LAW COMMISSION OF INDIA

FORTY-THIRD REPORT

ON

OFFENCES AGAINST THE NATIONAL SECURITY

K. V. K. Sundaram

New Delhi
August 31, 1971

Dear Law Minister,

I have pleasure in sending herewith the Fortythird Report of the Law Commission on offences against the national security. The Report, as will be evident from its subject matter, supplements the Commission's recommendation for revision of the Indian Penal Code, as embodied in its 42nd Report.

2. As we have done in our Report on the Code of Criminal Procedure and on the Indian Penal Code, we have in this Report added a draft Bill, together with a draft of the consequential amendments which will be found necessary in the Penal Code and the Code of Criminal Procedure.

Yours sincerely,
K. V. K. Sundaram

Shri H. R. Gokhale,
Minister of Law & Justice,
Government of India,
Shastri Bhavan,
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CHAPTER 1

INTRODUCTORY

REPORT ON THE OFFENCES AGAINST THE NATIONAL SECURITY

The crime of treason.

1.1. Treason is the gravest crime known to society and by the law of every country traitors are liable to the severest punishment. It is a crime directed against the very existence of the State itself and is therefore peculiarly odious. "Treason is the crime of betraying a nation or sovereign by acts considered dangerous to its security. Sedition though it might have the same ultimate objective as treason refers generally to the offence of organising or encouraging opposition to Government in a manner (such as by speech or writing) that falls short of the more dangerous acts constituting treason."[1]

Genesis of the Report.

1.2. While revising the Indian Penal Code, we considered the question of the adequacy of the law of treason with reference to the consolidation of the law which at present is scattered in several special Acts. We observed in our Report[2] on the Indian Penal Code—

> "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 details 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".

Suggestion to consolidate the law.

1.3. In February, 1971, the Ministry of Law[3] also had requested the Commission to "consider the enactment of a self-contained law on treason relating to substantive as well as procedural matters and the preparation of a self-contained law on this subject." After submitting the Report on the Penal Code, the Commission therefore made a detailed study of the various enactments in force relating to treason and allied activities and also the corresponding law in various other countries available here. This Report contains the recommendations of the Commission on the subject.

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1. Encyclopaedia Brittannica, Vol. 22, p. 196.
2. 42nd Report, para. 6.4. The Report was submitted to the Government in June, 1971.
3. Vide Law Secretary's letter No. Law Secy. 95/71, dated 20-2-1971.

Scope of treason.

1.4. The expression 'treason' in its narrow and restricted sense is generally applied to those very serious offences which directly and dangerously affect the security and integrity of the State. Thus, waging war against the State, adhering to its enemies, compassing the death of the Head of State and such other offences usually described as 'high treason' will come within this narrow sense. But the crime has also been treated in its widest aspect as including not only high treason but also other acts of disloyalty which have the effect of directly or indirectly endangering the security and integrity of the state. We notice that while in Britain and U.S.A. treason is generally restricted to what may be conveniently described as high treason, in other foreign countries where codified penal law is in force, various other acts of disloyalty of lesser gravity have also been included under this class.

Title of National Security Act recommended.

1.5. We consider that the expression "crime against national security" conveys more comprehensively the idea of treason in a wide sense, and hence recommend that the consolidated law on the subject may be entitled "The National Security Act".

Existing Central Acts on the subject.

1.6. The various enactments in force in India dealing with offences against the national security are:—

(i) chapters 6 and 7 of the Indian Penal Code;

(ii) the Foreign Recruiting Act, 1874;

(iii) the Official Secrets Act, 1923;

(iv) the Criminal Law Amendment Act, 1938;

(v) the Criminal Law Amendment Act, 1961; and

(vi) the Unlawful Activities (Prevention) Act, 1967.

Of these chapters 6 and 7 of the Indian Penal Code have been fully considered by us in our Report on that Code. We have recommended[1] therein that the Criminal Law Amendment Act, 1938, should be included in chapter 7 of the Code. A brief summary of the other statutes on the subject will be useful.

Foreign Recruitment Act.

1.7. The Foreign Recruiting Act, 1874 deals mainly with recruitment in India for service in a foreign state. The definition of "foreign state" is very wide and will include all countries beyond the limits of India, including not only *de jure* Governments but also *de facto* Governments. Recruitment for service in such foreign states has an indirect but close bearing on national security and hence should find a place in the proposed law.

1.8. Reference should also be made to the foreign Enlistment Act, 1870, an Act of the British Parliament which, though not formally repealed, is of doubtful application to India since the

1. 42nd Report, para. 7.10.

Constitution. This Act regulates the conduct of British subjects throughout Her Majesty's dominions during the existence of hostilities between foreign States with which the British Crown is at peace. It is obvious that similar legislation should find place in our statute book.[1] Like recruitment for a foreign State, enlistment for service in a foreign State has also an indirect but close bearing on national security.

Official Secrets Act.

1.9. The Official Secrets Act, 1923 is the main statute for fighting espionage activities which vitally affect the national security. The main offences created by this Act are as follows:—

(i) "spying", or entry into a prohibited place etc., transmission or collection of secret information, and the like;

(ii) wrongful communication of, or receiving secret information of the specified type;

(iii) harbouring spies;

(iv) unauthorised use of uniforms, falsification of reports etc., in order to enter a prohibited place, or for a purpose prejudicial to the safety of the State;

(v) interference with the police or military, near a prohibited place.

Criminal Law Amendment Act, 1961.

1.10. The primary object of the Criminal Law Amendment Act, 1961 is to punish persons who question the territorial integrity or frontiers of India in a manner prejudicial to the safety and security of the country. Though there is undoubtedly necessity for retaining some of these provisions which have a direct bearing on national security and integrity, in view of the passing of the Unlawful Activities (Prevention) Act, 1967, some of the provisions of the earlier Act may not be necessary. This question will be considered at the appropriate place.

Unlawful Activities (Prevention) Act.

1.11. The Unlawful Activities (Prevention) Act, 1967 was passed for the effective prevention of disruptive activities, whether they are in support of cession of a part of the territory of India, or in support of the secession of a part of the territory of India from the Union, or otherwise disclaim, question or disrupt the sovereignty and territorial integrity of India. It deals with such activities of individuals and also of associations. Its provisions as to unlawful associations are detailed and elaborate.

Its importance.

1.12. That this Act constitutes a vital link in the chain of enactments of importance to national security, cannot be doubted. Activities intended to "detach a part of the territory of a country" (as described in some of the foreign Penal Codes[2]) stand

1. *Cf.* 5th Report of the Law Commission, British Statutes Applicable to India, page 50, item 87.

2. E.g. section 80 of the German Penal Code provides that anybody who by force or threat of force undertakes to detach a part of the territory therefrom shall be guilty of high treason. Article 101 of the Yogoslav Penal Code punishes acts aimed at detaching a socialist republic, autonomous unit or any part of the territory from Yogoslavia by force or in any other unconstitutional way.

at the apex of treasonable activities. They go much beyond the formation of a parallel Government or acts of overthrowing the Government, which are the subject matter of some of the provisions in Chapter 6 of the Indian Penal Code. Such activities, if successful, would bring into existence a parallel nation with its own "sovereignty and territorial integrity" which will be a rival to the country from which the territory is "detached".

There is, therefore, enough justification for bringing the offences covered by this Act within the fold of legislation on national security.[1]

1.13. Apart from the aforesaid statutes, there are provisions in other Acts mainly of a procedural nature which have a bearing on national security and integrity[2] but as they form part of special statues, dealing with other subjects also, we would not recommend their incorporation in the new law.

Advantages of consolidation.

1.14. The first question we have to consider is whether there is a really necessity for a separate consolidated law on the subject, or else whether the aforesaid statutes[3] may be allowed to remain as before. The main advantages of consolidation of statutes are these:—

(1) Consolidation diminishes the bulk of the statute book and makes the law easier for those who have to administer it (including Judges, administrators, the Bar and the litigant public); for they have only one document to consult instead of two or more.

(2) The consolidated Act speaks from one and the same time, and thus the convenience arising from the interpretations of sections of various Acts speaking from different times is avoided. The art of legislative drafting has altered very much during the last century and the language used, the length of the sentences, the arrangement of the clauses and the sections may have to be drastically altered to conform to modern style of drafting. This applies specially to the Foreign Recruiting Act and the Official Secrets Act which will, in any case, require revision.

(3) Some of the provisions of the earlier Acts may have to be omitted as unnecessary.

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1. It appears that the constitutional validity of this Act is under challenge in two writ petitions (Nos. 60 and 81 of 1971), which have recently been admitted by the Supreme Court. But we may proceed on the assumption that Act is constitutional until the Supreme Court holds otherwise.

2. (a) The Dramatic Performances Act, 1876, s.3(b),
   (b) Sections 99A to 99G and section 108 of the Code of Criminal Procedure, 1898.
   (c) Sections 20 to 27 of the Post Office Act, 1897.
   (d) Section 11 of the Customs Act, 1962.

3. Para. 1.6 above.

In addition to these advantages, there arises an opportunity of incorporating in the new Act some of the provisions of the foreign codes dealing with national security which may be suited for Indian conditions also. For these reasons, we are of the view that there should be a consolidated statute entitled the National Security Act.

Form of the new law.

1.16. Another question is whether the new law should be a separate enactment, or else, whether it could be inserted as a separate chapter in the revised Indian Penal Code. It is true that crimes affecting national security form an essential part of the criminal law of the country, and we find that in many foreign codes, these crimes are included in a separate chapter in the penal Code. But we consider it desirable to pass separate legislation on the subject, for the following reasons:—

(1) A special rule of limitation[1] may have to be provided for some offences affecting national security.

(2) The necessity of obtaining sanction from the Government before initiating prosecutions for offences under the new law is a special feature, not found in respect of most of the offences under the Penal Code.

(3) In some other respects also, the provisions of the Criminal Procedure Code may have to be modified in their application to offences under the new law.

(4) The rules of evidence ordinarily applicable for trial of criminal cases will have to be very much modified in their application for the trial of some of the offences under the new law.

These reasons make the new law distinguishable from most of the provisions of the Indian Penal Code and it may, hence, be somewhat incongruous if the new law is introduced as a separate chapter in the Indian Penal Code. We therefore recommend separate legislation on the subject.

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1. See Chapter 11 below.

CHAPTER 2

CONSTITUTIONAL ASPECTS, EXTENT AND APPLICATION

Constitutional validity of some provisions examined with reference to 'public order" and 'security of the State'.

2.1. While our comments on the various chapters of the National Security Bill[1] annexed to this Report will be given in the succeeding chapters of this Report, we consider it desirable to refer here to two possible constitutional grounds on which the validity of some provisions of the Bill might be challenged.

Fundamental rights.

2.2. The first is that these provisions are inconsistent with the fundamental rights guaranteed under clause (1) of article 19, especially the right of freedom of speech, the right to assemble peaceably and without arms and the right to form associations or unions [sub-clauses (a), (b) and (c) respectively.] We have no doubt that, as the Bill is drafted, the provisions are saved by clauses (2), (3) and (4) of article 19. They are entirely reasonable restrictions in the interests of sovereignty and integrity of India, security of the state and friendly relations with foreign states.

Legislative competence.

2.3. The second possible ground of objection is that some of the provisions relate to 'public order' which is exclusively in the State legislative field (Entry 1 of List 2) and consequently outside the legislative competence of Parliament.

The expression 'public order' mentioned in Entry 1 and List 2 and referred to in clauses (2), (3) and (4) of article 19 is capable of a wide, or of a narrow, construction according to the context. If a wide construction is given, provisions dealing with the security of the state may be held to fall within 'public order'. But, as observed by the Supreme Court in *Romesh Thapar*[2]—

> "The Constitution thus requires a line to be drawn in the field of public order or tranquility marking of, may be roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of state and the relatively minor breaches of the peace of a purely local significance treating for this purpose differences in degree as if they were differences in kind."

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1. Appendix 1.

2. *Romesh Thapar* v. *The State of Madras*, (1950) S.C.R. 594; A.I.R. 1950 S.C. 124, 128, 129.

These observations of Patanjali Sastri J. (as he then was) were cited with approval in Dr. Lohia's case[1] in the following terms:

> "'Public order' is synonymous with public safety and tranquility: it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war affecting the security of the State."

In a later case,[2] Gajendragadkar J. (as he then was), observed: "So far as clause (2) [of article 19] is concerned, security of the state having been expressly and specifically provided for, public order cannot "include the security of state, though in its widest sense it may be capable of including the said concept."

Provisions not falling within 'public order' in the narrower sense.

2.4. There is thus sufficient judicial authority to support the view that the expression 'public order' in Entry 1 of List 2 should normally be given a narrow meaning, as referring to the absence of disorder and involving relatively minor breaches ofthe peace of a purely local significance, in contradistinction to those serious and aggravated forms of public disorder which are calculated to endanger the security of the state. We are satisfied that none of the provisions of the Bill will come within the scope of 'public order' in the narrow sense, and hence the legislative competence of the Parliament may be taken as unassailable.

It is true that the subject 'security of state' does not figure either in List I or in List III; but it may be taken as included in the expression 'defence of India' (Entry 1 of List I), which must include defence, not only from external aggression, but also from extensive internal insurrection and public disorder of a violent type spread over a large area. We may, in this connection, also refer to two articles of the Constitution which lend support to the above interpretation. Article 352(1) relating to the Proclamation of Emergency describes the situation in which the President can issue such a Proclamation as 'a grave emergency ..whereby *the security of India* or any part of the territory thereof is threatened, whether by war or *external aggression or internal disturbance*'. Similarly, article 355 provides that it shall be the duty of the Union to protect every state against "*external aggression and internal disturbance*". In any case, it can also be brought under the residuary power of legislation mentioned in article 248.

Extent of the new law.

2.5. The territorial extent of the new law may now be considered. Of the various Acts whose provisions are to be incorporated in the new law, the Unlawful Activities (Prevention) Act, 1967, the Foreign Recruiting Act, 1874, and the Official Secrets

1. *Superintendent, Central Prison* v. *Ram Manohar Lohia*, (1960) 2 S.C.R. 821; A.I.R. 1960 S.C. 633, 641, para 18.

2. *O.K. Ghosh* v. *Ex. Joseph*, (1963) Suppl. 1 S.C.R. 789; A.I.R. 1963 S C. 812, 814.

Act, 1923, extend to the whole of India[1] including the State of Jammu and Kashmir. It appears to us that the provisions of these Acts fall under Entries 1 and 2 of the Union List, supported if need be by entry 97. Entries 1 and 2 apply without any modification to the State of Jammu & Kashmir. As regards entry 97 it has in its application to this State been modified as follows:—

> "97. Prevention of activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to the Indian National Flag, the Indian National Anthem and this Constitution."

The modified entry clearly covers the Unlawful Activities (Prevention) Act, 1967.

Offences under the Penal Code.

2.6. The subject-matter of Chapters 6 and 7 of the Penal Code which are to be incorporated in the new law also falls within Entry 1 and Entry 2, respectively, of the Union List. Though these matters pertain to "criminal law" and fall within "matters included in the Indian Penal Code at the commencement" of the Constitution (Concurrent List, entry 1), they relate primarily to the Union List, entries 1 and 2. The entries in the Concurrent List are to be read subject to those in the Union List[2]. Moreover, Concurrent List, entry 1, expressly excludes offences against laws with respect to any of the matters specified in List I or List II. There should accordingly be no constitutional difficulty in extending those provisions also to the whole of India including the State of Jammu and Kashmir.

Recommendation.

2.7. We, therefore, recommend that the new law should extend to the whole of India.

Two alternatives as to extraterritorial application.

2.8. In our Report on the Indian Penal Code,[3] we examined the general question of the extraterritorial application of the criminal laws of the land, and recommended that so far as that Code was concerned, its extraterritorial application to aliens should be limited to acts committed by them whilst in the service of the Government and relatable to offences committed either in connection with their service or punishable under Chapters 6, 7 or 9 of the Penal Code. As to the extraterritorial application of the National Security Act, two alternative courses are open to us. We may either adopt the same type of application clause as that proposed by the Indian Penal Code, or else, we may widen it so as to include all offences against national security committed outside India by aliens whether or not they are in Government service.

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1. The Unlawful Activities Act was amended in 1969 so as to extend it to the whole of India; the other two Acts were amended by the Part B States Laws Act (3 of 1951) so as to extend them to the whole of India.

2. *Cf. Indu Bhushan* v. *Rama Sundari*, (1968) 2 S.C.C. 289.

3. 42nd Report, paras. 1.12 to 1.20.

Protected interest principle.

2.9. The second view is not so fantastic as may appear at first sight. Though Anglo-American jurisprudence is reluctant to extend the principle of exterritoriality to acts committed by aliens abroad, world opinion seems to be veering round to the view that where the security of a state is involved, widest exterritoriality must be given. This is based on what is known as "protected interest principle" and, in the Harvard Researches in International Law, one suggestion as to exterritoriality was as follows[1]:—

> "A state has jurisdiction with respect to any crimes committed outside its territory....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 to the alien by the law of the place where it was committed."

Provisions in foreign Codes based on the protective principle.

2.10. This principle has been accepted in the Penal Codes of several nations. Thus in France[2] it is provided that "every foreigner who outside the territory of the Republic renders himself guilty, either as perpetrator or as accomplice of a felony or misdemeanor against the security of the state or the counterfeiting of the seal of the state or current national monies, may be prosecuted and tried according to the provisions of French law if he is arrested in France or if the Government obtains his extradition".

The German Penal Code provides[3] that "Regardless of the law of the place of commission, the German Criminal law is applicable to....conduct amounting to high treason or treason against the German Federal Republic or one of her member States, as well as felonies of constitutional treason."

In the Swiss Federal Penal Code, 1942, article 4 provides that "whoever commits in a foreign country any felony or misdemeanor against [Switzerland], carries on an illegal news service establishes an illegal organisation, or disturbs military security shall be subject to this law."

In the Draft Penal Code of Japan it is proposed in Article 5 that "the Code shall apply to an alien who, being outside Japan, commits a crime against the State of Japan or a Japanese national, punishable by death, or imprisonment or confinement for life or for a maximum term of five years or more: provided that this shall not apply when such act is not criminal under the law of the place of offence."

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1. Harvard Researches in International Law—Jurisdiction with respect to crime—Draft Convention (reprinted in (1935) 29 American Journal of International Law, (Supplement), pages 435-438), Article 7(c).

2. Section 694 of the French Code of Criminal Procedure, 1958.

3. Section 4, para. 3.

Desirability of wider alternative considered.

2.11. At first sight, it may seem desirable if we also adopt a similar extent clause for offences involving national security and make it penal for any alien to commit any offence under the National Security Act even outside India. Doubtless there will be difficulties in enforcing this provision, unless he is subsequently found in India or else he is extradited according to law. It would indeed be extremely difficult to enforce such a provision and it may remain a dead letter on the statute book.

Anglo-American practice.

2.12. It will be useful to refer the well-known case of *Joyce* v. *D.P.P*[1]. In that case the Lord Chancellor Lord Jowitt referred in wide terms to the following principle of exterritoriality in respect of the crime of treason in the following terms:

> "No principle of comity demands that a State should ignore the crime of treason committed against it outside its territory. On the contrary, a proper regard for its own security requires that those who committed that crime whether they committed within or without the realm should be amenable to its laws."

Having laid down this general proposition, the House of Lords, however, convicted Joyce of treason on the ground that, though he was an alien who committed the act outside Britain, nevertheless during the relevant period he held a British passport and thereby owed allegiance to the British Crown. It is true that this judgement has raised some controversy in legal circles. But neither England nor the United States appears to have gone to the extreme limit of applying the law of treason for aliens committing the crime outside their territories, unless allegiance to the country could be established either by the holding of a passport or otherwise.

Special case of alien entering the country for a purpose prejudicial to national security.

2.13. If, however, an alien enters into our territory for the purpose of completing an offence involving national security for which he has made preparations abroad, he may be guilty by the express language of some of the provisions because the act of entry with that intention may itself be an overt act sufficient to fasten the guilt on him[2]. This view seems to prevail in U.S.S.R[3]. "The textbooks[4] consider a foreign citizen who enters the Soviet Union with the intention of committing a crime for which he has made preparations abroad, as punishable according to Soviet criminal law (e.g. espionage or smuggling)".[5]

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1. *Joyce* v. *D.P.P.*, (1946) 1 All E.R. 186, 192 (H.L.).

2. Compare provision suggested below as to infiltration for a purpose prejudicial to the national security.

3. F.J. Feldbrugge, Soviet Criminal Law (1964), being Vol. 9 in the Series, Law in Eastern Europe, (University of Leyden) at page 68.

4. The reference is to a text-book in the Russian language Soviet Criminal Law, General Part, Edited by V.M. Chkhikvadze, Moscow, (1959).

5. In a footnote it is added "It is doubtful whether this view can still be held under the new legislation."

2.14. We do not therefore recommend the widest form of territoriality for offences under the National Security Act. The application clause recommended by us for offences under the Indian Penal Code may be followed, and sub-clause (3) of clause 1 of the Bill may read:— Recommendation as to extra-territorial application.

"(3) It applies also outside India—

(a) to citizens of India;

(b) to aliens on any ship or aircraft registered in India; and

(c) to aliens in the service of the Government."

CHAPTER 3

INSURRECTION

Introductory.

3.1. We shall now deal with the offences to be included in the consolidating law. The first group of such offences should deal with direct internal opposition to the authority of the State.

Existing offences connected with waging war, etc.

3.2. The most important of such offences is "waging war" against the Government of India[1], or "levying war" as it is described in England, Canada and other Commonwealth countries. Preparation to wage such war[2], and concealing a design to wage such war[3], are connected offences. Then, there are less grave forms of opposition, illustrated by the offence of conspiracy to overawe the Government of India[4], or of any State, or the Parliament, or a State Legislature.

Opposition to the established Government may manifest itself in the form of a physical assault on its functionaries and other dignitaries.[5] All these crimes are provided for in Chapter 6 of the Indian Penal Code, and the relevant provisions as proposed to be revised in our Report on the Code[6], could be collected under the head "Insurrection".

Preventing by force exercise of the authority of a State.

3.3. In addition, we recommend a new provision to punish those who prevent, or attempt to prevent, by force the exercise of the authority of a State in furtherance of an inter-State dispute. During the last decade, there have been occasions for apprehending a threat to the country's security from certain centrifugal forces, which aim at the disintegration of the country. Article 19(2) of the Constitution was amended in order to ensure that the freedom of speech and expression is not abused by the propagation of views supporting such tendencies. Two Central Acts, the Criminal Law Amendments Act, 1961 and the Unlawful Activities (Prevention) Act, 1967 have been enacted to deal with the menace to the country's integrity from such sources. A corresponding provision to protect the territorial integrity of States has not been considered necessary. Logically, there ought to be adequate protection against any resort to force for preventing a State from exercising its lawful authority within its territory. Movements for the alteration of boundaries of a

1. Section 121, I.P.C. (No change in the 42nd Report).
2. Section 122, I.P.C., as amended in the 42nd Report
3. Section 123, I.P.C., as amended in the 42nd Report.
4. Section 121A, I.P.C., renumbered as section 123B, and amended in the 42nd Report.
5. S.124, I.P.C., as substituted in 42nd Report.
6. 42nd Report, Chapter 6.

State or disputes which arise between two States should be pursued in a constitutional manner and not by violent means. If by the use of force a State is prevented from exercising its authority over a particular area within the State, the security of the State, and consequently, the nation's security is gravely jeopardised. Any such activity should be punishable as a grave offence. Such a provision would not be an innovation, since we find it in the Penal Codes of a few countries[1].

The new provision may be as follows:

"Whoever, by means of force or show of force, prevents or attempts to prevent any State from exercising its authority in any part of the territory of that State, with a view to securing an alteration of the boundaries of that State or in furtherance of a dispute between that State and another State, shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Penalty for assuming dictatorial powers.

3.4. In some countries, there are special provisions against the assumption of dictatorial powers, intended perhaps to prevent the resurgence of movements like Nazism and Fascism. Thus, the Penal Code of Argentina[2] penalises any member of the Congress who gives dictatorial powers to specified persons or bodies of persons.

Similarly, the Draft German Penal Code[3] has a section entitled "preparation of a Despotism" punishing anybody who undertakes to promote groups set up for the purpose of subversion, violence, etc. and who thereby pursues efforts directed against the existence of the Federal Republic or constitutional principles.

3.5. We considered the advisability of adopting some such provision against the possible assumption of dictatorial powers by any group of persons. We came to the conclusion that so far as the criminal law is concerned, it would be preferable to check specific acts which are in the nature of various steps-in-aid for such attempts at assuming dictatorship, than to punish the final assumption of dictatorial powers. If the attempt succeeds, the provision will not be needed. If it has failed, it will not be difficult to establish the offence of attempt to wage war or preparing to wage war, for that is what the act really amounts to.

Treason against a State unit of a Federation etc.

3.6. The subject of treasonable acts against a State which forms part of a Federation is an interesting one, and we went into the question how far our law covers such acts. There was in fact, a suggestion that section 121, Indian Penal Code, should make

1. (a) Articles 100 and 101(1) of the Yogoslav Criminal Code.
   (b) Article 98(1) of the Denish Penal Code.
   (c) Article 229 of the Argentina Penal Code.
2. Section 227, Penal Code of Argentina.
3. Section 369, Draft German Penal Code.

punishable the waging of war not only against the Government of India but also against a State Government.

We looked into the position in other federal countries in this respect. The Argentinian Penal Code provides[1] that "anybody who, without rebelling against the national government, arms one province against another, or takes arms in order to change a local constitution, or to overthrow any provincial or federal territorial government or sub-division thereof, or to force out of any such government or sub-division thereof any measure or concession, or to prevent, although temporarily, the free exercise of its legal functions, or the formation or renewal in the time and ways established by law, shall be punished by jailing from one to three years". The matter has received some attention in the United States also.

We are not convinced, however, that the present law suffers from any deficiency from the practical point of view. Conspiracy to overawe a State Government or Legislature and exciting disaffection against a State Government or Legislature are proposed to be severely penalised.[2] Even if the violent action goes beyond the stage of conspiracy, the maximum punishment provided for conspiracy will suffice for the completed offence. We, therefore, do not recommend any additional provision on the subject.

Offences to be included in this group.

3.7. In the result, the following offences will be included under the heading "Insurrection":—

1. Waging war against the Government of India.

2. Preparation to wage war.

3. Concealing design to wage war.

4. Conspiracy to overawe the Government, Parliament etc.

5. Preventing by force exercise of State authority in furtherance of inter-State disputes.

6. Assault on the President and other high dignitaries.

1. Section 229. This is contained in Title 10, Crimes against the Government and the Constitutional Order, Chapter 2, Sedition. The preceding title—Title 9—deals with crimes against the security of the Nation.

2. See clauses 6 and 39 of the proposed National Security Bill.

CHAPTER 4

ASSISTING THE ENEMY

Introductory.

4.1. The preceding Chapter[1] was mainly concerned with direct opposition to the State from within. Threats from without form the subject matter of this Chapter.

Assisting India's enemies.

4.2. The most direct of such threats arises from the act of giving assistance to India's enemies. In our Report[2] on the Penal Code, we have brought out the defect in the existing law on the subject, and recommended the insertion of a provision for punishing a person who assists India's enemies or the armed forces of a country whose armed forces are engaged in hostilities with India, whether or not war has been declared between that country and India. It is appropriate that that provision should form the first section in the group of sections with which we are now concerned.

Collaboration with hostile countries.

4.3. While direct assistance to the enemy country would be covered by the above provision, the law has also to take into account activities which represent an earlier stage of collaboration with a hostile power. Such collaboration may take various forms, and some of the acts of collaboration may fall within the corners of the Official Secrets Act. There is, however, a residue of conduct which, though definitely inspired by a purpose prejudicial to the national security and aided usually by a hostile power, requires to be checked.

4.4. It is well known that prior to the state of direct assistance to the enemy and much earlier than the commencement of war or direct hostilities, clandestine measures are resorted to in order to carry on, later, activities prejudicial to the national security. Those prejudicial activities themselves would be punishable under the relevant specific penal provisions, such as, sabotage, espionage, sedition, or incitement of disaffection among the members of the armed forces. But the mere act of infiltrating into the country for carrying out those nefarious activities is at present not punishable.

Infiltration.

4.5. During recent times, infiltration into India with the object of doing acts prejudicial to security has been on the increase. Such act should obviously be checked at the very inception. The Foreigners' Act etc. and similar laws, are designed primarily for other purposes. The technical offence of illegal entry (*i. e.* entry without a valid travel document) or similar acts, which may be punishable under those laws, are quite different from an infiltration with a sinister motive.

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1. Chapter relating to waging of war and connected offences (Chapter 3)
2. 42nd Report, Para. 6.7, and Bill annexed to the Report, section 123A.

4.6. We consider that unlawfully entering into, or remaining in, the Indian territory, with the object of committing an offence against the national security, should itself be an offence. Such acts are preparatory to, and pave the way for, more harmful activities, and there is enough justification for the law punishing such acts, provided, of course, the prejudicial purpose is established.

4.7. Exactly parallel provisions are not found in foreign Codes. But it is of interest to find in the Yugoslav Criminal Code[1] which punishes with "strict imprisonment" any one who "infiltrates himself into the territory of Yugoslavia for the purpose of carrying out hostile propaganda". Hostile propaganda is defined comprehensively in the same section to include all types of subversive or treasonable propaganda affecting the national security.

A writer on Soviet Criminal Law[2] says that "the text-books[3] consider a foreign citizen who enters the Soviet Union with the intention of committing a crime for which he has made preparations abroad, as punishable according to Soviet criminal law (e.g. espionage or smuggling)". But he adds in a footnote that "it is doubtful whether this view can still be held under the new legislation".

We think, however, that the provision which we are proposing below is justifiable on the principle that the offender has been guilty of preparation for a crime against which the State has right to act in the interests of protection of its security.

4.8. The new provision may be on the following lines:—

> "Whoever unlawfully enters into, or remains in, India for the purpose of committing an offence under this Act shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Offences concerned with prisoners of war.

4.9. If a war does take place with an external power, and prisoners are captured, the question of preventing their escape arises. There are provisions in the Penal Code concerned with the escape of prisoners of war[4]. These penalise any person who aids the escape of or rescues or harbours a prisoner of war, or a public servant who voluntarily allows or negligently suffers a prisoner of war to escape. These acts, usually committed in the course of or after hostilities, are proper for inclusion in the group under discussion.

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1. Section 118.

2. F.J. Feldbrugge, Soviet Criminal Law (1964), being Vol. 9 in the Series, Law in Eastern Europe (University of Leyden), page 68.

3. The reference is to a Text-book in the Russian language—Soviet Criminal Law, General Part, Edited by V.M. Chkhikvadze, Moscow (1959)

4. Section 128 to 130, Indian Penal Code.

4.10. In the result, the following offences will be included in the Chapter:—

Offences to be included in this group.

(1) Assisting India's enemies;

(2) Infiltration for committing offences against national security;

(3) Aiding escape of, rescuing or harbouring prisoner of war;

(4) Public servant voluntarily allowing prisoner of war to escape;

(5) Public servant negligently suffering prisoner of war to escape.

CHAPTER 5

RELATIONS WITH FOREIGN STATES

Introductory.

5.1. Indian statute law is not unfamiliar with legislative provisions on the subject of relations with foreign States. For some time, the statute book had a specific Act on the subject[1]. The Penal Code has a few provisions intended to act as a deterrent against waging war or depredations on foreign states which are friendly with India[2]. The Constitution, while guaranteeing the freedom of speech and expression, expressly permits[3] reasonable restrictions in the interests of friendly relations with foreign states[4]. One of the grounds on which the Government can prohibit the import of a book under the Customs Act[5] is the maintenance of friendly relations with foreign States. The primary reason why the matter did not receive prominent attention during the last century was, perhaps, the political status of the country and the comparative infrequency of occasions raising questions involving such relations.

5.2. There is of course no doubt as to the close connection between friendly relations with foreign States and national security. The maintenance of friendly relations with foreign States is of vital importance for the protection of the country mainly from external danger. Protection from internal danger also cannot be wholly ruled out because a hostile foreign power may try to create internal disturbances through fifth columnists in the country. The connection between the two may be indirect in point of causation, but is unquestionable. Besides, there is a practical advantage in utilising the present opportunity for consolidating the law on the subject.

Offences connected with war or depredations on foreign States.

5.3. Chapter 6 of the Penal Code has three provisions which punish the following offences:—

(1) Waging war against any foreign State in alliance or at peace with India;

(2) Committing depredation on territories of foreign State in alliance or at peace with India;

(3) Receiving property taken by means of such waging war or depredations.

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1. The Foreign Relations Act, 1932 (12 of 1932) (Repealed).

2. Sections 125 to 127, I.P.C.

3. Article 19(2) of the Constitution.

4. Also see Union List, Entry 10, "Foreign Affairs; all matters which bring the Union into relation with any foreign country."

5. Section 11(2)(t), Customs Act, 1962.

These provisions are obviously intended to ensure the maintenance of friendly relations, and will be placed in the group under discussion.

Recruitment and enlistment of foreign States.

5.4. Recruitment for service in the armed forces of foreign State and voluntary enlistment of Indians for such service are two other matters which could have repercussions on our external relations. The subject is regulated partly by a Central Act[1] and partly by a British Statute[2]. Such recruitment may fall in one or other of the following categories :—

(1) recruitment for a foreign State at war with India, which can be called, for brevity, an enemy country;

(2) recruitment for a foreign State at peace with India, which can be called, for brevity, a friendly country;

(3) recruitment for a country which is friendly to an enemy country; and

(4) recruitment for a country which is enemy of a friendly country.

5.5. Recruitment for an enemy country (at least where the recruitment is for military or semi-military service) is treason in English law[3]. In India, it is bound to be held as abetment of the waging of war against India punishable under section 121 of the Penal Code.

5.6. Recruitment for a friendly country can, in England, be regarded as criminal, if it subjects the party to an influence or control inconsistent with the allegiance due to the sovereign. Russell says[4]:

> "Entering into the service of a foreign State without the consent of the King, or contracting with a foreign State any engagement which subjects the party to an influence or control inconsistent with the allegiance due to our own sovereign, is said to be a misdemeanour indictable at common Law[5], and where the foreign State is at war with Great Britain, is treason[6]".

In India, such recruitment can be regulated under the Foreign Recruiting Act, 1874.

5.7. Recruitment for a country friendly to an enemy country may or may not amount to treason in England or to abetment of

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1. The Foreign Recruiting Act, 1874.
2. The Foreign Enlistment Act, 1870 (33 and 34 Vic. c. 90).
3. R. v. *Lynch*, (1903) 1 K.B. 444; Russell on Crime, (1964), Vol. 2, page 1545.
4. Russell on Crime, (1964), Vol. 2, page 1544.
5. 1 East P.C. 81; 4 Bl. Com. 122.
6. *R.* v. *Lynch*, (1903) 1 K.B. 444.

waging war in India. The answer depends on the nature of the service to which the person is recruited, the use to be made of the person recruited, and other circumstances. Usually, if the third country is giving solid military assistance to the enemy country, war would have been declared against that country also. The regulatory power under the Foreign Recruiting Act, 1874, can also be exercised.

5.8. Recruitment under the last category, i.e. for the enemy of a friendly country was not, in itself, an offence at common law. Russell says[1], "It appears not to have been an offence at common law for British subjects to enter into the service of belligerent powers at peace with Great Britain unless the act involved a breach of duty to the Crown[2]. This category is now regulated by the (U.K.) Foreign Enlistment Act, 1870.

Two Acts on the subject.

5.9. The (U.K.) Foreign Enlistment Act, 1870 applies only when the recruiting is for the service of any foreign State at war with any foreign State at peace with the Government. The Foreign Recruiting Act, 1874, on the other hand, authorises the Government to prohibit or regulate recruitment in India for any type of foreign service. As the wider of the two, it may be discussed first.

Foreign Recruiting Act, 1874.

5.10. Under the Foreign Recruiting Act, 1874, recruitment for the service of any foreign State may be prohibited by the Central Government[3], or that Government may impose conditions on such recruitment[4]. Where such prohibition or condition has been imposed, then a person who, in violation thereof, induces or attempts to induce any person to accept a commission or employment in the service of a foreign State, or induces any person to proceed to any place to obtain such commission etc. or knowingly acts in the engagement of any person so induced, is punishable with imprisonment upto seven years, or fine, or both[5].

The Foreign Enlistment Act, 1870 (33 and 34 Vict. c. 90).

5.11. The (U.K.) Foreign Enlistment Act, 1870 regulates the conduct of British subjects throughout Her Majesty's dominions during the existence of hostilities between foreign States with which the British Crown is at peace[6] . Section 4, which is the crucial provision, prohibits (in the absence of a licence from the Government, a British subject from enlistment in the service of a foreign State which is at war with another foreign State, friendly with the British Crown.

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1. Russell on Crime, (1964), Vol.2, page 1544.
2. See also para. 5.12, below.
3. Section 3, Foreign Recruiting Act, 1874.
4. Section 4, Foreign Recruiting Act, 1874.
5. Section 6, Foreign Recruiting Act, 1874.
6. The British Act has not been repealed in its application to India by the British Statutes etc. (Repeal) Act, 1960.

5.12. The position at common law has been thus stated[1-2]:—

"A foreigner who enlists in the forces of either belligerent when an international war is in progress (including a civil war in which recognition of belligerency has been granted by the parent Government or by his own Government) commits no crime against the other belligerent, who is not entitled to punish him if captured. But, following the great example of President Washington (and it was of him that George Canning said : 'If I wished for a guide in a system of neutrality, I should take that laid down by America in the day of the Presidency of Washington and the Secretaryship of Jefferson'), many countries, including our own, have made it a criminal offence to join the forces of any Government at war with a State which is at peace with His Majesty. Our present statute is the Foreign Enlistment Act, 1870. We do not often enforce this part of it, and it is notorious that British subjects are found fighting in nearly every war that occurs."

5.13. The present English Act on the subject prohibits : (1) the enlistment by a British subject in the military or naval service of either belligerent, and similar acts[3]; (2) the building, equipping and despatching of vessels for employment in the military or naval service for employment in the military or naval service of either belligerent[4]; (3) the increase by any person on British territory of the armament of a man-of-war of either belligerent being at the time in a British port[5]; (4) the preparing or fitting out of a naval or military expedition against a freindly State[6]. The last two prohibitions apply to any person, subject or alien, within Her Majesty's dominions.

5.14. The extra territorial application of the Act is interesting. The draftsmen of the Act seems to have devoted considerable attention to this aspect, as is abvious from the care he has taken to indicate, in most of the penal sections, whether the act is to be punished when committed "within Her Majesty's dominions," or when committed "within or without" those dominions.

5.15. In its Report on British Statutes applicable to India, the Law Commission observed in regard to this Act[7] :—

"This statute regulates the conduct of British subjects throughout the Dominions during the existence of hostilities between foreign States with which the British Crown is at

1. Mc. Nair "Law relating to Civil War in Spain", (1937) 53 Law Quarterly Review, 471, 494.
2. See also para. 5.8, above.
3. Sections 4 to 7, Foreign Enlistment Act, 1870.
4. Sections 8 and 9, Foreign Enlistment Act, 1870.
5. Section 10, Foreign Enlistment Act, 1870.
6. Section 11, Foreign Enlistment Act, 1870.
7. Fifth Report of the Law Commission (British Statutes applicable to India), page 50, Item 87.

peace. Thus, section 4 prohibits a British subject from enlistment in service of a foreign State which is at war with another foreign State, friendly with the British Crown.

Since the extent clause of this statute refers to 'Dominions' it has become inapplicable to India, according to Menon's case[1-2].

But such a legislation is necessary for India, for no Indian citizen can be allowed to side against a State friendly with India, in case of war between that State and another. Further, whether the benefit of the legislation should be extended to all members of the Commonwealth is another question to be considered."

Recommendation regarding the Foreign Recruiting Act.

5.16. As regards the Foreign Recruiting Act, 1874, we are of the view that it is sufficient to incorporate the substance of section 4 of the Foreign Recruiting Act and the penal provision in section 8 of that Act, with the modifications indicated below[3]. That section gives power to the Central Government to issue a general order prohibiting recruitment for service under a foreign State, or imposing conditions on such recruitment. This should, in our view, serve a weapon to deal with any situation that may arise by reason of attempts at recruitment on a large scale.

The other elaborate provisions which are contained in the Foreign Recruiting Act, mostly deal with acts in the nature of abetment of the commission of, the principal offence of unauthorised recruitment for service in a foreign State. They are unnecessary as the general provision of the Penal Code[4] punishing abetment would apply to all offences under the proposed law.

Further, we think that there is no need to have a provision directing a *particular person* to stop recruitment as is found in section 3 of the Foreign Recruiting Act. The general power under section 4 will do.

Recommendation regarding the Foreign Enlistment Act.

5.17. As regards the (U.K.) Foreign Enlistment Act, 1870, which concentrates on recruitment for a foreign State at War with a friendly State, we do not think that elaborate provision under that category is required. The matter could be left to be dealt with by the Central Government, which can be given general powers to prohibit or regulate enlistment for foreign State similar to its general powers under section 4 of the Foreign Recruiting Act, 1874. Moreover, many of the activities made punishable by the British Act, like illegal ship building, are such that in the conditions of the present day it would be physically impossible for individuals to embark on them without detection. The rest of

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1. *State of Madras* v. *C.G. Menon*, A.I.R. 1954 S.C. 517; (1955) 1 S.C.R. 280.

2. After the Fifth Report, similar questions as to copyright arise in *Blackwood & Sons* v. *Parasuraman*, A.I.R. 1959 Mad. 410.

3. Para. 5.18, below.

4. Existing sections 109 to 116, I.P.C.; proposed sections 67 to 74, 42nd Report.

the activities punishable under the Act could be dealt with as abetment of the commission of, the principal crime, which is—to put the matter shortly—unauthorised recruitment for a foreign State.

A provision similar to section 4 of the Foreign Recruiting Act would be adequate to regulate, restrict or prohibit such recruitment, whatever be the status of the foreign country in question.

Modifications required in section 4, Foreign Recruiting Act.

5.18. Existing section 4 of the Foreign Recruitment Act, however, is very wide in two respects. First, as the Central Government is given unlimited power to prohibit recruiting for service of any foreign State or to impose conditions on such service, the section is not confined to military service, and covers all kinds of non-military service. Secondly, it does not specify the cosiderations which should weigh with the Government in issuing a prohibition or restriction. In our opinion, the section needs to be modified, in both these respects. Apart from any objections that could be raised from the constitutional point of view with reference to article 19(1)(g) of the Constitution, such a wide power is not needed now. Need for restrictions on civil service under a friendly foreign State[1] is extremely improbable, at the present day. Even as regards restrictions for enlistment, in service in the armed forces of a foreign State, there should be some criterion on which the Central Government could act. We think that the interests of national security or maintenance of friendly relations with foreign States are adequate criteria in this context.

Punishment to be three years' imprisonment.

5.19. We are, further, of the view that a maximum punishment of imprisonment for 3 years will be adequate for the offence.

Recommendations as to recruitment and enlistment.

5.20. We, therefore, recommend the incorporation of the following provisions in the Bill[2] :—

(1) The Central Government may, if satisfied that it is necessary to do so in the interest of the national security of the maintenance of friendly relations with foreign State, by general order notified in the Official Gazette either prohibit recruiting or enlistment for service in the armed forces of a foreign State or impose conditions on such recruiting.

(2) Contravention of the prohibition or breach of any of the conditions of such restriction will be punishable with imprisonment of eithr description for a term which may extend to three years, or with fine, or with both.

Jeopardising neutrality.

5.21. We carefully considered a suggestion for inserting a provision punishing the acts of individuals which jeopardise the

1. As to service in an enemy country during war, see para. 5.5, above.

2. See clause 17 of The National Security Bill, below.

neutrality of the country. Attention was invited to the provisions in some of the foreign Penal Codes[1].

English practice as to neutrality legislation.

5.22. The British practice on the subject of neutrality legislation[2] does not favour general and permanent provisions of the nature which we find in South American countries[3], but confines itself to dealing with the important matters, leaving other measures to be undertaken as and when a situation arises. Examples of such specific measures are furnished by the Foreign Enlistment Act, 1870 and by orders issued under the Customs Act which prohibit (without licence from the Board of Trade or other competent authority), the export of arms and other materials of war. But most measures adopted in England are of a temporary character. For example, during the Spanish Civil War, the Merchant Shipping (Carriage of Munitions to Spain) Act, 1936, was passed, to prohibit the carriage of ammunitions to Spain. Section 2(5) of the Act declared that the Act shall continue in force "until His Majesty by Order in Council is pleased to declare that it is no longer necessary or expedient that it should continue in force." Another device is to pass statutory orders under a particular statute, such as the Treaty of Peace Act, 1919. Yet another device is to issue executive orders, circulars, instructions and departmental communications drawing attention to the provision of the Foreign Enlistment Act or other relevant law and its applicability in a particular situation which has arisen at the particular moment.

Position in South American countries and in some Continental Codes.

5.23. In some of the South American and Central American countries and in some Continental Codes, however, there are provisions in the Penal Code of a permanent and general nature, punishing acts compromising the neutrality of the country. At the same time, in the event of a particular war between other States, detailed legal prohibitions are also issued[4].

Position in the U.S.A.

5.24. The United States represents a midway position. The provisions for enforcing neutrality are more numerous than in England and Commonwealth countries. But they are specific and precise, rather than general and abstract as in the South American countries.

Various aspects of acts jeo-

5.25. Acts jeopardising neutrality have various facets.

First, there is the question of international law. Where there is a war between two countries, international law may impose

1. (a) Argentinian Penal Code, Articles 219 and 220.
   (b) Sections 121 to 131, Colombian Penal Code.
   (c) Article 43, Draft Penal Code for Japan.
   (d) Section 110c, Danish Penal Code.

2. See Deak and Jessup, Neutrality Laws, Regulations and Treaties, (1939), Vol. 1, Preface, page xv.

3. As to South American countries, see para. 5.23, below.

4. See Deak and Jessup, Neutrality Laws, Regulations and Treaties, (Carrnergie Endowment for International Peace) (1939) Vol. 1, page 82.

certain obligations on the States as a consequence of its neutrality. The precise extent of such obligations may be gathered from leading text books on the subject[1]. pardising neutrality.

Secondly, there is the question of friendly relations with foreign States. Irrespective of the question whether or not abstaining from a certain act is required as a matter of its obligations under international law, a neutral State may desire to abstain from that act in order to maintain its friendly relations with foreign States in general.

Thirdly, there is the question of internal security. A State which has adopted the position of a neutral one may wish to avoid jeopardy to its neutrality in the interests of its own security.

5.26. It appears to us, however, that the subject is one of considerable complexity involving a number of repercussions. General rules framed in abstract terms may lead to consequences which cannot be anticipated at the time of framing the rules, and this may cause embarrassment. Provision as to act jeopardising neutrality not favoured.

Further, such a provision may result in considerable vagueness in its application, partly because of the difficulty of precisely defining an act which jeopardises neutrality. We do not therefore think it proper to have a penal provision on the subject of a general and permanent nature.

5.27. As a result of the above discussion, the following offences are recommended for inclusion under the group dealing with foreign States:— Offences to be indicated in this group.

(1) Waging war against any foreign State at peace with India;

(2) Committing depredations on territories of foreign State at peace with India;

(3) Receiving property taken by means of such waging war or depredations;

(4) Recruitment to, or enlistment in, armed forces of foreign States.

1. See Oppenheim, International Law, (1960), Vol. 2, pages 653 to 661, and page 745 *et seq.*

CHAPTER 6

OFFENCES RELATING TO ARMED FORCES

Introductory.

6.1. We have so far dealt with direct attacks on national security.

The security of a country may also be threatened by indirect acts, such as those which weaken the agencies established for the maintenance of its security. Since the armed forces of a country are the most important of such agencies, provisions punishing interference with their preparedness and efficiency in the discharge of their functions are found in the criminal law of all countries.

Existing provisions to be incorporated.

6.2. In India, such provisions are contained in Chapter 7 of the Indian Penal Code, and it is appropriate that they should be placed in the new law, with the changes recommended in our Report on that Code[1].

Provisions relating to armed forces—importance of.

6.3. It is not a mere coincidence that in the Indian Penal Code, the Chapter dealing with offences relating to armed forces appears immediately after the Chapter relating to offences against the State. The importance of armed forces as the chief instrument for maintaining national security must have been the principal reason. The Chapter attempts to provide, in a manner more consistent with the general character of the Code, for the punishment of civilians who abet military crimes. The inter-relationship of the offences in Chapter 7 of the Code with the offences in the laws relating to armed forces has been explained briefly in our Report on the Penal Code.[2] The necessity for these provisions is obvious. The military law does not apply to civilians, as so they cannot be punished as abettors under that law. And the general provisions of the Penal Code as to abetment would also not apply, because the principal offences of mutiny, desertion, insubordination and the like, are outside the Code.

Statutory provisions in England

6.4. In England, there are several enactments on the Statute Book which are designed to prevent the spread of disaffection. These are mainly concerned with the protection of public servants, and more particularly members of the Armed Forces who may be exposed to attempts to seduce them from their duty or allegiance. The Aliens Restriction (Amendment Act), 1919[3] prohibits an alien from causing sedition or disaffection among the civil population as well as among the Armed Forces of the

1. 42nd Report, Chapter 7.

2. 42nd Report, paragraphs 7.1 and 7.2.

3. Section 3, Aliens Restriction (Amendment) Act, 1919 (9 & 10 Geo. 5 c. 92).

Crown and those of its allies, and provides for summary punishment for the promotion of, or interference in an industrial dispute by, an alien in any industry in which he has not been engaged in the United Kingdom for at least two years immediately preceding.

6.5. In 1797, on the occasion of the mutiny at the Nore, an Act[1] was passed punishing, as a felony without benefit of clergy, the incitement of soldiers or sailors to mutiny. It was at first a temporary measure[2], intended to expire at the end of the first month of the then next session, but it was several times re-enacted, and was in force till[3] August 1, 1807, when it was suffered to expire, but it was revived and made perpetual[4] in 1817.

6.6. The Incitement to Disaffection Act, 1934 was intended to provide less harsh penalties than those under the (unrepealed) Incitement to Mutiny Act, 1797. The principal offence under the Act punishes a person who seduces a member of the forces from his duty or allegiance[5]. The Act contains stringent provisions for the prevention, and detection of this offence. Moreover, it is an offence for any person to be in possession (with intent to commit, or to abet, counsel or procure the commission of the principal offence), of any document of such a nature that the dissemination of copies thereof among members of the Forces would constitute the principal offence[6].

A leading author on Constitutional law has made the following comment after referring to the provision relating to possession of documents in the 1934 Act—

> "This measure arms the Government with a means of restricting the distribution of political propaganda; particularly it could be used to suppress the distribution of pacifist literature. It must be admitted that prosecutions are rare and that juries are reluctant to convict[7]."

Other suggestions considered.

6.7. A few suggestions for the addition of new provisions relevant to armed forces may be briefly discussed.

Treachery.

6.8. We had, during our consideration of the subject of offences against the national security, looked into the Treachery Act[8], an English Act passed during the second world war. The Act, which was a temporary one, has been repealed

1. The Incitement to Mutiny Act, 1797 (37 Geo. 3 c. 70).
2. Stephen, History of the Criminal Law of England, Vol. 2, page 193.
3. 41 Geo. 2 c. 29.
4. 57 Geo. 3, c. 7 referred to in Stephen, History of the Criminal Law of England, Vol. 2, Page 193.
5. Section 1, Incitement to Disaffection Act, 1934 (24 & 25 Geo. 5, c. 56).
6. Section 2, Incitement to Disaffection Act, 1934 (English).
7. Wade and Phillips, Constitutional Law, (1970), page 529.
8. The Treachery Act, 1940 (3 & 4 Geo. 6 c. 21).

in England. It has also been repealed in its application to India.[1] But, in view of the importance of the subject, its provisions require consideration. The main section[2] read:—

> "If, with intent to help the enemy, any person does, or attempts or conspires with any other person to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede such operations of His Majesty's forces, or to endanger life, he shall be guilty of felony and shall on conviction suffer death."

We have given some thought to the subject; but we have ultimately come to the conclusion that the practical importance of such a provision would be very limited, and we are not, therefore, inclined to recommend any such provision. If war is declared or is very imminent, suitable emergency legislation could be readily enacted, and such legislation would be comprehensive enough to cover such acts.

Propaganda amongst armed forces.

6.9. Propaganda in the nature of subversive activities among the armed forces was referred to during our discussions and it was suggested that a specific provision aimed at such acts corrupting the minds of members of the armed forces was needed. It was stated that the acts would not amount to inciting mutiny nor fall under section 505, Indian Penal Code.

Now, an attempt to seduce an officer or member of the armed forces from his duty is punishable[3] even under the present law. So is a statement, rumour or report inducing him to fail in his duty.[4] If there is no such incitement or inducement, a mere attempt at indoctrination—though morally reprehensible—cannot, in our opinion, be made penal. Special provisions applicable to armed forces may be needed, and may be provided in the special Acts applicable to armed forces. But persons outside the armed forces cannot be punished for mere indoctrination falling short of incitement or inducement to seduction or other objectionable conduct.

Offences to be included in this group.

6.10. Hence we recommend that the offences to be included in the Chapter relating to armed forces may be as follows[6]:—

(1) Abetment of mutiny.

(2) Attempting to seduce an officer or member of any of the armed forces from his duty.

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1. The British Statutes (Application to India) Repeal Act, 1960.
2. Section 1.
3. Section 133, I.P.C. as proposed in the 42nd Report; existing section 131.
4. Existing section 505; proposed section 139, I.P.C. (42nd Report).
5. *Cf.* article 33 of the Constitution.
6. These are the same as sections 132 to 140 of Chapter 7 of the Indian Penal Code as proposed to be revised in the 42nd Report.

(3) Abetment of assault on a superior officer.

(4) Abetment of desertion from armed forces.

(5) Harbouring a deserter.

(6) Abetment of an act of insubordination.

(7) Incitement to mutiny or other act of insubordination.

(8) Dissuasion from enlisting, and instigation to mutiny or insubordination after enlistment.

(9) Wearing garb or carrying token used by officer or member of the armed force.

CHAPTER 7

SUBVERSIVE ACTIVITIES

Introduction.

7.1. In the preceding Chapters, we were concerned with acts in the nature of direct opposition to the State. Lesser forms, or indirect modes, of attacks on the security of the State will now require consideration. These could assume a variety of forms, such as disruptive activities, organising para-military groups, maintaining relations with a foreign power or body for a purpose prejudicial to the national security, deceiving a public servant for a purpose prejudicial to the national security, sabotage, espionage and seditious acts. Though the external characteristics of these acts may differ, they all share some common characteristics, namely—(i) the acts are the result of, or are intended to cause, a shift of allegiance, a split between the nation and its citizens; and (ii) the acts represent a preparatory or other stage earlier than treason proper. The ultimate end is not in doubt; but the connection between the visible act and the ultimate end is not always easy to discern. For example, sedition usually consist of words, not action. The ultimate end is to destroy the bond between the nation as represented by the Government established by law and those whose obedience the Government is entitled to command. But the means adopted —usually, words—represents a stage preparatory towards graver acts. Similarly, an act of sabotage; undoubtedly committed with the object of impeding the defence efforts of the nation, is, nevertheless, an indirect—and, therefore, not easily discoverable mode of achieving that object. The expression "subversive activities" is, we think, apt as a convenient label for describing these acts, as distinct from graver acts of 'overthrowing' the Government. And we proceed now to indicate the offences to be included in this group.[1]

Disruptive activity.

7.2. We think that the principal offence[2] dealt with in the Unlawful Activities (Prevention) Act, 1967 (so far as relates to individuals), namely, taking part in, committing advocating, abetting, inciting or advising certain activities described in the Act as 'unlawful activities' could form the first section in the group of subversive activities. The definition of an 'unlawful activity' in that Act comprises three kinds of acts, concerned respectively with (i) cession of Indian territory, (ii) secession of a part of the territory from the Indian Union, and (iii) disclaiming, questioning or disrupting the sovereignty and territorial integrity of India. The first two are really in illustrative of the third, which is the most general, and the essence of it is disrup-

1. Discussion as to constitutionality is contained in Chapter 2 above.
2. Section 13(1), Unlawful Activities (Prevention) Act, 1967.

tion. A more expressive designation for this type of anti-national activity would, therefore, be "disruptive activity". It is obvious that such acts are in their essence subversive acts. As has been stated more than once, the essence of treason is destruction of the bond between the citizen and the State. These acts are aimed at such destruction.

The provision which we propose on the subject is modelled on section 13(1) of the Act, which contains the penal provision. The gist of section 2(f) which defines "unlawful activity" and of section 2(b) and 2(d) which explain "cession" and "secession" respectively, is put in the Explanation.

The relevant section will be as follows:—

Disruptive activity.

"Whoever commits, or abets the commission of, any disruptive activity, or advocates or advises any disruptive activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Explanation.—For the purpose of this section,—

(a) "disruptive activity" means any action taken, whether by act or speech, or by written words, signs or visible representation, or otherwise,—

(*i*) which questions, disrupts, or is intended to disrupt the sovereignty and territorial integrity of India, or

(*ii*) which is intended to bring about, or supports any claim for, the cession of any part of India, or the secession of any part of India from the Union, or

(*iii*) which incites any person to bring about such cession or secession;

(*b*) "cession" includes the admission of the claim of any foreign country to any part of India;

(*c*) "secession" includes the assertion of any claim to determine whether a part for India will remain within the Union.

Exception.—Nothing in this section applies to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India."

Para-military groups for subversive purposes.

7.3. The waging of war against the Government of India can be committed effectively only by organising large groups. But there could be lesser offences committed by groups, such as the setting up of a para-military group. It is a serious defect in

our law that there is no provision for punishing the act of setting up of a private military organisation, by whatever name called, whose objects are of a subversive character. That such organisations are capable of developing into a serious threat to internal security cannot be denied. This is particularly so when the object of the group is to usurp the functions of the armed forces. Further, in a society organised on the rule of law, any group trained to use force in the achievement of its objects should be regarded as criminal.

Prohibited by law in some countries.

7.4. We notice that the laws of many countries prohibit the formation of such groups. Thus in England, quasi-military organisations are penalised by statute as follows[1]—

> "If the members or adherents of any association of persons, whether incorporated or not, are:—
>
> (*a*) organised or trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the armed forces of the Crown; or
>
> (*b*) organised and trained or organised and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that they are organised and either trained or equipped for that purpose;
>
> then any person who takes part in the control or management of the association, or in so organising or training as aforesaid any members or adherents thereof, shall be guilty of an offence under this section."

In Denmark, the Penal Code has a provision[2] punishing, with imprisonment upto six years, "participation in, or substantial support to, any corps, group or association which intends, by the use of force, to influence public affairs or to disturb public order." The same section punishes participation in "unlawful military organisation" (not defined) with fine, simple detention or (in aggravating circumstances) imprisonment upto two years.

The French Penal Code has, in the chapter entitled "Felonies against the Internal Security of the State," a provision[3] punishing a person, who raises or causes to be raised an armed force, enlists or causes enlistment of soldiers or supplies or provides them with arms and ammunition without legitimate authority.

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1. Section 2(1), Public Order Act, 1936.
2. Section 114, Danish Penal Code.
3. Article 92, French Penal Code.

The Russian Penal Code has[1], under the Chapter "Crimes against the State," a group of sections under the head "Especially dangerous crimes against the State." One of these sections punishes organisational activity directed to the preparation or commission of especially dangerous crimes against the State or to the creation of an organisation which has for its purpose the commission of such crimes, or participation in an antic-soviet organisation.

Provision recommended.

7.5. There should hardly be any question that such organisations ought to be prohibited and participation in them severely punished. The question of defining in precise terms the kind of organisations to be prohibited was carefully considered by us. Before a group can be regarded as punishable, two tests should in our opinion, be satisfied. First, the group must be of such a character that its members are trained or equipped to use force for achieving its object. Secondly, the group must be organised for a purpose prejudicial to the national security. That will include, of course, the purpose of usurping the functions of the armed forces, or of committing any acts of sabotage. But the last two purposes may be specifically mentioned.

The following section is recommended:—

"Whoever organises, trains, maintains or promotes any group the members of which are trained or equipped to use force for achieving its object and which is organised—

(*a*) for the purpose of usurping the functions of the armed forces; or

(*b*) for the purpose of committing any acts of sabotage; or

(*c*) for any other purpose prejudicial to the national security.

shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and whoever participates in, or belongs to, any such group as aforesaid shall be punished with rigorous imprisonment for a term which may extend to five years, and shall also be liable to fine."

Maintaining relations with foreign States for purpose prejudicial to national security.

7.6. The offences referred to above are concerned primarily with internal security. Danger to external security can arise from other acts, and these will now be dealt with.

The gravest act endangering external security is, of course, what has been described in England and U.S.A. as being adherent to the (country's) enemies, giving them aid and comfort and in the Canadian Code as "assisting the King's enemies." Such acts

1. Section 72, read with sections 64–71, R.S.F.S.R. Penal Code.

will be covered by the new section which we have recommended in our Report on the Penal Code.[1] and which is to be included in the proposed Consolidation Act. But there are lesser offences which require attention. While assisting an enemy is an act confined to time of war, there are acts committed in peacetime which show a guilty association with a hostile country. In some respects, these are different from the graver act of assisting the enemy, because—

(*i*) the country assisted may not have commenced war or hostilities,

(*ii*) the assistance is not direct, but is of a subtle character not easily descernible.

But precisely because the assistance is indirect and the situation has not yet attained the stage of war, there is greater reason for punishing such sinister preparatory acts which pave the way for treason in its highest form. We shall refer below to a few of such acts.

For example, collaboration with hostile countries may be referred to. It appears that certain groups are in league with hostile foreign powers in some of the border, areas and indulge in hostile acts, preparatory to insurrection. Owing to want of evidence, it is difficult to bring any charge of waging war or preparation of waging war. But collaboration with a potential enemy in a secretive form and for a subversive purpose, is unquestionably resorted to. For example, a group of Indian citizens go over the border, obtain some arms from an neighbouring hostile country, come back to India and then carry on subversive activities. The preparatory acts are built up slowly, and before any convincing evidence could be obtained. The State, therefore, loses ground while the insurgents are gaining ground. After arrival in India, the insurgents do not go with arms openly and usually scatter themselves. The essence of their crime is foreign inspiration coupled with such preparatory acts showing collaboration with a foreign power. Such acts should, it was suggested, be dealt with by a specific provision.

Provision in foreign Codes.

7.7. We find that some of the foreign Codes have provisions designed to punish collaboration with the "enemy" and, in some cases, collaboration with a foreign state in a manner detrimental to the State.

For example, the Norwegian Penal Code has this provision.[2]

"Any Norwegian citizen or resident of Norway who receives from a foreign power or party or organisation acting in its interest, for himself or for a party or organisation,

1. 42nd Report, section 123A.
2. Chapter 4, above.
3. Sectio 97a Norwegian Penal Cod

economic support to influence public opinion about the country's form of Government or foreign policy or for party purposes, or is accessory thereto, shall be punished by jailing or imprisonment upto two years."

The German Penal Code provides punishment for such 'treasonable relations' in a section[1] reading as follows: —

"1. Anybody who, with the intent of bringing about or furthering a war, an armed undertaking, or coercive measures against the Federal Republic of Germany or one of her States, enters into or maintains relations with a Government, a party, an alliance or organisation in existence in a territory outside the territorial jurisdiction of this law, or with a person who acts in the service of such a government, party, alliance or organisation, shall be punished by confinement in a penitentiary.

2. If the perpetrator acts with the intent of bringing about or furthering other measures or efforts of a government, party, alliance, or organisation in existence in a territory outside the territorial jurisdiction of this law, which are designed to impair the existence or the security of the Federal Republic of Germany or to abrogate or invalidate the constitutional principles designated in section 88, the punishment shall be imprisonment. The attempt is punishable."

The provision in the Yugoslav Penal Code for participating in hostile activity against the country is simpler.[2]

"A Yugoslav citizen who with intent to overthrow the State system and social organisation or because of any hostile activity against Yugoslavia establishes contacts with a foreign state, foreign organisation or a particular foreign group of refugees, or who assists them in the performance of hostile activities, shall be punished by strict imprisonment."

Provision recommended.

7.8. It is obvious that as the law in India stands now, collaboration with, or receiving assistance from, a foreign power with which there is no war or active hostilities, is not an offence, except where the collaboration takes the shape of transmission of secret information falling under the Official Secrets Act. A special provision, is therefore, required, to penalise such acts, if committed for a purpose prejudicial to national security.

During our discussions, it was suggested that persons who have contact with countries which commit or have committed aggression against India and propagate their ideology should be punished. The provision we recommend below will cover such activities to some extent. The essential *mens rea*, namely, a purpose prejudicial to the national security, will, of course, have to be proved.

1. Section 100d, German Penal Code.

2 Article 109, Yugoslav Penal Code.

The new section may be as follows:—

"Whoever, for any purpose prejudicial to the national security, maintains relations with a foreign State or with an institution or organisation outside India shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

Treasonable deception.

7.9. Threat to external security of a country may arise not only from the use or likelihood of use of force, but also from acts done fraudulently or clandestinely. It is possible to conceive of fraudulent acts which mislead the public authorities, and thereby prejudice the national security by disrupting its relationship with a foreign country.

7.10. Violence, when constituting a threat to external security, is amply taken care of by the present provisions of the Penal Code; and clandestine acts, which usually consist in the collection or transmission of intelligence, are also fully provided for in the laws relating to espionage. But fraudulent acts of the nature mentioned above are not specifically provided for, and the lacuna should, we think, be filled.

Provision recommended.

7.11. We propose a new section[1] on the subject, as follows:—

"Whoever, for a purpose prejudicial to the national security, intentionally transmits to a public servant a false report, the content of which is likely to disrupt relations between India and a foreign state or an international institution, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both."

Sabotage.

7.12. Another subversive activity of which serious notice has to be taken is sabotage. The offence consists not only in wanton destruction of, or damage to, the property and undertaking required for defence purposes, but it also includes organising and participating in unlawful strikes in defence plants, and in the essential services which impair and impede the proper functioning of such plants and services and thereby endanger national security.

Different motives for destruction of property.

7.13. Malicious or wanton destruction of property could be committed from different motives. The object may be to impair the defence effort of the nation, or to undermine its economic prosperity, or to harm the owner of the property, or some other object. Provisions in different Penal Codes of foreign countries emphasise one or more of these objects. Here we are primarily concerned with those provisions which deal with jeopardy to the security of the country.

1. *Cf.* (a) Section 391, Draft German Penal Code.
(b) Swedish Penal Code, Chapter 19, section 8.

In Canada, under the Heading 'offences against public order', there is a section[1] punishing sabotage as a 'prohibited act'. The purpose must be one prejudicial to the safety, security or defence of Canada or to the safety or security of the armed forces of any other country lawfully present in Canada. The act may impair the efficiency of any vessel, vehicle, aircraft, machinery, apparatus "or other thing", or cause loss, damage etc. of property. The property need not be State property; this is emphasised by the words "by whomsoever it may be owned".

Position in England regarding sabotage.

7.14. There is no separate offence of sabotage in England. But in *Chandler's case*[2], it was pointed out that the Official Secrets Act is widely framed so as to cover some acts of sabotage. Lord Radcliffe observed (with reference to the Official Secrets Act):—

> "The saboteur just as much as the spy in the ordinary sense is contemplated as an offender under the Act."

Provision in France and Germany.

7.15. The French Penal Code punishes[3] such acts by a provision appearing in the Chapter entitled "Felonies and misdemeanours against the security of the State".

In the German Penal Code[4], the offence of sabotage is included under Chapter 2, entitled "Endangering the State". The object must be to impair the existence of the Republic, or of abrogating, invalidating or undermining the constitutional principles etc.

Provision in Russia relating to sabotage.

7.16. In the Russian Code[5], sabotage is included under "Chapter One—Crimes Against the State", "Sub-Chapter I—Especially dangerous Crimes Against the State". The purpose should be to weaken the Soviet State. The gist of the offence is the destruction or damage by explosion, arson, or other means, of enterprises, structures, routes and means of transportation, means of communications or other state or social property. Death is a permissible punishment.

Crime of "wrecking" in Russia.

7.17. There is also, in the same Code the offence of wrecking. The gist of this offence is an act or omission directed towards subversion of industry, transport, agriculture, monetary system, trade or other branches of national economy or activity of state agencies or social organisations, for the purpose of weakening the Soviet State.

Present provisions in India as to destruc-

7.18. Mere destruction or material impairment of property with such intent is not left unpunished even at present. A group of sections in the Penal Code dealing with mischief and its aggravated forms provides adequate punishment for such

1. Section 52, Canadian Criminal Code.
2. *Chandler* v. *D.P.P.*, (1962) 2 All England Law Reports, 142, 148 (H.L.).
3. Section 76, French Penal Code.
4. Section 90 and 190e, German Penal Code (1871).
5. Sections 68–69, R.S.F.S.R. Penal Code.

tion of property.

destruction and impairment. But the emphasis in that group of sections is on the proprietary aspect, as is evident from the fact that the sections are placed in the Chapter on offences relating to property. We consider that, for cases where such destruction and impairment take place for the purpose of prejudicing national security, a specific provision is required; the offence may be conveniently described as "sabotage".

Provision recommended.

7.19. The physical act punishable would be an act which impairs the efficiency or impedes the working of or causes damage to:—

(*a*) any means of public transportation,

(*b*) any means of telecommunication,

(*c*) any place used for the production of any article useful for the defence of India or any machinery or apparatus therein.

There should be an exemption clause dealing with stoppage of work arising out of an industrial dispute.

The provision which we recommend on the subject is, in form, less elaborate than that which was contained in the Defence of India Rules[1].

The new section may be as follows:—

"*Sabotage.*—(1) Whoever, for any purpose prejudicial to the national security, does any act which impairs the efficiency or impedes the working of, or causes damage to,—

(*a*) any prohibited place or any machinery or apparatus therein, or

(*b*) any means of public transportation, or

(*c*) any means of telecommunication, shall be punishable with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

(2) A person shall not be guilty of an offence under this section by reason only that he stops work as a result of an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947; but nothing in this subsection shall affect his liability to be prosecuted for any offence which he may have committed against the provisions of that Act."

Espionage (Official Secrets Act).

7.20. A number of offences relating to espionage are dealt with in the Official Secrets Act. Hence it is necessary to consider in detail the various provisions of that Act.

[1] rule 36 Defence of India Rules, 1962.

Section 2(1)—Definition of place belonging to Government to be omitted.

7.21. Section 2(1) says that any reference to a place belonging to Government includes a place occupied by any department of the Government, whether the place is or is not actually vested in Government. The definition is unnecessary, and should be omitted.

Section 2(2)—expressions referring to communicating, receiving, obtaining or retaining to be omitted.

7.22. Section 2(2) is an inordinately long sentence mixing up several ideas. First, it explains the scope of expressions which refer to communicating or receiving. Next, it explains the scope of expressions which refer to obtaining or retaining. Lastly, it explains that expressions referring to the communication of any sketch, plan, model, article or document include the transfer or transmission of the sketch, plan, model, article, note or document.

The whole definition appears to be unnecessary, and should be omitted.

Section 2(3)—"document".

7.23. Section 2(3) defines "document" as including part of a document. The definition is unnecessary because the definition of 'document' in the General Clauses Act[1] is applicable to the whole as well as a part of a document. Clause (3) of section 2 should therefore be omitted.

Definition of enemy.

7.24. We considered the question whether the expression "enemy" should be defined. The expression occurs at several places in the Official Secrets Act. There is an English decision[2] which contains observations to the effect that the word 'emeny' in the Official Secrets Act includes a potential enemy.

Provision as to "constructive enemy country" in Korea.

7.25. In one of the foreign Penal Codes[3] the concept of 'constructive enemy country' has been introduced in these terms.

> "In any of the crimes of Article 93 through the preceding Article,[4] a foreign country or a group of foreigners taking a hostile action against the Republic of Korea shall be deemed an enemy country."

The English decision[5] is likely to be followed in India also and it is not desirable to define the expression 'enemy'. It may be left undefined so as to facilitate an elastic construction according to context.

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1. Section 3(18), General Clauses Act, 1897, defines a document as including "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."

2. *R.* v. *Parrott*, (1913) 8 Cr. App. Rep. 186 (C.C.A.).

3. Section 102, Korean Penal Code.

4. Article 93, Korean Penal Code punished a person who fights against the Republic of Korea by joining an enemy country. Article 101 punishes, *inter alia*, a preparation or conspiracy to commit an offence under article 93.

5. Para. 7.24 above.

Definition of "foreign agent" to be transferred from section 4(2)(b) of the Secrets Act.

7.26. There is, in section 4(2)(b) a definition of 'foreign agent', which needs no change but can be included in the general definition[1].

Section 2(4),'model'.

7.27. Section 2(4) which defines 'model' needs no change[2].

Section 2(5), 'munitions of war'.

7.28. Section 2(5) defines 'munitions of war'. The importance of this definition is mainly for the purposes of the definition of 'prohibited place'[3], and for one of the penal provisions[4]. No change of substance is needed in this definition[5].

Section 2(6)— Definition of "office under Government" to be omitted.

7.29. Section 2(6) defines the expression 'office under Government', as including any office or employment in or under any department of the Government. We think that the definition is unnecessary. The expression 'office under Government' is well understood. The definition should be omitted.

The definition does not include employment under public enterprises, and hence a person holding office in such enterprise does not fall within that part of the penal provision in section 5(1), which[6] relates to information entrusted in confidence by a person 'holding office under Government' or 'information obtained as a person who holds office under Government'. But that part of section 5(1) which refers to prohibited places or information likely to assist the enemy may be attracted. Moreover, where munitions of war are the subject matter of the information, the specific provision relating to munitions of war in section 5(3) would also come into play. Hence the scope of the Act need not be expanded on this point.

Section 2(7)— "photograph".

7.30. Section 2(7) defines photograph as including an undeveloped film or plate. It needs no change[7].

Section 2(8)— 'Prohibited Place'.

7.31. Section 2(8) defines the expression 'prohibited place'. This is the most important definition in the Act. Its importance is illustrated by several provisions, but it is sufficient to mention section 3(1) which, *inter alia*, punishes, (under the head of 'spying'), any person who, for any purpose prejudicial to the safety or interest of the State, approaches, inspects, passes over or is in the vicinity of, or enters, any 'prohibited place'.

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1. The definition of 'foreign agent' is proposed to be included in the general definitions applicable to the whole Act.

2. The definition of 'model' is proposed to be included in the general definitions applicable to whole Act.

3. Section 2(8)(d).

4. Section 5(3).

5. The definition of 'munitions of war' is proposed to be included in the general definitions applicable to the whole Act.

6. *Cf.* para. 7.61, below.

7. The definition of 'photograph' is proposed to be included in the general definitions applicable to the whole Act.

Definition of "prohibited place" analysed.

7.32. The definition in section 2(8) covers four classes of places. Clause (a) relates to certain works, which, broadly speaking, comprise works of defence or establishments relating to the armed forces, mines, military communications and the like, and factories etc. used for manufacturing munitions of war. The works, establishments, mines, communications and factories etc. *must belong to or be occupied by* the Government, under clause (a). Clause (b) covers any place not *belonging to Government*, where any munitions of war or any sketches, models, plans or documents relating thereto are being made, repaired, gotten or stored, under contract with, or with any person on behalf of, Government or otherwise on behalf of Government.

Clause (c) covers any place *belonging to or used for the purpose of Government*, which is for the time being declared by the Central Government by notification in the Official Gazette, to be a prohibited place for the purposes of the Act, on the ground that information with respect thereto, or damage thereto, would be useful to an enemy[1].

Clause (d) covers a railway, road etc. or other means of communications by land or water or any place used for gas, water or electricity or other public works etc., or a place where munitions of war etc. are being made etc. *otherwise than on behalf of Government*, which is for the time being declared by the Central Government by notification to be a prohibited place, on the ground that information with respect thereto, or the destruction or obstruction thereof, would be useful to an enemy[1].

Defect in clause (d) of the definition.

7.33. Clause (d) lacks clarity. While enumerating the various places, it does clearly not bring out the idea that the two requirements, namely,—

(*i*) a declaration should be made that information relating to, or obstruction etc. of the place, would help the enemy, and

(*ii*) a copy of the notice declaring the place to be a prohibited place should be affixed,

are intended to apply to every one of the *places* enumerated in the clause.

Recommendation for amending the definition of "prohibited place".

7.34. Apart from this verbal defect, it would be seen from the above analysis, that while places directly concerned with defence installations are adequately covered, other places, information regarding which may be useful to the enemy, are not sufficiently provided for. Clauses (c) and (d), which relate to places, information regarding which may be useful to an enemy, are hedged in with minute limitations; under clause (c), the place must belong to or be used by Government, and under clause (d), the

1. The clause requires that a copy of the notification should be affixed to the place so notified.

emphasis is on the *nature of the place* (namely, means of communications or places used for public works or places where the munitions of war are made etc.). It is felt that there may be places which do not fall under clauses (c) and (d), and which, nevertheless, are important from the point of security, insofar as information with respect thereto may be useful to an ememy. The Central Government should have power to notify *any place* as a prohibited place on that ground. We, therefore, propose a new clause, giving such power to the Central Government. This will render (c) and (d) unnecessary.

Other minor changes recommended.

7.35. The changes which we recommend in clauses (a) and (b) are of minor verbal nature. The definition is proposed to be split up into more intelligible categories. A short expression 'armed force establishment' is proposed to be used, in place of the lengthy enumeration of such establishments; the reference to 'mine' is to be omitted as unnecessary, as a 'minefield' is already mentioned[1].

The revised definition will be as follows:—

"(*i*) 'prohibited place' means,—

(*i*) any armed force establishment, station or camp;

(*ii*) any work of defence, wireless or signal station, telegraph or telephone installation, arsenal, minefield, ship or aircraft under the control of any of the armed forces;

(*iii*) any factory, dockyard or other place belonging to, or occupied by or on behalf of, Government, and used for the purpose of making, repairing or storing any munitions of war or any sketches, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;

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

(*v*) any other place which is for the time being declared by the Central Government by notification in the Official Gazette to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and at which a copy of such notification is displayed for public information."

1. The definition of 'prohibited place' is proposed to be included in the general definitions applicable to the whole Act.

Section 2(9)—Definition of "sketch".

7.36. Section 2(9) defines a 'sketch' as including any 'photograph' or other mode of representing any place or thing. We propose to add 'plan' in this definition, so as to avoid repetition of the word 'plan' in the various succeeding provisions[1].

Section 2(1)—"Superintendent of police" to be omitted.

7.37. Section 2(1) defines 'Superintendent of Police'. The only practical utility of the definition is in the power of the Central Government to designate lower officers as Superintendents of Police. The various powers under the Act may well be confined to officers appointed as Superintendent of Police. Where it is considered necessary to invest some power on subordinate police officers, this has been expressly provided for[2]. As regards higher officers, no practical difficulty is likely to be caused by the absence of a definition. We, therefore, recommend omission of this definition.

Section 3(1)—Analysis.

7.38. Section 3(1) deals with the most important offence under the Act. Though described as 'spying', it comprises acts of three types, as indicated in three clauses of the sub-section. Clause (a) emphasises certain acts done in relation to a 'prohibited place', described as approaching, inspecting, passing over, being in the vicinity of, or entering 'for any purpose prejudicial to the safety or interests of the State'. Clause (b) is concerned with making a sketch etc. useful to an enemy, with the same purpose. Clause (c) deals with obtaining or communicating etc. any secret official code or pass word or sketch etc. or information useful to an enemy, relating to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States, again with the same purpose.

Chandler's case.

7.39. For a correct interpretation of the expression 'safety or interests of the State'[3] occurring in this provision, we may refer to an important English case[4] on a similar provision in the English Act. In that case the airfield, which was occupied by the United States Air Force Squadrons, had been declared a 'prohibited place' within section 3 of the Official Secrets Act, 1911 (English). Thereafter, the appellants, members of 'Committee of 100', which was carrying on a campaign for nuclear disarmament by organising demonstrations of civil disobedience, planned to urge demonstrators to sit or lie on the road outside the entrance to the airfield so as to black access to it, and to encourage a smaller number of persons to enter the field, and, by sitting in front of aircraft, to prevent them from taking off. This second object was not carried out, as the demonstrators were prevented by the police from entering the field. On these facts, the appellants were charged with conspiring to commit a breach of section 1 of the Official Secrets Act, 1911.

1. The definition of 'sketch' is proposed to be included in the general definitions applicable to the whole Act.

2. See paras. 7.82 and 7.84 below (relating to sections 8 and 10).

3. Para. 7.38, above.

4. *Chandler* v. *D.P.P.*, (1962) 3 W.L.R. 694, 705 (H.L.) (Lord Reid) 709 (Lord Radcliffe).

Meaning of "safety of the State" explained by Lord Reid.

7.40. While constructing the expression "Safety or interests of the State," Lord Reid said :

> "Next comes the question of what is meant by the safety or interests of the States. "State" is not an easy word. It does not mean the Government or the Executive. *'L'etat c'est moi'* was a shrewd remark, but can hardly have been intended as definition even in France of the time. And I do not think that it means, as counsel urged, the individuals who inhabit these islands. The statue cannot be referring to the interests of all those individuals because they may differ and the interests of the majority are not necessarily the same as the interest of the State. Again we have seen only too clearly in some other countries what can happen if you personify and almost deify the State. Perhaps the country or the realm are as good synonyms as one can find and I would be prepared to accept the organised community as coming as near to a definition as one can get."

Meaning of 'motive' and 'purpose' explained by Lord Radcliffe.

7.41. Lord Radcliffe dealt with motive and purpose in these words, "All controversies about motives or intentions or purposes are apt to become involved through confusion of the meaning of the different terms and it is perhaps not difficult to show by analysis that the ideas conveyed by these respective words merge into each other without a clear line of differentiation. Nevertheless a distinction between motive and purpose, for instance, is familiar enough in ordinary discussion and there are branches of law in which the drawing of such a distinction is unavoidable..... I do not think that the ultimate aims of the appellants[1] in bringing about this demonstration of obstruction constituted a purpose at all within the meaning of the Act. I think that those aims constituted their motive, the reason why they wanted the demonstration, but they did not qualify the purpose for which they sought to enter the airfield.

We may assume that the Courts in India will adopt the same view.

Question of capital punishment considered, with refcrence to sections 3 and 5.

7.42. There is a suggestion that the maximum penalty for offences under sections 3 and 5 should be enhanced to include the death penalty, if the act relates to defence installations[2]. The suggestion raises important and controversial issues as to the desirability of capital punishment.

The Law Commission in the Report on "Capital Punishment", observed.

> "473. The offence of *espionage* should, it has been suggested, be made a capital one. It may be noted, that where espionage

1. The ultimate aim was said to be the prevention of a nuclear war.
2. F.1(1)/71-L.G., S.No. 21 (Suggestion forwarded by one Ministry).
3. 35th Report (Capital Punishment), paragraphs 473-474.

consists of acts which constitute an abetment of the waging of war against the State, the offence would be amply covered by section 121 of the Indian Penal Code, which allows the penalty of *death*. Other cases of collection and transmission of State secrets mostly fall under the Official Secrets Act[1], section 3(1) of which provides the maximum punishment of imprisonment up to 14 years. In times of emergency, additional provisions are made by special legislation[2].

474. Thus, under section 5(4) of the Official Secrets Act, 1923, as amended by the Defence of India Act[3], a person guilty of an offence under section 5 of the Official Secrets Act shall, if such offence is committed with intent to wage war or to assist any country committing external aggression against India, be punishable with death, or imprisonment for life or imprisonment upto ten years etc[4].

We think that the provisions of the law on the subject as they exist now are, in substance, adequate."

Death penalty for spying not recommended.

7.43. We have also come to the same conclusion. We are aware that in some countries spying (disclosure of national defence secrets) is a capital offence[5]. These are China (Taiwan), Dahomay, Spain, some States of the U.S.A., France, Greece, Iran, Luxembourg[6], Poland, United Arab Republic, Central African Republic, South Africa, El Salvador, Somalia (Northern), Czechoslavakia, Togo, Turkey, U.S.S.R. and Yugoslavia. But, having regard to the recent positive and unmistakable trend towards abolition of capital punishment all over the world, we do not think that death penalty for any offence under the Act would be acceptable at the present day, except during emergency or war.

Question of punishment under section 3(1) considered.

7.44. There is, however, another point relating to punishment which requires attention. Section 3(1) classifies the offences into two parts, according to their gravity and provides for two types of punishment. The offender (to quote the relevant portion) "shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, mine-field, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years, and in other cases to three years."

1. The Official Secrets Act, 1923 (19 of 1923).

2. See the Defence of India Act, 1962.

3. See section 6(1)(b). I Defence of India Act, 1962 (51 of 1962).

4. See also rule 34(6), rule 38(1)(a) and (b), rule 38(5), rule 39(1)(a) and rule 39(2), Defence of India Rules, 1962.

5. See U.N. Publication on Capital Punishment (1962), Table at the end.

6. Luxembourg is, however, *de facto* an abolitionist country.

Imprisonment under section 3(1)— Recommendation for amendment.

7.45. This classification is unnecessary. Apart from the involved nature of the language used, it may be difficult in practice to classify offences into those two parts. It would not be easy to demarcate precisely the scope of the quoted words, especially the phrase "in relation to the naval, military or air force affairs of Government" If a wide meaning is given to that phrase, it may include almost all offences under section 3(1) within the graver part punishable with 14 years. We, therefore, recommend that the distinction should be removed, and the maximum should be 14 years' rigorous imprisonment, leaving it to the discretion of the trying court to impose a lesser sentence, according to the facts and circumstances of each case.

Fine to be added.

7.46. We also propose the inclusion of fine as an additional punishment, in section 3(1).

Drafting changes recommended in section 3(1).

7.47. No other change of substance is necessary in sub-section (1) of section 3, but we recommend a few drafting changes.

Some of these are consequential on the amendments proposed in the definitions, e.g., removal of the word 'plan'[1] from section 3(1), and change in the expressions indicating prejudice to sovereignty and integrity of India or safety or interests of the State.[2]

The lengthy phrase "which is calculated to be, might be, or is intended to be, useful to any enemy", which occurs in section 3, is proposed to be replaced by the shorter but equally comprehensive phrase "which is intended or likely to be".

In clause (c) of section 3(1), words referring to the various types of documents or information are proposed to be shortened. In particular, the expression 'document or information' is regarded as sufficient to cover code words and pass words. It also appears to be desirable to split up the clause into two portions, (i) obtaining etc. a document, or information, and (ii) publishing it[3].

Section 3(2), first half, (Evidence of purpose prejudicial to national security) to be extended.

7.48. Section 3(2) contains a special rule of evidence which relaxes the high standard of proof required for conviction on a criminal charge.

The first part of this sub-section states that on a prosecution for an offence punishable under section 3(1), it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted, if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State.

1. See proposed definition of "sketch"; paragraph 7.36, above.
2. See proposed definition of the expression "prejudicial to national security".
3. Revised drafts of penal provisions in sections 3 to 10 are given in para 7.86, below.

We consider that this part of section 3(2) should be extended to a few other offences also. In all those offences, the essential ingredient is the mental element, namely, the existence of a purpose prejudicial to the national security. Such a purpose cannot be ordinarily proved by direct evidence and has to be inferred from the facts and circumstances of such case and the antecedents of the accused. Hence the rule of evidence applicable for proof of the offence of spying may, with equal justification, be applied for those offences also.

Our recommendation will necessarily involve the omission of sub-section (4) of section 6, because according to our suggestion, the aforesaid special rule of evidence will be applicable[2] to the whole of section 6.

Section 3(2), latter half-presumptions in prosecutions for spying.

7.49. The second part of section 3(2) provides that if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place or relating to anything, in such a place, or any secret official code or pass word is made, obtained, collected, recorded published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to safety or interests of the State, such sketch, plan, model, article, note, document, information, code or pass word shall be presumed to have been made, obtained, collected, recorded, published, or communicated for a purpose prejudicial to the safety or interests of the State.

Comparable English provision.

7.50. This provision corresponds to section 1(2) of the (English) Official Secrets Act, 1911, as amended in 1920. The latter, in its turn, appears to follow the language of a parallel provision in the (English, Prevention of Crimes Act, 1870. That Act, provides with reference to the offence of vagrancy[3], that "in proving the intent to commit a felony (now an arrestable offence), it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent and he may be convicted if from the circumstances of the case, and from his known character as proved to the justice of the peace or court before whom or which he is brought, it appears to such justice or court that his intent was

1. (a) Para-military groups;
   (b) Treasonable relations with foreign State etc. or institution etc.
   (c) Treasonable deception;
   (d) Sabotage;
   (e) Spying;
   (f) Divulging official secrets;
   (g) Using false official uniform etc.

2. At present, section 6(4) applies the provisions of section 3(2) only where the offence relates to specified matters.

3. Section 15, Prevention of Crimes Act, 1870.

to commit an arrestable offence; and the provisions of the said section, as amended by this section shall be in force in Scotland and Ireland....."

General rule as to evidence of bad character modified.

7.51. It is well-established in England[1] as well as in India[2], that (subject to certain exceptions not relevant for the present purpose), evidence of bad character of the accused cannot be given. The provision in section 3(2) is in the nature of an exception to that rule. The exception has, apparently, been considered necessary in view of the nature of the offence, and the difficulty of securing direct evidence of purpose.

Section 3(2) second part to be combined with section 4.

7.52. We recommend that the second part of section 3(2) should be combined with section 4, as they both deal with rules of evidence[3].

Section 4(1).

7.53. Section 4(1) provides that in any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without India, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

This provision creates no presumption, but establishes rule about "relevance" of one fact to another. The relevance is for both the *actus reus* and the *mens rea* as will be clear if reference is made to section 3. The act of obtaining information useful to an enemy, for a purpose prejudicial to the safety or the interests of the State, is, under section 3, punishable with imprisonment for not more than 14 years. Section 3, thus, requires (*i*) an act, and (*ii*) a purpose. The act is obtaining of the information. The purpose is one prejudicial to the interests or safety of the State. Under section 4(1), communication with a foreign agent is relevant, both to prove the act of obtaining information which might be useful to an enemy, and to prove the purpose.

Section 4(2).

7.54. Section 4(2) contains a variety of provisions relevant for decision of the question whether a person can be said to have been in communication with a foreign agent within the meaning of sub-section (1). Two of the provisions contain rebuttable presumptions, and one provision is in the nature of a definition applicable in construing one of the rebuttable presumptions.

Under clause (a) of the sub-section, a person "may be presumed to have in communication with a foreign agent" if—

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

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1. *R.* v. *Butter wasser,* (1947) 2 All E.R. 415 (C.C.A.).

2. Section 54, Evidence Act.

3. Re-drafts of sections 3(2) and 4 are included in the procedural provisions at the end of this Chapter. Paragraph 7.119, below.

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

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

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

proof of *mens rea* facilitated.

7.55. The *actus reus* of obtaining useful information may, in short, be evidenced by attempted communication with the person reasonably suspected of being a foreign agent. Proof of the *mens rea* is facilitated by allowing, in evidence [1], statements of the accused's past behaviour and character, under section 3(2).

Drastic presumptions necessary.

7.56. These presumptions and rules of evidence may appear to be very drastic. But they are very necessary for offences of this type. We may, in this connection, refer to a view expressed in the U.S.A. where such presumptions are not available. An American writer has observed [2]—

"A further point in the program to improve our security posture is that we should review and tighten up our espionage laws in certain respects. Since 1946, on several occasions, attempts, all abortive, have been made by the executive branch of government to amend the Espionage Act so that a prosecution would not fail merely because of difficulties in establishing "an intent or reason to believe" that the information wrongly divulged or passed to a foreign government was "to be used to the injury of the United States or to the advantage of a foreign nation. This is hard to prove. Fortunately, the requirements of proof of such intent has already been eliminated in cases involving restricted data under the Atomic Energy Act and with regard to disclosure of classified information in the field

1. Paragraphs 7.49 and 7.50, above.

2. Allen Dulles, The Craft of Intelligence, (Harper), (1963), page 248.

of 'communications intelligence'. The requirements still holds, however, in cases where other types of secret and classified information are divulged".

Minor changes in section 4 recommended.

7.57. We do not recommend any change in this section, except the transfer of the definition of "foreign agent" to the definition clause[1] and the merger of section 3(2) with this section[2].

Section 5(1).

7.58. Section 5(1) punishes the wrongful communication of the specified documents or information by a person in possession or control of the document or information. These may be conveniently described as "official secrets."

Overlapping in part between section 3(1) and section 5(1).

7.59. The wrongful communication of an official secret is also dealt with in section 3 (1) (c) and there may be some overlapping between that section and section 5(1). But section 3(1)(c) is restricted to communications intended to be useful to an enemy or relating to matters likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States (after the amendment made by Act 24 of 1967). Section 5(1) on the other hand is somewhat wider, and penalises not only communication and use for a purpose prejudicial to the safety and interest of the State but also unauthorised retention, or failure to take care of such official secret.

Wide scope of section 5(1) and 5(3).

7.60. Section 5 (1) and section 5 (3) speak, respectively, of "any person", "any foreign power or in any other manner prejudicial to the safety of the State", and "directly or indirectly", to any foreign power or in any other manner prejudicial to the safety or interest of the State". These indicate sufficiently the wide scope of the section.

All confidential communications covered by section 5(1).

7.61. The wide language of section 5(1) may lead to some controversy. It penalises not only the communication of information useful to the enemy or any information which is vital to national security, but also includes the act of communicating in any unauthorised manner any kind of secret information which a Government servant has obtained by virtue of his office. Thus, every noting in the Secretariat file to which an officer of the Secretariat has access is intended to be kept secret. But it is notorious that such information is generally communicated not only to other Government servants but even to some of the non-official public in an unauthorised manner. Every such information will not necessarily be useful to the enemy or prejudicial to national security. A question arises whether the wide scope of section 5(1) should be narrowed down to unauthorised communication only of that class of information which is either useful to the enemy or which may prejudicially affect the national security leaving unauthorised communication of other classes of secret information to be a mere

1. Paragraph 7.26, above.
2. Paragraph 7.52, above.

breach of departmental rules of justifying disciplinary action. It may, however, be urged that all secret information accessible to a Government servant may have some connection with national security because the maintenance of secrecy in Government functions is essentially for the security of the State. In this view, it may be useful to retain the wide language of this section, leaving it to the Government not to sanction prosecution where leakage of such information is of a comparatively trivial nature not materially affecting the interests of the State[1].

Applicability to retired Government servants.

7.62. Incidentally, we may point out that a query was raised whether the words in this sub-section are wide enough to include retired or dismissed Government officers also. We think that they are. The Words "has held)" should, in the context, be taken as including retired or dismissed Government servants also.

Drafting change recommended in section 5(1).

7.63. The language of sub-section (1) of section 5 is cumbersome and lacks clarity. Hence,, without any change in substance, we recommend the adoption of the drafting device separately defining "official secret" as including the enumerated classes of documents and information.

Provision of section 5(4) as to punishment to be amended.

7.64. The punishment for offences under sub-section (1) of section 5 is, at present, mentioned separately in section 5(4). We propose to include it in sub-section (1). Further, the present punishment—imprisonment of either description for three years or fine or both—is, in our view, inadequate, for some cases. We propose a maximum of seven years for important official secrets, and three years in other cases. In the former case, imprisonment will be mandatory, but fine can be added. In the latter case, the existing punishment will continue. Under the category of important official secrets we include secrets intended or likely to be directly or indirectly useful to an enemy or prejudicial to the national security.

Section 5(2)— Receiving official secrets.

7.65. Section 5(2) penalises voluntary receipt of official secrets (fully described in that sub-section) if the offender at the time of such receipt knew or had reasonable grounds to believe that the secrets were communicated in contravention of the Act. It is extremely difficult to prove this mental element namely that he knew or had reasonable grounds to believe that the secrets were communicated in contravention of the provisions of the Act. The language of this sub-section is somewhat similar to the language of section 411, I.P.C. which requires guilty knowledge on the part of a person retaining stolen property. Just as there is a presumption of such guilty knowledge arising out of recent possession [see illustration (a) to section 114 of the Evidence Act] we consider that a similar presumption should be made to the effect that where a person is in possession of an official secret without lawful authority there may be a rebuttable presumption that he received

1. Shri Narasimham, however, has a reservation on this subject.

it knowing or having reason to believe that it was communicated to him in contravention of the Act.

Section 5(3) to be omitted.

7.66. Section 5(3) deals with certain acts regarding information relating to munitions of war. Briefly, a person who, having in his possession or control any sketch etc. document or information which relates to munitions of war[1], communicates it directly or indirectly to any foreign power or in any other manner prejudicial to the security of the state, is punished under the sub-section. We think that most cases of such communication would fall either under section 3(1)(c) or under section 5 (1) (a), and, therefore, do not see any need for retaining sub-section (3). We recommend that it should be omitted as a redundant provision.

Section 5(4).

7.67. Sub-section (4) of section 5 prescribes the punishment for offences under the section. It has already been dealt with.[2]

Section 6, and the variety of acts covered.

7.68. Section 6 punishes a variety of acts when committed for the purpose of gaining admission to a prohibited place[3] or for any other purpose prejudicial to the safety of the State.

This section deals with offences relating to three kinds of articles, which can be coveniently labelled as official uniforms, official passes or documents and official seals. The dominant object of the section is to punish frauds pertaining to any of these three, when committed for the purpose mentioned above. Many of the punishable acts would, no doubt, fall under the offence of cheating or the offence of forgery (or allied offences) under the Penal Code. What distinguishes the offences under the Official Secrets Act from such crimes under the Penal Code, is the purpose behind the offences, and it is this purpose which renders appropriate their inclusion in a law primarily designed to protect national security. It is this purpose, again, which constitutes the common link between types of conduct which are otherwise before hetereogeneous in character.

This essential link may sometimes be overlooked due to the length of sentences in this section and their lack of clarity.

Section 6(1), opening paragraph-word 'other' to be omitted.

7.69. In the opening paragraph of section 6(1), the purpose is described as one of gaining admission to a prohibited place, (or of assisting another person to do so), or "any other purpose prejudicial to the safety of the State". The word 'other' is not correctly used in this context. It implies that the purpose mentioned earlier in the paragraph, namely, the "purpose of gaining admission or of assisting any other person to gain admission to a prohibited place", is necessarily one prejudicial to the safety of the State. But that view would conflict with

1. "Munitions of war" is defined in section 2(5).

2. See discussion relating to punishment under section 5(4), Paragraph 7.64, above.

3. Section 6(2), however, does not include the purpose of gaining admission to a prohibited place.

the opening line of section 3(1). Section 3(1) (so far as is relevant) punishes a person, who, "for any purpose prejudicial to the safety or interests of the State", approaches etc. a prohibited place. If gaining admission to a prohibited place necessarily and in all cases indicative of a purpose prejudicial to safety of the State, then there was no need to mention that purpose in the opening paragraph of section 3(1).

Hence the word 'other' is misleading in the opening paragraph of section 6(1), and should be omitted.

Section 6(1)(a) to be shortened.

7.70. We further recommend the shortening of clause (a) in section 6(1) by substituting the expression "armed force" in place of the words referring to naval, military and air force.

Section 6(1)(b)— verbal changes recommended.

7.71. Clause (b) of section 6(1) punishes a person who makes any false statement, for the above purpose, orally or "in writing in any declaration or application" or in any document signed by the offender. The quoted words are, in our view, unnecessary, as the word 'document' would cover writing in a declaration or in an application. We, therefore, propose to omit them.

Section 6(1)(c)— to be shortened after addition of definition of "official document".

7.72. Clause (c) of section 6 (1) punishes a person who forges, alters or tampers with, any passport or naval, military etc. pass, permit, certificate etc. or other document of a similar character, as well as a person who knowingly uses or has in possession any forged etc. passport. The Word "knowingly", which occurs in the latter part, does not occur in section 1 (1) (c) of the English Act of 1920. The word was inserted in the Indian Act as a result of the amendment suggested by Shri K.S.L. Agnihotri[1], which was accepted by Government.[2]

No change of substance is needed in clause (c). But we propose to add a definition of "official document" separately, and this enables the clause to be shortened.

Section 6(1)(d)— personation and false representations.

7.73. Clause (d) of section 6 (1) punishes a person who, for the specified purpose—(i) personates a person holding an office under Government, or (ii) falsely represents oneself to be or not to be a person to whom an official document or secret official code etc. has or has not been communicated, or (iii) with intent to obtain an official document etc., knowingly makes a false statement. It needs no change of substance.

Drafting changes recommended.

7.74. We recommend a slight recasting of this clause for securing grammatical accuracy, and also suggest that the latter part of this clause relating to making a false statement could be made into a separate clause.

1. Legislative Assembly Debates, Vol. III, No. 44, dated February 24, 1923.
2. Also see Council of States Debates, dated 8th March, 1923, Vol. III, No. 44.

Section 6(1)(e) to be shortened after adding definition of 'official seal'.

7.75. Clause (e) of section 6(1) punishes the use or possession of certain dies, seals and stamps without the authority of Government or the authority concerned. Briefly, the dies, seals or stamps with which the clause is concerned are those belonging to or made by Government etc. The clause needs no change of substance. But we propose to define "official seal" separately, thereby enabling a shortening of the clause. Also, we propose to transfer the matter contained in section 6(2)(c) to this clause, as the subject-matter of both is the same.

Section 6(1)(e)—Portion relating to counterfeit die to be omitted.

7.76. The last portion of section 6(1) (e) punishes a person who knowingly uses or has in his possession or under his control "any such conterfeited die" etc., *i.e.*, any counterfeit official seal. This appears to be unnecessary, since section 6(2)(c)[1] will cover it. We therefore propose to omit this portion.

Section 6(2)(a).

7.77. In clauses (a) and (b) of section 6(2) minor verbal changes alone are suggested.

Section 6(2)(c).

7.78. Clause (c) of section 6(2) deals with the offence of manufacturing without lawful authority or excuse (and other acts in respect of), "any such die, seal or stamp as aforesaid" *i.e.*, as is referred in section 6(1)(e). We have already recommended[2] transfer of the substance of this clause to section 6(1)(e).

Section 6(3).

7.79. Section 6(3) needs no change of substance.

Section 6(4).

7.80. As already recommended[3], sub-section (4) of section 6, need not be separately retained, in view of the proposed extension of the scope of section 3(2), first half.

Section 7.

6.81. Section 7 punishes interference with officers of the police or members of the armed forces of the Union. But the interference must be "in the vicinity of any prohibited place",—a very important ingredient not brought out in the marginal note. The words "of the Union" in subsection (1) should be omitted, in view of the proposed definition of "armed forces[4]".

Section 8.

7.82. Section 8 imposes an obligation to give information about certain matters, on a demand being made by (i) A Superintendent of Police or other police officer not below the rank of Inspector, empowered by an Inspector-General of Police etc., or (ii) any member of the armed forces engaged in guard, patrol, sentry or similar duties. This corresponds to section 6 of the English Act of 1920, as it stood before 1939.

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1. Paragraph 7.78, below.
2. See discussion relating to section 6(1)(e), paragraph 7.75, above.
3. Paragraph 7.48, above.
4. See the proposed definition of "armed forces".

We propose to substitute "Sub-Inspector" for "Inspector", as it appears that the present restriction cause some practical difficulty. We also propse to put the portion relating to armed forces first, as that is of greater practical importance in the context of this section.

Section 9 to be omitted.

7.83. Section 9 punishes any person who attempts to commit or abets the commission of an offence under the Act. Such person is punishable with the same punishment and is liable to be proceeded against as if he had committed such offence. This section corresponds to section 7 of the English Act of 1920.

We are of the view that section 9 can be safely omitted. Abetment of an offence under the new law can be taken care of by the general provision in the Penal Code. So far as attempts are concerned, many of the acts punishable under the penal sections, by their very terms, cover them.

Section 10.

7.84. Section 10 prescribes the penalty for harbouring spies. Section 7 of the English Act of 1911, on which our section 10 is based, is wider in one important respect, namely it covers the harbouring of a *person about to commit or who has* committed any offence under the Act. The Indian section is limited to the harbouring of a person who has committed one of the more serious offences under the Act.

Further, the Indian section creates two separate offences. The ambiguity caused by the use of the words 'omits or refuses' in section 7 of the English Act, has been avoided, and it has been provided that the information shall be given on demand to the police officers who may demand it under section 8.

The first is a departure of substance. The second is a matter of drafting, and represents a change made by the Select Committee on the Indian Official Secrets Bill, 1922[1].

It should, finally, be noted that section 10, in some respects, goes beyond section 212, Indian Penal Code, which is the general provision punishing the harbouring of offenders.

Minor changes recommended.

7.85. No change of substance is needed in this section. But we propose to substitute[2] 'Sub-Inspector' for 'Inspector' in sub-section (2) which relates to the duty to give, on demand, certain information to the specified officer.

1. Report of the Select Committee, 20-1-1923, portions relating to clause 10, Official secrets Bill.

2. *Cf.* amendment proposed in section 8(1), Paragraph 7.82, above.

Redrafts of penal provisions in sections 3 to 10, Official Secrets Act.

7.86. The penal sections to be taken from the Official Secrets Act (as we propose to redraft them) will be as follows : [1]

"33. If any person, for any purpose prejudicial to the national security,—

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

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

(c) obtains, collects or records any such model, sketch, or note as aforesaid, or any article, documents or information which is intended or likely to be, directly or indirectly, useful to an enemy, or relates to a matter the disclosure of which is likely to be prejudicial to the national security; or

(d) punishes or communicates to any other person any such things or information as aforesaid,

he shall be punishable with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

Divulging official secrets.

34. (1) If any person, having in his possession any official secret,—

(a) uses it for the benefit of any foreign State or in any manner prejudicial to the national security; or

(b) wilfully communicates it to any person other than a person to whom he is authorised to communicate it, or a person to whom it is, in the interests of State, his duty to communicate, or a Court of Justice; or

(c) retains it when he has no right to do so, or when it is contrary to his duty to do so, or wilfully fails to comply with any direction issued by lawful authority with regard to its return or disposal; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the official secret,

he shall—

(i) if the official secret is one specified in clause (b) or clause (c) of section 33, be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine;

(ii) in other cases, be punishable with imprisonment for three years, or with fine, or with both.

1. The rules of evidence and presumptions in section 3(2) and section 4, Official Secrets Act, will appear at the end of the Chapter.

(2) If any person receives any official secret knowing or having reason to believe that it is communicated to him in contravention of sub-section (1) of this section or section 33, he shall—

(i) If the official secret is one specified in clause (b) or clause (c) of section 33, be punishable with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine;

(ii) in other cases, be punishable with imprisonment for three years, or with fine, or with both.

(3) For the purposes of sub-section (2) a person who is in possession of an official secret without lawful authority may be presumed, until the contrary is proved to have received it knowing or having reason to believe that it is communicatd to him in contravention of sub-section (1) of this section or section 33, as the case may be.

(4) In this section, "official secret" means any thing or information—

(a) which is specified in clause (b) or clause (c) of section 33; or

(b) which has been entrusted in confidence to the offender by any person holding office under the Government; or

(c) which the offender has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract.

Using false official uniforms, documents and seals for purpose prejudicial to national security.

35. (1) If any person, for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place or for any purpose prejudicial to the national security,—

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

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

(c) forges, alters, or tampers with any official document, or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be, a person holding office under Government, or falsely represents himself to be or not to be a person to whom an official document has been duly issued or communicated; or

(e) with intent to obtain an official document whether for himself or any other person, knowingly makes any false statement; or

(f) without lawful authority, uses, has in his possession or under his control, manufactures or sells any official seal, or any die, seal or stamp so nearly resembling an official seal as to be calculated to deceive, or counterfeits any official seal,

he shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person, for any purpose prejudicial to the national security,—

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

(b) allows another person to have possession of, or communicates to another person, any official document issued for his use alone; or

(c) without lawful authority or excuse, has in his possession any official document issued for the use of some person other than himself; or

(d) on obtaining possession of any official document, by finding or otherwise, wilfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer;

he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) In this section,—

(a) "official document" means any armed force, police or official pass, permit, certificate, licence or other document of a similar character, and includes any secret official code or pass-word;

(b) "official seal" means any die, seal, stamp of or belonging to, or used, made or provided by any department of Government, or by any diplomatic or armed force authority appointed by, or acting under the authority of, Government.

Interfering with the Police or armed forces on duty at a prohibited place.

36. If any person in the vicinity of any prohibited place obstructs, knowingly misleads or otherwise interferes with or impedes, any police officer or any officer or member of the armed forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, he shall be punishable with imprisonment which may extend to three years, or with fine, or with both.

37. If any person fails—

(a) to give on demand to any member of the armed forces engaged on guard, sentry, patrol or other similar duty, or to any superintendent of Police, or to any other police officer not below the rank of Sub-Inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to an offence or suspected offence under section 33 or section 34, or

(b) If so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information,

he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Penalty for harbouring saboteurs or spies.

38. (1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 32 or section 33, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person who has harboured any such person as aforesaid, or who has permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid, fails to give on demand to a Superintendent of Police or to a police officer not below the rank of Sub-Inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both."

Procedural provisions in the Official Secrets Act.

7.87. The procedural provisions in the Official Secrets Act may not be considered.

Section 11 (1) -Search -warrants Magistrates

7.88 Under section 11 (1), if a Presidency Magistrate, Magistrate of the first class or sub-divisional Magistrate is satisfied, by information on oath, that there is reasonable ground for suspecting that an offence under the Act "has been or is about

to be committed", then he may grant a search warrant authorising the specified officer to enter, "at any time," "any premises or place named in the warrant", (if necessary, by force) and to search the premises or place and "every person found therein". The police officer can, further be authorised to seize any sketch, plan, model, article, note or document or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed and with regard to which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

Section 11 (2) and 11 (3)..Search by the police.

7.89. Under section 11(2), where it appears to a police officer, not below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary, he may, by written order under his hand, give to any police officer the like authority as may be given by warrant of a Magistrate, as aforesaid. But sub-section (3) provides that he must report such action to the Chief Presidency Magistrate (in presidency town) or to the District or Sub-divisional Magistrate (outside a Presidency town).

Exceptional powers needed.

7.90. It is obvious that these powers are of an exceptional character, in so far as they cover even situations where an offence is about to be committed, and can be exercised at any time and in respect of any place. At the same time, they are needed in the interest of the security of the State. They are exercisable only by judicial or police officers of a high rank, and this is a sufficient safeguard against abuse.

Applicability of Code of Criminal Procedure.

7.91. There is, however, a matter of considerable interest which arises by reason of the fact that the Code of Criminal Procedure, 1898, has also a set of provisions which authorise Magistrates to issue search warrants[1], and also empower an officer in charge of a police station[2] to conduct or order searches for the purpose of an investigation.

Position considered.

7.92. We therefore considered it proper to go into two questions, namely,—

(*a*) how far section 11 of the Act overlaps the power of search under section 96 and section 165, Cr. P.C. and similar provisions; and

(*b*) whether the detailed provisions regulating the exercise of the power of search, as laid down in the Cr. P.C. (e.g. section 103, Cr. P.C. which requires two witnesses) are to be complied with when conducting a search under section 11

1. Clause 93, Cr. P.C. Bill, 1970 (Existing section 96).
2. Clause 167, Cr. P.C. Bill, 1970 (Existing section 1965).

Magistrates' power of issuing search warrants compared.

7.93. As regards question (a)[1], it may be pointed out that the Magistrates' power under the Code is limited to cases where there is a proceeding pending or imminent[2]. Section 11 (1), Official Secret Act, on the other hand, contains no such restriction.[3] Where an offence has been committed, section 11(1) applies even if cognizance has not yet been taken and is not about to be taken. Further, as regards cases where an offence is likely to be committed, there is no overlapping between the Code and section 11, Official Secrets Act, because the Code does not apply.[4]

Section 11 to be retained.

7.94. Hence, notwithstanding the partial overlapping that exists between the Code and section 11, we think that it is preferable to retain section 11. The section should not, of course, be taken as superseding the Magistrates' power under the Code,—though the question is mostly academic having regard to the wide scope of section 11.

Provisions of the Cr. P.C. to be applied to searches.

7.95. As regards question (b)[5], our view is that the procedure in the Criminal Procedure Code is not attracted. We recommend that those provisions should, as far as may be, extend to searches under this section.

Section 11 to be extended to sabotage.

7.96. We think that the provisions of section 11 can be usefully extended to sabotage i.e. the new offence[6] proposed to be added by us on the subject, since need for issuing search warrant can arise in respect of that offence also.

Change in the nomenclature of Magistrates consequential on separation, involve verbal changes in sections 11(1) and 11(3), and we propose to modify these sub-sections suitably, for that purpose also.

Section 12—"tender of pardon" to be omitted.

7.97. Section 12 deals with the tender of pardon to a person whose evidence is essential for the successful prosecution for an offence under the Act. The position in this respect may be left to be governed by the general provisions in the Criminal Procedure Code.[7]

As the punishment in most cases, under the Official Secrets Act, as now proposed to be amended, will be imprisonment for seven years, or more, the need for a special provision disappears. Section 12 may, therefore, be omitted.

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1. Para. 7.92, above.
2. That is the result of existing section 96, Cr. P.C. and the judicial construction of that section.
3. See para. 7.88, above.
4. See para, 7.88, above.
5. Para, 7.92, above.
6. Para. 7.12, above.
7. Sections 337 to 339A Cr.P.C.

Section 12 before 1967—Cognizable offence.

7.98. Before 1967, section 12 dealt with other topics. One of them was the offences that were to be cognizable. Under the section as it then stood, only offences punishable with imprisonment upto fourteen years, and offences under section 6(1)(a) of the Act, were cognizable. Section 12, did not in this respect, go as far as the Canadian section,[1] which covers even a person about to commit an offence, and also authorises his arrest without warrant and detention by any constable or police officer. The English Act[2] has also a similarly wide provision.

After the amendment of 1967, all offences under the Act have become cognizable, because under the Criminal Procedure Code[3] if the punishment provided is imprisonment or three years or more, offences under special laws are cognizable.

Bail

7.99 There was also, before 1967, a provision in section 12 regarding the bailability of offences. The provision was somewhat over-liberal, having regard to the nature of the offence. The section after its amendment[4] in 1967, does not deal with bail at all. The matter will, therefore, be governed[5] by the Criminal Procedure Code, under which offences under special laws, which are punishable with imprisonment for three years or more, are non-bailable.

This does not end the matter, because, even where the offence is technically non-bailable, bail is not to be refused as a matter of course. In the case of person suspected of an offence connected with the disclosure of secrets of national importance, there is a probability that his ties with India are very thin, and the probability of his absconding is greater than in the case of other offences. This consideration, no doubt, will be taken into account by courts in considering applications for bail. A legislative provision, by way of restriction on the power of the Courts may not be desirable.

Suggestion relating to section 497 (3A), Cr.P.C. considered.

7.100. According to sub-section (3A) of section 497, Criminal Procedure Code[6] if, in any case triable by a Magistrate, the trial of the person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, then such person shall, if he is in custody during the whole of the said period, be released on bail unless, for reasons to be recorded, the Magistrate otherwise directs. Now, there is a suggestion[7] that this benefit should be denied to the accused tried for offences under the Official Secrets Act. Money, it is stated, is no consideration to foreign agents, and they can afford to jump bail.

1. Section 10, Canadian Official Secrets Act, 1939.
2. Official Secrets Act, 1911.
3. Criminal Procedure Code Bill, 1970, First Schedule.
4. For the law before 1967, see *State* v. *Jagjit Singh*, A.I.R. 1962 S.C. 253.
5. Criminal Procedure Code Bill, 1970, First Schedule.
6. *Cf.* 41st Report, Vol. 2, page 168, Clause 446(6).
7. F.1(1)/71-L.C., S. No. 21 (Suggestion forwarded by one Ministry).

7.101. It does not, however, appear to be proper to insert a rigid provision and to take away the benefit of the above provision in all cases. The Magistrate has a discretion not to release the accused on bail, even if the period of sixty days has elapsed. That discretion should be adequate for practical purposes.

Suggestion to being civilians within the enactments relating to armed forces.

7.102. In one suggestion forwarded to us[1], the position with reference to the three Acts relating to armed forces has been referred to. It has been stated, that section 38 of the Navy Act provides that a person not subject to Naval law who is or who acts as a spy for the enemy is punishable under the Act with 'death.' (This provision could be applied to persons not otherwise subject to the Navy Act, only if they commit the offence of spying in respect of naval secrets or intelligence). It is stated, that if a similar offence is committed in regard to Army or Air Force secrets or intelligence, then civilian personnel could be tried only under the Official Secrets Act[2].

Suggestion considered.

7.103. The suggestion is that to remove the existing disability in the Army and Air Force Acts in respect of bringing to trial persons not governed by those Acts for offences of espionage, a provision similar to that in existing section 38, Navy Act should be introduced in the Army and Air Force Act also, to bring civilians under the three Service Acts.

No change recommended.

7.104. We consider that it would hardly be appropriate to bring civilians within the laws relating to armed forces. The provision in the Navy Act, whatever be its precise scope, does not appear to furnish a satisfactory precedent. We cannot accept the suggestion.

Sections 13 (1) and 13 (2) to be omitted.

7.105. Section 13(1) deals with the court competent to try offences under the Act. District Magistrates and presidency Magistrate can try any offence under the Act, while other Magistrates can do so only if they are of the first class and are specially empowered by the appropriate Government. Section 13(2) gives a right *to the accused* to make a claim to be tried by the Court of Session for an offence under the Act. We propose to omit both the sub-sections. The general provision in the Schedule to the Criminal Procedure Code as to the competence of courts will govern the matter. As the punishment for a few offences under the Act is proposed to be increased, most offences will now go to the higher categories of criminal courts.

Section 13 (3) to be amended.

7.106. Section 13(3) contains certain provisions requiring complaint of the appropriate Government or some officer empowered by the appropriate Government, as a condition precedent to a court's taking cognizance of an offence under the Act, and makes certain other provisions as to the place of trial.

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1. F.1.(1)/71-L.C., S. No. 2 (Suggestion forwarded by one Ministry).

2. The suggestion also discusses the position regarding members of the army and the air force. But that aspect is not of importance for the present purpose.

We propose to substitute sanction of the appropriate Government in place of complaint, as the present provision creates difficulties in the Court. If cognizance is taken only on a complaint then the more elaborate procedure provided in the Code of Criminal Procedure for cases instituted on complaint is to be followed, which is dilatory.

Calcutta Case.

7.107. A calcutta case[1], though not directly involving this aspect, may be referred to. It was held in that case that the Official Secrets Act provides for a special procedure of complaint, and since a complaint by a person authorised under the Act was required, cognizance was taken under section 190(1)(a) and not under section 190(1)(b) of the Criminal Procedure Code. The procedure for trial would, therefore, be regulated by section 252 of that Code, which applies to cases instituted on complaint.

Position altered.

7.108. The change which we recommended will alter this position, as cognizance will now be taken in the usual manner[2].

Section 13 (4).

7.109. Section 13(4) deals with the venue for trial of offences under the Act. It needs no change of substance[3].

Section 14.

7.110. Section 14 provides for exclusion of the public from proceedings of the Court in prosecutions under the Act. A judicial decision on the section may be referred to.

In a Calcutta case[4], an order had already been passed under section 14 excluding the public from the Court room. The question fell to be considered whether the granting of copies of documents, under section 173, Cr. P.C. would be in conflict with the order under section 14. The Magistrate passed a general and vague order granting copies as a matter of course, in respect of documents as found in his order. But the High Court held that such general order of granting or refusing would not be proper in the instant case. The general rule will be that the opposite parties are entitled to such copies, but in respect of each individual copy paid for, the Magistrate has to consider and apply his mind to come to a finding whether the grant of the copy would affect his own order under section 14. If there is no such conflict, then the copies may be granted; but if there is conflict, then the copies cannot be and should not be granted.

Section 14 to be retained and extended.

7.111. Strictly speaking, the section is not required, as there is a general provision in the Criminal Procedure Code[5] on the subject. However, as the section is harmless, it may be retained.

1. *Romendra Singh* v. *Mihit Chaudhary & Others*, A.I.R. 1969 Cal. 535, 538, para, 19.

2. It is proposed to have a general provision requiring sanction of the Central Government or the State Government for every offence under the law.

3. It is proposed to adopt the principle in section 13(4), Official Secrets Act, for all offences under the new law.

4. *Superintendent & Rembrancer of Legal Affairs, West Bengal* v. *Satyen Bhowmik and others*, A.I.R. 1960 Cal. 535.

5. Section 352, Criminal Procedure Code, 1898; section 335, Criminal Procedure Code Bill, 1970.

If it is to be retained, we think that it can be usefully extended to some of the offences[1] which we propose to include in the law, as an emphasis on the power to hold proceedings in camera can be useful for those offences also.

Section 15.

7.112. Section 15 deals with the offences by Companies, and needs no change. After its amendment in 1967, the section has been brought in line with similar provisions in recent Acts.[2]

Sedition to be included.

7.113. So far, we have dealt with espionage. The group with which we are concerned should also include sedition (already contained in the Penal Code).

Insult to the Constitution, National Flag etc.

7.114. We do not consider it necessary to provide specially for insult to the Constitution, the National Flag, or the National Anthem, because the Lok Sabha has just now passed a Bill which fully deals with the subject.[3]

Writing anti-national slogans.

7.115. It was stated during our discussions with officers of one Ministry that anti-national slogans, and slogans extolling a country which has committed aggression against India, were frequently written or shouted. Such acts could not be punished at present, and the suggestion made was that this defect in the law should be removed. It appears to us, however, that this is a very minor act of disloyalty, and could even be regarded as a passing phase. We do not consider it necessary to include such offences in a permanent law on national security.

Defamation of the State.

7.116. We considered the question if publicly defaming or maliciously vilifying India or one of the State should be punished. Reference was made in this connection to the German Penal[4-5] Code. We think, however, that if the defamation of this type is really harmful, it would be possible to take action under other provisions. For example, if a class of persons is defamed, section 153A of the Penal Code could be invoked. If the speech or written causes disaffection likely to lead to a disturbance of public order, the act would amount to sedition.

In the circumstances, no further legislative provision is called or.

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1. (a) Disruptive activity,
   (b) Para-military groups,
   (c) Treasonable relations with foreign States,
   (d) Treasonable deception,
   (e) Sabotage.

2. It is proposed to extend the provision relating to offences by Companies to all offences under the new law.

3. The Prevention of Insult to National Honour Bill, 1971.

4. German Penal Code, 1871, section 96, para. 1(1).

5. Also Draft German Penal Code, section 378.

Accepting titles from foreign Governments.

7.117. It was suggested to us that a provision prohibiting citizens of India from accepting titles from foreign Governments should be inserted. It may be pointed out that article 18(2) of the Constitution already prohibits the acceptance of such titles. It was emphasised that there ought to be a penal sanction to enforce it. We do not, however, consider such a provision to be needed. Such cases may be very rare, and, in any case, the conduct in question has no necessary connection with national security.

Offences to be included.

7.118. As a result, the following offences should be included as constituting subversive activities:—

(1) Disruptive activity[1];

(2) para-military groups[2];

(3) Maintaining relations with a foreign State or institution for a purpose prejudicial to the national security[3];

(4) Treasonable deception[4];

(5) Sabotage[5];

(6) Spying[6];

(7) Divulging Official Secrets;

(8) Using false official uniforms, documents and seals for purpose prejudicial to the national security;

(9) Interfering with the police or armed forces on duty at a prohibited place;

(10) Failure to give information;

(11) Harbouring saboteurs or spies;

(12) Sedition[7].

Revised procedural and evidentiary provisions in the Chapter.

7.119. The procedural and evidentiary provisions in the Chapter[8] relate to:—

(*i*) search warrants[9];

(*ii*) Exclusion of the public from certain proceedings[10];

1. Para. 7.2, above.
2. Para, 7.5., above.
3. Para. 7.6., above.
4. Para, 7.11, above.
5. Para. 7.12, above.
6. see para. 7.86, above for spying and other offences.
7. Para. 7.113, above.
8. Procedural and evidentiary provisions which are relevant also to offences under other Chapters will appear at the end of the new law.
9. *Cf.* para. 7.88 to 7.96, above.
10. *Cf.* para. 7.111, above.

(*iii*) Evidence of purpose prejudicial to national security[1];

(*iv*) Presumptions in prosecutions for spying.[2]

The relevant provisions will be as follows:—

Search Warrants.

40. (1) If a metropolitan magistrate, magistrate of the first class or sub-divisional magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under any of the sections 32 to 38 has been or is about to be committed, he may grant a search warrant authorising any police officer named therein, not being below the rank of an officer in charge of a police station,—

(a) to enter at any time any premises or place named in the warrant, if necessary, by force, and

(*b*) to search the premises or place and every person found therein, and

(*c*) to seize any sketch, model, article, note or document, or anything of a like nature, or anything which is evidence of an offence under any of the said sections having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under any of the said sections has been or is about to be committed.

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

(3) Where action has been taken by a police officer under sub-section (2), he shall, as soon as may be, report such action, in a metropolitan area to the Chief metropolitan magistrate, and outside such area to the district or sub-divisional magistrate.

(4) The provisions of the Code of Criminal Procedure, 1971, shall, so far as may be applicable, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of that Code.

Exclusion of public from certain proceedings.

41. In addition and without prejudice of any powers which a Court may possess to order the exclusion of the public from any proceedings, if, in the course of any inquiry into or trial of, any person for an offence under any of the sections

1 *Cf.* para. 7.48, above.

2 *Cf.* para. 7·49 to 7·62 above.

28 to 38 or in the course of any proceedings in appeal or revision from such inquiry or trial, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the conesry of the proceedings would be prejudicial to the national security, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

"Evidence of purpose prejudicial to national security.

42. In a prosecution for an offence under any of the sections 29 to 35, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the national security, and notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the national security[1].

Presumptions in prosecutions for spying.

43. (1) In any prosecution for an offence under section 33, if any sketch, model, article, note, document or information relating to or used in any prohibited place or relating to anything in such a place is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the national security, such sketch, model, article, note, document, or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the national security[2].

(2) In any prosecution of a person for an offence under section 33,—

(*a*) the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without India, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the national security, obtained or attempted to obtain information which is intended to be or likely to be, directly or indirectly, useful to an enemy[3];

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

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

1. This corresponds to section 3(2), earlier half, Official Secrets Act.
2. This corresponds to section 3(2), latter half, Official Secrets Act.
3. This corresponds to section 4(1), Official Secrets Act.

(*ii*) either within or without India, the name or address of, or any other information regarding, a foreign agent has been found in his possession or has been obtained by him from any other person[1];

(*c*) any address, whether within or outside India, in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent[2]".

1. This corresponds to section 4(2)(a), Official Secrets Act.
2. This corresponds to section 4(2)(c), Official Secrets Act.

CHAPTER 8

SUBVERSIVE ASSOCIATIONS

Introductory.

8.1. A statute equal in importance to the Official Secrets Act is the Unlawful Activities (Prevention) Act, 1967, which was passed primarily to deal with secessionist activities. Pursuant to the acceptance by Government of a unanimous recommendation of the Committee on National Integration and Regionalism appointed by the National Integration Council, the Constitution (Sixteenth Amendment) Act, 1963 was enacted empowering Parliament to impose, by law, reasonable restrictions in the interests of the sovereignty and integrity of India, on the freedom of speech and expression, on right to assemble peaceably and without arms and the right to form associations.

The object of the Act of 1967 was to check and penalise activities directed against the integrity and sovereignty of India.

Constitutional aspects discussed before the Joint Committee.

8.2. During the consideration of the Bill (which led to the Act of 1967) in the Joint Committee discussions took place as to whether the legitimate expression of one's honest opinion about the giving up of a certain territory to a foreign state, would be attracted by the penal provisions of the Bill. The Attorney-General[1], while referring apparently to the penal provisions relating to 'unlawful activity[2]', said in his evidence before the Joint Committee[3] :—

> "Judicially, it is interpreted to mean inciting anyone to action for the purpose of obtaining a particular end. May I say that in my opinion, if we have to give away something or half of our territory and so on, that does not come within that mischief."

Activities dealt with in the Act.

8.3. Broadly speaking, the unlawful activities which the Act seeks to control are those which encourage claims to a cession of Indian territory, or secession of any State from India, or disruption of the sovereignty or territorial integrity of India.

The definition in the Act is as follows:—

> "unlawful activity", in relation to an individual or association, means *any action taken by such individual or association* (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),–
>
> (*i*) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of

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1. Shri C.K. Daphtary.

2. Section 13.

3. Lok Sabha, Joint Committee on the Unlawful Activities (Prevention) Bill, 1967. Evidence, (November, 1967), page 12.

a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;

(*ii*) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India."

Definition of "unlawful association".

8.4. Equally important is the definition[1] of "unlawful association" which reads—

"Unlawful association" means any association which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity".

This covers three types of associations, first, associations whose very object is the commission of an unlawful activity, secondly, associations which encourage or aid persons, whether members or not, to undertake any unlawful activity, and thirdly, associations whose members undertake such activity, whether or not the object of the association is the commission of such acts. The three classes are not mutually exclusive and there could be overlapping.

Constitutional questions.

8.5. Though the provisions of the Act infringe the fundamental rights guaranteed in sub-clauses (*a*) and (*c*) of clause (1) of Article 19, nevertheless they are saved because they are "reasonable restrictions" within the meaning of clauses (2) and (4) of that Article. They are directly relatable to the prevention of injury to the sovereignty and integrity of India.

A doubt may, however, be entertained as to whether the wide definition of "unlawful activity" may unreasonably restrict even the honest expression of opinion by a person for the cession of a portion of Indian territory or giving of support to such an opinion without incitement to violence. There are, however, two considerations which weigh with us in not suggesting any amendment to clarify this doubt. First, the definition begins with the word 'action'. This requires something more positive than an academic speech. Hence the courts may be persuaded to construe the Act narrowly in the manner suggested by the Attorney-General in his evidence before the Joint Committee[2]; and secondly, it is unlikely that Government will consider it necessary to launch a prosecution for a purely academic expression of opinion. The question of a prosecution itself will, therefore, remain as academic as the opinion.

Supreme Court decision in

8.6. In the leading case on the right to form an association, the validity of the Madras Amendment of 1950 to the Indian Criminal Law Amendment Act, 1908 was under challenge. The

1. Section 2(f).
2. Paragraph 8.2. above.

V.G. Row's case.

Supreme Court, after setting out the considerations to be borne in mind in examining the reasonableness of restrictions, observed[1]—

> "Giving due weight to all the considerations indicated above, we have come to the conclusion that section 15(2)(*b*) cannot be upheld as falling within the limits of authorised restrictions on the right conferred by article 19(1)(*c*). The right to form associations or unions has such wide and varied scope for its exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fields, that the vesting of authority in the executive Government to impose restrictions on such right, without allowing the grounds of such imposition, both in their factual and legal aspects, to be duly tested in a judicial inquiry, is a strong element which, in our opinion, must be taken into account in judging the reasonableness of the restrictions imposed by section 15(2)(*b*) on the exercise of the fundamental right under article 19(1)(*c*); for, no summary and what is bound to be a largely one-sided review by an Advisory Board, even where its verdict is binding on the executive government, can be a substitute for a judicial enquiry. The formula of subjective satisfaction of the Government or of its officers, with an Advisory Board thrown into review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits, and cannot receive judicial approval as a general pattern of reasonable restrictions on fundamental rights."

Criterion of provision for judicial inquiry.

8.7. Thus, the vesting of power in the government to impose restrictions on this right *without having the grounds therefore tested in a judicial inquiry*, is an important element to be taken into consideration in judging the reasonableness of the restrictions. The existence of a summary, and largely one-sided, review by an Advisory Board could not be an adequate substitute for a judicial inquiry.

Defect avoided in the Unlawful Activities Act.

8.8. It is obvious that while framing the Unlawful Activities Act, Parliament has tried to avoid the above defect. The important points of difference between the 1908 Act (as amended in Madras in 1950) and the 1967 Act, are worth pointing out.

(*i*) The 1908 Act[2] did not categorically lay down that the notification declaring any association unlawful *shall not have effect* until the Advisory Board has confirmed the declaration. The 1967 Act[3] provides for confirmation by the Tribunal, except in urgent cases.

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1. *State of Madras* v. *V.G. Row*, (1952) S.C.R. 597; A.I R. 1952 S.C. 196.
2. Section 16A(6), 1908 Act, as amended in Madras.
3. Section 3(3), 1967 Act.

(*ii*) In the 1908 Act[1], the scope of the reference to the Advisory Board was not defined in a precise manner. In the 1967 Act[2], the reference to the tribunal is specifically for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(*iii*) The Advisory Board constituted under the 1908 Act was to consider the materials placed before it (and any such further information as it may deem fit to call for from the State Government or the association concerned). Under the 1967 Act,[3] the Tribunal has to call upon the association to show cause and to hold an 'inquiry' in the prescribed manner. (It has power to call for such further information as it considers necessary)[4].

(*iv*) Under the 1908 Act[5], the report of the Advisory Board containing its opinion as to whether or not there was sufficient cause for the issue of the notification, was to be given separately. Its proceeding and its main report were to be treated as confidential. Under the 1967 Act,[6] the order of the Tribunal is required to be published in the official gazette.

(*v*) Under the 1908 Act,[7] no person was entitled to appear before the Advisory Board, either himself or through a legal representative. In the 1967 Act, there is no such bar. Since the Tribunal holds a regular inquiry[8], it must necessarily give the parties concerned an opportunity not only to appear before it, but also to argue their case. It may also be mentioned that the rules[9] under the Act require the Tribunal to follow the Evidence Act.

It appears to us, therefore, that the constitutional validity of the Act is unassailable.

Scope of the Act to be widened.

8.9. We propose that the scope of the Act should be widened to cover any association which has, for its object, a subversive activity, or which encourages or aids persons to undertake such activity. We recommend this change, as it is obvious that such subversive associations constitute as great a danger to national security, as the associations which are at present covered by the 1967 Act under the nondescript designation of "unlawful associations". The penal and prohibitory provisions contained in the 1967 Act in our opinion are urgently needed in respect of all subversive associations.

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1. Section 16A(3), 1908 Act as amended in Madras.
2. Section 4(1), 1967 Act.
3. Sections 4(2) and 4(3), 1967 Act.
4. Section 4(3), 1967 Act.
5. Section 16A(5), 1908 Act, as amended in Madras.
6. Section 4(4), 1967 Act.
7. Section 16A(5), 1908 Act, as amended in Madras.
8. Section 9, 1967 Act.
9. Rule 3, Unlawful Activities (Prevention) Rules, 1968, as amended upto 1970.

Subversive activity.

8.10. For this purpose, the expression "subversive activity" will include not only activities which are "unlawful activities" under the Unlawful Activities (Prevention) Act (corresponding to what we are recommending to be included in 'disruptive activity'[1] but also certain other acts designed at subverting the Government. Briefly, these are—

(*a*) waging war against the Government of India;

(*b*) preparing to wage war;

(*c*) conspiracies to overawe the Parliament, Government etc.;

(*d*) preventing by force exercise of State authority in furtherance of inter-State disputes;

(*e*) disruptive activity;

(*f*) forming para-military groups;

(*g*) treasonable relations with foreign State or institution or organisation;

(*h*) sabotage.

Section 2A References to laws not in force in Jammu and Kashmir.

8.11. Section 2A of the Unlawful Activities Act (inserted in 1969) deals with the construction of references to laws not in force in Jammu and Kashmir. It may be incorporated without change.

Section 3—basic provision for applicability of penal provisions.

8.12. Under section 3, if the Central Government is of the opinion that any association is or has become an unlawful association, it may declare it to be an unlawful. It is only after such declaration that the operative provisions of the Act come into effect. The penal provisions in sections 10, 11, 12 and 13(2), and the prohibitory provisions in sections 7-8, are so framed as to apply only where the association has been declared to be unlawful. The penal provisions provide the following penalties:—

(*i*) penalty for being members of an unlawful association so declared (section 10); [Imprisonment upto 2 years, and fine.]

(*ii*) penalty for dealing with the funds of an unlawful association in violation of the prohibitory provisions; (section 11); [Imprisonment upto 3 years or fine or both; Also additional fine to recover the amount of the funds etc. used in contravention.]

(*iii*) penalty for use of an article of an unlawful association, in violation of the prohibitory provisions; [section 12(1)]; [Imprisonment upto 1 year, and fine.]

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1. See para 7.2. above.

(*iv*) penalty for entry into a notified place, i.e. a place notified as used for an unlawful association, entry into which has been prohibited section 12(2)] ; [Imprisonment upto 1 year, and fiine.]

(*v*) penalty for unlawful activity[1]; [section 13(1).]

(*vi*) penalty for assisting the activities of an unlawful association, after it has been declared to be unlawful; [section 13(2).] [Imprisonment upto 5 years or fine, or both.]

Sections 10, 11 and 12.

8.13. In the penal provision in section 10 of the Act, we recommend the enhancement of the sentence to five years' imprisonment, as the offence, is fairly serious.

Sections 11 and 12 need no changes of substance.

Section 13(2) to be omitted.

8.14. Section 13(2) overlapes[2], to some extent, section 10. In view of our recommendation[3] to enhance the sentence for an offence under section 10, section 13(2) may be omitted.

Section 13(3).

8.15. The saving provision in section 13(3), is not intended to apply to associations but only to the activities of individuals. Hence it need not be included in this Chapter.

Sections 7 and 8.

8.16. The prohibitory provisions in sections 7-8 do not require any change.

Sections 4 to 6 and 9—Proceedings before the Tribunal or District Judge.

8.17. The notification by the Central Government declaring an association to be unlawful, has to be confirmed by the Tribunal. Sections 4 to 6 and section 9 contain detailed provisions in that respect, including provisions as to the composition and procedure of the Tribunal.

8.18. Section 4 deals with references to the Tribunal to be appointed for the purposes of the Act. The Tribunal is to be constituted under the Act, for approving or disapproving the orders of the Central Government declaring an association to be unlawful.

Sections 5 to 9.

8.19. No changes of substance are needed in sections 5 to 9 which deal with the Tribunal, the period of operation of the Notification and with powers of the Central Government to prohibit the use of funds of an unlawful association, and to notify places used for the purpose of an unlawful association, and with the power of the District Magistrate to prepare a list of properties of an unlawful association and ancillary matters.

Section 14 to be omitted.

8.20. Section 14 of the Act declares certain offences under the Act to be cognizable. The matter can be left to be dealt with by the general provision in the Criminal Procedure Code[4]. As the

1. This offence can be committed by individual. It has been covere d by the provisions relatin g to 'disruptive activity'.
2. Section 13(1) has been already dealt with in para 7.2. and 7.3. above.
3. See para 8.13. above.
4. Criminal Procedure Code Bill 1970, First Schedule.

punishment under section 10 is proposed to be increased[1], section 14 is unnecessary and should be omitted.

Sections 15 and 16.

8.21. Section 15 of the Act deals with the meaning of 'continuance of an association' and needs no change.

Section 16 of the Act deals with bar of jurisdiction of court, and needs no change.

Section 17.

8.22. We have already recommended the insertion of a general provision regarding sanction[2] of prosecutions under the proposed Act, and hence section 17 of the Unlawful Activities Act is unnecessary.

Sections 18 to 21.

8.23. Sections 18, 19, 20 and 21 of the Unlawful Activities Act may be incorporated in the proposed Act without substantial modifications.

Offences to be included this group.

8.24. As a result, the following offences will be included in this group:—

(1) Being member of a subversive association[3].

(2) Dealing with funds of a subversive association[4].

(3) Contravention of an order made in respect of a notified place[5].

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1. Para 8.13. above.
2. See chapter 7 above.
3. Para 8.12(i) above.
4. Para 8.12 (ii) above.
5. Para 8.12 (iii) and (iv) and 8.16. above.

CHAPTER 9

THE CRIMINAL LAW AMENDMENT ACT, 1961

Introductory.

9.1. The Criminal Law Amendment Act, 1961, contains a few provisions relevant to national security. The object of the Act was thus described in the Statement of Objects and Reasons appended to the Bill[1]:—

> "Certain recent developments in the regions adjoining the borders of India and in other parts of the country likely to jeopardise the security of the country and its frontiers point to the necessity of placing curbs on such activities. The Criminal Law Amendment Bill, 1960, accordingly seeks to provide for punishment to persons who may question the territorial integrity or frontiers of India in a manner prejudicial to the safety and security of the country, and for other cognate matters."

The Act has not been frequently used—at least, there is a paucity of reported decisions on the Act[2].

Section 2 covered by the Act of 1967—Repeal recommended.

9.2. Under section 2 of the Act, a person who questions the territorial integrity or frontiers of India in a manner which is, or is likely to be, prejudicial to the interests of the safety or security of India, is punishable with imprisonment upto 3 years, or fine or both. It appears to us that section 2 is practically covered by the Unlawful Activities (Prevention) Act, 1967. The combined effect of section 2(f) and section 13(1) of the Act of 1967 is to punish "any action, whether by committing an act or by words either spoken or written or by signs or by visible representation or otherwise, which is intended or supports any claim to bring about.....cession.....or secession.....or which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity "of India". The 1967 Act, unlike section 2 of the 1961 Act, does not mention 'frontiers' expressly. But a serious challenge to frontiers (barring, perhaps, an academic discussion) cannot escape the all-embracing clause "questions the sovereignty", occurring in section 2(f) of the 1967 Act.

Moreover, the maximum punishment under section 13 of the 1967 Act is imprisonment upto five years, while the Act of 1961 punishes the act with imprisonment upto 3 years, even though the latter Act is more stringent, as it requires that the act be done in a manner prejudicial to the interests of the safety or security of India.

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1. Gazette of India, (1960) Extraordinary, Part II, section 2, page 938.
2. See para 9.4. below.

We, therefore, recommend that section 2 should be repealed[1].

Section 3.

9.3. Under section 3, statements etc. in a 'notified area' prejudicial to the maintenance of public order therein or to the safety or security of India or to the maintenance of essential supplies, are punished, and the entry of persons in such area is also regulated. The basic provision is in section 3(1), which gives power to the Central Government to declare an area adjoining the frontiers of India to be a notified area, where the Central Government considers that in the interests of the safety or security of India or in the public interest, it is necessary or expedient to do so.

Delhi case.

9.4. The only reported case[2] under the Act is that of the Delhi High Court. The petitioner in that case had been granted a permit to enter an area notified under the Act and to remain in it, for a specified period. Before the expiry of the period, however, the permit was cancelled arbitrarily and in violation of the rules of natural justice. The order of cancellation was, for that reason, quashed by the High Court.

Sections 4 & 5.

9.5. The State Government has, under section 4, power to declare certain publications to be forfeited, being publications which appear to the State Government to contain any matter the publication of which is punishable under section 2 or section 3(2). There is also a power to issue search warrants.

Sections 3 to 5 not suitable for inclusion in the new law.

9.6. It appears to us that sections 3 to 5 of the Act are not appropriate for inclusion in the proposed consolidated law on national security. These provisions are of a special character, and applicable only in relation to notified areas. Moreover, the provisions are not confined to national security. The order under section 3(1) can, for example, be passed not only in the interests of the safety or security of India, but also in "the public interest". Again, under section 3(2), a statement prejudicial to the maintenance of essential supplies can also be punished. Such provisions would not fit in with a law primarily designed at the protection of national security. We do not, therefore, consider it necessary to include these provisions (sections 3 to 5) in the new law.

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1. Consequential changes will be required in section 4 which refers to section 2.
2. *Abdul Butt* v. *Government of Himachal Pradesh*, A.I.R. 1968 Delhi 49, 54 (Hardy J.).

CHAPTER 10

PROCEDURE, LIMITATION AND MISCELLANEOUS

Introductory.

10.1. Having discussed the substantive provisions relating to offences against the national security, we now discuss the procedural and ancillary provisions.

Three kinds of procedural provisions relating to offences against the national security.

10.2. Procedural provisions may be divided into three groups:

First, there are new provisions i.e. provisions not found in any of the existing enactments. Secondly, there are provisions already contained in one or more of the respective laws, which appear to be appropriate for being applied to all offences against the national security. In the third group are provisions contained in existing laws, whose application may be confined (as at present) to offences under those laws. These need not be discussed here again, as they have been dealt with under the relevant Chapters.

Limitation for offences.

10.3. The subject of limitation comes, in the first group. We have, in our Report[1] on the Penal Code, recommended the introduction of the law of limitation for prosecution for offences punishable with not more than three years' imprisonment. The amendment recommended therein will not cover most of the offences under the proposed Act because these are punishable more severely.

Limitation as to treason in England Statute of 1695

10.4. In England, an indictment for high treason within the realm (with the exception of treason by designing, endeavouring or attempting any assassination on the body of the Queen by poison or otherwise) must be signed within three years after the offence is committed[2].

An "information" for Blasphemy by words spoken must be filed within four days of the speaking, and the prosecution must be within three months of the information[3].

A prosecution for an offence under the Unlawful Drilling Act, 1819, must be commenced[4] within six calendar months after the offence committed[5].

1. 42 Report, Chapter 24.
2. Treason Act, 1695 (7 & 8 Will, 3, c.3) section 5 and 6.
3. Section 2, Blasphemy Act, 1697.
4. Section 7, Unlawful Frilling Act, 1819.
5. The discussion is illustrative only. Provisions as to the time-limits for prosecutions are contained in several other Statutes.

No particular explanation is given by Stephen[1] as to the reason for passing the 1695 Act, which introduced the provisions relating to limitation for treason; he makes just a brief reference to it. Maitland, in his Constitutional History[2], refers to this Act, and points out how the Act made a number of exceptions from the general law in favour of persons accused of treason. But he does not deal with the historical reason for the particular provision relating to limitation.

But the background of the 1695 Act in general can be gathered from what Kenny states in his Criminal Law[3]:—

> "As treason was, of all crimes, that in which the Crown had the strongest direct interest in securing the conviction of an accused person, it was the one in which a public prosecutor or a subservient judge had most temptation to conduct the trial so as to press harshly upon the prisoner. The reigns of the Stuarts afforded so many instances of this harshness that after the Revolution of 1688, the legislature in 1695 introduced great innovations into the course of criminal procedure so far as trials for treason were concerned."

Though British jurisprudence does not recognise the applicability of the law of limitation to crimes in general, nevertheless, its special application to the crime of treason was presumably made with a view to preventing political victimisation.

Transitory nature of some offences against national security.

10.5. Some of the offences relating to national security are transitory in nature, and should be subject to limitation even though the punishment may be more than three years' imprisonment. A traitor or arch seditionist of today may be the head of the Government some years later and may even be considered a great patriot. If there is a subsequent change in Government (due to change in ideology or otherwise), there should be no apprehension of political victimisation of such person for a crime committed several years before. Hence we consider that there should be a law of limitation for some of the offences under the proposed Act especially those of mere speeches and writings. For very serious offences such as waging war or serious acts of sabotage, the law of limitation should not be applicable.

Recommendation regarding time-limits for prosecutions for certain offences.

10.6. Acting on this principle, we think that there ought to be a time-limit for a prosecution for the following offences:—

(1) Incitement to mutiny or other act of insubordination. (Maximum period of imprisonment—3 years).

(2) Dissuasion from enlisting and instigation to mutiny or insubordination after enlistment.
(Maximum period of imprisonment—3 years).

1. Stephen, History of Criminal law, Vol. 1, pages 415-416 and Vol. 2, page.
2. Maitland, Constitutional History, (1946), page 314.
3. Kenny, Criminal Law, (1966), page 403.

(3) Disruptive activity.

(Maximum period of imprisonment—7 years).

(4) Sedition.

(Maximum period of imprisonment—7 years).

(5) Contravention of an order made in respect of a notified place.

(Maximum period of imprisonment—1 year).

A time-limit of one year should suffice in all these cases. In other respects, such as computation of the time-limit and the like, the detailed provisions recommended in our Report on the Penal Code[1] should apply.

Provision recommended.

10.7. The new provision will be as follows:—

"(1) No court shall take cognizance of an offence punishable under sections 24, 25, 28, 39 or 55 after the expiry of one year.

(2) The provisions of sections 513 to 516 of the Indian Penal Code[2] shall apply for the purpose of computing the said period of limitation under sub-section (1) as they apply for the purpose of computing the period of limitation for taking cognizance of an offence under that Code."

Procedural provisions applicable to all offences.

10.8. The following procedural provisions belong to the second group referred to above[3] and are to be applicable to all offences under the new law:—

(*i*) the provision[4] requiring sanction[5] of the Government, for a prosecution for an offence;

(*ii*) the provision[6] relating to place of trial; and

(*iii*) the provision[7] relating to offences by companies.

The gist of these provisions has been already dealt with[8].

Provisions as to cognizability of certain offences and courts competent to try them.

10.9. One point regarding cognizability of certain offences and the courts competent to try them requires to be mentioned. Offences under chapters 6 and 7 of the Penal Code are to be transferred to the new law. Now, the position as regards bailability,

1. 42nd Report, Chapter 24.

2. The reference is to sections 513-516, as recommended in the 42nd Report, which contain detailed rules as to starting point, excluding the first day, containing offences, etc.

3. Para 10.2. above.

4. Section 13(3), Official Secrets Act, as proposed to be revised.

5. It is proposed now to substitute sanction in place of the present requirement of complaint.

6. Section 13(4), Official Secrets Act.

7. Section 15, Official Secrets Act.

8. Chapter 7, discussion relating to section 13(3), 13(4) and section 15, Official Secrets Act.

cognizability and courts competent to try them is, at present, governed by specific items in Schedule II to the Code[1] of Criminal Procedure, 1898. On the transfer of those offences to the new law, those specific items will cease to apply, and the provision in the said schedule relating to offences against other laws will become applicable. Where the position so resulting would be different from the present one, it will obviously be necessary to consider if a specific provision is required for maintaining the present position. We deal below with this matter.

(1) *Assaulting the President etc. with intent to compel or restrain the exercise of any lawful powers*[2].—This offence (punishment—imprisonment for 7 years, and fine) is under the specific entry in the Schedule to the Cr.P.C.[3], triable by the Court of Session[4]. Under the part of the Schedule applicable to offences under other laws, the offence would be triable by a Magistrate of the First Class. We are of the view that this change may stand. Though the offence involves high dignitaries, it can cover a variety of acts, and there is no harm if it is triable by a Magistrate of the First Class. Serious cases can be committed to the Court of Session. Hence no special provision is required.

(2) *Public servant negligently allowing prisoner of war to escape*[5].—This offence (punishment—imprisonment for 3 years, and fine) is, under the specific provision in the Schedule, non-cognizable.[6] It would now become cognizable. We are of the view that the offence should be cognizable. Hence no special provision need be recommended.

(3) *Sedition*[7]. This offence (proposed punishment—imprisonment for seven years, and fine) is, under the Schedule, non-cognizable, non-bailable and triable exclusively by the Court of Session[8]. It would now become cognizable, non-bailable and triable by a Magistrate of the first class which, in our opinion would not be desirable. Hence it will be necessary to provide that the offence is non-cognizable and triable by the Court of Session.

(4) *Committing depredation on territories of foreign State at peace with India*[9].

(5) *Receiving property taken by means of such waging war or depredation*[10].—These two offences (punishment for each—

1. First Schedule to the Cr. P.C. Bill, 1970.
2. Section 124, I.P.C.; section 8, National Security Bill, 1971.
3. The reference throughout is to the First Schedule to the Cr. P.C. Bill, 1970.
4. Appendix 3 to the 42nd Report does not alter this position.
5. Section 129, I.P.C.; section 13, National Security Bill, 1971.
6. Appendix 3 to the 42nd Report has not altered this position.
7. Section 124A, I.P.C.; section 39 of the National Security Bill, 1971.
8. Appendix 3 to the 42nd Report has not altered this position.
9. Section 126, I.P.C.; section 15, National Security Bill, 1971.
10. Section 127, I.P.C.; section 16, National Security Bill, 1971.

imprisonment for 7 years and fine, and forfeiture of certain property) are, under the Schedule, triable by a Court of Session[1]. They will now become triable by a Magistrate of the First Class. To avoid that result, it will be necessary to provide they are triable by the Court of Session.

(6) *Abetment of desertion.*—There are two situations:

(*a*) *Abetment of desertion from armed forces, if the desertion be committed*[2].—This offence (punishment—imprisonment for 5 years, and fine, or both) is, as proposed[3], cognizable, non-bailable and triable by a Magistrate of the First Class. This position remains unaltered, and no special provision will be required for this offence. But, a special provision is needed for situation (*b*) below.

(*b*) *Abetment of desertion from armed forces in other cases*[4].—This offence (punishment—imprisonment for 2 years or fine, or both) is, under the Schedule cognizable. It will now become non-cognizable. It is, therefore, necessary to provide that it is cognizable.

(7) *Harbouring a deserter*[5].—This offence (punishment—imprisonment for 2 years, or fine, or both)is, under the Schedule cognizable[6]. It would now become non-cognizable. It is, therefore, necessary to provide that the offence is cognizable.

(8) *Abetment of an act of insubordination*[7].

(*a*) if such act be committed;

(*b*) in any other case.—This offence (punishment for situation under (*a*)—imprisonment for two years, or fine, or both and for situation under (*b*)—imprisonment for 6 months, or fine, or both) is, under the Schedule, cognizable[8]. It would now become non-cognizable. Hence, it would be necessary to provide that it is cognizable.

(9) *Wearing garb or carrying token used by officers or member of the armed forces*[9].—This offence(punishment[10]—imprisonment

1. Appendix 3 to the 42nd Report has not altered this position.

2. Section 135(a)(new), as proposed by the 42nd Report, section 21(a), National Security Bill, 1971.

3. Schedule to the Cr. P.C. as amended by 42nd Report, Appendix 3.

4. Section 145, I.P.C.; section 21(b), National Security Bill, 1971.

5. Section 136, I.P.C.; section 22, National Security Bill, 1971.

6. Appendix 3 to the 42nd Report has not altered this position.

7. Section 138, I.P.C.; section 137(a) and (b) as proposed in the 42nd Report, section 23(a) and (b), National Security Bill, 1971.

8. Appendix 3 to the 42nd Report has not altered this position. *See* section 137(a) and (*b*), of the Schedule appended thereto.

9. Section 140, I.P.C.; section 27, National Security Bill, 1971.

10. As proposed in the 42nd Report.

for 6 months, or fine or both) is, under the Schedule, cognizable[1]. It would now become non-cognizable. Hence, it is necessary to provide that it is cognizable.

We accordingly recommend a special provision as follows:—

"Notwithstanding anything contained in the Code of Criminal Procedure, 1971,—

(*a*) offences under sections 21, 22, 23 and 27 shall be cognizable;

(*b*) the offence under section 39 shall be non-cognizable; and

(*c*) offences under sections 15, 16 and 39 shall be triable only by the Court of Session."

Repeal.

10.10. Consequential on the incorporation of the provisions of various statutes, as proposed in this Report, repeal of those statutes is recommended.

Provisions to be included.

10.11. As a result, the following provisions of a procedural or miscellaneous character will be included:—

(1) Cognizance of offences[2]. (requirement of sanction).

(2) Bar to taking cognizance after lapse of time[3].

(3) Place of inquiry or trial[4].

(4) Offences by companies[5].

(5) Cognizability of offences and courts competent to try them[6].

(6) Repeal and savings[7].

Appendices.

10.12. We annex to this Report, two Appendices, one showing our recommendations in the form of a draft Bill, and the other showing the consequential amendments needed in various Central Acts as a result of the recommendations incorporated in the draft Bill.

1. K. V. K. SUNDARAM—*Chairman.*

2. S. S. DULAT,
3. Mrs. ANNA CHANDI,
4. R. L. NARASIMHAM,*
5. D. B. KULKARNI

} *Members.*

P. M. BAKSHI—*Secretary*

NEW DELHI;

The 30th August, 1971.

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1. Appendix 3 to the 42nd Report has not altered this position.
2. Para 10.8(i), above.
3. Para 10.7. above.
4. Para 10.8(ii), above.
5. Para 10.8(iii), above.
6. Para 10.9. above.
7. Para 10.10. above.

*Shri R.L. Narasimham has signed the Report, subject to the note appended.

NOTE BY SHRI R. L. NARASIMHAM

As I have been unable to persuade my colleagues to accept some of my suggestions for inclusion in the proposed National Security Bill, 1971, I am constrained to give my separate Note. These suggestions are based mainly on the provisions found in some of the foreign Penal Codes relating to treason. It appears to me that they will be suitable for Indian conditions also, and hence may be included in our proposed law.

I. Repentance

Under our existing law, the only inducement for an accomplice to betray his colleagues is the tender of pardon under section 337 and the succeeding sections of the Criminal Procedure Code. But this pardon cannot be claimed as of right; and it is within the discretion of the appropriate court [*See* sub-section (1) of section 337] to tender pardon to an accomplice who is ready and willing to betray his colleagues by making a full disclosure. Though the section has been very usefully employed in a few instances, nevertheless, it cannot be said to be a sufficient inducement. On the other hand, if the law itself confers absolute immunity from punishment on a person who discloses the commission of the crime (subject to certain conditions and restrictions), it may be a greater inducement for accomplices to betray their colleagues even in the earlier stages of the commission of the crime (such as the preparatory stage or the stage of attempt), and thereby either prevent the completion of the crime altogether, or facilitate the detection of arch-criminals. Conspiracy to commit the crime of treason is generally hatched in great secrecy, and a study of the history of treason trials all over the world shows that such offences are detected mainly on the basis of the evidence of the accomplice. This is an additional reason why, for offences involving national security, a special provision giving complete immunity from either prosecution or punishment, as the case may be, is highly desirable. I would not recommend such a provision for all the offences under the Penal Code.

It will be useful to compare the provisions found in some of the foreign Codes:

Argentina.—Articles 216 and 217—The person who takes part in a plot of two or more persons to commit treason and discloses the plot before execution of the crime is commenced, is punished by imprisonment or jailing from 1 to 8 years. (Article 216). But the plotter who reveals the plot to any authority before the criminal process has been started, is exempt from any punishment (article 217).

Germany[1].—(Draft Penal Code), section 368—

(1) The court may mitigate, under section 64, paragraph 1, the punishment provided in sections 361, 362, 364, paragraph 1, and section 365, if the perpetrator voluntarily abandons the

1. Section 82, German Penal Code, 1871, is simpler.

further carrying out of the act, and averts or materially lessens any danger that might exist that others will further carry out the activity, or if he voluntarily prevents completion of the act.

(2) The court may mitigate in its discretion (s. 64, paragraph 2) the punishment provided in s. 363 and s/ 364, paragraph 2, or refrain from punishment, if the perpetrator voluntarily abandons his design, and averts or materially lessens any danger that may have been caused by him that others will further prepare or carry out the activity or if he voluntarily prevents completion of the act.

(3) The court may mitigate in its discretion (s. 64, paragraph 2) the punishment provided in s. 366 or refrain from punishment, if the perpetrator voluntarily abandons his activity and averts or materially lessens any danger that may have been caused by him that others will further pursue the treasonable efforts therein stated. The foregoing shall apply correspondingly to acts punishable under section 367.

Japan.—Article 80—The punishment of a person who after committing the crimes mentioned in the two preceding articles denounces himself before the disorder is created, shall be remitted.

I would, therefore, suggest the insertion of a new provision in the last chapter of the proposed Bill, conferring complete immunity either from prosecution (where a prosecution has not yet been initiated) or from punishment (if the trial has already commenced), to the person who has committed an offence under the National Security Act, if he will make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission of the same, either before the authority empowered to investigate the commission of the offence or before the court empowered to take cognizance of the offence or the court before which he is undergoing trial.

II. Disloyalty in Negotiations

I notice that in many foreign countries there is a special provision in the law of treason for penalising disloyalty in negotiations.

Argentina.—Article 225—Anybody being in charge of a negotiation with a foreign nation on behalf of the Argentinian Government, who conducts such negotiation in a way prejudicial to the nation by deviating from any instructions given to him shall be punished by imprisonment or jailing from three to ten years.

Colombia.—Article 120—Anyone entrusted by Colombia to negotiate matters of State with a foreign Government or with persons or groups of another country, who behaves disloyally in the exercise of his agency shall suffer penal servitude for five or fifteen years.

Denmark.—Article 106—Any person who acts against the interests of the State in carrying out a mission entrusted to him to negotiate or settle on behalf of the State any matter with any foreign power shall be liable to imprisonment for a term not exceeding 16 years.

Draft Penal Code of Germany.—Article 392(1).—Danger in the conduct of State matters—A representative of the Federal Republic of Germany or of one of her States who deliberately or knowingly conducts a matter of State with a foreign Government or a supra national or international institution to the detriment of his principal, shall be punished with confinement in a penitentiary upto fifteen years.

Sweden.—Chapter 19, section 3—If a person, who has received a commission to negotiate with a foreign power or otherwise to protect the concerns of the Realm, in being with some one who represents the interests of a foreign power misuses his authority to represent the Realm or otherwise his position or trust and thereby causes the Realm considerable harm, he shall be sentenced for disloyalty in negotiation with a foreign power to imprisonment for a fixed term of at least two and at most ten years, or for life.

Some acts of disloyalty may possibly come under the wide sweep of some of the provisions of the Official Secrets Act, 1923. But, as we are recommending the repeal of that Act and the inclusion of its provisions in the proposed National Security Act, it seems desirable to take this opportunity of inserting a new provision penalising disloyalty in negotiation.

III. Duty to prevent the commission of the crime

Under our penal law there are some provisions casting a duty on a person to give information in his possession to the proper authorities regarding the commission of or intention to commit some offences. (*See* section 44 of the Cr. P. C. and clauses 39 and 42 of the Bill). But there is no provision casting a positive duty on a person to prevent the further progress in the commission of any treasonable activity, if he could prevent the same without danger to himself. In a few instances, such as sabotage, espionage, etc. the mere giving of information to the appropriate authorities may not suffice.

The Austrian Penal Code, section 60, contains the following interesting provision: "He who intentionally fails to prevent, the further progress of an undertaking which is included in the definition of high treason, although he could have done so easily and without danger to himself, his relatives or to those persons who are by law under his protection, becomes an accessory to the felony and shall be punished by severe imprisonment of from five to ten years."

It may be useful to have a similar provision in the proposed Bill also. It is true that occasions for prosecution of a person for contravention of that provision may be very rare indeed. But if a person without danger to himself or his near relatives can prevent the commission of an offence and yet fails to prevent the same, there is no reason why he should not be held punishable under the law for an offence involving national security. To cite an extreme case, suppose an expert on explosives notices that a time bomb has been laid by some unknown culprits to blow up an installation which is vital to national security. At present the only duty cast on him by law is to report the matter to the authorities. There is no duty on him to remove or defuse the bomb or otherwise render it harmless, though he could easily have done so without danger to himself in view of his expert knowledge. The consequences may be very serious. But by the time the authorities, on receiving the information, rush to the spot, the installation may be blown up. There is no reason why the law should not punish that citizen for his grievous sin of omission. Instances of this type can be given for the offence of espionage also.

I notice that in the French Penal Code (Article 62) and in the Draft German Penal Code (Article 233) there are provisions making it penal if a person omits to prevent the commission of some offences if such prevention could be done without danger to himself. I am not, however, in favour of extending this rule for all classes of offences under the Penal Code. It will be sufficient if this rigorous rule is applied for offences involving national security alone.

R. L. NARASIMHAM

APPENDIX 1

THE NATIONAL SECURITY BILL, 1971

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THE NATIONAL SECURITY BILL, 1971

A

BILL

to consolidate and amend the law relating to offences against the national security

CHAPTER 1

PRELIMINARY

Short title, extent and application.

1. (1) This Act may be called the National Security Act, 1971.

(2) It extends to the whole of India.

(3) It applies also outside India—

(*a*) to citizens of India;

(*b*) to aliens on any ship or aircraft registered in India; and

(*c*) to aliens in the service of the Government.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "armed forces" means the military, naval and air forces, and includes any other armed forces of the Union;

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

(*c*) "member", in relation to the armed forces, means a person in the armed forces other than an officer;

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

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

(*f*) "officer", in relation to the armed forces, means a person commissioned, gazetted or in pay as an officer of the armed forces, and includes a junior commissioned officer, a petty officer and a non-commissioned officer;

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

(*h*) "prejudicial to the national security" means prejudicial to the sovereignty and intergrity of India, or to the safety or security of India or any part thereof, or to India's friendly relations with foreign States;

(*i*) "prohibited place" means,—

(i) any armed force establishment, station or camp;

(ii) any work of defence, wireless or signal station, telegraph or telephone installation, arsenal, minefield, ship or aircraft under the control of any of the armed forces;

(iii) any factory, dockyard or other place belonging to, or occupied by or on behalf of, Government, and used for the purpose of making, repairing or storing any munitions of war or any sketches, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;

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

(v) any other place which is for the time being declared by the Central Government by notification in the Official Gazette to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and at which a copy of such notification is displayed for public information;

(*j*) "sketch" includes any plan, photograph or other mode of representing any place or thing;

(*k*) words and expressions used but not defined in this Act and defined in the Indian Penal Code have the meanings respectively assigned to them in that Code;

(*l*) any reference to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law in force in that State.

CHAPTER 2

INSURRECTION

Waging war against the Government of India.

3. Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punishable with death or imprisonment for life, and shall also be liable to fine.

CHAPTER 7

SUBVERSIVE ASSOCIATIONS

Preparing to wage war.

4. Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Government of India, shall be punishable with imprisonment for life or rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Concealing to wage war.

5. Whoever, by any act or illegal omission, conceals the existence of a design to wage war against the Government of India, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Conspiracy to overawe the Parliament or Government of India or the Legislature or Government of any State.

6. 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 punishable with imprisonment for life or with rigorous imprsonment 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 ommission shall take place in pursuance thereof.

Preventing by force exercise of State authority in furtherance or inter-State disputes.

7. Whoever, by means of force or show of force, prevents or attempts to prevent any State from exercising its authority in any part of that State, with a view to securing an alteration of the boundaries of that State, or in furtherance of a dispute between that State and another State or the Union, shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to a fine.

Assaulting President etc. with intent to compel or restrain the exercise of any lawful powers.

8. (1) Whoever, with the intention of inducing or compelling any office-holder or to whom this section applies, to exercise or refrain from exercising in any manner any of his lawful powers, assaults, or wrongfully restrains, or overawes by means of force or show of force, such office-holders, shall be punishable 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 Peoples;

(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.

CHAPTER 3

ASSISTING THE ENEMY

Assisting India's enemies.

9. 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 punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Infiltration for committing offence against national security.

10. Whoever, unlawfully enters into, or remains in, India for the purpose of committing an offence under this Act shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Aiding escape of, rescuing or harbouring prisoner of war.

11. Whoever, knowingly aids or assists any prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punishable with rigorous and shall imprisonment for a term which may extend to ten years, also be liable to fine.

Public servant voluntarily allowing prisoner of war to escape.

12. Whoever, being a public servant and having the custody of any prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Public servant negligently suffering prisoner of war to escape.

13. Whoever, being a public servant and having the custody of any prisoner of war, negligently suffers such prisoner to escape from any place in which such prisoner is confined, shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

CHAPTER 4

RELATIONS WITH FOREIGN STATES

Waging war against any foreign State at peace with India.

14. 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 punishable with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Committing depredation on territories of foreign State at peace with India.

15. Whoever commits depredation, or makes preparation to commit depredation, on the territories of any foreign State at peace with India, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine and to for feiture of any property used or intended to be used in committing such depredation or acquired by such depredation.

Receiving property taken by means of such waging of war or depredation.

16. Whoever receives any property knowing the same to have been taken in the commission of an offence under section 14 or section 15, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Recruitment to, or enlistment in, armed forces of foreign States.

17. (1) If, in the interests of friendly relations with foreign States or national security, the Central Government considers it necessary so to do, it may, by notification in the Official Gazette, prohibit, or impose conditions on,—

(*a*) recruiting for service in the armed forces of a specified foreign State;

(*b*) enlistment for such service;

(2) Whoever, in contravention of such notification,—

(*a*) induces, or attempts to induce, any person to accept, or agree to accept, or to proceed to any place with a view to obtaining, any commission or employment in the armed forces of a foreign State, or

(*b*) knowingly aids in the engagement of any person so induced by forwarding or conveying him or by advancing money or in any other way whatsoever, or

(*c*) enlists himself with a view to obtaining any commission or employment in the armed forces of a foreign State, or

(*d*) knowingly aids in such enlistment of any person, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

CHAPTER 5

OFFENCES RELATING TO THE ARMED FORCES

Abetment of mutiny.

18. 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 punishable 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 punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Attempting to seduce officer or member from duty.

19. Whoever attempts to seduce any officer or member of any of the armed forces from his allegiance or his duty shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Abetment of assault on superior officer.

20. 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 punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and

(*b*) in any other case, be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

Abetment of desertion from armed forces.

21. 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 that abetment, be punishable with imprisonment for a term which may extend to five years, or with fine, or with both;

(*b*) in any other case, be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Harbouring deserter.

22. Whoever, knowing or having reason to believe that an officer or member of any of the armed forces has deserted, harbours such officers or member, shall be punishable with imprisonment 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.

Abetment of an act of insubordination.

23. 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 punishable with imprisonment for a term which may extend to two years, or with fine, or with both; and

(*b*) in any other case, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Incitement to mutiny or other act of insubordination.

24. 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 punishable with imprisonment 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.

Dissuation from enlisting and instigation to mutiny or insubordination after enlistment.

25. 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 punishable with imprisonment for a term which may extent do 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.

Persons subject to certain laws, not to be punished under the Chapter.

26. 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 the preceding provisions of this Chapter for any of the offences therein defined.

27. Whoever, not being an officer or member of the armed force , 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 punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Wearing garb or carrying token used by officer or member of the armed forces.

CHAPTER 6

SUBVERSIVE ACTIVITIES

28. Whoever commits, or abets the commission of, any disruptive activity, or advocates or advises any disruptive activity, shall be punishable with impriosonment for a term which may extend to seven years and shall also be liable to fine.

Disruptive activity.

Explanation.—For the purposes of this section,—

(*a*) "disruptive activity" means any action taken, whether by act done, or by words spoken or written, or by signs, or by visible representation, or otherwise, -

(*i*) which questions, disrupts, or is intended to disrupt, the sovereignty and territorial integrity of India; or

(*ii*) which is intended to bring about, or supports any claim for, the cession of any part of India, or the secession of any part of India from the Union, or

(*iii*) which incites any person to bring about such cession or secession;

(*b*) "cession" includes the admission of claim of any foreign country to any part of India;

(*c*) "secession" includes the assertion of any claim to determine whether a part of India will remain within the Union.

Exception.—Nothing in this section applies to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.

29. Whoever organises, trains, maintains or promotes any group the members of which are trained or equipped to use force for achieving its object and which is organised—

Para-military groups.

(*a*) for the purpose of usurping the functions of the armed forces; or

(*b*) for the purpose of committing acts of sabotage punishable under section 32, or

(*c*) for any other purpose prejudicial to the national security, shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

and whoever participates in, or belongs to, any such group as aforesaid shall be punishable with rigorous imprisonment for a term which may extend to five years, and shall also be liable to fine.

Treasonable relations with foreign State or Institutions or organisation.

30. Whoever, for any purpose prejudicial to the national security, maintains relations with a foreign state or with an institution or organisation outside India shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Treasonable deception.

31. Whoever, for any purpose prejudicial to the national security, intentionally transmits to a public servant a false report the content of which is likely to disrupt relations between India and a foreign State or an international institution, shall be punishable with rigorous imprisonment for a term which may extend to seven years, or with fine, or with both.

Sabotage.

32. (1) Whoever, for any purpose prejudicial to the national security, does any act which impairs the efficiency or impedes the working of, or causes damage to,—

(*a*) any prohibited place or any machinery or apparatus therein, or

(*b*) any means of public transportation, or

(*c*) any means of telecommunication,

shall be punishable with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

(2) A person shall not be guilty of an offence under this section by reason only that he stops work as a result of an industrial dispute as defined in clause (*k*) of section 2 of the Industrial Disputes Act, 1947; but nothing in this sub-section shall affect his liability to be prosecuted for any offence which he may have committed against the provisions of that Act.

Spying

33. If any person, for any purpose prejudicial to the national security,—

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

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

(*c*) obtains, collects or records any such sketch, model or note as aforesaid, or any article, document or information which is intended or likely to be, directly or indirectly, useful to an enemy or relates to a matter the disclosure of which is likely to be prejudicial to the national security; or

(*d*) publishes or communicates to any other person any such thing or information as aforesaid,

he shall be punishable with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.

Divulging official secrets.

34. (1) If any person, having in his possession any official secret,—

(*a*) uses it for the benefit of any foreign State or in any manner prejudicial to the national security; or

(*b*) wilfully communicates it to any person other than a person to whom he is authorised to communicate it, or a person to whom it is, in the interests of State, his duty to communicate, or a Court of Justice; or

(*c*) retains it when he has no right to do so, or when it is contrary to his duty to do so, or wilfully fails to comply with any direction issued by lawful authority with regard to its return or disposal: or

(*d*) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the official secret,

he shall—

(*i*) if the official secret is one specified in clause (*b*) or clause (*c*) of section 33, be punishable with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine;

(*ii*) in other cases, be punishable with imprisonment for three years, or with fine, or with both.

(2) If any person receives any official secret knowing or having reason to believe that it is communicated to him in contravention of sub-section (1) of this section or section 33, he shall—

(*i*) if the official secret is one specified in clause (*b*) or clause (*c*) of section 33, be punishable with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine;

(*ii*) in other cases, be punishable with imprisonment for three years, or with fine, or with both.

(3) For the purposes of sub-section (2), a person who is in possession of an official secret without lawful authority may be presumed, until the contrary is proved, to have received it knowing or having reason to believe that it is communicated to him in contravention of sub-section (1) of this section or section 33, as the case may be.

(4) In this section "official secret" means any thing or information—

(a) which is specified in clause (b) or clause (*c*) of section 33, or

(*b*) which has been entrusted in confidence to the offender by any person holding office under Government, or

(*c*) which the offender has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract.

Using false official uniforms, documents and seals for purpose prejudicial to national security.

35. (1) If any person, for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place or for any purpose prejudicial to the national security,—

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

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

(*c*) forges, alters, or tampers with any official document, or knowingly uses or has in his possession any such forged, altered, or irregular official document; or

(*d*) personates, or falsely represents himself to be, a person holding or in the employment of a person holding office under Government, or falsely represents himself to be or not to be a person to whom an official document has been duly issued or communicated; or

(*e*) with intent to obtain an official document, whether for himself or any other person knowingly makes any false statement; or

(*f*) without lawful authority, uses, has in his possession or under his control, manufactures or sells any official seal, or any die, seal or stamp so nearly resembling an official seal as to be calculated to deceive, or counterfeits any official seal,

he shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person, for any purpose prejudicial to the national security,—

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

(*b*) allows another person to have possession of, or communicates to another person, any official document issued for his use alone; or

(*c*) without lawful authority or excuse, has in his possession any official document issued for the use of some person other than himself; or

(*d*) on obtaining possession of any official document, by finding or otherwise, wilfully fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer;

he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) In this section,—

(*a*) "official document" means any armed force police or official pass, permit, certificate, licence or other document or a similar character, and includes any secret official code or pass-word,

(*b*) "official seal" means any die, seal, stamp of or belonging to, or used, made or provided by any department of Government, or by any diplomatic or armed force authority appointed by, or acting under the authority of, Government.

Interfering with the police or armed forces on duty at a prohibited place.

36. If any person in the vicinity of any prohibited place obstructs, knowingly misleads or otherwise interferes with or impedes, any police officer or any officer or member of the armed forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, he shall be punishable with imprisonment which may extend to three years, or with fine, or with both.

Failure to give information.

37. If any person fails—

(*a*) to give on demand to any member of the armed forces engaged on guard, sentry, patrol or other similar duty, or to any Superintendent of police, or to any other police officer not below the rank of sub-inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to an offence or suspected offence under section 33 or section 34, or

(*b*) if so, required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information,

he shall be punishable with imprisonment for a term which may be extend to three years, or with fine, or with both.

Penalty for harbouring saboteurs or spi s.

38. (1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 32 or section 33, or knowingly permits to meet or assemble

in any premises in his occupation or under his control any such persons, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) If any person who has harboured any such person as aforesaid, or who has permitted to meet or assemble in any premises in his occupation or under his control any such person as aforesaid, fails to give on demand to a superintendent of police officer not below the rank of sub-inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Sedition.

39. 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 sovereignty and integrity of India or the safety or security of India or any part thereof, or to cause public disorder,

shall be punishable 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 enemity, 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 obtaining their alteration by lawful means without exciting or attempting to excite disaffection, do not constitute an offence under this section.

Search Warrants.

40. (1) If a metropolitan magistrate, magistrate of the first class or sub-divisional magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under any of the sections 32 to 38 has been or is about to be committed, he may grant a search warrant authorising any police officer named therein not being below the rank of an officer in charge of a police station, —

(*a*) to enter at any time any premises or place named in the warrant, if necessary, by force, and

(*b*) to search the premises or place and every person found therein, and

(*c*) to seize any sketch, model, article, note or document or anything of a like nature, or anything which is evidence of an offence under any of the said sections having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under any of the said sections has been or is about to be committed.

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

(3) Where action has been taken by a police officer under sub-section (2), he shall, as soon as may be, report such action, in a metropolitan area to the chief metropolitan magistrate, and outside such area to the district or sub-divisional magistrate.

(4) The provisions of the Code of Criminal Procedure, 1971, shall, so far as may be applicable, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 94 of that Code.

Exclusion of public from certain proceedings.

41. In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings, if, in the course of any inquiry into or trial of, any person for an offence under any of the sections 28 to 38, or in the course of any proceedings in appeal or revision from such inquiry or trial, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national security, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public.

Evidence of purpose prejudicial to national security.

42. In a prosecution for an offence under any of the sections 29 to 35, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the national security, and, notwithstanding that no such act is proved against him, he may be convicted, if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the national security.

Presumptions in prosecution for spying.

43. (1) In any prosecution for an offence under section 33, if any sketch, model, article, note, document or information relating to or used in any prohibited place, or relating to anything in such a place is made, obtained, collected, recorded, published

or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the national security, such sketch, model, article, note, document, or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the national security.

(2) In any prosecution of a person for an offence under section 33,

(*a*) the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without India, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the national security, obtained or attempted to obtain information which is intended to be or likely to be, directly or indirectly, useful to an enemy;

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

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

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

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

CHAPTER 7

SUBVERSIVE ASSOCIATIONS

Definitions.

44. In this Chapter,—

(*a*) "prescribed" means prescribed by rules made under section 59;

(*b*) "subversive activity" means any act punishable under section 3, 4, 6, 7, 28, 29, 30 or 32;

(*c*) "subversive association" means any association which has for its object a subversive activity, or which encourages or aids persons to undertake such activity or of which the members undertake such activity;

(*d*) "Tribunal" means the Tribunal constituted under section 47.

Declaration of an association as subversive association.

45. (1) If the Central Government is of opinion that any association is, or has become, a subversive association, it may, by notification in the official Gazette declare such association to be a subversive association.

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under section 46, confirmed the declaration made therein and the order is published in the Official Gazette:

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be a subversive association with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 46, have effect from the date of its publication in the Official Gazette.

(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall also be served on such association, in such manner as the Central Government may think fit and all or any of the following modes be followed in effecting such service, namely :—

(*a*) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or

(*b*) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association; or

(*c*) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or

(*d*) in such other manner as may be prescribed.

Reference to Tribunal.

46. (1) Where any association has been declared a subversive association by a notification issued under sub-section (1) of section 45, the Central Government shall, within thirty days from the date of the publication of the notification under the said section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association as a subversive association.

(2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected, by notice in writing, to show cause, within thirty days from the date of such notice, why the association should not be declared a subversive association.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry, in the manner specified in section 51, and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be a subversive association and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 45, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette.

Tribunal.

47. (1) The Central Government, may, by notification in the Official Gazette, constitute as and when necessary, a tribunal to be known as the "Subversive Activities (Prevention) Tribunal" consisting of one person, to be appointed by the Central Government :

Provided that no person shall be so appointed unless he is a judge of a High Court.

(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) Subject to the provisions of section 51, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely—

(a) the summoning and enforcing the attendance of any witness and examining him on oath;

(b) the discovery and production of any document or other material object produced as evidence;

(c) the reception of evidence on affidavits;

(d) the requisitioning of any public record from any court or office;

(e) the issuing of any commission for the examination of witnesses.

(7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for purposes of section 196 and Chapter XXVI of the Code of Criminal Procedure, 1971.

Period of operation and cancellation of notification.

48. (1) Subject to the provisions of sub-section (2), a notification issued under section 45, shall, if the declaration made therein is confirmed by the Tribunal by an order made under section 46, remain in force for a period of two years from the date on which the notification becomes effective.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, either on its own motion or on the application of any person aggrieved, at any time, cancel the notification issued under section 45, whether or not the declaration made therein has been confirmed by the Tribunal.

Power to prohibit the use of funds of a subversive association.

49. (1) Where an association has been declared a subversive association by a notification issued under section 45, which has become effective under sub-section (3) of that section and the Central Government is satisfied, after such inquiry as it may think fit, that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the subversive association, the Central Government may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order, save in accordance with

the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the manner specified in sub-section (3).

(2) The Central Government may endorse a copy of the prohibitory order made under sub-section (1) for investigation to any gazetted officer of the Government it may select, and such copy shall be a warrant whereunder such officer may enter in or upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys, securities or credits, and make inquiries from such person or any officer, agent or servant of such person, touching the origin of any dealing in any moneys, securities or credits which the investigating officer may suspect are being used or are intended to be used for the purpose of the subversive association.

(3) A copy of an order made under this section shall be served in the manner provided in the Code of Criminal Procedure, 1971, for the service of a summons, or, where the person to be served is a corporation, company, bank or other association, it shall be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or other association at its registered office, or where there is no registered office, at the place it carries on business.

(4) Any person aggrieved by a prohibitory order made under sub-section (1) may, within fifteen days from the date of the service of such order, make an application to the Court of the District Judge within the local limits of whose jurisdiction such person voluntarily resides or carries on business or personally works for gain, to establish that the moneys, securities or credits in respect of which the prohibitory order has been made are not being used or are not intended to be used for the purpose of the subversive association, and that Court shall decide the question.

(5) Except so far as it is necessary for the purposes of any proceedings under this section, no information obtained in the course of any investigation made under sub-section (2) shall be divulged by any gazetted officer of the Government, without the consent of the Central Government.

(6) In this section, "security" includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of money.

Power to notify places used for the purpose of subversive association.

50. (1) Where an association has been declared a subversive association by a notification issued under section 45, which has become effective under sub-section (3) of that section, the Central Government may, by notification in the Official Gazette, notify any place which in its opinion is used for the purpose of such subversive association.

Explanation.—For the purpose of this sub-section, "place" includes a house or building or part thereof, a tent and a vessel.

(2) On the issue of a notification under sub-section (1), the district magistrate within the local limits of whose jurisdiction such notified place is situate or any officer authorised by him in writing in this behalf shall make a list of all movable properties (other than wearing apparel, cooking vessels, beds and beddings, tools of artisans, implements or husbandry, cattle, grain and food-stuffs and such other articles as he considers to be of a trivial nature) found in the notified place in the presence of two respectable witnesses.

(3) If, in the opinion of the district magistrate, any articles specified in the list are or may be used for the purpose of the subversive association, he may make an order prohibiting any person from using the articles save in accordance with the written orders of the district magistrate.

(4) The district magistrate may thereupon make an order that no person who at the date of the notification was not a resident in the notified place shall, without the permission of the district magistrate, enter, or be on or in, the notified place :

Provided that nothing in this sub-section shall apply to any near relative of any person who was a resident in the notified place at the date of the notification.

(5) Where in pursuance of sub-section (4), any person is granted permission to enter, or to be on or in, the notified place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by the district magistrate.

(6) Any police officer, not below the rank of a sub-inspector, or any other person authorised in this behalf by the Central Government may search any person entering or, seeking to enter, or being on or in, the notified place and may detain any such person for the purpose of searching him :

Provided that no female shall be searched in pursuance of this sub-section except by a female.

(7) If any person is in the notified place in contravention of an order made under sub-section (4), then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by any officer or by any other person authorised in this behalf by the Central Government.

(8) Any person aggrieved by a notification issued in respect of a place under sub-section (1) or by an order made under sub-section (3) or sub-section (4) may, within thirty days from the date of the notification or order, as the case may be, make an

application to the Court of the District Judge within the local limits of whose jurisdiction such notified place is situate—

(a) for declaration that the place has not been used for the purpose of the subversive association; or

(b) for setting aside the order made under sub-section (3) or sub-section (4), and on receipt of the application the Court of the District Judge shall, after giving the parties an opportunity of being heard, decide the question.

Procedure to be followed in the disposal of applications under this Chapter.

51. Subject to any rules that may be made under this Chapter, the procedure to be followed by the Tribunal in holding an inquiry under sub-section (3) of section 46, or by a Court of the District Judge in disposing of any application under sub-section (4) of section 49 or sub-section (8) of section 50 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908, for the investigation of claims, and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.

Penalty for being member of a subversive association.

52. Whoever is and continues to be a member of an association declared to be subversive association by a notification issued under section 45 which has become effective under sub-section (3) of that section, or takes part in meetings of any such subversive association, or contributes to, or receives or solicits any contribution for the purpose of, any such subversive association or in any way assists the operations of any such subversive association, shall be punishable with rigorous imprisonment for a term which may extend to five years, and shall also be liable to fine.

Penalty for dealing with funds of a subversive association.

53. If any person on whom a prohibitory order has been served under sub-section (1) of section 49 in respect of any moneys, securities or credits, pays, delivers, transfers or otherwise deals in any manner whatsoever with the same in contravention of the prohibitory order, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both, and notwithstanding anything contained in the Code of Criminal Procedure, 1971, the court trying such contravention may also impose on the person convicted an additional fine to recover from him the amount of the moneys or credits or the market value of the securities in respect of which the prohibitory order has been contravened or such part thereof as the court may deem fit.

Penalty for contravention of an order made in respect of a notified place.

54. (1) Whoever uses any article in contravention of a prohibitory order in respect thereof made under sub-section (3) of section 50 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

(2) Whoever knowingly and wilfully is in, or effects or attempts to effect entry into, a notified place in contravention of

an order made under sub-section (4) of section 50 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

Continuance of association.

55. An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

Bar of Jurisdiction

56. Save as otherwise expressly provided in this Chapter, no proceeding taken under this Chapter, by the Central Government or the district magistrate or any officer authorised in this behalf by the Central Government or the district magistrate shall be called in question in any court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Chapter.

Protection of action taken in good faith.

57. (1) No suit or other legal proceeding shall lie against the Government in respect of any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Chapter or any rules or orders made thereunder.

(2) No suit, prosecution or other legal proceeding shall lie against the district magistrate or any officer authorised in this behalf by the Government or the district magistrate in respect of anything which is in good faith done or intended to be done in pursuance of this Chapter or any rules or orders made thereunder.

Powers to delegate.

58. The Central Government may, by notification in the Official Gazette, direct that all or any of the powers which may be exercised by it under section 49 or 50 shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised also by any State Government, and the State Government may, with the previous approval of the Central Government by order in writing direct that any power which have been directed to be exercised by it shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by any person subordinate to the State Government as may be specified therein.

Power to make rules.

59. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely :—

(*a*) the service of notices or orders issued or made under this Chapter and the manner in which such notices or orders may be served, where the person to be served is a corporation, company, bank or other association;

(*b*) the procedure to be followed by the Tribunal or a District Judge in holding any inquiry or disposing of any application under this Chapter;

(*c*) any other matter which has to be, or may be, prescribed.

(3) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

CHAPTER 8

MISCELLANEOUS

Cognizance of offences.

60. (1) No Court shall take cognizance of any offence under this Act except with the previous sanction of the Central Government or of the State Government.

(2) The Central Government or the State Government before granting sanction under sub-section (1), may order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 157 of the Code of Criminal Procedure.[1]

Bar to taking cognizance after lapse of time.

61. (1) No Court shall take cognizance of an offence punishable under sections 24, 25, 28, 39 or 54, after the expiry of one year.

(2) The provisions of sections 513 to 516[2] of the Indian Penal Code shall apply for the purpose of computing the period of limitation under sub-section (1) as they apply for the purpose of computing the period of limitation for taking cognizance of the offences under that Code.

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1. The references is to the Cr. P.C. Bill, 1970.
2. As recommended in the 42nd Report, see para. 24.30.

Place of inquiry of trial.

62. Notwithstanding anything contained in the Code of Criminal Procedure, 1971, any offence under this Act may be inquired into and tried by any court within whose jurisdiction the offence was committed or the accused person is found.

Provision as to certain offences regarding cognizability and competent court.

63. Notwithstanding anything contained in the Code of Criminal Procedure, 1971,—

(*a*) offences under sections 21, 22, 23 and 27 shall be cognizable;

(*b*) the offence under section 39 shall be non-cognizable; and

(*c*) offences under sections 15, 16 and 39 shall be triable only by the Court of Session.

Offences by companies.

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

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

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

Explanation.—For the purposes of this section—

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

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

Repeals and savings.

65. (1) The following enactments are hereby repealed, namely,—

(*a*) chapters 6 and 7 of the Indian Penal Code;

(*b*) the Foreign Recruitment Act, 1874;

(*c*) the Official Secrets Act, 1923;

(*d*) section 2 of the Criminal Law Amendment Act, 1961; and

(*e*) the Unlawful Activities (Prevention) Act, 1967.

(2) The British Statute entitled the Foreign Enlistment Act, 1870 (33 & 34 vic. c. 90) in so far as it extends to, and operates as part of the law of, India or any part thereof is hereby repealed.

(3) Transitional provisions.

COMPARATIVE TABLE

(1) INDIAN PENAL CODE

Existing	*Proposed*
Section 121	3
Section 121A	6
Section 122	4
Section 123	5
Section 124	8
Section 124A	39
Section 125	14
Section 126	45
Section 127	16
Section 128	12
Section 129	13
Section 130	11
Section 131	18 (in part) and 19
Section 132	18 (in part)
Section 133	20 (in part)
Section 134	20 (in part)
Section 135	21
Section 136	22
Section 137	Omitted[1]
Section 138	23
Section 139	26
Section 140	27
Section 505 (in part)	24

[1] As to omission of Section 137, I.P.C., see the 42nd Report.

(2) OFFICIAL SECRETS ACT, 1923

Existing	*Proposed*
Section 1	—
Section 2(1)	Omitted.
Section 2(2)	Omitted.
Section 2(3)	Omitted.
Section 2(4)	2(d)
Section 2(5)	2(e)
Section 2(6)	Omitted.
Section 2(7)	2(g)
Section 2(8)	2(i)
Section 2(9)	2(j)
Section 2(10)	Omitted.
Section 3(1)	33
Section 3(2)	42 and 43(1)
Section 4(1), 4(2)(a), (c)	43(2)
Section 4(2)(b)	2(b)
Section 5(1)	34(1)
Section 5(2)	34(2)
Section 5(3)	Omitted.
Section 5(4)	34(2) and 34(4).
Section 6(1)	35(1)
Section 6(2)	35(2)
Section 6(3)	35(1) and 35(3)
Section 6(4)	42
Section 7	36
Section 8	37(a) and (b)
Section 9	Omitted.
Section 10(1)	38(1)
Section 10(2)	38(2)
Section 10(3)	38(3)
Section 11	40
Section 12	Omitted.
Section 13(1)	Omitted.
Section 13(2)	Omitted.
Section 13(3)	60
Section 13(4)	62
Section 13(5)	60
Section 14	41
Section 15	64

(3) FOREIGN RECRUITING ACT, 1874

	Proposed
Section 1	Omitted.
Section 2	Omitted.
Section 3	17(1)(a)(b)
Section 4	17(1)
Section 5	Omitted.
Section 6	17(2)(a)(b)
Section 7	62

(4) FOREIGN ENLISTMENT ACT, 1870 (ENG.)

Existing	*Proposed*
Sections 1 to 3	Omitted.
Section 4	17(2)(a)
Sections 5 to 15	Omitted.
Section 16	Omitted.
Section 17	62
Sections 18 to 33	Omitted.

(5) UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

Existing	*Proposed*
Section 1	—
Section 2(b)	28, Explanation (b)
Section 2(c)	44(a)
Section 2(d)	28, Explanation (c)
Section 2(e)	44(d)
Section 2(f)	44(b) & 28, Explanation (a)
Section 2(g)	44(c)
Section 2A	2(b)
Section 3(1)	45(1)
Section 3(2)	45(2)
Section 3(3)	45(3)
Section 3(4)	45(4)
Sections 4(1) to 4(4)	46(1) to 46(4)
Section 5(1)	47(1)
Section 5(2)	47(2)
Section 5(3)	47(3)
Section 5(4)	47(4)

Section 5(5)	47(5)
Section 5(6)	47(6)
Section 5(7)	47(7)
Section 6(1)	48(1)
Section 6(2)	48(2)
Section 7(1) to 7(6)	49(1) to 49(6)
Section 8(1) to 8(6)	50(1) to 50(8)
Section 9	51
Section 10	52
Section 11	53
Section 12(1) and (2)	54(1) and 54(2)
Section 13(1)	28
Section 13(2)	Omitted.
Section 13(3)	Omitted.
Section 14	Omitted.
Section 15	55
Section 16	56
Section 17	60
Section 18(1), (2)	57(1), (2)
Section 19	58
Section 20	Omitted.
Section 21(1), (2), (3)	59(1), (2), (3)

TABLE SHOWING THE SECTION IN THE BILL AND THE CORRESPONDING SECTION IN THE RELEVANT EXISTING ACT

Bill	*Existing Act section*
Section 1	New
Section 2(a)	New
Section 2(b)	Section 4(2)(b), Official Secrets Act, 1923.
Section 2(d)	Section 2(4), Official Secrets Act, 1923.
Section 2(e)	Section 2(5), Official Secrets Act, 1923.
Section 2(g)	Section 2(7), Official Secrets Act, 1923.
Section 2(i)	Section 2(8), Official Secrets Act, 1923.
Section 2(j)	Section 2(9), Official Secrets Act, 1923.

Bill (*contd.*)

Bill Section	*Existing Act Section*
Section 2(b)	Section 2A, Unlawful Activities Act.
Section 3	Section 121, I.P.C.
Section 4	Section 122, I.P.C.
Section 5	Section 123, I.P.C.
Section 6	Section 121A, I.P.C.
Section 7	New
Section 8	Section 124, I.P.C.
Section 9	New
Section 10	New
Section 11	Section 130 I.P.C.
Section 12	Section 128, I.P.C.
Section 13	Section 129, I.P.C.
Section 14	Section 125, I.P.C.
Section 15	Section 126, I.P.C.
Section 16	Section 127, I.P.C.
Section 17(1)(a),(b)	Sections 3 and 4, Foreign Recruiting Act, 1874.
Section 17(2)(a), (b)	Section 6, Foreign Recruiting Act, 1874, also, section 4, Foreign Enlistment Act, 1870 (Eng.).
Section 18	Section 131, I.P.C. in part. and Section 132, I.P.C. in part.
Section 19	Section 131, I.P.C.
Section 20	Section 133, I.P.C. in part. and Section 134, I.P.C. in part.
Section 21	Section 135, I.P.C.
Section 22	Section 136, I.P.C.
Section 23	Section 138, I.P.C.
Section 24	Section 505, I.P.C. (in part)
Section 25	New.
Section 26	Section 139, I.P.C.
Section 27	Section 140, I.P.C.
Section 28	Section 13(1), Unlawful Activities (Prevention) Act, 1967.

Bill (contd.)

Bill Section	*Existing Act Section*
Section 28 Explanation (b)	Section 2(b), Unlawful Activities (Prevention) Act, 1967.
Section 28 Explanation (c)	Section 2(d), Unlawful Activities (Prevention) Act, 1967.
Section 29	New
Section 30	New
Section 31	New
Section 32	New
Section 33	Section 3(1), Official Secrets Act, 1923.
Section 34(1)	Section 5(1), Official Secrets Act, 1923.
Section 34(2)	Section 5(2), 5(4), Official Secrets Act, 1923.
Section 34(4)	Section 5(4), Official Secrets Act, 1923.
Section 35(1)	Section 6(1), 6(3), Official Secrets Act, 1923.
Section 35(2)	Section 6(2), Official Secrets Act, 1923.
Section 35(3)	Section 6(3), Official Secrets Act, 1923.
Section 36	Section 7, Official Secrets Act, 1923.
Section 37(a) & (b)	Section 8, Official Secrets Act, 1923
Section 38(1)	Section 10(1), Official Secrets Act, 1923.
Section 38(2)	Section 10(2), Official Secrets Act, 1923.
Section 38(3)	Section 10(3), Official Secrets Act, 1923.
Section 39	Section 124A, I.P.C.
Section 40	Section 11, Official Secrets Act, 1923.
Section 41	Section 14, Official Secrets Act, 1923.

Bill Section	*Existing Act Section*
Section 42	Section 3(2), Official Secrets Act, 1923 also Section 6(4), Official Secrets Act, 1923.
Section 43(1)	Section 3(2), Official Secrets Act, 1923.
Section 43(2)	Section 4(1), 4(2)(a)(c), Official Secrets Act, 1923.
Section 44(a)	Section 2(c), Unlawful Activities (Prevention) Act, 1967.
Section 44(b)	Section 2(f), Unlawful Activities (Prevention) Act, 1967.
Section 44(c)	Section 2(g), Unlawful Activities (Prevention) Act, 1967.
Section 44(d)	Section 2(e), Unlawful Activities (Prevention) Act, 1967.
Section 45(1)	Section 3(1) Unlawful Activities, (Prevention) Act, 1967.
Section 45(2)	Section 3(2), Unlawful Activities (Prevention) Act, 1967.
Section 45(3)	Section 3(3), Unlawful Activities (Prevention) Act, 1967.
Section 45(4)	Section 3(4), Unlawful Activities (Prevention) Act, 1967.
Section 46(1)	Section 4(1) — Unlawful Activities (Prevention) Act, 1967.
Section 46(2)	Section 4(2) — Unlawful Activities (Prevention) Act, 1967.
Section 46(3)	Section 4(3) — Unlawful Activities (Prevention) Act, 1967.
Section 46(4)	Section 4(4) — Unlawful Activities (Prevention) Act, 1967.
Section 47(1)	Section 5(1) — Unlawful Activities (Prevention) Act, 1967.
Section 47(2)	Section 5(2) — Unlawful Activities (Prevention) Act, 1967.
Section 47(3)	Section 5(3) — Unlawful Activities (Prevention) Act, 1967.
Section 47(4)	Section 5(4) — Unlawful Activities (Prevention) Act, 1967.
Section 47(5)	Section 5(5) — Unlawful Activities (Prevention) Act, 1967.
Section 47(6)	Section 5(6) — Unlawful Activities (Prevention) Act, 1967.

Bill Section	*Existing Act Section*	
Section 47(7)	Section 5(7)	Unalwful Activities (Prevention) Act, 1976.
Section 48(1)	Section 6(1)	
Section 48(2)	Section 6(2)	
Section 49(1)	Section 7(1)	
Section 49(2)	Section 7(2)	
Section 49(3)	Section 7(3)	
Section 49(4)	Section 7(4)	
Section 49(5)	Section 7(5)	
Section 49(6)	Section 7(6)	
Section 50(1)	Section 8(1)	
Section 50(2)	Section 8(2)	
Section 50(3)	Section 8(3)	
Section 50(4)	Section 8(4)	
Section 50(5)	Section 8(5)	
Section 50(6)	Section 8(6)	
Section 50(7)	Section 8(7)	
Section 50(8)	Section 8(8)	
Section 51	Section 9, Unlawful Activities Act, 1967.	
Section 52	Section 10, Unlawful Activities (Prevention) Act, 1967.	
Section 53	Section 11, Unlawful Activities (Prevention) Act, 1967.	
Section 54(1)	Section 12(1), Unlawful Activities (Prevention) Act, 1967.	
Section 54(2)	Section 12(2), Unlawful Activities (Prevention) Act, 1967.	
Section 55	Section 15, Unlawful Activities, (Prevention) Act, 1967.	
Section 56	Section 16, Unlawful Activities (Prevention) Act, 1967.	
Section 57(1)	Section 18(1), Unlawful Activities (Prevention) Act, 1967.	

Bill Section	*Existing Act Section*
Section 57(2)	Section 18(2), Unlawful Activities (Prevention) Act, 1967.
Section 58	Section 19, Unlawful Activities (Prevention) Act, 1967.
Section 59(1)	Section 21(1), Unlawful Activities (Prevention) Act, 1967.
Section 59(2)	Section 21(2), Unlawful Activities (Prevention) Act, 1967.
Section 59(3)	Section 21(3), Unlawful Activities (Prevention) Act, 1967.
Section 60	Section 13(3), 13(5), Official Secrets Act, 1923, also section 17, Unlawful Activities (Prevention) Act, 1967.
Section 61	New
Section 62	Section 13(4), Official Secrets Act, 1923. also section 7, Foreign Recruiting Act, 1874, also section 17, Foreign Enlishment Act, 1870 (Eng.)
Section 63	New
Section 64	Section 15, Official Secrets Act, 1923.

APPENDIX 2

CONSEQUENTIAL AMENDMENTS IN CENTRAL ACTS

I. THE INDIAN PENAL CODE

1. In section 52A, the words and figure "and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured" shall be omitted.

2. In section 94, for the words "offences against the State", the words and figures "offences against the National Security Act, 1971" shall be substituted.

II. THE CODE OF CRIMINAL PROCEDURE[1]

1. In section 42, sub-section (1), clause (a),—

(i) the words and figures "121, 121A, 122, 123, 124, 124A, 125, 126, 130" shall be omitted;

(ii) after the words, figures and brackets "456 to 460 (both inclusive)" the words and figures "or under any of the following sections of the National Security Act, 1971, namely, 3, 4, 5, 6, 8, 11, 14, 15, and 39", shall be inserted.

2. In section 95, sub-section (1), for the words and figure "under section 124A or", the words and figures "under section 39 of the National Security Act 1971, or under" shall be substituted.

3. In section 109, sub-section (1), clause (a), for the words and figure "under section 124A or", the words and figures "under section 39 of the National Security Act, 1971, or under" shall be substituted.

4. In section 197, caluse (a), the word and figure "Chapter VI" shall be omitted.

5. In section 446, in sub-section (3), the word and figure "Chapter VI", shall be omitted'.[2]

6. In the First Schedule, the entries relating to offences under Chapters VI and VII of the Indian Penal Code shall be omitted.

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1. The amendments proposed are to the sections of the Code of Criminal Procedure Bill, 1970.

2. Except section 130, all offences under Chapter VI of the Indian Penal Code as revised and included in the National Security Bill are punishable with imprisonment for seven years and more, and are therefore covered by the general ascription in section 446(3) of the Criminal Procedure Code Bill.

7. In the Second Schedule, in Form No. 31, Part I,—

(*i*) in item No. (1), for the words and figures "under section 121 of the Indian Penal Code" the words and figures "under section 3 of the National Security Act, 1971" shall be substituted;

(*ii*) in item No. (2), for the words and figure "under section 124 of the Indian Penal Code" the words and figures "under section 8 of the National Secruity Act, 1971" shall be substituted.

III. THE CRIMINAL LAW AMENDMENT ACT, 1961

In section 4, sub-section (1), for the words, figures and brackets "under section 2 or sub-section (2) of section 3", the words, figures and brackets "under section 28 of the National Security Act, 1971 or sub-section (2) of section 3 of this Act" shall be substituted.

MGIPRRND—34 M of Law/71—Sec. II (N.S.)—21-2-72—2,000.