the production of other things. This omission should be rectified by inserting the words "or other thing" after the word "document".

The punishment provisions should be amended as follows:–

(i) In the first paragraph of this section for "one month, or with fine which may extend to five hundred rupees, or with both", substitute "three months, or with fine, or with both."

(ii) In the second paragraph, for "six months, or with fine which may extend to one thousand rupees, or with both", substitute "one year, or with fine, or with both".

10.3. We propose that the same amendments should also be made in section 173. Section 173 amended.

10.4. In section 174 also, the punishment provisions should be amended as in section 172. The illustrations appear to be wholly unnecessary as they do not clarify any doubtful point and may safely be omitted. Section 174 amended.

The expression "intentionally omits" has been given a somewhat narrow meaning by the courts and the plea of there having been sufficient cause for the omission although intentional has been accepted as valid. We do not think, however, that an amendment on this point is necessary.

10.5. In section 175, the same amendments are required to be made as those proposed above in section 172. The illustration also is unnecessary and should be omitted. Section 175 amended.

10.6. The punishments provided in section 176 should be increased to the same extent as in the preceding sections. Under the first paragraph, the maximum punishment should be three months' imprisonment and unlimited fine; and under the second and third paragraphs, it should be one year's imprisonment and unlimited fine. Section 176 amended.

10.7. The question as to what exactly is the "subject" on which a village headman is "legally bound to furnish information" to the officer in charge of a police station under section 45(1)(d) of the Code of Criminal Procedure gave rise to a difference of opinion when it came up before a Division Bench of the Allahabad High Court. The headman who had in fact taken away a girl from the village signed a panchayatnama in which it was stated that the girl had died of drowning and sent it to the police station. On the question whether section 177 of the Penal Code was applicable, Sulaiman, C.J., held:-[1] Section 177 meaning of "subject".

> "Taking this section [section 45 (1)(d), Cr. P.C.] as it stands, it only enjoins upon him the duty of communicating the information which he may possess respecting 'the occurrence of any sudden or unnatural death or of any death under suspicious circumstances' etc... The section does not say on the alleged occurrence of any death. The word 'subject' used in section 177 of the Indian Penal Code means on (sic) any matter. Section 45 of the Criminal Procedure Code does not say that he is bound to supply information on the subject of a death, which might perhaps have included both the cases where a death took place and a case where no death, in fact, took place; but it says merely on the occurrence of a death. The word 'occurrence' in my opinion is not an equivalent of the word 'subject'; and necessarily implies that a death has

1. *Emp.* v. *Lakhan*, I.L.R. (1937) All. 162, 172; A.I.R. 1936 All. 788, 792.

actually occurred and not only that it is alleged to have occurred. If it was to be held that it is his duty to supply information on the 'subject of an alleged death', even though no death has taken place, the position of a headman who is not a paid servant, would become intolerable as he would become guilty under section 176 of the Indian Penal Code where he merely omits to expose all sorts of false rumours that may be afloat about alleged deaths, even though he may know that the persons named are alive. It seems that where a death has taken place in suspicious circumstances, it is the duty of the headman to supply the information he possesses, and his failure to do so makes him liable under section 177. But where no death has taken place at all, section 177 is inapplicable."

Bennet J., took a different view[1]:-

"The word 'subject' is much wider, and the subject here is 'sudden or unnatural death'. The duty of the mukhia under section 45 is to report true facts in regard to this subject; if he omits to report an occurrence he is guilty of an omission under section 176 of the Indian Penal Code, and if he falsely reports an occurrence where there was no occurrence, or if he makes some false statement about an occurrence, he is guilty under section 177. I do not consider it is correct to say that the subject under section 177 is the 'occurrence' because an occurrence is only a particular instance and the word 'subject' implies something which is common to a number of instances, all of which are classed under one subject. Here the mukhia is bound to 'communicate forthwith any information which he may possess respecting an instance of the subject of 'sudden or unnatural death'."

Rachpal Singh, J., to whom this difference of opinion was referred held[2] "that as none of the events enumerated in clause (d) of section 45 of Criminal Procedure Code had happened, it cannot be said that the accused was legally bound to give information to the police and that the false information which he gave to the police does not bring his case within the four corners of section 177 of the Indian Penal Code.".

It appears to us, if we may say so with respect, that the view taken by Sulaiman, C.J., and Rachpal Singh, J., is very narrow. We find ourselves in agreement with Bennet, J.'s reasoning that the word "subject" in section 177 ought not to be confined to the particular matter to be reported but should be construed widely to cover the entire field within which that matter falls. Since, however, this question has not arisen in any other High Court, we do not recommend any amendment to clarify the position.

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1. *Emp.* v. *Lakhan*, I.L.R. 1937 All. 162, 171; A.I.R. 1936 All. 788, 793.
2. *Emp.* v. *Lakhan*, I.L.R. 1937 All. 162, 190; A.I.R. 1936 All. 788, 800.

Section 177 Explanation revised.

10.8. The Explanation to section 177 mentions some, but not all, of the offences mentioned in sections 44 (1) and 45(1) (e) of the Criminal Procedure Code. Sections 121 to 126, 130, 143, 144, 145, 147 and 148 of the Penal Code mentioned in the former section and sections 231 to 238 and 489A to 489D mentioned in the latter section are left out of the Explanation for no apparent reason. The resultant position is unsatisfactory. Since sections 44(1) and 45(1)(e) of the Criminal Procedure Code cast on persons in India a duty to report certain offences committed out of India, it is clear that all those offences should be covered by the Explanation to section 177 of the Penal Code. Enumeration of the sections of this Code relating to those offences is, however, not necessary since the duty to give information in respect of their commission arises from provisions (such as sections 44 and 45 of the Criminal Procedure Code) which enumerate or otherwise specify the offences in question.

The Explanation may accordingly be revised to read:—

> "*Explanation.*—In section 176 and in this section, the word 'offence' includes any act committed at any place out of India which, if committed in India, would be punishable under this Code; and the word 'offender' includes any person who is alleged to have been guilty of any such act."

Section 177-Illustrations unnecessary.

10.9. The two illustrations given in the section do not appear to be of any real help and may be omitted.

Section 177-Punishment enhanced.

10.10. The punishment for an offence under the first paragraph may be slightly enhanced by omitting the words "which may extend to one thousand rupees".

Sections 178 to 180 amended.

10.11. The next three sections do not call for any comments except in regard to the maximum punishment provided therein. In sections 178 and 179, the limit of one thousand rupees for the fine may be removed by omitting the words "which may extend to one thousand rupees". In section 180, the punishment provided may be enhanced to "simple imprisonment for a term which may extend to six months, or with fine, or with both."

Section 181.

10.12. No change is needed in section 181.

Section 182-application to volunteered statements.

10.13. There is some uncertainty as to whether information given in answer to questions put by a public servant falls under section 182. The majority of the High Courts have answered the question in the affirmative and taken a broad view about the scope of the word 'gives' . They disagree with the earlier Lahore case[1] on the subject, which limited section 182 to 'volunteered statements'. We also think that there is no justification for construing the expression 'gives information' narrowly.

1. *Mangu* v. *Emperor*, A.I.R. 1914 Lah. 360.

A Kerala case,[1] however, illustrates the special position as regards statements under section 161 of the Criminal Procedure Code. Here also the position will be changed after the obligation to answer 'truly' is added in that section as has been recommended in our Report on the Code of Criminal Procedure.[2] In the circumstances, we do not suggest any amendment of section 182 in this respect.

Overlap between Sections 182 and 211

10.14. The overlapping between section 182 and section 211 will be dealt with in the next Chapter.

Punishment provision amended.

10.15. The punishment provided in this section should be increased to "imprisonment of either description for a term which may extend to *one year*, or with fine....., or with both.

Sections 183 difference of opinion on meaning of 'lawful authority'.

10.16. Section 183 punishes resistance to the taking of any property by the lawful authority of a public servant. We find that there is a conflict between the Madras High Court[3] and the Bombay High Court,[4] regarding the construction of the words "lawful authority". The Madras High Court, relying on the first and second paragraphs of section 99, has held that the two sections 99 and 183 should be construed together, and that, even if the act of the public servant is not stricty justified by law, nevertheless, where he acts in good faith under colour of office, he should be deemed to be acting in 'lawful authority', and resistance to his action should be held to be an offence under section 183. The Bombay High Court has dissented from this view and held that resistance to the action of a public officer which is not strictly justifiable by law, even though the action may be done in good faith under colour of office, will not be punishable under this section. We consider that the Bombay view is the correct view, and since the question has not arisen elsewhere, we recommend no amendment on the point. One of us, however, favoured the Madras view and suggested an amendment to give effect to it.

Section 184 revised.

10.17. The *mens rea* for the purposes of this section is restricted to intentional obstruction. We consider that knowledge of likelihood of obstruction also should be covered as in section 186, and recommend that the word 'voluntarily' should be substituted for the word 'intentionally'.

The offence under this section is a petty one, and imprisonment is not necessary. It should be removed. The fine, however,

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1. *State of Kerala* v. *Markose*, A.I.R. 1962 Ker. 133 (reviews cases).
2. 41st Report, Vol. *I*, para. 14.10.
3. *Queen-Empress* v. *Tiruchittambala Pathan*, (1898) I.L.R. 21 Mad. 78.
4. *Sakharam Rawaji Pawar* v. *Emp.*, A.I.R. 1935 Bom. 233.

should be increased from Rs. 500.00 to Rs. 1,000 . Accordingly, section 184 may be revised as below:—..

"184. *Obstructing sale of property offered for sale by authority of public servant:—*

Whoever voluntarily obstructs any sale of property offered for sale by the lawful authority of any public servant, as such, shall be punished with fine which may extend to one thousand rupees."

Section 185 amended.

10.18. The punishment provided in section 185 may also be the same as in the preceding section, i.e., fine upto Rs. 1,000 but no imprisonment.

Section 186-application when public servant's action not strictly justified by law.

10.19. Section 186 punishes a person who voluntarily obstructs a public servant in the discharge of his public functions. There is a conflict of judicial opinion as regards the construction of the words 'in the discharge of his public functions' occurring in this section, a conflict similar to that relating to the words 'lawful authority' under section 183. Do these words include only those acts which are strictly in accordance with law, or do they include even those acts which though not strictly justified in law, are done by public servants in good faith under colour of office ? It is unnecessary to cite here the various decisions on the subject[1]. Even in the same High Court, the decisions have not been unanimous.[2] This controversy has been referred to in a judgement of the Supreme Court[3], but not settled by that judgement. There is no need to discuss the relative merits of the two views. One of us was in favour of a liberal construction of the words, so as to include those acts of public servants against which there is no right of private defence as mentioned in the first two paragraphs of section 99, and suggested an amendment to section 183 by way of clarification. The majority, however, were of the view that the only obstructions of those actions of public servants which are strictly in accordance with law should be punishable. In view of this difference of opinion amongst us, we do not recommend any amendment to this section. It may remain in the present form and the law may be clarified if and when the matter is taken to the Supreme Court.

Section 186-meaning of 'obstruction'.

10.20. There is a conflict of decisions as to the scope of the word 'obstruction' in section 186. The same question has also been discussed at length in several English cases. These decisions, English as well as Indian, do not yield a precise test as to what constitutes obstruction. We considered a suggestion that it should be made clear, *e.g.*, by an explanation, that

1. *See* Ratanlal, Law of Crimes, (1966), pages 469, 470.
2. *See* for instance, *Bhawoo Jivaji*, I.L.R. 12, Bom. 377.
3. *Santosh Kumar Jain*, A.I.R. 1951, S.C. 201; (1951), S.C. R. 303.

'obstruction' is not confined to physical obstruction, but the majority of us were not in favour of it. If courts have due regard to the dictionary meaning of the word 'obstruction' (which meaning is fairly wide), then no difficulty should arise. English cases relating to section 51(3), Police Act, 1964 (or earlier provisions corresponding thereto) also leave the matter elastic[1]. No amendment is, therefore, recommended on this point.

Section 186—amendment regarding punishment.

10.21. The maximum punishment, now provided in section 186, three months' imprisonment, or fine upto Rs 500, or both, may be increased to 'six months, or with fine, or with both'.

Section 187—Attendance at search and signature by witnesses.

10.22. In connection with section 187, there is a suggestion[2] to provide punishment for non-attendance by witnesses required to attend a search by the police. We may note that section 103 (5) of the Criminal Procedure Code (as amended in 1923) specifically covers non-attendance at searches. What is not covered is failure to sign the memorandum of search. Signature of the search memorandum has been held to be not obligatory under the law as it now stands,[3] but that provision need not be altered. An amendment providing that search witnesses are bound to sign the list may create practical difficulties. The law would then have to provide for a contingency where the witnesses find or allege that the search record is inaccurate. We do not consider that any amendment of section 186 is necessary on this point.

Section 187—Amendment regarding punishment.

10.23. The punishment provisions in section 187 may be amended as follows:—

(i) in the first paragraph, it may read 'punished with fine which may extend to one thousand rupees'; and

(ii) in the second paragraph, the words 'which may extend to five hundred' may be omitted.

Section 188.

10.24. Section 188 provides for punishment of disobedience of orders promulgated by public servants. Prosecutions under this section are generally launched for violation of orders under section 144 of the Criminal Procedure Code. But this section is so worded that mere disobedience of such an order is not sufficient. The prosecution is required to show in addition that such disobedience causes or tends to cause (a) obstruction, annoyance or injury to any person lawfully employed, or (b) danger to human life, health or safety or (c) tends to cause a riot or affray. Thus, the effect of the disobedience of the order is made an essential ingredient of the offence.

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1. See *Bastable* v. *Little*, (1907) 1 K.B. 59; *Betts* v. *Stevens*. (1910) 1 K.B. 1; *Hinchliffee* v. *Sheldon*, (1955) 3 All E.R. 406; and the discussion in *Sykes* v. *D.P.P.*, (1961) 3 All E.R. 33, 41 (per Lord Denning).

2. F. 3(9)/56-L.C., S. No. 108, page 294 (Shri K. Rajah Iyer's suggestion).

3. *Ram Prasad* v. *Emp.*, A.I.R. 1938 Pat. 403, 407, 408, 412 (F.B.) (Majority view).

Should production of harm be necessary for offence?

10.25. One of us was of the view, that in the penal section mere disobedience of a duly promulgated order should be made punishable, and that the effect of such disobedience need not be included as a necessary ingredient of the offence. An order under section 144, Criminal Procedure Code, will be a valid order only if the Magistrate considers that such an order should be promulgated for the purpose of preventing obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety or a disturbance of public tranquillity or a riot or an affray. In order to prove the validity of the order, it will always be necessary for the prosecution to show that there was such risk on the date of the promulgation of the order. But to require the prosecution to further prove, not only disobedience of a valid order under section 144, but also the effect or tendency of such disobedience will be putting an enormous burden on the prosecution, and may well result in the giving of perjured evidence. Moreover, such a provision is outside the scheme of the general provision dealing with disobedience of orders of public servants in Chapter 10, where the mere act of disobedience is made punishable. Hence, though an accused prosecuted under section 188, I.P.C., will always have the right to show that the order was not validly made because the pre-existing conditions required for the promulgation of the order as specified in section 144, Cr. P.C., were not present when the order was promulgated, nevertheless the prosecution should not be required to further prove, after proving the disobedience of the order, that such disobedience either caused or had a tendency to cause the various risks mentioned above. He further pointed out that the circumstances, present on the date of the promulgation of an order under section 144, Cr. P.C., should be the main consideration, and not the circumstances present on the date on which the order was disobeyed. In many instances, the mere promulgation of the order under section 144, Cr. P.C., may have the salutary effect in preventing the various risks mentioned in that section. If a person, therefore, disobeys such an order (which has proved to be effective for the purpose for which it was promulgated), it will be difficult for the prosecution to show that on the date of the disobedience the act of disobedience had any such tendency as is required in section 188. The person who deliberately flouts a lawful order should not benefit from its effectiveness.

Majority of us were, however, not in favour of this view. Section 188, though mainly referring to orders under section 144, Cr. P.C. is wide enough to include violations of some orders under special laws, and mere disobedience of even a valid order should not be made punishable unless it caused or had a tendency to cause one of the harmful effects mentioned in the section.

In view of the absence of agreement, we do not propose any amendment to the section of this point.

Minor amend-ments proposed.

10.26. The following minor amendments are recommended:—

(i) In the punishment provision, the limit of one thousand rupees for the fine may be removed by omitting the words "which may extend to one thousand rupees".

(ii) In the Explanation, the word 'contemplate' in the first sentence is imprecise and not in accord with the usual terminology. The second sentence is unnecessarily expositary and also slightly misleading. The Explanation may be shortened to read:—

"*Explanation*:—It is not necessary that the offender should intend to produce harm, or know that his disobedience is likely to produce harm."

(iii) The illustration does not elucidate any doubtful point; and in fact, the words "and thereby causes danger of riot" are not particularly apt. The illustration should be omitted.

Sections 189 and 190.

10.27. No changes are required in sections 189 and 190.

CHAPTER 11

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Introduction.

11.1. Perjury and other offences against public justice are dealt with in considerable detail in this Chapter. The range of these provisions is wide and nearly everything calculated to obstruct the administration of justice has been covered. It has, therefore, been unnecessary for us to make many changes, except to remove working difficulties.

Definitions in sections 191 and 192.

11.2. Section 191 defines 'giving false evidence', and section 192 defines 'fabricating false evidence', while the three punishing sections that follow treat the two alike. Under section 191, when a person who is legally bound to state the truth or to make a declaration, makes any statement which is false and which he knows or believes to be fasle or does not believe to be true, he gives false evidence. Under section 192, if a person causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that any of these may appear in evidence and mislead the person dealing with the matter, he fabricates false evidence.

Accused persons to be equally bound.

11.3. Regarding these definitions, one suggestion noticed by us was that an accused person, while defending himself against a criminal charge, should be put outside the scope of section 191 as well as section 192, the argument being that it is too much to expect that a person accused of a serious offence would not be tempted to give or fabricate false evidence. We are unable to accept this. It is quite true that an accused making a statement under section 342 of the Criminal Procedure Code cannot be prosecuted if any part of the statement is false but that is because the accused is not legally bound to state the truth. If, however, the law requires that he must state the truth, e.g., when he gives evidence under section 342A, there is no reason why he should not be bound by that requirement. We see no justification generally for giving a licence to any accused person to obstruct the course of justice, by planting false or fabricated evidence in court.

Materiality of false statement under section 1911.

11.4. Another suggestion put before us was that like section 192, section 191 should specifically provide that a false statement made by a person must be material to the matter under investigation. We are not persuaded that it is either necessary or advisable to do so. A prosecution for giving false evidence can begin only if the authority before which false evidence is

given considers it expedient[1]; and, when the question of instituting such a prosecution is raised, the question of materiality can be properly considered. No harm has been caused by the existing definition and we do not propose any change.

Fabricating false evidence which is inadmissible—conflict of views.

11.5. Regarding section 192, there seem to be some conflict of decisions as to whether fabricated evidence which may not be admissible is within the definition. While the Allahabad[2] and Patna[3] High Courts have taken a narrow view, the Calcutta view[4] is that, under section 192, it is the intention that creates the criminal offence, and the question whether, under the terms of the law the document is admissible in evidence or not is immaterial. That Court observed:—

> "The decisions of High Courts in India, at any rate some of them, would seem to show that section 192 is limited to such cases as those in which the fabricated evidence is, in fact, admissible under the terms of the law of evidence. Speaking for myself, I have the gravest doubt whether those decisions are correct. I think the words of the section will show that it is the intention that creates the criminal offence and not the fact as to whether, under the terms of the law, the document is admissible in evidence. The view expressed in the cases mentioned might raise a considerable difficulty in cases where the judge has improperly admitted in evidence a document not admissible under the terms of the law."

In a later Calcutta case,[5] it was held that the mere fact that a document would be ultimately inadmissible in evidence, does not necessarily take it out of the mischief of section 193.

In an early Lahore case,[6] the Court stated the position as follows:—

> "The appellant did not produce Ex. P.C.2 in original but a copy thereof, Ex. P.A. The weight of authority is in favour of the view that there can be no fabrication of false evidence within the meaning of section 192, I.P.C., if the evidence is not admissible in itself."

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1. Section 476, Code of Criminal Procedure, 1898.
2. *Emp.* v. *Mulla*, (1879) I. L. R. 2 All. 105;
   Emp. v. *Gauri Shankar*, (1883) I. L. R. 6 All. 42;
   Q. E. v. *Nand Kishore*, (1897) I. L. R. 19 All. 305;
   Q. E. v. *Zakir Hussain*, (1898) I. L. R. 21 All. 159; and
   Emp. v. *Mulai Singh*, (1906) I. L. R. 28 All. 402.
3. *Mangal Singh* v. *The State*, A. I. R. 1956 Pat. 154, 156, 157.
4. (a) *Barada Kanta Sarkar* v. *Emp.* A. I. R. 1916 Cal. 553, 554.
   (b) No opinion was expressed on this point in *Mohammed Kazim Ali* v. *Jorabali Nadar*, (1919) I. L. R. 46 Cal. 986; A. I. R. 1919 Cal. 430. (Only a query raised).
5. *Mahesh Chandra* v. *Emp.* I. L. R. (1940) I Cal. 465; A. I. R. 1940 Cal. 449.
6. *Faz! Ahmed* v. *Emp.* A. I. R. 1914 Lah. 433, 435, 436.

A later Lahore case[1] however, holds that a person is guilty of fabricating false evidence if he makes a false entry in a document, intending that it shall appear in evidence and mislead the Judge or Magistrate, and the mere fact that the entry is not legally admissible in evidence cannot affect his guilt.

Wider view preferred and explanation recommended.

11.6. We would prefer the wider view. If evidence is fabricated with the peculiar intent mentioned in section 192, we see no reason why the fabrication should not be punished. To allow the matter to be determined by the admissibility of the evidence is to leave it to fluctuate with the decision of the presiding officer as to the admissibility, and this is not a satisfactory position. We propose to make the position clear by adding a specific explanation in section 193.

Contr oversy about "judicial proceeding".

11.7. The expression "judicial proceeding" which occurs in section 192 and 193 has not been defined in the Code. Though controversy often arises whether a particular proceeding is or is not a judicial proceeding, Courts have refrained from attempting a definition, choosing to decide each case on a consideration of the nature of the proceedings, the body before which they were held, the parent legislative provision and other relevant circumstances. We also have come to the conclusion that a precise and satisfactory definition is not possible. We considered whether judicial proceedings should be confined to proceedings in a court of justice, but felt that such a definition would be very narrow.

Section 193 amended.

11.8. (i) Explanation 2 to section 193 becomes pointless if commitment proceedings are abolished. It should, therefore, be omitted, as also the illustration pertaining thereto.

(ii) For the reasons given in paragraph 11.6 above, we purpose that, in its place, the following Explanation be inserted;—

> "*Explanation* 2.—For the purpose of this section, it is immaterial whether the fabricated evidence is or is not legally admissible in the proceeding in which it is intended to be used."

Sections 194 and 195 amendments proposed.

11.9. (i) Sections 194 and 195 provide for aggravated forms of giving or fabricating false evidence. It strikes us that primarily, both these sections are intended for cases where false evidence is given or fabricated for production in criminal courts. We think that it will make for clarity if that is expressly put into both these sections; and although, in the result some cases now covered by sections 194 and 195 may fall outside them, no great harm will occur, as these cases will remain covered by section 193 which provides adequate punishment.

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1. *Amolak Ram.* A. I. R. 1918 Lah. 192, disenting from A. I. R. 1914 Lah. 433.

(ii) The second part of section 194 punishes only the person who gave false evidence, and not the person who fabricated it; but there is no reason why fabricating false evidence should not be treated the same way as giving false evidence. We propose to add the words "or fabricates" after the word "gives".

A suggestion was made that the fabrication of false evidence should be punishable under section 194 only if such fabricated evidence is actually used in court. There seems to us no justification for that and so long as evidence is fabricated with intent to use it in court, it is immaterial whether the evidence is actually used or not.

(iii) As regards the punishments prescribed in section 194, we feel that life imprisonment as an alternative to ten years' rigorous imprisonment in the first paragraph is hardly necessary and may be omitted. The maximum sentence for the offence may be rigorous imprisonment for fourteen years.

(iv) As a consequential amendment in the second paragraph, the words "or imprisonment for life" will have to be added after the word "death".

(v) With these amendments, sections 194 and 195 would read as follows:—

"194. *Giving or fabricating false evidence with intent to procure conviction of capital offence.*—Whoever gives false evidence *in any trial before a Court of Justice* or fabricates false evidence *for the purpose of being used in any such trial*, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of *a capital offence*, shall be punished with rigorous imprisonment for a period which may extend to *fourteen years*, and shall also be liable to fine;

and if any innocent person shall be convicted and executed in consequence of such false evidence, the person who gives *or fabricates* such false evidence shall be punished with death *or imprisonment for life* or the punishment hereinbefore described.

195. *Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for seven years or upwards.*—Whoever gives false evidence *in any trial before a Court of Justice*, or fabricates false evidence *for the purpose of being used in any such trial*, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which *is not capital*, but punishable with imprisonment for a term of seven years or with a more severe sentence shall be punished as a person convicted of that offence would be liable to be punished."

(*vi*) The illustration to section 195 is hardly necessary and may be omitted.

Sections 196 to 198.

11.10 Sections 196 to 198 need no change.

Evil of false medical certificates.

11.11 One addition to the chapter seems to us useful. It concerns the use of false medical certificates. It is common knowledge that unscrupulous persons do not hesitate to use such certificates to gain advantage in the course of litigation, and sometimes for purposes unconnected with the courts. It will be noticed that sections 196 and 197 of the Code provide punishments for using false certificates which are required by law to be given or which state facts of which the certificates are good evidence. Medical certificates do not fall within that description; but, because of the regard in which the medical profession is held, the courts and other public officials usually accept such medical certificates at their face value. We think it proper that the making of a false medical certificate and, correspondingly, the use of such a certificate, should be punishable. We are making this suggestion not because many doctors issue false certificates, but because the courts almost invariably accept them as true, and there should be a legal sanction to ensure that such certificates are, in fact, true.

New sections recommended.

11.12 We, therefore, recommend the insertion of two new sections as follows:—

"198A. *Issuing or signing false medical certificate.* Whoever, being a medical practitioner, issues or signs any medical certificate or certificate of fitness, knowing that such certificate is false in any material particular, shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and, if he knows that the certificate is intended to be used in any stage of a judicial proceeding, he shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

198B. *Using as true a medical certificate known to be false.* Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and, if he so uses or attempts to use it in any stage of a judicial proceeding, he shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Sections 199 and 200.

11.13 Section 199 deals with false declarations, and section 200 deals with the corrupt use of such false declarations. They need no change.

Section 201.

11.14 Section 201 punishes any person who, knowing that an offence has been committed, destroys the evidence of that offence in order to screen the offender. The punishment varies according to the nature of the offence, so that if the offender sought to be hidden in this manner is punishable with death, the offender is liable to imprisonment upto seven years, while if the offence be punishable with imprisonment upto ten years, the maximum imprisonment is three years. For some time, there was a controversy whether a person who commits an offence and then destroys evidence of the offence, could be punished under section 201. The Supreme Court[1] has decided that he can be so punished; and although this may, at first sight, seem somewhat incongruous, the courts have, on the whole, found this view useful for practical purposes. We do not think it is necessary to amend section 201 in the contrary sense.

Sections 202 and 203 to be transposed.

11.15 Section 202 punishes the person who intentionally omits to give information concerning an offence which he is legally bound to give, and section 203 punishes the person who gives false information concerning an offence. Logically the latter section should come first. We propose that section 202 and the main part of section 203 may be transposed. The Explanation may continue to be a part of the revised section 203.

Section 204-amendment proposed.

11.16 Section 204 punishes the destruction of any document which can be compelled to be produced as evidence in a Court or when it has been summoned or required to be produced. The section mentions only a 'document', although anything other than a document can easily be required to be produced in a Court, and we do not see why the destruction of such a thing if it be good evidence, should not be equally punishable. We, therefore, recommend that in this section after the words "any document" the words "or other thing" be inserted.

Sections 205 to 207.

11.17 No change is needed in sections 205, 206 and 207.

Interference with property attached by court's order to be punishable.

11.18 While sections 206 and 207 punish certain fraudulent acts designed to prevent the seizure of property under the orders of a Court, there is no direct provision in the Code against the removal of attached movable property. We consider that once any movable property has been lawfully attached by order of a Court of Justice, any authorised removal of, or interference with, that property should be punishable irrespective of the motive or intention of the person concerned. We propose that the following section may be inserted after section 207:—

"207A. *Removal of attached property.*—Whoever, knowing or having reason to believe that any movable property has been lawfully attached by the order of a Court of Justice, removes or interferes with such property otherwise than in accordance with law, shall, whether or not he was a party

[1] *Kalawati*, A. I. R. 1953 S. C. 131; (1953) S. C. R. 546.

to the proceedings in which the order was made, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Sections 208 to 210.

11.19. No change is needed in sections 208, 209 and 210.

Section 211 —overlap with section 182 considered.

11.20. Like section 182, section 211 is intended to prevent false accusations being made against innocent persons, which not only cause harassment to those persons but also result in wastage of public time. Section 182 is briefly described as 'false information with intent to cause a public servant to use his lawful power to the injury of another person', while the heading of section 211 runs 'false charge of offence made with intent to injure'. These two provisions are complementary to each other and designed to operate in different situations. The courts have, however, frequently found it difficult to determine which provision would be applicable in a given situation. Thus, if a person gives false information to a police officer that another person has committed an offence, does he give false information to a public servant within the meaning of section 182, or does he institute criminal proceedings within the meaning of section 211? The High Courts are not agreed in the answer, and the conflict has not yet been resolved by the Supreme Court.[1] The practical importance of this conflict lies in the procedural rule[2] which requires a complaint by a public servant for a prosecution under section 182, and by a court for a prosecution under section 211 when the matter relates to a court proceeding. To remove this fruitful source of dispute in courts over what is after all a procedural detail, we propose to confine section 211 to proceedings instituted, and charges made, in a court, while other cases of false information will fall under section 182.

Ambiguous wording of section.

11.21. The wording of section 211 is not as clear and unambiguous as could be desired. For instance, does "intent to cause injury to any person" govern also the act of falsely charging any person with an offence? Should those two persons be the same, or would it also be an offence where the intent is to injure X but Y is falsely charged with committing an offence? The two limbs of the section *viz.*, instituting criminal proceedings and falsely charging with an offence, are somewhat confusingly mixed up.

Incidentally, we also considered a suggestion that it would be worthwhile adding an Explanation to section 211 to indicate the scope of the expression 'criminal proceeding' with reference to proceedings under sections 107 to 111, 133, 144, 145, 488 etc.

1. The judgement in *State of Punjab* v. *Brijlal*, A. I. R. 1969 S. C. 355, 359, deals with a different question, namely, that during the pendency of a complaint on the same fact as those given in the first information report, the magistrate cannot take cognizance without complying with section 195(1)(b), Criminal Procedure Code.

2. Section 195, Criminal Procedure Code.

of the Code of Criminal Procedure. We do not, however, consider the matter as of sufficient importance to require clarification. The case-law also does not reveal any serious difficulty in this respect.

Punishment to be increased.

11.22. The maximum punishment provided in the first paragraph of section 211 should be increased from two years to three years.

Section 211 revised.

11.23. In the light of above discussion, section 211 may be revised as follows:—

"211. *False charge of offence made with intent to injure.*— Whoever, with intent to cause injury to any person,—

(a) institutes or causes to be instituted in a Court of Justice any criminal proceeding against that person, knowing that there is no just or lawful ground for such proceeding against that person; or,

(*b*) falsely charges that person in a Court of Justice with having committed an offence, knowing that there is no just or lawful ground for such charge against that person,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with imprisonment for seven years or a more severe sentence, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 212.

11.24. Section 212 deals with harbouring an offender. The punishment varies with the gravity of the offence. No change is required in this section.

Sections 213 and 214—Explanations recommended.

11.25. Sections 213 and 214 deal with unlawful compounding of offences and make culpable the giving or taking of a gift for such compounding; and again, the punishment varies with the nature of the offence compounded. If the offence is legally compoundable, these provisions do not, of course, apply.

The language of the sections leaves little doubt that the offence is complete once a person agrees to give or take a gift for concealing an offence or screening the offender, and it is not necessary that he must actually screen the offender. But, as some doubt has been expressed in this connection, we propose to add an Explanation in each section to make this clear.

(*i*) To section 213, the following may be added:—

"*Explanation.*—It is not necessary to the commission of an offence under this section that the offender should have done, or desisted from doing, what he undertook to do, or to desist from doing.

Exception.—The provisions of this section do not extend to any case in which the offence may lawfully be compounded."

(*ii*) In section 214, the existing exception may be omitted and the following may be added:—

"*Explanation.*—It is not necessary to the commission of an offence under this section that the other person should have done, or desisted from doing, what he undertook to do, or to desist from doing.

Exception.—The provisions of this section do not extend to any case in which the offence may lawfully be compounded."

Sections 215 and 216.

11.26. Section 215 punishes the taking of a gift to help in the recovery of stolen property without exposing the offender. Section 216, which is supplementary to section 212, deals with harbouring an escaped convict or a person ordered to be arrested. Neither section requires to be changed.

Section 216-A—amendment recommended.

11.27. Section 216A was added to the Code in 1894 specially to deal with the harbouring of persons who are about to commit, or have recently committed, robbery or dacoity; and it extends to robberies and dacoities contemplated or committed outside India. Harbouring a person who has committed an offence is already provided for in section 212, and we do not think it necessary to provide for it again in section 216A. At the same time, we feel that kidnapping and abduction could be usefully included. The section may be amended to read:—

"216A. *Penalty for harbouring persons about to commit kidnapping, abduction, robbery or dacoity.*—Whoever, knowing or having reason to believe that any persons are about to commit the offence of kidnapping, abduction, robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such offence, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section, it is immaterial whether the offence is intended to be committed within or without India.

Exception.—This section does not extend to the case in which the harbour is by the husband or wife of the person about to commit the offence."

Sections 217 to 220.

11.28. The next four sections, 217 to 220, are designed to punish certain illegal acts of public servants done with corrupt or malicious intention. A question was raised whether the expression 'legal punishment' in sections 217 and 218 covers preventive action under sections 107 to 110, Criminal Procedure Code. Though it may be said that such section is, in a sense, imposing

a punishment, we are of the view that it need not be regarded as "legal punishment" for the purposes of this section. However that may be, we propose that the reference to "legal punishment" may be replaced by "punishment for an offence" which will make the position absolutely clear.

No change is needed in sections 219 and 220.

Sections 221 to 225 B.

11.29. Seven sections, 221 to 225B, deal with two connected situations, namely, failure to apprehend a person required by law to be apprehended, and escape of a person from lawful custody, and describe in detail the various forms in which the two situations arise. The commonest and most readily understandable is the case of a person resisting his own arrest or escaping from custody after arrest. Similar is the case of a person helping another to resist his arrest or helping him to escape from lawful custody. Much more serious is the case of a public servant omitting to arrest a person whom he is by law bound to arrest, and perhaps even more serious is the case of a public servant who, intentionally or through criminal negligence, permits a person in his lawful custody to escape. These acts are reprehensible and have rightly been made punishable. Further, the punishment is graded according to the seriousness of the offence, and, broadly speaking, the grading is as it should be.

Formal revision and re-arrangement proposed.

11.30. Since, however, some of these acts were not made punishable when the Code was first enacted, there has come to be a certain want of neatness in the arrangement of the various sections. Thus, omission to apprehend a person liable to be apprehended was first confined to persons liable to be apprehended for any offence punishable with imprisonment. Later on, a provision had to be made for cases where a person was liable to be apprehended but not for an offence punishable with imprisonment, and section 225A had to be enacted. Similarly, resistance to the lawful apprehension of another person was, at first, punishable only if the arrest was for an offence, and other cases were later provided for by section 225B. We also find that in some of these sections, too many ideas are introduced at one place, which is avoidable. We, therefore, propose to re-arrange this set of seven sections in such a way that, as far as possible, one section would express one idea, as follows:—

(*i*) Redraft of section 221, combining with it sections 222 and 225A(a) :—

"221. *Public servant intentionally omitting to arrest or permitting escape.*—Whoever, being a public servant legally bound to arrest any person or to keep him in custody, intentionally omits to arrest him or intentionally aids him in escaping or attempting to escape from such custody or intentionally permits him to escape from such custody, shall,—

(*a*) if that person is to be arrested or kept in custody by reason of a conviction or charge or suspicion of a capital offence, be punished with rigorous

imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(*b*) if that person is to be arrested or kept in custody by reason of a conviction or charge or suspicion of any other offence punishable with imprisonment for life or for ten years or upwards, be punished with rigorous imprisonment for a term which may extend to five years, and shall also be liable to fine;

(*c*) in any other case, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

(*ii*) Redraft of section 223, combining with it section 225A(a):—

"222. *Public servant negligently omitting to arrest or suffering to escape.*—Whoever, being a public servant legally bound to arrest any person or to keep him in custody, negligently omits to arrest him or negligently suffers him to escape from such custody, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

(*iii*) Redraft of section 225, combining with it part of section 225B:—

"223. *Rescue from lawful custody.*—Whoever rescues, or attempts to rescue, any other person from lawful custody shall,—

(*a*) if such person is in custody by reason of conviction or charge or suspicion of a capital offence, be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(*b*) if such person is in custody by reason of a conviction or charge or suspicion of any other offence punishable with imprisonment for life or for ten years or upwards, be punished with rigorous imprisonment for a term which may extend to five years, and shall also be liable to fine;

(*c*) in any other case, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

(*iv*) Redraft of section 225B, combining with it part of section 225:—

"224. *Resistance to arrest of another person.*—Whoever offers resistance or illegal obstruction to the lawful arrest of another person shall be punished with the punishment provided in section 223."

(*v*) Redraft of section 224, combining with it part of section 225B:—

"225. *Escape from lawful custody.*—Whoever, being in lawful coustody, intentionally escapes or attempts to escape from such custody shall,—

(*a*) if he is in custody by reason of a conviction or charge or suspicion of an offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

(*b*) in any other case, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person in custody was liable for the offence of which he was convicted, or would have been liable on a conviction for the offence with which he was charged or of which he was suspected, as the case may be."

(*vi*) Redraft of section 225B, combining with it part of section 224:—

"226. *Resistance to arrest.*—Whoever intentionally offers resistance or illegal obstruction to his lawful arrest shall be punishable with the punishment provided in section 225."

Section 227.

11.31. No change is needed in section 227.

Section 228—Increase in punishment recommended.

11.32. Section 228 provides for wilful interruption of judicial proceedings, not only before a court, but also before any other public servant. We feel that the present maximum punishment of six months' imprisonment or one thousand rupees' fine is not adequate for dealing with serious cases, *e.g.*, deliberate interruption of the proceedings of a Court of Justice. The punishment provision may be amended to read "with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Punishing of persons appearing drunk in Court.

11.33. We considered a suggestion that a new section to punish persons appearing drunk in courts should be inserted, but did not accept it. The court can always order any such person to remove himself, or be removed, from the court, and, if the case is serious, the High Court can take cognizance of the offence as a contempt of a subordinate court[1].

1. The Contempt of Courts Act, 1952 (A Bill is pending to replace this Act, but it does not affect the substance of the relevant provision).

Punishing of persons taking photographs in Court without permission.

11.34. Another suggestion considered by us was that it should be an offence for a person to take photographs in Court without the Court's permission. Reference was made, in this connection, to the provision in England on the subject.[1] We doubt if there is any real need for such a provision. The Court can maintain its dignity by ordering out the person who takes photographs, and a penal provision on the subject is not required.

Section 229 omitted.

11.35. Section 229 will cease to be useful when the jury system is completely abolished, and may be omitted.

Three additional sections proposed.

11.36. We propose three additional sections in this Chapter, penalising certain illegal acts which affects the proper administration of justice. The first is interference with witnesses.

(i) Interfering with witnesses.

"229A. *Interference with witnesses.*—Whoever, by threats, bribes or other corrupt means, dissuades or attempts to dissuade any person from giving evidence before a public servant legally competent to examine him as a witness, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

(ii) Bail jumping.

11.37. Another penal provision we consider necessary is in regard to bail jumping. We notice that section 174 which punishes non-attendance in obedience to an order received from a public servant will not suffice, as it is applicable only where the public servant *orders* a person to be present before him. In the Canadian Criminal Code[2], there is an express provision against bail jumping which appears to be a suitable model. The new section may be as follows:—

"229B. *Failure by person released on bail or bond to appear in Court.*—Whoever, having been charged with an offence and released on bail or on his own bond fails without sufficient cause (the burden of proving which lies upon him) to appear in Court in accordance with the terms of the bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation.—The punishment under this section is—

(*a*) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he is charged; and

(*b*) without prejudice to the power of the Court to order forfeiture of the bond."

1. Section 41, Criminal Justice Act, 1925 (English).
2. Section 125, Canadian Criminal Code.

1) Vexatious search made without reasonable ground.

11.38. Apart from the powers of search and seizure conferred on the police by the Criminal Procedure Code, various special and local laws confer similar wide powers on various law enforcement officers. Some of these laws contain safeguards against abuse of these powers in the shape of provisions penalising vexatious and unreasonable searches, *e.g.*, section 22 of the Central Excises and Salt Act, 1944, section 136(1) of the Customs Act, 1962 and section 94 of the Gold (Control) Act, 1968. We think a simple, general provision in the Penal Code to cover searches under the authority of any law would be useful.[1] The new section may be as follows:—

> "229C. *Vexatious search without reasonable ground.*— Whoever, being empowered by law to order or conduct search of any place, vexatiously and without having a reasonable ground for so doing orders or conducts such search, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

1 Some of the European Criminal Codes contain such a provision, *e. g.*, section 116 of the Penal Code of Norway.

CHAPTER 12

OFFENCES RELATING TO CURRENCY NOTES, COINS AND STAMPS

Introductory.

12.1. Chapter 12 deals exhaustively in as many as 24 sections with offences relating to the counterfeiting, debasing or altering of coin, both Indian and foreign, and the trafficking in counterfeit or spurious coin. Analogous activities in respect of "stamps issued by the Government of India for the purpose of revenue" (including Indian postage stamps) and in respect of foreign postage stamps are covered in ten sections.

Forging of currency notes—Legislative history.

12.2. Originally, the Penal Code did not make any specific provision relating to the counterfeiting of currency notes, Indian or foreign. The general provisions relating to forgery were considered applicable and sufficient to deal with such counterfeiters. This was perhaps natural at a time when coin played a much more vital and important part in the monetary system of the country than currency notes. Legislation relating to paper currency, however, goes back to 1861. Between that year and 1923, there were as many as six Indian Paper Currency Acts, passed successively in 1861, 1871, 1882, 1905, 1910 and 1923. The last of these Acts was repealed by the Reserve Bank of India Act, 1934 when the duty and responsibility of issuing and regulating currency notes was entrusted to the Reserve Bank. In 1940, however, the Government of India assumed the power and authority to issue one rupee notes as legal tender in addition to the Reserve Bank notes under the Currency Ordinance, 1940[1].

Forging or counterfeiting of currency notes and bank notes, both Indian and foreign, and other related offences, like possessing counterfeit notes, using them as genuine, and possessing instruments material for forging such notes, were first brought into the Penal Code by the Currency Notes Forgery Act, 1919. Four sections, 489A to 489D, were added in Chapter 18, on the basis that these offences were closely allied with forgery and other offences relating to documents dealt with in that Chapter. (Section 489E was added during the last war by Act 6 of 1943 to deal with a comparatively trifling matter). In recent times, criminal Courts are much more concerned with prosecutions under these four sections than with prosecutions under all the 35 sections of Chapter 12 put together.

Chapter 12 to cover currency notes also.

12.3. We propose that sections 489A to 489E should be put in Chapter 12 where they rightly belong. The heading of the Chapter should, in consequence, be changed to "Offences relating to Currency Notes, Coins and Stamps". We propose also

1. Although called an Ordinance, this law continues in force as a permanent law.

that in view of their greater importance the sections relating to currency notes should come first.

Section 489A—"Currency notes or bank notes".

12.4. Section 489A which is the principal section in this group punishes the counterfeiting of "Currency Notes or bank notes". While there is no definition of "Currency Notes" the expression "bank note" is defined in an explanation as "a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, *and intended to be used as equivalent to, or as a substitute for money*". This definition is comprehensive enough to cover all notes issued by the Reserve Bank of India or by the Government of India, which are used as money in the country, and also, notes issued by or under the authority of the Government of a Foreign State used as money in that State. Currency Notes, as commonly understood, are notes which are in current circulation as money or, in other words, which are legal tender, in the country in which they are issued.[1] It does not appear that the intention or effect of the Explanation in section 489A is to cover any other type of bank notes, if at all it exists in a foreign country. So far as India is concerned, since private persons are prohibited[2] by the Reserve Bank of India Act, 1934 from issuing a Bill of Exchange, *hundi*, Promissory Note or engagement for the payment of money payable to bearer on demand, there can be no such "bank notes". We propose, therefore, to adopt a clear and simple definition of "currency notes" in place of the lengthy definition of "bank notes" in the existing Explanation, and to omit all reference to "bank notes" in section 489A and the following sections.

Punishment provision modified.

12.5. The punishment prescribed at present for the offence of counterfeiting currency notes is imprisonment for life or imprisonment of either description upto ten years to which fine may be added. We consider that life imprisonment is not called for, but on the other hand, the possibility of imposing simple imprisonment for a number of years should not be allowed. The maximum punishment for the offence may be rigorous imprisonment for fourteen years and fine.

Section revised.

12.6. The first section in the revised Chapter 12 will accordingly read :—

> "230. *Counterfeiting currency notes.*—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency notes shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

1. *Cf.* section 1(2) of the (U. K.) Counterfeit Currency (Convention) Act, 1935 which defines "currency notes" as including any "notes (by whatever name called) which are legal tender in the country in which they are issued".
2. See sections 31 and 32, Reserve Bank of India Act, 1934.

Explanation.—The expression 'currency notes' means—

"(i) any currency notes of the Government of India;

(ii) any bank notes issued by the Reserve Bank of India; and

(iii) any notes (by whatever name called) issued by or on behalf of the Government of any country outside India which are legal tender in that country."

Sections 489 B, 489 C and 489 D.

12.7. Only a few formal changes are required in sections 489B, 489C and 489D, which will be numbered 231, 232 and 233 after they are transposed to Chapter 12. These sections will read :

"231. *Using as genuine counterfeit currency notes*— Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any counterfeit currency notes, knowing or having reason to believe the same to be counterfeit, shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

232. *Possession of counterfeit currency notes.*—Whoever has in his possession any counterfeit currency note, knowing or having reason to believe the same to be counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

233. *Making or possessing instruments or materials for counterfeiting currency notes.*—Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for counterfeiting any currency note, shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine."

Section 489 E.

12.8. While section 489A makes the counterfeiting of currency notes punishable with imprisonment for life, section 489E imposes a small fine of not more than Rs. 100 on a person who makes a document "so nearly resembling a currency note as to be calculated to deceive" the unwary individual. It is doubtful if this section has at present any practical use. However, we see no harm in retaining it, but we propose increasing the maximum fine under sub-section (1) to Rs. 200 and that under sub-section (2) to Rs. 500. The words "or bank note" occurring in sub-section (1) and the marginal heading will be omitted.

Sections 230 to 254—Distinction between "Indian coins" and other coins.

12.9. We now proceed to consider the group of sections in Chapter 12, sections 230 to 254, which deal with offences relating to coins. A noticeable aspect of the scheme of these sections is the distinction drawn between 'coins' in general and 'Indian coins'. Apparently, the maker of the Code were of the view that the offences when committed in relation to Indian coins were more reprehensible than when they related to non-Indian coins. This is reflected in the elaborate method of providing two different sections for each distinct offence, one relating to 'Indian coins' and carrying a severe punishment, and the other relating to 'coins' with a comparatively lighter punishment.

Abolition recommended.

12.10. This distinction was, no doubt, important at the time when the Code was first drawn up. There were then a number of Indian States some of which had their own coinage. This condition no longer exists. Counterfeiting of non-Indian Coins should no doubt continue to be punishable; but it is not necessary to have two sets of provisions to deal with Indian and non-Indian coins separately. We would, therefore, recommend that each pair of sections dealing with one particular offence be combined into one.

Punishment to be modified.

12.11. As for punishment, we feel that a scale of punishment somewhere in between the comparatively light punishment prescribed for non-Indian coins and the more severe one provided for in the case of Indian coins, would be suitable. In this context, one must also keep in mind the diminishing importance of coins in the monetary system as compared with currency notes and the resulting lack of incentive to counterfeit coins.

Simplification of provisions.

12.12. Further, we feel that the scheme of sections 489A to 489D dealing with offences relating to currency notes should be followed here also, as the former is much simpler and the provisions better drafted.

Section 230.

12.13. section 230 defines 'coin' and 'Indian coin'. In view of our proposal[1] to do away with the distinction between Indian coins and foreign coins, this section may be revised as follows:—

> "235. *Coin defined.*—Coin is metal used for the time being as money, and stamped and issued by the authority of the Government of India, or of the Government of a country outside India, in order to be so used.
>
> *Explanation.*—Metal which has been stamped and issued by the authority of the Government of India in order to be used as money shall continue to be coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money."

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1. See paragraph 12.10 above.

The illustrations to section 230 are unnecessary. Some of them deal with coins which are now obsolete, and none of them throws any special light on the definition. We, therefore, recommend the deletion of all illustrations to the section.

Sections 231 and 232 combined and amended.

12.14. Sections 231 and 232 deal with the offence of counterfeiting 'coins' and 'Indian coins' respectively. They should be combined into one section. The punishment provided for in section 231 appears sufficient. In view of the definition[1] of "counterfeit", the Explanation to section 231 is not of any practical use and may safely be omitted.

Sections 233, 234 and 235 combined and revised.

12.15. Section 233 deals with the offence of making or selling instruments for counterfeiting 'coins', and section 234 deals with the same offence in relation to Indian coins. These sections may be combined. Further, section 235 which deals with the offence of possessing such instruments may also, following the scheme of the provisions dealing with the counterfeiting of currency notes[2], be incorporated in the same section.

Section 236 to be omitted.

12.16. Section 236, which deals with the abetment of the counterfeiting of coins performed outside India, should be omitted, as section 108A covers the situation contemplated in this section.

Sections 237 and 238 combined and amended.

12.17. Sections 237 and 238 dealing with import and export of counterfeit coins may be combined into one section, with provision for imprisonment upto seven years.

Sections 239, 240 and 241 combined and revised.

12.18. Sections 239 and 240 deal with the offence of 'delivery' of counterfeit coin. Section 241 deals with the 'delivery' of counterfeit coins which the offender did not know to have been counterfeited at the time they came into his possession. These may be combined into one section, with one punishment of seven years' imprisonment. The wording of the sections should also be changed, to bring them in conformity with section 489B[3] which deals with a similar offence relating to counterfeit currency notes.

Sections 242 and 243 combined and revised.

12.19. Sections 242 and 243 dealing with possession of counterfeit coins may be combined into one section, with provision for imprisonment upto five years. The present sections describe the *mens rea* as "fraudulently or with intent to defraud". We propose to follow the language of the corresponding section[4] relating to currency notes, as it is more precise than the present wording.

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1. Section 28.
2. Section 489-D (renumbered 233 above).
3. Renumbered 231; *see* paragraph 12.7 above.
4. Section 489C (renumbered 232).

Sections 244 and 245.

12.20. Section 244 relates to employees in mints and section 245 deals with taking out coining instruments from mints. These sections do not require any change.

Sections 246 to 254 to be omitted.

12.21. Sections 246 to 254 deal with altering the weight, composition or appearance of coins. They were important when costly metal was used in the minting of coins. The present position is quite different, and nobody would take the trouble of trying to alter the weight or composition of the coins which are in use at present. These sections are out of date and may be omitted.

Revised sections in place of sections 230 to 254.

12.22. In the light of the above discussion, sections 231 to 254 may be replaced by the following sections :—

"236. *Counterfeiting coins.*—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

237. *Using as genuine counterfeit coin.*—Whoever sells to or buys or receives from any other person, or otherwise traffics in or uses as genuine any counterfeit coin, knowing or having reason to believe the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

238. *Possession of counterfeit coin.*—Whoever has in his possession any counterfeit coin, knowing or having reason to believe the same to be counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

239. *Making or possessing instruments or materials for counterfeiting coin*—Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession any machinery, instrument, or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for counterfeiting any coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

240. *Import or export of counterfeit coin.*—Whoever imports into India or exports therefrom any counterfeit coin, knowing or having reason to believe that the same is a counterfeit coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

241. *Person employed in mint causing coin to be of different weight or composition from that fixed by law.*—Whoever, being employed in any mint lawfully established in India, does any act, or omit what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

242. *Unlawfully taking coining instrument from mint.*—Whoever, without lawful authority, takes out of any mint lawfully established in India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Use of spurious coin or token in automatic vending machine.

12.23. Before considering the next group of sections relating to revenue stamps, we would suggest the insertion of a new section relating to coin. With increasing mechanisation the use of automatic vending machines for selling various articles and even services or for collecting fares and tolls is bound to come into vogue in the near future. Such machines are usually operated by inserting the requisite coin, or other valuable token. Experience of other countries shows that the machine, or rather its owner, is cheated by dishonest persons inserting 'slugs' instead of coins. Such conduct is harmful and dishonest, and should be made punishable as has been done in some countries. We see, for instance, section 397 of the Canadian Criminal Code which makes it an offence for any one "who fraudulently inserts or uses in a machine that vends merchandise or services or collects fares or tolls, anything that is intended to pass for the coin or the token of value that the machine is designed to receive in exchange for the merchandise, service, fare, or toll, as the case may be." We would, therefore, recommend the insertion of a new section to deal with this offence. Punishment of imprisonment upto one year, or fine, or both, will suffice for the offence. The new provision may be as follows :—

"243. *Dishonest use of slugs in vending machines.*—Whoever dishonestly inserts or uses in a machine which sells goods or services or collects fares or tolls, anything that is intended to pass for, but is not the coin or the token of value that the machine is designed to receive in exchange for the goods, services, fare or toll, as the case may be, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Sections 255 to 263—General discussion.

12.24. Sections 255 to 263 deal with the counterfeiting of, and connected offences relating to, "stamps issued by Government for the purpose of revenue". As "Government" means the Government of India or any State Government, the sections apply in relation to all revenue stamps, whether State or Central. By virtue of section 17 of the Indian Post Office Act, 1898, Indian

postage stamps (including impressions produced by franking machines) are deemed to be such revenue stamps within the meaning of section 255 *et. seq.* Then, sub-section (4) of section 263A makes the preceding sections applicable also in relation to foreign postage stamps.

Amendments to sections 255 to 263 considered.

12.25. No substantial change appears necessary in these nine sections. However, a considerable shortening of the language of these sections can be achieved; in particular, the repetition in each section of the words 'stamp issued by the Government for the purpose of revenue' can be avoided by using the term 'revenue stamp' with a definition in the first section. We also propose that these sections may be revised on the same lines as the sections relating to coin.

Section 255 amended.

12.26. In section 255, the severe punishment of imprisonment for life appears to be unnecessary; rigorous imprisonment upto ten years should be adequate. In view of the clear definition of "counterfeit" in section 28 of the Code, the Explanation to section 255 is not necessary and may safely be deleted.

Sections 256 and 257 combined and revised.

12.27. Section 256 deals with the possession of instruments or material for counterfeiting, and section 257 with the sale of such instruments. These two sections may be combined into one. Further, the language of the corresponding section regarding currency notes—section 489D—appears to be simpler, and could be followed with advantage.

Sections 258, 259 and 260 combined and revised.

12.28. Sections 258, 259 and 260 deal with the sale, possession and use of counterfeit stamps. The three sections may be combined into one.

Sections 261 to 263.

12.29. Sections 261 to 263 require no change of substance.

Sections 255 to 263 revised and re-numbered.

12.30. In the light of the above discussion, sections 255 to 263 may be revised and re-numbered as follows :—

"244. *Counterfeiting revenue stamp.*—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any revenue stamp shall be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.

Explanation.—The expression 'revenue stamp' means a stamp issued by Government for the purpose of revenue.

245. *Making or possession or sale of instruments or materials for counterfeiting revenue stamp.*—Whoever makes, or performs any part of the process of making, or buys or sells, or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be

used, for counterfeiting any revenue stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

246. *Sale, use and possession of counterfeit revenue stamp.*—Whoever—

(a) sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit revenue stamp, or

(b) has in his possession any stamp which he knows to be a counterfeit revenue stamp, intending to use or dispose of the same as genuine, or

(c) uses as genuine any stamp, knowing it to be a counterfeit revenue stamp,

shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

247. *Effacing, writing or removing revenue stamp with intent to cause loss to Government.*—Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing a revenue stamp, any writing or document for which such stamp has been used, or removes from any writing or document, a revenue stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

248. *Using revenue stamp known to have been before used.*—Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a revenue stamp which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

249. *Erasure of mark denoting that stamp has been issued.*—Whoever—

(a) fraudulently or with-intent to cause loss to the Government, erases or removes from a revenue stamp, any mark put or impressed upon it for the purpose of denoting that the stamp has been used, or

(b) knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or

(c) sells or disposes of any such stamp which he knows to have been used,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Section 263A—distinction between fictitious and counterfeit stamp.

12.31. Section 263A prohibits dealings in "fictitious" postage stamps. The distinction between counterfeit stamps and fictitious stamps appears to be that if a person uses a stamp resembling a stamp in general, but not resembling a particular stamp actually in use, then it would not be counterfeiting, but it would be using a fictitious stamp. Secondly, though imitation is required for the offence of making a fictitious stamp, a close resemblance (as is required in counterfeiting) is not necessary. Lastly, intention to deceive is not necessary in the case of an offence against this section. As the potentiality for mischief of such acts is much less than counterfeiting postage stamps, the offence of making, using or possessing fictitious stamps is punishable only with a small fine. The language used in section 263A is wide enough to cover even serious acts of counterfeiting; but, obviously, the intention is to cover only acts which do not fall within the more serious offence of counterfeiting.

Amendments proposed.

12.32. We do not consider it necessary to disturb the section since it has seldom, if ever, been invoked. But we propose to simplify the definition of 'fictitious stamp' given in sub-section (3). Sub-section (4) which makes this section as well as the nine preceding sections applicable in relation to foreign postage stamps should be put in a separate section. Further, the marginal note to the section should contain the word 'postage', as the section deals with postage stamps only.

Revised sections in place of section 263A.

12.33. Section 263A may be replaced by two sections as follows :—

"250. *Application of preceding sections to foreign postage stamps.*—The provisions of sections 244 to 249, both inclusive, apply in relation to postage stamps issued by the Government of a foreign country as they apply in relation to revenue stamps.

251. *Prohibition of fictitious postage stamps.*—(1) Whoever—

(a) makes, knowingly utters, deals in or sells any fictitious postage stamp, or knowingly uses for any postal purpose any such stamp, or

(b) has in his possession, without lawful excuse, any such stamp, or

(c) makes, or, without lawful excuse, has in his possession, any die, plate, instrument or material for making any such stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious postage stamp may be seized and, if seized, shall be forfeited.

(3) In this section, 'fictitious postage stamp' means any stamp falsely purporting to be issued by the Government of India or of a foreign country for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by such Government for that purpose."

CHAPTER 13

OFFENCES RELATING TO WEIGHTS AND MEASURERS

Sections 264 to 267— Recommendation for increasing punishment.

13.1. The four main offences relating to weights and measures are made punishable in Chapter 13 of the Code. These are fraudulent use of a false weighing instrument, fraudulent use of a false weight or a false measure of length or capacity, possessing such instrument, weight or measure, and making or selling such instrument, weight or measure. The maximum punishment under any of the four sections is imprisonment upto one year. Since these offences are committed frequently and with impunity by unscrupulous traders in relation to commodities of every day use, thereby causing much hardship to people, especially to the poorer sections, we feel that the offenders merit deterrent punishment. We would, therefore, suggest that the maximum punishment of one year's imprisonment now provided under these sections should be increased to two years.

Analogous State laws.

13.2. We find that the State laws dealing with weights and measures also contain penal provisions which cover the kind of acts punishable under sections 264 to 267. We give below, by way of sample, an analysis of the provisions in the Punjab Weights and Measures (Enforcement) Act, 1958 :—

Section	Gist of offence	Punishment
1	2	3
Section 23.	Selling or delivering, in course of trade or commerce, any article by weight or measure other than standard weight or measure.	For first offence—fine upto Rs. 2000; for second or subsequent offence imprisonment upto 3 months, or fine, or both.
Section 24.	Selling unverified or unstamped commercial weights or measures or measuring instruments.	Fine upto Rs. 2000.
Section 25.	Using in trade or commerce, or having in possession for such use, unverified or unstamped weights.	For first offence—fine upto Rs. 2000; for second or subsequent offence imprisonment upto 3 months, or fine, or both.
Section 26.	Manufacturing or repairing or selling commercial weights and measures without licence.	Imprisonment upto 3 months, or fine upto Rs. 2000, or both.
Section 27.	Contravening notification prescribing the use of weights only, or measures only, in specified trade or commerce.	Fine upto Rs. 2000.

1	2	3
Section 28.	Selling, or having in possession for sale, articles in sealed containers without marking of weight or measure on the containers.	Fine upto Rs. 2000.
Section 29.	Fraudulently using standard weights and measures knowing them to be false.	Imprisonment upto one year, or fine upto Rs. 2000, or both.
Section 30.	Being in possession of commercial weight or measure, knowing the same to be false and intending that the same may be fraudulently used.	Imprisonment upto one year, or fine upto Rs. 2000, or both.
Section 31.	Making, selling or dispersing of standard weights or measures etc. knowing the same to be false or knowing that the same may be or is likely to be used as true.	Imprisonment upto one year, or fine upto Rs. 2000, or both.
Section 32.	Delivering in sale article by short weight or measure.	Fine upto Rs. 2000.
Section 33.	Forging or counterfeiting stamps used for stamping weights and measures etc., or knowingly using, selling or disposing of such false stamps on it.	Imprisonment upto one year, or fine upto Rs. 2000, or both.
Section 34.	Refusing or neglecting to produce weights and measures etc. for inspection.	Fine upto Rs. 2000.
Section 35.	Inspector knowingly stamping weight or measure in contravention of the Act.	Imprisonment upto one year, or fine, or both.

Code provisions should be retained.

13.3. It will be noticed that the State Acts are mainly designed to enforce the central legislation[1] establishing standard weights and measures. Prosecutions for offences against these Acts can be instituted only with the sanction of the State Controller of Weights and Measures or other competent authority. A private person's right to make a complaint about such misconduct ought to be retained, and that is one reason for maintaining the provisions in the Penal Code. Further, the State Acts do not impose a severe punishment; none of them, we find, imposes more than one year's imprisonment. In view of the need to treat these offences more severely, we consider it desirable to retain sections 264 to 267 of the Penal Code with the amendment already indicated.

1. The Standards of Weights and Measures Act, 1956 (89 of 1956.)

CHAPTER 14

OFFENCES AFFECTING PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

Introductory—General recommendation for increase in punishment.

14.1. A 'public nuisance' is defined in section 268 of the Code as "an act or omission which causes any common injury, danger or annoyance to the public or to people in general who dwell or occupy property in the vicinity". Speaking generally, such acts arise out of careless or callous disregard of other people's welfare or convenience. The sections that follow mention specific instances of such conduct which are expressly made punishable, such as, the negligent spreading of an infectious disease, adulteration of food or drink or drugs, the fouling of a public spring or reservoir, endangering human life by rash driving or careless navigation, or negligent keeping of explosives or dangerous animals. In modern times, such careless conduct is likely to cause a lot of harm to a lot of people, and should be regarded as truly anti-social; and viewed in that light, the punishment provided by the Code for such anti-social conduct is, we think, inadequate. Mostly, the maximum punishment is imprisonment for six months, and in some cases, it is less: only in two cases does it exceed six months' imprisonment. We find, that the special Acts dealing with such offences do provide deterrent punishment, and it is proper that our Penal Code should treat these offences in a similar manner. We propose, therefore, to raise the maximum punishment considerably for most of the offences.

Sections 268 and 290—Combined and revised.

14.2. Section 268 defines 'public nuisance' in a very general and comprehensive manner. In fact, the definition is so wide that it could be said that many of the offences described in detail in the subsequent sections are merely particular instances of public nuisance. Accordingly, the penal provision in section 290 prescribes the punishment for public nuisance "in any case not otherwise punishable by the Code". Instead of defining the offence at the beginning of the Chapter and prescribing the punishment practically at the end of it, we suggest that it would be clearer to bring them together in one section at the beginning. The punishment of fine provided in section 290 which is now limited to Rs. 200, may, we suggest, be unlimited. The revised section may be as follows :—

"268. *Public nuisance.*—(1) Whoever does any act or is guilty of an illegal omission which—

(a) causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or

(b) must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right, commits a public nuisance.

Explanation : Any such act or illegal omission is not excusable on the ground that it causes some convenience or advantage.

(2) Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine."

Sections 269 and 270—combined and revised.

14.3. Sections 269 and 270 deal with the spreading of infectious diseases dangerous to life—section 269, when it is done "unlawfully or negligently" and section 270, when it is done "malignantly".

With regard to the first type of *mens rea,* there has been some doubt about the meaning of "unlawfully". The underlying idea is that when the person acts without lawful excuse. As regards the second section, there seems no point in using a word like "malignantly" which has a condemnatory overtone. The distinction should, as usual, be between negligent acts and intentional acts, the latter being punishable more severely than the former. The punishments provided in both sections require to be enhanced. We propose to combine the two sections in one, reading as follows :—

"269. *Act likely to spread infection of disease dangerous to life.*—Whoever does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished—

(a) if he does such act negligently, with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

(b) if he does such act intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Section 271.

14.4. No changes are required in section 271.

Sections 272 and 276—punishment increased.

14.5. The next five sections deal with the anti-social and reprehensible offences of adulterating food or drink and drugs. While the definition of all the offences is comprehensive and clear and does not require any modification, we propose that the punishment provided in each of these sections should be increased to "three years, or with fine, or with both".

Section 277 amended.

14.6. Section 277 punishes the "corrupting or fouling" of a public spring or reservoir, but does not expressly speak of a public well. It would be useful if a well is specifically mentioned. On the other hand, the archaic word "corrupting" is

redundant and may be deleted. The punishment should be increased to imprisonment upto six months, or unlimited fine, or both. The section may be revised as follows :—

"277. *Fouling water of public spring, well or reservoir.*— Whoever voluntarily fouls the water of any public spring, well or reservoir, so as to render it less fit for the purposes for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both".

Section 278 amended.

14.7. Section 278 punishes those who vitiate the atmosphere, but the punishment is only "fine which may extend to five hundred rupees". This is inadequate, and we recommend that these words may be replaced by "imprisonment of either description for a term which may extend to six months, or with fine, or with both".

Section 279 amended.

14.8. Section 279 deals with the offence of rash driving of a vehicle on a public way. We propose to make the fine under this section unlimited by omitting the words "which may extend to one thousand rupees".

New Section 279A—Dangerously over loaded vehicles.

14.9. There is, however, no provision corresponding to section 282 under which carrying passengers in a boat which is unsafe either because of its condition or because of its load is an offence. A similar provision should, in our opinion, be made for taking on the road an unsafe vehicle, and we suggest the addition of a new section 279A as follows:—

"279A. *Driving unsafe or overloaded vehicle on a public way.*—Whoever knowingly or negligently drives any vehicle on a public way when that vehicle is in such a state or so loaded as to endanger life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Sections 280 to 283 amended.

14.10. Sections 280 to 283 are designed to ensure public safety on waterways. While the punishment under section 281 is justifiably severe, that under the other three sections is mild and should be increased by making the fine unlimited. In sections 280 and 282, the words "which may extend to one thousand rupees" should be omitted; and in section 283, the words "which may extend to two hundred rupees" should be omitted.

Sections 284 to 290 amended.

14.11. The same amendments are required in section 284 to 290.

Section 291.

14.12. No amendment is required in section 291.

14.13. Section 292 punishes the sale of obscene books, section 293 punishes the sale of obscene objects to young persons, and section 294 punishes obscene acts in public and also the singing of obscene songs in or near a public place.

Section 292—Recommendation regarding expert evidence.

Section 292 has been extensively amended very recently.[1] An attempt has been made to lay down a test of obscenity, but since the words used are the same as Judges have, before now, used in their judgments, it does not seem that the concept of obscenity has become any clearer. the practical problem still being the difficulty of deciding what is 'lascivious' and what 'appeals to the prurient interest', and what does or does not 'tend to deprave or corrupt'. Only the actual working will show whether the amendment is useful to the Courts. More important than this attempted definition is the new exception, which allows a defence on the ground that the 'publication is in the interest of art or science or literature or learning'. This will actually turn on expert evidence, and it seems to have been assumed that such expert evidence would be permissible under section 45 of the Evidence Act. The assumption is probably well-founded, but it would be safer if, in the section itself a provision is specifically made for admission of expert evidence. We propose that the following sub-section may be added[2] to section 292 :—

> "Where, in any prosecution under this section, the question is whether the publication of any book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other object of general concern, the opinion of experts as to its scientific, literary, artistic, academic or other merits may be admitted in evidence."

14.14. Section 293 needs no change.

Section 293.

14.15. The punishment provided in section 294 for singing obscene songs is imprisonment upto three months. We think that imprisonment is hardly necessary for such an offence, and propose to limit the punishment to a fine not exceeding one thousand rupees.

Section 294—Recommendation.

14.16. The last section in this Chapter (294A) prohibits lotteries except those run or authorised to be run by the State Government. No indication is given of the circumstances in which the State Government may authorise a lottery, and this kind of power entrusted to the State Government may be open to objection. We think it proper that broad guidelines should be inserted in this provision, to assist the State Government in deciding when to authorise a lottery. A lottery in aid of a charity, for instance, may well be authorised, and

Section 294A—Guidelines for authorising private lotteries.

1. The I. P. C. (Amendment) Act, 1969 (36 of 1969).

2. Alternatively, the necessary amendment could be made in section 45 of the Evidence Act.

so might a lottery confined to a small group or a lottery incidental to an entertainment, if there be no other objectionable features about it. We are suggesting that the State Government should be guided by such considerations although, of course, the discretion of the State Government is not to be unduly restricted.

Revision recommended.

14.17. We also propose that the provision in section 294A should be amplified, and certain acts concerning the keeping of a lottery office or the running of a lottery should be specified and expressly made punishable. The new section should, we think, read thus :—

"294A. *Offences in connection with lotteries.*—(1) Whoever, in connection with any lottery promoted or proposed to be promoted, whether in India or elsewhere—

(a) prints any tickets for use in the lottery; or

(b) sells or distributes, or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution, any tickets or chances in the lottery; or

(c) prints, publishes or distributes, or has in his possession for the purposes of publication or distribution—

(i) any advertisement of the lottery; or

(ii) any list, whether complete or not, of prize winners or winning tickets in the lottery; or

(iii) any such matter descriptive of the drawing or intended drawing of the lottery, or otherwise relating to the lottery, as is calculated to act as an inducement to persons to participate in that lottery or in other lotteries; or

(d) brings, or invites any person to send, into India for the purpose of sale or distribution any ticket in, or advertisement of, the lottery; or

(e) sends or attempts to send out of India any money or valuable thing received in respect of the sale or distribution, or any document recording the sale or distribution or the identity of the holder, of any ticket or chance in the lottery; or

(f) uses any premises, or causes or knowingly permits any premises to be used, for purposes connected with the promotion or conduct of the lottery; or

(g) causes, procures or attempts to procure any person to do any of the above-mentioned acts,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(2) Nothing in this section applies in relation to a lottery which is a State lottery or is authorised by the State Government.

(3) The State Government may authorise a lottery with reference to this section, where it is satisfied that—

(a) the profits of the lottery are to be appropriated towards any charitable purpose; or

(b) participation in the lottery is confined to the members of a society or other group of persons, and is not open to the public; or

(c) the lottery is incidental to an entertainment; or

(d) it is otherwise in the public interest to authorise the lottery."

CHAPTER 15

OFFENCES RELATING TO RELIGION

Introductory.

15.1. Originally, the Code formulated four offences relating to religion and made them punishable under four sections in Chapter 15. The first deals with damaging or defiling a place of worship or a sacred object with intent to insult the religion of a class of persons; the second, with disturbing a religious worship or ceremony; the third, with trespass in any place of sepulture or place where funeral ceremonies are proceeding; and the last, with utterances in the presence of another person with the intention of wounding the religious feelings of that person. Later on, it was found that there was no legal provision to punish a person who deliberately wounded the religious feelings of a class of persons by speech or written publication. A new section 295A was added in 1927 in the Code, which made it an offence to insult the religion of any class of citizens by spoken or written words, if it was done with the "deliberate and malicious intention of outraging the religious feelings" of that class.

Section 295A—amendment proposed.

15.2. This is a necessary and salutary provision, but it is needlessly hedged in by too many conditions. It is not clear what the import of the word 'malicious' is ; when there is a 'deliberate' intention to outrage the religious feeling of a class of citizens, the state of mind is reprehensible enough to merit severe punishment. Secondly, it is noticed that while section 297 and 298 refer to *wounding* the feelings of any person, section 295A refers to *outraging* the feelings of a class. There seems to be no particular point in varying a material expression. We therefore, propose to amend section 295A by describing the *mens rea* as "with the deliberate intention of wounding the religious feelings" etc.

Other sections.

15.3. The other sections in this Chapter do not require any modification.

CHAPTER 16

OFFENCES AFFECTING THE HUMAN BODY

Introductory.

16.1. Chapter 16 covers a wide range of offences affecting the human body, extending from the petty offences of assault and wrongful restraint at one end to the heinous crimes of rape and murder at the other. These are grouped under seven heads, the first and foremost being offences affecting life, and the next offences relating to infants and the unborn. Then follow causing hurt to the body, wrongful restraint and wrongful confinement, criminal force and assault, kidnapping and abduction, and finally, rape and unnatural offences.

Offences affecting Life

Sections 299 and 300—Stephen's criticism of the definitions.

16.2. Sections 299 and 300 define the offences of murder and culpable homicide not amounting to murder. An authority of the eminence of Sir James Stephen criticised the drafting of these sections in the following terms[1] :—

> "The definitions of culpable homicide and murder are, I think, the weakest part of the Code. They are obscure, and it is obvious to me that the subject has not been fully thought out when they were drawn. Culpable homicide is first defined, but homicide is not defined at all, except by way of explanation to culpable homicide. Moreover, culpable homicide, the genus, and murder, the species, are defined in terms so closely resembling each other that it is difficult to distinguish them."

Criticism Considered.

16.3. We do not think there is very much substance in the first two points made by Stephen. Such obscurity as might have been initially felt in interpreting the definitions—Stephen's criticism dates back to 1883—is hardly felt now after they have been expounded and clarified by dozens of authoritative judicial decisions. There was, and is, no need to define a word like 'homicide', which is obviously used in its ordinary signification of causing the death of a human being. (Explanation 3 to which Stephen apparently refers is of course not a definition of homicide but furnishes a guide to help decide a border line case). The act which causes death is 'culpable' when it is done with the intention or knowledge specified in section 299; and, subject to the five exceptions set out in the second half of section 300 the act amounts to murder, if done with the intention or knowledge specified in the first half of that section. "The difficulty

1. Stephen, History of the Criminal Law of England, Vol. 3, page 313.

of these sections", as Stephen himself emphasises, "is that the definitions of culpable homicide and murder all but repeat each other; but not quite, or at least, not explicitly.[1]"

Repitition of ideas analysed.

16.4. The crux of Stephen's objection is the repetition, "not quite", of certain ideas in the two definitions, "in terms so closely resembling each other that it is difficult to distinguish them." The obvious repetition occurs in the very first limb of the two definitions. Thus, under section 299, "whoever causes death by doing an act with the intention of causing death ....commits the offence of culpable homicide"; and under section 300, "except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death." The repetition of the same idea, with an "elegant variation" in the form of expressing it, perhaps helps to indicate that the same act done with the same intention will ordinarily be punished as murder under section 302, but as culpable homicide not amounting to murder under the first part of section 304 if it is covered by one of the five exceptions set out in section 300.

The second limb of the definition of culpable homicide rests on "the intention of causing such bodily injury as is likely to cause death". In the definition of murder, this limb has two branches, marked *secondly* and *thirdly,* respectively. The first branch covers the case where the intention is to cause "such bodily injury as *the offender knows* is likely to cause the *death of the person to whom the harm is caused*". (Illustration (b) explains the special point sought to be made in the underlined words). The second branch covers the case where "the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death". It could be said with justification that the distinction between a bodily injury which is likely to cause death and a bodily injury which is sufficient in the ordinary course of nature to cause death is very subtle, if not obscure, and creates considerable difficulty when applied to concrete situations. The courts, however, have resolved the difficulty by saying (to put it broadly) that if the probability of death resulting from the injury is of a high degree, then it is murder, and if the probability is not so high, then it is culpable homicide not amounting to murder.

Finally, we may compare the third limb of the definition of culpable homicide with the fourth clause of the definition of murder. It is culpable homicide if the act is done with the knowledge that such act is likely to cause death; but it is murder, if it is done with the knowledge that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and the act is committed without any excuse for incurring the risk of causing death of such bodily injury. The distinction between the two is

1. *Ibid*, page 314.

clear enough, and the additional circumstances necessary to make it murder are expressed without any obscurity. Here also in a concrete case, the degree of probability willl be relevant for deciding between a mere likelihood of causing death by the reckless act and the reckless act being imminently dangerous.

Two clear definitions desirable.

16.5. Stephen's observation that the two sections make culpable homicide the genus and murder a species, and define them accordingly, cannot be gainsaid. But what is sought to be achieved by the two sections is primarily a definition of murder as one species of the genus culpable homicide, and then a definition of the other species of the same genus, namely, culpable homicide not amounting to murder. It is the latter offence for which punishment is provided in the two paragraphs of section 304.

Each of the five exceptions in section 300 states that culpable homicide (as defined in section 299) *is not murder* if death is caused in the circumstances specified in that exception. It leaves it to be implied that, in those circumstances, the act *is culpable homicide not amounting to murder.* Similarly, it is left to a process of deduction that when an act is done with the intention or knowledge specified in the second or third limb of section 299, but that intention or knowledge does not come up to the level specified in the second, third or fourth clause of section 300, the offence committed *is culpable homicide not amounting to murder.*

Further, though the five exceptions in section 300 are exceptions to the offence of murder, this idea is not clearly brought out in the language used. The question is not merely academic because, by virtue of section 105 of the Evidence Act, the burden of proving that the act comes within the exceptions lies on the accused, but the question of discharging this burden will arise only when the prosecution has affirmatively established that the act amounts to murder.

We feel that the criticism of obscurity and repetition of ideas, employment of terms closely resembling each other for expressing similar ideas etc., should and could be met by redrafting the definitions. Murder being the offence of primary importance, it should be defined first in a self-contained manner, without being expressed as a graver modification of culpable homicide. On the other hand, it would be conducive to clarity to define separately the offence of culpable homicide not amounting to murder which is punishable under section 304. In the redrafting, however, it would be desirable to retain the present formulation of ideas, since judicial interpretation in the course of a century has invested the phrases with well understood significance.

Section 299 to be revised to define murder.

16.6. We propose that murder may be defined in section 299 as follows :—

"299. *Murder.*—Whoever causes death by doing an act—

(a) with the intention of causing death, or

(b) with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, or as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

(c) with the knowledge that the act is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and without any excuse for incurring such risk,

commits murder except in the circumstances specified in section 300.

Explanation.—For the purposes of this section and section 300.—

(i) causing the death of a child in the mother's womb is not causing the death of a human being; but causing the death of a living child, after any part of it has emerged from the womb, is causing the death of of a human being, though the child may not have breathed or been completely born;

(ii) a person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity and thereby accelerates the death of that other shall be deemed to have caused his death;

(iii) where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused death, although by resorting to proper remedies and skilful treatment death might have been prevented.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder although he may not have intended to cause Z's death.

(c) A, knowing that Z has an enlarged spleen a blow against which is likely to cause his death, strikes him there with the intention of causing him such bodily injury. Z dies in consequence of the blow. A is guilty of murder although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person with a sound spleen.

(d) A, without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have designed to kill any particular individual.

(e) A knows Z to be behind a bush. B does not know it. A induces B to fire at the bush knowing that such firing must in all probability cause Z's death or such bodily injury as is likely to cause his death, and without any excuse for incurring the risk. B fires and kills Z. Here B may be guilty of no offence but A is guilty of murder.

Section 300 to be revised to define culpable homicide not amounting to murder.

16.7. Culpable homicide not amounting to murder has to be defined in two parts which we propose to put in section 300, as two sub-sections. Sub-section (1) will, as indicated above[1], cover those cases where the act causing death is done with the intention of causing such bodily injury as is likely to cause death, but the intention is not that specified in clause (b) of the revised definition of murder. It will also cover those cases where the act is done with the knowledge that it is likely to cause death, but it is not murder because the strict conditions laid down in clause (c) of the revised definition of murder are not fulfilled.

The second part of the definition will cover those cases falling within one or other of the five exceptions set out in the existing section 300. In substance, these exceptions appear to us to have been carefully thought out and they have stood the test of practical application over the years. We have only a few minor and formal amendments to suggest. Thus the explanation to exception 1 is not required after the abolition of the jury trials. A few of the illustrations could also be omitted or modified with advantage.

We propose accordingly that culpable homicide not amounting to murder may be defined in section 300 as follows :—

"300. *Culpable homicide not amounting to murder.*—(1) Where a person causes death by doing an act with the intention of causing such bodily injury as is likely to cause death or with the knowledge that by such act he is likely to cause death, and such act is not murder under clause (b) or clause (c) of section 299, he commits culpable homicide not amounting to murder.

1. See paragraph 16.5 above.

Illustration

A lays sticks and turf over a pit with the knowledge that death is likely to be thereby caused. Z treads on it, falls in and is killed. A has committed culpable homicide not amounting to murder.

(2) Whoever causes death by doing an act with the intention or knowledge specified in section 299, but in the exceptional circumstances hereinafter specified, commits culpable homicide not amounting to murder, namely,—

(i) when the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gives the provocation or causes the death of any other person by mistake or accident, provided the provocation—

(a) is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person, or

(b) is not given by a public servant in the lawful exercise of the powers of such public servant, or

(c) is not given by anything done in the lawful exercise of the right of private defence, or

(d) is not given by anything done in obedience to the law;

(ii) when the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without pre-meditation and without any intention of doing more harm than is necessary for the purposes of self-defence.

(iii) when the offender, not being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duties as such public servant and without ill-will against a person whose death is caused;

(iv) where the offender causes death without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and without having taken undue advantage or acted in a cruel or unusual manner; it is immaterial in such cases which party offers the provocation or commits the first assault;

(v) where the person whose death is caused, being above the age of eighteen years, consents to suffer death or to take the risk of death.

Illustrations

(a) Y gives grave and sudden provocation to A. A on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide not amounting to murder.

(b) A, under the influence of passion excited by a provocation given by Y, kills Z, Y's child standing nearby. This is murder, inasmuch as the provocation was not given by the child.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the lawful exercise of his powers.

(d) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(e) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for the purpose. B kills Z with the knife. Here B may have committed only culpable homicide not amounting to murder, but A is guilty of murder.

(f) Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide not amounting to murder.

Applicability of Exceptions to faction fights.

16.8. With reference to the fifth exception, the question may arise whether it applies where two rival factions, after having thrown out mutual challenges, indulge in a free fight and some of the persons get killed. There was previously a controversy on the subject as is shown by two early Calcutta cases[1]; but the question was answered in the negative by a later Full Bench decision of that High Court[2]. We agree with the view taken

1. (a) *Rahimuddin*, (1873) I. L. R. 5 Cal. 31.
   (b) *Samserai*, (1879) I. L. R. 6 Cal. 154.
2. *Nayamuddin*, (1891) I. L. R. 18 Cal. 484 (F. B).

in the later case. The fifth exception is not meant for situations where there is a pitched battle between two factions. To hold that the persons killed in the battle had "consented to suffer death or to take the risk of death" would be to take a unrealistic view. Consent requires some degree of particularity with reference to the act consented to or authorised, and with reference to the person or persons authorised. That particularity is missing in such situations. A member of the faction may be prepared to run the risk of being killed; but the does not (in the absence of further facts) 'consent to take the risk of death' *vis-a-vis* the person who actually causes his death. No change is, therefore, needed in this respect.

Section 301—doctrine of 'transferred malice.'

16.9. It will be noticed that the law of homicide does not require that the offender must have intended to kill a particular person. It is enough if there is an intention or knowledge to cause the death of a human being. What is sought to be punished is the act of causing death, accompanied by the requisite *mens rea*. It is immaterial whether the intent to cause death is an intent to kill the person in fact killed, or even any particular person; and the same applies to knowledge.

The application of this principle is illustrated by three situations. First, the offender may be indifferent about his victim; the act charged may be such as to endanger the life of a number of persons, generally, one of whom is killed; but the offender has no particular person in mind. Secondly, the offender may be mistaken about the identity of the person attacked. Or thirdly, the offender may intend to hit A, but actually B is hit and killed, either by reason of accident or extraneous intervention or some such factor.

The law regards all these acts as murder, provided, of course, the requisite *mens rea* existed. In section 301, a specific provision is made in regard to the last-mentioned situation. Though the language of the section is elaborate, the idea is clear, namely, that where the death of one person is caused by an act constituting culpable homicide, but the *mens rea* was with reference to another person, then the culpable homicide is of the description of which it would have been if the death had been caused of the person with reference to whom such *mens rea* existed.

If A intending to kill Y, shoots at him, but misses and kills Z, who, unknown to the accused, was standing close by, A is guilty of murder under section 301, notwithstanding that he did not intend to kill Z. His malice towards Y is 'transferred' (by a legal fiction) as existing towards Z. Section 301 is based on what is referred to in English law as the doctrine of transferred malice.

Not necessary that death of unintended victim should be a likely consequence.

16.10. The question whether the application of this doctrine is dependent on the knowledge of the accused that the death of the unintended victim was a likely consequence arose before the Madras High Court which held[1] by a majority that it is sufficient for the purpose of this section if criminal intention or knowledge on the part of the accused existed with reference to any human being, though the death of the person who actually became the victim was never compassed by the offender. In other words, it is not necessary that the death of the person must have been a likely consequence of the offender's act. Sundara Ayyar J. dissented and emphasise the need for proof that the death of the unintended victim was a likely consequence of the original act.

Since the majority view has been followed in later cases[2] elsewhere and has created no difficulty, we do not think any amendment of section 301 is necessary by way of clarification.

Act intended to kill, not leading to death, but death caused by subsequent act.

16.11. A nice question of law arises where an offender, intending to kill a person, does an act which does not cause death, and then, believing the victim to be dead, he does another act which causes the death of the victim. A study of decided cases on the subject reveals some controversy as to whether, in such cases, the killer can be held guilty of murder. The majority view is that, if the two acts of the offender are parts of the same transaction, then his mistaken belief that death was caused by his first act should be disregarded. To use a metaphor, this belief should not be allowed to act as a veil dividing the previous intentional act aimed at killing, and the subsequent action aimed at concealment. We carefully considered the question of inserting a new section to provide that, where an act done with the intention or knowledge referred to in section 299 or section 300 does not cause death, but death is caused by another act forming part of the same transaction, then the two acts taken together would constitute the offence which would have been committed if the first act alone had caused death. We have, however, decided against the insertion of such a section in view of the full consideration of this subject in recent decisions[3] of High Courts.

Section 302.

16.12. Section 302 which lays down the punishment for murder needs no change.

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1. *Suryanarayan Murthy*, 13 Cr. L. J. 145 (Mad.)
2. *Mt. Jeoni* v. *Emperor*, A. I. R. 1917 All. 455; Ballan, A. I. R. 1955 All. 626.
3. *Lingaraj Das*, (1944) I. L. R. 24 Pat. 131;
   Mehto, (1939) I. L. R. 18 Pat. 485;
   Kaliappa Gounder, (1933) I. L. R. 57 Mad. 158;
   Tamkamani, A. I. R. 1943 Mad. 571;
   Nanhu, (1969) Cr. L. J. 605.

Euthanasia Question put.

16.13. For the last few years, the question of legalising 'euthanasia' or 'mercy killing' has been engaging the attention of lawyers, moralists, physicians and laymen. Should the act of putting to death a person who is in physical agony, or to whom life has become useless because of his bodily condition, be regarded as culpable homicide when it is done with the person's consent ? We included in our Questionnaire the question, "should euthanasia (or 'mercy killing' as it is popularly called), be exempted from punishment either as homicide or as abetment of suicide ?"

Replies received.

16.14. The majority of the replies to this question show a strong opposition to exempting euthanasia from punishment. They emphasise that if euthanasia is to be legalised, very elaborate safeguards will be required, that there is great danger of abuse, that it will be difficult, almost impossible, to distinguish between a genuine case of killing for mercy with consent and a case of murder, and that these practical aspects must outweigh humanitarian considerations. Those who favour exemption point out that there is no reason why a man in serious agony arising out of incurable disease or otherwise should be forced to protract his agony. They consider that with adequate safeguards, such as certificates from two medical officers and the consent in writing of the sufferer before witnesses, euthanasia should be permitted.

Position in other countries.

16.15. In most English-speaking countries the causing of voluntary death in cases of painful and incurable disease is punishable even though the sufferer is willing. It is suicide if performed by the patient himself, and murder if performed by any other. Even in countries where an attempt to commit suicide is not an offence, abetting the commission of suicide is punishable. Thus, the Swiss Penal Code provides[1] in Article 114 that "whoever kills a human being upon the latter's earnest and urgent request shall be confined in prison"; and in article 115, that "whoever, from selfish motives, induces another person to commit suicide or aids him in it, shall be confined in the penitentiary for not over five years, or in prison, provided that the suicide has either been completed or attempted."

Legalising euthanasia not recommended at present.

16.16. On a consideration of various aspects of the matter, and in particular the state of public opinion on the subject, we have come to the conclusion that it would not be advisable to insert a provision totally exempting euthanasia from criminal liability. The Code has taken note of it as a circumstance for reducing the offence from murder to culpable homicide not amounting to murder[2]. Moreover, the range of punishment provided for the latter offence[3] is wide enough to allow the court

1. From the translation published in the Journal of Criminal Law and Criminology, Vol. 30, No. 1 (1939).
2. Section 300, Exception 5.
3. Section 304.

to pass light sentences in appropriate cases. The law is thus elastic and a total exemption from liability is hardly called for at present. If later on, in consequence of a change in world opinion, there is a strong demand for legalising mercy-killing, the matter may be re-considered.

Section 303.

16.17. Under section 303, if the murderer is "under sentence of imprisonment for life" he shall be sentenced to death. The words quoted have caused some difficulty. A person whose sentence of imprisonment for life has been remitted unconditionally by the Government has been held not to be under the sentence[1], but if a person is released conditionally, he is held to be "under" it[2]. This may look somewhat anomalous. The primary object of making the death sentence mandatory for an offence under this section seems to be to give protection to the prison staff. If so, replacing the words "being under" by the words "whilst undergoing" may remove the anomaly and restrict the application of the section to life convicts actually in prison. But as section 303 is very rarely applied, no change is recommended. Where there is an exceptionally hard case, it could be easily dealt with by the President or the Governor under the prerogative of mercy.

Incidentally, we note that in its Report on Capital Punishment[3], the Law Commission was against making the punishment of death under section 303 discretionary.

Section 304-analysis

16.18. Section 304 lays down the punishment for culpable homicide not amounting to murder, and is in two parts. Under the first part, the punishment is imprisonment for life, or imprisonment upto ten years, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death. Under the second part, imprisonment upto ten years, or fine, or both, is the punishment, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. This scheme is thus based on a distinction between intentional homicide and unintentional homicide, with a higher punishment in the first case.

Distinction unnecessary.

16.19. This distinction, though theoretically sound, is unnecessary in practice. The Court has always the discretion to pass a lenient sentence if the homicide was based on guilty knowledge and not on guilty intention, and there is no need to waste time in deciding whether the offence comes under the first part or the second part. We, therefore, recommend only one maximum punishment for all types of offences under this

1. *Ghulam Mohd.*, A. I. R. 1943 Sind. 114.
2. *Po Kun*, A. I. R. 1939 Rang. 124; *Sohan Singh*, A. I. R. 1965 Punjab 156.
3. 35th Report.

section. While life imprisonment is never given for this offence and is not necessary, we feel that imprisonment should be mandatory even in cases falling under the second part of the section.

Simplification of section recommended.

16.20. Section 304 may, accordingly, be simplified as follows :—

> "304. *Punishment for culpable homicide not amounting to murder.*—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Section 304A and quality of negligence.

16.21. Section 304A deals with homicide by a rash or negligent act. That the negligence mentioned in the section is not of the same type as in civil disputes has been made clear by judicial decisions. In civil cases, courts insist on a maximum standard of care, while criminal courts require minimum care. If the minimum care is taken, then the criminal courts would acquit the accused. It was suggested that this judicial interpretation should be embodied in the section, e.g., by adding the words 'so as to indicate a want of due regard for human life'.

History of section.

16.22. The provision in Macaulay's Draft Penal Code was as follows :—

> "304. Whoever causes the death of any person by any act or any illegal omission, which act or omission was so rash or negligent as to indicate a want of due regard for human life, shall be punished with imprisonment of either description for a term which may extend to two years, or fine, or both."

This clause was inadvertently or otherwise, left out in the final draft. The present section 304A was subsequently inserted, at the instance of the then Law Member, Sir James Stephen, by Act 25 of 1870. It was stated in the Statement of Objects and Reasons :—

> "The Code, as it stands, contains no adequate provision for the punishment of what English lawyers call manslaughter by negligence. This was provided for in the draft Code, section 304, and the present Bill supplies the omission".

Meaning of 'negligence'

16.23. The connotation of 'negligence' in relation to manslaughter was explained by Lord Hewart, C.J.[1], as follows :—

> "In expounding the law to juries on the trial of indictments of manslaughter by negligence, judges have often referred to the distinction between civil and criminal liability

1. *R.* v, *Bateman*, (1925) 19 Cr. App. Rep. 8, 10.

for death by negligence..... In the civil action, if it is proved that A fell short of the standard of reasonable care required by law, it matters not how far he fell short of the standard. The extent of his liability depends not on the degree of negligence, but on the amount of damage done. In the criminal court, on the contrary, the amount and degree of negligence are the determining questions. In explaining to juries the test they should apply to determine whether the negligence, in the particular case, amounted or did not amount to a crime, judges have used epithets such as 'culpable', 'criminal', 'gross', 'wicked', 'clear', 'complete'. But, whatever epithet be used and whether an epithet be used or not, in order to establish criminal liability the facts must be such that, in the opinion of the jury, the negligence of the accused went beyond a mere matter of compensation between subjects and *showed such disregard for the life and safety of others as to amount to a crime* against the State and conduct deserving punishment.....".

No clarification necessary.

16.24. In this connection, we also noted that sections 336 and 357 refer to acts done "so rashly or negligently as to endanger human life or the personal safety of others". But obviously these or similar words would not be adequate or appropriate for the purposes of section 304A. We find it difficult to devise a satisfactory form of words which, while giving effect to the concept of "criminal negligence", could be regarded as sufficiently expressive and simple. Judicial decisions have fully explained the scope and content of the section and on the whole, it seems best not to make any change in the wording.

Punishment inadequate.

16.25. We are, however, of the view that the present maximum punishment for the offence is inadequate, and should be increased. This is desirable, in view of the greater importance which this offence has assumed since the section was inserted due to the wide use of fast moving mechanically propelled vehicles and the frequency in the commission of the offence, accompanied by callousness of the offender towards the victim; often there are cases tried under this section which are very near to culpable homicide and deserve a severe sentence.

Opinions received.

16.26. We may note that in the views expressed on our question as to the quantum[1] of punishment under the Code, there has been a strong demand for increase in the punishment for offences under this section. The suggestions vary from three years to seven years. There is also a suggestion to increase the period to seven years if more than one death has been caused. A Presidency Magistrate referred to a case where 17 fatalities occurred in a house collapse, owing to non-repair of the house by the landlord, and to another where three deaths had been caused by the negligence of the hospital staff.

1. Question 5 of the Questionnaire.

Maximum punishment to be five years.

16.27. After taking into account our proposal to fix the maximum punishment for culpable homicide not amounting to murder at ten years, we recommend that the maximum punishment for causing death by negligence may be half that period, namely, five years.

Eulogy of murder

16.28. We examined the question whether it would be desirable to penalise eulogy of murder[1]. We think that such a provision may lead to difficulties; for example, where there is some apparent moral justification for the particular murder, a prosecution may be embarrassing. Further, killing in private defence may, sometimes technically amount to murder, if the right of self-defence is grossly exceeded. Hence, there are risks involved in the proposed amendment. So long as an act of approval of an offence does not amount to actual incitement to repeat the offence approved, there is no need to have a penal provision.

Sections 305 and 306.

16.29. Sections 305 and 306 relate to abetment of suicide. Some countries take a milder view of this offence in two special situations—(i) suicide pacts; (ii) abetment of suicide for purposes which are not selfish. Thus, the Penal Code of Denmark provides[2] that "any person who assists some other person in committing suicide shall be liable to a fine or to simple detention", and "if such an act of assistance is committed for reasons of personal interest, the penalty shall be imprisonment for any term not exceeding three years". We have referred[3] earlier to the provision in the Swiss Penal Code which requires "selfish motives" to be established for a person to be severely punishable for aiding suicide. We are of the view that no such special provision is necessary. The question of punishment may be left to the discretion of the Court, which can take into account all the circumstances in which the suicide was abetted by the offender.

Sections 307 and 308 to be revised.

16.30. Sections 307 and 308, which deal with attempt to commit murder and attempt to commit culpable homicide not amounting to murder, have been considered in a previous Chapter, and a revision of both the sections has been proposed[4].

1. Compare Article 213, Argentina Penal Code, which provides that anybody who publicly, by any means, extols the commission of any crime or any person sentenced therefor, shall be punished by jailing from one month to one year.
2. Section 240, Penal Code of Denmark.
3. Paragraph 16.15 above.
4. See paragraph 5.55 above.

Section 309—suicide in the *dharma shastras.*

16.31. Section 309 penalises an attempt to commit suicide. It may be mentioned that suicide was regarded as permissible in some circumstances in ancient India. In the Chapter on "The hermit in the forest", Manu's Code[1] says,—

> "31. Or let him walk, fully determined and going straight on, in a north-easterly direction, subsisting on water and air, until his body sinks to rest.
>
> 32. A Brahmana having got rid of his body by one of those modes (i.e. drowning, precipitating burning or starving) practised by the great sages, is exalted in the world of Brahamana, free from sorrow and fear".

Two commentators on Manu, [2]Govarndhana and Kulluka, say that a man may undertake the *mahaprasthana* (great departure) on a journey which ends in death, when he is incurably diseased or meets with a great misfortune, and that, because it is taught in the Sastras, it is not opposed to the Vedic rules which forbid suicide.[3] To this Max Muller adds a note as follows:—[4]

> "From the parallel passage of Apas tambha II, 23, 2, it is, however, evident that a voluntary death by starvation was considered the befitting conclusion of a hermit's life. The antiquity and general prevalence of the practice may be inferred from the fact that the Jaina ascetics, too, consider it particularly meritorious."

Should attempt to commit suicide be punishable?

16.32. Looking at the offence of attempting to commit suicide, it has been observed by an English writer:[5]

> "It seems a monstrous procedure to inflict further suffering on even a single individual who has already found life so unbearable, his chances of happiness so slender, that he has been willing to face pain and death in order to cease living. That those for whom life is altogether bitter should be subjected to further bitterness and degradation seems perverse legislation."

Acting on the view that such persons deserve the active sympathy of society and not condemnation or punishment, the British Parliament enacted the Suicide Act in 1961 whereby attempt to commit suicide ceased to be an offence.

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1. Laws of Manu, translated by George Buhler, Sacred Books of the East edited by F. Max Muller, (1967 Reprint) Vol. 25, page 204, Shlokas 31 and 32.
2. See Medhatithi's commentary on Manu.
3. Laws of Manu, translated by George Buhler, Sacred Books of the East edited by F. Max Muller, (1967) Vol. 25, page 204, footnote 31.
4. *Ibid.*
5. H. Romilly Fedden: *Suicide* (London, 1938), page 42.

Section 309 to be repealed.

16.33. We included in our Questionnaire the question whether attempt to commit suicide should be punishable at all. Opinion was more or less equally divided. We are, however, definitely of the view that the penal provision is harsh and unjustifiable and it should be repealed.

Inducing suicide by ill-treatment.

16.34. Among the diverse reasons which lead a person to seek the ultimate refuge in death, one that occasionally comes to light and shocks sociey is continuous cruel treatment. The Suicide Inquiry Committee set up by the State Government of Gujarat reported in 1964 that systematic ill treatment of a young woman by her husband and/or in-laws leading to her committing suicide was, allegedly at any rate, not uncommon, in that State. Such cruel conduct deserves to be punished as criminal. The provisions as to abetment of suicide may not be applicable to such conduct because the series of acts constituting ill-treatment may not be regarded as 'instigation' or 'intentional aid'. The need for a separate provision on the subject was felt during our preliminary examination of the Code, and we included in our Questionnaire the question, "should there be a provision in the Code for punishing a person who drives another person by systematic cruel treatment to commit suicide."

Most of the replies to this question were opposed to any provision for punishing such acts. Even in Gujarat which for some time had a high female suicide figure, Judges of the High Court and lawyers were generally not in favour of the suggestion, but some of the Sessions Judges were. Some Judges of a High Court have suggested making penal an omission to report promptly to the authorities an unnatural death caused by persistent ill-treatment. But we do not think that this will be enforceable in practice and in any way effective.

The main grounds on which the suggestion was opposed were that it would be difficult to detect and prosecute the offenders, that proof of casual connection would not be easy, and, therefore, prosecutions would not succeed, and that a person could be punished for his own cruelty, but not for another's suicide, even though it was provoked by his cruelty.

While we appreciate the relevance of the first two objections, we are nevertheless of the opinion that where such cases do come to light, the law should not overlook them. Difficulties of proof not withstanding, there is justification for expressing strongly the law's condemnation of such conduct, which tantamounts to homicide caused indirectly through the hands of the luckless victim herself. It has been observed by some Judges of a City Civil Court that there are clear cases where the victim appeared to have committed suicide only because life became unbearable and in order to escape persistent cruelty. There are cases where there is no proof of any overt acts on the part of the offender, but still the circumstances clearly establish

that the victim was driven to commit suicide to escape the mental torture and agony. It was observed by Dua J. (as he then was of the Punjab High Court),[1]—

> "Women in such circumstances as those of the appellant, in our society, normally submit themselves to their fate and bear ill-treatment at the hands of their husbands, and unless a climax is reached, they usually do not take the desperate step of going to a police station to lodge a report; the poor financial condition of such women and lack of proper understanding on their part would also stand in their way of securing a proper medical certificate.... Besides, even if the injuries on the person of Smt. Kaushalya are considered not to be so serious as to call for their treatment by a medical practitioner, if she has actually been ill-treated as deposed by her, that treatment must be held to amount to cruelty according to the standards of all civilised societies....The approach of the court below appears to me to be inconsistent with the public policy clearly discernible in the recent legislative measures whereby attempts have been made to raise the social status of woman in this Republic. New rules of social behaviour and conduct in respect of the status of women in Indian society of today must in my view, be recognised and kept in the forefront while determining what would really amount to cruelty under the Hindu Marriage Act."

New section recommended.

16.35. We are strongly of the opinion that this type of cruel conduct towards a member of the family ought not to go unpunished for want of a suitable provision in the Penal Code. We, therefore, recommend that the following section should be inserted after section 308 of the Code[2]:—

> "309. Whoever, by persistent acts of cruelty, drives a member of his family living with him to commit suicide shall be punished with imprisonment of either description for a term which may extent to three years, and shall also be liable to fine."

Sections 310 and 311 to be omitted.

16.36. Sections 310 and 311 relate to "thugs". These are obsolete, and may be omitted.

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1. *Kaushalya* v. *Wisakhi Ram*, A. I. R. 1961 Punj 521, 524.

2. Cf. Article 107 of the R.S.F.S.R. Penal Code which is a more general provision reading,—

> "Inciting a person economically or otherwise dependent on the guilty person to commit suicide or to attempt suicide, by cruel treatment of the victim or systematic lowering of his personal dignity, shall be punished by deprivation of freedom for a term not exceeding five years"

Causing of miscarriage and injuries to unborn children.

Sections 312 and 313 abortion.

16.37. Culpable homicide is causing the death of a human being. The offence would not be committed by an act which destroyed a life before it had separate existence from the mother. This gap is filled up in the Code by five sections,[1] 312 to 316, dealing with abortion. The main offence is described in section 312 as voluntarily causing a woman with child to miscarry. It is only when the miscarriage is caused in good faith for the purpose of saving the life of the woman it is not punishable.

The Medical Termination of Pregnancy Bill pending in the Rajya Sabha.

16.38. The movement for the reform of the law of abortion, which has been going on outside India for the last thirty years, has found official support in India. Some time ago, the Government of India appointed a Committee to study the subject, and in the light of its recommendations,[2] introduced a Bill[3] in the Rajya Sabha. Its provisions may be summarised:—

(1) A registered medical practitioner shall not be guilty of an offence under the Code or under any other law if a pregnancy is terminated by him in accordance with the provisions of the Bill.

(2) A registered medical practitioner can terminate a pregnancy if he is of opinion, formed in good faith, that

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of injury to her physical or mental health, or

(ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(3) Where the pregnancy is alleged by the woman to have been caused by rape, "the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman."

(4) where a pregnancy occurs as a result of failure of any device used by any married woman or her husband for the purpose of limiting the number of children, "the anguish caused by such unwanted pregnency may be presumed to constitute a grave injury to the mental health of the pregnant woman."

(5) In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned above, account may be taken of the pregnant woman's "actual or reasonably foreseeable environment".

1. Section 315 punishes acts done with intent to cause an infant to die after birth, as well as acts done with intent to prevent an infant being born alive.
2. Report of the Committee to study Legislation of Abortion, (1966).
3. The Medical Termination of Pregnancy Bill (Rajya Sabha) (1969).

(6) If the length of the pregnancy does not exceed twelve weeks, the opinion of one registered medical practitioner is sufficient. If it exceeds twelve weeks, but does not exceed twenty weeks, the opinion of two medical practitioners is required. If it exceeds twenty weeks, the Bill does not apply.

(7) The termination of pregnancy must be with the consent of the woman.

(8) The operation is to be performed only at a Government hospital or other place approved by the Government.

The Statement of Objects and Reasons annexed to the Bill, first emphasises that (i) this very strict law has been observed in the breach in a very large number of cases all over the country; (ii) most of these mothers are married women, under no particular reason to conceal their pregnancy; and (iii) doctors have often been confronted with gravely ill or dying pregnant women "whose pregnant uterus have been tampered with." It then sums up the evil by stating that "there is, thus, avoidable wastage of the mother's health, strength and sometimes life".

It is then stated that the proposed measure, seeking to liberalise existing provisions, has been conceived (i) as a health measure, when there is danger to the life or risk to physical or mental health of the woman; (ii) as a humanitarian measure, when pregnancy arises from a sex crime; and (iii) as an eugenic measure where there is substantial risk that the child, if born, would suffer from deformities and diseases.

Position in England.

16.40. In this context, a scrutiny of the development of the law in other countries will be helpful. In England, abortion was not a common law offence, but was made an offence by statute. Until 1967, the statute law in England was very strict. There was no express immunity, not even for an act done to save the woman's life.[1] In the celebrated case of Dr. Bourne, a Harley Street specialist aborted a sixteen-year old girl who had become pregnant following rape. He reported his action to the police and successfully defended himself at his trial by claiming that the operation was, in his opinion necessary to the future health of the girl. His acquittal seems to have been based mainly on the view taken by the jury that the probable consequence of the continuance of the pregnancy would be to make the patient a physical and mental wreck and that consequently the operation was performed in good faith for preserving the life of the girl.

1. Section 58, Offences Against the Person Act, 1861 (English).
2. *R.* v. *Bourne*, (1938) 3 All E. R. 615.

But a substantial section of the public took the view that the immunity should be widened in its scope. The births of tragically deformed children as a result of mothers having taken thalidemide drug prior to the births had certainly contributed to this view. The Abortion Act was passed in 1967 by the British Parliament. The operative provision of this Act is as follows:—

> "1. (1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner, if two registered medical practitioners are of the opinion formed in good faith,—
>
> (a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical and mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or
>
> (b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.
>
> (2) In determining whether the continuance of a pregnancy would involve such risk as is mentioned in paragraph (a) of sub-section (1), account may be taken of the pregnant woman's actual or reasonably foreseeable environment."

It will be noticed that in the English Act, risk to the life, or of injury to the health, of, the woman is not by itself conclusive: it must be greater than if the pregnancy were terminated. Secondly, there is no presumption relating to anguish caused by an unwanted preganancy, though the Act mentions injury to the existing children of the woman's family. At some stage, there was a proposal to take into account the fact that "the pregnant woman's capacity as a mother will be severely overstrained by the care of a child or of another child as the case may be". But the provision does not find a place in the Act.

Position in Sweden.

16.41. Sweden is a notable example where abortion has been allowed on what are now known as 'socio-medical' reasons. Under the Swedish law (as it stood in 1962), abortion is permitted in the following circumstances[2]:—

> (1) If due to a woman's illness, physical defect or weakness, child birth would entail serious danger to her life or health, i.e. on *medical reasons*;[3]

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1. (1966 May) 274 House of Lords Debates, 1201.
2. Extract from Report of the Committee to study the question of Legalisation of Abortion, (1966) pages 127-128.
3. This aspect is developed fully in a book by Professor Ekbald, Induced Abortion on Psychiatric grounds.

(2) If with regard to a woman's conditions of life and other circumstances there is reason to assume that her physical or phychic strength would be seriouly reduced through child-birth and child care, i.e. on *medico-social reasons*;

(3) If a woman has become pregnant as the result of rape, other criminal coercion or incestuous sexual intercourse, if she is insane or an imbecile, or under 15 years of age at the time of the fertilizing coition, i.e, on *humanitarian reasons;*

(4) If there is reason to assume that the woman or the father of the unexpected child would transmit to their offspring hereditary insanity, imbecility, a serious disease or a serious physical handicap; i.e. on *eugenic reasons.* An abortion for the reason of any such hereditary defect in the mother is contingent on sterilization simultaneously with the abortion unless sterilization appears risky or unnecessary (e.g. with regard to the woman's advanced age or because she is to be permanently committed to an institution).

(5) An abortion for reasons other than disease or physical defect in the woman may not be performed after the twentieth week of pregnancy, but the National Board of Health may make exceptions and authorise the performance of the operation before the end of the twenty-fourth week.

The procedure in Sweden appears to be dilatory. About 85 per cent of all legal abortions in Sweden are authorised by the Royal Medical Board in Stockholm, on the basis of written reports by physicians and social agencies throughout the country. Consequently, a substantial proportion of legal abortions is performed after the third month. These late abortions contribute heavily to the total number of deaths.[1]

Position in Soviet Russia.

16.42. The law of abortion in Soviet Russia has now (1965) been made liberal after undergoing major fluctuations during the last 50 years. Soviet women have been given freedom to decide, by themselves, the question of their motherhood. The abortion operation is allowed to all women wishing to undergo the operation, except where the pregnancy is over 12 weeks or there is inflammation of certain parts, or the existence of infectious diseases such as flue, quinsy, etc. and high temperature etc. If necessary a woman could be operated for abortion at a qualified medical institution that guarantees her the maximum innocuousness of the operation.

1. Report of the Committee on the Legalisation of Abortion (1966), page 21, paragraphs 2 to 32.

Position in Japan.

16.43. In Japan, the matter is regulated by the Eugenic Protection Law which is a very elaborate piece of legislation.[1] It is unnecessary to refer in detail to its provisions. The primary object of the law is to prevent the increase of inferior descendants from the eugenic point of view and to protect the life and health of the mother as well. Provision is made for what is known as " Eugenic Operaton' to be performed by a surgeon with the consent of the person concerned and his or her spouse. There is provision for artificial interruption of preganancy under various circumstances, including pregnancy caused by rape, and also where the mother's health may be affected seriously by the continuation of the pregnancy either from the physical, or the economic view point.

Position in the U. S. A.

16.44. The past few years have seen a definite trend towards liberalisation of the laws relating to abortion in the U.S.A. The position, however, varies from State to State. The New York law, which is the most radical, states that an abortion is justifiable when done with the woman's consent by a 'duly licensed physician, acting (a) under the belief that such act is necessary to preserve her life, or (b) within 24 weeks from the commencement of her pregnancy'. A woman performing abortion upon herself in similar circumstances is also justified. There is no residence requirement.

Liberalisation of the penal law proposed.

16.45. The penal prohibition of abortion seems to be based on four main grounds, (i) protection of the life of the unborn child, (ii) protection of the society's interest in the continuation of the race, (iii) sentimental objection to the destruction of a potential human life and (iv) protection of the life and health of the mother. On all these matters, opinion is sharply divided and no useful purpose will be served by any elaborate discussion of the various views. General opinion, however, is definitely in favour or attaching paramount importance to the life and health of the mother over all other considerations. It seems to us that the decision whether to bear a child or not must remain with the mother, but a distinction could be drawn between destruction of a nearly full grown child in the womb and termination of pregnancy at an early stage. As Lord Riddell said,[2] "the destruction of a full grown child is a revolting affair, whereas the abortion of an early foetus differs little from the removal of a uterine tumor." Abortion procured by a qualified physician within the first three months of pregnancy is attended with hardly any risk to the life or health of the woman. If the pregnancy is within this period, the woman must have full freedom to have it terminated by a qualified physician. If, however, the duration of the pregnancy exceeds three months, risk to the life and health

1. Japan's Law No. 156 of July 13, 1948, as extracted in the Report of the Committee to study the question of Legalisation of Abortion (1966), pages 102 to 106.

2. Lord Riddell, Medico Legal Problems (1929), page 35, cited by Williams, "Sanctity of Life", (1958), page 209.

of the woman is much greater, and termination of the pregnancy may justifiably be permitted only in the circumstances and under the conditions set out in the Bill now before Parliament.[1]

Section 312 to be amended.

16.46. We, therefore, recommend that, so far as the Code is concerned, a proviso may be added to section 312 as follows:

"Provided that it shall not be an offence under this section if the miscarriage is caused within three months of the commencement of pregnancy by a registered medical practitioner with the consent of the woman."

As a consequential amendment, the Explanation to the section may be modified to read:—

"*Explanation.*—A woman who causes herself to miscarry when she has been pregnant for more than three months is within the meaning of this section."

Section 313—punishment provision to be amended.

16.47. Section 313 rightly makes it a very serious offence to cause miscarriage in a pregnant woman without that woman's consent. The maximum punishment of imprisonment for life, however, seems to be excessive. We propose that the punishment provision should be modified to "rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Sections 314 to 316.

16.48. Sections 314 to 316 need no change.

Section 317—leaving child with a person.

16.49. Section 317 speaks of exposing a child or leaving it 'in any place' with the intention of abandoning it. It does not apply where the child is left with a person who is incapable of looking after it. We considered the question whether this restriction should be removed, in view of an Allahabad decision.

In that case,[2] the mother of an illegitimate child aged about six months left the child in charge of a blind woman in whose company she was, saying that she was going to get food and would return shortly. But actually the mother went to another village and did not return. The blind woman handed over the child at the police station. The mother was prosecuted under section 317, but acquitted. On appeal, Blair J. (with whom Aikman, J. concurred)[3] observed—

"It seems to me that the words of section 317 of the Indian Penal Code should be dealt with in the most literal sense.

1. One of us, Mrs. Anna Chandi, is of a different view set out in a Note appended to this Report.
2. *Q. E.* v. *Mirchia*, (1896) I. L. R. 18 All. 364, 367.
3. Knox J. dissented.

"To expose" literally means to physically put outside, so that such putting outside involves some physical risk to the person put out. Having reference to a child, it would mean putting it somewhere where it could not receive the protection necessary for its tender age; as, for instances, putting it outside the house, whereby it would be exposed to the risk of climate, wild beasts and the like. The exposure contemplated by the Act was one by which danger to life might immediately ensue. The explanation of section 317 seems to be to indicate with much clearness the scope and purview of the section and the nature of the evil against which it sought to provide. That explanation provides for the case of injuries actually ensuing that the guilty person shall be punished for the injury so inflicted according to the circumstances under which the injury is done, *i.e.* for murder or culpable homicide, as the case may be. It seems to me that, as the word 'leave' comes in immediate juxtaposition with the word 'expose', the word 'leaving' means leaving in a sense *ejusdem generies* as the exposure, and indicates an offence only slightly distinguishable from exposing. It cannot in my judgment mean leaving in the large sense of abandonment, but must be construed in strict connection with the word 'exposure'. The narrower construction of the words 'expose or leave' is much strengthened by the insertion of those striking words 'in any place'. I cannot conceive of any possible antithesis to those words unless it be 'with any person'. It seems to me manifest that if the framers of the Act had intended to include in the section a case like the present, they would have used after the expression 'in any place' the words 'or with any person', or some other words to that effect. I find myself wholly unable to understand where, upon any other construction but the one suggested, a line is to be drawn in cases of abandonment of children. I do not see how in point of law the abandoning of a child in the protection of a person able to take care of it, and willing, perhaps, from kindly motives to do so, but under no legal obligation to take care of it, is to be distinguished from leaving a child, as was done in the present case, in the protection of a blind woman who could and did afford some limited protection to the infant. I have yet to see upon what principle this conviction can be supported. Take the case of a person who leaves a child of eleven years of age at a hill school under the care and protection of a schoolmaster with intent to abandon. I am quite unable to see where a line can be drawn which would include the one case and exclude the other. Of course there may be cases, as my brother Knox pointed out, of much difficulty and requiring some discrimination. One would have to consider whether putting a child in physical possession of another child wholly incapable of protecting it would come at all within the meaning of the section; whether, for instance, leaving a child of eleven years under the care of another child of five years would fall within the

purview of the section. These difficulties do not arise in the present case. Here the blind woman was to some extent capable of protecting, and did protect, the child. She was a person with whom the child had been left."

Corresponding provision in England.

16.50. We note that the English section on the subject does not contain a limitation that the child must be left in a 'place'. Section 27 of the Offences against the Person Act, 1861, provides that "whosoever shall unlawfully abandon or expose any child, being under the age of two years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be permanently injured, shall be liable to imprisonment for any term not exceeding five years." It only emphasises the risk of danger to life or risk of permanent injury to health, and is, therefore, wider than the Indian section.

We do not, however, consider it necessary to expand the section in the Code. Cases not covered by the Code will be taken care of by the Children Act,[1] which punishes the act of neglecting or abandoning a child so as to cause unnecessary mental and physical suffering. Though the maximum punishment under that Act is not very high (six months' imprisonment), it should be adequate.

Section 317 to be revised.

16.51. In view of the severity of the punishment under section 317, we think it desirable that the offence should be more restricted in scope, and confined to exposure etc. of children below 5 years, and that the *mens rea* should be indicated more precisely, with reference to the risk of life or serious injury to health. The Explanation stating that the section does not prevent the trial of the offender for murder or culpable homicide if the child dies in consequence of the act appears to us to be unnecessary and could safely be omitted. The section may, accordingly, be revised as follows:—

> "317. *Exposure and abandonment of child under five years by parent or person having care of it.*—Whoever being the father or mother of a child under the age of five years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall, if such act endangers, or is likely to endanger, the life of the child or permanently injures, or is likely to permanently injure, the health of the child, be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

Section 318 (Concealment of birth)—Omission recommended.

16.52. Section 318 punishes concealment of birth by secret disposal of the dead body of a child. In our view, the Penal Code need not punish such concealment. For statistical purposes, concealment of birth can be punished under the law relating to registration of births and deaths. If the child is illegitimate, it is wrong to use the criminal law for the purpose

1. e. g. section 41, Children Act, 1960 (60 of 1960).

in modern times. If the child is legitimate, there would not, ordinarily, be any inclination to conceal the birth. The practice of killing female children has practically disappeared. If the child has been killed after birth, and then the crime is sought to be suppressed by concealing the birth, section 201 can be resorted to. This being the position, section 318 may be safely omitted.

New section to punish failure to provide necessaries of life.

16.53. Cases often arise where persons when legally bound to do so, fail without lawful excuse to provide the necessaries of life. Such illegal omissions ought to be punishable, and we recommend the insertion of a new section after section 317 in place of the present section 318. It may be as follows:—

"318. *Failure to provide necessaries of life.*—Whoever, being legally bound to provide the necessaries of life to any person, fails without lawful excuse to do so, knowing that such failure will endanger the life or seriously impair the health of that person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Causing hurt

Section 319.

16.54. Section 319 which defines causing hurt needs no change.

Section 320 to be revised.

16.55. The following changes are recommended in section 320 which defines grievous hurt:—

(i) The first clause may be omitted in view of the proposed widening of the fifth clause.

(ii) The second and third clauses may be combined and amplified to read "*deprivation*[1] *or impairment* of the sight of either eye or the hearing of either ear."

(iii) In the fourth and fifth clauses, the word "organ" should be added, since the reference to "any member or joint" is not comprehensive.

(iv) In the seventh clause, there is no need to mention "tooth" expressly.

(v) In the eighth clause, any hurt which causes the sufferer to be in severe bodily pain for a period of *ten* days should be regarded as grievous hurt. On the other hand, relating grievousness of the hurt to the injured person being unable to follow his ordinary pursuits for twenty days does not appear to be the right approach, and it certainly leads to abuse in the nature of false hospital certificates.

1. The word "privation" now used in these clauses is archaic.

We propose that section 320 may be revised as follows:—

"320. *Grievous hurt.*—The following kinds of hurt only are designated as grievous:—

(i) deprivation or impairment of the sight of either eye or the hearing of either ear;

(ii) deprivation or destruction of any organ, member or joint;

(iii) permanent impairment of the powers of any organ, member or joint;

(iv) permanent disfiguration of the head or face;

(v) fracture or dislocation of a bone;

(vi) any hurt which endangers life or which causes the sufferer to be in severe bodily pain for ten days."

Does voluntary sterilisation amount to causing grievous hurt?

16.56. While dealing with the legal aspects of the family planning programmes, the Seminar on Criminal Law, which was held some time ago under the auspices of the Central Bureau of Investigation, felt that voluntary sterilization might arguably render the medical officer liable for grievous hurt and suggested that section 320 of the Code should be amended "so as to legalise sterilization when carried out as a part of family planning programme by a qualified doctor on an adult who has had some children". The Commission was asked to consider the suggestion in view of the importance attributed to family planning in general, and to sterilization as a method of population control in particular.[1]

Our examination of the position, however, reveals no need for an amendment of the law on the point. Sterilization would amount to grievous hurt, as it would amount to "permanent impairment of the powers of an *organ*", even if it might not be regarded as permanent impairment of the powers of any *member* or *joint*. But we have no doubt that the operation of sterilisation done at the instance of the person undergoing it is covered by the general exception in section 88. That section exempts from penal liability an act not intended to cause death, if the act be done in good faith for the benefit of the person to whom hurt is caused. Voluntary sterilisation done with consent is certainly for the benefit of the person undergoing it. No amendment of the law is necessary on this score.

Sections 321 and 322.

16.57. No change is needed in sections 321 and 322.

1. F. 3(9)/56-L. C. Part VI, S. No. 408 (Suggestion of the Ministry of Home Affairs).

Sections 323--Amendment recommended.

16.58. In section 323, the amount of fine should be unlimited. The words "which may extend to one thousand rupees" should be omitted.

Causing hurt to envoys.

16.59. We considered the question whether a special provision to punish the causing of hurt to diplomatic envoys is needed. It was suggested[1] that, at present, there is no special provision in our laws for dealing with offence against the person of diplomatic envoys or members of their staff. In all cases when a non-cognizable offence is committed against them, they are precisely in the same position as any private person, and unless they choose to waive their immunity and step into a court of law, no case can be made out against the assailant. Hence, it was suggested that a new section should be inserted making the offence of voluntarily causing hurt to a diplomatic envoy punishable with imprisonment for three years or fine or both and that this offence should be made cognizable. We do not, however, see any need for such provision. Though causing hurt is not a cognizable offence, there is nothing to debar a member of the diplomatic staff from making a complaint in court. The fact that the diplomatic representative enjoys immunity from appearance in court does not prevent a complaint by him or by a member of his staff. The present law creates no practical difficulty, and no amendment is needed.

Sections 324 and 326—causing hurt by corrosive substance.

16.60. With reference to section 324 and 326, we considered the question whether there is any need for laying down a minimum punishment where the hurt or grievous hurt is caused by a corrosive substance. In a private member's Bill[2] introduced in the Rajya Sabha in 1968 it was proposed that a minimum sentence of three years' rigorous imprisonment should be prescribed in the case of simple hurt, and life imprisonment in the case of grievous hurt. The Statement of Objects and Reasons attached to the Bill said:—

> "Of all the offences affecting human body, throwing of acids is the most heinous. It not only destrous the happpiness of the human being against whom such offence is committed, but also ruins the entire family. Of late, an increase in the incidence of such crime is being noticed. Only a highly deterrent punishment can check such crimes."

We have carefully considered the suggestion. In our view, however, the mode of inflicting the injury should not be the main criterion for prescribing a heavy minimum punishment. The nature of the injury, the result of the assault and many other factors enter into the picture in determining the proper punishment. The reasons given by the Member for singling

1. F. 3(9)/56-L. C., S. No. 130 (Ministry of External Affairs).
2. Indian Penal Code (Amendment) Bill, 1968, introduced in the Rajya Sabha by Shri G. R. Patil (Bill No. 12 of 1968).

out, for minimum punishment, hurt or grievous hurt caused by throwing acid are not, in our view, convincing. The general question of providing minimum punishment for some of the offences under the Penal Code was discussed by us with the judges of the various High Courts and leading members of the Bar. The majority opinion was against the provision of such minimum punishment (except for a few offences), on the ground that they would unnecessarily fetter the discretion of the trying court. We are of the view that it should be left to the convicting court to impose a severe sentence where hurt or grievous hurt has been caused by a corrosive substance, if the circumstances of the case justify a severe punishment.

Section 325.

16.62. It was suggested that, for the offence under section 325, the court should have a discretion to award fine, and that imprisonment should not be mandatory, but we do not favour any such change.

Section 326- Recommendation to remove life imprisonment.

16.63. Section 326 punishes the offence of voluntarily causing grievous hurt by dangerous weapons or means, the maximum punishment being imprisonment for life or for ten years. We consider imprisonment for life to be unnecessary for this offence and recommend its omission.

Section 327—recommendation to reduce the period of imprisonment.

16.64. Section 327 punishes the offence of voluntarily causing hurt to extort etc. with imprisonment upto ten years. We recommend that the imprisonment should be reduced to seven years, so as to maintain a distinction between this section and the corresponding offence under section 329 as proposed to be amended.

Section 328- Amendments proposed.

16.65. Section 328 punishes a person who administers to any person any "stupefying, intoxicating of unwholesome drug or other thing" with intent to cause hurt or to commit or facilitate an offence or knowing it to be likely that he will thereby cause hurt. We recommend that the expression 'substance' should be substituted for the words 'drug or other thing'. This will make it clear that the 'other thing' must also have the effect of 'stupefying, etc. and that it need not be a 'drug' as normally understood.

We considered the question whether an offence under section 328 can be committed in the absence of the requisite intent or knowledge. It was felt that the language of the section was clear on the point. Intent to cause hurt etc. or intent to commit an offence etc. or knowledge that hurt is likely, is an essential ingredient. The Allahabad case,[1] cited in some of the commentaries as raising a doubt on the point, is concerned with the quality of intent. The section could be re-arranged to deal first with (i) intent to cause hurt or knowledge that hurt is likely,

1. *Aniz Khan*, I. L. R. 46 All. 77; A. I. R. 1924 All. 215.

and then with (ii) the other type of intent, so that there would be less scope for an argument on this point. But the deletion of a portion of the section as recommended below renders a re-arrangement unnecessary.

Administration of poison with intent to cause hurt or with the knowledge that hurt is likely to be caused, is covered by section 324 if hurt is caused, and by section 324 read with section 511 (attempt) if hurt is not caused. The punishment under section 324 (three years) is adequate. That portion of section 328 should, therefore, be deleted, as unnecessary.

We considered the question whether knowledge that commission of an offence will be facilitated, should be added in section 328. But this did not find favour with us. If a person administers poison etc., the connection between that act and another offence will invariably be one of intent and not of mere knowledge that an offence will be facilitated.

The marginal heading to section 328 is inaccurate even on the wording of the present section, and requires modification. It begins with the words "causing hurt" but the act punished is the administration of poison, etc. . .

In the light of the above discussion, we recommed that section 328 may be revised as follows:—

> "328. *Administering poison etc. with intent to commit an offence.*—Whoever administers to or causes to be taken by any person any poison or any stupefying intoxicating unwholesome substance with intent to commit or to facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Section 329-Recommendation to remove imprisonment for life.

16.66. Section 329 punishes the offence of voluntarily causing grievous hurt to extort property or to constrain to an illegal act. The maximum punishment is life imprisonment or imprisonment up to ten years. Life imprisonment for this offence appears to be unnecessary and should be omitted.

A question was raised whether the section should not extend to all cases of coercion by causing grievous hurt, e.g., to compel a person to do or omit something what he is not legally bound to do or omit. Causing hurt in order to compel a person to withdraw a suit[1] or to extract a promise of marriage, is not within section 329. We think, however, that such an amendment would unduly widen the section, and raise difficult questions of motives etc. Such widening may bring in many cases not fit to be regarded as aggravations of grievous hurt. We do not, therefore, recommend any such change.

1. See *Jorubha* v. *The State*, A. I. R. 1951 Sau. 40 (D. B.).

16.67. No change is needed in sections 330 and 331.

Sections 330 and 331.

16.68. As regards sections 332 and 333, we note that its wording differs from that of sections 186, 332 and 353 and we considered the question whether the verbal diversity represented by the words "discharge", "execution", etc. could be avoided. We, however, think that since no difficulty has arisen in practice, no such change is necessary.

Sections 332 and 333—Recommendation regarding the word "lawful".

We also considered a suggestion to include persons acting under the directions of a public servant. But such cases could be adequately dealt with under the general provision punishing hurt or grievous hurt, and no enhanced punishment is needed.

The word "lawful" in the latter part of sections 332 and 333 should be omitted, since it does not occur in the earlier part.

16.69. Imprisonment for one month which is provided in section 334 is unnecessary. Short term sentences serve no purpose. The maximum amount of fine should be increased. The punishment provision may be amended to read "punished with fine which may extend to one thousand rupees".

Section 334—Recommendation regarding punishment.

16.70. Imprisonment under section 335 should be reduced from four years to three years, which is the usual period in the Code, but the fine may be unlimited.

Section 335—Recommendation regarding punishment.

16.71. The punishment under sections 336 to 338 are not adequate, and should be increased as follows:—

Section 336 to 338—Recommendation for increase in punishment.

(i) Section 336: Substitute "six months" for "three months", and "five hundred rupees" for "two hundred and fifty rupees".

(ii) Section 337: Substitute "one year" for "six months" and omit the words "which may extend to five hundred rupees".

(iii) Section 338: Substitute "three years" for "two years" and omit the words "which may extend to one thousand rupees".

Section 339.

16.72. There has been a controversy as to whether the offence under section 339 is made out if a person is prevented from proceeding in a particular vehicle (say, a car), but is allowed to proceed on foot. A narrow view was taken in an early Bombay case[1] and in two Calcutta cases.[2] But later decisions of both these High Courts[3] have taken a wider view which appears to us to be correct. We considered whether an explanation should be inserted that where a person has a right to proceed in any direction in a vehicle, then voluntarily obstructing him so as to prevent him from proceeding in that direction in that vehicle amounts to an offence under section 339, but in view of the later decisions mentioned above, decided that this was unnecessary.

Section 340.

16.73. No change is needed in section 340 which defines wrongful confinement.

Section 341.

16.74. For wrongful restraint under section 341, a sentence of imprisonment is unnecessary but fine may be up to rupees one thousand. Where, however, the offence is jointly committed by ten or more persons, it should, in our opinion, be more severely punishable *e.g.*, with imprisonment of either description up to one year, or fine, or both.

Section 341 may accordingly be revised as follows:—

"341. *Punishment for wrongful restraint.*—Whoever wrongfully restrains any person shall be punished with fine which may extend to one thousand rupees;

and, if the offence is jointly committed by ten or more persons, every one of them shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Section 342—Recommendation regarding punishment.

16.75. Imprisonment upto one year, or unlimited fine, or both, should be the punishment under section 342 for wrongful confinement. Here again, if the offence is committed by ten or more persons, the punishment should be heavier. In recent years, it has been a feature of agitational propaganda and demonstration for a large number of persons to "gherao" officials and others. The views received in response to our Questionnaire[4] show a very substantial support for providing a severe punishment for this offence. We propose that the maximum punishment for wrongul confinement by a group of ten or more persons should be imprisonment for three years and fine.

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1. *Emperor* v. *Rama Lal,* (1912) 15 Bom. L. R. 103 (D. B.).
2. *Durga Prasad* v. *Nilman,* A. I. R. 1935 Cal. 252; and *Mahendra Nath,* I. L. R. 62 Cal. 629.
3. *Emperor* v. *Lahanu Manali,* A. I. R. 1926 Bom. 118; and *Madhab Chandra* v. *Nalini,* A. I. R. 1964 Cal. 286.
4. Question 7 (b) was, "Should 'gherao' (wrongful confinement by a large group of persons) be made a separate offence with a severe punishment".

Section 342 may accordingly be revised as follows:—

"342. *Punishement for wrongful confinement.*—Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

"and, if the offence is jointly committed by ten or more persons, every one of them shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Sections 343 and 344 to be replaced by one section.

16.76. Sections 343 and 344 prescribe a heavier punishment for wrongful confinement according to its duration. If it lasts for three days or more, the offence is punishable with two years' imprisonment; and if it lasts for ten days or more, then it is punishable with three years' imprisonment. We do not think two gradations are necessary. We propose, instead, one section for this aggravated form of wrongful confinement, reading as follows:—

"343. *Wrongful confinement for days or more.*—Whoever wrongfully confines any person for five days or more, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine."

Sections 345 to 348.

16.77. No change is needed in sections 345 to 348.

Criminal force and Assault

Section 349—omission recommended.

16.78. We have next a group of ten sections dealing with criminal force and assault. The first three sections define 'force', 'criminal force' and 'assault', respectively. The definition of 'force' in section 349 is very complicated and the language reminds us of the definitions given in the science of mechanics. Considering that no other penal code has found it necessary to define the expression and that there is nothing abstruse in the concept requiring definition, we think that section 349 could be safely omitted.[1]

Sections 350 and 351—definitions to be combined.

16.79. After defining the expression 'to use criminal force' in section 350, and the expression 'to commit an assault' in section 351, all the seven penal sections that follow equate the two acts and refer to "whoever assaults or uses criminal force". There is thus practically no difference between assault and using criminal force from the point of view of punishment. It is apparent that, in keeping the two ideas distinct, the Code merely follows the distinction between 'assault' and 'battery' under the common law of England. "Assault and battery are two distinct crimes at common law; but it is common in ordinary usage, and

1. The expression "force" occurs in sections 146, 350, 362, 366, 366A and 366B of the Indian Penal Code, and in sections 46, 128 and 352 of the Criminal Procedure Code.

even in statutes, to use the term 'assault' to cover both."[1] We think that, so far as the Code is concerned, it is needless to maintain the distinction between assault and using criminal force, and that it would be simpler to refer to the offensive act merely as "assault". The definition of assault should, however, comprise the ideas set out in section 349 and those set out in section 350.

"Criminal force" to be defined in Section 141.

16.80. Apart from this Chapter, the expression 'criminal force' is to be found only in three sections of the Code, *viz.*, sections 121A, 141 and 152. In section 121A, as already indicated,[2] the word 'criminal' is not required in the context and could be omitted. We have also proposed[3] the addition of an explanation in section 141 to indicate when force will be regarded as criminal for the purposes of that section, and the same explanation will be sufficient for interpreting section 152.

Section 350 to be omitted and section 351 to be revised

16.81. We accordingly propose that section 350 may be omitted, and that section 351 be revised as follows :—

"351. *Assault.*—A person is said to assault another when he, without that person's consent—

(a) applies force, directly or indirectly, to that person in order to the committing of an offence, or intending or knowing it to be likely that he will thereby cause injury, fear or annoyance to that person, or

(b) Threatens, by any gesture or preparatory act, to apply such force as aforesaid to that person, intending or knowing it to be likely that the gesture or act will cause him to apprehend that such force is about to be applied.

Explanation.—Mere words do not amount to an assault; but the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(a) Z is sitting in a moored boat, on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here, A has indirectly applied force to Z.

1. Smith and Hogan, Criminal Law, 2nd edition, page 249.
2. See paragraph 6.8 above.
3. See paragraph 8.9 above.

(b) Z is riding in a horse-carriage. A lashes the horses, and thereby causes them to quicken their pace. Here A has indirectly applied force to Z.

(c) A pulls up a woman's veil without her consent, intending or knowing it to be likely that he will thereby frighten or annoy her. He has assaulted her.

(d) A incites a dog to spring upon Z without Z's consent. Here, A has applied force to Z and if he intends to cause injury, fear or annoyance to Z, he has assaulted Z.

(e) A begins to unloose the muzzle of his dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has assaulted Z.

(f) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has assaulted Z.

(g) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could not amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault."

Section 352—punishment to be increased.

16.82. Under section 352, a slight increase in punishment is recommended. The imprisonment at present three months, should be increased to six months; and the fine, at present limited to Rs. 500/-, should be unlimited.

Sections 352 and 358 to be combined and revised.

16.83. While section 352 punishes assault otherwise than on grave and sudden provocation, the punishment for assault on such provocation is provided in section 358. Since the Explanation of section 352 also has to apply to section 358, the two sections may be combined and revised as follows :—

"352. *Punishment for assault.*—(1) Whoever assaults any person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(2) Whoever assaults any person on grave and sudden provocation given by that person shall be punished with fine not exceeding five hundred rupees.

(3) Grave and sudden provocation will not mitigate the punishment for assault if the provocation—

(a) is sought or voluntarily provoked by the offender as an excuse for the offence, or

(b) is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant, or

(c) is given by anything done in the lawful exercise of the right of private defence.

The provision in the existing Explanation that "whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact" is not required after abolition of jury trials, and has, therefore, been omitted.

Section 353.

16.84. No change is needed in section 353 except the omission of the words "or used criminal force to".

Section 354—outraging the "modesty" of a baby—Supreme Court's view.

16.85. Section 354 punishes a person who assaults or uses criminal force to a woman with intent to outrage her modesty. We have earlier[1] referred to a judgment of the Supreme Court[2] in which it was held that even a baby of seven and a half months old has modesty that can be outraged by use of criminal force within the meaning of this section. In that case, the accused had indecently assaulted the baby and caused injury to its genitals, and the question arose whether the act amounted to an offence under section 354. The High Court of Punjab acquitted[3] the accused holding that a girl of seven and a half months cannot have a "modesty" which can be outraged. The Supreme Court, by a majority, reversed the High Court's judgment. Bachawat, J. observed:—

> "The essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under section 354. The culpable intention of the accused is the crux of the matter.
>
> "The reaction of the woman is very relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section."

1. See paragraph 2.5.
2. *State of Punjab* v. *Major Singh*, A. I. R. 1967 S. C. 63, 65, 67, Cri. L. J. 1 ; (1966) Suppl. S. C. R. 286.
3. A. I. R. 1963 Pun. 443 (F. B.).

And Mudholkar J., observed as follows:—

> "It speaks of outraging the modesty of a woman and at first blush seems to require that the outrage must be felt by the victim itself. But such an interpretation would leave out of the purview of the section assaults not only on girls of tender age but on even grown up woman when such a woman is sleeping and did not wake up or is under anaesthesia or stupor or is an idiot. It may also, perhaps, under certain circumstances, exclude a case where the woman is of depraved moral character. Could it be said that the Legislature intended that the doing of any act to or in the presence of any woman which, according to the common notions of mankind, is suggestive of sex, would be outside this section unless the woman herself felt that it outraged her modesty? Again, if the sole test to be applied is the woman's reaction to a particular act, would it not be a variable test depending upon the sensitivity or the upbringing of the woman? These considerations impel me to reject the test of a woman's individual reaction to the act of the accused. I must, however, confess that it would not be easy to lay down a comprehensive test; but about this much I feel no difficulty. In my judgment when any act done to, or in the presence of, a woman is clearly suggestive of sex according to the common notions of mankind that act must fall within the mischief of this section."

Sarkar, C.J., however, dissented:—

> "To say that every female of whatever age is possessed of modesty capable of being outraged seems to me to be laying down too rigid a rule which may be divorced from reality. There obviously is no universal standard of modesty. If my reading of the section is correct, the question that remains to be decided is, whether a reasonable man would think that the female child on whom the offence was committed had modesty which the respondent intended to outrage by his act or knew it to be the likely result of it. I do not think a reasonable man would say that a female child of seven and a half months is possessed of womanly modesty. If she had not, there could be no question of the respondent having intended to outrage her modesty or having known that his act was likely to have that result. I would for this reason answer the question in the negative."

Indecent assault on children to be an offence.

16.86. While substantial justice was done in the case, one cannot (with great respect) help observing that the conclusion was reached by the majority after some straining of the language. The expression "modesty" connotes a retiring, bashful or decorous disposition. It is a strain on the ordinary use of language to apply that expression to a baby in arms. It is better to have a direct provision on the offence of indecent assault on children of whatever age or sex, so that courts may not (in the case of girls)

be thrown back upon a restricted provision like the present section 354. We are of the opinion that apart from assault to outrage 'modesty', acts of indecency with children should be made specifically punishable by a new section reading as follows :—

"354A. *Indecent assault on a minor.*—Whoever assaults any minor under sixteen years of age in an indecent, lascivious or obscene manner, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Section 355.

16.87. No change is needed in section 355 except the omission of the words "or uses criminal force to".

Section 356—Recommendation.

16.88. Section 356 speaks of assaulting a person "in attempting to commit theft *on* any property which that person is wearing or carrying". The preposition 'on' appears to be incorrect, and should be replaced by 'of'.[1]

Section 357.

16.89. No change is needed in section 357 except the omission of the words "or uses criminal force to".

Section 358.

16.90. Section 358 which is proposed[2] to be combined with section 352 will have to be omitted.

Kidnapping, Abduction, Slavery and Forced Labour

Kidnapping in English law.

16.91. Derived from the word 'kid' meaning child, and 'napper', an American cant word for thief, the word 'kidnapper' originally (seventeenth century) meant one who stole children and others to provide servants and labourers for the American plantations.[3] In England, however, "according to East, the most aggravated species of false imprisonment is the stealing and carrying away, or secreting of some person, sometimes called kidnapping, which is an offence at common law. Blackstone confines this offence to the case where the victim is sent into another country, and East appears to agree that this is strictly a constituent of kidnapping properly so called. According to Russell, the offence is committed if a minor is taken away against the will of his friends or lawful guardians."[4] Child-stealing, as such, is a statutory offence[5] punishable with seven years' imprisonment. The offence is unlawfully, either by force or fraud, to take away or entice any child under the age of fourteen years, with intent to deprive its guardian of the possession of such child, or with intent to steal any article from the child. It appears that the common law offence of kidnapping is of small importance at the present day in England.[6]

1. This mistake is also found in the printed copy of the Indian Penal Code as passed in 1860.
2. See paragraph 16.83 above.
3. Oxford Dictionary of English Etymology.
4. Smith and Hogan, Criminal Law, 2nd edition, page 276.
5. Offences against the Person Act, 1861, section 56.
6. Smith and Hogan, Criminal Law, 2nd edn., page 277.

Kidnapping to be of one kind only—sections 359 and 360 to be omitted.

16.92. The Penal Code distinguishes between two kinds of kidnapping, *viz.*, kidnapping from India and kidnapping from lawful guardianship. The first kind is defined in section 360 as conveying any person beyond the limits of India without the consent of that person or of some person authorised to consent on behalf of that person. This offence was of importance in the last century when the practice of indentured labour was common and "coolycatching" by devious methods had to be put down. As will be seen by a comparison of the definition of kidnapping from India in section 360 with the definition of abduction in section 362, the difference between the two is very slight; where an adult is conveyed out of India without his consent, it is almost certain that he would have been compelled or induced to go from some place, *i. e.*, "abducted". We think it is unnecessary to have the first kind of kidnapping as a special offence, and propose that both section 359 and 360 should be omitted.

Revised definition of kidnapping.

16.93. In order to amount to kidnapping of a minor from lawful guardianship, the age limit of the minor is fixed in section 361 at 16 for boys and 18 for girls. It was suggested that since, under clause fifth of section 375, it is not rape to have sexual intercourse with a girl of 16 or more with her consent, the age limit for kidnapping also should be 16 for girls aswell as boys. We do not, however, think that this is a valid argument since the two offences are very different. Kidnapping being an offence against lawful guardianship, it is logical to fix the age of majority as the age limit. In fact, we see no reason why it should be 16 in the case of boys. We propose that all minors under 18, whether male or female, should be brought within the scope of the definition of kidnapping, but the punishment may be more severe where the kidnapped person is under 15.[1]

The explanation of the section refers to "any person lawfully *entrusted*" etc. These words have led to a needless controversy as to whether there has to be a formal entrustment.[2] For instance, orphanages and similar charitable institutions which take charge of neglected or abandoned children may find it difficult to establish that they have been lawfully entrusted by anyone with the care or custody of a particular child. *De facto* guardians are clearly intended to be covered by the Explanation.[3] We propose to use the words "any person who has lawful custody of" etc. in the Explanation.

Kidnapping may accordingly be redefined as follows :—

"361. *Kidnapping.*—Whoever takes or entices any person who is under eighteen years of age or is of unsound mind, out of the keeping of the lawful guardian of such person, without the consent of such guardian, is said to kidnap that person.

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1. See para 16.93 below.
2. See discussion in *State* v. *Harbans Singh*, A. I. R. 1954 Bom. 339.
3. *Jangli Milan*, A. I. R. 1934 Pat., 170 ; *Saharali*, A. I. R. 1931 Cal. 446.

Explanation.—In this section, the words 'lawful guardian' include any person who has lawful custody of a minor or of a person of unsound mind."

Exception in section 361 considered and revised.

16.94. The exception under section 361 provides for two different cases which may arise in relation to the immediate care and custody of an illegitimate child. The first is where the alleged kidnapper in good faith believed himself to be the father of the child and takes it away from the custody of its present guardian. The second exception is where there is a *bona fide* dispute over the custody of the illegitimate child. It will be noticed that the exception has no application in relation to legitimate children.

In England, under section 56 of the Offences against the Person Act of 1861, the mother of the child (whether legitimate or illegitimate), a person who shall have claimed any right to possession of the child, and a person who shall have claimed to be the father of the child where it is illegitimate, are all exempted from prosecution for child-stealing. While we do not consider that the scope of the exception in section 361 should be widened to this extent, the distinction it makes between legitimate and illegitimate children is neither logical nor satisfactory. Disputes do arise between the parents of a child who have fallen out over the custody of the child: should it be regarded as a culpable act, and a serious offence at that, for either of them to take or entice the child out of the keeping of the other? There may, in some cases (but not necessarily in all) be good justification for the father of an illegitimate child to take it out of the custody of its mother, but, equally, there could be justification for the mother of a child born in wedlock to take it out of the keeping of the father even if he is its lawful guardian. It seems to us, therefore, that the exception should be extended to the taking of a child by either parent, and where it is illegitimate, by a person who in good faith believed himself to be its father. *Bona fide* claims by other persons to the lawful custody of a child, whether legitimate or illegitimate, should not, in our opinion, be sufficient to exculpate them from the offence of kidnapping.

We propose accordingly that the exception should be revised to read as follows :—

"*Exception.*—It is not kidnapping when a minor is taken or enticed out of the keeping of his lawful guardian by either of his parents, or, where the minor is an illegitimate child, by a person who in good faith believes himself to be the father of such child, unless such act is committed for an *illegal* or immoral purpose."

It will be noticed that in the above re-draft, we have mentioned "illegal purpose" instead of "unlawful purpose", which are the words used in the present exception. The question what is an

'unlawful purpose' has led to contraversy[1] in courts because of the vagueness of the expression. As the word 'illegal' is defined in section 43, it is desirable to replace it by the more precise expression 'illegal purpose'.

Section 362—Recommendation for amendment.

16.95. The language of section 362, which defines abduction, is defective in two respects. First, it is doubtful if it covers the act of bodily lifting and carrying away a person, when he is unconscious or asleep. Such cases do not literally fall within the words 'by force compels or by deceitful means induces'—which is the formula used in the present section. Secondly, while 'force' is mentioned, show of force is not mentioned, with the result, that some High Courts have construed the section as confined to cases where force is used.[2] It appears to us that it would be useful to amend the section so as to clarify the position on the first point and widen the section on the second point, as follows :—

"**362. Abduction**:—Whoever,—

(a) by force or show of force compels, or by any deceitful means induces, any person to go from any place; or

(b) takes any person away from any place without the consent of that person or some person legally authorised to consent on behalf of that person, is said to abduct that person."

Abduction incidental to hi-jacking.

16.96. It was suggested that, to cover cases of hi-jacking of aircraft or other vehicles, an amendment may be made so as to punish those who indirectly cause persons to be transported to a place which is not their intended destination. The need for such amendment was emphasised on the ground that the compulsion in such cases, at least so far as the passengers are concerned, is indirect. We are, however, of the view, that such cases could be regarded as falling within the section, notwithstanding the indirect nature of the compulsion, and no amendment is necessary.

Section 363.

16.97. As regards section 363, we are of the view that the maximum punishment for kidnapping a person not under 15 years of age should be less severe than at present. If such kidnapping is for one of the purposes, mentioned in the succeeding sections, then the increased punishment under the relevant section will apply. The section may be revised as follows :

"363. *Punishment for kidnapping.*—Whoever kidnaps any person who is under fifteen years of age shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and

1. See *Khalil-ur-Rehman*, A. I. R. 1933 Rangoon 98 ; *Mahindra Nath*, (1934) I. L. R. 62 Cal. 629 ; *Chowdayya*, A. I. R. 1938 Mad. 656.

2. E. g. see A. I. R. 1949 All. 710.

whoever kidnaps any person who is not under fifteen years of age shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Section 363A—amendments proposed.

16.98. Section 363A deals with kidnapping for begging. We have examined the recommendations of the Committee appointed to inquire into this offence, as well as the papers relating to the Bill prepared by the Home Ministry to amend the section.

(i) It has been suggested that the definition of 'begging' in sub-section (4) (a) of section 363A, should be expanded so as to cover persons wandering without visible means of subsistence, on the analogy of the definition of 'begging' in the Bombay Prevention of Begging Act, 1959. The object of anti-beggary legislation is not punitive, but to tackle the problem of begging by remedial and welfare measures, whereas the object of section 363A is to prevent the cruelty to minors involved in kidnapping children and making beggars of them. The act punishable is kidnapping : subsequent use for begging is only the motive of the act. Where there is evidence of begging in any form, there should be no difficulty, even in the absence of a definition. We, therefore, recommend omission of the definition.

(ii) As in section 361, we do not think it necessary to have one age for boys and another for girls while defining 'minor'. It may be 18 years for both.

(iii) In regard to punishment, the Committee considered,[1] and we agree, that the maximum provided in the section is sufficient. We also agree with the Committee[2] that a minimum punishment of 3 years' imprisonment would be justifiable in order that the provision might be effective as a deterrent. We do not think that there is any need to give the court a power to award a lesser punishment, as the offence in question is bound to be grave in every situation. Imprisonment should be rigorous.

Accordingly, section 363A may be amended as follows :—

(i) in sub-section (1), for the words 'imprisonment of either description', the words 'rigorous imprisonment' shall be substituted; and after the words 'ten years', the words 'but which shall not be less than three years', shall be inserted; and

(ii) for sub-section (4) the following shall be substituted, namely :—

"(4) In this section, 'minor' means a person under eighteen years of age."

1. Report of the Committee on Kidnapping of Children for Begging, (1969), para 5.2.5.
2. *Ibid.*

Section 364—amendments proposed.

16.99. Section 364 punishes the offence of kidnapping or abduction of a person in order to murder him, the maximum punishment being imprisonment for life or for ten years. In view of our general recommendation as to imprisonment for life, we propose that life imprisonment should be omitted and term imprisonment increased to 14 years.

The illustrations to the section do not elucidate any particular ingredient of the offence and should be omitted.

Section 364A—Kidnapping or abduction for ransom.

16.100. We consider it desirable to have a specific section to punish severely kidnapping or abduction for ransom, as such cases are increasing. At present, such kidnappig or abduction is punishable under section 365 since the kidnapped or abducted person will be secretly and wrongfully confined.

We also considered the question whether a provision[1] for reduced punishment in case of release of the person kidnapped without harm should be inserted, but we have come to the conclusion that there is no need for it. We propose the following section :—

> "364A. *Kidnapping or abduction for ransom.*—Whoever kidnaps or abducts any person with intent to hold that person for ransom shall be punished with rigorous imprisonment for a term which may extend to 14 years, and shall also be liable to fine."

Section 365 to be amended.

16.101. We have proposed above the omission of the separate offence known as kidnapping out of India, but kidnapping or abducting any person, whether a minor or an adult, with the intention of taking him out of India, should be severely punishable. This offence may appropriately be included in section 365 by revising it as follows :—

> "365. *Kidnapping or abducting with intent to convey out of India or secretly confine person.*—Whoever kidnaps or abducts any person with intent to cause that person *to be conveyed out of India* or to be secretly and wrongfully confined shall be punished with *rigorous* imprisonment for a term which may extend to seven years, and shall also be liable to fine."

In this connection, we considered the question whether inter-State abductions should be made an offence, but came to the conclusion that this is not necessary.

Section 366 and the expression 'against her will'.

16.102. Section 366 is in two parts. The first part punishes a person who kidnaps or abducts any woman in order that she may be compelled "to marry any person against her will". There is a sharp divergence of judicial opinion as to the meaning of these words in cases where the person kidnapped is a minor. Are these words to be taken as referring to the will of the guardian, or are they limited to the will of the person kidnapped, even though she is a minor?

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1. The New South Wales Criminal Code contains such a provision vide section 90A.

In a Calcutta case,[1] these words were taken as referring to the will of the girl, and not to the will of her guardian, though the girl was a minor. The Oudh Chief Court[2] also seems to have taken the same view.

In a Rangoon case,[3] the High Court considered the distinction between "against the will" and "without the consent" of a person:—

> "Further, in the Penal Code a distinction is drawn between an act which is done 'against the will' and an act done 'without the consent' of a person[4]. Every act done 'against the will' of a person, no doubt, is one 'without his consent', but an act done 'without the consent' of a person is not necessarily 'against his will', which expression, I take it, imports that the act is done inspite of the opposition of the person to the doing of it.
>
> Now, having regard to the distinction that is drawn in the Penal Code between the expression 'against the will' and 'without the consent' of a person, and the fact that in section 366, it is specifically provided that the woman may be compelled, or knowing it to be likely that she will be compelled, to marry 'against her will', I am of the opinion that the provisions of section 90 are not to be applied to section 366."

But in a Madras case,[5] Panchapakesa Ayyar, J., was provisionally of the view that inasmuch as the principle of section 366 was to "uphold the lawful authority of the parents or guardians over their minor wards and to throw a ring of protection over the girls themselves", the consent or will of the girl was immaterial, and the will of the guardian was decisive for this purpose. But he did not give his final opinion on the subject, as the case was remanded.

In a Kerala case,[6] a girl under 18 years of age was kidnapped by the accused, and he later married her. He was charged under section 363, and also under section 366, the allegation being that his object was to marry her. The accused, besides raising the defence that the girl was major, also took the defence that the girl was a consenting party throughout. The defence was negatived, and his conviction was affirmed by the High Court, which observed that "for purpose of section 366 also, the minor's consent to the marriage or illicit intercourse is not of any significance."

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1. *Fulchand* v. *Emp.*, A. I. R. 1932 Cal. 442.
2. *Bishnath Prasad* v. *Emp.*, A. I. R. 1948 Oudh 1, 4, and 9.
3. *Khalilur Rahaman* v. *Emp.*, A. I. R. 1933 Rang. 98, 101.
4. *Reg.* v. *Fletcher* (1859) 8 Cox C. C. 181 ; 28 L. J. M. C. 85-5 Jr. (n s) 179-7 W. R. 204.
5. *District Magistrate* v. *Subhanna*, A. I. R. 1951 Mad. 900.
9. *Kunjukunju* v. *State*, A. I. R. 1959 Ker. 197.

With all respect, this observation appears to us to ignore the specific words of section 366, which require that the kidnapping of the minor from lawful guardianship must have been with intent to *compel* her to marry *against her will.* If a minor girl (above 12 years)[1] is taken away with her consent and married with her consent, the offence under section 363 may be made out, but section 366 cannot apply. Further, we are of the view that an intention to marry the minor girl without the consent or 'against the will' of her guardian is irrelevant for establishing the offence under section 366. We do not however think it necessary to alter the wording of the section despite the different views expressed by the High Court as to its meaning and effect.[2]

16.103. The second half of section 366 and section 366A (both of which were inserted by an amending Act in 1923) are closely connected with each other, and could appropriately be put in one section.

16.104. In the light of the above discussion, sections 366 and 366A may be revised as follows :—

"366. *Kidnapping or abducting woman to compel her to marry etc.*—Whoever kidnaps or abducts any woman—

(a) with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or

(b) with intent that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse,

shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

366A. *Procuration of woman or minor girl.*—(1) Whoever, by means of criminal intimidation or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with rigorous imprisonment which may extend to ten years, and shall also be liable to fine.

(2) Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person shall be punished with rigorous imprisonment which may extend to ten years, and shall also be liable to fine."

1. Under section 90, consent of a minor under 12 years is not sufficient.

2. One of us, Shri R. L. Narasimham, is of a different view. See his separate note.

Sections 366B and 367.

16.105. In sections 366B and 367, the only change required is to provide for rigorous imprisonment.

Section 368—Recommendation regarding punishment.

16.106. Section 368, which deals with wrongfully concealing a person knowing to be kidnapped or abducted, leaves the punishment to be regulated according to the punishment for the principal offence of kidnapping or abduction. We think that this refinement is unnecessary and a specific punishment may be provided. The section may be revised as follows :—

> "368. *Wrongfully concealing or keeping in confinement kidnapped or abducted person.*—Whoever, knowing that any person has been kidnapped or abducted, wrongfully conceals or confines, such person shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

Section 369- Recommendation for minimum punishment.

16.107. The offence under section 369, kidnapping or abducting a child with intent to steal from its person is, in our view serious enough to justify a minimum punishment of two years' rigorous imprisonment. Further, as the offence is grave, the minimum punishment need not be subject to relaxation by the Court. We, therefore, recommend that section 369 be revised as follows :—

> "369. *Kidnapping or abducting child under ten years with intent to steal from its person.*—Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with rigorous imprisonment for a term which may extend to seven years, but which shall not be less than two years, and shall also be liable to fine."

Section 370 to be amended and section 371 to be omitted.

16.108. Sections 370 and 371 deal with slavery. Though, slavery and trafficking in slaves no longer exists in India, section 370 may be retained as a deterrent. Imprisonment for the offence should be rigorous. Section 371, which punishes *habitual* dealing in slaves more sevesely is, however, unnecessary and may be omitted.

Section 372- Amendment recommended regarding punishment.

16.109. Section 372 punishes selling, or hiring a minor for prostitution, illicit intercourse or any 'unlawful and immoral purpose'.

It was suggested that, for the words 'unlawful and immoral purpose', the words 'illegal or immoral purpose' should be substituted, but we think that the purpose should be both immoral and unlawful. Although the expression 'unlawful' may be vague in other contexts, it is not so in this section, because the further restriction imposed by 'immoral' narrows down its scope.

Imprisonment under this section should be rigorous, having regard to the gravity of the offence.

Section 373—difference of opinion as to taking possession of minor.

16.110. There is a conflict of decisions on the question whether section 373 is confined to obtaining possession of a minor from a third person. The Bombay[1] and the Patna[2] High Courts have held that it is not necessary that the buying, hiring, or otherwise obtaining possession, of the minor should be from a third person. Any one *taking* a girl under eighteen years for the purpose indicated in the section is liable even though there is no one who has given him possession of the girl, and he himself has taken possession of her. The Madras[3] and the Calcutta[4] High Courts have taken a narrower view. The Calcutta case expressly dissents from the Bombay view.

Recommendation.

16.111. We are of the opinion that a clarification on the point would be useful. Further, we regard the wider view as preferable. This is a beneficial provision, and a wider scope is desirable for effective protection against mercenary exploitation of helpless minor girls. We, therefore commend the addition of an Explanation to section 373 as follows :—

> "*Explanation III.*—For the purpose of this section, it is not necessary that possession of the minor should have been obtained from a third person."

Section 374.

16.112. No changes are needed in section 374.

Sexual offences

Section 375—Applicability of Section 90 to 'consent' of woman.

16.113. The definition of rape in section 375, which refers to the woman's consent in four of its five clauses, raises the question as to how far, if at all, the general exception in section 90 is applicable in relation to the consent "intended" by the second clause of the definition. Concretely, if the consent is given by a woman, who from unsoundness of mind or intoxication, is unable to understand the nature and consequence of the act to which she has in fact submitted, has the man committed rape? If the second paragraph of section 90 is applicable, such consent must be ignored and the man must be regarded as having had sexual intercourse with the woman without her consent. While there are quite a few English cases leading to this conclusion under the common law of England, the question does not appear to have arisen in any Indian case.[5]

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1. *Shamoundarbai*, A. I. R. 1921 Bom. 323 ; *Bhagchand*, A. I. R. 1934 Bom. 200; *Gordhan Kalidas*, A. I. R. 1942 Bom. 23.
2. *Shamsunder Prusti*, A. I. R. 1930 Pat. 219.
3. *Dowlath Bee* v. *Shaik Ali*, (1870) 5 M. H. C. R. 473, 475, 1 Weir 377 (See judgments of Holloway and Innes JJ.).
4. *Jateendra Mohan Das*, I. L. R. (1937) 2 Cal. 187 ; A. I. R. 1937 Cal. 250 (Cunliffe and Hunderson JJ.).
5. V. B. Raju cites *Bhonri*, 1953 R. L. W. 254, for the view that "sexual intercourse with a woman under the influence of drink cannot be said to be with consent. (Raju, Commentaries on the Indian Penal Code, 3rd Edn., Vol. II, page 1321). A full report of the decision was not available.

The special exceptions in the second and third clauses of section 375 obviously do not cover the same ground as the general exception formulated in the first paragraph of section 90. Under section 375 read by itself, it is only when the woman's consent to the act has been obtained by putting *her* in fear of death or physical hurt, the consent does not count; whereas, under section 90, if she has given her consent under fear of 'injury'—a wider term than physical hurt—to herself or any one else *and* the man knows that the consent was given in consequence of such fear, the consent does not count. In a Nagpur case,[1] the High Court held that, where the woman had consented or submitted to sexual intercourse with the accused who pretended to have a warrant to arrest and take her to Bombay, and, by that deceit, abducted her to a circuit house for the purpose, the consent was not vitiated by its being given in fear of some 'injury' to herself other than bodily hurt. The applicability of section 90 to the charge of rape in those circumstances was neither raised nor considered in the judgment.

Similarly, under the fourth clause of section 375, only one misconception of fact, *viz.*, the induced belief that the man is her husband, vitiates the consent of the woman; whereas, under section 90, any misconception of fact vitiates, provided the man knows or has reason to believe that the consent was given in consequence of such misconception. Here again, we have no Indian decisions on the applicability or otherwise of the general exceptions to a charge of rape when the particular exception in the fourth clause of section 375 is not applicable.

The third paragaph of section 90 raises no such problem. The minimum age of 'consent' for the offence of rape being specified as 16 in the fifth clause, the 12 year age limit in the general exception does not apply.

It seems possible to take the view that the third and fourth clauses of section 375 relating to fear of hurt and misconception are special provisions and hence exclude the application of the corresponding general provision in the first para of section 90; but the general exception in the second para is *not* excluded by any thing specified in section 375. We do not, however, consider it necessary to clarify this point by an amendment of that section since no difficulty has been felt in practice.

Consent obtained by threatening death or hurt to another person present on the spot.

16.114. Under the third clause of section 375, the consent of the woman is vitiated only when she has been put in fear of death or body hurt to herself. The clause does not extend to a case where death or grievous hurt is threatened to some one else present on the spot, *e.g.*, the woman's child, parent or husband, and she is thereby compelled to submit to sexual intercourse. Though such cases would be very rare there is no reason in principle why such consent should not be held to be vitiated.

1. *Motiram* v. *State*, A. I. R. 1955 Nag. 121.

We notice that the definition of rape proposed in the American Draft Penal Code includes the case where the man "compels (the woman) to submit by force or threat of imminent death, serious bodily injury, extreme pain or kidnapping, *to be inflicted on any one.*"[1] We propose to amplify the third clause to cover the cases envisaged above.

Exception—"rape" by husband.

16.115. The exception in section 375 provides that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. The punishment for statutory rape by the husband is the same when the wife is under twelve years of age, but when she is between 12 and 15 years of age, the punishment is mild, being imprisonment upto two years, or fine, or both. Naturally, the prosecutions for this offence are very rare. We think it would be desirable to take this offence altogether out of the ambit of section 375 and not to call[2] it rape even in a technical sense. The punishment for the offence also may be provided in a separate section.

Under the exception, a husband cannot be guilty of raping his wife, if she is above 15 years of age. This exception fails to take of note one special situation, namely, when the husband and wife are living apart under a decree of judicial separation or by mutual agreement. In such a case, the marriage technically subsists, and if the husband has sexual intercourse with her against her will or without her consent, he cannot be charged with the offence of rape. This does not appear to be right. We consider that, in such circumstances, sexual intercourse by a man with his wife without her consent should be punishable as rape.

Sexual intercourse with consenting minor girl to be a separate offence.

16.116. Under the fifth clause of section 375, it is rape for a man to have sexual intercourse with a girl, not being his wife, who is over twelve years but under sixteen years of age, even when she has consented. We are of the opinion that this offence need not be equated to, and punishable as severely as, rape. It sometimes happens in such cases that the man has been led to believe, and in good faith believes, that the girl is over sixteen. A *bona fide* mistake as to age should be a defence to a charge of rape of this type. We propose, therefore, to deal with this offence in a separate section.

Section 375—revision recommended.

16.117. In the light of the above discussion, section 375 may be revised as follows :—

"375. *Rape.*—A man is said to commit rape who has sexual intercourse with a woman, other than his wife,—

(a) against her will; or

(b) without her consent; or

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1. Section 213.1, clause (1)(a), Model Penal Code.

2. The marginal heading of section 198A, Criminal Procedure Code, refers to the offence as 'marital misbehaviour'.

(c) with her consent when it has been obtained by putting her in fear of death or of hurt, either to herself or to anyone else present at the place; or

(d) with her consent, knowing that it is given in the belief that he is her husband.

Explanation I.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Explanation II.—A woman living separately from her husband under a decree of judicial separation or by mutual agreement shall be deemed not to be his wife for the purpose of this section."

Section 376 to be amended.

16.118. In view of the proposed changes in the definition of rape, the latter part of section 376 has to be omitted. Further, in place of the punishment now provided in the section, *viz.*, imprisonment for life or imprisonment of either description for ten years, we propose to substitute rigorous imprisonment for fourteen years. We considered the question whether a minimum sentence of say, three years imprisonment, should be provided for this offence, but decided against it. Adequate punishments are imposed by Sessions Courts by which this offence is ordinarily triable. The section will accordingly read as follows:

"376. *Punishment for rape.*—Whoever commits rape shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine."

Prohibition of intercourse by husband with child wife.

16.119. The separate section penalising sexual intercourse by a man with his child wife may run as follows :—

"376A. *Sexual intercourse with child wife.*—Whoever has sexual intercourse with his wife, the wife being under fifteen years of age, shall be punished—

(a) if she is under twelve years of age with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine; and

(b) in any other case, with imprisonment of either description for a term which may extend to two years or with fine, or with both.

Illicit intercourse with a girl under sixteen.

16.120. The provision against illicit intercourse by a man with a girl under sixteen years of age, with her consent, may be as follows :—

"376B. *Illicit intercourse with a girl between twelve and sixteen.*—Whoever has illicit intercourse with a girl under sixteen years, but not under twelve years of age, with her

consent. shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

It shall be a defence to a charge under this section for the accused to prove that he, in good faith, believed the girl to be above sixteen years of age."

Compelling or seducing a boy to illicit intercourse.

16.121. It was suggested that a mature woman, who compels or seduces a boy under sixteen years of age to sexual intercourse, should be just as severely punishable as a man in the converse case. Apart from the physiological fact that forcing a boy, in the strict sense, to perform the act is impossible, complaints of either forcing or seducing minor boys to such illicit intercourse are unheard of. Such lascivious acts on the part of the woman are socially not so evil as to merit a penal provision.

Knowingly infecting another with venereal disease.

16.122. We considered the need for a new section punishing a person who knowingly exposes another to infection of venereal disease by sexual intercourse. We are of the view that such an act need not be made an offence. It may be that if the act causes the disease, then it might amount to causing hurt which, as defined in section 319, perhaps includes disease; this is, however, doubtful, the notion of hurt and the notion of disease being basically different from each other. If at all such an act is to be made an offence, then it has to be by means of a specific provision, but it is fairly obvious that any such provision is unlikely to be enforced in practice. It is, therefore, not recommended.

Compelling a woman to illicit intercourse in certain special situations.

16.123. There are certain situtations in which, although force or fraud cannot be established, the compulsion of the situaion is such that the woman's will is dominated by the will of the man, and taking an undue advantage of the situation, the man takes liberties with the woman. The woman's submission to sexual intercourse in such a situation is really not a willing consent, and we think that provisions punishing this reprehensible conduct on the part of the man should be included in the Penal Code. We do not, however, wish to make the provisions very wide because they may furnish a weapon for blackmail in the hands of unscrupulous women or their relations. We would confine it to those situations where the need for throwing a cloak around the woman for protecting her chastity outweighs the opportunity for blackmail. On this principle, we recommend the insertion of three new sections as follows :—

"376C. *Illicit intercourse of public servant with woman in his custody*.—Whoever, being a public servant, compels or seduces to illicit intercourse any woman who is in his custody as such public servant shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

376D. *Illicit intercourse of superintendent etc. with inmate of women's or children's institution.*—Whoever, being the superintendent or manager of a woman's or children's institution or holding any other office in such institution by virtue of which he can exercise any authority or control over its inmates, compels or seduces to illicit sexual intercourse any female inmate of the institution shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—In this section, "women's or children's institution" means an institution, whether called an orphanage, home for neglected women or children, widow's home or by any other name, which is established and maintained for the reception and care of women or children,[1] but does not include—

(a) any hostel or boarding house attached to, or controlled or recognised by, an educational institution.[2] or

(b) any reformatory, certified or other school, or any home or workhouse, governed by any enactment for the time being in force.[3]

376E. *Illicit intercourse of manager etc. of a hospital with mentally disordered patient.*—Whoever, being concerned with the management of a hospital or being on the staff of a hospital, has illicit sexual intercourse with a woman who is receiving treatment for a mental disorder in that hospital, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—It shall be a defence to a charge under this section for the accused to prove that he did not know, and had no reason to believe, that the woman was a mentally disordered patient."

Section 377—questions put.

16.124. Section 377, which is the last section in this Chapter, deals with unnatural offences, including buggery and bestiality, and provides for these a punishment as severe as that provided for rape in section 376. In order to elicit informed public opinion on the subject, we had included in our Questionnaire the following two questions :—

(a) Should unnatural offences be punishable at all, or with heavy sentences as provided in section 377?

1. *Cf.* section 2, Women's and Children's Institutions (Licensing) Act, 1956.
2. *Cf.* section 10, Women's and Children's Institutions (Licensing) Act, 1956.
3. *Cf.* section 21, Suppression of Immoral Traffic in Women and Girls Act, 1956.

(b) Should exception be made for cases where the offence consists of acts done in private between consenting adults?

The replies received by us are conflicting, but a larger number of those who have cared to express an opinion are in favour of retaining the section more or less as it stands. Some were of the view that homo-sexual acts done in private between consenting adults need not be treated as offences, but other thought that such acts are "abominable and loathsome which tend to make men and women depraved" and should be punishable in all circumstances. There was, however, a general feeling that the punishment provided in section 377 is unduly harsh and quite unrealistic. No court is likely to sentence a man to imprisonment for life for committing such acts.

Arguments against punishing homo-sexual acts.

16.125. The question has in recent times received much attention in the West. The Wolfenden Committee in England set out the main arguments against punishing homo-sexual acts, *viz.*, that the act harms no body, that it falls within a sphere of private immorality which is not the law's business and that it could be tackled by other measures. Referring to the punishment of imprisonment usually awarded for the offence, one American psychiatrist has pertinently observed that "segregating a male homo-sexual for months or years in a prison, where he will see only other men and where he will often be isolated with a group of other homo-sexuals, can hardly result in anything but reinforcement of the homo-sexual tendencies."[1]

Arguments for retaining present law.

16.126. There are, however, a few sound reasons for retaining the existing law in India. First, it cannot be disputed that homo-sexual acts and tendencies on the part of one spouse may affect the married life and happiness of the other spouse, and from this point of view, making the acts punishable by law has a social justification. Secondly, even assuming that acts done in private with consent do not in themselves constitute a serious evil, there is a risk involved in repealing legislation which has been in force for a long time. The position might be different if we were merely refraining from legislating about a type of private conduct whose suitability for punishment is in dispute, but we are not legislating on a blank slate. Ultimately, the answer to the question whether homo-sexual acts ought to be punished depends on the view one takes of the relationship of criminal law to morals. The debate on the subject, sparked off by the Report of the Wolfenden Committee, has not yet come to an end. There will always be two views on the question how far it is the business of criminal law to enforce notions of private morality. If one shares the reasoning of the Committee, namely, that there *is* a sphere of private morality in which criminal law has no business, then the answer is clear, but it is well known that there are distinguished thinkers who take a different view, emphasising the need for preserving the society's cherished beliefs.

1. Prof. Karl M. Bowman, "Review of Sex Legislation and Control of Sex Offenders in the U. S. A." cited in Donnelly, Criminal Law (1962), page 163.

It appears to us that, in this highly controversial field, the only safe guide is what would be acceptable to the community. We are inclined to think that Indian society, by and large, disapproves of homo-sexuality and this disapproval is strong enough to justify it being treated as a criminal offence even where adults indulge in it in private.

Amendments recommended.

16.127. We think, however, that cases of bestiality should be regarded as pathological manifestations ignored by the criminal law. Buggery may continue to be an offence, punishable much less severely than at present, but where it is committed by an adult on a minor boy or girl, the punishment should be higher.

We propose that section 377 may be revised as follows :—

"377. *Buggery*.—Whoever voluntarily has carnal intercourse against the order of nature with any man or woman shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and where such offence is committed by a person over eighteen years of age with a person under that age, the imprisonment may extend to seven years."

"*Explanation* :—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

CHAPTER 17

OFFENCES AGAINST PROPERTY

Introductory.

17.1. In any statistical survey of crime, offences against property would find a prominent place. This is readily understandable, as one of the basic motives behind unlawful conduct is greed which, in the main, directs itself towards property, the result being that the law-breaker takes or attempts to take things that do not belong to him. The range of such activity is wide, and although much of it could, in a broad sense, be described as theft, the Penal Code—wisely, we think,—describes it under ten sub-heads, namely, theft, extortion, robbery and dacoity, criminal misappropriation of property, criminal breach of trust, receiving stolen property, cheating, mischief, fraudulent dispositions of property, and criminal trespass.

The main element common to these offences is 'dishonesty', which the Code describes as 'the intention of causing wrongful gain to one person or wrongful loss to another', but the manner in which dishonesty is exercised, is, in different cases, different. Thus, a pick-pocket and a cheat, both dishonestly take another person's property; but while the former does it surreptitiously, the latter does it openly. Hence the need for these subdivisions, for a clearer understanding of the different concepts involved.

Theft

Section 378—definition of theft.

17.2. Theft, by its definition, in section 378, is the dishonest removal of movable property out of the possession of any person without his consent. It is thus an offence against possession and not against ownership, so that even the owner of movable property can be guilty of theft in respect of that property. Illustrations (j) and (k) to section 378 make that clear.

Explanations.

17.3. There are five Explanations added to section 378, and although we think the meaning of the section would not be in doubt without Explanations 2, 3, and 4, we are not suggesting their deletion, as the reason behind such deletion may be misunderstood.

Bona fide claim of right.

17.4. We considered a suggestion that another Explanation may be added to section 378, making it clear that a *bona fide* claim of right to property is a good defence to a charge of theft. The idea behind the suggestion was that this principle, laid down by judicial decisions[1], should be enacted into the section. Our

1. See *S. Sanyasi Apparal*, A.I.R. 1962 S.C. 586; (1962) Suppl. 1 S.C.R. 8; and *Chandi Kumar* v. *Abandidhar*, A.I.R. 1965 S.C. 585.

attention was also invited to an express provision[1] in the recently passed Theft Act of England to that effect. We are of the view, however, that the judicial decisions have settled the question so firmly that no legislative action is necessary, and we propose none.

Sections 380 to 382.

17.5. Ordinarily, theft is punishable with a maximum of three years' imprisonment under section 379. Then, we have three aggravated forms of theft defined in sections 380, 381 and 382. Theft in a dwelling house, etc. and theft by a clerk or servant are punishable with seven years' imprisonment under sections 380 and 381 respectively; and theft after preparation made for causing death or hurt is punishable with ten years' imprisonment under section 382.

We think a maximum of seven years' imprisonment should be enough for any offence of theft. We have already before us several suggestions for punishing certain kinds of theft more severely than section 379 does, and we have accepted some of them. We propose to add them in section 380, so that the punishment will be seven years' imprisonment, apart from any fine that may be imposed.

Theft in Vehicles.

17.6. The first suggestion is that theft in a vehicle used for the transport of goods or passengers should be treated in the same way as theft in a building, and we agree that there is proper justification for this.

Theft by an employee other than "clerk" or "servant".

17.7. The second suggestion is that section 381 arbitrarily picks out "clerks" and "servants" from a host of employees for harsher penalty, if any of them commits theft of property in the possession of his employer. We agree that it would be better if all employees were treated in the same way, and we propose that the wording of section 381 should be suitably changed. Further, we have an apprehension that the expressions "clerk" and "servant" are likely to be narrowly construed as referring to persons close to a private employer. Since that is not the intention, we propose to substitute wider words in their place.

Theft of public property and of temple property.

17.8. Next, it is suggested that theft of public property is more reprehensible than ordinary theft, and should be so treated; and again we agree. The same is the case of property in a place of worship or intended for the purpose of worship. These can be added in section 380.

Theft from victims of calamities.

17.9. Another suggestion equally acceptable to us is that theft from the possession of a person who is at that time the victim of a calamity like fire, flood, earthquake or accident, should be treated as aggravated theft. This could be dealt with in a new section.

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1. Section 2(1)(a), Theft Act, 1968 (English), provides that "a person's appropriation of property belonging to another is not to be regarded as dishonest, if he appropriates the property in the belief that he has, in law the right to deprive the other of it on behalf of himself or of a third person".

17.10. We suggest, therefore, that in place of sections 380 and 381, the following be substituted:— Revised sections in place of sections 380 and 381.

"380. *Theft in a building, vehicle, temple etc.*—Whoever commits theft—

(*a*) in any building or tent used as a human dwelling or for the custody of property, or,

(*b*) in, or in respect of, any vehicle, vessel or aircraft used for the transport of goods or passengers, or

(*c*) in a temple, mosque, church, gurdwara, or other place of worship open to the public, in respect of any property which belongs to, or is part of, such place of worship, or

(*d*) in respect of any property of the Government or of a local authority,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

380A. *Theft of property affected by accident, fire, flood etc.*—Whoever, taking advantage of the occurrence of an accident in a public place or of a fire, flood, riot, earthquake or similar calamity, commits theft in respect of any property affected by such accident or calamity, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

381. *Theft by employee.*—Whoever, being employed in any capacity by another person, commits theft in respect of any property in the possession of that person, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

17.11. Section 382 should be amended by substituting "seven years" for "ten years", as we have already indicated that imprisonment for seven years is enough[1] for any aggravation of theft. Section 382—punishment to be reduced to seven years.

Extortion

17.12. Extortion is the dishonest obtaining of property by putting any person in fear of injury, *i.e.*, any harm illegally caused in body, mind, reputation or property, and the maximum punishment is three years' imprisonment. Even if property is not obtained, the mere threat of injury for committing extortion, is punishable with two years' imprisonment. Sections 383 to 385.

1. See paragraph 17.5 above.

Blackmail—new section recommended.

17.13. Some doubt has arisen whether the definition of extortion covers every case of blackmail, as, for instance, where money is obtained by threatening to expose something true but unsavoury about a person. Such conduct is, of course, reprehensible; but we are not clear if such a threat would amount to threat of injury in the sense of *illegally* causing harm. We feel, however, that the law of extortion should, as far as practicable, make such infamous conduct punishable.

The question whether a person actually offended by some wrongful act of X can demand money from X with the threat that otherwise he will expose the conduct of X, was considered by us. Most of us were of the view that, it would be covered by the draft proposed below, though one of us[1] had a doubt on the point.

The question was also considered whether in the proposed section, threat of injury, other than harm to reputation, should be included. But the essence of blackmail is harm to reputation. If, for example, the act threatened is prosecution, it is a species of harm to reputation. Hence other harm need not be covered.

We recommend the insertion of the following new section:—

"385A. *Blackmail.*—Whoever dishonestly threatens any person with the making or publication of any imputation which is likely to harm his reputation or the reputation of any other person, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—Where the threat is to accuse a person of the commission of an offence, it is immaterial whether the accusation is true or false."

Blackmail in English law.

17.14. We note that section 21 of the (English)[2] Theft Act, which relates to blackmail, is wider than the section proposed above, and practically covers the entire ground covered by the offence of extortion as defined in the Code. But this is obviously unnecessary in India, as we have a specific offence of extortion, and only extortion by libel is to be covered.

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1. Shri R.L. Narasimham.

2. Section 21 (1), Theft Act, 1968 (English) defines the offence thus—"A person is guilty of blackmail if, with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menaces is unwarranted unless the person making it does so in the belief—

(a) that he has reasonable grounds for making the demand, and

(b) that the use of the menaces is a proper means of reinforcing the demand."

A question which looms large in English cases is how far the belief of the accused that the demand was justified renders the act non-punishable. Initially, a real and honest belief that the accused had good and probable cause for the demand was regarded as a sufficient excuse by the courts.[1] This view was later overruled.[2] With the passage of time, however, it came to be realised, that there are two aspects to the question, namely, (i) the honest belief in the legal demand and also, (ii) the honest belief in the legitimate character of the *means employed,* that is, the threats or menaces. These considerations seem to have weighed with Parliament in England while enacting the new Act. The accused must believe that he is "warranted" (or in the old language, has a reasonable and probable cause), (i) in demanding the property etc. (ii) in demanding the particular thing demanded, (iii) in demanding it with menaces, and (iv) in demanding with the particular kind of menace which he has used.

It may also be added that the English section brings in the test of propriety of the threats, while we propose to use the word "dishonestly", which is defined in the Code and is well understood. In England, the matter was left elastic, so that the jury could decide the issue as one of fact.

17.15. Sections 386 and 387 need no change. — Sections 386 and 387.

17.16. Both in section 388 and in section 389 the special reference to section 377 should be deleted, as we are reducing[3] the punishment for an "unnatural offence". — Sections 388 and 389 Amendment recommended.

Robbery and Dacoity

17.17. Robbery and dacoity are dealt with together, and rightly, as the only difference between them lies in the number of offenders. A suggestion was made that robbery when committed by three or more persons, instead of five or more persons should be called 'dacoity', but this suggestion did not find favour with us. The definition of "robbery" under section 390 is satisfactory, and the punishment provided adequate. — Sections 390 to 393.

17.18. We suggest only a small change in section 394, which punishes robbery accompanied by hurt with imprisonment for life or imprisonment extending to 10 years. We have elsewhere suggested an alteration in this kind of alternatives, and recommend that the offence should be punishable with imprisonment for a term upto 14 years. — Section 394 Amendment recommended.

1. *R.* v. *Miard,* (1844) (Northampton Assize) 1 Cox C.C. 22 (Tindal C.J.).
2. *R.* v. *Diamond,* (1920) 2 K.B. 260; (1920) All E.R. Rep. 259 (C.C.A.) considered in *Hardie* v. *Chillon,* (1928) All E.R. Rep. 36 and in *R.* v. *Bernhard,* (1938) 2 All E.R. 140.
3. See paragraph 6.127 above.

Section 395.

17.19. The maximum punishment under section 395 for dacoity is imprisonment for life, which needs no change.

Section 396 Amendment recommended.

17.20. If one of the dacoits commits murder, each one of them is liable to death sentence under section 396. There can be no doubt that the need for imposing this vicarious liability exists and we do not suggest any relaxation.[1] We would go further, and recommend that this kind of liability should be extended to robbers irrespective of their number. We propose that section 396 should be amplified to read—

> "396. *Robbery or dacoity with murder.*—If any one of two or more persons who are conjointly committing robbery, commits murder in so committing robbery, or if any one of five or more persons who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death or imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Section 397 Amendment proposed.

17.21. Section 397 provides a minimum punishment of seven years' imprisonment if, while committing robbery or dacoity, the offender 'uses any deadly weapon' or causes grievous hurt to any person.

There used to be a controversy previously as to whether a person, other than the offender who carried the deadly weapon, fell within this section. The question is now answered in the negative by almost all High Courts, and no clarification is needed on this point.

As to the expression 'uses' in section 397, it is now settled[2] that the actual use of a deadly weapon is not necessary, and it is enough if the offender carries, brandishes or exhibits such a weapon at the time of committing robbery or dacoity. We think that it is unnecessary to provide for a minimum punishment of seven years for merely carrying a deadly weapon. Even when the weapon is used against the victims, but it cannot be said that it amounted to an attempt to cause grievous hurt, there is little justification for bringing the case under section 397. We propose, therefore, that the words "uses any deadly weapon, or" should be omitted.

1. Retention of death penalty for this offence was favoured in the Law Commission's 35th Report on "Capital Punishment".
2. *P.P.* v. *Nagappau*, A.I.R. 1941 Mad. 718 (use may be against person not robbed); *Nanhe* v. *Emp.*, A.I.R. 1931 All. 363, 367 (carrying is enough, as it inspires fear); *Govind Dipaji*, v. *The State*, A.I.R. 1956 Bom. 353; *Nagar Singh* v. *Emp.*, A.I.R. 1933 Lah. 35; *In re Thevar Servai*, A.I.R. 1938 Mad. 477.

17.22. In view of the omission proposed above in section 397, it will be necessary to extend section 398 to cases of commission of robbery or dacoity, besides cases of attempt to which the section at present applies. The minimum punishment for the offence, however, need not be as heavy as seven years, and may be reduced to three years. Section 398—Amendment proposed.

17.23. It was suggested that section 399 which punishes preparation to commit dacoity should be amended to cover robberies also. We do not think this would be desirable. It will be noticed that under section 402 assembling for the purpose of committing a dacoity, which undoubtedly is a preparatory act, is punishable with imprisonment upto seven years only. At times, it is difficult to decide whether a case falls under section 399 or 402. In order to avoid this difficulty, and also in view of the fact that it is only a preparatory act which is being punished under section 399, the maximum under section 399 may be the same as the maximum under section 402, *viz.*, seven years. Section 399—Amendments proposed.

17.24. One of two formal amendments are required in sections 400 and 401. The words "at any time after the passing of this Act" and the reference to "*thugs*" should both be omitted. Sections 400 and 401.

17.25. We propose that section 402 should be extended to cover the cases where three or four persons assemble for the purpose of committing a robbery. Section 402 to cover robberies also.

17.26. In the light of the above discussion, sections 397 to 402 may be revised as follows:— Sections 397 to 402—revision proposed.

"397. *Robbery or dacoity, with attempt to cause death or grievous hurt.*—If at the time of committing robbery or dacoity, the offender causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

398. *Robbery or dacoity, when armed with deadly weapon.*—If, at the time of committing or attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than three years.

399. *Making preparation to commit dacoity.*—Whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

400. *Belonging to gang of dacoits.*—Whoever belongs to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

401. *Belonging to gang of thieves or robbers.*—Whoever belongs to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of dacoits, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

402. *Assembling for purpose of committing robbery or dacoity.*—Whoever—

(*a*) is one of three of four persons, assembled for the purpose of committing robbery, or

(*b*) is one of five or more persons assembled for the purpose of committing dacoity,

shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

Criminal Misappropriation

Section 403—Explanation 2 to be revised.

17.27. Section 403 punishes a person who "dishonestly misappropriates or converts to his own use any movable property". To this rather brief description of the offence, two Explanations are added. The first merely says that a temporary misappropriation is also misappropriation. The second Explanation is lengthy, and attempts to express three ideas. First, a person who finds property which is not then in anybody's possession, does not act dishonestly if he takes it in order to keep it for the owner with the idea of restoring it to him. Secondly, if he knows the owner, or can reasonably find out who the owner, is, and in spite of that, he converts the property to his own use without attempting to get into touch with the owner and informing him, then he acts dishonestly. Thirdly, it is not necessary that the finder should know the identity of the owner; and so long as he does not honestly believe that the owner cannot be found, his conduct is dishonest.

We think that these ideas could be expressed more briefly, and perhaps more clearly, than the existing Explanation, which seems to us unnecessarily lengthy and still somewhat incomplete. It may read:—

"*Explanation* 2.—It is not dishonest misappropriation for a person who finds property not in the possession of any other person, to take it for the purpose of protecting it for, or of restoring it to the owner, but it is such misappropriation if he appropriates it to his own use,—

(*a*) when he knows, or has the means of discovering the owner, or

(*b*) when he does not in good faith believe that the owner cannot be discovered, or

(*c*) before he has used reasonable means to discover and give notice to the owner, and allowed a reasonable time for the owner to claim the property."

Partners and illustration (c).

17.28. Illustration (c) to section 403 indicates when one of two joint owners could be regarded as committing misappropriation of a chattel belonging to both and in the possession of the other. It says, 'A' and 'B' being joint owners of a horse, 'A' takes the horse out of 'B"s possession, intending to use it. Here as 'A' has a right to use the horse, he does not dishonestly misappropriate it. But if 'A' sells the horse and appropriates the whole proceeds to his use, he is guilty of an offence under this section."

We should have thought that if 'A' and 'B' were partners and the horse partnership property, and if 'A' sold the horse and appropriated the proceeds to his own use, the legal situation would be the same and 'A' would be guilty of the offence. Under the Partnership Act[1], "subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business". The Supreme Court has however held[2]—

"It is obvious that an owner of property in whichever way he uses his property and with whatever intention will not be liable for misappropriation, and that would be so even if he is not the exclusive owner thereof. As already stated, a partner has undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes, he may be accountable to the other partners. But he does not thereby commit any misappropriation."

Additional illustration proposed.

17.29. If this general statement of law were to be applied to every case, the result would, in our opinion, be unfortunate, and dishonest partners, dishonestly dealing with partnership property, would be immune from punishment. We are confident that the Supreme Court did not intend such a consequence. To remove the possibility of any misunderstanding on the subject, we suggest that another illustration, expressly dealing with partners, should be added. While making the position clear, the illustration will exclude from penal liability cases where the partner has a right to use the property. For example, the partnership agreement may authorise the partner to appropriate the proceeds but with an obligation to make adjustment at the end of a specified period. Partnership agreement of this type, under which the other partners are only "sleeping" partners, are not uncommon.

1. Section 15, Indian Partnership, Act, 1932.
2. Velji Raghavji v. State, (1965) 2 S.C.R. 429, 434.

We accordingly propose that the following illustration be added after illustration (C):—

"(*d*) A and B are partners in a firm which carries on the business of jewellers. A takes a jewel which is the property of the firm, intending to show it to a prospective customer. Here, as A has a right to do so, A does not dishonestly misappropriate. But if A sells the jewel and appropriates the whole proceeds to his own use, without authority to do so under the Partnership agreement, he is guilty of an offence under this section."

Section 404—Amendment recommended.

17.30. In contrast with section 403 which specifically refers to "movable property", section 404 refers to dishonest misappropriation or conversion to own use of "property" in the possession of a person at the time of his death. The omission of the word "movable" is clearly deliberate, and the Supreme Court has said so.[1] We think this view of the matter will be brought out by inserting the word "any" after the words "to his own use", and before the word "property".

Criminal breach of trust

Sections 405 to 409.

17.31. The next five sections (sections 405 to 409) deal with criminal breach of trust. According to the definition in section 405, it means dishonest misappropriation or conversion to his own use of property which has been entrusted to the offender, or dishonest disposal of such property contrary to any agreement or any direction of law. The definition is, in our opinion, satisfactory, and the illustrations to that section, which are six in number, bring out the idea clearly.

Section 408—Amendment recommended.

17.32. Section 406 provides the punishment for criminal breach of trust in ordinary cases, and the three sections that follow deal with aggravated forms of that offence. Section 408 dealing with breach of trust by "clerk or servant" may be brought into line with section 381 as proposed to be revised,[2] so that breach of trust by any employee in respect of his employer's property will be covered.

Section 409 Amendments recommended.

17.33. If the offence is committed by a public servant or by a banker or agent, the maximum punishment is life imprisonment under section 409. We consider this excessive, and as proposed in regard to other similar sections in the Code, we recommend that the punishment may be "*rigorous* imprisonment for a term which may extend to 14 years", besides fine. The word "factor", which is obsolete, should be omitted.

1. *R.K. Dalmia* v. *Delhi Administration,* (1963) 1 S.C.R. 253; A.I.R. 1962 S.C. 1821.
2. See paragraph 17.10 above.

Receiving Stolen Property

Section 410.

17.34. Section 410 to 414 deal with stolen property this is defined in section 410 as property 'the possession of which has been transferred by theft, extortion, robbery' and also property 'which has been misappropriated or in respect of which criminal breach of trust has been committed', whether any of those offences took place in or out of India. In case, however, such property comes into the possession of a person legally entitled to its possession, it thereupon ceases to be stolen property.

Property obtained by cheating be included.

17.35. We do not understand why property obtained by cheating is not called stolen property. Cheating seems to us as close to theft as criminal misappropriation, and perhaps even closer, because although in cheating property is taken with the consent of the person cheated, that consent is vitiated by deception. We suggest, therefore, that the definition of 'stolen property' should be extended to cover property obtained by cheating. This may be done by substituting for the words "by theft, or by extortion, or by robbery' the words "by theft, extortion, robbery or cheating".

Explanation and illustration to be added.

17.36. Further, we feel that the definition does not expressly cover a situation which it should, namely, when a child below the minimum age of criminal responsibility[1], or an insane person[2], commits theft which, *in law*, is not theft, and passes the property to another person who receives it dishonestly. Such a person should be liable to punishment in the same way as any other person receiving stolen property, and we propose that this idea should be clearly expressed in the definition section by adding to it an explanation and illustration as follows:—

> "*Explanation.*—Property the possession whereof has been transferred by an act which would otherwise be theft, robbery or criminal misappropriation, but it not that offence by virtue of section 82 or section 84, shall be deemed to be stolen property.

Illustration

A, a child nine years of age, snatches away a necklace from another child, voluntarily causing hurt to that child. Z, knowing this fact, dishonestly receives the necklace from A. Though A's act is not robbery by virtue of section 82, the necklace is stolen property, and Z has committed the offence defined in section 411".

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1. Under section 82 as proposed, the age will be ten years. See paragraphs 4.23 and 4.24 above.
2. Section 84.

Section 411 Amendment recommended.

17.37. The punishment under section 411 for receiving stolen property is three years' imprisonment as the maximum. We think that the punishment should be higher if the stolen property is the property of Government or of a local authority. In such a case the imprisonment may be upto seven years. The following may be added to section 411:—

> "and if the stolen property is the property of the Government or of a local authority shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

Section 412 and 413 Amendment recommended.

17.38. Section 412 relates to dishonestly receiving property stolen in the commission of a dacoity, and section 413 punishes a habitual dealer in stolen property. The same punishment is provided for these two offences, namely, imprisonment or life or rigorous imprisonment for a term which may extend to ten years. As in other sections we suggest that this should be altered to "rigorous imprisonment for a term which may extend to fourteen years", life imprisonment being deleted.

Section 414 Amendment recommended.

17.39. As in the case of dishonestly receiving stolen property punishable under section 411, we propose that under section 414 also, where the stolen property is the property of the Government or of a local authority the imprisonment may go upto seven years. Accordingly, the following words may be added to the section at the end:—

> "and if the stolen property is the property of the Government or of a local authority, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

Cheating

Section 415.

17.40. The definition of 'cheating' in section 415 is really in two parts though printed as one. The first part says, "whoever by deceiving any person, fraudulently, or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person should retain any property" cheats. The second part describes as cheating the act of a person who "by deceiving any person, intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to *that person* in body, mind, reputation or property"'.

Damage or harm to one other than person deceived.

17.41. The first part of the definition presents no difficulty, and has caused none to the courts. The second part, however, has. First, the notion of harm is not clear-cut, and situations have arisen where no tangible harm to the person deceived is apparent, although undue and unfair advantage has been taken by the offender and the courts have had to stretch the meaning of harm to

cover those situations. Secondly, where real harm has occurred, not to the person deceived, but to somebody else, the question whether there has been cheating has not been easy to answer.

17.42. In an Allahabad case,[1] for instance, the accused pretended to be a well-known eye specialist, and induced the complainant to let him operate on the eye of his 12 years old son. It was held that, though bodily harm was done to the son, he was not the person deceived, but since the deceived father had also sufferred *harm in mind,* because of the anguish caused to him, the conviction for cheating was upheld. This desirable result was reached indirectly.

In a Lahore case,[2] 'A' represented to a Patwari that one Ilahi Baksh had sold some land to A, and in corroboration, he produced 'B', who represented himself to be Ilahi Baksh. The Patwari made an entry to that effect in the mutation register. The mutation was placed before the Naib Tehsildar, and the same false representations were repeated before him. The trial court convicted A and B of cheating. The High Court, on appeal, set aside the conviction, holding that the person deceived—the Naib Tehsildar—did not suffer any "harm"[3], and though Ilahi Baksh was likely to suffer damage or harm no deception had been practised on him. In the course of their judgment the learned Judges observed:—

> "It appears to me that the definition of 'cheating' in section 415, Penal Code, requires modification in order to cover cases where one person is deceived and another person suffers, or is likely to suffer, damage or harm in body, mind, reputation or property. It has been revealed in a number of cases that serious deception has been practised on Government officials as a result of which certain other persons have suffered a great deal of harm in reputation or property. As the definition of 'cheating' at present stands, such cases are not covered by section 415, Penal Code,... Persons who practise such deception, may be convicted under section 182, Penal Code, but the punishment prescribed for that offence is not sufficiently deterrent, and it is desirable that such convicts should be liable to be heavily punished under section 420, Penal Code, which prescribes a maximum sentence of seven years' rigorous imprisonment."

17.43. That harm must be caused to the person deceived has also been emphasised in cases decided by other High Courts.[4]

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1. *Baboo Khan* v. *State*, A.I.R. 1961 All. 639.
2. *Muhammad Baksh* v. *Emperor*, A.I.R. 1941 Lah. 460, 464 (Bhide and Abdul Rashid, JJ).
3. As to meaning of "harm", see *Veeda Menezes*, A.I.R. 1966 S.C. 773; (1965) 2 S.C.R. 577.
4. *Seetharam Rao*, A.I.R. 1954 Mysore 9; *Baboo Khan*, A.I.R. 1961 All. 639.

A recent Supreme Court case[1] seems to support this view by implication. In that case, the two appellants were charged with having cheated an Assistant Station Master by dishonestly inducing him to make out a railway receipt with false particulars, which was capable of being converted into a valuable security. The receipt as made out stated that a wagon "said to contain 251 bags of chillies" had been despatched. The wagon was found to contain 197 bags of *bhusa* (chaff). The charge of cheating the Station Master could not be established, as the railway did not incur any additional liability by the false representation that the consignment contained 251 bags of chillies. The issue of the railway receipt was not likely to cause any damage or harm to the railway as the freight due was paid. The Court therefore held that no question of cheating the railway or the Station Master arose, and acquitted the appellants. The facts of the case, the long-drawn trial and the final conclusion seem most unfortunate and deplorable, "both because the courts are reluctantly compelled to allow dishonesty to go unpunished and because of the serious waste of judicial time involved in the discussion of futile legal subtleties.[2]"

There is also a suggestion[3] that misrepresentation of facts by any person which leads an officer of Government to pass orders to the detriment of third parties should be brought under the definition of cheating. This will be covered if cases of harm caused to third persons are included in the definition.

As against this, there is the plain fact that the idea of harm cannot be dispensed with, as that would widen the scope of this offence to the extent of taking innocent activities like practical jokes. In actual experience it is found that undue advantage to the cheat results in some harm to some person. We consider, therefore, that the idea of harm must be retained as a necessary element of cheating, but we would include within its scope harm to anybody, and not only to the person deceived.

Amendment proposed.

17.44. We propose accordingly to substitute for the words "harm to that person" the words "harm to any person".

Explanation amendment proposed.

17.45. Section 415 contains an explanation that "a dishonest concealment of facts is a deception within the meaning of this section". Since "concealment" conveys the idea of some thing active, the question was often arisen whether mere non-disclosure of facts, when there is no legal obligation to disclose them, is

1. *Hari Sao* v. *State of Bihar*, A.I.R. 1970 S.C. 843.
2. (1956) 72 Law Quarterly Review 183, quoted by Lord Goddard C.J. in *Russell* v. *Smith*, (1957) 2 All. E.R. 797.
3. F.3(9)/56-L.C., S.No. 106 (Suggestion from Legal Remembrancer and Secretary to a State Government).

deception. The view generally taken by the courts is that such non-disclosure is not concealment and there is no deception. It would make for certainty if this is expressly mentioned in the explanation. We propose therefore to amplify it as follows:—

> "*Explanation.*—A dishonest concealment of facts, or, where there is a legal duty to disclose particular facts, a dishonest omission to disclose those facts, is a deception within the meaning of this section."

Section 416.

17.46. Section 416 which defines cheating by personation needs no change.

Sections 417, 418 and 419.

17.47. The next three sections provide the punishment for cheating *simpliciter,* cheating by personation and cheating in order to cause wrongful loss to one whose interest the offender is bound to protect. No change is required in these sections.

Section 420 overlapping section 415 in some respects.

17.48. There is a noticeable overlap between the definition of the offence punishable under section 420 and the definition of cheating contained in section 415. Section 420 envisages, besides the essential *actus reus* of cheating with its concomitant *mens rea* as set out in section 415, one or other of three ingredients turning on delivery of property and tampering of valuable securities. The typical offence under section 420 is committed when the offender "cheats"—not merely deceives—and by such "cheating", dishonestly induces the person deceived to deliver any property to any person. But then according to section 415, a person "cheats" when he *deceives* another, and dishonestly induces the person deceived to deliver any property to any person. Where a person "cheats" in this manner, it would appear that he is punishable under section 415 as well as section 420. In fact, the earlier section curiously and unnecessarily mixes up the particular type of cheating for which a severe punishment is provided in section 420 and a general description wide enough to cover all forms of deception which should be regarded as culpable. As a general definition of cheating, section 415 should have confined itself to the latter, *e.g.*, by stating that "whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived..... to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to *any* person in body, mind, reputation or property, is said to cheat". Delivery of property, making, altering or destroying of a valuable security, etc., specifically mentioned in section 420, would all be covered by the general formula and appropriately treated as aggravated forms of cheating. We, however, do not think that there is any great practical advantage in making this change.[1]

1. One of us, Shri K.V.K. Sundaram, was strongly in favour of recommending this change in section 415.

17.49. While the idea of inducing the person deceived to consent to the retention of property by a third person is expressly mentioned in section 415, it is not referred to in section 420 which appears to be an oversight. We think this should be rectified. The section may be redrafted in clauses as follows to facilitate understanding:—

"420. *Cheating and dishonestly inducing delivery of property.*—Whoever cheats and thereby dishonestly induces the person deceived.

(*a*) to deliver any property to any person, or

(*b*) to consent that any person shall retain any property, or

(*c*) to make, alter or destroy the whole or any part of a valuable security, or

(*d*) to make, alter or destroy anything which is signed or sealed and which is capable of being converted into a valuable security,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Cheating in respect of Government contracts—new section proposed.

17.50 The Law Commission in an earlier Report[1] considered how to tackle the problem of cheating of Government on a large scale by dishonest contractors while supplying goods or executing works, and recommended a specific provision penalising it as an aggravated offence of cheating. Considering the wide range of State activity at present (and it is likely to grow wider), there are, we think, sound reasons for enacting a special provision expressly covering such fraudulent conduct. The maximum punishment for such conduct, we think, could be more severe than that suggested in the earlier Report, and we propose a maximum of ten years' imprisonment. We propose that after section 420, a new section be inserted reading as follows:—

"420 A. *Cheating public authorities in performance of certain contracts.*—Whoever, in performance of any contract with the Government or other public authority for the supply of any goods, the construction of any building or the execution of any other work—

(*a*) in the case of a contract for the supply of goods, dishonestly supplies goods which are less in quantity than, or inferior in quality to, those he contracted to supply, or which are, in any manner whatever, not in accordance with the contract or

1. 29th Report – Proposal to include certain social and economic offences in the I.P.C. paragraphs 137 to 139.

(*b*) in the case of a contract for the construction of a building or execution of other work, dishonestly uses materials which are less in quantity than, or inferior in quality to, those he contracted to use, or which are, in any manner, whatever not in accordance with the contract,

shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be also liable to fine.

Explanation.—In this section "public authority" means—

(*a*) a corporation established by or under a Central, Provincial or State Act;

(*b*) a Government company as defined in section 617 of the Companies Act, 1956; and

(*c*) a local authority".

Commercial corruption.

17.51. The provisions of Chapter 9 of the Code relating to corruption are applicable only to acts of 'public servants', and as defined in section 21, that expression does not include private employees. Commercial corruption, *i.e.*, corruption by employees of private organisations is thus not punishable in India, unless falls within the definition of cheating or criminal breach of trust or other offences made punishable in other Chapters.

With rapid industrialisation and the formation of big joint stock companies and the wide delegation of managerial functions to professional business executives, close personal contact between the employer and employed has practically disappeared, especially where the employer is not a human being, but a corporate body. Opportunities for committing acts akin to "bribery" by such employees have increased greatly and legislation is necessary to penalise such act. Thus an executive employee of a private undertaking, receiving a substantial personal advantage for favouring a particular firm with a contract (not necessarily the most advantageous to his employer) or conniving at the delivery of inferior materials in return for a consideration would, at present, be immune from criminal law. The only actions open to the employer-company would be a civil action and internal disciplinary measures against their servant.

Statutory offence in England and other countries.

17.52. In England, a statute[1] makes it a misdemeanour triable, summarily or on indictment, for any 'agent' to accept a bribe as an inducement for doing or forbearing to do any act in relation to his principal's business; or for showing favour or disfavour, and for any person to give a bribe to an agent as such an inducement. Although the term 'agent' is defined to include persons serving under the Crown or under any corporation etc., the term is wide enough to include persons employed in private business. This statute has frequently been invoked to deal with corruption in private industry.

1. The Prevention of Corruption Act, 1906.

Similar legislation exists in France, Germany and Sweden and in some of the United States.[1]

Should be made an offence in India.

17.53. We consider that in India also a provision on the subject applicable to all private employees is desirable. Corruption is perhaps as rampant amongst employees of private concerns, especially big concerns, as amongst public servants. Though our main object is to check corruption amongst employees of big undertakings, we recommend that the language of the provision should be wide enough to include all classes of firms, because it may not be feasible to frame the provision so as to exclude small firms.

New section 420 B recommended.

17.54. We recommend that the following section which is modelled on section 161 be added after section 420A proposed above.[2]

"420B. *Employee taking bribe in respect of employer's affairs or business.*—Whoever, being employed by another accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification other than legal remuneration, as a motive or reward—

(*a*) for doing or forbearing to do any act in relation to his employer's affairs or business, or

(*b*) for showing or forbearing to show, in the exercise of his functions, favour or disfavour to any person in relation to his employer's affairs or business.

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—(1) The word 'gratification' is not restricted to pecuniary gratifications, or to gratifications estimable in money.

(2) The words "legal remuneration" are not restricted to remuneration which an employee can lawfully demand, but include all remuneration which he is permitted by his employer to accept.

(3) "A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do or has not done, comes within these words.

1. See note in (1962) 11 I.C.L.Q. 880, 884, 885.
2. See paragraph 17.50 above.

Exception.—This provision does not extend to the case in which the employee is a public servant acting as such."

Professional corruption.

17.55. It was suggested that there should also be a provision for punishing corruption by professional persons. For example, if a chartered accountant or an advocate takes money and gives a false certificate, he may not be guilty of any offence. We are, however, of the view that such acts would amount to professional misconduct, and may be left to be dealt with more appropriately by the disciplinary tribunal of the profession concerned. Suspension or revocation of right to proctice the profession (as a chartered accountant or advocate) has a more deterrent effect than imprisonment. A provision in the Penal Code cannot be easily enforced and may prove a dead letter. We, therefore, do not suggest a provision for punishing professional corruption in general.

Fraudulent Deeds and Dispositions of Property.

Sections 421 to 424.

17.56. Sections 421 to 423 which deal with fraudulent deeds and dispositions of property do not require any comments or modification.

Mischief

Introductory.

17.57. The next fascicle of 16 sections deal with the offence of mischief which is clearly and neatly defined in the first section (425). While the corresponding English law as codified[1] in the same year as the Indian Penal Code describes the mental element in many of its sections as "unlawfully and maliciously", our definition adopts the simpler formulation of intention or knowledge of likelihood of the consequence with which we are familiar. The classification of the offences for the purpose of prescribing punishment is also much less detailed and cumbrous than that adopted in the English Act of 1861. While that Act creates about 50 different offences of malicious damage to property, our Code is content with 15.

17.58. A very light punishment of imprisonment upto three months or fine or both is provided in section 426 for the ordinary offence of mischief when none of the aggravating circumstances specified in the subsequent sections exist. Aggravations are based on value of damage caused, (s. 427), nature of the property damaged (ss. 428 to 434), the method adopted to cause damage (ss. 435 to 438), other criminal motives influencing the act (ss. 439 and 440), and, of course, a combination of these aggravating circumstances. The maximum sentences provided for the various offences are three months, one year, two years, five years, seven years, ten years and life. We propose a closing up and reduction of this spectrum of seven to five—one year, three years, seven years, ten years and life—and also a reduction in the number of different offences.

1. The Malicious Damage Act, 1861.

Section 425.

17.59. Section 425 which defines mischief does not require any modification.

Sections 426, 427 and 434.

17.60. The maximum punishment under section 426 for mischief in its simple form may be increased from three months' imprisonment to one year. When this is done, there will hardly be any need for treating mischief causing damage to the amount of a specified sum as an aggravated form of mischief punishable with imprisonment upto two years. We propose that section 427 be omitted; and also section 434 under which destroying or damaging a landmark fixed by public authority is punishable with one year's imprisonment.

Section 428 to be omitted.

17.61. Section 428 punishes any one who kills, poisons or aims any animal of the value of ten rupees or more, the punishment being two years' imprisonment. Since the maximum punishment under section 426 is being raised, this special provision is unnecessary, and we suggest that section 428 be omitted.

Section 429 Amendments recommended.

17.62. In section 429, the minimum value of the "other animal" may be raised from fifty rupees to two hundred rupees. But the maximum sentence of five years seems excessive and may be reduced to three years.

Section 430 Amendments recommended.

17.63. Section 430 deals with mischief causing diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals, which are property, or for cleanliness or for carrying on any manufacture. This kind of enumeration seems to us both unnecessary and incomplete. It would be sufficient to say that mischief by causing diminution of supply of water to the public or to any person for any purpose is punishable. The maximum sentence for this offence also may be three years only.

New Provision Mischief in respect of public property and mischief in respect of machinery.

17.64. Mischief to public property, although of course covered by the definition of mischief and by the basic section punishing mischief, is not expressly provided for in the section punishing aggravations of mischief. It would, we think, be helpful if a specific provision is made to punish such mischief. We suggest three years' imprisonment as the maximum punishment for this offence. We would also suggest a specific provision for mischief in respect of machinery, punishing it with imprisonment upto three years, as instances of malicious damage to expensive machinery have occurred.

Sections 431 and 432

17.65. While sections 431 and 432 do not call for any change of substance, they could be combined into one. The maximum punishment for these offences also may be three years instead of five.

17.66. Section 433 punishes mischief by destroying or moving any light-house or other sea-mark or buoy, etc. To these should be added marks for aerial navigation, interference with which can be even more disastrous. Section 433.

17.67. In section 435, it is hardly necessary to fix the very low limit of ten rupees in respect of agricultural produce, as distinguished from other property. The minimum of one hundred rupees may be made generally applicable by omitting the words "or, where the property is agricultural produce, ten rupees or upwards". Section 435 to be amended.

17.68. Section 436 punishes mischief by fire caused to any human dwelling or place of worship or a building used for the custody of property. We suggest that mischief to any sacred object in such building should also be included and expressly mentioned. Section 436 to cover sacred objects.

17.69. In section 437, which mentions mischief to vessels a reference to aricraft should be added. Section 437 Amendment recommended.

17.70. Section 438 needs no change of substance. Section 438.

17.71. Section 439 does not punish any act of mischief, but only the act of intentionally running a vessel a ground or ashore, so that theft may be committed of property in it. We do not think that such a provision fits in, at all, in this part of the Code. Nor, in fact, do we see any point in such a provision, as the conduct contemplated would be punishable in many other ways. Hence section 439 should be omitted. Section 439 to be omitted.

17.72. In section 440, the maximum punishment may be increased from five years to seven years. Section 440 punishment to be increased.

17.73. Accordingly, the following sections should be substituted in place of sections 426 to 440 :— Revised sections in place of sections 426 to 440.

"426. *Punishment for mischief.*—Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to *one year*, or with fine, or with both.

427. *Mischief causing damage to public property or machinery to the amount of one hundred rupees.*—Whoever commits mischief in respect of any property of the Government or of a local authority or in respect of any machinery, and thereby causes loss or damage to the amount of one hundred rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.[1]

1. New provision.

428. *Mischief by killing or maiming animal.*—Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of *two hundred rupees* or upwards, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.[1]

429. *Mischief by causing diminution of supply of water or inundation or obstruction in public drainage.*—Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause.—

(a) a diminution of the supply of water to the public or to any person for any purpose, or

(b) an inundation of, or obstruction to any public drainage,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.[2]

430. *Mischief by injury to public road, bridge, river or channel.*—Whoever commits mischief by doing any act which renders any public road, bridge, navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property shall be punished with imprisonment of either description for a term which may extend to *three years*, or with fine, or with both.[3]

431. *Mischief committed after preparation made for causing death or hurt or wrongful restraint.*—Whoever commits mischief, having made preparation for causing to any person death or hurt or wrongful restraint, or fear of death or of hurt or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.[4]

432. *Mischief by destroying, moving or rendering less useful air-route, beacon etc.*—Whoever commits mischief by destroying or moving or rendering less useful any air-route beacon or aerodrome light, or any light at or in the neighbourhood of an air-route or aerodrome provided in compliance with law, or any other thing exhibited or used for the guidance of aircraft, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.[5]

1. Section 429 slightly amended.
2. Sections 430 and 432 combined and amended.
3. Section 431 slightly amended.
4. Same as existing section 440.
5. New provision.

433. *Mischief by destroying, moving or rendering less useful a light-house or sea-mark.*—Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.[1]

434. *Mischief with intent to destroy or make unsafe aircraft or vessel.*—Whoever commits mischief to *any air-craft* or to any decked vessel or to any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that *aircraft* or vessel, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if such mischief is committed or attempted by fire or any explosive substance, shall be punished with imprisonment for life, or with the punishment aforesaid.[2]

435. *Mischief by fire or explosive substance with intent to cause damage to amount of one hundred rupees.*—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, x x x shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.[3]

436. *Mischief by fire or explosive substance with intent to destroy place of worship, house, etc.*—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of,—

(a) any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, or

(b) any object therein which is held sacred by any class of persons,

shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."[4]

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1. Same as existing section 433.
2. Sections 437 and 438 combined and amended to cover aircraft.
3. Section 435 slightly amended.
4. Section 436 amended to cover sacred objects.

Criminal Trespass

Introductory.

17.74. The last item in this Chapter is criminal trespass. In its least reprehensible form it is "entry upon ,property in another person's possession with the intention of annoying that person", the punishment being a maximum of three months' imprisonment. At its worst, criminal trespass takes the form of house-breaking when the punishment can be fourteen years' imprisonment. The forms of criminal trespass described in the Code are—

(i) house trespass (section 442);
(ii) lurking house trespass (section 443);
(iii) lurking house trespass by night (section 444);
(iv) house-breaking (section 445); and
(v) house-breaking by night (section 446).

Part to be simplified.

17.75 Punishment to be provided for these offences according to their gravity and according to the aggravating circumstances in which they are committed. We recognise that simple trespass is a very different matter from house-breaking, and the difference in the punishments for the two offences is justified. We do not, however, see much need for distinguishing between lurking house trespass during the day and lurking house trespass by night. Nor indeed does there seem any need for evolving these different ideas, when plainly all that we wish to do is to severely punish what is commonly understood as "burglary". We think this part of the Code could be considerably simplified by dropping the notions of lurking house trespass and house-breaking and introducing, instead, the idea of burglary which should, in substance, mean house trespass for committing theft or any other serious offence. If adequate punishment is provided for these two offences, there should no need for any intermediate category of offence. We suggest that the maximum punishment for criminal trespass should be raised from three months' imprisonment to six months' imprisonment, and for house trespass it should be raised from one year to three years' imprisonment, while, for burglary the maximum punishment should be ten years' imprisonment.

Section 441 to be amended.

17.76. Out of the definition of criminal trespass in section 441, a curious difficulty has arisen. The definition is in these words :—

> "Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,
>
> or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,
>
> is said to commit 'criminal trespass'."

The difficulty is about the second paragraph, the object of which seems to be to cover the case of a person who enters another's property without any intention of annoying him or committing any offence there, but later changes his mind and insists on staying on the property in order to annoy the person in possession. Some courts have thought that if the initial entry is unlawful though not accompanied by any of the intentions mentioned in the section, then the second part of the definition becomes inapplicable, and if such a wrong-doer continues to stay on the property expressly for annoying the person in possession, he commits no offence. The Calcutta High Court[1] has put the matter thus:

> "There appears to be two types of cases which arise for consideration, one of the type of the case of *Baldewa* v. *Emperor*[2] of unlawful entry without remaining with one of the intentions prescribed and secondly a case like the present, of the unlawful entry with the necessary intent followed by the unlawful remaining also with the necessary intent. In my opinion, neither type of case is covered by the plain words of section 441 plainly interpreted. Whether they ought to be made punishable or not is a matter for the legislature".

We are not worried by the second situation mentioned above, for, in that case, the entry itself will be punishable; but the first situation, if understood in the light of this judgment, could hardly be tolerated. It could not be that the section punishes a person who acts lawfully in the beginning but later forms an evil intent, but not a person who acts unlawfully from the beginning. It seems to us desirable, that the words of the definition should be altered to bring out its purpose more clearly.

We have noticed a recent amendment made in Uttar Pradesh in this respect. That is designed to deal with a trespasser who refuses to vacate the property, after proper notice has been served on him. We do not think the present Code is a fit place for such special legislation, and we are not, therefore, adopting it. The real defect will be met by revising the section as follows:

> "441. *Criminal trespass.*—Whoever—
>
> (a) enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or
>
> (b) having entered into or upon such property without such intent, unlawfully remains there with such intent,
>
> is said to commit criminal trespass".

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1. *Sunil Kumar*, A.I.R. 1951 Cal. 297-98.
2. *Baldewa* v. *Emperor*, A.I.R. 1933 All. 816.

Section 442.

17.77. In section 442, we considered the question whether house-trespass should include trespass into a vehicle or aircraft,[1] but decided that no such change is needed.

Sections 443 and 444 omitted and section 445 revised to define 'burglary'.

17.78. As indicated above, sections 443 and 444 which define lurking house-trespass and lurking house-trespass by night should be omitted and instead of house-breaking, burglary should be defined in section 445 as follows:—

"445. *Burglary.*—A person commits burglary, if—

(a) he commits house-trespass in order to commit theft or any offence punishable with imprisonment for seven years or with a more severe punishment, or

(b) having committed house-trespass, he commits theft or any such offence as aforesaid."

Clause (b) of the above definition is intended to cover cases where the original entry is not proved to have been with intent to commit the specified offence, but the trespasser does commit the specified offence after his entry.

Section 446 to be omitted.

17.79. Section 446 which defines house-trespass by night may be omitted.

Sections 447 to 460 to be revised.

17.80, Sections 447 to 460 which provide graded punishments may be replaced by the following sections:—

"447. *Punishment for criminal trespass.*—Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to *six* months, or with fine, or with both.

448. *Punishment for house-trespass.*—Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to *three years*, or with fine, or with both.

449. *House-trespass after preparation for hurt, assault or wrongful restraint.*—Whoever commits house-trespass, having made preparation—

(a) for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or

(b) for putting any person in fear of hurt, or of assault, or of wrongful restraint,

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1. Compare section 380 as proposed to be amended.

shall be punished with impriso nment of either description for a term which may exteynd to seven years and shall also be liable to fine.[1]

450. *Punishment for burglary.*—Whoever commits burglary, shall be punished with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.[2]

451. *Grievous hurt caused whilst committing burglary.*—Whoever, whilst committing burglary,—

(a) causes grievous hurt to any person, or

(b) attempts to cause death or grievous hurt to any person,

shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.[3]

452. *All persons jointly concerned in burglary punishable where death or grievous hurt caused by one of them.*—If, at the time of committing burglary, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such burglary shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.[4]

17.81. Sections 461 and 462 do not require any comments or change. Sections 461 and 462.

1. Existing section 452.
2. New section covering existing sections 449, 450 and 451.
3. Existing section 459 modified.
4. Existing section 460 modified.

CHAPTER 18

OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY MARKS

Sections 463 and 464 analysed.

18.1. The offence of forgery is defined in sections 463 and 464. The two sections have to be read and construed together for deciding whether a person has committed the offence. The *actus reus* is making a false document, and the *mens rea*, under the first section may be any one of the following:—

(i) intent to cause damage or injury to the public or to any person;

(ii) intent to support any claim or title;

(iii) intent to cause any person to part with property;

(iv) intent to cause any person to enter into a contract;

(v) intent to commit fraud;

(vi) intent that fraud may be committed.

The *actus reus*, which is indicated in bare outline in that section by the words "makes a false document" is described elaborately under three heads in section 464. Practically every conceivable way of preparing a false document or of falsifying a genuine document is covered in this description. But, not content with being comprehensive as to the nature and method of falsification, the section requires in each of the three heads a culpable state of mind (either dishonesty or fraud) to accompany the physical making of the false document. When one remembers that mere making of a false document is not punishable as such under this Chapter, it is difficult to find any cogent reason why the mental element is first given under two broad heads "dishonestly or fraudulently") with reference to the making of the false document, and then under six heads (in section 463) with reference to the complete offence of forgery.

Definition of "forgery" in the English Act.

18.2. The position in England where the offence of forgery stands codified in the Forgery Act of 1913 is very much simpler. By sub-section (1) of section 1 of this Act, "forgery is the making of a false document in order that it may be used as genuine. . . ., and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided". Sub-section (2) of the same section sets out in detail (more or less on the same lines as section 464 of our Code) the circumstances in which a document will be considered to be false or to have been made false, but it does *not* again bring in the mental element. Thus, the English definition amounts to stating that whoever dishonestly or fraudulently makes a false document in order that it may be used as genuine commits forgery.

Mental element of the offence.

18.3 We consider that sections 463 and 464 could be easily combined and simplified giving a clearer definition of the offence of committing forgery. The duplication of the mental element which is patent and unnecessary should be removed. When one analyses the six "intents" specified in section 463, it is clear that all of them, except perhaps the last, are covered by the "dishonestly or fraudulently" formula repeated three times in section 464; the mental element of the offence would, it seems to us, be sufficiently specified by the words "dishonestly or fraudulently or with intent that fraud may be committed on the public or on any person". It may be recalled that under the revised definition of "fraudulently" proposed by us in Chapter 2, the intention to deceive another and by that deceit to cause injury to any person or to induce any person to act to his disadvantage is covered by that word.

The culpable act.

18.4 As regards the act required for the offence, the description given in section 464 requires little modification. Under the first clause, a person makes a false document if he makes it appear that the document was made "at a time at which he knows that it was not made", it being understood, of course, that the time of making the document is material for the object in view. The place of making a document may be just as material as the time and it should be forgery if this detail is somehow falsified. We, therefore, propose that the first clause should refer to "place" as well as "time" but expressly qualify both by adding "when the time or place is material".[1]

In the second clause of section 464, it seems desirable to mention "addition" and "obliteration" besides "cancellation".

Illustrations unnecessary.

18.5 As many as 17 illustrations are appended to the section. It is doubtful whether any of them is really required to elucidate any obscure point in the definition. In fact, they seem to be stating the obvious and we suggest that they could be omitted in the revision.

Sections 463 and 464 combined and revised.

18.6 The two sections may accordingly be combined and revised as follows :—

"463. *Forgery*.—A person is said to commit forgery who, dishonestly or fraudulently or with intent that fraud may be committed on the public or on any person,—

(a) makes, signs or executes a document or part of document with the intention of causing it to be believed that such document or part of a document was made, signed or executed—

(i) by, or by the authority of, a person by whom, or by whose authority, he knows that it was not made, signed of executed, or

1. *Cf.* s. 1 (2) of the (U.K.) Forgery Act, 1913.

(ii) (when the time or place is material) at a time or place at which he knows that it was not made, signed or executed; or

(b) by cancellation, addition, obliteration or otherwise, alters a document in any material part thereof, after it has been made, signed or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

(c) causes any person to sign, execute or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication cannot, or by reason of deception practised upon him does not, know the contents of the document or the nature of the alteration.

Explanation.—(1) In this section, "execute" includes sealing and making any mark denoting execution of a document.

(2) A man's signature of his own name may amount to forgery.

(3) The making of a document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his life-time, may amount to forgery".

Section 465.

18.7. Section 465 prescribes the punishment for the offence of forgery. The maximum period of imprisonment now provided is two years. We propose to increase it to three years, having regard to the gravity of the offence.

Sections 466 and 467 Amendment regarding punishment.

18.8. Section 466 deals with forgery of Court records, public registers etc., and section 467 with forgery of valuable securities, wills etc. These types of forgery are rightly considered aggravated forms of the offence and visited with higher punishment. However, the imprisonment for life provided in section 467 for forgery of valuable securities appears to be too harsh. On the other hand, the maximum punishment of seven years prescribed in section 466 for forging a Court record or a public register appears to be too light, when compared with the life imprisonment or imprisonment for 10 years provided in section 467 for forging a valuable security. We are of the view that the two equally grave offences should be treated alike, and a maximum imprisonment of 10 years should be provided for both. The proposed punishment being common to both sections, they may be combined into one section.

"Authority to adopt" to be omitted.

18.9. We are also of the view that "the authority to adopt a son" now mentioned alongwith valuable security in section 467 may be omitted, as the legal importance of an authority to adopt is no longer what it was under the uncodified Hindu law.

"Purporting to be".

18.10. Another point that requires to be considered regarding sections 466 and 467 is the use therein of the words "a document purporting to be". Apparently, these words have been employed by the Legislature to cover a document which does not possess legal validity *qua* a document of the enumerated type, though it "purports" to be such a document. The question whether the document possesses such legal validity is immaterial and what is material is what character the writing attempts to put on. But this attempt at subtlety may create its own problems. For example, when a person forges a document, —*e.g.*, a public register containing a few thousand entries,—is he forging "a document which purports to be a public register", or is he merely forging "a document which is a public register"? Since the rationale of sections 466 and 467 seems to be that tampering with public registers, Court records, valuable securities etc. should be considered aggravated forms of the offence of forgery, we feel that, in the interests of clarity, the words "a document purporting to be" should be replaced by the words "in respect of a document which is or purports to be", which will be wide enough to cover valid documents as well as documents whose validity (in the sense discussed above) is doubtful.

Sections 466 and 467 combined and revised.

18.11. Sections 466 and 467 may be combined and revised as follows :—

"466. *Forgery of Court record, public register, will, valuable security, etc.*—Whoever commits forgery in respect of a document which is, or purports to be—

(i) a record or proceeding of or in a Court of Justice;

(ii) a register kept, or document made, by a public servant in his official capacity;

(iii) a register of birth, baptism, marriage or burial;

(iv) a will;

(v) a valuable security;

(vi) an authority to make or transfer any valuable security;

(vii) an authority to receive or deliver any valuable security, movable property or money;

(viii) an acquittance or receipt for the delivery of any valuable security or movable property or for the payment of any money;

(ix) an authority to institute or defend any suit or to take any proceedings therein or to confess judgment; or

(x) a power of attorney;

shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Sections 468 and 469 to be omitted.

18.12 Sections 468 and 469 deal, respectively, with forgery for the purpose of cheating and forgery for the purpose of harming reputation; the punishment is seven years for the former offence, and three years for the latter. We do not think that these are particularly aggravated forms of the offence of forgery; and as we have already proposed a slight increase in the punishment for forgery,[1] we recommend that sections 468 and 469 should be omitted.

Section 470.

18.13. Section 470 defines a "forged document" as "a false document made wholly or in part by forgery". This is defective, inasmuch as forgery is itself defined in section 463 as "making a false document" with the requisite intent, so that, when one reads section 470 and section 463 together, one meets the idea of "making a document" twice. Further, in view of the revised definition of "forgery" proposed above, a "forged document" could be defined as a document in respect of which, or any part of which, forgery has been committed. We propose that this revised definition be put in as section 464 thus :—

> "464. *Forged document.*—A document in respect of which, or any part of which, forgery has been committed is a forged document."

Section 471 conflict of decisions.

18.14. Under section 471, whoever uses as genuine a forged document shall be punished in the same manner as if he had forged such document. The use of the words "in the same manner as if he had forged" has led to some conflict of decisions, regarding the question whether a person who has both forged the document and used it as genuine, can be punished for both the offences.

In *Umrao Lal,*[2] Aikman, J. of the Allahabad High Court said—

> "The concluding words of this section lead me to believe that it is directed against some person other than a person proved to be the actual forger. The section is useful as an alternative charge when it is not certain whether the accused person is himself the forger of a document or has merely used it as genuine. But I cannot recollect a case in which the forger has been punished both for forging a document and for using it as genuine."

In the later case of *Badri Prasad*[3], Knox and Muhammad Rafiq, JJ of the same High Court said they knew of no authority for the proposition that "the accused cannot be convicted at one

1. See paragraph 18.7, *supra.*
2. *Umrao Lal,* (1900) I.L.R. 23 All. 84.
3. *Badri Prasad,* (1912) I.L.R. 35 All. 63.

and the same time of forging a document and using that document as genuine, and the charges under sections 467 and 471 must, therefore, be regarded as alternative". Apparently, *Umrao-Lal's*[1] case was not brought to their notice, nor did they go into the question in any detail.

In *Sriramulu Naidu*,[2] however, Waller and Jackson, JJ. of the Madras High Court expressly disagreed with Aikman, J.'s view and said—

> "All, it seems to us, that section 471 lays down is that the sentence that can be imposed for the offence of using a forged document as genuine is the same as the sentence that can be imposed for the offence of forgery. They are separate offences and, under section 35, Criminal Procedure Code, separate sentences may be passed on an accused person who has been convicted at the same trial of both."

In *Gajanan Sakharam*,[3] Hallifax, A.J.C., of Nagpur was emphatic that committing forgery and using a forged document as genuine are separate transactions, the commission of one does not necessarily involve the commission of the other, and a person committing the two offences can certainly be convicted of them both. But, in *Ismail Panju*,[4] Findlay, A.J.C., of the same Court agreed with the reasoning of Aikman, J. in *Umrao Lal*[5] and thought that "the language of section 471 most obviously suggests that this provision is expressly directed against some person other than the forger himself". According to him, "the reason for the presence of section 471 on the statute book, in the somewhat unusual language which is employed therein, is in order to provide a useful alternative charge in cases where there is uncertainty as to whether the person on trial is himself the forger of the document, or has merely used it as genuine, knowing it to be nothing of the sort".

Section 471 revised.

18.15. To the extent that this controversy has arisen from the "somewhat usual language employed" in section 471, we are of the view that it should be avoided by dropping the referential form and making the punishment provision self-contained. We have ourselves no doubt that the object of employing the abbreviated form the punishment to be imposed for the offence of using a forged document is simply to equate it to the punishment for committing forgery in respect of that document which may fall under section 465 or 466 or 467. The wording of the punishment provision in section 471 does not appear to be specially designed to provide a useful alternative charge in cases of uncertainty. The offence under this section may be committed either by the forger himself or by another person, *e.g.*, one who

1. *Umrao Lal*, (1900) I.L.R. 23 All. 84.
2. *Sriramulu Naidu*, (1928) I.L.R. 52 Mad. 532.
3. *Gajanan Sakharam*, A.I.R. 1924 Nag. 162.
4. *Ismail Panju*, A.I.R. 1926 Nag. 137.
5. *Umrao Lal*, (1900) I.L.R. 23 All. 84.

has employed a professional to prepare the forged document for him. It is difficult to see why in the former case the offender should not be charged with, and convicted of, both the offences.

Section 471 may be revised as follows :—

"471. *Using as genuine a forged document.*—Whoever fraudulently or dishonestly use as genuine any document which he knows, or has reason to believe, to be a forged document—

(a) shall, if the document is one of the description mentioned in section 466, be punished with rigorous imprisonment for a term which may extend to ten year , and shall also be liable to fine; and

(b) shall, in any other case, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Sections 472 and 473 combined and revised.

18.16. Section 472 punishes the making of any instrument for the purspose of forging any document mentioned in section 467, while section 473 punishes similar acts for the purpose of forging any other document, including documents of the type mentioned in section 466. While this preparatory act requires to be punished where the object is forgery of any document mentioned in section 466 or section 467, it is hardly necessary in the case of other documents. The punishment of life imprisonment now provided in section 472 appears to be unduly harsh. The maximum punishment of imprisonment for ten years should be sufficient for the offence. We propose that sections 472 and 473 may be combined and revised as follows:—

"472. *Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section* 466.—Whoever makes or counterfeits any seal, plate or other instrument making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 466, or with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Section 474 revised.

18.17. In view of the proposal to combine sections 466 and 467 in one section, section 474 may be revised as follows:—

"474. *Possessing a forged document described in section* 466.—Whoever has in his possession any doument of the description mentioned in section 466, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

Sections 475 and 476 combined and revised.

18.18. Sections 475 and 476 are similar to sections 472 and 473. These two sections also may be combined and revised on the same lines as follows:—

"475. *Counterfeiting device or mark used for authenticating documents described in section* 466 *or possessing counterfeit marked material.*—Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any document described in section 466, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Section 477 revised.

18.19. Section 477 deals with the offences of cancellation, destruction etc. of "a will, or an authority to adopt a son, or any valuable security". For the reason given[1] under section 467, the words "or an authority to adopt a son" may be omitted from this section also. The punishment for this offence may be the same as that provided for the aggravated offence of forgery under the revised section 466 above. Section 477 may be revised as follows:—

"477. *Fraudulent cancellation, destruction etc. of valuable security or will.*—Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person,—

(a) cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secrets or attempts to secret, any valuable security or any document which is or purports to be a will; or

(b) commits mischief in respect of such valuable security or document;

shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Section 477A applicability to partner keeping accounts of the firm.

18.20. Section 477A deals with the offence of falsification of accounts by a clerk, officer or servant with regard to books, papers etc. belonging to his employer. There appears to be a difference of judicial opinion on the question whether the section applied to the case of a partner who falsifies the accounts of the firm.

1. See paragraph 18.9 above.

In a Calcutta case,[1] it was held that a partner cannot be guilty under this section, and that the offence can only be committed by somebody in the employ of another person as a clerk or officer or servant, and the falsification can only be committed in respect of the books of accounts of the employer. A similar view has been taken by the Allahabad High Court.[2] But in a Bombay case,[3] it was held that a partner, if appointed as such to manage the business or to write the accounts of the firm, acted as its servant, and if he falsified the accounts, section 477A would apply to him.

On a full consideration of both the views, we were inclined to agree with the former interpretation. The opinion expressed by the Supreme Court[4] that a partner cannot be held guilty of breach of trust under section 405 is likely to prevail as regards the liability of partners under section 477A also. No amendment of the section by way of clarification is, therefore, necessary.

Sections 478 to 489.

18.21. The next twelve sections originally dealt with offences relating to trade marks, property marks and merchandise marks. Two of them, namely, sections 478 and 480 were repealed, and the other sections were amended, by the Trade and Merchandise Marks Act, 1958. Ths group of ten sections now deals with offences relating to property marks only. There is no controversy about them.

Sections 489A to 489E.

18.22. Sections 489A to 489E, which deal with offences regarding currency notes and bank notes, have been considered in a previous Chapter.[5]

1. *C.V. Krishnan* v. *Virji Kunverji & another*, A.I.R. 1959 Cal. 498.
2. *Hari Prasad* v. *State*, A.I.R. 1953 All. 660.
3. *State* v. *Devakinandan*, A.I.R. 1959 Bom. 484.
4. *Velji Raghavji*, A.I.R. 1965 S.C. 1433; (1965) 2 S.C.R. 429.
5. See Chapter 12 above.

CHAPTER 19

CRIMINAL BREACH OF CONTRACTS OF SERVICE

History of Chapter.

19.1. This chapter, which has now got reduced from its original three sections to one, is itself a relic of the last century when it was considered necessary and proper to safeguard contracts of service with a penal provision for breaches. An old Act of 1859 provided "for the punishment of breaches of contract by artificers, workmen and labourers", who, having received money in advance on account of work which they had contracted to perform, refused to perform the work. Three special cases were considered serious enough to be included in the Penal Code. One was breach of contract of service during a voyage or journey and another was breach of contract to serve at a distant place to which the servant was conveyed at the master's expense. These two were made punishable as offences by section 490 and section 492, respectively. All these oppressive enactments were repealed in 1925 by the Workmen's Breach of Contract (Repealing) Act, 1925.

Repeal of Section 491 recommended.

19.2. The surviving section 491 is perhaps not altogether on a par with the two repealed sections. It may be regarded as having some ethical justification in that the person affected by the breach of contract is, because of youth, unsoundness of mind, disease of bodily weakness, in a helpless condition. By failing to look after such persons after having agreed to do so, an offender may be causing serious harm to the health of the helpless individual. However, the offence itself is treated as trivial and made punishable with a small fine not exceeding Rs. 200, or in a very bad case, with a short term of imprisonment not exceeding three months. It is noticed that in recent times there have been no complaints under this section. We consider, therefore, that the practical utility of the section is negligible and that it is not necessary to retain it in the Penal Code. The whole Chapter may be repealed.

CHAPTER 20

OFFENCES RELATING TO MARRIAGE

Introductory.

20.1. In this chapter are enumerated six offences relating to the ancient institution of matrimony to which most communities and, indeed, most people attach vital importance as forming the essential basis of family life. Besides the principal offences of bigamy and adultery, fraudulent conduct in this field is made punishable under two sections (493 and 496). The maximum punishment prescribed for these offences ranges from five to ten years' imprisonment. Enticing or detaining a married woman with intent that she may have illicit intercourse with any person is also made an offence, but a minor one, punishable with imprisonment not exceeding two years or with fine or with both.

Section 493.

20.2. Section 493 punishes a person who deceives a woman into believing that she is lawfully married to him and makes her live with him as wife and husband. In a way, the offence is very near to, but not the same as, an offence of rape under clause four of Section 375. As such, the punishment of ten years' imprisonment for the offence is not unduly severe.

We considered a suggestion that the section should apply also to a woman who deceives a man in the same way and with the same object. Apart from the improbability of such cases occurring, the injury done to the man in body, mind or reputation by such deceit is negligible and need not be taken notice of in the Penal Code.

Section 494—Definition of bigamy.

20.3. Bigamy is defined in section 494 as the act of a person who, having a husband or wife living, marries, but only in a case where such subsequent marriage is void under her or his personal law. Until recently, polygamy was permissible for all communities in India except Christians and Parsis, and consequently the impact of this section fell mainly on women. With the passing of the Hindu Marriage Act of 1955, the whole population of India, except the Muslim male and some tribes among whom polygamy is permitted by custom, are concerned with the section.

The phrase "having a husband or wife living" used in the definition was natural at a time when divorces were rare even where permissible by law, and the bond of marriage subsisted until death of one party to the marriage severed it. In a case where the first marriage was dissolved under the law, each of the parties would cease to be "husband" and "wife", respectively, of the other and, consequently, the fact of that individual

being alive would be irrelevant to the application of this section. Since it is really, not so much the fact of the person "having a husband or wife *living*", as the legal subsistence of the first marriage that makes the subsequent marriage void and an offence, we consider that it would be preferable to define bigamy as follows :—

> "Whoever, being married, contracts another marriage in any case in which such marriage is void by reason of its taking place during the subsistence of the earlier marriage, commits bigamy."

The expression "contracting a marriage" which is used in the second paragraph of the exception seems to us to be more expressive than the word "marries" used in the existing definiton.

Exception, first part to be omitted as superfluous.

20.4. The first exception provides that the section does not extend to any person whose marriage has been declared void by a court of competent jurisdiction. It has been remarked[1] "that a person accused of an offence under section 494 may plead in his defence that the first marriage was null and void even though he had not obtained a declaration to that effect" by a court. In a case where the parties have gone through a ceremony of marriage which is utterly ineffective in law so that they have never acquired the status of husband and wife, neither party can be said to "have a husband or wife living" at the time of contracting the second marriage, and consequently neither party commits the offence defined in this section. It is, therefore, doubtful whether the first exception serves any useful purpose even at present. When the definition of bigamy is altered, as proposed above, it would be rendered quite superfluous. A person whose alleged first marriage was void *ab initio* cannot be said to "be married" and his subsequent marriage cannot be said to be contracted during the "subsistence" of any earlier marriage. We, therefore, propose to omit the first exception.

Second part to be retained.

20.5. The second Exception is necessary and should be retained with a few verbal modifications.

Mens rea of the offence.

20.6. It has been held that, though section 494 makes no reference to intention or knowledge, the normal presumption that a penal statute requires some *mens rea* must be given effect to. In *Kunju Ismail*[2], the first accused, a Muslim woman, took legal opinion that she could effectively divorce her husband, went through the formalities thereof, gave notice to him and, after waiting for a reasonable time, married the second accused. The Court found that the divorce was valid and consequently the accused was not guilty of bigamy. It also held, after an elaborate discussion of the *mens rea* aspect of the offence,

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1. *Gnanasaundari* v. *Nallathambi*, A.I.R. 1945 Mad. 516.
2. *Kunju Ismail*, A.I.R. 1959 Ker. 151. See also *Janaki Amma*, I.L.R. (1955) Trav.-Cochin, 137.

that there could be no criminal knowledge on the woman's part that her first marriage was subsisting when she married again, and hence she could not be guilty under section 494. We do not think it is necessary to indicate the *mens rea* specifically in the definition of bigamy.

Re-marriage after decree of divorce.

20.7. Where a marriage has been dissolved by a decree of divorce, but the law[1] fixes a period during which it will not be lawful for either party to the dissolved marriage to marry again, the question may arise whether a person remarrying within that period commits an offence against section 494 as it stands. It may be urged that as soon as the decree of divorce is pronounced, the parties cease to be husband and wife and, thereafter, neither has a "husband or wife living" for the purposes of section 494. But, obviously, this line of argument, if accepted will defeat the object of the marriage law in prohibiting the divorce from remarrying until the expiry of a specified period after the decree. The same question may be raised with reference to the revised definition of bigamy. Do the parties to the divorce proceedings cease to "be married" immediately a decree of divorce is pronounced or only after the expiry of the specified period ? We consider that the answer should be the latter, if not as a matter of interpretation, at any rate, as a matter of policy. We, therefore, propose to add an Explanation to this effect.

Effect of conversion on marriage.

20.8. Incidentally, we wish to point out that there is at present considerable uncertainty as to the effect of conversion on marriage, particularly when the conversion is from a monogamous religion to a polygamous religion and *viceversa*. The Law Commission in a previous Report[2] had gone into this question and recommended legislation to replace the existing Converts' Marriage Dissolution Act of 1866, which would be uniformly applicable to all conversions and confer on a convert a right to have the marriage contracted before conversion dissolved on such terms as might be considered just and proper. We would draw the attention of Government to this Report and express the hope that it will be implemented soon.

Punishment for bigamy under sections 494 and 495.

20.9. Under section 494, the offence of bigamy is punishable with imprisonment upto seven years. Where it is accompanied by concealment of the former marriage from the person with whom the subsequent marriage is contracted, the offence is punishable with imprisonment upto ten years. We are of the view that the maximum in both cases is unnecessarily high and should be reduced to three years for ordinary bigamy and to seven years for the aggravated form.

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1. *See* section 57 of the Indian Divorce Act, 1969; section 48 of the Parsi Marriage and Divorce Act, 1966; section 30 of the Special Marriage Act, 1954; and section 15 of the Hindu Marriage Act, 1955. It is noticed that these four sections use different language to express more or less the same idea. It is desirable that the language of these sections should be assimilated.

2. 18th Report on the Converts' Marriage Dissolution Act, 1866.

20.10. In the light of the foregoing discussion, sections 494 and 495 may be replaced by the following two sections:— Sections revised.

"494. *Bigamy.*—Whoever, being married, contracts another marriage in any case in which such marriage is void by reason of its taking place during the subsistence of the earlier marriage, commits bigamy.

Explanation.—Where a marriage has been dissolved by the decree of a competent court under an enactment, but the parties are, by virtue of a provision of the enactment under which their marriage is dissolved prohibited from re-marrying within a specified period, then, for the purposes of this section, the marriage shall, notwithstanding its dissolution, be deemed to subsist during that period.

Exception.—The offence is not committed by any person who contracts the later marriage during the life of the spouse by earlier marriage, if, at the time of the later marriage, such spouse shall have been continually absent from such person for seven years and shall not, within that period, have been heard of by such person as being alive, provided the person contracting the later marriage informs the person with whom it is contracted of the real state of facts so far as the same are within his or her knowledge.

"495. *Punishment for bigamy.*—(1) Whoever commits bigamy shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(2) Whoever commits bigamy, having concealed from the person with whom the later marriage is contracted the fact of the earlier marriage, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

20.11. Section 496 punishes one who fraudulently goes through a marriage ceremony knowing that he is not thereby lawfully married. In keeping with our recommendation to reduce the maximum punishment under the two preceding sections, the maximum here also should be reduced from seven years' imprisonment to three years. Section 496 punishment to be reduced.

20.12. The offence of adultery under section 497 is very limited in scope as compared to the misconduct of adultery as understood in divorce proceedings. The offence is committed only by a man who has sexual intercourse with the wife of another man and without the latter's consent or connivance. The wife is not punishable for being an adulteress, or even as an abettor of the offence for which the man can be (but never is) sent to jail for five years. Section 497.

Views of Macaulay and of the Law Commissioners.

20.13. The section did not find a place in the first Draft Penal Code prepared by Macaulay. His reasons for not including it were as follows[1] :—

> "We considered whether it would be advisable to provide a punishment for adultery, and in order to enable ourselves to come to a right conclusion on this subject we collected facts and opinions from all the three Presidencies. The opinions differ widely. But as to the facts there is a remarkable agreement.
>
> The following positions we consider as fully established : first, that the existing laws for the punishment of adultery are altogether inefficacious for the purpose of preventing injured husbands of the higher classes from taking the law into their own hands; secondly; that scarcely any native of the higher classes ever has recourse to the Courts of law in a case of adultery for redress against either his wife, or her gallant; thirdly, that the husbands who have recourse in case of adultery to the Courts of law are generally poor men whose wives have run away, that these husbands seldom have any delicate feelings about the intrigue, but think themselves injured by the elopement, that they consider wives as useful members of their small households, that they generally complain not of the wound given to their affections, not of the stain on their honor, but of the loss of a menial whom they cannot easily replace, and that generally their principal object is that the woman may be sent back.***Where the complainant does not ask to have his wife again, he generally demands to be reimbursed for the expenses of his marriage.
>
> These things being established, it seems to us that no advantage is to be expected from providing a punishment for adultery. The population seems to be divided into two classes—those whom neither the existing punishment nor any punishment which we should feel ourselves justifed in proposing will satisfy, and those who consider the injury produced by adultery as one for which a pecuniary compensation will sufficiently atone. Those whose feelings of honor are painfully affected by the infidelity of their wives will not apply to the tribunals at all. Those whose feelings are less delicate will be satisfied by a payment of money. Under such circumstances, we think it best to treat adultery merely as a civil injury."

The Law Commissioners in their Report on the Draft Penal Code took a different view and said :—

> "While we think that the offence of adultery ought not to be omitted from the Code, we would limit its cognizance

1. Macaulay's Draft Penal Code, (1837), Note Q.

to adultery committed with a married woman, and considering that there is much weight in the last remark in Note 'Q', regarding the condition of the women in this country, in deference to it, we would render the male offender alone liable to punishment. We would, however, put the parties accused of adultery on trial together, and empower the Court in the event of their conviction to pronounce a decree of divorce against the guilty woman, if the husband uses for it, at the same time that her paramour is sentenced to punishment by imprisonment or fine."

This latter recommendation was not accepted, and in 1860, section 497 was enacted in its present form.

Position in the U.S.A.

20.14. It is not surprising that the attitude of criminal law towards adultery varies from country to country. In the United States of America, it varies from one State to another. We may quote from the Harvard Journal of Legislation (January 1970) the following :—

"A review of the many different definitions of criminal adultery throughout the United States will highlight the variance problem. Four major formulations of adultery exist under State law : the 'common law' view, the 'canon law' view, and two hybrid views. Under the common law view, adultery takes place only when the woman is married, but both parties are deemed to be guilty. Under the canon law view, adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife, only the married person is guilty. Under the majority hybrid rule, followed by twenty States, if either spouse has sexual intercourse with a third party, both transgressors are guilty of adultery. Finally, eight jurisdictions make both transgressors guilty if the woman is married, but if the woman is single, only the man is guilty. Six States have never passed a statute changing adultery from a common law tort to a statutory crime, so it is not a crime unless it constitutes a public nuisance by being open and notorious ; three of these States, however, have anti-cohabitation "statutes. Three States have statutes punishing adultery but define it neither by statute or case law. Georgia has held that the parties cannot commit adulrety unless both are married to someone else ; if one is unmarried, the crime is called 'fornication and adultery', and indictments have been quashed where the wrong crime is charged. Eight States require a showing of cohabitation or at least more than a single adulterous act for conviction of adultery."

Position in Britain, France and Germany.

20.15. While adultery is not a criminal offence in Britain, it is punishable, though mildly, in some of the countries of Europe. Thus, in France a wife guilty of adultery is punishable by jailing for a period ranging from three months to two years but the husband may put an end to her serving the sentence by agreeing to take her back. The adulterer is punishable

similarly. A husband who keeps a mistress at the matrimonial home is, on prosecution by the wife, punishable with fine. In Germany, if a marriage is dissolved as a result of adultery, then the guilty spouse, as well as the guilty partner, is punishable by imprisonment for a term of not less than six months, but the prosecution has to be initiated by the aggrieved spouse by means of a petition.

Questions on which opinion was sought.

20.16. Against this background we included in our Questionnaire the Questions (a) should adultery be punishable at all, and (b) if so, should the offence be limited to men only as in section 497. We found opinion to be more or less equally divided between those who favoured the total abolition of the offence, those who favoured retention of section 497 without any change, and those who would have the section modified so as to make the errant wife punishable along with her paramour.

Views of the Commission.

20.17. We also could not come to an agreed conclusion among ourselves on these points. It seemed to us, however, that from the factual and practical point of view, the position to day is not appreciably different from that described by Macaulay more than 130 years ago. Criminal complaints of adultery (which under section 199 of the Criminal Procedure Code can be brought only by the husband of the woman or, in certain circumstances, by someone else on his behalf) appeared to be comparatively few and confined to the poorer and unsophisticated sections.[1] The object of such prosecutions is seldom to send the offender to jail, that is, if the court will regard the offence as serious enough to merit a sentence of imprisonment. It is more often with a view to come to a settlement with the offender on the mercenary level. The existence of the section in the Penal Code has no apparent affect on the number of cases where the irate husband metes out condign punishment on the wife or on her lover or on both of them.

However that they be, among the judges and lawyers who expressed their views on the subject, the majority were in favour of retaining the offence of adultery as defined in section 497. Though some of us were personally inclined to recommend repeal of the section, we think on the whole that the time has not yet come for making such a radical change in the existing position. We however, think that the reasons which weighed with the Law Commissioners in the last century in exempting the wife from punishment are by and large no longer valid, and there is hardly any justification for not treating the guilty pair alike. The suggestion that, in the name of equality of the sexes, the unfaithful husband who has a mistress or goes to a prostitute should also be punishable for committing adultery did not find a sympathetic response in any quarter.

1. The statistics furnished in the official reports of Administration of Criminal Justice in the States lump together all offences under Chapter 20, making it impossible to find out the number of complaint cases under section 497 only.

Revision of section 497 recommended.

20.18. After much discussion and careful consideration, we are of the opinion[1] that the exemption of the wife from punishment under section 497 should be removed, that the maximum punishment of five years' imprisonment prescribed in the section is unreal and not called for in any circumstances and should be reduced to two years, and that with these modifications, the offence of adultery should remain in the Penal Code. It is accordingly recommended that the section may be revised as follows :—

> "497. *Adultery.*—If a man has sexual intercourse with a woman who is, and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, the man and the woman are guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Section 498.

20.19. Section 498 punishes any one who "takes or entices away" a married woman from her husband with intent that she may have illicit intercourse with any person, and also any one who "conceals or detains" any married woman with the same intent.

As observed by the Supreme Court,[2] "the gist of the offence under section 498 appears to be the deprivation of the husband of his custody and his proper control over his wife, with the object of having illicit intercourse with her. Section 498 is intended to protect, not the rights of the wife, but those of her husband ; and so, *prima facie,* the consent of the wife to deprive her husband of his proper control over her would not be material. It is the infringement of the rights of the husband, coupled with the intention of illicit intercourse, that is the essential ingredient of the offence."

Meaning of "detains".

20.20. The question raised before the Supreme Court in that case was whether the word "detains" did not involve the detention of the married woman against her will. In regard to the three other acts mentioned in the section, namely, taking away, enticing away and concealing, it cannot be seriously contended that the consent of the woman affects the guilt of the actor so long as the intention and knowledge specified in the section are established. In regard to the act of the detention also, the Supreme Court, after reviewing the decisions of the High Courts, has held that, although the word may denote detention of a person against his or her will, it is impossible to give it this meaning in the context.

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1. One of us, Mrs. Anna Chandi, is of a different opinion. Her views are set out in the annexure to this Chapter.
2. *Alamgir* v. *State of Bihar*, (1959) Suppl. 1 S.C.R. 464, 467, 468.

Policy of section.

20.21. Gajendragadkar, J. (as he then was) remarked that "the policy underlying the provisions of section 498 may no doubt sound inconsistent with the modern notions of the status of women and of the mutual rights and obligations under marriage. Indeed Mr. Saran vehemently argued before us that it was time that sections 497 and 498 were deleted from the Penal Code. That, however, is a question of policy with which Courts are not concerned".

We considered whether section 498 should be repealed or amended so as to make it accord with "modern notions of the status of women". By way of amendment, it could hardly be suggested that it should be an offence for any one (man or woman) to entice away or conceal a married man so that he may have illicit intercourse with a woman. On the other hand, repealing of section altogether might result in giving unchecked liberty to procurers and go—between which, point of view, would not be desirable.

Revision of section recommended.

20.22. We feel, however, that it would be an improvement to limit the offence to the three acts of taking away, enticing away and concealing. Detention which in the context may even cover the act of giving shelter to a married woman who has left her husband of her own free will, may be omitted. We propose the section may be amended as follows :—

> "498. *Taking or enticing away or concealing with criminal intent a married woman.*—Whoever takes or entices away *or conceals* any woman who is, and whom he knows or has reason to believe to be, the wife of any other man, from that man or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both."

Maintenance of pregnant woman.

20.23. We considered a suggestion that the Penal Code should contain a provision for punishing a person who, having made a woman pregnant leaves her uncared for and helpless at the time of her confinement. It is provided in the German Penal Code[1] that "anybody who unscrupulously withholds assistance from a woman whom he has rendered pregnant, which assistance she need by reason of such pregnancy or child birth, and thereby endangers the life of the mother or child, shall be punished by imprisonment". We think, however, that such a provision cannot be appropriately put in a penal law. The man's conduct will certainly be disapproved by society, but to haul him up before a criminal court does not seem right. Interference of the criminal law in these matters of family life should, we think, be extremely limited. If any hardships are caused to the woman or to the child by such indifierence or neglect on the part of the male, then, the remedy

1. Section 170c.

certainly does not lie in treating it as a crime ; the welfare of the woman or child, could be better taken care of by other measures.

Endangering a child by neglect.

20.24. Another suggestion we considered was also derived from the German Penal Code. A section[1] makes it an offence punishable with imprisonment for "anybody who endangers the physical or moral welfare of a child by grossly and unscrupulously neglecting his duty of supporting and educating the child, especially by leaving the child without sufficient food or care." We do not, however, think that such a provision is particularly suited for inclusion in the Code as a punishable crime. The complaint being that the offender has failed to maintain his child, the proper remedy would be to force him to maintain his child. This is already provided for to a certain extent in section 488 of the Criminal Procedure Code. Alternatively, it could be appropriately included in special legislation relating to children.

1. Section 170d.

CHAPTER 21

OF DEFAMATION

Section 499.

21.1. As the law of defamation is a restriction on the freedom of speech and expression, we had, in our Questionnaire, [1] pointedly asked whether defamation as an offence should be retained in the Code. Mostly the answer has been that it should be retained. The reason is that, if the sanction of criminal law is removed, the only remedy left to a defamed person would be a suit for damages, which is not only expensive but also in many cases useless. Many such persons guilty of defamation are men of no substance and nothing can be recovered from them. Further, public servants are being frequently defamed, and the criminal law alone can effectively deal with such law breakers. We are consequently not suggesting that defamation should cease to be an offence. The right of free speech is, we think, sufficiently safeguarded by the several explanations and exceptions added to the definition of defamation in our Code.

Explanation 4.

21.2. Explanation 4 to section 499 explains what is meant by harming a person's reputation, and it excludes every thing except an imputation "that, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a lothsome state, or in a state generally considered as disgraceful."

We considered the possibility of simplifying this lengthy statement, but found it undesirable, as it was likely to become less concrete and, perhaps, more difficult to understand.

First Exception amendment proposed.

21.3. The first exception to section 499 says that a true imputation made for the public good is not defamation, and then adds a sentences "whether or not it is for the public good is a question of fact". This is to make it clear that the question has to be decided by the jury in a jury trial. After the abolition of jury trials, this explanation has lost its significance, and we, therefore, propose to delete the second sentence of the first exception.

Fourth Exception amendment proposed.

21.4. A substantially true report of the proceedings of a court of justice is expected by the fourth exception to section 499. We considered a suggestion that this exception should be limited to report of the proceedings in open court, and should not apply to proceedings *in camera* which are not meant to be

1. Question 25.

published. The object of excluding the public from the court is to deny publicity of any sort to those proceedings, and if any one violates that understanding and gives publicity to defamatory statements, he should not be allowed to avail of the protection of this exception. We agree with this reasoning, and recommended that the exception be amended by inserting the words "in open court" after the words "report of the proceedings".

The Explanation given in this exception is intended to cover commitment proceedings before Magistrates. Since according to the revised definitions of "judge" and "court of justice" proposed by us, all proceedings before a Magistrate acting judicially will be "proceedings of a court of justice" and no further explanation is necessary. The present Explanation can, therefore, be deleted.

Section 500 amendments recommended.

21.5. The maximum punishment for defamation provided in section 500 is two year's simple imprisonment. Although some suggestions have been made for enhancing it, we find no practical justification for doing so. We think, however, that the imprisonment need not necessarily be 'simple' as is now provided, and should be altered to imprisonment of either description.

Another useful suggestion is that, where the defamatory statement has been published in a newspaper and thus made known to a large number of persons, the fact of the offender's conviction should be similarly published. Such a step would, we think, afford more satisfaction to the innocent victim than the mere punishment of the offender, and we recommend the insertion of a new provision in section 500 empowering the convicting court to order such publication in suitable cases. The cost of publication should be made recoverable from the offender as a fine. The order for publication will, of course, be in addition to any other punishment to which the person convicted may have been sentenced. Section 500 should, accordingly, be revised as follows :—

"500. *Punishment for defamation.*—

(1) Whoever defames another shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(2) Where the offence has been committed by publishing an imputation in a newspaper, the Court convicting the offender may further order that its judgment shall be published, in whole or in part, in such newspaper as it may specify.

(3) The cost of such publication shall be recoverable from the convicted person as a fine.

Sections 501 and 502—punishment provision amended.

21.6. Section 501 punishes any person who knowingly prints or engraves any defamatory matter, and section 502 punishes any person who knowingly sells the printed or engraved libel. As under section 500, the punishment under these two sections need not necessarily be simple imprisonment. We propose to replace the words "simple imprisonment" in both sections by the words "imprisonment of either description".

CHAPTER 22

CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

Introductory.

22.1. Criminal Intimidation is defined very comprehensively in section 503. But rather curiously the punishment for the offence in its simple form and in two different aggravated forms is prescribed in sections 506 and 507, *after* dealing with insult with intent to provoke breach of peace in section 504, and publication of statement conducing to public mischief in section 505. The last mentioned section (particularly after the recent amendment of 1969) contains a mixture of ideas some of which could more appropriately have been put in the earlier chapters. Section 508 constitutes an offence substantially similar to the offence of criminal intimidation. Section 509 is connected with section 504, insult being the common feature, while section 510, falls under the category of annoyance, the third limb mentioned in the chapter heading. The chapter is thus a heterogeneous, ill-arranged, but nonetheless useful, mixture of penal provisions.

Sections 503 and 506 to 508.

22.2. These four sections relating to criminal intimidation do not require any change but should preferably be brought together.

Suicide threat to coerce public authorities to be an offence.

22.3. Another type of intimidation which, in our opinion, should be punishable under the Code is threatening to commit suicide with the object of coercing a public authority to pursue a course of action which it is not prepared to do. We have in a previous chapter recommended that an attempt to commit suicide should cease to be an offence. Suicide threats of the type mentioned above, of which we have experienced quite a few in recent years, are in a different category. Their main object can only be described as coercion or intimidation of public authorities ; and the persons indulging in such threats hope to achieve their object by the disturbance of public order and tranquillity which they expect to create during the days when they are ostentatiously preparing it carry out their threat. In our opinion, there is no justification for the State permitting such agitational activity to be carried on with impunity. This view is shared by a large number of persons who replied to our Questionnaire in which we had included a specific question on this point.

We accordingly propose that a new section may be added after section 506 as follows :—

"506A. *Threat of suicide with intent to coerce a public authority.*—Whoever holds out a threat of suicide to

a public authority, with intent to cause that authority to do any act which it is not legally bound to do, or to omit to do any act which it is legally entitled to do, as the means of avoiding the execution of such threat, and does any act towards the execution of such threat, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both."

The offence should be made cognizable and triable by a Magistrate of the First Class.

Section 504—Amendment recommended.

22.4. Section 504 punishes a person who "intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence". The section, in our view, unnecessarily stresses the giving of provocation. What should really attract liability is the intentional insult. Provocation is only a link in the chain, and is used merely to describe the quality of the insult. The section, therefore, requires to be re-cast, so as to bring out more directly the connection between the insult and the breach of peace. We recommend that the section should be revised so as to read as follows :—

"504. *Intentional insult with intent to provoke breach of the peace.*—Whoever intentionally insults any person, intending or knowing it to be likely that such insult will provoke that person to break the public peace or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Mock funerals of living persons to be an offence.

22.5. It has been brought to our notice that mock funerals of living persons are being frequently staged in public to the annoyance of not only those persons but also of the public in general, and such demonstrations are calculated to result in a breach of the peace. In certain circumstances, a mock funeral might be punishable as defamation ; but it would be more satisfactory to prohibit it as an offence of insult and annoyance in this Chapter. We recommend a new section 504 A as follows to meet such cases :—

"504A. *Performing mock funeral of a living person.*—Whoever, with intent to cause annoyance to the public or to any person or with the knowledge that annoyance is likely to be caused to the public or to any person, performs, or takes part in the performance of, any mock funeral associated with, or referrable to a living person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

The offence should be made cognizable and triable by any Magistrate.

Section 50.

22.6. Section 505 punishes the making, publishing or circulating any statement, rumour or report "conducing to public mischief" (as briefly put in the marginal heading). We have in a previous Chapter recommended that clause (a) of subsection (1) relating to statements made with intent to cause mutiny, dereliction of duty, insubordination etc. among the armed forces should find a place in the Chapter relating to offences against the armed forces.[1] We have also recommended that the rest of the section which could well be regarded as creating offences against public tranquillity, should be taken in Chapter 8 as section 158 B.[2] Section 505 may accordingly be omitted.

Astrological predictions-suggestion not accepted.

22.7. While on the subject of statements causing "fear or alarm to the public", we may mention a suggestion made by the Press Commission[3] in 1954 as regards astrological predictions of a calamitous chapter. The point was referred to the Law Commission at that time. The suggestion was to punish persons who published astrological predictions foretelling death or disaster which were bound to cause fear or alarm to the public. After considering the suggestion in the light of experience we think that the harm that results from such predictions is of a temporary and fleeting character and on the negligible. It does not seem necessary to make their publication an offence.

Section 509.

22.8. In our Report on the Code of Criminal Procedure,[4] we have recommended that the offence under section 509 should be cognizable. No changes are needed in the section.

Section 510 repeal recommended.

22.9. Section 510 punishes a person appearing drunk and causing annoyance to people in a public place. There is a provision in the Police Act[5] which punishes 'any person who is found drunk or riotous or who is incapable of taking care of himself'. The punishment is fine upto fifty rupees or imprisonment upto eight days. The offence must be committed "on any road or in any open place or street or thoroughfare", within a notified town. This provision should be enough, for areas notified under that section. In areas where section 34 of the Police Act is not applicable, there is hardly any need for section 510 of the Code, as such misconduct is not noticeable. We recommend that section 510 may be omitted.

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1. See paragraph 7.9 above.
2. See paragraph 8.26 above.
3. The Press Commission's Report (1954), Part I, page 347.
4. 41st Report, Vol. 1, paragraph 47.8
5. Section 34, clause sixthly, Police Act, 1861.

CHAPTER 23[1]

VIOLATION OF PERSONAL PRIVACY

Right of privacy.

23.1. "The quest for privacy is a strong one. The poet Robert Browning said in Paracelsus :

> I give the fight up : let there be an end,
>
> A privacy, an obscure nook for me.
>
> I want to be forgotten even by God."[2]

A man's privacy, his "right to be left alone,[3]" requires protection from the law to the extent to which it would be infringed by others without just cause. For such protection, the laws of the last century are inadequate mainly because of the rapid advancement of technology, especially in the field of electronics, sound and light. With the modern electronic, optical and other artificial devices, it is very easy to infringe on the privacy of a person even inside his house, without his knowledge. Hence invasion of privacy, which was perhaps the subject of mere poetical imagination in the last century, has now become a real menace requiring statutory interference. As one American author observes :—

> "We are slowly drifting into a world of nakedness. Each year an increasing number of technological devices invade the world that we once considered private and personal. In spite of this, we are still confident that our lives, activities, ideas, thoughts, and sensations are shared with no one unless we so chose."[4]

Microphones reduced to the size of a matchhead pick up sound waves and transmit the same to eavesdroppers. *Infra-red light* techniques enable a room to be watched and photographd from an adjoining room even though opaque walls. Long distance photography has also developed to such a remarkable extent that photographs can be taken from a distance without the person concerned being aware of the same.

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1. The subject of Attempt has been dealt with in Chapter 5 above in paras 5.41 to 5.54. Chapter 23 of the code is proposed to be omitted and replaced by a new Chapter 5B.
2. Rosenberg; The Death of Privacy, P. 142.
3. Cooley on Torts, 2nd Edition, 1888.
4. Rosenberg: The Death of Privacy, page 143.

23.2. In article 12 of the Universal Declaration of Human Rights (1948), the right of privacy was emphasised in the following terms;— Right internationally recognised.

> "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Every one has the right to the protection of the law against such interference or attacks."

Though this Declaration may not be legally binding on the nations, its status as an authoritative guide to the interpretation of the Chapter of the United Nations is well established. In that capacity, the Declaration has considerable indirect legal effect and is regarded by the General Assembly of the United Nations, and also by some jurists, as a part of the law of the United Nations. This right has been reiterated in the International Covenant on Civil and Political Rights, adopted by the General Assembly on the 16th December, 1966, to which India is a party.

Article 17 of the Covenant reads:—

> "(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
>
> (2) Everyone has the right to the protection of the law against such interference or attacks."

23.3. As the safeguarding of privacy is thus made, for all practical purposes, a part of International Law, it is not necessary for us to dilate at length on the need for legislation in this field. We need only quote an observation by Pope Pius XII in the course of his address to the Congress of the International Association of Applied Psychology in 1958:— Observation by Pope Pius XII.

> "And just as it is illicit to appropriate another's goods or to make an attempt on his bodily integrity, without his consent, so it is not permissible to enter into his inner domain against his will, whatever is the technique or method used."

23.4. We find that the right of personal privacy is protected by specific legislation in several countries. In the Norwegian Penal Code, breach of professional privacy, tampering with private correspondence and tapping private conversation by any mechanical aid have been made penal.[1] In the Penal Code of Austria, fixing up instruments clandestinely for hearing sounds not intended for the public and publication, by pictorial representation or otherwise of facts about the private or family life of a person which are of a derogatory nature, are made punishable.[2] In some other countries the subject has been taken up and laws Right protected by legislation in certain countries.

1. Sections 144, 145 and 145a.
2. Sections 310d and 489.

on the subject are in the process of being enacted. Thus, in the Draft German Penal Code, prepared in 1962, a whole title has been set apart to deal with "violation of personal privacy". The several sections[1] under this title propose to make it an offence to discuss publicly another's private affairs, eaves drop, obtain knowledge of confidential communications, violate confidential disclosures by professional persons, breach of privacy by office-holders and persons especially obligated for public service and commercial exploitation of secrets. In the Draft Japanese Penal Code, prepared in 1961, opening sealed correspondence and breach of privacy by professional persons have been made punishable.[2]

Recommendation in England by "Committee of Jurists".

23.5. In England, a Committee was set up by "Justice" (British Section of the International Commission of Jurists) to examine the whole subject of privacy, with special reference to the safeguarding of the same in the English law. The Committee's Report published in 1970, while suggesting comprehensive legislation on the civil side, recommended that to make use of electronic, optical or other artificial devices as a mean of surreptitious surveillance should be made a criminal offence except in certain clearly defined circumstances. They also recommended further investigation as regards criminal sanctions for industrial espionage.

Replies of Judges and lawyers in India to question.

23.6. We therefore thought it advisable to examine this subject and included in our Questionnaire the following question:—

> "In view of Article 12 of the Universal Declaration of Human Rights (1948), do you think that the Criminal Law ought to recognise and protect the right of privacy, and if so, what kind of interference with the right should, in your view, be punishable?"

Though a large number of replies received to this question were unfavourable, some of the judges and lawyers were in favour of legislation to make certain types of invasion of privacy penal. Two of the Judges were in favour of a special provision in the Penal Code for invasion of privacy based mainly on the Norwegian pattern. One of the Chief Justices suggested that some beginning should be made in the law of privacy. During discussions some of the Judges observed that specific invasions of privacy like telephone tapping, tape-recording of conversations, unauthorised shadowing should be made punishable. One of the Advocates-General of a State suggested that interference with the right of privacy without authority of law should be made penal.

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1. Sections 182 to 186b.
2. Articles 334 and 335.

A Dean of Law Faculty stated that opening of sealed letters and unauthorised disclosure of information by professional persons such as Medical Officers and legal practitioners should be made offences.

Beginning to be made.

23.7. As the law on the subject is still rudimentary even in advanced countries, we would not advise comprehensive legislation to deal with all aspects of invasion of privacy. It is better to make a beginning with those invasions which may amount to what is known as eavesdropping and unauthorised publication of photographs and leave the rest to be considered later on in the light of the experience gained, and legislation introduced, in other countries. In any such law, the magistracy and the police will naturally have to be exempted from the penal provisions so long as they act in good faith in the discharge of their duties.

Proposed offences against privacy.

23.8. We recommend the insertion of the following new sections in a separate Chapter which may take the place of the existing Chapter 19 proposed to be omitted.

CHAPTER 19

OFFENCES AGAINST PRIVACY

490. *Use of artificial listening or recording apparatus.*—(1) Whoever, knowing that any artificial listening or recording apparatus has been introduced into any premises without the knowledge or consent of the person in possession of the premises, listens to any conversation with the aid of such apparatus or uses such apparatus for the purposes of recording any conversation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(2) Whoever publishes any conversation or a record thereof, knowing that it was listened to or recorded with the aid of any artificial listening or recording apparatus introduced into any premises without the knowledge or consent of the person in possession of the premises, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.[1]

491. *Unauthorised photography.*—(1) Whoever, intending to cause, or knowing it to be likely that he will cause, annoyance to any person, takes a photograph of that person without his consent elsewhere than in a public place, or takes his photograph in a public place when that person has prohibited such taking, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

1. It may be noted that the section does not cover the entry into the premises of another person and fixing therein an artificial listening or recording apparatus. Such entry and fixing would obviously amount to criminal trespass, since it would be either for annoying the owner or for committing the new offence.

(2) Whoever, intending to cause, or knowing it to be likely that he will cause, annoyance to any person, publishes any photograph of that person taken in contravention of sub-section (1) shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

492. *Exception regarding certain acts of public servants and persons acting under their directions.*—Nothing in section 490 or section 491 applies,—

(a) to any public servant acting in good faith in the course of his duties connected with the security of State, the prevention, detection or investigation of offences, the administration of justice, or the maintenance of public order, or

(b) to any person acting under the directions of such public servant."

CHAPTER 24

TIME LIMITS FOR PROSECUTIONS

Time limits for prosecutions.

24.1. It now remains to consider a subject which, though procedural, is usually dealt with in the Code of substantive criminal law in many countries, namely, the time limit for initiating prosecutions.

Opinions received on the subject.

24.2. In our Questionnaire, we had included the following question :—

> "Do you consider that there should be a statutory period of limitation for prosecution for any offence under the Code, and, if so, for what offences?"

A majority of the replies received on this question is against prescribing a period of limitation for prosecution. Of the smaller number in favour of introducing the law of limitation in criminal cases, a few are for prescribing a time-limit for all or almost all offences, and others only for comparatively minor offences.

Reasons for time limits in civil cases.

24.3. In civil cases, the law of limitation in almost all countries where the rule of law prevails, Jurists have given several convincing reasons to justify the provision of such a law; some of those which are equally applicable to criminal prosecutions may be referred to here:—

(1) The defendant ought not to be called on to resist a claim when "evidence has been lost, memories have faded, and witnesses have disappeared.[1]"

(2) The law of limitation is also a means of suppressing fraud, and perjury, and quickening diligence and preventing oppression.

(3) It is in the general public interest that there should be an end to litigation. The statute of limitation is a statute of repose.

(4) A party who is insensible to the value of civil remedies and who does not assert his own claim with promptitude has little or no right to require the aid of the state in enforcing it.

(5) The court should be relieved of the burden of adjudicating inconsequential or tenuous claims.

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1. *Order of R.R. Telegraphers* v. *Railway Express Agency*, (1944) 321 U.S. 342, 349.

Applicability of above reasons to criminal law.

24.4. Theoretically, all the aforesaid reasons apply with equal force in the field of criminal law. Evidence is as much likely to become stale in criminal cases as in civil cases. Memory, if it fades, would fade irrespective of the nature of the proceeding, subject to the qualification that a serious criminal injury perpetrated on a victim may remain fixed in his memory for a very long time.

Reasons for not extending limitation to criminal prosecutions.

24.5. The usual reasons given for not extending the law of limitation to criminal cases are that, in a criminal prosecution, apart from the injured party and the offender, the community as a whole has an interest in the detection and punishment of the offender, and this interest may be defected if the mere expiry of time is allowed to operate as a bar to prosecution. Moreover, in a civil case there is always a victim with an active personal interest in seeking his remedy, and the wrong-doer is generally known; but in many criminal cases the wrong-doer may not be known or else may be untraceable due to his absconding or for other reasons.

Position in India generally.

24.6. In India, following the English model, there is no general law of limitation for prosecutions. But, in some of the special and local laws, a priod of limitation has been prescribed; e.g., section 106 of the Factories Act, 1948, and section 122 of the Army Act, 1950.

Position in other countries where penal law codified.

24.7. In most of the countries where penal law has been codified, it is generally found that there is a law of limitation, not only for initiating prosecutions, but also for execution of sentences passed by the courts. Among the foreign Penal Codes we have been able to look into, such rules are to be found in the Codes[1] of Argentina, Austria, Ceylon, Colombia, France, Germany, Japan, Norway, Russia and Yugoslavia.

Position in countries following the Anglo-saxon legal system.

24.8. In countries where the Anglo-saxon system of jurisprudence prevails, though there is no general law of limitation for crimes, nevertheless, for certain classes of offences, limitation has been prescribed. For example, in England there is a time limit of three years for treason or misprision of treason,[2] except where there is a plot to assassinate the sovereign or treason committed abroad. There is a general limit of six months for trial by Magistrates of summary offences,[3] but this rule is subject to

1. Argentine Penal Code, Article 62; Austrian Penal Code (1852), republished in 1945, as amended upto 1965, Chapter 27, sections 227 and 228; Ceylon Code of Criminal Procedure, s. 444; Colombian Penal Code, 1936, Article 105; French Code of Criminal Procedure 1958, Articles 6, 763-767; German Draft Penal Code, 1962, Articles 127 and 131; German Penal Code, 1871, Articles 61, 67 and 70; Japanese Draft Penal Code, 1961, Articles 100 and 104; Norwegian Penal Code, 1902, ss. 67 and 72; Russian Soviet Federated Socialist Republic (RSFSR) Criminal Code, 1958, Articles 48 and 49; Yogoslavia Criminal Code, Articles 80 and 81.

2. Sections 5 and 6, Treason Act, 1695, and Treason Act, 1708 (Eng.).

3. Section 104, Magistrates' Courts Act, 1952 (Eng.).

several exceptions. Then, there is a time limit of 12 months for the offence of unlawful sexual intercourse with a girl above the age of 13 and below the age of 16.[1] Similar provisions exist for these offences in some Australian States.[2]

We note that the Law Commission of England has proposed for consideration the general question of limitation in criminal proceedings and included it in working paper[3] for eliciting opinion.

The Model Penal Code[4] of the American Law Institute proposes a period of limitation for all offences except murder.

View of Dr. Andenaes.

24.9. The distinguished Norwegian Jurist,[5] Johannes Andenaes, has given the following special reasons why there should be a law of limitation for crimes also :—

"The factor of proof :

As time passes, evidence becomes more and more uncertain, and the danger of error therefore greater. This is true whether the claim stems from the penal law or from the civil law. Some evidence is lost, other evidence becomes unreliable. Thus testimony of witnesses can change character completely because of changes in recollection or a mere lapse of memory. By setting a definite time limit, the law avoids basing decisions on a weak foundation.

The factor of prevention :

In the civil law we often refer to a preventive purpose as a reason for limitation; the owner of a right should not let things remain unsettled; there must be some pressure on him to have the matter cleared up within a reasonable time. The same argument can be made with respect to limitation of the private right to prosecute. And, theoretically similar reasons can also be advanced with respect to the ordinary limitation in the penal law; there should be some pressure on the public prosecution to clear up matters within a certain time. However, no great weight can be given to this argument. There are other methods to prevent delays on the part of the public prosecution; there are methods more direct than relieving the offender of criminal liability.

The need for punishment diminished :

What is more important is that the need for punishment diminishes as time passes. This is especially clear from the individual

1. Sexual Offences Act, 1956, section 37, and 2nd Schedule, Part I, No. 10 (a).
2. e.g. section 212, Queensland Criminal Code.
3. Working Paper on General Principles of Codification of Criminal Law, Subject No. 5 page 15.
4. Section 1.06.
5. Andenaes, The General Part of the Criminal Law of Norway, pages 308-314.

preventive point of view. If the guilty party has kept peace for a number of years, it would be contrary to any and all purposes to punish him now and if he has been guilty of new offences, he can be punished for those. Nor do the consideration of general prevention or the demands for retribution apply with the same force as the years go by. Time heals all wounds. Both the victim and the public calm down after a while, at least "with respect to less serious offences. It is important for the authority of the penal law, of course, that the guilty person does not escape punishment, but what is at least equally important in this respect is that the matter is cleared up and the guilty party brought to court while the offence is still rather fresh. A prosecution many years later does not have the same beneficial effect.

The opposite considerations become stronger :

On the other hand, the opposite considerations become stronger as time moves on. For the guilty party, who perhaps has overcome his criminal inclinations and has ceased to think of punishment, it would seem harsh to be held liable after many years have gone by. And it would also be harsh to his wife and children who may have no knowledge about this part of his past.

The Penal Law Commission said, a criminal investigation after perhaps fifty years, even with respect to the most serious crime, would have no real benefit but rather would cause sorrow and unhappiness to the innocent and the guilty alike."

View of German writers.

24.10. Two German writers have, in an article[1] discussing war crimes, explained the object of the principle of limitation, in terms of the result of an inactive judicial process on the crime and the removal of the crime from social consciousness. "The term is set when, through the passage of time,—juridically the length of the interval is made to depend upon the gravity of the crime,—the injuries inflicted upon the community by the crime are healed and the act itself has ceased to imperil the life of the community and the rule of law, by force of a bad example left unpunished; the conditions too must be ripe for the removal of a particular crime from the consciousness of men, so that they are no longer preoccupied with it.....Consequently, prescription is not only and simply a one-sided waiver of prosecution by society and the State, and still less the juridical expression of an unprincipled indifference. Basically, it is rather a special form of suppression of crime, reflected and shaped by the law from the principle that the organs of criminal prosecution must make every effort within their powers to ensure the detection and punishment of crimes committed. To illustrate, according to the law in force in the Federal Republic (of Germany) prescription does not operate if there is a general suspension of the judicial process;

1. Paper presented by Dr. Lekschas, Dean of the Law Faculty of Humboldt University of East Berlin, and Dr. Renneberg, translated in (1965) 14 International and Comparative Law Quarterly, pages 627, 629.

under the Code of Criminal Procedure, article 44, no time-limits operate in such a case and the previous position is re-instated. From this it is obvious that time cannot of itself and without certain presumptions be taken to have healed the wound inflicted on the community by the crime; So Article II, s. 5, of law No. 10 of the Allied Control Council directed that in Germany, an individual charged with a grave crime committed in the period between January 30, 1933 and July 1, 1945, could not invoke the rule of prescription, even though there had during this period been a suspension of the judicial process in respect of such crimes... Again since the length of periods of prescription is determined by the gravity of crimes committed, and the extent of the effect necessary to secure fair and effective prosecution, the longest period of twenty years is fixed by the Penal Code, article 67(1), for the most serious crimes. But even this period is not absolute : on the contrary the running of time for the purpose of prescription is broken and starts afresh with every judicial process, which is initiated against an offender in respect of a crime committed by him, and which may, by reason of the gravity of the offence, be repeated and removed without restriction."

Case for extending limitation to original prosecutions.

24.11. It seems to us that there is a strong case for having a period of limitation for offences which are not very serious. For such offences, considerations of fairness to the accused and the need for ensuring freedom from prosecution after a lapse of time should outweigh other considerations. Moreover, after the expiry of a certain period the sense of social retribution loses its edge and the punishment does not serve the purpose of social retribution. The deterrent effect of punishment which is one of the most important objectives of penal law is very much impaired if the punishment is not inflicted promptly and if it is inflicted at a time when it has been wiped off the memory of the offender and of other persons who had knowledge of the crime.

24.12. Apart from the aforesaid considerations, for the purpose of peace and repose, it is very necessary that a person who has committed a minor crime should not be kept in continuous apprehension that he may be prosecuted at any time. Negligence or undue delay on the part of a private prosecutor should be severely discouraged. The reasons given by the Norwegian and German writers apply with equal force in India also. As one learned author, pointed[1] out, "at one time or another approximately 91 per cent of the adult population have committed, crimes and punishable with imprisonment. If they have escaped conviction it is due partly to their good luck and partly to other circumstances." If the law gives them absolute immunity from prosecution after the lapse of a specified period they will have peace of mind; otherwise, the risk of their being prosecuted will remain and may be taken advantage of by blackmailers especially if their conduct

1. James Brands, "Criminal Law in the Seventies—Some Suggestions" (June 1970) New York State Bar Journal.

after the commission of the offence has been exemplary. The modern view[1] that the essential aim of punishment should be reformation and social rehabilitation of the offender can be better implemented by conferring absolute immunity from prosecution after the lapse of a certain period, instead of by requiring him to undergo the harassing process of prosecution and punishment.

Delay by itself no ground for dismissing complaint.

24.13. At present no court can throw out a complaint solely on the ground of delay, because, as pointed out[2] by the Supreme Court, "the question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict, but by itself, it affords no grounds for dismissing the complaint". It is true that unconscionable delay is a good ground for entertaining grave doubts about the truth of the complainant's story unless he can explain it to the satisfaction of the court. But it would be illegal for a court to dismiss a complaint merely because there was inordinate delay.

Recommendation to introduce principle of limitation.

24.14. We, therefore, recommend that the principle of limitation should be introduced for less serious offences under the Code. We suggest that, for the present, offences punishable with fine only or with imprisonment upto three years should be made subject to the law of limitation. The question of extending the law to graver offences may be taken up later on in the light of the experience actually gained.

Limitation to be graded.

24.15. As regards the period of limitation, we propose that it should be graded according to the maximum punishment for the offence, as follows:—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year; and

(c) three years, if the offence is punishable with imprisonment for a term not exceeding three years.

Starting point possible alternatives.

24.16. As regards the question what should be the starting point for computing limitation, three possible alternatives could be thought of, namely, (i) date of commission of the offence; (ii) date of discovery or knowledge that the offence has been committed, whether the offender be known or not; and (iii) date of discovery or knowledge that the offence has been committed by a particular offender.

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1. Article 10 (3) of the International Covenant on Civil and Political Rights (1966).
2. Asst. Customs Collector, Bombay U.L.R. Melwani A.I.R. 1970 S.C. 962, 964.

Alternatives considered (i) commission of offence.

24.17. On the analogy of the law of limitation for civil suits, alternative (i) above may strike one as the natural choice, but there is an important difference to be noted in regard to criminal prosecutions. In a civil wrong, only the person wronged is actively interested in pursuing his claim, and the wrong-doer is known. In the case of a crime, the victim is not necessarily interested in instituting a criminal prosecution; and even if he is interested, the offender is, more often than not, unknown, the person really harmed by an offence may not for some time come to know that an offence has been committed. Sometimes, there may be no 'victim' as such, as in the case of public nuisance sale of obscene publications, rioting, mischief to public property, etc. Practical considerations, therefore, compel one to reject the first alternative.

(ii) Discovery of offence.

24.18. The second alternative is more attractive. In some of the special laws (*e.g.* section 106 of the Factories Act) the date of discovery or knowledge of the offence has been taken as the starting point of limitation. In England also, in some statutes, the starting point for the purpose of limitation is the date of the discovery of the offence and not the date of commission of the offence. *e.g.*, section 164(4) of the Factories Act, 1961, section 20(2) of the Dangerous Drugs Act, 1965, section 244 of the Road Traffic Act, 1960[1] and section 24(3) of the Pharmacy and Poisons Act, 1933.[2] There are, however, practical difficulties in making the date of knowledge of the commission of the offence the starting point for all offences. So far as cognizable offences are concerned, an information can be lodged before the police by the aggrieved party against an unknown offender, it being left to the police to investigate and find out his identity. But in respect of non-cognizable offences which are generally initiated by filing complaints before Magistrates, no prosecution will ordinarily be initiated unless the complainant gives the name or other identifying marks of the offender. Perhaps, on a strict construction of section 190(1), read with section 200, Cr. P.C., an aggrieved party may be entitled to file a complaint against a person unknown leaving it to the court by due investigation or enquiry under section 202 to find out the identity of the offender. But in practice such a complaint is likely to be dismissed with a direction to the complaint to find out the name of the offender and then move the court. Hence, if the date of the knowledge of the commission of the offence be taken as the starting point of limitation for all minor offences, time may run against the aggrieved party through no fault of his, and by the time he comes to know the identity of the offender the period of limitation might have expired.

1. Summary proceedings for certain offences under the Road Traffic Act may be brought within a period of six months from the date of the commission of the alleged offence or within a period which exceeds neither three months from the date on which it came to the knowledge of the prosecutor that the offence has been committed, nor one year from date of the commission of the offence, whichever period is longer.

2. Summary proceedings for an offence under this Act may commence within 12 months of the commission of the offence or, in the case of proceedings instituted by or by the direction of a Secretary of State, either within that period or within three months next after the date on which the evidence justifying, in the opinion of the Secretary of State, a prosecution comes to his knowledge.

(iii) Knowledge of offender's identity to be the starting point.

24.19. We, therefore, consider that the starting point for the purpose of limitation should be the date on which knowledge of the identity of the offender was known either to the aggrieved party, or to the officer investigating the offence. However, if a special law provides a different starting point that will prevail over the general law to be provided in the Penal Code.

Prosecution commences when court takes cognizance.

24.20. The question whether prosecution commences on the date on which the court takes cognizance of the offence or only on the date on which process is issued against the accused, has been settled by the Supreme Court[1] with reference to section 15 of the Merchandise Marks Act, 1889. Where the complaint was filed within one year of the discovery of offence, it cannot be thrown out merely because process was not issued within one year of such discovery. The complainant is required by section 15 of the Act to "commence prosecution" within this period, which means that if the complaint is presented within one year of such discovery, the requirements of section 15 are satisfied. The period of limitation is intended to operate against complainant and to ensure diligence on his part in prosecuting his rights, and not against the Court. It will defeat the object of the enactment deprive traders of the protection which the law intended to give them, to hold that unless process is issued on their complaint within one year of the discovery of the offence, it should be thrown out.

Exclusion of first day.

24.21. A few matters of detail may now be considered. First, as in civil cases,[2] in computing the period of limitation for taking cognizance of an offence, the day from which such period is to be reckoned should be excluded. It may, in this connection, be noted that section 29, Limitation Act, 1963, (which applies the provisions of that Act to other laws), may not suffice to apply the corresponding provision (section 12) of that Act to prosecutions, as section 12 is confined to suits and applications. Though some judicial decisions regarding a complaint as an 'application,[3] and so falling within section 29, Limitation Act, it is better to have a specific provision.

Infructuous proceedings.

24.22. Secondly, as in civil cases,[4] in computing the period of limitation for taking cognizance of offence, the time during which any person has been prosecuting with due diligence another prosecution whether in a court of first instance or in a court of appeal or revision, against the offender, should be excluded, where the prosecution relates to the same facts and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

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1. *Dau Dayal* v. *State of U.P.*, A.I.R. 1959 S.C. 438; (1959) Suppl. 1 S.C.R. 639.
2. *cf.* section 12 (1). Limitation Act, 1963.
3. *B.P. Thakur*, A.I.R. 1959 All. 787; *Sita Ram* v. *The State*, A.I.R. 1961 All. 151; *Damodaran* v. *State of Kerala*, (1961) 2 Cr. L.J. 102.
4. Section 14, Limitation Act, 1963.

Continuing offences.

24.23. Thirdly, in the case of a continuing offence,[1] a fresh period of limitation should begin to run at every moment of the time during which the offence continues;[2] and we recommend the insertion of a provision to that effect.

Impediments to prosecution

24.24. Impediments to the institution of a prosecution have also to be provided for. Such impediments could be (a) legal, or (b) due to conduct of the accused, or (c) due to the court being closed on the last day.

As regards legal impediments, two aspects may be considered, first, the time for which institution of prosecution is stayed under a legal provision, and secondly, prosecutions for which previous sanction is required, or notice has to be given, under legal provision. Both are appropriate cases for a special provision for extending the period of limitation. We recommend that, where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, than, in computing the period of limitation for taking cognizance of that offence, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluced.[3]

Notice of prosecution.

24.25. We also recommend[4] that where notice of prosecution for an offence has been given, or where for prosecution for an offence the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, then in computing the period of limitation for taking cognizance of the offence, the the period of such notice or, as the case may be, the time required for obtaining such consent or sanction, shall be excluded.

Absence of accused and absconding.

24.26. As illustrations of impediments caused by the conduct of the accused, we may refer to his being out of India, and his absconding or concealing himself. Running of the period of limitation should be excluded in both cases.

Closure of court.

24.27. Finally, it is necessary to provide for the contingency arising out of the court being closed on a day; and we recommend[5] that, where the prescribed period for taking cognizance of an offence expires on a day when the court is closed, the court may take cognizance on the day when the court re-opens.[6]

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1. As to continuing offence (with reference to section 106, Factories Act, 1948), see A.I.R. 1966 Mys, 136.
2. *cf.* section 22, Limitation Act, 1963.
3. *cf.* section 15(1), Limitation Act, 1963.
4. *cf.* section 15(2), Limitation Act, 1963.
5. *cf.* section 4, Limitation Act, 1963.
6. *cf.* Section 5, Limitation Act, 1963.

Power of court to condone delay not needed.

24.28. We do not think it necessary to give power to the court to excuse delay in other cases, like the power conferred on the Court by the Limitation Act, in respect of appeals and applications.

No limitation for execution of sentence.

24.29. For the present, we do not recommend any limitation for the execution of sentences, because experience shows that in India there is no undue delay in execution. Even if there is some delay in a few cases due to the accused absconding after jumping bail or otherwise, he cannot take advantage of that delay.

Recommended sections.

24.30. We recommend that the following Chapter be added to the Penal Code at the end.

CHAPTER 23[1]

LIMITATION FOR TAKING COGNIZANCE OF OFFENCES

Definitions.

"511. For the purposes of this Chapter, unless the context otherwise requires,—

(a) 'period of limitation' means the period of limitation for taking cognizance of an offence specified in section 512;

(b) 'prescribed period' means the period of limitation, computed in accordance with the provisions of this Chapter.

Bar to taking cognizance after lapse of time.

512. (1) Subject to the other provisions of this Chapter, no court shall take cognizance of an offence punishable under this Code after the expiry of the prescribed period.

(2) The period of limitation for taking cognizance of an offence shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term not exceeding three years.

Commencement of the period of limitation.

"513. (1) The period of limitation commences, in relation to any offender, from the day on which his participation in the offence first comes to the knowledge of a person aggrieved by the offence or of an officer investigating the offence.

(2) In computing the said period the day from which it is to be reckoned shall be excluded.[2]

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1. This could take the place of existing Chapter 23 (Attempts), as attempts are proposed to be dealt with in a new Chapter 5B.

2. *cf.* section 12(1), Limitation Act, 1963.

Exclusion of time in certain cases.

514. (1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a court of first instance or in a court of appeal or revision, against the offender, shall be excluded, where the prosecution relates to the same facts and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.[1]

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.[2]

(3) Where notice of prosecution for an offence has been given or where for prosecution for an offence the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, then in computing the period of limitation for taking cognizance of the offence, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction, shall be excluded.

Explanation.—In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.[3]

(4) In computing the period of limitation, the time during which the offender—

(a) has been absent from India and from the territories outside India under the administration of the Central Government,[4] or

(b) has avoided arrest by absconding or concealing himself shall be excluded.[5]

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1. *cf.* section 14(1), *Ibid.*
2. *cf.* section 15(1), Limitation Act, 1963.
3. *fc.* section 15(2), Limitation Act, 1963.
4. *cf.* section 15(5), Limitation Act, 1963.
5. *cf.* section 4, Limitation Act, 1963.

Exclusion of date on which court is closed.

515. Where the prescribed period for taking cognizance of an offence expires on a day when the court is closed, the court may take cognizance on the day when the court re-opens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section, if during any part of its normal working hours, it remains closed on that day.

Continuing offences.

516. In the case of a continuing offence, a fresh period of limitation begins to run at every moment of the time during which the offence continues."[1]

1. *cf.* section 22, *Ibid.*

CHAPTER 25

SUMMARY OF RECOMMENDATIONS

Summary.

25.1. We have now come to the end of our detailed study of the Code. The recommendations which we have made for its improvement are numerous, ranging from verbal changes designed to remove ambiguities and clarify underlying ideas, to substantial changes with a view to its simplification and modernisation and also some additions to its provisions. We have given special attention to the extent and nature of the punishments prescribed in the Code for various offences and suggested modifications to bring them into accord with modern notions of penology. We have indicated in each chapter of this Report, corresponding to a chapter of the Code, the provisions which should be made in lieu of, or in addition to, the existing provisions, and also the amendments, both major and minor, to be made in them. A brief summary of the principal recommendations made in each chapter is given below:—

I. (1) The extra-territorial application of the Code should be extended to any offence committed outside India by an alien whilst in the service of Government, when such offence is committed in connection with such service, or is punishable under Chapter VI, VII or IX of the Code. (Para 1.17).

2. Steps should be taken to extend the Code to Jammu and Kashmir. (Para 1.5).

II. (1) The General Clauses Act should be made applicable to the Code and redundant definitions eliminated. (Para 2.2).

(2) The chapter should be re-arranged giving simple definitions of words and expressions in alphabetical order. (Para 2.82).

(3) The definition of "public servant" should be revised to include specifically any member of Parliament or of a State Legislature. (Para 2.35).

(4) A clearer definition of "fraudulently" is proposed. (Para 2.50).

III. (1) A system of corrective labour, without deprivation of freedom, should be introduced as a substitute for short-term imprisonment. (Para 3.11).

(2) Provision should be made in the Code itself for orders to pay compensation out of fine to victim of the offence when the offence is punishable under Chapter XVI, XVII or XXI. (Para 3.19).

(3) In regard to certain offences of an anti-social character committed for the second time, public censure should be provided as an additional punishment. (Para 3.25).

(4) Death sentence on minors should be prohibited. (Para 3.34).

(5) Besides laying down that life imprisonment shall be rigorous, the sentence should be retained for a few heinous offences only. (Para 3.35 and 3.40).

(6) Light labour should be permissible by law in simple imprisonment. (Paras 3.41 to 3.44).

(7) Provisions relating to imprisonment in default of payment of fine should be made clearer by re-drafting. (Para 3.52 to 3.58).

(8) Solitary confinement as a form of judicial punishment should be abolished. (Para 3.80).

(9) Section 75 which provides for enhanced punishment for repeated offences should be rationalised and liberalised. (Paras 3.82 to 3.89).

IV. (1) The minimum age of criminal responsibility should be raised from seven years to ten years. The further provision in section 82 for exempting a child between seven and twelve years if he has not attained maturity of understanding should be omitted. At the same time it is very necessary that Children Acts should be properly enforced in all States. (Paras 4.23 to 4.25).

(2) The defence of duress, now limited to threat of instant death to the person compelled, should be extended to threat of instant death or grievous bodily harm either to the person compelled or to his near relative. (Para 4.45).

(3) The present restriction on the right of private defence in cases where there is time to have recourse to the protection of the public authorities should be omitted. (Para 4.54 and 4.55).

V. (1) Abetment by conspiracy should be omitted. (Para 5.2).

(2) A revision of the definition of abetment contained in sections 107, 108 and 108A is recommended. (Para 5.4 and 5.13).

(3) Where the abettor of an offence is a public servant whose duty it is to prevent its commission, he should be punishable with the punishment provided for the offence. (Para 5.21).

(4) Abetting the commission of an offence by a child under 15, whether or not the offence is committed, should be punishable with imprisonment for a term up to twice the maximum provided for that offence. (Para 5.23 and 5.24).

(5) Agreements to commit petty offences or non-criminal illegal acts should not be punishable as criminal conspiracies. (Para 5.37).

(6) A definition of attempt is recommended. (Para 5.54).

VI. (1) Treason, sedition and other offences threatening the security and integrity of India are not adequately dealt with in the Code. The strengthening, consolidation and review of this branch of the criminal law should, however, be taken up as a separate project. (Para 6.4).

(2) Assisting India's enemies in any manner should be a specific offence punishable with rigorous imprisonment upto ten years. (Para 6.7).

(3) Conspiracy to overawe Parliament or the Legislature of a State should be included in section 121A along with conspiracy to overawe the Government. (Para 6.8).

(4) Section 124 should be expanded to cover assault etc. on (a) the Speakers/Chairmen of the Legislatures and (b) Chief Justices. (Para 6.10).

(5) The offence of sedition should be redefined, including within its purview the exciting of disaffection towards the Constitution, or the Government or Parliament of India, or the Government or Legislature of any State, or the administration of justice, as by law established, and expressing the *mens rea* as "intending or knowing it to be likely to endanger the integrity or security of India or of any State, or to cause public disorder". The present punishment for sedition—imprisonment for life or imprisonment upto three years—should be replaced by rigorous imprisonment upto seven years. (Para 6.19).

(6) Deliberate insult to the book of the Constitution, the national flag, the national emblem or the national anthem, by burning, desecration or otherwise, should be made an offence. (Para 6.20).

VII. (1) Chapter VII, now limited to offences relating to the regular Army, Navy and Air Force should be extended to all armed forces of the Union. (Para 7.2).

(2) The important offence of inciting to mutiny or other act of insubordination by publishing statements, circulating rumours or otherwise (now included in section 505) should be put in this Chapter. (Para 7.9).

(3) Similarly, dissuading persons from joining the armed forces, and instigating them to mutiny or insubordination after joining, which are now offences against the Criminal Law Amendment Act, 1938, should be dealt with in this Chapter. (Para 7.10).

VIII. (1) Making any preparation for rioting should be made an offence . (Para 8.13).

(2) A person promoting enmity between different groups on grounds of religion, race, language, etc. should be punished only if it is done intentionally. Section 153A should be amended to make this clear. (Para 8.25).

(3) As section 505, after excluding sub-section (i)(a) thereof, deals with offences against public tranquillity similar to the offence punishable under section 153A, its provisions should be transposed to this Chapter as a new section 153B. (Para 8.26).

IX. (1) In order to check oppression, a public servant who wilfully conducts himself in the performance of his functions as such public servant with intent to cause injury to any person shall be punishable with imprisonment upto one year, or fine, or both. (Para 9.9 and 9.10).

(2) Another new section recommended is to punish a public servant who authorises payment on behalf of Government or other public authority for goods supplied or works done under any contract, when he knows that the goods or works are not in accordance with the contract. (Para 9.12).

IXA. (1) The offence of undue influence at elections should be defined more closely on the lines of the British, Canadian and Australian definitions, by expressly mentioning use or threat of force, violence or wrongful restraint as an ingredient of the offence. (Para 9A.10 and 9A.11).

(2) Punishment for the offences of bribery, undue influence, personation and false statements should be enhanced. (Para 9A.6 and 9A.13).

(3) Sections 171H and 171-I, which create two petty offences in relation to elections, should be omitted. (Para 9A.15).

X. (1) The punishments provided in this Chapter dealing with contempts of the lawful authority of public servants err on the side of leniency and should be increased. (Para 10.1).

XI. (1) In order to check the growing malpractice of issuing and using false medical certificates, it is recommended that any medical practitioner who knowingly issues any false medical certificate or certificate of fitness, and any person who corruptly uses it as a true certificate, should be punishable with imprisonment upto one year, or fine, or both; and if the certificate is, or is to be used, in a judicial proceeding, the punishment could be upto three years. (Para 11.11 and 11.12).

(2) Harbouring of persons about to commit kidnapping or abduction should be included in section 216A. (Para 11.27).

(3) Sections 221 to 225B relating to resistance to arrest, rescue from custody, omission to arrest, allowing escape etc. should be revised and re-arranged. (Para 11.29).

(4) Three additional sections are proposed to punish (i) dissuading a witness by threats, bribes or other corrupt means from giving evidence, (ii) failure, without sufficient cause, by a person released on bail, to appear in court in accordance with the terms of the bond; and (iii) the ordering or conducting of vexatious searches without reasonable grounds. (Para 11.36).

XII. (1) Provisions relating to the counterfeiting of currency notes and bank-notes, at present contained in Chapter 18, should be placed in Chapter 12 which deals with counterfeiting of coin and Government stamps. (Para 12.3.).

(2) The present scheme of two sets of provisions for counterfeiting of foreign coins and counterfeiting of Indian coins should be done away with, and the number of sections reduced. These provisions should also be simplified on the lines of the corresponding provisions relating to counterfeiting of currency notes. (Para 12.9 and 12.10).

(3) The dishonest use of slugs in vending machines should be punished with imprisonment upto one year or fine or both. (Para 12.23).

(4) A completely revised Chapter XII on offences relating to currency notes, coins and stamps is recommended.

XIII. (1) The maximum term of imprisonment for offences relating to weights and measures should be increased from one year to two years. (Para 13.1).

XIV. (1) The punishments prescribed in this Chapter for various anti-social offences affecting public health, safety and convenience are generally low, and should be increased as indicated. (Para 14.1).

(2) To the section dealing with the sale, publication, etc. of obscene books (as amended in 1969), a provision should be added to the effect that where the question is whether the publication of a book, pamphlet, etc., is in the interests of science, literature, art, learning or other objects of general concern, expert evidence on that question may be admitted. (Para 14.13).

(3) Section 294A dealing with unauthorised lotteries should be more detailed as in some State Acts. It should contain broad guide-lines for the State Government in the matter of authorising private lotteries. (Para 14.16 and 14.17).

XVI. (1) A re-drafting of the definitions of murder and culpable homicide not amounting to murder, contained in sections 299 and 300, is recommended to meet the criticism of obscurity and repetition of deas. It is desirable to have a self-contained definition of murder in section 299, and another of the lesser offence in section 300. (Para 16.6 and 16.7).

(2) Section 304 should be simplified by abolishing the distinction between the two parts of the section and prescribing a uniform punishment for culpable homicide not amounting to murder. (Para 16.18 to 16.20).

(3) For the offence of causing death by rash or negligent act, the maximum term of imprisonment under section 304A should be increased to five years. (Para 16.27).

(4) Attempt to commit suicide should cease to be an offence. (Para 16.31 to 16.33).

(5) A person who, by persistent acts of cruelty, drives a member of his family living with him to commit suicide should be punished with imprisonment upto three years, or fine, or both. (Para 16.34 and 16.35).

(6) Miscarriage caused by a registered medical practitioner with the woman's consent, within three months of the commencement of the pregnancy, should not be punishable under section 312. (Para 16.45 and 16.46.).

(7) The offence of concealing the birth of a child by secret disposal of the dead body should be abolished. (Para 16.52).

(8) It should be made an offence for a person who, being legally bound to provide the necessaries of life to another, fails without lawful excuse to do so, knowing that such failure will endanger the life or seriously impair the health of that person. (Para 16.53).

(9) The offences of wrongful restraint and wrongful confinement, when jointly committed by ten or more persons, should be regarded as aggravated forms and be more severely punishable. (Para 16.74 and 16.75).

(10) The distinction between 'assault' and 'using criminal force' without any practical difference need not be maintained. There is also no need for elaborate definitions of 'force' and 'criminal force'. The expression 'assault' should be so defined and employed as to include what is now covered by 'criminal force'. (Para 16.78 to 16.80).

(11) A new offence of indecent assault on a minor under 16 years of age punishable with imprisonment upto three years should be created. (Para 16.86).

(12) Kidnapping need be only of one kind, *viz.*, kidnapping from lawful guardianship. Kidnapping out of India need not be treated as a separate species of kidnapping. (Para 16.92).

(13) For the offence of kidnapping a minor for the purposes of begging, there should be a minimum sentence of three years' rigorous imprisonment. (Para. 16.98).

(14) Kidnapping or abduction for ransom should be an aggravated form of the offence of kidnapping or abduction, punishable with rigorous imprisonment upto fourteen years and fine. (Para 16.100).

(15) Sexual intercourse of a man with his child wife, and illicit intercourse with a girl between twelve and sixteen with consent, both of which are statutory rape, should be taken out of the definition of rape and made specific offences. In regard to the latter, it should be a defence for the accused to prove that he, in good faith, believed the girl to be over sixteen years of age. (Para 16.115 to 16.120).

(16) Three other sexual offences are recommended for inclusion in this Chapter. (i) A public servant compelling or seducing to illicit intercourse any woman who is in his custody as such public servant, (ii) a superintendent or manager of a women's or children's institution compelling or seducing to illicit intercourse any female inmate of the institution, and (iii) a person on the management or staff of a mental hospital having illicit intercourse with a woman who is receiving treatment for a mental disorder in that hospital, should be punishable. (Para 16.123).

XVII. (1) A person who, taking advantage of the occurrence of an accident in a public place or of a fire, flood, riot, earthquake etc., commits theft in respect of property affected by such accident or calamity, should be punishable with imprisonment upto seven years. (Para 17.9).

(2) Blackmail, in the sense of dishonestly threatening one with publishing an imputation harmful to his reputation, should be made a separate offence. (Para 17.13).

(3) Robbery with murder committed by two or more persons should be treated in the same way as dacoity with murder for purposes of punishment. (Para 17.20).

(4) Property, the possession whereof has been transferred by cheating, should be included within the definition of "stolen property". (Para 17.35).

(5) Cheating a public authority in the performance of a contract for the supply of goods or the construction of a building or execution of other work should be punishable with imprisonment upto ten years and fine. (Para 17.50).

(6) Bribe taking by employees in the private sector of commerce or industry in respect of the employers' affairs or business should be punishable in the same way as bribe taking by public servants. A new section to deal with this type of commercial corruption is recommended. (Para 17.53).

(7) Mischief in relation to aircraft, should be specifically dealt with as an aggravated form of mischief. (Para 17.69).

(8) The aggravations of house trespass, which are at present described as "lurking house-trespass", "lurking house-trespass by night", "house-breaking" and "house-breaking by night", should be replaced by one aggravation to be called "burglary", and the sections numbering twenty, now dealing with trespass in great detail, reduced to nine. (Para 17.75 and 17.78).

XVIII. (1) The definition of forgery should be made self-contained, incorporating all that is now set out in sections 463 and 464. (Para 18.2 to 18.4).

(2) The numerous penal sections relating to forgery and allied offences should be simplified and reduced in number so as to remove unnecessary or over-lapping provisions. (Para 18.8 to 18.16).

XIX. (1) The existing provision punishing very lightly a breach of contract to attend on the wants of a helpless person unable to look after himself, should be repealed as being of negligible utility. (Para 19.2).

XX. (1) The definition of "bigamy" should be revised. It should be made clear, in particular, that where the relevant divorce law prohibits re-marriage of the parties within a specified period after the decree of dissolution, such re-marriage wou'd amount to bigamy. (Para 20.3 to 20.7).

XXI. (1) Where the offence of defamation has been committed by publishing an imputation in a newspaper, the Court convicting the offender should have power to order that its judgment shall be published in whole or in part in such newspaper as it may specify. (Para 21.5).

XXII. (1) Intimidation, in the form of a threat to commit suicide with the object of coercing a public authority to pursue a course of action which it is not legally bound to do, should be made an offence. (Para 22.3).

(2) Performing mock funeral of a living person with intent to cause annoyance to the public or to any person should be made an offence. (Para 22.5).

XXIII. (1) There should be a chapter in the Penal Code dealing with violation of personal privacy. (Chapter 23).

(2) As a beginning, the use of artificial listening or recording apparatus to eavesdrop on private conversations, unauthorisedly taking photographs of a person without his consent or against his wishes, and the publication of any information gathered by such methods, should be made punishable. (Para 23.7 and 23.8).

XXIV. (1) The principle of limitation for taking cognizance of an offence should be introduced in regard to less serious offences punishable under the Code either with fine only or with imprisonment not exceeding three years. (Para 24.14).

(2) Detailed provisons are recommended. (Para 24.30).

Draft of Amendment Bill.

25.2. A draft of a Bill to amend the Indian Penal Code, designed to implement all the recommendations made by us, is annexed to this Report. We were gratified to note that special steps were taken by the Government on our last Report on the Code of Criminal Procedure, and legislation to replace the existing Code of 1898 by a new Code as recommended by us is well on its way. It would be in the fitness of things if the Penal Code could be revised and brought up-to-date by the present Parliament and we would therefore recommend to Government that equally expeditious action may be taken in this behalf.

Note by Mrs. Anna Chandi

I. *Amendment of section* 312

I regret I am unable to agree with the recommendation that a proviso be added to section 312 whereby, causing miscarriage would not amount to an offence if it were done by a registered medical practitioner with the consent of the woman who has not been pregnant for more than three months. In my opinion the effect of this recommendation would be to liberalise our law on abortion beyond socially acceptable limits.

Under the penal laws of most countries, the causing of abortion was considered, until quite recently, a culpable crime except when such abortion is necessary to save the life of the woman. Following widely supported demands for liberalisation of these rules, many countries have enacted less restricted laws on abortion. In India too, there have been demands for such liberalisation, and the Government of India in 1964, appointed a committee to study the question of legislation of abortion. The committee under the Chairmanship of Sri Shantilal Shah, the then Minister of Health of the Government of Maharashtra consisted of representatives of the Central Social Welfare Board, Family Planning Association of India, Association of Medical Women in India, All-India Women's Conference, Federation of Obstetrical & Gynaecological Societies of India, Indian Medical Association and Indian Council of Child Welfare. The Committee, after a detailed study of the subject, submitted its report in 1966. The recommendations were that the provision regarding abortion in the Indian Penal Code was too restrictive, and should be liberalised to allow termination of pregnancy by a qualified medical practitioner acting in good faith not only for saving the pregnant woman's life but also:

(a) when the continuance of the pregnancy would involve serious risk to the life, or grave injury to the health, whether physical or mental, of the pregnant woman, whether before, at, or after the birth; or

(b) when there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped in life; or

(c) when the pregnancy results from rape, intercourse with an unmarried girl under the age of 16 or intercourse with a mentally defective woman.

It is obvious from its membership, that the committee was a wide-based expert body with adequate representation for women who, after all, are those primarily concerned with the subject

of abortion. In my opinion, the Committee's recommendation has gone as far as one may properly go in liberalising abortion laws without doing damage to our social and cultural values.

Contrived termination of pregnancy, at whatever stage of the child's development in the mother's womb, amounts to wilfully extinguishing a human life. One may do so only for good and sufficient reasons. These reasons may change with changing social and cultural values; but there must always be some demonstrable reason. If, at one stage, a society will accept only imminent danger to the mother's life as sufficient justification, the same society at another stage of its evolution may consider the likelihood of an adverse effect on the mother's health as good enough reason for permitting abortion. The recommendation of the Committee appears to reflect such a change in our society's attitude.

However, our present recommendation goes far beyond that. The effect of the recommended proviso to section 312 would be to permit abortion at will during the first 12 weeks of pregnancy. This is a quantum jump from abortion to save the mother's life to abortion for convenience.

It would be difficult to justify such latitude unless we consider the 12 weeks old foetus in the mother's womb not as an incipient human life but merely as a 'uterine tumour'. I do not think such disrespect for human life is compatible with our social values.

II. *Amendment of section* 497

I regret that I find myself unable to agree with my learned colleagues on their recommendation regarding the amendment of section 497. This section which punishes the offence of adultery is a part of Chapter XX of the Indian Penal Code dealing with offences relating to marriage.

Generally speaking the whole chapter is based on the postulate that the wife is the property of the husband and the wife has no corresponding rights in relation to her husband. Any transgression by or relating to the wife is to be punished, while the law is silent on similar misdeeds by or relating to the husband.

This postulate is nothing peculiar to India or to the Indian Penal Code. Most countries in the world had, at some time or other, laws relating to property, succession, polygamy and other material offences, which were quite frankly biased in favour of the male. This however is no longer very prevalent. Most advanced societies have already done away with such debasing discrimination. India too is progressing in the same direction and has passed some enlightened legislation, such as those relating to women's rights of succession, prevention of polygamy etc. And now that we are at the job of amending the Penal

Code, I think it is the right time to consider the question whether the offence of adultery as envisaged in section 497 is in tune with our present day notions of woman's status in marriage.

The Commission discussed this section at some length. The final decision of the majority of the members is that the section should be left as it is, after deleting the provision which exempts the wife from punishment for adultery.

In my opinion, the recommended amendment would be a retrograde step, which would be difficult to justify.

To appreciate the effect of the amendment, it would be useful to glance briefly at the back ground of the section.

Macaulay had, in his Draft Penal Code,[1] decided not to make adultery an offence. One of the reasons for that decision was given thus:—

> "There is yet another consideration which we cannot wholly leave out of sight. Though we well know that the dearest interests of the human race are closely connected with the chastity of women, and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state of society in this country which may well lead a humane man to pause before he determines to punish the infidelity of wives. The condition of the women of this country is unhappily very different from that of the women of England and France. They are married while still children. They are often neglected for other wives while still young. They share the attention of a husband with several rivals. To make laws for punishing the inconstancy of the wife while the law admits the privilege of the husband to fill his zenana with women, is a course which we are most reluctant to adopt. We are not so visionary as to think of attacking by law an evil so deeply rooted in the manners of the people of this country as polygamy. We leave it to the slow, but we trust the certain, operation of education and of time. But while it exists, while it continues to produce its never failing effects on the happiness and respectability of women, we are not inclined to throw into a scale already too much depresssed the additional weight of the penal law. We have given the reasons which lead us to believe that any enactment on this subject would be nugatory. And we are inclined to think that if not nugatory it would be oppressive. It would strengthen hands already too strong. It would weaken a class already too weak. It will be time enough to guard the matrimonial contract by penal sanctions when that contract becomes just, reasonable, and mutually beneficial."

1. Macaulay's Draft Penal Code (1837) Notes, Note Q, pages 90-93.

The Law Commissioners, in their second report[1] on the draft Penal Code, did not think it advisable to exclude the offence of adultery from the Code, but relied on Macaulay's remarks quoted above to recommend the exemption of the woman from punishment for adultery. They gave their reasons thus:—

> "While we think that the offence of adultery ought not to be omitted from the Code, we would limit its cognizance to adultery committed with a married woman, and considering that there is much weight in the last remarks in Note Q, regarding the condition of the women of this country, in deference to it we would render the male offender alone liable to punishment. We would however put the parties accused of adultery on trial "together", and empower the Court in the event of their conviction to pronounce a decree of divorce against the guilty woman, if the husband sues for it, at the same time that her paramour is sentenced to punishment by imprisonment or fine. By Mr. Livingstone's Code the woman forfeits her "matrimonial gains", but is not liable to other punishment."

The present Commission's recommendation is that this exemption clause be deleted. The reasoning behind it is that with the general advancement in the status of women and especially their education, they can now be held responsible for their own actions and so have no further need for any artificial protection. This idea of equality between men and women in the field of responsibility for their own actions is progressive and is quite unexceptionable; but the resultant recommendation, I am afraid, does not fully reflect the idea. In fact, far from disapproving the mediaeval postulate behind the present provision, the recommendation in effect reinforces it.

The wife being considered the husband's property, the present provision reserves for the husband the right to move the law for punishing any trespass on it, while not giving the wife any corresponding right to complain against any transgressions on the part of or relating to her husband. Perhaps to make amends for this harsh discrimination, the present section provides that the wife should not be punished along with the trespasser. The removal of this exemption clause does not cause damage to the basic idea of the wife being the property of the husband. On the other hand, it merely restates the idea, and adds a new dimension to it by making not only the trespasser but the property also liable to punishment. This, as noted before, can hardly be considered a progressive step.

1. Second Report on the draft Indian Penal Code (1847), pages 134-135.

The Supreme Court, while dealing with a case[1] under section 498, observed:—

> "The provisions of section 498, like those of section 497 are intended to protect the rights of the husband and not of the wife. . . .The policy underlying the provisions of section 498 may no doubt sound inconsistent with the modern notions of the status of women and of mutual rights and obligations under marriage."

It is time now that we began to look at marriage as an equal partnership, and not as a transaction giving rise to proprietary rights for one over the other. If this equality is to be reflected in the Code, then section 497 would have to be either omitted altogether or reframed so as to make transgressions by either party equally punishable.

Speaking for myself, I am not for removing the offence of adultery from the Penal Code. No doubt, the idea is spreading in most advanced societies that adultery is not a criminal offence but only a civil wrong. The example of countries which no longer treat adultery as a crime, is no doubt of persuasive value, but it is not binding on us. I do not think our society is as yet ready to take that step. From ancient times our society has stressed the sanctity of marriage and has always considered any violations of it as highly reprehensible. This is the real sanction behind the punishment for adultery. I do not think that there is any change in the popular mind with regard to this matter.

The main argument against making adultery a crime, is that marital morality is the private concern of the husband and wife, and law has "no business" there. True, it is a private matter to a great extent; but society has also a vital interest in the preservation of the family. When immorality goes to the extent of endangering the existence of the family, society can rightly claim to step in; for, in the preservation of the family unit lies ultimately the preservation of society itself. This border line between private and social concern is crossed when adultery results in the dissolution of the marriage and the break up of the family.

The idea that the State should step in only at this stage is nothing new. It is reflected in the provision on adultery in the German Penal Code,[2] which is as follows :—

> "172. *Adultery.*
>
> 1. If a marriage is dissolved as a result of adultery, then the guilty spouse as well as the guilty partner shall be punished by imprisonment for a term of not less than six months.
>
> 2. Prosecution shall be commenced only upon petition."

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1. *Alamgir* v. *State of Bihar*, A.I.R. 1959 S.C. 436 (per Gajendragadkar, J.).
2. Section 172, German Penal Code (1871).

I am, therefore, of the view that the section be amended to bring out that a person—male or female—who, being married, has sexual intercourse with a female or a male (as the case may be), not his or her spouse, without the consent or connivance of such spouse, commits adultery, provided that it shall not amount to adultery unless the marriage had been dissolved by reason of that offence.

Mrs. Anna Chandi.

NOTE BY SHRI R. L. NARASIMHAM

General

The Indian Penal Code, 1860, is based on the original draft prepared by Lord Macaulay and the colleagues in 1837 and it retains its pre-eminent position as one of the great Codes of the world. It has been widely adopted (with modifications) in several countries and has undergone very few amendments during its long existence for more than a century. But its pre-eminence amongst codified laws should not, by itself, be taken as a good reason for not recommending suitable amendments and additions to bring it into conformity with the modern view on penology. Even in some well informed quarters an erroneous view still persists that apart from minor drafting changes to some of the sections with a view to reconcile conflicting decisions of the High Courts and to give legislative recognition to some of the decisions of the Supreme Court, the Code should not undergo a thorough revision. This view overlooks the following obvious defects from which the Code suffers.

(1) Macaulay seems to have ignored some of the principles of Hindu criminal jurisprudence which though laid down in the Smritis made between the 1st and 6th centuries are applicable even now.

(2) Macaulay drafted the Code to suit the needs of India at a time when it was a mere police state with purely agricultural economy whereas Independent India is now a "Welfare State" with an appreciable percentage of industrial Society.

(3) Macaulay was a Liberal following the school of Bentham and J.S. Mill and for him the principle of *Laissez faire* was almost sacrosanct. But India is now a socialist state with extensive state powers and control of personal liberties and economic rights and the penal law (like other laws) must be modified, especially as regards nature of punishment, classification of new crimes, rehabilitation of a convict etc. to suit the prevailing economic theory.

(4) Subsequent to Macaulay, the science of Penology (Crime and Punishment) has undergone a drastic change at the hands of world jurists and some of their ideas have been incorporated in the U.N. Charter and in the Penal Codes of several foreign countries.

2. The social consciousness of society is generally reflected in the state of the criminal law. As pointed out by an eminent American authority:—

> "The purpose of the penal law is to express a formal social condemnation of forbidden conduct, buttressed by

sanctions calculated to prevent it." (Wechalor "The Criteria of Criminal Responsibility" 22 University of Chicago L.R. at p. 374).

"Social change affects criminal law in many ways: through developments in science especially in biology and medicine, through changes in the predominant moral and social philosophy; through changes in the structure of society, especially in its transition from a moral self-contained and relatively sparsely populated, to a highly urbanised and industrialised pattern". (Law in a Changing Society by W. Friedmann, p. 166).

"Criminal law has, quite rightly been called one of the most faithful mirrors of a given civilisation reflecting the fundamental values on which the latter rests. Whenever these values change, the criminal law must follow suit". (Criminal law by Richard C. Donnelly, Joseph Coldstein, and Richard D. Schwartz, P. 524).

3. By the end of the last century, there was a striking change in the concept of crime and punishment, brought about mainly by the Italian jurist Ferri and his followers. The classical school of criminology which prevailed till then believed that the greatest happiness of the greatest number was the primary object of punishment and that special emphasis should be given to the restrictive and repressive functions of punishment. Ferri, however, maintained that the rehabilitation aspect of punishment should be the guiding principle in the prevention of criminal behaviour and in the handling of the criminal, and became the leading exponent of the positive school of punishment. Ferri's ideas have gradually received world recognition and in the recent U.N. Covenant adopted by the General Assembly of U.N.O. on 16-12-1966, the following resolution was unanimously passed:—

Article 10:

(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(2) .....

(3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation".

It is now well recognised in all civilised countries that sentences should be based on the nature of the criminal personality and not exclusively on the nature of the crime committed. In the report of the Study Group of the British Labour Party (Crime—A Challenge to us all) there is this significant passage:—

"Although society may be justified in demanding a measure of retribution to deter the criminal, this in a negative

approach. Something more is needed for the true protection of the citizen: the prevention of crime by the care of the inadequate and immature, the healing of the sick, the rehabilitation of the offender, the restoration of his self-respect and his training in respect for the rights of others".

These are positive aspects of penal practice and penal reform.

4. By the middle of the 20th century, the term "Welfare State" has become the commonly accepted description of the society in several western countries and in the recent edition of the Oxford Dictionary the term has been explained as "A polity so organised that every member of the community is assured of his due maintenance with the most advantageous conditions possible for all". In such a state, it is recognised that fundamentally crime is a sign of sickness in the individuals and sickness in the society that breeds him. Thus, as it is no good condemning plants for not growing and blossoming as they should, if the soil is sour, similarly the society should not, when there is prevalence of crime put the entire blame on the criminals and assume a wholly innocent attitude. The same idea was conveyed in Manu, Book viii, sloka 304:

सर्वतो धर्मषड्भागो राज्ञो भवति रक्षतः
अधर्मादपि षड्भागो भवत्यस्य ह्यरक्षतः

"A king who (duly) protects (his subjects) receives from each and all the sixth part of their spiritual merit; if he does not protect them then the sixth part of their demerit (sin) also (will fall on him)."

Hence according to Manu, the Government (King) shares 1/6th of the sin committed by a criminal. This shows that the Government also should share, to some extent, the responsibility for the prevalence of crime. In Valmiki's Ramayana also, the close relationship between the King (now Government) and the prevalence of crime in a country is brought out while describing Ram Rajya:

राममेवानुवर्तन्तो नाऽभ्यहिंसन परस्परम्

(Yuddha Kanda—Ch. 128, sloka 100).

"The subjects followed the example set up by Rama (their Ruler) and did not commit crimes against one another".

5. This change in the attitude towards crime and punishment is reflected in some of the Articles of the United Nations Organisation. Thus in the U.N. Charter it was stated that one of the main purposes of the United Nations was to promote and encourage respect for human rights. In pursuance of this objective, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights unanimously on the 10th December, 1948. This Declaration has considerable indirect legal effect and is regarded by some jurists as a part of the "Law of

United Nations". Those articles of the Declaration which have a bearing on the reform of the Indian Penal Code are given below:

Article 5:

> No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.

Sections 73 and 74 of the I.P.C. which deal with solitary confinement will have to be omitted from the Code in pursuance of this Article. Again, for the same reason, the punishment of whipping cannot be provided in the Code as suggested to us by some sections of the Bar and the judiciary.

Article 12:

> No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

For implementing this article new offences dealing with the unauthorised invasion of privacy have been provided in the Penal Codes of some countries. In the Indian Penal Code also a new chapter dealing with offences affecting the right of privacy will have to be provided.

On the 16th December, 1966, the General Assembly of the U.N.O. unanimously adopted the International Covenants on Human Rights in which the aforesaid Articles of the Declaration were reiterated. (See Articles 7 and 17). In addition, the Covenants lay down certain principles relating to punishments for crimes. Thus, Article 6, para. 5 says that sentences of death shall not be imposed for crime committed by persons below 18 years of age.

6. There is an unfortunate tendency, in some circles, to ignore or to belittle the Hindu criminal jurisprudence on the main ground that it provides for barbarous punishments such as mutilation for some offences. These critics overlook the obvious fact that the Smritis were written between the 1st and 6th centuries A.D. and the punishments provided in them were less barbarous than those provided in the criminal laws of western countries as late as the end of the 17th century when petty theft was punishable with death and burning of witches and heretics was sanctioned by law. Hindu criminal law was more humane in the treatment of offenders than the laws of other countries of the same and even later period. Moreover, punishments such as externment from a locality, direct payment of compensation to the victim of the crime, wide publication of the name of the offender (social censure) which are now found in the penal laws of some of the Foreign countries, have been provided in the Hindu Smritis. As regards complete social rehabilitation of convicts after they have undergone the sentences, Smritis were more liberal (as will be shown subsequently) than modern penal law.

7. In my opinion, while considering the reform of Penal Law in India, the Law Commission, should approach the subject with a juristic outlook keeping in view the modern development in penal law of the leading Welfare States of the world and the norms laid down by the U.N.O. Proposals for penal law reform should not be scrutinised with the typical bureaucratic mistrust of new and experimental schemes nor should undue importance be attached to the absence of enthusiasm for reform in India, or to financial and other practical difficulties that may be anticipated. All sound reforms—whether legal or political or social—include an ideal element. Practical difficulties should undoubtedly be carefully considered and overcome at the time of implementing the reform but they should not be used as an excuse for not initiating reform altogether. There should be no hesitation in freely borrowing ideas from the Hindu criminal jurisprudence as laid down in the Smritis of Manu, Narada and Brihaspati.

8. A study of the Penal Codes of several countries of the world (as far as available here) shows that in most of the Welfare States the penal law provides for[1]:—

(1) Several intermediate types of punishments between "fine" and "imprisonment".

(2) Law of limitation for the initiation of prosecution against the offenders and the execution of sentences.

(3) Complete rehabilitation of some classes of convicts under certain conditions either by judicial pardon, expunging or cancellation of convictions and sentences.

(4) Relaxing the rigour of the old maxim "ignorantia juris non excusat" by providing even for complete acquittal where notwithstanding due diligence, the law on a particular subject could not be ascertained.

In my opinion all the aforesaid subjects should be included in the revised Indian Penal Code and where I have been unable to persuade my colleagues to agree with my views, I have prepared a separate minute.

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1. I have been much handicapped in my study of the Foreign Penal Codes, due to the non-availability of complete and uptodate texts. The Commission was denied an opportunity for an intensive study tour in some of the leading Welfare States of the World for the purpose of examining the actual working of the Penal Laws, in those countries. Hence any observation in these minutes about the penal laws of foreign countries should be taken as subject to the limitation of being either incomplete or not uptodate.

EXTERNMENT

One of the important omissions in the Code is the absence of any punishment intermediate between (a) imprisonment and (b) fine (see section 53). The punishment of forfeiture of property is retained only for three offences, viz., sections 126, 127 and 169 Indian Penal Code.

The result is that where the court feels that the sentence of fine may not be suitable for an offender, it has no other alternative except to sentence him to imprisonment. The evil effects of imprisonment—especially short-term imprisonment—are well-known. As pointed out by Nigel Walker (Reader in Criminology at Oxford) in his "Sentencing in a Rational Society" at p. 76, the unwanted by-products of imprisonment are these:

(1) The prisoner loses his job, is separated from his family and is compelled to associate with other delinquents.

(2) Prison work is seldom more than a way of reducing the economic burden which prisoners represent and of weaning them from idleness; it is only in exceptional cases that he learns a trade which he afterwards takes up.

(3) Though prisons make efforts to palliate the effects of separating the prisoner from his wife and family by allowing them to visit him, yet this does not prevent many marriages from breaking up during a long or even a medium sentence.

(4) In a prison there is ample scope for contamination of the unsophisticated offender by the professional criminal.

Hence, there is a need for providing for other types of sentences for certain classes of crimes.

The recent decision of the Supreme Court of United States in *Tate* v. *Short* decided on 2nd March, 1971, is instructive. It was held that any law which limits punishment to payment of fine for those who are also able to pay it but to convert the fine to imprisonment for those unable to pay it, offends the equal protection of the clause of the Constitution. The learned Judges indicated that the State was free to choose some other method to avoid imprisoning an indigent person for involuntary non-payment of a fine. It is not unlikely that an enterprising lawyer in India also may challenge the constitutional validity of section 64, I.P.C. as contravening article 14 in so far as it enables the court to send a poor convict to jail whereas a convicted person who is able to pay the fine, escapes imprisonment. This is, therefore, an additional reason for the Law Commission to devise some intermediate punishment between (a) fine, and (b) imprisonment.

2. The sentence of externment for an offence was suggested by me, but as it was not acceptable to my colleagues, I have been

constrained to write a separate minute on the subject. The necessity for such a punishment arises from the fact that notwithstanding universal condemnation, short-term sentences are widely prevalent. In England, according to Nigel Walker (*Ibid*, p. 125) in 1967, sentences of six months or less accounted for 72 per cent of all prison sentences. In the book entitled "Crime, Punishment and Cure" by Giles Playfair and Devrick Sington, the learned authors point out (p. 20) "The statistics supplied by the various countries show that the great majority of sentences of imprisonment passed by the Courts are of short duration. Sentences of six months and less form on an average more than 75 per cent of all prison sentences."

In India, in the State of Bihar, during the year 1963, short-term imprisonments of less than six months amounted to more than 90 per cent of the total convictions. The condition in other States must be equally bad.[1]

In some countries, the penal law provides for the sentence of externment from a specified locality, as a substantive punishment either in lieu of or in addition to other punishments.

Thus in U.S.S.R. article 21 while enumerating various kinds of punishment for offences includes "banishment" (Sub-section 3). This punishment of "banishment" is in substance the punishment of what is known as externment because article 26 says "Banishment shall consist in the removal of a convicted person from a place of his residence without prohibition against living in certain localities."

In the French Penal Code (as amended in 1959) article 44 provides for 'restriction of freedom of movement consisting of the prohibition to frequent certain places'.

In the Columbian Penal Code (as amended upto 1936) article 42 provides 'prohibition to reside in a specified place as an accessory punishment'.

In the Austrian Penal Code (as amended up to June 1965) deportation from a place is one of the punishments provided for gross and petty misdemeanours. (See section 240 clause (f) and also section 249).

In the Norweigian Penal Code also (amended upto 1961) in section 39 (1) there is a provision for forbidding certain classes of convicts from residing in a particular place.

It also appears that similar provisions are found in the Penal Codes of Ethiopia, Greece, Italy, Portugal, Spain, Switzerland, Venezuela, Yugoslavia and Germany, but as accurate texts of the Penal Codes are not available here, I am unable to give full particulars about this punishment as prevalent in these countries.

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1. See note on "Duty to Make Amends for the Harm Caused" in this folder.

In Narada Smriti (about 5th century A.D.) externment from the town was prescribed as one of the punishments for the offence of 'Sahasa' (violence) of the highest degree. (Narada Smriti by Max Muller, Sacred Books of the East, Vol. XXXIII, Chapter XIV, Sloka 7).

वधः सर्वस्वहरणं पुरान्निर्वासनाङ्कना
तदङ्गच्छेद इत्युक्तो दण्ड उत्तम साहसेः

(Moreover corporal punishment, confiscation of entire property, banishment from the town and branding, as well as amputation of that limb [with which the crime has been committed], is declared to be the punishment for Sahasa of the highest degree).

This sentence should be distinguished from the sentence of banishment from the country which is not recommended. It should also be distinguished from the preventive action of externment from any place provided in some local Acts for goondas and other undesirable persons.

3. My detailed suggestions as regards this form of punishment are given below:

(1) "Externment" should be included as a punishment in the Penal Code. It means the prohibition of the convicted persons from residing in any specified area or locality for a specified period.

(2) The area from which the convicted person is to be externed must be within the jurisdiction of the convicting court.

(3) Such a punishment may be imposed either in lieu of or in addition to any other punishment for offenecs under sections 143, 147 and 148, I.P.C.; sections 188, 189 and 190, I.P.C.; sections 379, 380, 381 and 382 I.P.C. and for aggravated forms of theft such as robbery and dacoity and also for the offence of criminal trespass and its aggravated forms.

(4) The maximum period of externment should be two years. But it should not exceed the maximum period of imprisonment prescribed for the offence.

(5) Externment as a punishment may be imposed in addition to or as an alternative to the punishment of imprisonment or fine to which the convict may be sentenced.

(6) If the convict fails to comply with the order of externment he shall be liable to imprisonment for a period to be specified by the convicting court.

(7) The period of imprisonment in default of complying with the order of externment shall not exceed the maximum period of imprisonment prescribed for the offence.

(8) Whenever a part of the period of externment has been undergone, the term of imprisonment fixed in default shall be deemed to be reduced by such number of days as bears to the total number of days in that term the same proportion as the number of days for which externment is undergone bears to the number of days of externment ordered.

(9) In calculating the reduction under proposition (8), any fraction of a day less than one-half shall be left out of account and any other fraction shall be counted as one day.

4. The main advantages of providing the punishment of externment for offences under the Code are these:

(1) Short-term imprisonment can be avoided in a large number of cases; thereby the evil effects of short-term sentences mentioned in para.1 will also be avoided and congestion in jail removed.

(2) Where persons otherwise in respectable stations in life commit offences involving defiance of authority such as offences under sections 188, 189, 190 I.P.C. or even offences under sections 147 and 143, it may be preferable to extern them from the place where there is potentiality for mischief due to their local influence, rather than send them to jail.

(3) As this punishment can also be imposed in addition to the punishment of imprisonment, it will be more effective than section 106 Cr. P. C. in preventing undesirable persons (for a limited period of course) from committing offences in a locality where they have much influence, after they have undergone a substantive sentence of imprisonment.

5. There need be no apprehension that such a sentence will be unconstitutional. It is a less severe sentence than imprisonment and as the constitutionality of the latter is beyond question, the former is also unassailable. It will be a 'reasonable restriction' in public interest for the purpose of clause (5) of Article 19. In the International Covenant of 1966 also while paragraph (1) of Article 12 says that there should be liberty of movement for 'every one lawfully within a state', paragraph 3, excludes from the scope of this article those restrictions which are provided by law to protect public order (omitting other particulars).

DUTY TO MAKE AMENDS FOR THE HARM CAUSED

As pointed out by me in my note on "Externment", one of the important omissions in the Penal Code in the absence of a kind of punishment intermediate between (1) imprisonment, and (2) fine. Many petty offences under the Code are committed by poorer sections of society who are not in a position to pay any fine. In consequence, the jails are crowded with short-term prisoners and all the evil effects of short-term imprisonment pointed out in my note on "Externment" operate with full force.

2. The extent of the evil of short-term imprisonment prevalent in India does not appear to have been fully appreciated even in informed circles. A scrutiny of the Report of the Administration of Criminal Justice in the State[1] of Bihar during the year 1963 shows that the total number of persons sentenced to imprisonment (both rigorous and simple) in Magistrates' Court during that year was 19,038 plus 7,646-26,684. Of these, 9,340 were sentenced to terms of imprisonment not exceeding 15 days, and 15,032 to terms not exceeding six months. Thus, more than 90 per cent of the persons convicted in Magistrates' Courts in Bihar in the year 1963 were sentenced to short-term imprisonment not exceeding six months. This figure may be taken as typical not only of Bihar, but of most of the States of India. It is reported (See my note on 'Externment') that in England the percentage of prisoners sentenced to short-term imprisonment of six months or less amounted to only 72 per cent of all prison sentences.[2] In India the figure is very high indeed, and the Law Commission will be failing in its duty if it does not suggest reform of the penal law with a view to eradicating this evil of short-term imprisonment as far as possible. There can be no doubt that if there is a kind of punishment intermediate between imprisonment and fine, a substantial number of sentences of short-term imprisonment could be avoided.

3. Jurists all over the world have been very much concerned with this problem, and various types of intermediate punishments have been provided in some of the foreign Codes. In the Code of the U.S.S.R.,[3] the punishment known as "imposition of duty to make amends for harm caused" has been provided as one of the supplementary punishments, which may be imposed either as the only punishment or as an additional punishment for certain classes of offences. In Article 32[4], of that Code the nature of this punishment has been fully described as follows:—

> "*Article* 32:–*Imposition of the duty to make amends for harm caused.* –Execution of the duty to make amends for harm caused shall consist in direct elimination, by one's own resources, of the harm caused, or in compensation, with one's own means, for material loss, or in a public apology before the victim or before members of the collective in a form prescribed by the court.
>
> Punishment in the form of imposing the duty of directly eliminating, by one's own resources, the harm caused may be assigned in the event that the court, taking into account the character of the harm caused, deems that the guilty person is capable of directly eliminating it in the indicated manner.

1. Report of the Administration of Justice in State of Bihar (1963) paragraph 6.
2. Nigel Walker, "Sentencing in a Rational Society", p. 125.
3. R.S.F.S.R. Penal Code, Article 21 (8).
4. R.S.F.S.R. Penal Code, Article 32.

Punishment in the form of imposing the duty to compensate for material loss may be assigned if the amount of the loss caused does not exceed one hundred rubles.

Punishment in the form of imposing the duty of publicly apologizing before the victim or members of the collective may be assigned if there has been an infringement of personal integrity or dignity or a violation of the rules of socialist communal life not causing material loss.

If the convicted person fails to fulfil his duty to make amends for the harm caused within the period established by the court, the court may replace this punishment by correctional tasks, or a fine, or dismissal from office, or social censure. In such event, and also in the event that material loss is caused in an amount of more than one hundred rubles, compensation for loss caused to the victim shall be effected by way of civil proceedings."

It will be noticed that the main advantage of this type of punishment is that it provides for the direct reparation to be paid by the offender to the injured victim by compensation either in money, labour or in kind, for the harm caused or for public apology where it may suffice.

4. One of the important advantages of this type of punishment is the prompt payment of reparation to the victim for the injury caused. It is one of the justified complaints against the penal law (both of Britain and India) that in criminal proceedings the injured party is generally neglected. The conviction and sentence passed on the offender may satisfy the State, which is generally responsible for initiating the prosecution; but it is poor consolation to the innocent victim of the crime. The recent White Paper[1] "Penal Practice in a Changing Society" points out that "the assumption that the claims of the victim are sufficiently satisfied if the offender is punished by society.....becomes less persuasive as society increasingly emphasises the reformative aspects of punishment and adds the view that the concept of reparation might give 'greater moral value' to our penal system".

In India, the victim may rely on section 545 Criminal Procedure Code for payment of compensation out of the fine imposed on the offender if and when it is realised. He may have a right of civil action against the convicted person but in view of the dilatory and costly nature of civil litigation this kind of relief is seldom sought for.

1. (1959) 227 Law Times , 117, 118.

5. In ancient Hindu Law, the law-givers were fully aware of the necessity of directly compensating the victim of the crime. Thus, Manu[1] in Chapter VIII, verse 287, says :—

> "If a limb is injured, a sound (is caused) or blood (flows, the assailant) shall be made to pay (to the sufferer) the expenses of the cure, or the whole (both the usual amercement and the expenses of the cure as a) fine (to the king)."

In Chapter VIII, verse 288, Manu says :

> "He who damages the goods of another, be it intentionally or unintentionally, shall give satisfaction to the (owner) and pay to the king a fine equal to the (damage)."

Manu, thus, provides for direct reparation to the victim of the crime apart from payment of fine to the king (the State). In Chapter XXI, Verse 10, Brihsaspati [2] says :

> "He who injures a limb, or divides it, or cuts it off, shall be compelled to pay the expenses of curing it; and (who forcibly took an article in a quarrel restore) his plunder."

In Chapter XXII, verse 7, he says :

> "A merchant who conceals the blemish of an article which he is selling, or mixes bad and good articles together, or sells (old articles) after repairing them, shall be compelled to give the double quantity (to the purchaser) and to pay a fine equal (in amount) to the value of the article."

Here also a distinction is made between imposition of fine which goes to the State and direct reparation to the victim of the crime.

6. In many other countries the victim is permitted to request the prosecution to include his claim in the criminal case against the accused. This is provided in Austria, Norway, Swede n, Spain, Colombia and Italy.[3] In France, a special action known as "actione civile" can be started by the injured person, which is heard along with the criminal case against the accused.[4] In Germany also, in the criminal proceedings against the accused the injured party may assert his claim in the property rights arising out of the offence.[5]

In my opinion, section 545, Cr. P. C. is wholly unsatisfactory, for the following reasons :

(1) Under section 545 Cr. P. C. compensation can be given only in money, to the injured party. There is no provision for direct reparation for the harm caused.

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1. The Laws of Manu in "Sacred Books of the East" by Max Muller, Vol. 25.
2. Brihaspati in the "Sacred Books of the East", by Max Muller, Vol. 33.
3. "Crime and Punishment —Reparation to the Victim" (1959) 227 Law Times, 117.
4. Articles 2 to 4, 85 to 91, 371-375, 418 to 426 , 497, French Cr. P.C.
5. Articles 403 to 406-a, German Code of Criminal Procedure.

(2) The procedure involved in section 545 Criminal Procedure Code, is circuitous, dilatory, expensive and causes much harassment to the injured complainant. The court is required first to impose fine on the accused and then await its realisations. Thereafter, the injured party has to apply for withdrawal of compensation awarded to him and this procedure, as is well known in law courts in India, involves much delay and harassment and also expense in the form of illegal gratification to the subordinate court staff. It will be very rarely indeed that any aggrieved party can hope to receive the full amount of the compensation awarded to him within reasonable time.

(3) It does not cover cases of those accused persons who are unable to pay the fine. The evil effects of short-term imprisonment already pointed out persist and the complaintant also may not be able to derive any advantage so far as reparation is concerned

8. Even in England, learned writers are slowly veering round to the view that apart from payment of fine, personal reparation including the undoing of the damage where possible or performance of other useful services by the convict, is desirable. I may quote the following passage in the Article "Crime and Punishment—Reparation to the Victim".[1]

> "Personal reparaion-linked, if necessary, to some scheme of national compensation—might involve revision of prison earnings and new arrangements for the supervision of offenders who are at liberty, but it would surely emphasise a man's responsibility for his own crime. *It need not be confied to money payments but could be extended to undoing the damage,* where possible, or performing other useful services. It would at once be just and reformative."

9. The number of minor offences for which the convicted person may be directed to make amends directly to the victim is very high in India. Thus, taking the figures of Bihar for 1963 as how in the Report of the Administration of Criminal Justice referred to above, the number of persons convicted of the following classes of minor offences is as follows (Table V)

Hurt	4,815
Wringful restriction and wrongful confinement.	175
Criminal force and assault	273
Theft	7,231
Extortion	43
Criminal misappropriation	40
Receipt of stolen property	561
Cheating	196
Mischief	994
Criminal Trespass	1,483
Defamation	36
Criminal intimidation, insult and annoyance	50
TOTAL :	15,897

1. (1959) Law Times, 117, 118, 227.

The total number of convicted persons under the Indian Penal Code during that year was 26,050. Thus the percentage of persons convicted of minor offences was more than 60 per cent. For all these offences a sentence of direct payment of compensation to the victim of the crime could easily have been imposed. I fully realise that even if such a sentence is passed many of the convicted persons may not pay such compensation but may prefer to undergo imprisonment in default. Hence, to some extent, sentence of short term imprisonment cannot be wholly avoided. But the number of sentences can be appreciably reduced. Some of the persons convicted of these offences may prefer to repair the damage caused to the complainant either by their own labour or by replacing the article damaged or lost, rather than go to jail. Moreover, the injured victim may be sufficiently recompensed without the circuitous procedure of awaiting the realisation of fine and payment of compensation. In my opinion, this will be a distinct improvement on the existing law and I would advocate this reform notwithstanding any pessimism that may be entertained in some quarters about its efficacy. I am suggesting below a draft of sections 70A and 70B.

"70A. (1) In the case of conviction for an offence against the human body, and offence against property, defamation or an offence against privacy, the court may direct that the person convicted shall pay compensation to the person mentioned in sub-section (4).

(2) Such compensation need not necessarily be monetary and it may be in any form which the court considers to be a sufficient recompense to the injured party. But while passing the order for compensation, the court shall estimate its monetary value for the purpose of execution of the order.

(3) A court shall not, under this section direct payment of compensation whose monetary value exceeds the amount of fine which it is empowered to impose.

(4) An order under sub-section (1) may be made—

(a) in addition to any other punishment to which the person convicted may have been sentenced ;

(b) in substitution of fine, where the offence, not being a capital offence, is one punishable with fine.

(5) The compensation under this section may be directed to be paid—

(a) to any person who has incurred expenses in prosecution, for defraying expense properly incurred;

(b) to any person for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a civil court;

(c) in the case of a conviction of any offence for having caused the death of another person or of having abetted the commission of such an offence, to the persons who are, under the Fatal Accidents Act, 1855, entitled to recover damages from the person sentenced, for the loss resulting to them from such death; or

(d) in the case of a conviction for any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, to any *bona fide* purchaser of such property, for the loss of the same, if such property is restored to the possession of the person entitled thereto.

(6) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

70 B. (1) In every case in which the offender is sentenced to payment of compensation under section 70 A, it shall be competent to the Court which sentences such offender, to direct by the sentence, that in default of the payment of compensation, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

(2) The provision of sections 65 to 70 (of the Indian Penal Code) shall, after substitution of references to compensation or its monetary equivalent in place of references to fine, apply in relation to imprisonment in default of payment of compensation, as they apply in relation to imprisonment in default of payment of fine."

10. If this suggestion is accepted, consequential provisions will have to be made in the Criminal Procedure Code also for execution of this type of sentence. Section 545 of the Criminal Procedure Code may be omitted altogether and new sections 388A, 388B and 388C, as shown below, may be inserted in the Criminal Procedure Code.

"388A. (1) Whenever an offender has been sentenced to pay compensation under section 70A of the Indian Penal Code, the Court passing the sentence shall order the payment of compensation to the person concerned within a specified period. If the said compensation is not paid

within that period or within such further period as may be extended by the Court, the Court, shall, subject to the provisions of sub-section 2, take the same action for recovery of compensation as it could take for recovery of the fine under section 386 of the Code of Criminal Procedure, 1898, and the provisions of sections 386 and 387 of the Code shall, after substitution of references to compensation in place of references to fine, apply for the purpose as they apply for the recovery of the fine.

(2) Proceedings for recovery of compensation as indicated in sub-section (1) shall be taken up by the court only on the application of the person in whose favour the order for compensation was passed. Such an application shall be filed within one month of the last date of the period specified for payment of compensation. If such an application is not filed within the time so fixed, the right of the person to receive the compensation shall be extinguished.

388B. When an offender has been sentenced only to pay compensation under section 70A of the Indian Penal Code, or to pay such compensation and fine and to imprisonment in default of payment of compensation, and the compensation is not paid within the date ordered by the Court, the Court may suspend execution of the sentence of imprisonment by passing the same orders as it could under sub-section (1) of section 388 (of the Code of Criminal Procedure, 1898) if the offender had been sentenced to fine only ; and the provisions of sub-section (1) of that section shall, after substitution of references to compensation in place of references to fine, apply for the prupose as they apply in case of a sentence of fine.

388C. For the purpose of section 388 (of the Code of Criminal Procedure, 1898), an offender sentenced to pay compensation under section 70A of the Indian Penal Code and to fine, shall be deemed to be an offender who has been sentenced to fine only."

ENTRAPMENT

Entrapment is broadly divided into two classes (1) legitimate entrapment, and (2) illegitimate entrapment. In the penal law of U.S.A. the expression "Entrapment" is used in the narrower sense of illegitimate entrapment.

2. It is recognised throughout the civilised world that certain offences cannot be detected easily without taking help from agent provocateurs any decoys or trap witnesses. But judicial decisions both in the west and in India have repeatedly laid down a sharp distinction between the legitimate method of utilising the services of such witnesses and illegitimate or objectionable

and unethical method. As pointed out in Perkins 'Criminal Law,' 1957 Edn. "It is not the entrapment of a criminal upon whom the law frowns ; but the seduction of innocent people into a criminal career by its officers is what is condemned and will not be tolerated." If the authorities who are engaged in the duty of enforcing law themselves instigate the commission of crime by implanting criminal ideas on innocent minds and thereby bring about the commission of offences which otherwise would not have been perpetrated such an entrapment is considered as illegitimate. As one Judge of the United States put it "Decoys are permissible to entrap criminals but not to create them" (*United States* v. *Healy,* referred to in Perkins Criminal Law, page 523, Footnote 12.) Illegitimate trap consists in the conception and planning of an offence by a law enforcing officer or his agent and the procurement of the commission of the offences by a person who would not have perpetrated it except for trickery, persuasion or fraud of the officer.

3. Legitimate trap, on the other hand, comes under the category of what is known as detection of an offence. Traps may be laid or decoys employed to secure the conviction of those bent on crime. The distinction between legitimate and illegitimate traps arises mainly as regards the point of origin of the criminal intent. If the intention to commit the crime originates in the mind of the accused and the enforcement agency merely places himself in a position to apprehend the accused by laying a trap for him, his action will not be blameworthy. But if the intention to commit the offence originates in the mind of the public official and the accused is lured into the commission of the offences for the purpose of prosecuting him thereafter, such a method may be highly objectionable and unethical.

4. In U.S.A. such illegitimate traps are now universally condemned as contrary to public policy and as operating as estoppel "Just as no other plaintiff is entitled to judgement (except against his agent) based upon harm of which his agent was the instigating cause, so it has been held that the acts of its officers estop the Government to prove the offence." (Perkins *ibid,* page 925). In a very recent decision *Cox* v. *Louisiana,* (1965) 379 U. S. page 559, the Supreme Court of the United States reversed the conviction of the lower court in a case where the police officers first permitted demonstrations in the vicinity of the court-house and thereby gave consent to such demonstration, but subsequently prosecuted the demonstrators for picketting near a court with intent to obstruct justice. The Supreme Court observed that such prosecution was violation of 'due process' and that it constituted an 'indefensible sort of entrapment by the State'.

5. The leading decision on the doctrine of Entrapment in the United States in *Sherman* v. *The United States* (356 U.S. 369 [1958]) where Chief Justice Warren of the Supreme Court

of America, after citing with approval *Sorrels* v. *United States* (287 U.S. p.435 observed :

> "The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestly that function does not include the manufacturing of crime. Though stealth and strategy are necessary weapons in the arsenal of a police officer for detecting criminal activity these become objectionable police methods if the criminal design originates with the officers of the Government and is implanted into the mind of an innocent person."

Chief Justice Warren further said that such objectionable police methods are in the same category as coerced confessions or unlawful search. To quote the Chief Justice :

> "Congress could not have intended that its statutes were to be enforced by tempting innocent persons into violations."

Mr. Justice Frankfurter, while dismissing the indictment (when the case was remanded) examined the principle of entrapment and pointed out :

> "No matter what the defendant's (accused person's) past record and present inclinations to criminality or the depths to which he has sunk in the estimation of the society certain police conduct to ensnare him into further crime is not to be tolerated by an advanced society....The possibility that no matter what his past crime and general disposition the defendant might not have committed the particular crime unless confronted with inordinate inducements must not be ignored. Past crimes do not for ever outlaw the criminal and open him to police practices aimed at securing his repeated conviction from which the ordinary citizen is protected. The whole ameliorative hopes of modern penology and prison administration strongly counsel against such a view."

While recognising that it is the obligation of the police to detect those engaged in criminal conduct and ready and willing to commit further crimes, should the occasion arise, Frankfurter J. further observed :

> "It does not mean that in holding out inducements they should act in such a manner as is likely to induce to the commission of crime only those persons and not others who would normally avoid crime and through self-struggle resist ordinary temptations....The power of Government is abused and directed to an end for which it was not constituted when employed to promote rather than detect crime and to bring about the downfall of those who left to themselves might well have obeyed the law. Human nature is weak enough and sufficiently beset by temptations without Government adding to them and generating crime."

6. It seems to be thus clear that in U.S.A entrapment is a sufficient ground for the court to quash the conviction of an accused even though he may be guilty of the offence. The 'due process' clause of the Constitution has been applied for this purpose, even in those States where there is no statute law on the subject. In the American Model Penal Code also a provision (section 2.13) has been made for quashing the criminal proceedings initiated against the victim of such illegitimate entrapment. In the New York Penal Law, article 35.40, the following provision is found :

> "In any prosecution for an offence, it is an affirmative defence that the defendant engaged in the prescribed conduct because he was induced or encouraged to do so by a public servant, or by a person acting in cooperation with a public servant, seeking to obtain evidence against him for purpose of criminal prosecution, and when the methods used to obtain such evidence were such as to create a substantial risk that the offence would be committed by a person not otherwise disposed to commit it. Inducement or encouragement to commit an offence means active inducement or encouragement. Conduct merely affording a person an opportunity to commit an offence does not constitute entrapment."

7. In Britain though there is no statutory law allowing an accused to plead successfully that he was the victim of an illegitimate trap for the purpose of quashing a conviction, nevertheless judicial decisions have expressed strong disapproval of this type of entrapment. I need only refer to the recent judgment of the Court of Appeal in *Regina* v. *Birtles* (1 Weekly L.R. 1969, p. 1047) where Paker, C. J. observed : "It is one thing for the police to make use of information concerning an offence that is already laid on. In such a case the police are clearly entitled, indeed it is their duty to mitigate the consequences of the proposed offence, for example, to protect the proposed victim, and to that end it may be perfectly proper for them to encourage the informer to take part in the offence or indeed for a police officer himself to do so. But it is quite another thing, and something of which this court thoroughly disapproves, to use an informer to encourage another to commit an offence or indeed an offence of a more serious character, which he would not otherwise commit, still more so if the police themselves take part in carrying it out." In *Brannan* v. *Peek* (1947) 2 All. E. R. 572, where a police officer committed a crime with a view to detect a crime Goddard C. J. observed :

> "I hope the day is far distant, when it will become a common practice in this country for police officers to be told to commit an offence themselves for the purpose of getting evidence against someone."

8. In India also judicial decisions have unanimously condemned the use of illegitimate traps to secure evidence against an accused. I may refer to A. I. R. 1938 Mad. p. 893 and A.I.R. 1968 Kerala p. 60.

In the Supreme Court this question came up for consideration in A. I. R. 1954 S. C. p. 332. To quote their Lordships at p. 334: "It may be that the detection of corruption may sometimes call for the laying of traps, but there is no justification for the police authorities to bring about the taking of a bribe by supplying the bribe money to the giver where he has neither got it nor has the capacity to find it for himself. It is the duty of the police authorities to prevent crimes being committed. It is no part of their business to provide the instruments of the offence."

Having passed strictures on the action of the Additional District Magistrate, their Lordships further stated that they would completely eliminate from consideration the evidence of the Additional District Magistrate, Shantilal Ahuja, who was the principal trap witness to prove the illegitimate trap. In the well-known case of *Ramjanam Singh* v. *The State of Bihar* (A.I.R. 1956 S. C. p. 643) their Lordship expressed themselves in more sympathetic terms against the laying of illegitimate traps. To quote their Lordships :

> "....that this was not a case of laying a trap, in the usual way, for a man who was demanding bribe, but of deliberately tempting a man to his own undoing after his suggestion about breaking the law had been finally and conclusively rejected with considerable emphasis and decission.

"Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and provoked into breaking the law; and more particularly by those who are the guardians and keepers of the law. However, regrettable the necessity of employing agents provocateurs may be (and he realises to the full that this is unfortunately often inevitable if corruption is to be detected and bribery stamped out), it is one thing to tempt a suspected offender to overt action when he is doing all he can to commit a crime and has every intention of carrying through his nefarious purpose from start to finish, and quite another to egg him on to do that which it has been finally and firmly decided shall not be done.

> "The very best of men have moments of weakness and temptation, and even the worst, times when they repent on an evil thought and are given an inner strength to set Satan behind him; and if they do, whether it is because of caution, or because of their better instincts, or because some other has shown them either the futility or the wickedness of

> wrong-doing, it behaves society and the State to protect them and help them in their good resolve; not to place further temptation in their way and start afresh a train of criminal thought which had been finally set aside. This is the type of case to which the strictures of this Court in *Shiv Bahadur Singh* v. *State of Vindhya Pradesh* apply," (A.I.R. 1954 S.C. 322, 334; 1954 S.C.R. 1098).

In that case they set aside the order of the High Court and restored the order of the trying court acquitting the accused. In 1958 S.C. p. 500, their Lordships pointed out that as the law stands in India, such trap witnesses, though they may be considered as partisan or interested witnesses could not in law be treated as accomplices. This was reiterated in A.I.R. 1969 S.C. p. 17.

10. The question for consideration by the Law Commission is whether in view of the aforesaid strictures passed by the Courts against laying of illegitimate traps, statutory protection should be given to the victim of an illegitimate trap in the Penal Code or else whether the law as laid down by the Supreme Court should be left for due implementation by authorities concerned.

11. In my opinion, the Legislature should step in and make a special provision in the Penal Code enabling a court to quash the criminal proceedings against an accused who is the victim of illegitimate traps. As the law now stands, though Courts may pass severe strictures on the methods used by the police, nevertheless, they have no other alternative but to convict the accused, even though it may be apparent that he would not have committed the offence but for the instigation and facilities provided by the police themselves. Strictures passed by courts even of a serious nature remain generally as pious observations which the prosecuting agency may or may not care to follow. On the contrary, if the law provides for quashing such proceedings, illegitimate traps will disappear altogether from the country. I am fully aware that in view of the wide prevalence of corruption especially amongst public officials laying of traps for detection of corruption cannot be avoided. But it must be done in a manner recognised as proper in all civilized countries. To quote Mr. Justice Holmes (277 U.S. p. 438).

> "It is desirable that criminals should be detected and to that end that all available evidence should be used. It also is desirable that the Government should not itself foster and pay for other crimes, when they are the means by which the evidence is also to be obtained... *For my part I think it a less evil that some criminals should escape than that the government should play an ignoble part.*"

I would specially emphasise the words underlined which should be the object of the jurists and Law Reformers in India.

12. My colleagues consider that legislation on the subject is unnecessary and that the prosecuting agency may be trusted to follow the principles laid down by the Supreme Court and avoid laying illegitimate traps. With great respect, I am unable to take such an optimistic view. Not infrequently the observations of the Court will be ignored and illegitimate traps laid. In such instances, the Court will have no discretion to quash the proceedings and can only insist on adequate corroboration of the evidence of the trap witness. The 'due process' clause in the American Constitution which enables a court to quash a conviction based on indefensible entrapment is not available here. I consider that in a country where rule of law prevails, a person who was the prime instigator and active helper of a person who would not have committed the crime but for such instigation and help, should not be permitted to successfully prosecute his victim. Any proposal for penal reform should in the Code itself provide for the quashing of the conviction of the victim of an illegitimate trap. This is the only effective way of eradicating this evil in this country and it will also correct a glaring omission in the Penal Code.

13. I, therefore, recommend the addition of a new section at the end of Chapter 4, on the lines of the New York Penal Code (*see* para 5) with suitable drafting modifications.

PRINCIPLES OF PUNISHMENTS TO BE PROVIDED IN THE PENAL CODE

In the new Criminal Procedure Code recommended by us we have specially provided for the hearing of the accused on the question of sentence by a court before passing sentence according to law. See draft sections 241(2) and 256(2). It seems therefore desirable to formulate in the Penal Code the main principles to be borne in mind by a court while passing sentence on a convicted person. The necessity for such formulation arises mainly because it is notorious that in India the Magistracy is not fully conversant with the principles of punishment. It is true that these principles have been repeatedly laid down by the High Court and the Supreme Court in several decisions. But these are not available in a convenient form for the benefit of the trying Magistrates. In the Draft German Penal Code of 1962, article 60(2) laid down the various matters to be considered by a court in fixing the punishment and they are reproduced below:

> "(2) In fixing a punishment the court shall weigh against each other such circumstances, other than definitional elements, as speak for and against the perpetrator.
>
> "Especially there shall be considered :
>
> the motives and aims of the perpetrator;

the state of mind which the act be speaks and the exercise of volition involved;

the extent of breach of duty;

the manner of perpetration and the wrongful effects of the act;

the prior life of the perpetrator, his personal and economic circumstances, as well as his conduct after the act, especially his endeavour to make restitution."

In Argentinian Penal Code also articles 40 and 41 which are relevant on the subject may be quoted :

"40. In the case of punishments divisible as to time and amount, the Court shall determine the sentence in accordance with the mitigating and aggravating circumstances of each particular case, under the provisions of the next following article.

"41. To effectuate the preceding article, the following shall be taken into consideration :

(1) The nature of the deed and the means employed in its commission, as well as the extent of the damage and danger created thereby.

(2) The age, education, habits and previous conduct of the individual, the nature of the motives which lead him to commit the crime, especially his poverty or his difficulty to obtain the necessary sustenance for himself and his family, the extent of his participation in the deed, his criminal and his personal record, as well as his personal relations, *i.e.* the character of the persons and the circumstances of time, place, occasion and others, which may indicate his greater or lesser dangerousness.

The judge shall take direct and visual cognizance of the subject, the victim and the factual circumstances to the extent necessary for each case."

The main advantages of inserting a similar provision in the Penal Code are these:—

(1) The trying court's attention is prominently drawn to the principles of punishment so as to enable the court to properly discharge the duty conferred on it by Draft Artices 241(2) and 256(2) of the Criminal Procedure Code.

(2) Both the prosecutor and the defence counsel get due notice of the matters that will be taken into consideration in imposing sentence and this enables them to collect the necessary materials for making their submissions on this point.

I, therefore, recommend that at the end of Chapter dealing with punishment, Chapter 3, a new section 75A may be inserted as follows:—

"75A. In fixing a punishment the court shall take into consideration, amongst others, the following matters:—

(1) The motives and aims of the perpetrator.

(2) The state of mind of the perpetrator at the time of the commission of the crime.

(3) The extent of breach of duty, if any.

(4) The manner of commission of the crime and the wrongful effects of the crime.

(5) The nature of the deed and the means employed in its commission.

"(6) The age, education, habits, previous conduct of the perpetrator, his personal and economic circumstances and the extent of his participation in the deed.

(7) His conduct after the commission of the crime, especially his endeavour to make restitution and to help the authority in tracing out his accomplices."

JUDICIAL PARDON OR EXPUNGING OR CANCELLATION OF CONVICTION

The positive school of crime and punishment has been strongly advocating the principle of complete rehabilitation of a convict under certain conditions. The necessity for such rehabilitation arises because conviction in a criminal case carries with it a certain stigma which persists throughout the life of the person even though he might have turned from his criminal activity and taken to legitimate activity and led an exemplary life. It also carries with it certain penalities and disabilities which persist so long as the conviction remains on record. In a very illuminating article entitled "Criminal Law in the Seventies, Some Suggestions" (published in the New York State Bar Journal, June, 1970), James V. Brands, who is an Assistant District Attorney of Dutchess County, New York, stated :

"It has been estimated that at one time or another throughout their lives approximately 91 per cent of our adult population have committed crime for which they could be sent to jail. We might consider that those in prison are to some degree only the unlucky ones, the failures are those without money for adequate counsel. In that light, an understanding that of all those convicted of misdemeanours he who leads a life free of convictions for five years thereafter should have his first conviction dropped from the record.

This should be allowed to the extent that he can answer no to any question on a Questionnaire asking whether he has been convicted or arrested for a crime."

The well-known international jurist of Norway, Johannes Andenaes, in his book "The General Part of the Criminal Law of Norway", p. 79, has commented on this subject as follows:—

"According to modern views, the resocialization of the convict must be accorded the greatest significance. Both purely humanitarian and social considerations make it clear that one who has served his sentence should be helped to his feet again. Of course, the traits which he has revealed by his offence may be of such a nature as to require that certain cautions be taken. But within these limits he should be allowed to support himself in an honest way and to regain his lost respect."

This subject has been dealt with in an article "Rule of Law in Criminal Justice" by Helen Silving who has been acclaimed as the "first lady of modern criminal law" by G.O.W. Mueller in his "Essays in Criminal Science." She observed at p. 139 *ibid* :

"Retribution implying 'rehabilitation', a limit should be set to the legal and social disabilities attaching to a 'criminal record'. After lapse of a certain period, unless there is reincidence the conviction should be completely erased from the record, so that no one be permitted to disclose the fact of such conviction in any context and that the person concerned need never admit it to anyone, including state authorities. When probation is granted and is successful, certain convictions should be deemed never to have occurred (French system). When probation is denied on grounds not connected with the actor's guilt provision should be made to afford him appropriate relief against the disadvantage of such denial. Finally, reports of criminal cases should not disclose the name of the defendant. Such disclosures, particularly in small communities, is highly prejudicial to the defendant throughout his life. It also adversely affects innocent family members."

In P.G. Fitzgerald's Criminal Law and Punishment, Clarendon Law Series, p. 204, the learned author points out :

"There is, however, a valuable claim concealed in the notion of expiation, namely, the idea that the wrong-doer who has been punished has by paying his debt wiped the state clear for a fresh start; and this claim is worth pressing in the face of practical consideration which operate to prevent the criminal making a fresh start. The known fact that a man has been convicted, the stigma of a prison sentence, together with various other factors make it impossible for his start to be entirely fresh, but in so far as the notion of expiation involves the demand for a possibility for such a start it goes hand in hand with the demand for reformation and rehabilitation."

The Hindu jurists also have laid down that once a person has been punished for an offence he becomes completely pure like a sinless person. Manu, Chapter 8, Sloka 318, enunciates the principles of rehabilitation of convicts in the following manner:—

राजभिः कृतदण्डास्तु कृत्वा पापानि मानवाः
निर्मलाः स्वर्ग मायान्ति सन्तः सुकृतिनो यथा

(But men who have committed crimes and have been punished by the King go to heaven being pure like those who performed meritorious deeds.)

Kulluka Bhatta (15th century) the great commentator on Manu, while commenting on this verse says :

सुवर्णस्ते यादीनि पापानि कृत्वा पश्चात् राजाभिः
विहित दण्डाः मनुष्याः सन्तः प्रतिबन्धक दुरिता भावात्
पूर्वार्जित पुण्यवशेन साधवः सुकृत कारिण इव स्वर्गं गच्छन्ति ।
एवं प्रायश्चित दण्डस्यापि पापाक्षय हेतुत्व मुक्तम ॥

(Having committed crimes such as theft of gold etc., the criminal after undergoing the punishment inflicted by the King becomes pure just like a person who has done good deeds (sadhus) and goes to heaven. It is indicated that the punishment purifies the criminal and absolves him from all sin in the same manner as expiation ceremony).

Again in the XIth Book, in Sloka 189, Manu says :

एनस्विभिः अनिर्णिक्तैः नार्थं किन्चिण्त् समाहरेत्
कृतनिर्नेजणांश्चैव न जुगुप्सेत कर्हिचित्

(Let him not transact any business with unpurified sinners but let him in no way reproach those who have made atonement.)

While commenting on this, the famous commentator Medhatithi (early 10th century) says:

निर्णेजनम् शोधनम् पापापनोनदम् ।
तस्मिन् कृते नैनम् जुगुप्सेत ।
कृतप्रायश्चित्तान न कुत्सयेन्

(Expiation is purification, wiping off of the sin. When this has been done, one should not despise the men. That is, no one should reproach one who has duly performed the prescribed expiation).

Kulluka Bhatta also says :

कृत प्रायश्चित्तान् नेव कदाचिदापि पूर्वकृत
पापात्वेन निन्देत् । किंतु पूर्व वह्म वहरेत्

(Once a person has expiated for his sin, he should never be despised for his sin, but *he should be treated in the same manner as he was treated before he committed the sin.*)

It is thus clear that Manu condemns the action of those persons who despise and reproach those unfortunate people who after having committed crimes have undergone the prescribed punishment. Though Manu Smriti might have been written at the commencement of the Christian era (the exact date is not known), nevertheless the fact that commentators like Medhatithi (early 10th century) and Kulluka Bhatta (15th century) reiterate the view of Manu on this point, shows that the Hindu law-givers took a very humane view of punishment and emphasised that after the purification ceremony either by expiation or punishment the offender should be completely rehabilitated into society without any stigma attached to him.

The aforesaid view of distinguished jurists on the principle of rehabilitation of a convict has now been recognised in the international covenant on Civil and Political rights which was passed unanimously by the General Assembly of the United Nations on the 16th December, 1966. Article 10.3 of the Covenant (already quoted) says that the primary aim of the treatment of prisoners should be their reformation and social rehabilitation. The subject has thus now passed beyond the stage of mere discussion or controversy and the question for law reformers all over the world (including the Law Commission here) is only one of how to implement this resolution.

It will be useful to study the provisions in the Penal laws of some of the countries of the world where this principle has been given legislative recognition.

Thus in the California Penal Code, p. 1203.4 :

"Even defendant who has fulfilled the conditions of his probation. . .shall at any time thereafter be permitted by the Court to withdraw his plea of guilty and enter a plea of not guilty; or if he has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusations or information against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offence or crime of which he has been convicted. . .provided, that in any subsequent prosecution of such defendant for any other offence, such prior conviction may be pleaded and provided and shall have the same effect as if probation had not been granted or the accusation or information dismissed."

In para. 1203, it is provided that probation, however may not be granted to *inter alia,* any defendant :

". . . convicted of robbery, burglary, burglary with explosives, rape with force or violence, arson, murder, assault

with intent to commit murder, commit murder, train wrecking, kidnapping, escape from a state prison, conspiracy to commit any one or more of the aforementioned felonies."

In the Yogoslave Criminal Code [article 87(2)] the court is given power on the application of the convict after lapse of a specified period to order the removal of all legal consequences arising out of his conviction provided the convict has deserved it by reason of his behaviour. Article 88 further says that some sentence may be expunged from the criminal record provided the convict does not commit a fresh criminal offence within five years of the date on which the punishment has been served.

In the German Penal Code, 1875, section 25, permits the court to pass an order restricting information about the conviction of a convict if his conduct is found to be exemplary. This has been described as "Judicial Pardon".

In the French Criminal Procedure Code also there is a separate chapter entitled "Rehabilitation of Convicts" (Book Five, Title Nine) where detailed provisions for complete rehabilitation of a convict under certain conditions have been made and the effect of such rehabilitation is mentioned as follows in article 799. "The rehabilitation shall wipe out the conviction and cause all the incapacities that result from it to cease for the future.

In the Criminal Law and Procedure of Russian Soviet Federated Socialist Republics, article 57 provides for cancellation of the record of conviction of certain classes of offenders by a court under certain conditions. Similarly in the Japanese draft Penal Code also there is a separate section (article 108) dealing with the subject of estinguishment of sentences.

In India there is no such power with the court of justice to wipe out the stigma of conviction. It is true that in the Criminal Procedure Code, section 562, permits the suspension of a sentence in the case of first offenders. The probation of Offenders Act also permits the court to release a person after conviction without sending him to jail. But these provisions are of restricted application and deal with the problem of rehabilitation in a half-hearted way. The court has no power to completely obliterate the conviction and to remove the stigma arising out of it. This power is conferred only on the executive by the right of pardon conferred by article 72 (for the President) and article 161 (for the Governors of States). This power of pardon is generally exercised on political or quasi-political grounds and cannot be claimed as of right. Hence a person who through sudden temptation commits a crime and afterwards sincerely repents for the same, undergoes the full penalty of law and thereafter leads a blameless life cannot wipe out the stigma during his lifetime except by asking for pardon and depending on the whims of the executive. Under Explanation (2) to section 54 of the Indian Evidence Act, his previous conviction is evidence of bad character

and can be brought on record to discredit him. Then again, there are certain statutes such as the Passport Act, the Representation of People Act and the Municipalities Acts of certain states which impose statutory disabilities for a certain period on persons who are convicted and sentenced to imprisonment. Apart from these statutory disabilities, for many public appointments, the applicant is specifically asked to disclose whether he was previously convicted or not and the conviction will always be used as a circumstance for rejecting his application.

In my opinion, bearing in mind the covenant of the United Nations Organisation to which India is a party there should be a provision in the Penal Code itself conferring a right on a convict (subject to certain conditions and restrictions) to apply to the court for judicial pardon or cancellation or expunging of the conviction. The scheme in its broad outlines may be as follows :—

(1) Expunging of conviction should be available whether the sentence is one of imprisonment or fine or both.

(2) The jurisdiction will be on the court which passed the original conviction or its successor in office.

(3) The right of the convicted person to apply for such expunction will arise after the expiry of the period mentioned below, from the date of payment of fine or the date of release from imprisonment :

Mere fine	1 year
Imprisonment for not more than one year .	2 years.
Imprisonment for not more than five years. .	5 years.
Imprisonment for five years or more . .	7 years.

(4) In considering the application for expunction of the conviction, the court will take into consideration the following facts and circumstances :

(a) That this is the convict's first conviction;

(b) That his previous behaviour has been good;

(c) That his character, the nature and circumstances of the crime and the determining motives therefore are such as to convince the Judge that the person to enjoy this benefit is not dangerous to society and that he will not revert to crime.

(5) If after the expunction of the conviction the convict is convicted on another offence during one half of the period mentioned in para. (3), the order of expunction shall stand cancelled.

(6) The effect of such expunction of the conviction shall be as follows:

(a) No court or authority shall take notice of the conviction expunged notwithstanding section 75 Indian Penal Code and similar provisions in other laws (*See* Explanation 2 to section 54 of the Evidence Act.)

(b) Notwithstanding anything to the contrary in any other law for the time being in force, the convicted person shall not be bound to disclose his conviction to any person or authority.

Consequential provisions will have to be made in the Criminal Procedure Code also dealing with the procedure to be followed by the Court while disposing of an application for expunging of conviction. There should be provision for notice to the Public Prosecutor and also to the Private Prosecutor, if any, and to the party aggrieved by the commission of the offence. The order should be made appealable. Article 370 of the Soviet Criminal Law and Procedure may be taken as a guide for this purpose.

IGNORANTIA JURIS NON EXCUSAT

(Ignorance of Law is no Excuse)

A plea for relaxation of this maxim in special circumstances in criminal proceedings

The Roman maxim that ignorance of law is no excuse seems to hold morally innocent persons criminally liable relying on an obvious fiction that everyone is presumed to know the law. The ludicrous nature of this fiction will be apparent in the well-known observation of Lord Mansfield. "It would be hard upon the profession (*i.e.* legal profession) if the law was so certain that everybody knew it.[1]" Eminent jurists have therefore discarded this fiction and stated that the true rule is not that everyone is presumed to know law but that ignorance of law will not be permitted as an excuse. The relentless rigour with which this maxim has been generally applied in all criminal proceedings has been justified by well known writers on jurisprudence on three grounds:—

(1) Law, in theory, at any rate, is definite, and knowable. Hence innocent and inevitable ignorance of law is impossible.

(2) The ground of necessity—if this maxim is relaxed every accused will take the plea that he did not know the law and it will be almost impossible for the prosecution to show affirmatively that he knew the law in question. Hence for

1. *Jones* v. *Randal*, (1774) 98 E.R. page 956.

the sake of any benefit derivable from a relaxation of this maxim it is not advisable to weaken the administration of justice by making liability dependent on well nigh inscrutable conditions touching knowledge or means of knowledge of the law.

(3) Criminal law rests on certain moral principles and hence when a person breaks the law though he may be ignorant of the provision of law he knows very well that he is breaking the rule of right.[1]

2. Though these grounds are undoubtedly valid and weighty, nevertheless modern jurists recognise "that they do not constitute an altogether sufficient basis for so stringent and severe a rule. None of them goes to the full length of the rule."[2] Thus, the principle that law is definite and knowable is so far-fetched in modern conditions as to be quixotic.[3] Again the difficulty of affirmatively proving the knowledge of law on the part of the accused may be surmounted by providing that the accused should bear the burden of establishing non-negligent ignorance. Thirdly the concept that criminal law is based on certain moral principles will be wholly inapplicable for certain regulatory offences especially of a technical nature. As pointed out by Salmond "That he who breaks the law of the land disregards at the same time the principles of justice and honesty, is in many instances far from the truth. In a complex legal system a man requires other guidance than that of commensense and a good conscience."[4] Salmond therefore points out (in the latest edition) that there is no sufficient justification for applying the maxim in its full extent with uncompromising rigidity and that certain exceptions to it are in course of being developed.

3. European scholars have therefore re-examined the problem arising out of the rigorous application of the maxim and have suggested relaxations in special circumstances. In England, the subject has been dealt with at greath length by Glanville Williams in his book on Criminal Law.[5] The learned author observes at page 292: "a more specific way of resolving the problem, which is gaining most favour among critics of the present rule, is that a distinction should be drawn between crimes resting upon immemorial ideas of right and wrong. where it is the business of the citizen to know what he may legally do, and modern regulatory offences of which the citizen would not normally know unless there is something to put him on enquiry." As no comprehensive codified penal law exists in England judges

1. Salmond on Jurisprudence, 12th Edn., page 395.
2. Salmond *ibid*, page 396.
3. General Principles of Criminal Law by Hall, 2nd Edition, page 378.
4. Salmond *ibid*, page 396.
5. Criminal Law by Glanwville Williams, Chapter 8, General Part, 2nd Edition.

have some discretion to relax the rigour of this maxim in exceptional cases. Thus, in the well-known case of *Wilson* v. *Inyang*[1] an African who had lived in England for two years began to practise as a naturopath physician declaring himself to be "N.D., M.R.D.-P." though he was not a registered medical practitioner. The High Court acquitted him of the offence under section 40 of the Medican Act on the ground that he honestly believed that he was within his right in so practising. Smith & Hogan[2] while commenting on this decision observe: "The mistake which Inyang made seems to have been a mistake of law for he knew all the facts and the question whether he was entitled to describe himself as he did was one of law". Thus, in England any serious injustice that may arise out of the strict application of the maxim is avoided by the development of case law. Nevertheless, recently the English Law Commission (which is engaged in codifying the criminal law) has taken up this subject and in its Working Paper has formulated certain questions for eliciting opinion.

4. In U.S.A. the "due process clause" gives relief to an innocent accused. Thus, in the case of *Lambert* v. *California,*[3] the U.S. Supreme Court held that the due process clause of the Constitution prevented the conviction of a person for an omission in breach of a statutory rule which he neither knew nor would have known. Jerome Hall[4] and Perkins[5] have described in detail the various circumstances where the maxim was not strictly applied. Thus "where the offence charged is violation of law which forbids the doing of certain things without securing the permits from a specified commission of department the *bona fide* reliance upon advice received from that very Commission or Department to the effect that contemplated action falls without the scope of the statute and hence requires no permit has been held to bar conviction." (pp. 813-814, Perkins). It has also been held that where a mistaken belief as to the law was based upon a decision of a lower court, prior to the contrary determination of a higher court such a plea was a good defence. Again, "where specific intent is essential to crime, ignorance of law may negative the existence of such intent" (p. 816 *ibid*). Where special mental element is required for guilt such as the doing of a thing maliciously, corruptly, wilfully or knowingly, ignorance of law may in certain cases negative the existence of such intent. Hall, after reviewing the entire subject, has pointed out the necessity of legislation with a view to relax the rigour of this maxim for minor offences especially those of a regulatory nature. To quote[6] his own words:–

> "Since the questions requiring determination, in order to demark the exact area within which ignorance of the law

1. *Wilson* v. *Inyang,* (1951) 2 All E.R., page 237.
2. Criminal Law by Smith & Hogan, Second Edition, page 130.
3. (1957) 355 U.S. 225.
4. Hall *ibid.*, Chapter 11.
5. Criminal Law by Perkins, 1957, Chapter 9.
6. Hall, *ibid,* page 404.

is a defence, are beyond the province of the judicial function, the need for legislation is clear. A likely area would include recent misdemeanours punishable only by small fines, various ordinance and technical regulations of administrative boards. Here actual knowledge of the illegality should be required. It seems necessary to retain the presumption that there was such knowledge allowing the defendant to introduce evidence tending to prove his ignorance or mistake of the law, but placing the final burden of proving *mens rea*, in the above sense, upon the State."

5. The American Model Penal Code also contains the following provisions on the subject:—

"Proposed[1] Official Draft (1962) :

(1) Ignorance or mistake as to a matter of fact or law is a defence if:

(a) the ignorance or mistake negatives the purpose, knowledge, belief, recklessness or negligence required to establish a material element of the offence; or

(b) the law provides that the state of mind established by such ignorance or mistake constitutes a defence.

(2) Although ignorance or mistake would otherwise afford a defence to the offence charged, the defence is not available if the defendant would be guilty of another offence had the situation been as he supposed.

(3) A belief that conduct does not constitute an offence is a defence to a prosecution for that offence based upon such conduct, when:

(a) the statute or other enactment defining the offence is not known to the actor and has not been published or otherwise reasonably made available to him prior to the conduct alleged; or

(b) he acts in reasonable reliance upon an official statement of the law, afterwards determined to be invalid or erroneous, contained in (i) a statute or other enactment; (ii) a judicial decision, opinion or judgment, (iii) in administrative order or grant of permission; or (iv) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offence.

(4) The defendant must prove a defence arising under sub-section (3) of this section by a preponderance of the evidence."

1. Criminal Law and Procedure. Cases and Readings, 2nd Edition by Jerome Hall and Gerhard O.W. Mueller, page 593-594.

6. In those countries where Penal Law has been codified, there is a tendency in recent times to make express provisions dealing with mistake of law.

Thus in the Draft German Penal Code, 1962, Article 21 says:

"21. *Error about the Prohibition.*—Anybody who in committing the act erroneously assumes that he is not acting unlawfully, acts without guilt *if he cannot be blamed for the error.* If he can be blamed for the error the punishment may be mitigated in accordance with Article 64, paragraph 1."

In the Draft Japanese Penal Code, 1961, Article 20 (2) says:

"20(2) A person who acts without knowing that his acts are not permitted by law shall not be punished, *if there is adequate reason for his ignorance."*

In the Norwegian Penal Code (corrected upto 1961), section 57 is as follows:—

"57. If a person was ignorant of the illegal nature of an act at the time of its commission, the court may reduce the punishment to less than the minimum provided for such an act, to a milder form of punishment, provided the court does not decide to acquit him for this reason."

In the Colombian Penal Code, 1936, Article 23 (2) is as follows:—

"There is no liability when the deed is committed in full good faith under *insuperable ignorance* or through essential mistake of the fact or law not due to negligence."

In the Austrian Penal Code, 1966, section 2 (e), is as follows:—

"Hence an act or omission is not to be regarded as a felony if such an error occurred as to prevent *recognition of the felonious character of the act."*

In the Argentinian Penal Code, 1960, the relevant portion of Arctcle 34 is as follows:—

"The following are not criminally liable: 1. Anybody who at the time of the commission of the crime could not appreciate the unlawfulness of the deed or control his actions, by reasons of insufficiency or diseased disturbances of his mind, or by unconsciousness, or by error of fact or *ignorance for which he is not responsible* . . . ."

In the Korean Penal Code, 1953 also, mistake of law has been dealt with in article 16 as follows:—

"*Mistake of Law.*—Where a person commits a crime in the belief that his conduct does not constitute a crime under

existing law, he shall not be punishable only *when his mistake is based on reasonable grounds.*"

The revised Swiss Penal Code (1951) explicitly provides that Article 18 (on *mens rea*) is also applicable to contraventions (offences susceptible of fines or arrest but not prison sentences) and that at least criminal negligence is required for a conviction based on other federal law (Public welfare offences Article 333-3).

In Netherlands also a theory of culpability similar to that prevailing in Switzerland has been introduced in 1952.

In Belgium also after 1940, invincible mistake of law is a good defence for any offence.[1]

In these countries, the theory of Simon and Von Liszt advocated by the 4th International Congress of Comparative Criminal Law seems to have been substantially adopted. According to this theory:—

"No punishment without guilt, no guilt without fault, the author of an act is convicted because when acting he knew or could have known that he acted unlawfully."[2]

The well-known Norwegian Jurist J. Andenaes[3] has pointed out the elasticity of section 57 of the Norwegian Penal Code and referred to various circumstances where an accused may be completely acquitted for mistake committed in ignorance of law.

7. It may be interesting to refer to Corpus[4] Juris Canonici, promulgated by Pope Benedict XV in 1917.

"Canon 2202, 1.—Violatio legis ignorantae nullatenus imputatur, si ignorantia fuerit inculpabilis.

"This principle, simply stated, means that ignorance of the law is an excuse if the ignorance is not the fault of the agent.

The imputability of a crime committed through ignorance is determined by the degree of culpability in the ignorance."

8. It may, therefore, be stated broadly that wherever the Penal Code has been recently revised or is in the process of revision, efforts have been made to relax the rigour of this maxim

1. Penal Codes of other foreign countries are not available here.
2. Muller-Rappard, The Mistake of Law as a defence, 36 Temple Law Quartely 261 (288).
3. J. Andenaes "Ignorantia Legis in Scandinavian Criminal Law" in Essays in Criminal Science, edited by Gerhard O.W. Mueller, Criminal Law, General Part 2nd Edn., Chapter 8.
4. Criminal Law and Procedure, Cases and Readings, 2nd Edn., by Jerome Hall, page 593.

and to provide (in the Code itself) for exceptional circumstances where mistake of lay men be a good defence. The language of the statutes is so framed as to cast this burden on the accused thereby making the maxim, as it were, a mere rebuttable presumption. Even in those countries where there is no comprehensive Penal Code, as in England and U.S.A., judges have had no hesitation in acquitting the accused in exceptional cases where ignorance of law would be a good defence. Even in those countries codification of Penal Law has been taken up and the authorities concerned are carefully considering how this provision should be drafted.

9. In India, the Penal Code of Lord Macaulay, by express provision (in sections 76 and 79) excludes mistake of law from the scope of the exceptions. The maxim is therefore applied in all its rigour; but as no minimum punishment is provided in the penal laws of India as a general rule, the court has considerable discretion in passing nominal or lenient sentences, where there is non-negligent invincible mistake of law. But in any proposal for penal law reform in India this question has to be grappled adequately bearing in mind the trend in other countries. The conservative view will perhaps be to the effect that the existing provisions should be left undisturbed, and that where there is exceptionl hardship it may be left either to the discretion of the court to pass a nominal sentence or to the excutive to exercise their prerogative of pardon or remission of sentence.

10. The reformer, however, may not be satisfied with such a negative approach to the whole question. Once it is found that the basic grounds on which the maxim is based are no longer applicable for all classes of offences legislature must intervene with a view to provide for complete acquittal in proper cases. At pages 398-399 of General Principles of Criminal Law by Hall, the learned author has referred to some cases where though the offence of bigamy was committed due to mistake of law, the courts passed a nominal sentence of one day's imprisonment or one week's imprisonment. But this provided an interesting query from a New Zealand Judge (page 399 *ibid*) "Why then should the Legislature be held to have wished to subject him to punishment at all." This observation is strengthened if it is remembered that the conviction in a criminal case is itself a serious stigma on a person, and a mere reduction of sentence may not be sufficient for his complete rehabilitation. Thus, under Explanation 2 to section 54 of the Evidence Act the conviction is evidence of bad character and may be used against an ex-convict throughout his life. Hence, though the court's discretion to pass nominal sentences in appropriate cases should remain in tact, nevertheless in any proposal for reform of the penal code to suit modern ideas of crime and punishment it seems necessary to make an express provision for the complete acquittal of the accused on the ground of mistake of law in exceptional circumstances.

11. According to Hall[1] "recent misdemeanours punishable with fines, ordinances and technical regulations of an administrative Board" should be separately classified and actual knowledge of the illegality may be insisted upon. The burden of proving ignorance or mistake of law should however rest with the accused. The broad principle of classification is worth adopting in India also. It has also been suggested by Glanville Williams in the passage already quoted (paragraph 3). The main test for the purposes of classification of offences for this purpose may be the test of "knowability" of the penal provision and not necessarily the actual knowledge of the same.

12. In India there is a marked difference between Acts of Legislature on the one hand and the mass of legislation known as 'subsidiary legislation', on the other. Acts of Legislature are generally introduced in the form of Bills, discussed in the Legislatures, widely advertised in the press and even after being passed by the Legislatures are generally available as priced publications from various book-sellers. Anyone, who is vigilant and diligent can without much difficulty know the relevant provision of the law. The test of knowability may, therefore, be said to be fully satisfied in respect of Acts of Legislature.

13. On the other hand, "subsidiary legislation" will not satisfy the test of knowability. Rules, orders, bye-laws and notifications made under parent Acts are generally published in the Gazette and are not easily available. Even authorised booksellers do not have uptodate copies of the same. The Government also do not publish uptodate copies of statutory rules, orders and notifications. Some of the notifications are not issued by the Government but by the subordinate authorities, such as Board of Revenue and local authorities. For instance, unauthorised possession of any excisable commodity (Ganja, Opium, Bhang, Liquor etc.) above the maximum permissible limit is made an offence under the Excise Acts. But the maximum limit of permissible possession is fixed from time to time by the Board of Revenue by notifications and the limit may vary from district to district. Hence a person in unauthorised possession above the limit, contravenes the notification, though he is punishable under the parent Act. Similarly, bye-laws are issued and amended from time to time by local authorities and the contravention of the bye-laws is punishable under the parent Act. Again, some of the notifications issued under the Foreign Exchange Regulations and the Sea Customs Act are neither known nor easily knowable. It is not unusual to find even the departments in charge of administration of a statute not being fully aware of the latest amendments to some of the notifications, especially where these are changed with lightning rapidity and the amendments are so drafted as to be unintelligible without a careful scrutiny of the original provisions. Perhaps, a research scholar digging into ancient gazette

1. Page 404, *ibid.*

notifications and exhuming an old rule, bye-law or order may be in a position to know the latest law on a subject. But it will be quite unrealistic to expect even an ordinary prudent and vigilant citizen to reach that standard. There are also some reported decisions where even High Courts have been misled by omission of the Counsel for the Government (due to his own ignorance) to place before the Court the latest notification on a subject. Thus, when judged in the light of the test of 'knowability', subsidiary legislation in India can be reasonably classified and separated from the Acts of Legislatures for the purpose or relaxing the rigour of the maxim. It appears that the test of 'knowability' was considered very important even in Roman times and hence minor women, farmers and soldiers were exempted from the operation of the maxim.[1]

14. It is true that ultimately the offence committed would be punishable under the parent statute but where the essence of the offence consists of contravention of a rule, order, bye-law or notification, the law should permit the accused to show that he could not even with due diligence have been aware of those provisions. By thus casting the burden on the accused the ground of necessity (ground no. 2 in paragraph 2) for retention of the maxim will still be maintained in its effectiveness.

15. The main advantage of such a law reform may be put in the words of Glanville Williams[2] as follows:—

> "To recognise this defence would have the considerable advantage of compelling the departments of Government to make a continuous effort to bring regulations to the notice of those affected. It would probably have a beneficial effect on the clarity with which rules are drafted, the frequency with which they are revised in the light of judicial interpretations and the general effectivencess of legal regulations."

These observations would apply with equal force in India. If this suggestion is accepted, the authority concerned will be compelled to produce revised editions of the subsidiary legislation frequently and make them easily available to the public as priced publications.

16. The following draft is suggested for this purpose:—

> "79A.—Notwithstanding anything contained in sections 76 and 79, nothing is an offence where the act alleged against an accused is contravention of a provision of a rule, bye-law, order or notification made under an Act of Legislature, if at the time of such contravention the accused could not have with due diligence been aware of the said provision."

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1. Hall *ibid*, page 378.
2. Glanville Williams, *ibid.*, page 292.

As to what will be 'due diligence', no general rule can be stated and it should be left for case law to clarify the position. The accused's status in society, his educational and mental abilities, the recent nature of the rule, the fact that the accused is a stranger and the fact that the law is so ambiguous as to render its meaning doubtful may all amount to due diligence. Once the Code is amended as suggested above, the High Court and Supreme Court will in due course lay down certain tests for this purpose.

17. A radical law reformer may perhaps be not satisfied with the aforesaid proposal on the ground that it does not go far enough. He may prefer a comprehensive provision on the lines of the American Model Penal Code (paragraph 5) laying down in greater detail, the various circumstances in which mistake of law will be a good defence. But this proposal is open to the objection that it will be impossible to be exhaustive in the enumeration of the details and that considerable discretion should be left with the court. In some of the foreign Codes, this has been achieved by using phrases such as:—

> "If he cannot be blamed for the error"; "if there is adequate reason for his ignorance"; "insuperable ignorance of law not due to negligence"; "ignorance for which he is not responsible"; "where his mistake is based on reasonable grounds", etc (paragraph 6).

18. The whole question may be formulated thus: Should the provisions of sections 76 and 79 of the Indian Penal Code be retained in their present form? If they are to be amended, what should be the nature and extent of law reform. I would recommend the suggestion contained in paragraph 17.

R. L. Narasimham

APPENDIX 1

QUESTIONNAIRE

ON REVISION OF THE INDIAN PENAL CODE

Application of the code

1. Extra-territorial operation of the Code in respect of aliens is at present confined to offences committed on ships or aircraft registered in India (section 4). Should this be enlarged in any manner, e.g. to offences committed by aliens in the service of Government outside India?

Punishments

2. The punishments provided in the Code are death, imprisonment for life, rigorous and simple imprisonment, forfeiture of property and fine. Do you consider it necessary or desirable to add any other punishments, e.g.

(a) banishment for a term to a specified locality within India;

(b) externment for a term from a specified locality;

(c) corrective labour;

(d) imposition of a duty to make amends to the victim, by repairing the damage done by the offence;

(e) publication of name of the offender and details of the offence and sentence;

(f) confiscation.

In respect of what offences or types of offences would such punishments be appropriate?

3. The Code lays down only the maximum punishment for offences, and no minimum punishment except in very few cases. Are you in favour of laying down a minimum term of imprisonment for any offences? If so, for what offences?

4. Should imprisonment for life as the punishment prescribed for some offences be replaced by imprisonment for a specified long term, e.g. 20 years?

5. Have you any general suggestions to make for a reduction or increase in the quantum of punishment for various offences under the Code ?

6. Are you in favour of providing any special form of punishment (such as, ordering suspension or winding up of business), for persistent violations of the law by Corporations?

7. (a) Where an offence is conjointly committed by a group of persons (say, exceeding ten in number), should the maximum punishment be higher than the maximum prescribed for that offence?

(b) For instance, should 'gherao' (wrongful restraint by a large group of persons) be made a separate offence with a severe punishment?

(c) have you any other additions to suggest for dealing with violent crimes committed by organised groups or by unruly crowds?

8. When a person commits an offence in a state of intoxication (self-induced), should that be made a ground for enhanced punishment?

9. (a) Do you think that there are too many provisions in the Code dealing with aggravated form of particular offences and the law should be simplified in this respect?

(b) Would it be preferable to give a list of aggravating and another of mitigating circumstances and provide generally that, in case of aggravating circumstances, the ordinary maximum punishment will be doubled, and, in case of mitigating circumstances, it will be halved?

General Exceptions

10. Would you allow mistake of law to be pleaded either as a defence or as a mitigating circumstance, for offences constituted by contravention of subordinate legislation, such as, statutory rules, bye-laws, orders and the like?

11. Do you consider that any increase is necessary in the minimum age of criminal responsibility which is 7 years at present (section 82)? If so, what should it be?

12. (a) Should the existing provision (section 84) relating to the defence of insanity be modified or expanded in any way?

(b) Should the test be related to the offender's incapacity to know that the act is wrong or to his incapacity to know that it is punishable?

(c) Should the defence of insanity be available in cases where the offender, although aware of the wrongful, or even criminal, nature of his act, is unable to desist from doing it because of his mental condition?

13. There is at present no right of private defence in cases in which there is time to have recourse to the protection of public authorities (section 99). Do you think that this restriction is necessary or that it should be removed or that it should be modified?

14. In regard to entrapment cases where the law enforcement officers or their agents directly instigate the commission of an offence, as distinct from those cases where they merely provide the opportunity for the commission of the offence, would you say:—

(a) that the procedure adopted is so unfair and unethical that the accused should be deemed not to have committed any offence, or

(b) that, at any rate, a lesser sentence should be provided in the Code?

Abetment and attempt

15. Where a person abets an offence by instigating a minor to commit it, should the abettor be punishable with a punishment higher than that prescribed for abetment in general?

16. Are you in favour of introducing the principle of full vicarious liability of the master for an offence committed by a servant in the course of his employment for the benefit of the master?

17. At present, preparation to commit an offence is by itself an offence in very few cases. Would it be desirable to increase this number, and if so, in respect of what types of offences?

Offences against the State

18. Do you consider that the law relating to sedition should be amplified or modified? If so, in what respects?

Offences affecting the human body

19. Should euthanasia (or 'mercy killing' as it is popularly called) be exempted from punishment either as homicide or as abetment of suicide?

20. Should there be a provision in the Code for punishing a person who drives another person by systematic cruel treatment to commit suicide?

21. (a) Should attempt to commit suicide be punishable at all ?

(b) Where a person threatens to put an end to his life or attempts to do so, with a view to compelling another person or authority to do or omit to do anything which that person or authority is not bound to do or, as the case may be, omit to do, should such act be made punishable?

22. The Code contains a few provisions for punishing sexual offences (rape, unnatural offence etc.). Are any additions to, or, alterations in, these provisions necessary?

23. (a) Should unnatural offences be punishable at all or with heavy sentences as provided in section 377?

(b) Should exception be made for cases where the offence consists of acts done in private between consenting adults ?

Other offences

24. (a) Should adultery be punishable at all?

(b) If so, should the offence be limited to men only, as in section 497?

25. (a) Should defamation as at present elaborately defined in section 499 be punishable at all?

(b) Would it be preferable to limit criminal defamation to cases where a person defames another person (living or dead) intending or knowing it to be likely that such act will lead to a breach of the peace?

26. In view of Article 12 of the Universal Declaration of Human Rights (1948), do you think that the criminal law ought to recognize and protect the right of privacy, and, if so, what kind of interference with that right should, in your view, be punishable?

Limitation for prosecutions

27. Do you consider that there should be a statutory period of limitation for prosecution for any offences under the Code, and, if so, for what offences?

Note

Although it is not normal drafting practice to re-number sections which are only replaced or amended, re-numbering of sections is proposed in this draft Bill up to the beginning of Chapter VII of the Code. As Chapters I to VB, as revised,[1] forming the general part of the Code, will have 34 sections less than the present Chapters I to VA,[2] it is desirable to have consecutive numbering of the provisions of general application included in these Chapters.

The definition of particular offences begins with section 121. Re-numbering of these subsequent sections is not proposed in the draft Bill, except where a whole Chapter or a fascicle of sections is replaced after revision, in order that familiar landmarks like sections 124A, 147, 193, 302, 420 etc. may not be disturbed.

1. Revised Chapter I to VB have 84 sections in all.
2. Existing Chapters I to VA have 118 sections in all.

APPENDIX 2

LAW COMMISSION'S DRAFT

OF

THE INDIAN PENAL CODE

(AMENDMENT) BILL, 1971

1. *Short title and commencement.*—(1) This Act may be called the Indian Penal Code (Amendment) Act, 1971.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Omission of section 2.

2. Section 2 of the Indian Penal Code (hereinafter referred to as "the Code") shall be omitted.

Substitution of new section for section 4.

3. Section 4 of the Code shall be omitted, and in lieu thereof, the following section shall be substituted as section 2, namely,—

"2. *Ex-territorial application of the Code.*—This Code shall apply also :—

(a) to any offence committed outside India by a citizen of India;

(b) to any offence committed by an alien on any ship or aircraft registered in India, wherever it may be; and

(c) to any offence committed outside India by an alien whilst in the service of the Government, when such offence is committed in connection with such service or is punishable under Chapter VI, VII or IX of of this Code.

Explanation.—In this section, the word 'offence' includes every act committed outside India which if committed in India would be punishable under this Code."

Omission of section 4.

3. Section 4 of the Code shall be omitted.

4. For section 5 of the Code, the following sections shall be substituted as section 4, namely,— Substitution of new section for section 5.

"4. *Saving.*—Nothing in this Code shall affect the provisions of any special or local law."

5. For Chapter II of the Code, the following Chapter shall be substituted, namely,— Substitution of new Chapter for Chapter II.

CHAPTER II

General Explanations

5. *General Clauses Act to apply for interpretation.*—The General Clauses Act, 1897, shall apply for the interpretation of this Code as it applies for the interpretation of an Act of Parliament.

6. *Sense of expression once explained.*—Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

7. *Definitions.*—In this Code, unless the context otherwise requires,—

(a) 'animal' means any living creature other than a human being;

(b) 'capital offence' means an offence for which death is the only punishment, or one of the punishments, provided by law;

(c) 'court of justice' means a judge or body of judges when acting judicially;

(d) 'death' means the death of a human being;

(e) 'election' means an election by whatever means held under any law for the purpose of choosing members of any legislature, local authority or other public authority;

(f) 'harbouring' means giving shelter to a person, and includes supplying a person with food, drink, money, clothes, arms, ammunition or means of conveyance, or assisting a person in any manner to evade apprehension;

(g) 'India' means the territory of India, including the territorial waters of India, but excluding the State of Jammu and Kashmir;

(h) 'injury' means any harm illegally caused to a person in body, mind, reputation or property;

(i) 'judge' means any person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons which is empowered by law to give such a judgment, and includes a magistrate;

(j) 'life' means the life of a human being;

(k) 'local law' means a law applicable to a particular part of India;

(l) 'man' means a male human being of any age;

(m) 'public' includes any class of the public or any community;

(n) 'public servant' means,—

(i) any person who is a member of Parliament or of a State Legislature;—

(ii) any person in the service or pay of the Government, or remunerated by the Government by fees or commission for the performance of any public duty ;

(iii) any person who is a member, or is in the service or pay, of a local authority ;

(iv) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act or of a Government company as defined in section 617 of the Companies Act, 1956;

(v) any judge, including any person empowered by law to discharge, whether by himself or as a member of a body of persons, any adjudicatory functions ;

(vi) any person specially authorised by a court of justice to perform any duty in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court ;

(vii) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(viii) any person who holds an office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election; or

(ix) any person who holds an office in virtue of which he is authorised or required by law to perform any public duty ;

Explanation.—A person falling under any of the above clauses by virtue of any office or situation he is actually holding is a public servant, whatever legal defect there may be in his right to hold that office or situation;

(o) 'special law' means a law applicable to a particular subject;

(p) 'valuable security' means a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right;

(q) 'woman' means a female human being of any age.

8. "*Counterfeit*".—(1) A person is said to 'counterfeit' who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised. It is not essential to counterfeiting that the resemblance should be exact.

(2) When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person causing the resemblance intended thereby to practise deception or knew it to be likely that deception would thereby be practised.

9. "*Document*".—(1) The word 'document' denotes any matter recorded upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation.—It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in a court of justice, or not.

Illustrations

The following are documents :—

a map, or plan; a caricature; a writing on a metal plate, stone or tree; a film, tape or other device on which sounds or images are recorded.

(2) Whatever is expressed by means of letters, figures or marks as understood by mercantile or other usage, shall be deemed to be recorded by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as understood by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words 'pay to the holder' or words to that effect had been written over the signature.

10. "*Dishonestly*".—A person is said to do a thing 'dishonestly' if he does that thing with the intention of causing wrongful gain to one person or wrongful loss to another person.

11. "*Fraudulently*".—A person is said to do a thing 'fraudulently' if he does that thing with intent to deceive another and, by such deceit, either to cause injury to any person or to induce any person to act to his disadvantage.

12. "*Good faith*".—A thing is said to be done or believed in 'good faith' when it is done or believed honestly and with due care and attention.

13. "*Illegal*".—A thing is 'illegal' if it is an offence, or is prohibited by law, or furnishes ground for a civil action.

14. "*Legally bound to do*".—A person is 'legally bound to do' a thing when he is bound by law to do that thing, or when it is illegal in him to omit to do that thing.

15. "*Possession*".—When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant is a clerk or servant within the meaning of this section.

16. "*Reason to believe*".—A person is said to have 'reason to believe' a thing if he has sufficient cause to believe that thing but not otherwise.

17. "*Voluntarily*".—A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration

A sets fire, by night, to an inhabited house in a large town, for the purpose of 'facilitating a robbery' and thus causes the death of a person. Here, A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

18. "*Wrongful gain*".—'Wrongful gain' is gain by unlawful means of property to which the person gaining is not legally entitled; and a person is said to 'gain wrongfully' when such person retains wrongfully, as well as when such person acquires wrongfully.

19. "*Wrongful loss*".—'Wrongful loss' is loss by unlawful means of property to which the person losing it is legally entitled; and a person is said to 'lose wrongfully' when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of that property.

20. *Effect caused partly by act and partly by omission.*—Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

21. *Acts done by several persons in furtherance of common intention.*—(1) Where two or more persons, with a common intention to commit a criminal act, do any acts in furtherance of such common intention, each of them is liable for the criminal act done as if it were done by him alone.

(2) Whenever an act which is criminal only by reason of its being done with a criminal knowledge or intention is done by two or more persons, each of such persons who joins in the act, with such knowledge or intention, is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

22. *Persons concerned in criminal act may be guilty of different offences.*—Where two or more persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

23. *Co-operation by doing one of several acts constituting an offence.*—When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations

(a) A and B agree to murder Z by severally and at different times giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder and as each of them does an act by which the death is caused, they are both guilty of the offence though their acts are separate.

(b) A and B are joint jailors, and as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food; in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder, but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

6. For Chapter III of the Code, the following Chapter shall be substituted, namely.— Substitution of new Chapter for Chapter III.

"CHAPTER III

PUNISHMENTS

24. *Punishments.*—The punishments to which offenders are liable under the priovisions of this Code are—

(i) death;

(ii) imprisonment for life;

(iii) imprisonment for a term, which may be—

(a) rigorous, that is, with hard labour, or

(b) simple, that is, with light labour;

(iv) forfeiture of property;

(v) fine.

25. *Minors not to be sentenced to death.*—The sentence of death shall not be passed on a person convicted of a capital offence if at the time of committing the offence he was under eighteen years of age and death is not the only punishment provided by law for the offence.

25A. *Construction of reference to transportation.*—(1) Subject to the provisions of sub-section (2) and sub-section (3), any reference to 'transportation for life' in any other law for the time being in force or in any instrument or order having effect by virtue of any such law or of any enactment repealed shall be construed as a reference to 'imprisonment for life'.

(2) In every case in which a sentence of transportation for a term has been passed before the commencement of the Code of Criminal Procedure (Amendment) Act, 1955, the offender shall be dealt with in the same manner as if sentenced to rigorous imprisonment for the same term.

(3) Any reference to transportation for a term or to transportation for any shorter term (by whatever name called) in any other law for the time being in force shall be deemed to have been omitted.

(4) Any reference to 'transportation' in any other law for the time being in force shall,—

(a) if the expression means transportation for life, be construed as a reference to imprisonment for life;

(b) if the expression means transportation for any shorter term, be deemed to have been omitted.

26. *Imprisonment for life to be rigorous.*—Imprisonment for life shall be rigorous.

27. *Fractions of terms of punishment.*—In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to rigorous imprisonment for twenty years.

28. *Imprisonment of either description.*—In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

29. *Order to pay compensation out of fine to victim of offence.*—Whenever a person is convicted of an offence punishable under Chapter XVI, Chapter XVII or Chapter XXI of this Code or of an abetment of such offence or of a criminal conspiracy to commit such offence and is sentenced to a fine, whether with or without imprisonment,

and the Court is of opinion that compensation is recoverable by civil suit by any person for loss or injury caused to him by that offence,

it shall be competent to the Court to direct by the sentence that the whole or any part of the fine realised from the offender shall be paid by way of compensation to such person for the said loss or injury.

Explanation.—Expenses properly incurred by such person in the prosecution of the case shall be deemed part of the loss caused to him by the offence.

30. *Amount of fine.*—Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

31. *Sentence of imprisonment for non-payment of fine.*—(1) In every case in which an offender is sentenced to a fine, it shall be competent to the Court to direct by the sentence that, in default of payment of the fine, the offender shall undergo imprisonment for a certain term.

(2) If the offence be punishable with fine only, such imprisonment shall be simple, and the term thereof shall not exceed—

(a) two months, when the fine does not exceed one hundred rupees,

(b) four months, when the fine does not exceed two hundred rupees, and

(c) six months, in any other case.

(3) If the offence be punishable with imprisonment or fine, or with imprisonment and fine,—

(a) the imprisonment in default of payment of the fine may be of any description to which the offender might have been sentenced for the offence;

(b) the term of such imprisonment shall not exceed one-fourth of the maximum term of imprisonment provided for the offence; and

(c) such imprisonment shall be in addition to the imprisonment, if any, to which he may have been sentenced for the offence, or to which he may be liable under a commutation of a sentence.

32. *Termination of imprisonment on payment or realisation of fine.*—(1)Imprisonment imposed in default of payment of a fine shall terminate whenever that fine is either paid, or realised by process of law, in full.

(2) Whenever a part of the fine is paid or is realised by process of law, the term of imprisonment fixed in default of payment shall be deemed to be reduced by such number of days as bears to the total number of days in that term the same proportion as the amount of fine paid or realised bears to the amount of fine imposed, and if, at that time, imprisonment in default of payment is being suffered, it shall terminate on the expiration of the reduced term or, if the reduced term has previously expired, it shall terminate forthwith.

"(3) In calculating the reduction required under sub-section (2), any fraction of a day less than one-half shall be left out of account and any other fraction shall be counted as one day.

33. *Limitation for levy of fine.*—No proceedings for realisation of the fine or of any part thereof which remains unpaid, shall be commenced:—

(a) at any time after the expiry of six years from the passing of the sentence, or

(b) if, under the sentence, the offender is liable to imprisonment for a longer period than six years, at any time after the expiry of that period.

34. *Death not to discharge property from liability.*—The death of the offender does not discharge from the liability for recovery of fine any property which would after his death be legally liable for his debts.

35. *Punishment of offence made up of parts.*—Where anything which is an offence is made up of parts, any of which parts is itself an offence of the same kind, the offender shall not, unless expressly so provided, be punished separately for such parts.

Illustrations

(a) A beats Z twenty times with a stick. His offence of voluntarily causing hurt to Z is made up of the twenty strokes given, each of which is iteself an offence of voluntarily causing hurt. A is liable only to one punishment for the whole beating.

(b) While A is beating Z, Y intervenes, and A intentionally strikes Y. As this is no part of the acts whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z and to another for voluntarily causing hurt to Y.

36. *Punishment of offence made up of several offences.*—

(1) Where an act constitutes an offence under two or more enactments, but the offences are the same, the offender shall not be punished for more than one of such offences.

(2) Where an act constitutes an offence under two or more enactments and the offences are not the same or

Where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence.

the offender may be punished separately for each of such offences, but shall not be punished in the aggregate with a more severe punishment than could be awarded for any one of such offences.

37. *Punishment where judgment in alternative.*—In all cases in which judgment is given in the alternative and a person is guilty of one of several offences specified in the judgment and if the same punishement is not provided for all of them, the offender shall be punished for the offence for which the lowest punishment is provided.

38. *Enhanced punishment for certain offences after previous conviction.*—Whoever, having been convicted by a Court in India of an offence punishable under this Code with imprisonment of either description for a term of three years or upwards and sentenced to imprisonment on such conviction, commits, within three years from the date of his final release from prison after serving that sentence, any offence punishable under this Code with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to fourteen years.

39. *Public censure for certain offences after previous conviction.*—(1) When any person, having been convicted by a Court in India of an offence specified in sub-section (3), is convicted of a like offence, it shall be competent to the Court before which the conviction takes place, to cause the offender's name and place of residence, the offence and the punishment imposed to be published at the offender's expense in such newspapers or in such other manner as the Court may direct.

(2) The expenses of such publication shall be recoverable from the offender in the same manner as a fine.

(3) The offences to which sub-section (1) applies are any offences punishable under Chapter XII, Chapter XIII, sections 272 to 276, sections 383 to 389, sections 403 to 409, sections 415 to 420 or Chapter XVIII of this Code."

Substitution of new sections for section 76.

8. For section 76 of the Code, the following section shall be substituted as sections 40 and 41, namely.—

"40. *Act done by a person bound or justified by law.*—Nothing is an offence which is done by a person who is bound by law to do it or is justified by law in doing it.

41. *Act done by a person by mistake of fact, believing himself bound or justified by law.*—Nothing is an offence which is done by a person who by reason of a mistake of fact and not by reason of mistake of law, in good faith, believes himself to be bound by law to do it or justified by law in doing it.

Illustrations

(a) A, an officer of a court of justice, being ordered by that court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

(b) A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murders in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

Re-numbering of sections 77 and 78.

9. Sections 77 and 78 of the Code shall be re-numbered as sections 42 and 43, respectively.

Omission of section 79.

10. Section 79 of the Code shall be omitted.

Re-numbering of section 80.

11. Section 80 of the Code shall be re-numbered as section 44.

Substitution of new section for section 81.

12. For section 81 of the Code, the following section shall be substituted as section 45, namely.—

"45. *Act likely to cause harm, but done in good faith.*— Nothing is an offence which, though done with the knowledge that it is likely to cause harm, is done in good faith for the purpose of preventing or avoiding other harm to person or property, provided the latter harm is of such a nature and so imminent as to justify or excuse the risk of doing the act with such knowledge.

Illustrations

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur the risk of running down a boat C with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the Boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence."

Substitution of new section for section 82.

13. For section 82 of the Code, the following section shall be substituted as sectinon 46, namely,—

"46. *Act of child under ten.*—Nothing is an offence which is done by a child under ten years of age."

Omission of section 83.

14. Section 83 of the Code shall be omitted.

15. Section 84 of the Code shall be re-numbered as section 47. Re-numbering of section 84.

16. For section 85 of the Code, the following section shall be substituted as section 48, namely,— Substitution of new section for section 85.

"48. *Act of a person who is intoxicated.*—(1) Nothing is an offence which is done by a person who, at the time of doing it, is, by person of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law :

Provided that such intoxication was not self-induced:

(2) Where an act done by a person in a state of intoxication which is self-induced will be an offence if done with a particular knowledge, he shall be liable to be dealt with as if he did the act with the knowledge he would have had if he had not been intoxicated.

(3) Intoxication is self-induced in a person if he voluntarily causes the state of intoxication in himself. "

17. Section 86 of the Code shall be omitted. Omission of section 86.

18. Sections 87 to 90 of the Code shall be re-numbered as sections 49 to 52, respectively. Re-numbering of sections 87 to 90.

19. Section 91 of the Code shall be re-numbered as section 53, and in the said section as so re-numbered, for the words and figures "sections 87, 88 and 89", the words and figures "sections 49, 50 and 51" shall be substituted. Re-numbering and amendment of section 91.

20. Section 92 of the Code shall be re-numbered as section 54, and in the said section as so re-numbered in the Explanation, for the words and figures "sections 88, 89 and 92", the words and figures "sections 50, 51 and 54" shall be substituted. Re-numbering and amendment of section 92.

21. Section 93 of the Code shall be re-numbered as section 55. Re-numbering of section 93.

Substitution of new section for section 94.

22. For section 94 of the Code, the following section shall be substituted as section 56, namely,—

"56. *Compulsion by threats.*—Except murder and offences against the State punishable with death, nothing is an offences which is done by a person who is compelled to do it by threats which, at the time of doing it, reasonably cause the apprehension that instant death or grievous bodily harm, either to that person or to any near relative of that person present when the threats are made, will otherwise be the consequence :

Provided the person doing the act did not, of his own accord or from a reasonable apprehension of harm to himself short of instant death or grievous bodily harm, place himself in the situation by which he became subject to such constraint.

Explanation.—In this section,—

(a) 'near relative' means parent, spouse, son or daughter;

(b) 'grievous bodily harm' means hurt of the description specified in the first two clauses of section 320.

"*Illustrations*

(a) A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

(b) A smith seized by a gang of dacoits and forced, by threat of instant death or grievous bodily harm, to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception."

Re-numbering of sections 95 and 96.

23. Sections 95 and 96 of the Code shall be re-numbered as sections 57 and 58, respectively.

Omission of section 97.

24. Section 97 of the Code shall be omitted.

Re-numbering and amendment of section 98.

25. Section 98 of the Code shall be re-numbered as section 59 and in the section as so re-numbered, the words "the want of maturity of understanding" shall be omitted.

26. For sections 99 to 106 of the Code, the following sections shall be substituted as sections 60 to 64, namely,— Substitution of new sections in place of sections 99 to 106.

"60. *Restrictions on the right of private defence.*—(1) There is no right of private defence against an act which does not reasonably cause an apprehension of death or of grievous hurt, if the act is done or attempted to be done—

(a) by a public servant acting in good faith in pursuance of the judgment or order of a court of justice, though the court may have had no jurisdiction to pass such judgment or order, provided the public servant believes in good faith that the court had such jurisdiction ;

(b) by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law; or

(c) by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

(2) A person is not deprived of the right of private defence by virtue of sub-section (1),—

(i) in a case falling under clause (a) thereof, unless he knows or has reason to believe that the person doing the act is a public servant and is acting in pursuance of the judgment or order of a court of justice or unless that person produces, if demanded, the authority in writing under which he is acting;

(ii) in a case falling under clause (b) thereof, unless he knows or has reason to believe that the person doing the act is a public servant; or

(iii) in a case falling under clause (c) thereof, unless he knows or has reason to believe that the person doing the act is acting by the direction of public servant, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces that authority, if demanded.

(3) The right of private defence in no case extends to the causing of more harm than it is necessary to cause for the purpose of defence.

61. *Right of private defence of the body.*—(1) Every person has a right to defend his own body and the body of any other person against any offence affecting the human body.

(2) If the offence which occasions the exercise of the said right is,—

(a) such an assault as may reasonably cause an apprehension that death or grievous hurt will otherwise be the consequence of the assault, or

(b) an assault with the intention of committing rape or carnal intercourse against the order of nature, or

(c) an assault with the intention of kidnapping, or

(d) an assault in such circumstances as may reasonably cause an apprehension that an offence punishable under any of the sections 364 to 369 of this Code is being committed, or

(e) an assault with the intention of wrongfully confining a person in such circumstances as may reasonably cause him an apprehension that it will not be possible to have recourse to the public authorities for his release,

the right of private defence of the body extends, under the restrictions mentioned in section 60, to the voluntary causing of death or of any other harm to the assailant, and in any other case, it extends, under the same restrictions, to the voluntary causing to the assailant of any harm other than death.

(3) If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

62. *Commencement and continuance of right of private defence of body.*—The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

63. *Right of private defence of property.*—(1) Every person has a right to defend the property, whether movable or immovable, of himself or of any other person against any offence which is or includes robbery, theft, mischief or criminal trespass and any attempt to commit any such offence.

"(2) If the offence the committing of which, or attempting to commit which, occasions the exercise of the said right is or includes—

(a) robbery, or

(b) theft, mischief or criminal trespass in such circumstances as may reasonably cause an apprehension that death or grievous hurt will be the consequence if the right of private defence is not exercised, or

(c) mischief by fire or explosive substance committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place of worship or as a place for the custody of property, or on any vehicle,

the right of private defence of property extends, under the restrictions mentioned in section 60, to the voluntary causing of death or of any other harm to the wrong-doer;

and in any other case, it extends, under the same restrictions, to the voluntary causing to the wrong-doer of any harm other than death.

64. *Commencement and continuance of right of private defence of property.*—The right of private defence of property commences when a reasonable apprehension of danger to the property commences; and it continues—

(a) against robbery, as long as the offender causes or attempts to cause any person death or hurt or wrongful restraint or as long as the fear of instant death or of instant hurt or instant wrongful restraint continues;

(b) against theft, till the offender has effected his retreat with the property, or, if the property has been recovered earlier or the assistance of the public authorities has been obtained earlier, till such recovery of the property or the obtaining of such assistance; and

(c) against mischief or criminal trespass; as long as the offender continues in the commission of mischief or criminal trespass."

Re-numbering and amendment of section 107.

27. Section 107 of the Code shall be re-numbered as section 65, and in the said section as so re-numbered, for the main paragraph, the following shall be substituted, namely,—

"A person abets the doing of a thing, who instigates any person to do that thing, or intentionally aids, by any act or illegal commission, the doing of that thing.[1]"

Substitution of new section for sections 108 and 108A.

28. For sections 108 and 108A of the Code the following section shall be substituted, as section 66, namely,—

"66. *Abetting an offence.*—(1) A person abets an offence, who abets the doing of a thing which is that offence or which

1. The two explanations and the illustration to section 107, do not require any change

would be an offence if done by a person capable by law of committing that offence with the same intention or knowledge as that of the abettor.

(2) A person abets an offence, who, in India, abets the doing of any act outside India which, if done in India, would constitute that offence.

(3) A person who abets the abetment of an offence abets that offence.

(4) To constitute abetment of an offence, it is not necessary—

(a) that the act abetted should be committed; or

(b) that the effect requisite to constitute the offence should be caused; or

(c) that the person abetted should be capable by law of committing an offence, or should have any guilty intention or knowledge, or should commit an offence.

(5) To constitute abetment of an offence that consists of an illegal omission of an act it is not necessary that the abettor should himself be bound to do that act.

Illustration to sub-section (2)

(a) A in India, instigates B, a foreigner in Nepal, to commit a murder in Nepal. A is guilty of abetting murder.

Illustration to sub-section (3)

(b) A instigates B to instigate C to murder Z. B accordingly instigates C and C murders Z in consequence of B's instigation. B has committed the offence of abetting murder and is liable to be punished with the punishment provided for murder; and as A instigated B to commit the offence. A is also liable to the same punishment.

(c) If, in the foregoing illustration, C refuses to murder Z, B has committed the offence of abetting murder, and is liable to be punished with imprisonment which may extend to seven years and with fine; and as A instigated B to commit the offence, A is also liable to the same punishment.

Illustrations to sub-section (4)

(d) A instigates B to murder Z. B refuses to do so. A is guilty of abetting B to commit murder.

(e) A instigates B to murder Z. B in pursuance of the instigation stabs Z. Z recovers from the wound. A is guilty of abetting B to commit murder.

(f) A, intending to kill Z, instigates B, a child under ten years of age, to do an act which A knows will cause Z's death. B, in consequence of the instigation, does the act and thereby causes Z's death. Here B was not capable by law of committing an offence, but since his act would be murder if it had been committed by a person of full age with the same intention and knowledge as that of A, A is guilty of abetting murder.

(g) A, intending to take dishonestly an article belonging to Z out of his possession induces B to believe that the article belongs to A and instigates him to take it from Z's possession. B does so in good faith believing it to be A's property. Though B has no guilty intention or knowledge, A is guilty of abetting theft."

Substitution of new section for section 109.

29. For section 109 of the Code, the following section shall be substituted as section 67, namely,—

"67. *Punishment for abetment where act abetted is committed in consequence of abetment.*—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or with the aid, which constitutes the abetment.[1]"

Re-numbering of sections 110 to 113.

30. Sections 110 to 113 of the Code shall be re-numbered as sections 68 to 71, respectively.

Amendment and re-numbering of section 114.

31. Section 114 of the Code shall be re-numbered as section 72, and in the said section as so re-numbered, the words "if absent" shall be omitted.

Substitution of new section for section 114.

32. For section 115 of the Code, the following section shall be substituted as section 73, namely,—

"73. *Abetment of capital offence if offence not committed.*—Whoever abets the commission of a capital offence shall, if that offence be not committed in consequence of the

1. In existing section 111, the change recommended in the Report concerns the form of printing. Hence it is not included as an amendment.

abetment, and no express provision is made for the punishment of such abetment, be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine;

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine."

Substitution of new section for section 116.

33. For section 116 of the Code, the following section shall be substituted as section 74, namely,—

"74. *Abetment of offence punishable with imprisonment if offence be not committed.*—Whoever abets an offence punishable with imprisonment, not being a capital offence, shall, if that offence be not committed in consequence of the abetment, and no express provision is made for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

and if the abettor is a public servant, whose duty it is to prevent the commission to such offence, the abettor shall be punished with the punishment provided for the offence.

Illustrations

(a) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(b) A, a police officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to the punishment provided for robbery."

Re-numbering of section 117 and insertion of a new section after that section.

34. Section 117 of the Code shall be re-numbered as section 75, and after the said section as so re-numbered, the following section shall be inserted, as section 76, namely,—

"76. *Abetting commission of offence by a child.*—Whoever abets the commission of an offence punishable with imprisonment by a child under fifteen years of age, whether or not the

offence is committed in consequence of the abetment, shall be punished with imprisonment of any description provided for that offence for a term which may extend to twice the longest term of imprisonment provided for that offence, and shall also be liable to fine."

Amendment and re-numbering of section 118.

35. Section 118 of the Code shall be re-numbered as section 77, and in the said section as so re-numbered, for the words "an offence punishable with death or imprisonment for life" the words "a capital offence" shall be substituted.

Amendment and re-numbering of section 119.

36. Section 119 of the Code shall be re-numbered as section 78, and in the said section as so re-numbered, the fourth paragraph shall be omitted.

Amendment and re-numbering of section 120.

37. Section 120 of the Code shall be re-numbered as section 79, and in the said section as so re-numbered, after the words "offence punishable with imprisonment", the words "not being a capital offence" shall be inserted.

Substitution of new section for section 120A.

38. For section 120A of the Code, the following section shall be substituted as section 80, namely,—

"80. *Definition of criminal conspiracy.*—When two or more persons agree to commit an offence punishable with death, imprisonment for life or imprisonment of either description for a term of two years or upwards or to cause such an offence to be committed, the agreement is designated a criminal conspiracy.

"*Explanation* 1.—It is immaterial whether the commission of the offence is the ultimate object of such agreement or is merely incidental to the object.

Explanation 2.—To constitute a criminal conspiracy, it is not necessary that any act or illegal omission shall take place in pursuance of the agreement."

Substitution of new section for section 120B.

39. For section 120B of the Code, the following section shall be substituted as section 81, namely,—

"81. *Punishment of criminal conspiracy.*—Whoever is a party to a criminal conspiracy shall, where no express provision is made for the punishment of such a conspiracy,—

(a) if the offence which it is the object of the conspiracy to commit or cause to be committed is committed

in pursuance of the conspiracy, be punished with the punishment provided for that offence; and

(b) if the offence is not committed in pursuance of the conspiracy, be punished with imprisonment of any description provided for that offence for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for that offence, or with both."

Insertion of new Chapter VB.

40. After Chapter VA of the Code, the following new Chapter shall be inserted, namely,—

CHAPTER VB

ATTEMPTS

"82. *Definition of attempt.*—A person attempts to commit an offence punishable by this Code, when—

(a) he, with the intention or knowledge requisite for committing it, does any act towards its commission;

(b) the act so done is closely connected with, and proximate to, the commission of the offence; and

(c) that act fails in its object because of facts not known to him or because of circumstances beyond his control.

Illustrations

(a) A, intending to murder Z, buys a gun and loads it. A is not yet guilty of an attempt to commit murder. A fires the gun at Z; he is guilty of an attempt to commit murder.

(b) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A is not yet guilty of an attempt to commit murder. A places the food on Z's table, or delivers it to Z's servant to place it on Z's table. A is guilty of an attempt to commit murder.

(c) A, with intent to steal another person's box, while travelling in a train, takes a box and gets down. He finds the box to be his own. As he has not done any act towards the commission of the offence intended by him, he is not guilty of an attempt to commit theft.

(d) A, with intent to steal jewels, breaks open Z's box, and finds that there is no jewel in it. As his act failed in its object because of facts not known to him, he is guilty of an attempt to commit theft.

83. *Punishment for attempt.*—Whoever is guilty of an attempt to commit an offence punishable by this Code with imprisonment for life or with imprisonment for a specified term, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life, or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both."

Omission of section 121A.

41. Section 121A of the Code shall be omitted.

Amendment of section 122.

42. In section 122 of the Code, for the words "imprisonment of either description" the words "rigorous imprisonment" shall be substituted.

Amendment of section 123.

43. In section 123 of the Code, for the words "imprisonment of either description" the words "rigorous imprisonment" shall be substituted.

Insertion of section 123A and 123B.

44. After section 123 of the Code, the following sections shall be inserted, namely,—

"123*A*. *Assisting India's enemies.*—Whoever assists in any manner an enemy at war with India, or the armed forces of any country against whom the armed forces of India are engaged in hostilities, whether or not a state of war exists between that country and India, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

123*B*. *Conspiracy to overawe the Parliament, Government of India or the Legislature or Government of any State.*—Whoever conspires to overawe, by means of force or show of force, the Parliament or Government of India, or the Legislature or Government of any State, shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof."

Substitution of new section for section 124.

45. For section 124 of the Code, the following section shall be substituted, namely,—

"124. *Assaulting President etc. with intent to compel or restrain the exercise of any lawful power.*—(1) Whoever, with the intention of inducing or compelling any office-holder to whom this section applies, to exercise or restrain from exercising in any manner any of his lawful powers,

assaults, or wrongfully restrains, or overawes by means of criminal force or the show of criminal force, such office-holder,

shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) The office-holders to whom this section applies are,—

(*i*) the President of India;

(*ii*) the Vice-President of India;

[(*iii*) the Chief Justice of India;

(*iv*) the Speaker of the House of the People;

(*v*) the Governor of any State;

(*vi*) the Chief Justice of any High Court;

(*vii*) the Speaker of the Legislative Assembly of any State; and

(*viii*) the Chairman of the Legislative Council of any State."

Substitution of new section for section 124A.

46. For section 124A of the Code, the following section shall be substituted, namely,—

"124*A*. *Sedition.*—Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise,

excites, or attempts to excite, disaffection towards the Constitution, or the Government or Parliament of India, or the Government or Legislature of any State, or the administration of Justice, as by law established,

intending or knowing it to be likely thereby to endanger the integrity or security of India, or of any State, or to cause public disorder,

shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation 1.—The expression "disaffection" includes feelings of enmity, hatred or contempt.

Explanation 2.—Comments expressing disapprobation of the provisions of the Constitution, or of the actions of the Government, or of the measures of Parliament, or a State Legislature, or of the provisions for the administration of justice, with a view to obtain their alteration by lawful means without exciting or attempting to excite disaffection, do not constitute an offence under this section."

Insertion of section 124B.

47. After section 124A of the Code, the following section shall be inserted, namely,—

"124*B*. *Insult to the book of the Constitution, national flag, national emblem or national anthem.*—Whoever deliberately insults the book of the Constitution, the national flag, the national emblem or the national anthem, by burning, desecration or otherwise, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Substitution of new section for section 125.

48. For section 125 of the Code, the following section shall be substituted, namely,—

"125. *Waging war against any foreign state at peace with India.*—Whoever wages war against the Government of any foreign State at peace with India, or attempts to wage such war, or abets the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Amendment of section 126.

49. In section 126 of the Code, for the words "any Power in alliance or at peace with the Government of India" the words "any foreign state at peace with India" shall be substituted.

Amendment of section 128.

50. In section 128 of the Code,—

(*a*) the words "State prisoner or" shall be omitted;

(*b*) the words "imprisonment for life or" shall be omitted.

Amendment of section 129.

51. In section 129 of the Code, the words "State prisoner or" shall be omitted.

Amendment of section 130.

52. In section 130 of the Code,—

(*a*) the words "State prisoner or" shall be omitted;

(*b*) the words "with imprisonment for life or" shall be omitted.

Substitution of new Chapter for Chapter VII.

53. For Chapter VII of the Code, the following Chapter shall be substituted, namely,—

CHAPTER VII

OFFENCES RELATING TO THE ARMED FORCES

131. *Definitions.*—In this Chapter,—

(*a*) the expression 'armed forces' means the military, naval and air forces, and includes any other armed forces of the Union;

(*b*) 'officer' means a person commissioned, gazetted or in pay as an officer of the armed forces, and includes a junior commissioned officer, a warrant officer, a petty officer and a non-commissioned officer;

(*c*) 'member', in relation to the armed forces, means a person in the armed forces other than an officer.

132. *Abetment of mutiny.*—Whoever abets the committing of mutiny by an officer or member of any of the armed forces shall,—

(*a*) if mutiny be committed in consequence of such abetment, be punished with death, or with imprisonment for life, or with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine; and

(*b*) in any other case, be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.

133. *Attempting to seduce an officer or member of any of the armed forces from his duty.*—Whoever attempts to seduce any officer or member of any of the armed forces from his allegiance or his duty shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

134. *Abetment of assault on superior officer.*—Whoever abets an assault by an officer or member of any of the armed forces on any superior officer being in the execution of his office shall—

(*a*) if such assault to be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and

(*b*) in any other case, be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

135. *Abetment of desertion from armed forces.*—Whoever abets the desertion of any officer or member of any of the armed forces shall—

(*a*) if the desertion be committed in consequence of the abetment, be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both; and

(*b*) in any other case, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

136. *Harbouring deserter.*—Whoever, knowing or having reason to believe that an officer or member of any of the armed forces has deserted, harbour such officer or member, shall be punished with inprisonment of either description for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137.—*Abetment of an act of insubordination.*—Whoever abets what he knows to be an act of insubordination by an officer or member of any of the armed forces shall—

(*a*) if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and

(*b*) in any other case, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

138. *Incitement to mutiny or other act of insubordination.*—Whoever makes or publishes or circulates any statement, rumour or report, with intent to cause, or which is likely to cause, any officer or member of any of the armed forces to mutiny or otherwise disregard or fail in his duty

as such officer or member, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanation.—A person making, publishing or circulating any such statement, rumour or report, who has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid, does not commit an offence under this section.

139. *Dissuasion from enlisting and instigation to mutiny or insubordination after enlistment.*—Whoever—

(*a*) with intent to affect adversely the recruitment of persons to serve in the armed forces of the Union, dissuades or attempts to dissuade the public or any person from entering any such forces, or

(*b*) without dissuading or attempting to dissuade from entering such forces, instigates the public or any person to do, after entering any such force, anything which is punishable as mutiny or insubordination under the law relating to that armed force,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanation.—The provisions of clause (*a*) do not extend to comment on, or criticism of, the policy of the Government in connection with the armed forces, made in good faith without any intention of dissuading from enlistment, or to advice given in good faith for the benefit of the individual to whom it is given, or of any member of his family, or of any of his dependants.

139*A*. *Persons subject to certain laws, not to be punished under the Chapter.*—No person subject to the Army Act, 1950, the Navy Act, 1957, the Air Force Act, 1950, or any other law relating to the armed forces of the Union is subject to punishment under this Code for any of the offences defined in this Chapter.

140. *Wearing garb or carrying token used by officer or member of the armed forces.*—Whoever, not being an officer or member of the armed forces, wears any garb or carries any token resembling any garb or token used by such an officer or member, with the intention that it may be believed that he is such an officer or member, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

54. In section 141 of the Code,— Amendment of section 141.

(*a*) for clause third, the following clause shall be substituted, namely,—

"*Third.*—To commit an offence punishable with imprisonment."

(*b*) The Explanation shall be numbered as Explanation 1, and after the said Explanation 1 as so numbered, the following Explanation shall be added, namely,—

"*Explanation* 2.—Force is criminal when it is applied to any person with the intention of causing, or knowing it to be likely to cause, injury or fear of annoyance to that person, or in order to the committing of any offence."

55. After section 147 of the Code, the following section shall be inserted, namely,— Insertion of new section 147A.

"147*A*. *Making preparation to commit rioting.*—Whoever makes any preparation for committing rioting shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

56. In section 153 of the Code, the words 'malignantly or wantonly' shall be omitted. Amendment of section 153.

57. In section 154 of the Code, for the words "with fine not exceeding one thousand rupees", the words "with imprisonment of either description for a term which may extend to six months, or with fine, or with both", shall be substituted. Amendment of section 154.

58. In sections 155 and 156 of the Code, for the words "with fine", the words "with imprisonment of either description for a term which may extend to six months, or with fine, or with both", shall be substituted. Amendment of sections 155 and 156.

59. In section 157 of the Code, for the words "harbours, receives or assembles", the words "assembles, receives or shelters" shall be substituted. Amendment of section 157.

60. Section 153A of the Code shall be re-numbered as section 158A and inserted after section 158, and— Re-numbering and amendment of section 153A, and insertion of new section 158B.

(*a*) in the said section as so re-numbered, in clause (*a*) of sub-section (1), for the words "promotes" the words "intentionally promotes" shall be substituted; and

"(*b*) after the said section as so re-numbered, the following section shall be inserted, namely,—

158*B*. *Statements conducing to offences against public tranquillity*.—(1) Whoever makes, publishes or circulates any statement rumour or report—

(*a*) with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

(*b*) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community; or

(*c*) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public, whereby any person may be induced to commit an offence against the public tranquillity,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Exception.—A person making, publishing or circulating any such statement, rumour or report, who has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid, does not commit an offence under this section.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

Substitution of new section for section 160.

61. For section 160 of the Code, the following section shall be substituted, namely,—

"160. *Punishment for committing affray*:—Whoever commits an affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

62. In section 161 of the Code, for the fourth Explanation, the following Explanation shall be substituted, namely,— Amendment of section 161.

"A motive or reward for doing"—A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do or has not done, comes within these words.'

63. In section 166 of the Code, for the words "one year", the words "three years" shall be substituted. Amendment of section 166.

64. After section 166 of the Code, the following section shall be inserted, namely,— Insertion of new section 166A.

"166A. *Public servant acting with intent to cause injury to any person.*—Whoever, being a public servant, wilfully conducts himself in the performance of his functions as such public servant, intending to cause or knowing it to be likely that he will by such conduct, cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

65. For section 167 of the Code, the following section shall be substituted, namely,— Substitution of new section for section 167.

"167. *Public servant preparing an incorrect document with intent to cause injury.*—Whoever, being a public servant and being, as such public servant, charged with the preparation of any document, prepares that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he will thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanation:—The expression 'preparation of a document' includes preparation of a copy or translation of a document."

66. After section 167 of the Code, the following section shall be inserted, namely,— Insertion of new section 167A.

"167A. *Public servant knowingly authorising payment in respect of contracts, when the goods supplied or work done is not in accordance with contracts.*—Whoever, being a public servant competent to authorise payment on behalf of the

Government or other public authority in respect of any contract for the supply of any goods, the construction of any building or the execution of other work, authorises such payment, knowing:—

(*a*) in the case of a contract for the supply of goods, that the contractor has supplied goods which are less in quality than, or inferior in quality to, those he contracted to supply or which are, in any manner whatever, not in accordance with the contract, or

(*b*) in the case of a contract for the construction of a building or execution of other work, that the contractor has used materials, which are less in quantity than, or inferior in quality to, those he contracted to use, or which are, in any manner whatever, not in accordance with the contract,

shall, in the absence of lawful excuse, the burden of proving which shall be on him, be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—In this section, "public authority" means—

(*a*) a corporation established by or under a Central, Provincial or State Act;

(*b*) a Government company as defined in section 617 of the Companies Act, 1956; and

(*c*) a local authority."

Amendment of section 171.

67. In section 171 of the Code,—

(*a*) for the words "three months", the words "six months" shall be substituted; and

(*b*) the words "which may extend to two hundred rupees" shall be omitted.

Amendment of section 171A.

68. In section 171A of the Code, for clause (*b*), the following clause shall be substituted, namely,—

"(*b*) 'electoral right' means the right of a person at an election to stand or not to stand as a candidate, or to withdraw or not to withdraw his candidature, or to vote or to refrain from voting."

Amendment of section 171B.

69. In section 171B of the Code, after sub-section (3), the following shall be added, namely,—

"(4) Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both:

Provided that bribery by treating shall be punishable with fine only.

Explanation.—'Treating' means that form of bribery where the gratification consists in food, drink, entertainment or provision."

Substitution of new section for section 171C.

70. For section 171C of the Code, the following section shall be substituted, namely,—

"171C. *Undue influence at elections.*—(1) Whoever, with intent to interfere with the free exercise of any electoral right at an election,—

(*a*) makes use of, or threatens to make use of, any force, violence or wrongful restraint on any person, or

(*b*) inflicts, or threatens to inflict, on any person, injury of any kind (including social ostracism and expulsion or ex-communication from any caste or community), or

(*c*) induces, or attempts to induce, any person to believe that he will become an object of divine displeasure or of spiritual censure,

commits the offence of undue influence at an election:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) Whoever commits the offence of undue influence at an election shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if the offence is committed in the manner specified in clause (*a*) of sub-section (1), the imprisonment may extend to three years."

Amendment of section 171D.

71. Section 171D of the Code shall be re-numbered as sub-section (1) thereof, and after sub-section (1), as so re-numbered, the following sub-section shall be inserted, namely,—

"(2) Whoever commits the offence of personation at an election shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Omission of sections 171E and 171F.

72. Sections 171E and 171F of the Code shall be omitted.

Substitution of new section for section 171G.

73. For section 171G of the Code, the following section shall be substituted as section 171E, namely,—

"171E. *False statement in connection with an election*— Whoever, with intent to affect the result of an election, makes or publishes any statement purporting to be a statement of fact which is false and which he either knows or believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of candidature of any candidate, shall be punished with imprisonment of either description which may extend to two years, or with fine, or with both."

Omission of sections 171H and 171-I.

74. Sections 171H and 171-I of the Code shall be omitted.

Amendment of section 172.

75. In section 172 of the Code,—

(a) for the words "one month", the words "three months" shall be substituted;

(b) the words "which may extend to five hundred rupees" shall be omitted;

(c) for the words "six months", the words "one year" shall be substituted; and

(d) the words "which may extend to one thousand rupees" shall be omitted.

Amendment of section 173.

76. In section 173 of the Code,—

(a) for the words "one month", the words "three months" shall be substituted;

(b) the words "which may extend to five hundred rupees" shall be omitted;

(c) after the words "produce a document", the words "or other thing" shall be inserted;

(d) for the words "six months", the words "one year" shall be substituted; and

(e) the words "which may extend to one thousand rupees" shall be omitted.

77. In section 174 of the Code,— Amendment of section 174.

(a) for the words "one month", or with fine which may extend to five hundred rupees", the words "three months, or with fine" shall be substituted;

(b) for the words "six months, or with fine which may extend to one thousand rupees", the words "one year, or with fine" shall be substituted; and

(c) the illustrations shall be omitted.

78. For sections 175, 176 and 177 of the Code, the following sections shall be substituted, namely,— Substitution of new sections for sections 175, 176 and 177

"175. *Omission to produce document or other thing to public servant by person legally bound to produce it.*—Whoever, being legally bound to produce or deliver up any document or other thing to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to three months, or with fine, or with both;

or, if the document or other thing is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to one year, or with fine, or with both.

176. *Omission to give notice or information to public servant by person legally bound to give it.*—Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished—

(a) with simple imprisonment for a term which may extend to three months, or with fine, or with both; or

(b) if, the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to one year, or with fine, or with both; or

(c) if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898, with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

177. *Furnishing false information to public servant.*—Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both;

or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—In section 176, and in this section, the word 'offence' includes any act committed at any place out of India, which if committed in India, would be punishable under this Code; and the word 'offender' includes any person who is alleged to have been guilty of any such act."

Amendment of section 178.

79. In section 178 of the Code, the words "which may extend to one thousand rupees" shall be omitted.

Amendment of section 179.

80. In section 179 of the Code, the words "which may extend to one thousand rupees" shall be omitted.

Amendment of section 180.

81. In section 180 of the Code, for the words "three months, or with fine which may extend to five hundred rupees", the words "six months, or with fine" shall be substituted.

Amendment of section 182.

82. In section 182 of the Code, for the words "six months, or with fine which may extend to one thousand rupees", the words "one year, or with fine" shall be substituted.

Substitution of new section for section 184.

83. For section 184 of the Code, the following section shall be substituted, namely,—

"184. *Obstructing sale of property offered for sale by authority of public servant.*—Whoever, voluntarily obstructs any sale of property offered for sale by the lawful authority of any public servant as such, shall be punished with fine which may extend to one thousand rupees."

Amendment of section 185.

84. In section 185 of the Code, for the words "imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both", the words "fine which may extend to one thousand rupees" shall be substituted.

85. In section 186 of the Code, for the words "three months, or with fine which may extend to five hundred rupees", the words "six months, or with fine" shall be substituted. Amendment of section 186.

86. In section 187 of the Code,— Amendment of section 187.

(a) for the words "simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both", the words "fine which may extend to one thousand rupees" shall be substituted; and

(b) the words "which may extend to five hundred rupees" shall be omitted.

87. In section 188 of the Code,— Amendment of section 188.

(a) the words "which may extend to one thousand rupees" shall be omitted;

(b) in the Explanation, the second sentence shall be omitted; and

(c) the illustration shall be omitted.

88. In section 193 of the Code, for Explanation 2, the following Explanation shall be substituted, namely:— Amendment of section 193.

"*Explanation* 2:—For the purposes of this section, it is immaterial whether the fabricated evidence is or is not legally admissible in the proceeding in which it is intended to be used."

89. For sections 194 and 195 of the Code, the following sections shall be substituted, namely:— Substitution of new sections for sections 194 and 195.

"194. *Giving or fabricating false evidence with intent to procure conviction of capital offence*:—Whoever gives false evidence in any trial before a Court of Justice, or fabricates false evidence for the purpose of being used in any such trial, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of a capital offence, shall be punished with rigorous imprisonment for a period which may extend to fourteen years, and shall also be liable to fine ;

and if an innocent person shall be convicted and executed in consequence of such false evidence, the person who gives or fabricates such false evidence shall be punished with death or imprisonment for life or the punishment hereinbefore described.

195. *Giving or fabricating false evidence to procure conviction of offence punishable with imprisonment for life or imprisonment for seven years or upwards.*—Whoever gives false evidence in any trial before a Court of Justice or fabricates false evidence for the purpose of being used in any such trial, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is not capital, but punishable with imprisonment for a term of seven years or with a more severe sentence, shall be punished as a person convicted of that offence would be liable to be punished."

Insertion of new sections 198A and 198B.

90. After section 198 of the Code, the following sections shall be inserted, namely:—

"198A. *Issuing or signing false medical certificate.*—Whoever, being a medical practitioner, issues or signs any medical certificate or certificate of fitness, knowing that such certificate is false in any material particular, shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

and, if he knows that the certificate is intended to be used in any stage of judicial proceeding, he shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

198B. *Using as true a medical certificate known to be false.*—Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

and, if he so uses or attempts to use it in any stage of a judicial proceeding, he shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Substitution of new sections for sections 202 and 203.

91. For sections 202 and 203 of the Code, the following sections shall be substituted, namely:—

"202. *Giving false information respecting an offence committed.*—Whoever, knowing or having reason to believe

that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

203. *Intentional omission to give information of offence by person bound to inform.*—Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—In sections 201 and 202 and in this section, the word 'offence' includes any act committed at any place out of India, which, if committed in India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460."

Amendment of section 204.

92. In section 204 of the Code, after the word "document" wherever it occurs, the words "or other thing", shall be inserted.

Insertion of new section 207A.

93. After section 207 of the Code, the following section shall be inserted, namely:—

"207A. *Removal of attached property:*—Whoever, knowing or having reason to believe that any movable property has been lawfully attached by the order of a Court of Justice, removes or interferes with such property otherwise than in accordance with law, shall, whether or not he was a party to the proceedings in which the order was made, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Substitution of new section for 211.

94. For section 211 of the Code, the following section shall be substituted, namely:—

"211. *False charge of offence made with intent to injure.*—Whoever, with intent to cause injury to any person,—

(a) institutes or causes to be instituted in Court of Justice any criminal proceeding against that person, knowing that there is no just or lawful ground for such proceeding against that person; or

(b) falsely charges that person in a Court of Justice with having committed an offence, knowing that there

is no just or lawful ground for such charge against that person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with imprisonment for seven years or a more severe sentence, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Amendment of section 213.

95. To section 213 of the Code, the following Explanation and Exception shall be added, namely:—

"*Explanation.*—It is not necessary to the commission of an offence under this section that the offender should have done, or desisted from doing, what he undertook to do or to desist from doing.

Exception.—The provisions of this section do not extend to any case in which the offence may lawfully be compounded."

Amendment of section 214.

96. In section 214 of the Code,—

(a) the following Explanation shall be added before the Exception, namely:—

"*Explanation.*—It is not necessary to the commission of an offence under this section that the other person should have done, or desisted from doing, what he undertook to do, or to desist from doing."

(b) for the Exception, the following shall be substituted, namely:—

"*Exception.*—The provisions of this section do not extend to any case in which the offence may lawfully be compounded."

Substitution of new section for section 216A.

97. In section 216A of the Code,—

(a) for the words "or have recently committed robbery or dacoity" the words "the offence of kidnapping, abduction, robbery or dacoity" shall be substituted; and

(b) for the words "such robbery or dacoity or of screening them or any of them from punishment", the words "such offence" shall be substituted.

98. In section 217 and in section 218 of the Code, for the words "legal punishment", the words "punishment for an offence" shall be substituted. Amendment of sections 217 and 218.

99. For sections 221 to 225B of the Code, the following sections shall be substituted, namely :— Substitution of new sections for sections 221 to 225B.

"221. *Public servant intentionally omitting to arrest or permitting escape.*—Whoever, being a public servant legally bound to arrest any person or to keep him in custody, intentionally omits to arrest him or aids him in escaping or attempting to escape from such custody, or intentionally permits him to escape from such custody, shall—

(a) if that person is to be arrested or kept in custody by reason of a conviction or charge or suspicion of a capital offence, be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) if that person is to be arrested or kept in custody by reason of a conviction or charge or suspicion of any other offence punishable with imprisonment for life or for ten years or upwards, be punished with rigorous imprisonment for a term which may extend to five years, and shall also be liable to fine;

(c) in any other case, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

222. *Public servant negligently omitting to arrest or suffering to escape.*—Whoever, being a public servant legally bound to arrest any person or to keep him in custody, negligently omits to arrest him or negligently suffers him to escape from such custody, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

223 *Rescue from lawful custody.*—Whoever rescues, or attempts to rescue, any other person from lawful custody, shall—

(a) if such person is in custody by reason of conviction or charge or suspicion of a capital offence, be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) if such person is in custody by reason of a conviction or charge or suspicion of any other offence punishable with imprisonment for life or for ten years

or upwards, be punished with rigorous imprisonment for a term which may extend to five years, and shall also be liable to fine;

(c) in any other case, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

224. *Resistance to arrest of another person.*—Whoever offers resistance or illegal obstruction to the lawful arrest of another person shall be punished with the punishment provided in section 223.

225. *Escape from lawful custody.*—Whoever, being in lawful custody, intentionally escapes or attempts to escape from such custody, shall—

(a) if he is in custody by reason of a conviction or charge or suspicion of an offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

(b) in any other case, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person in custody was liable for the offence of which he was convicted, or would have been liable on a conviction for the offence with which he was charged or of which he was suspected, as the case may be.

226. *Resistance to arrest.*—Whoever intentionally offers resistance or illegal obstruction to his lawful arrest shall be punishable with the punishment provided in section 225."

Amendment of section 228.

100. In section 228 of the Code,—

(a) for the words 'six months', the words 'two years' shall be substituted;

(b) the words "which may extend to one thousand rupees" shall be omitted.

Substitution of new sections for section 229.

101. For section 229 of the Code, the following sections shall be substituted, namely:—

"229. *Interference with witnesses.*—Whoever, by threats, bribes or other corrupt means, dissuades or attempts to dissuade any person from giving evidence before a public servant legally competent to examine him as a witness, shall be

punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

"230. *Failure by person released on bail or bond to appear in court.*—Whoever, having been charged with an offence and released on bail or on his own bond, fails without sufficient cause (the burden of proving which lies upon him), to appear in court in accordance with the terms of the bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Explanation.——The punishment in this section is—

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he is charged; and

(b) without prejudice to the power of the court to order forfeiture of the bond.

231. *Vexatious search without reasonable ground.*—Whoever, being empowered by law to order or conduct search of any place, vexatiously and without having a reasonable ground for so doing orders or conducts such search, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Substitution of new Chapter in place of existing Chapter XII.

102. For Chapter XII of the Code, the following Chapter shall be substituted, namely,—

CHAPTER XII

OFFENCES RELATING TO CURRENCY NOTES, COINS AND STAMPS

"232.—*Counterfeiting currency notes.*—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency notes shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

Explanation.—The expression 'currency notes' means—

(i) any currency notes of the Government of India;

(ii) any bank notes issued by the Reserve Bank of India; and

(iii) any notes (by whatever name called) issued by or on behalf of the Government of any country outside India which are legal tender in that country.

233. *Using as genuine counterfeit currency-notes.*—Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any counterfeit currency-notes, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

234. *Possession of forged or counterfeit currency-notes.*—Whoever has in his possession any counterfeit currency-note, knowing or having reason to believe the same to be counterfeit, and intending to use the same as genuine, or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

235. *Making or possessing instruments or materials for counterfeiting currency-notes.*—Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for counterfeiting any currency-note, shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

236. *Making or using documents resembling currency-notes.*—(1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note shall be punished with fine which may extend to two hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1), refuses, without lawful excuse, to disclose to a police officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to five hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made.

237. "*Coin*" *defined.*—"Coin" is metal used for the time being as money, and stamped and issued by the authority of the Government of India, or of the Government of a country outside India in order to be so used.

Explanation.—Metal which has been stamped and issued by the authority of the Government of India in order to be used as money shall continue to be coin for the purposes of this Chapter, notwithstanding that it may have ceased to be used as money.

238. *Counterfeiting coins.*—Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

239. *Using as genuine counterfeit coin.*—Whoever sells to or buys or receives from any other person, or otherwise traffics in or uses as genuine any counterfeit coin, knowing or having reason to believe the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

240. *Possession of counterfeit coin.*–Whoever has in his possession any counterfeit coin, knowing or having reason to believe the same to be counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

241. *Making or possessing instrument or materials for counterfeiting coin.*—Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for counterfeiting any coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

242. *Import or export of counterfeit coins.*—Whoever imports into India or exports therefrom any counterfeit coin, knowing or having reason to believe that the same is a counterfeit coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

243. *Person employed in mint causing coin to be of different weight or composition from that fixed by law.*—Whoever, being employed in any mint lawfully established in India,

does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

244. *Unlawfully taking coining instrument from mint.*—Whoever, without lawful authority, takes out of any mint lawfully established in India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

245. *Dishonest use of slugs in vending machines.*—Whoever dishonestly inserts or uses in a machine which sells goods or services or collects fares or tolls, anything that is intended to pass for, but is not, the coin or the token of value that the machine is designed to receive in exchange for the goods, services, fare or toll, as the case may be, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

246. *Counterfeiting revenue stamp.*—Whoever counterfeits or knowingly performs any part of the process of counterfeiting, any revenue stamp, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—The expression 'revenue stamp' means a stamp issued by Government for the purpose of revenue.

247. *Making or possession or sale of instruments or materials for counterfeiting revenue stamp.*—Whoever makes or performs any part of the process of making or, buys or sells, disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for counterfeiting any revenue stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

248. *Sale, use and possession of revenue stamp.*—Whoever—

(a) sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit revenue stamp, or

(b) has in his possession any stamp which he knows to be a counterfeit revenue stamp, intending to use or dispose of the same as a genuine stamp, or

(c) uses as genuine any stamp, knowing it to be a counterfeit revenue stamp,

shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

249. *Effacing writing, or removing revenue stamp used for it, with intent to cause loss to Government.*—Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing a revenue stamp, any writing or document for which such stamp has been used, or removes from any writing or document a revenue stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

250. *Using revenue stamp known to have been before used.*—Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a revenue stamp which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

251. *Erasure of mark denoting that stamp has been used.*—Whoever —

(a) fraudulently or with intent to cause loss to Government, erases or removes from a revenue stamp, any mark, put or impressed upon it for the purpose of denoting that the same has been used, or

(b) knowingly has in his possession or sells or disposes of any such stamp from which such mark has been erased or removed, or

(c) sells or disposes of any such stamp which he knows to have been used, shall be punished,

with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

252. *Application of preceding sections to foreign postage stamps.*—The provisions of sections 246 to 251, both inclusive, apply in relation to postage stamps issued by the Government of a foreign country as they apply in relation to revenue stamps.

253. (1) *Prohibition of fictitious postage stamps.*—Whoever—

(a) makes, knowingly utters, deals in or sells any fictitious postage stamp, or knowingly uses for any postal purpose any such stamp,

(b) has in his possession, without lawful excuse, any such stamp, or

(c) makes or, without lawful excuse, has in his possession any die, plate, instrument or material for making any such stamp,

shall be punished with fine which may extend to two hundred rupees.

(2) Any such stamp,' die, plate, instrument or materials in the possession of any person for making any fictitious postage stamp may be seized and, if seized, shall be forfeited.

(3) In this section, 'fictitious postage stamp' means any stamp falsely purporting to be issued by the Government of India or of a foreign country for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by such Government for that purpose."

Amendment of section 264 to 267.

103. In each of sections 264 to 267 of the Code, for the words "one year", the words "two years" shall be substituted.

Substitution of new section for section 268.

104. For section 268 of the Code, the following section shall be substituted, namely,—

"268. *Public nuisance.*—(1) Whoever does any act or is guilty of an illegal omission which—

(a) causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or

(b) must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

commits a public nuisance

Explanation.—Any such set or illegal omission is not excusable on the ground that it causes some convenience or advantage.

(2) Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine."

105. For sections 269 and 270 of the Code, the following section shall be substituted, namely,— Substitution of new section in place of section 269 and 270.

"269. *Acts likely to spread infection of disease dangerous to life.*—Whoever does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished—

(a) if he does such act negligently, with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

(b) if he does such act intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

106. In each of the sections 272 to 276 of the Code, for the words "six months, or with fine which may extend to one thousand rupees, or with both", the words "three years, or with fine or with both" shall be substituted. Amendment of sections 272 to 276

107. For section 277 of the Code, the following section shall be substituted, namely,— Substitution of new section for section 277.

"277. *Fouling water of public spring, well or reservoir.*—Whoever voluntarily fouls the water of any public spring, well or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

108. In section 278 of the Code, for the words "with fine which may extend to five hundred rupees", the words "imprisonment of either description for a term which may extend to six months, or with fine, or with both", shall be substituted. Amendment of section 278.

109. For section 279 of the Code, the following two sections shall be substituted, namely,— Substitution of new sections for section 279.

"279. *Rash driving or riding on a public way.*—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

279A. *Driving unsafe or overloaded vehicle on a public way.*—Whoever knowingly or negligently drives any vehicle on a public way when that vehicle is in such a state or so loaded as to endanger life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Amendment of sections 280, 282 and 284 to 289.

110. In each of the sections 280, 282, 284, 285, 286, 287, 288 and 289 of the Code, the words "which may extend to one thousand rupees" shall be omitted.

Omission of section 290.

111. Section 290 of the Code shall be omitted.

Amendment of section 292.

112. Section 292 of the Code shall be re-numbered as sub-section (1) thereof, and—

(a) in the Exception to sub-section (1) of section 292 as so re-numbered, for the words "This section", the words "This sub-section" shall be substituted;

(b) after sub-section (1) of section 292 as so re-numbered, the following sub-section shall be inserted, namely,—

"(2) Where, in any prosecution under this section, the question is whether the publication of any book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, the opinion of experts as to its scientific, literary, artistic, academic or other merit may be admitted in evidence."

Amendment of section 294.

113. In section 294 of the Code, for the words "imprisonment of either description for a term which may extend to three months, or with fine, or with both", the words "fine which may extend to one thousand rupees" shall be substituted.

Substitution of new section for section 294A.

114. For section 294A of the Code, the following section shall be substituted, namely,—

"294A. *Offences in connection with lotteries.*—(1) Whoever, in connection with any lottery promoted or proposed to be promoted, whether in India or elsewhere,—

(a) prints any tickets for use in the lottery; or

(b) sells or distributes, or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution, any tickets or chances in the lottery; or

(c) prints, publishes or distributes, or has in his possession for the purpose of publication or distribution—

(i) any advertisement of the lottery; or

(ii) any list, whether complete or not, of prize winners or winning tickets in the lottery; or

(iii) any such matter descriptive of the drawing or intended drawing of the lottery, or otherwise relating to the lottery, as is calculated to act as an inducement to persons to participate in that lottery or in other lotteries; or

(d) brings, or invites any person to send, into India for the purpose of sale or distribution any ticket in, or advertisement of, the lottery; or

(e) sends or attempts to send out of India any money or valuable thing received in respect of the sale or distribution, or any document recording the sale or distribution or the identity of the holder, of any ticket or chance in the lottery; or

(f) uses any premises, or causes or knowingly permits any premises to be used, for purposes connected with the promotion or conduct of the lottery; or

(g) causes, procures or attempts to procure any person to do any of the above-mentioned acts,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(2) Nothing in this section applies in relation to a lottery which is a State lottery or is authorised by the State Government.

(3) The State Government may authorise a lottery with reference to this section, where it is satisfied that—

(a) the profits of the lottery are to be appropriated towards any charitable purposes; or

(b) participation in the lottery is confined to the members of a society or other group of persons, and is not open to the public; or

(c) the lottery is incidental to an entertainment; or

(d) it is otherwise in the public interest to authorise the lottery."

Substitution of new section for section 295A.

115. For section 295A of the Code, the following section shall be substituted, namely,—

"295A. *Deliberate acts intended to wound religious feelings of any class by insulting its religion or religious beliefs.*—Whoever, with the deliberate intention of wounding the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations, or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Substitution of new sections for sections 299 and 300.

116. For sections 299 and 300 of the Code, the following sections shall be substituted, namely,—

"299. *Murder.*—Whoever causes death by doing an act—

(a) with the intention of causing death, or

(b) with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death or as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

(c) with the knowledge that the act is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and without any excuse for incurring such risk,

commits murder, excepts in the circumstances specified in section 300.

Explanation.—For the purposes of this section and section 300,—

(*i*) causing the death of a child in the mother's womb is not causing the death of a human being; but causing the death of a living child, after any part of it has emerged from the womb, is causing the death of a human being, though the child may not have breathed or been completely born;

(*ii*) a person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death;

(*iii*) where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused death, although by resorting to proper remedies and skilful treatment death might have been prevented.

Illustrations

(*a*) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. A is fuilty of murder, although he may not have intended to cause Z's death.

(*c*) A knowing that Z has an enlarged spleen a blow against which is likely to cause his death, strikes him there with the intention of causing him such bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person with a sound spleen.

(*d*) A, without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have designed to kill any particular, individual.

(*e*) A knows Z to be behind a bush. B does not know. A induces B to fire at the bush, knowing that such firing must in all probability cause Z's death or such bodily injury as is likely to cause his death, and without any excuse for incurring the risk. B fires and Z is killed. Here B may be guilty of no offence but A is guilty of murder.

300. *Culpable homicide not amounting to murder.*— (1) Where a person causes death by doing an act with the intention of causing such bodily injury as is likely to cause death or with the knowledge that by such act he is likely to cause death, and such act is not murder under clause (b) or clause (c) of section 299, he commits culpable homicide not amounting to murder.

Illustration.

A lays sticks and turf over a pit with the knowledge that death is likely to be thereby caused. Z treads on it, falls in and is killed. A has committed culpable homicide not amounting to murder.

(2) Whoever causes death by doing an act with the intention or knowledge specified in section 299, but in the

exceptional circumstances hereinafter specified, commits culpable homicide not amounting to murder, namely,—

(*i*) when the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gives the provocation or causes the death of any other person by mistake or accident, provide the provocation—

(*a*) is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person, or

(*b*) is not given by a public servant in the lawful exercise of the powers of such public servant, or

(*c*) is not given by anything done in the lawful exercise of the right of private defence, or

(*d*) is not given by anything done in abedience to the law;

(*ii*) when the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without pre-meditation and without any intention of doing more harm than is necessary for the purpose of self-defence;

(*iii*) when the offender, not being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duties as such public servant and without ill-will against a person whose death is caused;

(*iv*) where the offender causes death without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel and without having taken undue advantage or acted in a cruel or unusual manner; it is immeterial in such cases which party offers the provocation or commits the first assault;

(*v*) where the person whose death is caused, being above the age of eighteen years, consent to suffer death or to take the risk of death.

Illustrations

(*a*) Y gives grave and sudden provocation to A. A on this provocation, fires, a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide not amounting to murder.

(*b*) A, under the influence of passion excited by a provocation given by Y, kills Z, Y's child standing nearby. This is murder, inasmuch as the provocation was not given by the child.

(*c*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the lawful exercise of his powers.

(*d*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of a A to prevent him from doing so. A is moved to sudden and violent passion in consequence and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*e*) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for the purpose. B kills Z with the knife. Here B may have committed only culpable homicide not amounting to murder, but A is guilty of murder.

(*f*) Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide not amounting to murder."

Substitution of new section for section 304.

117. For section 304 of the Code, the following section shall be substituted, namely.—

304. *Punishment for culpable homicide not amounting to murder.*—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Amendment of section 304A.

118. In section 304A of the Code, for the words, "two years", the words "five years" shall be substituted.

Substitution of new section for section 307 and 308.

119. For section 307 and 308 of the Code, the following sections shall be substituted namely,—

307. *Attempt to murder.*—Whoever attempts to commit murder shall be punished with rigorous imprisonment

for a term which may extend to ten years, and shall also be liable to fine; and if hurt is cause to any person by such act the offender may,—

(*a*) if under sentence of imprisonment for life, be punished with death; and

(*b*) in any other case, be punished with imprisonment for life.

"308. *Attempt to commit culpable homicide.*—Whoever attempts to commit culpable homicide not amounting to murder shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Substitution of new section for section 309.

120. For section 309 of the Code, the following section shall be substituted, namely,—

"309. *Driving member of family to suicide.*—Whoever, by persistent acts of cruelty, drives a member of his family living with him to commit suicide, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Omission of section 310 and 311.

121. Sections 310 and 311 of the Code shall be omitted.

Amendment of section 312.

122. In section 312 of the Code,—

(*a*) the following proviso shall be inserted, namely,—

Provided that it shall not be an offence under this section if the miscarriage is caused within three months of the commencement of pregnancy by a registered medical practioner with the consent of the woman.

(*b*) for the Explanation, the following Explanation shall be substituted, namely,—

Explanation.—A woman who causes herself to miscarry when she has been pregnant for more than three months s within the meaning of this section.

Amendment of section 313.

123. In section 313 of the Code, for the words "imprisonment for life or with imprisonment of either description for a term which may extend to ten years" the words "rigorous imprisonment for a term which may extend to ten years" shall be substituted.

Substitution of new section for section 317.

124. For section 317 of the Code, the following section shall be substituted, namely,—

"317. *Exposure and abandonment of child under five years, by parent or person having care of it.*—Whoever, being the father or mother of a child under the age of five years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall, if such act endangers or is likely to endanger, the life of the child or permanently injures, or is likely to permanently injure, the health of the child, be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

Substitution of new section for section 318.

125. For section 318 of the Code, the following section shall be substituted, namely,—

"318. *Failure to provide necessaries of life.*—Whoever, being legally bound to provide the necessaries of life to any person, fails without lawful excuse to do so, knowing that such failure will endanger the life, or seriously impair the health, of that person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Substitution of new section for section 320

126. For section 320 of the Code, the following section shall be substituted, namely.—

"320. *Grievous hurt.*—The following kinds of hurt only are designated as grievous:—

(1) deprivation or impairment of the sight of either eye or the hearing of either ear;

(2) deprivation or destruction of any organ, member or joint;

(3) permanent impairment of the powers of way organ, member or joint,

(4) permanent disfiguration of the head or face;

(5) fracture or dislocation of a bone; ..

(6) any hurt which endangers life or which causes the sufferer to be in severe bodily pain for ten days."

Amendment of Section 323.

127. In section 323 of the Code, the words "which may extend to one thousand rupees" shall be omitted.

Amendment of Section 326.

128. In section 326 of the Code, the words, "with imprisonment for life or" shall be omitted.

Amendment of Section 327.

129. In section 327 of the Code, for the words "ten years" the words "seven years" shall be substituted.

Substitution of new section for section 328.

130. For section 328 of the Code, the following section shall be substituted, namely,—

"328. *Administering poison etc. with intent to commit an offence*,—Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating or unwholesome substance with intent to commit or to facilitate the commission of an offence, shall be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine."

Amendment of section 329.

131. In section 329 of the Code, the words "imprisonment for life or" shall be omitted.

Amendment of sections 332 and 333

132. In each of the sections 332 and 333 of the Code, the words 'lawful' shall be omitted.

Amendment of section 334.

133. In section 334 of the Code, for the words "with imprisonment of either description for a term which may extend to one month or with fine which may extend to five hundred rupees or with both", the words "with fine which may extend to one thousand rupees" shall be substituted.

Amendment of section 335.

134. In section 335 of the Code,—

(*a*) for the words "four years' the words "three years" shall be substituted.

(*b*) the words "which may extend to two thousand rupees" shall be omitted.

Amendment of section 336

135. In section 336 of the Code,—

(*a*) for the words "three months", the words "six months" shall be substituted;

(*b*) for the words "two hundred and fifty rupees" the words "five hundred rupees" shall be substituted.

Amendment of section 337.

136. In section 337 of the Code—

(*a*) for the words "six months", the words "one year" shall be substituted;

(*b*) the words "which may extend to five hundred rupees" shall be omitted.

Amendment of section 338.

137. In section 338 of the Code,—

(*a*) for the words "two years" the words "three years" shall be substituted.

(*b*) the words "which may extend to one thousand rupees" shall be omitted.

Substitution of new sections for sections 341 to 344

138. For sections 341 to 344 of the Code, the following sections shall be substituted, namely,—

"341. *Punishment for wrongful restraint.*—Whoever wrongfully restrains any person, shall be punished with fine which may extend to one thousand rupees;

and, if the offence is jointly committed by ten or more persons, every one of them shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

"342. *Punishment for wrongful confinement.*—Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

and, if the offence is jointly committed by ten or more persons, every one of them shall be punished with imprisonment for either description for a term which may extend to three years, and shall also be liable to fine.

343. *Wrongful confinement for five days or more.*—Whoever wrongfully confines any person for five days or more, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Substitution of new heading for the heading above section 349.

139. For the heading "Of criminal force and Assault" above section 349, the heading "assault" shall be substituted.

Amendment of section 356

140. For sections 349 to 355 of the Code, the following sections shall be substituted, namely,—

"350. *Assault.*—A person is said to assault another when he, without that person's consent,—

(*a*) applies force, diretly or indirectly, to that person in order to the committing of an offence, or intending or knowing it to be likely that he will thereby cause injury fear or annoyance to that person, or

(*b*) threatens, by any gesture or preparatory act, to apply such force as aforesaid to that person, intending or knowing it to be likely that the gesture or act will cause him to apprehend that such force is about to be applied.

Explanation.—More words do not amount to an assault; but the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

Illustrations

(*a*) Z is sitting in a moored boat, on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A has indirectly applied force to Z.

(*b*) Z is riding in a horse-carriage. A lashes the horses, and thereby causes them to quicken their pace. Here A has indirectly applied force to Z.

(*c*) A pulls up a woman's veil without her consent, intending or knowing it to be likely that he will thereby frighten or annoy her. He has assaulted her.

(*d*) A incites a dog to spring upon Z, without Z's consent. Here, A has applied force to Z and if he intends to cause injury, fear or annoyance to Z, he has assaulted Z.

(*e*) A begins to unloose the muzzle of his dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has assaulted Z.

(*f*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has assaulted Z.

(*g*) A takes up a stick, saying to Z, "I will give you a beating". Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

351. *Punishment for assault.*—(1) Whoever assaults any person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(*b*) Whoever assaults any person on grave and sudden provocation given by that person shall be punished with fine not exceeding five hundred rupees.

(3) Grave and sudden provocation will not mitigate the punishment for assault if the provocation—

(*a*) is sought or voluntarily provoked by the offender as an excuse for the offence, or

(*b*) is given by anything done in obedience to the law, or by a public servant in the lawful esercise of the powers of such public servant, or

(*c*) is given by anything done in the lawful exercise of the right of private defence.

352. *Assault to deter public servant from discharge of his duty.*—Whoever assaults any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequent of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

"353. *Assault on woman with intent to outrage her modesty.*—Whoever assaults any woman, intending to outrage or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354. *Indecent assault on a minor.*—Whoever assaults any minor under sixteen years of age in an indecent, lascivious or obscene manner, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

355. *Assault with intent to dishonour a person, otherwise than on grave provocation.*—Whoever assaults any person intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Amendment of section 356.

141. In section 356 of the Code,—

(*a*) the words "or uses criminal force to" shall be omitted; and

(*b*) for the words "on any property", the words "of any property" shall be substituted.

Amendment of section 357.

142. In section 357 of the Code, the words "or uses criminal force to" shall be omitted.

Omission of section 358.

143. Section 358 of the Code shall be omitted.

Omission of sections 359 and 360.

144. Sections 359 and 360 of the Code shall be omitted.

Substitution of new sections for sections 361 to 363.

145. For sections 361 to 363 of the Code, the following sections shall be substituted, namely.—

"361. *Kidnapping.*—Whoever takes or entices any person who is under eighteen years of age or is of unsound mind, out of the keeping of the lawful guardian of such person without the consent of such guardian, is said to kidnap that person.

Explanation.—In this section, the expression "lawful guardian" includes any person who has lawful custody of a minor or of a person of unsound mind.

Exception.—It is not kidnapping when a minor is taken or enticed out of the keeping of his lawful guardian by either of his parents, or, where the minor is an illegitimate child, by a person who in good faith believes himself to be the father of such child, unless such act is committed for an illegal or immoral purpose.

362. *Abduction.*—Whoever—

(*a*) by force or show of force compels, or by any deceitful means induces, any person to go from any place, or

(*b*) takes any person away from any place without the consent of that person or some person legally authorised to consent on behalf of that person, is said to abduct that person.

"363. *Punishment for kidnapping.*—Whoever kidnaps any person who is under fifteen years of age shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and whoever kidnaps any person who is not under fifteen years of age, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Amendment of section 363A.

146. In section 363A of the Code,—

(*a*) in sub-section (1),—

(*i*) for the words "imprisonment of either description", the words "rigorous imprisonment" shall be substituted;

(*ii*) after the words "ten years", the words "but which shall not be less than three years" shall be inserted,

(*b*) for sub-section (4), the following shall be substituted, namely,—

"(4) In this section, 'minor' means a person under eighteen years of age."

Substitution of new section for section 364.

147. For section 364 of the Code, the following section shall be substituted, namely,—

"364. *Kidnapping or abducting in order to murder or to ransom.*—Whoever kidnaps or abducts any person in order that such person—

(*a*) may be murdered, or

(*b*) may be so disposed of as to be put in danger or being murdered, or

(*c*) may be held to ransom.

shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine."

Substitution of new section for section 365.

148. For section 365 of the Code, the following section shall be substituted, namely,—

"365. *Kidnapping or abducting with intent to convey out of India or secretly confine person.*—Whoever kidnaps or abducts any person with intent to cause that person to be conveyed out of India or to be secretly and wrongfully confined shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

Substitution of new section for sections 366 and 366A.

149. For sections 366 and 366A of the Code, the following section shall be substituted namely,—

"366. *Kidnapping or abducting woman to compel her marriage etc.*—Whoever kidnaps or abducts any woman—

(*a*) with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, be or

(*b*) with intent that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse.

shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

366A. *Procuration of woman or minor girl.*—(1) Whoever, by means of criminal intimidation or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punished with rigorous imprisonment which may extent to ten years, and shall also be liable to fine.

(2) Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person shall be punished with rigorous imprisonment which may extend to ten years and shall also be liable to fine."

150. In section 366B of the Code, for the word "imprisonment," the words "rigorous imprisonment" shall be substituted. Amendment of section 366B.

151. In section 367 of the Code, for the words "imprisonment of either description", the words "rigorous imprisonment" shall be substituted. Amendment of section 367.

152. For sections 368 and 369 of the Code, the following sections shall be substituted, namely,— Substitution of new sections for sections 368 and 369.

"368. *Wrongfully concealing or keeping in confinement, kidnapped or abducted person.*—Whoever, knowing that any person has been kidnapped or abducted, wrongfully conceals or confines such person shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

369. *Kidnapping or abducting child under ten years with intent to steal from the person.*—Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with rigorous imprisonment for a term which may extend to seven years, but which shall not be less than two years, and shall also be liable to fine."

153. In section 370 of the Code, for the words "imprisonment of either description" the words "rigorous imprisonment" shall be substituted. Amendment of section 370.

154. Section 371 of the Code shall be omitted. Omission of section 371.

155. In section 372 of the Code, for the words "imprisonment of either description", the words "rigorous imprisonment" shall be substituted. Amendment of section 372.

156. To section 373 of the Code, the following Explanation shall be added, namely,— Amendment of section 373.

"*Explanation III.*—For the purposes of this section, it is not necessary that the possession of the minor should have been obtained from a third person."

Substitution of new sections for sections 375 to 377

157. For the heading "Of Rape" and sections 375 to 377 of the Code, the following heading and sections shall be substituted, namely,—

"*Sexual Offences*

375. *Rape.*—A man is said to commit rape who has sexual intercourse with a woman, other than his wife,—

(a) against her will, or

(b) without her consent, or

(c) with her consent when it has been obtained by putting her in fear of death or of hurt, either to herself or to anyone else present at the place or

(d) with her consent, knowing that is given in the belief that he is her husband.

"*Explanation I.*—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Explanation II.—A woman living separately from her husband under a decree of judicial separation or by mutual agreement shall be deemed to be a woman other than his wife for the purpose of this section.

376. *Punishment for rape.*—Whoever commits rape shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

376A. *Sexual intercourse with child wife.*—Whoever has sexual intercourse with his wife, the wife being under fifteen years of age, shall be punished—

(a) if she is under twelve years of age, with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine; and

(b) in any other case, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

376B. *Illicit intercourse with a girl between twelve and sixteen.*—Whoever has illicit sexual intercourse with a girl under sixteen years, but not under twelve years of age, with her consent, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

It shall be a defence to a charge under this section for the accused to prove that he, in good faith, believed the girl to be above sixteen years of age.

376C. *Illicit intercourse of public servant with woman in his custody.*—Whoever, being a public servant, compels or seduces to illicit sexual intercourse any woman who is in his custody as such public servant, shall be punished with imprisonment of either description for a "term which may extend to two years, or with fine, or with both".

376 D. *Illicit intercourse of superintendent etc. with inmate of women's or children's institution.*—Whoever, being the superintendent or manager of a women's or children's institution or holding any other office in such institution by virtue of which he can exercise any authority or control over its inmates, compels or seduces to illicit sexual intercourse any female inmate of the institution shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—In this section, "women's or children's institution" means an institution, whether called an orphanage, home for neglected women or children, widow's home or by any other name, which is established and maintained for the reception and care of women or children, but does not include—

(*a*) any hostel or boarding house attached to, or controlled or recognised by, an educational institution, or

(*b*) any reformatory, certified or other school, or any home or workhouse, governed by any enactment for the time being in force.

376E. *Illicit intercourse of manager etc. of a hospital with mentally disordered patient.*—Whoever, being concerned with the management of a hospital or being on the staff of a hospital, has illicit sexual intercourse with a woman who is receiving treatment for a mental disorder in that hospital, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

"*Explanation.*—It shall be a defence to a charge under this section for the accused to prove that he did not know, and had no reason to believe, that the woman was a mentally disordered patient.

377. *Buggery.*—Whoever voluntarily has carnal intercourse against the order of nature with any man or woman shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and where such offence is committed by a person over eighteen years of age with a person under that age, the imprisonment may extend to seven years.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section;"

Substitution of new sections for sections 380 and 381.

158. For sections 380 and 381 of the Code, the following sections shall be substituted, namely.—

"380. *Theft in building, vehicle or temple etc.*—Whoever commits theft,—

(*a*) in any building or tent used as a human dwelling or for the custody of property, or

(*b*) in, or in respect of, any vehicle, vessel or aircraft used for the transport of goods or passengers, or

(*c*) in a temple, mosque, church, guardwara or other place of worship open to the public, in respect of any property which belongs to, or is part of, such place of worship, or

(*d*) in respect of any property of the Government or of a local authority.

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

"380A. *Theft of property affected by accident, fire flood etc.*—Whoever, taking advantage of the occurrence of an accident in a public place or of a fire, flood, riot, earthquake or similar calamity, commits theft in respect of any property affected by such accident or calamity, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

381. *Theft by employee.*—Whoever, being employed in any capacity by another person, commits theft in respect of any property in the possession of that person, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

159. In section 382 of the Code, for the words "ten years", the words "seven years" shall be substituted. Amendment of section 382.

160. After section 385 of the Code the following section shall be inserted, namely,— Insertion of new section 385A.

"385A. *Blackmail.*—Whoever dishonestly threatens any person with the making or publication of any imputation which is likely to harm his reputation or the reputation of any other person, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—Where the threat is of accusation of the commission of an offence it is immaterial whether the accusation is true or false."

161. In section 388 of the Code, the words "and, if the offence be one punishable under section 377 of this Code, may be punished with imprisonment for life" shall be omitted. Amendment of section 388.

162. In section 389 of the Code, the words "and, if the offence be punishable under section 377 of his Code, may be punished with imprisonment for life" shall be omitted. Amendment of section 389.

163. In section 394 of the Code for the words "imprisonment for life or with rigorous imprisonment for a term which may extend to ten years", the words "rigorous imprisonment for a term which may extend to fourteen years" shall be substituted. Amendment of section 394.

164. For sections 396 to 402 of the Code, the following section shall be substituted, namely,— Substitution of new sections for sections 396 to 402.

"396. *Robbery or dacoity with murder.*—If any one of two or more persons who are conjointly committing robbery, commits murder in so committing robbery, or if any one of five or more persons who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine"

165. In section 397 of the Code the words "uses any deadly weapon, or" shall be omitted. Amendment of section 397.

Amendment of section 398.

166. In section 398 of the Code,—

(a) after the words "at the time of" the words "committing or" shall be inserted; and

(b) for the words "seven years" the words "three years" shall be substituted.

Amendment of section 399.

167. In section 399 of the Code, for the words "ten years", the words "seven years" shall be substituted.

Substitution of new sections for sections 400 to 402.

168. For sections 400, 401 and 402 of the Code, the following sections shall be substituted, namely,—

"400. *Belonging to gang of dacoits.*— Whoever belongs to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine.

401. *Belonging to gang of thieves or robbers.*—Whoever belongs to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of dacoits, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

"402. *Assembling for purpose of committing robbery or dacoity.*—Whoever—

(a) is one of three or more persons assembled for the purpose of committing robbery, or

(b) is one of five or more persons assembled for the purpose of committing dacoity,

shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

Amendment of section 403.

169. In section 403 of the Code,—

(a) after illustration (c) to the main section, the following illustration shall be inserted, namely,—

"(d) A and B are partners in a firm which carries on the business of jewellers. A takes a jewel which is the property of the firm, intending to show it to a prospective customer.

Here as A has a "right to do so, A does not dishonestly misappropriate. But if A sells the jewels and appropriates the whole proceeds to his own use without authority to do so under the partnership agreement, he is guilty of an offence under this section,"

(b) for Explanation 2 (including all three paragraphs), the following Explanation shall be substituted, namely,—

"*Explanation* 2.—It is not dishonest misappropriation for a person who finds property not in the possession of any other person, to take it for the purpose of protecting it for, or of restoring it to, the owner; but it is such misappropriation if he appropriates it to his own use—

(a) when he knows, or has the means of discovering the owner, or

(b) when he does not in good faith believe that the owner cannot be discovered, or

"(c) before he has used reasonable means to discover and give notice to the owner, and allowed a reasonable time for the owner to claim the property."

Amendment of section 408.

170. In section 404 of the Code before the word "property", the word "any" shall be inserted.

Amendment of section 408.

171. In section 408 of the Code, for the words "being a clerk or servant or employed as a clerk or servant", the words "being employed in any capacity" shall be substituted.

Amendment of section 408.

172. In seetion 409 of the Code,—

(a) the word 'factor' shall be omitted;

(b) for the words "imprisonment for life or with imprisonment of either description for a term which may extend to ten years", the words "rigorous imprisonment for a term which may extend to ten years", the words "rigorous imprisonment for a term which may extend to fourteen years" shall be substituted.

Substitution of new section for section 410.

173. For section 410 of the Code, the following section shall be substituted, namely.—

"410. *Stolen property*.—Property, the possession whereof has been transferred by theft, extortion, robbery or cheating, and property which has been criminally misappropriated

or in respect of which criminal breach of trust has been committed, is designated as "stolen property" whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Explanation.—Property, the possession whereof has been transferred by an act which would otherwise be theft, robbery or criminal misappropriation but is not that offence by virtue of section 82 or section 84 shall be deemed to be stolen property.

"*Illustration,*

A, a child, six years of age, snatches away a necklace from another child, voluntarily causing hurt to that child. Z, knowing this fact, dishonestly receives the necklace from A. Though A's act is not robbery by virtue of section 82, the necklace is stolen property, and Z has committed the offence defined in section 411."

Amendment of section 411.

174. To section 411 of the Code, the following shall be added, namely,—

"and if the stolen property is the property of the Government or of a local authority, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

Amendment of section 412.

175. In section 412 of the Code,—

(a) the words "with imprisonment for life or" shall be omitted;

(b) for the words "ten years" the words "fourteen years" shall be substituted.

Amendment of section 413.

176. In section 413 of the Code, for the words "with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, the words "rigorous imprisonment for a term which may extend to fourteen years" shall be substituted.

Amendment of section 414.

177. To section 414 of the Code, the following shall be added, namely,—

"and if the stolen property is the property of the Government or of a local authority, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

178. For section 415 of the Code, the following section shall be substituted, namely.— Substitution of new section for section 415.

"415. *Cheating*. Whoever, by deceiving any person,—

(a) fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or

(b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation or property, is said to 'cheat'.

Explanation.—A dishonest concealment of facts, or, where there is a legal duty to disclose particular facts, a dishonest omission to disclose those facts, is a deception within the meaning of this section."

179. For section 420 of the Code. the following section shall be substituted, namely,— Substitution of new section for section 420.

"420. (I) *Cheating and dishonestly inducing delivery of property*.—(1) Whoever cheats and thereby dishonestly induces the person deceived—

(a) to deliver any property to any person, or

(b) to consent that any person shall retain any property, or

(c) to make, alter or destroy the whole or any part of a valuable security, or

(d) to make, alter or destroy anything which is signed or sealed and which is capable of being converted into a valuable security,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

180. After section 420 of the Code, the following section shall be inserted, namely,— Insertion of new section 420A and 420B.

"420A. *Cheating public authorities in performance of certain contracts*.—Whoever, in performance of any contract

with the Government or other public authority, for the supply of any goods, the construction of any building or execution of other work—

(a) in the case of a contract for the supply of goods, dishonestly supplies goods which are less in quantity than, or inferior in quality to, those he contracted to supply, or which are, in any manner whatever, not in accordance with the contract, or

(b) in the case of a contract for the construction of a building or execution of other work, dishonestly uses materials which are less in quantity than, or inferior in quality to, those he contracted to use, or which are, in any manner, whatever, not in accordance with the contract,

shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be also liable to fine.

Explanation.—In this section, "public authority" means—

(a) a corporation established by or under a Central, Provincial or State Act;

(b) a Government company as defined in section 617 of the Companies Act, 1956; and

(c) a local authority."

"420B. *Employee taking bribe in respect of employer's affairs or business.*—Whoever, being employed by another, accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification, other than legal remuneration, as a motive or reward—

(a) for doing or for bearing to do any act in relation to his employer's affairs or business; or

(b) for showing or for bearing to show, in the exercise of his functions, favour or disfavour to any person in relation to his employer's affairs or business,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Explanations.—(1) The word "gratification" is not restricted to pecuniary gratification, or to gratifications estimable in money.

(2) The words "legal remuneration" are not restricted to remuneration which any employer can lawfully demand, but include all remuneration which he is permitted by his employer to accept.

(3) "A motive or reward for doing".—A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do or has not done, comes within these words.

Exception.—This provision does not extend to a case in which the employee is a public servant acting as such."

181. For sections 426 to 432 of the Code, the following sections shall be substituted, namely,— Revised sections in place of sections 426 to 432.

"426. *Punishment for mischief.*—Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

427. *Mischief causing damage to public property or machinery to the amount of one hundred rupees.*—Whoever commits mischief in respect of any property of the Government or of a local authority or in respect of any machinery, and thereby causes loss or damage to the amount of one hundred rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

428. *Mischief by killing or maiming animal.*—Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of two hundred rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

429. *Mischief by causing diminution of supply of water or inundation or obstruction in public drainage.*—Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause:—

(a) a diminution of the supply of water to the public or to any person for any purpose; or

(b) an inundation of, or obstruction to, any public drainage,

shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

430. *Mischief by injury to public road, bridge, river or channel.*—Whoever commits mischief by doing any act which renders any public road, bridge, navigable channel, natural or artificial, impassable or less safe for travelling or conveying

property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

431. *Mischief committed after preparation made for causing death or hurt, or wrongful restraint.*—Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

432. *Mischief by destroying, moving or rendering less useful air-route, beacon etc.*—Whoever commits mischief by destroying or moving or rendering less useful any air-route, beacon or aerodrome light, or any light at or in the neighbourhood of an air-route or aerodrome provided in compliance with law, or any other thing exhibited or used for the guidance of aircraft, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

Substitution of new sections for sections 434 to 440.

182. For sections 434 to 440 of the Code, the following sections shall be substituted, namely,—

"434. *Mischief with intent to destroy or make unsafe aircraft or vessel.*—Whoever commits mischief to any aircraft or to any decked vessel or to any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that aircraft or vessel, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if such mischief is committed or attempted by fire or any explosive substance, shall be punished with imprisonment for life, or with the punishment aforesaid.

435. *Mischief by fire or explosive substance with intent to cause damage to amount of one hundred rupees.*—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause damage to any property to the amount of one hundred rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

436. *Mischief by fire or explosive substance with intent to destroy, worship-house etc.*—Whoever commits mischief by fire or any explosive substance, intending to cause, or

knowing it to be likely that he will thereby cause, the destruction of,—

(a) any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property; or

(b) any object therein which is held sacred by any class of persons,

shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Substitution of new section for section 441.

183. For section 441 of the Code, the following section shall be substituted, namely,—

"441. *Criminal trespass.*—Whoever—

(a) enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or

(b) having entered into or upon such property without such intent, unlawfully remains there with such intent,

is said to commit criminal trespass."

Substitution of new sections for sections 443 to 460.

184. For sections 443 to 460 of the Code, the following sections shall be substituted, namely,—

"443. *Burglary.*—A person commits burglary, if—

(a) he commits house-trespass in order to commit theft or any offence punishable with imprisonment for seven years or with a more severe punishment; or

(b) having committed house-trespass, he commits theft or any such offence as aforesaid."

"444. *Punishment for criminal trespass.*—Whoever commits criminal trespass, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

"445. *Punishment for house-trespass,*—Whoever commits house-trespass, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

"446. *House-trespass after preparation for hurt, assault or wrongful restraint.*—Whoever commits house-trespass, having made preparation—

(a) for causing hurt to, assaulting, or wrongfully restraining, any person; or

(b) for putting any person in fear of hurt, assault or wrongful restraint,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

"447. *Punishment for burglary.*—Whoever commits burglary, shall be punished with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine."

"448. *Grievous hurt caused whilst committing burglary.*—Whoever, whilst committing burglary,—

(a) causes grievous hurt to any person, or

(b) attempt to cause death or grievous hurt to any person,

shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine."

"449. *All persons jointly concerned in burglary punishable where death or grievous hurt caused by one of them.*—If, at the time of committing burglary, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such burglary shall be punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine."

Substitution of new sections for sections 463 to 477.

185. For sections 463 to 477 of the Code, the following sections shall be substituted, namely,—

"463. *Forgery.*—A person is said to commit forgery who, dishonestly or fraudulently or with intent that fraud may be committed on the public or on any person—

(a) makes, signs or executes a document or part of a document with the intention of causing it to be believed that such document or part of document was made, signed or executed—

(i) by, or by the authority of, a person by whom, or by whose authority, he knows that it was not made, signed or executed, or

"(ii) (when the time or place is material) at a time or place at which he knows that it was not made, signed or executed; or

(b) by cancellation, addition, obliteration or otherwise, alters a document in any material part thereof, after it has been made, signed or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

(c) causes any person to sign, execute or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication cannot, or by reason of deception practised upon him does not, know the contents of the document or the nature of the alteration.

"*Explanation.*—(1) In this section, "execute" includes sealing and making any mark denoting execution of a document.

(2) A man's signature of his own name may amount to forgery.

(3) The making of a document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery."

464. *Forged document.*—A document in respect of which, or any part of which, forgery has been committed is a forged document.

465. *Punishment for forgery.*—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

"466. *Forgery of court record, public register, will, valuable security etc.*—Whoever commits forgery in respect of a document which is, or purports to be,—

(i) a record or proceeding of or in a Court of Justice;

(ii) a register kept, or document made, by a public servant in his official capacity;

(iii) a register of birth, baptism, marriage or burial,

(iv) a will,

(v) a valuable security,

(vi) an authority to make or transfer any valuable security;

(vii) an authority to receive or deliver any valuable security, movable property or money,

(viii) an acquittance or receipt for the delivery of any valuable security or movable property or for the payment of any money,

"(ix) an authority to institute or defend any suit or to take any proceedings therein or to confess judgment, or

(x) a power of attorney,

shall be punished with rigorous imprisonment which may extend to ten years, and shall also be liable to fine."

467. *Using as genuine a forged document:*—Whoever fraudulently or dishonestly uses as genuine any document which he knows, or has reason to believe, to be a forged document.—

(a) shall, if the document is one of the description mentioned in section 466, be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and

(b) shall, in any other case, be punished with imprisonment of either description for a term which may extend to three years, or with fine.

"468. *Making or possessing counterfeit seal etc., with intent to commit forgery punishable under section* 466.—Whoever make or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 466, or with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with rigorous imprisonment which may extend to ten years, and shall also be liable to fine."

469. *Possessing a forged document described in section* 466.—Whoever has in his possession any document of the description mentioned in section 466, knowing the same to be forged and intending that the same shall be fraudulently or dishonestly be used as genuine, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

"470. *Counterfeiting device or marks used for authenticating documents described in section* 466, *or possessing counterfeit marked material:*—Whoever counterfeits upon or in the substance of, any material, any device or mark used for the purpose of authenticating any

document described in section 466, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance or which any such device or make has been counterfeited, shall be punished with rigorous imprisonment which may extend to ten years, and shall also be liable to fine."

471. *Fraudulent cancellation, description etc. of valuable security or will.*—Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person,—

(a) cancels, destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete, any valuable security or any document which is or purports to be a will, or

"(b) commits mischief in respect of such valuable security or document,

shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Re-numbering of section 477A.

186. Section 477A of the Code shall be renumbered section 472.

Omission of sections 489A to 489E.

187. Sections 489A to 489E of the Code shall be omitted.

Substitution of new Chapter for Chapter XIX.

188. For Chapter XIX of the Code, the following Chapter shall be substituted, namely,—

CHAPTER XIX

OFFENCES AGAINST PRIVACY

490. *Use of artificial listening or recording apparatus*—(1) Whoever, knowing that any artificial listening or recording apparatus has been introduced into any premises without the knowledge or consent of the person in possession of the premises, listens to any conversation with the aid of such apparatus or uses such apparatus for the purposes of recording any conversation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(2) Whoever publishes any conversation or a record thereof, knowing that it was listened to or recorded with the aid of any artificial listening or recording apparatus introduced into any premises without the knowledge or consent of the person in possession of the premises, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

491. *Unauthorised photography*:—(1) Whoever, intending to cause, or knowing it to be likely that he will cause, annoyance to any person, takes a photograph of that person without his consent elsewhere than in a public place, or takes his photograph in a public place when that person has prohibited such taking, shall be punished with simple imprisonment for a term which may extend to six months or with fine, or with both.

(2) Whoever, intending to cause, or knowing it to be likely that he will cause, annoyance to any person, publishes any photograph of that person taken in contravention of subsection (1) shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

492. *Exception regarding certain acts of public servants, and persons acting under their directions*:—Nothing in section 490 or section 491 applies—

(a) to a public servant acting in good faith in the course of his duties connected with the security of State, the prevention, detection or investigation of offences, the administration of justice, or the maintenance of public order, or

(b) to persons acting under the directions of such public servant."

Substitution of new section for sections 494 and 495.

189. For sections 494 and 495 of the Code, the following sections shall be substituted, namely,—

"494. *Bigamy*:—Whoever, being married, contracts another marriage in any case in which such marriage is void by reason of its taking place during the subsistance of the earlier marriage, commits bigamy.

Explanation:—Where a marriage has been dissolved by the decree of a competent court under an enactment but the parties are, by virtue of a provision of the enactment under which their marriage is dissolved, prohibited from re-marrying within a specified period, then, for the "purposes of this section, the marriage shall, notwithstanding its dissolution, be deemed to subsist during that period."

Exception:—The offence is not committed by any person who contracts the later marriage during the life of the spouse by earlier marriage, if, at the time of the later marriage such spouse shall have been continually absent from such person for seven years and shall not, within that period, have been heard of by such person as being alive, provided the person contracting the later marriage informs the person with whom it is contracted of the real state of facts so far as the same are within his or her knowledge.

495. *Punishment for bigamy:*—Whoever commits bigamy shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

"(2) Whoever commits bigamy, having concealed from the person with whom the later marriage is contracted the fact of the earlier marriage, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Amendment of section 496.

190. In section 496 of the Code, for the words "seven years", the words "three years" shall be substituted.

Substitution of new section for section 497.

191. For section 497 of the Code, the following section shall be substituted, namely,—

"497. *Adultery.*—If a man has sexual intercourse with a woman who is, and whom he knows or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, the man and the woman are guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Substitution of new section for section 498.

192. For section 498 of the Code, the following section shall be substituted, namely,—

"498. *Taking or enticing away or concealing with criminal intent a married woman:*—Whoever takes or entices away conceals any woman who is, and whom he knows or has reason to believe to be, the wife of any other man, from that man or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Amendment of section 499.

193. In section 499 of the Code,—

(a) in the First Exception, the second sentence, that is to say, the words "Whether or not it is for the public good is a question of fact", shall be omitted;

(b) in the Fourth Exception:—

(i) after the words "report of the proceedings", the words "in open court" shall be inserted;

(ii) the Explanation shall be omitted.

Substitution of new section for section 500.

194. For section 500 of the Code, the following section shall be substituted, namely,—

"500. *Punishment for defamation.*—(1) Whoever defames another shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

(2) Where the offence has been committed by publishing an imputation in a newspaper, the Court convicting the offender may further order that its judgment shall be published, in whole or in part, in such newspaper as it may specify.

(3) The costs of such publication shall be recoverable from the convicted person as a fine."

Amendment of sections 501 and 502.

195. In sections 501 and 502 of the Code, for the words "simple imprisonment", the words "imprisonment of either description" shall be substituted.

Omission of sections 504, 505 and 510; re-numbering of sections 506, 507, 508 and 509; and insertion of sections 507, 508 and 509.

196. In Chapter XXII of the Code:—

(a) sections 504 and 506 shall be omitted, and sections 506, 507 and 508 shall be re-numbered as 504, 505 and 506, respectively;

(b) after section 506, as so re-numbered, the following sections shall be inserted, namely,—

"507. *Threat of suicide with intent to concern a public authority.*—Whoever holds out a threat of suicide to a public authority, with intent to cause that authority to do any act which it is not legally bound to do, or to omit to do any act which it is legally entitled to do, as the means of avoiding the execution of such threat, and does any act towards the execution of such threat, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

"508. *Intentional insult.*—Whoever intentionally insults any person, intending or knowing it to be likely that such insult will provoke that person to break the public peace or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

509. *Performing mock funeral of a living person:*—Whoever, with intent to cause annoyance to the public or to any person or with the knowledge that annoyance is likely to be caused to the public or to any person, performs, or takes part in the performance of, any mock funeral associated with, or referable to, a living person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;"

(c) section 510 shall be omitted, and the existing section 500 shall be re-numbered as section 50.

Substitution of new Chapter for Chapter XXIII.

197. For Chapter XXIII of the Code, the following Chapter shall be substituted, namely,—

CHAPTER 23

LIMITATION FOR TAKING COGNIZANCE OF OFFENCES

"511. *Definitions.* For the purpose of this Chapter, unless the context otherwise requires,—

(a) "period of limitation" means the period of limitation for taking cognizance of an offence, specified in section 512;

(b) "prescribed period" means the period of limitation, computed in accordance with the provisions of this Chapter.

"512. *Bar to taking cognizance after lapse of time.*—(1) Subject to the other provisions of this Chapter, no court shall take cognizances of an offence punishable under this Code after the expiry of the prescribed period.

(2) The period of limitation for taking cognizance of an offence shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year; and

(c) three years, if the offence is punishable with imprisonment for a term not exceeding three years.

513. *Commencement of the period of limitation.*—(1) The period of limitation commences, in relation to any offender, from the day which his participation in the offence first comes to the knowledge of a person aggrieved by the offence or of an officer investigating the offence.

(2) In computing the said period, the day from which such period is to be reckoned, shall be excluded.

514. *Exclusion of time in certain cases.*—(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a court of first instance or in a court of appeal or revision, against the offender, shall be excluded, where the prosecution relates to the same facts and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, than, in computing the period "of limitation, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where for prosecution for an offence the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, then in computing the period of limitation for taking cognizance of the offence, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction, shall be excluded.

Explanation:—In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

(4) In computing the period of limitation, the time which the offender—

(a) has been absent from India and from the territories outside India under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself,

shall be excluded.

515. *Exclusion of date on which court is closed.*—Where the prescribed period for taking cognizance of an offence expires on a day when the court is closed, the court may take cognizance on the day when the court re-opens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section, if, during any part of its normal working hours, it remains closed on that day.

516. *Continuing offences.*—In the case of a continuing offence, a fresh period of limitation begins to run at every moment of the time during which the offence continues."

COMPARATIVE TABLE

Code as Revised	Existing Code	Existing Code	Code as Revised
Section	Section	Section	Section
	CHAPTER I		
1	1	1	1
2	4	2	Omitted.
3	3	3	3
4	5	4	2
		5	4
	CHAPTER II		
5	New		
6	7	6	Omitted.
7(*a*)	47	7	6
7(*b*)	New		
7(*c*)	20		
7(*d*)	46		
7(*e*)	21		
	Explanation 3		
7 (*f*)	52A		
7(*g*)	18		
7(*h*)	44		
7(*i*)	19		
7 (*j*)	45		
7(*k*)	42		
7 (*l*)	10		
7(*m*)	12		
7(*n*)	21		
7(*o*)	41		
7(*p*)	30		
8	28	8	Omitted.
9	29	9	Omitted.
10	24	10	7(*l*)
11	25	11	Omitted.
12	52	12	7(*m*)
13	43, in part.	13	*Already repealed.*
14	43, in part.	14	Omitted.
15	27	15	*Already repealed.*

Code as Revised,	Existing Code.	Existing Code.	Code as Revised
Section	Section	Section	Section
	CHAPTER II—(contd.)		
16	26	16	*Already repealed.*
17	39	17	*Omitted.*
18	23 in part.	18	7(g)
19	23 in part.	19	7(i)
20	36	20	7(c)
21(1)	14	21	7(n)
21(2)	35		
22	38	22	Omitted.
23	37	23	18 and 19
24	53	24	10
25	New	25	11
25A	53A		
26	New	26	16
27	57	27	15
28	60	28	8
29	New	29	9
30	63	30	7(p)
31	64	31	Omitted.
32(1)	68	32	Omitted
32(2)	69		
32(3)	New		
33	70 in part.	33	Omitted.
34	70 in part.	34	21(1)
35	71 Ist part.	35	21(2)
36	71 2nd and 3rd paras.	36	20
37	72	37	23
38	75	38	22
39	New	39	17
40	76, in part. 79, in part.	40	omitted
41	76, in part, and 79, in part.	41	7(o)
Illustrations (a)	Illustration (b) of 76		
(b)	Illustration of 79.		
42	77	42	7(k)
43	78	43	13 and 14
44	80	44	7(h)
45	81	45	7(j)
46	82	46	7(d)
47	84	47	7(a)

Code as Revised.	Existing Code.	Existing Code.	Code as Revised
Section	Section	Section	Section
	CHAPTER II—(contd.)		
48(1)	85	48	Omitted
48(2)	86		
48(3)	New		
49	87	49	Omitted
50	88	50	Omitted.
51	89	51	Omitted
52	90	52	12
		52A	7(f)
	CHAPTER III		
53	91	53	24
		53A	25A
54	92	54	Omitted.
55	93	55	Omitted.
		55A	Omitted.
56	94	56	*Already repealed.*
57	95	57	27
58	96	58	*Already repealed.*
59	98	59	*Already repealed.*
60	99	60	28
61(1)	97, 1st para.	61	*Already repealed.*
61(2)(a)	100, First and Secondly.		
61(2)(b)	100, Thirdly and Fourthly.		
61(2)(c)	100, Fifthly.		
61(2)(d)	100, Fifthly.		
61(2)(e)	100, Sixthly and 101		
61(3)	106		
62	102	62	*Already repealed.*
63(1)	97, Secondly.	63	30
63(2)(a)	103, First.		
63(2)(b)	103, Fourthly.		
63(2)(c)	103, Thirdly.		
63, last para.	104		
64, 1st para.	105, 1st para.	64	31
64(a)	105, 3rd para.		
(b)	105, 2nd para.		
(c)	105, 4th para.		
65	107	65	Omitted.

Code as Revised	Existing Code	Existing Code.	Code as Revised
Section	Section	Section	Section
	CHAPTER III—(contd.)		
66(1)	108	66	Omitted.
(2)	108A		
(3)	108, Expl. 4.		
(4)	108, Expls. 2 and 3.		
(5)	108, Expl. 1.		
67	109	67	Omitted.
68	110	68	32(1)
69	111	69	32(2)
70	112	70	33
71	113	71	35 and 36
72	114	72	37
73	115	73	Omitted.
74	116	74	Omitted.
Illustration (*a*)	Illus. (*b*)		
(*b*)	Illus. (*c*)		
75	117	75	38
	CHAPTER IV		
76	New	76	40, in part and 41, in part.
		Illustration (*a*).	Omitted.
		Illustration (*b*).	Illustration (*a*) of 41.
77	118	77	42.
78	119	78	43.
79	120	79	40 in part and 41, in part.
		Illustration.	Illustration (b) of 41.
80	120A	80	44
81	120B	81	45
82	511, in part.	82	46
83	511, in part.	83	Omitted
84 to 120B	*GAP*—Consequential on recasting and re-arrangement of sections.	84	47
		85	48(1)
		86	48(2)
		87	49
		88	50
		89	51

Code as Revised	Existing Code	Existing Code	Code as Revised.
Section	Section	Section	Section
		CHAPTER IV—(Contd.).	
		90	52
		91	53
		92	54
		93	55
		94	56
		94, Explanations. 1 and 2.	56, Illustrations. (*a*) and (b)
		95	57
		96	58
		97, First para.	61(1)
		97, Secondly.	63(1)
		98	59
		99	60
		100, First & Secondly.	61(2)(*a*)
		100, Third & Fourthly.	61(2)(*b*)
		100, Fifthly.	61(2)(*c*) and (*d*).
		100, Sixthly.	61(2)(*e*), in part.
		101	61(2)(*e*), in part.
		102	62
		103, First.	63(2)(*a*).
		103, Secondly.	Omitted.
		103, Thirdly.	63(2)(*e*).
		103, Fourthly.	63(2)(*b*).
		104	63, last para.
		105, first para.	64, 1st para.
		105, 2nd para.	64(1)(*b*).
		105, 3rd para.	64(1)'(*a*)
		105, 4th para.	64(1)(*c*)
		106	61(3)
		CHAPTER V	
		107	65
		108	66(1)
		108, Expl. 1.	66(5)
		108, Expls. 2 and 3.	66(4)
		108, Expl. 4.	66(3)
		108A	66(2)
		109	67
		110	68

Code as Revised.	Existing Code.	Existing Code.	Code as Revised.
Section	Section	Section	Section
		CHAPTER V—(Contd.).	
		111	69
		112	70
		113	71
		114	72
		115	73
		116	74
		Illustration (*a*).	Omitted.
		Illustration (*b*).	Illustration (*a*).
		Illustration (*c*).	Illustration (*b*).
		Illustration (*d*).	Omitted.
		117	75
		118	77
		119	78
		120	79
		CHAPTER VA	
		120A	80
		120B	81
		CHAPTER VI	
121	121	121	121
		121A	123B
122	122	122	122
123	123	123	123
123A	New		
123B	121A		
124	124	124	124
124A	124A	124A	124A
124B	New		
125 to 130	125 to 130	125 to 130	125 to 130
		CHAPTER VII	
131	New	131	132(*b*) and 133
132(*a*)	132	132	132(*a*)
(*b*)	131, in part.		
133	131, in part.	133	134(*b*)
134(*a*)	134	134	134(*a*)
(*b*)	133		

Code as Revised.	Existing Code.	Existing Code.	Code as Revised.
Section	Section	Section	Section
135 and 136	135 and 136	135 and 136	135 and 136
137	138	137	Omitted.
138	505	138	137
		138A	*Already Repealed.*
139	New	139	139A
139A	139		
140	140	140	140
	CHAPTER VIII		
141 to 147	141 to 147	141 to 147	141 to 147
147A	New		
148 to 153	148 to 153	148 to 153	148 to 153
		153A	158A
154 to 158	154 to 158	154 to 158	154 to 158
158A	153A		
158B	505		
159 to 160	159 to 160	159 to 160	159 to 160.
	CHAPTER IX		
161 to 166	161 to 166	161 to 166	161 to 166
166A	New		
167	167	167	167
167A	New		
168 to 171	168 to 171	168 to 171	168 to 171
	CHAPTER IXA		
171A	171A	171A	171A
171B(1),(2) and (3).	171B(1),(2) and (3).	171B	171B(1),(2) and (3).
171B(4)	171E		
171C(1)	171C	171C	171C(1).
171C(2)	171F, in part.		
171D(1)	171D	171D	171D(1).
171D(2)	171F, in part.		
171E	171G	171E	171B(4).
		171F	171C (2) and 171D (2).
		171G	171E
		171H	Omitted.
		171I	Omitted

Code as Revised	Existing Code	Existing Code	Code as Revised
Section	Section	Section	Section
	CHAPTER X		
172 to 190	172 to 190	172 to 190	172 to 190
	CHAPTER XI		
191 to 198	191 to 198	191 to 198	191 to 198
198A	New		
198B	New		
199 to 201	199 to 201	199 to 201	199 to 201
202	203	202	203
203	202	203	202
204 to 207	204 to 207	204 to 207	204 to 207
207A	New		
208 to 216A	208 to 216A	208 to 216A	208 to 216A
		216B	*Already repealed.*
217 to 220	217 to 220	217 to 220	217 to 220
221 (a) and (b)	221, in part.	221	221 (a) and (b)
	222, in part.		
221(c)	225A, in part.		
222	223, in part.	222	221
	225A, in part.		
223 (a) and (b)	225, in part.	223	222
223 (c)	225B, in part.		
224 (a) and (b)	225, in part.	224	225 (a) and 225 (b) and 226.
224 (c)	225B, in part.		
225 (a)	224, in part.	225	223 (a) and (b)
			224 (a) and (b)
225 (b)	224, in part.	225A	221 (c) and 222
	225B, in part.		
		225B	223 (c), 224 (c), 225, 226.
226	224, in part.	226	*Already repealed.*
	225B, in part.		
227 to 228	227 to 228	227 to 228	227 to 228
229	New	229	Omitted

Code as Revised	Existing Code	Existing Code	Code as Revised
Section	Section	Section	Section
	CHAPTER XII		
230	New	230	237
231	New	231	238, in part.
232	489A	232	238, in part.
233	489B	233	241, in part.
234	489C	234	241, in part.
235	489D	235	241, in part.
236	489E	236	*Omitted.*
237	230	237	242, in part.
238	231 and 232	238	242, in part.
239	239 to 241.	239 to 241	239
240	242 and 243		
241	233, 234 and 235		
242	237 and 238	242	240, in part.
243	244	243	240, in part.
244	245	244	243
245	New	245	244
246	255	246 to 254	*Omitted.*
247	256 and 257		
248	258, 259 and 260		
249	261		
250	262		
251	263		
252	263A(4).		
253	263A		
254 to 263	*Gap*— Consequential on re-casting and re-arrangement of sections.		
		255	246
		256	247, in part.
		257	247, in part.
		258	248, in part.
		259	248, in part.
		260	248, in part.
		261	249
		262	250
		263	251
		263A(1), (2) and (3)	253
		263A(4)	252

Code as Revised	Existing Code	Existing Code	Code as Revised
Section	Section	Section	Section
	CHAPTER XIII		
264 to 267	264 to 267	264 to 267	264 to 267
	CHAPTER XIV		
268(1)	268	268	268(1)
(2)	290		
		269	269(a)
269(a)	269		
(b)	270		
270	*Gap*— Consequential on re-casting and re-arrangement of sections.	270	269(b)
271 to 279	271 to 279	271 to 279	271 to 279
279A	New		
280 to 289	280 to 289	280 to 289	280 to 289
290	Gap— Consequential on re-casting and rearrangement of sections.	290	268(2)
291	291	291	291
		292	292(1)
292(1)	292		
292(2)	New		
293 to 294A	293 to 294A	293 to 294A	293 to 294 A
	CHAPTER XV		
295	295	295	295
295A	295A	295A	295A
296 to 298	296 to 298	296 to 298	296 to 298
	CHAPTER XVI		
299	300	299	300
300	299	300	299
301 to 304	301 to 304	301 to 304	301 to 304
304A	304A	304A	304A
305 to 308	305 to 308	305 to 308	305 to 308
309	New	309	*Omitted.*
310 and 311	*Gap*— Consequential on re-casting and rearrangement of sections.	310 and 311	*Omitted.*

Code as Revised	Existing Code	Existing Code	Code as Revised
Section	Section	Section	Section
	CHAPTER XVI— Contd.		
312	312	312	312
Proviso	New		
313 to 317	313 to 317	313 to 317	313 to 317
318	New	318	*Omitted.*
319 to 340	319 to 340	319 to 340	319 to 340
341, 1st para.	341	341	341, 1st para.
341, 2nd para.	New		
342, 1st para.	342	342	342, 1st para.
342, 2nd para.	New		
343	343 and 344	343	343, in part.
344	*Gap*— Consequential on re-casting and re-arrangement of sections.	344	343, in part.
345 to 348	345 to 348	345 to 348	345 to 348
349	*Gap*.—Consequential on re-casting and re-arrangement of sections.	349	*Omitted.*
350	350 and 351	350	350, in part.
		351	350, in part.
351(1) and (3)	352		
351(2)	358		
352	353	352	351(1)
353	354	353	352
354	New	354	353
355 to 357	355 to 357	355 to 357	355 to 357
358 to 360	*Gap*—Consequential on re-casting and re-arrangement of sections.	358	351(2)
		359 and 360	*Omitted.*
361 to 363	361 to 363	361 to 363	361 to 363
363A	363A	363A	363A
364 and 365	364 and 365	364 and 365	364 and 365
366	366, 1st para.	366	366 and 366A(1)
366A(1)	366, latter part.	366A	366A(2)
366A(2)	366A		
366B	366B	366B	366B
367 to 370	367 to 370	367 to 370	367 to 370
371	*Gap*—Consequential on re-casting and re-arrangement of sections.	371	*Omitted.*

Code as Revised Section	Existing Code Section	Existing Code Section	Code as Revised Section
	CHAPTER XVI—Contd.		
372 to 375	372 to 375	372 to 375	372 to 375
376	376	376	376, 376A and 376B.
376A	376		
376B	376		
376C	New		
376D	New		
376E	New		
377	377	377	377
	CHAPTER XVII		
378 to 380	378 to 380	378 to 380	378 to 380
380A	New		
381 to 385	381 to 385	381 to 385	381 to 385
385A	New		
386 to 409	386 to 409	386 to 409	386 to 409
410, 1st para.	410	410	410, 1st para.
410, 2nd para.	New		
411 to 413	411 to 413	411 to 413	411 to 413
414, 1st para.	414	414	414, 1st para.
414, 2nd para.	New		
415 to 420	415 to 420	415 to 420	415 to 420
420A	New		
420B	New		
421 to 426	421 to 426	421 to 426	421 to 426
427	New	427	Omitted.
428	429	428	Omitted.
429(a)	430	429	428
429(b)	432		
430	431	430	429(a)
431	440	431	430
432	New	432	429(b)
433	433	433	433
434	437 and 438	434	Omitted.
435 and 436	435 and 436	435 and 436	435 and 436
437 to 440 *Gap.*—Consequential on re-casting and re-arrangement of sections.		437	434
		438	434
		439	Omitted.
		440	431

Code as Revised	Existing Code	Existing Code	Code as Revised
Section	Section	Section	Section
	CHAPTER XVII—Contd.		
441 and 442	441 and 442	441 and 442	441 and 442
443	445	443	Omitted.
444	447	444	Omitted.
445	448	445	443
446	452, 455 and 458,	446	Omitted.
447	449 to 451, 453, 454, 456 and 457	447	444
448	459	448	445
449	460	459 to 451	447
450 to 460	*Gap.*—Consequential on re-casting and re-arrangement of sections 443 to 460		
		452	446
		453	447
		454	447
		455	446
		456	447
		457	447
		458	446
		459	448
		460	449
461 and 462	461 and 462	461 and 462	461 and 462
	CHAPTER XVIII		
463	463 and 464	463	463, in part.
464	470	464	463, in part.
465	465	465	465
466	466 and 467	466	466, in part.
467	471	467	466, in part.
468	472 and 473	468	Omitted.
469	474	469	Omitted.
470	475 and 476	470	464
471	477	471	467
472	477A	472	468, in part.
473 to 478	*Gap.*—Consequential on re-casting and re-arrangement of sections.	473	468, in part.
		474	469
		475	470, in part.
		476	470, in part.

Code as Revised	Existing Code	Existing Code	Code as Revised
Section	Section	Section	Section
	CHAPTER XVIII—Contd.		
		477	471
		477A	472
		478	*Already repealed.*
479	479	479	479
480	*Gap.*—Consequential on re-casting and re-arrangement of sections.	480	*Already repealed.*
418 to 489	481 to 489	481 to 489	481 to 489
		489A	232
		489B	233
		489C	234
		489D	235
		489E	236
	CHAPTER XIX		
490	New	490	*Already repealed.*
491	New	491	Omitted.
492	New	492	*Already repealed.*
	CHAPTER XX		
493 to 498	493 to 498	493 to 498	493 to 498
	CHAPTER XXI		
499	499	499	499
500(1)	500	500	500(1)
500(2)	New		
500(3)	New		
501 and 502	501 and 502	501 and 502	501 and 502
	CHAPTER XXII		
503	503	503	503
504	506	504	508
505	507	505	138 and 158B.
506	508	506	504
507	New	507	505
508	504	508	506
509	New	509	510
510	509	510	Omitted.

Code as Revised	Existing Code	Existing Code	Code as Revised
Section	Section	Section	Section
	CHAPTER XXII—Contd.		
		511	82 and 83
	CHAPTER XXIII—(New)		
511	New		
512	New		
513	New		
514	New		
515	New		
516	New		

Tabular statement showing the number of sections in each Chapter of the code and the number of sections in that Chapter after the proposed revision.

	Present number	Revised number
Chapter I	5	4
Chapter II	45	19
Chapter III	20	17
Chapter IV	31	25
Chapter V	15	15
Chapter VA	2	2
Chapter VB	..	2
Chapter VI	12	14
Chapter VII	10	11
Chapter VIII	21	23
Chapter IX	12	14
Chapter IXA	9	5
Chapter X	19	19
Chapter XI	41	45
Chapter XII	35	22
Chapter XIII	4	4
Chapter XIV	28	27
Chapter XV	5	5
Chapter XVI	83	80
Chapter XVII	85	74
Chapter XVIII	31	20
Chapter XIX	1	3
Chapter XX	6	6
Chapter XXI	4	4
Chapter XXII	8	8
Chapter XXIII	1	6
	533	474

APPENDIX—3

Consequential Amendments of the Code of Criminal Procedure and other laws.

(will follow)

APPENDIX 3

CONSEQUENTIAL AMENDMENTS IN THE CODE OF CRIMINAL PROCEDURE AND OTHER CENTRAL ACTS

I. *The Code of Criminal Procedure*[1]

1. In section 31, in each of the sub-sections (2) and (3), the words "including such solitary confinement as is authorised by law" shall be omitted.[2]

2. In section 33, sub-section (1), for the word and figure "section 71", the words and figures "sections 35 and 36" shall be substituted.

3. In section 42, sub-section (1), clause (a)—

(i) the figure "121A" shall be omitted;

(ii) after the figure "123", the figures "123A, 123B" shall be inserted;

(iii) for the words, figures and brackets "431 to 439 (both inclusive), 449, 450 and 456 to 460 (both inclusive)", the words, figures and brackets "429, 430, 433 to 436 (both inclusive) and 446 to 449 (both inclusive)" shall be substituted.

4. In section 43,—

(a) in sub-section (1), clause (e),—

(i) for the words, figures and brackets "231 to 238 (both inclusive)", the words, figures and brackets "232 to 235 (both inclusive), 238, 241, 242" shall be substituted;

(ii) for the words, figures and brackets "436, 449, 450, 457 to 460 (both inclusive), 489A, 489B, 489C and 489D", the words, figures and brackets "436 and 446 to 449 (both inclusive)" shall be substituted;

(b) in sub-section (2), clause (ii), for the words, figures and brackets "436, 449, 450 and 457 to 460 (both inclusive)", the words, figures and brackets "436 and 446 to 449" (both inclusive), shall be substituted.

5. In section 95, sub-section (1), for the figure "153A", the figure "158A" shall be substituted.

6. In section 109, sub-section (1), paragraph (i), clause (a), for the figure "153A", the figure "158A" shall be substituted.

7. In section 111, clause (d), the words and figures "or under section 489A, section 489B, section 489C or section 489D of that Code" shall be omitted.

7A. In section 190, for sub-section (1), the following sub-section shall be substituted, namely,[3]—

"(1) When an offence committed by any person outside India is punishable under the Indian Penal Code or any special law, such person may be dealt with in respect of the offence as if it had been committed at any place within India at which he may be found :

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

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1. The amendments proposed in this Appendix have been drafted with reference to the Code of Criminal Procedure Bill, 1970 which is now pending before a Joint Committee of the two Houses of Parliament, and is expected to replace the Code of Criminal Procedure, 1898, in the near future.

2. Consequential on the repeal of sections 73 and 74 of the Indian Penal Code: *see* para. 3.80 of the Report.

3. *See* para. 1.19 of the Report.

8. In section 196, sub-section (1),—

(i) in clause (a), for the figure "228", the words, figures and brackets "228 to 230 (both inclusive)" shall be substituted[1];

(ii) in clause (b), for the words and figures "section 471, section 475 or section 476", the words and figures "section 467 or section 470" shall be substituted.

9. In section 197,—

(a) in clause (a), for the words and figures "secton 153A, section 295A or section 505", the words and figures "section 138, section 158B or section 295A" shall be substituted;

(b) in clause (c), for the figure "108A", the words and figures "sub-section (2) of section 66" shall be substituted.

10. Section 198 shall be omitted.[2]

11. In section 201, sub-section (1), clause (c), for the figure "494", the figure "495" shall be substituted.

12. For section 202, the following section shall be substituted, namely,—

"202. *Prosecution for sexual intercourse with child wife.*—No court shall take cognizance of an offence under section 376A of the Indian Penal Code, if more than one year has elapsed from the date of the commission of the offence."[3]

13. In section 215, for illustration (a), the following shall be substituted, namely,—

"(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in section 299 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it was not committed in any of the exceptional circumstances specified in sub-section (2) of section 300".[4]

14. In section 219, in illustration (a), for the figure "242", the figure "240" shall be substituted.

15. In section 226,—

(a) in sub-section (5), for the word and figure "section 71", the words and figures "sections 35 and 36 " shall be substituted;

(b) in illustration (a), for the figure "225", the figure "223" shall be substituted;

(c) in illustration (b),—

(i) for the words "house-breaking by day", the word "burglary" shall be substituted;

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1. Consequential on the addition of two new sections 229 and 230, dealing with interference with witnesses and with non-appearance by a pesrson who has been released on bail; *see* paras 11.36 and 11.37 of the Report. It is proper that when these offences are committed in or in relation to proceedings in a court, its sanction should be obtained before cognizance is taken.

2. Consequential on the proposal to restrict the scope of the offence of criminal conspiracy dealt with in existing section 120B of the Code and proposed section 81: *See* para. 5.40 of the Report.

3. Consequential on the proposal whereunder the offence of rape, where it consists of sexual intercourse by a man with his own wife under 15 years, at present dealt with in section 376, is to be dealt with in section 376A: *See* para. 16.119 of the Report.

4. Consequential on the revised definitions of murder and culpable homicide not amounting to murder: *see* para. 16.6 of the Report.

(ii) for the figure "454", the figure "447" shall be substituted;

(d) in illustration (d), for the figure "473", the figure "468" shall be substituted;

(e) in illustration (h), for the figure "506", the figure "504" shall be substituted;

(f) in illustration (i), for the figure "352", the figure "351" shall be substituted;

(g) in illustration (l), for the words, figures and brackets "471 (read with section 466)", the figure "467" shall be substituted.

16. In section 229, clause (g),—

(i) for the words "counterfeit coin", the words "counterfeit currency notes or coin" shall be substituted;

(ii) for the words "the same coin", the words "the currency notes or coin" shall be substituted.[1]

17. In section 258, sub-section (4), for the words and figures "sections 68 and 69", the word and figure "section 32" shall be substituted.

18. In section 268, in sub-section (1),—

(a) in clause (b), after the word and figure "section 380", the word and figure "section 380A" shall be inserted;

(b) in clause (f), for the figure "427", the figure "426" shall be substituted;

(c) clause (g) shall be omitted.[2]

(d) for clause (h), the following clauses shall be substituted, namely,—

"(g) criminal intimidation under section 504 of the Indian Penal Code;

(h) intentional insult under section 508 of the Indian Penal Code."

19. In section 269, clause (a),—

(a) before the figure "277", the figure "268" shall be inserted;

(b) the figure "290" shall be omitted;

(c) for the figures "352, 358", the figure "351" shall be substituted;

(d) for the figure "447", the figure "444" shall be substituted; and

(e) for the figure "504", the figure "508" shall be substituted.

20. In section 327,—

(a) in the table below sub-section (1),—

(i) for the entry relating to "Assault or use of criminal force", the following entry shall be substituted, namely,—

"Assault.	351, 355.	The person assaulted;"

(ii) in the entry relating to mischief, the figure "427" shall be omitted;

(iii) in the entry relating to criminal trespass, for the figure "447", the figure "444" shall be substituted;

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1. Consequential on the inclusion of offences relating to counterfeit currency notes in Chapter XII, it is considered that offences relating to currency notes should, for this purpose, be treated on the same footing as offences relating to coin.

2. Section 268(1)(g) relates to offences under existing sections 451, 453, 454 and 456, I.P.C. The proposed section 447 (burglary) creates an offence more severaly punishable, and cannot be substituted in place of these offences.

(iv) in the entry relating to house-trespass, for the figure "448", the figure "445" shall be substituted;

(v) for the entry relating to "Criminal breach of contract of service" the following entries shall be substituted, namely,—

"Use of artificial listening or recording apparatus.	490	The person aggrieved by the offence.
Unauthorised photography.	491	The person aggrieved by the offence."

(vi) for the last three entries, the following entries shall be substituted, namely,—

"Criminal intimidation except when the offence is punishable with imprisonment for seven years.	504	The person intimidated.
Act caused by making a person believe that he will be an object of divine displeasure.	506	The person against whom the offence was committed.
Intentional insult	508	The person insulted."

(b) in the table below sub-section (2),—

(i) in the entry relating to "Wrongfully confining a person for three days or more", for the words "three days" the words "five days" shall be substituted;

(ii) the entry relating to "Wrongfully confining for ten or more days" shall be omitted.

(iii) for the two entries relating to "Assault or criminal force", the following entries shall be substituted, namely,—

"Assault on woman with intent to outrage her modesty.	353	The woman assaulted.
Assault in attempting wrongfully to confine a person.	357	The person assaulted."

(iv) for the three entries relating to mischief, the following two entries shall be substituted, namely,—

"Mischief by killing or maiming animal.	428	The owner of the animal.
Mischief by causing diminution of supply of water for any purpose, when the only loss or damage caused is loss or damage to a private person.	429	The person to whom the loss or damage is caused."

(v) the entry relating to "House-trespass to commit an offence (other than theft) punishable with imprisonment" shall be omitted;

(vi) for the entry relating to "Marrying again during the life-time of a husband or wife", the following entry shall be substituted, namely,—

"Bigamy.	495(1)	The husband or wife of person committing bigamy."

(vii) in the last entry, for the figure "509", the figure "510" shall be subs tituted.

21. In section 331, for sub-section (1), the following sub-section shall be substituted, namely,—

"(1) Where a person having been convicted by a Court in India of an offence punishable under the Indian Penal Code with imprisonment of either description for a term of three years or upwards and sentenced to imprisonment on such conviction, is again accused of having committed, within three years from the date of his final release from prison after serving that sentence, any offence punishable under that Code with like imprisonment for the like term, and the Magistrate before whom the case is pending is satisfied that there is ground for presuming that such person has committed the offence, he shall be sent for trial to the Chief Judicial Magistrate or committed to the Court of Session, unless the Magistrate is competent to try the case and is of opinion that he can himself pass an adequate sentence if the accused is convicted."[1]

22. In section 362, for sub-section (2), the following sub-section shall be substituted, namely,—

"(2) Where a person is convicted, and it is doubtful under which of two or more enactments the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative."[2]

23. In section 364, sub-section (1), the words and figures "section 489A, section 489B, section 489C or section 489D" shall be omitted.

24. In section 365,—

(a) sub-section (a) shall be omitted;

(b) in sub-section (2), for the words "If the fine is imposed", the words and figure "When a court passes an order under section 29 of the Indian Penal Code to pay compensation out of fine to the victim of an offence and the fine is imposed" shall be substituted ;

(c) in sub-section (5), after the words "as compensation under", the words and figure "section 29 of the Indian Penal Code or" shall be inserted.[3]

25. For the First Schedule, the following shall be substituted, namely,—

FIRST SCHEDULE

CLASSIFICATION OF OFFENCES

Explanatory Note :—

(1) In regard to offences under the Indian Penal Code, the entries in the second and third column against a section the number of which is given in the first column are not intended as the definition of, and the punishment prescribed for, the offence in the Indian Penal Code, but merely as indication of the substance of the section.

(2) In this Schedule, (i) the expression "Magistrate of the first class" and "Any Magistrate" include Metropolitan Magistrates but not Executive Magistrates; (ii) the word "cognizable", stands for 'a police officer may arrest without warrant'; and (iii) the word 'non-cognizable' stands for 'a police officer shall not arrest without warrant'.

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1. Consequential on the revision of the existing section 75: *see* para. 3.89 of the Report.

2. Consequential on the proposed extension of the scope of existing section 72 of the Indian Penal Code to offences under any enactment: *see* para. 3.79 of the Report.

3. Consequential on the recommendation to insert a new section in the Indian Penal Code, dealing with orders to pay compensation out of fine to the victim of an offence: *see* para: 3.19 of the Report.

I. Offences under the Indian Penal Code

Section		Offence	Punishment	Cognizable or non-cognizable.	Bailable or non-bailable	By what court triable
1		2	3	4	5	6
Amended.	67	Punishment for abetment where act abetted or committed in consequence of abetment.	Same as for offence abetted.	According as offence abetted is cognizable or non-cognizable.	According as offence abetted is bailable or non-bailable.	Court by which offence abetted is triable.
Amended.	68	Abetment of any offence, if the person abetted does the act with different intention from that of the abettor.	Ditto	Ditto	Ditto	Ditto
Amended.	69	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Same as for offence intended to be abetted.	Ditto.	Ditto.	Ditto.
Amended.	71	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Same punishment as for offence committed.	Ditto.	Ditto.	Ditto.
Amended.	72	Abetment of any offence, if abettor is present when offence is committed.	Same punishment as for offence committed.	Cognizable if offence abetted is cognizable, but not otherwise.	Ditto	Ditto.
Amended.	73	Abetment of capital offence, if offence not committed.	Rigorous imprisonment for 7 years, and fine.	Ditto.	Non-bailable.	Ditto.
		If act causing hurt be done in consequence.	Rigorous imprisonment for 14 years, and fine.	Ditto.	Ditto.	Ditto.

Amended.	74	Abetment of an offence punishable with imprisonment, if offence be not committed.	Imprisonment extending to one half of the longest term provided for that offence, or fine as is provided for that offence, or both.	According as offence abetted is cognizable or non-cognizable.	According as offence abetted is bailable or non-bailable.	Court by which offence abetted is triable.
[Existing S. 117]		If abettor be a public servant whose duty it is to prevent the offence.	Same punishment as provided for the offence.	Ditto.	Ditto.	Ditto.
Amended. [Existing S. 117]	75	Abetting the commission of any offence by the public, or by more than ten persons.	Imprisonment for 3 years, or fine, or both.	According as offence abetted is cognizable or non-cognizable.	According as offence abetted is bailable or non-bailable.	Ditto.
New.	76	Abetting commission of offence by child.	Imprisonment of any description provided for the offence for twice the longest term provided for that offence, and fine.	Ditto.	Ditto.	Ditto.
Amended.	77	Concealing a design to commit capital offence, if the offence be committed.	Imprisonment for 7 years, and fine.	According as offence abetted is cognizable or non-cognizable.	Non-bailable.	Ditto.
		If the offence be not committed.	Imprisonment for 3 years, and fine.	Ditto.	Bailable.	Ditto.
Amended.	78	A public servant concealing a design to commit an offence, which it is his duty to prevent if the offence be committed.	Imprisonment textending to half of the longest term, and of any description, provided for the offence, or fine or both.	Cognizable if offence abetted is cognizable, but not otherwise.	According as offence abetted is bailable or non-bailable.	Ditto.
		If the offence be not committed.	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.	Bailable.	Ditto.

1		2	3	4	5	6
Amended.	79	Concealing a design to commit an offence not being a capital offence, if offence be committed.	Ditto.	Ditto.	According as offence abetted is bailable or non-bailable.	Court by which offence abetted is triable.
		If the offence be not committed.	Imprisonment extending to one-eighth part of the longest term, and of the description provided for the offence, or fine, or both.	Ditto.	Bailable.	Ditto.

CHAPTER VA

CRIMINAL CONSPIRACY

Amended.	81	Criminal conspiracy to commit an offence, if the offence be committed.	Same as for offence which is the object of the conspiracy.	Cognizable if the offence which is the object of conspiracy is cognizable, but not otherwise.	According as offence which is object of conspiracy is bailable or non-bailable	Court by which abetment of offence which is object of conspiracy is triable.
		If the offence be not committed.	Imprisonment of any description provided for that offence for a term which may extend to one-half of the longest term provided for the offence, or fine provided for the offence, or both.	Ditto.	Ditto.	Ditto.

Amended.	83	Attempt to commit an offence punishable with imprisonment for life or imprisonment for a specified term.	Imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life, or as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence or with both.	According as the offence attempted is cognizable or non-cognizable.	According as the offence attempted is bailable or non-bailable.	Court by which offence attempted is triable.
		CHAPTER VI				
		OFFENCES AGAINST THE STATE				
	121	Waging or attempting to wage war, or abetting the waging of war, against the Government of India.	Death or imprisonment for life, and fine.	Cognizable.	Non-bailable.	Court of Session.
	121[1]	Collecting arms, etc. with the intention of waging war against the Government of India.	Imprisonment for life, or rigorous imprisonment for 10 years, and fine.	Ditto.	Ditto.	Ditto.
	123	Concealing with intent to facilitate a design to wage war.	Rigorous imprisonment for 10 years, and fine.	Ditto.	Ditto.	Ditto.
[New]	123A	Assisting India's enemies.	Rigorous imprisonment for 10 years, and fine.	Ditto.	Ditto.	Ditto.

1. Section 121A is to be renumbered 123B.

1	2		3	4	5	6
[Existing 121A amended and re-numbered.	123B.	Conspiracy to overawe the Parliament, Government of India or the Legislature or Government of any State.	Imprisonment for life, or rigorous imprisonment 10 years and fine.	Ditto.	Ditto.	Court of Session.
	124	Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power.	Rigorous imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
	124A.	Sedition.	Rigorous imprisonment for 7 years and fine.	Non-cognizable.	Ditto.	Ditto.
New	124B.	Insult to the book of the Constitution, national flag, national emblem or national anthem.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Non-bailable.	Court of Session.
Amended.	125	Waging war against any foreign State at peace with India, or attempting or abetting the waging of such war.	Imprisonment for 10 years and fine.	Ditto.	Ditto.	Ditto.
Amended.	126	Committing depredation on the territories of any foreign state at peace with India.	Imprisonment for 7 years and fine, and forfeiture of property used or intended to be used in such depreciation or acquired by such depredation.	Ditto.	Ditto.	Ditto.
	127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Imprisonment for 7 years and fine, and forfeiture of property used or intended to be used	Cognizable.	Non-bailable.	Courts of Session.

		in such depredation or acquired by such depredation.			
Amended. 128	Public servant voluntarily allowing prisoner of war in his custody to escape.	Imprisonment for 10 years and fine.	Ditto.	Ditto.	Court of Session.
Amended. 129	Public servant negligently suffering prisoner of war in his custody to escape.	Simple imprisonment for 3 years and fine.	Non-cognizable.	Ditto.	Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, prisoner of war, or offering any resistance to the recapture of such prisoner.	Imprisonment for 10 years and fine.	Cognizable.	Non-bailable.	Court of Session.

CHAPTER VII

OFFENCES RELATING TO THE ARMED FORCES

Amended. 132	Abetment of mutiny,—				
	(a) if mutiny is committed in consequence thereof.	Death, or imprisonment for life, or rigorous imprisonment for 14 years and fine.	Cognizable.	Non-bailable.	Court of Session.
	(b) in any other case.	Rigorous imprisonment for 10 years and fine.	Ditto.	Ditto.	Ditto.
Amended. 133	Attempting to seduce an officer or member of any of the armed forces from his duty.	Rigorous imprisonment for 10 years and fine.	Ditto.	Ditto.	Ditto.

1	2	3	4	5	6
Amended. 134	Abetment of assault on superior officer,				
	(a) If assault is committed in consequence thereof.	Imprisonment for 7 years and fine.	Cognizable.	Non-bailable.	Magistrate of the first class.
	(b) in any other case.	Imprisonment for 3 years and fine.	Ditto.	Ditto.	Ditto.
Amended. 135	Abetment of desertion from armed forces,				
	(a) if committed in consequence thereof	Imprisonment for 5 years, or fine., or both.	Ditto.	Ditto.	Ditto.
	(b) in any other case.	Imprisonment for 2 years, or fine, or both.	Ditto.	Bailable	Any Magistrate.
Amended. 136	Harbouring deserter (from armed forces).	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended. 137	Abetment of an act of insubordination,				
	(a) if act of insubordination committed in consequence thereof.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
	(b) in any other case.	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended. 138	Incitement to mutiny or other act of insubordination.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
(New) 139	Discussion from enlisting, and instigation to mutiny or insubordination after enlistment.	Imprisonment upto 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.

Amended.	140	Wearing garb or carrying token used by officer or member of the armed forces with the intention that it may be believed that he is such an officer or member.	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Any Magistrate.

CHAPTER VIII

OFFENCES AGAINST THE PUBLIC TRANQUILITY

	143	Being member of an unlawful assembly.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Bailable	Any Magistrate.
	144	Joining an unlawful assembly armed with any deadly weapon.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
	145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
	147	Rioting.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
(New)	147A	Making preparation to commit rioting.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
	148	Rioting armed with deadly weapons.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
	149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	The same as for the offence.	According as the offence is cognizable or non-cognizable.	According as the offence is bailable or non-bailable.	The Court by which the offence is triable.

1	2	3	4	5	6
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	The same as for a member of such assembly and for any offence committed by any member of such assembly.	Cognizable.	According as offence is bailable or non-bailable.	The Court by which the offence is triable.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Imprisonment for 6 months, or fine, or both.	Ditto.	Bailable.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot etc.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
Amended. 153	Giving provocation with intent to cause riot, if rioting be committed.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto	Any Magistrate.
	If not committed.....	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended. 154	Owner or occupier of land not giving, information of riot etc.	Imprisonment for 6 months, or fine, or both.	Non-cognizable.	Ditto.	Ditto.
Amended. 155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended. 156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.

Amended.	157	Assembling, receiving or sheltering persons hired for an unlawful assembly.	Imprisonment for 6 months, or fine, or both.	Cognizable.	Ditto.	Any Magistrate.
	158	Being hired to take part in an unlawful assembly or riot.	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.
		or to go armed.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended.	158A(1)	Intentionally promoting enmity between classes.	Imprisonment of either description for 3 years, or fine, or both.	Ditto.	Non-bailable.	Magistrate of the first class.
	158A(2)	Promoting enmity between classes in place of worship etc.	Imprisonment of either description for 5 years, and fine.	Ditto.	Ditto.	Ditto.
Amended.	158B. [Existing section 505, in part.]	Statements conducing to offences against public tranquillity.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
		If committed in a place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies.	Imprisonment for 5 years, and fine.	Ditto.	Ditto.	Ditto.
Amended.	160	Committing affray.	Imprisonment for 6 months, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.

CHAPTER IX

OFFENCES BY OR RELATING TO PUBLIC SERVANTS

1	2	3	4	5	6
161	Being or expecting to be a public servant and taking a gratification other than legal remuneration in respect of an official act.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Bailable.	Magistrate of the first class.
162	Taking a gratification in order, by corrupt or illegal means, to influence a public servant.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
163	Taking a gratification for the exercise of a personal influence with a public servant.	Simple imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
164	Abetment by public servant of the offences defined in the last two preceding sections with referance to himself.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
165A	Punishment for abetment of offences defined in section 161 or section 165.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.

Amended.	166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Simple imprisonment for 3 years, or fine, or both.	Non-cognizable.	Bailable	Magistrate of the first class.
(New)	166A	Public servant acting with intent to cause injury to any person.	Imprisonment for 1 year, or fine. or both.	Ditto.	Ditto.	Ditto.
Amended.	167	Public servant preparing an incorrect document with intent to cause injury.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
(New)	167A	Public servant knowingly authorising payment in respect of contracts, when the goods supplied or work done is not in accordance with contracts.	Imprisonment for 3 years, and fine.	Ditto.	Ditto.	Ditto.
	168	Public servant unlawfully engaging in trade.	Simple imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
	169	Public servant unlawfully buying or bidding for property.	Simple imprisonment for 2 years, or fine, or both and confiscation of property, if purchased.	Ditto.	Ditto.	Ditto.
	170	Personating a public servant.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Ditto.	Any Magistrate.
Amended.	171	Wearing garb or carrying token used by public servant with fraudulent intent.	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.

CHAPTER IXA—OFFENCES RELATING TO ELECTIONS

(1)		(2)	(3)	(4)	(5)	(6)
Amended.	171B	Bribery.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Bailable.	Magistrate of the first class.
		If treating only.	fine only.	Ditto.	Ditto.	Ditto.
Amended.	171C	Undue influence at an election.	Imprisonment for 2 years, or fine, or both.	Dtito.	Ditto.	Ditto.
		If with violence.	Imprisonment for 3 years.	Cognizable.	Ditto.	Ditto.
Amended.	171D	Personation at an election.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended.	171E	False statement in connection with an election.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Ditto.	Ditto.

CHAPTER X—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

Amended.	172	Absconding to avoid service of summons or order proceeding from a public servant.	Simple imprisonment for 3 months, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.
		If summons or notice requires attendance in person, etc. in a Court of Justice.	Simple imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended.	173	Preventing the service or the affixing of any summons of notice or the removal of it when it has been affixed, or preventing a proclamation.	Simple imprisonment for 3 months, or fine, or both.	Ditto.	Ditto.	Ditto.
		If summons, etc., require attendance in person etc., in a Court of Justice.	Simple imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.

Amended.	174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Simple imprisonment for 3 months, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.
		If the order requires personal attendance, etc., in a Court of Justice.	Simple imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended.	175	Intentionally omitting to produce document or other thing to public servant by person legally bound to produce or deliver it.	Simple imprisonment for 3 months, or fine, or both.	Ditto.	Ditto.	The Court in which the offence is committed, subject to the provisions of Chapter 26, or, if not committed in a Court, any Magistrate.
		If the document is required to be produced in or delivered to a Court of Justice.	Simple imprisonment for 1 year, or fine, both.	Ditto.	Ditto.	The Court in which the offence is committed subject to the provisions of Chapter 26, or, if not committed in a Court, any Magistrate.
Amended.	176	Intentionally omitting to give notice or information to public servant by person legally bound to give such notice or information.	Simple imprisonment for 3 months, or fine, or both.	Ditto.	Ditto.	Any Magistrate.
		If the notice or information required respects the commission of an offence, etc.	Simple imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.

(1)		(2)	(3)	(4)	(5)	(6)
Amended.	176	If the notice or information is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure.	Imprisonment for 1 year, or fine, or both.	Non-cognizable.	Bailable	Any Magistrate
Amended.	177	Knowingly furnishing false information to a public servant.	Simple imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.
		If the information required respects the commission of an offence, etc.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended.	178	Refusing oath when duly required to take oath by a public servant.	Simple imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	The Court in which the offence is committed subject to the provisions of Chapter 26; or if not commited in a Court, any Magistrate.
Amended.	179	Being legally bound to state truth, and refusing to answer questions.	Simple imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Any Magistrate
Amended.	180	Refusing to sign a statement made to a public servant when legally required to do so.	Simple imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.
	181	Knowingly stating to a public servant on oath as true that which is false.	Imprisonment for 3 years, and fine.	Ditto.	Ditto.	Magistrate of the first class.

Amended.	182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
Amended.	183	Resistance to the taking of property by the lawful authority of a public servant.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended.	184	Obstructing sale of property offered for sale by authority of a public servant.	Fine of 1,000 rupees.	Ditto.	Ditto.	Ditto.
Amended.	185	Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorised sale or bidding without intending to perform the obligations thereby.	Fine of 1,000 rupees.	Ditto.	Ditto.	Ditto.
Amended.	186	Obstructing public servant in discharge of his public functions.	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended.	187	Omission to assist public servant when bound by law to give such assistance.	Fine of 1,000 rupees.	Ditto.	Ditto.	Ditto.
		Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences etc.	Simple imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended.	188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Simple imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.

(1)		(2)	(3)	(4)	(5)	(6)
		If such disobedience causes danger to human life, health or safety etc.	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
	189	Threatening a public servant with injury to him or one in whom he is interested, to induce him to do or forbear to do any official act.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
	190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Imprisonment for 1 year, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.
		CHAPTER XI—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE				
	193	Giving or fabricating false evidence in a judicial proceeding.	Imprisonment for 7 years, and fine.	Non-cognizable	Bailable	Magistrate of the first class.
		Giving or fabricating false evidence in any other case.	Imprisonment for 3 years, and fine.	Ditto.	Ditto.	Any Magistrate.
Amended.	194	Giving or fabricating false evidence with intent to procure conviction of capital offence.	Rigorous imprisonment for 14 years, and fine.	Ditto.	Non-bailable.	Court of Session.
		If innocent person be thereby convicted and executed.	Death, or imprisonment for life, or as above.	Ditto.	Ditto.	Ditto.
Amended.	195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with imprisonment for 7 years or more severe sentence.	The same as for the offence.	Non-cognizable.	Non-bailable.	Court of Session.

	196	Using in a judicial proceeding evidence known to be false or fabricated.	The same as for giving or fabricating false evidence.	Ditto.	According as offence of giving such evidence is bailable or non bailable.	Court by which offence of giving or fabricating false evidence is triable.
	197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto.	Ditto.	Bailable.	Court by which offence of giving false evidence is triable.
	198	Using as true certificate one known to be false in a material point.	The same as for giving or fabricating false evidence.	Non-cognizable.	Bailable.	Court by which offence of giving false evidence is triable.
New	198A	Issuing or signing false medical certificate.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Any Magistrate.
		If to be used in judicial proceeding.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
New	198B	Using as true a medical certificate known to be false.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
		If used in judicial proceeding.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
	199	False statement made in any declaration which is by law receivable as evidence.	The same as for giving or fabricating false evidence.	Non-cognizable	Bailable	Court by which offence of giving false evidence is triable.
	200	Using as true any such declaration known to be false.	The same as for giving or fabricating false evidence.	Ditto.	Ditto.	Ditto.

1	2	3	4	5	6
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Imprisonment for 7 years, and fine.	Non-cognizable.	Bailable.	Court of Session.
	If punishable with imprisonment for life or imprisonment for 10 years.	Imprisonment for 3 years and fine.	Ditto.	Ditto.	Magistrate of the first class.
	If punishable with less than 10 years' imprisonment.	Imprisonment for a quarter of the longest term, and for the description provided for the offence or fine, or both.	Ditto.	Ditto.	Court by which the offence is triable.
Amended and 202 (Re-numbered)	Giving false information respecting an offence committed.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended and 203 (Re-numbered)	Intentional omission to give information of an offence by person legally bound to inform.	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Any Magistrate.
Amended 204	Secreting or destroying any document or thing to prevent its production as evidence.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.

	206	Fraudulent removal or concealment, etc., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence or in execution of a decree.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Any Magistrate.
	207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
New	207A	Removal of attached property.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
	208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Ditto.	Magistrate of the first class.
	209	False claim in a Court of Justice.	Imprisonment for 2 years, and fine.	Ditto.	Ditto.	Ditto.
	210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	211	False charge of offence made with intent to injure.	Imprisonment for 3 years or fine, or both.	Ditto.	Ditto.	Ditto.
		If offence charged be punishable with imprisonment for 7 years or more severe sentence.	Imprisonment for 7 years, and fine.	Non-cognizable.	Ditto.	Court of Session if offence charge be capital. Magistrate of the first class in other cases.

1	2	3	4	5	6
Amended	212 Harbouring an offender, if the offence be capital.	Imprisonment for 5 years and fine.	Cognizable	Ditto.	Court of Session.
	If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 3 years and fine.	Ditto.	Ditto.	Ditto.
	If punishable with imprisonment for 1 year and not for 10 years.	Imprisonment for a quarter of the longest term, and of the description provided for the offence, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
Amended	213 Taking gift, etc., to screen an offender from punishment if the offence be capital.	Imprisonment for 7 years and fine.	Cognizable	Bailable	Magistrate of the first class.
	If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 3 years.	Ditto.	Ditto.	Ditto.
	If punishable with imprisonment for less than 10 years.	Imprisonment for a quarter of the longest term and of the description provided for the offence, or fine, or both.	Non-cognizable	Ditto.	Ditto.
	214 Offering gift or restoration of property in consideration of screening offender if the offence be capital.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
	If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 3 years and fine.	Non-cognizable	Bailable	Magistrate of the first class.

		If punishable with imprisonment for less than 10 years.	Imprisonment for a quarter of the longest term and of the description provided for the offence or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
	215	Taking gift to help to recover movable property of which a person has been deprived by an offence, without causing apprehension of offender.	Imprisonment for 2 years, of fine, or both.	Cognizable	Ditto.	Ditto.
	216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	Imprisonmen for 7 years, and fine.	Ditto.	Ditto.	Ditto.
		If punishable with imprisonment for life or with imprisonment for 10 years.	Imprisonment for 3 years with or without fine.	Cognizable	Bailable	Magistrate of the first class.
		If punishable with imprisonment for 1 year, and not 10 years.	Imprisonment for a quarter of the longest term and of the description provided for the offence, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	216A	Harbouring persons about to commit kidnapping, abduction, robbery or dacoity.	Rigorous imprisonment for 7 years, and fine.			
	217	Public servant disobeying a direction of law with intent to save person from punishment or property from forfeiture.	Imprisonment for 2 years or fine, or both.	Non-cognizable	Ditto.	Any Magistrate.

1	2	3	4	5	6
	218 Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Imprisonment for 3 years, or fine, or both.	Non-cognizable.	Bailable	Magistrate of the first class.
	219 Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict, or decision which he knows to be contrary to law.	Imprisonment for 7 years, or fine, or both.	Ditto.	Ditto.	Ditto.
	220 Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Imprisonment for 7 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	221 Public servant intentionally omitting to arrest or permitting escape—				
	(a) if the offence be capital.	Imprisonment for 10 years, and fine.	Ditto.	Non-bailable if the person is to be arrested or kept in custody under sentence of death. Bailable in other cases.	Court of Session.
	(b) if the offence be punishable with imprisonment for life or imprisonment for 10 years or upwards.	Imprisonment for 5 years, and fine.	Ditto.	Non-bailable if the person is under sentence of imprisonment for life, or for 10 years, or upwards. Bailable in other cases,	Ditto.

	(c) in any other case.	Imprisonment for 3 years, or fine, or both.	Ditto.	Bailable	Magistrate of the first class.
Amended 222 [portions of 223 and 225A and renumbered as 222.]	Public servant negligently omitting to arrest or suffering to escape.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Any Magistrate.
Amended 223 [Parts of ss. 225 and 225B recasted and renumbered as 223.]	Rescue from lawful custody persons charged with suspected or convicted of offence—				
	(a) if the offence be capital.	Rigorous imprisonment for 10 years, and fine.	Cognizable	Non-bailable	Court of Session.
	(b) if the offence be punishable with imprisonment for life or imprisonment for 10 years or upwards.	5 years, and fine.	Ditto.	Ditto.	Magistrate of the first class.
	(c) in any other case.	Imprisonment for 2 years, or fine, or both.	Ditto.	Bailable	Any Magistrate.
Amended 224 [Parts of ss. 224, 225 & 225B recasted and renumbered as 224.]	Resistance to arrest of person charged with suspected or convicted of offence.				
	(a) if the offence be capital.	Rigorous imprisonment for 15 years, and fine.	Ditto.	Non-bailable	Court of Session.
	(b) if the offence be punishable with imprisonment for life or imprisonment for 10 years or upwards.	Rigorous imprisonment for 5 years, and fine.	Ditto.	Ditto.	Magistrate of the first class.
	(c) in any other case.	Imprisonment for 2 years, or fine, or both.	Ditto.	Bailable	Any Magistrate.

1. The offence under section 224 is punishable with the same punishment as under section 223. The punishment under section 223 has been reproduced here for convenience.

1	2	3	4	5	6
Amended 225 [Parts of ss. 224 and 225B recasted and renumbered as s. 225.]	Escape from lawful custody— (a) if he be in custody for an offence. (b) in any other case.	Imprisonment for 2 years, or fine, or both. Imprisonment for 6 months, or fine, or both.	Cognizable Ditto.	Bailable Ditto.	Any Magistrate. Ditto.
Amended— [Parts 226 of ss. 224 and 225B recasted and renumbered as s. 226.]	Resistance to arrest.	Same as provided in section 225.	Ditto.	Ditto.	Ditto.
	227 Violation of condition of remission of punishment.	Punishment of original sentence, or if part of the punishment has been undergone, the residue.	Non-cognizable	Non-bailable	The court by which the original offence was triable.
Amended	228 Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Simple imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	The Court in which the offence is committed, subject to the provisions of Chapter XXXV.
New	229[2] Interference with witnesses	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Any Magistrate.
New	230 Failure by person released on bail or bond to appear in court.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
New	231 Vexatious search without reasonable ground.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.

1. Section 226 of the I.P.C. was repealed by the Code of Criminal Procedure (Amendment) Act, 1955, s. 117.
2. Existing section 229, is to be omitted.

1	2	3	4	5	6
Whole Chapter amended.					
232[1] [Existing s. 489A].	Counterfeiting currency notes.	Rigorous imprisonment for 14 years, and fine.	Cognizable	Non-bailable	Court of Session.
233 [Existing s. 489B.]	Using as genuine counterfeit currency notes.	Rigorous imprisonment for 14 years, and fine.	Ditto.	Ditto.	Ditto.
234 [Existing s. 489C.]	Possession of forged or counterfeit currency notes.	Imprisonment for 7 years, or fine, or both.	Ditto.	Bailable.	Ditto.
235 [Existing s. 489D]	Making or possessing instruments or materials for counterfeiting currency notes.	Rigorous imprisonment for 14 years, and fine.	Cognizable.	Non-bailable.	Court of Session
236 [Existing s. 489E]	Making or using documents resembling currency notes.	Fine upto 200 rupees.	Ditto.	Bailable.	Any Magistrate.
	Refusal of the person whose name appears on such document to disclose to police-officer the identity of the person who made the document.	Fine upto 500 rupees.	Ditto.	Ditto.	Ditto.
238 [Existing ss. 231 and 232]	Counterfeiting coins.	Imprisonment for 7 years, and fine.	Ditto.	Non-bailable.	Magistrate of the first class.
239 [Existing ss. 239 to 241]	Using as genuine counterfeit coins.	Imprisonment for 7 years, and fine.	Cognizable.	Non-bailable.	Magistrate of the first class.

1. The whole chapter is amended.

1	2	3	4	5	6
240 [Existing ss. 242 and 243]	Possession of counterfeit coin.	Imprisonment for 5 years, or fine, or both.	Cognizable.	Non-bailable.	Magistrate of the first class.
241 [Existing ss. 233 to 235]	Making or possessing instruments or materials for counterfeiting coin.	Imprisonment for 5 years, and fine.	Ditto.	Ditto.	Ditto.
242 [Existing ss. 237 and 238]	Import or export of counterfeit coins.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
243 [Existing s. 244]	Person employed in mint causing coin to be of different weight or composition from that fixed by law.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
244 [Existing s. 245.]	Unlawfully taking coining instrument from mint.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
(New) 245	Dishonest use of slugs in vending machines.	Imprisonment for 1 year, or fine, or both.	Ditto.	Bailable.	Any Magistrate.
246 [Existing s. 255.]	Counterfeiting revenue stamp	Imprisonment for 10 years, and fine.	Ditto.	Ditto.	Magistrate of the first class.
247 [Existing ss. 256 and 257.]	Making or possession or sale of instruments or materials for counterfeiting revenue stamp	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
248 [Existing ss. 258 to 260.]	Sale, use and possession of revenue stamp,	Imprisonment for 7 years, or fine, or both,	Ditto	Ditto.	Ditto,

	249 [Existing s. 261]	Effacing writing, or removing revenue stamp used for it, with intent to cause loss to to Government.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
	250 [Existing s. 262]	Using revenue stamp known to have been before used.	Imprisonment for 2 years or fine, or both.	Ditto.	Ditto.	Any Magistrate.
	251 [Existing s. 263]	Erasure of mark denoting that stamp has been before used.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
	253 [Existing s. 263A]	Fictitious postage stamps.	Fine of 200 rupees. Seized fictitious postage stamps and other materials relating thereto to be forfeited.	Ditto.	Ditto.	Any Magistrate.

CHAPTER XIII—OFFENCES RELATING TO WEIGHTS AND MEASURES

Amended	264	Fraudulent use of false instrument for weighing.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.
Amended	265	Fraudulent use of false weights or measures.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	266	Being in possession of false weights or measures for fraudulent use.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	267	Making or selling false weights or measure for fraudulent use.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.

CHAPTER XIV—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

Amended. [Existing 290]	268	Committing a public nuisance.	Fine	Non-cognizable.	Bailable.	Any Magistrate.

1		2	3	4	5	6
Amended	269 [Existing 269 and 270]	Act likely to spread infection of any disease dangerous to life—if done negligently.	Imprisonment for 1 year, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
		If done intentionally.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
	270[1]	.....				
	271	Knowingly disobeying any quarantine rule.	Imprisonment for 6 months or fine, or both.	Ditto.	Ditto.	Any Magistrate.
Amended	272	Adulterating food or drink intended for sale, so as to make the same noxious.	Imprisonment for 3 years, or fine or both.	Non-cognizable.	Ditto.	Magistrate of the first class.
Amended.	273	Selling any food or drink as food and drink, knowing the same to be noxious.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	274	Adulterating any drug or medical preparation intended for sale so as to lesson its efficacy, or to change its operation, or to make it noxious.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Imprisonment for 3 years, or fine, or both.	Ditto.	Bailable	Ditto.

Amended	277	Fouling water or public spring, well or reservior.	Imprisonment for 6 months or fine, or both.	Cognizable.	Ditto.	Any Magistrate.
Amended	278	Making atmosphere noxious to health.	Imprisonment for 6 months or fine, or both.	Ditto.[2]	Ditto.	Ditto.
Amended	279	Rash driving or riding on a public way.	Imprisonment for 6 months or fine, or both.	Ditto.	Bailable.	Ditto.
New	"279 A	Driving unsafe or overloaded vehicle on a public way.	Imprisonment for 6 months or fine, or both.	Ditto.	Bailable.	Ditto.
Amended	280	Navigating any vessel so rashly or negligently as to endanger human life, etc.	Imprisonment for 6 months or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	281	Exhibition of a false light, mark or buoy.	Imprisonment for 7 years, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
Amended	282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Imprisonment for 6 months or fine, or both.	Ditto.	Bailalble.	Ditto.
	283	Causing danger, obstruction or, injury in any public way or line of navigation.	Fine of 200 rupees.	Ditto.	Ditto.	Ditto.
Amended	284	Dealing with any poisonous substance so as to endanger human life, etc.	Imprisonment for 6 months or fine, or both.	Non-cognizable.	Ditto.	Ditto.
Amended	285	Dealing with fire or any combustible matter so as to endanger human life, etc.	Imprisonment for 6 months or fine, or both.	Cognizable.	Bailable.	Any Magistrate.

1. Incorporated in amended section 269. The entry relating to section 270 is to be omitted.
2. Made cognizable in view of addition of imprisonment.

1		2	3	4	5	6
Amended	286	So dealing with any explosive substance.	Imprisonment for 6 months or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
Amended	287	So dealing with any machinery.	Imprisonment for 6 months or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Imprisonment for 6 months or fine, or both.	Non-cognizable.	Ditto.	Ditto.
Amended	289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	Imprisonment for 6 months or fine, or both.	Non-Cognizable.	Bailable.	Any Magistrate.
	290[1]	.....				
	291	Continuance of nuisance after injunction to discontinue.	Simple imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.
	292[2]	Sale etc., of obscene books etc.	On first conviction, with imprisonment for 2 years, and with fine of 2,000 rupees, and, in the event of second or subsequent offence, with imprisonment for 5 years and with fine of 5,000 rupees.	Ditto.	Ditto.	Court of Session.
	293	Sale, etc. of obscene objects to young persons.	On first, conviction with imprisonment for 3 years and fine of 2,000 rupees, and, in the event of se-	Ditto.	Ditto.	Ditto.

			cond or subsequent offence, with imprisonment for 5 years and fine of 5,000 rupees.			
Amended	294	Obscene songs.	Fine of 1,000 rupees.	Ditto.	Ditto.	Any Magistrate.
Amended	294 A	Offences in connection with lotteries.	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.
		CHAPTER XV — OFFENCES RELATING TO RELIGION				
	295	Destroying, damaging or defiling a place of worship or Sacred object with intent to insult the religion of any class of persons.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
Amended	295 A	Deliberate acts intended to wound religious feelings of any class by insulting its religion or religious beliefs.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Non-Bailable.	Magistrate of the first class.
	296	Causing a disturbance to an assembly engaged in religious worship.	Imprisonment for 1 year, or fine, or both.	Cognizable	Bailable.	Any Magistrate.
	297	Trespassing in palace of worship or sepulchre, disturbing funeral with intention to wound the feelings or to insult the religion of any person or offering indignity to a human corpse.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
	298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight of any person, with intention to wound his religious feeling.	Imprisonment for 1 year, or fine, or both.	Non-cognizable.	Ditto.	Any Magistrate.

1. Entry regarding section 290 transferred to section 268.

2. Entries as to section 292 and 293 are given as amended by section 3(c) of the Indian Penal Code (Amendment) Act, 1969 (36 of 1969).

1		2	3	4	5	6
	302	Murder.	Death, or imprisonment for life, and fine.	Cognizable.	Non-bailable.	Court of Session.
	303	Murder by a person under sentence of imprisonment for life.	Death.	Ditto.	Ditto.	Ditto.
Amended	304	Culpable homicide not amounting to murder.	Imprisonment for 10 years, and fine.	Ditto.	Ditto.	Ditto.
Amended	304A	Causing death by rash or negligent act.	Imprisonment for 5 years, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
	305	Abetment of suicide committed by child, or insane or delirious person or an idiot, or a person intoxicated.	Death or, imprisonment for life or, imprisonment for 10 years and fine.	Ditto.	Ditto.	Court of Session.
	306	Abetting the commission of suicide.	Imprisonment for 10 years and fine.	Ditto.	Ditto.	Ditto.
Amended	307	Attempt to murder.	Imprisonment for 10 years and fine.	Ditto.	Ditto.	Ditto.
		(a) if hurt is caused to any person in such attempt by life-convict to murder.	Death, or imprisonment for 10 years and fine.	Ditto.	Ditto.	Ditto.
		(b) if hurt is caused to any person in such attempt in any other case.	Imprisonment for life, or imprisonment for 10 years and fine.	Ditto.	Ditto.	Ditto.

	308	Attempt to commit culpable homicide. If such act caused hurt to any person.	Imprisonment for 3 years or fine, or both. Imprisonment for 7 years, or fine, or both.	Ditto.	Ditto.	Court of Session.
New [1]	309	Driving member of family to suicide [2]	Imprisonment for 3 years and fine.	Non-cognizable	Bailable.	Magistrate of the first class.
	312	Causing miscarriage.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
		If the woman be quick with child.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
Amended	313	Causing miscarriage without woman's consent.	Rigorous imprisonment for 10 years, and fine.	Ditto.	Non-bailable.	Court of Session.
	314	Death caused by an act done with intent to cause miscarriage.	Imprisonment for 10 years, and fine.	Ditto.	Ditto.	Ditto.
		If act done without woman's consent.	Imprisonment for life, or as above.	Ditto.	Ditto.	Ditto.
	315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Imprisonment for 10 years or fine, or both.	Ditto.	Ditto.	Ditto.
	316	Causing death of a quick unborn child by an act amounting to culpabale homicide.	Imprisonment for 10 years	Ditto.	Ditto.	Ditto.
Amended	317	Exposure and abandonment of child under 5 years of age by parent or person having care of it.	Imprisonment for 7 years or fine or both.	Cognizable	Bailable.	Magistrate of the first class.

1. Existing section 309 omitted.
2. Entry relating to section 311 is to be omitted.

1		2	3	4	5	6
New.	318	Failure to provide necessaries of life.	Imprisonment for 3 years or fine or both.	Non-cognizable.	Bailable	Any Magistrate.
Amended.	223	Voluntarily causing hurt.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
	324	Voluntarily causing hurt by dangerous weapons or means.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Ditto.	Ditto.
	325	Voluntarily causing grievous hurt.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
Amended.	326	Voluntarily causing grievous hurt by dangerous weapons or means.	Imprisonment for 10 years, and fine.	Ditto	Non-bailable.	Magistrate of the first class.
Amended.	327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is legal or which may facilitate the commission of an offence.	Imprisonment for 7 years and fine.	Ditto.	Ditto.	Ditto.
Amended.	328	Administering poison etc. with intent to commit an offence.	Imprisonment for 10 years and fine.	Ditto.	Ditto.	Court of Session.
Amended.	329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Imprisonment for 10 years and fine.	Ditto.	Ditto.	Ditto.

	330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc.	Imprisonment for 7 years and fine.	Ditto.	Bailable.	Magistrate of the first class.
	331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property etc.	Imprisonment for 10 years, and fine.	Ditto.	Non-bailable.	Court of Session.
	332	Voluntarily causing hurt to deter public servant from his duty.	Imprisonment for 3 years, or fine, or both.	Ditto.	Bailable.	Magistrate of the first class.
	333	Voluntarily causing grievous hurt to deter public servant from his duty.	Imprisonment for 10 years, and fine.	Ditto.	Non-bailable.	Court of Session.
Amended.	334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Fine of 1000 rupees.	Non-cognizable.	Bailable.	Any Magistrate.
Amended.	335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Imprisonment for 3 years or fine, or both.	Cognizable.	Ditto.	Magistrate of the first class.
Amended.	336	Doing any act which endangers human life or the personal safety of others.	Imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.	Ditto.	Any Magistrate.
Amended.	337	Causing hurt by an act which endangers human life, etc.	Imprisonment for 1 year, or fine, or, both.	Ditto.	Ditto.	Ditto.

1	2	3	4	5	6
	338 Causing grievous hurt by an act which endangers human life, etc.	Imprisonment for 3 years, or fine, or both.	Cognizable	Bailable	Any Magistriable
Amended.	341 Wrongful restraint.	Fine of 1000 rupees.	Ditto.	Ditto.	Magistrate of the first class.
	When jointly committed by ten or more persons.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended.	342 Wrongful confinement.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
	When jointly committed by ten or more persons.	Imprisonment for 3 years, and fine.	Ditto.	Ditto.	Ditto.
Amended.	343 Wrongful confinement for five days or more.	Imprisonment for 3 years, and fine.	Ditto.	Ditto.	Ditto.
	3441				
	345 Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Imprisonment for 2 years in addition to imprisonment under any other section.	Non-cognizable	Ditto.	Magistrate of the first class.
	346 Wrongful confinement in secret.	Imprisonment for 2 years in addition to imprisonment under any other section.	Non-cognizable.	Bailable.	Magistrate of the first class.
	347 Wrongful confinement for the purposes of extorting property, or constraining to an illegal act, etc.	Imprisonment for 3 years and fine.	Ditto.	Ditto.	Any Magistrate.

1. Entry relating to section 344 is to be omitted.

	348	Wrongful confinement, for the purpose of extorting confession or information, or of compelling restoration or property, etc.	Imprisonment for 3 years and fine.	Ditto.	Ditto.	Any Magistrate
	349[1]	. . . . .				
	350[2]	. . . . .				
Amended	351	Assault otherwise than on grave and sudden provocation.	Imprisonment for 6 months, or fine, or both.	Ditto.	Ditto.	Ditto.
(Existing 352 and	358)	Assault on grave and sudden provocation.	Fine of 500 rupees.	Ditto.	Ditto.	Ditto.
Amended (Existing	352 353)	Assault to deter public servant from discharge of his duty.	Imprisonment for 2 years, or fine, or both.	Cognizable.	Ditto.	Ditto.
Amended (Existing	353 354)	Assault on woman with intent to outrage her modesty.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
New	354	Indecent assault on a minor.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	355	Assault with intent to dishonour a person, other wise than on grave and sudden provocation.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.
Amended	356	Assault in attempt to commit theft of property worn or carried by a person.	Imprisonment for 2 years or fine, or both.	Cognizable.	Non-bailable.	Ditto.
Amended	357	Assault in attempt wrongfully to confine a person.	Imprisonment for 1 year or fine of 1000 rupees, or both.	Ditto.	Bailable.	Ditto.

1—2. Entries relating to sections 349 and 350 are to be omitted.

1		2	3	4	5	6
	358[1]	. . . . .				
Amended.	363	Kidnapping any person below fifteen years.	Imprisonment for 7 years. and fine.	Congizable	Non-bailable.	Magistrate of the first class.
		Kidnapping any person who is not under fifteen years.	Imprisonment for 3 years. and fine.	Ditto.	Ditto.	Ditto.
Amended.	363A	Kidnapping or obtaining the custody of a minor in order that such minor may be employed or used for purpose of begging.	Imprisonment for 10 years, but not less than 3 years, and fine. —	Ditto.	Ditto.	Ditto.
		Maiming minor in order that such minor may be employed or used for purpose of begging.	Imprisonment for life and fine.	Ditto.	Ditto.	Court of Session.
Amended.	364	Kidnapping or abducting in order to murder, or to ransom.	Rigorous imprisonment for 14 years and fine.	Ditto.	Ditto.	Ditto.
Amended.	365	Kidnapping or abducting with intent to convey out of India, or secretly confine a person.	Rigorous imprisonment for 7 years and fine.	Ditto.	Ditto.	Magistrate of the first class.
Amended.	366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, etc.	Rigorous imprisonment for 10 years and fine.	Cognizable.	Non-bailable.	Court of Session.
Amended.	366A	Procuration of woman or girl under 18 years.	Ditto.	Ditto.	Ditto.	Ditto.
Amended.	366B	Importation of girl from foreign country.	Ditto.	Ditto.	Ditto.	Ditto.

1. Incorporated in section 351 above. The entry relating to section 358 of the code to be omitted.

Amended.	367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.	Ditto.	Ditto.	Ditto.	Court of Session
Amended.	368	Wrongfully concealing or keeping in confinement a kidnapped or abducted person.	Rigorous imprisonment for 7 years and fine.	Ditto.	Ditto.	Magistrate of the first class.
Amended.	369	Kidnapping or abducting child under ten years with intent to steal from its person.	Imprisonment for 7 years but not less than 2 years, and fine.	Ditto.	Ditto.	Ditto.
Amended.	370	Buying or disposing of any person as a slave.	Rigorous imprisonment for 7 years and fine.	Non-cognizable.	Bailable.	Ditto.
	371[1]	. . . . .				
Amended.	372	Selling or letting to hire a minor for purposes of prostitution, etc.	Rigorous imprisonment for 10 years and fine.	Ditto.	Ditto.	Ditto.
	373	Buying or obtaining possession of a minor for the same purposes.	Ditto.	Ditto.	Ditto.	Ditto.
	374	Unlawful compulsory labour	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Any Magistrate.
Amended.	376	Rape.	Rigorous imprisonment for 14 years and fine.	Cognizable	Non-bailable.	Court of Session.
Amended. (Existing 376)	376A	Sexual intercourse with wife under fifteen years.				
		a) if she is under twelve.	Imprisonment for 7 years.	Non-cognizable.	Bailable.	Court of Session.
		b) in any other case.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.

1. The entry relating to section 371 of the Code to be omitted.

1		2	3	4	5	6
Amended. (Existing 376)	376B	Illicit intercourse with a girl under 16 years but not under 12 years with her consent.	Imprisonment for 7 years and fine.	Cognizable.	Non-bailable.	Court of Session
New.	376C	Illicit intercourse of public servant with woman in custody.	Imprisonment for 2 years, or fine, or both,	Ditto.	Bailable.	Ditto.
New.	376D	Illicit intercourse of Superintendent etc. with inmate of women's or children's institution.	Ditto.	Ditto.	Ditto.	Magistrate of the first class.
New.	376E	Illicit intercourse of Manager etc. of a hospital with mentally disordered patient.	Ditto.	Ditto.	Ditto.	Ditto.
Amended.	377	Buggery.	Imprisonment for 2 years, or fine, or both.	Ditto.	Non-bailable	Ditto.
		If committed by a person over 18 years with person under that age.	Imprisonment for 7 years. or fine, or both.	Ditto.	Ditto.	Court of Session.
		CHAPTER XVII				
		OFFENCES AGAINST PROPERTY				
	379	Theft.	Imprisonment for 3 years, or fine or both.	Cognizable.	Non-bailable.	Any Magistrate.
Amended.	380	Theft in a building, vessel, vehicle or temple and theft of public property.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.

(New)	380A	Theft of property affected by accident, fire, flood etc.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Any Magistrate.
Amended	381	Theft by employee, of property in possession of the employer.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
Amended	382	Theft, after preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt of restraint, in order to the committing of such theft, or to retiring after committing it, or to retaining property taken by it.	Rigorous imprisonment for 7 years, and fine.	Ditto.	Ditto.	Magistrate of the first class.
	384	Extortion.	Imprisonment for 3 years or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.
	385	Putting or attempting to put in fear of injury, in order to commit extortion.	Imprisonment for 2 years or fine, or both.	Ditto.	Do.	Ditto.
(New)	385A	Blackmail.	Imprisonment for 7 years, and fine.	Cognizable.	Non-bailable.	Magistrate of the first class
	386	Extortion by putting a person in fear of death or grievous hurt.	Imprisonment for 10 years, and fine.	Non-cognizable.	Ditto.	Ditto.
	387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.

1	2		3	4	5	6
Amended	388	Extortion by threat of accusation of a capital offence or an offence punishable with imprisonment for life or imprisonment for 10 years.	Imprisonment for 10 years, and fine.	Non-cognizable.	Bailable.	Magistrate of the first class.
Amended	389	Putting a person in fear of accusation of a capital offence or an offence punishable with imprisonment for life or imprisonment for 10 years, in order to commit extortion.	Imprisonment for 10 years, and fine.	Ditto.	Ditto.	Ditto.
	392	Robbery.	Rigorous imprisonment for 10 years and fine.	Cognizable.	Non-bailable.	Ditto.
		If committed on the high way between sunset and sunrise.	Rigorous imprisonment for 14 years and fine.	Ditto.	Ditto.	Ditto.
	393	Attempt to commit robbery.	Rigorous imprisonment for 7 years and fine.	Ditto.	Ditto.	Ditto.
Amended	394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Rigorous imprisonment for 14 years, and fine.	Ditto.	Ditto.	Ditto.
	395	Dacoity.	Imprisonment for life, or rigorous imprisonment for 10 years and fine.	Ditto.	Ditto.	Court of Session.
Amended	396	Dacoity or robbery with murder.	Death, imprisonment for life, or rigorous imprisonment for 10 years, and fine.	Ditto.	Ditto.	Ditto.

	397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Rigorous imprisonment for not less than 7 years.	Cognizable.	Non-bailable.	Court of Session.
Amended	398	Robbery or dacoity when armed with deadly weapon.	Rigorous imprisonment for not less than 3 years.	Ditto.	Ditto.	Ditto.
Amended	399	Making preparation to commit dacoity.	Rigorous imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
Amended	400	Belonging to a gang of dacoits.	Imprisonment for life, or rigorous imprisonment for 10 years, and fine.	Ditto.	Ditto.	Ditto.
Amended	401	Belonging to a gang of thieves or robbers.	Rigorous imprisonment for 7 years, and fine.	Ditto.	Ditto.	Magistrate of the first class.
	402	Assembling for purpose of committing dacoity or robbery.	Rigorous imprisonment for 7 years, and fine.	Ditto.	Ditto.	Court of Session.
	403	Dishonest misappropriation of movable property, or converting it to one's own use.	Imprisonment for 2 years, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.
	404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Imprisonment for 3 years, and fine.	Ditto.	Ditto.	Magistrate of the first class.
		If by clerk or person employed by deceased.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
	406	Criminal breach of trust.	Imprisonment for 3 years, or fine, or both.	Cognizable	Non-bailable.	Ditto.

1	2	3	4	5	6
407	Criminal breach of trust by a carrier, wharfinger, etc.	Imprisonment for 7 years, and fine.	Cognizable.	Non-bailable.	Magistrate of the first class.
408	Criminal breach of trust by an employee.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
Amended 409	Criminal breach of trust by public servant or by banker, merchant or agent etc.	Rigorous imprisonment for 14 years, and fine.	Ditto.	Ditto.	Ditto.
Amended 411	Dishonestly receiving stolen property knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Ditto.	Bailable.	Any Magistrate.
	If the stolen property is public property.	Imprisonment for 7 years, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
Amended 412	Dishonestly receiving stolen property knowing that it was obtained by dacoity.	Rigorous imprisonment for 14 years, and fine.	Ditto.	Ditto.	Court of Session.
Amended 413	Habitually dealing in stolen property.	Rigorous imprisonment for 14 years, and fine.	Ditto.	Ditto.	Ditto.
Amended 414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Any Magistrate.
(New)	If the stolen property is public property.	Imprisonment for 7 years, or fine, or both.	Ditto.	Ditto.	Magistrate of the first class.
Amended 417	Cheating	Imprisonment for 1 year, or fine or both.	Non-cognizable.	Ditto.	Any Magistrate.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.

	419	Cheating by personation.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Bailable.	Any Magistrate.
	420	Cheating and thereby dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Magistrate of the first class.
(New)	420A	Cheating public authorities in performance of certain contracts.	Imprisonment for 10 years, and fine.	Ditto.	Ditto.	Ditto.
(New)	420B.	Employee taking bribe in respect of employer's affairs or business.	Imprisonment for 3 years, or fine, or both	Non-Cognizable.	Ditto.	Ditto.
	421	Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Any Magistrate.
	422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
	423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.
	424	Fraudulent removal or concealment, of property, of himself or any other person or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Imprisonment for 2 years, or fine, or both.	Ditto.	Ditto.	Ditto.

1		2	3	4	5	6
Amended	426	Mischief	Imprisonment for one year, or fine, or both.	Non-cognizable.	Bailable.	Any Magistrate.
Amended	427	Mischief in causing damage to public property or machinery to the amount of one hundred rupees.	Imprisonment for 3 years, or fine, or both.	Cognizable.	Ditto.	Magistrate of the first class.
Amended	428	Mischief by killing or maiming animal.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	429	Mischief by causing diminution of supply of water or inundation or obstruction in public drainage.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	430	Mischief by injury to public road, bridge, river or channel.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	431	Mischief committed after preparation made for causing death or hurt or wrongful restraint.	Imprisonment for 7 years and fine.	Ditto.	Non-bailable.	Ditto.
(New)	432	Mischief by destroying moving or rendering less useful air-route beacon etc.	Imprisonment for 7 years, or fine, or both.	Ditto.	Bailable.	Ditto.
Amended	434	Mischief with intent to destroy or make unsafe aircraft or vessel.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
		If committed or attempted by fire or explosive substance.	Imprisonment for life or for 7 years, and fine.	Ditto.	Non-bailable.	Court of session.
Amended	435	Mischief by fire or explosive substance with intent to cause damage to amount of one hundred rupees.	Imprisonment for 7 years, and fine.	Ditto.	Bailable.	Magistrate of the first class.

Amended	436	Mischief by fire or explosive substance with intent to destroy place of worship, house etc.	Imprisonment for life, or imprisonment for 10 years, and fine.	Cognizable	Non-bailable	Court of Session.
		Entries relating to sections 437 to 439 shall be Omitted.				
Amended	444	Criminal trespass	Imprisonment for 6 months, or fine, or both.	Ditto.	Bailable.	Any Magistrate.
Amended	445	House- trespass	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
Amended	446	House trespass after preparation for hurt, assault or wrongful restraint.	Imprisonment for 7 years, and fine.	Ditto.	Non-bailable.	Ditto.
Amended	447.	Burglary.	Rigorous imprisonment for 10 years, and fine.	Ditto.	Ditto.	Court of Session.
Amended	448	Grievous hurt caused whilst committing burglary.	Rigorous imprisonment for 14 years, and fine.	Ditto.	Ditto.	Ditto.
Amended	449	Death or grievous hurt caused by one of several persons jointly concerned in burglary.	Rigorous imprisonment for 14 years, and fine.	Ditto.	Ditto.	Ditto.
450 to 460[1]		.....				
	461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Imprisonment for 2 years, or fine, or both.	Ditto.	Bailable.	Any Magistrate.
	462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.

1. Entries relating to sections 450 to 460 of the Indian Penal Code to be omitted.

1		2	3	4	5	6
Amended	465	Forgery	Imprisonment for 3 years, or fine, or both.	Non-cognizable	Bailable	Magistrate of the first class.
Amended	466	Forgery of Court record, Public register, will, valuable security etc.	Rigorous imprisonment for 10 years and fine.	Ditto.	Non-bailable	Ditto.
	467—469[1]	.....				
Amended	467	Using as genuine a forged document—				
		(a) if the document is one of the description mentioned in section 466.	Rigorous imprisonment for 10 years, and fine.	Ditto.	Ditto.	Ditto.
		(b) in any other case.	Imprisonment for 3 years, or fine, or both.	Ditto.	Bailable	Ditto.
Amended	468	Making or possessing counterfeit seal etc. with intent to commit forgery punishable under section 466.	Rigorous imprisonment for 10 years, and fine.	Ditto.	Ditto.	Ditto.
	473[2]	.....				
Amended	469	Possessing a forged document described in section 466.	Rigorous imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.
Amended	470	Counterfeiting a device or mark used for authenticating documents described in section 466 or possessing counterfeit marked material.	Rigorous imprisonment for 10 years, and fine.	Ditto	Ditto.	Ditto.

Amended	471	Fraudulent cancellation. destruction etc. of valuable security or will.	Rigorous imprisonment for 10 years, and fine.	Ditto.	Non-bailable	Ditto.
	472	Falsification of accounts.	Imprisonment for 7 years, or fine, or both.	Ditto.	Bailable	Ditto.
	473[3]	.....				
	476[4]	.....				
		OF TRADE AND PROPERTY MARKS				
	482	Using a false property mark with intent to deceive or injure any person.	Imprisonment for 1 year, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
	483	Counterfeiting a property mark used by another, with intent to cause damage or injury.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto.	Ditto.
	484	Counterfeiting a property mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc. of any property.	Imprisonment for 3 years, and fine.	Ditto.	Ditto.	Magistrate of the first class.
	485	Fraudulently making or having possession of any die, plate or other instrument for counterfeiting any public or private property mark.	Imprisonment for 3 years, or fine, or both.	Ditto	Ditto.	Ditto.

1. The entries relating to sections 467, 468 and 469 of the Indian Penal Code to be omitted.
2. The entry relating to section 473 of the Indian Penal Code shall be omitted.
3. The entry relating to section 473 of the Indian Penal Code to be omitted.
4. The entry relating to section 476 of the Indian Penal Code to be omitted.

1		2	3	4	5	6
	486	Knowingly selling goods marked with a counterfeit property mark.	Imprisonment for 1 year, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
	487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain etc.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
	488	Making use of any such false mark.	Imprisonment for 3 years, or fine, or both.	Ditto.	Ditto.	Ditto.
	489	Removing, destroying or defacing property mark with intent to cause injury.	Imprisonment for 1 year, or fine, or both.	Ditto.	Ditto	Ditto
489 A—489 E1		.....				
		CHAPTER XIX—OFFENCES AGAINST PRIVACY				
New	490(1)	Knowing that any artificial listening or recording apparatus has been introduced into any premises without the knowledge or consent of the person in possession of the premises, listening to any conversation with the aid of such apparatus.	Imprisonment for six months, or fine, or both.	Non-cognizable	Bailable	Magistrate of the first class.
New	490(2)	Publishing any conversation or a record thereof, knowing that it was listened to or recorded with the aid of any artificial listening or recording apparatus.	Imprisonment for one year, or fine, or both.	Ditto.	Ditto.	Ditto.

New	491(1)	Taking photograph of any person without his consent elsewhere than in a public place, or taking his photograph in a public place when that person has prohibited such taking, intending to cause or knowing it to be likely to cause annoyance to any person.	Simple imprisonment for six months, or fine, or both.	Ditto.	Ditto.	Ditto.
New	491(2)	Publishing any photograph of any person taken in contravention of sub-section (1), intending to cause, or knowing it to be likely to cause, annoyance to any person.	Simple imprisonment for 1 year, or fine, or both.	Ditto.	Ditto.	Ditto.
		CHAPTER XX—OFFENCES RELATING TO MARRIAGE				
	493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief.	Imprisonment for 10 years, and fine.	Non-cognizable	Non-bailable	Magistrate of the first class.
	494[2]	.....				
Amended	495	Bigamy.	Imprisonment for 3 years, and fine.	Ditto.	Bailable	Ditto.
		Same offence with concealment of the earlier marriage from the person with whom later marriage is contracted.	Imprisonment for 7 years, and fine.	Ditto.	Ditto.	Ditto.

1. The entries relating to sections 489 A to 489 E of the Indian Penal Code to be omitted. These have been incorporated in Chapter XII.
2. The entry relating to section 494 of the Indian Penal Code to be omitted.

1		2	3	4	5	6
Amended	496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Imprisonment for 3 years, and fine.	Non-cognizable	Bailable	Magistrate of the first class.
Amended	497	Adultory	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Ditto
Amended	498	Taking or enticing away or concealing with criminal intent a married woman.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Any Magistrate.
			CHAPTER XXI—DEFAMATION			
Amended	500	(a) Defamation against the President or the Vice-President or the Governor of a State or Administrator of a Union Territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Court of Session.
		(b) Defamation in any other case.	Imprisonment for 2 years, or fine, or both. (In case of defamation through publication in newspapers, publication of judgment in a newspaper may be ordered. Costs of much publication shall be recoverable	Ditto	Ditto	Magistrate of the first class.

			from the convicted as fine.)			
Amended	501	(a) Printing or engraving matter knowing it to be defamatory against the President or the Vice-President or the Governor of a State or Administrator of a Union Territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Court of Session.
		(b) Printing or engraving matter knowing it to be defamatory, in any other case.	Imprisonment for 2 years, or fine or both.	Ditto	Ditto	Magistrate of the first class.
Amended	502	(a) Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter against the President or the Vice-President or the Governor of a State or the Administrator of a Union Territory or a Minister in respect of his conduct in the discharge of his public functions, when instituted upon a complaint made by the Public Prosecutor.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Court of Session.
		(b) Sale of printed or engraved substance containing defamatory matter knowing it to contain such matter in any other case.	Imprisonment for 2 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.

For the entries relating to Chapter XXII of the Indian Penal Code, the following entries shall be substituted:—

CHAPTER XXII—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

1		2	3	4	5	6
Amended	504 [Existing s.503.]	Criminal intimidation.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Bailable	Any Magistrate.
		If threat be to cause to death or grievous hurt, etc.	Imprisonment for 7 years, or fine, or both.	Ditto	Ditto	Magistrate of the first class.
Amended	505 [Existing s.507.]	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Imprisonment for 2 years, in addition to the punishment under above section.	Ditto	Ditto	Ditto.
Amended	506 [Existing s.508.]	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Any Magistrate.
New	507	Threat of suicide with intent to coerce a public authority.	Imprisonment for 3 years, or fine, or both.	Congnizable	Ditto	Ditto.
Amended	508 [Existing s.504.]	Intentional insult with intent to provoke a breach of the peace.	Imprisonment for 2 years, or fine, or both.	Non-cognizable	Ditto	Ditto.
New	509	Performing mock funeral of a living person.	Imprisonment for 2 years, or fine, or both.	Cognizable	Ditto	Ditto.
Amended	510 [Existing s.509.]	Uttering any word or making any gesture intended to insult the modesty of a woman, etc.	Simple imprisonment for 1 year, or fine, or both.	Ditto	Ditto	Ditto.

26. In the Second Schedule,—

(a) in Form No. 31,—

(i) in Part II, in section (1), sub-section (b), for the figure "241", the figure "239" shall be substituted;

(ii) in Part III, for the figure "75", the figure "38" shall be substituted.

(b) in Form No. 34, for the figure "69", the figure and brackets "32(2)" shall be substituted.

II. *The Prisons Act, 1894*

1. In section 35, sub-section (1), the words "or employed on labour at his own desire" shall be omitted;

2. In section 36,—

(a) the words and brackets "(as long as they so desire)" shall be omitted;

(b) for the words "no prisoner not sentenced to rigorous imprisonment", the words "no such prisoner" shall be substituted.[1]

III. *The Criminal Law (Amendment) Act, 1938*

Consequential on the proposal to incorporate the substance of this Act in Chapter 7 of the Code,[2] the Act should be repealed.

1. Consequential on the proposal that simple imprisonment should be with light labour in all cases: see para. 3.44 of the Report. Since the subject of "Prisons" is in the State List, these two amendments will have to be initiated by the State Governments, whose attention may be drawn to this point.

2. See para. 3.80 of the Report.

GIPRRND—3 M. of Law—1st Sec.—8-10-71—2,500.