Page 1:  
LAW COMMISSION  
OF INDIA  
  
FORTY-SECOND REPORT  
  
INDIAN PENAL CODE  
  
JUNE, 1971  
  
GOVERNMENT OF INDIA, MINISTRY OF LAW  
  
  
Page 2:  
K. V.K. Susana  
  
Now Deut  
June 2, 1971.  
  
Dear Law Minister,  
  
1 have pleasure in sending herewith the Forty-second Report of the  
‘Law Commission on the Indian Penal Code, This tings to conclusion  
the second major task of revision undertaken by the preset Commission  
sce its constitution in March, 1968  
  
2. The Law Commision in 1959 announced is intention to tke up  
for revision the Penal Code and the Criminal Procedure Code and invited  
‘tazestion from the pubic. It was, however, ony aftr the present Come  
‘mission completed the revision of the Criminal Procedure Code and sub.  
mited our Report to the Goverment atthe end of September, 1962, that  
‘wecould get down to a detailed stody of the Penal Code.  
  
3. As we Rad done in our last Report on the Code of Criminal. Pro-  
‘ndere, we alo have in this Report added a draft Bil to implement all our  
‘recommendations for the amendment of the Thdian Penal Code, together  
With a draft of the consequential amendmeats which will be found neces.  
‘sary in the Criminal Procedure Code and other Central Acts.  
  
‘4. Finally, we wish to expres our appreciation ofthe assistance given  
40 us by our Secretary, Shri P. M. Bakshi, in collecting and analysing the  
Material for our discussions, particularly from foreien Codey and tex  
books,  
  
‘Yours sincerely,  
Sa  
(K. V.K. SunDanan)  
  
Shri H.R. Gobble,  
Miniter of Law & Josie,  
Government of India,  
hase) Bhavan,  
  
‘New Dei  
  
  
Page 3:  
CONTENTS  
  
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‘hd Mowe  
  
15. Ofer ea to Ratio :  
16ers aeing te Huan Baty .  
  
17 ences agit Prvety :  
18 fences relating to Documents and to Property Maks  
19. Criminal Bach of Contes of Sevice  
  
20. Oftencs easing o Mariage  
  
21. OF Defamation  
  
22. Cina nina, tnt ang Annorance  
  
23. Viton of Peon Prey  
  
24 Tie Cie for Proetont  
  
oe by Mrs. Anna Cane  
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APPENDICES  
  
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‘The nan Pal Code Amend) Bi 971  
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“shen proposed vein .  
  
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Page 5:  
INTRODUCTION  
  
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ir igs coset coerce = POPE and chewing  
  
‘The Commision was then asked by the Government to examine the  
‘question of "the abolition or retention of expital punishment, and ater an  
‘exhaustive consideration of the subject it gave 2 Report) secommending  
fetention, We sal be veering to tis Subject later i this Report  
  
‘Alter the present Commision was constituted in March, 1968, we, took  
up for urgent consiseration question eating to the sence of imprison:  
‘ment for life under the Penal Code and submited a Report\* To this also  
‘We shall have occasion (0 ele ater  
  
On a preliminary examination of the Code we thought it deseable 0  
  
ccc "pute opinion on cetan broad questions, and, wilh this obec, pee=  
  
pated t questionnaire? which was sent out to High Cours, various bat ass  
  
lations ind other lal bodies, end the State Government. As i appear.  
  
fd fo us that theic ews on the wide range of questions could be obtained  
  
‘noe Susictony ty petonal damon, Members of the Common  
  
Viste at t fs and held infoumal meetings with the Judges,  
  
Tepresentatives of the bar, academic lawyers end Government offal  
  
"These discussions have been of mush ausance to Ss in” deciing, upon  
  
the additions 2nd slerations to be made in the Cade We are. apecslly  
  
indebted to the Judges of High Courts for ready sparing tie for these  
  
discussions and giving’ us the eneBt of their indhadual views on the  
  
‘questions raed.  
  
1 The gaaeon wat. dey he Sunita Capo ste Erni of Cseupton  
Woe at Coomatecs Reparpars  
  
4. 2 Report (ebay, 19609 9 te Popol fo nla cern socal apd econo  
ines he Inds’ ma Case"  
  
2. 380 Report (Dace 1967) 08 Cpt Pane  
  
4. 391 Rept (ay 9) 09 Imprisonment fo Ike nde he nian Penal Ca.  
  
1 Tee quionnie ie apponded oth Rept: Append  
  
  
  
Page 6:  
Cuspren 1  
PRELIMINARY  
  
11. Tie Law Commissioners who laboured in the middle Cénina  
Fibs fot cenry onthe codicaton of the ave in fore in el  
ii hg Ske ut the na tc ne  
sore codes. “The fist to be placed om the site book wos  
ins fndan Peal Code formula the substamsve law of times  
Fuss enacted in October. 1860, but brought ito force hileen  
tm ater nn the Tot nauay, hon cane thes  
inal Procedure enacted in 1861, which consolidated  
ing the setup of criminal Courts an the pros  
ure 1 be Followed the ovesgation and tal of ences  
‘Thc dsision ofthe vast slgject of criminal Iw for the pose  
‘of ection is Obviously Convent tnd well  
  
eof “Ind Peal Coie” len ty the Law 1  
tothe Bae criminal tw apy descntes is cow Tes!  
“The word “pensl” no. doubt cophasnee the aspect ef CO  
prishiog iRoxe who eandgress the law and. comma cllences  
  
Sui coutd hardly be ciberwie, so long as punishment aed te  
  
Uiveat ‘nf tare the chet methods known 1 the Site for  
Inaioaining public order, pence ual (aaguiley  
  
1.3. As orginally enacted. section 1 peovided that the Code Tetra  
all have effet "Uroushoot the whole Of the trntores wines een‘ t  
FS, oF may Fecome vesied In Her Majesty by Statute 2Y and 22%  
Vei"e. "106 ened "Act forthe beter Gavernment af fala  
  
xcept the S<tlements of Prine of Wales (and. Sieapore  
  
fad Malacca By an amendment mado vs IR98, the references fo  
  
the thee elo setlements outside Ind were ormteds While  
  
the Cove isef was natin Tove in any0f the Td Slaten  
Iyovions were in course Of time. adopsed with munoy mod  
  
{tions in practically a of them. Upon the commencement of  
  
the Const. the Adaplation of Laws Order 1930; changed  
  
the esten chase 19 “the whole of dias ctcepe Pat B Sta  
  
1.4. Fach of these Sales had its on  
Code. not witerially diferent from ‘the Vndian. Penal Cage  
Soom afterward. the 1931 Chor 1981)  
  
the State of Tamme  
peaked he Penal Codes  
‘oF the former Iadn States except tha of Jamis und Ras  
  
1.5. "the lomino and Kasdic Ranbie Penal Code, i fs Esa  
colle 1 epic of the Toda Cade wath the again fat fees  
a see ye ating the: Seman of on athe  
Irwittal coca weonated vbivacion far oh.  
  
  
  
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1 sans 1B, S14 an 5  
a Report, parnesahs 1.8 and 1.9  
  
fanks and alls, and slaughter of cat, and thee sections!  
‘ating to whipping” icappears anomalous to have the punch:  
trent at whipping sontnges in only one Sate of India whe  
sheen atelished Im the vent of the county long aga. 1a  
ur Report® on the Code of Criminal Procedore we have pois”  
flout the apomaies and dificult tring oot of two difrem  
‘Codes operating in Jam and Kashmit and inthe other Sites  
sand recommended that these shouldbe removed, by fest sulle  
{bly “amending the Consticion (Appication to Jaman and  
Kathrin) Order, 1980 under slicks Hb of the Constuson, and  
‘hen ty enending the Indian Penal Code andthe Criminal  
Procedure ‘Code to thir Sate  
  
16 With seerence to section 2, the Law Commisioners!  
sated  
  
We do aot advise ine genera repeal of the penal ls  
‘nom existing in the ferttoncs for which ‘we have recon  
‘medi Eerie he Code We hike be mae  
‘pedient to provide onl that no man shall be tood or  
Punished (except by a Coort Mattia for any ofthe ace wh  
Sonsttie any" offence dened in tke Code, otherase than  
Secoring (0s provisions"  
  
tat wasn 0a. prvsn oft Cade wee  
ppb they ere to prea im Superesion ofhe peaal avs  
feet le Toe Suan High Co oneedt I's  
  
“I must be borne in euind that, up 10 the date of the  
cnactnent of At XVII of 1862 the Lepiatore took 0  
Towards expres Yepeling the old timinal law, Pu  
  
it may have been thought hazardous to repeal it wholesale  
find without sacha caret sertiny as would ensure the reset  
Sion of such parte stone of the oid law ae the Benat Cove  
‘onderee superioon. Whatever may fave been the reason,  
the eld tat'was fet in the Statute Books aad’ but for the  
provisions of setion 2, the reat oxy of acts and omisions  
DPunihable inde the "Penal Code night have. been ail  
prosecuted Under che old ts  
  
"As the Penal Code was intended 10 be genera. it was  
ces hi the ld an anand in the tte Bok,  
{args numberof cases in which the als and omissions cons  
titung ofences wader it were also viclattone of the Prov  
sions of he Penal Code The old lw was therfore render  
‘4'moperative to this enent by section 2, except 30 far a5  
  
5. Law Commins” 26d Rept te Pal Cade, acon 16-3,  
4084) SMC R Append  
  
  
Page 8:  
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sexion$ (eich ws perhaps too longo be introduced into  
‘Scvon 3 areametcaiy aed sas oniat stent and ae  
  
saps ie rater ene, paced by wel) Seah  
and acts as a saving cause.” mes “  
  
Relying on this section, the Calcuua High Court held that  
the Engish common law cannot be followed in order (0 modity  
the offence of erimmnal dtamation. Ie observed. —  
  
The Penal Code cerainly declares the law ia cespect  
of defamation. It contain. @ definton of delamation and  
Seis outa umber" of exceptions. ft appears to. es that  
it owst be Tepanded a8 exiutive on the point. Socion >  
fnacs that every person shall be habe to punishment unde<  
ths Code: snd not omer, for thee ate If there eo  
‘hunter of exceptions to the offence of defamation, other that  
those comzaned in section 439, i appears to us that an fend  
rit be Table (0 punishment for defumalton olherwise  
thas uae he Code: "On pnp, tee would sem  
{ows that section 498 is exhaust, and that ia defamatory  
Natement does not come sits the speciied exception’,  
5 not prieped.”  
  
gli Sting 2 howeer, i ot mel a he, preset  
  
‘he deleted» "Tho old copuations or laws in force when  
iM Code nas crated have mol Wee speicaly tepate.  
‘There can be no. question ato the calonve apphcabiy of  
{ie troxtion Ot se Cade, Sbjct fo at ited Stn  
  
1.8, Scetion 3 provides shat “any person ible by any Kadi  
law. to be tried foe an offence committed beyond India shal be  
Gea wath according Lo the provisions of this Code Tor any act  
ommited beyond India In the sarac manner 3s such act had  
‘been committed within India" Two conditions have to be fl  
Ie cor ths Stn peed in servi forte rps  
‘fa criminal ene. hrs, here showld be an alegation that pe  
Som (beter at eazen of Tin or aa) has commited outside  
Toca ‘an act which, i commie ia Tel, Would be punishable  
tinder the Code, ad secondly. that persons lable under some  
Todian law! be tied in Iadia for that offence. When both  
these conditions ave sats. the accused person i required 19  
bbe deat with according to ibe provisions of the Code in the  
‘Sime manner a5 the culpable act had been committed in India  
‘The pracical ull of the section would seem (0 he fo the Tact  
18a Si he general Sad ancilany provision of the Code, he  
omplity i cli, genera encepions abetment aed attempts  
Se" Qtecaly made! appicable sn reation othe externa,  
  
“T Rat Sh Empoor, (TLR OCH OH  
  
‘Seton #8 apis ao so he Peal Ce  
  
  
Page 9:  
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“4 Every servant ofthe Queen shal bo subject to pun  
rent under thi Code for every att or emission contrary (0  
Ihe’ peownions there. of which wiblst in such service. Be  
Shaif’be gut om or ait the said Is day OF May 1861, with  
Inthe dominions of ray Prasce or Stave n lance with the  
‘Queen, by virtue of any weaty of engagement heretofore  
tered into with the East tala Company. or whic may  
five been or nay hereafter be made i he ame ofthe Queet  
By'Say Government of Taga  
  
The extersitrial application ofthe Code was limited wo persons  
ine service ofthe Goveenment avd to offences committed by  
them: whilst in such sefviee the terres of Indian States,  
‘Th wm in comyomance with section 22 oF the Indian Covociy  
AY Wai” chick ensbid. the Governor-General tm Counc  
{feimake laws ard regulon for all persons yin Bush india  
‘und for all servants of the Goveroment of Hd within the  
dominions of Princes and’ Sates tn alance wis Her Majesty"  
T1198 section 4 of the Code was replaced by the Following  
‘Meh save ie mach wider scope  
  
4, The provision ofthis Code apply abo to any olence  
commits be  
  
(1) any Native Hodian subject of Her Majesy in  
any place without and beyond Bish India:  
  
(2) any offer British subject within the eniories  
‘of uty’ Native Prince or Chin ti  
  
(9) any servant of the Queen, whether a British suby  
Jeet not wth the tierce of any Native Prince oF  
hit im tad  
  
Explanation, to this section the word offence ncldes  
exces adc commited ournde Brak India whch, ircommated  
fn Bish tng, wookl be punsable under this Code."  
  
Te Indian Legislature had by then been eimpowsred by. the  
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eves eateyones of person hy pursuance of section 92)  
WSthe"Govcenmen of Hodis Act. 1935. whch nfarged that  
  
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FEO Fasano A, 2  
  
  
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ower, tion 4 of she Code was amended in 140. by inser  
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(4) any person on any ship oF sircrarepatered in  
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baer Gr 480 rec he hs as af vn 4  
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‘nthe fourth clase and inthe explanation \*  
  
110, Theexr-erticorial operation of the Code at present  
{sho limited to oflenes commie by hndian sts Bonde  
ia and to lfoees commited on Board Inti ships ot  
‘af, We’ have coieied wheter the feof such opera  
‘the Code shoul be enlarged nny way "Wie cea i  
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frags 142. Chuse (I) of section 4 of the Code which makes al  
  
SSMS" provisons of he ‘Code aphentie to sneer commie oy  
  
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‘under the protection ofthat State otha ll persons on  
  
‘uch ship of acral whatever sit naioal Gt may  
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‘ison mars whch deus to prove it hs ben med fate  
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iSite Bee bin tal str at  
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‘eictauy criminal bet committed outde State teary ove of eo  
  
inci.” Zens." This is sometimes described as the “passive personality  
Drinciple. “This notion according to which’ Stace cai te  
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{ry of is ova nationals has found no pace ia Anglo-American  
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{God Shah Year Bok on tata En, Me  
  
3. Gare, Mer, Cima Jusdion oer Fosgntsy (5859) Disb Law Re  
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4. S00. Jain, oe  
  
  
  
Page 12:  
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fppresion of immoral trafic in seomen, dangerous aMups es  
‘The asis of this forisdiction ( aot tector! sovereignty oF  
anything connected wth t but the principle of universality.  
‘Xt nero ations havin ape fo rat ch eines  
‘Simos against mankind, any State eepresting mankind ts jus  
‘Sod in assuming jonsdicion ander i own Tas to try the offend  
{er even there Beno other nexus betwcen the crm (Othe oend-  
Se) and the State  
  
1.6 Reference should be made in thls connection 10 the  
Dalit Convention on Tonsdision wa spect to etme proposed  
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inate te bio whic State may go soumng ad exe=  
‘hing jerisscion wih respect to erimes commited ouside  
  
SS octal he Brat Coen des 3 Sates  
{tory as comprsing sland and terra waters aed thea  
‘forthe Wena water the ra Cameron  
jroposed for intratinalrecogniion Wat Sate has jet  
omit respect to any crimes eommited outs i etary —  
  
(a) by an alien in connection with the discharge of =  
pati fimction which he was engaged to perform for that  
Sates  
  
(6) by an alien while cogaged as one of the personne  
‘of a'ship of siete havieg the national characte of that  
Sut  
  
oh maaan th cy, nti imei  
‘or poinica indspendence of tht State, provided. the aet of  
‘mmission which constitutes the cnme was not committes  
Snenerewe ofa hiberty guaranted the alien by the lw of the  
pce where at as commited?  
  
(4) by an alien which comsits of a faileaton ot coun  
teeing ran tee of faites copes ot coun.  
bite peal, coreney nscujents Of credi stamps, passports  
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{0 by am ale, which cote piracy by iterations  
  
[arise 6 the Dat Comet,  
‘rele Th  
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ewention 1.17, We conde it dsrabe to extend the extraterritorial  
ESA" application of the Code 19 aliens n the sevice ofthe Goysene  
ite’ teat (Ceara a well 35 Stal), bat notin eapect ofa ffenzs  
SoEC" puiuble under the Cos. Where am sien im Government ser-  
SES” Pee Commits am olfence ouside Inde, provisions ofthe Code  
TES, dosnt aply tn fim nor is he table oe red forthe offers  
Swiadior er i he ome to Toda Att in such servic. the  
‘fence comeited abroad 3 conne-ted with his sevies wader  
  
fhe Government, such a0 bubere criminal breach of (rst  
  
then oF Governrient property 2! ihe lke its abviowsy de  
  
ble, even if ot Absolcly coc that he provision oft  
eke Should be pcb ond ta the offender shou be ab  
{orbs ined Unit forte oft. and when es bro buck  
oor found in, tndin Whi the foreign State im whic the  
fence is commited competent to prosecute and pons fit  
“me interet io sch proscuton a  
  
{esould have Me own goveramental interests were allected  
  
a) jardin by the State em  
be Sand to res on the piviple that ach  
iaied capacity to organive and conte is  
fon governs lal agences"!  
  
While it ent nocesary, nor even desea, thatthe tain  
onal Cove sis apply va whole to an aie ia. Government  
Scans sre the elfen 8 comanted in his indvadua of pete  
Shecis, we think a woold be qu  
  
ay of put tant of he Code Se ocd  
heat ee eed conntina mh Me ewe,  
jn commision by a public servant could pot be tolerated  
  
18. We acorn econmend hat action tf se Cale  
te revit flows and placed immedi afer section 1  
“2, Besterstrial application ofthe Ce. This Code shall  
poly aio  
(@) to any offence commited curse India by  
citron of tl  
1) to any offence committed by an alien on any  
ship ot areal reginered in Tnda, whesever i may be  
and  
(0 any offence committed outsige India by an  
alien ohuse inte serce of the Government, when such  
Stence ie commited ia connection wih so ser  
‘ris punibable under Chapter Vi, VIC or AX. of this  
Coat!  
  
“oft oe Asean Soa! nealonl Law, Val 3, (35, pe 5  
Te anting con 2s pope be omit: ae pasa 3.7  
  
  
  
Page 14:  
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“Explanation —ta this section, the word offence’ in:  
‘ges evry act commited outside Tada which i commited  
‘nndis would be punishable under ths Code."  
  
119, \_Whca this amendoent is made inthe Indian Penst  
{Code wil be ncesay to tend secon 15 ofthe Comal  
Procedure Code Soy 10 cover the case of aoa i the srioe  
ot the Goscmment sho commit ouside Inds oes push  
tie unde the tian Peal Cove. We have, por Report on  
ihe‘Chde of Cra Process, tecommendea) hat subexction  
0) ef section 188 of that Code should be revised as follows  
°U) Whee an ffs i commited ouside India—  
{bya cin of Toda whether onthe igh seas  
or cette, =  
(©) 879 prion, not being ich izes, on any hip  
or ahr fea fal ”  
ema be deat within epee of sch. ofece\_ as if i had  
Semen pc whined hich he may  
found  
Pronded ete."  
  
We think, however, that instead of amending the subsection om  
eng eine teson fhe Re oe eo  
achat generat the provision and make ap  
  
to si ofleres Sommted outa when tey ae punttatl  
ina ner the Penal Code or ay spsal aw. The subszction  
say beamed fo rod  
  
“188. (1) When an ofeace commited by any person ont  
fide India is ponichable unde the Indian Penal Code or any  
“Spec fw sich person may be dealt with vn respoct of the  
offence a: ft had been commited at anyplace within Indi  
At which be Inay be found  
  
Provided ee."  
  
120, Seton S expressly provides that nothing inthe Code  
spl fect the provi on Act Yor pane  
  
dssenion of oes, sor, sekders or aftmen  
of the Government of odio the provisions of  
ideal ine ‘The xpressons “spec lan  
‘ed m ston Stand 4 of he Code Since the Acts provi  
forthe iniplne ofthe offers od men ofthe are forse  
the, Union Bae the Avy Act 198, the Ale Force At” 1950,  
Sid the Novy Act 1987 are undoubtedly special laws within te  
‘eho, ston 8 may Be mphted 1 feds  
  
"5. Nothing ia this Code shall afet the provisions of|  
any special of oad law”  
  
Since section 4is to be revised and placed as section 2, the  
sevised section 3 may be numbered seston fy  
  
  
  
Page 15:  
Section 6—  
‘omission  
  
Applica-  
tion of  
General  
Clauses  
Act to the  
Code.  
  
Section 7.  
  
Sections 8  
and 9—  
‘omission  
Tecom-  
mended.  
  
Cuaprer 2  
GENERAL EXPLANATIONS  
  
2.1. Chapter It begins with a provision to the effect that  
every definition of an offence, penal provision and illustration  
shall be understood subject to the general exceptions contained  
in Chapter 1V. Such a provision is hardly necessary as\_ every  
relevant section in Chapter TV begins with the words “Nothing  
is an offence which are sufficient to indicate that every provision  
of the Code relating to offences has to be read together with and  
subject to all relevant exceptions contained in that Chapter.  
Section 6 may therefore be omitted.  
  
2.2. Neither the definitions nor the general rules of construc-  
tion contained in the General Clauses Act, 1897, are applicable  
to the Indian Penal Code except to a very limited extent. The  
result is that there is an appreciable amount of overlapping bet-  
ween those rules and definitions and the definitions and general  
explanations contained in Chapter II of the Code. It is desirable  
to remove this duplication as far as possible by providing expres-  
sly that the General Clauses Act shall apply for the interpretation  
of the Code, If this is done, a number of sections in Chapter IT of  
the Code can be omitted. We propose that in lieu of section 6 the  
following section may be inserted as the first section in Chapter  
Tea  
  
“6. General Clauses Act to apply for interpretation —The  
General Clauses Act, 1897, shall apply for the interpretation of  
this Code as it applies for the interpretation of an Act of Parlia-  
ment.”  
  
2.3. Section 7 states that “every expression which is explain-  
ed in any part of this Code, is used in every part of this Code  
in conformity with the explanation.” This explanation itself  
may, at first sight, seem to be unnecessary in view of the well-  
known principle of interpretation that words and phrases! should  
be given the same meaning throughout an Act, But is useful  
in a few instances. For example, the definition of “election”  
given in section 21, Explanation 3, would, by its own force,  
apply only in deciding whether a person is a public servant or not,  
yet by virtue of section 7 it is applicable to the whole of Chapter  
IX-A dealing with election offences. It appears desirable there-  
fore to retain section 7.  
  
2.4. Section 8 and 9 contain rules of construction as to  
gender and number which are the same as those found in section  
13 of the General Clauses Act, 1897. Those two sections may  
accordingly be omitted.  
  
1. Maxwell, Interpretation of Statutes (1962), p. 311.  
  
10  
  
  
Page 16:  
n  
  
25, The dios of "man and woman” eon 10  
as Scoung a mueiemale human being of any abe peat 10  
i ttle temoring ay douse the aptabity of  
hon the Cade anon to cidren and infnt of ter  
Sa'Thos with ceterene to the ofence of ssaulting woman  
Sit intent outa er modesty ton 4), ths dentton  
TF Aofnan hoe tc bo by the Supreme’ Coot! to be appli:  
te nace wire the smal fort a ued fo a feral fant  
FTE mom Tus Court hy a majority considered fe unecesaty  
irish mabe EN a ge ap ee ota  
{o'er modesty. Though a child my mot have developed ay  
‘Sous of Sine and had no awaenes of em never from  
Fer cry oth ae posses the modesty which tthe atte  
UFpr or Sure Co id nat apree wrth ths ww, Whee  
Sal adver to ths pot Ite! the Report the dehnitons i  
‘Setion 10 do-no rage any chang  
  
26. Section 11 defines the word “person” as including any  
company or snsoution of body of persons, whether incorpora  
{ele not As an slmost identical defaition 1s te be found in  
the Gensrat Clases Act this section may be omited  
  
27. Section 12 defining the word “pubic” as including any  
clase of the publi oy any community doesnot requice ay change.  
  
28: Section 14 defines “servant of the Government” as  
any olicer or servant. continued, appointed or employed in  
India ty oF under the author of Government, bot this expres  
‘Son dogs not now occarin any other secon ofthe Cade. (Before  
1930, the expresion servant of the Queen” occured jn section  
Pod the Sentuon in seeion 14 was of use) The ection may,  
therfore be oiled  
  
29.\_ As the word “Government is defied in section 3123)  
ofthe General Clauses ACL, ater definition inthe Penal Code  
{8 unnceesry, aad seston 17 may be omit,  
  
210, Section 18 defines “ogi as meaning she teritory of  
India ekcasing the Slate of Jammu and Kashmir. We have  
indicated inthe previous Chapter the need to amend ths db  
{gn to make it Clear thatthe Code “extends” 10 the tertiton  
tvates of tnd is exactly the sume manner as i extends to  
Tanderrory and internat ster of odie. We recommend that  
ection 18 may be amended 0 read:—  
  
“18. india’ means the teriory of India including tet  
torial water, hut does sot inluge the terntory of Jamme  
‘nd Kash  
  
‘rales Now, Sag oe Sem BRAS  
Teisds MOMS Medtech with Sasha |  
  
=]  
  
2, Sr paras 1685 and 1586  
1S Seton x0,  
  
Seco 1.  
  
seta  
  
Seton  
  
  
  
Page 17:  
2  
  
21. According to section 19, every person “who is emo  
eed ft ee, my pl sete i or era  
2'aehnive 2 odge. Bath tbe expressions "legal  
  
Drosteiog” and sefinitne jodgerent” have presented Some  
Sicily tn imerpretation sx requre to fe eoosdere.  
  
MoE ag ZIP, lanowes cst thequeton arose whieh Ps  
Ho" dent of'» Union Board. while ceepting oF rejecting nomination  
cand Sofey at elcuone to Taluk and" Union Boardas wars Jodge  
Shin the meaning of Setion 19 of te Indian. Penal Code. $0  
th tion 97 Crim Provedre Code” was  
eves for defamatory statements made  
Connection with those proceadings. It was, contended that  
egal proceeding” ia secon 19, Indian Pesal Coos, ithe same  
a a "jwical proceeding” as defined ia the Code of Cumnal  
Procedie and, therefor, sancion was not requ. THe high  
Court held  
  
“88 “judicial proceeding’ is an expression wned in  
‘other paris of the indiam Penal Code, we are not at bery10  
Says Unless ntwoiaely driven to i, thal Tegal proceeding.  
ferexscly equlvslent to, "jdinal procesding and that the  
EEpiauue cavlesly weed (wo ciferemtexpresignst0 convey  
Shacty the same ideas nor the deflawion of Judeia peor  
Seeding’ In the Criminal Procedore ose necessarily appl  
SSDE'fo that expression when used in the Penal Code” Ii  
‘we confine oursches to sexton 19, Tedian Pesal Code, Teal  
Droceedine” therein is obviously a preceeding in which &  
[igment may or must be given. a judgment belag not an  
hrvtary decision but a decion arrived at fodicially, In my  
Spoon, eat eoceding nection 1 nda, Peni Code  
icone proceeding regulated of pres ine in whi  
Jinical desion may of Must be given”  
  
“The Coutt accordingly decided that the president of a, Uni  
Beard, who aceepung or reecting 2 nommnation, ts giving &  
{cine judicata ma eal prcening and thereore  
Shige’ within the meaning of Seaton 1.  
  
What consites a “go proceeding” as been considered  
in bes jude! Jesions, ough they donot elle 10 the  
Code" iat,sbe meaning oft orm appearing in econ, 71  
te Compares Rt I3 (wi Beats te egal  
roveeding again # company in bauiation thou eave 0  
Fee asia tore we Feder  
  
1, Svan Reo ¢; Chima, AUR. 1923 Ma. 475 was ce  
  
  
Page 18:  
B  
  
‘being whether it included proceedings for the recovery of tax  
‘The Faleral Coun ebsersed—  
  
nan Allahabad cxtet the question whet comsttnes 2 “legal  
ree in the mening of Secon 24 of the Tee  
ark Act ab wan cnr, Under eton 462) af th At  
any porn aggieved by an entty made inthe epster without  
Stn eScoid appeal othe gh Cou. The High Coe  
iat  
  
Held co be “legal procesing®  
  
‘bvatse there  
‘nothin on 2 High Court being invested wih updieion Over  
‘proseings bh ate no Tegal preceeding’  
  
{In the view of the High Cour, procendings for cancellation  
‘or alteration of the regaeaton ofa reyitered rage math ate of  
the same mature av proceedings for repastation. which are  
‘parimentslproceasings, and not “egilprocedings™” On  
the caher handy proceeds for enorcensnt of the night confer  
red by the reystation of the Wage mark. of 10 pecvent is  
{ingemen oF for punishncet forthe faluieation oF the regis  
‘ror Zleiyrepresetog the trade Mark a repisteted, were held  
  
bbe proceedings which-ar invariably to be fake sm a eouet of  
  
aude undoubiedly “egal peoveasings"- that they are  
Droussiiags to enforce the law in one way OF  
  
Ine Bombay cae, the qutstion arose wheter the expression  
‘iepalproweedings in section NQH0) OF the. Bombay Sales  
Tae Ack 98k (eich, while repeating the Bombay Sales Tax  
  
1982, saved “legal prorsedings” under the Oréiance  
rb te precisa COUR of Covered ABM  
  
1: Ma Rt, nt ls Pry, ATR 197 AC, a  
ae pl pecs eine to a nego ade sh he rial te  
Matta OR ae ce of Nem Jeane ke  
(Gh "ame epson ied by Ta oe  
  
  
  
Page 19:  
ry  
  
broceeings ao, 1 was held that “legal proses in its  
Sormatcobnetaton ch only ret a procecing m ecordance  
  
ins and hee an bs ns Jou st assem proses  
Ing unde he Saks Tax Acti auch» proveaing  
  
Accords vo these dessons, "keel proseng” sone which  
is shod pcb byw, ore staten in pursaonge  
{a uo pl enactment. Is notsynonyinees with a ode  
la preceeding’ or wha proceeding nx Court Though i  
ths vice the scope of the expression may seem tbe ery ide  
sth read wih te aditonal requirement section Teper  
ihe powe to ges “uae wpe a rete a  
{he apresion comes vey near jodical proceeding ora prose  
‘ng in'which's joa clon determines i  
  
nest 2.13 to comutring the tu coe and conten of thee  
  
Mime’ preston “deGaitive jodpmenn”, Judiil decisions on the inte  
  
stdomen®. Fretaton ofthe oid "wdgmeat™ wil be help, The question  
ether the onder of Magistrate rejecting tm objection to the  
Tmuitioa of criminal proceeding against a publ vervant on  
she rend of vant of anon anger ection 97. Cron  
rocedure Code, wat o“yuupment Tor ihe purpoes of section  
rs cf he Concent of naa Ac, 1958 fame up before he  
Federal Court, and that Court observed =  
  
toda. im the Code of Criminal Procedure, the word  
sjudgament wed to Indieate the tezmination othe case  
by sorte of conviction o acquit] othe accused. The word  
Fao Getined the Criminal Procedure Code, bat that ine  
{erprcttion was put on the werd in Emperor Y- Maes. ara  
onigrte The view appesrstofave been approved by Sula  
{and in Har Ram Sagr'scae >. Tour opinion, the term  
udgment self indeates a judiial decison gven on the  
moras ofthe dupute brought hefore the Court. ina criminal  
sei Cannot eover 2 proiminary ot itertcvtory orden”  
  
Ina Bombay cases, the High Court opined that a “definitive  
judgement” meat a fal judgement  
  
“The Supreme Court while deciding? that a Commisioner  
  
holding an gui under the Pubic Servants (Inguis) ASL  
Tsun as nota court" for the purposes of the Contempt of  
  
1 Kanpsnont oes  
  
Emp Meennos, VR, 3 Ma. 33  
  
2 HOE han Sage M18 1939 FE: (999) ECR 19.  
  
1 Banoo Shaner Sap, ACR 1938 Bom,  
  
$id Se pon Sara ATR: 9656-66, 70, przaph 1; (959 25.CR.  
  
be  
  
  
Page 20:  
is  
  
Courts Act, 1952 eferred to section 3 of the Evidence Act and  
‘Setions 19 and 30 of the tadian Penal Code ad observed: —  
  
“The pronouncement of a defiive judgment is thus  
opiate he scl in qu nom of ou ad nls  
8nd ent a binding and. auchorative jcpment can be pros  
‘ounced By a person of body of persons, cannot be Pree  
‘Gated chat fe or they comsiute @ court”  
  
Referring to the tests of finality and authortativeness, the  
‘Sepreme Caw ecitecated it view expreved in an eal Sas!  
  
ssi ei nent i  
judicial tina. power to ive & econ ora deve ju  
‘ent which fray aff aineccs eh see  
cesta sof a Roi ponomnconet  
  
1 td he 20  
inen or deli  
  
{in connection with the interpeetation of  
‘another test ‘nas come  
  
‘Thus, tm an appeal Bofors the Supreme Court the guewion for  
consideration was whetie the nominee ofthe Reger of Co-  
seperate Soin nae cout within the meaning of Seton  
155Criminal Procedure Cove Holding thi section to Sinope  
‘bie. the Supreme Court observed  
«After carefully considering the powers coafeted and  
  
soutce of authority af the nominee. we have no doubt tha: the  
omines exersing poyer to make-an award under seston 96  
ff the. Masrashirr Co-operative Societies Act 1960. derives  
‘is authority, not ‘rom ihe sate. Sut fom investment by the  
Registrar in hs individual dissetion, The power 40 wvesed  
Uiable fo be suspended and may be withéctwn: He is theriore  
‘ot entrusted wath the jue power tthe Stites be fete  
Sn atbitator authorised nithin the Finis ofthe pone conered  
{adjudicate upon the dispute elered to hime  
  
2.15, The vasious judicial pronouncements. summarised  
above show that the terms "judge and “Court of Josie” 98  
‘etined at present i he Toda Penal Code are somewna slastse  
  
TSA Vetnranan (959 SOR 119, AT WHEE TE  
anuras Nanay, (199) 1 SCI. 95,953. (Revie,  
  
  
Page 21:  
nied where amendment eros bythe Com  
Procedete should  
beak se e guide and section 19 of the Penal Code recast as  
  
Fonows  
  
~The word “Judge” denotes esery person who is ofcitly  
designated ant Judge ov Magistrate every peesiding onc  
fof arevense Cout, and every person acung onder 2 Cen  
Provincial or State Acti decked by that Act 10 Be 8 fadge  
Tor the purposes of this Code  
  
“This would. no doubt. bring uniformity besecen she Penal  
1h the Code of Criminal Precedne But the dia ton  
thie sargoeed down. the immunity conlried By  
fhe Peal Cn wt no be ava oe Phe  
homo be regarded os eng “define  
eet one. the foteeuon nice econ 7) should  
oetnuc fo be ode aa present and eo sediment tat ray Be  
fropoved son 19 soul alc that pontoon, Ho  
Foon that uc sosld prefer not to alr the teat tad down in  
{Siton 1 usu they mig appear to he someha angen  
  
fers 216 Aa 9 pao te deft. he, sans “ery  
SES person eho & Siealy Ssipated => a “suse hardly serves  
Sin Rey‘purgoe and should be Omid Any sich paren would  
  
va taal satiy the lest of having pst te Bhe dene Jad  
  
tents legal proceedings  
  
Watraion 2.1%, The four illustrations appended to section 19 appeat  
  
Iptesn™ g mariow down the wope of the section to some extent Ts  
  
» ‘cording to'2 Patna dation’? 9 Mogivrate vs nots “Suge  
‘thon he fs mot sia of m cane, ant this fe etphsted by  
istration (bt Hthe Patna vies ss correct then i ct  
fasnydesrae (0 widen secion 19. so 2st expressly nclode  
Magistrates, ‘There is no unuiication for making & dtinetion  
teiween dudes ad” Maghtrates inchs “respec  
  
Comming 2.18, Some iffeulty is created by Huseation (8) acconting  
SERRE co sth "a Magntate excroning sosclon in Fespect of a  
  
Ban changt-om Which he has power oni: 10 commit for tral 40a  
isa” Gtnet" Courts nat Judges A” commiting, Mapstrate ay  
  
BEL io Sieh isnot elighble fe the immunity eonterred by secon TT  
the Cove, sou imoule be possible or ny person, ho Suers  
Shy tnory ssa rewl of whats Magstrate does inthe couse of  
  
prod whe ve  
  
Sig saudi oan he Cont mama shi rng  
‘Sta clare by tha Ato bea Cour forte purpons of in cc.  
  
  
  
Page 22:  
a  
  
<commiment procesings, 0 launch a prosecution fr  
Jory. Doubles, in respect of ome acts he may obi  
‘huhity from other provisions of the ‘Code. For example, 3  
Senne passed in good faith on the conduct of ap accused ot 3  
‘Sunsss by a commuting Magsrate may fll under the seventh  
‘Excepion to secon “99, Indian Pane! Code, and he may be  
Simmons trom a charge of defamation, But be runs the isk  
ciprocuen er other ofenes, i the mgt of “ow  
‘itr are made out  
  
ino had, Magivtat, Justice of the Peace. Col  
[tor ‘or other person acting judsialy shall te able to "be  
‘ied in ay Cwl Court for any act done or ordered to be done  
by him in she discharge of hs jdielat duty. whether or not  
  
‘he mite of hs jrdetion. provided that he at the  
{imei good Tuts, beeved himself 10 have Juridction to do  
for onder the act complained of  
  
28 cording othe Engh ant on he ste, ine  
nity im civil casen ould apply im regard fo any proceed  
‘elore any court or tnbundl recognised by law, the essen  
‘Sbjeet being that Judges ‘might sxercse. ther functions ree  
from any. danger that they mgt be called to account for any  
‘fonds Spoken in thsi ileal capacty.. “Ths has. recenty  
‘Boon ensured’ by the Administration of Justice Act, 19643  
Sinch‘ makes elaborate provsions for the ndetnaienion of  
Jostices of the Peace. They ate ene to be toderniied out  
2B Tocal funds Ip reipet of comes damages te. "iin tspect  
‘f the matters ging tee 1 the cl peooedings cr Claim they  
Setedeeatonably an good faith.  
  
2.21. Thos, both in England and in India. committing Max  
fistaies enjoy” adequate protection so. fat ai ciel Mabity  
Eoncersed. 1 appeats to be unreaonabie and lope to deny  
hem protection from criminal Prosecutions In respect of those  
proctsuings whete they do" nol fave to. pass defnitve jude:  
Bente \*. We therefore, recommend that all Mapisirates should  
Fe brought within the dalininon of "Judge" tn Seetion 19. None  
‘Sf the ilusrations is necessary and they should all be cmt.  
Section 19 may be tedtaed as follows :—  
  
19, Judge "Vode means. any person who & em  
powered by faw 10 ghe, im any legal proceeding, cist or  
  
T Sesion at the Tait Oi anon Aa ASD of 19  
2 Sorte, Hany of Cal Law, Vol pages 2,257  
  
3 See ston 210,  
  
4 Wher somata erent  
  
Engine  
Beaye  
Sma  
  
ni d'art halal Mapas wll Be (sonny 25 adgss amon all oe  
  
aM eta rt—3  
  
  
Page 23:  
Section 20-  
‘ourt of  
  
justice”.  
  
importance  
of defini-  
tion.  
  
18  
  
criminal, a definitive judgment, or a judgment, which, if  
not appealed against, would be definitive, or a’ judgment  
which, if confirmed by some other authority would be  
definitive, or who is one of a body of persons, which body of  
Persons is empowered by law to give such a judgment and  
includes a Magistrate”.  
  
2.22. Section 20 defines a court of justice as meaning a judge  
or body of judges empowered by law to act judicially ‘when  
such judge or body of judges is acting judicially. It has been  
suggested that the wider definition of court given in section 3  
of the Evidence Act should be adopted in the Penal Code. For  
the purposes of the Evidence Act, “court” includes all judges  
and magistrates, and all persons, excepi arbitrators, legally  
authorised to take evidence. The emphasis in the Penal Code  
is on the power to give definitive judgments, whereas in the  
Evidence Act, it is on the authority to take evidence. Although  
some quasi-judicial tribunals having legal authority to take  
evidence may not be courts of justice under the Indian Penal  
Code, we do not think it is necessary that they should be brought  
within the definition of that expression.  
  
The definition is, however, unnecessarily lengthy. The  
word “judge” having been clearly and comprehensively defined  
in section 19, there seems to be no point in repeating in section  
20 the idea that the judge or body of judges should have been  
empowered by Jaw to act judicially, alone or as a body, as the  
case may be. It is sufficient to indicate in the definition that  
it is only when a judge or body of judges is acting judicially that  
he or it is to be regarded as a court of justice for the purposes  
of the Code. Thus an Executive Magistrate, while functioning  
judicially under the Code of Criminal Procedure, will be a court  
of justice but not when he is performing an executive or adminis-  
trative function under that Code or some other law. We  
propose that the definition of “court of Justice” may be simpli-  
fied to read, “the words ‘court of justice’ denote a judge or  
body of judges when acting judicially”.  
  
2.23. The definition of public servant in section 21 is im-  
portant because there are numerous offences under the Code  
where the distinction between public servants and other be-  
comes material. These offences may be broadly classified as  
follows :  
  
(i) offences which can be committed only by a public  
servant;  
  
ii) offences which are aggravated when committed by  
@ public servant;  
  
(iii) offences which can be committed only against a  
public servant;  
  
(iv) offences which are aggravated when committed  
against a public servant; and  
  
  
Page 24:  
9  
  
‘The Civil Procedure Code contains a definition of “pubs  
‘offcer” which silat to, bot not etacty the same a8, the  
eration of “public servant” ta" the Penal Cede," We note  
‘hat 9 naterial changes have Been proposed in the former  
efnition by. the Commision ia is, Report.on that Code!  
When section ‘8 of the. Ci Provedare’ Code ts Tepealed as  
recommended. by the Commission, the detnition et puble  
‘lticer wil tose most of te significance. For purposes Of the  
Penal Code, however, the distinction between public servants  
4nd others will contate to: be of practical importance.  
  
224. The elaborate enumeration of various categories of Re  
public Servants in steuon 21 fs primanly based on the functions Sane  
Slsehargee by the public servant concerned. There sy home Say  
‘ver, comiderabie dverlapping, parucalarly after the recasting Seen!  
‘of cause eweth by the amending Acts of 1958 and 1964, and Soe  
Some of the clases seguir revision. “ach of the clauses  
  
‘Sil now be consisted separately  
  
225, Clause second, which relates to commissioned officers aus  
in the Miltary. Naval of Air Foree of Todi, may be omitted, Shy,  
235 hese ofces are included in the twelfth clase  
  
226, Clause third relates to Judges incloding persons em- Cause  
10 perform adjudicator fonetons, The word “Judge” tora  
  
{Hives colouf io the added word: reerring to adjudstory fuse:  
  
fons. A doube may arse es to whether an arbitrator isa  
  
‘Sige bgt Um sie the. express mention of an arbitrator  
  
‘g'elause sith this ‘clause’may "ot iciode an arbitrator. NO  
  
‘change need be mase 1 thi clase”  
  
sah, doubt a1 atte a uibna’ ed i, hi  
<lause has been claried by the jadgments of the Supreme Court  
fn the ‘cases cited. telom? while construing the expeesion  
  
ibunat™ occuring in artic 136 and. 297 of the Coste:  
fon. Hence no amendment to this clause is necessary.  
  
227. Cause fourth relates 10 offers of = Court of Justice cause  
pefrming the specifed fonctions Tm pat, it overlaps clause fon  
elt "fo our sew, it should be reseed to"“every person  
specally authorised by the Court to perfor any oie i  
  
1 tm Rope —\_  
{Bara Bonk ne of Blt Beals A, 9808  
osm Sa Sy ee erie a he Bat  
  
lat Spar Shve Sander RRS SC  
BETTE esac Comet Ce HN i  
  
  
  
Page 25:  
»  
  
connection with the adminisuation of justice, including @  
figudator,reeivet oe commissioner  
  
Fullaime oficers of « Court of Justice are included in clause  
  
twelfth.  
  
cae 228, Clause Ath may be omited. Jurors and anessors no  
  
Firt\* anger enst im the criminal procedure after the abolition of  
{nal by jury and ith the aid of assessors.  
  
Soe 229, No change is needed in cause sixth  
  
Choe 2.0, Cause sath may be sl for comnts  
  
fe, not Government servants. We, therefore, propane  
  
fc ie Stance ba ira erent form im meget  
  
SeEciee’ Clause eighth relates to officers “of the Government whose  
  
BEST guy eet fens, fone oe  
for beingofenders 0 justice or (0 protest the pubic heath,  
  
Satay Se convemeace,” Caselaw? relaing "to prosecutors,  
juice pus ofcers of the Souety for Prevention “of Cruelty  
[evAniats eee shows Ja uty” We propose to. retsin i 10  
‘Substance, bot ia diferent form. We may add thatthe words  
Sor Government”Sre unduly restrictive im this claus  
  
tect should te the nature of the duty, and not whether the  
‘ice Is under Goverament  
  
We alio propose 19 retain causes ninth and tenth hich  
reste to persons koking after peconiay and propnstary =  
Tersls of the State) in subsahoe  
  
It seems tows, tha, to cover the matters mentioned ia causes  
‘seventh, eighth, ninth and tenth, Rew clave a8 Tolows should  
‘be oubsieuteg =  
  
any person who holds an offce by victue of which  
tg une or eget yf plo ay rab  
  
It may be specially mentioned with reference f0 the above  
dave tat the “publle duty mt be one impoved by. law  
Soca requiement mill prevent undue vnening of the” se0pe  
St'the capresion “pubbe seman”  
  
2.3, Clause eleventh needs no change of substance.  
  
(4) "any mater ong fore the Cou  
2.) dune Rating Ban, 9) HR, 9 Ca #7  
{8} Aon 950) 10.21 Bom 31.  
(6) ona, (1920, KC, 46 Mad. 82,  
  
  
Page 26:  
a  
  
2.32. Clause twelNh i a sesiduary clause. The ninth clause Clase  
esfore the relevant portion was transfered from the nth  
fTause 1 the wwelth Llause in 1968), ewphessed the | perora  
  
Spee of a “puble dun” The relevant words in the minty  
  
lave (Bore 1964) were "and every ofiet in the service OF  
  
bay of the Governments or temunerated by fees or comanssion  
  
{or the performance of any “puble duty The words “public  
  
hig emf have cred in ome ee 8 ning. the  
  
tuhole of ths, readuary provision. Le. so applicable 10  
  
those in the "ierice or pay™ of Government  
  
Somaimes emphasis was pace on the word “oferta  
Bombay ene nas obtened  
  
“There is 2 difercnce between an office and an. employ-  
rent, every offce being an employent: but there are et  
Ployments which. do-net‘come under the denomination of  
‘ties: such as, am” agreement to make hay, herd a ock  
fic, whieh difr wily fom that of steward of a. manor  
‘The Brat of thes paragraphs implies that aa offer is One 10  
‘whom is delegated by the Supreme authority, some portion  
S010 reuatg a oeee power. cr mh sapped  
to represent the State mas feations to" individual subjects,  
Tic the "central ide” and applying Wt the chuse which  
swe have to conc, we think Wal the word Soft” there  
reans some person employed to exercise 10 some exch,  
nd In certain creumstamce\_a delegated function of Govern:  
‘ent. ‘He is eter hint armed with some author oF  
fepresentatve character, or his dates are immediatly a0:  
lity to those of some’ one Who 1 50 arma”  
  
In a Caktta cae, 2 poon attached to the. Superintendent  
cof he Sat Daparsnet nas found fotave kena es When  
Ss eos wid for a lence under seston eh n was, cone  
athe was not an “oer”  
  
oF yon SN (as it stood thes). Sine” Ne wat no aa  
fer he ot aati ena nae he bat Sf  
the apunen "The contestion wasted bythe i  
Scling that eventhough the poon Lid not eure any dee  
‘led fancion of the. Goverdmen, ye his ies wes ae  
ety ety Re of the Shane hes  
Feformng soch deleted fonction. rade, fat  
ERO nthe ttc pay of Goneroment, wit ae  
Sn HO), one pad he pete fame ue  
a  
  
1 Of Nasal Bin OF GO TLR BCLS WN  
  
2 Reg Ramah Ra, (U3 HE Bows MER. 1 3 We}  
  
4, Nevomd Dn. QE (100) LR. 28 Ca 366 §CW.N. 8  
  
4. Tg file oa he Goren enemy nh aap  
  
etc ara) Coat ese TS as Eager  
Ronson Cia “A TR 150 Lak We Cow Rese  
  
  
  
Page 27:  
2  
  
But a ifeent view was also prevent. In one case, it  
yah sated that in the case of persons in the pay ele of Go-  
‘ernment, if had! teen. presumed that they are performing. &  
pple duty. In another ease, at was clea salad thatthe  
‘rords “for the pettormance of'any" public U3" (in section  
21, large ninth as stood “before 1964), governed oly the  
‘words "Temunerated by fee oF commiaion® ?  
  
“Two judgments of the Supreme Court seem to indicate  
that the requirements of py aad pub duty are Cumulative,  
4a one case, the appicant was a Glas Nt servant employe  
43 metal Examiner athe" Ralway Carvage Workshop’ at  
‘Ame He Was conve By the Spacal id Site of Ame,  
it ces es ih rin Pe Cote ig  
accepted from one Nanak sn ‘si  
  
‘Fatication ax a motive for securing a job for someone” Hie  
frat alo convicted of an ollence undet section KG) of the  
Prevention of Corruption Act, 1947 for absxing hs osition  
SATs eran oie for ra by sort  
egal mea pecunary advantigs in the shape i  
fiom the stad Nanak Singh. The case was taken up t0 the Sop-  
‘me Court on appeal and the main question for consideration  
by that Court was whather'a ease Tt railway servant ws a0  
afi,” wihin the meaning OF clase inch asi stod pre  
  
The Cout Ind down two tet, namely, whether he is in the  
service oF pay ofthe Goverment and meter he is cuased  
wi the prformance of a pubs duty, and iid tau Si both  
these retirements ae sald it mars not the est what  
the matte ot his ofc, wheter the dutcs he perfor att  
‘ofa exe charactor very humble Indeed farther  
steered  
  
ie therefore, on the facts of & paiclar cis, the  
Som te penn a ey  
  
server or pay ofthe Goverment bu cng  
a ublc duty, he ha Sipe ton ihe func of the  
‘Gbramen rs many lent prfoing dete bcs  
Stila o those of somone ao b a8 ofc oF ihe Go.  
ere snd i therefore an ofr of he Goveraene wit  
i ecaniog OF set” 510 ladins Pata” Cote  
  
In another cases, the appllant was a tescher in railway  
  
and the main question before the Sapreme” Court wes  
her he was 2 “pute servants within the menting of section  
‘The Sepreme (Court reuerated the test lag down by Itt  
  
2 Jana Sing «Ep, ALR 4) Pa. 15 316  
3. Gel Maori. The Sa of Amer 9861S 8  
The Se of Aer. Sg tal 93 SER. B12 91D  
  
  
Page 28:  
2  
  
C. A. Montoro v. The Sate of Aimer, and beld thatthe appe!-  
Tai was tn the sevice of Government and wat being pat by  
Government. “The Court observed  
  
“1 cannot, in our opinion, be doubled that be wae  
entrusted withthe performance of publ dary inssmech  
Ss he was a teacher in a school mainained by Government  
fd ic'was'a prt of his public duly 10 teach boys”  
  
In clause 12(a), air the ameadment of 1964, any pervon  
i the service ot pay ofthe Government s'a public servant and  
‘sinot necessary to coosider whether he performs. any pubic  
‘duty'or not But as regards thove persons who "ace remuner:  
ted’ by fees of commissions, uch as partdime publi prose:  
futon the performance public duty i materia,  
  
233, The expression “public duty” cannot be easly defined  
snd no Coun has atempil ay sah Seton Sid cet  
ontans an insracive dcusion 2 1 the import of the words  
able duty Ther, the Coun way requed to deste whe.  
ther the Coutts of Wands undet section Bombay Court  
Wards Act, 1905, wan a “pubic officer” oc not.” The. Court  
feierred to an old Bombay ese? where the Bombay High Cour  
fra refered to the definition of the word “of” oc duty  
Even an the Bacon Abeidgemens at Vol Vi page, and ob.  
See hat an fic wah oe 1 whom was dk te  
Suprene authori, some portion of ts tepubting or coxrcie  
owes of mho mas ppoiicd to fenreen the St  
  
Sion to indvdoa! sebjecs, and tha an “lier  
Zisclaise (@) Ina Panel Code, meant sme perton employed  
to exer, to some exent and i certain circumstances, 2 dee:  
fed. Tuncion of Governments The Sind Court thea, eed  
{ith approval a more comprehensive American dfaion® nr  
ning 28 Toons —  
  
“Ht has been defined as the righ, authority and duty  
rate and confer by Jaw by whch, Tors pen period,  
‘ther fed by law or ending at the pleasure of the crea  
power, am individual i invested with some portion of the  
[Steeipn fonctions. of the Government either exceutive.  
fegslatve of jedi, to be exerted for the benefit of the  
pate  
  
la.a Ranshan cue the qution nas withr Supe  
ining Eater and on Auistat Capes toh ol  
  
‘he Sate of Rayethan and Yenctonig om deputation. wh the  
Rajonhan Sate Bectrsty Board  
  
CT itis The Bao mer 95S SER A pre  
2 Viel w Cir of Warde ATR. 1928 Send.  
5 Rep v Ronan. (1879) BHC, Us 3  
  
4 Val I of Juda ang Saucy tions of Wor nd Phat, compiel by he  
‘io ad's Nout Repose Sac  
  
5. Not La Pies Sih MUR, (1965) 18 aj BH; 1968) Ce. 8  
  
‘statutory corporation, Were  
  
  
  
Page 29:  
”  
  
public offers” within the meaning of seston $62) of the  
TRH rhecrcity Act of 1910. (Tins Act does not deine he  
Madan Fae nee’) Whule not profesing C0 ay down  
aoe ee Ge or aerianing the "poblic nate of 30 TRE  
SPS the ign Court observed  
  
“The expression ‘pablie offices) appear to refer fo an  
oficer tho dechenges fonctions oF duties in cation tO, the  
SEs. "dd not i eetation to peivate inéraduals. Ths  
Pee acepted axa rough and poveral est for determining  
Bo who svould be weated as 2 public offcer ALINE  
Se, Kuat be recognised that the expression public ofce™  
‘Sitnot be bald to have 8 presse meaning”  
  
Referring 19 the definition of “public officer” in section  
21 Coat of Chit Procsture. and’ that of "public. servant”  
Hee indian Penal Code, the Court observed:  
“The deiiions of both terms are\_ quite comprehensive  
‘and wi, Sind clade ai Government servants and otbet  
sak Soettined in the performance of dues of'@ public  
‘tare ‘They “cehanly dncharge function’ and  
Bain eltion 0 the publi and not relation 19 priate  
‘edad  
  
cae! illestrates the tendency oficial decisions in  
estas SE ponds public Oaty. Am wei this case was  
imeptcing ts ene engaged by. the Provincal Government  
ree loct a cl sit for the secovery of pubic mney was  
Bo soeitcer within clause (h) of section 217) of the Code  
PGi Procedure. The Court sd =  
  
“tn the second category. are thote who are in he ay  
of ihe Government. Here the Lepsare has nt. spciied  
She work which tsie persons are 10  
{thas been presomed that when 22 ta the gay of the  
iL eee Pe must have been performing & public, det.  
GOT Md Coutgory are those who. are remunerated by  
Wn 28s Jomminog, and in order shat they may be held to Be  
(eee cheers, ai agcenary thatthe payment should be  
Pu pafornance of any pube duty. Conduct of 2  
  
rer Mra of the Goveroment for the recover of the. publ  
  
mony emg poe dy wich a ote  
  
‘Unde: Engl aw ao, no ena denn of what and  
ohat Sat fpubhe duty ‘bar been attempted by the, Coutts  
"TRE estlon has boon decided 1m specie instances and, the  
see aeeereontext me wvch the, word ‘publ. occured. One  
Pe ita down bythe Englan, Courts. thatthe duty  
or Nelly enfrceabe. Thus the "public Suc” refered, 10  
ection la) oF the Public Author 1893,  
  
hs Ea Bah oe, AUR. DD WaT.  
  
  
Page 30:  
3  
  
yas held by Avory 3. 10 mean’ “a duty which can be legally  
Cored, Revs feaed”puricaly toe, soaseding words  
$Gking We weeles or Seloslt at the duty.” Enforeeab.  
Tio. REwever, may ot be the cay tet. The postion in\_ England  
{vin fo be hat Court end 10 vig publ’ du oe  
  
ovsteign functions of he Goveroment  
ects interested or which 8 for the  
enctt ot the pubic and one of the erteria for deciding ths  
fost is thatthe duty i enforceable by any member ofthe public,  
erga ck mene na Cou fi i ths ott  
only crerion  
  
1234, Apart [rom the twelve clauses, i some of the special  
and local ets, Wis expresy Seclared in the sate itself that  
$fSited pevsenu are'publc servams forthe purpoues of #2:  
YES" GSS incian Penal Code. This aveds.umnevesary  
Eccoversy and ty be conveniently adopted sm other statutes  
SRD dmocecary to rler to such & provision in secon  
BV or the Coa  
  
2.38. Ie was suggesed that members of Parliament, Site  
Legiltutes od local authorities should be regarded “pubic  
Lepein'S Rough the new text which we Propose, namely,  
SShytpesont holding sy office by virtue of which he is autho:  
‘acd Breed by fw to paform apie Jy” should cover  
ome tnuek that i would be better to mention them  
speticaly.  
  
2.36 Explanation 1 to section 21 i unnecessary, The  
sabsianve Pauses ofthe section do not themsevesrequite that  
e"tnon concerned should be appointed by the Government,  
‘Fhe"Explanation should, therefore, be omited.  
  
"237, Explanation 2 needs no change of substance. The  
word stuabont ts however, not etpresine, and we propose  
Wee he ea dice to ideale the meaning more clealy  
  
2.8. The definition of ‘election’ jn Beplanaton 3. is not  
ery hoppy worded. It speaks of “aay legative, muncipal  
Shaner pole authori Though the residual nem is wide  
Shou ud conse Toe bodies ater than municipal corporations,  
Teeadztanion could more pay ad usefully eer to ocal autho  
se The words “the method of selection to which is, by oF  
a Taw pecseribed as by election” seem rather Uto-  
Her atthe ford selection” is not very appropiate, when  
teeter 'an Gestion. U should be Teplaced by the Sord  
SERA 2! The defntion may be redafied as fllows—  
  
“The, orleans a cetan bate  
system, held under ny lav forthe purpose of choosing mem-  
RST RMLURE neh auttorily Sr ther poe natho-  
  
“TMs: Lae Car Cl  
MGS fo Pes acca Otel  
  
ie  
od  
se  
ie  
  
=.  
Ei  
  
  
  
Page 31:  
26  
  
“The defiion could be appropriately placed in a  
section i ot conned ti (apna seston  
ppl alto 10 cher stone  
  
Selon 2h 2.39. We have considered various suggestions for extend  
See ng the Seition in secon 21  
  
Tmabag move comprehen  
ean a to ede  
i) heads. and executive authorities of pubic insittions  
ana Womaticl bodes =  
i pesidnts of cocperaive societies:  
(i) oceterer, ofces oc servants of any saciety  
coptered under the Societe Regstaton Act, 1960, or of  
Sy pute or chats hetuaes  
  
10 Petions iemed 1 sel! controlled commodities:  
  
(0) pleaders, advocates and attoeneys  
  
{on our view it wil be inadvisable to include these persons in  
section 21 ofthe Hodan Penal Code, Ht most be left othe Lege  
Tnture’vo expressly decare in the special o¢ local laws dealing  
swith the aforesaid person, that they are “public servants” (or  
the’ purpose oI setion 21, Tndiam Penal Coe  
  
2.40, We recommend in the light of the above discussion  
‘at section 21 may be replaced by the folowing two sections —  
  
“DL Public Serramt—The words ‘public servant” de-  
  
(2) aay person sho is a member of Patament  
for of w Sate Legistture:  
  
©) nnn he ei py he  
nt aN at a ht  
Seri tomes ae tate iy  
amie  
  
(© any peri who iss member, oF is inthe ser  
vice Sr pay i's focal auboehy:  
  
(4) any person in te service or pay of a corpora  
tion established by cc under «Cental, Provingal or  
State Act or of a Government company a defined  
Seaton 617 f the Compas Act 1986  
  
©) any Judge, including any person empowered  
bby lay to discharge, whether “by umsator a a member  
‘fF & body of persons, any adjudiatory Tonctions  
  
Tee, Chapier 9A Gecions 171A 90 17D,  
  
  
Page 32:  
n  
  
(0) any person specially authorised by a Court of  
‘use to pettoom any duty in connection withthe a8  
Imlostration of osice.inceaiog a ligedator, receive  
Sr commisionet appointed by soch Court;  
  
(@) any arbteator or other person to whom any  
<ause or:matter hat been referred for decision oF FepOrt  
by any Coumtof Justice or by any other competent pub-  
  
Te authority  
() any person who holds an ofce in vet of which  
be is om to prepare, pubish, mainiin. or re  
  
Mie'an cecoral rll oe vo conde ha eecton OF pa  
cof an election; or \*  
  
any person who holds an office in vrtve of which  
ts aitoned oe gare yl to perform any padi  
it  
  
Explenation—A person falliog under any of the above  
ame yr of ay ocean he eel Bl  
  
a able eran hate deft, may be  
hin tight to bold thai ofice or situation  
  
A. leone wor “etn” dency ay  
won By hate tin eld, der ay nfo the ar  
  
me of chooning members of any leglatre, lal al  
Fas" or other publi authonty  
  
2.4L Section 22 defines “movable property” as “intended  
to inclade eoeporeal property of cwery Seseription except Land  
  
find" thingsatached othe earth oF permaneetly fastened (0  
{nyhing which is attached fo the earth” "Th expression Is  
Important where any offence, savolving theft isto be consieted,  
  
{thet can only be of motable property. ‘The General Chau:  
SaiAct defies movable property ay "property of every des.  
Spin exert smote par ab thea a  
operiy"Sncudes "land, bene to arse out of land and  
{hogs aged (othe cath or permanently fastened 10 anythin  
STeached to the earth In terms, this debtion in the Geactal  
‘Gigs Act is sider than the explanation inthe Code, but. for  
  
Jrachcal purposes seems torus that the General Clauses Act  
Setntion is sdegeate forthe Code, and does not unduly widen  
the Concer ot "det a5 i has ben ll long wnderstood. For  
  
ther eons imolving “moable propery alo, that dein  
{lon sce suficest, a8! ace we ink that hen the General  
lus et contains 8 good defintion of ¢ paar expres:  
Son another eefiion inthe Code should 04 be attempted.  
Se yepoue to eee the provision in scion 2 of the Code.  
  
3 Sesion 3  
2 Seton 35S, Gener Ose A  
5, Secon HD, Geral Caer A, 197  
  
  
  
Page 33:  
2%  
  
Section 23 explains the terms “wrongful gain” and  
el loss, and ection 24 says that a person does 2  
“dishonesty ine does Ie with the intendon of casing. weOng.  
Gl pte pon of wag ow to another a has  
  
been no diicuty im understanding of applying thet de  
  
2.83, The same cannot be sid of the defnition of “fraudu-  
F yi he ex fect, "Secen 25 tates  
  
v Sito dot ting fraudulently he does that  
  
{o defraud bet not otherwise". As early as 1897  
  
ime in for. caicism by the Caleta High Cour. Maclean  
  
i 10a judgment of he Judges of that  
  
“AS a definition this provision is obviously imperfect,  
‘nd perhaps inrodwes an cement cf doubt Which Gad nol  
preslusly exit; for it leaves to be. determined whether  
{he nord deta) ied i ton 28 sph te epi  
Naton in prvation of property 88 3 part of  
fesull of the fraud. The word "defraud vs of double mean:  
Ing in he sense that iether may oe a may not tne) de  
Duration, and as iis not dehaed in the Code, and 1s not  
{Tar ag we ate abate, to be found in the Code except i  
Secton'38 ts meaning. must be Sought by a consideration  
‘OF the context tm whch the word “Naudulenthy i found.  
  
“The word frauduleoty” isso in sections 471 and  
4464 topeiher withthe word “dishonesty” and presumably  
{a sense not covered by the later word® Tf, however,  
te ela that “Travdlen” implies deprivation’ eter actual  
for intended, then apparently that word would perform 0  
Tavetion which would not have Seen Tuy dcharged by the  
‘Word “duhonesth, and its'use would be mere Surplus” age.  
  
Seprivation of property forms 9 part  
  
Gece 2.44, In another Calcuia case it was held that the word  
  
3 ind snvolves tWO conceptions narmely, deceit and injury  
19 the person deceWved, that is a infringement of some legal  
ght posesed by him, but ot necessarily deprivation OF pro  
Pa.  
  
1 GE Tae a WH TLRS Gal 98 Dy,  
  
REUSE Gee aire dain oat Sos  
SOUS Tak a Siena cn  
  
‘gh it fd may Become eos 29S 3  
SSNs Ber “  
  
2 Sarena Noh Ghose Emp TLR. 38 Cok 75  
  
  
  
Page 34:  
2»  
  
245, In an equally old Allahabad case! where the charac- Alubabat  
{Se oll ofa pohce head constable was tampered with, by subs  
{ting paps containing lavourabe remaeks, fa order 10 Yotease  
  
is chances of ‘promotion, the. question was whether forgety  
  
had ‘eon commited. Bunerjs J. held that “where thee  
  
{3 intention to deceive and by means of that dscet to. Sain  
  
fan advantage, there is fraud, and ia Socueat is fubcated  
  
rth soch nent is forgery.” Tea furter held thet an oience  
  
§5 committed under section 47) whenever a document kaown  
  
‘or belived by the accused to have been forged is used ay genuine  
  
th the imtetion that some person should be deceived thereby,  
  
by means of tat dveplon itera advantage should sechoe  
  
{othe person so using the document or injury shsul bel somne  
  
‘ther peson oF persons  
  
2.45, tna later Bombay case, ic was bse that, aough pont  
tigre mee conicsing’ rains on the ebation of “aude Se  
‘he consensis of opimen in the Bombay High Cour ts  
tha ther mes e some advange onthe on ee nh acevo  
fonding low onthe oes  
2.42\_t0 Enalund so. the precise eal easing o be atach> Ye  
the word detaud, parca Im datinglshing betncen SS  
“intent io deeive™ and ~ittent to efaod", be beet a eater ==  
oftconoveny. "Bathey J's ditom! "which became cee  
  
Pact ect ere  
mora death aes Se  
dhracSiorae dual Sua eit  
  
1 QE ¥en Sea han, (998) TLR, AL TTR  
2B Sayer fips ALR 193) om 3  
  
4: fare: Loudon and Glove Fnac Corpora, (19) AKER 91,893  
4: Wek «Dic of Pb Prana (190) VA E RBS  
  
S.RN, Goossen “rea at 3 ttf intent to detinul,(360) Cambie Law  
  
  
Page 35:  
Sato  
ius”  
  
ey  
1  
  
0  
  
248. The Supreme Court? as afer considering relevant  
<ecsions on the saject ated the legal postion as follows!—  
  
“The expresion ‘delta involves two elements, same  
ye se sry he geen deed.“ sore  
Ticker ovation lmmowste, of of money, and  
Tnsiud any harm whatever caused to any person in BOdY,  
find, reputation. or sich ter. Ta short its 4 900"  
‘Senos pany foe ee ead  
{he decener wl aimost always cause lessor detriment (01  
Screen ite eat whee ve a le  
Dr advantage to the dose, bat ho corresponding loss to  
Te dseoneds the second condition salied  
  
Jn a later cate, however, the Supreme Court observed? —  
  
“The wards with intent to defraud inthe section indi  
cate not a bore nent to deceive, But af jntent (0 cause 3  
ppeson to act of omit fo sty a8 2 felt of deception played  
‘Spon him, to his disadvantage This i the most extensive  
meaning that may be peu To the expresion “with intent  
{o defraad in our penal Code, and the words “but not other  
sey ow i the i et fo a Pt  
‘Smonymus wih intent to decent’ and require some action  
  
rhc, but forthe deception.  
sve avoided”  
  
2.49, It would thus appear that the esentaelments Lo conse  
ie an tment to defand are () 3 fnient to deceive another,  
lind Ga) a intent to cause. By that deception, injory f0 some  
forson (ordinaniy, bur not necesally, the person deceived)  
Fhe injury intended ‘eed not eecesarily Be pecuniary ct  
‘Aen economi amoveting 10. deprivation of property, Dut  
‘hay be any harm whatsoever 10 any person im body, mand ot  
EEpuisuion Tt goes without saying that the infeton and  
Sect othe person accused of fraudulent conduct isto obtain  
‘STheneit or advantage to himself which Re would not otherwise  
fave'got.Oialy ses ony in thowe cas where whe ths  
‘Bone or advantage tothe deceiver obvious. the jury oF rik  
‘SFiyury to the person deceived, or indeed Yo any Person, fs  
‘ot spparent.  
  
250, We comsider it deseable to replace the very waste  
‘dehntion of “Yraudulntty" iC can be called a defn  
{ignrst sl by one wht wil at fast sae the esvental require.  
Inns as Indicated by the Supreme Coort and furnish a gendelive  
I Goobutu cases auch 8 definition, Ht would obviously be  
cond element tothe deceiver’  
  
‘one Benes or advanlage to hiemsell by  
  
$day Sime of CPs A060 SCR,  
  
  
  
Page 36:  
at  
  
‘means of the docsit. To constitute culpable fraud there should  
‘ier be an intention Lo cause by the deception injury fn the  
Side'sense to'someone or, at any” rate, an rotention to fade  
the person deceived to act to hit Usndvantage "We recommend  
the Following: deaitons:  
  
“A person is sad (o do a thing fraudulently if he does  
that thing with intent to deceive another nd, By such deceit,  
ther to-cause injury (0 any person oF to ade any person  
tot to his dhadvantage”  
  
2.1. Section 26 expins the meaning of the words “reason  
to Belive™ and emphasises that only ita person has suficint  
‘luse to believe a thing canbe sald 9 have' reason to belive  
  
“The Cove thas accepts ely “rational behets something. war  
‘aking notce off and that is how 1a Taw should bey In order  
that needless controversy about the mere ensence of © delet  
oes not arisen court. fo acteal working. the explanation  
Inn been found Suisfatory, and We st no Fessoh ts dist I  
  
252, Section 27 says:  
  
When property is inthe possession of a person's wife,  
clerk of servant oa account ‘ofthat person i i thai  
person's possesion within the meaning OF ths Code.  
  
‘This explanation is paticulaly wefan relation tothe ofence  
‘of theft. "ted "two. lastationt under section 378 (which de  
bring out the point ofthe explanations  
  
a) A ts, eran a et by 2 ih te  
«ae of 2 ple shoes rae aay wth the plat, with  
Sir 2 coment Ah comand thet  
  
pom oa out Pt to te  
sol 3 Eitenasery Senos mse te  
Babs Soden ae Shee lo  
Bene hain a has  
ibe Sa cl ia ot  
  
Section 27 is confined to a wife, clerk or servant, Because  
‘ofthe close proximity of sich persons tothe person on whose  
behalf they could ‘be holding property. The explanation I.  
  
ie yuh ties gd oY me aie.  
lon betacen poresion and custody, without, of course. Bic  
‘erating that distintion. We think the explanation hep  
{nd shoul be retained akhough we ‘do not soggest any exten:  
Sion of this principle to cover other persons, s0ch a trotecs,  
‘agents of hae,  
  
  
  
Page 37:  
Seton  
  
See  
Sone  
  
Ba  
  
2.53 Seton 28 explains the word “counter, sed most.  
ty in ration to offences governing coins currency pote and  
vemos stumps’ “To eure “to make one thing 2 Fe  
sci ane sie ining yen fata  
{Srpracine Seep or knowing "0 be ikely tha deception  
‘ote thereby be proce  
  
‘There are swo explanations to the section, of these, the  
second explanation important. It says, hen a person  
suits one thing to resemble another thing, andthe resemblance  
‘etch that a person might be deceived thereby. it should be  
presumed until the contrary # proved, thatthe parson 0 caus  
fing the one thing to resamble the other thing intended by rans  
‘of that resemblance to peace deception or-know ito be hikely  
that deteption would thereby be pezlsed”™  
  
Counterfeiting has, thus, two ingredients:  
(1) actual ination of something, and  
  
2) intention to induce a belie in others that the mits  
sais the. genuine arc  
  
"he erlanaon dri tha ht of lone rmblaees  
Gent to deceive another would be presumpuve ewdence that  
Seception was intended. Je was suggested that the presump-  
{fon should nov Bs obligatory. but lett to the discretion of the  
ourt: but we thik that thee Title room for disceion here,  
‘'vigw of the terms of the explanation. and the presumption  
sould ane only i the cour i fact thought the resemblance  
love ena 10 deceive  
  
may of cours happen that an inition prepared. jonocent-  
a lon resemble (he ea Soh mace im  
{sions however, are not “counterets" a5 there i po sntention  
te ese ajo sat ca be ready Shot dig  
the purpose ofthe imation, We do not think that any inno-  
ein ce rae ia he ening tote  
‘cent intention, in such circumstances, will have to be disclosed  
Sind the cour persuaded tha was so. In certain cumstances,  
Dracf af mnscent imitation may be onerous, but that does not  
erate Wo mater down dhe second expionaion. We there  
Fete propos to eave the section i i  
  
2184 Section 29 defines “document” thus:—  
  
“The word “document” denotes any matter  
ssn aon yatta ye fis 4  
fr marks of ty more than on= of hose means ite  
  
‘be ened, oe which muy be used, a evidence ofthat mater.”  
  
  
  
Page 38:  
By  
  
“This followed by eno explanation. the frst of which tates  
‘that "ic immaterial by wast mean Se upon what subsance  
the letters, figures or marks are formed or whether the evidence  
Js intended for, or may be ued in, a Court of Justice of Not  
“The second provides that letters, Sgures oF marks which have  
cial signicance according Yo tsage sould be understood  
ave that meaning. allo  
cipressed.”" Halt-a dozen stat  
  
rae. atache  
  
2.58. The Evidence Act has.adeiniton of “document” which  
reads  
  
‘Document means any mater expressed oe described  
‘upon any substance by" means of fetes, gures or marks,  
  
more than one of theve mean, intended to be Weed OF  
‘hich may be wsed or the purpose of recording that mallee  
  
Five ilastrations are given of which two are practically the same  
8 those piven inthe Code and the others are diferent  
  
“The General Causes Act also has a definition which is practi  
cally the Same us the one tothe Evidence Act. It reade!:——  
  
“Document” shall include any matter writen, expressed  
‘or described upon any substance by means of leer Bgures  
‘of marks. or by mare chan one of those means, which i ine  
tended to be used or which tay be used for the purpose of  
recording that matter”  
  
No illostrations are appended.  
  
2.56 The main idea ia all the thee Acts is the same  
sod the Emphasis is on the “matter” which i re.  
Cored, and not onthe substance’on which the maier i record  
ced We feel. on the whole, that the Penal Code shoald contain  
{fdefintion of "document for ts own purpose, and that Section  
29 Shoukd be retnned  
  
“The two Baplanations attached to section 29 are, we think,  
hpf "The Hest Explonation helps to cleat ambyputy about  
the import of the wotd “evidence el inthe secon, ad 810  
‘Scord with the view ofthe Courls.®  
  
i Sacto 3 lan Evrae As,  
  
2 Sion 38h, General Clee At, 1957  
  
5 a) Dhormintra Res ALR. 8, Al. 38  
(0) ACS. rengors. Quen LL 4 Mad 393.  
  
ato Laet—a  
  
  
Page 39:  
u  
  
‘Amendment 2.57. The definition is wide enouah to cover every kind of  
‘eves gocaeat. "Some doubs han however, been expenicd Whether  
  
ishable the same way aa person prepa  
intend to make ts ceat by adding tn  
2. "We propose, in fact, to delete some  
raion ede ection 23, ait goes etl nee  
mn Trom the Evidence Act. Alo we suggests slight aera:  
tion in the Tanguage of the iain section to make it infection  
dearer. “The section shout, we tia, read as follows :—  
  
“29, Dociment.~The word. “document” denotes any  
rmauter recorded upon any Substance by means of lees,  
{igures, or marks, or by more than one” of those meaos,in-  
  
tended to be used, or which may be used, as evidence of that  
  
ofits th et  
TES ESES.  
  
Mlusraions  
The following are docomeats—  
  
(©) a map o plan;  
  
©) acaricatue;  
  
() a writing on 8 meal plate? stone or tree?  
  
4) a film, tape or othe device on which sounds or  
images are recorded.  
  
Explmaion 2--Whatever expressed by. means, of  
react Reesor marks as undeatood by ‘acai o other  
{Se SA Ge deemed to be recorded By Such Hters Aures  
Sr Rarks within the meaning of as Secon, although the  
Shwe may not be actualy expesed.  
  
[Peay Bagh Rares (95) 4SER VT; ATR 19S. par TS  
2 Se scan 3 Eien Act.  
SRNL Le top Rape, ALR. 1925 Ho. 327 (ells npiaed on ed.  
  
  
Page 40:  
3s  
  
Mstration  
  
A tits his name on the back of a billof exchange  
payable fo" his oder. The meaning of the ‘ender  
ment 25 understood by merce ‘use, i hat the bil 81>  
br paid to the hokct ‘The ‘endorsement iy a: docameny,  
pd must be construed ia the seme manver 8s if the words  
“ay the holder or words 10 that elect had been ten  
over the signature,”  
  
258, A “valuable security", mentioned in section 3, is one  
kind of document, the test being that i coats or deals witha  
“egal right" No diiclty hat arisen about the weaning. of  
this expresson,athoweh, of cout, the question wheter a deca  
iment does. or does not create a legal righ ha tbe determined in  
sch case according tothe nate of the docu. We Jo bot  
‘Sggest any change in scion 30.  
  
299, Section 31 defines a “will”. $0 does the Geneea  
‘Clauses Acti." "Tie term is now so well understood that a separate  
intone, Cie ems emer ane, Caer  
  
lauses Act definition ought to be enough. We would tertore,  
elete section 3  
  
240. Section 32° merely says that “act” includes egal  
omissions. ‘The General Chuses ACK? say the ‘same thing 0  
that section 32 is now unnecessary Toe same. considerations  
apply to section 3, which explains that am act includes a sees af  
{4 and an omésion, a. series of ommons,<exaclly ay the  
General Cinuses Act dock ath thew wcuoas cas, Therfore,  
brome  
  
261, A good deal of serious crime i the reeult of concerted  
tion by seral person, Criminal law has, therein to deal  
‘ith the problem of individual ability, where several pefsons are  
Seiad i sonmision oft shee Siomy  
ot the Code are desgoed for that purpose, bat section  
Thich is the most important and toe fequently ia ase, The  
  
incite It enacts 8 quite simple. "To borfow the wotds of =  
Fie Cour Sadar, te scion “embodies the oeinay ome  
sete principle that if two or more, persons inteaonally de  
5 thing oun its jst the sme asf cach of them bad done  
indivsuay™  
  
2 Section 10). General Cusser Ach 1897  
3. Warm Sigh TLR, Toe Lah 23  
  
Sin  
oat  
  
  
  
Page 41:  
3%  
  
2.62. The wording of section 34, however, is such that i  
  
Reset  
ESAS nas at times been misunderstood; and unit the deckion ofthe  
  
Somes.  
  
Pry Counc in ‘BorenroKiomor ‘Ghose\* cheated the wiole  
ound, there was considerable diference of opaion regarding  
{is meaning. The Privy Couns ew bas been accepted bythe  
‘Sopreme Court so tht about the meaning ot secion 34. there i  
Bom no doubt Itt however, desirable fat the ambiguity felt  
inthe langue ofthe secon shouldbe removed. At pron,  
34. When a criminal at is done by | several persons  
furtherance ‘of te comon inteotion of all, cach. Bf such,  
‘ersoosis Liable for that actin the sae manoet as if it were  
Sone by hin atone  
  
J of he Caleta igh Court, in Brgeror¥. Nema  
soa Re, sand any i sor ote ue meting of he  
  
rims act dove by aber pesoar”- and ioet,  
Inder cser two mn Sioa atog coe, had ed  
1 poh oe hig sad kag tm, od the ther ing to  
Hela a te eee dg dct the seal he ater,  
ding tat be oii! ay murder wa ae by one ma  
Honan pot by sera pisos Thr’ vw war ova y  
ihe'Bony Cone" certo make he eeming caer  
Uhlertand, we ange te flowing reat Of the sen:  
  
“34, dete done by several persons in furtherance of  
common tatention Where 9 0f ore Petsou, with & co  
‘on ttenton to cotamita cariaal act do any acts fn fare  
therane of such common ftetion, each of therm i abi for  
the cial act done a2 were done by him loos  
  
2.0 On her sueion i angio mat 0 be  
conidia that cog St mated oly  
Eeipentnt esi fate fa cmon nese  
{Te unten ie se common ineation me et  
Pes tah ng ping veges Ny be  
  
Seka asada ssa mere pon  
types inc olan aurmbly and mast geson  
Paina SgSS a a Meet edo  
fSooceh hak ku fo een the spel toh men  
Ron st'Sewal soem. toe prom A red  
Terao Gna ane oti ea run thet  
Ry ie onary ee There ref coancabe  
sess tn st he peat of «common tes”  
SION tin ana pul ia To provi oe  
te er ed me deovion etn  
  
Benda Kant Ghose, ALi WS PE I  
  
2. Emperor, Nal a Roy LLR. AU Ca 107  
3. Barn Kamar Ghat, ATR. W25 PC. J  
  
  
Page 42:  
Ey  
  
24 Secon 35 deals with a sation where an olen  
requites a paticolae criminal itesion or Keowledge aad  
ommited Oy several persons. Each of tem who jos the act  
speh sch Kowa Gr intention lathe i hee Yay a  
IWC were dove by him alone with that isention or Lnowiedge.  
‘This complementary 10 te main Pale in secon 34, andthe  
{io ave to be read together. “There ie no need to clay the  
position further, and we are suggesting only a small verbal  
  
fon in the sectioat, namely, for the words “several person  
the words "two or mote prsoes™ may be mbxituted.  
  
265, Section 36, agnin, says what is plain. common sease:  
ithe casiog of any eft by ah actor an sion Is a ofl  
{the casing of the tame eect party by an at and pay by a  
‘mission woald ala bean ofletce. It was perbaps, nnecetary  
{o put such a proposition nthe Code ia but, since there,  
‘Weldon tak we should now delete  
  
2.6, Section 37 provides that when several acts ate done 50  
20 ret ote he commun ofan ac: he dng  
{atich inay not be the same as an inlenion common, to all  
‘makes the actor fable fo be punished forthe commssion of the  
Stlence, wile section 58 provides “that where Several persons  
fare coacerned in the commision of activa act. they may  
te uly of ifeceat fences” These provisions. have proeoted  
‘bo diically in actual working and need not be ds  
  
2.6). No amendment is required in section 39 which defines  
the expression "wolentany™  
  
agit toe clawes of scion 4 ive te dierent  
inions ofthe exptesson “ollence lasse provides  
{hat except im the Shapes and sens mentioned in aus 3  
ited 3 the word lfonce denotes "a thing. made Puassabie by  
the Code”. "According to clause 2m chapters IV and VA and  
falso im Gomme. 34 sections enumerated therein, the word offence  
‘denotes “a thing punishable under the Code or any special or  
local law" Clause 3 lays down that, inthe eight sections. men  
toned therein, the word “oleace™ has "the same messing. Whe  
the thing punishable under the specal of local In purshable  
under sock Taw "wah imprisonment fora ter of six months  
‘Upwards whether with or witout Ane  
  
appears to vs that the\_ present definition i rather awkward  
and is not conducive to ether claniy or omvenience, When.  
‘rer @ question arses 10 the leaning of the word “ffence™  
‘appearing in a particular section of the Code, oe has to po back  
‘Te ection 40 and wade troup the laes to fd out Where the  
  
Sesion 9$  
  
‘Secon 77  
wae  
  
1 OF ation 34s ropa o be anwndal im pra 2 above  
  
  
  
Page 43:  
Bs  
  
section in question is mentioned, We fel thatthe simple dein.  
ion ofthe Word "ofence™ inthe General Clauses Act" should  
be"lumaentYor the Code. the word “offence” occuring in &  
particular sexion of the Code ftended to have a diferent  
‘evning: the mater may be dclt with suitably in that pariclae  
  
SGiotll 269. The Code rer a sreal places to “offences punish  
  
est". apie wth death or iprzonment frie the obwows inet  
ing'o cover ony hove offences for which death ether te  
nly ponshimentpeechbed or atlas one ofthe punshments  
prmboible under the am” Though the exprestion not ihe  
‘ended to conan offence for whieh ne of he alternative punish:  
‘rents provided imprsonmwnt fore (eg. the ofence of  
‘ited tnder scion HAA) ple ie at oc,  
  
'n iteration hay oem aiepted by the Court a cep  
  
fo scton A) of he Code of Comal Prosedte wher  
kpression eet. We therefore propose to addin the Penal  
‘Gio a defiton of "apitel once” as meanng any ofeace  
foewhich det isthe ony punishment, or neo he panne,  
Drovided bylaw and use ths expres nsead of the longer and  
Embigwous phrase “offences pumhable with death Gt faprisone  
‘ent for lie” inthe relevant sosion-  
  
seeps! 2 Se dan wh ee expo “peal  
Seg 0 es pein eg a ey  
mee os  
  
a “The word ‘egal’ applicable fo everything which is  
an offence, oF which i probed bylaw, or which furnishes  
{ground for a cal action" and a peion i said to be epally  
‘Bound vo do" whatever itis epa in i to om  
  
Acconing tothe section a personaly ound odo only what  
See tai to oak ad what alga fy cetons  
‘hat ian ofenc, or what prohibited of what lv atonable  
‘der co aw Te detons ae, at were in ctl and  
ieee to das  
  
pe 2.72 In a caset which went up to the Privy Council, the  
  
Sone quesion whether» person fallog to Tartish information required  
  
Se ya Wakt Commitee under section 3of the Mtussaiman Wakt  
  
Geer een tant ot enc tadepunkubl by any for tbe  
toes beng tm force  
  
2 Se, for instincts 73 and 90  
  
4 Se fortune, seston 15, 106, 1208, 36,389, 06,  
  
AAU Motoned 6 Emp ALR BB PC 18  
  
  
  
Page 44:  
»  
  
Act 123, amend in Bombay) coud be proceed  
in gh er for come oer he Cote of Crs  
ey" The obec an earth ander actos 9)  
Mictter Att he Hiss Cour oul et ake copies oe  
Susanah bordmte cove abet anh coarse  
Sinn uae the ind Fesl Ck at ral  
Sai Ie to ferme norman i qusion ek  
‘htc onder evton 76 ini Fea Coleen,  
evel by te Pry Coun on te feowng Ch et  
{0 eon 176 appr oy whee pron is“  
bout Stara hanica?” “ty  
i. pon is “ely Soune™ 9 do ealy what i  
meg Ea Soe "  
ui Mega pesto ton tat wich i  
vente tal 2  
yan Soin” in econ 9 ny hat wich  
pon ld i at ae  
  
In was therefore held that section 176 applied only to a failure  
hich a0 offence under some section ofthe Indian Penal Code  
{nd not an offence uncer the Wakt Act  
  
“If no othe section ofthe Peoal Code dest with the mater,  
‘hen, one must conclude that the parculae crime, though pans:  
ble ‘under some other enactment. i not pumshabie Undet the  
oie, and would wot fa under secon 176." Therefore, the gs  
Court was not prohbied from dealing with i under the Cone  
tempt of Courts Act.  
  
Jn other wonds the Prity Council was ofthe view, that,  
see it nia ane nl ode tue ee  
{Br'not hiving done something he oe  
‘Srecesaty to ahow thatthe omion todo ta ng unounis  
{olan alone and frther such “oflene" should came witha oe  
‘Sikion of that expression inthe Pooal Code  
  
2273. Our recommendation to omit the definition of the  
sion “fence in the Penal Code. whereby the wider  
Shon of the God te Geo hie Act wena  
ion. wl obviate the ted out ty the Puy  
unc in taking action oder the Code for “ollences” andce  
ther Acts. “However, siielies would stil rive ifthe omis-  
Sion to-do what i enjoined bylaw fo made a ofence det  
the pardcule Actin question. To other words, under the pre-  
femt"dfniton ofthe, term “legally bound” bocas a aw which  
‘sjins 2 person to-do a parieulr thing aso sys down, in  
Srany words, thatthe gefon shall not omit too that thing.  
ihre pen cane be onset ely bound od  
fat thine  
  
  
  
Page 45:  
“  
  
‘The Law Commission had occasion to consider the matt  
in connection with the Commassion of foquiry Act 1982, and a  
provaion by way of cancion was recommended to be added  
By ieeuon’3 oi shat Act’ The matte, however, 1s of wider  
sgn air ities may ain eet pron  
  
\_\_We sherefore recommend that the defnition of the expres:  
sion “lpilly ound be widened £9 that It covers its primary  
‘Significance of bomg bound by Taw to-do a thing. Section 43  
may be tevised as (olloms  
  
43, (1) thing i legal i i is am offence, i prohie  
bited by law, oe farnihes ground fora cil action.  
  
(@) A person is legally bound to do a thing, when  
he is bound by law todo. that’ dhing. of when i legal in  
Mico to do that thing"  
  
seuom 2:74. No changeit neoded in sections 4 fo 47 which define  
SEER. the eapessions “imjury™ MMe", “death” and “animal”.  
  
Scion 44 2.75. The words “esse, “yeu”, month” and “section!  
SST gre choad in the General Ciautes Act? and the defoitions cam  
Sites. Neu"Spply where the words are weed in the Code Sections  
  
{B49 "anu 50 are sceondngly unnecessary and may be omitted.  
  
2.76 Section. 1 defines “oath as including “a solemn  
fication substituted by Taw foram oath, and any declaration  
fequted o suthorsed by law to be made before a public secant  
‘Seto be used forthe purpose of proof whether before Court  
SEostce or net" “So ae hs salem affinnation ae con  
  
the definition” inthe General Clauses Act Is sufccnt to cover  
than, The second part of section 3 reating to vanous deol  
‘Budns does not seem to be appropriate of necesary. Most  
‘SF ihe scion of the Code (ceione 21,178 and 181) where the  
SXpression South” eccura use it im the context ofthe adminis-  
{elon of the oath by-2 Court or public servant, and this part of  
tie dednition 3 arly applkable to. those sections Even as  
fegurds section 191 which, pamisbes false slaiements made on  
"RIN", th part of the defiiton rating 0 declarations is aot  
sonded! as thers ey i various special laws" provisions for  
Punishing false statement 1m declarations. Further, there is &  
Brovisiog ip section 199" of we Code which specifically cover  
  
Wun Repor pp  
> Genel Cs A 7 to 3 cles (9, (68, 05) 284 epee.  
5, Seman 307), General Canes Act 197 uote teow =  
nt shal nce tiesto ad Getaratin in he ae of persns  
tow aldo Stare ade Soe »  
  
4 Sx ocimtane, wn 5 fhe Sci Mang A,  
SS ASISETASESAS SD Re apo et oe,  
  
ton 277 the aoe  
  
  
  
Page 46:  
a  
  
fat statements in statuiory declarations. We, consider that  
this dentin of “oath” ia the General Causes Act ts sofient  
{ind that section St may, therefore, be omitted.  
  
2.77, Seaton 82 defines the expression “good faith a fal  
tows pe  
  
othing is said to be done or believed  
  
“toad faith  
which is done oF believed ee  
  
wl de care and attention”.  
  
“The definition of “good faith” inthe General Clauses Acts  
‘ery diferent. "For purposes of laws other than the lodian  
Penal Code, "a thing shal be deemed to be done tn “good faith  
tin fact done honesty, whether i is done neligenty  
‘rinoe'. "When the two dehnitions are iened im jucapostion,  
‘may appear that just os Rosety of purpose alone ie sucient  
to make an act bon fide under other las, due care and ateston  
Ie necessary and sulfcent under the Penal Code. The two  
‘Shnivons stem to approach the question from two diferent  
Seandpoints snd to Have nothing im. common between them.  
‘Avone writer hus expressed st "while the general defintion con  
ones neaigence ana carelessness, if Only thee. ws  
{he Code resrds bonesty as immaterial, and the  
fod atetion a5 all inal  
  
2.78 There is also an observation by the Supreme Court  
which may sppear to support this ew. Ina cave of efi  
{onthe High Court of Fonjh, rejecting the pica of good faith  
Det forwatd by the accsed, eld =—  
  
Good [ath therefore implies, not only aa upright mental  
ui and cleneconaciece ofa person, But aso the doing  
‘fan at showing that ordinary prudence has been exeried  
Sccording to the standatas of a reasonable person, ‘Good  
Taw contemplates an honest effort to ascertain the facts  
topon whch exereise ofthe power must res. IC must, there:  
fore, be ssmmed av an honest determination from acerained  
  
‘God ath” proviedes prelenee or deceit apd. as  
nce and fecklesness. A tack of diligence, whch 3m  
Ronet ran of ordinary prudence ts accustomed fo exerci,  
{erin lama want of good faith”  
  
‘On appeal, the Supreme Court took a diferent view on the  
facts, and set aside the conviction. Though the jodement did  
Bot form onthe presence ot absence of honesty of purpose,  
Snes the observation that "the element of honesty Wa  
intoaced by the dion preacibd by the Gepeal Cues  
[Ret isnot introduced by the dfinuon of the Code and we are  
  
Hen  
Sate?  
  
“Yar, eat Coa iy VoL Wome  
2 Harjn Sigh, Ste of Pasa AL, 196, Pein 25.  
  
  
Page 47:  
Avene  
ena  
  
2  
  
Ayman ear oe Gee  
monk ore  
  
1¢ appears to vs thatthe definition ia the Code is merely  
cenphotaing the need for care and attention while natexclodng  
{he need for honesty of purpose, since honesty i impli io the  
<oncepc of good fh {ei cific to imagine how a dshosest  
Sct canbe Sid to\_be dane in “good faith. The Code stresses  
the aopect of care and attention beau: under the Code the  
ex than arg done i hc cece  
ferry rath cial baby ov eel 2  
cular offences.” Even an aet dane i pein  
  
Sil done rashiy and neshpently, amount to an ence  
  
279. The view that honesty is implicit in the idea of good  
faith tecetves support from a numberof reported decors.  
n'a case where sztion 499, sinth excepion, was ae, the  
Privy Counc abserved ==  
  
«ait as accordingly this question, and thie ques-  
tom oni uhich the jury charged by Si Charles Fox had to  
tay, namely, wheter in publohing the Ucls admted 12  
bz falee, Mr, Arnold di 30 vn po0d faith because Be belaved  
them to Be tur, having piven due care and atenion to seeing  
that they were So." Irthe jty were saisied that he did ge  
AHS a ie alent da he ced oe ah,  
then the excepuon formes a good defence, and the accused  
‘wood be ound not put."  
  
2.80, is therefore quite clea thatthe dfn nthe Coe  
ct ot nen tec fmt Hone in a of the  
sty ofthe Gbacraton fy te Supreme Coat ated aier  
  
ike as anexpresion ofa diferent view ofthe matter, We  
Fel ut would be bear to make the demison mor exp,  
  
We therefore secommend that section 52 may be revised  
asbelow  
52. Good faith —"A thing is si to Ye dove oF beliey-  
  
ced in good ath when is done ox believed honesty and with  
‘due eave and atention  
  
2.81, Section SIA defines the expression “harbour  
fatten —  
  
“Except in tection 1$7, and in section 130 i the case in  
  
which the harbour fs given y the wife or husband of the pet  
  
Son harboured, the Word “harbour, iocudes the sapplying  
  
V, Hasjon Singh See of Pad 0965) SCR. 35,28.  
  
  
Page 48:  
“  
  
‘person with shelter, food, drink money, clothes, sem, arsmunic  
fon or means of convesance. or ihe assting & person By 2  
teton heer of the ome hind thon tates i 1  
Stow Or not, to evace apprehension”  
  
‘Though the expression oosurs ont i, sc sections of the Code  
  
(setlom 190. 135, 157,212, 216and 216A, the definition does  
  
Sot appiy to ali of them. Asis indicated by the  
  
pov des not apy to ston TS aad hr  
  
130, is inapplicl in eaies tq thee two conte  
  
the ohaning fo be assigned to the expres  
  
patently be the dicuonacy meaning, Le  
10 lodge, to entertain  
  
"Sharbour® would  
to provide for, 10  
  
Now, ifthe meaning to be assigned to the expresion in secs  
tions 130 and (37 iss dicionary or now-Statutory meanings.  
then, ie would be Beier to provide fori in those two sections  
faiher than make a clumsy exception inthe general debnivon.  
Section S2A'may be revised a follows:—  
  
A. Harbouring.—The expression ‘harbouring’ means  
giving sheiter to person, and includes supplying person  
Sih food, drink, money, “clothes, arms, aramuniion Ot  
rmeans of conveyance, or assting a person in any mater to  
fvade apprehension.”  
  
252, I nil be noticed that this chapter of eneraleplanae Reson  
Simple deintions Sonal  
Spersed between elaborate explanations Of basic concepts of the ented  
  
Riminal law "There does ot seemto be any Topial or even  
‘iphabetical order in setting them down. With the appicae  
tion of the Gonerat Classes Act for the laterpretation of the  
{Code’and the. consequent omission of 2 number of sesion®,  
{he chaptee will have even more gnps and Tes orderliness than it  
dbase present, "We, therefore, recommend 2 revued and Te=  
arranged Chaptec 2 in which the amendments proposed By Ui  
{n'puricular sctions ave been incorporated and cher formal  
fr Yerbal changes, not affecung the substance, have also been  
‘made.  
  
i, See popoied alt le Inn Penal Cae (Amends Bi, Ga 5,  
  
  
  
Page 49:  
Cuarnen 3  
PUNISHMENT  
  
The punishmenssto which an ofender i able under  
she Chad's Caumeed ston 3, ec ie ery  
propery The ‘corporal punhment of whipping, ‘which as  
EiPodea and regdatea 6 the Whipping ACTS! 18 ey et  
and replaced by the Whipping Act f 190), was abo  
1985"Tapart (tom the exteme sentence of teath wh in pete  
rrosible Under wer fe seston: the posthments provided in  
the Coe deve te fender a i hery oo property  
fr both Loss of therty may take the form of imprisonment for  
Iie or for a specified term and the later may be ether riorot  
{hat is, with bard labour, or sample, tht, witout compotso  
lout ot any trea of pec may be cused ether by  
Set force io he Stat a pce oper fhe ood  
ry dering hi to pup speed su a.  
  
2, Theve punishments have been in vogue everywhere fom  
ancien, umes and have come t0 be recognised a6 the notmal  
fethods. available Tor, dealing with cominals. While egal  
Stems based on, oF “denvng from, English common law  
ed Jursprdence have ot adopted anyother forms of pis  
‘enis, we found that the penal codes of some European coun:  
ties, particulary that of Rusia, provided for certain additonal  
PPnshiments which appeated to be worth considering. We  
Srordngly include Ya our Questoanace a queson ia the  
  
Sonhmest for 8 em to a spec locity  
‘in Te  
  
> exterment fo 9 term fom 2 specie locality;  
(0 corrective lou;  
(2) imposition ofa duty to make amends to the vex  
( iaTbyrepaing to ce Sone ys ofecs;  
(© pobiication of mame of the offender and detail  
  
GF te ofenceandsenteee  
( contacation,  
in reapect of what oflence of types of oes would  
such pethibncas Se appropete?™  
  
  
  
Page 50:  
45  
  
[As was to be expected, interesting, but widely diferng, views  
fe apted Sy"he dg nc tnd er esac by  
  
3,5 Basihment or ele fom the kin’ alm wag a 0g. Bass  
rised panishoentm ancent and medieval times, mainly for he =  
King's"eoemies und pobtcal eifenders of acetal stats: In  
‘moders conditions, however, can haraly be contemplated at  
Tidal enc loving comaton fox 4 time. howe  
Seitous that crime may be. It might indeed be teparded a6 0  
  
fetious violaion ef a human tight to provide by law for the  
‘Slishment ofa czizen from the county even a8 & punshanent  
  
Fora serious erie. The question was therefore limited to the  
‘Seirabiity of punishing an offender with banishaiat for a  
  
‘certain term fo specified locality within na  
  
34, Such a punishment is provided for in the USSR.  
under ihe name fen According to arte 25 ofthe Resian  
ea Chal tl oma inte empl of aed  
prroa rom the residence, with obligatory setcment  
Fea "cerain locity. Te may be aigned a2 splemeats  
puniticer fora tefm a two to He eae cy nanes  
$i nda in the Peal Code ation of work  
tsa te ona of asthe commit of  
focal Souets of woo os deputies, ure,  
Besant ioe {or seeing exe bal be ewabished by  
jason of the USSR.  
  
135. The suggestion dl ot find favouria any quarter, From  
the prateal point of view, almost acsesanly savolves the  
‘sablisment ‘Of a pen setiement in each Slate, romewhat  
  
“iE  
  
ny  
  
ff such seltements and Keeping eflectve contol over the couvst  
Braid tho wil pve tet ei problems of admin  
tration. Ifthe conf were to be srt, te aetlements would  
<egencratz. to concentration ‘campr.” As “an aernative (0  
inagrterm inprsonment, tanthmoent does not appear to have  
ny" appreciable advantage and cannot be recommended,  
  
3.6, Another possible punishmeat which we considered was  
extetniment of the offender fora term rom a specibed local  
‘The Underying iden was that, if the fender was dissociated  
from his surrounding, is capacity for commiting crimes of &  
fatal os Would be vedere, For instance, where the rime  
one which is fatated by the bad influence wich the” cami  
‘al execiges over the community fa 20 aea, ie migh be aseful  
{ keop bir out of that area for specied period. Again Tor  
‘oflenot: under seston 188 ofthe Cave conaituied by a toltion  
ordered ston 4 of the ode of Cal Pore  
‘nd simlar fences against, ic tranquility, an order  
‘fexternment might be s more iitble and efestive punishment  
fama sentence of umpesonment fora shor period.  
  
if  
  
  
  
Page 51:  
“6  
  
Driged 3.7, We found opion on the sub more ores equally  
‘rma. aid “Eure Suton wee gene ced in our  
  
‘of such a punishment. The Bombay Act empowers the Come  
Iisioner of Police in the City of Bombay to pass exterament  
‘tders against criminal yan executive meavure, Subject to feview  
by the cours. While the State Government aithorses thought  
is was a wicful pce of legislation for keeping the pooade  
cheat of ei ude como: he expvened a comtary  
ew doubting it efciency and. sresing the scope it aor  
for"harassment and corruption.  
  
bests 3.8. We think there are serious and basic objections to  
  
eset tet ati et es tt  
EASES git SE eae bate lee  
Euaiem Seana Sema meant ane,  
ect nds Sa SA SP a  
Sor alta of tein et hate eas  
is ean hac ence nan  
ioe (oon aera eect  
teed ane bls te ae ce ets  
okie memcorade wecmatera Eeeetiay  
Se halite Sat ase we ae  
Sahai thin calmer sr  
Rt Sahar  
  
atese 3.9. current development io penolgy is the emphasis on  
AESSSC"" seformaton sad rehabitaton of the ofenderistad of re  
  
=”  
ss USS!  
  
fen Th fa at an inceing of ccd  
the Traditional pattern, ‘One form is known as corrective labour,  
{ie main ober being fo" make the comvct work a bi OWS  
ace or at 3 mortcefr onde the rdeaty peso and theseby  
Froid the nessun) evs of 8 po hi  
  
310, This mode of punishment has been in force  
for a'Toog time. Mleolopcally, Wi (aceable  
teachiogs of Lenin "According to Conrad's Crime and ite  
CCortecion,\* Lems's"Semmary" ofthe Essence of the Sestion  
CConcezing. Punishments of the Party Progamme of 1919  
formulated four taste points =~  
(0) The administration of crimial jusie should rely  
fon the pinciple ofthe conditional duchatpe of the oflender  
(i) Courts shoukd express the atinde of society towards  
  
crime andthe etimiaal through the euetle of social reps  
‘mand.  
  
“To. the lew OF he major. St RL Narsibam Bas geo» separa woe  
  
“ee Saat  
‘Conn, Cone ends Corman, 196) pe 157  
  
  
Page 52:  
a  
  
it) Ponishment shoul be without depeivation of liberty  
1, for example, correcive labour on speed puble proj  
  
(is) Prisons should be tansformed into educa  
fnsututors i which oflenders are educated. ‘ther  
Toate.  
  
“These are impeccable ideals which can hardly be improved  
by any pena lave seformec” The working of a corrective  
ur sien in USS.R. has been descibed™ thos  
  
Corrective labour is claimed to be one of the most  
typical penalies im Soviet law.” Is essential feature is that  
tipofRenser rot deprived of hisiberty. "A corrective labour  
femance served ether tthe place ofthe offender's ordinary  
‘work, oF ina special corrective labour islttion in the locality  
Whore he ofeader s domiciled. "The court decides which  
‘ofthese tno allcnatives wil be applied. both eases, 2 part  
ning fromm Ave to. tweaty per ceat i walls from the  
‘tf’ salary” Te is stressed, however, by Soviet authors  
that corrective lbove should not be equated wath a Tne  
‘The escoul punishment isthe work that has to be done:  
further a fing is a faed som, while the amount of money  
withhel from one's story alters according to his salary  
  
“Corecive labour i the standard penalty in most caer  
where the seriousness of the offence Joes not require the  
‘fender fo be iolsted from “society. One. year i. the  
Tonge period for which ican be imposed; one font the  
  
“The tighter form of corrective labour is that under which  
tne offender continess working at the same place aya the  
tine of ha omence.” The air form of coneave boar  
onsss in assignng work Yo hi ‘where he ives,  
‘iri unis men hey" pone works Ie pce’ where  
the fener is put to work must be within seach of his  
fqasters ‘bees sthe evita featore “of corrective  
itboar i ahat the efender snow depeved of hs liberty and  
{lng home ate he hs dove his Gas Nok When the  
‘Sour has sentenced 9 petson to corrective labour in see  
cert labour istuon the acon of The fsation  
  
with the cometivelabout inspectorate, » branch of  
the Ministry of Itemal Asia  
  
“To complete the picture frm the legislative ane, wer  
doce here srcis and 38 of the Cll Cave tthe  
RS PSR a  
  
Arce 27—Correcional tasks without derivation  
Sreclm deprivation of  
  
Sa wa (G2, aw in Eos Evope OR, ps 2, 3  
  
  
Page 53:  
ati of  
Ieee  
  
6  
  
Gorrstinal asks without deprivation of feedom  
spate Sslaned for erm one ono ose yea aed  
shal be ved in scordance wit he judgment of Gcoure  
Ether ate ple so fe compro a  
‘ter place Ecemcl by the gens in Change Sf ent  
Saion af corectional tanks, bain the smn ports  
Si eaten  
  
Dedections ffom the wages of a perion condemned  
to corrcuonal tasis without seprvation of fectow tall  
Sade sae rahe by ihe pent the court  
End shall be transfered tothe Sate se  
  
re youn ae ep twig «wat  
maiiewariire sit attend  
  
The time of serving corrections tasks, incling time  
served atthe pace of work of the convicted person dal  
‘ot be counted in job Semi  
1 convicted person serves correctional tasks under  
‘conditions of conscientious work and exemplary conduc,  
the gourt may. alter the convied person has ferved uch  
rent pon Pion oa soa epavation oclectve  
‘orking people, Include the ‘ume of serving” corecoonal  
taste tas pb senioty.  
  
Article 2%—Conequences of eration of correctional  
tasks  
sult St a ream vader cresionl  
{ost s.r te place of work the court may replace the sentence  
correinal tansat pace determi by agency ih  
charge of application af fach ponishment In te event of  
Sea cl areca te athe as etn. by  
the'deignated agencies. the court may “veplase teste  
2 depaton of esto wie sete da tet  
Sere term of eoerecona tasks toe te one  
‘ot epettuon of freedom”  
  
3.11. While we consider that this sytem withthe mecesany  
modifications should be adopted and tried, we do not soegest  
{ny textual amendment of the Code Toe implementing sranght  
vay, as we ate conscious that i cannot be worked WiOUt  
‘bon! of provisions dealing with various administrative matters  
fazre we indicate, very beoadls the lentes ofthe panshment  
which have in mind, and recomend that appropriate legis:  
Tatton should be undertaken separately onthe subject  
  
(2 Correcuve tabout, without deprivation of freedom,  
{is intended to be a subative for short term Impronment,  
that the defects'f ja administration, like contamination  
by ‘association with hardened ‘minal, may be avon  
  
  
  
Page 54:  
”  
  
£2) The essence of the punishment will be working on  
reduced wages at @ public work centre  
  
(2) The punishment wil be awarded by the court and  
vot by the exeatve government or by prison authori  
  
(4) This wil be diferent from,“ worksreeate™ (as  
employed in the US Ad. or "semiterie™ (as in force in  
France oe Bepium). der which the prisoner is rlased  
{rom confinement daring specified hours of the ay, esdally  
For the purpowe of private employment.) He reiums. t0  
Getnement during. moneworking hours It Is a mode of  
ppunhment for persons comvcted of minor ffenees and  
fenened to shrterm inponment, Used aa semening  
procedure, work-rleae ‘occupies "2 postion somes!  
Fetween peobation and fulltime incarceration. The cores-  
tive labour system, however, involve ho deprivation of free  
‘dom, whether totat or pata  
  
(5) The punishment of corrective labour wil be primarily  
‘sutable for perions belonging 19 the labouring classes.  
  
(6) Offences punishable with death, imprisonment foe  
hie oe wnprisonmént Yor 8 term excesding 7 years should be  
‘exch Trom this punishment  
  
(7) The maximom period of corrective labour will be  
‘one Sear and The minima one mopth.  
  
() There will be 90 depevation of freedom. Work  
stall be assigned in accordance wih ‘the jodgmest of  
ihe our ier athe plc wor othe once eon,  
‘Of in anyplace deermined be the agences In charge  
‘Sdeunisration of the Tam, but. as far as posable, i the  
‘onviciedperton’s dist of residence.  
  
(9) Deductions from the wages of the person sentenced  
to.corective labour willbe mae at a rate laid down by the  
jndgment of the court and eredued to the State. The rate  
nay be between 3%, and 207, of the Wages  
  
(10) IF the convicted person evades eoerectona Iabouc  
‘atthe asined place of work, then the court may dest him  
1 ‘ondergo comrecie labour at plas etermned by the  
Aapescies in charge of aeminsation of this punishment,  
[andi he evades this sto, then the court may punish hun With  
inmpeisonment ia default  
  
‘SKS (opie V0 carminnIournl f Connon, No, age 0,  
ater Laws  
  
‘iny Gin, “Wark Reka for son scem Odcadan France mate nied  
  
  
Page 55:  
Py  
  
sly pti imprisonment in da il 50  
acta that fr ey of te weed term of  
SStrsne labour” chore shal be hot more than one iy St  
Smpcannment i deta The srtoal period wil bo. fed  
by the court onan appcaton made To" afer dnobedence  
  
By the comact  
Comper 3.12. Reparation othe vitim ofan offence hasbeen ceiving  
Be ey  
  
‘beered  
  
Th ery ino a oye  
a Mah re amass  
Sea es ee atic  
Se ac Boe ae ae ay  
Eocei talad Gets Gk  
Senet Pata ee geese  
Sees, Seas Sie Seta ce  
Sieg tnd ooo oe  
rah  
  
[At one tine in the evolution of ctiminal jrisprodence, the  
idea of roparation of the victim of the wrong occupied a malar  
piace io mos fal systems. ‘The punitive or criminal aspect  
OF the wrong gradually claimed ecogaition and, Tor some  
fim, the two were mined or combined in the same proceedings  
Uae, the ei or eparason aspect became subordinate, snd the  
CGiminal courts concerned. themacies almost wholly withthe  
une aspect, in fecent tines, however, the compensation  
spect fegening ss importance, not Of course as the principal  
fim of criminal procedng, but axa recopmsed anellary there.  
  
Te, gl Re pac of commenting te vin ine  
  
Bm cant: Fee my the et a eso  
  
Sm acta of ce “Satay te nde can be  
  
Sour” neato pays ty of panien forthe one od,  
  
Serra? Bal ‘aay Ea be aide ote i  
  
cy eco eis cde aon pote  
  
IRE AU ecg a diet ht ay compost the  
  
Buin cle hee mae ames by pene  
irae one ihe ome  
  
1. Kagnnigy om ie ined ape el erdcaben ota he Cree  
ESET elds sa are il Wye St ane’ et Sono  
‘Soman Bosal meno ad kr Stina oe ae nd es  
  
2 NG Cine and Pepa 10 she Wat" 1922 Lam Tes  
  
  
  
Page 56:  
st  
  
23.14 The question whether this dest method of compen- Onion  
satng the mes of 2 Sime shouldbe adopted and provided for "Set  
[RUDE Penal Gods was cluded in he quettonnatre”Obgetion S77  
{S hs sueeston was ved by a numberof persons cone,  
{pineal te appecsenton tat might covert the cena  
{Pat fto’s prorated maguy Into matiers of a civ nature,  
ere was hover lrg body of epmon favour of he Pro=  
  
posal  
  
2.15, We notice that in some European countries provision Provision  
  
is made for payment of compensation to the victim ofthe Cte Foy,  
  
Ia"the course of the esa! proceedings, in France, they SSS  
  
ine ombing th thei prowction, him  
  
‘SMlone cnteby the injted purty—partie civle-for compensa  
  
‘SSton’. "The guiding petnipl’ of the atone cile fs that, as SM  
  
Fir as posse, the tnjetod party should be put Back into’ the  
  
Fat, ac reaped lor ie ce. oak a:  
nage rs awarded to cover not oly the Hoss actualy sustained,  
  
‘Dat abo potetal lot or tom of probe consequential upon the  
  
yusy. Fhe darmagce most not, however, excend the lows which  
  
ihky ace designed fo repair.» Remedies other than the award  
  
‘OT damages are also enesage, such asthe restitution of stolen  
  
‘ropes closing ofthe promises where a trade has been carried  
  
Be ics. advertising’ the Andings of the Cour in suitable  
  
Sap a aps of the ted nd pat  
  
‘ep romaine ht lp one  
  
‘aly by the ijored party, other persons concerned besides  
  
SCensed, may te joined as defendants. Tt has been sated that  
  
‘FSgtain "measure of immediate personal interest in setting the  
  
‘hachinery'of erminal Taw in. mouion cam the oe  
  
‘Ticausey of pubic action, that cil proceedings are cosy com-  
  
Barc tae criminal poseion, ng thal alow the in  
  
Eimervene ism expedient procedure®.  
  
Under the German Code of Criminal Prosedure?, the injured  
person oF hs heir may inthe criminal proctediog, ser against,  
he accused a claim ‘nvolving property righs arising cut of tbe  
‘liens To facilitate the fing of such claim, the law provides  
‘ht the ingoredperiy should be node ofthe hing of the eri  
Sa procectings The claim can be made by oral or writen  
‘Moxdoa and fos the same eect ay bringing an ction in ci  
pation, "The injured party-or his representative Js ented  
ta parusipate fn the ai ta  
  
tn Russia, one of the punishments prescribed in the Criminal  
Code is empostion of the duly t9 make amends Tor the harm,  
  
T Feach Coe o Comal Pade ais 2,395 0  
  
2 Venvef eh Commentie Valen, Toa det Cima ef de Lean, Pr  
Yempoee sear en, AB ele oy oma (958 5) Moder kaw  
eda Ss  
  
ne 3  
  
4, Secs 40 6 406, Griman Code of Criminal Prostar  
  
  
Page 57:  
IS  
beer  
ite  
  
1 RSFSR Cunt Coe (Oy wide B  
2 i, ace 3  
  
2  
  
tl fang do in ie sii,  
Stone acta Oar ee  
wre seamen yg ro ty  
lg mire mpl ti  
ceric, cement  
Sean couch aches St  
SS ee tate tes  
Sel er ese Syncs Sona an,  
fac S20 naman “hacen tee  
Osa Sree  
sey nk ae wi eae  
Sma oe omy soe  
  
3.16, We do not think that any such elaborate procedure as  
‘is provided in France oF Germany would be suitable for our  
‘eiminal courts. Tt would be tice to create legal right in  
the person oF persons injored bythe efenc to Join nthe cna  
prerrings om the Cen ay aula thi party The  
Should only lad to a mixiog up of chil and criminal procedures  
which, in our legal ssn, are Kept separate. a confusion of  
Fssoet and prob of the aly The Rossin model  
might be workable, but i) Bela” cf application ts. obvious  
ime 10 minor ofleaces whete the harm dene, or damage cased,  
‘s"smal. Further it not exeniy defen from co  
‘Satng the ictim ofthe efence out ofthe fine to which the  
‘der could be sentenced under or la.  
  
217, We have # fatty compechonive provision for payment  
of compensation 0 the tated party Under secon 38 Of the  
‘ott ome Code it eet at ow cours  
io not exec thers this tection a,  
fal bern coud be aed "The Sct tan ao doa,  
iS mats 1 apphcation depends the fsa,  
‘on whether the cour Comaders a acutania Ge pro  
imeat forthe ofence In the more serious eases, te court may  
Bk at ev pet aon fp fv oe  
{erm it not jutdable, especialy" when the, publ: prosecutor  
gnoes the plight of the victim of the offence and doe! aot  
fercomprctaon ov hi beat Ancther baat ems Foe  
ited At eens magatas of te fet as cant oy  
sine exceeding two thousand ropes and a Magstate ‘of the  
ia cnt cnot ipo an cen ve handed rapes  
Farther. under section 5431)(0), he court has fo be saad hat  
ubstanil compensation 9 recoverabe 1 2 Git  
fon to witom fom or ijary hat ben caused bythe offence  
n°Gur Hast Report ‘oa the Criminal Procedure Code” we have  
  
  
  
Page 58:  
By  
  
{esommended? that the word substantial” should he onvited  
‘om ths section, and also that the maximem fine. impoctie  
bby magisrates of the Mrst class should be increased 19 five  
‘howrand cupees and the maximum re enposble by magsrates  
  
4 Nberal se’ of section 548 of the Criminal Prosedure Code 1  
‘nade by ths cours oud, in out opinion, go's long way 10  
‘et che complaint that the victim of the ofence i ipeorl  
‘the criminal courts ar it be wishes to recover damages. he fs  
Incesarily 10 resort toa protracted and conly ul Mipation  
  
318. We do not see any pret advantage in proving  
adignal paniiment-on the Russian mode.” Whether fh  
aed "doy to make amends forthe harm caused” or payment  
‘st compensation tothe victim ofthe fences the objec te  
‘anshmeot ty mach the same as ts now achieved (or can be  
4chieved) under section S88 of the: Crminal Procedure Code  
  
outst whether an order ofthe sentencing cout to make  
‘amends in kind directly ebminate, by one's own resource the  
fare chic sche Rusian Code pst) wil be esy toenfores  
St otherwise Satisfactory from the pom of view ot the com  
‘ot the offence. There i no materalcfference between the cour,  
Sentencing the fender (0 pay a certain sums compensates  
for loss or injury cause. andthe court sentencing mts Ree  
and simuttaneooy ordering that the whole or spied pur  
‘of abe fine shall be pad to the tm of the olen by way of  
‘Such compensation, "Tt may be toe thatthe ater often nds the  
{rosedure for obtining this amount from the Court ae fhe  
Fine has beon realised, long drawn, expensive and harssing, bot  
he wl probably fd an oder ofthe court desing the  
1 pay up compensation equaly fica (o execne” We ae,  
therefore. unable to ecorhnend this sdilonal punishment foe  
poste heaton. snd ncluson inthe Penal Code  
  
212, We hin, howe the Penal Ce hols  
‘Prominence t0 this aspect of compensating the ‘ict of  
‘fence out of the fine imposed onthe oflender AT present the  
Keg provaton in this opard is tached aay inthe Ie”  
<llaneous chapter of the Code of Crimonal Procure, I sees  
1 ra ey sani po he co Ke dee  
{0 be mentioned speciealy the Penal Code chap’ on pan  
end the srlon of fhe flowing nl sete es  
mend the tserdon, ing sec0n foe  
Seetion 63 of the Penal Code  
  
62. Onler 10 pay conpensanon out of fine 1 victim  
of offence—Whenever’ a person i convicted Of an oflence  
4. 4st Repo. Vol, pararans 462 and sarapah 312  
  
2 The fecrmenaigy tae ten epi secs Bt and 36  
Erna roe: Ba 19 sessed the Raga Sabha’  
  
he Coe ot  
  
Te ths iw ofthe maja. Shi RL. Narain has BW # Separate note  
at eniey “me  
  
  
Page 59:  
Begimee:  
  
se  
  
punishable under Chapter 16, Chapter 17 “or Chapter 21  
Erie cee fan seat of sch sence fo iia  
‘onspeacy to Commit soch ofence and is sentenced © a fie,  
Sather With or wthout imprisonment i  
  
TEE ae oa  
  
it shal be competent to the Court to diet by the sen-  
spite gf ge  
forte aloe sey \*  
  
Explonarion Expenses propely incurred by soc per~  
soni the pocsato eh ane shal bs deemed ptt othe  
ios Canad to him by he once  
  
‘When this provision made in the Penal Code i wil necessary  
SMUSBy to mehty section 543 ofthe Code of Criminal Procedure,  
‘Hose to bring i ito line with this provion. I may Be pro-  
‘Wed in he mowed section S43 tat n every case where the new  
Wetton 2 ofthe Peval Code f attracted, but the Court decides  
or tg make an order for payment of compensation out ofthe  
Fre, it should record its reasons.  
  
13.20. We have mentioned above! that one ofthe patterns of  
compematiag the victim of 2 ome notceable in other gal  
SURE Rk ‘Slaw undertaking this responsiblity io dened  
  
of cases According to adtiona Tegal nations, “the  
CASES Styoaication yn a criminal tal is directed cowards the  
‘SSnetion o be applied to the offender, and excpk in a few jolted  
Sic when te lr allowed the ciminal cours fo grant retteion,  
Ge idlin ues crime coud not seck compensation in the criminal  
Scars "The respomsibty of te Sate ended with te proves  
tom and ae reer une ea la  
{ protect tbe ives and property of 1 etizens from crininal  
Srezacsions, Consequently. there could be no leeal claim  
‘ehinat the Slate for compensation  
  
‘wi te emergence of he ssl ole Sate ae a  
tional Rotts of Sate immmomiy are undergoing rand change.  
ihe wen of the rime deserves 2s much atenton  
  
  
  
Page 60:  
ss  
  
‘rom ihe State as the criminal apd that, if he State falls to pro-  
tect citizens against violence, ft can Tegiimately be called upon  
{compensate the victin, s gaining ground in westerm counties  
  
dt End, fr rsanc, he psion ws changed in 1964  
when a nonstatutory scheme of ex gratis payments by the Sate  
Tor" compenating victims of woknce oo fle tnd the  
‘Criminal Inpares Compensation Board commenced its work  
  
Zin mck apy od some  
Seehialeials'e etecertwel wear  
Seeelling wloen et ants a  
  
Sen ES bi Pom ote  
Se eager ane een ce,  
Misses ail be el 2  
ete thes ra  
Si cereaetaite Sine acres, ie  
a ca eRe caging gerne  
  
Sioa peotrammes for compesaing veins of crime have  
teen aed by nw roam pereia ‘New Zelang? and  
Nontern Metand®, ‘and ia afew Sais ofthe USA. es.  
Colfomat, Masschwses ad New Yor.  
  
321, Another punishment which we included in our ques: Pac  
  
‘onpaite, and contidered Inthe Tight of opinions, expressed was Soma  
ofthe name of the offender and deals of the offence $PoPnate  
  
nd sentence, or briey, public censure, © There are caiain fet  
  
“ninsocal offences commited by persons belonging © the cher Sense”  
  
‘ind’ move “sophisticated sections Of sovty in tan to which  
  
this punishment would appear to be- particularly appropriate  
  
While these offences acta large umber of people, the offen  
  
ers ate fealy bought 10. book In sach cater pubic  
  
‘ensures tel to” act as'a greater deterrent than ne of eves  
  
1, fleece may be mad the owing we —  
Rope Grom, “Cooperation op Vict of igen” (196) € The Lset 415:  
Eis, “Gerpesnon tor Vite of Cina Ota ey Coe  
Tega rien 180  
“Sepia main apo compenstionproranme” (4,  
‘Yahuds, “Criisl Ines Compensation” (1966 116 New Law Jounal 292:  
gy rice “Compenntn for vali of Ce of Vice” (Washingt)  
UeBehin leon Sac: itary of Couey. on“ ”  
  
2. New Zand Pate Aa No 34 of 196,  
  
2 ghee ln hla 4 Reson Canpeman Act, 68 6 7  
  
4 Gal Pen Code, Ar 1340 (96), Ca. Wal a's Ce at 11214 (196,  
  
5S. Masschssts Genera! Lan (196, Ch 2564  
  
6. New York Eset Las tons 0-435, 1967 Soph  
  
  
  
Page 61:  
Seat  
  
cote  
  
‘ecan  
Peele  
  
56  
  
eee mice ach conn tat of Sones ould  
to tote mises re ald  
cr the oRealrs more efectely than the Ussal Punbhmens  
tinder the Cove  
  
5.22. In ancient India, pubic censure with degradation in  
some form was laid dows £5 sufable punishment for certain  
Sees aP ns ne Nara Ss endo  
  
re ‘been composed in the sith century A.D. prexribes for  
2 Brahmin golty of a iokent cme (cahasa) tht "shaving is  
ead Wang hie. fom the town, brandi him on the fre  
ead! witha mark ofthe crime of which he has been conited,  
‘Bnd parading bim on an as, sall be his punishment.” Apart  
Hon tke dezsing orm given tothe punishment which may.  
Bot oe aceenable 10 reodern. notions, the underlying idea of  
Pet ty Scaristeing socal “canoe io the ollendet is. worth  
owe  
  
3.23. Quite 9 few penal codes of the preset day\_ provide  
foc the gig of funy tthe fact of conection dd sen  
Te she Columban Penal Code provides for “special  
TeEicauon Sr the sentence oan, peesory fo penal wren  
BePitpnscoment™. ‘The publestion is made i an uncial  
ease are iowmbip in which the ffenee was commited  
Pere chaed person teides "Its made at the expeme of  
Re coved or iured person, and if he fais 10. pay the cost,  
iis done by prodamation.\*  
  
‘Socal cenbute is one of the prescribed punishments ia the  
USSR. According to the Russian Penal Code, .  
USS cOosts a public exprenion by the court of censure  
Se yen ad pe Sigg hp 1 te  
oie othe public throgh the pres or other means?  
  
3.24, In Indi, thi form of punishment. has been recognised  
‘yy Paamentn the Prevention Of Food  
PeoeereamSn tec). "itany person convicted ofan offence under  
ade, Somme & Uke offence afterwards, shall be awl  
Ths (Act Son before which the sgcond or subsequent conviction  
To the seatfo cause the offenders name and pce of residence,  
kes BESS snd he penalty imposed to be pablnbed at the ofen-  
Si ncwspapers. of ie auch other manner as  
fect", A smile provision for publishing the  
the cout Tfaating assssce rade in section 267 ofthe In-  
  
F EiSisan Pen! Cade, Artis 42, SD and $4  
3 Rate Fant cole, Arcs 210) anf OD.  
  
  
Page 62:  
37  
  
325, We consider that this. additional punishment sil be  
wefbl in the cae oF perons convicted forthe second tne of  
ny ofthe following oflences. punishable under the Penal Code —  
(i offences celating to cutency notes, coin and stamps  
(chapter  
(i) offences re  
13)  
  
to weighs and measures (Chapter  
Gi adulteration of food and drugs (sections 272 10  
  
Gi) extortion (sections 383 t0 399),  
  
(© ctnviat misappropriation and breach of rust  
ccm S05 10 409)  
  
(i) cheating (sstions 415 to 20);  
(it offences relating to documents (chapter 18).  
  
Ne,sseommend the adtion of & new seston 76A a  
  
“76h. Pic conse for etal aflces fer previo  
  
4) When any person, having, been convicted by  
‘Court in indi of dn oflence specie in sub-section (3),  
SSonvited of she offence, taal be competent to the  
‘Coun before wich tse conviction takes place, to ease  
the offender's mame ad place of Tesidene. the offence  
  
thepnhnen nosed te pled the  
(offenders expense tm such newspapers Orin such oiher  
manage asthe Court imay” daect  
  
2) The expense of, such, pubation shal be, r-  
covetable home nde sme anne 42 ine  
  
2) The offences to which easton (1) applies ace  
tany ofences punishable under chapuer 12, chapter 13,  
Sections 772 10.276 sftions 383 10 399, “sections 403  
To409, sections 413g 420 or chapter IW ofthis Code.”  
  
326 Confusion in the seme of fora the ate of  
‘it property belonging to the sriminal was fein the  
Inlan Poon Coos fr a fen offences ‘hong on 136,  
‘Seonginaly enacted, “whoever wages war against the Quech  
2. Soh pea a imprnmen oe od  
Shalt forte al Bs. propery" It wat fad ‘ce  
oman a ae uh ender sab ncapae f  
‘Saul heal Rave undergone tbe punishment awarded or Ts  
fprinhment to which s shal have been commoted of Unt he  
Shalt have ben pardoned.” Then, under section &, "whenever  
  
New  
  
cooienton  
  
  
Page 63:  
feos  
  
8  
  
SU EERNS SQmeed of ae oe puna wih dah  
‘able, hall be" frfoed 10 goverment” These “dracoman  
  
mht wot era fo HE3 an sie then, ovine  
Eet'punshment shied to specie propery usualy proper  
naga wih, oe acgoted 6p meses Of the cme tnd fe  
{tined only Tor “ve fences ner the: Code™  
  
Tks of interest to find thatthe Code of Mans presibed con-  
fscalion (irushoranin) Tor those traders who Gut of copay  
{ok away for export goods and animals of which the King hal  
monopoly orf whi the export was prohibited. The com  
enti Kuboka Bata pve eephamt and hors a ca  
of the fst category and pain doing a famine as an exam  
OF the second. rte Gero me  
  
Of the opioions expressed on the question wheter this puish-  
rent should be romefodaced inthe code there. ‘were not many  
[i favour. We are alio of the view that this hash puntohment,  
‘which wil fll not oly on the cemina But also on ble dependent  
Tamniy."'s not't0 be commended.  
  
3.27, Weincloded in ou questionnaire the following question:  
or fie Cote Jay daw nly the, maximum punishment  
for oflences, and fo ion punishment excep ive  
  
few canes "Are-you in favour of laying’ dow = minh  
term of imprisoament for any offences ? It 30, for what  
  
328, There aze only five sections in the Penal Code which  
prcctite a" minimam penal. Wating war agaist the sate  
{Getion 121) and rourder(ethon 302) are punished with death  
fr imprisonment for hfe. Under section 303, «person commie  
{ing murder wile undergoing hfe senteace has to be wenenced  
tordenth A mvimum sentence of seven years imprnonment  
Is provided fn Seton 397 Tor a dacot or robber using a deadly  
‘Scapon, or causing or aterosing to cause erievous hurd, and in  
‘eclon 39s for a davai or robber Being armed wih 8 deadly  
Seapon  
  
Bur, as noticed by the Law Commission ia a previous Report,  
‘daring ecent years. several enactments have Peen passed By the  
Suate'Legilaures or Parltrent providing for minimum se0-  
fences Its. true that in some of thewe enactment the Jsere=  
tion ofthe court has not been completely feiteed. ‘Though the  
Section provides for a minimum sentence the court has Seen  
‘Bien the Hbety, For Suiciont reasons to be recoded, to award  
  
Se sons 155, BT ane 1.  
2 am St, Ch. 8, St 39—  
  
‘Both rakinata tends pratense chan nro bia stare  
  
  
Page 64:  
Ea  
  
42 lower sentence. Instances of sacl, legilation are section  
3 "ofthe Prevention of Corroption Act, 1947 (as amended  
fn 1958) the Prevention of Food Adaterstion Act, 1988, the  
Suppression of immoral Trafic in Womeo,and Gils Ac, 1956,  
nd the Bombay Probibaion Act, 169. “The peincipal Faso 0  
Toe sich provscons “appears toe 2 fcling tha cours seldom,  
fvard sentences which would bave a dterent eft, partial  
iy'in certain types of ofences which are ecessary to be dea  
‘ith sternly sm the interes of set)?  
  
3.29. While in the Anglo-Saxon legal sytem, minimum  
prishment tt seldom prescribed by sate, the penal codes of  
many’ European counthes ly dow upper and lower limits for  
Pnishments ie many cass.” The wsuol formula in these codes  
Xt say thatthe offence & punishable with confinemen: Joa peni=  
tentiary (or jing) for 3 term of x to.» years. These codes,  
However, ustaly-contain provisions enabling the court {0 pass  
seen Jove, tan the preerbeé mime im exaorary  
‘cases or for special reasons  
  
13.30, Most ofthe opinions expressed on the question were  
strongly opposed to living down at ‘union panihaent  
in pil, member the jr aa rel aaa ay  
toch amendrcnt as totaly unaccesary. Some of them ae not  
app about the working of the prowatons made in special laws  
for imposing. 3 minimum sentence.  
‘The Law Commision in 2 previous Report obsrved:)—  
“The determination of what shoul be the proper sen  
tenes pica ese he nay ten tf le cot  
aie iy Sea dr hie nce wat  
‘Sommites and the moral terpitade itching To t Wo  
Sates his the special Rnowiedge of the cour which has  
ITod the case "There can be mo rule of general appheation  
living dona pei quanta of ponent chat should  
‘insted Inthe cave ofa partclafoflene. A sound ju  
a isretion om the prt ofthe al je i awarding Pun  
Shiment cam sone “doainguish between ease” and case and  
At tbe pantsiment to the ex" to each individual case.  
  
once, the plising of seston’ on jodi dcretion  
ig th a te ao ec lt be  
‘Soret 4 geeeral prac ="  
  
‘ltrred occmiony where joes fave alle Lo award sentences  
foporiona tthe gravy othe efenes This ant, how  
Brebovarrant te sstmption thatthe fairy as 2 we has  
{ica fo award adequate sertnces or onerioked ihe ned for  
sing Jeterent stents in approprate. cases  
  
2 rah Repo Yo. Hp 38  
1 dpe, a  
  
  
  
Page 65:  
©  
  
‘We apre with the above view and consider that, save in excep-  
tonal cave there should aot be any provision for minimum  
Sentences in the Penal Code.  
  
ssction 51 23%, We now proceed with the consideration of the provi  
sions of chapter Saccion by secon,  
  
Bean 322. The question whether the death sentence should be  
atece seained fa the Code and various cognate ratte have been  
Sonucered in great deal in Law Commision  
  
ikepor on Capa pomihment+ Ie vegetable that bough  
thie report sat ade fo the Govecament more than thee years  
go, hut ot been paced tefore Parlament or otherwise Pub-  
Thed for te information ofthe publi. That Commisson has  
{commended that, the conditions existing at preset im In  
the death penalty should not be abolished.” We age wth ths  
‘esommendaton.  
  
Minimen 3.33. The, previous Commission has also folly considered  
  
SET” — wheter the Code should spay the minimim age of the olen  
‘ho can be sentenced to death, Alter exaroning the position  
Under the Chikren'® Acts of various States, i has sated! =  
  
“We feel that, baving regard tothe need fr uniformity,  
to the views expresed of the subject and to the conde:  
Mohan ude 8 can be eared ashy  
Tinmatare terete Tatysitong cae Tor doping the age  
SF8 as ihe minum for ent sentence We ate wae  
that caus wil occionaly arse where # peron net 18  
Found guy ofa reprehensible iling. or comer. 2  
Teruon above 18 found to\_be imate and not deserving  
Bethe hghest panament. "Aine hay, however be draws  
Soot anne int at Tea adopted who  
  
We, sheefore, recommend that a person who is under the  
age of 1 yes athe ume of the commision ofthe offence should  
38t be semenced to death. provision fo that elect cam be  
onvenienty inserted in the Indian Penal Code as section 538,  
  
xy, 5.34 We sare with this recommendation? Ther, how  
Bec, sam ol mln Rte Coe awh  
EE Beast wh cm Sn sitcton the sem  
  
hor SER Sauk be am enema rare ae where  
  
‘id paraaph 86, 87  
Tn ir somern, rfp ay ano bed tte uration Covenant Cet  
Se WoiRea Rigel SR, ae “Are potas, chi as fon  
  
ei eter of death sal nt be speed foe crimes commie by pesos  
ton Slit SF ha tot core ot on prema nen  
  
  
  
Page 66:  
on  
  
iwenile under the age of 18, being under sentence of impison-  
iment for hfe. commited merder or other capital oferee Ie  
‘er sch case did occur thee would be & confit between  
‘estion 303 which makes the ceath sentence ebliatory and the  
Fropated excepion inthe cave of aay juvenile ur the age oF  
1. "We consider thatthe proposed exception should no! apply  
whete the offender is conviced under section 303. If at a  
‘here ae any extenvating cveumstances ia his favour, the Pre  
dent and the Governor may be tusied to excise their power  
‘of commuting the ventence (0 one of Imprisonment for Me The  
fw provision may accordingly be as fellows’  
  
“The sentence of death shal ot be passed oe & person  
coicted of apa offence it the tne of comnatlg te  
Sine ews under eign yearn of age 30d ath  
the ony punishment provided by tw forthe oes”  
  
23.35 Ima previous Report! we considered vatious aspects  
of the punishment of lie impisonment and recommended that  
in wiew of the prevaig uncerainty onthe point shuld be  
horensly provided in the Penal Code that such prwonment  
Stall be rigorous. At the end ofthat Report be observed’ =  
  
“aly, while out prent propo ied so the  
tmmet protien of rting de eaten have sea  
18 regards the nature of this punithment, we have noted for  
future consideration the question whether Wis at alt neces:  
sary even in regard to capital oflences aad whether it Should  
be teained without modification im regard to the numerous  
ther offences now so pulabable.” Itatrkes ‘one ay xiv  
ah prema tha an oft the weds soul fe  
Bnkhable with eicher imprisonment for life or with rigorous  
‘or simple imprisonment” which may extend tothree yea’,  
Dut not more. These questions will have to be consicred  
‘when the Tedian Penal Code is uken up for revise”  
  
2.6. Acodgy, oso he gun pt omar nour  
jeestionnare on the Code Was whether. imprsameat fe  
Nhe penahment pescied for "tane eee tel ee  
giesd by Iason fora apse ong etm eg. 20 yur  
  
favious coments sd supacssons were tsived indicat no  
ier peponderancs of option one way‘or the othe Whi  
‘ere hee conse umber who hog he mptsonmene  
‘ool rnin and desed no change, the were ier  
‘onset ths punishment wrowg it principle Some dested  
Substitution fed period ont the prow tat Ue onne  
Practice in amon af Stes of panting toes ow hee  
  
1 Yah Report imprint for Me utr Whe lana nal Goh  
  
t  
  
eagF  
ae  
  
2 39 Report (lnprsemeat fr Be ander the ain Peal Cole), aragaph 29,  
  
  
  
Page 67:  
sine  
  
@  
  
scale reduced the period actally undergone by a lifer 10 some-  
‘hing ike 8 or 10 Years. In thelr view, there should be a mini-  
‘mum period below ‘which He imprisonment should not be fe.  
‘Guced by” the Government. Oters favoured substitution of  
‘ited Toog period but saw nothing wong ia remusions being  
ranted liberally by the Government at the discretion and wee  
§verse to any minimom period being fed by law or otherwie  
‘Opinions so difered ast what term of lmpisonment would  
be suitable instead of imprisonment for Iie. Some other o-  
UGresting suggestons were that the felevant sections should te  
‘made more elastic by providing for life imprisonment Ora spe  
‘Sted Tong ttm, inthe alternative, that instead of ie seotences  
jn ‘ove continuous, sretch, there should be Imprisonment for  
broken pends, and that a ioog terra of imprisonment followed  
by a peiod of surveillance would be good subslnete (or a hie  
  
3.37. Is of couse ue fo say that a sentence of imprison:  
men for ie fs ever cated ot Hera, though may oc  
STonaly‘happen hats prisoner 30 sented des in jal befor  
ee cng ptt he ine Govern for ree Te  
Stu period spent ijl by lle semence prisoners na  
“aries god dE and may be a short an? gear Whe  
ih po ean rai bai i he Sate et a=  
el anvorm, a Me sentence is generally equated to soprson-  
tment for 20 years and romision of dierent. types are piven  
intaccordanct wih roles "The case of every Me ents pe  
Sone taken up with the Sate Goverment ona completing  
i9't 1 years nctoive of reminonn earned ty him by en and  
the rate Government esses whether he sbould be secaed,  
Snccnatonally oe set to,conditions. A” favourae doce  
Son amped ty te Sit Government muy cm  
ing the unexpired poruom of the prisoners sentence under se  
tion Ot of the Cerin Procedure Code and orerng hs te  
Tease.” 'Since tension of seotence (sentry within the ds  
Sfeton of the Government under the Consttution ae wel a  
‘he Cina Procure Ca, the cours pone to detain daa  
serous criminals for longer petiods remsins unafected.  
  
438, Tes posible that, owing to th increasingly generous  
application of ihe remision syatem in tecent sears 10 ie tem  
‘tee prisoners, te sentence has ont some oi deterrent  
  
‘ass,  
the posaity of wate  
thin ihe ihe Chen to wick  
  
te  
‘replaced by imprisonment for a speciied long termlike 20 years  
  
  
  
Page 68:  
6  
  
3. th, conaecion, ne tied tat, when the det  
seneliy for murcer wa soothed Ye England in 96, the court  
[Entating any person’ conmted 9 marc to tmpioomet  
fore was shee the power to elare the period which  
SSiomended fo the Secselaty of Sate asthe minim period  
Sch ts View shoul clase teove the Secretary of Sta  
‘edered the sete of that person om famnce Thc same act  
Tete provided that no petion coovited of murder should be  
teiedby the Secertary Of State on eens wl the Saclay  
‘USate Rad prior to hich elas, Comuled the Lord Che  
Tosco England topener wth the al jude, if avaiable?  
‘We consider whether it would be Gevrbetohave some sich  
‘rowons in the Indian Peal Cade or the Crnunal Procedure,  
Bat fe that n'view of ances 72-and lof the Consaton  
‘hich confer Tul powecs‘on the Prendent and the Governor  
15 tnt reson, pronto he law ete hove powers  
Baht not We vad OF proper®  
  
2.40, Besides the four capital offences for which the Penal  
Code prescribes impeisoament for ie a3 an aiternative £0 the  
eath Sentence, there ate moe than 40 offences for which the  
Dpanshment may be either impriscement for hie oe impison=  
‘pent for a tem which may exlend to 14, 10 or? years, in One  
ftatance Gediion under section 124A), wile the ofleider may  
nated wh mpgbonment for Me, Be my notte teed  
{i More than 3 year imprisonment. We have. ate acacia  
Srutiny ofthese sections come to the Soncsion that the Me  
Seotence ts only necesssry in 6 of them. Inthe oer sions,  
the life sentence can be sifely omitted, the maximum ‘ecm of  
Imprisonment provided there ‘beng. suitably increased.  
  
i i ir 8 ta et nin  
thee notes seers  
Gey Puen peo ecm Sct  
eine wat pei ae et  
igen aos am emery te  
ioe retiy domes res  
sri pantera?  
  
Si iieae oe seater oe  
moat iarae nae Grae me  
cag Coase celery  
Seay ere oe  
  
i Monder (Asis of Death Peng) Act 196  
3. Sera st Report, Vou, eaagraph 294  
  
Reason  
isnt  
‘stoaeees  
sane  
  
a  
ington  
  
  
  
Page 69:  
“  
  
Se meet echt at hee  
ieee ante ran arenes  
  
Werabat eamcai a Srtarauatre ge  
Posiernane  
  
A ie of complete idleness even for short period would  
nace Gees fy anal ada THE oi of  
competing psoners to work im prson hs undergone ria  
‘arp ete centage "ard ibe war Satelit  
snes mal wh tf akg te he nie  
Feat imposed on thm bythe cours. This sea gave pace (0  
sine exent to mak peson labour product by inocu  
Je "hash and more sophisticated forms of work. Later st,  
stay gh wad on rang the poe oa cal  
  
labor. Work in rson fe topes desened  
oncipaly as an instrument of penahment of the offender  
Et deel souce of prot fo she Sat bu as method of eo  
ting the: pesoner and tchabitating him on Teles  
  
Even where the offence does not carey with it a moral stigma  
ands ihr on what ound Some thet, the ener ee  
{enced to simple imprisonment, not be any serious  
  
ection (o his being fequired” to do some work imprison a6  
Co the’ pons imposed on him. "Ne dou hee may  
  
“pecal cases where, wile the sentence of imprisonment  
Jotlate, ‘the praonecs antecedents, character tnd en  
auipment snd the nature ofthe oence commatted by him are  
Sch that ipritonment coupled with hard labour would be  
{op severe a punishment. We fel that lo auch cases, some form  
cf light labour should be a pert ofthe punishment of impeson-  
‘ent to Which the offender in Sentenced  
  
34, We ae coc atone ot de  
sl te ene tin tn Pe  
Sot oathaeattaeaerren ae  
aaa ah as cn a  
So gay ap eee ed  
ar hn an Pte eg  
Bagley aes pom rie,  
Ee See oie ae  
SESS e cae teal aes ea a  
el doar aka as cake  
aes  
  
  
  
Page 70:  
6s  
  
34k We ssadiny commend ati shoal te made  
cleat seon 53 of the Coge that snp impionment sans  
inproement with ight labour Secon 36 of ths Prsoets  
‘Act 894 shouldbe sab amends so hat convted. persons  
sree rumen cs be comate fee  
‘Srton and'no Sys longa hy 98 doe  
  
245, to the ht of the fovepsing dicusion we propos:  
that Seon 53 ay be revo as alo re  
  
“53. Punishments —The punishments hich offenders  
ave liable under the proviaon of tha Code. are  
© eeath;  
(i) imprisonment for ites  
(iy imprisonment for 2 term, which may be  
(©) sigorous, that i with hard labout, or  
  
(©) simple, thats, with Tight Iabour  
6) forfeiture of propery;  
(0) fie.”  
  
346, Section S3A\_ was inserted in the Penal Cade by Act  
26 of 1985 which formally abolthed the seatene of transporter  
ion, whether for fe oe for spss term. "The. new section  
  
Procedure Code and in statutory istumens and orders in Torse  
fon 3112-1955. ‘The section does not require any change.  
  
347. tn outlast Report!\_on the Code of Criminal Proc  
‘dure, 1898, we poated cat tha the provisions contained in se  
‘ons $4, 35"and S5A of the Penal Code relating. 10 commu:  
tation of death sentences and setencss of imprsonmnt for ie  
te repeated in secuon 802 of the Procedure Cade But with some  
Slight diferences. and recommended that this doplcaton should  
tetremoved andthe aw sated atone place inthe Crimuaal Proce:  
dure Code? "Sections "34, $8 and SSA and may accordingly  
te omite.  
  
iF Repo VoL, panarahe 3910 and i  
  
mendes |  
  
2 Ths fatten Goce in he Cote of Crit Prose, Bil, 197%, ile tas 82  
  
ans  
  
  
Page 71:  
sien  
Sion,  
sews  
  
®  
  
48. As indicated above in paragraphs 336 and 3.35, the  
following new sectons ray be inserted at ths place™—  
  
SA, Minors mot wo be sentenced to death The sestence  
  
Aner cigteen years of age and death not the oa pansh-  
eal peocbabady fence pee  
  
5S. Imprisonment for Wife to be rigorous—Imrisonment  
for ie “hallo goo  
  
1.49, Section 57 provides a ele for calculating fections of  
the punshmen of Mi impesoamest wherever neesary. under  
the Codey eg wth reference to the punsiment for abeiment  
‘aon ike we ecg aig le oon  
  
oon is term equivalent ‘gore imprsonment  
{5 tweniy year” The word “Pigorous® shouldbe ited ae  
the onde °Sgunalem "Inston 57  
  
30. Timoah eon 0 we cm cour de  
  
nen cra cases 10 rigotous and pany  
Simple teldom ave ofan prac, we aee no harm tT  
{Sn ‘inthe sate Books  
  
3.8L Section 63 needs no change.  
  
2.52 Sections 641067 provide forthe imposition of a sen  
‘ence of imprsonment in fut of guyment any Bae a an  
‘Sender has eon feed to. pated relate the. nae  
Snd'peiod of sich impesonment ihe arrangement and dra  
  
‘Of thee four sctons ae rher eumbrove and dict  
{Show “ins peuy eae under the Maas Town Nonance,  
‘Aa 8 ha went up beloe the igh Court in revo, the  
io a el fo aoc of RB a ea  
  
ment 10 ondergo simple mprsonment for a weke  
funn swardtble ener the Act war ie no exceeding  
Rar's0r or mprncemear of ether dscrption not excoing,  
days Th judge, fer not ery convncing analy xe  
{toby et 68 and 7 came fo the Snelson that The case was  
‘ured by action 85 and mot by setlon 67, and scSodinghy  
‘eh the sentence of smprsonment in ele open  
‘hints “puns able with ponents nel ar Rew habe  
‘ence ‘rit imprisonment swell ar ee”  
{She add mCi ce shh ty poe  
  
ihimpeisonmest or mith Se bat mot with "both. We  
  
Sect propose tha the four scion shoud be combined  
Sider one ston as foo  
  
“64. Sentence of imprisonment for nonpayment of fe —  
0 ee casein which an fede setenced 0 Sie  
Nai be Competent tothe Court to direst by the sentence  
  
  
  
Page 72:  
o  
  
hat, In default of payment of the fine, the offender shal  
undergo imprsonment for 8 eral etm  
  
2). the fence be pune with fe ony ich  
inmpiooment shal simple, aad the (em Gero shall not  
cnet van  
  
(2,160 months, when the fine does not excea one  
onde rupers  
  
(6) four months, when the fine does not exceed  
two hundred fupoes and  
  
(6) six months, in any other case  
  
13) Hf the offence be punishable with imprisoameat  
ort, or a prison and ie  
\_\_ (2) the imprisonment in dant of payment of the  
fine ay bef any desiption to. which the fender  
Imght have been seaenced forthe. once;  
  
(8) the term of such imprisonment shall not exceed  
‘onefouth of the maximum term of imprisoameat pro  
Nided Tor the offence: and  
  
“(© such imprisonment shall be in ation 10 the  
Imprisonment, ian, to which he may have Been sen:  
{ered forthe fen, o 19 which he maybe blender  
  
ig nd an aon se hin  
pecs po ae ahi ae on sa  
weet sa asad me  
  
1 Una aie ype n ope  
orien ees mo oe  
SEO n era rc cr  
i ae aoa ate fe, la  
Te Sigh ees eet be  
ae et tad SE  
SOUL Gg ote tesa  
PEE Siero Ree eee ees  
“Smee St a ates ae  
Sots  
  
3.34, Section 6, to which a lengthy ilseaion is append-  
‘¢d, lays down the rule for termination of imprisonment i  
Fait hen ony apart ofthe fie fs paid or levied. The utdety-  
Jag ideas" whith ae spe enough are elipiclly, and nose  
100 Geary, express in an attempt to make the ation, short,  
‘ut the Tong-wanded Mlastrion mote Dan counteracts the ter  
feness of the Secon.  
  
7  
  
Si Sod, Jogeal Boman (95) Vai, eae 1S  
  
  
  
Page 73:  
“  
  
SE 35S We sogzet tha sections 68 and 69 may be combined  
SGALP and revised os follows im one section, and the Masration to  
Seger Selon omited  
  
Salon 68. Termiation of imprisoament on pavment or re  
  
atisation of fine —  
  
(0) tmpssonment imposed in defi of payment  
ofa ester fener tat fie eer pad,  
Sree by proces a nein fall  
  
2) Whenever part ofthe fine is paid or is realise  
by proce of laws the term of impetsonment ted  
i déath of payment shall be deemed to be redoced  
by sch nent of dana eas the “lol nambor  
of days in that tem the same proportion a the amount  
ot fine paid or realied Bear to the amount of Ane  
npn an iat a Une, mprtonmen nt  
  
payment being ia thal terminate onthe  
‘apiaion of the rede etm ort theresa tm  
ak pevtomny expired shall terminate forth  
  
() In calelating the reduction required under  
upection Gh any acon ot a dy es tan oh  
  
i sal bei out of account and anyother aston  
shat be couned3¢ ony  
  
Seon 3.55. Under section 70, the fine or tere which  
  
% temaine-unpakd tay be “loved at any tg wither tears  
ser the passing ot the sentence" Ht welled that this  
Period of ain ear 1 be counted from the dateof conviction  
IE emtence io the Court of fst instance. ules the ope  
tion ‘of the sentence has been suspended.\*  
  
Meaning 3-57. But the word “levied” in thi section is capable of wo  
  
Ei diferent interpretations. "AS observed by the Bombay High  
  
Teved”. Courts im another context, the word bis many connotations,  
sod what puricular connotation shook be given 10 that, word  
‘would depend upon the context. in a Peshawar case the  
{he dedel Commusioner took the view that the Word means.  
the actual veastion of the fie, 90 that, even i the application  
for process i made within sit years bu the fine isnot realised  
within that period, Turther proceedings cannot be taken.  
  
[A ileret view hasbeen taken ia a Bombey cate where  
i tie been to that "the secon does noe precebeany Hem  
  
1 Se aon 6nd, (UK) Mapai Coun Ase 1  
  
2 Polar! Sh UP. (962) Sopph 2S.CR 6; ALR. 1961S  
2 Bilder Tanai, AUR. 1987 Bown. 7h %,  
  
Mie tion © Cour, ALR. I) Pah 36  
  
5 Gopi © Ui of Tia AR. 1963 Rom. 2,24 25, garaerenh 8  
  
  
Page 74:  
«  
  
shagging te segs ake fo rain te  
Trough Coe pote he Eh te a ae  
stom Ot oi inked eg ee me a  
EPR ott oo har the sates ofa Gs  
S55 au ite hom ta of Son Se 2a  
Sse Samet oon Sr hl  
Sndrgne in defn and ecy goal tenn  
EESc ae Go Sota  
Sie Cae ens in titolo 10 ng th pe.  
  
ing tnd Where for eta el" ie,  
Sictnade in rpc of the auch soo Oe  
precios lng tine "Si nn oe ME  
‘ha he ear pred an oa ine nae ahs SE  
‘re pres, commenng. fn sac a ta  
inden wid omeron eta oy aa  
sompieds To" old so may reat in empiri os  
e301 (0 questionable methods for peeveming se tthe sacks  
‘oper by poring epoca  
  
Zhe same view is taken by the Allahabad High Cou  
eid  
  
which  
  
“Ht not necessary thatthe prosedings for kvy of fine  
shoold terminate win So yeatsof the passing of the tne  
ence. “On'the other hand, what seston 10 ot the Indien  
Penal Code contempiates fs tha the proceedings for Jevy of  
fine» should commence within that period  
  
2.58, We have no doubt that this is the right sew 0 tae  
4 oer 10 make the gotiom ha and vcd acne,  
ne ati hd hd Sl id  
  
‘eerce to comcast or reaiing  
Be ioe We rae te ana ea  
  
down @ rule of lmtation, the present permsive forme—"may  
fe ieved at "  
  
‘be changed. “Section 70 may be revied "ar follows =  
sii tr ae  
  
(2) at a tine alter the expiry of si years from  
the Sting hee’ 7? oF 8 Ye  
  
0 under he sens, he onde ig tae  
to impriscament fr a Tongs ptiod than x Joa at  
sny"time ater the. expiry of that pod  
  
BWA. Death not to dicharse property from ibility —  
Tis gh of the re on a char ot a  
iy fOr recovery of fine any property which would et  
‘death be Teplly able for hie bts  
  
1, Kesar ‘Bane one Ser AR, 167 Ai 34278, pra  
  
  
  
Page 75:  
»  
  
3.59, Section 71 contains tee propositions each of which  
limits the ponshiment for an ofence shen iis made up, one  
‘tay or asther of several offeces It should be noiced that  
A ste coins wo the panies wrt, Teng  
coral aspects ike proweuting th offender, raming charge  
Seite! RStq!Conicong hi of shose charge, to be det  
Mah in the Chong! Provedure Code  
  
Ay snd in he cin cide  
tad Maat ee a  
‘aire a a ail of  
ergata pom o Repnchaes oat  
Sybase ee  
SE ld ene Sn ey  
sy a sa ie a  
Sri et tara tl ae  
  
Fk in Muti’, She fey  
Spake adr ey ey ai cet  
Page or toch ea cn ae  
SPA clyde ey  
Se eee  
Sake dt ete tc see  
Sete fe ak cag ane  
Sects teh ear bue  
  
Frocedura counterpart for sacha ease i i seston 2340) of  
[ie Crominst Procedure Code aay  
  
“To take another type of case, iF A 2. pickpocket, fist takes  
a.sik’handkerctel then «pane ang ast a eareticve from  
petit by ine separate a would be an nesting exer-  
eens wero son ig Bo  
‘ceatdel as comming ne sence of theft ade up of tee  
{Gans coxewhich pts ial an ofence of theft 8s Om  
Fars Sires oles ofl in or sesh Sts 30 conn  
Gi tother sa to fore one transaction within the meaning  
Sf schon BH) of the Cran Procedure Code, I howe  
Ss gd cnc ins ee  
  
pocketing would be brought against A a a  
Etat hon those thre charges separately  
  
3.61, Cours have then diferent views as to when exactly  
ix can be sant that am Ofence ig made up of parts” and 35 1,  
‘hs'prece elect of the words "shall fot be punished with the  
Pnbbment of mote than one of uch his Ie parte  
Pile the question of punishment in cases of Foung and aus  
ab rt hus gavea tie fo: mach contovery  
  
‘he Caleuta High Court eld that  
ection 324, coup  
  
  
  
Page 76:  
n  
  
appetants have teen found pily is primarily made up of two  
atte nz (ofthe being embers dan unawfaastty by  
Wich force and ven wes ned mn roseciom of i emeaes  
  
oy  
sangeet forth above. te fender maybe pune Sepa  
‘or th two offences coastitsted by the whole and the fart fee  
gectvely. Therefore, we find tha ll the conditions a ios  
Se pacagianh | ot section M1 of the Indian Penal Coe are  
sent here." Consequenty the faficion of separate panishments  
for the two efetes Wiel ner  
  
3.63, The Bombay High Covre took a diferent view of the  
sap tod il es aon 8 Seve 3 ig  
nd causing hurt, the conviction for cavsing hurt depending  
‘mvt apleatanof ston 1) spl ofa rn eae  
‘eS prowided the total punishment does mot exesd the leit which  
the Court might pas for amy one of the fences” ‘But where  
Bs cae tal ct Be hr he pres  
forthe two offences ean legally excted tht tic Ladepenae  
ofthe gueston whether the cas fell under sation 910  
  
fr Courts int case where person is conviced of two dace  
‘Mens, ik to pass a separa sentence for each fenee  
  
3.64, This view again was dissented from by the Madras  
ih Court in alter case ®t held thatthe view taheg hs  
‘Bombay ts that ection 71 te mot ons that gives diccons seobt  
‘mere sentence, but that st Only dats wih punishments, sod hat  
therefore as Tong as the kentones passed on n comvicton for  
ing an se form of contre har 4 not eed the  
{erm that can be awarded for one of tho offences the provisions  
of sections 71"ate complied with, in thatthe Offender Ts not  
  
sane given to him for one of is ‘ofence. With reget T  
ink the words the offender Shall not be punished with  
{he punishment of more than "one. of such ofences should  
50 interpreted, but T think rather thatthe correct ew that  
n im Calcutta. Taking it that in the constructive oences  
reference 10 section 149 the offence of rioting incieded.  
5 im'my opinion iis then & person who is sentenced for ts  
ng receives by that sentence his punishment for that fence  
‘ty fies ple tat en a ont otie afer  
‘will again be 2 punishment for the ot  
fn that the toting Is saclded in the later aence  
  
COE \. Rona Pose, (I) TLR 17 Bom 6 RY >  
2h Tage vB. ALR. Mad 38  
  
9, Mass  
  
  
Page 77:  
(sna  
  
een  
Phos  
  
ita». Bago RAR Ti) sind BE  
  
n  
  
Jo ot think that etn 71 nnd tr 1 the are  
{gms plaishment even though the section docs ot contain the  
‘ford tetence™ but only speaks of punishments  
  
3.65. A fourth view may also be noted. According fo 2  
‘Sind ease! “Section 149 cretcs a sepaate offence and. ther  
fore, ina case of toting and causing hur, “where section 149  
‘S'spptieds scion Ply Penal Code must apply", ahd "thowah  
‘pute convections may be recorded for thee separate offence  
{ebwhich man may be charged and sped atthe same tal accord  
fg tothe provstons of section 235, Code of Criminal Proc  
Gk separate setenets should nor be passe. The i  
nent, However, addr that tach cave depends om its parte  
Tew! "Si'cannot be fad down as 2 universal ale that where  
Sessconed on convicted of offences vader sections 147 and 1  
Foad‘wi ther appeopnate svtion, secuon 149. must always  
etude the punihent for the ofence under section 147. 1t  
seh ra ta tema ai ty  
oni hurt, some. members had alendy”comatted mi  
Reon otherwise wed force of violence; if before. commit.  
Saran, members ofthe sasembly had Broken the pas of shop  
‘SE.dows or sed force or violence, then they could be properly  
Convicted tod sentenced for woling ander section 147, Penal  
Coke Snd' seretter they comma grievous hurt ten  
‘Sopear to us they sound further be convicted ofan offence under  
sein 395 ted wih section 1, Penal Code, and sentenced (0  
‘parm, and cron consecutive sentences, the aggregate length  
‘Pike seatences not being im sah a ease a1 material question,  
Sie sar ensign 3 China! Posed Code ths down  
Simic or ta years”  
  
3.66, This seems 10 os a needless controversy arising gu  
‘of the wide mordng of the fst paragraph of section I. We  
Sheatier that ths provision should be finited to those cates i  
  
SRN Stences ofthe some’ Kou are repeated faa seis of acts  
which practically form one transaction, as indicated inthe fs  
Vidsuafton, In sch a case, there should be no question of  
  
Were anything whichis an offence is mage uP of  
  
ESE aE GRLSENAATSS to tcc rove.  
SF ifn hal st, ans expres so  
  
Ce pumstel separately Jor bck pat  
  
‘Aterthis amendment, the paragraph wil not be applicable  
to cases falling under section 149 and wil not operate as 8 bar  
1S ussng sere tenenees on person convicted of oliNE  
Sad tocng hurts whether constructively or directly.  
  
  
  
Page 78:  
3.67. The second proposition in section 71 is that “whether  
anything is an lence falling within two or move separcs Gee  
Liitons of any law in force forthe time being By winch offences  
ate denned” ot ponithed, the offender shall not be punished  
‘wth a more severe punshment than the cout which tes hie  
ould award for any one of sich offences  
  
3.68. 1 seems clear from the language that separate sentence  
sy epi cae here the aceoved ad been cone  
  
(0 and yentencod separately Yor transporting opium sid poser  
ng "optim, the ‘Supreme Court observed!  
  
‘AS tothe seatence which can be imposed, reference t see  
sion 35, Criminal Proscre Cod and eto TH Penal Code,  
ie hecesary Section 38. Crminal Procure. Cove provides  
sheer goon cone at Oe al of to ine  
  
cs the court ma subject fo the provsons Of seton 3  
Penal Code semence him, for such ofences 10 the several  
punihmentsprsebed therefor which such Court Competent,  
{2 "inet; sock penishoents hen oosating of impstomnent,  
{© commence the one ater the expeation Of the ther Tn sich  
cede ti Covey dienes the Cour rata  
Bunisenis shall rn concutrety Secon 35, therefore,  
Bermis the pasting of separate sentences for siferea fences  
8nd os ther to run consecutively. unless the Cou drets that  
‘hey shall run concurrently. This, however i subject 10 the  
‘rovisons sschon i Bena Code  
  
11 is clear fom these provisions that whese anything is an  
‘fence falling within twa! or more separte éefitions Of 88)  
lain force forthe tie bein by wich offences are” dened  
‘x punished, the offender shall not be pushed witha more severe  
‘unshment than the Court which ties tm could meat foray  
Ei, geate tes The imu sens ch cus  
  
ve been imposed upon the appllant foray one ofthe ones  
SFsaneh he fad tot Scene eee” tape  
  
“In other word, even if separate sentences were passd  
der tection 9, subsections (0) and CB) the som tal of  
these sencnces shoud not exceed one eit inprscame  
Inthe pesent cate, he sentence imposed opon the spoons  
‘as been in ll 6'monthe, 3 mame innpvonme ander  
(Sin Geet oll ape theron a heen  
  
"pon the "appellant didnot contravene the prov  
ont of‘ection 11, Penal Code. tn ur opmon, the appel  
‘Spam Ack and tere ha Bes oo septs ihe ete  
‘Opiom Act bees ila inthe venoms  
Itposed pon him  
  
1, Prounal © Sie of Cra, ety SER, Ny ALR TS BEDS  
  
agra  
  
  
Page 79:  
A. bombay  
  
“  
  
on Seca art eee  
ab ae ans, ye  
SED Se as Sa a  
ring do ar aula er ee cae  
BW Ghee Ae  
ong et aceon sels ek  
Sicha nl ae cutee  
ee  
  
“The wording ofthis section. paticualy the italicised phrase.  
Ts ld to" ices ierpreation ms  
  
5,70. a Bombay cathe accused ware found tate  
outaniog tit and maricd wih the words “Gujarat Prantik  
Samiti". The Samii had been declared an Unlawful association  
  
tence fo. fine of Rs. 10) on each charge The cout of Ses  
Shon: tching on section 26 of te Gover Claes Act, was of  
thee thal noone cou be prised tie forte sams fence  
tnd’ made a rere tothe High Court Beaumont Cod  
‘aiog the case ald  
  
The fits point  
  
demi i wher, the, were  
realy two acts onasuting two ofencs or one ingle act  
‘Slingo otenes Se Mscoms to me thai hs ca  
‘ere was only one ac hat at sons of being posses.  
somof contraband sale may well beth exe, ight  
fave teen raed so a5 to camtne two arte "The  
‘might have howe, ft ofa tha he Zc ween pom  
‘fon ofcontabeed sl and, secondly. that thy were NE  
That a tothe beadgartars ofan Uiawfl osvctaion  
View t0 entblng tat aoiaton to dipos oF the sll  
inhi chee Tink they wou lealy ave been gy  
ibe second ence of assting the” operations” of an  
hlett socio, But hear as an me the ot  
‘lene proved wa tha of beng possesion of coteaban  
Sais whch happened tobe in Bones withthe name of  
nto aesocaton upon i” {do aot tak thatthe last  
c's enough 10 comttue 4 sesond act, "Tha beng 20,  
  
thee ape withn he words of eon 26 Genera  
  
  
  
Page 80:  
15  
  
. ‘offence’ at the end of that section read  
with the definition in section 3, sub-section (37), means,  
I think, an act or omission. ‘In the present case you  
have got an act alleged to constitute an offence under iwo  
enactments, and section 26, General Clauses Act, ex-  
pressly provides that the accused shall not be punished  
twice for the same act. I think therefore that the accus-  
ed were only liable to be fined once, and that the second  
sentence of fine must be set aside.”  
  
3.71. Ina recent case’ where section 71 of the Code did Supreme  
not fall to be considered, the Supreme Court has held that sec- Court  
tion 26, General Clauses Act, is conditioned by the identity of “\*<ion-  
the two offences which form’ the subject of the prosecution or  
prosecutions. Though in its opening words this section referes  
  
io the act or omission constituting an offence under two or more  
enactments, the emphasis is not on the facts alleged in the two  
complaints, but rather on the ingredients which constitute the  
  
two offences with which a person is charged, as is made clear  
  
by the concluding portion of the section, which contains the words  
“punished twice for the same offence”. Therefore, the Court  
  
said, the ban imposed by section 26 could not be invoked where  
  
the offences are not the same, but are distinct.?  
  
3.72. It is necessary to consider the applicability of section Two diffe-  
26 of the General Clauses Act and section 71 of the Penal Code rent  
  
to two different situations. First, where an act made penal situations  
by two or more statutory provisions (“enactments” as the General ¢S"sisere4  
Clauses Act calls them) really constitutes the “same offence"— jngredients.  
that is to say, though the legal labels are different, the ingredients of thetwo  
are identical. It is by reason of the accidents of legislation that offences  
the act happens to fall under twoenactments. Suchcases, though f° sca)  
infrequent, can arise because of the fact that one aspect of the :  
act is dealt with more prominently in one enactment, while  
another enactment gives prominence to another. Essentially,  
there is only one culpable act, and though different legal labels  
Lead to two different “offences”, the offender should not receive  
punishment for more than one of them. In this situation, the  
latter half of section 26, General Clauses Act, should over-  
ride section 71, Indian Penal Code. Though charges may be  
framed for each such offence under section 235(2), Criminal  
Procedure Code—such a course would facilitate consideration  
of legal aspects separately3— punishment should be for one  
offence only.  
  
1. State of Bombay v. S.L. Apte, (1961) 3 SCR. 107; AIR. 1961 S.C. 578, 581, para  
‘graphs 13, 583, paragraph 16 (on appeal irom LL.R. 1956 Bom. 685)  
  
2. See also Manipur Administration v. Bira Singh, A.LR. 1965 S.C. 87, 90, paragraph 6;  
(1964) 7 S.C.R. 123.  
  
3. Of. section 221, Criminal Procedure Code.  
  
  
  
Page 81:  
rem  
  
16  
  
3.23 The second situation iy where ats made penal by 0  
ox, ore satlsy provnons ona sige eee” The  
"earens of the ingredient hier bat thoy ave ot Bente  
SL the fences being not the inet ogeal'e pat  
Saevnpantmen he tang ay tha ows A te  
Sete. navel oprenvenens th agape sich pane  
‘ments should not exceed the maximum prescribed for sy oF ‘the  
‘tenes oF whish he iconic  
  
2 te ce fe op  
  
75, In the ight ofthe above discussion, we propose that  
secon" Opi in et ea Tse"  
  
“71. Puiidonent of offence made up of parts —Where  
anything “which "fs. an “offence” "is made up of press  
Of which parts sitet an offence ofthe same kind the onde  
shal not unless expressly 0 provided, be pulsed separates  
Jor sch parts:  
  
‘Mustraions  
  
2) A beats Z twenty times with asick. Hisoflence  
2 solumaniy casing hu fo" it made up of the tment)  
Strokes given, cach of which Is isell an offence of voluntary  
causing burt. “Ais lable only to. ore punishment forthe  
whole beating.  
  
1b) While A is beating 2, Y intervenes, and A. tere  
jonally ‘rites ¥. “As thi ino. part of he nes wheseOy  
‘A wolunarity causes hurt to Z. Avis lable fo one puns  
ment for volunatly causing tet to Zand to another for  
‘voluntarily causing” hart to Y:  
  
20-4 Palen of ef mae p of see efor  
mrs tractmenes bute ofc at ae ant  
Shai not be"Panshed "orm tha‘one 9 oe  
  
(2) Where an act constitutes an offence under (wo oF  
‘more enactments ad the fener "ae nor te some oS  
  
  
  
Page 82:  
n  
  
Where seteral\_ acts, of which one or more than one would  
by isa or themselves constitute an offence, consttte, whe?  
combined, a dierent offence,  
  
the offender may be punished separately foreach of such  
coffencee. “but shall'not be punished 0 the aperegate with  
Amore severe punishment sham could be awarded for any On¢  
OF" such “liences”™  
  
78 Sion, 2a to “asesn wich judgements gan Son  
i ‘ht ar if Sul of which of tee fers he  
inqulty" Hin sich a cane, the tame punshment isnot provide  
olor lit te Sten the fender has to be punished oe the  
‘ence for which the punishment provided i te fowest. The  
eerespondine procedural provons ae to be found. i tecions  
  
‘and 367°) ofthe Coiminal ProceSore Code  
  
3.751 ape hat fama te rt rel ode Go  
snhZy 8 are totem cite Dah  
sot Sal gi, a te ae  
Latagcarames ateay Gioia Sok,  
i et mca ait eae  
Oe ro: ih ATEN Spat ay  
en teea te teenage tains  
ie cnt al rots ate eta  
Sse cece es eat ae ah oe  
Sete cimae brcaeogea ancat  
re ak ties eto ey  
eee gach lame te eel de  
ee  
Be OS Pees oe  
nee  
  
3.78. According to the definition in sation 40, “offence  
ln seeuon 32 1 now eoefined to fences undee the Code, IC  
the defistion 5 omited a5 Sugassted by es, the wider defartion  
‘of “offence” as given inthe General Clauses Act will become  
epi Bn en an Cty ca  
sble, that the principle" ndslving section 72 should apply  
Hot only to Penal Code offences, bat also to other off  
  
Tit) Note, Paws Ti ~—  
  
Vaserh. (1575) 7 NWPH.C R17; Khan Muhammad. Empes, (187)  
iy Boe Rafe} pase  
  
Part vs Enpror, ALRL SHE Habre 59,330,  
Maker Aw inp AVR AGS Cal, 21 es 19 The contrary  
  
  
  
Page 83:  
8  
‘Amends 3.79, Jn the light of the above discussion, we propose that  
= ecg section 72" may ‘be simplified. as Tolows  
  
1 ei Reinert hee adgrent aterm Io  
all cass in which judgemeat fe gen ithe alternative thai 8  
‘Berson gully of Oe several Sears “specie ine a  
Meni" and ifthe same ponsbiment no povided fra of  
thm, the offender shall be punished forthe offence for which  
the lowest punishment i” prowded:  
  
Section 36713) of the Criminal Proceduie Code which is  
‘now limited to fences under the Pens! Cose wil requre £0  
Re"amended at follows:  
  
“When a person js comcted and itis doubifal under  
hich of tea oF more enactments the edfence fall the Court  
  
shal dnuncy expen hesame, and pas Jadpemen 9 the  
  
‘oman 3.80. Sections 73 and 74 prove for solitary confinement.  
Gees, We late of the view, that this punshneot is out of tune. with  
“snd"3¢\_ modern thinking aed should oot find a lace in the Penal Code  
‘eye (©) puashment to be ordered by any Caiminal Cour. It may  
  
Suey "be heGmuay ss a measure offal acpi wine an ety  
Shy Stren matt, not povened ty the tame conatderaion that  
SSS Spy to ponstimanu a the Code" We recommend that Se  
  
henést. (ons 73 and 74 may be omitted.  
  
cous, |, 3.81 Heil be neces,  
$5 to oi the monde “ica  
SSeS) Sehonse ty lew", cern  
Beth, 0), Criminal Procedure  
  
such soll conan a  
(a) and (0 of section  
  
S$und\_ sho commit offences again property or fence rel  
fe Lan snd government tips more tan sce  
FGREgof (oldeal withthe problem of Rabsaal ofenders and ecient.  
  
a ‘nowhere have the simp mc. with marked  
Rice” perhape Becutoe the caine of” crime are"thomaches  
ompi, "Bese the previous Sentence has failed both ins  
  
tats, on protecting soci from the fender ‘by sending  
  
Stains the oflender somes ia the forefont "hy reason of hit  
Feviows condsct and ofthe kesood of his Comming Tur  
Tsr olen" ae the lates Engl provision’ om the sje  
  
‘Orowel (865) ANER I.  
  
  
Page 84:  
»  
  
yl Based this poly of protecting the public, section  
'§ enhances the powers of the Court regain the sentence  
19 be impose on the second of subsequent conviction for =  
{ain specited. categories of offenses. The necessity for such  
a'provision in the Penal Cade cam hardly be daputed,  
  
383. We, however. s40 no reason why the wtion should "Otc:  
te limited in is apphcaton to\oflences telating 10cm and fesrhch  
Samp and” offences propery. Since protection of Sy, +  
foeiety i the primary objet im suthodsing the Court to pest tat  
long nts a Sion aftr ander the Codec hse  
Danishable with imprisonment for 3 years or moe. shosid Top  
Say fa vain the pree (a on” Snes under  
‘ther lave are “Somigerations “and,  
shar ‘neces, “wovelon unlarto action TS five  
teen’ made by the Legiatre in those lawst Bat 0 far as  
‘fences under the Code are concerned, action 151 the Only  
esc ion fenced sentener cui he made  
  
ft only in he case of fencer apa il  
  
10), bain he case of many othe offences there need oe  
‘Biel prouston ayant peritent fenders, and thee so  
‘ssi Tor making a datnction inthis respect between oences  
wnder the various Chaplet. Even te. preeot section oes  
ot require thatthe previous conviction soul have Been unger  
{he same Chapter, ts shows that tls not the poy ofthe lew  
tp plc an emphasis. onthe rpttion of the parle fence,  
tsther the pofy Isto have Tegra to the criminal’ tendency  
‘Stabished By previous convictions  
  
We, thereto, recommend that ston 75 shou be extend  
4 10 overall ofoces under the Code which are pons  
Silden po ye mae, "Wena cm  
fection that the corresponding proviso In Engund™ not  
Siento offence t's pareMar character Bt apps  
Sey fender conte ‘of inden of a0 ofc posh  
Shi wih tmprsonment (or two pen ot ore  
  
384, There is ancther point on which the section requires Maxine  
  
tobe widened. "The maximum punishment that can be awarded ub  
  
fon 8 Second or subsequent conviction wader the secon 8 Me tg,  
fonment for le or for ten Yeats, The period of tn Years Soa  
  
in our view, inadequate, nce the longest period of imprison~ Same  
  
nt under the scheme ofthe Code jt not ten year, but Toure Hem  
  
teen years. Even where the oflender ie sonvcied a the same  
  
{lal oF two offences, the Court i peroted to. combine the \*  
  
Iimprsonmeot for the two silences, tubjct to @ saximum of  
  
fourteen years.” We, therefore, recomaend that in place of  
  
“ten pears, “fourteen years", should: be subatioted  
  
=  
  
TCE ssios 9 8, Sepptaion f Tamara Teall As, 1956  
2 Sexiea 32, Canal Sot At, 1967  
3. Sesion 350), Crminal Procure Cade  
  
  
  
Page 85:  
deo  
  
Sosbe  
  
cman  
=  
  
ry  
  
5185, While the section requires to be widened on the above  
‘points itis also in need of being narrowed dowa on others  
Excn where the offender has, alter his fst conviction. led a  
  
‘otic of the interval between the previous convicion apd the  
Sbsequent offense, and should not Teave It entrely "0 the d=  
zetion of the Courts” It may be that in practice the Courts  
40 take the lengih‘of this interval into account and moderate  
the punishment for the subsequent offence under ston 7S.  
[Nevertheless ther is room for Biting some indication of the  
nave poly ‘ths respect. We think that, between the  
‘rom the imprisonment for the previous conviction (ot  
{he telase Tom imprisonment forthe fst convicon, st there  
‘be more than one conviction) and the cornmussion of the pre=  
stot offence, the inteeal should not exceed thee years", nd  
‘commend ai) amendment of the aesion (0. that elect  
  
of mprisonme red is thatthe ‘previous  
fence mo hve “been unstable wih ieprsonncn for  
  
ars oF Upwards. an the subsequent offence must alo  
ive Gen so pals" We regard tiation,  
fn the previous conviction, the Was not sentenced 10  
imprisonment, (or example, fhe was sentenced 10 fre oF  
‘eleaed "on probation) then, exhypotesh the oflender  
{1 that gxcaston, regarded 3° nt stable for the punihen  
of imprisonment Because of the cieunslances of the offender  
fx ofthe offence, ‘The commision of another offence ma.  
‘0 doobt, show the desirabiit) of prion treatment, but does  
tect by it demas thn for an ean erm of  
Imprionmest The maximum imprisonment provided io  
farlcalar section felaing tothe second ofence should be more  
{han scent." We resommend that secon 75. shosit be  
mended reauiting dat, on the ast oocwson, the elfender  
‘should, not only “have been’ convicted, but sho sentenced "10  
Impncament  
  
87. We considered the question whether in-view of the  
Convention relating to the Suppression of Traffic. in Person  
{BSO0 preue conicions foreign counties ores  
So that Convention should be taken Ito  
Sceounl! Sach cet are! punshabe ur seions 3608,  
53s60, 367, 370, 37, 399 and S73 of the Code. benes the Su  
presion 6f Immoeal Trae in Women and’ Gir Act. 19  
Since Avice (1) of the Convention aly  
vious convictions. pronounced in foreign  
‘elered to inthe resent" Conveadion  
itt By domestic fa, be taken into account Tor the purpose  
  
1G tion He), Cin  
  
Tastee Aa  
  
  
Page 86:  
of estalishing recidiviem”, we do mot consider it necessary (0  
‘hake any tuch special provision in section 75 of the Code  
  
43.88. () It was suggested that the enbavced at  
of imprisonment for Ie. provided ufder section, 75 is rather  
Raak "Another polnt made was that the additional punish  
‘en should be reatable to the gravity of the secood or sub>  
Sguent lence, "We thik, however, that ths part of section  
SOYEE got crated any diffxlty, andthe Courts should be  
fen to exercise their dation tv the matter of sentence.  
  
(Gi) At present the section does not cover the case where  
te rs vobvsation forthe abetment of OF an alempt to cOm=  
Imictn oftence punishable onder Chapter 12 oc 17 ofthe Code,  
nd the offender se convicted of such an offece, Since we  
Ste proposing the extension of section 75 to cover all offences  
‘alr the Coe, istoding abetmeats and atlempts, punishable  
Nh imprisonmect for three Years or more, this tacuna will  
‘Snappaae.  
  
Wis) Under the section, the previous conviction must have  
teeltefoe s Court in tndia’ Brace Une Code docs not extend  
{Tamm & Kashmir and "Tia" exclodes that State previous  
‘Sowtaion in Juma & Keashonie by aot relevant for the  
Stsccion 75. "This anomaly, Which anses not out of section .  
3 at ov of the extent clause, Mustrates the need for exiend  
ing the Code 10 Jamme & Rashmi  
  
4.89, We recommend that secon 75’ may be revised as  
fellows — poor  
  
175. Enhanced punishment for. certain offences after pre-  
vious convicnons-— Whoever, avin been, convicted by  
Goorin India of an offence, ble under \*  
{he Code with impesonment of either deseripton for 2  
  
‘on such conviction, cas, whin the years fom the date  
(OF his fial’releate from ploon after gerving that sentence,  
‘hy cence punishable ner this Code wih Ike imprson  
‘cl forthe like term, shall be sujeet for every such sub~  
‘Ggueatoflence to uapronmeat for le, or to sopigon-  
Be tier depo ors term whch way ead 0  
fourteen Yea  
1190, fn view of the numerous amendmeats proposed in  
this chapter mill be desable to replace H by & completely  
{vised Chapter in which the sechons also are re-numbered in  
EDntiovation of the sestone in the evied chapter 2. The  
‘eteseay draft? has teen included inthe Ameadmest Bil  
Sppended to this Repor.  
  
1 Sie parazapis 14 aad 1S above  
J toate snnnent wi be estay J seta 3489 of the Coe of  
‘are  
>. Serine proved daft ofthe Islan Penal Coe (Amend) Ba case 6  
3 Mot Lawl?  
  
THe  
  
  
  
Page 87:  
‘Section 9.  
  
CHAPTER 4  
  
Gent Ep  
41, capes st ie pe een ei  
oh oie lt wl oer acre see  
Sebi irecaianer So age  
arsine ay oan Sec  
1 een J alia pe dy  
won Se ncn rae ek  
mtb Re matte  
rae i etl ato Bop oat  
> Barton tate oes ct hr  
ete aa cate fis eetenle ee  
Schur br ass aula tear  
  
43, Two ilsrations ave ten teow, the section, The  
first ttended to strate the fest proposition, rans thus =  
“SA, a soldier, fires on a mob by the order of his supetior  
coficee "in conformity wiih the commands of the aw. A  
bas commited 20 offence.  
‘The itstration is not welbexpresved. tis not clear wheter  
i the orces ofthe superior ofcer that ss to be in conformity  
{hth the commands of te law, oF tis the soldier's fring on the  
{ob the has to be m such conformity, Further, te situation  
magined by shis austradon raises controversial questions con-  
Ceoming the duty of a solder. ‘The proposition sought to be  
ered x selfndent and doesnot realy eed eny lara  
he ik, ere tat eon shoud be  
  
tc Son 7 mi compen ena 7,  
att Sete? Wahlen tay a  
iS feet Se a tay  
inet he fate Bader ft  
SSSR lech the pas die wel ce  
  
vy, Wht sng 1 or cn a  
obit it ety Sd  
soloing ota, a pe Sacer  
Scrae ae'mien aly EGpar een te  
Sovak wee  
  
wae ng wei fie et—  
oe tte ic ae ie  
wear a cle Sa Wea  
  
  
  
Page 88:  
3  
  
Silly, the second parts of the two sections which have  
common elements of miglake of fact and Bona fide bait  
{combined in section’ 19 as follows =  
  
ae  
  
“79, et done by a person by mistake of  
himsel? Bound’ or jst by. lat —"Nothog. i a0  
Wc i done by a person who, by rea of =  
Toctand not by reason of a, mistake “of 0 good fai  
(Sires Emel 8 una By aw 0 Wo ued  
sw in doing i.  
  
ea  
  
“Mastrations”  
  
(2) A. an ofr of a Court of Justice, being ordered  
by that Court to arest Y, and, after due eaduiy, be-  
lieying Z to be Y, arrests Z." A-has commited no  
  
‘offense  
() A sees Z comsiit what to Ato bee  
  
murder "Ain the exercise, 10 the best of his judgement  
  
‘xeric in good faith, of the power whch the law  
  
owe  
{o-all-perons of apprehendlog murderers i the fat,  
‘cies Zin order 0 tg 2 ble the thor  
fies Abas commited no ofence, though it may  
  
to change’ the rule  
  
One of us, however, i of diferent opinion which  
ni road, oso  
  
atz  
at  
  
"i  
  
  
Page 89:  
HEE  
a] TE PEAY ey i  
= 5 tse a 3 : L ip if  
aay ayia it fii t  
Hj aii nid pany BAe  
is eetag i milli q  
i L A BH sid i a?  
a 25 LE Fd sal Be  
Sake dos's ily ass 3 '  
a aL wile Agee ee  
rH ee Sapaeidad ida  
i: ee HL  
  
SES oe  
me  
  
  
Page 90:  
as  
  
4.1, 1 is woawidable in moder regulatory psi  
tha ret many dea o helm have fe be Tek to pe  
exited Gy ipean of rules and orders Elorcemeae of ch  
the ery bu foe the eforeent  
See Mite imal the nap ira  
fpvorance™ as 2 iegitmute defence tm resem 10. te Tones  
Ic ot inflaton tothe iter might well oul i ee  
the later larly mefectve- As earned we pets fe  
satus ae ot mento puis the vicous Wi bao ps pe  
oe ay  
eet of public Health safe of mora We 3  
core sare te view hata POI ten for awn  
‘avira of aw a. deece ray” clue “deeper  
  
‘egulations of adminisrative boards, ane in these cases “acta  
Knowiedge of the law should be raqowed?.” Wey think that  
‘he present rule'of ignorance of sch regulations alordig mo  
Jwtication for contteening them has to remain.  
  
412, tas teen urged that even conviction for @ conte  
ention of 2 statutory Tule ce order caries a sigma, ‘and Wn  
unfne that Such signa should allach to's perton When ‘he Knew  
‘pothing about i and when he coulé not, with due dikgence. have  
Known suffcienty aboot it. We think this st somewhat” exage  
ected,” The stipma arising out of conviction for an ofenee  
like not fencing 'a-mschine in the prescribed manner, of not  
‘seuss ha om i cr pd  
  
lw oF fling to fea tax return bythe. prescribed dates  
eplipbie  
  
Sure on the thoughtless and ineficent to-do thet  
inthe  
  
{£12 We should mention fete that a majority ofthe ju  
fH Court aod of te member ot the ge oti ak  
{Bye 29 opoion en the queaon were sean icopaoe Is  
{Ske of aw a. defence or even ar mcenting cease 1  
i capcly proded inthe Penal Code  
  
soci Ne tat he el cote oom countin povie  
fe owever tha the aioe foe coud urs neh phe  
ion, nth code pf mere importance than the provers  
themsehies “The magntude of the population the umber ot  
orc ming sur on he Hera thes  
‘ther similar factors, whch vay Tm country to. county,  
Til ac have tbe taken into sesount. What mal ave worked  
‘el chewtere may hot nesasnry be saab foe "Inde,  
  
2.!5,0r of w somite that to vet hari  
{Wome cases, there shouldbe an express porce pet 10 the  
Court to award a. punshment dferent fw nature Tiom the  
‘Punishment prescribe in the law, or lower io degree thon the  
‘minimum punishment. "We think however that even unr  
  
Senor  
  
1 Rosse Pond, te Spat of the Common Laws p=  
2 JermegHat, Genel Pacis of cml ta, 190, 0.48  
  
  
Page 91:  
Se  
a  
  
a  
  
Spon  
  
86  
  
the existing provisions, where the Court i satisfied about the  
oreimenes of the pa of ignorapee. t takes that fact ato  
sEtoun hile pasieg sentence We do. nat therfore” recom  
mend any change im the exiing, postion  
  
4.16, Section 77, which protects a Judge while ating just  
cial, needs no change  
  
4417, Seton 78 protects acts done in pursuance of  
mn Se Ce eae sou my  
Fee nee ale ibe poh hat  
re ane poson ating under Kr bives im ood fath hat  
we ut nfl sch jusdcion. "Th protection 18 bvowly  
Icsnny denon ofthe Cours ae tbe romely enforced.  
‘Ketel’ in fc tat there ought to be no-nighe ot peated.  
Tey aan he ences, Cou detonate  
AeA Wii ate "Seaton 18 should, therefore, sand a8  
  
418, Section 0 says that a person is not lable for the  
‘unintended and unkown consequences of his “awful ct, done  
Wistinwtal manner by lief means and with proper, care and  
Gution’ The dlustation to the section bangs ott the mean-  
ag clearly, and'no change i required,  
  
RSP esata oni  
SEMAN Hearn whee gona  
rowing ober hace person or property, Then. Talons  
eof cone at crs de  
  
“The intention ofthis provon is clear enough. The main  
ideas Bing) he act Woche law ences done 0 Oder  
{Soa lee am (the hae fo be avolded mst, i.  
‘Raat ea lings bw sch a fo jy the rk of Sin  
sata sys caus harm, aad Ga) thee done in od  
ia how ‘any tenon of caving arm One of hae  
{Gens "pat a he Explanation, whie the other wo arin the  
‘etn seein This spliting up does no som t0 be neces  
Faeters excite wil eer to understand iis sated  
idles =  
  
1. Nothing isan fence which, though done with  
the knowkege that t's thely ec harm, i done in  
fod Fath forthe purpose of preventing or avoiing thet  
[gem to person of propery, provided the ater ‘harm  
UF sha ature and’ so imine as to justly oF exci the  
‘isk of doing the act with such knows  
  
  
  
Page 92:  
1420, Section $2 completely exempts children under 7. years  
of ape from criminal tabilty in respect of any act done by  
the The bass of this ola exempton isthe asumption. that  
child below that age does not ease, and consequently” does  
hot Inn, the comquences of rasta the nestmary\_culp  
{ble sats ‘of mid must bo deemed to be absent. Ia) resent  
Years thete has bein an increased weight of ttormed “penion  
{favour of changes in our methods of dealing wiih dkaguct  
‘hilren, “Ths changed attde ss mainly due to. the aware:  
fete that thew delguency stems largely from. parental” neglect,  
Parental contict,assovaion with evil elemesta, poverty and  
Similar factors wivch operate more intensively on children  
‘han ‘on aduls," Special tegstation in the form ‘of Children  
‘Acts provides for @ variety of measures signed to. cocest  
er than punish the etting chill "The {wo main objectives  
fof such meatres re to tke cnidren as far as posable outside  
the ambit of criminal habihty and the joradicon of the ond  
‘ary criminal Court, and to" make sch arrangements. for thee  
Corfetion, education end. welfae as ave appropri.  
  
421, Noting that in many. counties the minim age  
criminal abliy is Sed igh than inte Tnsan "Pe  
{Cade "wo oclade in car guesionsire 2 uetion, "Do you  
Seve yu may hemi, ae  
  
“minal responsiiy whit? year at present Hf 8,  
hat tool tbe \*  
  
‘Among those who expresed an opinion on this queion.  
4 anal yy were aust a ete heap none  
  
‘ection #2. Bat there were ‘s consdersble number who  
woul have i fused 19 10, and some who even favoured 12  
Sts 35 the minimum age  
  
Suggs of High Courts were mostly against any change in  
emai ae Acorn ame iam,"  
‘Cente babs for stsocaingcatpabiy wits parca  
  
fnttedectopment faci ‘Some thought hat rg, the  
tmaniman age might lead 0 increase in urende crime was  
So Sad tt this was nota "ery great problem and sons  
Wand t) coud sek as doy eee  
  
in view ofthe fact that chide  
rea oe ting te 0 luca tanta amour  
Uiely early abs, His ot nessa fo iocease ‘rom  
  
dears fm order to fasten ecimnal fabiy. etdes, he sooner  
the eviminal habic of 2 boy i curbed, the bster it would be  
‘The rb maybe ened by sending the bay ton trmaony  
  
  
Page 93:  
Law  
Ieee  
  
Per contra, another Sessions Judge stated that in\_ his opinion  
ld upto the age of 10 year was not expable of understanding  
the gravy of an offers committed by him and therefore the  
‘minmom ope of ctiminal Fespensbiy” should be 10 Yeas  
  
422. The law in this respect varies consierably\_ in other  
‘ovis, in England the muinimam age was raised to. 10  
‘Ge teceuy ia B83" Under the Chileea aod” Young Persons  
Seat he oe crane espe  
Gochanged 2 hid under 14 years cannot and pro:  
SSutetfordny'srminal flea cust homicse A new Sone  
‘Spr‘or uneloresble cimnal repansiity has been into  
‘Bedi the cave of chdren between 10 Yeats and Jeary af  
Sse The commision of an offence % however, posible  
Feccondtion Tor a cate or supervision order  
  
{In Argentina, when « minor wader 16 years of age, commits  
«cine asad inlaw a8 2 felony, a. Sompetet Jodge ro.  
eed en the cre tf bt other inematon ups  
SEe"Natonl Council of Minot and if he coosiers it sd  
bie, be may order the intecement of the oinor tan isi  
fon" under the Counc  
  
In Aun, the minimum age 7 years in Queensland,  
‘Wester Australia and ‘Fasmaniae and’ ‘years in New South  
Wns" Viton and South Ausra  
  
In Canada the aw i similar to ours, A child under 7 years  
is completely exempt, aed a chi betwen the apes of 7/and  
Taj exompe unis be is competeot to know the eature and  
Consequence of is conduct and fo appresate that it was wrong  
  
ty ance, i mult apa hat hi ow 13, gas of  
  
"snot panihabe Irom the creamsances a  
SSalny ore often, haw been decced to impose penal  
‘Satence upon @ minor above the ag: of 13, elaborate rales ae  
int down tequring the subuituton of & lesser” sentence for the  
‘oem snes  
  
While the minimum age i 14 Jn the Federal Republic of  
(Germany td in Norsy, 18 15 10 Denmark  
  
In the United States the age of absolute incapacity varies  
{comm State te Sate betweon 8 ears and 12 years In-one Stat,  
Now Jercy fe igh a8 16 Yeas  
  
As meds Asan cont, the uma age i 7. yeas ia  
‘Thailand, Ceyfon, Wag, Syn. and ‘Lebanon: 9 years in the  
Philipps, 1 years iv Turkey and Wan, and 14 years in Japan.  
  
  
  
Page 94:  
»  
  
423, To view of this wide variation, we carefully considered  
the question whether any increase inthe minimum age Is neces  
Sity or desirable. The age at which a chil cam Understand the  
fore of his act and ts consequences isnot necescarly 7 Yeas  
eould be'§ or or 10, or even more. The age of ? mentioned  
fn section 82 iin a sense abitary, but then any olber MBE  
‘Mould be equally arbitrary  
  
‘with the etblishment of juvenile courts and other agencies  
cachsvely concerned wi jtverle come, the need Tor the  
Spplication ofthe penal law inthe oftinary sense ecreses in  
ihe case of chien. Socety could well regard dekoquent  
Chien, not ap cmt nthe ee imwhch cle  
  
Se tcehded buts person equirng eaten. AN ame  
tant secton 82 could with some Josfeaton, be svegerted  
‘nthe pround that the stigma ofa criminal conviction shoUid  
fo aac fo any child below, say, the age of ten. The act of  
the chitdsbould not” amount to an offence, the cid commiting  
the Sc shone bible Yar ot roc. hte  
Sedinary machinery the crminal cours should not be appt  
Sabie Tn even in thoy ™  
  
‘What higher age should be substituted fom thie point of  
view can bea matter of controversy regard to conde  
Sone genety ‘engin naan fom we te teed to  
‘igpestToyears as the minimum age. Upto that age parents,  
Syand large, ace stil able to contro the conduct of the child  
land no serous harm is likely to be caused if criminal habilty  
pot attached 10 the chids act-  
  
4.24. AL the same ime, i seems 10 us very necessary that  
legislation for the care. and. protection of Ghiren showld be  
‘acted in all those Stet where t bas nat far been enacted,  
‘ind i should ‘be propery enforced in the States where It has  
[iteady been enacts, On the assomption that this wil be done,  
trerrscommend that section 82 may be amended by subsilutiag  
‘Nena for "seven ears  
  
4.25, Wath the above amendment of section 82, section $3  
wil practically ose its wliy. "We do not think it it worthwile  
Fetaining nf ollending children between the ages of 10 and  
TB, and. propose ite omission.  
  
£6 Si, 84 ca hat 9 ron of mand  
  
visa Sy Pc  
a oa a re ish eee te  
Sat hts tae ae ais  
Lane SR Saale  
  
=o  
  
  
  
Page 95:  
%0  
  
Ibis Draft Penal Code, Macaulay had sugoested two sections  
(66 ad 67), one staling that “nothing fr 98 hence waa  
‘one by 9 person in a state of idiocy" ad the other atatiee that  
  
‘nothing i an offence which a person does in comscquese of  
fring mad of desriovs at the tine of doing it" "the tas,  
‘Covimisioners, in replacing these two seston ofthe Dine Penal  
Code by section 84 appeut to have eed Ta bref and suc  
  
act form the text lad down in England bythe Sosuled  
M'Naghiten Rules", The esence of thse Rulers couuined  
im the following passage whichis constantly quoted of reed  
10 by judges  
  
= ig peZTRe ney ough to be t9f8 in al cases that every man  
is peesumal tbe sane and to possess sullen dene  
‘gf reason 10 be responsible for hit ermes, wal the conten  
be proved to their satisfaction: and that to enabish 9 ae  
fence on the grou of isamiy. it must te clearly proved  
that, af the time of the commiting ofthe ae the party  
actuied was labouring under such t defect of reas, Bee  
isease of the ming, a5 not to know the nawure aad quai  
Of the act he was doing, or if he did. Kaew i thavhe a  
Tot know he was daitg what was: wrong”  
  
437. The Bish Royal Commision on Ca  
bch made its Report im. 1955, noted that this. tet ns  
nal attacked almost a8 toon ast was formula mate  
by members of the matical profeon, but ane by: ejay  
rouble by Fizjames” Stephens and Has barn sebjeted  
onstane erin ever snes", "Doctors wate capone (2  
Baraat ta out te HENGE  
sed on the “emily cbwlate and miskading eercepcn  
{Weratere of insrty. since insanity doc nl Sth os ea,  
seem ioe afc wale  
Fessonaity ofthe patient incoding both ine wl andthe ae  
fone "An inane person may tetfoe cen knees soe  
and qualty ot his act and the it wrong and fooiodee Gaia  
but yeu commit 35 result of the menial sea Hea,  
Lact curghiat ye an me  
Impulse: or he may repard his motives as staning higher tgs  
{tesancigns ote Wace may tea ane ge a  
se Paes fstal mons ht ie mane  
Tle valve“! "However. ihe Court of Caminal"Aoned  
as coment upheld. the valdiy of the Rul eas Mey  
10 apmvove thei extension to cover the itesstOk" oF ase  
ontrolale” impulse. ‘The Coort has sho decane 4 Snare  
the inepretation i other respect. Thos thas hel cht fe  
words "the nature nd quality ofthe at” mutt bee  
  
‘TESS. I mle cages shes eemons palo em 00) By ow  
  
nf Ld it cag af Del Aap Te sa a he Ho  
  
  
  
Page 96:  
on  
  
to refer only 10 the physical character of the act and ot. to  
<istingush between ie physeal and. moral  
‘erong” mass im eect "punishable ty law  
  
4.28. After a deep and extensive study of the laws of other  
oumiris 9s well. the Royal Commission same to the coneac  
Sion thatthe tof responsiblity nid down by the M'Naghten  
Rules “was'so defective that the law ought to be changed. They  
faggesed that, if the alteration were to be made by xtending  
the scope ‘of those Rus, the formula might be  
  
“The jury must be satisfied that a the time of comm  
fing the at the accused, ¢ a result of disease of the mind  
fof mental defcieney, a) didnot ‘now the nature and  
‘gally of the act, of (4) didnot kaow that It was. wrong.  
‘r (yas incapable OF pecventing.himtelt (rom omit  
nese  
  
‘They, however, comidered that it would be preferable 10 abpo=  
  
sate ibe MTNaghten Rules and leave the jury to determine whe  
  
ther. at the time of the at, the accused was suffering Irom  
eave ofthe mind or mental deficiency to sich 8 degree tha he  
  
‘Saght not to be held responsible. Nether recommendation  
  
was accepted in Briain,  
  
42%, Ms fd hat he nil code of ome of the Pro-  
aces of usa prove or “resi impale  
‘hs, theTesmanton” Criminal Code nate seco 168  
  
(1) A, peson isnot criminally cesposible for an act  
one, oe for tn omission ade, by Hh  
(3) when aficied with meniat disease (0 such an  
so render him dncapable of  
(© understanding the physical character of such  
@) Knowing that such act of omision was  
‘one tihich be ought motto do oF sale or  
(©) When such act or omission was done or made  
under an “impale which. by retin of meatal  
tikes he Was Im sibstance depeved of Say ‘powe!  
ore  
  
(2) The fact that a person waka the time at which  
he heed fhe dane an Blo ade sy Ome Ie  
Capable of contol Conaeel penerly. se resvan  
{oT the qosson wheter he Sad uch act made  
‘Shossion under am impulse which by reson feta  
‘eae he was im substance depened of any pomes tore  
  
{W Repont para 239  
Report pr. 317  
  
  
Page 97:  
2  
  
Similar provisions are 10 be found in the Criminal Codes of  
(Queenilind and of West Atnralia,  
  
‘The American Law Institute has sepgested! the folowing  
  
“() A pecson isnot responsible, for criminal conduct  
if atthe time of such conduet as a zest of mental Sense  
for defect he lacks substantial capacity either to appreciate  
the cximinality (wrongtulness} of his conduct otto coarorm  
his Conduct to the requremeats of Taw.  
  
2) As wed in this Aticle, the tezm “meatal disase  
or defect” does not inchade an abnormality matifested only  
by repeated cimninal or otherwise antisocial conduct."  
  
In France, atele 64 of the Penal Code provides that “there  
is no eime or offence whan the accused wa in a sate of mad  
‘nesta the time of the act of inthe event of his having Goer  
Competed by a force which e was unable t0 res”  
  
Acticle 10 ofthe Swiss Penal Code isto the effet that “any  
pecion sufleting from mental dase, ably oF trious Im  
airment of his mental faults who, at the tae of comming  
fhe ac, is inapabie of appreciating the wnlawful ature of ie  
{0 or of acing in accordance wih this appreciation “cannot  
‘punished  
  
We may ako eter to “the Dutham Rule’ flloned in the  
Distret of Columbia (USA) The rule i simply that an ae:  
ised. is not criminally responsible Wt his unlawhal act was  
‘the product of mental disease or mental defect We use 'sease  
Jn the sense of a condition which 4 consdered capable of eihee  
Improvng or deienoraing. We use ‘elect im the Sense of  
condition not combdered capable of either improving or  
‘Seterorating ‘and which may be ether congenial or the est  
‘oF injury, oF th resid effec of a physical or mental disease \*  
  
Qeesons 4.30, In view of the strong critcsm to which the\_M'Nagh-  
SE” om hake ine ea ea ine ote  
  
recognition sien 19 t a  
‘ions penal laws of several couatries we icluded in our Questionnaire  
econ’ Feeotowing question =~  
  
12. (4) Should\_the existing provision (ction 84)  
relating tothe defence of instmty be modified or expanded  
in any vay ?  
  
TAIT, Mods Peal Gade, propd OBal Dat 19s2—Sacion 4  
  
2 Tae le between the wars "iasty” a arompness se open by the  
nme  
  
2. The an th yt eae ts curs hen in ABP x he Ray  
  
4 Durham v. Usted Sais (1958) 98 US. App. D.C. 2  
  
  
  
Page 98:  
9  
  
(8) Should the test be related to the offenders incapae  
{iy to Aaow thatthe act is wrong OF to hs icapacty to  
Keaow shat its punishable >  
  
(6) Should the deteoce of insanity be availabe in cases  
  
{he offender, although aware of the wrongful, oceven  
  
riminal natore of his act. is unable to desist rom doles  
iW becasse of his mental’ condition?”  
  
Te my ote ws do at of ene  
sormeelaupce re nes eae  
shaPatacagtat atiaa,  
pela das tte pee ato  
ee ee rd  
het Sas ake ate ce  
  
live powers of commuation and remission vested i the re  
Sdent and the Governoe  
  
‘At regards part (6) of the question alo, the majority of the  
reps ‘soe ng change "“Some’ capa The woe ok  
the test shouldbe Knowledge of what i “wrong and others  
‘MAL shouldbe Koowiedge of what fy punishable by fw  
  
‘As repards part), ther was lite support fr specifically in  
ctading rest impane"iasecton Of Some chic opens  
considered that this was oot sly sanity. The main ection  
‘was that any such provaion would make the tial of the ive  
sore dificult for the judges than the present provision.  
  
4.31, 4 few questions arising directly ut of the working of  
  
ooh ster ct don  
foe Sa eae ata Pa  
Benson “Poe anna  
Seen Sete eas  
  
  
  
Page 99:  
Manioe  
  
ad  
  
TEE pat 435 seve  
  
a  
  
432. The crucial test under section $4 is whether the  
accned, athe time of commiting the olen, i incapable of  
owing “hat he's doing what ss citer wrong or contary  
olaw? The MNaghien Roles onfy rete $0 the accused not  
mowing that e's dong what wrong’ The quesion whether  
tie word “wong” these Rules means legal song or moral  
opin, Son dtu ath Ata co Eng  
Asal hefollowng direction 0 the Jory Even BY Beton  
1 conslred tobe corte statement ofthe la  
  
“The question is whether he was able to  
yonghess of the partcularact he was domgat  
ime. Could this man be ted to know inthis Senee whether Mt  
act was wronp if. through a disease ov defect or disorder of the  
‘mind he could aot think rationally of the reasons Which (o  
rainaty people make that act ight or wrong ? "If through  
he disordered condition of the ing, he could Not reason  
‘about the matter with a moderate degree of sense. and  
‘composure, may be sad that he could not Know that what  
betas doing was wrong”  
  
{In England,\* howeve, it hasbeen emphatically held bs the Court  
of Criminal Appeal that "courts of taw can only datingulsh  
between that which is Im accordance with the law and that  
‘which i contrary to law”, and “there js-no doubt that io the  
  
MPNaghten Rates ‘wrong ineans conteay flaw and not “wrong”  
  
cording to te opoion of one manor of num of people  
fo the goestion whether & particular act might oF might not  
be usted” n vane or mi  
  
433. Indian ease law\_on the subject seems to leave the  
postin obscure. In a Cabutia case’, was observed  
  
“We ace satisfied thatthe appellant knew the nature of|  
hig act What "we have to" ser 8 whetlee he Knew that  
twat he was doing was ether ong oe contrary to law. If  
be knew that what he wat doing wat wrong ther he  
Swit no be proteted even it he did mot Kaw that i Was  
Contrary to law Hf ‘he knew that what fe was doing. was  
‘onary t9 fa, then also he could not be protected eve  
though he did wat know that what he was doing roms  
  
According to this view, it would be rasessary forthe accus:  
‘9410 show that by feson of unsoundhness of mind he did not  
ot ht his ae eas rong a ab tat he int Koo hat  
yas contrary 10 law.  
  
2 Poor (933) 58 CLR. 192, 19; apron ia Sion, (1952) 86 CLR. 38,367  
3 Rw, Wanae, (1982) 2 AW ER. 1 (Lond Oosdrd, CJ)  
4 Cefon Al En. ATR ABE Cal 129, 190 (en at Roxburgh, 3).  
  
  
Page 100:  
8s  
  
In a later case, however, the same High Cort observed:—  
  
‘OF the tvee climents necetsary 10 be exablbed under  
section 84, any of which mast Be estblohed by an acased  
{oobi the benefit ofthe provsions appears that Ft  
the’ mature of th teas cealy Known tothe acess se  
ondly, that he knew tht the act was conay to le of  
We hve sais was" probably Known fo. hms ut (be)  
third element on wtich the case realy torn i shethe the  
Acewied Roo thatthe act wat wong  
  
‘Curiousy. no eeerence is made 0 the earlier judgment  
  
jnseuch ai fo the secu to show ha comes  
itn the peveral exception, of in other “words he id. not  
how et heen he cma of  
  
appears to us that the earher jngmest sates the Postion sor  
Shi. The new taken a theater Caleta ease as dened  
from by the’ Alfahabad High Cou?  
  
4.4. Although the MINaghien Rules sil hold the Beld Dink  
  
in Englnd despite the recommendations of the Royal Commie hed  
Slop, t new delence to murder, knen a a  
boty", was iuroduced by the Homicide Act of 1957. Gi  
Dinhed, Tenis the accused 10 be found guiRy” of man  
  
Saughterinsiad of murder. Secon 2 of that Act enacts  
  
() Where perion kills of is « party to te killing of  
another he shal ol be conte of murder it he ss slr  
ing. from such abnormaty of mind (wheter assing from  
Saale ot oteaed ode Solan of mind  
x any ‘ern: causes oF induced by dite oF i  
  
$5 Sebanally impaed hs mental responsibly for Re  
‘cs and omissions tn dong ox being 2 party 10 the Kili,  
  
@ “  
  
12) A person who but for this ection would be Hise,  
whether as" principal of as accessory. tobe convicted. of  
spies he Tate iment" "comics" man  
  
such provision ta the Code, ether testreted to ctlpable bom  
{ide dr, more generally applicable to al offences, ae 2 supple:  
‘ment (0 section 84 but decided against it, manly becuse of the  
implied medicolegal sues it woul intodace i the tal  
So'tac as murder cases are concerned, the Code aleady pives  
slscrtion (a the Cours in the matter of sentences the death  
Sentence not being obligatory. As ogarde olter offences also,  
  
Tpke Aboot The kg, RAR PAD GE 1 enbrgh aed Blake  
  
2 abate, AUR. 1984 AL S38 516  
5. Sw ao Se Report of Capit Panton tagaph 9.28  
  
  
  
Page 101:  
section st  
om  
  
Sesion  
Biatle  
  
Sein.  
  
She  
=  
  
96  
  
‘there is no need to. provide specially that i the “siminshed  
sporti is ctababed, the ofender wil recive Teser  
Pumshiment) The ‘mental absormaty”of the offender “will  
[rurally bs taken inte account by the court Nike any other ¢k-  
Tonuating crcumtance while eching upon the sentence to Be  
awarded  
  
435. In the seslt, our view is that, in spite of its short  
comings, nection B4 need ot be akered in any Wa.  
  
4.36, Section 85 equates involuntary intoxication with  
tuosoundiess of mind aod lays dove the same rue for excusing  
SOperson, The next, ection, ating wth voluntary itoxr  
tation provides tht "where a ‘Snot an offance unless  
Sone with a particular Knowledge or init, person who does  
fhe act tn. & sate of intonation shall be fable toe dea  
With if he had the same “knowledge ashe would have had  
ihe had mot been intoucated™ The effect is that voluntary  
fouoxiation cannot be pleaded as a defence om the ground that  
{he intoxited person ded not have the particular kindof know  
[Bige or tneat mentioned In. the detniion of the offence with  
‘which he is charged.  
  
1437, While the Coge makes it clear that voluntary of self  
seduced intonation dow not conse an exc fr commiting  
ofa ts seat onthe punt whether should be ea  
  
3 SMU Seeded one quetonnaie the queion’—  
  
“When a. person commits an offence in a, state of intoxi  
‘ation (aifinduced). shoold that be made & ground for  
fenced. punshment 7”  
  
wither eceatn Sa.r  
genetinaiicaae tama eas ee  
ES Petia esl genie  
Sree sata afeetnancan coe sh  
ky iy sates he ah ae  
Siesta ata aati To  
  
“The majority, however, were notin favour ofthe suggest  
‘oe ae he ew ao eon wan ea  
mie Cth Seeding ti gums fe Gr  
fntoxiation cou ‘ss eahancing culpability (ee  
See me, Mat Retin that condon morse 16  
om te crime rush) ort could be repsrded as extenoa-  
fp olfecee and that these were mater of detail which  
Sn elt to ae age to take Into account when deciing the  
Sppropniate sentence  
  
  
  
Page 102:  
oa  
  
Agrecing with this view, we have come to the concision  
that a “provivon for enhanced” punishment is not desirable  
Sd that the. mater maybe Teh Yo the discretion of the courts  
aS at present  
  
4.3%, The language of section 86 has caused same confusion. Kove  
As meio bythe Supreme. Cour whe hen pero the Slant  
‘Selon speaks ofviment oe knowledge. the taller pert deals swe  
‘aly ih kredg and 9 eran semen of du ine  
fers, nay "pombyBe Wy feat of th “omen  
{isn voluntary druskenress Raowedge is 1 he presumed inthe  
thine manner as if there mat no-drankenoess, what abot hs  
‘atic where men veo required Y "Are we at liberty "pace  
finent om the same Tooting Ad, i 0, why has the section  
‘ited intent ine later part? To thin question the Supreme  
Courts answer in. "$0 ot as krowedge ts concered, we must  
ittrbute oe I  
  
aie tle, foie a menion hep me mst  
umnetffom the attending ctcumtancey ofthe case, payin  
Saag te’ dre iment "We conn that  
eo irate to relly this anomalous poston by ome  
ting the reer 10" nention altogether.  
  
4.39. We recommend that sections 85 and 86 which deal with cians  
the Same subject may becombined fone section and revised a Sand se  
  
tito geet  
  
5. Act of. person who it invvicaed —\*  
is ao offence which fe one by 4 person who, atthe time oF  
“doin sn. by feason of itoxtation incapable of knowing  
the tre of the act, oF that he doing What is eter Sr0e  
fe contrary 10 law  
  
Nothing  
  
Provided that Sach intoication was not seinduced.”  
  
12) Where an act done bya pervon in a sate of toni  
ssicn wipes seleinduged wil be an ofece if done with  
Mfaricwtar Knowledge, be shall be fable tobe dealt with  
sd he. did the aut withthe Laowldge he would have  
ad Whe had eat boon intoxicated.  
  
15) oviation is elbindeed saa person when he  
Sofontariy cases the state OF toxieation in hin  
  
4.40. Ssctions, $7, $8 snd 89 deal elaborately with diferent Seo  
swaitons where bodily harm is caused, But with consent given WS)  
By orn behalf the person to whom His caused. After a  
Shae Stating oF the tebions we\_do not And any need 10  
then  
  
1 ey Te Soe of ESE. (50 SCR. 8  
SMot Lae 2  
  
  
  
Page 103:  
se  
  
=  
ved,  
  
isi it  
  
96  
  
41, Section 90 defines. the situations in which the consent  
apparently to be givenby a person is not seicient for porposss  
Of the Code, i!was sogpeted that content obtained” from  
Devson by putting him unger Rypnotic or other Ocul intucnce  
‘should ‘be “pecially mentioned in the seclion. "We hve  
litle douby that i ever @'comerte case ofthis sort tame vp.  
the cours would have no alficusy mn holding sacs coment 6  
te insufiient even under the eusting provion. The il  
‘nee on the mind. could be regarded shaving produced either  
3 mrssonception of fact or an inability to ndestand the na  
  
Sad consequence of that to which the person gives is conse  
IW" does noe appear sevescry to amply section 90 t0 cover  
sch eae which many event afe wot of practical importance  
  
442, No change is required in section 91  
  
4. Seon 9 roa, (4 san ef ney  
pear ee ere tg  
a aera ge ene  
ele Th ne igang  
  
‘The lye of cae envisaged by the section i that of surgeon  
wi Seen finds nectsry to petorm an operon sd ie  
0 lime to obtain anybody's conse. Hes protec. supet fo  
the safeguards mentioned, ihe cts in good faith forthe  
palien’s Benefit ugestion was made thatthe power of 3  
Surgeon’ n-such citcumatances shouldbe further: widened,  
50 85 to do away withthe requirement of consent alfoether  
xem. there be time to obtain consent." We fel no justifeat  
for buch change vince, under the lw a8 8 Surpeon hes  
sufficient otectton in suitable case, and 10 widen tht pre  
tection woul be somewhat rny, apart Irom placing too heavy  
4 burden on a surgeon. We a, therefore not preponog any  
‘hange in section 92  
  
444. Nor i any change needed in seston 93, wich potets  
2, sommunation made ty 0 Tet Tor the bene the  
ietson to whom iis made!  
  
4.45 Section 94 embodies the principle that 4 person  
complied by force of threat of force to" do. any act Shout  
ot be punished Yor that act.” To. ths there are two.  
‘sseptons, namely, ‘mucder and waging’ war against he  
‘Government of dia (which it the caly Ofence again! the  
Slate punsable with deathy. Further, the threat wit be of  
‘nsiant death (0 the person mage to commit the, oflence,  
  
  
  
Page 104:  
9°  
  
Aorber condition. is that the person so. hrestened. should  
fot have placed himself in that tuation of his own accord  
1s aly “right thatthe Taw shoal in no Srcumssnoe excise  
‘murder or wagiog War agains the Stateand.to that extents the  
Stringent role contained in section 98 should temaia as is  
  
There aie, however, wo directions in which we feel that  
the defence of duress can be oseflly extended Fist, we think  
‘hit for practical purposes treat of serous body injury can  
‘and daily sas Gompsling 25 the threw of death. le may  
tbe “mentioned "here that in Enpland in answering the  
<estion what 2 suffcentysetious threat co amount to dures,  
“blacstone refers to death or cher Dovhily harm. Stept 16  
death or grievous boxy harm ‘nd Lord Goddard, CIs in  
‘Scare! ig" sioeace or tmprsonment.©" According to Rusielh  
the view "is freely held that thveas of immediate and selon  
Physical sufering such a6 death or prevous ‘bodily “harm,  
Should excess fom ibility a person who may have commited  
2 leer olfence. though ceraniy not & grave oflnse such ss  
‘nurder™. A" person threatened with" grievous, bodily harm  
should, therefore. be permited to plead doress as an eteve  
Inthe sameway ay 2 person thvedtened wth deat  
  
Sandy, wetland chen mote. Arya teat  
ath or serious body Injry to someone very gear und deat  
{o'a person, can be even more compeling than threat of njy  
2 aaron mai hehe ands a ye aie  
“many a man ‘who regards is own perton safety 3¥ of  
  
stncance wil be sobected tthe mem extreme Sec 3 nad  
2eolroted wth 3 threat co kor seul ire bs le  
  
We propo, therefore, to include such a threat in the rule  
in sation 8 Hinting, hance the tof ear rele’ to te  
  
<hilcen. the parents and the spouse of the person thretened  
‘The two, Explanations should be- pu a istration a they  
  
eal with special situaiony and a9 not contain 2 clriatory  
provision  
  
Jn the light of the above, section 94 should be redrafed 3s  
follows  
  
"94, Act to which a person te by teers: —Exee  
smutder and oles apd the Se punsbabte wi eal  
  
‘othing ivan offence whch done by a feaoa who competed  
{odo tb threats whch, a the Ue Of dng i, reasonably  
  
LOA Ee ape re  
2. Soh and Hogan, Cinnal lw (2nd Edy page 14  
5, Rowell on Crime (12 Fn) Vol. page  
  
4 Edeans "Compuion, Coeron aad Cena Responsbihy.” (1951)  
Rie Bes  
  
  
  
Page 105:  
100  
  
‘cause the apprehension that instant death or prerou Bodily har  
‘ther to that person or t0 an near relative of tha person presen  
"ho te threat are made, wil otherwise be the consequence =  
  
Provided the person doing te act did not, of his own accor.  
cr froma reasonable apprehemson of harm to himslf short of  
“asian death or grievous bod harm place isl i the sta  
‘on by which fe became subject 10 Such consraimt  
  
Explanation tn this section.  
  
(2) “pious bodily harm, means permanent pri:  
‘tng ether er or pratt of ty ore: meer  
or jon of the boas!  
  
("near sclative” means parent, spouse, som of  
her.  
  
Msraions  
  
(a) A person who, of his own accord. or by eason ofa threat  
of being beaten. joins gang of cots, Knowing their characte,  
not Eatied ithe benef of this excesion.  
  
“(b) A smith seized by a gan of dacoits and forced  
by ea of nant sek or pes bi ans 16 take  
his tools and to force the door aft house for tbe dacoits to  
enter and plunder is emllsd “10° the ened of IMs  
Seep  
  
Stim 4.45. Section 98 an appston ofthe maxim de mininune  
ES ‘non cova Ine (0 the fed of enminal ta H the haem cares  
tan act 0 small that no man of ordinary senae and tempor  
‘so complaint of I. the et does not amaunt to an offence  
‘The object ofthis provision sh "to elude from the operation  
tthe Penal Code those caes which, from the Impeetection of  
the fang. may fall within the Teton ofthe law but ate not  
‘sina ts Spit? "No" chatge is "needed In the. setion,  
  
Suwon 4.47, Sections 96 10 196 which analyse and detimic the sight  
SeTiae of privaie defence come up before the court for Lnerpretsion  
‘awit Sad aplication mote Teguendly than the other sections i (his  
  
hapise Aller stung the general exception i secon 96 that  
So" Song an fence winch done the exer of this ht  
  
is aolysd inthe tubsaquegt cons fom to aspect,  
sehr dence the boty and eles of propery See  
Mn tines thee to aspects" While sections 98 and 99 re  
  
1. The pte span Pay Ra as dam pcg wo the epreton “eevee  
Me SUE RAR a ay ae  
  
2 Soe ron amin f “gewoon bar” propre in caper 16 ow. aly  
AS (25 [SS ob lntion at felled neous Bolly har  
aS pata HS, Sl  
  
3 Vonte Moness 6 Dita Klan, (969'SER. Sepp,  
  
25; ALR 1986 SCT, 17H,  
  
  
Page 106:  
10  
  
spplicable in relation to both aspects, sections 100, 101, 102  
and 106 areconcerned with defence ofthe boa) and sections 103,  
1 0 a need wi ates oop We  
pose Below a ressrangement of the pronson® Dringig tosther  
"hase relating to the right to defend the Body in one sete and  
‘hose relating to the right 10 defend property im another sti,  
‘This would, ie seem €9 uo, make fer  
of the provisions and fai  
  
4-48. In defsing the right to defend property, section 97. Secon  
sey the phrase “oMfenceoling ander te einion ef thet,  
robbery. machiet or crvhinal‘wespasi The intention and  
  
‘et of this forma is oviousy to cover all aggravated ore  
  
ofthe ofences named. There appens to be no particular Port  
  
ta using the words “any act which it'an offence! inthe second  
<lause of section 97, sine section 98 adequately cover all case:  
SIRE he ot oe the po he dor bat the  
Tight to defend stil exists. "The right fo deen property may  
‘conlingly be defined a8 follows  
  
“Every person has a right to defend she properts, whe  
thee moveatie or mere hao any ihe  
eon against any ofence which tor incldes robbery the,  
Incheon criminal trespass and any atempt 10 comm  
{ny Such fence  
  
4.49, Section 98 does not requite any change.  
  
4.5. Seton 99 has four paragraphs and two explanations eoian  
‘The fest two paragraphs preclude” the exer ot the right ot 3  
aac defence apn a done by. oF unde ihe" don  
  
St public servants cert ‘eulanes, Bath a  
  
to the two explaation. the fine being eleva to the fat  
Pcgraph and the santo the send porgrigh,  
  
The thick paragraph altossther dcbars the sight of private  
<ifiree in Sabra neh ene ane enol NS  
bbl atthortes "We conuer this proton ae feng  
‘it's Conteoveral and tases queston ef poly  
  
fom rani coin ha ovina te  
sigh of pivate' defence in no eae extend thei  
ote har tats shes eT hm  
  
4.51, The fst paragraph seers to an act done by a public  
hae AS iy not be a ta Haw  
  
These words uve been unifrmly constued by the High Cours Sein  
to be applicable only to thow aeis which are iguana not Seas  
to those which are wholly algal. For instance, ia subine. Sa  
  
ector of police armed with arseach warrant Toma mage: etSi.  
trate atlempts to search the house of 2 person and’ tested by  
  
  
  
Page 107:  
‘ons of  
  
a2  
  
foe age rd le wm ie  
aE cept a  
noe cena i sets ma.  
‘view has led to certain anomalies, and has also put public ser~  
SRLS ome pom ae a eae  
Sh RE, Saale ake ae  
Oe Ske eae aremer a pae  
wa ee eS ee  
SORE aaa oor ros be  
icine egret ey teen nse  
Bi Some ra ae ta  
syria marie cusses amiraeeenes  
Bo orice  
  
4.22, uy of he cea andey th iat paneer of  
sation 99 shows Bow, i 8 ‘of instances, public  
SErsant acting in excdiion of the court odcts have been badly  
injured. and the coorts fave Sequited their “ssalats on  
tole pround that the courts onder wat. without jc  
Whosher'am onder of «cour is within ts unsdietion or out:  
See its juradiction. it exeerely dificult io decide. and,  
fame the en bo Aa enh m  
Uithe Gsputef laten op te the highew court But a su  
fhe poble servant executing that order should not be put  
tpafdy of Bou injery 30 long as hs action vn good Tah  
‘bic gly also eis hat sich potion sould tegen  
fp tociate te prompr exseution of the cour’, orders The  
‘Suders of 4 court ought to be imply obeyed.” We therefore  
SSsomend the tertion of a new proven section 99 50  
Sto mae the immunty ftom proscation conered by section  
$Sheo-atenie wh the Geprivaton of the rah of private defence  
east sch action In the fst poragraph of setion 99  
  
‘We. however. consider that dhis extraordinary protection  
should be geen only ther 2 public servo acs in purseance  
SPA cede of a court of josie. Whese he ets in execs  
‘Sr Ahr he considers to be he poser conferred rn hy Ta  
‘he eusung peowson sil sui, tha 6 to sy, fs action  
Seogutar. tise wil be no ght of private defence. but if ie  
Sree egal, eater owing to absence of juradievon "or a  
‘ier sround. there will bes righ of ponte defence  
  
  
Page 108:  
4.5, The same view will  
rite tee spit aac done the dann 4 pase  
Min shee that dagen a Sey jute by see  
  
‘cond paragraph of section 99. docs nat Reyire any cha  
pat siniedaal segue any Change  
  
4.54 With fference to the thied parageaph of section 99,  
wwe “considered i deeable to inclade” im Our quesionnate the  
Thos ing question =  
  
There  
  
at present no right of private defence in cases  
ta ahh tne the rece te okton  
St pubic authorities “(ection 99). Do you think tht  
this restection is necessary of thal it should be removed  
OF that i shouldbe” modiieg?™  
  
The sjeus reesned By ws on this question indicated hat  
shone i Tavour of recaing the presen cerition were almost  
‘he Same sm mamber as those fn our of removing A much  
aller numer of perions favoured some Todication i the  
etting promo,  
  
“The present restriction on the exercise of the sight of private  
etence considered necesary by some fe wew it ssid ofthe  
‘owing tendency among the pobie to reso" to sethelp even  
fthore the protecuion of pULNC authovites fs avatable” itis  
‘ho Sant Hat an a preset there i merentng evidence of i  
Feapoot for law and ovaer. the deletion Of ths resiretion wil  
‘nly ihrease the numer of crimes and wil est lols  
  
‘On the ier handsome take the view that present condiions  
dsesind that an indiigual ought ta hase the right of petals  
‘Kience without waiting for the help of pubheaathonies i  
‘SSsla gut expenence shows that body ean be sure of ge  
  
[ageffectve protection of the public authorities when sought  
fund ths vestricuon tens to ake away the Tight el ad the  
Sony Burnone of the Section deleted.  
  
1 the third category are those who suggest. not foo clealy.  
some mgiiations in section 99. They post out the possiy  
‘confict Between the third paragraph of sition 3 and the  
SSsond ieagraph of socton 108 and suggest that the object  
‘of the former fs icrent Irom that of the latter, the Pouon  
‘Shout fe made clear by suitably amending the sections. They  
Sho shapes that. thew so provisions may becombned, "Are  
  
‘ther Segpesion i that the condiion OF there being time Fr  
sn 0 the projection of pubs authorities should apply  
(oly wen the putt gets information sulfelently carly about  
  
the nipending aes  
  
oe  
  
  
Page 109:  
108  
  
4.55, As diverse views hune been expressed, the choice bet-  
ween retention and deletion of the fest nol easy to mae,  
Wevonever: thnk tat fom the practeal poms Wi, the  
tulance es a favour of deleting the third parseraph. The lw  
fray oe encourage seep fF doubfat Ends bat elfen  
Sings on 3. diffrent footing. Eaperisce shows that i ary  
Sac ete wet bre aay won ine fo se  
ing the protection of publ athotes Recogmton el  
‘Slonce As josiaton for comming sm-oeve act the  
‘Ssumputon that “detached tefecson ant be expected  
face ofthe aplited kite", itso. the law should not expect  
perm to conuder carefully whether there mor 8 8ot suf  
‘Sin me to Sock the protection of pubic aborting. We hate  
fot been able to dover ny atch stringent esrcion on the  
{ight of selfelene inthe eiminal codes of any other country  
We'recommend that the thid paragraph should be elles  
  
4.56. te the light of the above discussion section 99 may be  
revised a8" follows 1  
  
99, Ressictions onthe right of private defence (1) There  
is wo righ of private defence against an act wach does not  
Feasonably cause am apprchenston of death or of pevous  
hum it the act is done or attempted to be done  
  
Soe of ator rr chr of oie  
purines ol wor oder e's chur of jestice  
Tooth the cont may have had no ertceton (0 pass  
Senejudgment or order provided the pablc Seevant  
oieds pod Tih thatthe covet had sch jens:  
  
“(bby a public servant acing in good faith under  
colout of his fice, though thal act may not be sty  
Susaiable By fw jor  
  
{9,8 ths, sreion of cubic servant acting  
good ‘aith under eeiour of his fice, though that dee  
fiom may not be sti yastibabe’ bya  
  
@) A person isnot deprived of the right of private  
defence by virwe of Subset (1). —  
  
(in 9 case falling under clause (a) thewof wens  
ie thas or ay reno Base that he pron dome  
the act ma public servant and is acing in pursuance  
‘ot the jdgmnt or erder of court oF justice “or nls  
that person produces, f demanded, the authority 10  
tweing unde hich he Ws Bcing 5  
  
i) m9 cae falling oder, lau (6) thereof, ure  
tess he knows or has teason to bee that the peton  
ing the act ia public servant; oF  
  
  
  
Page 110:  
os  
  
‘Gin case falling under clase (c) there, vn  
tess he knows. or has reason to believe thatthe potion  
doing the 4c acting ‘by the dsection of a pub ser  
  
‘or unless such peron siaes the 4  
he acts ot if he has authoriy in  
fe" produces that authontyy sf demanded  
  
(9) The sight of private defence in no case extends to  
‘the causing of more, harmh than iti neceatary 99 cause forthe  
purpose of elence”  
  
«i, Son 00s the ees agus whch trie Son  
of private defence of xionds evento the causing of  
Sekt of the asta’ Hes notable “that while the se,  
Second” and sith items ‘eter to. resonable apprebeason  
  
to the consequene of the assault, the other thee tems eer  
  
0 “assaults Wah a Fatlalar intention." We donot home  
  
rer, comsder it necessary to make any amendment inthis Te  
  
Pec ip he hs Tou nd the of tg Ny ne  
  
thon 102 makes it qute clear thatthe igh of private Gcence  
  
sre dy comments wn utr a ese ‘appchen  
  
Sion of danger tothe body from an atemp ce threat (9 comnt  
  
ny ofthe offences described In section TOO.  
  
4.58, The fith item covers “a assault with the intention of  
abducting” Te has been ‘held chat any ascolt th the ines  
  
tion to abduct a perion as defined im secon 362 te enowgh fs  
to auract the right of private defence under section 100'and. Mt food  
15 noe necessary that the abduction most ase be punshabie.  
  
“Thus, i's wife fs assutied im her father's house by the buss  
  
with the intention ef taking her nay by force to the hasband's  
  
Rouse, the fifth paragraph of seton 109 apis”  
  
fe uaa fom te ie, am  
ELS BSA el atari  
Ea hee eeee meee ee  
SSS Ta Koreas re aes  
ca artery ea  
Seu Siccta ier cei ier ate  
Seu urer sami Ser  
SEs ert et  
  
shes OF bueot the pws Gefesdmg aint am shacks Soe 1  
  
2 Hshemot Soe of CP, (MD | BER. Sts ALR. 10 SC.  
  
  
  
Page 111:  
ca  
  
106,  
  
4.59, Section 10} imposes a restnction as to the volun  
‘ming death (othe asa, but permis the rofmtary cau  
ing of ty other hago, TH vetlent a8 tothe Involuntary causing of  
‘death ef death by rash and negligent act.” We thnk it pro-  
‘er to incade. thin the scope of ths section, those cases where  
esis n'eaned but ot vos  
  
4.60, Section 102 which defines when the right of defence  
‘ofthe body eommencis and how lows it may comtnae Fegaes  
So chang  
  
4.61, Sesion 103 enumerates the cases in which the right  
cof defence ot property may extend (0 the causing of eal The  
Bris eobbers  
  
4.62, Came acon of tie secon meron, ene ah  
ing by sight, bot not lurking housestespass by night which  
REQlely punishable as housebresking by ght. It Ws often  
‘itil to Scie whether the oflender han commited lurking  
fouse-tespate of house breaking. This pont, however, becomes  
  
ttimportge as uc ate mcommending cern amenimeres 2  
Ghar 13 shore unr howe breaking by nt wl cose (0  
Weapatae oene” Focthat eas, we propose to oni cae  
SSonlh, Ait sggrovated forms ef criminal espns wall De  
oven by ihe genta provision in case fourth, ander whch  
eto beady speaking. iv wether death Ov eas hut ts  
1 ely conaqocnee  
  
4.68. We consider that in clause thiedly, (0) sci by ex  
lose substance should. be added a4 iis just as dangerous  
Pinichat by ie. (i) meh By hire or explosive nubstance  
‘Smit on any seni should be add85 a8 Ci) places of  
Sorhip showdl sl he incloded slong with dneloags.  
  
‘We considored a suegestion 10 ade mise in respect of  
pthc property he’ bj ng oer mae te reper)  
Posie ntnced to be wsed forthe perposs of the Government  
{eat authority or & corporation estatiished By or under  
‘Cohtel Pronincal of State Act oF 8 Government company a6  
‘Seamer section 617 ofthe Companies Act, 1936, where sch  
‘hoch Is commits by intentional desruction of, oF damage  
  
ihe property and likely 2o esl general danger Toss  
SE hnman hfe oF her prave consequences We. think, Row  
Cretan cose ted adequate Tor the purpose. and do  
tho recommend aay sch adation,  
  
4.6 Cone forty of ston 108 es no cote  
wwe'prapine suite esa espa’ for hownetepn  
Ie ebe Satie a8 tin tat there no ned 0 conte 0  
fount  
  
  
Page 112:  
wor  
  
4.65, As proposed sbove in section 101.1 section 104 should Sion  
be suitably modtied to ring within ts scope those cases whets 10  
ath is cased bat not vhontey.  
  
60, The fst paragraph of section 108 provides that the Sean  
St of rate ale of rapa commence a soon ay ee  
{etsgnableapprebension of danger to property commences, P=  
Unie econ 102 seevon 108 des mox"aate that the appr  
  
$eovign of anger mayne om an amo or tres fo con  
  
the offense, We comidered a suggestion to being ection 108  
  
1m ine with section 102." We do not however tt any need to  
  
amend theft clase of ection 105 nthe absent pra  
  
44.07 The second paragraph of section 105 provides thatthe Scene  
"gh of private dents gins theft continues (til the ofender ok,  
  
has fected his reteat wth the property of (i) eller the pres SA  
petty as bem recovered or the asstance of public authors P=  
bs ‘been obiained. The Mist alleratine densey the: prmary  
  
And usa! point of termination of the tight of delems. Bat  
  
before th ‘point teached, one ofthe two eveats mentioned i  
the second iMernaive takes place then tha Gren Geeoveny oF  
the proper or obianing the assistance of public uth}  
fceminates the fg. "Thos, of the-two akemative situations,  
the wart one becomes the'point of termination, The pre  
wording doesnot bring out this dea wit sufcien clrity a  
wre thrsfore, propote ight verbal changs 19° Mal  
  
Incidentally, we nole thatthe wew exprened by May  
thot the righ OF private defeace is revved after tetcat (the  
sens that ithe “peopecly found in the posesson ofthe  
‘rongldoer, then the Fgh of defence would rfrve for the pt  
post otis recovery hav no appeated tothe Cours,  
  
We also noe that the words “effected his retreat” ate vague  
sand courts have oeesionlly found # neceaary to point Ow hak  
ihey are qoveasy oh application kis however ast es) 10 Sevine  
2 baer form of words to express the des  
  
‘Ou: aueation was stay drawn tthe right of recapiute\_ of  
catch hugh iy tevognned? im Bagland inthe lw of torts  
4 permis ble spsoes of sl-help, though racentauthorty\* on  
The uj is scanty” We'do nt however comider wise to  
‘ert the Code ans erousion om the sees” Such 2 meant  
som may, if abused. creste more problems than Wt osKd 0h  
  
1 See eta $4.9 abs  
Maye, Boal Co, 180 7,  
  
# Nyanga hse amon Fob ean chi  
  
  
  
Page 113:  
cating  
fet  
  
eae  
rei  
  
‘ston  
Ten,  
  
10s  
  
pg No shana ted nthe hsp son  
  
4.08, As wo the fourth paragraph of section 105, we notogd  
nat it foot oot provide fo cases where the ones is ye tHE  
akeloPaiempe ia reasoeable apprenension of danger fo  
‘any arse rom an atcmpt to comme he fence he Fit  
Teepiead the property commence, but how Fong dors continue?  
ees okra t scsary to make any amend  
ti por inthe rt cee a raeag  
‘Sutee Vos which deat 'with commencement of ihe igh 6  
Sica ‘aout ate an moun be arcrts ,,  
tp atempt ina pointed way in the four at  
BAUER nen ete, sna mpi Brey  
reset any dic  
  
‘An alternative suggsstion was to add a provision inthe fist  
sarayraph to the efiee thatthe right continues so Tong 3s the  
Spprthension of danger to the property continues. But ch  
sptenment, which will hen over all the reraining pare  
sara nian 108, where the point of termination it defined  
eis diferent irom cominuance of apprehension of danger,  
  
4.7, iis ope 1om h ah eerh of ten  
10s ate Gals with howe breaking by night whichis eet pro-  
poted to te teamed a8 h sepurate Offence  
  
1479, Section 106 saves From lability harm caused oan inno  
cont person Tt permite a person acting tm seidefence 10  
Stn the rak™ of ciusing sach harm, where the self-defence =  
count assuttcauung a reasonable aprshension of death.  
We Sanlacred a. guggestion that the provison of the ection  
MiSoid he cutee to aseulls causing a veovonable apprcben:  
howe casu Rust\_Ad im suppor of the Suypention. Wa  
won ei ton that we have reommended! se enlagement of  
Point my tclude seriou oily harm, 1 was red, that  
eign 94 related to. compulsion by human agency. whereas  
iion\_ too" yelted to compulsion Py circumstances, and thet  
Sete beincile should apply to both the secon  
  
‘appears to us, however, that he lepnaone has 882 ote  
or pai Sekpecied thar where the harm appended is ess tha  
sentry the person exercrung the tight of self-defence shoold  
eau ie le care to vend serious harm aX ionocent fee  
sane eno er ere 1s sicient protection even now, DEcHISC  
hc erent ia the econstances mentioned 18 section  
He Per arecond caution. hen he would aso be able  
Ike the aid of secuon 80 ab.  
  
‘No change i. therefore, recommended,  
  
  
  
Page 114:  
108  
  
4.72, tn the light of the above disusion we propose that,  
scion 97'be emed tn tins TOD to 106 be epacedby  
Tbursexone astoons  
  
10 i ope df eed) fe pr  
Pcoh EAE a ag faa  
  
(2).1€ the offence which oscasions the exerci of the sad  
right is  
(@) sesh an assualt 2 may reasonably cause an  
apprehension that death ot grievous hutt sill other  
appre  
tte be the consequence of the assault, oF  
  
(©) an assault with the intention of comitin  
rape. or "eatnalinereoure "against the ‘ondee  
  
(6) an assault with the intention of kidarpping.  
  
(@) an assault in such circumstances as may reason  
ab's'cause an apprehension that a offence punishable  
Under any of whe sections 364 40369 of thas Cove I  
being commuted. oF  
  
(@)anasavl with the itention of wrongfully con  
ing ponom inch czumsanrs ay may ebony  
{olhave resurst tothe pubic authoies for hs t=  
ease,  
  
the right of private defence of the Body extends, under the ret  
{cons menuoned sn section 9, to the. voluntATy ang  
ath anyother arm to the assailant,  
  
and, in say other case. it extends, under the same restrions.  
tothe voluntary casing fo the sant of any har other than  
  
(2) I, inthe exercise of the right of private defence agains  
an isa whieh reasonably causes the apprehension of death  
the defendcr bo 0 sitated that he eanaot electually verne  
‘Wat right washout risk of harm to "a insocen person, hs right  
‘of private defence extends the fing of that ik  
  
101. Conmencement and. continuance of right of pirate  
scene of body The Hight of poate defence of bay Conmene:  
{6.38 soon ea fesoaable apprehension of danget fo the body  
Stiecfrom anatiem or heet t comm the ofence though the  
fesse may not have been sommes and i continees as Ong  
fs sich appecensons of danger to the Body continues  
  
Sesto,  
  
  
Page 115:  
110  
  
102. Right of prime defence of propery ~{1) Every person  
bags ait dente papery thet ovate or mo  
able of himself or of any oer peson agains any ence whch  
5s oF inches robbery. thet: mbit ct comin espa) tnd  
ny altempe commit "any auch once  
  
VAT the fence the commiting of which, oF attempt  
to conamit which, occasions the euerehe Of th sit ght fe oF  
inchedor  
(e) robbery, of  
©) thet, mischief or criminal trespass sch circum  
snes at yon hte" appeheaen“that  
  
euthoF grievous hurt wil be the consequence ne (ip  
oF private defence nou cnerched. oF \*  
  
(6) misciet by five oF explosive substance comnied  
on any Boiding. tnt or vessel uy bung te or vest  
iS osed as u human dueling ata place of worship oss  
4 place for the castody ot propenyor on “any Nene,  
  
te right of private defence of property extends, under the es  
  
twasionn mentioned in section $9.0 the voluntary ius  
  
{eath'or'o any other arm 40"the Wrong deer  
and in any otber cas. it extends. under the same testictions,  
  
to the voluntary causing to the mrongadoet of any harm othe  
than death  
  
103. Commencement an! consinonce of right of private  
stefece of propery "The right of pupae deenke of propery  
‘ommences when a resonable apprehension of danger ta the  
Property commences,  
  
‘andi contines—  
  
(a) against robbery, 2s long 28 the offendee cates or  
stems fo cause on, death oe hit of wrongiol  
feat ors lone asthe fea af fstant death o of eat  
Fert ‘or of instant Wrongful rextaint continy  
  
() aeaist the—til the offender has ected this >  
tegat wah the propery, of. fhe property has beh recover  
fd eather or the tate ofthe pubhe authors bas bern  
‘obtained carer, ull such recovery of the propery Or The  
‘obtaining of such atitance and  
  
agains mich o criminal tepass, a5 ong 28 the  
cende Comins the common al mibhce of Sit  
al espa  
  
  
  
Page 116:  
CHAPTER  
ETMENT, CONSPIRACY AND ATTEMPT  
A. Aberment  
  
5.1, In devising 2 comparatively simple scheme of abet-  
rent. the ft Law Commasioners made rads depattors  
from the complicated provsions of English Penal Law. whch  
istinguished "Between principals in the first Gepree, principals  
in the second degiee and sccessories before the fact 2d tf  
again between incitement to felonies and tcitement fo mise.  
imag, Seion sai abn! nae Ray  
‘amaly.abeiment by tation, abetment by conspire and  
thetment by" intentional ad. "The ‘concepts ‘underlying the  
fist and shit forms of abetment a5 explared jn Sections 107  
nd 108, have not ‘given rise any difealy in practice. and they  
Seem t0 us Yo be clearly and adequately stated  
  
5.2, The second paragraph of section 107 defines abetment  
by coamprcy by sls that pees abet the og of hag  
sho engages with one or more other person or persons in any  
omic) for the Joma of that thing. rum na ok ah "oe  
Son takes places purwance ofthat conptac) a forse to  
{he doing ofthat thing" Under Secon b50X, when nope  
Saat emg foe ai a fee  
fe'commiied, they are gt of scriminal congpracy to commit  
that ence whether ce not any of the paris thee dass oy  
46k Besides ihe agetment im pursuance thereat Thus the pee  
Sushe iy aly of company To comm an ce  
Buty of abeting the offence ab S00n 3a ast Mga  
imison tates place in purses ofthe cansprney. Ate ie  
taciment (in 193) of Secuons 130A" and 1508 making coe  
Spirag self an ofence punishable imthe same manner af alee  
iment abetment of an ovfece by compre) Mason i ratios  
‘orcad cal ohn nies ot of Caper alge  
in icone of cote Rl Ce ey  
i to Some. confosion in appting America  
‘czal sytem which admit the Wea of criminal somsprcy at  
‘uch and ‘make i ponthale, do not comma abcunent  
ofanafene by max apecren’ coma kWe propo that  
the ascond paragraph of Secton107 and all subsequent Feerences  
i Chapter 3 10 abeiment by congprcy shoul Ge med  
  
5.3, Under the third paragraph of Section 107, person  
  
abeis the doing of 2'ching ho itentonaly ais the ding of  
  
‘nat ting. “Tie language appear to nds tat 0 cone  
tciment offence, tere mut be bid In the Common of  
‘at particular fence. ""Knowlege that some once ping  
  
m  
  
Semmest  
ons  
  
oe ha,  
  
  
Page 117:  
is  
  
to be committed and sid given in that Knowledge is not enouth  
‘At the sme time it not aecessry thatthe person  
  
ihe aid should hn” beforehand alt detail pertain  
‘fence othe exact manner m sich is going to be comm  
SET We do wot think, however thatthe wording ofthe clase  
Fequices any ‘modieaiion.  
  
seer SMe ety pop he ma pt of sn  
i, ot ae  
  
“A person abets the doing. of thing, who, instigates  
any person 10 a9 that thing oF intenuoraly aids BY any  
SE Gr illegal omission, the doing of that thie  
  
“The two explanations and the stration do not reguite  
  
ny change  
  
fyston,, $5 We considered the question whether a counsrmanding  
Fabston gr betment i me shoul eee the abeltor of erin ait  
Giking The case aw in Ind on tee subject appears fo be nconchsive  
Hem —\_ReSonding to ‘an old Bombay cave,?H che abettor, fore, the  
  
"Seiusar ASomplahment of his criminal purpose, abandons his object  
  
gre nd wahdrner from the further provecsion thereoh and the  
  
fern abetid proceeds withthe! design on his own account.  
  
Traber may no be el ay ane Secon 14 Bat 1  
  
‘aleuta cane.) m person who, after comenting Io form ove of  
  
4 pany which comnntted shel reed from te agseement but was  
  
‘esata te tet, ara teparded ay guy of abetment under  
  
Beinn 7, clause thirdly, read with Section 109, as having  
Tenttonally ded the commision of the theft  
  
11 appears that in England. inorder that a perton may be  
soy an Senay elie he Fe the pros at Se  
EENtnuiag I the procarer of a felony repents and, before  
SSny A Eommited, countermands hs order, but despite that  
  
he princnal comms the Telony. the exiginal conte  
Cilnsrbelianc nvanaccewory «The Court of Criminal Appeal  
ie Rel? that in ander to eazape (fom ability a8 am accesory.  
there must bean express and actual countermand or revocation  
Bethe ender prevcusly Ever  
  
fev tone Gain, (1873110 Bor. WER. 497, 00 (Wes and Naat Maas 7)  
1 cunoe Badan, (167) 8 Weekly Raps Cri 7,29 (Grover 3  
  
2 Hate 48, feed 4 Arc, (560), AU,  
  
fe nfo oie 2 AW ER, a9, S85, MOLT 32(CCAD  
  
  
  
Page 118:  
ry  
  
‘We find shat, inthe Mode Penal Code! prepared by'the Ame:  
sean Lv Tot, he following povon songs 5 Beng  
  
“alse otherwise provided by the Code or by the tne  
einige enero tan eco nan ence  
for tothe common at the ofeae ands  
  
1) wholly deprives Hof ffctiveness 4a the com  
rossom OF the offence of  
  
4) gives timely warving 19 the La enforcement  
awhonves oF otherwise makes "proper effort to prevent  
ihe commission of the offence.”  
  
We comidered wher 2 provision on these fines shoul! he  
sade i the Cove conferting complete immunity on an abettor  
‘thos prior 10 the tual Comvmnon the Cite, socerely  
‘epent dsociates sel rom the particu and ves eason  
Ste Beip to the authortes wih view to preventing the corm  
mission ‘Of the cme. "at there are {wo obpctions to such =  
Principle being fesogised. Fis it may te pleaded in every  
‘Ske By om watlgator eho, atthe last moment. pretends (0 ihe  
‘Saw his mocaton with the cre for fear o detection. "Se  
‘Somay. under the seheme ofthe Code, she offence of abeimen  
complete with the tstgation other aetot the abettor. and  
  
‘question whether or not the principal ofeae has been com  
dd ie imate eacept an tepardy the gaan of punish:  
nt under Sexton 109. 113 ahd 116. Countermanding or  
‘Tihaeawal i therefore “out of the question, because  
Compete cannot be wihdrase  
  
(One of ws was of the view that. hough these dicts show  
tne men Tor some safeguards, they Qught not To come 19 the Way  
ofa ihe i ripe and pets Wa 0  
ere Coumiermanding should be permed only the person  
ounicrmanding mates hs best elorts to preven the crime from  
feing commicd.”"Soch a provision would Be beneficial. as #  
‘ould fer an inducement to 2 prospeave offender 10 desat  
From completing the offence, and may help im preventing the  
Commaion of the main once  
  
“The rest of ws howsver. were of the view that cass of sincere  
epemance wore very rare, that shoUld Be left to the disretion  
ithe Court to det feosntly with Such a repentaoe sinner and  
‘hate spell provision nest! Re made ia the Code  
  
  
  
Page 119:  
Poa  
  
ssw  
  
saa  
  
Tne as renal ie ALT Na  
SRMDRUGR ciewnsanes Se a Thon © Min  
  
ua  
  
5.6, In deaing an abettor asa person who aber “the com:  
tnision of an offence", Section 1€8 employs language whch  
itinot re Tlihuhat ot Section 107 whieh defines  
sosiment of "the di yee. of an ack The man  
paragraph in Savion 108 may be reworded as Tllows -—  
  
“A person abots an offence who abets te doing of a  
‘uct whuhts that offence, or Wich Would be that offence it  
‘Sommtted. by 4 person capable by law of commiting an  
‘tence withthe tame intention 9¢ Knowledge as that of the  
Sbetor  
  
5.7, The ltr pac of the above dtnon deals with a cae  
where a person may be uly of abeing an ence Tough te  
enon sbeted maybe incapable of gommting hat ence  
or Sny‘reason atsoeer. Mt anys hat the sbeior in such  
‘rcammsanees showld be eld to be ply of abetment of an  
‘Hence i ‘had been commited by the. person abet,  
‘wshthe same intenon or keomiedgeas that ofthe abetor. Tai  
‘dos not dent mith ese whore Ne person abeted hay commit  
{ed'an act wich asountto cima shes oreplgcace. but  
ove nor amount erminal tention or tnowiede- Th,  
‘fSthe OS mote awa the a td ati  
by fers eho ae re sen br ha pe  
on by Fis sasness a negipenc caus the death anche  
‘penon, can't be hld thatthe abstr abled the commission  
EF oonce under Section 304A, LPC.) The question Ses  
{o be larly Scndeme, because stances where  
the comission of rash and neglipent ac and the person ho  
{Som that ses eapate In wf comenting” Gy  
wel bs ery rae indeed We dn ot think t necesito oake  
ny amndnen in Section 10840 mee sch cses\*  
  
5. The idea undceyiog the fist explanation  
bebrowght out better by ewording las follows  
  
‘To constitute abetment of an offeace that consist of an  
‘egal omission of an acti aot necessary that the abet  
‘Should himself be bowed to do Tat ack”  
  
i, 8 think,  
  
59. 1s curious that explanation 2 refers to “the offence of  
  
abeiment™ whe explaining. what constittes abet  
‘offence. This is nether apt nor newsary. Explanations 23nd  
STiay be combined and revised a6 follows  
  
“Fa conslitate ahetment of anoflenc, itis ot necessary  
(a) thatthe act abetted should be committed: or  
  
(0) thatthe fet requisite to constitute the offence  
should be caused or  
  
  
  
Page 120:  
us  
  
(e) thet the person absted shoud be capable by  
law of commiting sm ofegce should ave any aily  
oF aoa commute  
  
{10 Explanation 4s omewta ambayowty werd th 3  
sai “ahebteimemt cone beagageiens, heabetaent Mf  
SESin' th ores snctane's Dare oma  
  
wee to ea propotion the set hasnt  
  
Use pecsett “ice when che abainere of an tence  
Senge Blaher tne sstment tat the abetmet of sich In  
‘hsper ica ofleice gives no gidam 59th purities >  
SR ston dice abst haben cteent cco  
Sana“ Tor instance A agate 8 to msiate Ct comm  
tae, ad'8 acco tates. bt the mre ot  
omiicd then the sbtment by A pussable unger section  
sGrrnrs it yomle nese scion 1157 The anbwer to hn  
Abn utpeade on whetber the word “oenee"in section 109  
ticaos the em ofence slimatly commited r che whether i  
Wi Mnctide te intermediate fence oF yeciment of the ain  
Sie the ics sat own ta A abe  
We eStegnded a abeting der where Woes nox iptiate  
(8 Sad'too bere € doesn commit the wurde The judgment  
“Sophie that abementofabetment of an feces no oe,  
SRPhMo" estan ubcunent of ar ofence.” Thi spre  
‘2% to be et ad node bring oot he nea cay the  
apiaion Tea’ be emordst as alone  
  
an Zhen th eb te abement of an oes ae  
Aha often  
  
5.1 Explanation $n the stration thereto psy be omits Sian  
{eds thay iat to abelment By conspiracy which proposed RM Be  
  
omit aa,  
  
5.12, Section 108A. in substance another explanation of paue  
wnat consittesabetment of as offence, and may accordingly ¥A-  
Be'Combined mith scion 108. Although according to secon  
{o,secton 108A apples only in relation to offences made poms  
‘bie under the Code, there can be'no objection to extending is  
doin to fence puihabe under any seca oF Fl  
  
Th gai a ow vats Toa Bl  
  
2 Mahood Rina, LLR. 18S Ker 235 Sulina 3)  
  
  
Page 121:  
reed  
“Ang  
sate:  
  
6  
  
S13. Inthe light of the above dscossion, sections 108 and  
TOSA ay be combined and revised ae below  
  
108. (1) A person abet un offence, who. abet the doing  
ofa thing whic is that ofence or which would be an fn  
I done'ty person cupable hy law of omniting that offence  
aah the Same intenuon or Krowiedes a5 that of the sbetor  
  
2) A person abets an offence, who im India, abets the  
  
ing at uti Indi which done Idi. Would  
ontiute that aflence  
  
a eA Ponion who abt the beument oF a offence abet  
  
offence, its not neces:  
  
(0) thatthe act abeted shou be commited; oF  
  
{}) thatthe es reste to constitute the offence  
shou) be eased or  
  
(6) that the person abetted should be capable by  
Jaw Of commiting am fence, or should Nave any guihy  
‘tention oF keowledge, or should commit an offence  
  
«af ihZ, conse abcinent of an fens tat cons  
Stator shou 7  
  
iat the  
  
I hima be bound to 0 that ac  
  
Masiraion 12 sub-section (2)  
  
instigates B, a foreigner ia Nepal to  
Nenat“A BS guy of abetng monde,  
  
Mnsirations 10. sbssecion (33  
  
4% inte 8 seus © 1 ware Zw  
Be Tincblion has ommled he flee a ating  
‘murder ad ble tobe punished with the punishment  
es for" murder. and a0 A invigated Bio. comm the  
‘ence, A's abo lible co the same Pumshment  
  
) Min the foregoing itastration, C refuses to murder  
2. B hes commiued the fence of abelting marder, nd  
Tale 10 be punished with omprsonment hich may extend  
aseven yeareand with fo: and au A insgated  
  
the offence, A tala liable tothe same punshiment.  
  
  
  
Page 122:  
ur  
Mustrations 19 subsection (4)  
  
(0A ingiates B to murder 2. refuses 10 do s0,  
‘A isigity of abetting B to commit murder.  
  
(0) A instigates B to murder ZB in pursuance ofthe  
Josigstion stabs ZZ recovers from the wound. A's gol  
‘of abetting B10 commander  
  
(fA. tending 0 Kill 2, instigates By a child onder  
ten sears of age, 10 do a act whic A knows willeause 2  
Seaih By consequence ofthe instigation, does the act and  
‘hereby Eounes Zs death, Here B Was nou capable by Tae  
‘of commiting an offence, bot since his act would be murder  
if ithad ben commited pion of fll ape wih hee  
Tinention snd knowledge as tha of A, As gully Of abeting  
‘rder  
  
(6) A. intending wo take dishonesty an ate belong  
wo Coat fie placa, nda B to tae that he  
tuck "befngs tA and lotgntes him to take W from Cs  
Tossesion 'W does so in good faith believing 10 Be A  
ropes” Thovgh B hes no, guily intention “oF Knowiede,  
Ke pay oF abetting thet  
  
S14, The words “by this Code” i section 109 appear to be  
unnecessarily restrictive and should be omitted. ‘There i no  
Feasou why Yo\a cas where press provision for punishing the  
oament of an ofence te made im # speci or oes fave that  
provion should Pot preva  
  
In the explanation, she words “or in prsuaacs of the cont:  
pray" Should be omited.  
  
ilseaton (a) is out of dle, since abetment of bribery is  
now apecically dealt wth in section 165A of the Code. The  
‘ther Wisratons sho Jo not appear to be of any value. Al  
flostrations tothe selion may bo omided.  
  
Section 109 may aceonlingly be revised as follows m=  
  
“09. Whoever abets any offence shall, if “the act  
abe ¥ commited in consequence of the abetment and no  
‘xpneys provisions made forthe punishment of such abet  
sent Be pnaed ‘ih the panohmen prose or the  
  
Explantion-—An acto offence is said to be commited  
in consequence of trent when iis commited i conse  
‘qusnce ofthe nstigation, or withthe an, which constitutes  
the abeiment  
  
1. As fo aps, se # con #2 25 proposed fo be amended, pungraph 4.24 above  
  
  
Page 123:  
patie  
  
done.  
  
Sion,  
Son  
  
us  
  
S15, Section 110 nests no change  
  
5.16, When exactly can ibe said that a act done was a  
probable consequence” of the abettent? "In deciding ths,  
important gues, cours have generally adopted the test of  
tho seavonable mai’. We considered whether an-amendment  
shouldbe made to the effec hol the abe.or shod swe kown  
{har tho erent ack was Hey to real inthe. creumatances  
‘The reasonable man's Yoresight is al presen, atebuted even So  
‘ses where the abeitor. an fac, dd nee Torco the parlor  
oncequence “even though ebjetvly il Was a probible con  
Szquenee fy our tive: however. te pres position ges au  
Sou workable lt ud ned not be dstarbed  
  
We also potid that where the act done was nota “probable  
{consequenee™ of the abstinent, then neltee section 110 nor sec-  
fon TTT ‘would apply. though sections 115. and 116 could be  
lnvokad n sucha cave” We hunk that this postion sitsfactoy,  
4nd no amendment eyuired  
  
Tuph the acon pragaph of on 1 app  
Sorat phere arareaere  
errata ere, Songs aie ae  
Ponce eared ened  
Secu i amr et ite rr  
Sages fe seated go  
Beit te Clot  
  
1. When am act is abeted and a diferent act is done,  
the abelior is luble for the act" dane, in ihe. sume. Zande?  
nd 10 the same xen 3s he had directly abetted i eo  
‘ed the act done  
  
(@) was a probable consequence of the abeiment,  
and  
  
(6) was commited under the inBuence ofthe in  
‘gation, o with the 33, which constituted the abetment  
  
‘tusinat rd 10. the meaning of “probable cone  
SRT hee ht haem nang tem fox hy  
  
‘517. No change is needed in ssetion 112 oF 113  
  
58, The need for section. 114. which es out a deeming  
provision fe not very clear” Since the section. postulates the  
£Ectual commission of the act or fflence abetted, the abettor is  
  
  
Page 124:  
us  
  
liable wader section 119 40 be pusishod with, the punishment  
frovided for the oflence. "What more Is guned by leing do  
ITSM teu, pres, shal be deemed fo Rave commuted  
  
1 is possible that section 114 was of some significance vie  
‘nvityeclon 30 ofthe Evdence Actas it 100d before the amend  
‘Gotu iaade in 891". Under that section, the confession of an  
‘Seused person could, under certain conditions, be taken nto  
Soanldechiow agains coaceased Hf both wore accused of “the  
Sie oll” AS observed by Cour,  
  
“Though an abettor may be leglly tid jointly with the  
principal oftender was Tormey eld, that as the abetlor  
Barbu ned arly with hun, for the tne offence, 8 con  
Tession made him was not “edmissble in evidence aga  
Fis coacensed’s Thus view was, pevety logical on scion  
30.570 an Eon Ae a ten So ves en  
  
the tendency vas to aan the point im Tovour Of Hee  
ies fr he Co al eed oo  
food a pec’ of evidence. was consequently aie  
foe ‘ete, tala prev, alton ted copy wih  
nother was teal ing ied forthe sane. ofeace $0 that  
the covfesson of one tas ada against the other?  
‘The Srtniment of he scion 1891+ at aw leslie this  
‘eas the word ‘once a Used that section w enacted  
{Shwe the abtment of or attempt to commit the offen,"  
  
‘Even assuming that section 114 of the Code could have been  
sed to remove the doubt tnder secon 80 of te Evidence Act  
  
itis cbsious that after the amendment of the latter section  
  
{91 secton TT is ot needed for this purpoe  
  
In ay old Bombay case, a euiouly narrow view has been  
taken of the deeming provision in section 114 in the mater of  
{Shitty 0 enhanced’ punishment ander section 75. According  
to th deckann, sae ection 114 docs ot say that the abetor  
“Shalt have commuted such offence”, i does aot equate the abet-  
sent ah teas for the pares a wecton 79 of the Co  
“This seasoning was, however, dssenced from in Rangoon cases,  
TThd docs not appear to have been followed ia any subsequent  
aioe. ‘We donot think that any amendment of section 118  
‘F regtred on ths point  
  
1 Gon, Fear tam, Git Vat pe 5  
1 Nar aed (470) PR. (Ce) No. 8; Annan Govind, 10 BCR. a  
5 Sc cam RR (ou Ne 3 itr SD PRA) No 8, os  
whe Ff 191  
  
5 Bin. Kai Ao, (198) 19 Boe. LR. 3,  
mmo, Mowny Le Rat ALR. 1929 Rang 20  
  
2.  
6  
  
  
  
Page 125:  
pion  
“i  
  
10  
  
1 is possible that if, under a special law, abetment of an  
‘fence is pursshable fess severely than the Tain ofene ever  
TIP eRe i consul abt eso  
tay be wstul at provides thatthe ebettonf reset  
the offence x commited shal be deemed to hae convmtd that  
flee Bor at we oul susan, te ie no proions  
Jn special las punisting abetment with leer punishment than the  
tain ‘offence.Eitber thee ts'mo express provision a alli the  
Special lw as to abetment othe a'prommon, then as  
down the same panihment for abetment a for the principal  
tence.” The uuhiy of sation 114 athe present days ths,  
not apparent.  
  
519. We olice thatthe section distinguishes between  
abetment and aeiment by partpation yn the offers.” Only  
the former falls within the section. Whether this reqivement of  
Dror abelment in recestary, and why abetment atthe time of the  
Commision of the offence should not sufice forthe purpose of  
Scion 114 te not af all clear. tn fact, me se no jutifcation  
Foe the estincion made in secion 114 between priarabetment  
land abetmant at the time ofthe offence, No doubt, mere pre  
fence atthe tne of the ofence sould not being the section fn  
Ply, "There must be other evidence oF absiment. But. in  
Eagan at spect the con a gone oh ene,  
‘The words "who, absent, would be lable to be punished 363%  
abstr, ule out any afd rendered atthe time ofthe offence by  
i save hove lhe conta te ah may  
i." A iminarinstization pret to the offence, followed by pre-  
ence, i ficient, se substantial aasstance at the time of the  
fence does not sufi. (No doubt, In the later case, section  
Serwil often come into pay; bot that fs true even of the eases  
‘now fling whim section 11). "The empha  
  
{ugh t0"be on presence coupled with abetme  
parcuve type of abstment elected only wth feference toi  
Ehronologcal order. We, therefore, recommend the deletion of  
the words “if absent  
  
5.20, Section 118 deals with the punishment for unsuocesful  
beiment ef ollences punishable with “death or imprisonment  
for lie" "Tse words "death or imprisonment for hie" are  
‘imbigous and i the interpretation placed om sillar words to  
{ection 297 of the Code of Criminal Procedure. any. guide  
these words may over sven "redivon®, for which one of the  
erate punishment is only theee years. AS the secon pres  
rien 9 Tatly severe punishment, we think it to nit i  
{o capil offences, offences for which death ithe only  
Donthment or one of the punshment provided by Te  
  
Imprisonment vader section 115 should in out view. be tga  
rout, dnd not sof either description”, as al present. Since only  
‘igorour impsionment ie potable for the mun offence, the  
Ppnishment for abetment alse should be rigorous ly  
  
  
Page 126:  
nat  
  
‘The marginal note, fo section 115. second, paragraph,  
‘mentions “harm but the section speaks only of “hart This  
<setepaney should be corrected.  
  
‘Where punishment for abelment is provided by any other  
law, secon 13 sbeuld not appr Hee the words "by this  
Coie Sout he omiies Irom the section  
  
‘Accordingly, section 115 may be revised a follows ~  
  
pet i" ale wen teas  
fossa ae  
  
and if any act for which the abet is liable in conse  
quence of the abetmeat, and which causes hart Lo any person  
iP done, the abettor shall be Table to rigorout imprisonment  
foe's "term which may extend to fourteen years and shall,  
‘so be Table 0" fie”  
  
52H, Section 16 prescribes the punishment of offences ie  
  
punishable wth impcschiert ‘when the eflence not commited  
ore (vl ay nap ee thn ion and ton  
sis deurableexpeesly no etclade capa afeces ThE  
nay be done by inserting the word, "not bei a capa ence  
aor the words, am fence poniihable with imprisonment  
  
1 wil be noticed that the abetment of an ofknce punishable  
‘only with fie 5 not punishable under section 116 or any other  
‘Eaton in the Chapter, "We conser that Wt ie unnecesary 10  
ponish soch abeiment sd The prosent postion des not reauire  
ny change i thie espe  
  
‘Unde the st rarapaph of ction 116, he main unis  
ment for abetment ithe offence be not comatedin consequence,  
only one fourth of the longest term of inprisonment proved  
forthe offence We consider that this is too tow apd propose  
that it should be increased to one-half of the maximums erm  
provided for the olfenes  
  
“The second paragraph of section 116 deals with two classes  
fais) ore te Seton pee ean aoe dui  
  
ent the commission of an offence andthe person abeted  
12 pate insu, and (i) where the abetur is a pale  
individual and the person abtled isn pubic sorant whose uty  
eto peevent the commission of an lflence, In both casey,  
the abettor is habe to heavier punishes than is provid im the  
first paragraph of section 168. We consder that ia the ist  
  
4, see parabanh St above  
  
  
Page 127:  
esory of cases, i. whore the abstor ia publi servant. he  
sou be able fob panished wath the fll period of mprion  
iment peonied forthe dence msten of onl oral ofthe er  
‘Tis here a pobes constable stad of preventing 2 aco  
ef whch fe hab information, aide and aelh = gang of Sac  
fur somehow the €acony ts bol commited, he Shotld be habe  
4g be pueda ifthe dacoty hed ben commited. The et  
ti he pote servant tring represen the extreme, Ue  
Sotho the lw fully apps Tor chek  
  
fn the other category of cases. vi. whee the abettor is 2  
private person, the mere fact thal he abetted ¢ poblie servant  
SShose doiy iis to prevent the commission of an oflence, the  
abetior need not, im our Opimen be deat with more severely  
than ease Where the person abeted i so private ndividual  
  
We accordingly propose that section 116 may be revised as  
  
116. Whoever abets an offence punishable with imypie  
sonment. not being 2. coptal efence, shall. that offence  
bernot commited tn comequence of the abetment, and no  
‘express provision is made, for the punishment of sich abet  
Imgnl. be purished with imprsonment of any description  
provided for that ofence for's tarm which may extend 0  
besa of the longest term provide for that ofeace. or with  
Sch fine abs provided for that offence, or with both  
  
and ifthe abetior \* «+ i pul servant whose duty  
1 i 0 prevent the commision of such offence, the abe or  
‘hal be punished with the pumishoiet provided Jor he oon.”  
  
‘Of the four illustrations which are appended to, the  
section, the fist Is obsolete inasmch as abetment of bribery  
[Snow 2 sbtstanuve aflence under secuon 165A.” The  
ins illustration also has fo be omitted in vew of the amend  
tent in the eosona paragraph of the fection. Accordingly.  
the ilstcations to the fevsed section may B¢ as fllows  
  
“Marans  
  
oA lsat B to gh fae viens, Here, B  
des ht is sade A has eerie, omit  
rafter ths Sst ad punabe ace  
die  
  
(Aca pls oe, hose dy tito preven coder.  
anette Confit of tabby Here, tog te aby  
SES sted ic abet he pao proved foe  
‘exten  
  
  
Page 128:  
cy  
  
SZ. Section 117 apis to abetment ofthe commision of Sion  
an offence bythe publi: generally of by any number or class ot  
rng eadlagten fi etn ot acd ae  
Appication of othor provisions relating £0 Punishment for abe  
iment. Tira Lahore case," doubt was expressed whether Where  
Seelion TI? apples. the offence eoule all under secon tis  
  
in that cas, the accused ad made a olen spect ata telips  
sembly of Sitks, In which he lacted the audience to merer  
Englishmen and “Government. servants The Mapa. com  
weed re scan rad wn cn se wc  
‘ction 117. and senesced himt to rigorous ympesonicent for  
five years.2"The High Court had doutiteas to whether seston {15  
applied, the doubt being based-on the fact that ‘sectom 113  
apps only when he abeiments not punthable unde any  
  
‘ther provision ofthe Code. and. Sechon 117 applies, then the  
‘offence would not fll under section 115;  
  
bn a Caewta cas? honve. way pone out tha te  
  
ord “express provision" in tection 173 Go not sit to pot  
  
Sionsike ction 1, butte secuons PDL (Stand tee Shed  
  
‘eal wth abetment of lence panisatie wih athe ip  
  
‘Bama Meee pace oes heh ton  
‘pplce  
  
‘The question was considered at length  
where the High ‘Court agreed wit the Cake  
Sone from  
  
yews and di:  
doubt expressed inthe Lahore case  
  
Me agree with the Calcutta ang Bombay view, and, afer the  
claborate dxcusson found in the Bombay judgment, we Jo not  
Hpk ha the doubt eared ithe  
  
523. tn the course of out preliminary consideration of the Ateting  
Sole ngeion mater hide baer pane a  
ment for abetting the commission of ofenes by minor. Ke Senet  
55. notorious fot that in every large urban cenicesa number of ge  
‘erson canbe found who train juvenics and chien inectoal | aden  
Rinses Hh’ papcttne icine a tary nd ter  
live upon their earring. Kopin themselves fa the background  
  
ani Shing tion We ipa our gussonae the  
  
weston, “Where person abets an offence by imaging &  
  
Sir cys ‘oui he bec Pan 2  
‘unishmenebipher than that prescribed for abetment i general  
A'majoriy of te opinions received by un purvcalay rem  
  
Site Govertment fers and memes the bar, wat Ease  
  
1 Sona Sieh 3 Bap. AARC THD ah ae  
2 Apgarcy. oer ander section 38, PE ever bythe Magra.  
2. Bev. Dams Ni AER. 193) Cab  
  
«La Mota, AER. 1939 Dom 35  
  
3  
  
  
Page 129:  
8 Pamagrgh $29 above.  
  
i  
  
‘f the proposal. The opinions given by the Judges seemed 10  
te evenly balanced. AMter a caeful consideration tthe light of  
silos re ae of yt abe th common  
  
‘any offence by 2 minor should be teparded os an 28872  
fom ofthe ofence of abetment and punted mors severely. AS  
shea the Jud ofa Cay Chi Court coe oP  
ion sent (9 the Commision,  
  
mind of the Chile and tates advantage of fir immature  
Understanding and diverts him to's wrong path, thus Marlin  
his feture. The society has in such case, 10 shoulder the  
  
‘Mldinonal burden of reforming the minor.” i therfore,  
hecesaty to prowde higher punishment for sich 20 oflence,  
{0 deter antisocial element from. making wie of such  
  
Innocent chidres for thei uelawfal obec  
  
5.24 We recommend the following new section for the  
rose :—  
  
IITA, Whoesee bets the commision of an offence  
punishable with mprsonmest by a child under Aleem years  
Brags, whether or notte oence committed m consequence  
oF ths ‘atetment, shall be punished with omprisonment of  
Shy deserpsom provided for that offene for aterm which  
nay extend to Grice the Longest ttm of inprisonmen! Peo  
‘idee for that ofenee. aad sual ao be hable co he  
  
aca, Yalta canalent of 3 Sn 1 gomnit an  
‘oflence punishable wth eath ox imprisonment fr He punish:  
Shi under section Tid, ste concealment done by ae ae oF  
‘legal omisica with the intention of Fallnating the commission  
Df the ofence or withthe knowledge That such consmission Is  
iy 1 be lactated by such concesinem. Its not necessary  
that the concealment mast acualy acitate the commision  
tthe ofence. ‘No change of substance is requived in ths see  
onthe eee oan lee push wih at ot  
Itapronment for’ may” be. ceplaced. by” "a capital  
‘fences for the teasons mentioned above! under setion 1.  
  
5.26. tn the fourth paragraph of section 119 aso, the words  
“ponishale. with death ce imprisonment for We” shouldbe  
repinced by the words "a capital ofenee™. 1 i however, not  
Ge whether this paragraph appl oly whan the offence  
Sbaght to be concesled is commited or ako when it 8 not com=  
mite. “The fot paragraph would scem lo\cover all cases where  
the offence i not commted, inclosing 2 captal ofenee, but  
tiore 1985, coud nor be applicable tothe ofence of mxdet  
then punishable with death or tronporsation Tor ie.” The  
leglaive intention was perhaps t@ make the fourth paragraph  
  
  
Page 130:  
1s  
  
applicable ia relation to a capital offence, whether or not that  
‘ollnce was commited. “After 1938, however i possible  
{50 do withoot the fourth paragraph: a capital offence be com,  
tlle, the pubic servant concealing the existence of design to  
commis the offence wil be punishable Uoder the thd paragraph  
‘nth rigorous imprisonment fora term which may extend to ton  
ears (one-half of the Tonges etm). dnd ifthe capital offence  
Concealed be ol coméusted he wil be ponishae oeder she fest  
faragranh sith igorows imprisonmest upto fe. yeary one:  
{oorth of whe Tongent tern’ It does not sem necesary that se  
the later case also the pubic Servant should be ponihed  
"igorous. imprisonment for ten-year, "We accordingly reco  
mend that scion (19 be simplified and made clearer by omting  
‘he fourth paragraph, “(Inceentally we notice that prosecutions  
tnder sections Tia, 119\end 130 are very tate).  
  
527. No change of substance ix required in section 120.  
  
Bul ti desirable expresty to exclude cases covered by secon  
  
118, and for this purpose alter the words “offence punishybie wih  
  
mponment the words not bog capital lence shold  
inserted  
  
B. Criminal conpirace  
  
5.28 For more than half & century, the Penal Code ony  
secognied abetment by conspiracy denedin cause secondly  
‘fseeon 107 and not te offence of cimint consprasy asus  
‘Thelaner notion was ntosoced inthe Penal Code oy the Crit  
Au Ls" Atpendoen Act of 1913, whch tosteg a Seperste  
Chaput SA'consning of 109 sections 100A aed 1308. “Despite  
the obvi and comerate overlap between he provisos  
ot hese two Secon an the provaions goveraing aeiment ot  
{in lfence by conspiracy contrined in Chaper 3 he leat  
‘u'southiienecenry to amend th earet Chapter nay ay  
Shus.i'a person s engaged mth another or ohes ina conspiracy  
ncn a ee aa il oso ae,  
face m pursuance ofthat conspiracy and in oer fo the Gong  
{ho erminal ac, he abe 19 be punished ‘au tn sbetior  
ory nder the teevant scion in Chapter Ba  
ibe r ot ssh to ea ‘mona pla. be  
Bully oft criminal conspiracy Su aoom a8 he becomes past  
tele agreement to commi the ofence ans punch under  
Solbseton (of subsection (2) of section 108 athe ce  
maybe "So Yar sv ompacis to Commit seows oes are  
Concer section 12081) pot  
  
furpow of punshment.Atisough it theoreti posse to  
{lafge a efon wis conapringfocommit an seae oven where  
mete erste con he eon done  
scklom: ier pene tht fv or mere peso re proc  
Ty"erminal compracy merely ot srengih of evden  
wosing the agresmant sd mtn. on  
  
  
  
Page 131:  
eas  
  
16  
  
529, Howey tat mayb thee odo taf he  
naciment of Chapter VA, abetmont by conspiracy iso hitle  
rasta! se, Sade rida a0 > ctouna iw concep It  
Inay be note, that in England there i no separate mention Of  
‘onsprasy as 2 spss of abetnen In Engh law i'n one  
fortor sto be regarded ah am accessory befove the fac he  
‘outs one whe counsel, procure, commands the com  
Imssiom of the oleae. If hells to be regarded ts pineal  
inthe same Gores because "alding aad absting” the em  
Dhani on his presence. tastance Or encouragement at the  
Scromision ofthe enme.” We have sosoringly a the binning  
‘itis chapier recommended the omission of the Second pare  
‘raph of scion 107 and all subsequent references i0 Chapin V  
EP She Cade to wberment by coaypacy  
  
530. One is struck by the wie sweep of the éefnition of  
mat Sonny i ton A coir to ony)  
fan agreement to commit an offence but also (a) an agreement  
{cn an egal but aot crmina et, ad) am ageeement  
{eo caymmi a legal act by legal means. Ths distinction between  
{i} and (a ib obscure and may be without any real diference:  
‘tenet tan sje yal mean mt ole he an  
  
Something legal, . the comming of an iegal act. The  
{er'uhich han offence punishable under subrsetton () x stb:  
son) of axon i i big por 0» minal cons  
pracy dened in secon 150A. fn oer word, criminal  
SSospiracy isnot an offence apilary 10 another olen, but 3  
Independent and substantive ofence by ‘sell  
  
S31, The sage at which a person becomes, ale 10 be  
pumihea or teria conic sch earlier thag the  
Rig wien fn aempt to commit an offen: tesomespunhadle  
finde the Coe. A mete agreement Tp comet an OF  
enough No phys ict ated uke pice "No consume  
ona cmd te te aeae oy eenstemgt Int  
‘Se parson, theses devting and Sr ng3eg met  
for ihe "commission of the offence 1 not ‘required. Tn this  
Sem, Sonspracy ean incomplete or ieheue che.” And  
‘en owe coders a eonapiacy to comme anil act which  
IPnot a etime, em not ven lasfabe as am inchoate cme  
‘hae quesion ses wheter I prope fore aw oimerence  
and “te crminal sanctions st setran ex Se  
  
5.32.1 st be noticed tat, foe purposes of punisnent,  
secon 1208 divide criminal comepeace ig, foo clases  
‘Where te conspiracy ito commit 2 senous fence, (le. an  
‘acral imptcnmet or fo ye ohn  
‘more severe punishment) party tothe conspiracy ¥sPunihed in  
ome mame avi dete he ene the cand  
‘Gtegry there are needed comprracis t0 commit anyother  
‘Steno’ nosing offences poashabl only wih ne) and con.  
Speacies fo sommitHgal ae ot thn fences; and or  
  
  
  
Page 132:  
m7  
  
these, sub-section (2) provides 2 uniform punishment  
Pronment of ober de  
  
tion lo alk month or neo  
  
Baik "Recognising that woutd be dangerous to fave these  
[ety conspiracies fo he alleged before courts by any peri <0  
Fnded."prowston 1s inden tbe Ciimial Code,  
Scion WEA. vem  
‘xcept upan Complaint made by order or under autoriy fom  
  
the Slate Government of some ofcer empowered in th beh  
  
53, Me eth nad eo of amp  
so ‘wid cmn Sm Jodi Conspiracy is comon fas Sem  
imsdemetnour”punshabte wih fie or omprsonment at the hee  
Afscetion “or she cour, ice inthe cae ok murder whore {30  
iy etatine thee ia tain punishment Often pers I  
onsite the agreement etween fwo‘Or more persons to eet  
  
sone “anal pene Whe the cman of 4 che  
ren 9 sonsndiaabe ces marly an un:  
  
inful porpose there re no’ peceise or lea resin seg (0  
‘omental unlewfal purpose oF an inoctabie conspiracy  
Eerprace dau arma fo meg ae,  
  
of to commit pubic mise are, aking nd.  
  
She: “A"ompacy a comin or indoce brekch cl Contact,  
  
is probably nat Inextable the present day  
  
S34 Jn bis Law of Crininal Congpiraces and Agreements ice  
pubihed in 187) Me Joice R'S. Wah datngunebennes WAS  
Up sereenents Tor the common of comes fi) agreements ae  
{or minor ofenes, and (np agreements for at eh would  
tiny oft. Melfeai inch of eens  
4 being merely my tothe lw which cess the Crime  
Reto "bercmene for minor aeons be ys  
  
“iis ext to be considered in what manner agrccments  
ugh 10 Ge tated shen they are foe oflenespanhable  
nly om summary prosecution and by Minor | penahics  
‘Tee's seat cies dasoserng he rincihe ach  
atchere applicable, but the sift) wil be dimishod hy  
Slimming atthe gutet al ofenes whch ought n't good  
penal sysicm oe treated at cnmen. BUC whlch happen  
{be wend only 35 minor offre any partesoe peal  
Suton. “These. being cmaated, the remaining fences  
Ort the produco ota mich, ex hres ae  
Sot an themselves of grave enough consequence 10 be mates  
{or naltmnt and so, mat pera be tment  
‘whether the results are produced by ‘ove person or by two,  
“r'more persons" ‘To: permit tna peso to be indied  
{or 5 tontpreay to make’ ade it the net ef atom,  
{419 caich hegesnartows A, would be to deioy th  
‘Sisnctiom betueen cues. and miner offences whi ih  
‘Sherycounety it held importaet to peeve  
  
T eayag fp nd Take Spee Te Renal Wakes Oven (SY AER  
sassy  
  
  
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eae  
  
the third cise, 4, agseemens for acts whic  
the absesce of agreement would not be crimes oF offences,  
Shetcloramg. co two pocula classes be proceeds  
  
“ana om ang within at  
two closes, thore appear tbe great theoretical objections  
torans Sereement may make punshuble  
thal whack ough Pumshed in he absence ol sgh  
  
fet i one, which c2n be done by a person  
tj Stone and when so dane ought nt 9 be punihed  
Hee Gage to see at hat pomnt and on what ground  
ima can be general duced by whe Tat tha (wo  
‘iimore persons Concur in the ast  
  
1535. We consider the above cricism fully applicable 10 dhe  
sgeccmente sich are made crminaland punbhable under  
SESioe Nor Feuon SB. agreements (0 coment  
Setaparately minor or petiy ofences and agreements (2  
SSinbac gga acts whch aze ot offences Agreements  
Siam seraus oflences however stand on = dierent footing  
Shoah jusiBeation, be. pensbed even when 90 other  
SEE SBae by any ofthe partie m pursuance of the agreement  
  
Mu back a elo  
rete Gopurtaniis and resources of many Obvious  
area ogerous and eye daca 1 police than the efforts  
Fe fone wrongdoer  
  
5.36, othe United States alo, where the aw of criminal  
congricy i the same asim England as come i for S700  
ERhiom From the ewpaia\_dhecussed above, Justice Jackson  
St the Supreme Core sat  
  
“Conspiracy m Federal la, angravatts the degree of  
crime Goch th of nconcei “afending. The sc of  
SSutbacrating to ‘comms misdemeanour, fllored by  
eeeertanent cwert act ine execution, a felony and  
amas ch een W the eden  
om ore radeal”propostion aos  
  
Sams hat a omman la Sod oer some nates  
Sapien may bea crmial conspiracy ven Wf COP”  
saree ne whi re nou ties all when Pe  
feavated by a9 individual or by tmany acting, severally  
  
“Thus. the conspiracy doctrise wil eciminate pee  
sons om the fringe oF ending who would ct be guily of  
Salng”and abetting or of becoming am acenory, 1 those  
Shr ny ae ac sh Se hs sy  
  
sua U8) ONE. 79 6 US. «Concing james of Jason  
  
2 Rodin, U5, (198 97 LE HO: 6 US HO  
  
  
Page 134:  
9  
  
“Autsbution of criminality 10 a confederation which cootem  
plates no at that. woul” be “ctiminal if carted out by  
hy one of the ‘onspiraoe ta practice peculiar to “Anglo"  
‘Rimercan law’ “There can be lie dob that thie wide dele  
‘ation of the crime Of consptacy originate in the riminal  
Cauity ciminetered inthe stat Chamber In fac, we ate ad  
‘hed that "the modern crime of conspiracy is almort emiey the  
resol of the manner in whieh a eommpiracy was Ueated by. the  
‘Court ofthe Star Chamber The detrine does not commend i  
feito juts of ev ln countin, despite Univeral yecopnition  
‘hat 'an organised society mt have legal weapons for combet-  
ting organised ctimnalay." Most other courfres have devised  
ssa they consider more disrimnating prieypes upon hick  
{e promte "ermal ngs secret asain, aad Sve  
Syndicates"  
  
5.37. We are wrongly ofthe view tha there is neither theore:  
‘ial jorsdhaion ‘nor practical) need Zor punishing agreements  
(S commit pety ofenses or sonerimipal Mepal aes. Tm prat-  
tice "fow private prosecutions of sch peli conspiraie ae  
‘SSncvoned bythe Sate goverment or ty ofers under scion  
I the Crna rede Code We therefore recom:  
men ‘that section oh defines criminal conspiracy  
Thowld be revived a follows  
  
DOA. When, two oF move persons agree 40 commit  
fan offence yumizhabie with deth, imprisonment for hie ct  
Imprisonment of either descpuod fora term of two Years  
‘or opwardh\_ of 40. cause such an offence to be committe,  
the terecment is esigated etmieal conspiracy.  
  
Explanation Ltt  
of the offence ithe Ul  
fs ‘merely inedertal  
  
snmterial mhether the commision  
  
Evplosation 2-—To. consist 2 criminal conspica  
‘ot nceary that any ctor tga omnon ra  
ein pursuant th agement  
  
‘Though the present subssection (1) of section 1208 only  
refers to oflenese punishable. with rigorus imprisonment Tot  
[sin of tea ear upward me nk a cr sh  
‘re puns ingwitooment of ether deserpton fot  
erm of two years or upwards should be brought within the  
Sento of criminal conspuacies. The second explanation i  
‘athe sume fines 25 the explanation 19 secton 121A" thou  
  
Sect eens ak seem eae to have 1 this  
  
5.38, We consigered the question whether @ person who  
recicnds\_ to. join a etimioal conspiacy, But does Rot te Tact  
Eire objet of ie cher conspirator, Hable Lo be punished  
35 "boing a party {0 the conspiracy’ vader section 1308. In  
SM of eth  
  
ae,  
sfecmt  
  
ny  
  
  
Page 135:  
“Pay  
id  
  
1. ata (na 3 Go 536 Saw Va  
  
bo  
  
fan ld English case,! where a police spy picended to aid the  
assigns ef» conspcators Tor the purpose of betraying them  
Oar held. that bw evedence dd Rot require corroboration 1s  
fn accomplice ‘since the complicity of such = person eulend  
nly to the actus reus, and not 0 the ment rea, and teteore  
fe Twas not an accompice. In 2-recent English jodement  
the pov was made that a person had never entertained any  
fntetion of going tough alt the proj then he cao,  
fe convicted of a conspiracy to commit the crime. AN  
Sivecivent required an intention to caty out the wall pote  
pose, and ths clement of ment rea would be missing 80 fa as  
be was concerned. We think the same sew showld Be taken  
' siraar cass ender section 08.  
  
i every cae of eonsptacy, the nproptat provision contained  
te Chapecr 3 wala to Be sued ot andappled) it mous  
Ghriowiy"telprerale o aks the ection selon  
  
We'ecommend har secion 128 shouldbe revsed a follows  
  
20 ons party. minal conepicy sal.  
where no express provision i made for the porihment of  
Icha conprcy =  
  
(0) if the offence which itis the object of the compe  
"a5} 10 Commo cae te commited com.  
Sh the "pine proved for at aes:  
  
(2 he fence ig nt omit in purse ofthe  
Say "eteticion gromded. fr that afene fora  
{erm which may extend to. one-half? of the longest  
{etm provided for that fens, or wit such ne  
818 provided for that fence, or with Both  
  
5.40. When criminal conspcaces are limited to agreements  
to commit serous offenses ae recommended sbove, there wil  
‘be po need fr sean 196A in the Cade of Criminal Prosedut  
Te9b. "This section will requze to be repealed.  
  
ad, (Pas), paragraph 1294  
  
2 Rae», Tompson. (96) 0 Ce App Rep. | (NotinghananeAssverLaWoo 1),  
‘once (Pan). Careent La, tm S82  
  
3. See panerae 3  
  
Sow and selon 115,28 propsod 1 be amended.  
  
  
Page 136:  
0  
© Attempt  
  
SL. Though he subject of attempt has been relegated i  
{eGo to he vey ina chaps ap section and dit it a  
1 residuary provision naa umtisfactory manne, we profons  
{0 discus it here in view of the imparaner of the concept ad  
His lose connection with abstment and conspiracy Nnerous  
Sections athe Code. "wie éeining the acts which consti  
Darsicular offences, put aiempys to 0 thote ain on 2 par mth  
‘oing the acts themselves ad make them punishable Tote  
Same extent, Thus, under secuon 121, with, whieh the next  
chapter betins, wapiog war against the Government of Tada  
fn ay aie age sach war ar Bh capa oe  
ection 130, one who aliempls to rescue 2 prsner  
aris punished 10 the same extent as one who actualy rescues  
4 prisoner of wat, It one were to constr secon SIt stetly  
fis’ residuary peowsion, none of the Ses contained. tere  
Modi te apple for Iterpcting what costs am atten  
fo wage wat under section 181 or an attempt to rexcoe a page  
hee" of wat under section 130." "These sections themselves do  
‘ot Turnsh ‘any guidance Tor this purpose  
  
542, Then we have ‘wo seemingly more specie and com-  
pubes deitions of "acy econ iat“  
Mitout wsing ‘he margin, Setnes  
  
pe excep  
  
tempt to murder, and section 308 Which simaty defines ate  
mt 10 commit culpable homicide not amounting to murdet.  
Tp both sections, the atlempt consists in doing any act ith  
such inention or Knowledge, and under such circumstances,  
that the actor by that act caused death he would be Buty of  
murder of, asthe case may be, culpable homicide not amounting  
{murder The hypothedcal ‘condition Whe by thar act  
caused Gath” snot ey to apply i cases where the act done  
‘var. physically "incapable of sing any ones death. The  
Question wheter there could bean aterptto murder sot fling  
within setion 307, of an attempt to commit culpable hombeide  
‘ct fag wuhin section 308 but punishable as, sech under  
fection SH, the feiduary section, isnot ently theoretical a5  
hav been rated before the cout fary olen  
  
S43, Finally, there i section SH which provides that “who-  
‘ver atempis 10 commit an elfen. potable by this Code  
Sith mmpetonment for hie or impraonment, oF 1 et  
Sn offen to be comtied. and in such atiempr does ary aet  
toward the commission of ibe oleae, shal, mere o express  
Rowe ae th, Cae for he piren of Sk  
tempt be punished ee" age ted in this secon  
in'seryconflung. (may aso be mowed that section 903  
SeGnet attempt 16 comet suse tm the same way" Whoever  
Semper to commit oie apd docs any act towards the com  
isso of Sach offence’. "To consti a crmural tempt  
{ho reqirements are appacctly {0 be satisied. The ofender  
  
  
  
Page 137:  
,  
if  
ze  
  
un.  
  
1m  
  
most first attempt to commit an offence, which presumably  
Eun my by Boing come act, But that apparently B not su  
Cine” He must in Going that act which te the atemp also  
Se"Something ese towards the commission of the offence, Does  
SPrena that the Beat at need nt be towards the commission  
Se'he’ offence or. that, even If it has. to be followed by  
Shothte et towards the commision of the act? Beyond ind  
‘ng that there bas tobe some act done towards the commsson  
SURE Sience an idea that h har worth expressing, the se<-  
Son's of ite ssistance a¢ 8 deBnition. certainly cannot  
Fee mention: sas, the, wording, would seem” to  
‘SSggeh that each aod every act towards the commission of the  
Seto punishable as an emp. "Any such “ilerpre  
iin of setion S11 or section 309 would obliterate the Well  
‘Stablshed. distinction between preparation and attempt,  
  
S44 Ja recent Engish case! the Jude i epee to ave  
obssntdl' “There ave some, brinch of the criminal aw 0  
SRE is permed for unices and junes to use their common  
nu, Tab pad to Rd that Tam wot constrained by  
  
LS aay that he law of acempe is exhaded from  
Shepp tt the fame he dan Pena Co  
SAE indiaGl‘To ave the aw of attempt to be regulated by  
Sn fons ied by canoes sn By a esse  
  
4545, The crux of the problem of defining attra seems  
to he ia "stating with) Precision testes fo when the act  
ig raved epond he eeparatary sage As Rowlat J, Pat  
IRE Seppe in he set, telore they begin to tok About iy  
think fie very easy thingo say what amount 19 an attempt,  
  
‘shen you come to-analse i it becomes a ie dificult  
[Au aly by pris, thee or four tests emerge ftom Judicial  
Shon to np tei at wh ne a to eg ft  
‘SSne towards the commission Of the intended offence becomes  
Sn stempe-  
  
sus, Ther nh ot fet, Th mocha  
Sam OEE th ratte eg  
ig at my Lach my oe  
red a a Se a  
et a gt erp a cn  
ir Ee engi PS a a ak  
a ty eae oo  
  
Tay kat (96) SAVER HS Ger Dink)  
  
3. her ¥, Osborn (1910 8438.8  
3. Base, (989) 520 39,51; 1D ER. 755.  
See act, (1965, penn 08  
  
  
Page 138:  
13  
  
a Sa  
i tc te cena rcs  
ne gc. Se a i we  
Eotnaieoratiashe tac eee  
eee aries  
<ommasion of crime, Eat only such sets donein an atempt  
Gia coum ater a  
Sitorarsn warfae a mle alps  
ag, ae acetate  
Scare eoee eee eh  
anna apne nal meas  
Smet ie ot reg  
See Saas oer  
Senter ee naan  
OS Choice conse aruns  
  
348. Another test adopted is known as the tex of fast ad Testo  
In Eaperon’s case, 19 which reference has sieudy teen nade’ HS ast  
Bison’ Parke sad  
  
“Acts remotely leading towards the commission of the  
  
‘offence ae ot. be considered at atiempls occ  
  
4, Bot acts immediately connected with it ares and it this  
  
Saale tered Wi he evi of forthe ae  
  
‘Gin “Overcharge, any "further ‘sep. on the Patt the  
  
Aefendant had Bech necesary to obtain” payment, 8» the  
  
‘making ‘ut a further account Producing the vouchers  
  
11) Mon 3, NE  
F tse cor os; 1 2.56  
  
  
Page 139:  
Tot of  
ant  
  
nas  
  
oe Daw rn hat ai  
Sica an ee  
ciara ate Want ee,  
‘tee itr here pt ae  
igiicherw atc car a tae  
(gets ct cet at  
iar yin saeaamdeyricen eri  
(Eas pera wate  
EY charities  
  
Fast, dane by him, Dut that need not prevent the det fom be"  
ng an” atemp  
  
549. A test which emphasies one aspect of “ust ac’ that  
of the. possibility of “lows pscnitemae’. An Allahabid  
‘ase lysates ths test. The acted had made a fase satment  
‘order to obtain a ceracate whch would have enabled him  
{ obtain a refund of oct duty but the certificate was not  
  
fated. The tral cout convited him of attempting co chet  
he Sessions Judes in hs Teference to the High Court said"  
  
“Even, supposing that, Dhundi (the accused) by fale  
eprseniation had succeeded in. geting the relnd ert  
ite chad 8 foi partion «He. had fete  
‘endorsed 3 the outpost, and had to present iton the following  
Starday "for eneashment before he Analy tot all contol  
fer it ad could no oager prevent the” commicson of  
the offence, Before that time he might have altered is  
‘mind even from prudence, if not from pentence. and. torn  
(Op'the crtfcate and’ no "cheating" could then’ have  
happened  
  
“The High Court accepted this view and. acguited the  
accuted. These view was taken bythe Patna Hige Court?"  
  
“We have to assume that beter reasons would. preva  
at any\_motbent an the man would change his intention to  
‘ommi"a {om ors crime before the actual consummation  
{hereof and unit be has done all a his power to kt hit  
‘son be outof hiscontrol so that the corpmision of tbe sn  
fr the crime would tea gatural effet ofthe actions srexdy  
‘committed, there i il a mere preparation forthe commis,  
slom and ace sm atempe to committe ofznce for the st]e™  
  
fae. TS. poe BS  
  
2 Quer Dam 806) R 8A  
  
ru Ey AR 1983 P30, NO, 30  
  
  
  
Page 140:  
bs  
  
5.50, We may abo refer 10 another test known as the test Tes we  
‘of aveguvocal evidence. Ifthe object of the criminal law i 10. SYS  
fcwent not oy consummated crits, but also the completion  
  
‘ine ha come very chow to aczomplishing his objet, the pro=  
itive nalve of hs condact il be to0 sight to support cone  
Senn foram atempt  
  
{In 2 Now Zealand cae, it was aid that “in orde to conse  
‘ute an attempt, the sets of the accused must be sich a8 10  
‘leary and unegulvocaly indicate of hemsches, the intention  
{o commit the olfence” Salmond J. whose view f tos re  
(uently quoted, observed,  
  
‘An act done with itent fo commit a crime is not  
rina attemp® unless it's Of Sach a nature as tbe ii  
Seif suficen’ idence of the criminal intent with which  
Wis dancA commal atempt i an act "which shows er  
tina inet on the face eit. /Am act--.-which #5 in  
Iisowt nature and\_ onthe face” of encent can  
sc Beat win the cage of crim tent by  
vidoe alana Sst he esta Purposes. with which  
Gone. par  
  
De. Tomer, ig his edition of Russell 99 Crime, after an  
ceuamination of the authori, states? as follows!  
  
“I i therfore suggested that a practical test for the  
tos ru in attempt i that the prosection must prove that  
the step caken by the accused must have reached the point  
‘shea they themes ‘larly tndcate What. was the end  
Yowards which they were divesed. In other” words, the  
Me “tatem mint” thomslver be sulBelent “to show.  
Trina foci, the fenders intention io comma the crime  
ich ‘he charged with attempting.  
  
A similar ost was mentioned in the eater editions? of Arch  
tool! "Buia a. tater edition \* he sates the rule thus  
  
“ee submited that the actus reus ncesary to constne  
an sent camps Wf eer dosha "ehh  
ieastep towares the commssion of the specie crime, whieh  
‘S lamedatcly and not'merely remotely connected with the  
‘Commission of i aed thedoing of which caanot reasonably  
bbe regarded as. having any other purpose than the commie  
Sion of the specie crime  
  
12.8, kes G94 NZL. VG (Ovaaons a ken om Wonk and Pen  
Nai Aa  
  
+ sty on Chie, 1968, Vo. p18 fod by Be. Teer  
  
Steg Mat Eilon (1950, p14  
  
4 eh Eon 65, vraag 108  
  
  
  
Page 141:  
16  
  
“The last twenty word in this passage achieve & happy symhe-  
i pete the tt ron and he tt of neque  
  
In a Rajasthan case, i was eld—  
  
“When a person intends to commit a particular offence,  
‘and then he esnduets hinwelf in Sach 2 alae Whi cleat  
Indkates bis desire to Wanslate thst intestion iato action,  
find in parsuance of such an intention If he does something  
‘vic may help Bim’ to. accomplish that dei then i  
‘cam safety be bed that he commited an offence of attempt  
fo"commie'a "parucular offence. Minot necesary that  
the act which fills under the desnition ofan attempt should  
inal ccamstances be 4 pentimate set towards the cone  
act may Tal at any stage  
  
“in offence  
  
siewotte \_\_ $1. In Abhavanand’s cas? the Supreme Court summarised  
Spee Mews aout the comtracion Seon $11 of the Cote  
  
eshamiettient aes ae poe  
  
Ina ate case where a tek crying paddy was to  
ssid 3st be Bunab-DAN bound onthe pou that  
Fantom ofthe Punab Pasty (Export Control) Order,  
198ap the der wa prosrsted for a0 atompt to conteavene  
the Orier the Sopeme Court eld  
  
"On the facts found, there was no atempt on the part of  
the appellants to commit the offence export Twas mctely  
hpektratom on the part of the appellate and ay mater  
ffaw 1 preparation for commatuing an ofence 1s diferent  
Flom” anompt to commits The prepartion const  
In "aewsng ot “arranging. the means or” messures  
feceary for tbe commision of the ofence, On the other  
Aca attempt to commit the ofenc sa "aiect movernent  
tSrade te cmon ae repaint re, ma In  
‘idee that a person may be convited ofa temp to coment  
Stem Re us be shan ist to have had an satenuon to  
‘eimimit te fence, and secondly to have done an act which  
  
Tine w Posinal onl gers AER) Ra WP Toe  
Seiad Stee of Bar, (95D 28CR AT; ALR. 10) SC. 1%, 170%  
5 nr Sn Sv of ua, 199) SCR, 157 Rams 1.  
  
  
Page 142:  
a  
  
constiuss the cer seus of a cimina attempt, The sue  
{tency ofthe acs regis 2 question of law which had led to  
sie ste of the tty of dating tesosen  
act which are mer ory thecommasion of acre,  
nd Those whch are ney proximate to it to amount  
tolan anempt to comm Hf iman bays 2 box of aches  
he cnmot te coi of ateted aio, Rowse ear  
may be proved that he intended toate 0-4 hayack a  
the time of the purchase. Nor can be be convicted of this  
‘offence if he approsches the sick with the mulches inhi  
Bele, fu i hbende down mathe aca ight a match  
Which ‘he eatinguiber om perceiving thar he iy el  
Talched, he may be golly ofan srempf to bara fe, Sir James  
Seon: nh Dro Crimea Law, ark 5, is  
an stcmpt ts ollowsi—  
  
“an act done with intent 10 commit that crime, ad  
forming part of seas of act which would consuuts  
stssctul commision fi “were no iaterupted The  
Doin at which noch a series of ats bop cagnot be de  
  
fed. but pends upon the eeumstances of each pat  
  
The for dtmining what he tof he appa  
onsttted an attempt oc preparation is whether the over  
Sei aleady' Jone are such tha st the offender changes his  
Inind and doss wot proceed further in ls progress the Acts  
sleady one would be completely harmless. in the resent  
cue. is quite possible thatthe appellants may have besa  
‘watoed that they had no Heane to carry the paddy and they  
thay have changed the aad at any place beeen Saale  
Barrer and the Delh-Punjab boundary and not have proce.  
Sed further In their journey.”  
  
5,52. In some cases where the accuses objective is for one  
reason or another impossible of achievement te question aries  
‘abeter his act woul amount 10 a punuhable”atlempt. Two  
iigseatons ot such cases are appended to section ‘Sita both  
fof them, 1's stated, the person during the Tote acts gity of  
Stemping co commit the Tes intresting to note th na  
English ce! of 1854, x was held tat where A bud pat his hand  
imnmather's pocket Bt found nothing. A could not be concted  
oF altempted larceny. This was appitentiy on the notion that  
an attempt was established aly where, no interruption had  
{ken plac, the temp couls have bee carried Out succesfully  
‘but the “decsion was overruled in 1892?  
  
‘There are. however other types of impossibility where the  
question presents ditcaltes Thus if Aho ses an umbel  
Ape vn hand reais to sel i and takes it home only 1 fi  
{hat it's his ova ombrei, is he guy of am atom to steal?  
  
ree  
Shane  
  
2 Rng ai nd Jakes, (WD, 61 LIME, 16,  
  
  
Page 143:  
ne  
  
1 A. with the intention of poisouing 2, buys what he thinks  
Js arsenic ana pots im Zs fod, bats the eevee surpeting  
‘A deg sol him sugar, 2 is unarmed. {6A gully of aempt  
‘omucer?  
  
‘Awa. iC, with the intention of poisoning 2. gets the poison  
{not Knowing the lethal dose. ues & dose Which ft (00 wea  
‘anyone, ts A gully of an attempt to murder”  
  
ICA administer to shi shes pregnant  
toe'h’nat so in fet a dig wc i key to cate abort In  
pregnant woman. A pity of an atetp to csuse miscarage?  
  
Such cases, both real and hypothetical can be malipi ad  
a  
  
Defokon 5.53 We have had a close Jook at Some foreign criminal  
Slstere! codes mhich contain a delinsion of attempt A few of thee  
Ga Gefinitions which appear to ws to be instructive have been extrac  
{Sd and giver in the Annexare to th chapter for reference and  
omparivon. A. study of these precsdems has persuaded uh 19  
{hin if desirable and practicable to Set out in our Penal Code  
he sential elrments of tempts nthe form of a Sshmition i=  
ad of leaving the ica ently Inthe a  
  
Recom: 5.54 We tecoromend tat the last chapter ofthe Code Cor  
  
‘rendtion, ining section S11 be omited and, seed, 9 new chaps VB  
flied "Attempt" consisting of two sections 120C and 1200 be  
Inner ater chapter VA as follows:  
  
Penasren VB  
ATTEMPT  
120C.. Defniion of atemptA person attempts to commit  
an offence punisabts by this Code, when  
“G) he, wah the intention ot knowledge requisite for  
commiting does any act towards its commission"  
(b) the act 40 done is lovely connceted with, and prow  
mate 0. the commision of the offence;  
‘onl  
{) the act fils i its object because of facts not kaowa  
to iim of because of circumstances Beyond his contol  
Mbrations  
(a) Ay intending ta) marder Z, bays a gun and toads it  
A is not 9et put) of am attempt to commit murder. A  
{yes the win af 7 he spy ofan ato fo comm mr  
(8) A, intending to. marder 2 by povscn, purchaser po  
son nd mines the same with food which remains In ‘A'S  
Keeping; Ais tot Jet guity of am altsmpt to commit morder  
  
Tse Opeth Sate of Pah, Ai WOE SE TE  
  
  
Page 144:  
139  
  
A ples the food on Z's table, or delivers it to Z's servant to  
place ion Zs table. A is uly of an atempe to commit  
ue.  
  
(6) A, with intent fo steal another person's box, while  
luovlingin'a teat, takes aboxand pts Gown, He finds The  
‘box to Beis own.” As he has not done any act towards the  
Commission of the offence intended by him, e ie not gully  
‘ofan atempt tO commit the  
  
(4), A, with intent to seal jewels, breaks open Z's box.  
and fins hat there no jewel oi As Bs act fall in ts  
‘ject becale of facts not Known to him, he ily am  
:Mémpe to commit thet  
  
1200. Punishment for attompr:—Whoerer i guilty of an  
mit fo commit am ofleace ponishable by this Code  
  
cr mith snprisonment foe a apecied  
ct, sale where o express provision In made by thn Code  
‘or the porshiment of such atlempy, be punshed with impr  
sonment of any description provided fr the offence. fOr 8  
{etm which may extend to oneal of the imprisonment for  
Hie of, as the ease may be, one half of the longest term of  
Impewonment provided for that fence, or Mis suck Tne  
ts is provided for the once, oe With Bot  
  
3.35 Inview of this defition of atempt, which we fee  
could be apphed in relation to. murger and cslpable homie  
‘ot amounting to murder without any seus dehy. we Bo  
tot conider it necessary to Rave ferent formola to deine  
‘Rermpeto comme ciher ofthese offences Scions 307 hod  
508" tmay be rovned a flows  
“307. Atenp 1 mrder:—Whoever attempts to commit mur  
er shal be ponthed with igoroun  
tray enend to ten yea and  
{Phun is caused to any porno by sich ac, the oflender may  
(@) iC under sentence of imprisonment for lie, be panish-  
cd ih deuth: ane \*  
  
or 2 8 OBE cme, pte with imprisonment  
  
MK Avempt to comnt culpable omicide:—Whocser attempts  
‘0 commit eulpibe homicige hot amounting to murder shal be  
nied Wish tmprsonment of eter desertion fr aterm which  
Fray extend tothe Jars. or with fine, or wth Doth: and shut  
‘cated to any person by such act. shal be pumtshed wth inp  
Sontment of ether descnpton for 8 tem which may extend 10  
Seven yeurs, of ith fine oF with bth  
  
Mastroion  
  
Aon grave and sudden provecation, fires pistol at Z, under  
such rcumsanccs that ifs thereby caused death he wuld be  
Bully of culpable homicide aot amounting tor murdces A has  
ESimmited the fence fined im thir sexton.  
  
Ameen  
Pa  
  
  
Page 145:  
Chneren 6  
OFFENCES AGAINST THE STATE  
  
snes whieh te sakes of oe Code Shoup oe in  
ONES been te  
rh dant fe etae cas  
  
Pentti late ook te Cte ba abate coma  
  
16.2. Thetis of his chapter—Offences agains the State—does  
not appear to be a particlatly apt description of the dozen aflene  
‘er Drought together within sts compose The fest five sections  
‘Seal with what ray be called acts of high teason—waging War  
‘gaint the Government of India, conspving to wage war, pre  
paralion Yo wage war, misprison of such aes and. over  
[Bveing the Goveroment or the Head of State by force. Nest we  
Inve S schon punishing One aspect of sedition, ‘Then. tee  
‘tions sim at preserving Friendly relations wn foreign States  
by porishing those who atlempt to prejdice those relations by  
‘Ummarranted. aggressive ation. The fast three sections oF the  
‘hope mich fee fae of ar and sate pines  
Ste nt of much practical importance duting peace time, expec  
  
‘ly since the category reered to as “State pesonets™ urine the  
Bish rime no tonger exis, Raving sven place, the lst  
ignited sppetiation of “persons under prevenuve detention”  
  
46.3, This chapter is thus by no means a comprebensive, oF  
‘even adequate, codteation of teacan, sedition and ther Kine  
‘Ged offences ages the secuiy aod integrity of the Union of  
‘ita ad ofthe States comprising the Union, This wade fel  
however is covered to tome extent by a mimber of other Cent  
‘Aoi of which we may Brey notice the flloweg:—  
  
(9 The, Foam, Recrwlinent Act. 174 This Act  
empowers the Cental Government £0: prohibit of cont  
the ferment in Tadia of persons for the service of any  
Forclgn Sate m any capaci, whether civil ce military. The  
Briash statote ented the Foreign Enlistment Act.” 1870,  
‘in fore Inthe Dominon of Toa. ined:  
{ely before the commencement ofthe Consutution, = perhaps  
more relevant from this pout of view. It prohibits Bath  
v0  
  
  
  
Page 146:  
ut  
  
subjgts from easing in the mitary or naval service of any  
Foreign Staeat war with aforegn Slate at peace wth Bia,  
A'taw on these tines applying in relation to “India and  
Indian crizens isan Obvous desdeatur,  
  
i) Te Indian Criminal Law Amendment Act, 1908,  
‘as elated provided in one pat Yor the moce speedy tal of  
fencing ole ins nd pat et  
Tec suppression of snociadons dangerous tothe publ pete  
‘The RIN pare of the Act was repel in 1922. Under the  
fecond pat which isn fore, s0eb penons 36 are mem  
bess orla any way eat, an association which encourages  
for aks the commission of acs of wslence or itimdaton,  
‘oF of which the members habitually commit such act, are  
‘ad Table fo pansion." severe pnshmet pve  
  
foe persons managing of, prometi sociation  
‘Whete te Ste Goverment d&lares such an assonation {0  
be unlaeful, persons maintaining tir connection with the  
Dbocton av fable (o punishment.  
  
i) The Offa Secrets Act, 1923., Based on the Ene  
isn Acta 1911 and 192390 the Same subject, his At Eo  
ties the chet lepat weapon for fighting espionage in this  
County Tks, however not eoufned to esponage in the  
Stoct sense: i” prohibits a number of otber acts prejadicil  
tae pob aay which “oui be broadly deebed a  
spbbtage  
  
(0) The Criminal Law Amendment Act, 1938, punishes  
a pion uo, th tee et ae he Ferment  
  
persons toierve in the armed forces of the Union, wilfully  
‘issues persons from enterag any such force, of inigaes  
Fersontoenter an armed force and then cooymnt acts of mutiny  
Und insubordieation from within. Prima fate. ths strange  
forward penal prowsion would appeat sucable for inclusion  
Invchapieh? of the Code av an offence relating to the "atmed  
forces of the Union.  
  
(9) The Crimioal Law Amendment Act, 1961, makes it  
ng the  
  
(0 The Unlove, revenin) Act, 1967,  
ia an important pace of legiation dealing with teaione  
Sat affecting the tecritorial Integrity and oviolsbiliy of the  
country. Any acitaty which i tended £9 disrupt the teri  
{onal iieprtyof Todi, 33 to being aboot the cesion ofa part  
‘of the tert) of India ofthe secesion of part irom the  
Uolon i decared by the Act to be “wnlamfule and punish  
fments are peowded for indivdushs and associations. Who  
Indulge im sch activities.  
  
  
  
Page 147:  
onside,  
ooo  
seas  
telaken  
Seow  
  
we  
  
5,4. We notice that treason, sedition and cognate offences  
wish may be clase as offences agninet the security of the  
sate, are deat with in foreign codes in mich pester det than  
in our Penal Code. In partela, iis noucesble that  
sod teasonable activities are spelt out elaborately. and not hinie  
{ed {0 waging var against the Government and atsoltig Te  
Ine of tate On a preliminary study ofthe problem, we hive  
‘ome tothe conctasion tha the sengthening. consolation aud  
Fession of thi important branch of the ciinal lw should be  
taken Up asa wepnate projet and tadied in depth. We. shall  
sccordialy confine ourselves inthe present rewison ofthe Penal  
aie, o-an examination of the provisions of Chapter 6 they  
  
6.5. In thet History of English Law, Pollock and Malthind\*  
  
8 observe that “treason sa crime which hae a Yagoeefcamference  
  
‘tnd more than one cette” ‘This strated by the fst atempt  
‘ois deiniuon tn the Statate of Treason! ubich was enacted in  
1352 to remove doobis about the meaning of the term, but which  
‘merely sted seven alleen sevice 8 teason, namely  
  
(2) 0 compnss or imagine the death of the King. hit  
‘Queta of eldest sons  
  
{o violate the King’ wis, ot his eldest wnmarcied  
dauphin oc his edet san Si  
  
(©) tolevy war against the King in is resin;  
  
(4) to be adherent to the King’s enemies io bis realm,  
siving them aid aod comfert inthe feabm or sewers  
  
(5) to counterfeit the King’s great or privy veal, or his  
mone:  
  
(6) t0 bring fake money into the realm; and  
  
0) slay the chanedloe or treasurer oe jee, being  
in thee places, doing their ofees.  
  
“To ws atthe present Ay, there would not seem to be much  
inet omit Cewen hs Ht aap ro em 9  
tnd 4ovying\_ wat apo the King in his eal and adhering  
{S'te Kings coomis She other ete mould ary bere  
seen at ot ana Maran eft the a in  
Hens as consioting the development of shew paiial ied,  
“Treason has been becoming a cram agalnst the sae the supreme  
‘ine against the sat nthe levying of war gaint i Argh,  
fr duty of sng agaist the Kine tna compelling him w do jus:  
tes ano onger be preached inthe name of fw: and thief  
well" This was writen in 1895, but W continues to be val  
Today, substituting “goveramen for"King in regard 10 demo  
craic resimes  
  
Weld, Hisoey of Eagiak Law (968) Vou 2 pase 502  
Sate 5 Cap. 2  
  
Rollo and Matas, Misory of Eng Law (195) Val 2 page 03  
  
  
Page 148:  
us  
  
46.6, Section 121. preeibes the same ponent, namely  
<eath or imps ment Tor efor the principal efence of wap ne  
Star against the Government of India and for abcting that lence  
‘oc alemptng to commu that offence. "The Sion does Bo Fe-  
‘Quite any change  
  
6.7.1 is curious thar wile waging war, against Indias  
call ith fall ospectsn sechoms Hh 123n0 mention i  
nade ofthe other important aspact of teason, viz, "adhering  
{oie King’s enemien pring thin anand comfort” Abetwent  
‘oF Waging war Which f& punsshable under secon i21/may not  
overall cases of such adherence. Inthe. Unted Sater, the  
‘ee of tenon bined the following terms:  
"Whoever. owing allegiance to the Unied States, eves  
var agate thom, of wheres to tee enemies ging. them  
3 od ome win the Unwed Sats or cewhee,  
{iy oF Hremon ete  
  
Although this enacimene (or r-enaciment) is quite recent. it  
fepvodonos the cater arehale words? of the Enghth Statue of  
‘Teaton. ‘The Canadian Criminal Code gives eapesion to the  
Same idea in mote precio and modern terms which we could  
‘Sel-adopt. "We piopose thats New Section may be added aller  
section 123 reading a folos-—  
  
123A, Assisting foia’s enemies —Whoever ass in  
any manner on enemy at ar wth India, or the seed force  
‘of any country apumst whom the armed forces of India ate  
‘engaged in hosilities whether or not a State of war exts  
between that county and Inds, hall be. ponihed wath  
rigorous imprisonmest fora term which may’ extend to ten  
‘esc, and shall also be Hable to hie,"  
  
6.8. Section 121A punishes two diferent kinds of conspiracy  
“Tae ist tea consuracy to wage mat against the. Government  
‘finda, and the second isa conspiracy to overawe by fore the  
Sata Seen fay Ste Coxe Se fa  
‘Gon 1208 as proposed to be revised by wr there I hardy any  
tec fora separate section to deal withthe fist ind of coma,  
  
cy. iC any such comsproy actly ests ithe WaBseg Of  
aati Government FInd ocx am ate owas  
{ch ar. th: conspirator wil be punishable with death or fpr  
‘omment for hfe wndet section 131 ead with sction 1908, Sn  
st the conspiezy is infractuous, they wil be punshalble with Pal  
{he longest term of inyprnonment eouded forthe offence th  
isten ears which should be sulle  
  
ws Codec vented opis dy  
fs  
  
‘Sesiea 124  
  
fedonre  
  
Aries 10MIN) anda) of the Conair “aegis o adbcece  
  
ee section 46, tae  
5. See praragh 539 above  
  
  
Page 149:  
Perron  
  
is  
  
1 is dial to see what purpose is served at present by the  
wouds “within ox without India" which appear atthe ecient  
oF the section.” When ic wes enacted in TA70. the externas  
applcalion of the Code as hited offences commited by  
{Government servants in the triton of any Todian Sates By  
relerag to conspiracies entered mts, “eiheet Be  
the “seston "way apparenty intended "cover  
5 and not foreigners. “Even where a situ cream 8 ee  
fal offence is cleat expressed. so a5 to cover acts commited  
ais the Jordon wil the Sen of ater cee  
‘rovision ony be regarded as covering such Acs when commatted  
Ex'Brvsh vbjecn “in view of etry Tend oF Cea  
8 they stand at present, Wi fat clear that scion 1STA com,  
‘ot apply othe acts of foreigners commited outside Indi. We  
consider the words "within of without Tada” are ofa praca  
ensequence or sgnifcance and should be matied  
  
{As regards the second kind of conspiracy, we think it desi  
rable to extend the iden to overawe by criminal force or by show  
oF criminal force, the Paliament of nda or the Teplatune of  
‘ay Sate in addition to overaweing the Cental Gowenment ot  
any Slate Government. At pesent, the Sward of simple iyi  
Sonment i perisible under the section, which in view oF the  
rally ofthe offence i not appropriate” should be rigorous  
Imprisonment in all cases.  
  
so NSS propose tat seston 121A may be reve ae  
  
SIDIA, Conplaey to ovroue the Prkamont or Gover  
‘ent of Ita othe Lepsiture or Govenien of ay Sat  
‘Whoo compuesto ream, by mean foto show of  
force, the Parlameot or Goverument of Init ofthe Leg  
lat o- Goneroment fan ‘Sat sal be parted th  
imprisonment fore ot with ngorous impeizoument (or 2  
term which may extend ten jar and al abo be Habe  
  
Explanation: —To constitute & conspiracy under this sec.  
tion, its not necessary that any act or legal omssion shal  
{RE place pursuance hero  
  
Sif hn 1 he cw dcibedin scton 12  
[vould be los to rig iter ths thee sections Sealing wit  
  
staging war avd he propoted ew section about assting Hela  
  
Crumes aed to number I 125.  
  
To ave for he wt wala 46 opm eed”  
  
2 Per Lard Mars Tras, BP Pa 971) TAMER. Ho a te  
  
  
Page 150:  
45  
  
6.9. 1 has been suggested by a public prosecutor that a Sesion  
spscing reference to noclee weapons, Besides arms and amsmunie F=-d  
  
‘om, should be made sy secuon 122, and alo that transport of  
fem, arm, etc. should be mentioned, Besides collecting them.  
‘We have, however, no dows that the words “otherwse prepares  
10 age eae” re wide enough to cover oth ideas and there 1  
fo need fo ampliy the section as suggested orm any other Wa.  
  
The only change we propose in sections 122 and 123 is to  
replace “imprisonment of eter deteription’ by “rigorous imps  
‘SSmcac’"" Here again, for 2 grave ofence alectng the security  
She tats impsonment hardly sn appropiate ph  
  
6.10, We considered a suggestion thal the scope of section Sen 1  
124" now applicable nly inrebtion (othe President of na and ‘eco #82  
the Governors of State should be widened to cover certain other 2 ct  
igh aigunaries ie esting offcers of lepative bodies and Sait the  
Chit Husices,” We egroe that, a8 symbolic heads of the ily obs  
STrtse poset dhe use of force against ther withthe intention  
Stcompaling them t ct oF otto ac ay should  
Sevrearded asa treavonuble act, ad  
  
lo tepars to the substance of the offence. it does not seem  
sscemary to cover expreay attempts to retrain wrongtaly and  
‘ttempes to overawe By Taye These may be ft (o be governed  
fiy‘the general provision for attempts.” The section may accor  
Singls be reviled 26 follows  
"24 wanting Presiden ct with iment to compe!  
ocrestran he exsroe of onylaefl power —{I) Wows, with  
the intention of inducing oe competing any ofe-holier to  
‘som ths ection plies, 10 ectese OF  
Wf pomers, asa. oF  
the  
  
(@) The ofce-holders 10 whom this section applies ae:—  
4) the President of India;  
i the Vice-President of ‘dia;  
(iy the Chief Sustise of India;  
1s) the Speater of the House of the People  
() the Governor of any State:  
(Gi the Chit Sosice of any High Court:  
(Gi the Speaker of the Legittive Assembly of any  
State and  
1 Bie ne sgn ID popes paca 338 Bove  
  
  
Page 151:  
16  
  
(i the Cain of the Legnave Council of any  
  
Seton. 6.11, Section 124A defines the clfence of sedition. Despite  
in Hl  
  
(evoke in one's mind, i 3 provision whic hs to hed apace  
in the Penal Code. AS observed by Sioha Coin Kel Nath:  
Cia every Sine, teers orm of Govetamen has to be  
‘fed wi ihe power to punish tore vino ty ther consece  
  
se the cet and sabity ofthe State, of dossnnals  
EGR Teeings of daly a have the endeney Uo ead otis  
ESrupion ‘ef the Stale ot to public disorder  
  
Urn. 612 ly England, te sme as decbed by Farad  
im the following terms: »  
  
“Sot cmt in cy ty ed mat  
acs ae hn i eo les  
siege se orem icra ae  
‘iin ee apap we  
siya ltt ge ons dee  
Sac es a ah a  
  
Stephen defined the offence more cotely as fllows!:—  
  
“Selon mabe eed conn whieh is, ier  
Bly of doiacuon mt he Coverite wih tee  
Engorder osc” The elie condc cay by eae  
S/Seed oberg. Fe apes heads of con may  
mere acorn (0 the’ cbt te seus INS  
ye She  
{0.1 dation aun he King Gove  
Simran ate  
(to promt ulate mean,  
in Church of State, »  
1) 10 te» tance of the pence:  
(3) rae content among the Kings sbi:  
(5) 10 ete cam hae,  
  
3 Abi to he Jury a Rep AME. Sion, (168  
  
8. Sksn, Conant ote Las f Egan (1901 Ve AV, 9. 2  
  
  
Page 152:  
ur  
  
fe mnt be observed that cam on political mat  
ters B apt ofall sedisous. The test the manner in  
SRR Tee nade. Candid and ropest discussion is  
ipormmued, The law only suerferes when the scsshon  
aerrehe bounds of air efitcem. More especialy  
this be ae cng when the natural consequence of the  
Jrhoner's conducts to promote public disorder.”  
  
6.1, 1 ill be notoa that she deft of sedition in se  
sion” 1518'S 'much nosower than Slept’ definition. “1  
iad to eating dsafection towards tbe Goveramentexablit  
oI'by law nichts ony put of the fest sem ta Stephen  
SEs Exctmeg dieecuion towards the Consitution or  
Feieimewc or tne admimtranon of justice ig not considered &  
Peitione esly in Indi On the other hand, while promotion  
Epub disorder in some form or her i considered an essential  
SU (ob ccdluoos conduct ia England ths dea i 04 BRE  
Sen the wording of section 124A.  
  
6.4 tthe clea cae of Bol Ganpadar Tilak Strachey  
4 of the Bombay High Court said:—  
  
1am awate that some distinguished persons bave thought  
fat here can ben offence apart the setion ues the 26  
(eeu tbr counselor suggets ebelion or freible resistance  
Ae Gotemmenc ta my opinion. this ww 5 absolutely  
eG tthe exqrew worn of the section itlf which, 2»  
Sibson posible makes exerting or atempling 10 excie  
ifaly ang, and motte inducing or aemptng vo reduce  
Cea set secon Such a febson or oreBle FesbtaNSe,  
the teat of ui  
  
But is Aiiovends Bur? Guyer, CJ. of the Federat Cour, te  
Peke’mats ow English ahontcy, ook the view that “publi  
HAMEL Re feasomsble ailpation oF hikelibood of pubis  
SERIE Rpt the fence. The actor words complaned  
SPORE ES five to'uorder or must be. Such, as te saisty  
Sladoeabie ea that it Ie their ingention or tendency” Ths  
Trctation, however, aid noc hold the fk for Tong. in  
‘Sunn Sages ® the Pray’ Cooma expresty overruled it Oy  
She hn sue tyr ke a  
Sor the anaage Sache aac eteeme Cer  
Swe sew onthe Pome  
  
2. (09) 22 Bom. 1.”  
© Minne Drs 60D PCRS  
  
Insan 6  
Tre  
  
daeceencee inion Btean, 5H) LA SETA 1 ALR. 19 RCH  
  
  
Page 153:  
us  
  
utes, 6S. After the Consttuion came into operation. the more  
SEES fundamental quesion, iz, the constttonality of section [294  
Fok tac wa aa fe cae ending co  
Sgn de oF decsions inthe High Cours, Te sas finaly resolved  
  
by the Supreme Court in Kedor Nav Singh? in the ola ne  
  
“In sew of the confictng decisions ofthe Feral Court  
and of the Pry Counel referred fo above we hae fo deter  
‘mine whether and how far the rvouisons af sctions 124A  
ad 308 of the Indian Penal Cade have to be track down  
ay unconstitutional If we accept the ierpretation of the  
Fedest Court svt the ga of romlauiye ina aleped crime  
‘of sedition. namely. incitement to diotder tr tendency OF  
Tiktiiood of "public. dherder\_or reasonsbic apprehension  
‘reo the section may he within the amt of permasible  
lepsintve restctions on the fondarmentl ight ot freon:  
peach und. expresion. I othe other hand, = Were  
to hold tha even without any tendency to disorder or iaten-  
tone ratedatrbane fl ad rer he wi of words  
‘waten or spoken wach mecely create OKaMection or feinge  
Df enmity against the Governimcnt. the ofence of  
R completo soch interpretation. of The  
\woold mate them uneomsituional in view of Artic!  
()ecad with ue it setie tht if seria poe  
Visions of aw onal 1 would make them cons.  
{ent withthe Cone Tiiespetation woul  
ender them vsconsti weal ean in favour  
‘of the former construction. "The provisions ofthe section  
‘ead aga whole: along Wath the explanations. Make Tes  
Sonably clear thatthe seeions sim st rendering ponsl ony  
hich activiien ae would be tniended, or haves’ tendenc.  
{o create disorder oe disturbance of pubic peace by tvont  
{6 Molerce. nx. N-only when the worth. writen oF  
spoken. ec, which have the peemciows tendency of fteation  
(of creating public dnorder or dsturtance of law and order  
that the aw eps gto prevent such actives fn the Interest  
fof public onde” Se construed, the section in our opinion,  
Stetes the corect lange between sods idoat fundamental  
Fights and the interest af pubic or  
  
As eegards ssition $05 of the Code the consttuionsity of  
which aso as challenged. the Court hel inthe same jment  
  
is manifest that each one ofthe consttvent clemonts  
‘of the offence under section 30 has teleence (0, and st  
Effect on. the sur of the Sua or publ order. Hence  
hese provisions would not eigeed the bounds of reason ic  
Festctions onthe righ of leedom of speech and expression,  
  
1 Red Ni Sy Site of Bios SER CRD Sap pA  
  
  
Page 154:  
1  
  
1 shouid be memtionad ore that whom this decision  
ssc, vate 12) oF the Consation ai not oman a eeerence  
athe sor.tezmy and “terry of tada phrase wh  
  
Social ier y the Corton Sens AMEN  
trong) Act Ot 184  
  
(16. tm siew of the contronerty which Sas ragod round see  
tion 124"Yor a'Thn time, hs ely ne sary to tense te  
Femultton ofthe ofance sa 19 make a patetlyreavonable  
Fstneton under afuele 192). The clemests mentioned mn thie  
facie nbich sre mesant to the oflence of sedition are mtr  
OF India sury of the State en pubhe erder” The secon  
‘oe heen ford to be defective beans" permcions tense  
fe imenton” underving ih seiows rot beh  
‘Sores plac tothe tleress of nt  
  
fr of pablie order, We fel thal this.  
Fy enfrewing the mens ea ae "intending OF koowing to Be  
isi to andangsr ve inary or sevurty of tad of any  
Stue oF io cause pubic disorder,  
  
17. Amoer defect we hae andy sticed. nthe defi  
sind af align a at. dec 6 ks fo moun da feoy  
  
ra he Conan ee, Cae rd) the  
  
lif pices al of whch aah fe on at  
  
Sy of te sic as dnafectonfowar te ena  
Governmant Thee aspect ngs emphasing  
‘Eilon citer Cos nee ena seoon SUA shoud BE  
Fest to ake them in  
  
6.18, The punishment provided for the offence is very of  
11 could be imprisonment of life or aie, imprisonment upto  
these years ony. But nothing in hetwecn.” The. Legare  
‘Should! we tuk’ gue o firmer indkcavon to she Cowete of the  
Baily OF dhe oilenee by fixing. the maximum punsimen. at  
Sita’ seun sgorous impetscmment ard Ae  
  
6.19, We peopose that the section be revised as fllons:—  
  
either spoken  
‘or written oF by sigs, OF by vibe represcnation. of eer  
‘wie oF atempis 4 excite, dhafection towards the  
Comation, ot the Coseenmen oe Parlument of toda,  
‘rite Governor logisative of any State, os adnan  
Maton of uate, by lw cuabined,  
dntendng or knowing fp be ly tery fo endanger  
  
pubs doc, m i  
  
shall be punished with igorowsimpisonment fay erm  
shim eNtend vn ear and hal abo Beals to  
  
Bieter  
‘sar he  
  
ma hoor  
  
  
  
Page 155:  
180  
  
rctonaion 1 The expression “ulsaection™ inctades fel  
Jingo enmity Hueed oF contemp  
  
Explonarion 2: Comments exposing cisapreobation of the  
protiont ofthe Comsnaton. oF of the atone ofthe Govern  
‘ont, or of the measures of Parliament or a State Leyislaure  
  
ss forthe admiration of jie. with 3 vw  
  
pang toe  
Sndertis seen.  
  
620. The Code showld, ve thisk, contain a provision for  
pootshing ule t0 the back of the Coastituuon. the national  
fa, the arvonal emblem and the national air, Burnin  
  
Leite competence of Parliament in the eaters is deri-  
sable fom the ety relating terminal law inthe Concurrent  
Ust‘and from the eeidary eeey ia the Union List I could  
fardly be sad thst such a provnion curls the (Feedom of 3  
ession unreasonably. and the rection Would be Cleat) 10  
fhe meres of public order  
  
[fier a iy of the Madras Act! on the subject and the  
ostlas thereon. sid of the laws of a few other countries. we  
{ie come'to the concianon that a simple provision on the sab-  
Jat would sulle. Wie mot necewary that the elfensive act  
‘foul be done tna public place. We recommend that anes  
‘SSouon be inwrted ater section J24A, 25 follows —  
  
"1248, Int 10 the book of the Conision.netgnal  
‘fase, atonal elem or national them “Whoever del  
Catia insults the book ofthe Comstition, the national  
Mag, the national emblem os the national anthem, by Bcning  
‘Sescruion or othereise, shall be ponished with peso  
Ince of euher description for a term wed Way eMtend Up  
{three jen, oF with Ras or with both  
  
4621, Section 125 makes it an offence fo wage war agains  
the Government Of any Avatie Power in alliance Of al peice  
Sin the Government of Toda. The reezence to" Asatic Power”  
shnow meanngie, and te wordy aan or renew  
Sac” Mwoukd he stint to flee tothe Government of any  
Foreign Stave 9 peace wth Tada.  
  
‘The punishment of ie imprisoament for she offence is wn  
aly severe othe other hand iene the offence fs commited  
{heoffender ough not to be lec off witha Roe a» now provided  
  
  
  
Page 156:  
13h  
  
tho section. We propose that the punishment should be  
ingore of ether dsripon nt electing Ye Year amd  
  
“The tection may uecordingly be revised as follows  
  
“125. Waging war epans any fries sae or peace  
seh In Whocyee wage. wat" ngumat the Goverment  
Siow Tosgn Sts pese with Inia or tempo mage,  
Seba of ete apn of uch sa ped  
‘on impesonment of ether deseipion for aterm which may  
‘Nico near, and shall be hale to He  
  
622. The only change required in section 126 is 0 substi  
1 forthe words “uny Power in alance or at peace with the  
‘Government of Yndia” the words "any foreign State at peace  
Soin”  
  
{62% Section 127 needs no change.  
  
6.24 () The seference to "State prisoners” in scetion 128  
aad the Sno sdcoesingsactions isa relic ofthe past. Since the  
‘tie Paioners Regulations of the three Presidences made cay  
tthe last century have Been fepeaed im 1982 the reference  
Shou ‘be Omitted from these secon.  
  
(ii) As seeatde prisoners of war escaping from custody, the  
ranithent of imprisonment fore provided in sections 125  
S130 wanecetury and ay be deleted. Imprisonment p>  
io ten years and fine fh adequate for both these ofenes.  
  
In ection 130. the word “harbours” bas tbe read  
te lpn ofthe explanation given, in section S2A, withthe result  
hit where the harbour given by the me or husband. of the  
(eiton harboured. it wil sor inelage tho "sopping. thar  
fersom with shefer food. deak te. 1 i ical (0 See What elie  
Seharouring'in such 2 case will mean. It the wife of an  
‘saped prisoner of war may be punished ander the fection for  
“SGnecalig him, there m0 good eason wy she need not be por  
Stshed fof “harbosring" him. sn ‘ehalever emee we understand  
fhattem, We do Not. thet propose any special explana:  
{fon im ection. 139 Tor the word “harbours”  
  
Section 125,  
  
Seon  
iSite  
  
  
Page 157:  
Corsa  
Reet  
  
Carrer 7  
  
OFFENCES RELATING TO THE ARMY, NAVY AND.  
AIR FORCE.  
  
“The correlation between the offences punishable wader this  
‘hoes and the offences punishable by court mart unger the  
‘Remy Aen, 195) eas Tohows:—  
  
Sections 131 and 132 of the Code punish abeiment  
of mutiny and aliempe to seduce defence sevice personne!  
from dy. My ncling any endeavour 1 see  
‘uch personnel from duty, fa capil offence under Section  
SP ofthe Army Act  
  
(5) Setons 13 and 14 ofthe Code pith sbtmen  
cof wsault by any dence service personel on any superior  
‘fice. Such assout punishable under secuon 40 Of the  
‘Army Act with imprsorment Up to T# year  
  
{ii) Sections 138 and 136 ofthe Code punish abetment  
of desertion and knowingly harbouring a dexter. Des  
ingvand wid deserters ate puma i the ease of amy  
Tesomel ender section 38 of the Army Act with iprsone  
sent up 07 Jean  
  
() Section 138 of the Code punishes abciment of 29  
act of insubordination bya defence serie pesonoel. Such  
Snsubordination is punishable Under section 32 of te Army  
‘Act wh seven years impntonment.  
  
7.2, Ke wil be noticed that chapter 7 of he Code isa preset  
applicable only in reason to Army, Naty and. alr Fase pore  
SEnne. "The explaation (0, secon IST exprely” mentors  
Fersong set to the Ary Act 1980, the Ion Navy (Dest  
Pig) Ac Ye and ei once Act, "rs er.  
{othe corresponding Brink Acs which afe no. longer ier  
ithe ea Fel oer aed cso he Gon resin  
fy spel Taw. Nb necssary that this chapter should apply  
1m edotion toll armed Tores of the Union, We terry  
  
  
  
Page 158:  
13  
  
propose that she Heading of the chapter be changed to “Orfences  
Fettng to the Atal Forests and thatthe expressions armed  
forces Softer und member” be comprehensively defined tn a  
how scion a folios =  
  
130A, Defourons In this Chapter.  
  
cd foyces” means the miliary, saval and  
clades any other armed ovees of the  
  
(0), “oer” means a person commissioned, pazet-  
ted Grin pay as am oficer ‘of any of the armed frees,  
Shu cludes a jomor commbsioned Ofte, warant  
‘ficer a pouty fer anda non-commessioned Ofer,  
  
(6 “member” means a periom in any ofthe armed  
fovess ther than an Beer  
  
2.3. While section 131 mates atelment of mutiny punishable  
with nmpesonment for hfe oF wih sprsonment of ether dese  
{iphon upto ten sears section 132 makes toch abetmest.  
funy be commniued in sonsguenve ofthat abetmert, pu  
Rei Short impesoament ie imtonent  
‘SFeither deserpion up to ten years. It would theretore appear  
at Secon 11 apis 4 ces wher muy pol emt  
In consequence ofthe abemert. Secon TS} algo wakes any  
aMlcmpt to seduce’ any defence serve personnel [rom Mis  
aieglnce ‘or duty punishable with imprioement for fe or m=  
Frvoment upto ten year fn cses where mutiny isnot Come  
ited te comequence othe abetment oF where Wis only an  
tempt to seduor defence serace personne, the punishment  
Srimprisonment for ite appears tobe unduly heayy. On the  
‘ther hands be es n0 joteaton for a sentece of imprison  
Inet under either action being simple. We propose that the  
Tho sattone may be feved as follows  
  
“Mh, Aberment of muatny-—Whoeret abst the commie  
ting of mutiny ‘by an ofieer or Member of any ef the  
Srmed frees sall-=  
  
(2) if musing be committed in consequence of such  
Jpetment, be punished with death oF tmprivenment For  
eon ehh sigoroes imprisonment foF 3 erm which may  
Extend 10 fourteen sear, ad shall also e fale to fine  
ana  
  
(8) in any other ease, Be punished with rigorous  
Jmpasonment or term which may extend to ten sea,  
Spd shal aso be babe to ie  
  
1. Gren Sot Um Ent  
  
i  
  
  
  
Page 159:  
sor,  
  
1s  
  
132. Antempring 10 seduce an oficer or member of the  
armed forces fom Iie dap Whooever ater to seduce  
Sing offer or member of any of the afmed forces from his  
lcguncs or he duty shall be punished with porous impri-  
Sbooment for u term which may etend to ten years and. shall  
ahtbe babe 10 ne  
  
74, Bovh sestons 133 snd 134 deal with ateument of aesaelt  
by defence service perenne! “on any supenor oficet bein  
‘Mahe stecuton of hip ofc, ihe former ssetion presumably pro:  
  
{ine fay case were soc assault sant commited in purseance  
OFIMS atetment andthe later for cases where the asus 50  
Shmmited. To make ths point clear i seems durable to  
  
ome nd ovis the to fectons as follows =  
  
da of et afi  
  
(a) if such assault be committed in consequence  
‘of that belment, he punished with imprisonment oF  
Slee description for ferm which may extend fo sve  
Sears and shall ao be Table To fine, and  
  
() in any other case. be punished with imprison  
ment of eather desripion for ier which may’ extend  
{Ditto pears. and all ako be able to ae  
  
7.5, Diflering from the previous sections section 138 does  
ot sings etweon cases wheze the abeiment of desertion  
‘geal andere uncnlicereae the  
‘hanimum poanhrent prescribed ia section 135 i impesoninent  
either Jocrption foc two years Under section 38 of the  
‘Remy Acta the copresponding sections of che Navy and A  
Force Acts deserson wie om ative service s punishable wt  
fetth, amin eier cane ih even years inprxonment. "We  
SSnstér theyefoce that the punishient under section 135 of the  
Eesha bs mcreused 16 five Jars im caves where desertion  
‘GRE place im comeguence of the sbetment. "The section may  
bbe rvaed a Follows  
  
S135. Abctment of desertion trom the orved, fonees—  
‘Whocrerabets the desertion of any oficer or member of any  
br the semod frees shal  
  
a) if the desertion be commited in comegeence  
cof sith stetment, be punisbed vith amprscnment of  
Shier detrprion fora arm which may ‘extend t0 five  
ears or ith fine, with both: and  
  
(in any other ease, be punished with imprison  
rent of eter deseription for a term which may extend  
{iniwo dearer wih Bie, with both  
  
  
  
Page 160:  
tim the arma forces tequires ony a formal amendment. 1  
‘nay Soamended to #ead as follows:  
  
bs ponished with inprtonment of ether description  
Tora ferm which may extend to 8v0 years oF  
‘shh both  
  
Esvenion.~-This provision does not extend to the case  
fn which the harbour given by a wife 0 er husband.”  
  
72. Secion 137 makes the master or person in charge of 2  
‘merchant veal om board of which any deserter K concealed.  
ble to pera” ou exceeding ive hundred apes. even  
‘thon he ignorant of sch concealment. fhe might Fave Kaos  
‘rth conecalment but for some neglect OF Guly on Nik pt  
it cons that ise gecion ses the ord "penalty" ines’ of  
the usual word ine" The object presumably fo debar the  
Cour convicting the offender ffom inbponing. any sentence. Of  
imprisonment i default of payment of the penalty". How  
‘Nar tht may be the section Goer mot appear tobe of any conse  
Soence, ud we Suggest that may be omted  
  
11S, Secon 138 deals with abetment of an act of insabord  
‘ation bya offeror member of the armed forces. but only  
‘Tie’ set of tsubordintton 5 cometted in consequence of the  
  
The nection shovld also provide for cases where  
‘or imubordingtion not comfnited ia Comequence of  
1 abetment Cionidring that am act of insubordination  
Pronshable. with sevon years imprisonment under section 42  
ithe Army Act (and if such insubordination consists in disobe-  
hence of superior offer, punishable with (ouricen Years inc  
Feisoament. the punishment provided in secuon 138. appears  
‘Selon. it should, te think: be mnereated to two jeans when  
the abetmewt ve roccevsal an to ik months when not It  
my be news o Tollowe  
  
138, Ahemen! of am aet of inordinaion— Whoever  
ets hat he knows to bea at of insubordination by  
Sin oMese oF memoe Of any ofthe armed forces, shall  
  
(2) if s9ch at of insabordinaion be commited  
in consequence of that atetmeat. be pushed with  
fmpsonment.of ether description foe term which  
Indy extend tof Year, oF wilh ie, e¢ with Both: an  
  
(8) 9 any other case, be parishes with imprison.  
ment of either excripton fora term sehich may extend  
(ota noms. or wh fines or ith Both  
  
Sexiog 7  
Sram  
  
Seon  
  
  
Page 161:  
Bos  
  
1 en ower  
  
156  
  
2.9, We notice that an important ence relating 1 she  
armed force which cou approprately ne. been nada  
inhi Chapice hor buen a Song wiht certain Ges, nots  
lowly connesied. matte tn secon SOI} af the Coc  
pulsating or cxculating a sates roto tpt  
fo cate the armed ores mutiny or sthernne  
day more germane fora Chap am 9 Chop?  
“eth mscelncove things ike sma) tmdaton  
insll'and ansoyance. Wer therefore. opine oad ere  
tow secon TMA flower  
  
13KA, Iniemen 19 tins of ther act of inert:  
susan. Whoever "makes ‘ot publishes or ieulaes any  
Statement, rumour oF report, with intent 10 cate or which  
is kelv'o caus. any cilcer or member of ny of the armed  
Toes 10 mating oF otherwise depard or fil ia his duty  
an soch officer or member, shall be punished sith open  
tent of either description fora tsrm which may exend to  
Thee year, oF with ne, oF ith both.  
  
Explanation A\_person making. pubishing oy cious  
‘ating ny sich statement, umeur Or feports who ss  
sonable grounds for believing that sich sttement, rum  
fr vepottis tue an makes, publishes ce etcuate in 2000  
favth and without any such intent ac aforesid, doesnot  
commit an offence wader this tection.”  
  
‘The fence should be cognizable  
  
740. a the previous chapter we have refered tothe Cra  
ral Tas Amendment Act, 1938, whch punishes prson who.  
‘sth inl to. fect adversely the ecvtnen of perros  
the ered forces, willy daseades persons [om entering such  
Forces, oF instigates persone fo enter am armed Torey and then  
ommit acts of siny and insubordination from within Com”  
‘ering thatthe offence 1 clearty one relating (othe armed forces  
‘Sfths Union and ofthese deat with an Chapar 70 the Penh  
‘Code. sth sical o understand why sepurte Act was cons  
‘Sed necesary forthe purpoe jn 1938. We\_propesc, yay  
‘ef consoldation, that te following Section may Se added the  
Code  
  
1388. Dusiasion from enitine eal intgation 10  
‘min! iibordnation after enon =-Whoever=  
  
(4) with intent to affect adversely the sservsment  
fof perm to sere in ihe armed forces of the  
Sistuades oe shtemps to daauade: the pubs oe ary  
‘ers om entering an) soe Toes, oe  
  
  
  
Page 162:  
ist  
  
(©) without disaading or attempting to dissuade  
fr ncn feet ity uo ay  
Person to do, ‘alter entering iy suc Toke anyth  
‘highs punshale as mut or inserdisation andes  
{hela eating to tot red fore,  
  
‘hall bs punished wit imprisonment of either description for a  
‘em sibhmay extend tne geno wh Se oF mh book  
  
Explanation ~The provisions of clause (3) do not extend  
seamen! ono eriicim of, the poly ef the Gaverement  
-sonnecton wih the armed fores, made In goad faith witout  
oy incntion of desuading Irom enlistment. Gr to advice aver  
aed (uth forthe Benet ofthe iodiideal to whom ts geen,  
a any member of hs famaly, or of any of hs dependants  
  
Thc offence isn our opinion, serious enough 0 merit 2 subs:  
{anal senience of imprtonment up to three dente mead  
fone year a3 a pesent provided inthe Act IC's abo desable  
to make the fence cognizable, "Toe Act requies the previous  
Suncion of the Sate Government to any prosecute ofthe  
fence under the Act. “After the ofence cluded in the Penal  
Gods an made cognizable, we donot conde that ony pean  
sunetion for prosecution i nesesary.  
  
TAL, Section 139 requies tobe formally revised as fllows:—  
  
1A oe ta cra ls tb pied  
‘ner the Chapter Mo. person subject ka the Arty ACh  
1980. the Navy’ Act, 1937" the Air Force. Act 1950, or any  
‘other law elating to the aimed foes ofthe inion fs subject  
{fo punishment under this Code for any of the ofences de  
fine in this Chapter  
  
7.12 to regard to section 140, we considered a suggest  
  
's only when the person Wearing = path, oF calsiop &  
token, resemfiing that used by-a soldi ets hs fraudulent  
incemion he show! be punished under the section, Ae at pees  
sat worded, mere intention that it may Be Believed teat he 9  
ollie suiitentfo-make him. punithable, “We do not think  
‘i necessary to introduce the ektmeat Of aud in the mens ree  
rnecestary Tor the offence  
  
“The section does not apply to wearing an officer's unifoem,  
which appears 0 be am omision, “There #00 Teason why  
Isnon ‘tho. not entilas to weae sath uniform, Wests i ih  
The'intention mentioned in Seton 180; should not be punishable  
je pensshment may who be mctesad to'in months and UN.  
eve ie  
  
Katy  
  
  
Page 163:  
138  
  
“The section may aecordingly be revised as follows —  
  
S140. Waring garb or corgying ten med by oficer  
“or meniber ofthe armed ores. “Whoever, no! beitg an ofieet  
St member ofthe armed forces, wears any garb. Of caries  
Shy token, esembling aay gare or token Oted by such 2  
  
eee member, wath the inten that may be Eeheved  
{hfe is uch an ocr er rember, shall be puri wih  
Unpeonment of ether deseripuon for 2 tem which may  
Enlend tsi month, or with ve, or with Both  
  
  
  
Page 164:  
Correa 8  
OFFENCES AGAINST THE PUBLIC TRANQUILLITY  
  
8.1, This Chapter deals with what are commonly known,  
1 “group offesces 1. oflences commited by a lage number  
1 persom which disturb the puble tranquility or cause breach  
1 the peace: The minimum number regaled (except i sce™  
ions 153A. 159 and 160) Is fe. In other chapters sho ave  
Included olfenes involving beach: of the peace or Geturbance  
(of the public ranquity. But the esence of most ofthe oRences  
under this Chapter is the combioution of several persons unted  
Inthe purpose‘ commiting 2 criminal ence, and that 2  
Sensus of purpose ts igel” an fence sisinet Irom the criminal  
‘Offences which these persont agree and intend to Some The  
‘sential “connecting Tink amongst the offenders isthe exsence  
‘ofa common object Lo do uny of the ate described in acon  
Tt which mates all of them members of 2n una assembly.  
Vicarious ality ataches to every one of the members of the  
assembly not oaly for any offence commited by any member  
in prosection ofthe common objet of the assembly. but aho  
for any-olfence commited. By one member which te there  
‘ne 0 be lke to be commited in prosecation of such common  
object.” Sections 153A, 159 and 16D are somewhat oat of pace  
Innis Chapter except forthe fet that they aco involve breach  
‘of peace oF disturbance of public wang  
  
Featole cause o fe ha a brdach a the peace occ  
  
sored  
  
  
Page 165:  
160  
  
‘We do rot, however, think that any radical change is called  
fon nthe Penal Code definition avd there 1 mo arr im Keep  
fog it Somewhat sider than in England.  
  
cae 8.3. The fist clause of section 14 requires no comments.  
  
Ga, 4.4. The second clause applies where she common objet  
SS ar pen composing anor ere ee  
Son's any law or af any fra proce may be some  
epesh Spring te eae scope of the wards see  
serie exc of any law Where there's no officer (0 co.  
(RH Siem of am, bot the provision i contravened i  
(o'Rbcbae whether sec contravention would amount 19 “re  
oe he execution of any faws Apparent, though the 3c  
Fer toate “contravention of fa Hay not amount fo  
‘Taziampin executions However, the point 1st of prt  
‘aT impdetznce’bacause\ grave cases of contraventons Of, the  
  
iy bola Tall ender the thd clause, asthe contravetions  
Would also amount to ‘offences  
  
awe 8.5. Under the third clause, an assembly is unlawful if its  
  
GSS oajsc ig ta commit any mischie or criminal trespass, or other  
  
Siti’, ‘The question araes whether the words othe fence  
GASES be Coed usdem generis withthe two offences of  
maeesiet and criminal trepass’ expresshy menvoned the  
RU" Reporiedaecalons do not show that wach a constr  
{dn'nay adopted. by any High Court. Since the definition of  
‘Sifonst ection 40 t applicable to this section al offences  
See Code, eespetve of the tent ot the punshment  
nee Some within the scope ofthis cause, whereas only those  
BRE iit the spect oF oct laws which are punishable wath  
mpreonmeat for six months and upwards would come within  
rare Thi appears to be rather logical If pelt offences  
dee Special ox neal awe are 10 be exuded, there no good  
anes Rin peiy oflences ender the Code should be include.  
Tass, icles fences under the Code punishable. with  
Tepe ifpersonment for less than st months should be excad  
SP rowseen having regard to the fat alll of ences under  
See EGU a present nuded, we propose as 2 a medi  
hau in cedec 10 conslitore am unlawful assembly, is obec  
Ina Beteccommit an ollence punishable with imprisonment  
Shower onder the Code of under a special or Focal fav. The  
ittse maybe simplified 10" read—  
  
urd —To, commit any offence punishable with iam  
rrisonment oF"  
  
[As we are fecommending! the omission of section 40.  
offs’ hore wil cover eflences under the Code and offences  
Cinder special or local Laws  
  
“Se prepa Seats  
  
  
Page 166:  
161  
  
8.6, With reference to the fourth clause, we considered whe-  
ther the expression “to enforce any right’ or supposed right”  
requires clarification, in view of the conflict of decisions on  
the question whether any distinction! should be drawn bet-  
ween enforcing a right and defending or maintaining a right.  
This distinction is, however, not very material, because section  
141 is subject to ‘the law of private defence (section 96), and  
where the right of private defence accrues, it is immaterial if  
the exercise of that right is described as enforcing a right or as  
defending or maintaining a right. Hence we do not recommend  
any amendment to this clause.  
  
8.7. No change is needed in the fifth clause.  
  
8.8. The existing Explanation, which provides that an  
assembly which was not unlawful when it assembled may  
subsequently become an unlawful assembly, is useful and does  
not require any alteration.  
  
. The expression ‘criminal force” which occurs in. the  
half a dozen times is now construed in the light of the  
definition contained in section 350. As we are proposing?  
to simplify the sections relating to criminal force and assault  
and, in particular, to omit sections 349 and 350, it will be  
desirable to add an Explanation in section 141 as follows -—  
  
xplanation—Force is criminal when it is applied  
to any person with the intention of causing, or knowing  
it to be likely to cause, injury, fear of annoyance to that  
person, of in order to the committing of any offence.”  
  
8.10. Sections 142 to 145 need no change.  
  
8.11. Section 146 refers to “force or violence”. Judicial  
decisions have construed force in the light of the definition in  
section 349, as meaning the use of force on a human being, and  
“violence” in a wider sense, as meaning the use of force on in-  
animate objects also, —an interpretation which appears to be  
right and need not be disturbed.  
  
A suggestion was made that threat of force or violence should  
be added. Such an amendment would practically equate sec-  
tion 143 with section 146, because the threat of force or viole!  
is almost always evident in the formation of an\_ unlawful assembly  
and a necessary element of its common object. No such addi-  
tion is, therefore, necessary in section 143.  
  
1. The distinction is rejected in Canouri Lal v. C.E., (1889) 1..R., 16 Cal. 206;  
  
Clause  
fourth,  
  
Existing  
Explana-  
tion,  
  
Sections  
142 to 145  
  
Section 146  
  
and Ghaya-  
  
sudtin, ALR. 1932 Pal. 215, but Dilian v, The State A.1.R. 1958 Pat. 492, rests on the  
  
distinetion,  
2. See paragraph 16 below  
3 Mof Law 71-12,  
  
  
Page 167:  
62  
  
8.12. The maximo punishment under section 147 for sit  
  
ing is imprisonment (oe two. years. Tht appears t0 Be W0  
  
(guns, "We conndered 9 suests  
  
Samat should be maedatory tr the once bu devel th  
‘would Te Be advisable hoo 30  
  
$11 We think, however, shat preparation (a commit Fi  
1 shouldbe made punishable as it © desirable that noUne  
Sout eke the caret ape Prepare the  
lectin. Scks Knives and other weapont of fence. ach  
bolls. bricks ete, by antisocial clements Bent of Maschit  
tray come tothe motce of the police, bat they my note able  
{oahesm efetne aetion Even en the objec of sec activi  
1S plain" Yo\ them: Wer iherefore. fecommend. the ttn  
or BI Sclon ier ston’ fay follows  
  
LATA. Making preperation to commit rioting —Who-  
ever makes any preparation for commiting risng! shall be  
jure all smpraonmen of ether devcription for aie  
‘tive 'may extend to ome ear, of ih fine ih Boll  
  
K-14 As rogatds section 148, the question whether she pine!  
fe of section 149 shouldbe applied to an offence under section  
Te hes bow comaeved In several dectsons. ‘The majonty of  
he High Courts have beon held that secu #39 i appcahle  
{oan fence under aceon 184. "We agree wth that View  
ot comet any amendment tbe necesarye ot this  
Stlence als. we 8o not consider that imprisonment shook be  
made mtadatony  
  
4.15, Section 14, which imposes vicarious Habilty on every  
member of an assembly for exraio ofences commited by ane  
imember, cons of two part The fst patt deal wih ah  
‘lence commuted by a member ia proveation of the commen  
Sbject of the assembly, while the seconds concerned wih 3  
  
ie knew 10 be likely tobe committed tw prosecution of  
that" object  
  
{In the Bist park. the oftsce is one sich has alread been  
‘geet pon ane necesiniy involved in The common objec  
  
second part seltes to ofences nok express, apfeod upon  
but Known fo be ely 0 be committed i accomplishing the  
ommon ohiget This dichotomy ist line with the scheme of  
the Code, which throughout mentions specially ees of ite  
tention and then eas with Knowledge for example, se. the  
‘rou elauses of wcton 299. This also convenient n oactc,  
ec tose who have (0 admit the a culpa 0  
‘hse in the proper compartment, Therefore, though Were may  
be theoretical abjestions to" the cnsting ‘Wording. we do Mok  
Consider an amendment 19 be neccessary.  
  
  
  
Page 168:  
6s  
  
Where aioe wfienes is commie Be one mpembse of an  
vanetol sembly. bul Thy carrion nse othe iN ox  
{oats outy "toa sven offence cm thy xh mentors  
‘semy Re com ite of that scr fewce, by cite 3  
vn 'VH) 2 the gacwtion tally sebes i igi canes Pere  
ne manor of he assembly cance deals th? Stn he  
‘somma pjet wa cy cigs Nm teu ht TI  
Utes No. be A comransry wn the ajdt ht nos. the Supe  
  
Comets hei that's canaeion forthe fect ame  
Fparminable. "he primis ot wiinn 8 has hoe on  
opiate to seeton HB. ND. mene ere te  
‘iirad to clay the  
  
6 Sasa 50 amie tu urs The tal ait BS  
rum the aller wh hives engages ex persoms to come  
Incmpers of an unlawful acm Ahi part apparels roars  
{(Otetion Tah and nononroversal The Wer pus  
  
Sik ie t-member ex thowh. i act, Re way nol 2 Oka.  
Pern. ‘being ieing persons to become sembers oF ah  
nsf atsembly "weit To be panicle  
  
The later part mae the bier punishable ahs Fur ans oe  
cesmmtial in purssanes oF the hing im he she snater  
‘The had heen member of the sasembly, ors he hid  
‘Coonmiied the ofesce hinsel."The iotepiclation of ts part  
‘the section resents some fen fI-a marrow tiie  
  
Ty he rae iat the ifr wi beable Tr the ence  
‘ctolly commited by the hired pera n= member of the ine  
fatal socmbly in purnaunee of sock Mati. amd vor Vor hn  
‘vice ‘which the hired person can be constructively held 0  
ise commited ter sston 18 mya member of the al  
Shen HE however wider camsracvan shen. the con  
Sinvtive titty othe hive ill atach net aot only191Me  
‘eat earece conv byte ited person but aa to an ofence  
fe which the Bie perso may Beconstrctvey Hable a2 che  
Ii ofthe amembly. We. huwever, do not consider t necenary  
alter the Tanaaase of ibis setion siih'a ew vo rij.  
boy doubt which may areas to which of the aforesaid 16  
ott tend” The pul of aes ey th  
SSiions presamablh due 4orhe fact that sary few caso  
Sperating “through hired men are. Drougin” 40 light The  
fer alvaye. takes "care "to romain in the ‘background  
‘without disclosing is identity: “im any case the words in  
Dorntance of sch Bring" okarng I ths sation ily che  
[Position to some extent narrowing theabi=of the hier 10  
‘ove clones ofthe hifed"pervon which can be had tobe in  
porsaace of st Bing.  
  
1, Foros Rn Ch oy BT 3  
 shmaae 8 e 19Oe  
  
  
Page 169:  
inn  
  
tot  
  
8.10, No change is needed in seotons 11 and 182.  
  
8.18. Section 153. in descubing the mens rea, ues two. exe  
pression, "malignant" aod "wantonly, nither of which 18 10  
Ee "ound ebewhere im the Code. Further. these expresions  
ave imprecise Um particular. the adverb "wantonly. not a  
fcim'of at the Shorter Oxford English Dictionary gives ight  
‘ierent meanings ta the word lewd. Eaciviously. spony  
Hiehthescediy reek}. unadviedly, without sept for conve:  
tjeness and willy The fasts probly “the. only sense  
imu the word san be winrabod the ones oF  
  
Having segard to the Further cequivement under the setion  
that there mest be an egal act tended or kaon tobe likely to  
‘atse trot, tds. mot Seem to be megesary obave the requce:  
ent dhe ‘hy The expreonsmalignandy ad “tan  
‘nym practice, these expressions do not add anything 10  
he oiter"edguntementh of the secon.” I'mas also be noted  
hac the’ punsshment onder the section % not severe inp  
SSninent Upto one year oessse month, acordng ay 8 HOC  
ore oe deme  
  
We, therefore. recommend that the words “malignanily  
co sanoly™ mye mite Pom seston 155.  
  
8.19. Section 153A punishes a be at of promating. enmity  
hecoen diferent groupe om grounds of ysigion. ace. place Of  
Inah. residence. language caste, community of any oticr ground,  
sind tb) acts prude to the maintenance of harmony between  
lteter groups or castes or Somumuntic the acts Sard  
he pbc mq  
  
4.20 The section hes a long history: Mh started as a pro-  
i eu tpn at ramon enmy ert et  
‘wee “dierent clases of Her Majesty's subjets™ which fae  
Ubsnme "heen laser “of the eitzens. oF India" There  
(Ss also an Explanation below the Secon. the effect of which  
Nm fo save hone critica without malicious intention. Barr-  
ing the verbal adaptations made Trom ne to time, the section  
‘seine thie shape til 1961" The amendment of 1961" made  
Thvee changes inthe onpial seeion. “The erm “clase Was  
Feolaced by religious, racial‘ language roups oF castes OF  
‘Commotion Secondly. the scope af the secon was enlarged,  
Sy"imaking it en offence also Tor anyone to da any eet which  
1 pried tothe mainlenance of harmony between dierent  
‘elgiews racial or hngeage groups. ov cases oF commantie  
fod obit ikely to dstieb. publi trang. Thirdly. the  
Explanatiowas ems  
  
  
  
Page 170:  
6s  
  
In 1969.4 the wetion was expanded fucther, and the ra:  
sons'for the amneniment were sisted? ae follows:  
  
SSO TRE Rata a  
  
8.21. Since section 153A constitutes & restraint on the  
Freedom of speech and expression. the. goeslion may be aid  
sith erence lis 1) and 2) of Ac Bt the Coe  
stitution whether tis easonableeestetion imposed in the  
finereste of the security ofthe Site oF inthe iter oF publi  
‘eder decency oF morally. orm relation tO meee fo 89  
ence  
  
Though the eonstizutionslty of the section has aot yet en  
decile By the Supreme Court, two High Courts) have held  
that i impose a reasonable cestizon "in the interest of pute  
frder and is therefore. a valid I  
  
After the decision of the Supreme Court im Kedarsath’s  
st ineeptting section T24A."™ Sado pbokding i  
‘Vali. i wold appear tha the validity of section 133 could  
ako be supported provided one fends into the secon the like  
Iinood of atsurbaace a pubic (ranglll'y requirement o>  
presaly mentioned im ciane (5) of sition 133A. though not in  
Eis (Reference may also be made tothe Supreme Court  
‘adgment in’ Rania Nous case? in which the valgiy of  
Schon 298A ‘wah phe on the ground thatthe section Nosed  
  
Tas 5 9  
2 Gace of na. 26 Angi 96, Part 2, sect 2 trade: pags 1042,  
  
(0) Kae Goi Za Su, (1968) AU. 88.58; 1964 AWW... 69  
(9) tightly «Te Same AAR, 108) A388 87a Sad ama  
‘Sadan  
  
(0) Sap Ioan Sh © Sef Mospur ALR. 1955 Maio 9, 18  
4 Ka at AAR 982 Ses) Sug? SCR.  
4 Ratan thd AN TGS CEN OI BO Nal  
  
  
  
Page 171:  
1 Conia an  
2 The dada Re  
fin Ma Ct Arend Al 98 (OF 8  
  
ae  
SPER Choke Ba. AUR, 196 Cok 1 Rankin 1,  
  
166  
  
= femonihic reition in the inerest of pie ofdce We  
fw thecteyes acoane the conklaatson Valais ths See  
  
Since Parliament has very recente! omidered the  
colon i deta and Tenney we da no tink W Rees  
Stotine the suet the proviso “These fe however  
Sov pot hh eee urcoleimdoration ove amen  
Smo in 'T96t sation 153A. contsined the folowing” Expl  
  
‘Explanation: 8 docs wo amount 40 a9 eens  
inser mean of thi soc pout  
‘natsrs shih are produc Or ha  
  
si of este aed ete  
wenn  
  
Uv is soe law that section 1SBA, 1 PC. does not  
tea that ary pars who publrnes mors ia Rave a tend  
icy vere dave hated am be convict ner Tht Se.  
oa. "The words “promotes or attempts To promote foc  
tbascenh temp Promo ‘coms Hemi  
inte pn aro the urns tthe cued to  
amie sh shins. ard ats no par OF be Nps  
Focimere erenmtarce thot there may bes tendengy not  
  
Coe nen) et IS EF of 16)  
  
Sabha Debs Sosnd Sek (21 Ana 9 0 Semen. 196 Yo  
‘tie  
  
  
Page 172:  
rd  
  
fe sever subsequent decisions it was held that jteston  
as # nocssey ingredicat of the eliza under section 1538.7  
‘Rome ef these vases lla tres on the Explanation finfon  
‘ng the ew that inenica was exennal fo Gonsttate the eens  
  
‘On the coauary, the Allahabad High Court had taken a  
‘atsrel ies. Wie the carer Allahabad case® spoke merely of  
{presumpign oF mith: ker eases? 10 ‘out my ques  
fiom of mers reg. Ths leading dession 30 favour of this ew  
Pini of Soman. C34 hy obweved  
  
Wc git lear to my ming that there are many offences  
tn the Raden Penal Code for wbich the root of an express  
Iinention on whe part of the accuse not at all necessary  
Indeed, wherever i cety that intention should frm  
pects pont of te lle. the sections expretsh  
  
‘Conirasting the langsage of section ISIA. with that of see  
ion 499 ¢where the wos intended” appears twice) Sulionan  
eyes  
  
“Ie seems to me tut it woul be interpolating the words  
“wah ttgn "fa aeeion IS3A. stone wete to hold that Ue  
  
neation of the wriler 1 promote hated ct, must be ev  
Ubinbed  
  
1 would sheseore. seem to follow that he Legis  
ture conlomplates that the words spoken ce wt, ‘which  
‘do promote hatred cl ould “crest suizientmichiet  
So a8" al thin the scope of the section, and that Hs  
hot necesary for the prosution futher 1 euablish that  
the writer had the sintenon to. promate sich batted  
  
‘The Alishahad decisions related to sections. 994, and 998.  
cof te Code of Crain Procedure. TR98- an the observations  
‘ade thers regarding seston 133A could. be rearded 38 iter  
iar ie obusun ta the view thal action 133A does not fe:  
(gre ment reo sal presents Maly established i that High  
Coon  
  
Re iat  
(ty Lab © Mama Maran ALR 3 Pt 32.2865  
fe) ov Pad Bing. AOR. 1927 Lah. 30  
  
(G) ha Emperor ay Pay AUR. 1936 La 98, 196  
  
1a) es hea Sharma Big, AAR. TBE Lah 94998, (Case Ine rend  
  
(9) fens Pad. Kg Bp, ALR. 1927 Cab 182 Play. Wan about  
  
Se era srosed nso of te  
at Char Boe. NUR. WEP A, 8  
GO MLC Gigtae Bop. ALR DISA 35. 3165.3.  
‘91 Harmen Ds Sef UP, AA. 187 AN 3, 8, prasigh 35.8)  
a MLE Gapee Emp ADR. 1886 AIL BIS TE  
  
  
  
Page 173:  
108  
  
So far ws could be ascertsiaed. there no later case of the  
Allahabad ‘High Count to the contrary. In one case decided  
sien ihe question wae comudered whether members oF  
3 Hindu Manasibha coostitted sense under secuon 153A.  
in hat cone, the High Court eld. them 0 Bee cls. bul  
Since the charge spoke of enmity between Mindas and Muslin.  
  
eaten Svc eh Cue ee  
See ae tee ite SNE  
fie carats ecank ite" anc  
  
Wis te gh Cosaened The sao rou cB  
‘ened aot anyon proundy of rchpon. race, language cate OF  
Smut. Betas on polieal er eronomicafiaton. How:  
te agate 9A prone  
ny act ot the person cracising 4 poical party without 3  
talus tense In other words therefor; even thoUeh  
fromcion eff cma and ated einen ret  
Pott pastes would fe ponthable under section 159A, stil  
ny" honeacricom esthout any, malcious rmention ous  
ea food defence as Tad down fn the Explanation thereto  
  
The atsence of the Explanation (omit in 1961) may ads  
strength (othe Allahabad view aod weaken the majority ie  
bscatse the'majdiy hed to some extent, on the Expl  
  
5.2}. Three possible views ca now be put fon a Ko the  
cauirement of ens res under section ISSA. Pst, ienion  
I Ml ne pst ofthe effence. and has to be proved by the pr-  
Tike any other fact, thoweh it open to the Court 0  
ss ually done 1 other eases (Majority wew before  
  
Sscanelyy iouention oll the gi of the offence  
tba there fa rebsteabie resumpdion aboot it By virtue of  
Scction "of the. Code, fead wa section 106 ofthe Esience  
[Nei however, the accused can rebul the presumption (vice  
Soil Bete ramen 6 FT, nto,  
Shoe required and mere tendency to promte i-wil ele.  
Enough. Allahabad siew before 1961)  
  
424 te ays ew ty Cory wl ak in  
the absence of the orginal Explanation. "Reliance on Section  
1 of the Code may not suffice  
  
Waves reais no considered secestary, then any writing of  
9 rensoned character, but containing song attack on 2  
Teligion or its founder, wren by way of Comment with & view  
  
1g il Sie ie aR ne sw HAO TDS MC  
  
Parapaps #22. pre  
5 Parag 2, a  
  
  
  
Page 174:  
19  
  
to indacing persons to lflct social oe religious relorms, ma  
  
‘wthn he mache! of the section. Te war precaeh "ht  
Sitation utich was sought lo be molded by the orga Ex  
planaon  
  
sation” and “lendoncy” ate enizely diferent concepts  
‘while the former as reference (0 the state of mind ofthe actor.  
the later hw feference othe possible eet of the act The  
tendency of a act may be. in fac exactly The reverse af the  
fevult hich the actor send, sho follow from the reasite  
{aken by hme Encept for he offence of contempt of court,  
fhe eflect or tendency produced by an acti not ordinarily com  
Sidefed ss suficent fo make iterimadh, unlst accompanied  
by the neces knowledge or intenton  
  
We do not alto think it aie 10 tow on the accused the bur  
ea" of prowing the absence of nen? reo. This ik against the  
‘general Schome of etuna! aw, and no strong reasone Tor Ue  
farturetherelrom exist.  
  
8.25, Hence ve would support the fist view, an ccomimend  
that ie word intentional" should be inserted before the word  
‘promotes sm seston 133A to make it car thal mts rea  
Stent an has to Be proved ws 9 any other ese  
  
8.26, Meation should he made here of section 305 «placed  
= Chapter 22) stich puastes the makina, publsting  
Sulsting. of any” statement, rumoer or reper "condcing to  
public mince!” "We have already” recommended thats the  
ortion this section which relates to salements made wi  
Tmtenr to uve matin, derckeion of du. iaaborgination st.  
{mong the armed Tones should ad a piace" in the Chapter  
Feliing 10 fences against the armed forces. The rest of the  
{ection really relies 10 public tranquility. This section has  
‘en ecentyamnded by he edition of tha stesso  
fg to statements creating oF promoting zamiy. uted oF  
‘tween lames. Th part of the section fs vty sonar to, If  
hol wholly covers by section TSA, and it would fe Toei  
{O insiade in Chapter © mmediately afer this section The  
bjt mater ofthe te Sections ie que diferent from the su  
Sisto umlustl assembles and rab dale wth Yn tbe group af  
i would be make appropeate terctore  
jon 1S3A an <ceon 198A, and fo ser aes  
  
“1588, Siatemes comoring Yo offences aginst public  
Irangniuss 8), Whoever makes,” pubtsbes 0" eicuates  
ny satement rout repost  
  
425 with intent to create or promote, or which i  
likey to create oe promote, on rounds OF Feligion.  
  
root  
  
cael  
  
1 Se aragagh 79 shove  
  
  
  
Page 175:  
sein 17  
  
17S Taam eine seston S24. pargag 28 above  
  
10  
  
race. place of birth residence, language. caste or come  
bits er ans ther ground weatenser fecings of com  
fated or twat between ailfren religious rata  
Engin reponah group oc or Ssmuntes  
  
(3, wath aunt co incite, oF whieh  
any chi orcommunty ol pessons€ com  
“iphins any other site or Gostunsy;  
  
th (nent t0 cause. of whic i ly to caus,  
Ket Shri gi: Or any’ of he  
Publ whereby any pers may Ye induced 10: cmt  
Sn eRe put tae pub tag.  
  
shal be punished with imprisooment of sither desi  
fir aterm whieh may extend to three Nears wath ne  
orsuh bo,  
  
LA person making, publishing or circulating  
ior evga soc satewen  
  
ant takes. pubis  
  
‘nd without nek tment a sens, Joey no! Comma  
(hbo unde th ection  
  
Wher commits an oie pid i ab cion  
1) sh any place of warship vr an tvcmbly enpaped in  
the petoraanes of reigous worship ragioos ceremonies.  
Shai be pursed with omprisonmen of ether description  
{ora it whack may ented to Ave Jars. and shall abo be  
Tia ine  
  
8.27. Offences wador sections 154, 258 and 186 are seldom  
trou Lo cout. though. iT these sections ae sthiy enforeed  
Erappropriste cise they may eeetively cht noting on acount  
ft and pete which are sidely prevalent in some pars of |  
Tain he sonieneds peoviged iN these secs. are emi.  
We recommend that a sonence of sx months imrisonment  
{tice dawcrption o¢ hoe oF both shoul be provided for each  
Fhe thse offnees.  
  
$28 Noone he acts gurihble wedey son 157. one  
is ahi of harhauring a persen Known to have Been engaged 9  
Eetome member Shuma wcewhlye The eapreston  
SSarhone te hven, defined in an eaicesetion.? Ina sie mane  
ter Tis enaion at wide for ty perpote of tection 137.0  
fc, "eoaing seein 32, which deine “harbour excades  
Scion 157 fom ie scopes aod thi indiates teat te dctongFy  
‘Benning of ‘harbour & intended for the purpose of secon  
i  
  
  
  
Page 176:  
m  
  
e the exprestion “Author weston 15?  
i apd We ccoiend tha orb nor hs  
  
N29. Nocchange i nosed in sexton 15  
  
S38 Cader scion 159, ew eeguiements see ascensary i  
clot thot tghting iy amouat to anafay. The Bet that he  
fishing roast he in’ 2 publ pce. ad the sccrad Ws tt  
shouldbe sch a changer as 19 isan the pac pee 1  
sgieset Ena “ane peas hn en bel a  
  
fay eam he commuted ima pate plas But me Jo.ot hak  
this would” be righ, foe ladlan condlions, ‘The mention et  
“pul place’ shouldbe retained in section 139, Twas suuzested  
shut expres uti ples” may he deine va pes used  
byte ute eae: i) ane’ ht Of ccs oor ot  
{Busou vw, coer a dlition wold not He at mech practical  
{ili and would wat solve nce problems which ase im practice  
Sta wnethera parieuar place's ers aol s public Wee  
  
8.31. 1 appears to ss thot the punishment for afray under  
seetion 100 Gmirachnnt peo ene month Tne upta ae  
‘hundred rupess) fe growl WadegeatePugsimen under ths  
ction shel be inereaued to 6 months smprisoamens and.  
{regan fine there" neal Re mo hintation onthe amount. See  
‘Hon 160 mas. rherefore. he reve ss wer =  
  
100. Poaishmeut for comvating are. —Whoeve coun  
‘ats alfa shal he pushed ith Imprisonment of ees  
‘ecrintion fora rm hich: may extend 10% months  
of wilh ne ce with both”  
  
Son 8,  
  
Sc 10  
sneha!  
  
  
Page 177:  
Chari 9  
OFFENCES BY OR RFLATING TO PUBLIC SERVANTS  
  
9.1, Chaper 9 deals with offences which ean be commited  
ty pul eants sone and aio wits thove offences which rate  
1G gubtc sans though not commted by them. The oences  
satiine conc tact pb ean an oer mente  
  
the comimanty ae deat wih i the genera provisions ofthe  
cote \* "  
  
Section 161 and the succeeding sections relating to bvibery  
ssc folly eomidered by as i he igh of the deeded cass and  
aS orion ibe Bevenion of Covropton Ac 1947 an  
IME fecantcommente made im some ol the jnigments On  
Tew matters the law Ts inadequate and we poeved 4 kN  
them im the sucecdngparagep  
  
94.2. There fy considerable overlapping between sections 161  
to 165 ofthe Cole nnd some of the prowsions ofthe Prevraron  
‘F Covruption AG. 1947 "That Act, howevet, was main In-  
‘ended to pamish “aiual corruption” and Hecontains special  
fotos of procedure and. evidence. The indian Penal” Coe  
Inbich convittgs the general criminal las. sou aso conumue  
{I reton prosions dealing with Biber. No shange 6 there  
foves neckeary in tis respect  
  
93. The question wheter secon 61 applies hors the  
  
public erat cone ag no poet 0 do the act pra  
  
now been settled by the Supreme Cont.” Te MahedtPravad  
of Paine Court observed =  
  
Nan  
  
“te pointed ou hat the apelin eho emposed in  
the Ratwsh war not mee petson whe as in a Postnn  
  
bo he compainag nor ist shown tat he ha  
Sumac race nth 2 paren oe who  
dot gives jon. Ter ange thereore that te enc, any,  
‘Smmited by he apociant ute only be one of esting a  
fn the roceteng Oa bribe, This argos is ho any  
Juthaance fe the tems of srton ot ofthe Tean Pena  
Gidea penn whos pune servant od acrpt egal  
Brcalon a movie for rendering service wth any pais  
Shank as such. fp ofthe vente thereunder  
  
STAT SSE HT  
  
  
Page 178:  
im  
  
To consitote an ence under this ection. tengo  
ive yt tera wh reeves the money ake by Rolie  
‘ut shat hs wll render asustance to the giver wil ny ach  
Pubticnervantand the giver ives he money mer that ule  
Tinayhe thr th reelver OF the money tn fac Ok IN a  
post vo rend sech ausstanca, aed even eae of  
Hie'mas moreven have intended 09 do what he olde Rime?  
‘ts capable of doing He may accordingly be sity  
‘of cheaime.-Nonetheles he guy of the aenee and  
16h of the taba Penal Cele This clear From the  
EPC. Tietention (0  
  
“Ths, wheve peblic servant who receives egal grate  
fgaann ts 3/matn for ding er procering an fel 3%.  
Ieler r tothe 1s capable of doing ot shetber of not  
  
ive Jon he uncer within the amb 9 ston  
  
9.4. An analogous yuesion is whether a poblc servant who  
ts fonsarn canbe ty ackepung’s bbe Tos guetion  
horus tn sess anes before the High Coors There are  
heath Bate Cot ote ae The ssn  
Sede bt the flowing Scovson s the judsment  
‘the Supreme Court fs OF teers ean  
  
Dr. Ambedkar then submits that in his ease go  
lft had been commited. "He pots out that it was Sr  
{God and not Sa Nast who was authored to sete the books  
SaGih directs Si Nate co examine the Rooks and make  
{trepont whieh the tater id on 13-3409, Bx IDA Aller  
That date Sa Naik wan fers ofc, Raving Tally performed  
Hiiever duty he hod to "perform. andy thetlore. be  
‘sas not the pubic Servant who sould. in the exec f Me  
iit function. show any Tavour oF render any seve 10  
i appisasLeareedcouneal rehed on the caves Of  
gh Hn Ep ne Fear and Sekar  
id Eup “Alpeoua ofthe eases telied on by leane  
oes ill show thatthe question of an was not Tully di  
‘Sthsed and dhe reaons in sepport ofthe onelunonsattived  
Stare not clear or convincing.» Oo the other hand. the High  
‘Coun Allahabad. Lahore, Nagpur. Bory and Ons  
fave tnaporoned of th dcssom shes on by Di, Ambedkar  
Setters np? En Pla Sigh Ram Sek  
  
1. Mahe St of kay, AUR 95D 8.C 79  
SRI akan 28  
  
sae  
  
passa  
  
fawn  
oe  
  
  
Page 179:  
Sign  
  
Seiya v8  
  
AU eid CT  
AUR 198 Rom $8  
AUR, 192 Oona 72  
Sesho Ventamrae Male ALR 1929 Mad 757, where the eel oe ae  
  
m4  
  
Lap! Gopesivar Memlal . Fup? ne Vecadndetibon  
Chorin” tr Devaides sdvon Steet ad State. Sale  
Chan Paine  
  
{he pow of ow appears 0 have Beem move fly die  
insane cases an fhe teasing ot therein apnea"  
{Suc a at present aur. to be more cmenng thn tose  
seisututhgenerehetony Be Aner” hs howe  
ct\_saceotry forthe pres of tho ike ty expres a  
Tina on ths guctuon, for Wwe ste satis cn he  
Fats of in ease. that Se Goa an Set Naik had 1 fn  
power, in the exeiene OF the clic (uncon, 10 bow  
Fivot de sender some service to te appear  
  
5, We roommend that the conic of dacons i the  
i should be resolved hy smending the Town Explanation  
oend a fallow  
  
‘A mative or rowers for doing..." A person who seeies  
® prtianion ss mative oe tevard for ding wat Be Joes  
‘ho ated re ot postion t0-d0 04 Ras nat done  
‘Somethin the words  
  
9.6, Brite giving is gexribed as abetment ed made punish  
ste tinder seiton 165A. Stel speaking, this nO ApprO-  
Fate The goer sas mach pty sy thercctivr andthe olence  
LS bibery should vay cover both the ger ad the reeset 1m  
the sectun Reference may be made, i this eonnetion (0  
‘tion 1718 bse a elections), Whefe the Same section co  
toth'the wiser and the nevewer of the bribe AN the point  
fot of peachesl importance and the punk the sie Tor  
the subuantine offence wow sor the btm, We econ  
fnochamge ths rept  
  
9.7, io changes ars eeyuied i sections 162 0 165A.  
  
9.8. Section 166 punishes 2 public servant disobeying. 2 Ia  
‘wth stent to eaute injury As the sence grave one we cons  
‘ise tna the punishment shou be inereased to imprizonaent  
‘Feather description for crm which may ented 10 vee ea  
rh fines wah bath  
  
Ste von anus eps was oes  
  
  
Page 180:  
ns  
  
99, The Cade does not take secount of thos: pes of ie  
act by: phe Sereante where tne miscondoct doesnot Ske  
the'shaps ebnibere cr extoruon of suman corrupt set. There  
ire weve ies er micondoxt in the erigrtanee of oi  
iNsettors unttn may "unm sent harm to tbe aores a 9  
‘Zon. inordinate deus. masioun ind revenpTl action. dsb te  
Failhy aa persion harowetent ae ecinpley sb some  
Teadly othe find. ech mmcondint does net ammount 8  
‘iret uemsind for patiestion though often te ulimate movie  
{so uta sch geaifation, Section 166 y not udeqte Tov  
the purpone Bocuse rence to misconduct ameun 10  
1SiSlaoon ofa spect dretion of the a  
  
is doviable to ensure that no public oficer shall #2 the  
‘excise of the dis oF sole oe ie ating detour  
‘theofice Go any al which rong ia tse of do an dhe  
Sse nel actin trongal manmere-We ae uly vane of the  
Probes! diftcltin invatved im enforcing 4 stators provaion  
Ina oven Ti evi Eee examen pie  
‘en daicut tlh rexponsibity om h parila fers aa 1  
may sso he dificult rove a specie Set of xconduci th  
atu stopwession. There would ako be difficulties o cok  
the mecbiery evidence Nevertheless. we cowsier that there  
‘Gent to be a penal prowson vo pariah ai of goons mcoodset  
  
9.10, We, accordingly. recommend the isertion of a new  
section ay falowe  
  
“160A Publ ara gig with ie 1 case  
1a at peramcaWhoever. being public servant. wilh  
Conduct himset inthe performance Of his fonctions aout  
pubic ei ocatr Enon to Eh hat  
fie wil by such conduct cause taf 10 any penon. sal  
he punished ith impiconment of saher destin For  
{cimahich may extn tone yea, oF wih fine OF wth both  
  
911. Sesion U6 pies 2 pub secant “charg wi Che  
germ en tami sae hae om  
fas ment aman ncorset manmer sith thee  
ton, Thon someconuunay a4 0 hehe the preparation  
1ahe aneered Unuer section "162" hn owe view,  
there can hay bay doube that a opy. hehe cried  
ype dae “ih he mating of ton 1  
  
"Copy vs nosey prepa covet then the act shou  
te ponthable unde scan 166. te drab to make the  
  
“The word eames” i ation 167 shoud be replaced by the  
word Spopare "The earer pat speaks Of person charged  
  
the preparation fs document not sh he rsming  
  
Ui documen  
  
“The cxprenion preparation ofa document” i comprchensise  
noth fo cover prepuation of the ramation of 4 document  
  
|. Cis copies woul be ceed By eto  
  
  
  
Page 181:  
‘Accordingly setion 167 may be revised as fallows:—  
  
“16. Pie, sercan preparing an incorrect domes with  
les to conte ur Wher. being 9 pic servant 31  
Beta. as ach pubhe servant, charged wih the preparation  
fF any document, prepares that document ta a manger which  
Ite knows of believer to be incorrect. amending thereby tO  
fuse own to bil thee wl herby ne  
Injory to any person. shall be punished wih Impeigommen  
tether éevription for aterm whichmay extend 10. hee  
Sess or with fine, oe with Both  
  
Explanation The expression ‘preparation ofa document  
  
includes the preparation of 8 copy or tamstation of doc  
  
9.12. The Law Commission had in an earlier Report! consi  
dre. to lacie the problem of heating oF government on  
  
ities Sarge scale by. dshoaes contractors while suppying goods  
  
Rent" Se"Shecoting works. and. recommended” a specif proviion  
ge penaling i a un agavan me Cansazting  
‘ten The' wie range of tae stvity at presentand iis ikely to grow  
  
‘nazr ire ace, we thank sound reasons for enucting spell  
Fwiion express covering such Traadulent conduct.” We  
Broa comm that tuch conduc ft facitaed and Tothered  
be oficial connivance. and jee should take mote, not ony of  
uudulent contractors, But sao of those public icity who  
Sst them The manimum punishment for such conduc, we  
fink, sould te more severe than that suggested on the. 20th  
nd we prone a Raasmuty of en years prisoner  
‘oper pace forthe provision for puniment of gavern-  
actors wold evn Choir 17 nthe pat tlating  
‘ee propane the following section to putish the cor upe  
Dobie serenrs who arte them  
“167A, Public servant knowingly authorising payment  
tespccl of contracts. men the foods supplied or work doe is  
Morey actordance wit te contrt-Whoeve, being» public  
fersant competent to\auiborse payment on beball ot the  
‘Government orather pubic autbontym respect of ay contract  
forthe supply of any goods the consruction of ay” Duling  
fo the exevation of other work, authoeses such payment,  
Knowing =  
  
oth co ofa coma tte, nh of de  
ie me vst os yo  
  
al an eon once i ee aan  
  
RUE. So aNo as  
Se apa 170 eo  
  
  
Page 182:  
7  
  
() in he case ofa contract for the construction of  
a building o execution of olber work, thatthe contacter  
hag esedaterns. wnch ate fein quanity then. oF  
inferior in quality to. those he contracted tos" wich  
whatever. not in acsordaoce with he  
the absencs of Fal excon. the borden  
‘f proving wich shall be on him, be possed with  
[mpasonment of either deerigtion for a efin which may  
‘tlend to thee Years, and shal ato be able to ie  
  
Explenation tn this section, “pube athority” means  
  
(2) a corporation established by or under a Cental,  
Proviical or State Ack  
  
() a Government company as defined in section  
{617 of the Companies Aet, 1936, and  
  
(6) a lca authony  
  
9.13, Section 168 deals with a public servant who unlawfully Seon  
‘engages im any trade, when fzally bound not to engage im that "=  
trade, The word trades this action was piven wee eRe  
‘3 Bombay easel a8 incling any business earned on sith  
‘ow to prot No contrary view has. ‘been taken by any  
‘ther High Court. snd we do not ‘consider it acsessiey TO  
mate any amendment to this section  
9.14. No change is need in section 169 is  
9.18. Section 170 panishes a person who pretends to hold Sion  
a partcelaroffcc as & public servant or falsely personates amy?  
‘cher person holdin such office and in buch asad character.  
does any act under colour a sochoffce, "itis mot necessary thai  
the act should bs done with a dishonest or cortag mote. We  
comered the quston wether the word Sishoncaty or faa:  
lenty or ‘corrpsly. should e inteied to inate the requsite  
mons rea. It was apprehended that. conttusd without Som  
Sich words, theses mht eeate hardships Tor instance. even  
acy hs, a a iicament st fone 9  
‘oficer ofa particular category. nay be held guilty ofthis offence  
[Bur we-do not think that he pot of any practal importance,  
Wis not fly that an agen provocateur who enrape a accused  
and makes on 'commit a crime by pretending to be @ public  
  
Servant, will ever be promcted  
3.16. With reference fo section 171 sho, it was suggested Secign 17  
that expressions indicating the mont rea souk be added bat ws Bub  
  
‘The punishment provided in this section appears to. be  
Mlequats "and Wwe recommend” that should be iacreased 0  
Sfe'monihs, oe with hae or wh Both.  
  
8 liek Gamo of ay, TR BT a5  
  
$M ofan 71-1.  
  
  
Page 183:  
Cugrnsn 9A  
  
ELECTION OFFENCES  
  
Inoue A.A. This chapter was inserted in the Penal Code in. 1920  
VSS" yy the Indian Elections Offences and Inguties Act, and Toe the  
Teat'tine, sanous corrape ane ices practos kale to oscar st  
  
Ere cmeemeremumate  
ifaorsuscmae a watts  
nachos Se  
  
Fenee 9A. 1 sppeies that several foal governments expressed  
Een the fear tha the new penal provisions wee fikely to Be abvie  
SSS Sfectly‘be vara) rea for puting one’s personal enemies into  
  
i, oabe by foiling ake cases om them aftr an section  
  
WPS Cr Geer so aly the apprehension, section 196 of the Crm  
Brocedare Code, as taultaneouly amended mel ng private  
rowectons Of clection offences subject to cxecuine contol  
Cour ere detarred from aking, cognizance OF ah  
fistoncifenc under Chapter” 9A of the Penal Code exept  
Spon complaint made by onde of. or under authority ome  
{he "Governor-Geverel\_ in Coun, the Local Goverment  
Sr some ofecr empowered by the Governor-General in Coun  
i he Sohal  
  
Recor 9A. As observed by us ia our ast Report othe Code of  
TENN” cuiminal Procedure "it mas thughe that ths would BH  
Tie stato tote Goverment i ermine whether  
= Sedinge wore warranted in the cieomstances of cack  
thay vexatious prosedingriawsted soley onthe bast of  
oti "anmonty by" prieke’ india coud) be snowed,  
‘Fai sewondary object way ceriiny achseved but i's doubt  
sei the peal powsions enenationty” pat to he en  
Gove but edecunc blond by section 196 of the Proce  
Eoae. ped to matin the purty ef estos to hy  
Sopra  
  
  
  
Page 184:  
19  
  
‘This dificaty was rialned in some \_prosines  
regard lo the ‘olfence 31 penonation punishable fer section  
STI of the Penal Code. Even a porsoa Blatant commating  
{his offence atthe polling booth could not be arrested or other wine  
roveeac agains on thespor since be offence was now cosmic  
Sind tbe complain of an empowered oficer\_ was required. for  
prosecuting the offender lo court. The Ceiminal- Procedure  
Eade was oes amended’ by Tour provinces excluding ths  
‘fence Ivor the scope of section 196 and making» copmcable  
“This lead wos Followed up inthe. Representation ofthe People  
Ay 1950 aad he amendmen bevame appicbletroghow  
  
“The experince of the lst 20 gears inthe eld of country  
wae democratic eletions shows thats unless chee impediments  
Uovtronecutin we temoned. the mete Tact that bribery, nde  
‘sien. characisesrtaranston ee are purhabe conve  
ony criminal cour makes ie derene and thse covet  
otc te Id wih impunity. The numberof Som.  
Fis ldo bythe Government or empomsred occ in  
Eicon fn apr am ercnatin) mate  
Sey soul Linder ibe part sem OF povernment prevalent  
tne crantry will no dou, Beemburasing forthe  
sc to en te fre estan wet a co  
ceion hs mon tly that ol  
Frsjoicer il be attnbant ty He povable tani the bar  
Teno et eC eones e l bes  
Spateot private complans inctidong gute afew erates ont  
ihe sate ot hartoment: Go we et thr the possi ont  
‘2 focad'in the intrest of ice and far elections We recommend  
‘Ta tenons ad exc fo the pare  
  
9A.4, Section 171A defines “candidate” and “lector ight". Sexton  
Winle the fst deinkiow does nt eallforany comment. we notice TA  
‘Ril ihe Uefntion of lectoral ght duet mot expreay ler “ale  
to the right of 2 person nor to withdraw his sndiatoe it an eat ig  
lesion. Tiss wan comaiered to bea facuna in section TH) of ono  
the Representation of the People Act, 1981, which originally  
  
elie electoral sight jn the same way a8 ssctign TTIA(b)  
  
‘oF the Coe and'in subslause (Oya) ot section 1281) of that  
‘Aetinhich deine Bribery. With reference tothe latter defiaion,  
ieMood befove 19h it was held tat saducenent afer  
Shto'sCansidate not to withdraw bs candidate id mot amon  
  
19 the corropt practice of bribery. In order to bring sach an  
Iducencnt hur the dchinton the wfoesuid provigns othe  
Reprsenration ofthe People Act, 195), were amended ro 1966  
  
1 Th ecomnaan as snare TA the Cade Crna ros  
‘re i 19 mec he hana Soa  
  
  
Page 185:  
189  
  
For the same reason, we that clause (by of seston 1714,  
Should be amended 0 ead Z  
  
by “letra righ” means the ght of 9 pomon at an  
dieaignouan oth to dad asa eretdne  
‘Sint to withdraw he conddatue, OF 0 0% OF to rath  
From voting  
  
94.5. We conuiered an od suggestion that the right of a  
‘eon 9 nominate anyone as a candidate a an election should  
fit be mentioned nthe geimition of "eleciora ight The obs  
|Sapputently 10 punish any alsenpk to bite of excicie: undue  
faflance ove» person inflation to the at of nominating ca  
“dates a¢ an elechon, bet th clary Tatetched. Ha  
Inkely that any person ented to nomate @ person ill demand,  
‘or be given, a iepal gratieation fortis simple verses” and  
1as'oven fess ikely thats peson who caneot ge himsll omic  
neied a 3 eandigate without 8 bribe to his proposer wil be  
‘psimbis enough to stand forthe aston  
  
98.6. Section 171B gives a compechemive and sausfactory  
Aefnition of the offence af bribery The ponishment  
  
ene the panment othe erie of ibn Bean  
§1definiton of "treatng™ are gven va secon 171  
  
Sager to all concerned if these: matters ano. fe included in  
Seaton self ay subsection (2). making Uist section come  
pie  
  
We have alresdy remarked on the lightness of the pu  
iment provided for election oflences this chaples Bean after  
‘owing for te fact that the chapter apphesble to all tinds  
OF cletons, om eecion to Paament down. leony  
{9 tvilage panchayat, me feel that if puny” OF elections  
[810 bemmintined. we Cannot alfrd to take such 2 knit  
Mew of these corrupt practices. While in the last resort the  
cficacy of thee. pendl provisions. depenes on puble opinion.  
{he lu should indate fo the courte and the pebic that these  
Foes of condsct ae essen for democratic electors and thee  
lnsringement will be severely dealt with” We recommend that  
th oflenes of brtery other. than "bribery by eating).  
Undue influence, personation and making false atementssbout  
{candidate's personal character or conduct should sll be punish-  
‘ise with imprisonment of|ether dexription which may extend  
to two gears of With tne oF wth Both,  
  
Accordingly we propose that scion I71E be omited, and  
the MSiooingtobtce te nated to won TH  
  
~(4) Whoever commits the ofence of bribery shall be  
punished with imprnonment of eithe descripion fr a  
{Rem whch may extend to two ‘ears or with ie oF with  
oth  
  
  
  
Page 186:  
ay  
  
Provided that bribery by \ecating shall be punishabie  
swath in oni  
  
YA The offense of undue infuence at an election is defined  
ery witely i section 71 to cover any Kind of yolumtary mer  
ference withthe free enecive of uy ecoral eh Tw kinds  
St such iielereace ate specially mentioned im sob-sechon (2)  
‘uthout price ta the wide cope of the general detiton gives  
‘subsccion (1. These are-theatening any candidate or voter  
‘r-iny person in whom a candidate or voter interested, with  
‘jury ot any kind. und anducing a candidate or vores to teeve  
To ora peso sham be eri Become  
an oopct of divine daplesure or spirtl censie. "There  
In of course nd dul that whan the interference takes the Fora  
{of sng or threatening fo use force or tolence H wil be rer  
Sed Bistint form of the silence  
  
DAR. Tee Supreme Court observed in Rar Rao v. Zakir  
‘Aussi that “i dic 0 ay dawn i general terms where  
ain cde al ime aed i ace  
Tater fo be determined in each ease, bat tere can be no doubt  
aa doe mer cama tol toe  
uence" Aller tevin presioun” decisons 8  
{Ghonas and cous nae. he Cont ceed  
beer consistently held th sony tha open  
{51 10 canvass for sandslates other pry slandiag for eletion  
Soch canvung does not amount to untoe fiance Batts pes  
[er tse ofthe Mistery ight ta ask the public to sypport cana  
Brey tetonping othe Ministers party. eis only where 8  
‘hates hs poe sushand sos tnd mel ai fs  
‘Suppor for ibe candidates befgnging to hs part thet a question  
A ie toes may arse 2B .  
  
9.9. 2m the more recent case of Shir Kirpal Singh  
  
“Ga one tie tony, ete othe dnbutan  
3 aioayrouy pamphiet “shu aliged. gros immorality 10 2  
indidate the presidental shetose The dnsboton he  
Ps iy came within the achiet of secon T7TG of the  
de, bt the controversy here the Supreme Court was whether  
He also came within the mint section TNC and trounce  
to undue inoence. The Com, by a major, bel  
  
“From a seading of section 171G it ces that in pur  
sit of parity of eens the Tepe rowed spam aterm  
Dist asl sch pry by mean of ale Satements  
  
2 AME ISTOSE, 397  
  
Pic  
ap dein,  
  
  
Page 187:  
Stch‘actepumstabletheewoder Hut the fos hat making  
Ot uch’ fake sistent he ancl fence cr Seta  
THG doesnot and cannot mean tha cannes take ae Branet  
{oem of onde ssence pumahnbe onder secion THF The  
{ke statement my Deo such went vulgar or scurtous  
aroter tht it woul citer deter of tend to. deter voters  
ffm supmeriing that candiate whom shey woud has  
potted nthe fee exerche oftheir eeetor ght but for ther  
being ated o altempted tobe afte bythe Maher ot the  
publisher of such sttement. Therefor. i the degree of  
Srivay of the aleyaton nhich wil be the deermining  
Sachi her uns conIICo  
ston 1716 ff the egaton, though fae and velaing 1  
SStmddutes persona chersctetor conduct made ih the  
{eter to aie thereat ofan election. dees nov amoum 0  
Intenernce o atimpe at sich neteteea, te ofence would  
fetter ow NiConthe other hand. it-amounts to  
Interference orn ate to itera. t would Ee the reve  
esd stow $71 read wh section HC  
  
We thnk with ee tat ths ef demain india  
Inthe last two semiemses 09 Thin ad dacs not appear neces  
ii or logisly to fllow from the wording ‘f ether secon  
THE st oP accion 1710." Whether the false statentens grossly  
  
Sonat characer of a candidate capot amour to  
racic of undue sfucnce, that false statements aboot the pet  
Sonal characcr or condoct of a candidate may. of course fe  
feurttous and foul Boteven then the offence commited wouhd  
fall under Seaton 1716.  
  
98.10. On comparing the definiions of undue nfuence in  
the Penal Code with the defingions im the Deish Canadian  
find Autialian leon las, we find that ove definition is unduly  
Wend vague. pining toe tothe dificuiues of tnterpreation  
Feiered-to above. ‘Under the British Representation of the  
People Ast. 159.  
  
“A person shall be gully of undue iflenee—  
  
(4) if he, diectly of sitet, by himself or by  
any oie potion on his behalf mes tse of oF thet  
ads To mike ase ofr an) Tone Molence of Pesta,  
Sr intets ov threatens to ili. by hinself of by any  
‘thet person. any temporal cr spietual jun. dara  
frm or owe upon or against any person tm ore 10  
Gace os compel that person to vole or rain Irom Mo  
ting: 8  
  
  
  
Page 188:  
1s  
  
(b) it. by abduction, dures oF any nt device  
  
for contrivance he imped oe prevents the lee exercise  
Si the franchise of an elecior OF proxy for an elton  
Sr thereby compel, induces or prevails upon an elector.  
Se proxy for ameleior ether 40 soe or retrain fam  
  
‘The dsinitiows in the Australian and Canadian eesion laws,  
ss on the a ines  
  
9A 11, We eonider that, 49 the tadian Penal Code alo,  
te ofence of undue intense shoskd be more sii defined  
Boe the two types of undue influence mentioned n subsection  
GPF Sct THC. the deinen shou expressly mention  
rnuking use of oF thecatening to make Use of, a Tere. violence  
‘Or wrong restraint on any. person a8 the really important ype  
ie usted. Any $0ch violent method of ntrferieg with tae  
Tice evewe of an electoral right should be made punishable  
tnore steely tun the other two objectionable methods, There  
‘SON; not seem to be any need 10 cst the penal provision or  
Torthe mater ofthat, the deintion of th corre "practice.  
more widely sous to cover every Interference. and eave it 12  
Stove To nd oa wheter the interference ia the particu  
‘Sectmtances ol 9 case war dee OF undue” proper OF improper,  
  
98.2 We acordingly propose that seston ITIC be reid  
as fallow spre  
  
ITC. Undue unfvence at elections —(1) Whoever, wit  
Tiere withthe fre exerts of Say eesora righ  
  
(2) mates use of oF threatens to make use of, any  
force: violnes OF vrongfa restraint om any person, OF  
  
(2) jolts, of thveatens 10 infil. on any person,  
jury of ny ing nla scl oncom and exp  
son or ex-commancation fom any east commun).  
  
seul OSES 9 temps fo inde ay peso Lo  
‘ref spiritual cannve. commits the offence oF undue  
faeace tan election  
  
Provided that a declacation of public poicy oF a  
soos of pubic ston shall not be am ence under  
  
  
  
Page 189:  
18s  
  
2) Shere ami ie fee of we es  
an devon all be panied wih impesonment of her  
Septem a eh acy ay een torino a oe  
sth nee mth oth: and fe ofene commute ne  
Taner specified in clase () of sbsction the pe sone  
tment may extend to three Years”  
  
Scion YA.13, Section IID defies the offence of personation at  
TAD" aa sketion. and under accion 171F, the punishiment for the  
  
tel ‘ig Silence imprisonment Up to. one year” oF ne, or Both. NO  
fShoites’ Shangs of tebetance fh needed in section 171.” Bot the mani  
‘SaTien- Imam punishment forthe offence should be increised 1 two ears  
3a," imprisonment. and. inscad. of having in a separate section. the  
  
ramen prvi soul te oti secon THD sais  
  
Accordingly, we propose that section 171F be omitted, and the  
fottowing sub-section be added to subsection 171D:=  
  
(2) Whoever commis the offence of personation at an  
lection shall be punished mth imprisonment of either deserip-  
{lon for» crm which muy extend to two seats: oF With He,  
or'eith both  
  
9.14, Scion 171G punishes the making or publishing of  
faje tneenit elton 1 te perro character or conduct  
Soy andes with tent to act ihe ren ofthe ction  
The etence however. ponatie, wath fine only whch, 25  
  
feady poled cute ine very mente of he oence  
“Character asasonatonatancetion seems vs to Beas fe  
fechomile sv curcting ugg sntuence on itor of biking  
{Rem and shold be poss jst Severely  
  
ent ht der tn 244 of the Reprain of  
‘ne Poop ct 9ST a cmap pacts to ake oF publn  
‘fuse tatemeit in Fltion tothe eanaiatue or wihdraval of  
“andhatue of any candidate Suck fae sateen ae ikly  
Sarcaue irepurable damage ta the candidate conc ned 9 0  
TEA the! Ctlon asa hes Wenn they shuld sso be brow  
htihin the pure of secon (716  
  
“This section may accordingly be revised as follows:—  
  
‘SITNG., Fale statement in connection with an election  
‘Whoc er with intent to aft the result of an election. makes  
‘or publuhes any statement purporting to be a satement of  
{ht icf false and which be ether Knows or bsheses 10  
be fae or does not believe to be trac, im relation fo the per  
onal charaeter oF conduct of any caadisate ov An via  
{ne canuidatue or withdrawal of candidature o any cand  
‘hue shall be punshed wath imprisonment of ether destin:  
‘Som wi say extend fo two years, or wth fine, or with Bot  
  
  
  
Page 190:  
185  
  
9A.15, Section (71H penalises any person who. without  
the written authority ofthe candidate, Incors any expense fot  
the purpose of promoting or procuring the election ofthat cand  
nie, "The: punishment provided under the secon ms Tie ot  
‘Seeeding fae hundred rupees. While this provision fs some  
focsningin elation to an election for sich the relevant election  
ine provides hit o se permoge expen of anda  
It's Anomaloes invelation (0 the much larger numberof eleons  
for wiveh there iso sachin. Even in regard t the parhamen=  
  
ry ud uur elections this section Ba dead eter, We  
propose that Ir eas safely be omited Irom the Penal Code. It  
‘found belt to the le governing a parucolar election to create  
thos offence considered necessary or desirable.  
  
For similar reasons ws coasider that any penal provision Oa  
ties ction 11. shoud be des i  
{Qures candidates to Aesp account of lection expenses, and  
Seed not find place to the Penal Cods.  
  
ite.  
  
  
Page 191:  
Isa:  
  
Caceree 10  
Contents ofthe tual authority of Public Servants  
  
10.4. This Chapter deals with contempt ofthe lawful autho  
of public servants ands meant to enforce obedience and Ye  
the av uoriy The. pena provios the  
‘apier are ts ation to, und notin derogation ofthe powers  
and metho of enforcing sbch obedisce as provided fori the  
laws conferring such pomery eg» by attache and sale of pros  
io of icences and permis ete Iwill be nono  
this Chapter i nked with subs  
Stunde provarons Yo be fou is wich conter the  
Felevam Bowers on This  
ofexprenigi hike uals competent” “legally Bound  
  
ety cancel  
tho pracialy every secon  
  
fnany conerete cate falling  
8 parlicelor ston ot ws Chapter it mil be acsesnry to  
‘ead it'wth the prowsions ofthe slbetantive law from whic the  
ptt cervane eres he auth power 10 ac Come  
‘ently. many questions which aie mn tal fr offences unde  
{thr Chapter uth more on un taterpectation ofthe provisions of  
‘ish suamtive la than on ax interpretaon of the provisions  
of this Chapter. ‘Some controversies which have arisen oder  
{he indivi sections: however. reqare to be considered and wi  
fe dl cine sacri paragapi Ore pn senat  
‘Nom which ws muy make atthe eyimmng is Ma he pon shesents  
[provided inthe several sections efron these of eneney sl,  
{nous opinion. regue to be mcteaed  
  
{0.3 Seco 172 pus any geron wo shonin cde  
{o,av0id service of stimmons ot other proceeding, “The word  
[bscon in th eon as ben hea wide eae by the  
courts 0 a practically Yo cover case of craton "We fepand  
ths wo be saifactery and’ do mot consider that any elrifceany  
amendment ¥ fequisd  
  
‘tis noticed tha the second paragraph refers only tothe peo=  
  
fucion of documents in cour. not to the production of other  
  
things. ‘This omission should be reciied by inperting We words  
‘Fler thing” afer the word “Wocument  
  
‘The punishment provisions should be amendsd as follows:-  
  
{9 hs fst paragraph ofthe setion fr “one mom  
th tne ch may Srced to Bre handed Teper,  
subsite “three months, or with fe. oe wih both  
  
fe i Sa praraph for" month oF  
ine which may extend to ome thousand rupees wih bath,  
subse “one Sear or wih ne ov ah Bote  
  
1  
  
  
  
Page 192:  
wr  
  
19.2. We propose thatthe sume amtentimenss hold also be  
made in secon 17,  
  
10.4 In section 174 ao, the punishment provisions should  
he amended ain section 172. The iusrtigns appear 10: be  
wholly wanecesay as they do not els any dowbifl point and  
mae fally be omuted  
  
“The expresion “inteasionaly oma” has been given some  
what arrow meaniog by the cout and the ples of there having  
bcm Suticient cause for the omion although intentional has  
fesm accepted as valid We do not thing, however, shat  
imenasont-on this poi i neces.  
  
10.5. tn section 178, the same amendments are required to  
he made as thowe proposed abote in ection 172. "The thse  
Now fs fe unnccetary and should be mtd:  
  
19.6. The punishments provided in section 176 should be  
‘reaned co the sae exent 3 the preceding sections Under  
the nine raragraph the maximum panshment showla be three  
‘noth umprnanment and enimite fines an wae the Scorn  
{nthe pragraps. hau be one ea’ prone ane  
tines ne  
  
10.7. The question as to what exacl is the “subj: on which  
s allgs nein aly Boad fer ilormation to  
Sct charge of a police station under section #9(1\8) of  
‘ods of Crimi Procedure gave rae toa difference of opinion  
‘inte wp before a Divison Beach of the Allahabad High  
curt “The beadman who had i fact taken twa) gl from  
‘inge ges pauchayataama in which say stated that the  
[BHT had ded of Growning and sent ito the police station, On  
the quedion whether section 177 of the Penal Code was pl  
sbi Soman. CJ held  
  
“Takiog this section (section 45 (AXA), Cr PC as it  
stands, i only enjoins upon him the duty of commana  
  
{he inormation when he may possess respecting "he oecure  
Fence ol any siden or aneatural death or oF any death under  
siriowy cecum a. Th elon dow toy  
fon the alleged occurence of hy death. The word “subject  
‘sed in Section 177 of the Indian Penal Code means om (0)  
inp matte." Seesion 45 ofthe Criminal Procedure Code Seer  
‘ol sy that he Bound tosapply information on the subject  
‘ta death: which igh perhaps have included both the eases  
‘share a death took place and ease where ao death, Yn fac  
{ook place but saye merely onthe currence of death  
The word “oceurenet sn my opinion i not an equiatent of  
she word “sebject and ecesarilyHmphies that 8 ath os  
  
Be 6 tektoe T LR. 190 AICI, Ts ALR WK ANC,  
  
Seton 14  
Shed  
  
sation 7  
ors.  
  
  
Page 193:  
188  
  
setually occurred and not only that it is alesed to hare ocr  
Fed. Fat was to be held that sis hs Guy to supply nr  
Imaiion on the “subject of an alleged death even thowgh  
‘dea is aken place, the postion of headman Who fot  
4 pak servant, would become Intolerable 3s he would be-  
ote gut under section 176 ofthe Indian Penal Code where  
he mefely oats to expos all Sorts of false rumours that may  
te afiont about alleged deaths even thoughhe may know that  
the persons named are sine. Ht seems that where"2 death  
thas Naken place in suspicious circumstances, Hts the duly  
‘of the beadmaa 10 supply the information be possesses, ans  
fis faite todo So makes him lable under section 177. Bet  
steep death hs tan pce ta secon 197 apie  
  
Bennet J. took a diferent view! =  
  
The word “subject, mach wider and the subject here  
is sudden or unmatral deuth™ ‘The doy oF the mks  
der section 48 to report trv facts regard fo th  
Jet heomus to report an occurence he's guty oF an omne-  
Son under scion 175 ofthe Indian Penal Code. and fe  
Fahely report an oxcurrence where there mas no acorrence  
‘or he makes some fase statement sbout am exeurtence. he  
WF guilty under secon 117-100 not consider Wt correc  
to Say that the subject under sction 17 the “cturencs)  
Becaue an osrurrence i only particular intaee and The  
Mord subject imphes something which common to >  
amber of instances all of which are class wader one sub  
‘Ee, Here the aia Round to “cmmuncate forth  
Sith any toformation ay" postess respecting  
tn instance ofthe subject of "sudden or unnatorat Gath”  
  
Rachpal Singh, J. to whom this diference of opinion, was  
fered hel? "that ds none of the events enumerated cause  
(a) sesuon 43 of Criminal Procedure Code had happens.  
‘cannot be sid that the accused was fepslly hound  
{aformation 10 the police aod thatthe fale information which  
ie'pae tothe police does not ing hes case wth the four  
Coenen of section 177 of the Indian Penal Code™  
  
W appears 69 us, if\_we may say so, with respec, that the  
view allen by’ Sulaiman, CJ and Rachpal Singh. J. very  
barron. We find ourselves in apfeoment with Bennet, I=  
Feasoning that the word "subject in section 17 ugh  
  
‘be confined Yo the particular matir 10 be forted but should  
‘be Gonstrued widely to” cover the entre fld within which that  
falter fall. "Sie, homever, this question has not arsen ts  
ny other High Court. we a not recommend any amendment  
Sa'danly the pontion.  
  
2 Bin «Latin UCR. 95? AB T6219; ALR. 1936 AN HH,  
  
  
Page 194:  
19  
  
1038. The Explanation to section 177 mentions some, but  
not ally of the offences mentioned tn sections 44 (1) and  
{e) of \* the Criminal Procedure. Code. Sections 121 to 126  
hop 143," 148, "1, 1a)" and 148 0¢ the Penal Code’ men-  
‘loned un the former section and sections 231 to 238 and 389A  
{o 489 mentioned in the ater secton are eft out of the  
Fxplanaion Yor no. apparent reason. "The resllant pas  
ik unsastactory. "Since sections #41) and S3(1\@) ‘of the  
‘Ceiminal Brocedige Code cast on persons in India a uty 10  
Teor crn ofr samme ont of Ti, ler that  
Hi those -pencer should be covered by the Explanation 10  
cei 177° of the Penal Code.” Enumeration of the sectors  
(oF this Code stating to those offences i, however, not necessary  
‘See the uy 10 pie” taformation ia tespect of thei commis  
‘Som arses Tom provisions (Goch as sections 44 and 48 of the  
Criminal Procedure Code) which enumerate ot otherwise  
Spey the ‘offences in “question,  
  
“The Explanation may accowdingy be revised to read:—  
  
“Evplanation.—In section 176 and in this section, the  
word ‘offence’ includes any act commited at an place out  
‘Ot india which, commited in India. would be punishable  
‘Inder this Coies and the word. “offender cludes any per=  
Son Uh is ulleged To have been gully of any such acl  
  
10.9, The ewe ilastrations gen in the section do not appear  
o be oF any fal lp and may be omited  
  
10.10. The punishment for an offence under the fst para-  
raph may be Sighly enhanced by omiting the words "which  
fmay extend to one thousand Tope  
  
10.11, The next thee sections do not cal for any comments  
capt in fepard to the maximum pnishment provided therein.  
in sdions Tang 179, the hot ol one thousdod tupecs or the  
Fine may be removed by omitting the words “which may extend  
ovene thownd rupees". In section 160, the. punishment  
‘movided may be eshanced to “simple imprisonment for erm  
ich'may’ extend to sm montbes or with fine or with both  
  
10.12. No change is ecded in section 181  
  
10.13. There is some sncertainny as to wheter information  
  
‘anseer to questions pat by 2 public servant falls under  
132 "The majority of the Fgh Cours have anered  
ef gueson tthe arte and taker a roa iw abot  
the spe of the word "They diagree ith the eater  
{Uinore case? on the subject, which finite secon 182 t volun  
teed statements We also think that there 1s no jostfeation  
TSe"comiruing the expression "gives Information’ natrowly  
  
1, stan «Erp, AUR. 198 a  
  
‘geen 77  
fore  
  
Secon  
  
  
Page 195:  
Sion  
on 20  
  
ish  
cre  
  
By  
ee  
  
ste of koala  
2 ant Rope, Vl pan  
  
190  
  
A Kerala case" however, istaes the spi poston 3 =  
igs sateen ender scion ot the Cia rose  
ole." Here ao the postion wil be Changed ter the ote  
son tanner ute aed i thas sy Ses  
Forde st Rept te Cae Chinn ro  
re cumstances, we JO ot songs an) ead  
‘ment of section 182 in this respect, \*  
  
10.4. The overlapping between, section 12 and section  
2UL wil be alt thm the next Chap  
  
1015, The punishment provided in this section should be  
inereated 10° Simpmooement of er desipon for's ter  
sc ay cxtend't0 ove ran or with nee cr Sth  
oi  
  
10, Scion 183 pues vest 1 he keg of a  
property by the lawiul'suhonty of a pablic servant "We Bn  
that there is confct between the Madras High Court? and the  
‘Bombay High Court regarcing the consiracuon of the words  
“lawful authority”. The Madras High Cour, tehing on the  
first and second paragraphs of vection 95, his eld tat the  
‘80 stetions 99 ad 183 should be construed together. 2d ta.  
fen if the act of the public tervant f not snty uss) a  
hevertelese. whete he acts im good falth under colour of os  
he shook be deemed to" be Sting in lawful authority ad  
Fesatance (0 hi action should be held to" be an oflenceunder  
‘ection 183. The Bombay’ High Court has dssened from the  
‘ew and eld that resitance fo the acon of a publi oMicr  
wich not sinelyjstiable by tae, even though the action  
‘nay te done in good faith under cotoer of sce will aot be  
Puonishable under this section. "We consider that ihe. Bombay  
‘ow i the correc view, and since the question has not arses  
Chewhere, we tecommend no amendment onthe point. "One  
ots, honeve. favoured the Madras wew and seggesied an  
amendment to pve eet 10  
  
1017. The mens ree for the purposes of this section res:  
usted’ to intentional “obstruction. "We eonsder that know  
ledge of likethiood of obstruction also should be covered ss  
  
‘The offence under this scion i a petty one, nd imprison  
rent is not necessary. It should be removed. The fine, however,  
  
3 Quvo npr ¥- Temhicaniols Paha, 998) LLR. 21 Std 78  
4 Sakina ae Par 9, Ep ALR, 138 Bom 33  
  
  
Page 196:  
wt  
  
should be inseused from Rs, 500.00 to Rs. 100. Aevordinaly,  
Seal Tt maybe reve ay below  
  
“184 Obsructing sale af property offer for sale  
‘bv author of pride servant”  
  
Whoever solustarily obstructs any sale of propery afered  
Toate by the nal eumonty of any publ servant as  
Sti shld be ponthed sh ie which may extend to one  
howd pee  
  
1018. The punishment provided in section 18S may also  
‘pe the same in the preceding secon, i fine upto RS 1,000  
bot no Imprisonment  
  
1029. Section 186 ponahes a, person sto voluntarily, aby  
strats pube svat" the dclarge of iy publec functions.  
Thee wd Coan juin opine rend hecosction  
2S the Seton sont sina to thar relating tothe words  
“Tawtl authority” under section 183.\_"Do\ these words nclode  
atin! cada he  
4 the inlee een those aes ot irl jos  
finn are Sone by pub servants goad Toth unde? colout  
ee i nein oc hr the avo estos  
‘So the subject Even in the sure High Court the decisions  
Fine nat eco uns! Th Contre his teen telefed  
13 in a jodgement-of the Supreme Coutt? but nat seid by that  
indgemant Thre Is mo need 10 dices the teltive mes  
ne tuo siews.\_ One of us was i favour of beta! conse  
  
ire nor a pina  
{ocntioned in the Bst two paragraph of section 9, an sugested  
By" amendment (0 secon 18) by way of ricaton. The  
irajory however, were of the view thatthe only obstrotiOns  
SF thows cons of public sereants wich are scl i aeeor=  
"5 should be punishable. view of this sie  
ice of opinon among ts, we do not recommend any amend  
fort woth secon may emai in he” preset form and  
the law may be cried and when the matter i taken Zo the  
Seireme' Coun  
  
10.20, There is 9 contict of deciions as 10 the cope ofthe  
‘sort “abstraction” in section 186.""The same. question has  
Siko been dhcued at length in several” Engish eases. These  
Sevsions English as well av Indian. do not yield a precise test  
Seto what consiutes obstruction. We considered sugges  
Tio that it should be made cleat e, by am explanation. th  
  
2 See for insane Ble Joi MLR. 3, Boe 377  
2. Sah Rear Ja AVR. 1951, 200; 1951, SE 33  
  
Sons  
  
Secson 1  
ae  
Coes  
Sosy  
  
Sect ts  
see  
  
  
Page 197:  
92  
  
obstruction’ is not confined to physical obstraction. but the  
Inajrity of us wore notin favour of HH courts have due re-  
{ard 10 the Gationary meaning of the Word ‘ebstacton' (which  
Franing fe fairy wide) then Ro difclly should arse” English  
(hse felting to Seton "31C), Pouce Act 1961 (reat  
‘corresponding therio} also leave the matter elas  
nnendment "hr therefore. recommended on thi otn.  
  
Soo 1021. The maximum punishment, now provided in section  
TRemee- 186. thee months” imprisonment. oF ne upto Rs $90, of both  
sect "© may beimcreaed to sn months or with fine, oF with Bot  
  
been, 1022. In connection with ection 187, there i & suggestion?  
  
Feta to Metal” semen, i a Meee  
EOS id als ME ae a ite NE yt tar  
SER 2S ST Gye ie Cait eda Coil enema  
Sa Te Ohi Seman at Ske ht  
Smee Seeds re ugh te memraniey a sen  
  
Signature of the search memoranda has Beem held 10 be not  
‘bliaatory under the law as ft now stands,» bat that prowsion  
fed not be alteed. An-amendment providing that search  
stineses are bound to sig the hse may cfeatepracical i  
Sis,‘The lnm mould then have to. provide fora contingency  
where the witaessed nd ‘or allege thatthe. search record  
Insccuraie, We do not consider that any amendment of section  
Te necessary on ths point.  
  
ete She  
Se certo  
Ter eaees poe  
  
4, Seb Beatie Eye, BOTH R B59; Bern w. Stevens (1940) T KB Hechler x  
  
niKe,  
  
Spe Sai ER ete Scone Sok OA. aS Al  
FP NorSe4.cr 3, No 10k page 254 (Ss K. Rah ers gon.  
  
fon Rosas Eps ANRC 1998 Pat 0, 47,4. 412 (FB) My iw,  
  
  
Page 198:  
19s  
  
1025. One of us was of the view, that in the pena section  
mere dsabedence ofa duly promulgated order shoud be made  
  
imbables and tat ihe eft of uch dsobedionee need not  
  
Included 28 a necessary ingredient of the offence An order  
der accion. 194, Criminal Procedure Code. will be 4 valid  
grat al te Mgt com that such 2h ore tou  
fepromulgaed for the porpose of preventing ‘bstracton  
yee or intey Se RAT ebm sagan  
inyory tary person lawfully employed or danger to Reman  
izeheat or Ziety ot disturbance of pube tangullay or  
fri or an aay th onder to prove the valiity of the order  
icin Siways be seatary for the prosecution t0 show th  
there as such ra on the de ofthe promlgation of the oder  
Borst require the proscition to farther prove, not oni i  
Uhedtene O's aid order unde aecton 14%, bat ato the elect  
fr tendency of such dsobedieace wil be puting a0 enormous  
Soudan om the promcon, and may well rut the giving of  
Perjred evidence.” Moresver. such & provision ts ous, the  
SGxeme of the general peowision dealing with divobedlence of  
fiders of pubie servant in” Chapter 10. where the mere. act  
Sr Gisobedlene i made punishable. lence, thowgh an accused  
froweuted niet section 188, EP-C, Wil alvaye have Oe ght  
{Show tha edt mas ot vay made bru the re  
‘rating conditions reqored for the. promulgation ofthe  
‘ede ts specie section 148, Ck, BC, were aot present when  
the order was promotnaed,netertiless the proseciion should  
tox be requed to further prove, ser proving the dobodince  
‘of the order, that such Ghobedience ether caused ot hada  
teedency to’ cause the vareut Taka. mentoned. above. He  
{Graber pointed out thatthe exeumstance. present onthe date  
‘of the promalgation of an ender under section 144, Cr. Pe  
Sot ema omega, ott aan  
present on the date on which the order was di a  
Trany" instances. the mere promblation of thy ore nder  
fstion "14a, Cr. PC” may have the salutary effec in preven.  
ing the vanous ks mentioned im that section. Ia person,  
Theta, desbeyt such ander {which has proved fo be  
‘fictive forthe purpose for which was promulgated), i wil  
fe aia forthe proncution to show that on the date ofthe  
<Ssabediene the asf oF disobedence had any auch’ tendency a5  
‘required in section T98. Tie person who” deliberately Rots  
1 Lil order shoud noc bene from it effectiveness  
  
Mujorty of us were, howeser. sot in favour of this view  
Section TBE. though mainly sefeitieg to otders ‘under section  
Tat, Cr\_ PC nde enough to include violations of some order  
Under Specat "laws, and" mere sobedience of even  
iid oedet should not be made punishable unless it caused of  
Tada tendency 0 case one of the harmful efetsmenioned  
{othe section  
  
In siew of the absence of agreement, we do mot propose any  
amendment to the section of this p  
  
Met I,  
  
  
  
Page 199:  
198  
  
ing, 1026 The following minor amendments are resomnmend-  
  
1) Inthe punishment provision. the iit of one thousand  
Topoes Tor the fine may be removed by orang the  
‘nora “hich may extend to one thoucand raps"  
  
(i) fe the Fxplanation. the word “goterplate in the frst  
Nentence B ampocie nd fot in acd wit Hs oszal  
{rminoiogy. The second” smtence is ‘Unnecscarily  
‘xpontary” and abo sighs misleading. "The txple  
ation maybe shortened. to "read  
  
‘Eyplaation:— i not aecesary that the ofend:e  
sro that hi  
  
iy The ihtation does not lacdate any doubsil poi  
{Indio hic the words "and thereby causes danger ot  
{Bot are pot pareuarly apt, The illstation should  
be omited  
  
econ, 27. No changes are required in sections 189 and 190.  
  
feta (077 Netane we rece 39 and  
  
  
Page 200:  
Caren 1  
  
(OF FALSE EVIDENCE AND OFFENCES  
‘AGAINST. PURLIC JUSTICE  
  
1.1. Perjury and other offences against public justies ace  
slr nner wa ihe Chapt Phe rans  
of thee "provwom wide and early everythin  
fnklied 1d otra the adminbteaion of jutce hat Been  
fevered. thas theefare Been unsceess  
  
many hangs except f0 Femove Wor  
  
ce us to. make  
uh  
  
14.2. Section 191 defines ving fae evidence’, and section  
102 defines “breatng Take evidence while the thrze push  
Jing Sections thit follow trea the two ake.” Under Sect  
TM, hen a person who fe legally bound to sale the woth of  
to make Searation, makes any statement which i fa  
  
‘when he nowy or lies to be  
  
Weiter he gives fabe evdence. Under section 192, ia pasion  
inte any Smcance to ext, make any fae en in  
Shy book ef record, of makes any document containing a false  
Stoleimen, Intending that any of these may appeat in evience  
Sed mind the pean deaig. wh the mater, Ne betes  
  
11.3, Regudiog. these defitions, one suggestion poiced  
by os was that an accused pefson, while deendieg himsell  
Sesion a crimmat charge, shouldbe’ put outsige the scope ot  
‘Solon 1h aw Nein 192 aretha tat  
Fetoo much fo expect that a person accused ofa serious offence  
‘Soul ‘not be tempied to give oF fabricate fae evidence. We  
fre unable ¢@ aceepe this Is quite toe that an accused  
making a satement under section 2 of the Criminal. Proce:  
Sie ode ene bere if any pat ofthe alee  
Jeisle but that ts hecnce the accused isnot legally bound 10  
te the’ truths However, the tow requires that he oust  
ate the truth, cig, when he, giver etdence under section  
SE2A, there igo Teason hy he shoukd wot be bound by that  
eqenement, "We sce no jstfeation. general for giving” 2  
  
any acconed person 1 obstrUet the coutse of juice,  
  
ise or Taicated evidence in cour  
  
Befetons  
Bh  
  
Mates  
eae  
best  
  
  
Page 201:  
6  
  
wen considers it expedient; and, when the question of insti-  
ing such a prosecution is aid, the quesnon of materiality  
‘an be propedy considered, No husm has beer caused by the  
siting detmition and we do not propose any change.  
  
11S, Regarding section 192 there seem to be some confit  
cof decisions’ ts to whether fabricated evidence which may Not  
be ‘admsibie i within the ebation. White the Allhabad>  
{isd Patna’ High Courts have taken a narrow view, he Cakuta  
Siow! ip that, under secon 192, the tention thal creates  
{he criminal fence, andthe quesuon whether, under the terms  
‘OF the law the dociment fy Sdmisuble io evidence or hots  
tmmaieral, “That Court observed —  
  
‘The deciions of High Courts ia (nda, at any rate  
some of them, sould soem to show that section 192.  
Iitted to such caves as those which the fabcated evi  
age i in fat adie unde the ters ft of  
fidence. Speaking Tor -mysel, T have the gravest doubt  
Sthether those dessions ae correct I think the words  
‘of the section will show that isthe intention that creates  
the eviounalollence and. not the fact m8 (0 whether, Under  
fhe term of the lw, the document is admisible in ev  
‘deoce The view ‘expresied in the “eases mentioned  
Iipht rave considerable dificlty ia eases where the Judge  
  
hha impropery admitted im evdencea document ota  
IMaleehder the terms ot Oe aw”  
  
In a later Calcutta cate, it was held thatthe mere fat that  
1 document would be ultimately inadmissible in endence, does  
fot necesarily take 3 out ofthe mischief of section 193  
  
In an eatly Lahore case\* the Court stated the postion as  
follows —  
  
“The appellant did not produce Ex. P.C2 in original  
bt a copy there, Ex, P-A. The weight of authority is in  
Favour ot the view thst there can be no fabecaion of  
fale evince within the messing of section 192, LP.C,  
IWibe‘ evidence 1) not adele In Hel  
  
‘Seen a Code of Crminat rostore 198  
Bog.» Mat (19) LR? A 105  
‘rp. Gut Sosy, (HKD) LL. 6 Al  
QE v- Real Kare, (97) UL RW AL 35,  
QB, Zoi Hare, 99 TLR. 21 AML 19; ans  
ag. vs Mal Sp (906) LL 8 A 2  
2. Ml Soph Th Ste, AT 1956 Pat 156 156,19  
5) Be RBar A DIS Cl 85S,  
© ep L RENN TR sista oh an sac rae  
+ stot Chora. Bmp 4 (194) 1 CAL 65; A.B, 1900 Cal 0,  
6 Fatt dined Brg. RAR Lah, 3, 5, 6,  
  
  
  
Page 202:  
wr  
  
A later Lahore case! however, holds that 2 person is. guily  
‘of fabricating flee evidence i he makes a fale enry in a doce:  
tment intending that n shall appear in evidence and” mislead  
the Judge cx Magistate, and the mere fact that. the eat) i  
ot legally admiauble in’ evigence cannot ale  
  
his guile  
  
1.8, We would prefer the wider view. IPewidence is fabric:  
sted with the pecullar sotent mesoned i Seton 192, we See  
4 renin why the fabrieaton sould not be purahed. To  
thief, ne deter y the dimiabiy of the  
Sing tices to the admis, and this nota salsetory  
  
ion, "We propose 10 make dhe postion clear By addi  
PPipeciic enptnaton in section 193. yawns  
  
117. The expression “judicial proceeding” which occurs  
Jn section’ 192 and 195 hin not. teen ‘detned in the Code.  
‘Though controversy often ares whether 9 particule proceed:  
ings o is nt a jade proceeding. Coots have refrsined. from  
‘tempting 4 defnton, choosing (© decide each case on 3 con  
‘eration ofthe ate of he roeetins,the ody ele  
‘hey ore bel the parent epsaive provision and  
  
Felevaot circomaancet. We also have come to the conclusion  
  
‘ot posible. We  
ether jodi proceedings should be confines  
  
biion would” be “very narrow.  
  
11.8. () Explanation 2 to sestion 193 becomes points if  
‘commitment. proceedings are abslabed. It should thersiore  
WTomated, af aso the Mutation pertaining thereto  
  
(Fo the remone ven in paragraph 11 6atove, ve  
rose hatin is pace, the ofowlag” Expinaton’ be  
porpose sana  
  
“Explanation 2.—For the purpose of this section, i  
immaterial whether the fabricated evidence or i not  
  
‘admissible im the peoceeding.in which it's intend  
ed to be used  
  
14.9. i Sections 194 and 195 prove for aggravated forms  
of ating fabncating fat ede, 1 str ue ta  
  
Etdence i pven ox fabreated for production in crianal co  
‘We ttt it make fr clr that expresay pe  
‘oth these sections; and although, ia the result some cases  
Now covered by sections 194 and 195 may fall tise the,  
no" preat hare” wil occur, as thesz cass wil remain. covered  
ty fecion 193 wiih provides Adequate ponsheo.  
  
leave it to vtuate wth the decison of the pres ®  
  
Secon 193  
Send  
  
—  
mm  
  
aol Ram NTR 9 Lak 98 Genie om A RTD  
  
wi  
  
  
Page 203:  
196  
  
i) The second pur of section 194 punishes only the person  
who gave fake evidence. and not the person who fabrested  
  
nl there no reason why fabnesting fae evidence Should  
ot be teate the same” Way as giving. fake evidence. We  
ropos to add the Wonls” “of fabrieses™ afer the WOrd  
  
‘A suggestion way made that the fabrication of fate evidence  
sould be punishable under ston 194 only Wf Such fabrics  
vidoe is actualy used in court There seem to  
feation (or that und 30 long. as evwence ir Tabcated wl  
sn ets nou Cm mmateria whts the eee  
in Setusy ted or not  
  
srs mation 18  
“pte npn Rha gt thea  
Shea oa Sea  
pre a i cea  
late rl be Semis’, Be  
pee al pel haa een  
  
and any innocent person shall te consisted and ee  
centedin“comeguence of sel fase evince: he person  
whe gives or foricees such fae evidence sal be pureshed  
wrth dca’ ar lprsament for Tie the pubes  
Rerinhefore deserted  
  
195. Giving oF fabricating fale evidence with intent 10  
roe conicion of frac ganas ith iprounent  
Jur Sevan sears or pwands Whoever gives lake Cdenee  
‘in en trac Before a Court of Jstce oTabicates fae ev  
Alene forthe purpose of bested on sh fa ending  
thereby to eau or kong tobe  
  
cine. amy perom to be convicted sf an offence whch i  
io capual, But punishable with imprisonment fora term of  
fen Years or witha mre severe sencence shall fe punched  
48's person convieted ol That offence would be hale 12 Be  
Posies  
  
snay be omitted, ~~  
  
  
  
Page 204:  
99  
  
His s  
  
tions 196 10 198 ness no change.  
  
11.18 One ablion 10 the chapter seems (0 os useful It  
contin te tne fake. medial certiates Te common  
{ike that “umnrupuleus persons. donot est  
  
th eerieats 10 ga vantage othe couse of Mga  
SSintancs for pueposes uncoaneci wih the. courts, 1  
owed at Sstinns 196 and 137 of the Code provide pr  
‘ance for wing fave corifeates which are required by law Io  
alge or whch state fate of wh the eerullcales are good  
dine: Maal certcates do ot fll within that description:  
SERUM OP US regard in whch ihe medical profess  
Feld the cousts and ther public ofials use accent such  
‘etal concer at tert face vale, We tink W proper that  
‘Gemaking af fake medial ceruteate and, corespondinaly,  
{he tne of Such 8 cemene,shoold be punishable, We are making  
thos agyestion not Because many doctors sue Tue ceria  
bot ech the courte almost tavanaly accept them a5 tue  
ht there shoud be a legal sanction to ensure that auch cet  
fates tre in Tact. toe  
  
1.12 We, thoreine.secommend the insertion of to new  
sects a follows  
  
Tretia cenibete or cetieate of fives. knowing that such  
‘Shiczsi as n soy mater parca shall be punta  
‘Sit imprigonmem of her description fora term which  
this enn’ tovene yearoe wah fe or with both Hn,  
is os thatthe feria Intended t0 be used in any  
Sage a joel procseding. he shall be ponshate with  
eSSdhmett of edar dewrption for a term which may  
Chiond wr three sear, ee will ne, oF with both  
  
19eR. Using ox roe a medical cenrcare Known to be  
Jae! Whawser vores sen oF empl to we any Ach  
‘Stic iw ceria Some fhe se to be ae  
SS anata oun, shall be punighable with spisonment  
  
‘tinge serio or a term whch may extend to” one  
Sir Orlin. or ith oth: andra hese es or tenets  
Ut im any sage of a deta proweeding. he shall be  
hence ont imprisonment of Sher description for &  
tah  
  
11.13 Section 199 dsuls with fae declarations, and section  
uo\deals sont the conupt ose of such fae declarations, They  
ind no change  
  
Boos  
  
  
  
Page 205:  
Seon mt  
inne  
  
Ieee:  
Sie ieee  
possi  
  
“rials ARH TE INS CR  
  
20  
  
1.16 Section 201 pusishes any person who, knowing that  
fan offeace has been committed, desroys the evidence of that  
‘liens otder to seen the clfender,”"The ponshment saree  
‘evording £0 the nature of the offence, so that it the oendse  
‘Suunto be iiden in thn manners pant with death, the  
‘flender is Hiable to impesonteent plo seven years, le the  
‘tence be. punishable wth imprisonment upto ten years. the  
‘maxima inpsoniment isthe years For some Une there wus  
{Tontroverny whether a person wh commass an offence and then  
Sestrye suidenge of the ellence, could be punished nde seo  
fom 201, The Supreme Court" has decided that he can be 30  
[ponisbed: and although this may a fist sight, seem someniut  
[congradus. the coutls have. on the. whole, found thi sew  
‘wef for practical parposss. We do mot think iis necessary 10  
‘vend section 201 fn the conteary sense  
  
15 Sostion 202 punishes the perion whe nentionaly  
‘omits one sntormation concerning at ofene wich egal  
fund sive, and scion 905 pehes the person ho pes  
Fase information concerning an fence Lopeatly the latte  
‘eon shoal ce a We mo at ton $0 nd the  
‘fa part of ssc 20, maybe transposed The Explanation  
ay choline to be e part ofthe renbed section 203  
  
16 Section 204 punishes the desuuction of any document  
which can be compelled to be prodeced as evidenee in a Court  
‘when it has been stmmoned oF requed to be proguced. The  
Scchon mentions oaly'2""dosament™ alihough anything ether  
than a dovament can ens be required to be produced ina Cour,  
nd we do not ae why the desrucion of sucka thing it be  
fod idence, should not be equally punishable We, therefore,  
‘FScommend tht in this section afer the words “any document  
the words “or other thiog™ be inserted  
  
LI.17 No change is needed in setions 208, 206 and 207  
  
118 Wesson 306 ad 207 pun certain andl  
acts dewgned to prevent the steure of property undet the odes  
SF Goa nerd eno duet provision i the Code agains the  
removal of stashed movable property, We consider that once  
Thy movable property has been law(uly attached by order of  
Tota a hy Suton mera Oo iene  
‘th that property habe respective ofthe moive  
‘rvtenusn ct te person concerned. We propose that the fl  
owing section may be Inerted attr Ston 207 —  
  
"207A. Removal of arached properis--Whoever, kno  
fe hosing reason fo elive that any movable propery has  
‘ten tawflty attached by the order of a Coot of Juste,  
‘omowes or interes wih sich. propery otherwise than  
Incsordsace wth le, shal, Whether Or ot he Was party  
  
  
  
Page 206:  
ao  
  
to the procedings in which the order was made, be punished  
‘with impersonment of ether description for a ter mich  
Imay extend to two sear, oe wh fine, oF th Bath  
  
1.19, No change is ned in sections 208, 209 and 210,  
  
11.20, Liks section 192, section 211 is intended to peevent  
fate ‘accoatons being made against insocent persons. whieh  
fot omy cause Rerawment fo those penons bot abo res it  
tnastags of pole time, Sutin 182 ee befly described us talse  
Jaformation ith sotent To cause a publc servant 10 use his  
{Satu power to the mnjury of another persons wile dhe heading  
ff sacton 211 ruts abe charge of ffenee made with intent  
injme™ Thee two provaions are complementary to each other  
dnd designed to operate diferent situations. The courts Rave,  
Rowevers ip found i sical to deternine which pro:  
‘ion would be appliabie una given situation. Thus if'a person  
Bess false iormation wo 4 pole offker that another person  
EiS"commitia an oienc. des he give abe information to 2  
public servant utua the meaning of section 182, oF docs he  
Erste crvinal proceedings with the meaning of section 207  
The High Cours Sve not peed the answer ad he coafict  
as not et heen resolved by the Supreme Cour." The practical  
fporizace "ofthis confer lies ia the procedueal rule?  
‘wih Fequires a complaat by a pubhe servant fora prosecution  
Unde scion 182, and by & cout Tora proecuton wet fection  
BIT when the mer relates 10 a court roceading. To remove  
‘tes ffl source of snp in courts Qver what i aera @  
[procedural dca we propose to confine sscton 21 to proceedings  
Frsittes, ad charges made. in a cour. while other cases of  
{ake formation sl fal ender section 182  
  
121, The wording of eon 214 not a8 cleat an uname  
omni dio nec ds Se ae  
Sing so sry. powson™ govern alto the ict of faliely charg  
ey fotson wate" Show thot ino pets Bethe  
‘Ste woul ako bean ofence where he went fo jue  
Sibi YI aly charged wih comm ihe  
thems ofthe steton is, insmuting emia procedings  
Snd func chrgiog wiih an olfence,aresomenhat Confainghy  
acd op  
  
Incidentally. we ako considered a suggestion that it would  
‘be worthwhile adsing an Explanavon to section 211 to indeale  
the seope of the expresso “ermal proceeding” wilh reference  
1 proceedings under seaigns 107 to 11}, 138.1  
  
Eran sa i dri te petty o on  
‘Eatooecbactyng tl ston 1¥IeN). ama Prescre Co  
  
2. Sean 195, aims Prot. Ce,  
  
eh  
  
Seton 201  
Seen  
Nom 3  
Comair.  
  
Tipe ine Si Roa al A ROR G35 3, daha  
  
‘ioe ct  
  
  
Page 207:  
ott  
  
‘Seon 21  
  
Sesto 22  
  
‘enation,  
  
Fecn  
  
om  
  
‘ofthe Cou of Criminal Procedure. We Uo no, however. comider  
The matter as of suficient importance to roqowe. clarification.  
‘Ths"tasclow also doce mot reveal any ssrous dicaly i ths  
repos.  
  
11.22. The maximum punishmsn: provided in the Rist paras  
raph of secon 211 should be merase rom fo Yours 10 Thee  
  
11.23, tn the light of above dscusion, seston 2H may bs  
revived follows  
  
"DU, Fake charge of offence mae wth arent 19 lure.  
whoeter, with nent 19 cause injary to any person  
  
line orc 1 Be ad na Goa of  
js any ermal proceeding against that pron. know  
that hae 5's jun or nwa ground for Sach procseing  
fgsist that peso OF.  
  
1) Gael charg that person in a Cont of Ja  
wainhhusng coammitcd an ofence koowing that ther  
Jit ot ht ground for sch charge agai tht peroon~  
  
stall he punished with imprisonment of either descipiion for  
term which my ented three Yeats oF wih nc oF with  
ean!  
  
‘and if sul cru proceeding be instituted on a fale  
charge of emifence punk wih imprisoament Tor seven  
Stare ona mare svefesemense, he shall be plihed wih  
Thpmonment of ether descuplion fora teem. eich My  
fexfend fo sven Seas and shallao be fae fi  
  
1124, Section 212 deals with harbouring aa, offender  
“Te ponent varcn wah the pray oF the fence No change  
fequed mn Wis secon  
  
11.25. Sections 213 and 214 deal with anlawful compounding  
cof ollemes sed ake culpable the ging or faking 60 Bi for  
‘Sich comping and agp, Uhe parshent varies wk  
‘ature cv the oflcace compounded I the offen 1 Fegan  
foundables thse prommany do Rot. of coure apply.  
  
cof the ection eases te doubt that the of  
i  
  
eganoffeae tr sorcening the ender. aid we tot neceary  
  
RSC "he lmese ctelly sereon the fends Hut. as some das  
sed i ahs connec. we rope to 9  
  
‘ich Secon fo mets Ths ces  
  
(i) Yo seston 213, the following may e added: —  
  
“Explmason. Hess not nexewat tothe commission  
‘of an ofence une this secion that the offender should  
Tine done, or dexised from dotas, What he undertook  
10 do, oF to desist from doing,  
  
  
  
Page 208:  
Ect  
  
scemon. The provnions of this section do\_nst  
entcad“oray ane whch the often may awly  
Sipconlcl:  
  
(4) section 214 the existing exception may be omited  
andthe following maybe adds =  
  
“Explonarion 109 not necessary fo the commission  
‘af an offence der this seston that the ether person  
Shout have done, oe Wesnted’ from doing. what he  
tindertook vo Se  
  
Excepion.—The provisions of this section dy not  
‘extend to any case In which he once nay lawfy be  
‘compounded,  
  
1136, Sein 5 roses the aking gic Relea the Seco  
reoiNery of salen property tathout exposing cr Section tnd 26  
ig Which i suppemeniay to schon 212 deals wih harbouring  
  
Sn excaped convict ow 9 parson ordered (a be arrowed. Neither  
  
enon eqns to be changed  
  
1127, Seton 216A wus add wo the Coden 186 speillyacan 26  
to de with burboorg ol sons who se about to comm, SSSR  
have recemy commited. abbey or dacony> and k etends Mere  
{S fot and deconues contemplated or commuted our ide Sem  
lecin Hardourng a person ahha some n oRcace  
  
sires provided fori iccton 22, and\ve Wo nt thnk see  
  
SESE Prd fori again in secuon SGA. At ihe same ime,  
  
vet ha tidnapping sn abton ould he why cade  
  
Thc ion way We hnended to tad  
  
2164. ovate: for harbouring persons about 10 commit  
Aeutaapnig, action. robbery or dacoit - Whoever, Kew:  
  
ingot ha  
Aico harbour tome any 8  
{tating the commision 6 such offence shal be Pl  
Shefwki"tfgorousmpeonment for tim which may  
‘nd to weven eas and shal ako be hah  
  
Fxplosation. For the purposes of this. seston,  
1 in impart whother be oenee ended Pe  
omated sia’ gr wathous td  
  
Exception, Thie section does not entend tothe  
extein'uhich the harbou ts by the hesband Or Sil  
The peso abst (0 comet the offence,  
  
sections. 217 t0 220. are designed 19 cions  
rats ea ao pubic sera dom acon or SEM  
Praiccas iaention. A gestion wae raed wheter the expression 23.  
‘ey pinhmene” in secoms. 217 and. 214 covery preventive  
  
aston under sccuons "10? te, 110. Crpinal Procedure: Coge  
  
“Though it may be sid that such section hy fn 2 seme, pos  
  
  
  
Page 209:  
ws  
  
tenon a  
teat  
  
2 punishment we are of the view that it need not be regarded  
352ieal ponstnen for the purpoee oft ston Hower  
thac iy Berne propose tate eens 1 opal pone  
smay Be replaced by Spunthment fot an ofence® which  
ake th ution Zaha ce  
  
No change Is needed in sctions 219 and 20,  
  
1.29, Seven sections, 221 19 225B, deat with two connected  
situations, namely. failere 19 apprehend a person required by  
inw to he apprchended. and cape of a Peron from ul  
ned. and Gescnbe in detal the various forms im which the  
{wo sition, arse ‘The commonest and moat ready” nde  
Standable ste ease of eperon essing hs owe atest Or ea  
Ingltom custody afer arrest, Sma the cae ofa person be  
nother o reset hs arrest or helping m0. excape wom ial  
pied. Much more Seng he cae pb sean om  
{ing to arrest a person whom be i by aw bound fo arrest a  
Tesi hen re Selon the cat a pu srant ho  
{otenttoaly or though criminal epee, permis person  
In is lewfu Sestody to escape Those acs aréFeprohenste and  
hove idly Seen made puntshable Further. the ponshmeat  
rade ecording 1 the teriowsnens of te fence, bm, ready  
Sesking, the grading 8 H show be,  
  
11.30, Since, however, some\_of these acts wore aot made  
ponisale when the Code was Rist enacted, there has Come 19  
e's cerain want of neatness in the arrangement of the various  
Séalons Tho, omission to apprehend a person Hable to Be ap  
  
ded was first confined to persons lable to be prebended  
for any offence ponhable with impraonment. tel, toe  
sion hae Emad for in wre so wa abet be  
pprcbended but not for an imahable with pon  
man, Seaton Zs had ob mtv, etance  
{o the ffl apprehension of another person way at Bet, pur  
‘able only the arrest was Toran offence and othr cases ere  
Inter provided for by section 2238. We ako find that sn some of  
these hetion, 90, many ideas ar introduc a one place, which  
avowdable We, therefore, propose to eastange thi set  
{fseven sections n sucha way Sata Tara pombe one vection  
‘ould express ove Mea. a lo  
@) Redeaf of section 221, combining with it sections  
222 hd BAG)  
  
<2, Publ sre ineionaly oni t are  
or permting escape Whoever, Seng 2 publ servant  
iy bound to arrest any person or 10 keep im  
SSiolyrendonally cate Btea. im otros  
‘aly aids bom bo escaping ce attempting to ccape from  
fuck custody or intentisnaly permits him to" ecape  
  
Fon Such Sastody shall  
(@) if that person to be aresad or hept in  
‘custody by ren of a conviction or charge of sus  
Prion ofa capital fence, be punished with EDU  
  
  
  
Page 210:  
20s  
  
umprisonmest for a term which may extend 10 ten  
{eats and shall also be lable o ie:  
  
@ if that person isto be areted of hep in  
‘custody by reason ofa conviction se charge oe suse  
hon of ny fer fee pone wuhipson-  
Ted with sgorour Impeuonne  
‘Bay cond toe yeas and shal ao be  
  
(0 many other case, be punished with impcison-  
sent of eitetdexctiption fora term which may eX  
{end to thes year, oF with fe, or ith Both  
  
(i) Redcat of section 223, combining. with it section  
225000) —  
  
“222, Public sernont negligently omiting to arrest  
  
‘or safering ta excape Whoever, being a public servant  
  
Tegal bound to arrest any petson or to keep tim in  
  
‘uitody, netientiy mils to arrest him ot neghgenty  
  
Salers hm to escape trom such custody. shall be ponshe  
  
bic with mpenonment of ether deverpton for’ term  
  
nay extend 10 two Yeats, OF wath ney oF With  
  
(li) Redrat of section 225, combing with i par of  
  
section 2258: " me  
  
"223. Rese from leful catods Wher \_ =  
  
seus, oF amp, (0 rcs, an eepeson foe  
lawful custody shall, — ”  
  
(2) if wh pion in custody by reason of  
concton “or Share. or soxpeion of capil  
stem, Be panned ith me  
  
sto be Table to fine:  
  
(0 if such person isin custody by reason of  
2 comction of charge of suspcion of any other  
accept Wi pets fo ie  
Ipracament foe ter whch may estend eRe  
etna hal aia be babe fe,  
  
(6) many oter eas, be punished with imprisons  
ment of ier Secription foe  
Extend to two years, F with fine, oF With oth.”  
{o> Red of weston 258 combing wih i pat of  
section 25  
224. Resigance 10 ares of another. person.—  
‘whoever offers restance or ileal cbstrucon to. the  
Jawa! arest of anotier person shall be punished with  
the punishment provided in secton 223."  
  
  
  
Page 211:  
206  
  
(0) Redratt of section 224, combining with it part of  
section 2258 mewn  
  
Escape from lanfelewstody.—Whoeve, bin  
in lanfl coustody, imentionally caper or icmp  
1o escape fom such custody shal  
  
{0 sn say by rap of conn  
charge or suspcion of an offence, he punished  
Shh imprncomen of eter eceripon for a teen  
  
Iehich may extend to tho Years ori Rae, or with  
both  
  
(1) in anyone cae. be punished with imptison-  
mont of either description for a term which may  
‘Mento month, oF wills ine, oF wth both  
  
Explanation —The punishes in thin section i ia  
dalton tothe punishrent for which the person Ip ue  
{ody washable forthe ofence of which he was convicted,  
‘2 Would have been lable on 2 convition forthe oflenee  
‘nth sche was. charged or of which be was suspected  
‘tho case may ber  
  
{:), Redrat of ection 2288, combining with it par of  
  
226, Resironce tareat-—Whoevce imentionally  
colfers tesistance at egal “obstruction 40" bis lawful  
arrest shall Be punishable with the punshmen provided  
  
Insect 25,  
Secion 227. 11.31. No change is needed in section 227,  
  
Sepign224 11.32. Section 228 provides for wil interruption of judicial  
‘mutatis, proceedings. not only before 2 court. but aso tefore any othet  
  
itis. Pubhe setae We fe that the pent sina pane  
ra  
  
‘fix months" imprisonment or ne thousand rupees fine not  
‘equate for dealing with serious cases rp” liberate inerpe  
fon of the proceedings of a Court of Juice, The punishment  
provision may be amended 19 read "with imprisonment of ether  
{scription for aterm hich may extend 0 two ears, or wath  
Tine, Gr with both"  
  
‘Penang 11.33. We considered a suggestion that ane sexton to pu:  
  
Stree nish penons appearing drunkam courts souls be nsrted, bu  
  
GREETS Gis no accept The court can always order any such person To  
  
Gia, Temiove hms, Be feinoved. trom the court and, i the case  
‘Serious the High Court can take cognizance Of the offence  
8.2 conicnpe of 8 subordinate court!  
  
1 fe Ceoteng of Gore A BA a pending Yo eine i At, Sat des not  
  
  
  
Page 212:  
207  
  
1.34. Another suggestion consicred by us was that it  
shold ean offence tora person to fake phoograpte in Court  
Vhou the Cours perminoe Reference amuse, in (Ns  
Conection. tothe proseton m England on the subget | We  
Aloubt tt thote 39 foal Reed for sucha prowuon. The Court  
{am maintain iy dignity by ering out she person who takes  
pboxcpaphs, anda pal provon om the Sabet ot re  
  
1.38, Section 239 willesave tobe wef when the jury system Seon  
is comply abvished, nd may be orate  
  
1.36. We propose thes adtions sections in this Chapter.  
  
BRIA, Jnterference with wins  
bribes or sr corrup meant,  
Stade any person from pining evdence before a public se  
Sine legalls'cmpelent ta exathie fm ay a wine shall De  
Pusihed sith imprisonment af ether description foe tem  
‘Shichi esicad tosim mondh. of with Bnet th bos  
  
11.37, Another pens! pronsion we conser necessary i in Gi) Ba  
regard wo bayumpng, We nese that secon 158 which punter nee  
fomaltendance in abediene to un order recesed from & public 8  
erat will ot slice, aK fe appieable only where the publi  
seated anon ote pt elem Tne Cada  
  
imi Code, there iam express provision agin bi jumpin  
SRENSoper io be tbe ol Te new seston ay Be  
  
“2298, Faure be pers released om hail or bond 10  
  
Sutsientsaese (the burdes of peoving whieh lies pon hi)  
opie "1 Cour in acvordance withthe term othe bond,  
‘hall be punished wat tmpsonment of ether description for  
2am chy extn oo ear OF wih Ts oF ith  
  
Evplonarion —The punishment under this section  
  
49 in adition to the posishment to which the  
  
cet Wowk be Hable Gna conviction or the  
‘Sense with which he's charged and  
  
ut prejudice Lo the power of the Court  
  
[Sion Hh, Crim! Ince Act, 195 deg  
2 Sinn 12. Cian Comin Cade  
  
  
Page 213:  
1 abuse of these power  
  
208  
  
Fe Me ec tl bef li pach  
  
Seed como eae  
Sr ieetonie ec s ae ga bas  
eeeereenn Strata ng  
SPT Meroe A Set  
Sr  
  
"229C. Vextious search without rewonale sromd.—  
‘Whoever, being empowered by lw fo order or conduct search  
‘Ol any pace, Sexatoushy and without having tensonable  
sind Fore dng ere or condo sath ech. hall  
Ee punished with imprisonment of ether description for &  
{Goo which may" enend to one Year ot with fn, oF ith  
to"  
  
1 Sng oe Emons Canin Cover cv vc pow, secon 6  
  
inal  
  
abe oF Rows  
  
  
Page 214:  
CHAPTER 12  
  
OFFENCES RELATING TO CURRENCY NOTES,  
‘COINS AND STAMPS  
  
12.1, Chapter 12 deah exhaustively in as many 25 24 sections  
ssh offence relating toe countefehing. debasing ot altering  
St coin, Goth tdi ad foreign. and the tracking in counter  
fev or spurade coin, Analogous stviies Yn eespet of “sammps  
‘ved the Goweramsnt of tdi fo! the purpose of revenue’  
{incngig Indkam pouage stamped and in respect of foreign  
Dovtape stamps are covered in tan ston  
  
122. Onginaly, the Penal Code didnot make any specie  
protnsna relating to the countering. of eureency notes diay  
Grncign The general prow relating to forgery were com  
tered appivubie and sfisent to est mth weh countretes  
‘ihense pshapm attra st acme when coi payed 9 mych more  
‘ira ant mportant part inthe monetary sistem of the country  
thom ‘ctrency notes Legniniom relating’ wo paper coven.  
Innwenes so back to TABt. Between that year and 1923. thee  
Seve many avast Indian Paper Currency Act. pated soto  
Seis Nahe (RoR BBD. T008 1910 and 1904. The last of these  
Ie ste repented hy the Reserve Bank of Toit Act. 1984 When  
the wats Sit tesponsbity of sang and regulating currency  
fotcs nas eran tothe Reserve Bank. In 1340, bowen, the  
Goxcenment of baa atsuroa the fewer dnd authony 19 issue  
Sone fave notes ay legal tender Yo addon to the Reserve Bak  
faes nr the Catenky Ordinance. 190!  
  
Forging or countering of currency notes and bank notes  
tooth fue and fortpn, an cther rete fences, Hke posse  
Sing soumertat sole using tim gene, and. Posessing  
inniromente ara for fonping such sate. were Brat brought  
  
(the Penal Code by the Curcency Motes Forgery Act 1919.  
For svions, A89A Wo BOD. wore added in Chapecr TR on the  
Iai tha ihese-ofences, wete closely alhed ‘wth forgey aed  
‘ahr fens eating to dscamems deat with nda Chapter.  
{Secon S096 way mided during the Jase wor Act 6 of 194)  
{odcawih-a comparatively tine mater. tn rece times,  
Sriminal Courts are moch move concerned with prosecutions  
‘der these four sections than wilh proweuuons under all We  
SS seatons of Chapter 12 put together.  
  
121, We propoe thut sections 489A to 4896 shoul be pt  
  
S"ohere they tiahily belong.” The heading of be  
sn-comsequence, be changed to "Offence relating  
to Cheney Nowe "Caine and Stampe' We prope SS  
  
ering ot  
  
1. taupe 4 Onan, tb coins foe as « permanent ay.  
  
  
  
Page 215:  
210  
  
that in sew of thei gear importance the sections clang 19  
en) note shoudl ame fe "=  
  
12.8 Section 49 which s the principal section in this group  
[poishes the counueteing of “Curensy Notes or bunk nowy  
Wie tice no ceneiion of “Cumency Notes: the expres  
tank note” is diel in an explanation an "a promissry nave  
‘or engagement fo the payment of money to Bester oa dena  
‘rvoed by any person eurying on the Business of banking in any  
[art of the wth or nated by of onder the author of any  
Stateor Savereign Power, and item vv hase eqn  
{oor-o» @ sobiite Jor’ once “This eliiuon compre:  
Inesive enough to cover all noses Kaued by the Revere Bank of  
India oF by the Government of india, which are ated as money  
tmihe Coutts. and also, note sued by or under the aulhonty  
‘of the Government of a Fersian State sed 3 money in that Stale  
Currency Notes, ak commonly understood, are notes which are  
surtout clon ey orm other words, hs  
ley fender, inthe country in hic they are fel)  
‘AOL appear that th Intemion or feet of the Explanation  
section 899A & to cover any ate, type of bak nots tak  
‘exten aYoreign county, «So fat Inga concerned,  
Datta personsare prohibit? by the Reserve Bank of Toda Aci  
{exe from wing t Bil of Exchange, hm, Promissory Nove  
engagement or ihe payment of money payable to Bees on  
‘demand. there car Be mo. such “hank owes” We. propos,  
‘href. toladipt cer and wee deftion of “Careney  
notes place of the lengthy definition of "bank noses" tn the  
‘xing Explanation. and 49 omut all erence To "bank meter  
In'Scuton 499A andthe Folloming Sections  
  
12.8. The punishment preserited at present for tbe offence  
‘of coumierfening curency notes fe imprisonment for he Or me  
Prsonient ef either description upts ten ears to which He  
fray be added. We \conider that ie imprronment not  
Called for. but ‘on the ther hand tbe powttlay of spose  
‘Spl iosrisonment for a mumber of ears wou not he some  
The maumom ponshinent for the offence may vivant  
IimpeSonment Gr fours years and fine  
  
1246, The Gist sction in the cevted Chapter 12 wil aceor=  
ingly read"  
  
"230. Coumerfeiing ewreney notes Whoever counter  
{ee or known perms ny pot of he proces ef cour  
fein. any cutveney notes shall be punished with rporens  
Jimpesonment fora tetm which. may extend 10 fours  
yet and shal als be abe to fe  
  
1 Gf ee on commit Caney. Coney Ge 3. ph  
  
Ser noses “a sng syns ase as Sc Se  
ae tent hey ed  
  
2 Seda 3 tna 8 Rare Bak oi ee 138  
  
  
Page 216:  
Explanation. The expeesion ‘saerensy Note! msanye  
si) any eutveney nts oF the Gavernmint oF Mis  
i otes ist hy the Reserve Book of  
  
‘iy any notes toy whatever maine called issued by  
ba ela ol the Governmest OF any eounery  
Inde whch ee legal tender” am that  
  
127, Only few formal chasses ate readin in sethons  
4808, 4890 "and AND, ch "ssh be numbered “3h 38 and  
Boner tye anspned to Chapaee 12 Tae Sesion  
‘il ead  
  
S231. Using ae sensing amet ores mows —  
‘whoever sells, or bayer recies from. amy eter person.  
Srothersine tits in or tes ay genuine, any coumtefe  
tisemey notes Knowing or hasing resnon to belcee the  
Sime Wo bev counties shall be perished Sah. gore  
Ktmpisonment for term which stay extend to fourteen Years,  
AND thal ho be Table to fine  
  
232, Possession oF counterfeit coreney sores: -Whoe  
ver fs ia pomsesson any countrisnerrency te,  
roving or honing reason to believe the same to he counter:  
fan itn tthe me genie oa  
{Ge uned a0 gemsine. shall be punished with imprisonment ct  
iher dastipinn for i erm hhh nhs extend to even  
Sears or sith ine, oF wih Rothe  
  
128, While section 89A makes the coupterisiting of cuteney  
soits punishable wih imprscament fore, section S39E imps  
SMimallne of not mare tha Re 100 on 3 porson sho makes 2  
Securaont "30 pearly veseabung 3 curren mate es fo he cal  
  
ted to deceive" he onary individush” its double  
“ction has at present ary practical tse. However. we see 0  
item ia etaning tut we propoxe ieteasing the mawimu  
fine wader space {1} 19 Ro 30 and that under sub sexton  
(5) to Re. Son The words “or took ote" oevureig in sb»  
Suloe (i) and the marginal heading willbe omated.  
  
  
  
Page 217:  
fon  
  
129. We now proceed to consider the group of sections in  
‘Chapter 12 sections 2300 254, which deal with eflences relating  
to bis, A notweable aspect" of the scheine of these sections  
'S the distinction drawe etween “coins yw general and “nan  
Swi “Apparemiy, the maker of the Code were ofthe view that  
the fenees when Comated in relation 10 Ind cone were  
‘Bore rprchcnsile than when they related to non-indian cons.  
‘his reflected in the elaborate method of providing two cies  
fet section foreach hint oe, one ting to Tin  
‘comms and caryiog severe ponhmeit. und the Cibo retain  
{o"coine wath’ a comparatively lighter punishment.  
  
vaso doubt. important at the time  
fawn Up There mere then a name  
oP indian States some of which had thei own Comage, Ths  
ondivon no longer exists.” Counterfeltie of non-adhan Coins  
Should no doubt continue o be punsshabes but 14 Het necessary  
{o fave two sets of eovisions to deal with Indian and. mon  
Taian vine separately. We would therfore commend that  
apa ot eto deg with One pene be  
Sombined into ve  
  
2.11, As for punishment. e fel that a seal of punishment  
someuihre ta batteen tbe Compattively ight pomsfoten pe  
{sited for noo-tnéian cous and the more revere one provided  
Trin the eae of Indian coms, woud be sutabie. In ths Content  
te must ako Keepin mind the diminishing importance of 01s  
in'the monetary system as compared with cureney noles and  
the resting lek Of incentive to counterfeit cn. ©  
  
1212. Further. we Gel that the scheme of sections. 439A,  
{0 489D deatng with ofences relating 10 currency notes should  
  
te flowed fete alsa. a5 the Former is moch simpler andthe  
proton beter drafted  
2.13. section 280 defines “coin and “Indian coin. In view  
  
inction between tndian  
te rented a allows:  
  
"238. Col defo. “Coin iy metal used for the tie  
being as money. and stamped and tsued by the authority  
oF he Go or ofthe Government of &  
Sours In 'arder «9 be so ed  
  
Explowrion ~Metal which bas been stamped an ised  
by she Suthonty of the Government of India in order 19  
‘be wied as money shall continue to be coin fr the purposes  
(of ths, Chapter naretstandiag that may have ceed 10  
fe ined at mone  
  
‘four proporal to do away withthe  
Soins at reg coins, th set  
  
See pagan 1210 stove  
  
  
Page 218:  
13  
  
“The ilurations to section 230 ate wanesessury. Some of  
them dca with coins which ate now obsolete, and one of ther  
hows any special ight oa the deinsson, Wes theftore, recom  
‘mend the dektion of all iMasrations to the section  
  
2.14, Sections 21 and 232 deal withthe offence of counter  
  
‘Spiny and “Indian coin txpeciely Thy. abou! be  
mbna Into one section. "The! punishment provided fr 19  
Sion 231 appears uifcteat. In view of The defetion’ of  
“counterfeit” the Explanation to secon 231 isnot Of any pace  
ial use and may solely be omited,  
  
1215, Section 23 deas with the offence of making of siting  
‘ntraments for counierfeting‘oits and section 234 desl with  
the Same offence Yn selation to indian cons. These secon ay  
bs comune "Fer, ston 235 eich ds ih thee  
<f possessing such instroments may also. fling the scheme of  
{the provisions dealing wih the couscerfitiog of cheteney nes,  
te Incorporated in the same sacion,  
  
12.16, Section 236, which deals with the abetment of the  
counieieitig ‘of covts performed Outside Inna shoud.  
{ied as Nelion 1OKA"cover the station Conimpate #0  
  
2.17, Sections 237 and 238 dealing with import and export  
‘of countereit coins may be sombined mlo one section, wth po  
‘ion for impasonmant up seven jes,  
  
1218, Sections 239 and 240 deat withthe offence of “el  
very’ of counteren coin.”Secuon 341 dale with the delve)  
‘ef. counterfei coins which the effcader Gd not how 0 ave  
then countered atthe ume they came into his possession  
‘These may he combined ito One section, mth one punshmce! of  
seven years imprisoned. The wordibg tthe sections should  
ho be changed, to bring them in conformity with secton 3B?  
‘whic deal wih x sma fence Felting 9 counterfet currency  
  
12.19, Sections 242 and 243 dealing with ponewsion of coun  
‘eret coins may be combined ina he seetfon, with proven  
for impritoniment upto five. years. The prevent secon. des  
gite the mens rea as “Cadulty of with intent (9. deraad!  
We propose to follow thelanguage of the cortesponing section!  
selating to eurency notes, ts tm emo pec ta the Prost  
soning.  
  
2 Sion 9-9 (enanderot 238 aor  
5. konami 23 ae ogni 12? shove  
  
Sinn  
  
onan  
  
Finca  
ra  
  
  
Page 219:  
aie  
  
24  
  
1220, Section 244 relates 10 employes in minis and sation  
$a: waking out coimungrosrameats fem ns. TRESS  
Sections do met tegue 199 CHM,  
  
1221. Sesinns 26 10 284 Gea wlth sing the weight come  
tention oan gem, Tey et ina  
frost hate erent, and nobody would  
Bring te itr the waght oF Eompoiion of the coins which  
Steines grown Thaw secon ne eat of date and sy Be  
ited  
  
ts ‘ofthe abe diewsion. setom 23  
  
2) ay IN ola by he oll ng schon =  
  
v3 mre ein where custo  
asin ptosis oF coumerTEN  
Sou Sh be pune! wit mprsonment of ether  
‘inn for term fish may-extend (0 ven SEARS, and  
Shah be ableton  
  
231, Caine a8 geomine comment evin. Whoever sly  
oo bigs revives [om ane other person. 0 otherwise  
sie it ve ues oh pentane ane cowte Te com, KNOWN  
tide a ihn eho onto be count shal  
  
fe punted wih impehonmene of eer description  
  
Sean sha alo be  
  
fe erm ich  
Trae te tes  
  
238. Passesion <P countesit coin —Whoever hy  
i ie pnseson any Souter ‘coin, knowing or  
faing son te belsss tia atic to be coumertel and  
ie a us he some ae psouine that Te may Be Used  
“Sitic’ chat he puna teh inpeingnmenn of ther  
ion fara term ohh my exten to Sve pear oF wT  
  
9. Afakixe oF pomesing surimouts oF merits for  
Tonigeriie crdee Whoever ike ut perry any  
a the precess of muking cr Buseor ei ar dnposes ol  
FeTLS mh passeesiomsts chine) imtroment oF material  
Thods cr bnew oe ha  
{Slpeiuae dik era yo fe wed. for coumieceing any  
Coamctht he penised wit imsebonment of eltber decripe  
lua amt which may ener tote Seas. nd shall abe  
fe tells wr ere  
  
ipo a Pdi cps throm ny commie oi,  
ines ng eases nehne thal hese peur  
pee shall bespamstadt wah imprisonment oF ether  
  
Mfg tem wh sy extend Ho sven Ye  
sett ne  
  
  
  
Page 220:  
1s  
  
241, Person emploved in it caxsing coin to be of die  
  
ex: weict or composition from that fed by taw.— Whoever.  
  
Iringemphinc in nny mint lawfly establahed tw tnd  
  
cy ay actor ort wat be i egaly bound todo, with tae  
‘of casngany coin cued from that st be oF  
  
nt weight caraponion tram  
  
sod by lan Sal  
  
x Gevripuion fora tet wis may een fo sven Jour  
  
sad shoiako oe Habe to fne  
  
SAE Unlwfltakive wing set fr mit  
Whoessr without bof thor. taker Out 99 mt  
letullyexabtohed in hs, ay cening tol br nares  
shal Be Gunshed wit "imprcnment of cir dese  
fora rm whi may extend To Sen eats nd shal ao be  
Wei tehne  
  
1228, foe coring hs nex rou of ton ealng  
fo recone stamps. we. would Soggee the imei of 2  
ection tcaing. to cain” Wilh “increasing mecharialion  
the, ea eotomatie vending machines for sling various atic:  
and eich services or for calling Tarer an tails boond to  
me fo wugine i he near future Such machines age aly  
‘operated y inserting the reqose coin, of otnet valuable them  
Expenenceof other countries shows thatthe mchine, of rather  
‘count, fvcheated by Ushonest persons inserting aes tstead  
of eons Such conduc is harmfl and dshooest and shoul he  
made punishable as ben dave in some counties. "We see,  
For none. section 399 of he Canadian Criminal Cade ved  
makes il an affence for any one whe frauduealy iets oF uses  
‘ma muchise that ‘ecds merchandise or sarees or colcts  
Faves cll anyching tha ntended to puss or the coin or ths  
woken of value vat the machine is desined vo weevive in exchange  
{or the merchandse. sevice. late, oF oll, a6 the ese may be  
rl ieee com th erin iS  
vo deal wa tes olence." Punishment of iprisonmen Upe  
Se both. wil sue forthe olfence "The new  
provbion may Lea  
  
TSOTSI Sear scene  
dave tarde ata 2 ee geet  
  
1224. Sections 255 to 268 deal with the coustereiiag of,  
and contested otenees relating to, “stamp tied by Govern:  
‘ment for the purpose of revenue’. Ae SOoweaments mssns  
{he Government of Inia of ary Slate Goversment. te sections:  
apply in cauon toalfevenvesiampy, whether Stuer Cena  
‘pvt of section 17 ofthe Indian Post ice Act. 1398 Indian  
  
  
  
Page 221:  
nent  
  
cra  
  
3.  
  
St  
  
postage stumps (icloding impressions produced by. fran  
‘aches ate deemed tobe such revesue stamps within the ea  
‘ng of seton 255 ef. teg. Then, sub-section (8) of secon 263A  
aes the pressing Selions applicable abo in relation to foreign  
Postge stamps.  
  
1225. No substantial change appears necessary  
nine secuons. "However, a considerable shoriening of the  
Tanguage of these sections can be achieved in partelar. Ue  
Fepetiom in each section of the. words “stamp Tasued by the  
‘Gocernment forthe purpose of revense” can be voided by wing  
the term revenve sump" with'a deinition inthefitst section.  
Mte Sito propose tha these sctions may De sewed “on the  
‘ime ines asthe sections reat 10 coin.  
  
1226. In ection 255 the severe punishment of imprisonment  
fe appears lo be unaecenary: goes Imprisonment UP,  
  
rs should be adequate. fa view ol the ceae deftion of  
  
‘Soleil in eecuon 28 of the Code. the Explanation to sc<-  
fon 5518 not necesary and may sally be dele,  
  
12.22, Section 256 dels with the possesion of instruments  
‘or materal for counterfsting, and section 257 with the sale of|  
Stehinirumens ‘These two. sections may be combined nto  
fn "ar the langage of i coesonding etn es  
ite eurency soter—section 89D —sppeus to be simpler. and  
(Ould be Tolomed with advantage  
  
1228. Sections 258,299 and 260 del with the sae, possesion  
land! ase gh counterfeit stamps. The the sections may be  
ombined nto once  
  
1229. Sections 261 to 263 require no change of substan.  
  
1230. In she light of the above discussion, sections 255 10  
2a may be rev ed and renumbered as follows —  
  
44. Covering revenue stamp —Whoeves  
{eis ot heowingy perfor any part ofthe process of counter  
fitag, any revenue stamp shall be ponshed with rigor,  
Feiutfonmeet for a term which may Extend to ten yeas and  
Sa also be Table (fine  
  
Explenation—The expession ‘revenue stamp’ means  
stamp sued by Government for the purpose oF retenve  
  
248, Making or possession or sale of insinements ar  
‘navera Jor conteforing revenue starp-—-Whoever makes  
Oe perforis any part of the process of making. oF Buys OF  
Sa Se doposes yor has in his possession, any machinery,  
iistroment"or materal for the. purpose of being ted. oF  
[oon Raving reason to belive that it intended 19 be  
  
  
  
Page 222:  
0  
  
a fo coutering any ven amp al be phd  
‘ithimpsonment of Sher desepion fr a term which may  
‘Mondo seven yeas and hal ah table fo oe.  
  
246, Sole, we ond possenon of comtret reeme  
  
(@) ss, or offers for sale, any stamp which he  
itnows or hts reason 0 believe so bet counterf  
revenue samp oF  
  
8) has in his possesion any stamp which he knows  
to be a souneve evenue samp. intending  
1 he oF Uapose of the same at penn, 3  
  
(6) uses as genuine any stamp. Knowing it to be a  
‘Sooner revenue samp,  
‘hall be punished with imprisonment of either description  
  
Tora ter which may extend To weve years or wath fi, OF  
‘wi Both  
  
247. ENacivg. wring or removing revenue stamp with  
‘intent to, cause Tos vo Corernnent- Whoever. Fausulenty  
‘rventhintent to cuvne fous (0 the Governmeni removes OF  
‘laces om say sabsunce Bearing ® revenue Samp. any  
‘wring or document Tor which such stamp hae beet set  
‘x removes from any writing ot document, a revenue stamp  
Stich hasbeen tse for such writing or document. in sxder  
That such stamp may be osed fora dierent writing or Joc  
‘mens, shall De punished with imprisonment of ether det  
ripton for aterm which may extend to Three year, oF with  
Snes or th both  
  
248, Using reseane stamp know to. have Been More  
‘wed Whoever, travdulemy oF sith ftent to cass los 19  
the Government. uses for any purpose a revenue lamp which  
the knows to have baen befoce used. shal be pusised with  
Imprmonment of either escrpion for a erm which may  
‘Guend to two Jeurs or wth ie, with Bot,  
  
219, Brose of mark devoting thar stamp has been  
‘asad Whoewet =  
  
> fraudulently or withintent to cause tos to the  
Government, eases or removes from a revenle  
Slump any inark put or tmpresed upon H for  
the’ purpove ol denoung that the stamp has been  
ued, oF  
  
(©) Knowingly has in his possession o sls or diss  
poses of any. such stamp from whieh such  
Fark has been erased or femoved, ot  
  
(6) sels oF disposes of any. such stamp which he  
Thows ta have been esod,  
  
  
Page 223:  
stall be punished with imprisonment of ether deseription  
  
inca Kau shih ay extend tote years oF mh fe, oF  
  
12.4, Scion 268 probs dealings in “tious poxtags  
campo ibe acon bso Sontten seep nd earn  
Sav ant tots prow wee a seme  
amp i'l tat nec ecoOing spam amp ae  
  
Eth woud she countersng ft woul De eine  
the ton Of making Beiioussisge mew resumen  
{Sister in coating) et cea asi tee  
ieeiotdatne hs sor nest inthe ce fe oes ane  
ARS nA he ently meh mach  
fh Tew ih” ceuecing” page amg, hee  
‘himaking. wing or menage tape pale  
Shy a a sna The ngage toed ction 260A 1  
ide Snoop eter even senoes a of coumerfouoe: ba  
Uso the intention sto cner onl ath wh do ot FL  
SEHINRE mee sen ence of counting.  
  
Snpliy the sefintion of fictsiow stamp: phen in subsection  
ame Slaton wich mates ho ei yell a the ne  
receding sections ie relaon, to foreign Posa  
Eom ahoatd be pot ne separate sccon: Forbert arpa  
note to the section should contain the word "postage a8 (he  
Rtiow deal with postage stamps only:  
  
res gf 22: Sstion 260A may be vented hy Imo sons as  
se 290, Applicaton of preceding sections ws foreign pestage  
stonpic The persion o secon a 0 £8, Rosin  
  
Sea ein pte tas edb over:  
ime faterag coos they apy eon fo ene  
  
251. Prohibition of tition postage stays (1) Who-  
  
2) makes. Knowingly utters. deal in or sels any  
fuitious "powage “stamp. or homngly” uses  
foe ny postal purposs any soc stamp, oF  
  
(6) has in bis posession, without lasful excuse.  
fry ‘Such samp, oF  
  
46) makes, of without Jawful excuse. fas in  
  
pomssion any di, plate nsirmen: or roar  
Roe'making any such stanp,  
  
  
  
Page 224:  
‘ul be punished with fine which may extend to two handed  
2) Amy such stamp. di, pote sstrament or matariah  
  
in he pouenuion oF ai ponon toe manking any ony,  
‘postage amp ay Reseed and eld. sal Be Hosted  
  
samp ibey purporting 0 be Read bythe! Govern  
‘tes af 4 Toregn coun for the purpove ot donot  
Strate of postage cry lactis or ima or epee  
Tian hla on paper or xherse, ot any Wanye by  
NUK Gemma or eh porpoe  
  
  
  
Page 225:  
Sueeee  
  
ecto 36  
  
seoian 2  
  
cuarren 13  
OFFENCES RELATING TO WEIGHTS AND MEASURERS  
  
19.4, The four main offences relating v0 weights and eure  
are made punshabie tn Chapeer 13 of the Code.” These we  
Fiswutest ise of fale weiphingnsrumen. fraudulent ose  
Pa Tulse went or ale measure of length ov capaci. poses:  
Sing Sich Ynstramen, weight ot measure, and making o sling  
ch insirement, weight oF menure, The maaimany ponsiment  
under ony ofthe four sections i smpnsorment uplo one Sear.  
Since hex offences are comme frequently and with punt BY  
Timsrupelous traders in realon tocommodies of every day oe,  
{there easing mace Rarcship to people, especialy to the pooree  
Wiehe we el thatthe” offers merit deterrent puns  
  
ier ew, here soa ha the ai,  
men of one. year's mpesgement now provided unde. thee  
‘elon should be iaureased (0 tho years  
  
13.2, We find thatthe State las dealing with weights and  
measures also contam penal provisions whch cover the kind of  
ca pumgnaie ander Heian e410 67. Were ow  
ty aay of sample an alts of the prowions  
  
‘eahh Sa Meares CEnfocemen) Ac. 1988 ==  
  
Pus  
  
‘Seting oF detocng, in coun of Fo feof ope  
ind Oe cGoe Sy Ste, Saher Wa td  
ce er a a  
  
‘Sling neried oF untamed ine upto Rs. 00.  
‘Srntiilag saemest  
  
‘ag iodo creme or Ff oer fae ma ts  
ied remand wes” fens | ‘eshte 3  
  
sages spun se monn mo  
a  
conan te ete Fre ens K08  
  
SoS ems ose  
  
>  
  
  
  
Page 226:  
Sa  
  
"EARS IO sie pecs epee ae oe eo  
Ee mmonere hmong shows Raat Mme eer  
  
Seton 7 eng in powenion of comme! foyvsonm ie cag yea  
oe are ag ae OPA Ben, Shak  
  
Sse Mg ee wie tenn pe oe sw  
Milind mcipu'e tacpuee 010 Soba. “oe tat  
Lagi ie pt 1 he bi  
SSUES ER oe  
  
Ss. eae co coma tp tame ae sa  
Bo See Na RE at  
Seep a  
  
Se ad lng ge Fe a 0  
  
Se tage ra umaelreh Ieiomen leo pa,  
  
123 il be ted that the Sate Acts are main dee Cte os  
Sgned to elon the cera epnont egantahng ees  
  
AEE ema. “Proc for ites apint these Sea be  
Pe  
  
‘aining the provions in the Penal” Code. “Further. the Site  
‘Acts do not impose severe punishment. none a them we ane  
‘poses more than ‘one years impenonment. in ey atte  
need erat these offences more severely we conser it det  
able to retain sections. 264 10 67 of the Penal Coos wish e  
Smsendient heady Indiated  
  
1 Tae Sandan ot Wei td Star A 16 of 869  
  
  
Page 227:  
rats.  
  
ogee  
  
OFFENCES ARFECTING PUBLIC WEALTIL. S\FEFY,  
CONVEMENCE, DECENCY AND MORAIS  
  
141A public nuisance’ 5 detined in seston 268 of the  
‘Code as “a et oe onion whieh eaues amy COMIN infer.  
Sing thc the pa oo ee eh  
jac or vocupy, property in the. icity”. Speak  
Aaelaky tah ANE out alten ovatus degand  
Feiler poonle’s ellie or comenience. The sectors that  
iuow'tmemtcn: spate inwanee. of such conduct whic are  
‘Xpronsy made poanfsgs sock as. the negligent spreading of  
NPimesiows dice, Aduerston of food or drink oc ig  
‘Me Misting ot'a publ spring or noersow, endangering hema  
Wie by ah devine or careless navigation. of nehaeat heen  
UME Siploes or dangerous anima he inodein times wich  
seeciseopdact sites to eam ft of harm vo Toto reople.  
Sh shoul be fogaeded ab tray uotesoctal aid viewed vs th  
hth pomaent oe yh Ce ta  
CEduct ine thnk, eadeguate, Mostly, she maximum pe  
sechinent is imprisonment for six montis, and 1m some ces  
eis ony in wo cases does He exceed sx months. imprison:  
toc Welt st the spec Acts dealing with such fences  
Drone geterrentpananment. and os proper that Or  
endl Cove should treat these oflences iw a simi” maner.  
Neipropose. therfore. to fase the maxmum pushmien con  
Maelo most of the tenes.  
  
142 Section 268 defines “public musance in a sety seca  
cand comprenemnive manner. "in fac, tbe dein a0 Wie  
te echo be sald that many ofthe ofienes dosrbed 0  
Sein the subscqueyt sections te merely paticlarinsanecy  
‘pins’ "Acide eel evo man  
SaP'pescrines the pumahment for pubic tse 9 ny  
Ete for emeryne funghunie by the Code™” Tnead of de  
‘ing he afenes a the beponing of the Chapter and’ presen  
tng'the purest practicaly atthe ead oF we weg  
seo ce ng hte a al a  
Beinn umshment of ne provided in section  
SEEN ot timed to Re 0, ay, we sgel be waned  
The teised scion may be a5 follows ==  
268. Publ mismice —(0) Whoever Joes any xt oF  
is quily of tm illegal omision whch  
(a) causes any common injury, danger oF sanovance  
  
to the publ of 10 the people ia gereral who Gell oF  
‘ecuny property In the Feimly. 08  
  
  
  
Page 228:  
2  
  
(2) mast necessitly cause. injury, obstruction,  
anger anoyance to pecsons who May have dues  
to te ny pubic right, commits + pubic nanan  
  
Evol «Any such et or iBeeat omission is wot  
‘cweuble oe the ground that I cass some convenience  
Sthante!  
  
©} Whoever commits «public nuisance in any case  
nx herwine punctate by i Cole, sal he pune  
  
HEX, Sections 269 and 270 deal with the spreading of in  
feetous dacases dangerous fo 23st, 249, when done  
niga eres” aad ao 8, whey one  
“malignant  
  
With regard 40 abe Gist type of wens rea, there has been  
some doubt about the meaning of ~unlawfully" The ander:  
Isiog iat tha whan the petson acts without lawfel excuse,  
As regards the second seston, there seem no. ount Using  
‘sord Ike “malignandy™ whi has a: condemaatory everione  
‘The-gistinction shosld, s'uruah be between negligent acts and  
{ncentomal “acs. the ftir being punhuble more severely chan  
the Tonnet. “Tho panishnicnts peduiged im both sections requre  
{erhe chanced We propane to combine the two sions 1  
‘ne weading 39 follow®  
  
~260) ey litle 10 spread Infection of disease dacrous  
to hfe Whoever dash et Which. an eich he Koo  
‘or ss reason tn fotese 10 be, Hiely fo spread the iferon  
[OF any Senne dangerous 0 fe, stall be punished  
  
2) sf be docs such act npligenty, sith imprison  
‘mon of either description fora tem which may exe  
(o'e year OF wilt ne, of th Bowks  
  
4) i he oes such wet dtentionally. with imprivon  
sent of either scription fort term thich may event  
forhnes Searn ov wh fn. oe th ost  
  
HA, No changes are required in section 2  
  
145. The next Sse sections des! with the antisocial and  
tepvehnuble fences of adultraing food or drink and de,  
‘Whe the detntion of all the olfencey i comprehensive and  
ler and des not roure Soy modification, we propose that  
the ponishmeat provided in each OF thse Seciods should be  
Incedisad to sihfee sears, oF with Fine. oe with both  
  
44, Section 277 punishes the “corrupting o« foating™ of  
1 gle sping retro ut dae nex peo  
  
pubic well fe Would be selul ia wall WY peelically men:  
Rome “On the ether Rao the archaic word Seorranting”  
  
Sion  
  
  
Page 229:  
33 amend  
  
mm  
  
fedunan and aye el The pian, be  
SSthsed io tmpronment open sit month oe untied ne  
SSotn! “The decom may be reed a folows =  
  
277, Poin ater of public spring. well oF eesersoir.—  
Whoever volumariy foul the ater of any public spring  
Trevor tevervr 30 ay 10 render I Te forthe purposes  
For shih it ordimarily used. shall be\_pucisbed with i  
Imagnien ‘of ether descaption Yor a term which may eu  
Tend tos months. or oath fine. or with Bath  
  
147. Section 28 punishes hose who site he atmos  
tut the panther bony ae which may ted tie  
Te Tops Mss adegeate aed we fesommend tha  
Sondcmmy be vepaccd by simprsonmrent of cr deve  
fe  
  
144, Section 299 deals with the offence of rnh driving of 2  
‘ehile on a pube Way. We propose to make the fine ender  
Uhr secbon viosted by omutmg the words “whic may ex  
fend io oe thowand pees  
  
149 thew is Rowever. no \_provivion corresponding 10  
section 222 unde? which creying pesenge at Bont MBER  
have ether become of se condition or Beaune Of Toad  
Sele ASG popflon shes oii.  
made for taking on the foad an sna veins and we Suga  
Tre Sdiuon of aes seston 299A a8 fotows—  
  
“DOA, Driving sate or overload sebicle on a pul  
hore -Wheeiee knosogly OF neglipetly drives any vehice  
(Goa pubis way, when that vebiie sin such a state oF So  
Toaded gs to endanger hi. shall be punished with imprson-  
tent of either dewipion for aterm whch may eMend 10  
Semon gor ith fie of Wh Both”  
  
1410. Sections 280 10 283 are designed to, ensure public  
safety on woternays., While the punishment under section 281  
Biimuuhaby severe. that under te other thee secions iy md  
Sn should be increned by making th2 fine unlimited. ta  
SSSom Sab ind 385. the words “uhh may extend 10 one  
thousand gopers” should be omited: and te scation 283. the  
Mors “winch may extend co two. hooded rupees” should  
‘be omites  
  
HLL, The seme amendments ate required in section 284  
10 9,  
  
1412. No gimendinent is reguieed in section 291  
  
  
  
Page 230:  
2s  
  
14.12, Scion, 292, panishes the sale of obscene ok,  
section 293 punishes the sale of obscene objects #0 young po  
fons sit tion 293 punishes obscene ate in pul and ao  
The singing of Ohcond songs in oF Meat © pobhe piace  
  
Section 292 has been extensively amended very resell.  
‘Aw allmpe as been made 101 down 2 test af bce. hot  
Since the words ese are "the Same is dodges Raver Bore  
bow, wed inthe jolgments det assem tha the cone  
of ibcemity a bsome ay heart the patil poblem  
Sheng the citiculy of dean vhs Nascwiouy ahd What  
"appeals ta the pruners interes yl wat dows or does ot  
"end 1 eprave or corrope. Only the deta! working wil  
show ‘siete the amendmen is useful tthe Courts “Mowe  
Simpowtant than the aticmped dentin ty dhe seu excepion  
trite slows "defence an the ground. that the "pubhesoon  
5m the interest of amt or scence” oF literate. of tearning  
“This wil acealy crn om eaperteenknoe. nd seem to Nake  
teen scoped tat 'sich expert evidence wowld be perio  
fender section 48 of the Peidcnce Act,” The assumption hs pros  
FSbIy setbfounde, but a would be safer Him the section fest  
aprosion psicily age for admsion of exper vee  
ANC once tha the fllowieg nub-tecion may headed to  
  
Where, ia any prosecution under this seston the  
asin erie puto ay Rook. pam  
paper wrtineOrmwing patting reprtetatio rune  
Iie tuts of ten eae nh swing  
  
‘best of eneral concern. the opinion of capers  
‘Skane, Fiery, are adam chee ee  
maybe sdmited i evidene  
  
4.1. Sestion 208 needs mo. change  
  
LAS. The punishment provided in section 298 for singing  
jbncens songs fe impesonatent upto these months. We think  
tut twpacnment ary neeesry for ach an offence.  
nd propos: fo han 2h puaishgent tos" Boe not exeoshing  
‘one thowsand raps  
  
HUG The last section in this Chapter 294A) prohibie  
Jowerics except those fam or authorited tbe run by ths State  
Govctament.” No indiation given of the cicumstaness in  
weak ihe Site Goverament muy authorise a Totery. and  
tins kind of power cntusted 19 the ‘State Government may  
be"opsa ao abjeton. "We think proper that benad guide  
Inc Std bs ried iy this prosiuon, 19 usunt he Sia  
Gotefomsnt im dezding when to auinose a letery A letery  
iid a chariy. For instnes, may well Be authorised nd  
  
2 se P-€ eAmeadne As 1980 (8 of 2  
  
2 Atomics the muy arenes el be rade set 4 0 the Fidese  
  
  
Page 231:  
26  
  
So might a lottery confined to a small group or a fitery inci  
‘Sento. an emtereinment if there be. po otter objectionable  
Teatuces about it. Weare suggesting that the State Govern  
iment should be goided by such constderations although. of  
Durie the dincreton ef the State Government 9 #0t10 be  
Atal reseed  
  
L417. We ao propose that the pronsion sa section 2948  
stot be api, certain ct coreg te epg  
Fa ach eee se the running of 2 lotery should be spel  
land expretly made punishable. The new scion should, We  
‘tink ead thas  
  
205A. Otfenver in connection wih fveries 41) Whos  
‘hnncetion with any lotery promoted or proposed  
Tromoted, whether im india oe elsenere-r  
  
(a) prints aay Uokets for vse Ja the fttery: oF  
  
() sols or dinibutes oF offers of advertises for  
sale ov datnbution= or has im hs Postesson for the  
purpose of sale or Satiborion, any tickets oF chances  
Inthe lonerys or  
  
6) prits. publishes oe distbutes. oF fas in is  
grncontn Tor the pps ot "puaion oF  
  
( any advertisement of the lotlery: or  
  
(ai) any ts, whether complete oF ot, of prize  
winners Or winning tekels ia the Totty! oF  
  
(ii) any uch matter descriptive ofthe drawing  
cr intended drawing. of the later. oe otherwise  
felaing to the Totty. as fs calvlated Yo act a6 an  
‘Silt gon parce a that  
Se io other Towers: ce  
  
(2 rings or ois any aon to snd, ie  
Indi Tor the purpose of ale or Sirbution any ticket  
ioe aavertement of, he Lowery ee  
  
(6) sends o¢ aiempts 10. send out of India any  
monty or valuable tng eceved in respect ofthe se oe  
sibotion, or any document recording the sale or di  
Ttbution ofthe identy of the holder, of any wcket  
‘or chance inthe Lottery oe  
  
(f) wes any premises. oF causes or knowingly  
permits any premises to be used. for purposes con  
ected wit the promotion ur conduct OF the ftterys  
  
cannes, procures or attempts 10 procure an  
pertil (US" any ef the abovementioned act  
  
  
  
Page 232:  
shall be puoished sith iauprsoament of ether description  
Fora term wisch may excnd 19 ot month, of With Ane,  
or wih both  
  
(2) Nothing in hs section apis in eeation to 2 fot  
sey et Ste ty orion y the Sate  
  
8) The Stale, Government may authorise & totery  
swith reterance ta this weston, where i sata that  
  
(a) the pris of the latery ate to he appropriated  
towards any charitable purpose: OF  
  
0} participation inthe lotlery confined to  
the members of society or other EFeup of persons. aN  
nou open co the publics or  
  
(e) the fotery incidental to. an entertains  
  
4a) it otherwise in the public interest to amorise  
te laters”  
  
  
Page 233:  
users 1S  
OFFENCES RELATING TO RELIGION  
  
184, Originally. the Code formolated four offences rating  
to dcligion and made them punmshsble under four sexton  
Chapt 15. "The fst deals with damaging ox dfling 2 pate  
Gr NTorahp or a sacred obec with test 49 yal ee  
St 2 Gaur of pemons: thy sccond. wiih dnteebing a region  
Sorship oF coramony? Whe third. wih trespass many place of  
Nopultwe’ place buco funeral celomomies are promedine  
ru the last, With wtteraases the preence of another person  
  
fa Iniention ef wounding The Flows facings. oth  
orore Luter‘on- i mas found hat thre was 90 egal pro  
on to ps 4 person who deliberately wounded the rgiows  
ichgs "a cin of pears by pct or wen puton  
[Rives section 205A "wae ded m. 1927 in the Code. which  
‘ade wun clence to tvult he tlgion of any cas of zeny  
ieispaten or wren words x way dane wth the “aerate  
Sind waiious ttenton of outraping the religious fshngs  
nar clase "  
  
152, This ina nesesary\_ a  
  
“tinse ve  
‘chrome, the state of mind tepreheesble  
Shere poashment: Secondly" i moved bat hile sexton  
By ng Boe refer to nomdhig the fechines of aay Peron.  
Section 2984 roles ts racing the Tecngs of «cts There  
‘Sein to be no particle pat im varying a mater expec.  
Wertherelore propuse amend section 298A by dest bsp the  
Ing roa te Wah the danberate intention of ound the  
‘gin ecg ote  
  
153, The other esctioas im this Chopict do mot sequen  
smodicatis  
  
  
Page 234:  
Charen 16  
OFFENCES AFFECTING THE HUMAN BODY  
  
16. Chapter 16 covers a wide range of offences affecting Inzane  
he man ody, extendany Tom the pay fence of asa tos  
it ont i atone nd he ng ne of  
  
fae and murfer st the ether These ae grouped under sven  
‘tothe tt tod Keon! bing ences sfine ead the  
  
nen ein nn ang he earn. Th allay  
‘Sonat tinal rape and" wnnatara!ofemee  
  
Offcoses affecting Life  
  
Jn3. Sections 299 amd 300 deine the offesces of murder secon  
alate homie amano at Ana  
these Sion inthe ising terms = "  
  
The dtintions of culpohlehomiside and merder  
fe. Thinks the Weakest Part OF the Code, “Tey ae  
fscue, ond ihe obeients a me thatthe tect has OL  
een fully thooghe vot wien they ere drawn, Culpable  
Romie sis lsinad. Du homie teat dined gt  
ait excereby way af explanation to. culpable homende  
Moreover cilpable home, the gory, aad irda. Iie  
species sre defined in tess so. closely nesembing each  
ther at iis citicat (0 datingsish them”  
  
16.3. We do not shink tev is ety much substance i the  
fist twe points made hy Stephen. Such ebscurity ss magn {WSs  
have bee init fein intxpretne the deimtons—Stephens  
sium tay ay et om eye  
icin expounded aad elned by doze of auiboratie ja  
shim. Thets say and. no need to deine award ike  
Hemet eich ahora Sihaton  
ceasing the death oa homan being. {Explanation § to  
Stohen apparently lee a of course nots dehintion oF hem  
nk bu fornshes a uide 9 help deride a borer tine on)  
‘Vis tet which saves death epable: when tei done’ wih  
the smention oF knowledge spies sn sctiom 299: and, subs  
itt the He excepons sel out im te second half of ction 300,  
{ie aet amounts to murder, if done with the intention or know  
‘Spoifisd in the first hall of hat sscuon. "The dificlty  
  
8 Law oF Eland, Vol 3, page 513  
  
  
  
Page 235:  
eae"  
ste  
  
20  
  
af thes section", Stephen isl emphasises, "that the  
SLanione of ‘culpable Homcide. and murder all but repeat  
ach other; But net gute, ovat Feast, sot exp.  
  
164. The cra of Stephen's objection is the repetition,  
‘not quite" of certain ideas im the to definitions, “An ecm  
Seay nbling eachother that seis dificult v6 distinguish  
theme "The obvious repetition ceeors in the ery fat im  
the wo defmitions. Than ander section 299, “whoever  
Ghuses dennh by doing an act withthe imention of Suni deat  
  
commits the ollence of culpable homie”. and. under  
Sciion 300. encepu tbe cases hetenafer exepieds culpa  
‘Romicde fs morder, ifthe at by whieh the death sensed  
Sones mith aie intention. of causing death. The repetition  
Stith same tea, with am "lepant wanton” inthe form of  
Skpresing i. perbapa bes 10 dicate thatthe ame act done  
SMn‘the amie tention will ordinatly Be punished 36 murder  
onder ection 363. ot as clpable homie oot amounting  
Thurdee unger the ft part oF section Sof i 1 covered by  
Se a the ve ssceptions set tin section 300.  
  
“The second limb of the defiion of culpable homicide  
ests on “the Intention of Causing such bodily mnjry a 5 key  
[Staone deaths habe detintion of munéery thi Iimb as  
{io branches. marked secondly and thd. respectively. The  
iat branch covers te ise where the inno to auve “ch  
edi inyry 25 he offend knows Is kaly fo cause the dewth  
OF the purson to nhom the barn is-coued™- (tation (0)  
a he special pola sought wo be made ithe underined  
Wrds)\_The second branch. covers the case where “the Body  
Tyee iniemed to be tafited fe suficenim the orinay course  
reo ae duh Sul be Se wh tin  
Sexy murs which fs Hely to  
tra eat bea injury which salient i the or  
fry course of ure t9 cae death very suble. not ob  
Seute“and eteules conorableeiiully When applied to con  
Gets stuctions. The court however have "esoWed the  
» pat brooal tha ithe probability of  
‘Seb suing rom the ijary ol gh degre, them te  
murder. and i he probabiiy i not So high then Hf culpable  
omenie not amounung to murde  
  
Finally. we may compare the hind Jinb of the defrition  
of Calpe Home withthe fourth cltse of te denon  
‘Of murders im capable homince i the ot done with the  
gee dar sohbet eA os cume death: but Hh Me  
Gee t's done wih the hogs that i 30 immunenly  
Sangean thats mut In a probity cause death or sock  
frdiy ity Whey 1@-edtne death, and the acm CO  
fmited Nahout any excse for incurng tis sk of, causing  
Bath of sah boul injury. The diction between the vo 8  
  
  
  
Page 236:  
: aie  
  
clear enough, a60 the adtional crcumsances necessary to  
Stake‘ morderareexproned shout any obwanty Here  
Sh 'aconrete case he epee of probably wil be el  
{cr deny between mere Retnosd of cauning death by the  
{Cena andthe cles act beng. nen) dangerous  
  
163. Suphen’s observation that the two sections make  
ulple, homiie “tegen, and moder ape and  
{Sethe them "accordingly, "cannot be" gainahd, But what  
cought to be achisved by the. (wo Sections i py  
  
2 delimton of marderas.oae ‘specie of the ges  
fomiide "sod then a definition of the olber Species  
‘me pei. anety, culpuble homicide not amoung to mur  
dee~ [e's the Hauer offence for Wivch punishment provided  
inne two paragraphs of section 304  
  
Fach of the tne exceptions in section 309 states that exlpable  
nomic fas defined m section 299) 11 aor urder death is  
Caused io the cicumelances specified. nthe exception Ie  
ies oe topics than howe Goma the at  
‘cipal fomice not ansoumg to murder. Samay. Wi tl  
  
{o'n provers of dedvation that when am act ts done With the  
‘mooi oe knowledge specie in Uhe second or third mb  
‘ot sechon 299, but that intention or knowledge does not come  
{hte the level spied im the second, thud or fourth cause of  
SBrutah0G tae fence” commited i culpable Bomiide not  
inning 9 mdr  
  
Fut, though the ve exceptions in section 300 are excep-  
sone ie ae of made ths a nt ley eh  
‘inthe longue 0 question is nox merely aeademic  
Beata by telat of sion 108 the Evens AC. the Ber  
Schr prowng shal the ae comes within the enentions Hes  
‘nthe seca po the question of discharging ths burden wi  
rhe only whe the ocosccaion has affrmalivey established  
  
We Jel that the critciom of obscurity and repetivon of  
ideas, employment of terms closely resembling each ter (or  
‘apresing similar idess ete, should and could be met by  
‘Siting the deinsions Minder being the offence of primary  
Sporto, should be Geined stm a sel-contaned. mae  
Tee anhout bemng expressed os u gravee modification of cul  
SR Hamas" te tr ha woud fe conde  
Givi. to deine separately the offence” of calpabi omic  
Scr"Gosounting to murder which is penshable under section  
$4. “To the redrafing however, t would be desirable to retain  
  
preci formulation of dea since fabio inerpretavon  
the Course of @ century has mvested the phrases wh well Unt  
Serstood signifieare®  
  
“Tee ce  
‘Storr  
sen  
  
  
Page 237:  
2  
  
S50, 166, We propose tat murder may be ese in ction  
BR > sls ”  
Le “299. Murer =Whooer caus death by ing sn  
  
(4) si the invention of causing death, oF  
  
8) with the intention of causing such bodily injury  
45 is'sfhcent in the eedinary come of naire to ete  
‘death or asthe offender knows to be kay 10 coe the  
‘ath’ the person to whom the harm i caused oe  
  
(©) wih the Knowledge that the acti  
dangerous that it mst tn al recat  
  
fr'sich body snjry as is ikl to chase  
Shout any excose Tor Incureing sich sh  
  
commits, murder except io the citeunstances special in  
‘Sccuon 3a  
  
inenly  
  
Explnation. For the purposes of sie sesinn and  
secwoa 300  
  
i) cuwsing the death of child in the msber’s  
‘womb int satsing he death of 2 human being. but  
  
ising the death of 3 Wain chld, fer bay pi of  
hs emerged irom the wont ss causirg se dath Of  
‘4 human Being. though te chld'may not have Bed  
‘hed oe ben completely born  
  
person who causes boty injury to onosher  
whois Iabouning under disorder dei oF bu  
Ineo "an Thereby accelerates the death of”  
flher shall'be decmed to have caused his det  
  
i) we death sane by oy ij. the  
spetsom who causes sched imry shal be doomed  
Sa iate ered. death string. 10 peo  
  
Wil treatmest dss mgt ave  
  
seations  
  
1a) A shoots Z with the intention of king  
tye "2! een in comeuens. "A commis. me  
  
(8) A intentionally hes £4 swordcat or  
clubssound sufsent (0 cause the Geny f= man,  
{the ordinary course of ture, 2 dies in com  
Stquence Here Ais guity of marder-althoveh  
he'imay not have tlanded to cause Z's death  
  
  
Page 238:  
Ea)  
  
{) A. knowing that 2 fas an elared spleen  
Propet trae  
Sunes Aum there wrth the iqtouon.of aus  
Fim toch body nj. dis in"cosequence  
Mine'Blow A guy of murder alors the  
‘ow might sot hve been sufient the tcinary  
Sues eatre to cane the death a penn  
we Sound seen  
  
44) A withowt ny excuse fees adel cannon  
‘oud of person and Ail oF em A  
  
“pay ov muderaihnugh heme nO BNE  
  
eluned (oN Sny panteular inet  
  
B does  
ot row i ith sh Aone  
Ine that ch gmt all -peobabity cause  
2 deatn'or such bods jure ss ikely to cause  
i deat, sed witout any ext for IncoTing the  
Ta B ines and ils 2. Here Way be Bly  
(Fao offence fats ity amr  
  
167, Culpable homie not amounting to murder hss 10  
te deal inte party whic we propane © pat section 30,  
fre subnets. Subekton (19 ea as mdiated abo.)  
Ghreriitne cngy whore the act Cawsng deaths done wth «he  
{Mention a casing such Poiy injury kel o case death  
Sor the mesa you tan speed in else b) OF he  
‘Raiiom of muvcer. I wil alan cover hose cases 9  
Garis one wah the Knoetadge that iis hts 0 cane: at  
fot it femot murder Sevaune the sist coadiions ford down an  
huse (nf the rened defination of murder eve ne Full,  
  
The second part ol the dfiaiicm ll cone those canes  
  
theo the five except Sout the  
Ang setson ab Tar subseanee. these exceptions Spear >  
ear have een coef thonght ot and they have 00d the  
(GC or practes! application ewer the ears, "We have only)  
{SS voor aed formal senna to seggest Thus the exe  
faawition to swgpon fm not fegulted. iter the aboiion “of  
Trey tale A Saw of the ilstauons could aso be omtted  
fied with aavontage  
  
We propose accordingly st cpable homicide not am  
cnt hfe may Be dened fn section 300 us fllon> =  
  
=300, Cripatle houiide not amonaing ro wander. (0)  
Where a pore een Jeath'b dome an ak wu te Ie  
temo of causing soc bodily aaj a is key to Gause  
‘Eau oh tha hoo Teg thay oath Sot er Whey 10  
Siac oath, and soch age is vot foorder usder clause (©)  
‘clase (6) of scton 299, he comes culpable honmeide  
amounting 10 out  
  
  
  
Page 239:  
A lays sucks and the knowledge that  
death i likly to be thereby fal in  
  
dis billed) ‘A has commited culpable homiewe not am  
‘omting to murder  
  
(2) eco cae death by dg an at with he ini  
co Knowledge spouted section 299. but in the excepion  
Seti fen pect. commis Curb homie  
fot amownting to murders namely  
  
Usp nay hi ed te po  
  
(2) is ot sought or voluntary, provoked by the  
nde sO Sut AG sang avn 10 as  
peron or  
  
(b) is not cen by public servant in the toil  
cexerae Of the posers of och publi servant. oF  
  
(616 not given by aaything done in the law fet  
cexorte of the Tight Of private defence. oF  
  
(@) is mot given by aanting dose in obedience 19  
the  
  
Ai) when the offender i the cxeise in good (th of  
the High of private defece. of peron oF property, exceeds  
ths pare given {o hum by law and causes the death of the  
prsson aguint whom Tet eneeiing such right of defence  
Titmoue prermeditaon and ‘about any intention of dong  
hone hat ina te nacessary For the purposes of selldefence  
  
(ii) wes the offender, sot boing, publi servant or  
sidgg3 publ sercant acing Tor the advancement of public  
Jn, ekcueds the power given him Oy law und aus  
Baath bs ‘coing an Set whi be, in good fat, Plies to be  
{laf ead estsaary forthe ae ieharge af fis dies 35  
Sich pasteservam and mathout abil agaow 2. person  
Whose den ens:  
  
‘ivy where the offender causes death without preamedi-  
tation inn siden fight nthe Peat of passion upon a sudden  
ose! and without having” taken” undue advantage or  
Sia a creel or unusual manner: jmmatral i sush  
‘Sick nbc party offers the provocation oF commits the  
  
(1 where the person whose deuth is cauned being  
abou the age Of eghteen yours, consents 10 Slee death oF  
to take the wink of eat  
  
  
Page 240:  
fot amounting £9 murder  
  
() A. under the inuence of pasion excited by a  
provscatisa pen by Y, ail Z.'Y's child Standing  
Fearby. This ts murder, inasiech as the provocation  
sas not given bythe hil  
  
Ge) A is lawfully arrested by Z. a bali. A is  
‘evil fo Sudden” and’ wlent passin" by the ares,  
Sand hil This & murder, inasmoch a the prove™  
ation as given ya thine done by a pbc Servant  
inthe fal exerene ol hes powers  
  
(@) A attempes to pull Z's nose. Z, in the exer  
cise of the night of private defence, Lays hald oF Ato  
present hin trom doing s0.--A is moved (0. sedden  
{nd violet passion in consequence and ils 2 This  
iS" der. inacmach as the provocation was given by  
Sf thing done tm the exerene Of the right of pric dee  
foe  
  
{) Z strikes BH by this provoration excited  
to sleat teas A, & bystander, tending ie  
  
famtaae of fs eyge. ana to cause hi to Kill  
‘Xf io Bs hand forthe purpose. B hls Z withthe  
Kine Here B may. have ‘commited only cup  
homicide aot amounting to murder bat As guy  
of murder,  
  
(©) Zatempts 19 horewhip A. sot im such 2 man-  
  
nee to fo caw prevow hurt to A. A-draws outs  
  
Psi" perintstmthe asa.” AL Daiving te  
  
Fea tac he cam by oot. means prevent himself  
  
from beng’ honewhipped, shoces Z detd. "A. Ras not  
  
ommitisd- mardcr. but oof} culpable homicide ot  
10 murder  
  
16, With efernce 1 the fifth eeeption, the question may  
arse whether it appivs here tuo sal facions afer Raving  
{heown out mutual challenges indoge ia afew Ret ad some  
‘of the perio et Lied “There wax previoudly 4 controversy  
fm the Subject a is Showa by teary Caleuta cases bot the  
Scan fey amnesty mga ter Ful Bech  
‘Scsalon ol'thae Tegh Court, "We'agiot’ wa the vw ten  
  
1 ta Raheny EARS  
(in Sonera (i839 Uf 6 Gah 88  
  
  
Page 241:  
26  
  
inthe later case. The ith exception isnot meant for situations  
hot there fa ptched Batde between two fiction. To hold  
thatthe persons ‘lled va the Bate had "consented (0 slr  
i og fae tek of death would Beto tae wena  
Siew “Consent teguires some degee parealaity with  
Felerence to the dat consented to oF authorised a with rer  
{nce to the person of persons outhornad. That paniculstiy  
“hising tm Sach stations, "A mnember af the futon ms DE  
frspived to run the risk of Beng killed: But the does mou (in  
feb fir es “onsen 1 ak th rk of eat  
‘ewe ne perso aho actualy canes ie dew, 0 ch  
A Therfe, noeded. in this texpe “  
  
wa 162. 1c will be noticed that the fw of omikide does not  
JOU Fame vegire th the ander mst ave “ended to Rill pastor  
  
Rigeiyt pemws, 2 enough if there fs an inenuon of Kiledse to  
  
Sone the death of human being. What fy sought to be Fut.  
Ise he act OF causing death accompnid by he requste  
Ios foa fei immaterial wuts the saat eaves Seat  
‘en ften tilt the person infact hie or even any ore  
Golan perca and the Sate apple to Ksowledg  
  
The application of 1° crane trated by vce ita  
toon "Fat tos leds uy Be inabiferent bu i vim:  
the det ehacged' may be cach ab to endanger the ile 3 number  
  
Siinenoae Sy" ahom hifi ot the olendse  
eats the offender uy  
fe om on attacked.  
to ite Sy"eason nf scident of extranecus ic  
  
egards all hove ucts ay md, pronied. of  
ate nus eu suned Ym Section S01 a spe 0  
ide iy repanl #0 Ihe lataeattoned siwation. Thoth  
Ue langeuge ot ths seth f elaborate the Wea i ler. Bsa.  
{ise hore the death of ne person ws caused by an ct const  
  
Talal homsile Dulane mens tea wae wh reerence  
  
the culpable Romende  
  
have been i the ath wd Beem  
the parson wath wterence 10 wom stich ent ve ated  
  
IEA intending 40 ill Y, hots 3 Win. et bss and Kills  
7. ho, mnkoown the aeetsgd. wan saming close BY AT  
Zoity ek murder onder section Sf. naxoustanine iat he did  
fot tend to kil Zhe malice towards Yi ransered  
IBF «Tegal fcion) a6 esting towards 2 Section 301 Ty based  
fon abst refered to nels fow as the downs of tans  
Fe ale  
  
  
  
Page 242:  
a7  
  
10.10, The quesion whether the" upplication of this doctrine Net was  
‘s dependent om the Krowledge of accused hat  
  
{he omtended. vim was a Tisely comequence  
the Maire High Court wach hela! By tt mayor hs  
Saffiint "Toe the purpose of this sction If criminal  
fr knowledge on the pe of the accused existed wah teerence  
1 any humun being. though tle death ofthe person who actu Se  
  
iy Bocame the smi way. ver companied by tho offender  
  
in ‘othe tor i thatthe death othe person  
ist hing heen 2 ‘of he fenders at. Stn.  
Git Ayyar de dicated and emphasise Ihe aed for proot  
  
‘hat ibe death of the unintended viet wos a kets come  
‘quence of the ovina a  
  
Since the mwjordy ew as been followed in ter anes?  
‘ewer and has ceatad no ically. we do ic Wisk am  
‘imentinent of Section 301 fe nscessuy by way nf lation,  
  
HGH, A oie question of law arses where an olflendsr. Asn  
intending 1 Kila person. docs an “set wich dacs not cane  
  
‘Seah aid thon, Beeving the tei to be dead. ie Joey ante  
‘Sct ich stoves the death of the sieum.\_ A sud 3f vided  
‘ise om she wubsct tveale some comrasery as 10. whether  
fash eos the hil can Beeld uly of murder The  
imajomty viow is thal ihe two acts of the fonder are pans  
‘OF the same teansation hn hs mstahem babel thar deat way  
‘Shuced by ow Mot act should he dovegatded To use neta  
for. thes hse should not he allowed fo act asa vec  
  
fh pecniows intentional st aimed a ‘eling  
  
foe acto med at concealment. "We carefull, cvsidered  
hetquoiton of mating new section tO provide tht wher  
  
5 one wn the sotemion or knowledge referred vo in sete  
Soy ‘or pection 300 nce mot cate death but Jen  
  
Enovher act Tormang part of the sane Iraasac, the  
Sch taken gether ould consatte the fence ich ald  
ive been commited of the tat acl alone had caused Jet  
Wevhive, however, desided agains the sasection of such 8  
thom in vice of the tll consideration ef Ths sujet  
Uesitonn oe Hiah Court  
  
16.12, Sexton 302 which lays down the punishineat 100 Sn 32,  
en no chug  
  
sau  
  
A fe Balan, AAR, 195 A 6  
  
se WADI Re SMa. 1  
  
  
  
Page 243:  
Reggae  
i  
  
2s  
  
16.13. For the last few years. the question of legasing  
“euthanasia or “merey kllng” has Been cngapias the attention  
Feliwpers, serait, phyncians and laymen. Should the  
kl puting to death & person who sin pyscal agony. oF 10  
stnom fife has Become wscess Because of his body’ condition,  
Se'earded sy culpable homene when ws done withthe per:  
Son's coment? "We ncladed m our Questionnaire the aueon,  
hold euthanasia (or "mercy iin ab Hh popularly called,  
seated my ponsbment ether 2 horde oa ae  
rent of cde  
  
1618 The majority of the replies to this question show a  
‘ong oppostion ro sxcmplaeg Euhanosia Com. punishment,  
They femphesse that i euthanasia 10 be lepained. very ed0-  
Tine stepuras wil be required that there treat danger of  
hata wil be dieu almost impossible. 10 dtinavish  
‘etwcen a penune ease of king Tor merey with consen! and 3  
CS mann, ad that these practical aspects must ouweigh  
omansarin, considerations. Those who favour exemption  
  
Tout that thee ipo reason why &'man in serious agony  
wing out of curable disease Or caer stoi lt  
{ protact his agony. They consider that with adequate sale-  
uate such as erticaes from two, medial ofcers and he  
EXineai\_in writing of the safer before witnesses, cuthanasia  
Showtd be! permite  
  
sai Set hanes Ss  
Peles Svat ae Sl a cme  
  
a ene So a  
ES cot iy Seta a nt  
  
"tO nein is as of fe mt  
sa a a a i  
iat cee eth laf  
ORNS ct tl Sen  
  
1 from ta aii gine lara inal Law a Cine.  
Vor: Re  
  
2 Secon 208 Fxcruon 5,  
  
3. Secon 306  
  
  
Page 244:  
»  
  
te ps lig sentences appropriate ease. The tay hus  
fled pd ott exemption rom nay fs Rady called fe  
peas, a ann cmegnece of ang nt  
Soaton thee isn rune mand Tor lean mercy hing  
the mtier'may te reconaered  
  
16.17, Uinder section 303, if the musderer i “oader sen  
set a en a inal bene  
Svords goted have cused some diicuty. A person whose  
“cwtence-of amprionment for Nhat Bet tomited uncon  
‘onaly 89 the Government has been heis no tbe une.  
sentence Gut if porson iy release conditionally. hes eld  
Ste" Seager" (Fue may look someehat saomaous. Ths  
Pimary object of making the death sentence mandatory for 20  
ence under this sexton seems to be to. ge protectin fo the  
freon all Hf so. replicin the words “bong under by the  
Nord “whi undergoing” may remove the somal and es  
Wie apa th tn casa  
ton” But as tection 303 ery rarely applied. no change fs  
[inmended”” Whore thre'n ah eieepcnay hard cos  
‘ould be esaiy dea wah by the Present oF the Governor  
Sind the prerogative Of mer  
  
Insel, ws te hat is Rept om Capt Pen  
meal the Lav Common ea apa making the pon  
ment of death under seo 303 ducrenonary  
  
W618, Section 34 ays down the ponshinent for culpable  
thomde not amounting Yo morder. an bn two puts. Under  
‘heh part. the punibment imprisonment fore, oF 1m  
frsonment upto ten your i the aet By whieh the eat  
‘Sesed ie done with the intention of eauing death. oF of casi  
  
Sty ary ly wo eso death. Under he cond  
  
fart. mprsonment upto on years or near both she Bosh  
feni Whe act done with the Knowledge tha i Uke (0  
‘Suse dent but without any intention t9 came seath, 10  
Se seh body injury a fo Hkely to cause death Th chee  
f'thus tases on a Guinction bstcen mtentional amie and  
  
Crinlentional homicide. with a higher pomtshment The Het  
  
16419, This distinction, though theoretically sound, i une  
rnecticty in pracice. The Court as always the discretion  
{ pasta lengnt sentence af the homicide wes base on gully  
Kegviege and not on pully intenuon, and there ¥ 0 need 10  
twas time in deciding whether the ofence comes under the  
frat part or the second pur” Wer therefore, recommend. only  
Se atimum panstment for all types of fences under the  
  
ian Mobs, A 1943 Sa  
  
2 Bia it A Rae hat 6,  
  
3 sth Repor.  
  
  
  
Page 245:  
1A bt HS) EH pe Ra AT  
  
seztion. While Me imprisonment i never. given for thie  
fence and f mou nevesary we fet that imprisonsent shuld  
feminioy “even tn ete falngunder the some pat of  
  
lt Z\_Sesion MH my. scoring. be hed as  
  
8, Punt for cp hole or anenning 10  
nwa heer Saas Capac Noeiede tor acen Ng  
{o"morderaball fe pune ith tmpennment of thee  
‘Sacrnion (ora tem which fay eed toon Sess AME  
Shahn be abo ne  
  
1.24, Section 304A deals with homie by rash neaie  
sont det. That the nesligence mentioned sn foe section 1 Het  
Fthe ame cps avin co dspues hasbeen ads cea? y jl  
al deo a enicanes, courts mah oo manana  
Sed of care. while eiminal Gourts fequie miaimum core If  
i mi are ak then the ina ears ould  
Sxguit the cased, It wn agate hat tbs sical inet  
Fastin should te embodied tthe secon. og by adding  
fhe ords "so as fo Indkats 2 Want of due reyrd 1 Human  
  
1422 Ths prownion i Maca Det Penal Code was  
  
Ri. Whoever causes the death of any eon by any  
set oF any legal emission. wih Sct OF OMS 8s ho  
fant molgcnt x to indcute 2' Want of duc fcaard for  
  
Tis shal be punished th “impesonment of eher  
so foe a erm which may exes tO wo $e.  
fin. os  
  
This classe wis wunbertealy os where, out im the fn  
deaf "The present season UA, eae sobecquenly mst  
I'he uote ofthe thon Law Member Sir James Stephen  
by et 28 of 1420. Te nay scaled in the Statement of Objets  
Bhd Rowson +  
  
“The Cave, ay stands, contains na adequate provision  
Sor sn amin hat Ena Ln alt nue  
{Sr by megigece, This ts provided Tor in the draft Code  
Soni asd the present Bil supplies the omission  
  
1623, The eoanotsrion of “nelignce™ in relation ty man  
staughicr vas Sapainsd by Lord Hewart, CJ) 38 follows  
  
“In expounding the law to juris on tie til of indict  
nis of mamaughter by neghgenssr jodger have often  
‘fered 0 the dtnetion wetwsen cra ad inal habiity  
  
  
  
Page 246:  
ue  
  
fo dah y nage I hee ston  
Ket ats Ee tele ect Ne  
Faia th mats ot amc a a  
Sener ete PA ty a  
Seo mpgen oto abo age ae  
ite otal ita coma. the ein  
see tinea a we Senet tat  
oral no ata a rte, Sot ed ees  
Tn it na an  
Potts SES See Neg at  
‘Seis Wit Se atc aa raed  
fer altar ett antes ain so  
  
1624. In this connection, we also noted that sections 334. Neca  
and 357" refer 19 acts done "so rashly or negligently ae 19 ca.  
  
‘linger human H-or the personal safety of theres But ODN  
xa oF sme word moa nt Be Rene rape  
rate for the purposes of section 304A.” We find it iui  
{2 deve a tice Tum of words which, whe stag fect  
1a the concept of “criminal negligence", could he regarded 38  
Saiienny expressive and sep Judicial Seishons have fully  
xplamed the scope and content ofthe ston 20d on the whok,  
‘W'hcems best not to make any change inthe. wording  
  
1625. We are, however, of the view that the present mai- Panshnen  
‘mum punishment forthe fence is inadequate, and should te nase  
Fwcreased, This is desirable, in view of the preter importance  
  
tihich "this offence has assumed tunce the secon was iceried  
  
due to the wide ese of fst moving mechanical propelled vehi  
  
‘les and the Frequency inthe comaion of the cence, acon  
  
[piicd by callousness ofthe offense tonards the victim, often  
  
there are cases tred under this section which are very Rea 19  
  
culpable Homicide and deserve © sovere semen  
  
1626, We may note that in the views expreted on, our Option.  
question as fo'the quantum! of pinishment under the Code,  
  
there has been a sirong demand or increase in the pusishmen  
  
{or ofences under this section The suggestions vary from three  
  
Years tO seven years. There i abo a sugeestion t0 jctease  
  
4he period to seven years i more than one Gath hasbeen caused,  
  
A Presidency Mapsrat refered to a cate where 17 faalies  
  
cued Ia otic calla Owing fo nonepi of the home  
  
by the landloed, and to another were eee deaths had Sees  
  
caused by the hephgence of the hospi salt  
  
Qube “5 of te “Garonne.  
2M of La t=17  
  
  
  
Page 247:  
Ihe be  
  
Fale of  
  
cra]  
  
Segoe  
  
a  
  
16.27, After taking into. account our propossl to x the  
‘maximum punishment for culpable homcige not amounting 10  
‘ieder at fen years. we tecommend thatthe maximum punish  
Ie fof cating death by neggence may be hal that ped,  
mamely, ve ears  
  
1628. We eamined the question shether it would be de-  
sirable to penatse eulogy of murder! We think that such a  
Prowsion say lead to oifcules: for example. here there 6  
Some apparent moral jostieation for the particular mde.  
Prosecution tay be eribarrasang. Funter iting in penate  
‘efence may” sometimes techieally amount to murder. the  
light of seledetence i prom exceeded ence, there are  
risks involved in the proposed amensment\_ So long a0 an act  
‘Of approval ofan efence det wot amount to actual incest  
1 repeat the offence approved, there emo need to have penal  
peonton  
  
1629. Sections 305 and 306 relate to abetmint of suicide  
Some counris take a miler ew of this offence wo api  
sitations—()‘sucie pacts: (i) abetmen! of sulide for por  
poses which are pot sesh. Thus the Penal Code of Denmark  
Provides? thet “any person who uate some other petten  
Comping suicide shall be able to'2 fine or to simple Ste  
tion" and’ “if such an act of gustance js commatd for reasons  
St personal teres. the penalty shall be imprisonment for ny  
term not exceeding thiee years". We have referred eater to  
the"provsion in the Sw Penal Code which requires “slish  
‘motives to be established for a person (o be severely panishable  
For aiding susie." Weare of he slow that 80 Sch special  
Provision ie necessary. The question of punishment iy be  
{ea 'to the discretion ofthe Court, which cn take nto necount  
al the eicumstances in which the sucide wa abetted by the  
eae  
  
16.30. Sections 307 and\_ 308, which deal with atempt 10  
  
‘murder and attempt to commit culpa: homicide not  
Limounling to murder. have ‘been considered in previo  
‘Chapt anda revision of bth the sections has fren peenosed  
  
1 Compan’ Akl 30, Aramina Pal Code per a ami who pay,  
  
sie  
  
wisest comin oi ne py patentee Tone  
"Sahl oy bes om one anh On re  
  
  
  
Page 248:  
2  
  
631. Section 309 peoalises an tempt to commit suicide,  
1c maybe mentoned Sat ioe wa read perme  
1h Some circumstances in ancient "dian tw the’ Chaplet On  
“She hermit in the forest” Magu’ Code? says.—  
  
"31. OF let him walk, fully determined and going  
steaight on, in-a.qonthaasterty direction, subssting on Water  
Sind aie, Ul his Body sinks 0 tes,  
  
22, A Braman having wo i of ht ody by one of  
shose modes (1.e"drowning. preopating burning OF tary.  
Inpl practised by the greitseaea is cated inthe. world  
oP pfamana, ee om stow and ea  
  
Two commentatoes on Manu, \*Govarndhans and Kullki  
say that 2 man may undertake the mahaprsthana (great dopa:  
Ife) on 2 journey which ends in death, when e ts ineurably  
Siseased or meets with a great misioriUne, and that, becuse  
Its taught ip the Sasteas, i is not opposed to the Vedic rules  
fr ade "To thi hx Moen ad ana a  
flows  
  
‘From the paral passage of Anus tambha Hl. 23,  
> iW however, evident hat a voluncaty: death by star  
ion was considered the Bebiting conclaston of a hers  
Infor “The antguiy and general prevalence of the practice  
‘may. be infeed from the fact thatthe Jaina acetic, 190,  
Conder N paricularhy mettorious  
  
1632, Looking. at the oflence of suemping to commit  
suid, a has buen Sbsened by a0 Engh mets  
  
SH seems a monsteous, procedure to incr further  
suffering O8 even 2" single individual who "has. alrey  
found “hfe. so unbearable, his chances"of fppiness  
sfender. that he. fas been willing to fee pain and death  
‘order fo cease Tiving. ‘That those for ‘ehom Ie i alloge.  
ther biter should be subjected 10 Torther bitterness and  
‘gradation seems. pererse legion.”  
  
‘Acting oa the view that such persons deserve the seve  
Sympathy of society and not condemnation or punishment,  
ihe Brien Parhament enacted the Suicde Act jn S6t whereby  
§Mlempl to commit suicide cessed to be an offence  
  
1 Kan of Mana ansied oe Gg Bai, Se Books of the Eo ed by FE  
  
Nast feo epi) v2 pope 3 Shoes St asd  
2. Se Modbus coer en Maw  
  
4 Lows of Mora tami ty Gens Bir, Sacred Books ofthe an ted by  
  
ize SWE” tistiy Wo 8 RSs  
  
SO Romily Faden: Suse Landon, 198, eae  
  
  
Page 249:  
Bry  
  
16.33, We included in our Questionnaire the question whe-  
ther attempe to commit soige shoald be pupishable at all  
Opvaion was mote or less equaly divided. We are, however,  
‘Sthntely"of he view thatthe penal provision is harshand on:  
stiable"and should be repeales  
  
1634. Among the divens renons which ead person to  
sect tne ultima feuge i desth: one that ceeasonaly comes  
{Sith and shocks stciey continuous cruel weatmen The  
Shictie imuiry Commie "sc up by the State Govertment  
Of Gujacat reported in. 1964 that sysematic i Weatment of  
Soune woman by Ter” hosband andor tnaws Reading het  
Zohmmiting stig’ was, ages at any Tate not uncommon,  
invthat Stace Sch crue condact dectoes fo be ponshed a3  
‘Timinal “The peovsions a9 to absiment of suicide may ot  
Beall ch condat cane he Seriya eos  
{big treat may ot be reparded a Sntigaion oF  
Simenional a" "The need for a aeparategrowsion on he  
subs te Te, ori. utmnation of Mh  
Code and we ncladed It our Questonnarfe the question, “should  
{here be'a promuon in the Code for punshing 2 peion who  
{es another peruon by systematic cel Weatmen to coment  
‘cde  
  
Most of the seplies to this question were opposed to any  
provson for ponhiag sack cs. “Eien in Gujarat wich  
for some te hat 2 high female suicide Agure, Judges of the  
High Court and Tauyers were generally not in favour of the  
fugpstion, bot some of the “Seasons Judges were. Some  
Joages of a High Court have suggested making penal an om  
Sion to report prompily to the authorities en umvatwal death  
ated: by peste hat we donot thiak that  
‘he wll be" enforceable in practice and in any way efectove  
  
“The main grounds on which the suggestion was opposed  
were that woold be dificutt to detect and prosecute the offen-  
  
at pron of casual connection would not be eas, amd  
therefore. prosscutions would not succeed, and that 2 person  
‘could be punished for his own cruel, but not for another's  
Shade, even though st was provoked by nis cruel.  
  
While wo appreciate the relevance of the fst two objections,  
  
ff proof sot iihstanding. thee is jstifeation for expresing  
Steonaly the law's condermeation of sock conduct whch tanta:  
mounts, to homicide Caused indnetty though the hands "of  
the Wekiss oti heesal Tt has been observed by some  
Todges of a Cty Civ Court that there are clear caves where  
the iti appeared 10 have commited suicide only because  
life became unbearable and inorder to escape pesstet cruelty  
There are cases where there i no proof of any Overt acts on the  
part of the offender, but sll the circumstances clearly estabish  
  
  
  
Page 250:  
as  
  
that the victim was driven to commit. suicide to. escape the  
meatal terture and agony. “Te-was observed by Dua J (as he  
then was of the’ Punjab High Cour),  
  
“Women in suck circumstances as those of the appel-  
Jaat, in our sooty, normally submit themscves to thet fate  
and bear biresiment at the hands of their husbands. and  
‘unless a chinax is reached, they usually "do, not fake the  
especate sep of going to police staion to ladge a Tepot  
the poor financial condition ef such women ad lack of  
roger ‘underto  
These way of Securing’ 4 proper edhcal cerifeate  
Besides, “even if the. injury om the person of Si  
are considered not to be eo serio as 10 eal To  
; \* eer she hae Stil  
bareated as deposed by her, tht treatment must  
eld rout fo erty acorn to the standards of al  
‘ivlsed societies," The’ “approach ofthe court below  
pears tome to be inconsistent mah the pubis poly clearly  
discernible inthe ecetleilative measures whereby alvomple  
have been made to raise the social status of, woman dn tis  
Republic. New rules of social Pehawiour and conduct in  
spect ofthe slag of women ia Inlan society of toy  
rust in’ my view. be recognised and tape im the Toreront  
hile ‘Uetrrining what would, really Amount to eral)  
the Hindu Marriage Act."  
  
1635, We are strongly of the opinion that this ope of Net  
roel conduct fowands a member ofthe family oot mt fo gO aR,  
{punished Tor want ofa sllabteprovison tn te Penal Code, 5  
IE" thercors. recommend thatthe Tolowimgsecteon should  
  
tthe Code  
  
of cruelty, dives a  
  
raent of iter description  
To thre jean shall ao  
  
16236. Sections 310 apd 314 velae to “thugs”. These  
are obsolee. and may be omitted  
  
1 abe il fo ATR Po  
2 Ghiancs netac Rit Pd Cone  
  
  
  
Page 251:  
286  
  
Consing of miscarriage ond injuries 10 wiborm chilren.  
  
1637, Calpable homie is causing te deat of « human  
ting. “Te ence would. pot be commited by an act whieh  
Ebyed's ule belore i had separate euch ftom tt  
SSotbe Tae gap fled in the Code by fe Seton  
SiB%G are deling wate aboruon The ma ofece i ge.  
coed ton 5 iy eng 2 worn vith ch  
{S muicary. It's only when the mscarge caused i. goed  
{Bum forthe purpose of saving the ie of te woman its wot  
fwhable  
  
1638. The movement for the refarm of the law of abortion  
which has een going on oui India forthe Ist thity year,  
$s founa “fiat oppor, Tia. “Someta te  
Government of India sppovsted Commitee to stody” the  
‘Stbjec "td inthe ght Hs tecommendations. introduced  
[Bl ws the Rajya Sabha, Ts provisions may be summarised:—  
  
(A registered mesial practioner shall note gully  
of a fe under the Cader under ay ober la a  
fregancy is terminated by him accordance wih the  
econ ofthe Bi  
  
(@) A egistered medical practioner cam terminate a  
reghaney ithe is af opmion. formed in good fat, that  
i the contounace of the pregnancy would ite  
ine of the pregnant women or of  
  
i eaith, or  
  
involve a risk 10  
injory to hee physical ot” meat  
  
(iy there i & subst  
born it wosld safer from such, physical  
tbnoemalies as to be seriously” handicapp®  
  
G) Where the pregnancy is alleged by the woman to  
have teen caused by rape, "the anguish caused by such  
fpctnency shal be preumed to constitute a grave injury to  
‘hetmenial bealth af the pregnant woman.”  
  
(Gere a pregnancy ocuts a rt of faite of any  
evi by aay mares woman or her hob forthe  
frrpose of Ning themuniber of ern, "the angunh  
Eis by sash untamed pregnensy may be preumed  
  
Srautts one injury to the mont eal ok te Pes  
  
(6) In determining whether the continuance of & pre:  
ancy world invlve och rk of tury 10 the heath a8  
Inentioned above. account may be taken of the preg  
  
‘Momancs” “actual or reasonably foreseeable environment  
  
sea et te sein ase  
  
oso tint  
  
SSIST RAOTaN tex {pve tt Bone Boo abe  
2, Repet ofthe Conimae tstady Legian ef Abortion, (366,  
5 The Mehual Temlnason of Peper it Rapa Sabb) (6,  
  
  
Page 252:  
2  
16) IF the length of the pregnancy does not exceed  
  
tnlve mech the pinion of on Teahsred medial prac  
Sher 8 suficenc Hr exceeds “che weeks but es  
  
(2) The termination of pregnancy must be with the  
consent ofthe woman  
  
2) The operation is 10 be pesfortied only at a Gov  
‘ment hospital oF ther pcs approved by the Government.  
  
‘The Statement of Objects and Reasons snnered to the Bil  
fist emphasises tha) ths very st law bas. Seen obverved  
lnthebreach ina vty largemumber of ‘cases sil over the county  
  
) most of thee mothers are marne@. wom, ender 90 Pale  
‘ula rason 10 conceal ther" pregnancy, and (ij doctors have  
fflen been contionted with gravel il or dying ‘repnant omen  
“whose pregnant teres hive been tampered "wah Me thon  
sumsup the evilby stating that “theres thus, aeotdsle wast  
ge of the mothers healthy strength sod sometimes he  
  
stated that the proposed measure, seeking 0  
ingens hat Reece :  
‘ema heath of the woman: fi) ev & muna ee  
Shen pregnancy arses om sek  
  
i measure, where tere  
Fat iPhow: would sue from deon  
  
160, inthis conten. 2 seruny of the development of the  
aw im other countries wil be help. In Englond, abortion  
vas nota coummon” tow offence But was mage’ an ollene by  
‘ature, “Unt 1967, the statute law in England war very sinet  
‘There was no express immunity, not even for am act” one to  
‘ne the oman’ he! "I the brated case f Dr. Bouroe,  
2 Haley ‘Sweet speclis aborted a sateen year oft pel who  
had become pregnant following rape. He vepared: hs scion  
{o the police’ ant succes dfended hime at ie tal Sy  
lamin (cpt ain hn pinion” once to  
{he fture health of the yi. "His acquittal seems to have been  
based mainlyon the view taken by the jury that the probable  
consequence of the continuance of the pregeancy would Be to  
Imake the potient a physical and mental wreck and that come  
{ently the operation as performed in good faith far" rene.  
ing the life ot the ‘i  
  
1 Seaton 38, Offenss Aaainst the Poon Act, 186 (Engh).  
2 Rv Bown (90 CANE ROS  
  
Poon  
fencind  
  
  
Page 253:  
TL dies 35) BF nee w Lor Dats 30.  
2 a ror en of  
St Ue es  
  
28  
  
But a substantia section of the public took the view thot  
in ay oa eed wae a  
Uapcalydslormed chidcen ss rent maers having taken  
ttahemde dren por tothe tte had certrely contibted  
fo ths wow. The "Abortion Act was passed te 1967 by the  
ah Panam. “Th ona proviso of th Adt  
  
1) abit ea of in 2  
eiaetonciins ae eae aioe  
Ioan ome a Baa  
  
(ay thatthe continmance of the prcenancy woul  
ale foe He ah erat pom, ot  
iSry to the phy aa, ment beth of the preps  
‘Soma ‘or any ting ciren of her amie srentce  
Tha i the pregnancy were terminated: ot  
  
(6) that there is. stan isk thot if te eid  
vere torn i ould safer ftom such physical of  
IRentaatnocmaiies a8 t0 be seriously handicapped  
  
(2) In determining whether she continuance oF  
ney would abe such rk 36 Is-menuoned it  
  
pres  
Paragraph (a) of subsoetion (account may be taken  
Bike Tpegnaat. womans actual oF reasonably foresce>  
  
bie environment  
  
164), Sweden is a\_motable example where abortion has  
beet allowed on what are noe knows a8 soeismedicl reasons  
Cinder the Saedish lw (asf stood in 1962). abortion ts per  
touted inthe folowing civcumstances?—  
  
(Df dveto a womans illess, physical defector weaks  
ress chit ch would email seriou danger to bet lie oF  
Fenty be. on medical Peasons\*  
  
‘pris sty the aeion of Heaton of  
  
2. Tog met deco ay i 2 ook by Por ERD, Feed Abortion on  
Bitte eon  
  
  
Page 254:  
2»  
  
2),10 wth regard 9 a womat’s condition of fife and  
exe feumce hae” reg foam.  
shvseal or niychesveng woud be seule  
  
BRouer chibi and hada, Se, on medcosoctal  
  
() {F woman, has become pregnant a6 the result of  
rape, biter criminal Soercion or incestuous sexe nt  
eetie fae fe mean of imbecile, or under 15 years of  
Sperst the tme ofthe fering cation, Le, on hmntarian  
  
(2) IF shere is reason to assume  
faiher of the Unexpected child would  
“pring hereditary san)  
  
Poetous, piysial handicaps 1e\_oh eugene reasons. An  
Shorton far the reason of any such hereditary delet in the  
ipother is contingent on stesization sioltancousy with the  
horuon’ unless leiization appears rwky or unncoesary  
jeer auth ropard fo the woman's advanced age or becaise  
Shas" 'be permanently commited to" an isttsion)  
  
the woman oe the  
  
(5) Av abortion for reasons other than diseae or ph  
sical Geet inthe woman may Wot Be. performed after the  
eenneth week of pregnancy. but the’ National Boars of  
Fick nay mute ekeeplione and authoeie the performance  
BF the operstion before the end of the teniy-fouth werk,  
  
Te goed in Selene sa, Atma  
8 for aaa gal abortions n Sweden ae authored  
LTEDSS eset in Side on the bo of writen  
Iepot by pscane an seal agence hrouhout the OU  
Eeeacath?s subetndal roporon, of Teal abortion.  
Feel ai etd mw Thee bei com  
Sie hes to the foto moter of Seah!  
  
tz. The lw of abortion in Soviet Russia has now (1965)  
tron, made brat afer undergoing major Mactations dering  
Ueto "ears “Sovetwoment have been given fesdom  
Weidecke. by icmselves the question of thee. motherhood  
Tigo open lua a women  
Ainderge tne option, except where the pregnancy 6 over 12  
Wesktor there ir infammation of erain parts, or the exsienee  
Criiveeuoas, dicawe sch as. Ase, gunk. ctc. and high  
Sempurature tes If necesary 2. woman could be operated for  
Sbortion at ‘a quaiied medial fom thal gtraners  
Fer the masimom imnoovousnass cf the operation.  
  
1, ep oie Comite’ ot ine Lagaion of ASoton Ve. vase  
  
prigrnie 2 0"  
  
  
Page 255:  
20  
  
Posionla 16.43. Ia Japan, the matter is regulated by the. Eugenie  
  
Simin" protection’ Law’ which sa very elaborate pace of Tegsaton ©  
fs unnecesary 10 reer im deta to is prowlons» The pi  
‘maty object of the faw so. prevent the increase of infer  
Aeacendums (rom the eugene poist of ew and to protect the  
lie and neath of the mother as well. Prowsion is made for  
Shas down as "Eugene Operaton’ 10 be performed by  
Shrgeon withthe consent of the petson concerned and is 0  
Fettspouse, These fe provision for ariel Imecrupton of  
Drepananey under vargus cfcumancs, iacludiog’ pregnancy  
Shored ty apes and also" where the mothers heal may  
‘er afeted srvaly bythe continuation of the pregnancy ether  
fom the physesl. or the esanomic sew” pail  
  
1644, The past few yours have seen a definite trend towards  
botaeation ‘of the Taw relating to abortion “in the USA.  
‘The potion, However varies from State. (0 Slate” The New  
‘Yor ams which f the most radical. sates thatan abortion is  
Zhaiiiable when" done with the woman's consent bj. 3 "duly  
{ecmedpipsician, acing (a) under the ebet that such act  
Seccoy’ to preeive Rer We, or (5) hin 24 Weeks from the  
Sommeitcinent of her plegntney”. "A! woman. performing  
Sborton upon herself simbar ctcumstances is ab usted  
There th no fenence. requirement.  
  
Linsabus \_ 1645. The penal prohibition of abortion secs vo be based  
{ite on four main greaude (0) protection of thew the unborn  
= on of the society's interes > the continuation  
  
“entimenial ob  
Potential aman Ife and () protection of te fe apd Real  
Stite mother "On all these matters opin w sharply diided  
Shd'e sell porpose wil be served "ty ao labors dis  
Sussiow of the sarioos views. GenersIopmion. however,  
  
Simei "favour” or ataching. paramount  
ince tthe le and health of the mother” overall  
Sidsraioan Ie scems to that the decision Whether to beat  
  
Chior aot mst remain with the mater. bot a distinction  
ould be drawn between "di  
  
vid ine womb sed tesmunation ‘of pregnancy al an early  
Stage. "As Lora Ridell sad? "the destruction of 2 fll grown  
SM i“S fevoling lui, whereas the abortion of an ear)  
‘ets afer Hite from the romona of» uteme temor-” Abor  
fiom peocured byt qualifed physician within the Art thee  
Iomtbe e pregnancy is attended "with hardly any Tsk (2 the  
Iie or eth of the woman. Te she pregnancy Ie within ths  
peri, the woman must have Tall feedom to have a tem  
Fotcd ‘by: qualified physician. I however, the duration  
‘tthe prepnanty exceeds three months, rk fo the he and heath  
  
{Set IR ghia’ of Leyshaion of Absevon 160) ra  
2 fo Rs seco Lat Pons (9 pg. Wika, “Sen  
  
  
  
Page 256:  
21  
  
‘of the woman is much greater, and termination of the, preg  
Sanya jay ber permed ony i the cams  
shader he Conditions sft out tm the Bill now before Pario-  
  
1646, We, therefore. recommend that, so far asthe Code 35%,  
sscohcinad i pronso may be added section 312 af010%% at  
  
“Provided that it shall not be an offence under ths  
section Wt the macartinge fs caused "within Thee” months  
“EINE commencement of pregnancy by a reistred medical  
frantiioner wah the coment of the WOMAN.  
  
[As conequeatat amendment, he Explanation tothe setion  
maybe model 10. ead "  
  
LEaplantion-A\_ woman who causes erself t0 mis  
corr with 'hag beta" progaant for\_-more than three  
hoki vain the meaning of this S60  
  
1647, Section 313 rightly makes it 8 veqy senous offence Sete  
0 eT SeNetae in a pregnant woman without that womans 55,  
to caus mee Egeomum punshmest of mpebonment Rtas  
SOME, nomeves, seems 10 be eacssive, We propose that the  
  
‘te  
‘erahindn provvon should be modiied 0 ‘rgorous impr, Senin  
Pomme fats crm wich may extend t0 ten years, and shal  
SRO" able 10 ne"  
4s, Sections 314 to 36 need wo change seer  
Bie.  
  
way plc wth the enon of abandoning ‘docs 30S  
  
In that case! the mother ofan illegitimate child aged about  
six noms Tet the child sm charge of Blind woman ia whose  
sarang ahs assaying tat sbe was going {0 aot food and  
SEED WaSm shorty. But actly the mother went, to another  
Vilage and did wou return, lina woman banded over the  
UMAF Arte potce sation, “The mother was prosecuted Under  
SeeSon SNR Hex acquitted” On appeal, Blair}, (with whom  
Bika J: concur) observed—  
  
we seems 10 mie that the words of section 317 of th nda  
  
Puoit Code should be dealt with fo the most eral seme,  
  
1 Gran tn Amn ch oon i ona No are  
2G. ee Mi (996) LL AE AIL 368 36  
3 Kee 2 dies  
  
  
Page 257:  
2  
  
tery means to physically put outside, so  
Ing osige involved some physical sk 10 the  
‘Paton put outs Having ceercae to a cal, would meas  
orig i somewhere where ie could. not recive the pr  
lbw ocesary for ts tender ager as, fr jnstances, puting  
it outside the house, whereby at" would Be "othe  
Tiskof cimote, wild bests and the Hike, The exposure  
CShiemplated by the Act was one by which danger to hie  
malt imineatly envue. The explanation of section 317  
os to Bees indicate with much clearnss the 099 oF  
Pumice of the section “andthe nature’ of the | ext  
Egataxt hich ic Sought. “fo provide, ‘That explanation  
‘Movides Tor the case of juries scaly emoing that the  
1) person shall he panahed forthe injury $0 intted  
setuid tote eeumotanees undet whieh the ary  
ones for murder or culpable homiade, as the case may  
$e" Sos me thay a8 the word heaye: comes nme  
‘Eee Jentapostton wih the word expose the word leaving  
steand ating in a sense elute pers ay the exposure.  
Tal vpdicutes am oMlence only slightly” Gtingishabe rom)  
‘poring, fe cannot in-my jagsment incan leaving io the  
ERR. Gk abandonment, Gut inst be construed in stret  
ion with the Word “exposure The narrower cons  
oma the words sespone or tae much siengthen-  
AP Gye tmerion af those stnkiog. words "m any lace,  
amor gomsive a ny possible antithesis 10 those words  
fais he ah any” person’, seems ome manifest  
Giavat the Gamers the Act had intended t0 Face im  
the scevion a cae ke the present they souls hive wc  
Ler tie expression any place the words. vor wah ao  
  
ser on came other words to that fect, T ind myse  
SHWE onus to undectund whereupon ay other conse  
Iincton bu the one sugested. a ine i fo be drawa in cases  
  
Gkumdomment ot een. H da not see how io point of  
athe ahondoning of 2 child ibe protection of 2 person  
Slots take care ol and willing. perhaps. from Kodhy  
ovis tovdo so, but uader no legal obligation to tke sare  
SPAS oe distinguished rom Teving a chil, aswas done  
So the presen cust In the protection ofa blind woman who  
Sunt dnd dit afford some Timed protection 1 the infant  
ihe gu sgeapow war pani hy canon  
Le NSpont. “Take the cave ofa person. who leaves child  
UF eleven gears of ao at a ll sthool ander the care and  
Sreteton ot a schvelmaster with inent to abandon, amy  
Pegi tunable toe where a line cat be drawn which would  
MeNae” ihe one case and) exclude the other, OF cours,  
there maybe cis aeimy brother Knox pomled out. of  
there Tafa) and, requiring. Home asciznnation, Oe  
  
Mherber puting 2 chal im physical  
foreign of a ifpable of | protecting  
RPEST"eSm a all sie the meaning of the section:  
Spbiher for mstamcs, nring 2 hl of leven years unde  
Ae eare of another chil of  
  
  
  
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mvicw of the secon. These difiutes do not aise  
i poe oe tae Si  
eePpeble of procting, and did prote the chi She  
ce ar obo he chi a bes Te”  
  
1650, We note thatthe English section on the subject does  
not Satins Haation thatthe child vast be Het sm 0 place  
Set contr the Olfences aganst the Person Act, 186, provides  
Stee ancver shal wally abandon or expase any, cid  
ie noe at ey gud St  
TEIN S'cmangers. or the health of such chid shall have. been  
eeU,th be aay to be permanendly injured, sbll be, liable to  
Gnprccnment for any term 8ot five yours” It only  
sarees the Fak danger to lie or tisk of perteanent inj  
ERASE an therefore, ner than the Hndian section  
  
consider it to expand the  
sets eg chget eco ta the oe eat te  
  
site ue of by the Chnldren Act which punishes the act of  
wT che or woandonng. a chika 30 as (0 cause unnecessary  
mealeing al sulering. Though the maxim punish  
men undar Anat Act iat very high (ix months! imprizos  
Reng. should be sdeguate.  
  
161, In view of the severity of the punishment unde  
st i ye ak ara ie eos Sead  
ereTested in scope, and confined (0. exposure,  
  
ae oP nat the mena ould Be 3k  
cafe dre precsly. wth refeence 10 the Tk of Me OF Serious  
sag Me south, “The Explanation. stating that the\_ section  
Bee prevent ihe tral ofthe ofendec for mer or Culpa  
$e ide ihe child dics in, comseqnence of the act  
Me eato us to be unnecessary and could safely be omited  
Re scetion may, accordingly, be rend as follows:—  
  
“347. Exposure and abandonment of child wer, five  
‘pears be paret or person horn care of Whoever being  
BeTtathef or moter ofa child ander the age of five year  
Se hmtg the care of such child, shall expose or leave sack  
Shay plc she inenin of chal shanna  
See Sant eat i ge act endanges, oF Is bkely fo ends  
‘Sir abe feof the child or permanent injures, ori, ikely  
Ber we aneoiy mnute, the health of the hid, be punished  
{0 fPimprsoners of ether deserption for 2 term whet  
Bay Guha seven years or wih ne, or with both  
  
1682. Section 318, punithes concealment of birth by geet  
“xpos of the dead Body of chi. In our vw, the Penal  
Eee Head not punish such concealment. For statstial purr  
  
7 Sth Scan be puihed onder the aw  
Posie to sepotration of bits and deaths. Af the childs ile  
rem iterong to we the criminal law for the parpose  
  
hee won Chase Aa, 9  
  
Pipa  
reine  
  
we  
  
Sriteny  
  
  
  
Page 259:  
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inmodern times. Hf the child i leptimate, thers would not ord  
‘ari be any declination to conceal the birth. The practice  
OF Kaitos frmalechndren tas practically daappested Ve  
‘hia as been Eiled after Sith and than the crm 6 sous  
{ibe suppresied by concealing the. beth, set  
  
‘ere tT ig the oso, ston 3  
  
1653. Cases often arise whore persons when legally bound  
to-do 80, fil without lawl excuse to provde the novesare>  
fof We, "Sock epal ht to be punistable. and. we  
‘fecominend the hnerion of “asnew section after stion 317  
J plae of the present section 3i8. It may be as folows:—  
  
58. Fle to provide necessaries of fe <Whoesst:  
ting tga bovad L provide the necssanic of Hie 0 ny  
person. fale without lawful excuse to-do so. Knowing that  
fen tale will endanger the We or serioody smpathe  
health of that peron,  
  
Shreither deeription Tor  
Sear or wath line, OF  
  
1 Se panshed with empesonment  
ic bich my exens 0 hice  
‘ot  
  
Causing bt  
  
1654. Section M9 which deines causing hurt needs no  
change  
  
16.5, The following changes ate recommended in section  
320! which deiaesprevous hur  
  
() The fist clause may be omited in view of the pro  
posed’ widening of the fifth clase  
  
(5) Th second and thal dases may, combined  
and ‘ampli to read "depevation! or impairment othe  
SHEN orither eye or the hearing of her ca”  
  
(ii) tn the fourth and fith clauses, the, word “organ”  
should be ded. since the elerence tov "any member oF  
Joint” is not. comprehensive  
  
in) ln the seventh clause, there 4S 89 nesd Lo mention  
“oath” expres  
  
a he SAN as, amy are hi ais the  
sulTver to te in severe for 8 period of Yon days  
Should be regarded ss qnevous, hurt Cn theotor band,  
‘ating ricvosness of the hurt 0 the injora person bang  
Saab hs oninay arate Tor Cent dye  
{oes not appear t0 be the night approach, andi crtamly  
iGo" abane inthe nature of fae hospital cea,  
  
on na wf  
  
  
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285  
  
We propote that section 320 may be rested as folows—  
  
320, Grevas Inet —The following Kinds of but only  
are degnstad 38 glevous—  
(0) deprivation of impairment of the sight of ether  
coe Oe ihe tearing of er  
(iy deprivation oc destvstion of any organ  
vember er in  
i) permanent smpirment of the powers of any  
organ, member "Join  
seal? Pmenene duration of the ado  
(0 fraser oF tileation of « bone;  
(si,any bur which endangers Me oe whi canes  
tne Sonne No! Bet severe bay pan for ten  
ie!  
  
16,56. While desing with the legal aspects of the family  
planning. propeammes, ihe Semar'on Cranial Law which  
Rae held sore me ago acc the auspices ofthe Cental urea  
iineeton eta wlynarysertatan mah rly  
fender the medal oficerhable for grievous hit and suggested  
{hat sccton 390 ofthe Code should be mended "30 as 10 ese  
Ine striction when canned oat 2 part of famuy planing  
Fregramune bya Quakiied doetor onan ult who has had some  
  
en The Commson was asked to\consider the Sug  
festion im view of the umporiance altebuted to fami planing.  
ff genes. and co teilzauon ts a method of population contra  
In baresia."  
  
vr examination ofthe postion, homer, revels no need  
foram amendment ofthe lw onthe poin. Sieration woul  
imcuni to prevows burt. as it Would -amount to "permanent  
{aparment Othe powers of an organ" evenif i might not be  
ebuded a5 permafentimpaicmet thé powers of any onher  
‘SPjamm "Bore have no doubt thal the operation of cic  
iy the seneral exception in section 38. That section enemys  
FPam pol iby a ot not mended fo ease death he  
ctr dont fm go0d faith forthe ene ofthe penn to whom  
Henny ait” wolatry eaaaton doe wih conn  
Shcnurnt of the ls aecestry fw ths Seer  
  
1657. No change is wooded in sctons 320 and 3  
  
1 SER, © Pam WS. No  
  
  
  
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286  
  
Selon, | 16S. ta section 523, the amount of fine should be unt  
SEVAne ited. The words “which may extend 9 one thousand rupees”  
Saha. should Ge omied  
si  
Eiuras 1639, We considered the question whether a special pro-  
Sa- sion to punish the causing ef hurt to ciplomatc envoys  
‘heeded. was sugested" tha at present, thee no Spec  
Peovs our lows for dealing with offence gaint the pet  
Xn of diplomatic envoys or memes of ther sta Tn al cae  
hut Roopa oft comoute taa them they  
Se precisely in the tae position as any prvale. person,  
Sit hey Choose fo wave thet mony and step nfo 9 Sous  
Taw, no case can be made out against the assailant. Hence,  
ser supested that's pow section shuld be ered aking  
the alence ef voluntanly casing har to 2 diplomatic eter  
Pnshable with. mprconment Tor thee years or fie or ork  
nd that tan ofenee should be made cogniabie We do not,  
iowever, sce an) need for sich provason. Though <aURn  
hart is hot a copnisable- fence. there is sath 10 debut  
member" of the diplomatic staff from making a complaint in  
ourt The fat thatthe diplomatic representative enjoys mm  
tity tom appearance incoutt doe not prevent 2 complaiat  
Terhim or 8's member of his sa ‘The present law creates  
no "practkaldiffculy,. and "0 Aimendiat 1 needed  
Seqeos 1660. With reference to. section 324 and 326, we consi  
Saad dered the question whether there ey nend for laying down  
Becce SPiniimum punshment where the hurl or\_grievous Rutt i  
SLES. Calsed"by'aPeoroune sutstance. Ina private members Bilt  
elas” Sntedoced in the Rajya Seba im 198541 ws proposed. thot  
SSE” Nnmum eee of three eats rigorous lpaonmeat  
  
Ea  
&  
  
Soyiien. C= Na Onin of Era Aa)  
nda Pes Cie (Amendment) ill 158, iarosaced fhe Ray Sabha by  
Ls a,  
  
me  
  
See  
  
‘OF all the ofeces affecting humae body, throwing of  
acs othe most heinous. It not only deur the. BapPRE  
revs of the oman being agnnatehom auch offence  
commited: bet"alo rus ‘the entre family. OF iste. an  
Jncrease inthe incidence of such crime is being noticed.  
(Only bighly deteeent punishment ean ebeck sueh crimes™  
  
We tae carly contd the sgeion In ot view  
sone nS fine iti 6  
{Theeatre of te jy. th real othe nul and many  
it tere ne tee epg  
  
‘ean colt MoS  
  
  
  
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ast  
  
owt, for mnie punishment, hurt oF grievous hurt caused by  
itn ue ae gyi our vem, comin The eer  
‘Question of providing miaimum punishment for some of the  
Sienoes uate the Penal Code was discussed by us with the  
Geese a ign Court a adng memes he  
Jae he majouty opinion was against the provision Of si  
tenimm puowhment (except Fora few offence), on the ground  
{Ra they ould uanectssriy ftir the dscreton of the ying  
‘Souls ‘We are of the ew that it shoul be eft to the con-  
‘tng court to impose severe sentence where hur or grievous  
Inu has boon cased by a corrosive substance. if the CTCaMs-  
{oces of the case juslly a severe punishment  
  
16.62, 1 was suggested that for the offence under section  
225) She court should have a dren to. award in, and that  
rsonment should not be mandatory, ol me donot favout  
ey noch changer  
  
166 ton 326 paises the afence of voluntary  
‘caning. grlevoum hurt by. dangerous weapons or means, the  
‘maximo. ponishment being imprisonment for life or for ten  
gears We" consider imprisonment for Me to be uanecesary  
ie this offense and recommced its omission.  
  
1664, Section 327 punter the ofeace of voluntaily  
esting ha extort Be wah Fpbonment upto fe pers.  
Ste"recommend that the imetsgnment srgud be sed 10  
sSpapewsn ano mas ton Breen ein  
Sal" consipondingollence under secuon 539 as ropow  
toe amended  
  
1645, Section 328 punishes a person who administers 10 any  
‘Mupstyine. iifoncaing of anvhlesome drug oF  
tker ng” ait alent to cause hort oF eo commit or fachate  
Sm offence or knowing 1 to be fikey that he ill thereby cause  
Rice We fevommend that the expression ‘substance™ should  
te‘substnuted for the words "drve. or her thing This will,  
lea hu th fer thing ma ao have se lst  
“tupevings ete. and that # need mot bes "drug™ as nor  
tmaly understood:  
  
We considered the question whethor an olfence under sec-  
tion 28 can be commited nthe absence of the requ fatent  
Se'kageledge ts fe thatthe longoape of the section We  
  
‘arom the point nent to cae hurt ete often to com  
fre offensy elo knatwdge that hort key isan essen  
ingrevicn ‘The Aahigad cas" cited fe some of the com>  
tientarce as ensing doubt on the point is concerned withthe  
dunlity of intents The secoon could be tesarranged 10 deal  
flat wa ciputent co ens Hct oF mowed that hurt key,  
  
1 sti hon To RW Ak TIPE AR  
Sater kaw tiie  
  
  
  
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foot foe  
  
T See dente v Tie Sie, AUR, 198i San 9 DB)  
  
236  
  
And then with (i) the other type of tant, so tha there would  
‘eess scope or an argement on ths poim. Bul the deletion of  
2 portion Bf the ‘ection as recommended below renders 2 re  
crangement ‘unnecessary  
  
Administration of poison with intent to cause hurt, oF  
withthe Keg that hurt Ts ikely to be caused covered by  
‘Setion 324 if hort is caused and by section 828 fead wilh sec-  
tion SUE (attempt) if hart is mot caused.” The punishment  
Under section. 324 (Uheee Years) Is adequate, That portion of  
Setuon 328 Should, therefore, be deleted. as vanecesary.  
  
‘We considered the question whether knowiedge that commis:  
sion of an oifence wil be fgtitated. should be added I section  
520 “but ths did not ind favour adh us I's ersoa warn  
‘ers pomon ei, the conection between that act and another  
‘feneeval ivarahly Beane of atest and not of mere Owed ge  
hate ofence sulle fata  
  
“The marginal heading to section 228 fy inaccurate even on  
the wording of the present section, and requis modification,  
Toepies wis the words “causing hort” but the act punshed  
'S the administration ‘ef poson, et  
  
nthe ight of the abowe digestion, we recommed that  
section 328 may be revised a8 follows —  
  
“328. Admistering\_poiton etc. with intent 20, commit  
‘an ofene- “Whoever administers To or causes 0 be taken  
fy any pesson aay polson of any stopelying tloxiating  
tinsholesome substance wrth iter to" cacumit oe 10 fac  
Hitniethe "eommesion ofan offence, shall be punithed  
‘sith impasonment of either destipon for a teri wich  
Thuy ented To fen yeas, and halo be fide to ine."  
  
1646, Section 329 punishes the offence of voluntarily case  
ug pevous hur (0 eatort property oF fo” constrain 10.  
{gal st. “The maximum punishment 1s We imprisonmeat or  
Imprisonment up 0. Ten years Life smprisonment for, this  
‘hence appears Yo be wnnseesiny and shovld be omit  
  
2 gel wa il wher be ee told not usd  
to all ses of conrion y chosing gevous her, eg, to com  
‘Ponce to do or ome something what he em lal bound  
{ofdo or Ut, “Causing hurtin order to compel 8 person To.  
‘vthdraw ail of to extrct'n promise of mariage, ts Not  
ihn tion 329° We thik howeter. that sich an amendent  
ston, aad ruse fie questions  
iy many caes not  
  
Se lovbe reearded as ae  
Therefor, recommend any such change  
  
  
  
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29  
  
1667. No change is needed in sections 330 and 331.  
  
1668. Ay sopads soctions 332 and 333, we mote that its  
‘wording ites roo that of accion 186, 332 and 353 and we  
‘Considered the\_quesion whether the verbal diversity represented  
bythe words “dicharge™»“xccution', ex. could te avowed.  
Weshowever, think hat ince no Sfbeulty has arisen im practice,  
sno such chage 1s necessary  
  
We also considered 2 suggestion to include persons. ct  
under the dictions of « public servant. But such cases coul  
‘be adeguately deat with finder the general provision punishing  
Mert or grievous hort, and no enhanced puriohment needed.  
  
“The word “lawl” inthe later part of sections 332 and 333  
shoo be oiled, sige i does not occur i the ealiee part,  
  
1609, tmgenonment for one month which is provided  
in secon 3848 wonecestry. “Short term Sentences serve 0  
Durpose "The maximum amount of fie should. be increased.  
‘Tae “punishment provision may be amended to read “punished  
wth fine which my eiond 9 one thousand rupees":  
  
1670. Imprisoamsot under section 335 should be reduced  
from four yes to ties years whic the Waal pend Ia The  
‘Code, but the Re may be slime.  
  
1671, The punishment vader sections 336 to 338 are not  
aeqiate, tnd ‘Should be increased as follows:—  
  
Section 336: Subsituc “six momins" for “vhvee  
months and “five hundred. rupees” for "two hundred  
and ity pees  
  
i Section 337: Subaiiyte “one yea" for “si months"  
tind ‘omit the words “which may extend (0 five hundred  
pee  
  
ii) Section 338: Substitute “three years” for “Iwo  
years""and ont the words "which may extend to one thou  
Sand rupees"  
  
Pe  
pevion  
  
  
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60  
  
Soon 1672. There has teen a contoveny at to whether the  
SR ogance under ecton 399 made ot it peron &proenled  
  
fiom proceeding a a pcr neice (ae Zen), bo a  
  
fonedro proceed on foot. A arow ew was token it an  
  
{25 Bony ease and in two Calan ces But  
‘Esti of both thes High Cours have aken a wider view  
‘tit appears tour to be cerect” We considred wheter an  
plant should iered tha where 2 person haa Heh  
{Steed in yin no, then vote  
‘Solin him 00" to preven he rom proetdng tha  
Sirectiog tn that vehicle amounts oan offence under section  
SSP ty othe ut dts mented above dosed  
iba ths eas unacsssary.  
  
Sgtion 16.73, No. change is needed in section 340 which defines  
38° wrongfal confinement  
Sesion 16.74, For wrongful reraint under section 341, a seme  
  
tence of Imprisonment anne  
evs one thousand" Where hone the ofnce bj  
smmited by Tan ce more person it shuld, tn ou Open.  
rm severely ponhanle egy with yprtonmen: of exhet  
ecipton up 10 ne pear, oF fhe” or bab  
Section 341 may accordingly be revised 95 fllows:—  
  
“34h. Pamishent ferro. rexraint—.Whoever  
sconglliy teats any person shall be panshed ith  
Uine"ahich my extend tone thowand ropes  
  
df the offences jiycomented By to oF more  
  
sersanyceiyonef the sal be pated with impr  
fen of ether easton for a fem wikch may extend  
‘he year of th ny or mith both”  
  
‘ot finery Be up 10  
  
Seon 16275. Imprisonment upto one year. of waited fine, oF  
SES, both should be the punishment under section 342 for wrong  
Etmmendes Confinement. Bete again. the offence ly committed By  
  
ten of mote persons, the punishment should be heavier. In  
  
eine  
famigg fect sear. han been a feature of apiational propeeanda  
E&I" 6f"ychomintion fora hrge number operons (0 "pherao™  
  
‘fini and others. "The nies rected in fesponse 10 our  
  
Guestonnaie®.thow Avery substan support for providing  
SSever punishment foe this ofence.""We- propose. that the  
Isauimwm ponithment for rong! continement by & grup  
‘Ol tenor more persons should be imprisonment forthe years  
Sand fine  
  
“Wiper: nam Tad 5S Bone Le FOV wD.  
2 pas Pal Son, 8H RIS Ga 37 ane Maeda Nash LR. CAL  
  
2. Engen vl Ma A 1 R906 Rom UB; and eb Cle Na  
  
4 Quson 7) Shad lr’ agence ae eo et  
  
  
  
Page 266:  
261  
Section 342 may acconlingly be revised as fllows:—  
  
32. Paihement for rene confocen—Whooree  
wrongfully confines aay peson shall be posished with inpie  
soument of het description fora term which may extend  
{o'one year, oF with fine. OF with Bothy  
  
"and. ifthe offeace is jointly commited by tm or more  
persons very ane of thes shall be punished Wah pean  
Tene of enter desciption for 4 term which may extend (o  
thee years and shall also be able to fin."  
  
cette Waeiat cite  
{oe ths ageravated form of wrongul confinement, reads  
Ha name ea  
  
16.77, No change is needed in sections 345 to 348,  
  
Criminal force and Assale  
  
1678. We have next « group of ten sections dealing with  
minal force and assaul.The atthe sections define force,  
‘Gominal force" and “assaule, respective. The ‘debniion of  
“fore” n section 349s very complicated andthe language reoings  
1 the definitions given In the scence of mechanic Const  
‘ecg that no other eval code has found it necestary fo\cefine  
the expression and that there Is ntbing.abstrre inthe conc  
Tequirag detintion, we think that section 349 could be sale  
‘ted  
  
1629. Ale dening the expresion Wo we criminal force!  
in scion Sh, and the expreson to comm an sabi  
Scolon Ta, al he sven penal sets that follow equate the  
{mo aus and refer to “whoever asus ors criminal fore  
‘Teves dus praccaly no diferene betncen auth and tang  
rma em the pe of ew png ee  
Spparent nn rein te wg ideas iat the Coe mer  
  
‘Sows ine tneson Werwesn stot and Gary” ander  
Common ay of England. Assault and baitey are to date  
‘res ac common hw; bt i's common ia ordaary wap ad  
  
ae eS SPAS Gea pea  
{de"Ran Code sad eto se Tod Sea'9 a the Chm Bea  
  
  
Page 267:  
Pay  
5  
  
22  
  
‘ven in statutes, to use the term ‘assault’ to cover oth."t We  
{hink'that 4 far ae the Code ss concerned, it needless to main-  
{Sin the distinction between assanit and ting evil fore,  
Sod that it would be simpler to refer to the offensive act merely  
SRtuusult" The delinton of asault should, however, comp  
fie the kas sett in section 349 and those et out in section  
5.  
  
1640. Apart fiom this Chapter, the expression ‘criminal  
force” ta be found onlin thes sections of te COGE,  
{cttoge [21A, Ia and 162." In section 121A, av already indi  
Seed the word "eiminal” is ot required ithe context and  
‘ould be omitted. We have ako proposed? the adtion of an  
‘Xplunstisn im section 14 to indicate whes force wil be repaded  
Stcrminal for the purposes that sestion, and the same ex  
Fianation wil be satent for nterpreing section T  
  
1681. Weaccordingly propose that, section 350 may be  
‘omited, and that section S81 be reve 35 fOHOWS  
  
“38h. Assult—A person is said to assault another when  
be, without that pecsce's consent  
  
(2) apoles force, duce or indie  
in order 10 the comit ‘ole  
‘or knowing ito be hel  
  
Sig fear annoyance  
  
() Threaten, by any gesture or preparatory act,  
to apply such Toree as aforesat to that person, n=  
{ending or bowing ita be hiely thatthe genre o¢ act  
tel eatse hm apprehend that such force i abOU 1  
ber applied  
  
Explanrion Mere words do not amount to an asault:  
‘bo the'words which a penon wats may give 10 is estures  
preparation sich ening ska fake those Bsus  
  
aseations  
  
a) 2 is sit  
uyotasens the moshiogs, amd thas intentionally causes  
the boat togiftdown the sream. Here, Abas indirectly  
pid force 10  
  
16 in 8 moored boat, on a river. A  
  
‘nth an Mogan, Cra Cans Sad on, pow BL  
  
2 Suc pagan 68 above  
  
See papi 89 ao:  
  
  
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sont? 2, fing m2 Nonecariag A les the  
norses and thereby causes them to Quicken thet PACE  
Fete A ‘has indrectiy app force to 2 ms  
  
(2) A pulls up 2 womans, weil without her consent,  
intending or knowing W to be Ukey hat he wil tered)  
Mighten ov annoy bet. He has assauled her  
  
£4) A incites» dog 10 spring upon Z without Z's  
consent.""Hers, A fan apiiad force to Zam he Sn  
tends cause injury. feat oF asmoyance tO Z, be has  
sseuited 2  
  
() A begins (0 unloose the muzele of his dog,  
Jiending or knowing sto be likely that he fay thereby  
Cause 210 believe that he abowt 0 cause the Gop 40  
Stack Z." A'has eased 2.  
  
(0 A shakes his 8s at Z, intending oF Knowing it  
fo. be likely that he may thereby cause 2.10 beteve  
that A isabouto stnte 7. A has asanled 2  
  
(@) A takes up a stick, saying to Z,“T wll give you  
‘beating. Heres though ihe words. ‘wsed by A could  
‘ot mount tam assault, ad though the mere gesture,  
lunaccompanicd by any ther circomstance, might noi  
Stnoune to an assault, the gesture explained bythe words  
‘may amount to am assault"  
  
1682. Under wetion 35, a alg increta ponihen  
sient The mpc pa ee aah  
SoAUTR ato td Ae pete  
to's Ss shoul he sea  
  
1683. Whie section 352 punishes assault otherwise. than  
‘on grave and sodaen provocation, the panihment for asault  
fom Such provocation k prowded ia sefson "388. Since the  
aplanation of section 354 also has fo apply to section 358, the  
fo sections may te combined and reviled as follows  
  
£382, Pnisimont for ausaul~(1) Whoever asa any  
person, ihre than on rave and sudden provoston git  
Byrihatporson, shal be punbed sith mprronment of ether  
lasnplos far str which ay extend "oot mont OF  
‘the or wth both  
  
(2) Whoeser assaults any person on srve, and sudden  
provscaon piven byt perton shalt we Panes with ne  
ot exci. ve hundred rer.  
  
2) Grave and sudden peowcction wil oti  
punihment for asa i she prowoeebon  
  
(0) is sought or voluntarily provoked bythe offender  
san ence forthe olen of  
  
4 the  
  
  
  
Page 269:  
ey  
  
is given by anything done in obedience 1 the  
raw, 2 by pune Sean ia te lawl enero of the  
overs of sth publ servant or  
  
(© js given by anything done in the lawful exesive  
of 2 spit of pte dleace  
  
“The provision in the existing Explanation that “whether  
the provocation wan prave and sudden enough to mtizate  
Re Rikence fs'a quenon of fact” not fequied alter  
‘bolton ot jury tals, and has, herefore, beea omited,  
  
1654. No change it needed in sectign 353 except the omission  
of te nords “or wed crmanal fore fo "  
  
1685, Section 354 punishes a. person who assaults or uses  
cimosi force 9 8 woman with intent to outage her modest,  
  
jhe eather! refered to-2 judgment of the Supreme Court?  
  
which i ras hed that even baby of seven and a Ba months  
Sha"hes modeuy that can be outraged by Use of criminal force  
‘Shi te meaning of tis secon, In that ease, the accused had  
Fadesenly ssauted the baby and caused injury (0 i enials  
echipe dueston arose whether the act amounted to 20 offence  
Shder sation 254. The “High Court of Punjab acquitted?  
Tee sclSed Wotding thats gi ot seven and hall" months cannot  
fave'a "modesty" which can be outraged. The Supreme Cour  
By smajoniy, revered the High Courts judgment. Bachaw  
1B bserved  
  
rn geo omy may er The  
oth Saeale San eh Sgt  
Sead a ate at  
es tea a Sr  
Wie trae ea nee  
ee ese  
H.R emcee set oe ot  
nm  
  
othe reaction of the woman is very relevant but its  
absence is"mot alvays decane, as for example, When the  
SEER ih's corre mod stealthy touches the flesh of 8  
‘Heoping womans ‘Ske may be an idiot, she may be wider  
po anand she yt ne ne  
USE to aperciate the signifeatoe of the at, neverthces,  
the offender = punshable under the section.”  
  
  
  
Page 270:  
26s  
  
And Mudholkar J., observed as follow  
  
“tt speaks of outraging the modesty of a woman and at  
first blush seems to requte tht the outrage must be felt by  
‘he victim isl But tuch an interpretation would lesve out  
Df porview of the section assaults oot only on pis of ender  
‘age but om even grown up woman when such 2 WomaD is  
‘epg and de not wakeup ors under anaesthesia or stupor  
ris ao iol Ht may alo, perhaps, under certain circum  
tances exclude a ease where the wooan if depraved moral  
Gharscier Could it be saad that’ the Legulatore  
fended that the doing of any act to or inthe. presence  
‘of any woman Which, according {0 the common notions of  
mankind, is suggestive of set. would be outside this c=  
fom nes tbe woman herself lek that outraged ber modesty?  
‘Ain i theo leobe appled isthe womanseacton to  
Faria ach woul not be a arial tex depending Upon  
the sensitivity or the upbringing ofthe woman’ These con  
Sidertions impel me to rect he test of a woman's individual  
Teacton tothe ato the acu" mus, Hower, cones  
that Ht would not be ety to lay down a comprehensive test  
fet about thi mich I feel no. ifielty. tn my judement  
ie ya ovo, te ref om  
al sve of Sek according to the common notions  
‘Of mankind that act must fal wb the michel of ths  
  
Sarkar, C., however, dssented:—  
  
kh cy foal of atv a is ponsied  
down too ig are WR mad be Greced ont elise  
‘There ‘sbvicinyino unveca!” standard of modes  
ims reading ofthe Seton conc, the question that remaing  
{obs cae wheter a feasofable an Would tl that  
{he female ton whom the ofence was commited had  
‘modesty which the rxpondent Intended so outage Oy is  
Xeor Kaew iw be he hisy res Of 1 do hu Yan  
Sreazonable mam Wolds that femal child of seven 90  
ESE ent ened womanly modo. if ae fa  
‘ot, there coult he no. questcn of the respondent vio  
  
ed 4 outrage her pode having known that  
cc was nly to hve that rea, "1 would forts temon  
wer the question 9 the repatine.”  
  
1s. whe satan jae was done in the cn. one  
cannot (with reat respect Serving that the concison  
Sus reathed bf the majrty alr some seaning ofthe anguage  
‘The expression "modesty connoteraretiingleashul or desu  
npoation. it ha ssi on the ordaary we of language to  
Spply that expression to 4 baby im erme. Tein beter to ave 2  
‘ect proviso on the offence of indecent asalt on chien  
‘St whaler age orse, so that cours may at Gn th ase os)  
  
  
  
Page 271:  
Kidnae  
  
Resch  
i  
  
266  
  
‘bethrown back upon a restricted provision lke the preset seston  
354. "We are of the opinion that apart from saul 10 osrage  
‘cis of indecency wath children should be made spec  
ACSly" punishable by a new section reading a8 follows =  
“3S4A. Indecent astault on @ minor —Whoever asails  
any minor under sateen years of agen i indecent. scious,  
for obscene manne, shall be punished with smprisonment of  
lier description Yor aterm which may extend C0 thee Jeu,  
fr tuth fines oF wih Bot  
16.87. No chang is needed in section 355 except the omision  
of the words “or uses erminal fore fa"  
OS: Sein 6 sens of aug «pein ia ae  
ing to comm the on any property which that perton 8 wear  
  
SF cvcng. The repostion “on” appear  
Sd should be replaced by “oF  
  
1689, No change seeded in weston 35 enn the omision  
‘ofthe words “or ues eimanal force to"  
  
16.90, Section 388 which is proposed? to be combined with  
section 82 sill have to be ote  
‘Kideappiag, Abduction, Slavery and Forced Laboor  
  
1691. Desived fom the word kid meaning cll,  
an American cant word oe Ue, the Word kia  
  
We incorvech  
  
i eto ante com tnd  
Est appeay to agree that hi strictly 4 constuent of doa  
ing properly so called According to. Russel. the olence  
  
omit i minor i taken way again the wil of hs fends  
SeTiawiut-guardans"\* “Chateling, as such 4 salutory  
ftence™ punshable with seven year in The  
fence i ual fway of  
  
‘nce any child under the ag@ of fourteen years. wilh inten to  
‘deprive guardian of the possesion of such ei, of with intent  
{orteal ang aructe from the eb. Te appears thatthe como,  
tao offence of kidnapping fs of small importance atthe present  
syn England  
  
T Tig esinRcw ae tnd he pre oy o We ion Pea Code ped in  
  
2 See pongaph 16.5 above  
1. Oxted Dison) of Eaash Feo.  
  
44 Sith ad Hos, Crna Lam, 2 eto, page 276.  
4 otemcy aac the Pon Ac. I, etuon  
  
(6 Smith and Hogan, Comin! Une, 2nd edn page 27.  
  
  
Page 272:  
2s  
  
16:  
  
Keeani. aman fo lobe and wren 8 “a  
  
ew ist kind"is defines tn secuon  
  
2s comeying any Person beyond the limits of India without the | Tons333"  
  
omer of tha person or of some person authored to consent 3nd  
‘bchall of tht person, Tis oMlence was ef importance inf,  
the last century when the practice of indentored fabour was °™  
CDinmnom and “ccalyentching= by devious methods had tobe  
  
por down, "AS wil be sen by 4 comparison of the definition  
  
Br ikktnapping from india In section 360 with the. detition of  
‘Shducton in Sexton 362, the Siference between the (wo 1s vr  
Stght here an adults conveyed out of India without i conse  
ith uimost corn that he would have been competed or induced  
to go fiom some place, e. “abducted” We think it un-  
ctv fo have the fat Kind of idaapping asa special offence,  
Ind ropove that both section 289 and 360 should be ome.  
  
1693. Inocder toamount 1 kidnappingof minor from lawful Reva  
  
Yo  
  
\_puardinnahip the age Tmt of the tumor is fixed in section 361 ian  
  
4 Te for boys and I8  
Cause Bfth of tection 375, 8 not ape to have sew inter  
fourge with & ir of 16 of more with her consent, the ge iit  
for. kideapping ako should be 16 for gris aswelas boys. We  
gt. however think that thi aval argu ont ace the 1Wo  
Stenccs are very diferent. Kidnapping bang aa offence against  
finial puerdanbip. iis lie! tovbe the age of majority the  
Cee eta fact we see no reason why it should be 16 an the  
CEscol boys, We propose that sl misers under 18, whether male  
Sr teal, should be brought within the scope of the dentin  
SE Aidoapping, bot the punishment may be more severe where  
the'Kedped perion is onder 13?  
  
“The explanation of the section refers to any person lawfully  
‘eure? ete These words have led to 9 needless controversy  
srtolehether here nus tea formal entrestment.© Foramsance.  
Srpharsges and. imiar” chantableasitutions, which take  
‘hry of neglect or abandoned ildren may find dieu  
fo teabish thar they have been lawfolyentesteg By anyone with  
{hc eure or eattody of 8 particular child De fro yuardians ave  
esry tensed to be covered by the Explanation. We pro-  
fost fhe no ay penn who Ns lol estoy  
Een the Explanation.  
  
Kidaupping may accordingly be redefined a8 follows °—  
  
ol. Kidnapping. Whoever takes or entices any. person  
i de in pe ape oof mind mi, ot  
SFthe keeping ofthe lasful guaran of Sach person. without the  
Soneent of sach pardin, i Sa Lo tadnap tht person.  
  
SS Esso Sune Horde Sigh, ALA R198 Ba, 39%  
5 Jans hon At IIB LTD; Soar, ALR 1931 Cal. 6,  
  
Twas Suggested that since, under Sicsane-  
  
“The Penal Code distinguishes between two Kinds of | Kiapning  
  
  
Page 273:  
Fa  
( Sea  
reed  
  
268  
  
Explanation —In this section, the words ‘law guardian’  
include any person who has lawful custody of 2 minor of OF  
person of bosound mind.”  
  
1694. The exception under sestion 361. provides for two  
ferent cases which may arse i relation to the immediate care  
in cintody ofan legate child. ‘The hes i where be alone  
{xdnapper i good fath believed himsel be the father ofthe  
Shld hod takes it away from the costody ofits present guardian.  
‘The second exception i where there la bona fide dispute over  
the cutady ofthe aleprimate child. Teil be noticed that the  
ttcoption has no application i relation to lepiimate chided,  
  
In England, under section $6 of the Oflencesayainst the  
erga At thet mire ei (hehe erate  
riegitmate), a person whos ‘latmed. any Hah 10  
Eskom athe cd and peron who shal have lac to  
Bethe father ofthe chid where igptimat, are all exempted  
‘goscaton fon caing ic do cone  
“ope ofthe exception i Sesion S61 should be widened  
  
{this extent, the dishncuon it maker tetven legitimate and  
Ileptiste children ih nether lopeal nor satisfactory." Disptes  
{o arse between the parents of 4 child who have fallen out over  
{he custody ofthe chid- should it be repacdd as a capable act,  
Sanda serious offence a hat, for ehr of them o take or enice  
the chit ovt of the keeping ofthe other? There may. in some  
‘es (out not necesaely in ll be good jstifeation forthe father  
‘Fan Megtimate child Co take it out of the custody of is mother  
fot equally there could be jsication forthe mother of child  
Bota wedlock to take i out of the Keeping of the father even  
Ihe te ite Motul guardian, Ic seems toa, therefore, thatthe  
tscepton should be extended to the taking ofa chld by eher  
  
ent, and where ais sieqtimat, by a person whois god faith  
  
ered hima to be lis father. Bona fu claims by other persons  
to the lw custody ofa child, whether lptimate or ema,  
‘Should not, ia our opinion, be sufbeent 9 exculpae them Fem  
the offence of Kidnapping  
  
pope scordnl that he xeon soul be reve  
to reads fallow  
  
“Exception Its not kidnapping when 2 minor is  
‘or enticed ut ofthe keeping of es Inu ty  
‘of hs patents on where the minor an Slegismate chile,  
‘bya person who i good futh believes himself tobe the father  
(of Sieh child) unless such act is commited for an legal  
‘tiemmoral purpose.”  
  
{e-will be noted that nthe above e-drat, we have mentioned  
  
inept purpose stead of “unlawful porpowe, which are the  
words vledin the present eacption. Phe quesion whats 48  
  
  
  
Page 274:  
9  
  
‘wnlawfst purpose’ has ta fo contavers® incourts because of  
{fe vagal the egpresions As the word Wega debned  
thcaton 43 w ids oeplae st bythe mare prea ce  
resion “ies pstpase  
  
1695. The language of section 362. which defines. abduction,  
i cing a tepeteFet out coer te  
‘Sa of body hing ad casing aay a person. When he ane  
ees of alee.” Such cy donot Keay fal hin the  
Sri hy Tere compels ory doceifal means inducer wb  
ihe taxa wed inthe, ees seon Seon. we  
‘orgs’ mentonca, show of force not mentioned, with the  
Toul tht some High Cours hae consrucd the section 3  
onfied to ces where force Used. Teappeats to un that  
Sod be wel to amend the section o 8 to cay he possion  
‘bee fist point and aden the socson om the see pom a  
‘Show  
  
$362. Abdecion: —Whoes  
  
(@) by forse or show of force compels, or by any  
ect means induces, any person t6 go From any  
  
place! or  
  
(aks ay pean away fom anyplace wou the  
onseat ofthat poon oe some Tesally  
Stor io sonscet an Beha of tha eran, a8  
io'abinct thar poton  
  
1696, 1 man suggested that, to cover cases of jackin  
act tu ther Shes an academy bs aces at  
  
iniscy cause to be transported  
ot ther mended destination, Ths ned for  
  
passengers are concern.  
Weare, however, of the wens that such eases  
Cold he regard! ss fling within the Secon, notwithstanding  
the indirect natute of the compubion, and no amendinest Ik  
poss  
  
1697. As epurdssction 363, we are ofthe view that the manic  
mum” panisment for kigoapping 2 person not under 15 years  
‘lage shouldbe Tess severe than at present. sich kidnapping  
[3 lor one of the purposes mentioned inthe succeeding sections:  
‘hen the increased purshment unger the relevant ction Wil  
fapaly. “the section may be revised as flows  
  
363. Pusient\_for\_ kidnapping Whoever kids  
any patton inde en Sse oF age shale pied  
‘iltimprsonment ot ether desrpion fora erm sich may  
‘htend fo seven ears: and shall abo be lable ohne: and  
  
Os contr ies ST  
  
R191 Al. 710  
  
Baad  
  
ton  
3  
  
Raa 04 Sinha Aw nab OR  
  
  
Page 275:  
20  
  
\whoover kidnaps any person wh is not unde fitsen years of  
“al be panished wit impaonment of ether dsrion  
sm hich may extend to tives yeas, and sal 983  
  
te taco ine  
SHye 1698. Section 634. dese with kidnapping for begging. We  
3OA> \_naveeraiinad the recommendations of the Commies appointed  
able. Winguesto ts ofc a wel a he papers rating fo the  
ores" Bil pared bythe Home Minky to amen the section  
  
(i) 1 hasbeen suggested thatthe defoiton of “beagina®  
in suction (4) of aetion 363A, should be expanded  
So a5 to cover peons. wander without vible means  
‘of subsistence. othe “analogy ofthe defation of “basing”  
mite omy Preven Bee Ae BS) Th  
beet of antebeszary legsiation snot punive, but to  
Tickle. the problem of begging by’ remedial and” weltare  
menu Chan he Ohana  
ent the crorky."to ‘minors involved. tn kideapping  
Eiidrn "ad making epgats ot bem: The Tact  
pi snapping tent ie or being nt  
the moire of the tt. + Where thee is evden of beaeing  
Iman forse there should te no dist. cven i the absence  
GE tention We, thereto ecomménd omvon ofthe  
  
(i) As in seotion 361, we do not think it necesary 10  
have. ove age for boys and Another for Bilt while desing  
‘minor’ Iemay be 18 years for both  
  
Ci) ta regard to punishment, the Commitee considered.  
ang te gees hal the maxtor provides nthe Sesto ie  
sth eho ages "wham a &  
mim punishment ‘ef 3 Seats imprisonment would  
Jota order tha the poston mi beeches 2  
aeent We ont hing tha here ay ned to ete  
court power to award lesser punishment a the offence in  
Sfostion’s bound to be gave i every shiaton” Impenow  
then shoal be esou  
‘Accordingly, section 363A may be amended a8 flows —-  
{9 supsetion (I) forthe words “imprisonment of  
citer escrptions te Words "rigotousimpusonent sal Be  
Susie aed ater the words “em years the words "bt  
  
‘heh shall note fs tate Jean's shal be nerd  
  
i) For subsection (4) the following shall bo substituted,  
namely =  
(4) tn this section, “minor” means a person wnder  
cighicen yours ge”  
  
  
  
Page 276:  
m  
  
1699. Section 364 posishes the offence of kidnaprina or  
sibducton of person fo order to murder hm, the maximum  
Ponshment being ompnsonment Tor" We or for tem ears In  
‘Sew of out genral resommendation a 9 imprisonment fer hie  
  
fe impesonsent should be omited ans term  
Tnnorisonment incrensed 20 1a years  
  
“The illustrations 10 the setion do not elucidate any particular  
ingresiont ofthe offence and should Be omit.  
  
16.100, We consider it desirable to have a specie section to  
ppnish severely kidnapping ot abduction for ransom. as such  
EBs ace increasing “AL pecent, sach Andnappis or abduction  
FS punishable under section 368 since the kidnapped oe abducted  
petsn vil be secretly and wrongly confined  
  
ake sonar the econ wer pon!  
sae pumhment Tye ‘the pect i  
  
‘Shout harm shold be mse, bate have some o the Con  
Sinan hat tere ane need Tort We propos the folowing  
  
364A. Kuapping or abdocion for ronson —Whoevet  
kidnaps or abducts ny person wath nent Co old that person  
for ransom shall” he punshed swith rigorous imprisonment  
for aterm which may extend 10°14 yeat and shall ah. be  
Tablet ine  
  
alll, WS he prot above ha onion of he separate  
eafence known as tapping ot of India, bot kiGmappINE OF  
Sisiucing any penon, whether u minor of an adult il the  
intention of aking bm out of fain, shosld be  
  
ny fence may anton  
  
reining t 88 Tallow’  
  
"385. Kidnapping or obdnctin with ivet fo cones ot of Inia  
‘rarerets connie poson=-<Whoeret kidnaps OF abducts any  
Person wth intent to use thet person vo fe conte cot oF  
To 9°10 be secretly and wrongtlly conned shall be pis  
‘d'ithrigorocstmrsonmet for aterm hich may" extend  
to seven ger and shal ao be able 0  
  
Tn this connection. we considered the question whether  
Stale abductions should Be mage an ofenc, ut ame tthe con.  
asion shat ns Is ot neces.  
  
16,102, Section 466 is in two parts. The frst part pani:  
shes «person who kidnaps or abducts any woman ta rdet th  
She may be compelied "to marry any porn spss: het wil  
Thee he sary divergence of ical opimon et fhe meaning  
ofthese words in cases where the dnapped is & moor  
‘echo ar een a ley te lo ie  
{hove eve 8 minor Beans  
  
Seinen  
  
‘son  
Soe  
sree  
  
ie  
  
Se ee  
oe  
  
Tike Se Sei Wales Comin! Cove cana sch @provon vide aon 304  
  
  
Page 277:  
m  
  
In. Colesta case," these words were taken  
wi ofthe pr, nnd ot to the wl of her gua  
Bil nas ¢ tor The Oud he Com a  
  
though the  
‘oma to have  
  
1In.a Rengoon case? the High Court considered the dsine-  
tion atween "apunat ihe wil and "without the consent” of 8  
person  
Further, i the Ponal Code a distinction is drawn bet  
‘peep an act wich ie done against the silt and an act done  
thu the consent of @ persons, Eyery act dove ‘again  
the wil! of a person, 00 doubt one "without his consent,  
‘hota act done without the consent” of a peeson isnot neces  
iy “agnnst his Mal which expression, T take i imports  
{hat the at is done inspite of the opposition of the person tO  
the doing of se  
  
Now, having reacd to the distinction that is drawn in  
the Penal Code Between the expression ‘agaist the wit and  
“out the conser of a peon. andthe fact tat in section  
Seen pocteally prowl thac the woman may be come  
Pad, Eeowing Be iy at she wil eats  
st fer wif nm othe opinion that he prove  
“Soare nctto'be appa fo secton 346."  
  
But in a Madras case\* Panchapakesa Aya... was provision:  
  
fy of the ew that iramuch as the principle’ of section 366,  
E.G thnold the laviat authority of fhe parents or gundians  
‘rer their mnor wards and fo throw a ring of protection over  
ih orks themelver, the consent or wil of the gf was immaterial  
fhd'the wilof the guaronn was dais for this purpose. Bul  
Hell tees rat opinion onthe sb a he cs WS  
  
An. Keraa cae a gil under 18 years of ope was kidnapped  
by the sceued, a he fer marred Nee. He‘sas charged vet  
cline toh and sho under seston 366, the lleaton being th  
‘SS oljrt eas to many hor The accused, bodes rating  
‘sfence that the girl "was. major, also took the defence thatthe  
{fetes a comenting party Wroughout, The defence was nega  
EE bad his convicuon was aired by the High Court, which  
‘heres that for purpose of ction 366 aso, the minor consent  
fo the marrage of ee intercourse 16 not of any sgliance  
  
Se iad «ny RE ae Gah  
1 ith Pea i ALY. 188 Ou ad 9.  
3 hotlr Rama yn A: 1933 Rang 98 10  
  
Shep Pte G8 SCO EIB LIME. 8S He 9 IT WR  
  
5 Daw Marts. Shama, ALR 981 Ma. 90  
9. Kaya Se, AAR 9 Ket 19  
  
  
  
Page 278:  
2  
  
‘With ll respect. this observation appears  
the specie wort of ection 366, which requ  
Ina of the minor Irom lawful giardanship mast have Been ite  
Intent to compel er fo matey against her will Ian git  
{above 12 years)! taken wway with fer consent and mactied  
‘shh her concen, the ofence under setion 363 may be made ou,  
3 etna Ea is hoc  
5h intendlon to. marty the mor gil without the consest or  
saa the mil thet pan relevant fo extn the  
‘afence under section ied We do not however thnk neces  
to alise the wording of the section deco the aiferent views  
‘xpress by the High Court as 0s meaning and eft  
  
16.103. The second half of stction 366 and section. 366A  
huth'of which were inserted by tm amending Act in 1923) ate  
lovely connected with each other, and could sppropnately be Put  
  
16108, tn the light of the above ditcusion, sections 366 and  
Mon imay be revised fllows  
  
~366.Kidnaoping or obdutig woman fo compel er 10  
marry te Whoever Knap ot abSucs any wom”  
  
(4) with intent that she may be competed oF krow=  
ing ito be likely. that she wil be compelled to matty  
{ny person pwns her il or  
  
(b) wih intent tha sho may be forced oF seduced  
to et ‘mercours, oF knowing ito be likely thot she  
‘wll be Yorced or sedced te hei intercourse,  
  
‘sho be ponished with rigorous imprisonment for acer which  
‘may extend to ten yess, ad shal lg be abl Co ie  
  
346A. Procuraion of womanor minor girl ~(V) Whoover,  
by means of eominal intimation or of abuse of author  
(Fay ‘ter thd of “compulsion, inde ny woman  
{3 go from any pce with stem that she maybe, oF knowing  
IP fo be ely that she wil be. forced or seduced 0 iit  
finersourss vith another person shall-be punishable with  
riporous imprisonment which may extend to ton yous. and  
‘hall ls be able to fine  
  
2) Whowwer, by any means whatscese, indvoes any  
‘minor git user the age of eighisen yeu 10 80 from any  
Place of todo soy act with ntsc that sven gir may Se OF  
[icing ito be [tty tht he wil be. freed or seduced (0  
fii Intercourse wi another person shall be pussshed with  
sigur siprionment whieh may extend to ten sears: ad  
‘Mi alo be babi To fine  
  
2 chef, SRL Naaman, ent ew. Ss separate ate.  
ota 24 19  
  
  
  
Page 279:  
Sea  
st  
  
SSR  
  
—  
  
Tot be  
  
sien  
  
Shenson  
Sse  
  
ma  
  
16.105. tn sections 366B and 367, the only change required  
{sto provide for nigarous imprisonment  
  
cuir enemies ee  
Sian tarage  
  
368, ron concelng or heepnt in confinement  
kideaoped or shuctd poron “Whoever, knowing that ay  
fort has ‘bse ednapped oad, wrongful conceals  
con ach pene shal he pune wh eoraee  
itupenonment for str which may extend 1 seven ear,  
nd sal aio Se hablo ie \*  
  
16.107. The ofence under section 36 kideapping or abduct  
ing cht wth intent fo sea from ie persone ot  
Zhe ena ta mane Pe  
‘minimum ponishient seed not be subject to relation BY the  
Gear WE"thtre some hat cn 3 Be es  
Slows i=  
  
"369. Kidepping oF abduetug cid under ten years with  
inet to stl from ss person Whoever todnape or abducts  
Athy chi under the age of tea year with the intention ‘of  
{aking dishonesty say movable propery from the person of  
Ste ehid. shall be punished wih ipocous imprisonment for  
f term ‘ehich tay extend to Seven years, but which shall not  
tele than two yeas, ad shall also be Hable vo fine.”  
  
16108, Sections 370 and 371 deal with slavery Though.  
slavery and waficking m slaves no Tonger exists tad, s:t0n  
Sr0 ay be etained wes deterrent. Traprisonrent for the oflence  
‘Sfoutt be ngorous., Secon S77, which punishes habitual Jeling  
Isles more sovevely however, unneessay andanty 8S om  
BS  
  
16109, Section 372 punishes seling, of hiring & minor for  
prostiation ihe inergoune or any "uolanfal and ier)  
  
purpore  
  
1 was suggest that for the words ‘unlawful and enor  
srpore ie Words “egal or irmoral Purpose should be subst  
RAE bat ue think that the purpove “should be, Both amoral  
Und walawfol,\_-Abhough the expression unlawful’ may b> vagus  
Trovhet "contents tat notso inthis econ, scatne the  
fiber reartion impessd by “nora” earrows down ty  
  
spe  
  
  
  
Page 280:  
ns  
  
Impcsonment under tis section should be rigorous, having  
regard to the gravity of the oflence  
  
16,110, There isa coafc of decsions.on the question whether Secon,  
section 393 ie confined fo obtaining possession af a minor from |S  
‘hind person The Bombay''and te Pana’ High Courtshave SSS",  
ald that fi aot necessary that the boying. hiring. or other. hig  
‘ise obtaining possession, of the mmor should be from a third  
erson. "Any one taka gel under eightcen pears for the pure 51-0  
‘Dove indicated sn the secon ie Hable eventhough thee it no one  
  
‘tho hs given hm posesion ofthe gel, and he himself hae taken  
posession of her, The Madras and the Calottas High Courts  
Ravelaken a narrower iew, The Caleta cae expen dents  
  
From the. Bombay view  
  
GAN. We are of the opinion tata carfcation cathe point Resa  
wou te vieful Further, we regad.the wider view as prefers bouion  
Ties Tabi a kenebcla pronusk and wider sope ademas  
foeeftetive protection azsinst mercenary explotaten of bps  
  
trinor vie We. therfore “commend the addon of 30  
Explanation to scion 373-25 follows, —  
  
“Explanation 111—Fot the purpose of this section, it  
is not necessary that posession of the ‘minor should have  
‘ben obisne rom ahi person”  
  
16.112, No changes are needed in section 374, gen  
  
Sesual offences  
16113, The éefniton of rape. in section 378, which secon  
  
refers 1 the woman's consent in Tout of is five clauses, Tales SS  
  
{he question toh fai at al the a Arab  
  
Sois appeal in relation to te consent ray  
  
Satse othe detintion. “Concttey the Consent Bien bye  
  
‘Ssoran, who from unsoundecis of mind oF itonration, Ure ew  
  
{ble fo understand the natureand consequence of theact towhich om  
  
She" sin fact subwatie. has the aan commited pe  
  
ithe second pargrnph of section 90s apphcaie such conten  
  
‘ust be ignored aod the man must be cegarsed i having had  
  
‘exval intercourse with the woman without her consent, Wile  
  
‘ere are qc afew English cases leading to ths conclston under  
  
{he commen law of England, the question doesnot appeat {9  
  
ive anon tay ind ee’ re  
  
1 Shamir, A AR. 221 Bo 33 | Bhar, A. 1 R, HE Bom.” 380; Gor  
  
iterator AR Sa! Bom 3  
  
2 Shomaniee Pr A. LR 1989 Pa 219  
  
3 GI Aw SA 7 SHE HC AT 9,1 Wei Tee ae  
  
4 gest Mas R997) 2A 5A. R. NT Cal 250 (Cae and  
  
5. ¥, B Rave ites Blom, 1953 RE. W. 286 fer the vig that open ineregue  
i man ade he, none in ase ti to hee cone a  
Gorse he team Rast oe ead. NaH page Sh ast  
  
  
  
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26  
  
‘The special exceptions in the second and third clauses of  
section Se obviously do nat cover the same ground asthe pene  
Sceplion formatted inshe ft paragraph of section 90. "Under  
SSevon 375 yea ty ex mony wpm ths womans con @  
{evict Aas en obtained ty puting her ear of death oF phys  
{al hort the consent does not count; whereas, under section  
So. ifshe has psemter consent under fear of injoty-—a wider  
{ham physical how-to here or any one ele andthe man  
  
(Re vomgnt wa given in consequence of such er. the consent  
{Sgcsnot count, In't Nappa case! the High Court eld th  
‘there the woman had coneented Subenitied to sexual in  
Course ih the accused who pretended 10 have a warrant 1  
Sve and take bes to Bombay, and: by that eset. abducted hes  
{og eeu hove forthe purposs the consent was pot viiated  
bye being ves im far of some “injury te herself other than  
Beaiy hurl The applcabsity"of section 90 10 the charge of  
ape in "those Grcummrances was wether tased: nor considered  
Inthe jodament  
  
Silay. under the fourth clause of section 375. only ove  
risonception of fact, 2 the indced tli that dhe man set  
Rishond wtaies the covvent of the woman: whereas Under  
SStion 50 any misconception of fact viates. proved the fan  
Knows or haw reason to buieve that the consent wat given  
En Consequenvect suchmisconcepion, Hereagain.we have 02  
Indian desisons on the applcabity or otherwse of the genera  
‘heeptions to a charge ef ape when the particular exception 68  
the fourth claute of tecuon 375 is mot applicable,  
  
The sea of ston 90 ase no teh” poem  
"nimom age af conten forthe ofece sf aps being spec.  
Teh ei fith ce the 12 your ege mit in the Sener  
Exception doet aot apply.  
  
1 seems possible to take the iew thatthe third and fourth  
lays of ston 37S lating to feat of burt and misconception  
Gio pest pronsions and hence elude the appheation of the  
‘Shresponding general proviso inthe fest 'gara" of section 99;  
‘Sa the yume exception nthe cond paras nor encoded by any  
ng spectied im wcion 375.” We do not, however, comer  
stecesary to clarify this point by an amendment of that section  
Since no duly has bee fet practice  
  
16.114, Under the thie clause of section 375, the consent of  
‘he oman ated cay when she has bez put in ear of death  
fr body. hurt to hers The clause doesnot extend toa. en  
STheve death or grievous hurt threatened to some one ele pre  
Sinr'on the Spot eg, the woman's eid. patent of husbane  
Sd She uerby cipeted to sub sexual intercourse  
Growin Though such cases would be very rare there Is-no" reason i  
SESS" Guincple why sch consent sHOuH! mot beheld to he ated  
  
1 Moon Ste ACE R198 Nag 2  
  
  
  
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m  
  
We notice thatthe definsion of rape proposed in the American  
Draft Penal Code includes the case Where the man “compels  
{ie woman) ta submit by force of thveat of imminent death,  
Serio bly jay. exe pun or Earaping 0 Fe mfr  
‘many one"? "We propose to ampiy the tnd clause to cover  
thercaser emsiged Sbove  
  
1611S, The exception in seston, 375 proves that sexual  
iar bya man with he ovm wi the meno bmg adr  
‘itech yeas of ge not fape. "The punishment fr sattory  
‘aps by the hosband fs the sme when the wife w under twelve  
{eave of age, Rot when she between 12 hed TS ears of ape the  
onaiiment is mil, eins iyprsonment upto tw. yeas, a hie  
‘or both Natoraly. the prosections foe this ofance ave very  
fr We thnk gu pe dei to ake th fee  
together out ofthe ambit of section not to eal? Tape  
{ven na technical sense. The punishment for the fence ko  
imay be provided ta a veparate sete  
  
Under the exception, 8 husband cannot be gully of raping  
bis wife, if she s above 1S years of age. Thi excetion fall  
{irate of note one spec situation, eames, when the hutband  
Sit ing Spar ye deo al Sprain  
‘ety muusal agreement. nsachacse. the marnage technica  
tutte and the Rast has sexta ntetcoutse wih et gait  
ter wil ge mute eamenthe eanrl be sarge wih he  
Dien of rape Th doe not appear to te righ We comer  
that in sch czcumstancrs. sexe intercourse ty a man with is  
thie thou Ser consent shuld be punishable a5 Zape  
  
16.116, Under the ithelse of section 35, tis ape for a mae  
to have sexual intercoee witha pte not being it mile. ho  
‘aver twelve years but under siategn yeas of ape, even when she  
Is consented. We are athe opsnion tbat this ofence need  
hot be equated to, asd punishable ve evetly us, rape. He smme:  
times bagpens in such cases thatthe man has been led t bebe,  
Lind i good fon eleven that the girs ser saleen, A  
Ineo fue mistake as to age should bela defence to a charge of  
‘ape ol this type. We propose, therefore, to deal mith is ofence  
Ina Separale ction  
  
6117, In the light ofthe above ditcusion, seston 375 may  
be revel av follows. S=  
  
"375, Rupe—A man is said 10 commit rape who has  
sexual nireourse witha woman other than Bis We  
  
(2) against hee wit, oF  
() without hee consent; 0  
  
1. Seton 213.1, ae yah Mee! Pen Code  
  
Sent  
  
2 The mana bading of sian 190A, Cina role Cole, et os  
  
  
Page 283:  
28  
  
) with ner consent when it has been obtained by,  
putting her in feat of death or of hurt, ether to Reset  
Bro anyone ese presen at the Pace;  
  
(4) with hee consent, knowing that  
tele that e's er husband.  
  
x tivenin the  
  
\_ExplenationJ.—Peveteation 3s sufient 1 constitute the  
senuil intercourse necessty to the offence of Tape.  
  
Explanation HA womae living. separately from her  
husband under'a decree of judicial separation or by mata  
be deemed not to be hs wile for the purpove  
  
seion G18, In view of the proposed changes inthe definition of  
  
BEES raps he lier part of seston 376 fas 1 be omied, Father,  
  
Tit place of the punishment now prowded in the scion, V2  
SIaprisonmeat fot fe or imprisonment ot either description fo?  
{Gn years, we propose to sabattoe rigorous imprisonment for  
fuceen years We considered the question wheiber 8 min  
{hum sentence of say, ree Yeats imprisonment, should te  
provided for thie oface. but decided. against i Adequate  
Bonishments are imposed by Sessions Cours by which this offence  
EXorotariytanble™ The sation wil accordingly read as follows  
376. Panishient for rape.—-Whoever commis rape  
  
shall be punished wath igocous imprisonment fra term which  
nay extend to fourteen feats, ad shall aso be Hable to ie.”  
  
16119. The. separate section penalsing sexual intercourse  
by aman wih his eid wife may fun a Follows =  
  
“316A, Sexual intercourae with il wife Whoever  
hus scnual intercourse with bis", the wife being under  
ftccn yes of age shall Be punished  
  
(a) if she is under twelve years of ape with rigorous  
limpedament fora term which, may extend 10 seen  
Sears and shall also be able to fine; and  
  
(in any other case, with imprisonment of either  
  
escrption Tor teem which May extend 0 WHO JESS  
Srmth fine, oF with Both  
  
16120, The. provision against, ict intercourse, by a man  
with git under snten years of age, with her consent, may  
Bers follows "=  
  
“3768, it intercourse with @ git beinean onele end  
sixteen “Whoever Iso ile Intercourne with & eth under  
Seen years not under Cele years of age, with Fer  
  
  
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Er  
  
‘consent. shall be punished with imprisonment of ether des.  
“rips for aterm hich may extend to seven years, and  
Su aso be abe oe.  
  
1 sll be a defence ow charg ander i ein fr the  
satase to prove tht he, sn, goo fat betoved the pel to  
ie above sateen yeas of ape"  
  
16.121, Ke was suggested that a mature woman, who compels  
corseduces soy under sateen year of age to sexual mercours  
Should be just as severely punishable aca ranin the converse  
‘cic Apatt from the phybiolopies! fact that forcing a boy, Ih  
ie set sense, to porfrm the ac 6 impossible, complaints of  
net forcing seducing minor boys to such lt itercourse  
Sre unheard of. Sech lawcivious acta on the part of the woman  
Ste sosally not so evil fo ment a penal provision.  
  
16122, We contd he ned for «new section punish  
4 persoa who knowingly expose another infection of Vener  
“ease ‘by sesual intercourse» Wer ate of the wew that such  
Sn'act need not be made am offence. Ttumay. be. that ifthe  
Sir "Gautes the dase, sent might amount (0 causing hurt  
‘Thich. as defned in secion 319, perhaps includes ease: this  
ehowever: doubltt te notion of hurt aad the notion of disease  
ting basically dierent from each other at all sch an act,  
‘Stolbe mage an offence, then it has to be BY means of a specie  
‘provision, buts fairy obvious that any sech provision i ualkely  
Eee enforced im peacic. lis, therefore, nol recommended  
  
16123. There ate certain stations in which, akhough force  
cor fr cannot be established, the compulsion of the stuaton  
‘such thatthe woman's wil s dominated by the wil ofthe man,  
Snd taking sa undue advantage ofthe sutuation, the man cakes  
iiertes bah the woman.” Fhe womans submission to serv  
Imercowrse inc soch a situation really nota. walling  
‘Sent, and'me thnk that provisions punting this reprehensible  
‘Shale on te part of the man should be incioded tm the Penal  
Code We do hot. however wish to make the provisions ver  
‘de beats the) may utnish a weapon for Backha the han  
SMGneupulous women or ther rations. -We would confine  
  
otto? uaa mere eed fe honing leak and  
he woman for\_protecting her chasity outweighs the opportunity  
for blackiat. ‘On this principle, we recommend the omertion  
OF three New sections as fellows "=  
  
"316C. sit inercourse of publi, servant with ons  
in his cniod)—"Whoever, being a. public servant, compels  
tr seduces fo ilhee tmercoure any” woman, wha isin hs  
‘hstody ae tuch pbc servant shall be punished wih imprison-  
tent of enher dexrpion for aterm whichmay extend vo wo  
ders, of with ne oF ath both  
  
  
  
Page 285:  
280  
  
76D. lic intercourse of speritendent et. with senate  
‘of women's or clon nsation "Whoever being he spe  
Tivcadent ot manuger of t woman's or ehidrens insituion  
‘F holding any ether oc in such insinution by sift 0  
Sthich he cam exercise any authorny or control overs fomales.  
‘Compels or sedoces to int sent intercourse any female  
inate ofthe jstiuton shall be punished with fmprisonmert  
‘fee desriguion fra term whch may extend two 3ea?  
fr with ie, oF th Both,  
  
Explanation —In this section, “women’s or hildren’s  
institution” means an isintion, whether ealed morpho.  
age, home for negecied women or chikeen, widow's home oF  
by any ster name, which i established and maitained for  
the veeepion and care of women oF children, but dees  
not inelase  
  
(2) any hostel or boarding house attached to, oF  
constlled or Fecognised bya educational inition.  
  
(©) any teformatory, certified oF other school. oF  
‘any hame or workhouse, governed by ony enaclment fot  
‘he tine being in fore?  
  
3766. cy merous of wore ete, of «hospital with  
‘menily dondered” parent“ Wwotverhaing voncerned  
withthe managemen’ of hospital cr being on the sai” of  
Ihowpta hav iin sexual iercoure. with 2" woman Who  
is reosing treatment fora mental Uoorder 1 that hospital.  
‘ha be punished with imprisonment of ier esenption  
Toes term which may extend 16 two yes oF lh ine. or  
‘vi both  
  
Explosion —It shall be defence 10 a chasse under  
‘hi section forthe accused to prove That he did at know.  
nd had ‘no reason to beleve, thatthe woman Way's men:  
{aly disodered patent”  
  
16.124, Section 377, which ig the last section in th Chapter,  
  
Stace deals” with annatural lence, including buggery and besuaty”  
‘Sos fat” gad prowses for theses punishment a Severe a5 that peosided  
  
1 Cf, section 2, Women's a6d Chadtens Instiations (Licensing) AZ, V936.  
  
Toceapein rection 376, Inorder to et informed psi opemion  
fon the. subject, we had” included im out “Questinnoare the  
Tellowing two. guasions =  
  
(a) Should unnatural offences be punishable at ll, oF  
with eayy sentences as provided in secthon 377?  
  
2 ¢f son 40, Worcs aed Chic fwetone Lieaay) act, 186  
4 Gf ton 2, Sappasson of Emmert Trae ie Women sed Got AS, 158  
  
  
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ast  
  
() Should exception be made or cases where the offence  
‘consists of acts done in private Between sonseming adults  
  
he replies received by us are conflicting, but a larger number  
‘of those who have cared 10 express an opinion are in Tavout of  
Feuainng the section more or fess as H Stands Some were of  
  
the view that homosexual acts done in priate berween consenting  
adults need not be treated as offences, but ther thought that  
Ssh acts are"abominable aod Testasome which tend 10 make  
tren amd women depraved” and shouldbe. punishable  
‘Stcumstances” There wan, however a general fecg tht the  
punishment provided ia section 377 ie unduly harsh and qu  
SercalnueNo'"court is ely to sentence '8'mam 10 spe  
SOnment foc hie for commiting Soch at  
  
16.128, The question has in rceat mes recived much  
ion in the West. The Wollenden Commitee nm England set  
fut the Maia arguments npainatpunihinghomo-seMial acts,  
fiz thatthe at harms no Body, tat falls within a sphere oF  
Fevate immorality whichis not the law's business and that  
‘ould be tale by other measures. Relerang tothe pusishme  
‘of impesonment sual awarded forthe offence, one Americus  
poschmurst has. perinently “observed tha “segregating emake  
omossexual for months of years ima pason, where he wil sce  
aly ether men and where he ll aten be nolated ith proup  
‘of ther homosexual, can hardy result in aasthing bet fer  
forcement ‘ofthe homo-setual tendencies"!  
  
16.126, There are, however, afew sound reasons for retaining  
the exsing aw in nda. "Fas. W cannot be disputed that homer  
seucal acts and (endenciey on the part of one spose may fot  
the maied fife and happines of the other spouse. and Tom  
ths pont of wew making the acs punishable byl hay social  
Jisticanon. Secondly” even assuming that sci dein ponte  
‘wth consent donot in themaelicy‘comtiule estou el  
there a rik inotved i repealing legato which has (oer  
‘in force fora tong time. The poston mght be diferent i we  
Sere metely elton from legslang about 8 (ype of pote  
{conduct howe stabil for punshment in Spee, fot we  
vt logstagon a” blank. sate.” Ulumately, the amet  
‘wheter homosexual es ought 10 be puns  
  
‘om the View ohne takes ofthe relationship of rina  
law to morals. ‘The debate on the subject. spared off by the  
Report of the Wellenden Commis, hes aot ye come to an  
ccd there will alvays be two vices on the qeeston how fa  
i's the 'busiaess oF ctiminl tw to enforce sours Of pate  
‘moray. Ihave shares the reaaning ofthe Commits. namely  
(hat thre (a spere of pelvate malty in wich cram has  
then the ansver is dear. bate wel Known that  
  
theve wre disingulshed takers wi take. "a dierent view ery  
[Phisising the need for preserving the sicys chetihed behets  
  
‘Bonny Cea Use 8625 pase 1  
  
iim af Sex Lopsioon and Cont of So. dower  
  
  
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se  
  
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1 apart us hat hs ly comers el, the ony  
{afer guide s “what would be acceptable to the. communi  
We afc nclined to ehink that Indl "acces, by and large  
{ipproves of Romo-ewusley and this disapproval strong encug>  
{Shostiy W being weed 86a stminal efence even where adults  
tule ba iti private  
  
16.127, We think, however, that cases of bestiality should  
bbe regarded as pathological manifestations ignored bythe crim  
fal law. Boggery may conunue to be an offence, punishable  
‘much less severely than st present, Dat where It commited  
{yan adult on a minor boy ori the punishment should Fe  
her  
  
We propose that section 377 may be revised as follows —  
  
37. Buerery.—Whoever soluntaily has caraa inter:  
der of nature wih any ta or woman sha  
  
(punahed with imprisonment sf ether descuption for (erm  
  
SShlth may ented to tho gears or sth Be, oF with Both  
  
and where such offence is commited by a. person over  
‘ighton "Yeats of age with. a pets, der that ape, the  
‘penomment may extend Yo Seven ears  
  
\*-Esplanation -~Pentraton is suficint 1, constitute  
tbe carnal tecouse neta) othe oflence een m  
1 Secon,  
  
  
Page 288:  
(Cuaeren 17  
OFFENCES AGAINST PROPERTY  
  
174, tm any sist! survey of crime. offences against pro- Inuodue-  
erly sould Rind'2 prominent place. Ths is eadly understand too  
[ble av one of the bane mativer benind unlawful conducts greed  
  
‘Shichi the main, directs well towards property. the fel  
  
being thatthe lasebfeaker takes or attempts to take tl  
  
‘So'mot bslong to hm. The range of toch activity is wide, and  
though much of could, 2 broad sens. be described as  
that, the Penal Code-wisely, we think,-desribes 1 under  
{on Subheads, namely. the extortion, robbery and. dacouy.  
‘Shiminal misappropriation of property. criminal breach of trust  
‘vetning nolen property. cheating. michel, fraudulent ispost  
tions of property. and titmal Uespass.  
  
‘The main clement common to these offences is ‘dishonesty’  
vshich the Code deveriber athe intention of casing rong  
[En to one person of wrongful fois to another bat the manner  
In which dishonesty 8 exeesed, isn ifleren cases, dierent  
‘hiss pickpocket and a chea, both dishonesty take another  
person's propery: but wile the former does Iesurcepatiouly.  
fhe fatter does it open. Hence the eed for thse ibdvsion,  
For a lear understanding of the diferent conceps lnvatved  
  
‘Tet  
  
1: Te by i dein ein 7 Son  
  
‘emorai of movable propery out ofthe possesion of any peton Pa  
  
Without ‘is coment Te thu an offence against possession and eh  
  
Son Sut hci, that cenen te ener of mabe  
  
Property can be gui theft in respect ofthat property ast  
Won) and to section 378 make hat cea  
  
172, There are ve Explanations added to sttion 378. and rola:  
akthugh me think the meaning of the section would not be in "\*  
‘Soube without Explanations 2.3, and we ae not suggesting ther  
  
‘logon the rato Behind och ston may Be monde.  
  
174, We consideved a suggestion that another Explanation sw fie  
may be added to section 378, making i clear that a ona fide Chins!  
Slain of ght to property i good defence to a charge of thet  
‘The idea behind the foppesion was that tis pensple, fxd down  
‘y jtical detinons, Should be enacted nfo the section. Our  
  
1 ge § Soya pa ATR MRE]: CD Se 1 SER. Ch  
Rai aondi AAW 8S SC HS  
2  
  
  
Page 289:  
Ey  
  
attention was ao ined 1 an expres provision in the eset  
Poss Taf Ato Engin wo thar fic We ae of he ve  
sve hat se yudca decsans have scled the quenion 1  
  
fry that'no legsatve action is necesry, and we propose  
  
15, Ordinary, theft, ponisable with 2 maximum of  
tac ears" mprsonment unde econ 37. Then, we have hee  
Sggatatd frm of the daira in sectioos 380, SBL and 3  
‘Ein owening nous, et, and thal by 2 clerk or evan ae  
Dense wave er! mproonnet ner ene 0  
fod 1 espcively and thet after made fr eas  
deuih ort nna wat ear mpruonment unt  
Son Se.  
  
We think 2 maximum of sven years! impesonment should  
be Snough for any offence of tel. We have sieady before us  
SSSR} Megeniny for penning ern indo el ore  
{Srerely than section 479 dows, snd. ne have acepted some  
scr he pope sem tect 81 a th ih  
‘ent wil fo seven yeas" mprsooment, apa from any fhe tht  
may be imposes  
  
12. The ft gps is att ei a fx  
the transpore of goods or passengers should be treated the  
‘ng ways tina ug “Ind we apes that these proper  
Justin for th  
  
CNet a Mote da a et  
tases ite Bin Baa ae  
Bei cect cet tt at  
  
178 Next, i suggested that theft of public property is  
smote reprehensible thn erdinaty theft, and should be So treated  
{fod agarn ne agree. The same the case of property 0 place  
St yerainp or tended for the purpose of worvhip. These can  
be ded in Seton 380  
  
17.9. Anosher suggestion equally acceptable 10 o> i that  
theft from the possession aa person wh isat that tie se vim  
[n'a calamity be Bee, ood earthquake or actaent should be  
‘ented as aggravated thet Ths Coutd be dealt with sa 96  
  
“tea, Viefe\_Aat 19 (Ena, rods at person's apmranciaton of  
  
Tatas ann a elo be ete cee  
  
‘oben  
ie eal ee a inh itso ber on  
  
  
Page 290:  
as  
  
1710, We song, tort  
361 the Tiong be Sb  
  
that in place of sections 380  
chat in pi  
  
380. Theft in @ bung, echicle, temple ete—Whoevee  
‘commits et  
  
(0) inany building or tent wed a5 2 human dvelting  
(FTor the custody of propery, oF  
  
3 in respect of. any vehicle, vessel or aiveraft  
{ed or the tungpor of gooss Or pasensers, of  
  
(6) i a temple, mosque, church, nurdwara, or other  
ace of naip open othe Foliage a  
ine SP wordhipe ot eres  
  
dyin respect of any property of the Government  
or Of socal authority  
  
shall be punished with imprisonment of either desi  
for a term which may extend to seven, years 20d shall  
ako be able 10 fie  
  
SHOR. Theft of property ofecied by accident, fire, flood  
ere “Whoever, taking advantage of the occurrence of an  
‘Scent in'a public place of of fie, Nod ios eurthguate  
‘r similar calamity. comms thet n respect of aay property  
‘ested by such acuadent o calamity, shail be puntihed Wide  
Imprisonment of either description fora term which may eX  
tend to seven year. and shall aso be tabi (0 fine  
  
381. Theft 6» emplyee.—Whoever, being omploved  
in any apachy by another petson, commis thet In respect  
fot any property in the possession of that person, shall be  
Punsed wih imprisonment of ether description fora tem  
Athi may exiend to seven yeas. and shal also be fable 10  
fine”  
  
TL, Section 382 should be amended by substituting “seven  
ears for “ten yeas as we ave already indicated that imprsos  
en tor seven ears enough! for an) aggravation Of he  
  
)  
  
Extortion  
  
1712, Extortion is the dishonest obtaining of property by  
putting any person in fear ory 12. ay harm Megaly caused  
‘body. misd.fepuathon or propery. and the maximum pont  
imcrt-m thuee year’ lmprisoumint Even if peoperty ts not eb.  
inca he mere theca of mung for commiting extortcn,  
punishable with wo ears imprisonment  
  
1 See paragraph 17.5 above  
  
  
  
Page 291:  
286  
  
Ductal 17.13. Some doubt has arisen whether the definition of  
  
RESIS extortion covers every case of Blackmal, ay for instance, where  
  
[Soca Inoney i obtained by theatening to expose something tue But  
  
= Linsivoury about a person. Such conduct ofcourse, reprebensi-  
ie; butwe are not clear such a thveat would amount fo treat  
‘of iayuty inthe Sense of egely causing harm. We fe, however  
that the law of entordon should foros practicable, mae such  
Infamous conduct. punsbable  
  
‘The question whether a person actully lfended by some  
vrongiul act of X'can demand money from X withthe cheat  
{hat otherwie he will expove the conduct of X, was considered  
by us" Mos of us wete of the view that X mould be covered by  
the draft proposed below, though one of us! had doubt on the  
point,  
  
“The question was alo considered whether in the proposed  
section, threat of injury, other than harm to reputeion, should  
Fe incioded. But te estnce of Blackall is harm to reputation.  
We for example, the act threatened ys prosecution, Ha specs  
cof harm fo vepatation. Hence other batim need not be covered,  
  
We recommend the insertion of the following new section"  
  
ti, Reka Whaes dito eens any  
So the Tarn Sra fe rept ot  
{ny other person, shal be pushed with Imprionmest  
fier deshpion for a erm ‘mick may sxtend to sever  
Seam, Sn thal also habe to Rae  
  
xplenaion —Where the test it acu prion of  
the commision of an ofene ts inatenal whether the  
Secatton i te or fas"  
  
EAM ge ete we ace  
tfenee of extortion ay deined i the Cose But this obvicasy  
See i eae Se ein aac  
  
1 St R.A Mariam  
  
2 Seton 310) Tht Ac. 68 Ela) day he fen =A rein  
{2 "Strobe mas earned “ean acess hd  
  
1) hat He as reaonaie groeml fr mains he dead nd  
oy arte of the menses przer means of rifting he demand ~  
  
  
Page 292:  
287  
  
|A gusstion which looms large sa English cases is how fa  
the bole ofthe assed thatthe demand was jute renders  
INE act sompunshable: lias real ad honeat bee tha he  
‘Semed nid good and probable cause for the demand was re  
ard a 9 seen excene by the courts Ths vew wa ater  
‘rer. With he passage of tine, however came te  
faied, tha thee afe vo arpec ig the question, namely.  
{isthe bones belt in he lgalSemand and abo, (0) the honest  
{2ieF inte eetoate charter of the eons employed, tat,  
thr haat or menace. These conadertions seem to Bave weight  
‘a wits Paetament in England while enacing the new Act The  
Seed must eve that he “warranted” (or inthe ol fa  
uoge, hava reasonable and probable cause, () sn demanding  
{he property ste. bm demanding the pareulr thing demanded.  
thy tn ering ws manne ana i) tm demanding ih  
the particular kind of menace which he has used  
  
i may ako be added that the English section brings in the  
eof propsty ofthe threats, while we propose fo se the word  
‘Sshonesty' which is efi ta the Code and Is well undet-  
Sood. tn England, the mater as left elastic s0 thatthe jury  
Sotid dsc the hae at One of ae  
  
ITS, Sections 386 and 387 nsed no change  
  
17.416, Both in setion 388 and in section 389 the special  
seferene 10 section 377 should be deleted, as we are redoing?  
the panshment for an “uonatual offence”  
  
Rothery and. Dacity  
  
1717, Robbery and dacoty are dealt with together, and  
ph ae 85 aly ieee arg the es the mas  
  
fenders A sapession was made that robbery when comm  
ted by three or mare person, nsead of five Or more persons  
Should be clied acoity at tht suggestion eid not find favour  
{th Gs The definition of "robbery" under section 390 i sats  
Fictosy and the punthment provided adequate  
  
1718, We suggest only 2 small chang i section 398, which  
panies ronbery accompanied by hurt with improonment for  
ieee impnsonment extending 1010 years. We have eiewbere  
Sggeted an ateration in tht Rind of alternatives, and recom  
ind tat hence sou be ponte wah epson  
joa term opto 14 years  
  
1. Roy Mind (1848 (Nortameton Asoae) 1 Cox C22 nda C5.  
  
\*  
Schone  
See  
Soke  
  
Soon  
  
Efe dwn 0202 30, (930) AUER Rep. 29 (CCA) comin  
  
HRT es AER en tard  
ueseanh 81 abo  
  
SH  
  
iy  
  
  
  
Page 293:  
2s  
  
‘etn 1749. The maximum panishnent onder section 395 for  
BE" aacoty is impesonment for ie, which neds ns change  
  
17.20. If one of the dacoits commits murder, each one of  
them is lable to death Sentence under ston 396, There can be  
"80 doubt thatthe need for imposing thn skariows hab exe  
tnd we donot suggest any eelaratiom ' We would go forthe. and  
feommend that ths kind of fisbiityshowid be extended to robe  
Res Trespectve of ther number. We propose thot ston 396  
should Be amplified to read  
  
"396 Robbery or daccty with murder If any one of  
two of more pers who are Conjoiiy commiting robbery.  
inmits murr i so commiting ober. orf any on of  
five-o¢ move persons who are conjay commiting Saoity,  
ommits mer in so comming dacony, eveyone of those  
Pearl be purse wth eth o mptcment for  
{0 ten Jews, and shall aso be late ohne  
  
Sepa, 22H, Sstion 7 provider a minimum pusher of venen  
BIA years” imprisanmeat if while comming foboery oe ascot,  
  
fis offender ‘uses aay deadly weapon” catnes prevou ROFL  
  
" (orany penon  
  
‘here cdo be a contyoveey previous to whe a  
Ettnm this secon, Phe question snow anvwered inthe eas:  
{ove by almost all High Coutts. and no clareation se needed On  
ths poi  
  
[As to the expression “ues in section 397 1s now sets?  
that the acluat woe of deadly weapon "is not ‘hecesary. and  
itis enough i the offender cartes, brandises or exhibits such 9  
weapon atthe time of coming robbery oF daconty. We think  
Tar tie wnnecemsry to prove Tor 8 minimum punishrnert of  
ven yeas for merely carrying deadly weapon. Even when tie  
sScapon is used agaist the victims, but iv cannoe Be i hat  
{Tumed to-an atempt uo eae’ grievous burt there thle  
Jstiteston for beinging the case under section 397. We propote,  
there tht he word was any deadly weapon, oF show! Be  
  
‘ej an “eSpta Pamna  
  
Fate TRON A Sah Novicurn ough ae Wimp tere Cand  
Bil" te AR ise Ban 35) Neca ph. Eng LA 33S Ua  
Binoy Pr Seat AAR. 9 Mad a  
  
  
  
Page 294:  
29  
  
17.2 ta view of the omission proposed above in section  
2g Hm eet end Seon oa of com  
Son 0 ‘or dacoy bees cases of altempt to which  
Shion ‘present applies. Te. minimum pusiihment for the  
‘Silence, however, need not be as heny as seven years and may  
‘BEedaced to three years  
  
17.2, 1 was suggested that section 399 which punishes  
preparation to commit cacoiy shouldbe amended to cover  
Foxbener also. We do.not think dh would be desirable. twill  
‘rotted that under section 402 asmbsing forthe purpose of  
Commuting a dacoity, whieh andovbtedly fa preparatory act  
{Spunuhabic with imprisonment upso seven years ony AL times.  
Jf diieut to desde whether a sae falls uncer secon 399 of  
{ah Imorder'o avd sh dul. and lage view of the at  
that i ie ony a preparatory ace whichis being pusbed ander  
‘Sctiow 399, the maxmnum ner section 399 maybe the same as  
The maxim under secuon 02, 512, seven Years.  
  
1724. One of two formal amendments are required in ses  
tions 0 ana 40L The words "tam this  
‘Ret andthe eeftence to hug  
  
1725, We propose that section 402 should be extended to  
‘costr the cates hare three of four persons aemble forthe Po  
powe of commiting 2 robbery  
  
1726. Aa the Hight of the above discussion, sections 397  
10 403 may be revised as follows —  
  
“397. Robbery or dacoty, wih ate  
or grievous hurt tthe tne of comming. ober) Ot  
Sa he de ete pot he 8 any Foon.  
Sentai to cause death or pievons hor © any person,  
‘hetmpraonment with which auth oflender shal be Ponshed  
SH no te hss than soven years  
  
398. Robbery or docily, when armed with deadly  
weapon =f at the tine of committing of attempting to com>  
Invtrobbery or dacot), Uwe ofendet Ts armed with any  
deadly weapon. the imprisonment with which such onder  
Sha "bepunvshed shall not be less than thee year.  
  
399. Mokine preparation 19 conanit dacoty.—Whoever  
race any" preparation for commiting daconty, shall be  
Pnnhed ith maaeous lprisonment for 2 term whch may  
{ntend 1 seven Sear. and shall also be Table Co fe  
  
400, Belonging 10 sane of dacots Whoever stones  
to. ging of persons asiaciated forthe purpose of habitually  
‘commiting ony, shall be punnhed with smpsionment Tor  
fie or with rigorous impronment for term sehich may  
tentend (olen jeats and shall aso be Labi to fine  
  
33 oka 20  
  
  
  
Page 295:  
S09,  
  
20  
  
401, teloing 10 ant of tino robles —Who-  
‘ever belongs to any wandering or other ang. of persons  
Shsocted for the purpose off habitually Comouting thet  
‘or robbery. and not being a gang of dacots, shall be punished  
Sth tmpesonment for sa term which may. extend (0 sven  
Yeats and shall aso be Habe to fie  
  
402 Assembling for purpose of commiting vobbery or  
dco —Wheeret—  
  
(2) is one of three of four persons, assembled for  
the purpose of Sommiting robber. oF  
  
(2) 8 one of five or more persons assembled for the  
purpose of commiting, daca.  
  
hall be punished. with rigorous imprisonment for a erm  
‘thick ay extend” 10 Seven years, and’ shall alto be  
Hable 10 ne  
  
Cimial Misappropriation  
1727. Section 403 punishes 2 person who  
  
ishonestly  
  
SEPExee aisappeoprie or conver to hs Ova Uc any movable property  
  
Brome  
  
‘To ths rather br dessoptton of the ofenc, two Explanations  
{ie add, The ft mer sap hata temporary meron  
{ion ieaiso msapprapriauon. The second Explanation lengthy.  
find attempt express three hes. Pisa potion who finds  
broperty which is mot then in anybody's posssion. docs Not  
Et Gishoneiy if he tahes i inorder to heap i forthe owner  
Sith the iden f estoring i to him Secondly. Hf he Knows the  
‘wner, of a0 ressonahiy find out who. the owner 1, ad 4  
Spite that. he converts the property to his own se without  
[Terpting to ge into touch wath twe owner and informing him,  
ifembeacsahoney, Try. nt mesa that the inde  
  
‘ofthe owner: aad 2 hong he doce  
not honey Bele thatthe omer cant be funds Ns condi  
  
We think shat thee teas eoold be expressed more brie.  
and peshaps more Ceurh. than the exting Explanavon, = hich  
Seem tou oecesariy lengthy ad sil somewhat incomplete,  
iinay tena:  
  
“Explanation 211s not dishonest essappropriation for  
«person wha finds property not sn the possesson of any  
‘ther person, to take ft forthe parpese of protecting it fOr.  
Or of fesorig.u to the owner but mis S928 msappropra:  
thon i he appropriates i 19 his own we, —  
  
(@) when be knows, of has the means of discovering  
the owner, oF  
  
  
Page 296:  
ea  
(0) when pe doc nt in good fut Bleve thatthe  
cose ca be dove oe  
  
() before he has wie reasonable means to discover  
and fine notice tothe owner. and allowed a reasonable  
time forthe Svnce to Saum the propel)”  
  
128 Musto (6) 10 won 4 ines when nt of  
to joint owners could be Ss commiting misappropia-  
1s Gh! log J S'toth and inte posseracn oF the  
‘ther says, "A and BY being joint owners of horse," aes  
fhehorse Qui of B's porsenon, imending 19 wef, Hote as  
SERS te ee hans He doy nt honey ge  
jroprae But iA sels the horse and appropriates te whole  
obec on se. hee goty of am fence onder ths Seton ™  
  
‘We should have thought that i(°A’ au °B" were pariners and  
the horse parinership propers. and it "A” sold the horse and  
Uppeopmated the proves to hic on ue, the Foal situation would  
ABM ame and'"A” would be guiky ef tbe ofence. Under the  
Partnership Act", “subject to contract eteen the partners. the  
property the frm sll he bland sed ye’ partners eX  
  
Efasvely for the parnoses of the besinss". The Supreme Court  
iis however hed  
  
“is obviows that an ownee of property in whichever  
‘way beans hie propety and wits whence incon all no  
Te iabe for msappropriation, and that would be 50 even st  
he fot th eles owes here A any Std, 2  
Darter has “undefined ownership along, with the ether pi  
  
Pan oher all the anets ofthe artnet. Whe choose 1  
{eb any ot them oy hs on upon, be ay be accounsble  
{o'ihe otter garners ut he. does not thereby commit any  
  
1729. he goal et of tw nee 10 plied  
to every cate. the Fest NOUN. In our opinion, be wafortanate,  
Snes” dkny eae wh pare  
{ropery would be immane fom punishments We are confuent  
ra? ihe Supreme Court didnot intend och a consequence TO  
‘oct hfs any dang oh  
‘fe sugges hat another slusration. expres dealing wth part=  
Teta be auc Whe mang ie foster he  
‘isiratonwiexhade from penal aly cases where the part  
bor has aight fo ose the propery. For empl, the partnership  
‘Sereemen nay authori pane (o appropiate te proceeds  
iSt ti am ebigaion to make adjustment atthe end of a speci-  
fed pend: Parterstp agreement of thik spe, under Which The  
Stet partners are ony leepang” partner ave not uncommon.  
  
1 Sic 5 Tada Pop, At PE  
2 Var magn Sut (965) 25.CR 29, 34,  
  
fica  
  
Ineooved  
  
  
Page 297:  
2  
  
We accordingly propose that the following ilstcation be  
sted ater tanner \*  
  
“(d) A aed B ate partners ina frm which cates om the  
  
‘business of jewellers. A lakes a jel which isthe peopery Of  
  
the Bem. ospastive customer  
10 do 40, A doesnot dishonesty mh  
  
Sesion, 1730. ta contast with section 403 which specifically refers  
  
SEA to “movable propery”, section 408 tefers 10 dshonest map  
  
river” roprlaion of comersion to ow tse of property in the pos  
  
FERy. \_Eson ora person at the time of his death The omission of  
Sword "movatic™ ts eleary ‘ebberae. and the Supreme Court  
has aid so," We think this view of the matter wil be brought  
‘et by ising the word "any ater the words “a his own we  
‘3nd before the word "property  
  
Criminal breach of  
  
Secions A731, The next five sections (Sections 405 10 403) deal  
Se" cra becoch ot trust According 0 the definition in  
40N'1T means dishonest msappropriation or conversion to his  
‘Son use of property which has Been entrsted to the offender,  
‘SF dishonest"daponl Of sUch propesty contrary to any’ agice:  
tment or any drsetion of baw. Fhe definition ssi our opinion,  
infty, si the iestaiony to thit section. which ave sk  
Jn number, being out the ies clear.  
  
see V7R2, Section 406 provides the punishment for criminal  
See Ae breach of tat i oninary cates andthe thre sections that follow  
Srdoen’ geal with aggravated forms ofthat offence. Section 408 dealing  
esZi Sth reach or trust by “clerk of servamt~ may be brought into  
Te with scton! 381 ae propoie to be fevsed? so that teach  
ob any erage im resp ts emer propery  
  
1733, ee omit y  
«bares of apts Ie gunimum punt ie impnsone  
tran unde sein 0b, We conler thik ees, tnd pos  
  
innards ar tc i he Code we ren  
TRond tt tbe ponshent nay be siewous, impicnment for  
Tein which Way extend to Te year tess ne The word  
‘ictor” whieh obsckts. shouldbe omit.  
  
TORK, Dales Des Adnniro anes, W951 SCR 33,  
2. Su paragraph 17-10 abo  
  
  
Page 298:  
2s  
  
Rectviog Stolen Property  
  
1734, Section 410 10 414 deal with stolen property this i $eson  
etme in section 410 as property “the possesion of which has “i  
‘ben iransfered by the, exertion, robbery” and ako property  
  
‘which has been msappeoprate or in respect of which Erm  
  
‘eeach of trast hasbeen commited, whether any of thote fences  
  
{00k ple in of out of Inga. In case, however, sch properly  
  
‘comes into the possession of 2 person legally ented forks pos:  
  
Seison, I thereon ceatek 19 be stolen property.  
  
1733, We do not understand why property obiained by Merely  
heating is not called solen propery. Cheating seems to us a¢ EAT Say  
{ove 19 thet as criminal maappropiaion, and. perhaps even fy Sade,  
ostr, because ‘although ia cheating property i taken with the  
  
‘onset ofthe person cheated, that consent Fe sited by dee  
  
‘Non. We suggest, therefore, thatthe defation of ‘soln propery”  
  
should be extended to cover property oblained by cheating.  
  
“This may be done by substituting forthe Words "bythe or  
  
extoron of by robbery” the words “by thet, extorton, rey  
  
17.36, Further, we fel thatthe definition does not expressy  
‘over 2 situation which t shoul, namely, when a child Below the  
  
lage of criminal responsioiny®, or an intane person’,  
mums thelt which law not tel, ad passes the property  
{another fperson who recenes it dishooesty Sch 4 person  
‘Should be ble to punshmen nthe same way as t0y otter pe  
son receiving stolen proper. apd we propose that th tea should  
bercealy expressed in the detnition econ by adging 10 tn  
explanation and slustation as follows  
  
“Explanarion.Property the possession whereol has  
been tramserred by an net which would. otherwise be thet,  
Fobhery or criminal misppropnation, but i not that offence  
by wirtue of section 82 oF secon 84, shall be deemed 10 be  
slolen property  
  
esration  
  
A. a child wine years of age, snatches away a necklace from  
-apothe! cil, Volutary causing hurt to that child. Z, knowing  
ths fact. dissonestlyrectives he necklace from A. Though A'S  
{At isnot robbery By virtue of secon 82, the necklace fs olen  
Broperty, and 2 has commited the offence defined in section  
ae  
  
Unie ton a won, age a bela yar aga TD TATE  
  
2 San a8,  
  
  
Page 299:  
204  
  
{tien 1737. \_The punishment under aston 41 for receiving stlen  
SERS pepe, the ears peo ate gman We  
scien thar the punishment. the men proper  
Sendee. the propery Goverament or of local sehr "In ack  
  
2 cave the inpriooment may be up sven years Te following  
  
fay be added to secon =  
  
‘and if the stolen property isthe propeny of the Governe  
meat or of sath sa be punished with porous  
Inu Si sho Be habe wo he: OE 1 sve Ya  
  
1738 Section 412 relates to dishonesty receiving proper  
stolen in the commission of a dacoy, nd secon #3 punishes  
4 habe ain sen property The same punshment  
| provided for thee two offence, namely, imprisonment or  
Fie'or rigorous imprsoament fr a icem which may extend to ten  
seu AF thereon We sgt thatthe shold be tered  
{9 "rigorous imprisonment fora term which may extend to fou  
teen" Jears™ Ife imprisonment being eleted  
  
1739, Asin the case of dishonesty reeisng stolen prope  
  
pponlshable under seciioe 411, we propose that under section  
  
ko, where the stolen property isthe prope’) ofthe Govern=  
  
mentor ofa lcal authority he Impetnment fay Bo ypto seven  
  
{eats. Accordingly. the following words may 86 edded fo the  
the end  
  
"and if the stolen property isthe propery ofthe Govern=  
‘ment or ofa fal authority, shall be punished wth porous  
Imprisonment for term which may extend fo seve years  
find shall abo Be Hable to ne”  
  
Cheating  
jon 1740. The definition of ‘cheating® in section 415 i realy  
Sin awo pars though printed as one The frst par ays, "whoever  
  
ty dsctiving any person. ffeeduaty. or Gahonealy induces  
‘We person so deceived te deliver any propery te any person or fo  
cede that any person shoul retain ay property Seat Fe  
‘Sod prt esc cheat the act a= pion who,  
ivi an) person ntentonaly duces the person so deceive  
{o'do or omi'to do ansinng which he would soto or omit  
fe were nor so deceived and which actor omioson eat ori  
Wicy fo ‘cane damage or harm fo thr person in body. mind  
‘puieon er  
  
ITAL. “The fst part ofthe defiition presents no difculy,  
tnd has caused none te the cours. The second par. However,  
its, Fit the notion of harm snot clear-cut, and situations hase  
\_ansen mere no tangible harm fo the person doeved ie apparent,  
‘hthough undue and unfair advantage hus teen taken By the offen  
‘er-and the cours have had fo strech the meaning of haem  
  
  
  
Page 300:  
ws  
  
covet toaos Seon, whee ca haem has ose  
"otto the person deceived, bu v0 somsbody eh, the question  
‘ether there has Sen cheating has Bot been easy to answer  
  
1742. In an Atiahabad case," for insane, the accused pre-  
tended fo be" a wel-known eye spesalist and induced the com-  
planar to ec him operate on the eye of is 2 years old son,  
[sas eld that though bodily harm was done tthe son, he was  
rot the perton ecered, bul since the deceived father had also  
{tered harm in mind, because ofthe anguish caused to AL,  
the conviction for cteaiing was upheld. Ths destable result was  
reached indirectly,  
  
Ina Lahore case, A" represented 1 a Pawar that ove Hai  
Batsh fa 0 some lana t0'A and corroboration he produced  
‘Griwho represented him (be fam ab, The Paw made  
lam enry fo tha eect Inthe mutation reper. Te mation was  
Phaced before the Nai Tebslda, and the same fase representa  
ors wet eae tlre bm eta ort om Aad  
‘St cheaing The Hiph Cour, on appes et aide the coarse  
thon, fatintat he feo cv abe Nate, Tela  
Baksh was likely  
ten i  
  
14 appears to me that the defaition of ‘eheatng™ in  
section 415. Penal Code, rejtes modification in order  
To cover cases whee one person i decewed and another  
[ers sure: of ily to Suter, damage or hatin body,  
‘ind. repotation or propery. Te has been revealed Io a mum  
Berer"caet tnt sds. acceptin has Been practised On  
Govnmment ofals 32 result of whch crt over per-  
Sone hte lee gel del ac in eptation oF  
rope. As the defation of chealng 3 peseat stands,  
Sich cases are not covered by scion #13, Penal Code,  
rons who practise such deception. may be convicted under  
Scion 182, Penal Code, but the purisiment prescribed for  
tha olence ts no sfieatly deterent and Wis derable  
that Such convicts should be Hable to be bewvily pursed  
Under section #00, Penal Cade, which prescribes # madam  
‘Enno of seven year" ngorous Imprronment  
  
1743, That harm must be caused to the person deceived  
has alo been emphasaed in eases decided by other High Courts \*  
  
has Koon Sane MERIAL OD.  
  
2 Mhanwad Bash Enporr, AL. 11 LAN $40, 468 (Bie aad ABC RN,  
  
th  
  
3. Ato moaning of “him 6 Pda Menees, ALR. 1966 S.C, 73; (945) 28  
Sy  
  
4 Sera Ran, AER. A9SE Mone 9; abo Kha. ALR. 19651 B69,  
  
  
Page 301:  
ae  
  
ine!  
  
Tei $0. Ste fbr AROSE. 6D  
  
296  
  
cet Supe Cor cn! a 0 opr. iw  
implication. in that case, the two appellants were charged with  
iting cheated an Acostam Slaton Master by dishonesty n+  
‘acing him to make outa railway. receipe wit false parteolss,  
Sch war capable of being converied nto a valuable security  
“The reipt ss mage out sated that a wagon “said Lo contain 231  
aps sf chilies had een Gespatched. The wagon was found  
{D tontain 199 bags of Ahusa chal) The charge of cheating the  
Station Maser could not he etablabed, as the ralleay did not  
eu any. addtional habihty by the fale “repeventation  
that the consignment contained 257 bags af chiles. The issue  
‘ol tye railway recep was no key to ease any damage or har  
{2 ely ae terete wasp, The Cour fore  
Feat'tmat no. question of cheating the railway or the Station  
iascrarous, and acquited the appelont. The facts ofthe cas,  
the long-drswn taal and\_the final concasion seem mast Un-  
ortunae and deplorabie, “both because the courts are react  
Sf empelo aon honry tog panied ad at  
  
the serious waste official Une involved inthe cussion of  
fue egal sbi.  
  
“There is alo. suggestion? that misepresentation of fats  
ty ay pron wih eas an oi of Government ops odes  
Pike Eitiment of third partes shoeld be brought unde the dee  
‘on of cheating, This wil be covered w cases of harm caused  
AO thnd penne ire included tm the definition,  
  
‘As against thin there i the plain fact that the idea of harm  
cannot be dupenscd wiih, a5 that would widen the scope of this  
‘Sttnce fo the extent of faking innocent actives like practical  
[Jus To actual experience ifs fownd that\_undue advantage (0  
Je cheat teults my some harm to some person. We conser  
therefor, thatthe idea of harm most be retained as neces  
{deinen of cheating, bat we would mhude within scope harm  
{S anybody. and not only tothe person deceived.  
  
17a, We propose accordingly to sabstitate for the words  
“harm to that peston’ the mors “hare to any person"  
  
1745.\_ Section 415 contias an explanation that “a dishonest  
condiment of facts a deception within the Meaning of (his  
Seldon Since “concealment” conveys the idea’ of some thing  
SNe! be guesion was offen arisen whether mere noo-discosure  
Sree when there (no leal obligation to disclose them, 5  
  
2 gi ay Quy seven 1, uted Lad Got Ci Rl St  
  
BTA  
  
"  
  
2. Fk get, $0.15 aeston fom tml Ronen: tl Set 0 +  
  
  
Page 302:  
a  
  
7  
  
eception. The view genecally taken by the courts is that such  
fomaislosue js not concealment and. there 18 no desption.  
Te ould make foe cevainty sf th expressly mentioned i the  
explanation. We propose therefore to ampli a follows: —  
  
“explanaion—A dishonest concealment of facts,  
where thece Isa Tega duty to diclow parteulat facts.  
Tones omision to disclose thove facts ies deception ‘within  
the meaning of this seston.”  
  
1745, Section 416 which defines cheating by personation  
reeds no change  
  
acl, teat ne sos ride te aie fo  
ind simpler. cheating by petonation and. cheng.  
Sj t cae wrong Ton 10 ove whose terest he oer  
Sound o protect No change is reqed Im these Sections,  
  
12, Tees mle ont te eon  
og inmate me eye Sn  
esis me as Ss See  
Pa Lone cece oer ae  
ieee cee eaters  
ee Ean Se oe See aa a  
Seay ag oe ae inher rely  
Sopa erase sae ay ee  
pene ec Sete Sang ee  
Speer Stora Sie ty ee oe  
Sele Seated OoCah ee a  
Sencie Soo‘ Sroene acne  
Siropeaecaey tesa asl  
i Gat mascara Oe  
Bie eats are Se  
RSet Sian tend ents So eae  
fa eer 2 nar ee oe  
Sion Meta cay ra  
Am eather Saran ah  
Saavik tie dete hace  
fevaem Suibars oon oespens oer ot  
soar ttn spp Saha" cy  
Secenceiay mage iene tr eee  
  
Sagat  
‘here is any great practical advantage in making this change."  
  
seen  
  
aa  
  
Secion 429  
cory  
  
recioe  
  
“T Gia Sip VIC Sn, wasn fou eect a  
  
  
Page 303:  
ae  
  
Wile he des of odin ie son dee tome  
seat 0 the retention of propery by 8 on expres  
  
‘entoned in schon aE ite ot refered tom secon 0  
‘wich appears to be en otersight. We think this shovld be ree  
Fea The ection maybe redrafed in clas allows (0 aie  
  
20. Cheating and dishonesty inducing delivery of  
property. Whoever cheats and thereby "dishonesty inducss  
the person deceived.  
  
{@) to deiner any property to any person, or  
  
(0) (0 consent that any perton shall retain any  
property  
  
(2) to make.\_aler or dstoy the whole or any part  
of a valuable wecuriy, oF  
  
(1) to make, ater oF destroy anything which i ig.  
ed or sealed and’ Winch |S capable of being converted  
Ito 2 vaieable scunty,  
  
cases.  
  
(hte 1750. The Law Commission in an carter Report! considered  
ey. how ache he prob of heating of Goverment on 3  
Senco large scale by  
  
nek ‘contrators whe spying, soods  
recommended a specfe provaton pena  
fuaravaed fence of cheating, Consdering the  
S18 aetiny at present (and ts ely to gow  
Wide) there ae, we think, sound reasons Tor enacting a special  
Drovon expesalysoveong such fraudulent conduct. The man  
{num ponstroent for such conduct. we think. could be more  
‘crete han hat ngs nt eer Repo. and we propa  
{Tmaximem of tenearsimpraonment. We propose Nat  
Section 0, Sew seca Be seid reading a follows  
“420A. Cheating public authors in performance of  
cers contrcin Whoever in performance of any comract  
‘wie the.Goveroment or other pubhesathonty Tor the  
{hippy fF any goods the contraction of any Buidng othe  
Exelon a's other work  
  
(cy in the case of «contract forthe supply of goods,  
ishonealy supplies goods which ae let Jo. quan  
than, of inferior 19 quality (0, those be contacted 10  
  
uppiy, oF which are, in any imanner whatever, not In  
‘scvordance with the sonract oF  
  
“in ma = pa nie iin wi ad ose te te LP  
paragnts  
  
  
  
Page 304:  
Ey  
  
(2) in the case of «contract for the construction of  
1 building or execution of other work, dishonesty Uses  
inal tc pf nay fa  
‘quality to. those he contracted to Use, Of  
Sy: manner, whatever not accordance  
  
‘hat be punished with imprisonment of either description  
fora term wich may extend to ten yea, an shall be eso  
Ibi to Bie  
Explanation —to this ection “public authority means—  
(0) corporation etabshed by or under a Cen  
Provivial of Sate Act;  
(8) a Goversment company as defined in section  
(647 SP te Companies Act 1988: and  
(© 4 local authority”  
1751. The provisions of Chapter 9 of the Code relating to  
cortpn are appicae only tacts of pbb sean and  
5 dehed in Secton 21 that expression doesnot include private  
  
Wit api induration andthe formation of big joint stock  
conga ad hed def ana toe if  
  
ieonal bases execute. close personal contact berween  
Remover and eenloyed hs beactetty dapeared,epecily  
tere fhe einployer not haman being. but @ corpoiste body  
Gpportnities for committing els akin to "bribery" by such  
tiploses have ioteasea greatly and lepslation is recesay 10  
fines ace an eetzne mle oh 9 pve  
‘Calertaking,teeching 2 sobstantial personal advantage for fa  
Nounng a partic fer ior (eee  
Inost advantageows (0 Be ‘or conniving a the del  
So3 of eri eur fr 9 comer wou  
2 freents be mene from crmina law. The ony actions open  
{0 the employercompany would be ac acon ond ier  
‘Secipinary measvres againae tit stant  
  
1752. In Bopand,a state! makes it a misdemeanous tr  
‘ie. summary of on indictment, for any ‘agent 10 Accept 3  
tribe as an ndocement for dona or forbearng to do any actin  
‘atom to bis. prinipas busines. or for showing favour ot  
‘slivour, and for any person to give bribe to am agent as 30ch  
  
inducement. Aithough the tet agent a defined to clude  
ferton seeing under the Crown or under any corporation ete.  
{he lem ie mee enough to include pernems employed in private  
‘Mesnce ‘Ths statate has Irequemiy bees inoked to deal with  
crit in private indesty  
  
1. The Previn of Coram Bet 1906,  
  
Stato  
  
  
  
Page 305:  
200  
  
Siar lesion exists in France, Germany and Sweden  
and'im some of the United States \*  
  
1753. We consider that ia India alo a provision on the  
sobject apphcable toll private employees is desirable, Corrup=  
‘on i perhaps ss rampant amongst employees of private con  
‘Sens. especialy bog concerns as amongst pubhe servants, Though  
or mui eet fo chock orapton amongst empiyes  
Be undertakings we recommend thatthe language of the pro-  
tion should be wade enough to inelude all classes of frm,  
Eecaoe tay ot be Yeo frame te provsion 0 196%  
  
V7s4, We recommend that the following section which is  
sodsicd om soon 1 be aed afer secon #30 propoed  
  
“4208, Employee taking bribe in respect of employers  
affine oF business Whoever, being employed. by another  
‘Reepis cr obtains or agrees 10 acceptor attempts to obtain,  
from any. person, for Rinse or for any thet person, any  
at tee an Hl vena. a8 # maine  
  
a) for doing ot forbeating to 40  
to his employers afais or Business,  
  
fs homing ofan 0 sh. in he xe  
ise of he functions, favour or aisfavour 10 any Terson  
‘ieaton to hi employer's ates or bosmess  
  
1 9 in elation  
  
shall be punisbed with imprisonment of ether description  
Feta teem whieh may extend to the yeas, oF with fine OF  
wih both  
  
xpanatons 1) The wor geaication i ot este  
tes 15 Meena ans of pricatons estima  
2) The words “eal remuneration’  
remuntriton sch an employ sas lal dems, Dt  
UH anereion shen kes permite By hemlet  
Pest  
A motive or renard for doing A pcon wh r=  
ees gruaon as smote or tenard fr ome what he  
SEAN or nt a pontion oo or Bas no dome,  
SSS es wor  
  
2 Sex paragraph 17.20 aboe  
  
  
Page 306:  
wo  
  
Exception —This provision does not extend tothe ease  
in which the employee 1s public servant acting a> sch  
  
1735. thwas suggested that there should sho bea provision  
for punning corcoptton by professional persons. For example,  
iPa thanred accountant ot an avocate fakes money and gies  
1 fale cerucate, be may not be guilty of any offence. We are  
  
eat ih a nou amount fo peso  
maybe. kt tobe dealt wth more appeo  
pinay "wba of the "pono voncered  
Stspension "ar revocaion of igh 10 proctce the prfesion  
iaw’a chartered accountant or advocate) "has 4 more” deterrent  
tfc than imprisonment A provision tothe Penal Code cannot  
te-cauiyenforeod and may prove a dead leer: We. therelore  
not gests provision foe punsingpotessonal <orupon  
in genecl  
  
Frantolent Deeds and Dispositions of Property.  
  
17.86. Secions 421 10 423 which deal with fraudulent deeds  
and dispositions of property 49 not require say comments oF  
‘modesto  
  
Misch  
  
1757. The next lascileof 16 sections dea! with the offence  
‘of ice whch vs clearly aid nealy defined inthe fet Section  
(425) White the’ corresponding Engish law as codibed' mn the  
Same yeat asthe Indian Penal Code descries the mental element  
{a'many of is aections as “unlawfully nd aleiously" ou  
‘Sefton adopt the simpler formulation of intention a7 Know=  
Tedge of likehnood ofthe consequence with which we are farnhae  
‘The clunicauon of the offences forthe Purpose of prescribing  
  
iment also much Tes detailed and eumbrovs than that  
{opted in the ‘English Act of 186), While that Act creates Bout  
50 ditt eee of aliious damage to proper, ou Cate  
  
17.58 very light ponishinent of impeisgament upto shece  
‘montis of fie 9 bath provided i setion 426 forthe Ordinary  
‘lence of mischief when none ofthe aggravating ieamstances  
Specie in the subsequent sections est. Aggravaions are  
Mean vale of "damage caused (2 427} ture of the  
property damaged. (5428 to. 434) the method adopted  
TorGiuse damage sx 438 to 438) oiher" criminal mouves  
Niueneing the act (Ss, 459 and 440), and, of couse, 2 combana  
fn of these agpravatingcicomstances. The maxim sone  
serene fete varoos oeces ahem ona,  
{So years five year. seven year. fon soars and fe, We propose  
'oting up se roduction of ths spectra of seven to Bee "ane  
Year. three pears. seven Years. ten years and fle-and aio.  
Feductom in the amber Of dillerent offences,  
  
fsa,  
too  
  
‘Stns,  
Bist  
  
Ivete  
  
17s Wass Danae AT  
  
  
Page 307:  
Sesion  
  
Sy  
  
Sey  
  
Now to  
tie  
fare  
  
2  
  
179, Section 425 which defines mischief does not require  
any’ medication,  
  
17, The maxigwa ponishmeat under section 426 for  
mischie! in te sionple form may be satessed from thes months  
Imprisonment co ae year. When ths is done, there will hacdly  
team need for treating mischief causing damage to the amount  
(fa spaced sum as an aggravated form of mischie! punishable  
‘Sikh imprisonment upto tee years. We propose that section 427  
Pe omited, ad alsa secon #34 under ch destroying. ce dae  
‘maging s landmark faed by poblie authority Is punihable with  
Se year's mperomest  
  
1761, Section $28 ponishes any one who Kil, poisons oF  
aims ny anal ofthe va of fen rupees oF more the pnish-  
‘pent being two years mprfionment Since the’ maximum ponsh  
ent wader section 420 s being Faised, ths special provision  
anoceoar, and we Suggest that section 428 be ome.  
  
17.62. In section 429. the misimur value of the “other  
animal may be raised from Bly ropes Co Iwo hundred copees,  
But the maximum sentence of five ears seems excessive. and  
‘may be rede 10 she yeas.  
  
1763, Section 430 deals with mischief causing dimination of  
‘the yoppiy of water for agricultural purposes, oF for food. oF  
Shak "For Chuiman “beings or fer animals, which ate  
Property. of for cleaniess or for carrying "On am  
Meobattive. Ths Yond of enomerstontoeme to bath  
Toncossary and incomplete. ‘Tt would be suffiet to say  
‘serach y aug dination of supply of ater fhe  
Pubic or to any person for an} perpose fs pnsbabe.” The  
Stritmom sentence for tht ofence sso pay be hve years ony.  
  
1764 Mischielto pulie property. alhough of couse co  
serch by the dealion ef mache nd by the hae seton  
Pnishiog machi not expressly pronded for inthe ection  
Banhing aggevaions of mache” woul, we think be  
Rel a pce provtn ade fo guns ich mie  
We sues tee years imprisonment asthe maxim penis  
Trent eft offence, We would aso sae aspect prewson  
FEevmuschet im sespect of machinery, penhise Kmth mpc  
‘Srumeat ple tree yea, a inatance of malios damage 1  
‘sponse achivery have soured  
  
1765, While setions 431 and 432 do sot cll for any change  
  
Secon  
‘SHS of subwtance, they could be combined imo one. The maximum,  
  
snishment for these fences also may be thre yeas Insead of  
  
  
Page 308:  
203  
  
17466, Section 433 punishes mischief by destroying or mor  
ing any lighthouse or" other sexmark oF buoy, eke = To these  
should ve‘addod' marks for serial navigation, fteterence With  
wich can be even more disstrous  
  
17467, tn section 435, i is hardly necessary to fix the very  
low Tinie of ten rupees in tespect of agreculeral produce, a  
ddatingushed from other propery. The muniun of one bun  
‘deed fupees may be made gncraly applcabie by omiting the  
Sordn rete the propels apical procs. en res  
OF upeats  
  
1148, Section 436 punishes michiel by fre caused to any  
human dveling or plage of worship or 2 Building weed for the  
custody’ of property We suggst that mischief to. any sacred  
hpet in slthuiing shoul a be lnlodes and expressly  
  
17.8. tn section 437, which, mentions micbit t vowels w  
reference (9 afcratshouid be added  
  
1770. Seation 638 nosis no change of substance,  
  
1731, Secon £39 does ot puis  
nly the acto ieguonayromlngs vasa ground or sure  
Serta ett maybe commited of propery fit We So nal  
‘hk hat sock pronbion fs. aah in hp othe Coe  
oy nf do eae ay pout n nah ov the  
‘Sou coniemplated woul Ce punabie n any cher ay  
‘Hence section 439 should be omit \*  
  
act of mischi, but  
  
3  
  
1772. tn section 440, the maximum punishment my be  
increased from five years (0 seven eats  
  
1723. Accocdingly. the following sections should be subs  
tiated in place of teiions 426 to. 20s  
"426. Punuhment for mischief Whoever consmits  
‘mischief shall te punished "with imprisonment of ether  
‘escription fora term which may extend to.one year” of with  
fine or th both,  
  
427, Mischief causing damese 10 public property or  
nwt oh cao ae nie  
  
‘Somme mich in respet ol  
  
trent oF fa hal athoniy oF  
Ens ry eae on Se fhe  
dred rupees or upward shal Se pone  
foent of exher desertion for term which  
thice Sear or i feo wah be  
  
1. New provision,  
  
imprison  
  
St,  
  
ered  
oie  
  
  
  
Page 309:  
08  
  
428, Mischief by kiliog oF maiming animal-—Whoever  
‘comity mitch by killing. poisoning. maiming. ot render  
Soe able any lepine ame ors, me, Baal, al  
rn, hacer ay te te valve hero; or any ther  
Shimal sf ihe valve of ve hundred ropes ov tpwatd, shal  
ie 'punshed ith inptsonment of exer Sesegton fe  
{crm which may extend (0 thet Year oF wh fine, or With  
toin!  
  
429, sschief by cousing diminution of supply of water  
‘or innit oe obstruction. public draage —Whoever  
‘Some miechet by doing any act which cames, ce Which he  
noms tobe hikly tO cause —  
  
(@) 4 diminution ofthe supply of water tothe public  
fr to any person for any purpose,  
  
(©) an iouadation of, or obstruction to any public  
Srainape.  
  
shall be punished with imprisonment of either desc  
fora tere which may extend To three pears of mith fine, OF  
‘sie bom  
  
450, Mischief by inery 10 public rood, bridge, river or  
chanel Whoever conimas ‘chet "by. dome. any ac  
‘wivch renders any public f0ad. budge, navgable tver Of  
  
mele chal, fatral or ati, impaaie or 1  
fate for taveling or conveying property shall be punshed  
‘sith imprisonment of either description for a, term which  
Inay extend 10 sree pear, oF wl fine, oF with both.>  
  
Miche commited afer peporation made for  
ann deh a ae ot arong a rest home COM.  
tn ite ating ade teers cag ay  
atic ongel fin oar Sank  
Se et ent wees al pon ith  
Saale oF ine cee fe arn etek mY  
Ee ee cand seo ao Bet  
  
492. Mischief be destroying, moving or rendering fess  
tefl cirroste, beocon ete-—Whaerer compas msciet  
ty Gestroying or mong or rendering es wseUl any  
  
bacon of aerodrome Might. or any fight t or int  
oorhood or an airsoute of serodrome provided in come  
hance wih law oF any other thing exhibited or axed or the  
{unc pf aircraft. sal be punished with imprisonment of  
fit ern ft whch may eed To een ea,  
  
2 Sich Round a conte amend.  
J Season att sth arene  
  
  
Page 310:  
sos  
  
448%. tisciaby destroying. mening or rendering less we  
ful lesson or sensmark Whoever coments. mischit  
‘by destroying ot moving any lighthouse or other light ses  
23. seaumurk. or any senate oe buoy or other ching places  
{3 a puige for navigate. by ans act which renders a  
thd fan setmar. Buoy oe ach hn fo  
Sid less se as guide” for navigators, shall be ponshe  
Sith lmpuonment of ener devripton for a tem which may  
‘ktend fo seven feats, with oe, oF with both \*  
  
4, Mihi wit tent 10 desiray or make unsafe arraft  
cor vessel “Whoever commits michich any aera “OF  
{5 any decked sevel Or to any vessel of @ burden of twenty  
to de upwards, inending to desteoy of render unsafe, oF  
Linowing ito be tikely that he wl thereby destroy or render  
Unsafe that avraft or vessel hall be punished with me  
frnonment of ether desertion fora term which may extend  
[y'Sven years: and shall Slo be Hae fo ne and such  
Imishie commited or attempted by fire oF any exptosive  
Substance. shal be punished wah Impesonment for Me. oF  
‘sith the parishmeat aloresaid =  
  
435. Mischief by fire or explosive substance with ment 1  
‘couse temage to onunt of one handed rapees Whoever  
‘commits macht by ie of any explosive substanee, intend  
fing to cause, ce knowing R to be key that he will thereby  
‘tne, amma to ay propecty 19 the ameunt of ove hundred  
Tope or pear xxx sabe pamshd a im  
Ince of either description for a term” which may extend  
{0 even years and shall aso be lab tone  
  
436 Mischief by fire or explosive sistance with intent  
to desiror place of worship, house. cre.—Whoever comics  
Ichi by ve of dey explosive substance, sending to cause.  
Se knowing Ht0 be kely that he will thereby cause, the  
Sestenon of  
  
(a) any bung which is ordinarily wed as place  
of warp or a8 2 buman dvelng or as 3 place  
fee'the etsody of propery, oF  
  
6) any object therein which i held sacred by any  
aks oP persons,  
shall be punished with imprisonment for ie,  
or wth "imprisonment ‘of ether escrption  
foe aterm which may extend To Cen years. and  
Sail So Be able to fies"  
  
2 Sens 457 and 5 combined and amended to cover seat  
5. Section ght ante  
  
4 Section 46 amanda Lo cover ered bjs.  
  
‘SMot Uae 7B  
  
  
  
Page 311:  
Invrosters:  
  
206  
  
Criminal Trespass  
  
17.78 The last item in this, Chapters criminal trespass.  
oes teas reprehensible for it enuy upon property 1h  
nother persons possession wih the inention of annoying that  
  
house-breaking when the punishment ‘cao be fourleen Yeats"  
impronments The forms Of rma eps dese the  
  
(house espass (Section 442):  
Gi) lwrking house teespass (ection 483)  
  
i) torking house trespass by nigh (ection 484),  
(iv) house-breaking (section 445); and  
  
(6) house-beeaking by night (Section 446).  
  
12.95 Pann ob viedo the oes cording  
to thei eraviy ad according to the tgerevating crcumsances  
In which they Se commited ® We tecopnac thatumple Uespast  
tna vers difeeat ater irom houseseeaking andthe diference  
Inthe ponishmenis for the two offences. We jostiied. "We do  
hot, hokever, se much need for ditnguking between forking  
odie ieapas dorng the day and faking. howe espa by  
taht. ‘Nor indeed does there scem any ned for evolving theae  
‘hifleren wat. nen plainly a that we wah 16 ois to severly  
uh what"is common" understood as “burgary. We  
fhomk this part of the Code could be considerably implied by  
Aioppine the notion of forking bout Uepasg and owe beak  
‘ne Ghd sotroducing instead, the ies of balay which shoul,  
Imosubstance, mean howe trespass for commiting theft ot any  
‘ther serious olleace I adequate punishment 1s provided Fr  
these to ot re! should no ed for ny needa  
Entepory of orcs We suggest that the maximum panihent  
Yor eriminal trespass should be ras Tom thee months" im  
Proonment to si months Imprisonment, and for howe trespass  
Should he raed from one year to three yeary impesonment,  
‘wae, for barglary the maximum punsshment shoold. be ten  
Seat imprisonment  
  
1776. Out of the defnition of criminal trespass in. section  
4s), 4 cuts diflealiy has rien." "The defiiton isn these  
snonds =  
"Whoever enters into or upon property in the possesion  
‘of another with intent fo commit an oflence or Co mimadate,  
Insult of annoy any person in posesion of seh property,  
‘of having lawfully entered into or upon such property,  
lunlastully remains there mth intent thereby to tata,  
{got or tonoy any such person or wth iment Lo comm a  
fence  
i Said to commit ‘criminal tespass!  
  
  
  
Page 312:  
307  
  
‘The dieu is about he second paragraph the cbiect of  
hiss os oon ea paso ener  
\* anothers property witout any inteon of annoying hi or  
Semeiing any ofene there, etter changer is ind  
ins on Saying on the property incr fo soy the person a  
sseson. Sore cous hve though tht the iia ey  
"tnlawtut thoegh: not agcompaned by any ofthe ouentfors  
‘entoned inthe section, then the second por of the Sention  
frome, mappa, in Yah wong conmes  
{0 ay on the propcry expres for annoning the Berson  
Possesion he comin no ence. The "Caluta High Court  
as pot the mato thos  
  
“There appears 19 be (wo types of cates which arse for  
‘consideration One of the type of the case of Belden  
Prperor® of unlantul enry matout remmine with one of  
{heritentions prescribed and secondly nea ie the preset,  
‘ef the unlawial entry withthe neceary intent followed Gy  
the tnlawiul remaining also seth the hecessary Intent. ie  
‘ay opinion, neuer type of cas is covered bythe pla word:  
‘of section a plainly inerprered. "Whether thy ought 1o  
te made ponistable or not e's matter forthe Westar:  
  
See eee ee  
  
Ie hn ond ey amend ad in tr Prat  
in ths teapect "That arigned to deal wih espace  
‘nes totaal the property er proper neice hae ten ser  
‘on, We dha depen Coe per  
Sch speci epslation an we aot heefores adapt  
‘he rel defect wl be et by Fv the vec ooo  
  
48. Criminal mespass.-Whoerer—  
  
(3) enters ito or upon property inthe possesion of  
another mith tet to. commit am ofence oe 0 inte  
dite. init or anney any person in posteson ef suck  
property. oF  
  
(b) baving entered int of wpon such property wi  
‘put such inten, unlawful” romaine there wit such  
  
Js said commit criminal trespass  
1 Sig am, An 1981 Cie,  
2 Belen Enger, ALR. 133 A  
  
  
  
Page 313:  
sae  
  
Siren  
  
‘tm be  
  
308  
  
17.77. tn sestion 442, we considered the question whether  
howtncspas should nciods trespass ito a vehicle oF ait  
bur decal that mo sich changes needed.  
  
1178, As indicated abo, sections M4 and 44 which die  
luring howe esas an ring Rowi-cpat y night shoal  
Wetted ang intad of Rowe-breaking, Corgi) shoul! be  
‘etncd in seton 488 a flows  
  
“5. Burglary A person commits burglar,  
  
(a) he commits howse-trepass in order to commit  
theft or any offence punishable with imprisonment fOr  
Sven Sear or with a more severe punishment, or  
  
() having commited house trespass.  
theft on any such oftenoe as aforesaid"  
  
Clase (6) of the above defsiton is intended to cover cases  
‘shore the orginal entry is not proved t0 have been with  
‘nent co commit the specified oflence, bat the trespasser does  
‘Som the apecied offence ater his entry.  
  
17.79, Seton 446 whic defies house expos by ight may  
be omit ™ ”  
  
1780, Sections 447 to. 460 which proside graded punishe  
meats may be replied by the following sections —  
  
“447, Pumsionent for criminal tress  
nits criminal’ tespass shall be: punished  
‘eater descrpton for a tetm which muy extend {0 sf  
ronths of within, or with Both  
  
488, Posslnent for howsesrespass.—Whoevet com  
mits house teapass skal be punsshed with imprisonment of  
‘her Gescripnon for 2 tet which may extend t0 tree  
Sears, oF with fine, oF with both  
  
49, Houseresper after preparation for Inet, assault  
cor sonafad restr. Whoever "commits housirsp03,  
faving made preparation  
  
(2) for causing hut to any person or for assaulting  
any fenon or fe Song Feaiong ny Pesan  
  
{b) for putting any person in fear of hart, o& ot  
assatht Gr Strangle fen  
  
  
Page 314:  
30  
  
fall be punished with impriso oment of citer desi  
  
fr aterm which may eeyhd to Seven years and shal al be  
Tbe to he  
  
450, Povshnent for buelary Whoever commits bat-  
ary, shall be punished wih rigorous smprisonmmen fora  
{sim not exceeding tem year and shall so be Table 10  
  
484. Grievous hurt caused whist commiting burglary —  
Whoo, Wht comming’ Burglary te  
  
(4) causes grievous hurl t0 any person, or  
  
() attempts to cause death or grievous hurt to any  
rer  
  
sll be punished with rigorous imprisonment for a serm  
  
Sich Qa lend 1 fore yet and saa 62 Hoe  
  
452, AU perso jy concerned in burtrypoihobe  
sxhere death or grievous hurt caused by fn <M, at  
it ine ot Cotng bargy, any prog of ack  
‘Mfeoce shall volimayeause ate fo case eu ot  
{erous hus oan penon, ety ett ny conch  
{n'commiting Such burg ‘sal be pushed min neers  
Jmprizonment fora trh wich may extend fo fearestaeee  
SoU sh to be iat ae  
  
1781, Sections 461 and 462 do not require any comments o¢ Seton  
chal ZS Stan 461 and 462 donot equi any Sgn  
  
> New ction covering eating won 9, 480996  
2 Exiung section 499: mot.  
+ sing ston #60 madd  
  
  
Page 315:  
Seton  
  
iiss  
be  
  
Crarren 18  
  
OFFENCES RELATING TO DOCUMENTS AND  
"TO PROPERTY MARKS.  
  
18.1, The offence of forgery 8 defined in sections $63. and  
“464. “The two sections have tobe fad and construed together  
for deciding whether a person has commited the offence. The  
facut reur ie making 9 fale document, ané the mens re, under  
the Best section may be any one ofthe following —  
  
(intent to cause damage or injury to the pubic or to  
  
any Peron.  
  
(i) intent to support any claim oF sie:  
  
(a) inten to cause any person to past with property:  
  
(Go) ent to cause any person to enter into a contract  
  
(©) intent {0 commut favd;  
  
(0) inet that Fraud may be commited  
  
“The cts rus, which is indicated in bare ouline jn, that  
section 6 the words "males a fale doctroent™ is deserted eax  
boracly under three heads im section 468. Practeally every  
‘conceivable way of preparing fale document or offing  
S°fenuine document's covered in this Geseription, But, not  
‘oben wah being comprchensive a othe nature and method of  
cutout Section requir in each of the three hea  
Culpuble state of mind (either dsbonesty or trgud) to accompany  
{he physcal nuXing ol the false document. Wheo one remem  
Heater malaga’ fs dcament ot pte  
Stich under ths Chapter, f Cleo to fied any cogent Teason  
‘by the mental element fist given andr {wo broad heads  
NGShovestly or Frowdulenly") with reference to the maung  
‘of th fake document. and then under sin heads (mn Section 463)  
‘ith reteence to the compete offence of forge)  
  
18.2, The postion in England where the offence of forgery  
sands coded in the Fongery Act of 1915 is very much simpler.  
[By sbeection (0) of section 1 of this Aci, “ongery the making  
ff guise document n order that may be used es genuine.  
Sind forgery with intent to defraud or deceive, asthe case may  
esis penanatle asin this Act provided" Subsection (2) of the  
‘Sire Section sets out in tall (more ot less onthe samme bes 38  
‘Scion 4 of ous Cove) the cicummlances i whi a document  
Wil be considered fo be fae orto have bern made false, bot  
‘Joes nor again bringin the mental men. Thus, the English  
‘tniton amounts fo stating that whoever dishonesty o fade  
Tenily maker» false doeoment in oracr that it may Be Used as  
Benuine commits orgey.  
  
  
  
Page 316:  
3H  
  
183 We consider that sections 453 and 468 could be easly  
«combined and uenplifed giving a claret deftion ofthe ofence  
‘Ccomenting forgery. he duplication othe metal Sement  
‘thes patent and uaneessarysboold be removed. "When one  
Sess fh Men speed econ eh a at  
ail of them, excep perhaps the last are covered by the “dis-  
ones or faudulenty” formula repeated thre ties im scion  
{223 the mental element ofthe ofance mould. sem  
  
‘speci by the words “dione o fraudulent:  
i stent that (rad may be commited on the public  
person It may te recalled that under she sessed  
eanion chtrawduleniy” propos by ws im Chapter 2. the  
intention to deci amotier abd by that deceit to cause iy 10  
{ty person or Io toduce any petton to ast to his dadvaniage  
dered by that wore  
  
18.4 As cepards the uct sequied for the olfence. the  
scription given in section 464 requies tle. moditeation.  
Under the fst clause, 2 person makes false documeat he  
rakes appear tho he document was made "at atime at which  
hs knows tht if tas not mace’, t Being understood, of course.  
thatthe time of making the document it materal forthe object  
Inview. The place of making a docament may be just as material  
| the time and it should be forgery Hf this deal 5 somehow  
Thisied’ "We" ieretore- propose that the fst clause should  
‘eter to plas” as well as "ime but expressly qualify both by  
‘diag "then he ume ot place is matenal™=  
  
In the second clause of section 464 it seems desirable ro men  
tion "sdditon and “obiMeraton™ Benes “cancellation  
  
15 As many a8 17 istration ae appended to the ection.  
{is doubul whether any of them is really roqred to eluckate  
any ebscure point im the definition” Jn fact they seem to be  
Stoliny the obvious and’ we sugges that they could be med  
ithe exiion  
  
1.6 The ewo sections may accordingly be combined and re  
ose falls =  
  
“468. Forgry—A. person is said 10. commit forgery  
who, dishonesty or fraudulently of wath intent that fraud  
‘nay be commited oo the public oF on any person.  
(a) makes, signs or executes 2 document or past of  
document withthe intention of causing fo be believed  
Sch document or part of document was made,  
‘gned or execeted  
(by. or by the authority of person by whom.  
cx by whose authority, he knots that it was not  
‘hale, signed ‘ot executed, oF  
  
TGS Tape Forma  
  
Ped  
  
  
  
Page 317:  
oi  
  
ee  
  
32  
i) Gabon the tne oF place material) at a  
  
sine of place at which, he knows thie was not  
bres sighed of executed: 07  
  
(0) by cancellation, addition, obliteration o there  
vise autcsa"document in\_any ster part there,  
Stevi has teen made, signed of executed cher by hm  
ioe by any other person, whether sec person be Iv  
hg or dead at the time of such alteration? oF  
  
(6) causes any person tosign.cxccule oralter a docu-  
sen Knowing that sech person by reason of unsound  
tes of mind’ Gr vnconcation camiot, Or by reason of de-  
‘Sption practised upon him does not, naw the contents  
‘ifthe daument othe mare ofthe aiteration  
  
Eyplotrion~(1) Inthe setion, “execwie™ includes sea  
ing and waking an} mark denoung execution of & document.  
  
(2) A man’s signature of his own name may amount to  
forts  
  
(@) The making of a document ia the name of» ttions  
person, inning 30 bevsleeed thatthe document wa  
‘race y reat person, vn the name of « veased pesen  
Indie it to be beueves that the document was made b)  
the peruse in hi Hfetme. suay mount to fergery  
  
18:7. Sesion 465 prescriber the punishment for the offence  
& orgy The maxinnom period of imprisonment now provided  
two ropes o yeseaue Wo thse Sear RAVINE  
reeurd ity a the once  
  
SGA eget ly os  
ee es Ray cate pe  
rare etme ‘hose ge  
ast etc tr allt pti  
Gps te gc shy  
  
189. We are sso of the view that “the authority to adopt &  
son" now imentioned alongwith valuable secrity section  
iF ay be outed as the egal importance of an authority 10  
SSope no longes what asunder the uncodiided Hings faa.  
  
  
  
Page 318:  
a8  
  
1810. Another point that cequires 10 be considered regard  
ing tection #06 nd 467 the we therein of the words a docu  
iment purporting 10 ty". Apparent, these. words have been  
‘ployed ‘by the Leginlaiure fo cover a document which, docs  
Sot poses legal valilty gus a document of the enumeraled type.  
tholgh st “purports” Be such a document.” The question  
‘hather the Gochment possesses such leal Vaityisimmatenal  
ind what fs mater chat character the writing ate (0  
‘pot or But this atempe at subllety may create is own pro-  
Blea” Ror example, when a person forges a document, —e  
  
2 public register containing afew thousand entries. she forging  
SP ocoment which porports to be 8 public regier ors he  
ineiely for peg "a doeument which is @ public epster”? Since  
The rationale of sections 68 and 7 seems to be that tampering  
‘Man public reper; Court records, valuable securities. ct  
Shound’te considered aggravated Totms ofthe oflence of Tovgsty.  
sr et ta he treo clay, the words document  
Prporting fo be" should be replaced by the words "in respeut  
Era document which is or purports 10 be", which wil be wide  
‘hough to Cover valld document as well as\_gocuments whose  
Sahdity (in the seese discussed above) ¥ dovbtt  
  
1611. Sections 466 and 467 may be combined and revised a5  
  
follows —  
  
es ory of Co ro pe ec,  
solute seturiy,et==—Whoever coments Forgery in respect  
eSccamem whlch or purports to be— ™  
  
(i) a eecord oF proceeding of oF in a Const of Jur  
  
{i a vepser ee, oF document made, by a public  
sercanl i his ofa apeety  
  
ya vegier of ie, bapkiay,marvage oF butiat:  
  
(4 wil:  
() a valuable secuity;  
i) an authority to make or transfer any valuable  
seus  
  
{uit) an authority to receive or deliver any valuable  
seculy, movable propery oF mone),  
  
“vid am acutance or receipt Tor the delivery of  
any Salute security or movable propery oF fr the pape  
iment of any money  
  
(Gx) an authority (0 institute or defend any sit or  
to take any prossedings therein of toconfessJodgmen  
  
(8) 4 power of atormey;  
  
  
  
Page 319:  
seven  
  
TSS pear Te  
  
3  
  
shall be punished with igorous imprisonment fr a erm which  
Jay exlend 0 tes yeas, and shall also be Hable fine.”  
  
18.12 Seotions 468 and 469 deal, cesecively with forgery  
for the putpoe of cating ana Foret forthe purpoe of ae  
Ing reputation: the punhment scven year forse former  
  
nce and three years forthe fatter, "We do not thik that  
these aie patculsy aggravated forms of the offence of forty:  
‘and as we have already proposed a sight crease nthe push:  
trent for forpery. ne femme at sections 408 and 4)  
‘Should be oma.  
  
418 Secon 0 dine « “forged dome” she  
document mage wholly orm part by forgery". This is defective  
Inasrmch as forgery 1s uel Benediction 483 a8 "making  
1'albe document” wth the fequsite intent, So thatwhen one  
Feadssction 420 and tection #43 topether one mest the Sed  
‘(making a document twice. Further in view ofthe ree  
“dfition of “Torgery" proposed above, a “forged document”  
‘out be defined a.» docanven in respect of which, o any pact  
‘fwhich, forsery has been commited, We propost that his  
Fevited definition be putin as section “466 this =  
  
464. Forged docienent—A document in \_ respect of  
which oF any part of which, forgery has "been commited St  
2 orged dovtiment  
  
18.14. Under seaion 471, whoever uses as genuine a forged  
document shal be punished” in the same mance as if he had  
forged such doctinent The tse’ of the words “it the "same  
sanner a5 i be had forged” has led to some confit of decisions,  
Fegarding the question ‘whether a. penon who his both Tord  
{Redacted wei pnt, can Be posed fr both  
the offences,  
  
In Uinrgo Lal.t Aikman, J. of the Allahabad High Court  
id  
  
“Th conding word fh ton ead met eve  
‘hat it dteced pains some person other than a person  
proved to be the actual forget. The section i tsful 36 at  
‘Ternative charge when it not certain whether the accused  
povson is hime he forges of @ document oF has, mecely  
Used it as genuine. | But [cannot fecolct a casein which the  
foreer hav been punished ‘ath for forging 8 document and  
for asing it a6 ponuine.”  
  
In the later ease of Badri Prasad}, Kaox and Muhammad  
  
Raig, of the same High Court sa they Enew of no authority  
  
for the proposition that "the acused cannot be convicted at one  
  
2. Cro Lo (100) LER 23 AN.  
3 Ras Pra (912) TLR 8 A  
  
  
Page 320:  
as  
  
land the same time of forging 2 document and using that  
‘event as genuine, and the charges uader sections 467 and 471  
seen thcrtote, be teearded ms ahernative". Apparently, Unrao~  
‘Borst cose eas not brought to" tbeir notice, nor did TREY 69  
foo the question in any de  
  
1a Srramulu Noite? homever, Waller and tackson, 1. of  
‘hc Madras High Court expeesly disagreed with Aikman, J  
Siew and sid"  
  
“al, it seems fous: that section 471 lays down is that th  
zntones tea be imposed forthe offence of using 2 forged  
Fexatmnt as gens Tete sae 6,the sentence that can be  
SRpovad for de once of forgery. They ae sparate offen-  
(Bing under section 3, Crominal Procedure Code separate  
SEatdees ney be passed on an accused, person WHO. is  
Hen'toovicted at dhe same taal of both.”  
  
fm Gajonan Sokharam,> Mallifas, AJC. of Nagpur was cx  
phates that comiting Torgery and using a forged document 3s  
Erna uate tantly the pmo of ore dens  
et tecosariy anvove the commision ofthe olber, and & per.  
son commiting the two fences cam certainly Be convicted of  
‘em both Burs in fama! Panoce Findlay, A.C, of the same  
‘Gur agreed wih the reasoning of Aikman, J, sw Umrao Lal\*  
Soe"tneighe hat “tbe Tanguape of section 471 most obviously  
Sogosts. at this provision ts expresy dicted against some  
Fae dher dan Ae Tonge himwelf". According 0. bie, "the  
Pete or the presence af section 471 on ahe statute Book, tn  
The sonterhat unusual language which # empioyed therein,  
te oe epovice useful aera charge in ces where here  
Sbeundiny av to whether the person on (ia Rise the  
eertah nc eScuments or has merely sed i 8 genuine, Know=  
Ing a9 be nothing of the ort"  
  
1.15. To oe extent that chs controversy hat aien from Sain  
Alsen us gunge employed im Sedo w7in we SS  
se sr iabge ht shoul be avenue by droping the wefeen- “8  
2 ns Ws ang the punstment pronsionseicconaied  
  
eee credo thatthe ober of employing the bore  
Ween punbmentto Beimpore for he etece of sng  
‘be drama sone ne pon  
  
Fore ce Tegey in espe ofthat coment which may  
  
aa ee BSS oe dee or 67. The wording ofthe Puss  
  
Stent previ seton 471 does not appcat fo Be sbecally  
em prvide a sete stern charge in cscs of  
Seriny the flee der tis section may be, comntled  
  
‘SEAN ane torgr moet or by another pevion, ane who  
  
T tras Ex io TCR 2 i 3  
  
2 ‘Srate Nena (930) CLR 3 Mas 592  
  
5, Gla Satior, ALR. 1926 Nag  
  
1 ina Pa AB 906 Nag  
  
5 ran ay (0 1 2A 8  
  
  
  
Page 321:  
Bhcom,  
  
316  
  
bas employed a profesional to prepare she forged document  
Fim. Iti dial to sec why nn the former ease the ofnder  
shouhd'not be charged with and convicted of both the ences  
  
Section 471 may be revised as follows :—  
  
“1, Using\_as gemine «forged docrancat —Whoeves  
frandulerly ot dahaeny hes genus any ovement  
Which he Rots, or has Featon (0 Scone a be 8 forged  
Aocumeri—  
  
(2) shal, iF the document is one of the deseription  
‘mentioned in ection ase, be pombe wih porous  
Iimpisonment for aterm which may extend to ten year,  
nd shall aso be liaie to fie} and.  
  
(0) shal, in any otber case, be punished with impr  
sonstent of either eseiption fo i  
‘extend to thee years, of with fine, of with both  
  
soci Sto 2 pani the mang of ny orn  
foe the puspose of fofgingany document mentioned tn section  
{che seton 73 panes a 0 for te poe of  
{Graig any other documents incaging documents of type  
‘mentoned in scion ash Wie this preparatory ae tics  
fo be punished wae he objet Orgy oF ay document Meh  
waned im scion 468 or secuon a0 hardy necessary  
teens ae" other dec" Fp ot  
imprisonment sow proved th seston 42 appears tobe une  
yma The minum purine ct sprain oe  
Bthe ofence. "We peopse ht  
  
‘Scions 472 and 473 maybe combined sod Fved 2 ol —  
  
ATR. Making or posessing cowstrfit sou, "ete. with  
intent fo comin forgerspantsoble wer secion 366.—-Who-  
{ver mates or eotintsels any seal, plate or other ina  
‘making 29 impression, intending that the ome seal be  
the forthe purpose of comming any forgery which wld  
be punishable under section 46, or with Such item, has  
Is possession any soch sel, pate or other imstracmen, Know:  
Ing the same to be counter shal be" panied with gor.  
us imprisonment for aterm whieh may extend t9 Ten Sears,  
Sd Sha als be Hable to ne"  
  
16.17, Tn view of the proposal ro combine sutons 466 and  
7 mone tection, secon 414 maybe reed ss follows: —  
  
474, Possessing a forged document described tn section  
65.—Whoever has ia his possession any doument Othe  
description mentioned in setion abo, knowing the sare to  
te ronped ‘and tending that the same shal Wawduleatly oe  
Sishonesly be uned as genuine, shall be Patished with Hg  
‘ous imprisonment foe tern” wh ‘oxend to seve  
‘ests, dod shall aso be table 1 foe  
  
  
  
Page 322:  
317  
  
18.18. Sections 475 and 476 are similar to sections 472 and 473.  
These two sections also may be combined and revised on the  
same lines as follows:—  
  
“475. Counterfeiting device or mark used for authenticati-  
ing documents described in section 466 or possessing counter-  
feir marked material.—Whoever counterfeits upon, or in the  
‘substance of, any material, any device or mark used for the  
purpose of authenticating any document described in section  
466. intending that such device or mark shall be used for the  
purpose of giving the appearance of authenticity to any  
document then forged or thereafter to be forged on such  
material, or who, with such intent, has in his possession any  
material upon or in the substance of which any such device  
or mark has been counterfeited, shall be punished with rigor-  
‘ous imprisonment for a term which may extend to ten years,  
and shall also be liable to fine.  
  
18.19. Section 477 deals with the offences of cancellation,  
destruction etc. of “a will, or an authority to adopta son, or any  
valuable security”. For the reason given! under section 467,  
the words “or an authority to adopt a son” may be omitted from  
this section also. The punishment for this offence may be the  
same as that provided for the aggravated offence of forgery under  
the revised section 466 above. Section 477 may be revised as  
follows:—  
  
“477. Fraudulent cancellation, destruction etc. of valuable  
security or will.—Whoever fraudulently or dishonestly, or  
With intent to cause damage or injury to the public or to any  
person.  
  
(a) cancels, destroys or defaces, or attempts to can-  
cel, destroy or deface, or secrets or attempts to secret,  
any valuable security or any document which is or pur-  
ports to be a will; or  
  
(b) commits mischief in respect of such valuable  
security or document;  
  
shall be punished with rigorous imprisonment for a term which  
may extend to ten years, and shall also be liable to fine.”  
  
18.20. Section 477A deals with the offence of falsification of  
accounts by a clerk, officer or servant with regard to books,  
papers etc. belonging to his employer. There appears to be a  
Gifference of judicial opinion on the question whether the section  
applied to the case of a partner who falsifies the accounts of the  
firm.  
  
1. See paragraph 18.9 above.  
  
ctions  
475 and 476  
combined  
and  
revised.  
  
Section 477  
revised.  
  
Section  
UN  
applica-  
bility to  
partner  
Keeping  
accounts  
‘firm,  
  
  
Page 323:  
Rote,  
  
se”  
  
38  
  
Iya Cateuta case, twas hel that a partner cannot be auity  
under this section, ad thatthe offence ean ony be commited  
bySommbody in i employ of another perm ss cet rect  
{servant ad the action ean en Be commuted in respect  
ofthe books of accounts of the employer Asmar tic hs  
‘een taken by the Alfokabad High Court? “But ina Bombay  
ive, it wes Ret hata partner, appoinied 2 such fo manage  
{te business orto write the accounts Of the frm. acted at See  
‘Sian he aes the asso, section 497A woul apy  
  
(On « fell consideration of both the views. we were iaclined  
fo agree withthe former imerpretstion. The opinion 6  
  
by the Supreme Cours that pare cans e Bld  
breach of trust under section 408 i Tiely vo preva aa regards  
the haiity of partners under section 477A alsa. No amendmsot  
(of he section by way of eluiieation la therefore, neces  
  
IBZ, Then twee secon orally dest wih fens  
  
seating to trade marks, property markt and ierchanuine mar  
  
‘Fo al them, namely, scons (Th and 480 rere repel  
  
the oiber sions weie amended, bythe Trade and Merchade  
  
Marks Act 1958, "The eoup af emscton now ew  
encoselating to property marks only. Theres 90 contr  
  
Seray about them \*  
  
1822, Sections 489A to 4896, which deat with offences  
regarding eartency notes and Banknotes have Been omidered  
in previous Chapter  
  
‘At  
Pte 2scR 9  
  
  
  
Page 324:  
Coneren 19  
  
CRIMINAL BREACH OF CONTRACTS OF  
SERVICE  
  
10.1, This chapter, whieh has now got duced from its org  
talthee eos tone mi ar the acer we  
Was Considered necessa'y and proper to safeguafd contacts ol  
Scryice with penal provision for breaches. Am old. Act of  
1839 provided “forthe punishment of breaches of So  
  
io, having received money  
they ad contracted fo ere  
form, refused to perform the work. Thvce specal cases were  
considered serious enough to be faluded i the Penal Code.  
‘One was breach of contract of service during u voyage or Journ)  
and aneuher was breach of contract to serve at a distant place tO  
which the servant way conveyed at the masiers expense” These  
"iyo were made punishable a fences by section 490 ad section  
492, fespectively. Al these oppresive enactments Ware rpealed  
tn. 1998 by the Workmen's Broach of Contract (Repealing)  
"Act, 1928,  
  
192. The surviving sstion 491 is perhaps not attogether on  
‘par withthe two repeated sections.” [eimay be regarded sy have  
ing some ethical joention in thatthe person affected bythe  
breach of contract rs, because of youth, unsoundness of ming.  
hate of Dou weakest 8 lea condom. By ing  
{otook after such persons aflerhaving” agreed to.do so, an ofen  
‘may be causing serious harm to the health ofthe hele  
Individual: Howeter, the offence isl! treated as iVah a  
‘made punishable witha small ine not exceeding Re. 200.  
‘ery bad cas, with short term of impsonment not exceeding  
  
inticed that i gece times thee have been  
ho complains under this section.” We consider. th  
the practical wilty of the Seeuon is negligible  
  
iim the Penal Code. ‘The whole. Chaptee  
  
i  
H  
:  
  
may be Tepe  
  
Boson of  
rare  
  
Repel of  
  
  
Page 325:  
Sun  
  
peone  
Seams  
  
casera 20  
OFFENCES RELATING TO MARRIAGE  
  
let ace enumerate six offences relating to  
"/ ton of are in ‘shich most Same  
{ind deed. most people atach vial importance as fore  
SSenat bee of ly Me ha ‘principaofeacts,  
Samy ao ater Teaolent omic fo thi Rid made  
able under two accion {839 and 496). ‘The maximum  
  
Years imprisonment. Enticing or detninng. » married woma  
The may have illic iercourse with any Per  
  
‘an offence. bat minor one, x  
  
Imprisonment not exceeding two yeas oF with Ane o  
  
202. Section 493 punishes a person who deceives a woman  
fo believing that she's lawfully married (o im and makes het  
  
"with hs as wife-and husband. Ta" way, the olence  
ory near to. but tthe sume a, an offence of rape under  
Clause. four of section 375. As such, the punishment of te  
Sears imprisonment for the offence is not unduly severe.  
  
‘We considered a suggestion that the section should \_apely  
ako to woman eho deszives a fan in the same wa) and wilh  
fhe same object. "Apart From the improbabity of ch cases  
fccurnog the injury dove othe mas in body, made Feput  
  
by such decent aeglipble and need not Be taken notice of i  
the Penal Code  
  
203. Digamy is dtined in section 494 a8 the act of & person  
‘hor hivinga hatind ox we vig, mars, bat ny ina ae  
‘hee such subsoqoemt marriage fs id Under het oF his prions  
ian Une recently. polygamy was pense Tora Commer  
‘ics i" Tndia except Chrtans and Parsi and consequently  
the’ impact of thn assion fell manly on’ women: "Wah the  
  
sing othe Hindu Martage Ac of 1955, the whole popsltion  
Er indi, except the Mest male and some Wibet among whom  
polygamy peemated by custom, are concered wit the So  
  
‘The phrase “having a husband or wife living used in the  
efron was natural ata time when divotees were rare even  
Sthote permissible by law, and the band of marriage Subsisted  
Unit death of one party fo the marriage sckcred it In a care  
‘where the fst marriage Was dissolved, under the aw, cach of  
{he partes would cease to be “husband” and “pife™ 1  
  
igs Gr the other aed, consequently. the ft of th  
  
Evid  
  
  
  
Page 326:  
Pay  
  
being alive would be ierelevant 10 the application ofthis sation.  
Since st 1s telly, mot so.moch the fact of the person “having  
"husband ‘or wile ving" as the legal subsbience of the Ri  
  
‘mattiage that makes the" subsequent marriage void and  
lene we nie that would be pte ene eam  
  
“Whoever Being martied, conteacis another mariage in  
any case which such marriage i vod by reason of isa  
ing place during the: subsistence ‘of the earler marcage,  
‘commits bizar  
  
‘The expression “contracting a martage™ which i wed inthe  
second paragraph ofthe exception szms to us to be more expres  
Sve than the word "wsarries" Uied ih the eusing dent  
  
204. The first exception provides that the section docs, not Exaton  
extend to ary person whose inariage fs been declared vod by ear  
our of competent jurisdiction Tt has been remarked? {f°  
wha 2 person necosed fan offence under section #4 may  
‘lead in fs defence that she fst marrage wo null and void even  
hough he ad not obiained a detraton to that elec” by =  
‘Cure Ina casz\nbore the partis bave pone though # ceremony  
‘t'marriage which f uiterly effective law so that they have  
‘ever sequred the satus of husband and wie, neither pat  
Ein be said to “have'a huskand oe wife Rving™ a the tne of  
‘Snvracting the second marrage, and conequenty ether patty  
Smt the oeace ded thn secon 1 toe  
‘Goutal whether the Sat exception series any viel perpose  
‘Wha tne dshinton of bigamy to alee as  
it would be rendered gure superflvos.” A  
  
{orbe contracted ducing the “subsistence” of amy earher martape  
We, therefore, propose lo omit the fest exception.  
  
205. The second Exception is necessary and should beelaio- Sulond  
ed with afew verbal modineations. fe  
  
20.6, It has been held that, though section 494 makes no Mensa of  
reference To intention or krowledge, the normal presumption tw oes  
TEN'S penal state regres sme mens ra tun be ven eect  
on Kena fonaifs the fiat acasd, "2 Masi women,  
{Sok egal Sinton tha she could ellecielvorce her Ts  
‘Sho, tent trough the formate thereat, give notice vo hime  
Sndy afer wating for'a reasonable ie, marted the second  
Seed TR Clit fn a the dae wan a a  
cy the aseused was not uy of bigamy. It also bel,  
Sian Eaters discomson ot the men eu hoped ofthe fence  
  
1 Gramawntr« Nalahamd, ALR. 1945 Mad 516,  
2 Kime loma, ALEC 189 Ke 11 Serato Janata LR (989) Tan Cochin,  
  
DM a Lawoi—22  
  
  
  
Page 327:  
2  
  
tat there coold be a0 ciinal knowledge om the womau’s part  
that her rt mariage Was subsisting when she marced agin,  
nd hence she could nor be gully ander section #38. We do  
‘ho think st pocessary to dca the mens rea speciclly  
Inthe definition of bigamy  
  
erga: 30.7, Where mariage Ran been disatved bya dese of  
  
SERS uch guibe hot es peed dungg whch Hol at  
  
SEES Ui Sate pony to she izahes manage Yo nt  
Seah actor sy” stae wether 3 penn cay  
‘Wit ha he sons am fence agit secon #4 a  
Sanh ML Ev'ee ange tat a son are re of fore  
we Snoanel’ she pes eas t'he bed ad ie Se  
‘fener seihes Ray's “husband orf me” Tor te  
sata eton #98, "ut bil. ti in Of fore  
Freee wil ier tbe obec the marrage Tee o-  
Shamstie Guowe Ron resting antl te xpry of asc  
TIMER Sab Suoee "The Same quel’ may Beate  
ingen to te events ptm Be, the  
sa he Sune aseeings eae tobe mari”  
Testy a dares of Soce pronounce of ny aie the  
‘ipso hs psi gerd?" We onaer that he anon  
SMBala te he cit Sot oy a mae fimtepetatinn. ta)  
Ser auc potty. Wer erie propose ta ah  
Eiaton thn ees  
  
Fast of 20.8. Ineidemmally, we wish to point out that there is at  
ESSN present considerable uncertain a lo the elect of comenson  
SSSq\_. Eeintesge, partes when the canvenion from 3 menor  
  
fprmous cgi to's polygamous raligion and vieecrsa.” The  
Fam’Commisson in tprevioss | Report? had gone snio this  
‘goction und recommended legion to replace the evsling  
qvers’ Marriage Dacolution Act of 1866, which would be  
Tonformly applicable to all consersons and confer‘on a con  
seneaTight to have he marsape contracted before camersion  
‘Gosolved om such term as might be considered just and prope  
Se Makdéeaw the auention ef Government to, ths Repo  
ou Caprese the ope that il Be Vmpemented 5703.  
  
20.9. Under section 494, the offence of bigamy i punsh-  
ide vith imprisonment upto seven years Where 1 Peon  
anced by concenlment of the former mersage from the Person  
tristan the sibiegen mare, conta. te ce  
IS'ponshabie with impesonment-epto ten years, We are  
the vw thar the maxsmem i both cases Is "unnecessary hgh  
Lind should be redoced to Three ears for ondary bigamy and  
{S"Sevem Sears forthe aggravated form  
  
1. oe son oi ian, Shae ssn.  
Bice eatin eal ange A  
RUSS eg Actioh es soiest a oe oe secons we difent gage  
inte Meas SC, tRo tamed: Wh aoa at the npinge tae  
{ncttrahsad Be some  
  
+ Winmeporon he Conny’ Mariage Disorion Act 6  
  
  
  
Page 328:  
23  
  
20.10 tn the ght of the forgoing dissin, sections  
‘and 498 mayb eplaced by the folowing two scons  
  
“94, Bgany Whoever, being maried, con  
racts another matriags Jo any cave i which such mati  
's void by reason of ts taking place during the subsistence  
of the eather marriage, commits bigamy.  
  
Explonarion—Whero a mariage has been disolved  
by the dette of & competent cout det an enacien. SUL  
{e paris ae. by virtue ofa provison of the enactment under  
‘which ‘heir mariage is dissed. prohibited from re-marying  
‘hin a specie eco, the, Tor the purposes of ths seston  
  
the'marige shal notwthsianding i duralon, Re deemed  
10 sabast Garing at period  
  
Excepion—The offesce isnot committed by\_any  
person ‘who contracts the ater marriage Jorng the. tie of  
{hespoime by ere mange, atte tin of the er  
Iaseage, such spouse shal ave been continually absent rom  
Sich person for seven years and shall not, within that period  
hve Been hened of by  
the person contacting the later marrage  
‘wih whom it fs contracted of the real sae of facts Car at  
Thetsame tre within his or her Knowiedge  
  
+498. Punishnen for bigany.—{1) Whoever commits  
bigamy shall be punished wah imprisonment of ether  
Seseription for a tetm Which "may extend. to thee. Soar,  
Sind shall also be able to Ane  
  
2) Whoever commis bigamy, having concealed from  
‘he petson with whom the Inter tamage t contacled the  
ft St the eave mariage, shall be punished with Impeison-  
Ment of eer deseripuion for a term which ma) extend to  
seven years, and shall also be fable tone”  
  
20.11. Section 496 punishes one who fraudulently gocs  
Yivough a marrage ceremony knowing that he is not thereby  
Iewuby mamied. In keeping "with our recommendation (2  
Feduce the maximim potiahment under the two preceding  
‘Sections. the maximum here also should be redoced from seven  
seartimprnonment io three”Seark =  
  
20,12. The offence of adliery under section 497 is vt  
limited in Seope a8 compared to the misconduct of adultery  
28 understood in divorce proceedings. The offence commit.  
{ea'only by 2 man who bas seta intercourse withthe ile of  
other man and without she Tater's consent oF connivance  
‘The wife's not punishable for being an adueress, or even as  
an'abettor of the fence for ehich the man can be (Out never  
5) Sent to jal for five yeas.  
  
Secon  
Snel  
  
Sete  
eran  
  
  
Page 329:  
ss  
  
20.13, The section did not find a place in the first Draft  
Fenal Code prepared’ by Macauley." His restos fr not ie  
hiding ft were” as alowst  
  
Sehves "come to. right concasion on Uh subject we  
Sallected fects and opment From all the tree Presence  
The opimon difr widely” Bur at to the fact there i =  
remarkable agreement  
  
“The following position we consider as fly clashed  
‘ng thatthe eng les Zor the pishnen of aa  
te allopether‘nficnios for the purpose of preventing.  
Injured Botbands of the bgher clases from ting the  
into their own, ands second thot scarcely any ative  
tthe higher canes ever has recourse tothe Courts af tw  
fn Scan of adltery for redress gains eer bin wile,  
ie gallant thirdly that the hoxbtds who have Fecoure 0  
‘he of adultery tothe Courts of lw are generally poor men  
show eave ron ay tht hove tunnel ve  
ty delat fesings about ihe tte, but thnk thebaeves  
injured by. the “coperent. that they consdce wives as  
stl member of hal omhll, t hy paral  
‘omplam ot ofthe wowad gen 10 ther  
SF in‘ the hago ta ofthe fo of «nl Sh  
they cannot easly replace. and that penal hee  
fal obese that the woman maybe seme" Back ==" Where  
The complainant dock not ask to have his ile again, he  
ferry damn tobe med forte Spent of  
navi  
  
“These things, being estas. x seems to us that no  
‘stantags n't be expected from protding © punishmen,  
ferry“ opaon oe She toto  
  
in proposing will tity, and those who consider the nity  
[redid by adultery a2 one for which a pecuniary compenss-  
fic wil sufieny atone, Those whose felings of honor  
spay ate yy tet we  
fot Sop sh run tall Than ne cigs be  
etcae wil be satiied by a payment of money. Cinder  
ircumetances, we think i be  
tea ci injury  
‘The Law Commissioners in thee Report on the Draft Penal  
Code took a diferent ew and aid =  
  
“While we think thatthe offence of adaltery ought not  
to be omitted from the Code, we Would limit its cognizance  
  
iT iaeniys Brat Penal Code (HT, oie @  
  
treat adulty merely  
  
  
  
Page 330:  
225  
  
‘to adultery commited witha matted woman, and consider-  
ing that there much weight inthe last remark im Noe “Q  
regarding the condition of the women tn this country, in de  
{erence tof we Wouhdfendet the male offender alone Fable  
{punishment We would, however, put the partes acts:  
fF adultery on til together, and’ empower the Court in  
the event of ther conviction (0 peonovnce a dectee of divorce  
‘against the guity woman, if the husband uses for it, a tbe  
me time that her paramour is sentenced to punishment by  
Impesonment or tne.  
  
“This later recommendation was not accepted, and in 1860,  
section 497 way enacted in is present orm  
  
20.14, 1 isnot surpening that the atitude of criminal aw  
towards adutery sare: from county to counts” tn the UN  
‘Stoies of Amery i varies Irom one State fo another. We  
Seay quote fom the’ Harvard Journal of Lepsltion Use  
1970) the Tllowing ==  
saucy pen ght ay erat detains of cia  
iitery throughout the United Sates wll highlight the  
ehance pate Fout mayor formaitons oh Adtery  
tt under Stats law the "comeom aw ew he camo  
fiw Siew, and ivo-hybrd views. Under The "common  
law view, adultery takes place ony when the woman i mact-  
td, but both partis are deemed 10 be gully.” Under the  
non law iewyackery i the Volulary seul intercourse  
ff 2 matiedpefson with 2 person other than the, ‘ofender's  
Rsband or wie only the aed. person i Eis, Under  
the majoaty hybrid rae, fllomed by twenty Sats if ether  
Spouse has sexual nercoree wth «hd party, both fans:  
‘Besors are gully of adultery” Pinay. Sah jrsdstions  
fnske both transgresors guy ifthe woman ts, marced,  
Botat the woman sgl, only the man gut. Six Sates  
Fave never passed a State changing aul from common  
law tor tora story come, 35 1 mol 8 time unless  
onsite a pb nace by bemg Opsa and notorious;  
three of these Sats, however, have ant-cokabiation “sara  
x Thae Sites have sates punohing adultery bet de-  
fine Heer by statute or ease lw “Georg hes held  
thatthe pares Coamot. comm aduey snes both ae  
married «© someone ee if one i unmarried, the crime Is  
{lid Toricaton aod allen” and indictments Rave been  
{Gushed where the wrong ese fs charged.” Eigh Sate.  
‘Equire'2'showing of cohabtston oe at Eas more than 2  
Single adulterous act for conviction of ade  
  
20.15, While adultery is not a criminal offence in Britain,  
‘is penshable, though milly in some” of the counties of  
Europe. Trin France a wife guilty of adultery is punshable  
by jing for 4 period ranging from thvee months co two Years  
‘bi the husband may pat an end. to her serving the sentence  
BY agrering to tke fer back,” The sdulterr ih punshabhe  
  
  
  
Page 331:  
Qesions  
se  
  
Vis of  
  
326  
  
similcy. A husband who Keeps 2 mistress atthe matrimonial  
home ion prosection by the we, pushatle ith fret  
Gera. 0 maa 8 aida Yea” of ey  
Ube by impsonment foc term sf Rot fst than sn month,  
bx the prosecution has tobe iste by the sgavewed spouse  
ty means of penton  
  
20.16. Azinst his background we icludd in out Quesion-  
aire the. Questions (a) should adultery be punishable at al,  
fd (6) if $0, shoud the offence be timed to men only a5 18  
Section 497." We found opinion to be more ot les Cau  
sided betheen those whe favoured the total abolition of the  
tence, those who fayoured retention of section 497 wathont  
and those who would have the section modified 30  
‘th errant wie punhabie slong with her paramour  
  
20.17. We also could not come to an\_ agreed conclusion  
among. oursivs”on these points {t semed 10 us. however,  
iatlfom the facut ad racic ol of view, the pesto  
{eda ws notapprecably diferent from that desrbed by Macau.  
Hay more than 130 years ago. Cmal complaints of adultery  
(Goich ander section 199 af the Criminal Procedure Code can  
te brought only by the husband of the woman co, in certain  
‘Secumstances by someoae ese on his behalf) appeated tobe  
gmat fe and contd 10 poorer and sonia  
  
es'uzetions\* "The objet of such prosecutions it stidom 10  
Sed he fede oul thas, her wl ead ih ene  
‘ir serous enough 0 merit fenlence "of impraooment.  
‘mor often with a ie to come to asettement with tne ofender  
‘onthe. mercenaty level. The existence of the rection in  
{he Penal Code hay no apparent alect om the number of cases  
here the irate husband mete oUt condign punishment on the  
‘feo her Iover"oF om both of them  
  
Monee ha they te, among be ges and eye ho  
FBlourotresning the otence of why sx delet in sesion  
Sr. Though tome of ws were lyincines t9 recom.  
fend repeat of the scetion, we think on the whole thatthe time  
iis not yet come for making such radial change to the ext  
ing postion. We however, tok thatthe reasons which wel  
ce tih th tae Commoners inthe tein ncn  
{ne the wile fom punsbment ate by and large no longer vale,  
fs thre arly any unieaton for rt treating the gaily  
‘The svegenton thi, inthe name of eqeaty ot the  
unintfal stand who has 2 mires or goes 10-2  
Frosttte should also be ponihate for commiting adalery  
Ens"not ‘nd’ sympathetic response in any”guate.  
  
Fa nnd he mal cpr of Aden of Ci! apa he  
Bugis oar mt Cha rating pombe nd et he  
iter of spins cies une ction 3 on.  
  
  
Page 332:  
Pa  
  
2.18 Ales uch, dacaion and car comideation  
‘we are ofthe opinion’ that the exemption ofthe wie rom punish:  
Tent onder section 497 should be removed, that Ihe maxmm  
Pishment one, yas! prsoament” peescredithe  
‘ction Ih unreal and ot called for in any eveumslances and  
‘Should ‘be reduced. to. two. year, and that wilh these mode  
ations, the oflece of adutery should romain in the Penal  
{Code ics auzordingly recomended. Unit the section. Ma)  
‘ev tewned "a6 flows  
  
“497, Adsleey “HP a man has sex intercourse with  
‘8 woman who snd whom he knows or ha reason to believe  
{o'be the wife of another man, without the Consent oF con  
vance of that man, such seal Intercourse not amtoamting  
{o'the offence of rape, the man and the worao ate gully  
‘of the ofence of aduliery, and shall be punished wit int  
pronment of ether dsctiption Tor a tea which may €  
fend Wo two Jeary o€ with fine, oF with both.”  
  
20,19. Section 498 punishes any one who “takes or ties  
away" marned woman from her husband with jtent that she  
‘may have ict intercourse with any person, and sO any one  
‘rho "conceals of detains" any martied woman wih the stme  
  
As sme amen ae te ob es  
anf Sein eo Gattis  
PE SSS pcpe aces ne a  
Sl eet Meade ei  
arenes carn tias Sa  
Ste he mide he a hin  
  
‘dn not involve the  
<Stestn of hearin woman agaist Ber wi.“ repd  
{Othe thee othertets mentioned in the section, namely, taking  
‘Seay, enucing avay and concealing, cannot be Secioushy  
ontended that the consent of the Woman acts the: gull of  
the ‘stor $0 long. as the tention” and. knowledge. specied  
Inthe section age established. In fegard 10 the act ofthe deter  
om also, the Supreme Cour, afer reviewing the dechions of  
the’ High Cours has hed tha, although the word may denote  
{sienton of person against his or er willis impossible to  
ve ths mening va the content.  
  
on  
  
S  
  
2 Alani. Ste of Bia (989) Soph SCR. 464, $67, 48,  
  
  
Page 333:  
bad  
  
Manton  
weet  
  
1. Seen  
  
a8  
  
20.21, Gajndragadhar, J. 49 he then was) remarked that  
“the poly ‘under}ying. the provisions of section 498 may no  
doubt sound inconsistent withthe madera notions ofthe ta.  
{of women and of the mutual nghts aad oSiations under  
Imarviage indeed Me. Saran vehemently argued before us that  
IRerastime tha scons 497 and 498 were deleted frm the Penal  
  
Code. "That, however, is question of pois with which Courts  
  
We considered whether setion 498 should be repealed or  
amended 30 a5 10 make accord with “modern nolns tthe  
sigs of women By eau amendment ool  
  
rdly be songeted that 1 am offence for any. one  
{nan or woman) fo ence avay of conceal 8 married ‘mas 3  
that he may have sie intercourse with «woman. On the  
‘ther hand, repealing of section altogether might Fel tsi  
Ing unchecked Hert to" procurers and. go~between whch,  
pint of view, would ot” be deatable  
  
20.22, We fel, however, that it would be an improvement  
  
to limit the often 1 the ties acts of taking vay, entcD3 away  
  
snd concealing Detention ‘which  
  
fru of Nr ofr tee wil may ee caeed” We  
f er own (ree wll, may be omited. "We propose  
  
‘he section may he amended. as follows  
  
“96, Taking or ening eway.or concealing with cri-  
‘nincl tent married” wontn—Whoever takes ot exes  
{INay or conceis any” woman’ "who band whom he Knows  
tr has reason to bese tobe, he wife of anyother man, from  
  
iat man or Tow any person having the cave of het bes  
i tha man oh tn a he yc me  
curse with "any person, Ponte ith tpi  
tment of cher dekeripnn for tet which may extend To  
{wo years or with fine oF with oth”  
  
20.23. We considered suggestion that the Penal Code  
should contain a peovion for punishing 4 person who, hav  
tng made a. women pregnant leaves her neared for and help:  
les atthe time of her confinement. lis provided in the Ger  
‘man"Penal Code! that “anybody who. unscraposly with  
Folds assistance ftom's woman whom be has rendered pro:  
Anant, which assistance she need by tenon of wch pregnancy  
‘Of child birth. nd thereby endangers the hfe of the mother oF  
hid, hall be" ponshed by imprisonment”, ‘We think, how  
ver, that such a provision chnnat be appropriately pu in apna  
Tew "The" man's” condact will certainly. "be. disapproved by  
secety, but lo hasl him up Before a criminal court does. not  
Seem right. ‘intrierence of the criminal Taw in these matters  
of family life shoud, we think, be extremely mites If any  
Madships are caused tothe woman oF to the child by sch ine  
Aiderence or neglet on the pact ofthe tals then, the remedy  
  
  
  
Page 334:  
30  
  
cetaily does aot ie in treating it as a crime ; the wafare of  
  
the woman of child, could be better taken care of by other  
  
2h, me spon wp net hn  
git re cme", aan tt  
ADAG SS Spee thd hs ales  
Sn etn ty sl ta  
DSSS dana 2 a,  
Phe a Sa at earl ce  
Sratarsaces MMA ert hy  
eae atest Eten Se  
SES ee ee SES fet ne  
SE Map asters Gs ae Sty  
tena he Cieet pend CA Anse  
  
Ingachid  
Sree,  
  
Beene 16  
  
  
Page 335:  
Ft Cur  
  
Foal  
Eee  
Propose  
  
CHAPTER 2  
(OF DEFAMATION  
  
dom a sperch bpm, we tad in Our Quetonza  
feitcaty" sted whether deamon ah an edeace shouldbe  
Fina inthe Code Monty te ver his Sha souk  
feetaned The season tht ifthe sansion of Sina  
tb is temoved, the only remedy eft toa defumed person would  
ea Sf damage which & nos ony expense Gat ah  
ty ese sem" Many toch pero guity of defomaton  
hey fo ice and ig ye erred om  
‘ten Forte, pote servants ae Sing Negi delans  
  
tein ci am abe ap Scns wah  
  
Beaker "eve Consequently “nat soaesng that defame  
fom should cate o'be an oence., The Tp of fe speech  
sree thin slimy salegunie by theese expans:  
Min aa icons ded tothe deition of defamation  
  
21.2, Explanation 4 to setion 499 explains wht is meant  
ty haring’s porns eputaon, anf "extode coy hing  
cept an imgaon “that, direct oF aden the eae  
eto Sher oer he mart orl ce  
  
that pers in respect of he caste or of hr alin, ot Lowers  
the cro otha peron, causes 110 be beled tha the  
bay f that persons jotsome sate ors ate goeraly  
Comidered at dspace  
  
We considered the possility of snplihing this Jeng  
satement ot found Endesrable as wa ily to become  
iss"Coniete ands pertaphs more’ dat xo UndeSsand  
  
21.3. The first exception (9 section 499 says that a troe  
Inmputauion made for the pubhe ‘good is nov defamation. nd  
then adds” sentencas "wbether of not iis for Ine. pubhc pood  
|. question of fact Tals isto make it clear that toe question  
fs fo te decided by the jury'm a yory tral. After the abol  
tion oF jury tal, this explanaion” as font fis sgnifcance: and  
ye therefove, prose fo delete the second sentence of the Ast  
exception  
  
21.4. A substantially rue report of the proceedings of 2  
pert of juste fs expeted by the fourth exception to aecton  
3H" We’ considered a suggestion that tis exception should  
be limited to report of the proceedings in open cour. and should  
ot apply to proceedings br comera whist ate not meant to be  
  
Tester 35  
  
1  
  
  
Page 336:  
a  
  
published The object of exuding the public from the court  
55 to deny publicity of any sort to those proceedings, and if any  
fone violates that Understanding and gives publicity. dean  
{Dey Statements, he should not he allowed to 2vall of the Pro-  
{ection of this eeption. We age wih this reasoning. and  
‘commended that the exception ‘be amended by imerig te  
orden open court” aterthe wordt por of the posed  
ngs  
  
‘The Explanation given in this exception i intended to cover  
‘commiment proceeds before Mapiicates Since according  
tothe eve imino ude a veo of ee  
{osed fy us all proceedings Belore a Magistrate acting judicially  
Ihilbe” “proceetings of a "court of jestice” and no further  
Explanation is necessary. The present Explanation can, thero-  
fore, be deleted  
  
21.5. The smasimum punishment for dlamation provid  
et in Gaon 0) tg ear pe npn aaah  
Soe Sggeston, Rave teen made Yor ennai, we And 80  
ferciea owen for domg io", We thks however that  
Beimprtonment ned not seer be "imple now  
ove sl te aed osm ee  
Spun  
  
othe wut samen (at, where the uma  
szatement has been peblthed i's newspaper and thus ma  
  
Xnown to a large aumter of persons the fact of the oflenders  
Sonvicion thould be silly published Such a step would.  
Ste think afford more satisfaction to the innocent vxtiny than  
{he ete punishment of the oflerder, and we recommend the  
Jmertion dfs new provision i secuon S00 empowering the com-  
Neling court to order such publietion in sunable cases. The  
{Sat of pubacation should be made recoverable irom the fender  
Sen foe The order for pubiation wil, of course. bem ade  
fon to any other punishment to Which the person convicted may  
Have, hea eee Seon S10 shoud, mccorsingy, eT  
  
500, Punishment for defamation  
(Nuke dies ser allo panies wie  
imprgonment of esher jon fot a term oh  
  
‘itd toto years oF wih ey OF th Both,  
  
iy  
  
(3) The cost of such publication shall be recoverable  
from’ the somvisied person’ as a. Roe  
  
  
Page 337:  
Spe  
Set  
  
a2  
  
21.6. Section SOL punishes any person who kné  
ent or nee ay deat bt and econ  
nises ay person who no sth printed or engrav  
inl. “As under section $00. the punishment ‘ander these two  
sections need not necesnnly be simple imgpesonment We  
pose 10 elie th word "siaple impisnmen tn bath  
Sections by the words “imprisonment of ether description".  
  
  
Page 338:  
(Cunrren 22  
(CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE,  
  
12.1. Criminal nvimidation i defined very comprehensively  
i secon S03, Bat rather coiousy the. panshment for the  
‘hence nit simple form and i two diferent aggravated forms  
iipembed scons iy and 37. afer deg wit nl  
‘dh antent to provoke breach of peace in section $08, and pubs  
Tealion of stllement conducing’ to public mnciel in section  
Sos. ‘The last mentioned secdon (pertcalanly after the recent  
Sincndmen of 1969) contains mistre ef dees some of which  
ould more eppropriately have been put im the earlier chapters.  
Section 308 Consitutes an offence substantially similar 10 the  
ence of criminal intimidation Section "509" connected  
Sth section 30, ful being the common feature, while section  
Sa fats der the eategory of annoyance, the tics mb men-  
‘iomed in the chapter heading. The chapter is thos @ hetero;  
(encoun bscranged, bot navethelesswsful, mistore of Pen  
  
Provsons  
  
22.2. These four sections relating to. criminal, intinida  
tion donot reauite any change But should preferably be Bought  
topeiter.  
  
22:3. Another (pe of iniidation whic, in oor opinion,  
soa be ponbath? tndr the Code i hreiening t0 commit  
sede whe object of coercing » pubic authority to pore  
PNG ation hich is sot prepared fo do. We ave in  
2 ples, Shape tisommendea” that an atempt 10 commit  
SaPiSE Shoal “case to be am ofence. Suicide threats of the  
Se ent ory ee sxe  
  
apvrecent yey are ina diferent category. Tele main  
tijet can ony be described scomcon o maton of ub  
Seistusorises”, ed the persons indulging in sock threats hope  
{> ashe toe objet by the disturbance of puis order 3nd  
Canguiity With they expec to create dating the days when they  
Seo'Eeniauoosy preparing. carey out ther teat ta or  
Spinan there 1 9 fasiReation forthe State permitng sch  
SBiatonal sctviny to be cared on with impurity. Ths view  
  
Shared bya large number of persons who replied fo Out Ques-  
  
rears (a whic we had incoded'a specie question ot this  
poi  
  
We accordingly propose that 2 new section may be added  
ater section 508 28 Tolows  
“S06A, Threat of suicide with intent 10 coerce @ pub  
ic cuboniye Whoever holds oN 2 threat Of suGd® 10  
33  
  
Sind  
  
iste  
were,  
  
  
Page 339:  
gen  
Set  
  
Mosk  
fen  
sors,  
  
Fy  
  
4 poblic authory. with intent to cause that authority 10  
dopa as hah tie Bod fo do of 10 ont  
to do any act whch i egy ented 0 do, the means  
‘of avoiding the execution of sch testy and does any  
foward the execstion of sch threat, sal be punted  
Impuisonmeat of either description or eam ‘ehh may  
extend 10 three yearn oF wa fine oF with both”  
  
“Te offence should be made cognizable ad triable by a Mait-  
thate oF the Fit Clan oro Ne  
  
4, Section 504 punishes a person who \_“intutionl  
inst, and thereby gles provocation to any person intend  
Ing or Koowing itt be likely that fork provecstion wll cause  
Ht athe ple pee orto am any other ofc  
"what shout realty attract habiey i the oes  
Proven only fink a the chai, and  
tse merely to docribe the quality of the insult. “The secuon,  
therore, fetes to be reas 30 810 bing cut mere dea  
‘the connacion Between the insult and the breach of Peace. We  
  
fecommend that the scion should be fevued 30-48 0 read 98  
Follows =  
  
apn etal al wit lent prove beh  
the. peace "Whoever itentionally insulin)” pero,  
“ending ce hoowing to Be key that sch insu il peo!  
‘Yoke that persom (0, break the public peace or to corm  
“notes “ore sa te pune ft mpionrent oF  
Shther detention fora term which may extend toto Yrs  
Or with ngs ce th oth ™  
  
2.5, Hs Son oust ona ht ma oes  
co fing petvont ae bag requnt aged In publi the  
Stmoyancé of mt only those patton bt sso of the pu In  
  
ir ad sich demonmatont ate cacuoted to. elt  
An's "breach of the pence in strain ‘irsamsances a mock  
Heel might he pombable' st deamaton fet it would Fe  
tmoresattactory (9 probit sana oflence of tl te  
Soyanc nth Chae. Werecommend anew secon 508 A  
I Tllons eet ach cate ==  
  
“500A, Performing mock fraeral ofa Iv person —  
Whocte, ih inant to Ene sec the pub a  
myers o mith the knowledge tat anoyance te ly  
io" be cased 1 the poblc oro any peron  
us pin the man’ dy ok inka  
ving person, shall Be pun  
ith imprnoniment of enbee deseipion for a Wem which  
Ima) eld o'teo Jeary wih he or with bth,  
  
“The offence should be made cognizable and triable by any  
Magistrate,  
  
  
Page 340:  
3s  
  
22.6, Seton $98 punishes the making. publishing or c  
  
Statements rumour oF report conaucig to peblic  
Cay ptt marl easing We have  
Inv’ previo, Chapter recommended that cise (a) of sede  
Aalion”"() telating to statements made with iaten (0. cause  
mony, ecco a matinee, among a  
Seam the armed force We have ls recommended that  
ite fe ofthe econ iho well eared ee  
2S eion FSe'Bo Scion 508 may accordingly be ome  
eo  
  
feta dies Rie es  
Ing death or distr ech were bound to cause fear of ale  
  
224, In oat Report on the Code of Crimieal Procedures  
swe have seconmended thatthe aence under seston $0? show  
be cognizaie. No changes ure needed in te Section,  
  
229, Section S10 pusishes » porn appearing dunk and  
  
i smnoyanee 10 peuple 2 publte pee. There Is ro  
“inom in the Police Avr which: punishes "any person who Te  
found drank cr rctous or who i mcupable ef faking cate oF  
hime The punishment ts fine upto tty eopees or mpeson:  
many upto eight dary ‘The vMfence mnt be commited "om any  
‘lad of sn‘aay- open place o set or thoroughiare™. within a  
holed cown This provsion should be enough, for ares oti  
{isd under that section. tn areas where secuon 3 of the Pate  
‘Act ieinct applica: thee is hardly any need for section 310  
‘ovine Code: fe such misconduct not notcenbe. We recommend  
that secon $10) may he snted,  
  
1. Se pagiaph 7.9 stove  
2S pega 8:26 bose  
3, The Pre Common’ Renn (1980, Fat pan 3  
4.2 Regore Vol Hs paragaat 8  
  
5. Seton le sii, Poe a, 1D  
  
Reered  
  
  
Page 341:  
Cuneren 231  
  
VIOLATION OF PERSONAL PRIVACY  
  
ih of  
  
Pear: 2. The quest for privacy i a strong one. The  
Robert Browning sad in Paracel OE me  
  
1 give the ght up : It there be an end,  
‘A privacy, an obscure nook for me  
T want to be forgoten even by Gos”?  
  
A man’s privacy. his “right 1 be lft alone, reqies protec  
Got tom the iw to the extent to which would be infnged  
ty ethers without jost cave. For sich protection, the law ot  
‘he as centr ae madequate mainly because of he rapa ad  
‘ancement of techno, especialy tn the fll of kerones  
soa ad Wah te ern coi oma sd  
Sica devees, is very eny to infge oa te privy of  
fest ie nt owe wou Ri nai Hens  
{evasion of pvac. which was perhaps the ubec of ie poet  
{2 imagination nthe last conery, ba now become el menace  
fering satatory ilerfvenc "AY one Aenean sathor 9  
  
‘We are slowly diting into world of nakedness. Each  
year an increasing number of technological devices invade  
the world that we oace considered private and persons. In  
spite of this, we are sll confident that ovr liven actin,  
  
though and sensaon areshived wh noone une  
  
Microphones reduced tothe sae of & matchhead pik up sound  
‘saves and transmit the same 10 eavesdcoppers. Iftated light  
‘cycles tn pt thes and Oto om  
Se'adjining room sven thowgh opegue ws ance  
  
topaphy has abo developed to such 2 remarkable extent  
‘hotgerpis cam be taken rom a ditance thou the 500  
concttned bem swate ofthe same  
  
4 of Aieap fas bea Sal whip apie 9 abn are S41  
Gai ede cade proposed 8 omiucd sarc ne Cap  
  
2, Roseterg: The Death of Prac,  
5. Cook on Torts, 2a Ein, 188,  
4 osentnr: The Death of Piva, pape 3.  
  
336  
  
  
  
Page 342:  
a7  
  
of the Universal Declaration of Human  
‘of privacy was emphasised tn the follow:  
  
282. ty ance  
Rights 1990) the  
  
‘No one sl be subj to arbitrary interference with  
bis pcm home x ereipondence ors  
upon his honour td eputton. Everyone has the gt to  
{he protection ofthe law apna ch merece ot aarkes  
  
“Though this Declaration may not he egy biting on the no  
toma aaa aubere geke oh ir lSs  
tthe Chapter ofthe Uinted Nats wel eth  
‘apaciy, the Declaration hs condersble indiect Tegal eect  
Sand is regarded by the General Assembly ofthe United Nations  
{dato by Some juntas a port of she law of the United  
Seer The ne erate nthe taal  
‘ovenant on Civil and Poltcal Rights, adopted by the General  
‘Accemmbly on the 16th December, 196, to which India pars  
  
‘Atile 17 ofthe Covenant reads  
  
Sit) No ome al we subeed to wiry of nls  
Su interference with hic privacy. Tama, home oF corrpon-  
‘dence, nor to wnlawil atacks ea his honour and repusation,  
  
(2) Everyone has the vight tthe protection of the tw  
against such taterference or attacks:  
  
233. As the safeguarding of privacy is thus made, for all  
racial purposes apart of fnternational Lam, iti not neces  
‘Sy 'for ds 0 dia a length on the need for Tegisation sa this  
3, We’ nee only Gute a observation by Pops Pos XI  
the course of Ns addreue to the Congress of the Internation  
[Assoxaton of Applied Prychology in 1958:  
  
‘And just ay itis iit to appropriate another  
ot to make’ an  
  
Consent 0 8 not perme to ener ite hs inet dom  
‘gains his will whotever the techni or method wed.  
  
Ratt Te atcha capa  
Seiesropiie an ater,  
senate Roy ate tae!  
  
2 Seeuoes 3G ang #89,  
  
ft ie  
Sore  
  
  
Page 343:  
Sirs.  
  
as  
  
fon the subject ate om the proces of being enacted, Thus, in the  
Brat German Penal Coa prepared i 196.3 noe ap  
teen set apart (o de wah “ohation of personal privacy The  
seal “ant ste poz ma oes  
fo discon publicly another's private alfa, caves drop, obtain  
Knowiodse confidential communications, violate coaihdenil  
Gelonures by profesional persons. breach of pavacy by oer  
folders and persone especiity obligated for public trice and  
mmeraa potion of set the, Brat Japanese Penal  
Gade, prepare in T96I, opening sealed correspondence and  
breach Sf privacy by profesional persons have been made punish  
he!  
  
235. In England, = Committee was set up by “Justice”  
(Boaish Section of the Tnermaional Commission Of Juris) to  
‘amine the whole subjort of privacy wath specalceerence (0  
the safeguarding ofthe same inthe English law. The Comntce’s  
Report pubitned ia 1970, while suggesting comprebeonive le  
Jaton on the cil ide, recommended that co make use of elstro-  
tc. optical or ther ati devices at a mean of surrepatious  
{urvellance should be made a criminal ofence excepe in certain  
Geary defined crcometanees They also recommenced further  
‘vestigation as Fegards criminal Sanctions for industrial espiow  
a  
  
34 We therefore yhoueht it advisable to examine this sub-  
{et and incloded in our Questionnaire the following question —  
  
slew of Artiste 12 of the Universal Declaration of  
Huet! Rh 9H) goyou hn, habe Cona Lay  
ug Feo rode the righ of privacy. and i so  
Stitt Kind of “imterference with the Hight shoul. tm You  
Mien, Be ponshable?™  
  
‘Though 2 large number of replies received to tis question  
zante of pander ve  
legato to make certain types of Invasion of privacy penal  
‘Fwove the Judges were m favour of special provion the  
Penal Cove fr tavanon of privacy based mainly on the Nocwe-  
fan pater One ofthe Chit Tastee wt some bp  
fing Should be made in te law of peasy. During discussions  
ome of the Judges observed. that Specie invasions of pewacy  
ithe telephone tapping, tape recording of conversations, unauthor  
teed shidowing should be mage punubable. One af the Advocate  
General of a State interference wih the  
‘Hah ol privacy without autbonty of faw should be made pel  
  
| Seton Tao 18,  
2 Arter 334 Sa 35.  
  
  
Page 344:  
Es)  
  
A Dea of Law Faculty sited that opening of sale ltrs and  
‘suuiboried disciosure ot information by profesional pesons  
wc a0 eacal Otier and egal vactoners shoul be made  
  
232. As the law on the subject i sil adimentary even in Boe  
~hanend counines, ne would not advise comprehensive psa!"  
Wom to deat with ail sspets of invasion of pevagy. Wis Beles"  
{0 make a begining woth those masons which may amount 19  
what is known as envexdcopping and unauthosied. pubeation  
ps aad feave the Fes 19 be comudered {ater ont  
Saperience gained. and legislation. introduces,  
ies. In any sch law. the maghttacy and the poles  
il naturally have to be exempted from the penal proviscny  
ong as the act In good fath nthe Gucharge of thei dues,  
  
235. We recommend the insertion of the following new Pevows  
seclions in a-separate Chapter which may take the place tthe Sia  
  
‘existing Chapter 19 proposed to be omited =  
  
Cure 9  
OFFENCES AGAINST PRIVACY  
  
Ss  
  
sng a a es  
jh on Sia Cones re ape  
seid aie asnty See ey ee  
  
491. Unavthorind plorography.—t1) Whoever, intending t0  
care lining 1 lth he wi ane! nora fo  
‘any person, takes a photograph ofthat person without his con.  
Sentchewhere than in-a pute piace, of takes his potopaph  
in pts place when shit prson had peohibed such taking,  
Sale puted th smplmprisoament for a term which may  
‘extend 0 st months, or with fine, 2 with Both,  
  
5. Kray bo pata section docsters of acter  
SR sais thoig'n rl henag oF edie Spat Suck nt  
via sli oa ont i sae sols ht  
  
  
  
Page 345:  
0  
  
(2) Whoever intending to cause, of Knowing it vo be Btls  
1 fe sl cause. anmoyance To. any person. publishes 33  
  
sreraph of tie pers tke fm contraventn Of subvscin  
Gh Shai be panned uh sige imprisonment fora term sh  
tray extend fone pear 0¢ wih fine, oF wth Dot,  
  
492. Bxcepion regarding. certain act of pli secrets ae  
oto i eae ta eects Neal to Saon 9  
Er Sesion 1 apples —  
  
{a) tony public servant sting in good faith inthe course  
or hs dunes connected sith the security of State. the preven  
ton detection or vestigation of offences. the tunnisalion  
Ol ane or the mamfenanee OF ute ore.  
  
fm ion acting wd eden fa  
pubic servane  
  
  
  
Page 346:  
Cunrren 24  
TIME LAMITS FOR PROSECUTIONS  
  
241. 1 now semaias to conser 3 subject which, thovgh  
roses uo’ deat with i the Code of subviantive crim  
tal ae ftp cota, mama the em for nc ng  
persecute  
  
242. in our Questionnaie, we had inchaded the following  
  
“Do you considee that thers should be a statetory psn  
of tintin for resceuion oe any ofence unde the Cade.  
nil so. for what offenses?  
  
A ssjorey of he replies raced om this question is against  
protein period imitation for\_prowrstion, OF the sale:  
‘umber im favo of sntrodcing the in of lmtation Sn coma  
Sacex afew are for prescribing te-iit forall ov alos a  
‘Sienoc. and vider only hw comparatively miaor offences  
  
1) The defendant ought not to be called on 10 resist,  
«clan shen “evidence as een Jost memories have (ed  
4nd wnnestes bane disappeared  
  
(2) The law of limiation is ao a means of suppressing  
Saud, ox? peu. and quickening digence and presenting  
oppression.  
  
(4) A pany whois inns othe value of ii remedies  
3nd Who does not ser hs own claim sith promptiade has  
Hie ono rtf eguvethe a of the sit enforcing  
  
(5) The court should be relieved of the burden of adjuds  
‘ato Insonsequental a enuous clans,  
  
Ons of BR, Toerpi's .Raoay  
  
iia BUS, Sa, a  
  
  
Page 347:  
SOSA" ome St sri  
SSSR Rasen word  
  
eases as sn etl cases Memory iit  
Fad seceapecive of the nature ofthe proctedng,  
suc tothe quatcation that a settows enminal uty perp  
  
tedon victim may remein fed in he memory fers Ser bag  
  
Remo, |, 245. ‘The wal reasons given for not extending the la of  
Ke Goue™ timation to etna case ae tha. la a canal proseutn  
  
Possonin 286  
  
ine part fram the injured party  
NGNoon abs whote has am  
  
Ilo: th olender and th  
  
the offender. the'communi  
ret Inthe detection in8 punishnent  
reat may be defected W the mere expiry  
‘ume liowed to apcras a 9 arto prosecution, Motcene’  
nach case there wala» a vctim with an acne percoat  
rs in scching bs remy, and the wrongdoer fe gee‘lly  
Korn: bots many criminal cases the wrongdoer map net be  
  
Knoan o¢ ee maybe untacesble due tohisabsonging or for  
‘the reas  
  
glsh mode. thee 0  
  
In India, following she  
  
Tay. Seteral Taw of limiation for prosecotins, Buti soe of «he  
  
esi and toca! aw. pein of lmtation has been pescsed  
  
‘GE. pection 106 ofthe Factors Att Ios sna sechon 133 af  
he Amy Ac 1950  
  
ing pronecations. but abo for exseuton a Sener:  
  
[Mailio» copied by the’ courts Among the orsign Pema! Codes we  
  
SEN" ite'teen able 10 tok noe  
  
och fees aver to be found. the  
Codes" of” Argentina, “Aust, Ceylon. Colombia Franses  
Germany: Japan, Norway. Russia ond Yiogostaia  
  
24K In countrcs where the Anglo-ayon stem of juris  
prudence prevails though there no general of mitaicn for  
‘Somes. nevertheles. for certain classe of offences, limitation  
‘ns been preted For example, in England thre fie hi  
oF three ears for teason ge. mispiion of treason except  
ster hee plot oanaanate the soveeiga or tran core  
  
here is 8 general Limit of i months for tl  
bby Magistrates of summary” ofences? bat this fue i sub 10  
  
Arscming eat Coie ‘ie 62 Ausiian Rat cis a, eb yas,  
{Sei Cu ang TO, Noreen Rat Cost ut a ay aan Ses  
  
Section Sand 6. Teton Net. 15. Teton A OSCE  
Sion HO Mage Comt Ast 1952 Eee}  
  
  
  
Page 348:  
30  
  
several exceptions. Then, there isa time fat of 12 months for  
Reena nh "aban he  
ag of TS anu below the age af 6 Similar prownons ext for  
‘hese ofenest in some Atsiaian States  
  
We note shat the Law Commision of England has propoted  
w comideraion the general question of liputation i coaminal  
Iroseeings and iocaded. sin working pager” for eetng  
Spinon,  
  
“The Model Penal Code of the American Law Insite pro-  
fpoes'a pend of Imitation for il offences except murder  
  
29. The disingihed Novwepian Jurist Johannes Ande: Yee  
sgn gente Slowing ape reseas Wiy tere should te Ae  
  
{Tiaw'otfinwtation for crimes also  
~The factor of root:  
  
[As ume passes evidence becomes more and more uncertain,  
tnd the danger of error therlore rea  
  
{he clam stem from the penal lsw'or  
fsndence 1 lost. other" evidence’ becomes unreliable. Thus  
Testimony of witnesey cart change character completely beeane  
‘of changes in recollection of a mere lapse of memory. By sting  
4 dele ume lm the lw avons bang dese o 8 Wel  
  
‘The factor of prevention  
  
In the civit law we often refer to 2 preventive purpose as  
44 reason for limuation; the ownec. of rght shoul not  
Jetthings remain uasetied there muse some peesere on bin 10  
ave the matter cleared up within reasonable time. The same  
afgument can be made with respect to liutation of the pevate  
‘Pah to prosecute” And. theoretically similar reasons can also  
[BE advaneea with respect (0 the ondinay lnation in the penal  
te ld foe prey ome pute poet  
Seat up matters within a certain time, However, no great we  
fam be piven to this argument. Thee are other mathods to prevent  
‘clas on the part of the pubke prosecution; there are methods  
more dec than tleving the olendet of criminal habit  
  
‘The eed for punishment dims +  
  
Wat is more important i that the need for punishment dimi-  
nishes a Une passes Ths is especialy elat from the Ingo  
1. ext Oa Aa ion fad,  
2 eg. selln 212, Quensnd Cronin Cae  
  
2 Most apron Gener Prints of Cation of Cina La Sabet. $  
4 Seton 16  
  
Anes, Te Gene Pato he Ci  
  
ina a of Hovey, pags 306315  
  
  
Page 349:  
ue  
  
preventive point of view, I the pity party has kept peace for a  
Romer or Suns woul besatrey to any and of arp  
{o punish Nin now and if he bas been Golly of new eens,  
fe dame pred for those. Noe do the consiertion of genera  
Prevent or he demands for setibatton apply wih these  
Force as the yeas goby. Time Realy ll wounds. Both te wetim  
fin te po cali down aera whe, at east “wath respect  
ies sens oes. eis portant forthe autonty ot the pensh  
iow: of couse, at he gut peron does nat excape punishment,  
bur shat lar ually sprtent ns respect te that the  
favor is Clemed up and the gilt party ou co court whe  
Te" Stence is sll Taher treks A prosevouon taay years Tet  
{foes not have the sume beneficial et  
  
“The opposite considerations become stronger:  
  
on he te ind, pont asians bce ton  
  
rte moves on, For he ally ary. who perhaps has over  
Spc nacrimialnctinnbons aod hi ceased to tink of puss  
font. feud seem harsh to beheld habe afer many sears have  
one’ And would alo be harsh to his Wife and chiren who  
iy have wo knowiedge about ths pat of his ast  
  
cli fea aw Commision ail inal imeinon  
neal hang ttl benedt but ater weal ease serow  
ho Untappmness fo the innooest and the guy alike”  
  
2410, Too, German wis be nan a dicunng  
war eres, explained the of principle of limitation,  
Iter of therewk of an naive jdical proces om the eime  
Rg the remnal of the erme from social eonsrousoess, “The  
aes ace when, through the pasiage of me jurseaty the  
‘coat ofthe michal i made to depend opon the gravity ofthe  
Mabe che iquries inflicted upon the community by the crime  
SreAdatcd onthe act Hell tas ceased to imperi he fe of the  
SSmmoty and the rule ef law, by force of a bad example left  
Tapunisbed the conditions Loo must be ripe forthe moval of  
2"Panea ne om he canto of eh 9 ht they  
Jie no longer preoeupicd with t--, -Consequenty, pres  
Mo's not ony and simpy a onesided water of prosesution by  
‘Jet and the State and tl ese the jundiealexpresion of at  
pincpledtndiference. Basically, Wt rather a special form  
etuppetssion of come eflsted and shaped by the law from the  
‘rindi hat the organ of erinal peosection must make every  
Bort 'wita ther powers Io ensute the detection and punish  
tment of crimes commited. To llustate, svording tote law in  
Free in the Federal Repubise (of Cerny) prescription does  
[oes pate ihre 1a general suspension of the jucial proses,  
  
Sisal by y\_Legches, Dean a ho Cay Fc of onto Univer of  
  
a as  
DRS As  
  
  
Page 350:  
us  
  
ee Apis ih a eee  
ona he Bay of nc de eat  
sient E clare aaa  
Inioget pad dedy sare take Ret  
ich 05 (Sri Ss ashame  
Hoceonmel i cl tne tn  
  
2A. te seems to 1 tha there is strong case for having  
4 petod of invation for feats which aN fat vey setae  
tach alec ctl eo su ed  
the teed for ensuing Treetom from proscution itr asa  
tas headunit comin Martner. er he  
‘api of x cena fried the seme of socal terbuton less he  
dead te pumsmest does nat seve the purse of see  
‘Ertan, deeran fet of puicn nf eof  
the most important abjectves of penal law i Yer) mush.  
poired ifthe punistiment ty not inicted promplly and Nie  
Trfited at time son it has been wiped of the memory of the  
‘tlender and of oer persons who had knowledse of he cian,  
  
2.2 Ag ge ai sete  
Frac tiene ah encanto  
See SING ee eating es coe  
beseech en  
Sere cane eh Pee  
  
1 Jamey Bem ring La inte Sven Sa Sosssons™ One  
Yeoh RS HO °  
  
for the  
  
1970) New  
  
  
Page 351:  
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sesing  
  
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1. Art 10) ate ternational Covenan on Gv ad Poll  
2. Aa Goons Collesor,Honbay ULAR. Metvan A  
  
36  
  
after the comminon ofthe offence has ben ecempary. The  
Asean sew" that th eal in OF pope shoul be  
‘Sinan nd haba thon cn be eter  
tlemented by Cofeing tte iments fom poses  
after the lips oF 2 ceriain period, instead of by requiring him  
  
{o undergo the harassing. proses of promcuton aod. nn  
  
cn i pant yaa me sae oe  
sage tanh  
  
lu Beal Mil eae cancion  
Mearns cen ei acti!  
  
24.14 We. therefore. recommend thatthe principle of timi-  
lstion should be introduced for less settous offences under the  
‘Gode, We sugses that, forthe present ofences punchable with  
fine Only of wth imprisonment upto tree yeas should be meade  
sabject to the law of ieitation The question of extending the  
{geo eraver offences may be Yaken up later Onin the ight et the  
cnpericce actully galned.  
  
2415. As rues the period of limitation, we proposed  
ic shuld be graded aecorlog to the masimuin pussies  
the ‘fence, 25 follows  
  
(2) months, if the off  
only  
  
i punishable with fine  
  
(6) one year. if te ofence i punishable with imprison-  
ment for a (rm not exceeding ue Sear, and  
  
he ence is punishable wth imprison  
ro not exceeding thse Seas  
  
24.16. As egards the question what should be the starting  
poate commuting maton, hee pone aenaies could  
  
Thought of namely. () date af commission of the afence:  
Ui date of Wiscovery'or knowiedge that the oflence has been  
‘onemitied, whether the offender be kaown or not and (i) date  
fof dicovery’ov Knowledge thatthe efence has ben sommted  
byt pantcule oender  
  
pam  
(OS. 9, at  
  
  
  
Page 352:  
a7  
  
24.17. On the analogy of the law of lnittin for civil suis,  
sinernance {2 above may stike one 88 the natural choice, ul  
ran portant eens 9 ne in rege ca  
Drovecusus Psa civl wrong, ony the person wronged is acunely S2cP  
finest ih pursing Rs elim, and the wrongdoer fs known,  
Inthe cise ote heim ft ce need  
im in-tating crsunal prosecution: and even he iy attested,  
{he ones, more often than not unkeown, the person really  
Iemted by a offense may not for some time come fo ERO that  
lin offence hay boen commited, Sometimes tere thy. te no  
“Sum wc nh ae of pb nace nko ne  
uals, sting. mache! to. public propery eke Praca  
‘omsideratons therefor, compel one fo reject the ist alterna  
DALI “The second allernative js more atrctve. In some of iy Bs  
the spi laws (es section 106 ofthe Facoriss Ac) the date coven  
“Ssooven oF Knowicdge ofthe allence has bee taken asthe stare ofoe  
pom of hmiation. In England alsa. 19 some statutes the  
  
‘ence. sccion Hof the Factories Act, 161, section 203)  
(Ofte Dangerous Deugs Act 1963, section 268 ofthe Road Teac  
‘ct, 1963" nd seston 243) of the Pharmacy” and. Posons  
ASC 1983.2 There ao, however, practical dieses In tming  
{he date of knoe ge ofthe commisson of the offence the start  
ing poi fr all ofnces. 50 fart copmizabe.sflenses fe con  
‘eroed. an information cam be lodged before the poise by the  
Segrieved party against an unknown offender, it bein tet (0 the  
Poles to Invesuipute and find out his dent. Gut Im respect of  
oncogu otters hh are general tated by Aine  
  
‘on a nck construction  
sun section 306.Cr PC an aggre  
party may beentiled to fie complaint agamsts porson unkown  
Tesving to the court by doe investigation ef engeiry under  
section 302 to find out the identity ofthe ofender. But m practice  
och complaint i tiely to be dismased with» direction to the  
lain to fnd! out the name of the ofendes and then move  
the goort. Hence if the date ofthe Knowledge ofthe commission  
‘ofthe offence be take as the starting poet OF leitation for al  
‘tumor olfenes time may run aguna the aggrieved party through  
ho aol of he, and by the te he comes to know the Wenihy  
(OF the oflende the peviod of lesion might have expired  
  
1 Sines groteings or cin often unde the Road Tie ys eet  
‘SIMD rt tS ae ete ee be constan es ieae e  
Th ele othe pst thence has he cette nt one me ON  
Shen toemtaon of the oflence hheset pated is fonger eH  
Spray proceeding for an cae th Ac ty commen within 12 motte  
3 hep veo esata sige yb  
Sie ib hn at pode ee hm et  
ist I fae Nonna tw Seay ef ae  
  
  
  
Page 353:  
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+ bai Daves Saves PALE DDE AOI SuRRL ITER OH  
  
38  
  
24.19. We. therefore, consider thatthe starting point (or the  
spurpoue of tmitsuon should be the date on sich knowedge  
ithe onus of the ofender was ksown ether tothe aggreve  
patty, or to the ofcer investigating the offence, However if 3  
Speci law’ provider afferent staring poxnt that wil pevai  
‘her the ener law 40 be provided m the Penal Code.  
  
2420, The question whether prosecution commences on the  
ate on which the court thes cognizance of the aence oF Onle  
fon the date om which proces se nosed agaist the acused, has  
‘Eons by the Supreme Cour with reference fo sechon 1S  
(Sh the Merchanchte Marks Act 89. Where the complaint ws  
fled thin one gear ofthe diacovery of offence, je cannot be  
hvown Out morly because process as not wed within one  
ear oF such dissovery The eomplainamt i required by section  
TPoP ine Act to scommence prosecution within ths period.  
‘hich means that if the complaints presented within one year  
Srvc dscovery. the roqufemente of ection 19 are Saisie  
‘The period of Hiitation = tended Lo operate” agaist complat>  
sncland to ensue diligence om hi parti prosecuting his Pahts.  
hd not aguint the Cour. Ie wll detent the objet of the enact  
‘ent deprive traders of the protecton which the aw intended 12  
  
ete 19 hold that Unlese process sued on their compl  
thin one year of the aseorery of the offence, nt shoud Be  
thrown out  
  
2421, A few mates of dal may now beconsiered is  
«asin ii cates? m-compating the period of entation foraking  
Signianes fo sense the day rom which such period 10  
‘ettctoned shold be exhoded. Ie may, in this connection, be  
‘occ tnat ction 23" Limitation Act 1363, (abich apples the  
rovisons of that Ack to other laws) may not suc to apely  
{ie corresponding provision (action 2) of that Act to prosecu-  
onsen Hf cong sxsndapnatins, Thaw  
‘Site joc decison egardng complain san sppiication  
SUD Ealing within section 2% Limitation Act. beter "(0  
iive's specie prowston  
  
Signa meetin comouing se gcd  
  
vtnion for taking" copmganee of fener the time Goring  
‘Thich any person as been prosecuting wth due diligence another  
rosecetion whether n'a Court of Rex estan or in a. court  
BfeNppeat oe reviuom, against the offender, should be excladed,  
‘thet ine prosecution teats tothe same facts 2nd is prosecuted  
{n'good ith ina court which, from defect of jridiction of  
‘iver cause of a ike nature, ss unable fo entertarn it  
  
2 sf ston 12 (1). Linitation At 196  
3p Mada, AN. 1999 AU TE Site Rae The Sate, ANR, 1964 AH AS: Bomex  
  
dieentsiis Rae  
  
Seton  
  
eins NS  
nation At 183  
  
  
  
Page 354:  
Pd  
  
2428. Thies, inthe case of a continuing offence, fresh  
period of bmstatio showld begin rum at every moment of the  
ne daring which the offence continues and we recommend  
the insertion of a provision fo that effect  
  
2424. tmpediments 1 the institution ofa prosecution have  
ko to be provided for Such Impediments could be (a) legs.  
Sf) dae conc oe acces. of fe) ue tthe cou  
  
As cgurds legal impediments to aspects may be considered.  
  
iy the time for whch Inaition of prosecution sae  
‘anders Igal ronson. and secoodly” prosecutions Lor whch  
Brevi sactom ft requited. oF notice has fo. be given, under  
[Egaiprosion oth are appropriate ese for special’ provision  
the period of limitation. We recommend th  
‘ ion ofthe prosecution ie expect ofa Meee  
BaS'Seem saned by an injunsion oe order, thao, im computing  
the pecind of imation for taking copiainee of that offence  
the lime of Ie contipuanee ofthe injunction of order. the day  
‘on whch ia sued or made, and the day on hich twas wate  
‘Stawor shal be excloced  
  
2425. We abo recommend that where noice of proxeeue  
sin for an feces been pen oe ref prscuton For  
sno he pee sna Soca he Covert  
‘any oer aullei regored tn becodance mth equ  
‘ens ot ay law forthe te eign fore hen a computing  
Aiea leo ing ogee tte ce he  
‘he pend of such note or a6 he ce tay be. the ime ea  
{br Bbning such coment or sanction, shal Be exclodee  
  
2426. Asillustations of impediments caused by the conduct,  
of the accused, we may refer to hs being out of fodia, and his  
Shacomding oF concealing Rimsell Running ofthe pecod of mv  
‘tron should be excluded in both cases  
  
2427, Fal. is necesary to provide forthe contingency  
arising out ofthe cog being led 4 day: and we vecom-  
tmond® thas where the prescribed period for taking cognizance  
‘am ofenceCxpires 4 day shen te courts closed the COUT!  
Say" uake ogntance om the day when the Cou re-opens.®  
  
| Axsoctning oor wth eres seston 10, Fairies A 9,007.  
na  
  
Sera  
2 efemtin  
Sesion  
{seston 12h, Liman Ae 1953  
San tamtton Ae  
6 of Scion 5 Linn Ae 19S  
  
Catan  
feet  
  
Spe.  
  
  
Page 355:  
Sale  
  
Bee  
Breet  
  
wee  
Castres  
  
350  
  
24.28, We do not think it ecessay lo give power to the cout  
to excase delay in other cases, like the power confeted oa the  
{Coutt By the Limitation Ack, in tespec of appeals and apie  
  
24.9, For the preset, we do no tecommend any limaation  
for the exection of sentences, beste experience shows that  
Tait there no undue delay im enection. Even there is 0m  
elas ima focuses Geto the accsed abaconding er jumpins  
‘ior othersie, be coanot take advantage of that dla  
  
25.30, We recommend that the following Chapier be added  
the Penal Code athe end.  
  
Curren 25°  
LIMITATION FOR TAKING COGNIZANCE OF  
‘OFFENCES.  
  
S11, For the purposes of this Chapter, unless the context  
there requireye  
  
(a) ‘period of limitation’ means the period of limitation  
  
Jor tGhing cognizance of am offence spectied in section 312  
  
(©) ‘prescribed period’ means the penod of limitation.  
‘computed in accordance with the prowatons ofthis Chapter  
  
512. (1) Sujet to the other provisions ofthis, Chapter, no  
court shal aks cognizance ofan offence punishable wider this  
(Code after the expy of the prescribed perio.  
  
(2) The period of limitation for taking cognizance of an  
cence shall Bo  
yf) 8 mons if th olen is pune with fie  
(b) one year, ifthe offence is purishable with imprison  
‘meat fora tetm not cxcceding one Year;  
(©) theee seats if the offence Je punihable with ime  
prisonment fora teem nou exceeding the Yeas  
S13. (1) The period of limitation commences, in ration  
te any offender rem the day om which Ns partcpaton in Oe  
‘ence fist comes tothe knoviedge ofa person aggrieved by the  
‘lfence of of an officer investigating the fence  
(2) In computing the said period the day ftom which iis to  
toe Feekoned shall Be excluded?  
  
ig  
  
2. section 130), Umtation Act, 16  
  
  
Page 356:  
asi  
  
14, (Jn computing the pio’ of Siation, the time  
turing thc ‘any pono has DE proseetng With Sue Sle  
enc another prsectin. whether fa Sou of st cases  
Srna court of appeal or fevron,nginat the ofan. sa Be  
Src hr ee lt eae cae  
Frosted in good uth ina corti, rom sefet of  
  
{ison ‘cr ot canes ‘she ate eanate tent  
  
2) Where the institution of the prosecution i reepect of an  
‘ollene has been stayed by an imundton or order then n con:  
puting the period of limitation, the tne of the. continoance  
‘SC injunction or order, the day on Which it was soued oF  
‘ade, and the day on which it was withdrawn, shall be exclade  
as  
  
{2 Wher ize of preci fo noc as een gen  
1 ete for proscton for an offence the previous coast  
SGncton of the Goveroment or anyother shorty is Tegel  
ordi he equi any ufone int  
in Togen, ‘then computing the period of imitavon for ising  
Sogntatce of the olzce, the ped of such note or we Be  
  
tke may be, the time regured for obtaining toch consent OF  
Shean sil be excel “s  
  
tn Inti ene  
Sacer oue Chetan Seam  
  
(4) le computing the psviod of fimiation, the time dui  
which the fender P™ \*  
  
bas been absent from Fadia and fom the tettoies  
‘outside tadia ander the adminstaton of the Cental Govern”  
  
6) has avoided ares by sbuconding or concealing hi  
seit tll Beaded "© sbtconding ‘ee  
  
1 scion ih ar  
2 Of ston 151, Linton Act 198,  
3. ftom 15, Latin at, 1,  
4 of sion 199), Limon Act, 1b  
5.0 exton 4 Linton Ach, 163  
  
  
  
Page 357:  
\_  
  
‘cotioa  
Rover.  
  
as  
  
LIS, Whew the precibed period for taking cognizance of  
an offence ‘epires on a day wen the court i closed, the court  
may take cognizance On the day when the cour Fe-apens.  
  
xpanarion —A. court shall be deemed to be closed 00 any  
ay ‘wlhin the caning of tis Section, Wf during any art of 1s  
notmal working hours emi coced on thot St.  
  
516, fn the case of» continuing offence. a fresh psi of li  
sgn bia 1 ren af cery moment ofthe time ding hich  
  
  
  
Page 358:  
Cusrnie 28  
SUMMARY OF RECOMMENDATIONS  
  
28.1, We have now come 10 the end of our desiled study of  
the Cade” The recommendation which we have made ft as  
Improvement are numeroure ranging Irom vert Changes Jeon  
‘ito remove ambygunies sed ay unerining sess. to sub  
{anit changes with a view 0 ve stpliicaton aod moder  
tion und abo some auditions te is prove We have Ben  
‘pou attention to the extent and nature of the punishment  
Droxnbed inthe Cade for various oflenes and fogged mad  
Nesom trig them int secord. with moder notion of  
Fenclogs. he have inated each chapter ths Repor  
Ecrtespundine 12-8 chopet of the Cove. the provisions whch  
‘hoi be mae new oor i aden tothe exiting eos  
So a ste amemen ha ma a mane  
  
teade inthem. "A Sel sommary of the procs rscommends.  
ions main each chapker fs pen elo  
  
1.11) Te entaterttorial application of the Code shouts  
be tensed to any olfencs commited ouside Inds bya  
len wis inthe sevice of Goverament. when such oflenee  
is Commuted in vonnection with nich tess ori pune  
lunder Chapter Vi Vitor IX of the Code, (Bara 171  
  
2 Stem shoul br taken to extend the Cove 10 Jasna and  
Kain thane 3).  
  
(1) The General Classes Act should be made apoticabe  
  
othe Cole and redundant detinnions ciminatel. Park 22  
(2) The chapter should be rearcanged giving simple defini  
  
sions f words and expressions in alphabets! onde, (Pars 233).  
(5) The definition of “public sersant™ should be revised 10  
  
inl aps a7 mene of arate or of Sate  
pilav (Part 23)  
  
(4) A cloaterdeinition of  
25h  
  
i  
  
ly" bs proposed «Para  
  
IN (1) A system of corective labour, without deprivation  
‘0 feedom. shoal Be intxiucrd ss subse for shorterm  
mpesonments (Para 51).  
  
(2) Prosision shoold be made in the Code sah For enders v0  
‘ay compensation out of fae o vet of ihe cence wen he  
flee poniviable under Chapter XVI, NVI of XXE (Par  
aon  
  
  
  
Page 359:  
cy  
  
(3) An tegardo ccetain-oflences of un anti-social character  
committe fr the sesond time, public censor shou be proved  
‘san addetioal punchment, (Para S33)  
  
42) Dent sentence snort shook! bs prohibit, (Pa  
aMy ° ‘  
  
(9) Resides laying don that life impisonment shall be  
tigoiows, the sentence should be ftsined for few heinous  
ollcrees ‘only. (Para 3.35 and 340)  
  
(©) Light labour should be pecaniible by tw in simple ime  
prigormen. (Paras 381 40.543)  
  
1) Provisions rating 0 imprisonment in default of  
regal ie ui ‘ade clon ty toaeafng testa 33  
  
(4) Solitary confinement as 4 form of judicial punishment  
should Be abated (Para 380)  
  
©) Section 78 which provides for enhanced gunishiven fy  
repeal fees stood Be atonal und heated. Pars  
Bee 2)  
  
1Y. (1) The minimum age of criminal espomaiiity shoul be  
  
‘sed iva seven Yeats to ten Sears The further prowsion  
Scetion #2 Tor exempng 2 child Eetween seven snd tuene year  
Fhe has noc slaned maturity ef understand shoals be  
‘oiled. AN the same time We sen) neeeeny at Chen  
‘Ret should! he propey enforced in all State (Paras 31  
  
2) The defence of duress, now limited to thea of insant  
dcth othe person compalled, shoud be extended 10 thveat  
‘of instane death or reves bodily arin eaher to the pene  
compelled 01 1 his near sola (Part 483)  
  
2) The present restction on the eight of private defence  
‘cues hee the is time lo have ecourse (othe protecuon  
‘oF the pubic aothontien should be omited Para 454 and 435),  
  
(1) Abetment by conspiracy shovld be omitted, (Park  
sy  
  
©) A eeviion ofthe detinition of abetment contained in ee  
5 107, 108 and HOBA ss recommended (Pats 3:4 and 813),  
  
(3), Wheee the abettor ofan offence a publi servant whose  
‘uty ii to prevent ts commaston, he sbould be punihable  
‘wih the punishment provided for the offence. (Para 21},  
  
(4) Atelting the commision of an offenes by 4 child under  
Igjthater ott he eens comnte,soul te puna  
abie"with impesonment for s term wp to tune the mahimm  
Provided for tht offence. (Para 3.23 ard 8:23),  
  
  
  
Page 360:  
as  
  
ty offences of ooh ninal  
He criminal oases  
  
65) Agreements 9 commit  
egal eto should at be puis  
Para $3).  
  
16) A defaition o auompt is ecomnendd. (Para $59,  
  
Yi.) Treo. ei au eer nes dhesenin  
secant And itepy of dare ot adequacy dealt  
The Ce he enetbanngcomsaton und eve  
Separate prot (bun)  
  
2) Assisting  
se ‘lice posts  
year (Pars 67)  
  
fas ene any manner shoul be a p=  
ie Sieh SagorowsYmpibonent upto 18  
  
@) Conspiracy to orerase Parlamemo« the Legiliase of  
«State Should Be included im ston 121A aon With comoracy  
feroverawe the Government. (Para 68).  
  
4) Section 128 shouldbe expanded to Gover wae son  
{ay he Spashers Chumen of the Leghatures sl tb) Chach  
Nien. (Paea 10),  
  
8) The offence of sedition should be rodelined. iniuding  
wishin a purssew the exciting of dsaffecnon towards che Come  
hetion or the Government or Parisvent Anite the  
‘Government ar Lesalaore of any’ Site. oF the adeunvsiration  
Oj, as by aw ean. and expressing the ere 1  
{Ss intending of Keowing tobe likely to endanger the imzgnty  
sway Tn ay See to ase pl  
  
prest punishment for sedition —rgprhonment for he oF  
iimprRomment upto three jear=-should Be tplaced By Tigoroms  
Imprisonment upto weve yeas (Pata 6.1  
  
(6) Delberae inst (9 the, book oF the Constitution, the  
ratinsl fap the pions mbm or the naional anthem. By  
Rorming. Gescration ov otfsrane, should be made an ofsase  
rae)  
  
VIL (11 Chap VI nos iit to offences eating te the  
ta Newsy Ran tnd Aix once should be evtended Yo a  
med forces of the Union. Pura 72),  
  
12) The important oifence of incting to muting or other act  
cot Subordination. by\_publabing statements. cxculating  
Sours or eihermie (now insted fa steton £8) should be put  
thes Chapler (Para 7.9)  
  
ones, and  
Jing  
‘men Act, 1938. should be dest  
  
‘VIN (1) Mating aay preparation for voting should be mage  
ain offense (Pare 813.  
  
  
  
Page 361:  
355  
  
12),4 pecion promoting camity between diferent groups on  
robin of requ, race ange. shoull be pnthed ony  
A done ncaa. ion 834 shou We amended  
tnahe th Gear (Para $25)  
  
2) As sexton 305, after excluding sub-section ()  
eal sth offence spuinet pu  
  
‘ffencpunshabte under sectton 153A, te prossion should be  
Sransposed to this Chaptet as a new secon 1538. (Para 8.26).  
  
1X. (1) ta order to chock oppression. public servant who:  
wilful onduct ime n the performance of Ris fanctions a8  
Such Pubic servant wth lent to cause inary 10 any person  
shall Ee punishatie with imprisonment upto one year oF fine. OF  
‘oth, Pars 9.9 and 9 1  
  
(2) Annes new ston recommended 0 pul a pubic  
seran wh sutoraes opment on bel Sovran  
‘ther plbhesuihory fr goody ppd or nor don ener  
‘Sy ca nhen Ne Ano at ped oe wens a nt  
Scoring with te coma Pa 91)  
  
XA. (1) The offence of undue inflance at clections should  
‘be deol! more cloely on the hae of the Brith. Canad  
and Acatralian dehaiion, by expresiy mentioning we or thet  
‘force. sjtence ot wrong ream as an mgredient of the  
Somence (Part 910 and 94TH)  
  
(2) Punisher for the offences of bribery. undue infuence  
pecsonation and fae ‘talements should be enhanced: (Para  
SX und 38 1)  
  
129 Sections, 7H and 171 which create to petty oflences  
Jn felation to shctions should be omitted. (Para 9513.  
  
X. (1) The punishments provided inthis Chapter dealing with  
scoters oF the lawful auihonty of pub servants ett on the  
SUe'orMeniney and should be Ineredees (Para 10.1)  
  
XI. (1) Im order to check the growing malpractice of issuing  
and using fase matical cerdcates. in recommended that any  
imeical practioner who knowingly sues 0) fale medica  
Certtcate or cetiieate of files, and any person who carrapay  
{es a a tue erent, should be pamabie wih impo  
in eld er se or bo Bri the rate  
Sto used. in Judai proceeding. the punishment cou  
teint thee year (Para HET ad Fi 12).  
  
2) Harbouring of persons about to commit kiinappeng oF  
abshstion should be inetaded in section 216A. (Para TE}  
  
(3) Section, 221 4 225B elating to resistance to ares. es  
Irom eusiod.omision to ate allowing scape should  
‘eevee arranged. (Para 11-29).  
  
  
  
Page 362:  
a  
  
(4) hice additional sections are proposed to purish (i) dis  
ming. 4 sinens by Seas, bboy or omer corrupt means  
Hom rang endence, (1) Tai, Wahout stint cauey BY a  
feof released on bal, to appear in court In accordance wih  
Betta of the bond, and (a) the ordering or conducting of  
Nenatious searcher withoot resonable rounds. (Para 1136).  
  
XL (1) Provisions rating 10 the counterfeiting of currency  
pote ang hank-note. Mt pesers contained mm Chapter 1. show  
Betplaced in Chapter I? which deals with counteretting ef cin  
find Government stamps (Para 12.)  
  
(2) The presen schere of two et of provisions for counter  
feiing ct reign vm and coumerteting of Indian cos souls  
(ehiinay nbs and the number of Secon reduc These  
Fn hl Sn he ida i  
  
ing prontuonsreang to coumrctng ot cuteney no  
Gar iS sna 1210) °  
  
(3) The dishonest use of slags in vending machines should be  
pumahel with imprbonment apto one Sear oF fine oF Bath  
in)  
  
(4) A completely evied Chapter XI on offences eating 10  
curtency notes colts and stamp fs ommended.  
  
XIN () The maximums tem of imprisonment for offences  
egeting mse meyers sould be Ines om oe  
yearotso youth. (Pare  
  
XIV. (1) The punishments presrbed in this Chapter (or  
various antisocial ofence eeting pubic health, saety\_ and  
Shvcmicnce are generily Tow. and should be ereased ai  
cated Weare 14)  
  
(2) To the tection dealing with the sale. publication ete of  
‘obsehe books (ax mended th 1969). prostton should be add  
Sto the effect that where the question is whether the publication  
Sra'books pamphice ete. inthe. tere of scence erature,  
Src tearming ov oter objects of general concern, expert evidence  
‘that question may br admted (Part 1813)  
  
(2) Section 294A dealing with unauthorised toteres should  
bbe move deloded wea tome Sate Acts" Ir should contin broad  
{Bide lines forthe Sete Government m the mater of authoring  
Five lttenes, (Para 1216 and: 1417)  
  
AYE (1A redrafting of the definitions of smurder and  
culpable homide not smoumting 19 murder contained in 9c  
{ious 299 and 300. recommended to meet the enicam of Of  
ty and repttion of dean, Ts Seiad to have a slfcon  
{ened deinison of murder section 299. and anotber othe  
Isr offence in section 300. (Para 18.6 and 16.7)  
  
  
  
Page 363:  
388  
  
(2) Section 308 should be simpliied by abolishing the die  
tietign betwesi the two pare ofthe action ahd pres ing  
S'uhitson pannisent Tor culgable bowisds not amounting  
tnd. ors Hts to 1620)  
  
2 For the offen of causing death by Fash negligent ae  
ahs acne of apenoomet andr section SHA should  
ine year Cara 162)  
  
121 Atioapt to coma suicide should ease to bea once  
gets ST to! et  
  
5A pono sho, by poston acts of study dines a  
  
‘oP A vam emg sath fom to comma side should  
{re pated sith ompelsonment pte hres yeas. oF fae, oF both  
(bare iss nd Tes)  
  
(o) Mocatriage caused by a wginer\_ modal ipractiioner  
  
{he ‘Noman’ coment. within three months of the com  
  
‘Othe prepaancs” should nex Be punishable ander  
SSE, “Para Teas and Pte,  
  
‘  
a0  
  
{011 sbould be made an offence for a penon who, being  
feguis ound te provide the nocesunes OF He to another  
finn wafhou tanta escone 10:do no. hnowing that Sox fire  
‘stl endanper te Be or sctousy impalrthe bealth of that per=  
Sow ePara 1038).  
  
The ofenee of coneculing the bith of a Chik by sere  
21°66 the dead Body should Gs abated. (Para 1652)  
  
(0: -The offences of wrongful retin and wrong cosine  
snot hts jy commited yin moe pes. sl be  
‘ended av saravated form and be mace scveely puna  
Gan 1673 nd 1675.  
  
(0) The distiftion between “assault” and “using rival  
fords wihowt aay practical ference teed pot be maintained,  
‘There sso no need for claborste deniions of Torce and  
‘Tiina fos" The eapremion assatht hold be 89 defined  
Se employed as to usage wat is now eovered by "crnnal  
Hire (Pea 1678 to 1480).  
  
(139 4 wo offense of indgoent asus on a minor under 16  
eats of wpe punshatie ath ieprannee upto thre eats  
Sfout he read. (Para Ta)  
  
2) Kidnapping need be onty of one Kind. vi. kidnapping  
Foon tanto euneamndan. Kidnapping out of ini ped ot he  
{feat ya separate species of Redan (Pata 1892)  
  
feos of Kanapping # vine For the purposes  
of Keguing hers should e's mii sentence of thee Fea  
Vgorosetnopessoamenc. (Para 1698),  
  
  
  
Page 364:  
a9  
  
(14) Kidnapping of abduction for ransom should be aa  
  
rated form of the cllence of kidnapping of abduction  
Dpniseable with rigorous impesonment wpto fourteen. yeas and  
Sine "(Para 28 00)  
  
(15) Sexual intercourse of & man with his eid wie, and  
  
sc sterourse witha il between twelve and wnten wth com  
irof wich ae satan) rape, should be taken out of  
  
{he dehnton Of supe and made spcee offseces. In regard $9  
  
te late. should he a defence for the accused to prove that  
  
In good iat. beleved the gt tbe over saicen years Of age.  
  
Ahate TOTS te 16.120)  
  
1) Thee, ther sexta oss are secommendsd for  
inhuwon i this Chapcr() A pubbe servant compeliog or  
‘Sueamg to llc: teour any woman who i in cusledy  
soc public servant. ia supe nerd of manager of 3  
‘womea's"or chiens Imtition compeling” or aedcing  
Bc ncecour ay mae mateo he nan. and Ga)  
{ipenon.om the management or sa fa neni! hospital hang  
{NGC imercoursc with's woman who i reeinng textment feet  
Toonta dnordcr tm that ospial shold be Punshable. (ira  
wo  
  
2) Blackmail in the sense of dlshonesty theeatening  
with publishing an imputation harnful tg hs feptation, shoud  
Demade a separate afence (Para 17.13).  
  
2) Robbers with murder committa by two oF more persons  
should be wfeaie in the same way as dacoty with murder for  
urpossy of punishment. (bara 17.20)"  
  
(4 Popes. dhe possonion whereof as been transferred by  
Wy. shouldbe ‘cluded within the definition ‘of "stolen  
proper”. (Pare 17.33),  
  
(5) Cheating a pubic authority in the performance of 1 cons  
tract for the supply of goods or the consruston ofa balding or  
‘hecalinn of ovker work should by punishable with prison  
‘ment unto ten sear and fine, (Para 1750)  
  
(6) Bebe taking by employees in the private sector of com-  
mores or tedustey th eespect of the employers fats of business  
Should he paisa in the sme way a8 baoe taking by pubic  
Nereans’ ‘Anew section to deal with this type of eommersial  
‘Sorvepion fs commended” (Para 1733)  
  
  
  
Page 365:  
40  
  
GP) Mrctiet in elation to aicrah, shouldbe. specif  
deal wah a3 an aggravated form of machi. Pane TOI  
  
(8) The which are at present  
gestae  
  
nigh  
serie replied oy one agievation to b ee “Curry  
  
And the scons numbering Twenty. nov deabing with trespass  
i reat deta reduced to nine” "(Para" 1715 and 1778),  
  
(1 The definition of forgery should be made sei  
Incorparating ll that if now st out ia scans 8  
(Pare 182 %0 184).  
  
© hme ol i egy edt  
;  
  
XIX. (1) The exiting provision punishing ve \*  
tach tonal salen Ort wants of apes Pert  
{0 1 ook ar Mma shoul be repeated as ng of Begg  
ihe ang" (ha 19.2.  
  
XX, (1) The definition of bigamy” should be revied It  
should be mage ler, in particular. that where the reevat  
‘oree law prohibits remuarhage ofthe parties within s spec  
Dentod afer the decree of disoluion such remarriage woud  
{mount to bigamy. (Pace 203 0207)  
  
XX. (1) Where the offence of defamation has been gom-  
i by ub! an imputation a newspaper, te Cow  
‘onmeting the offender shouls have power to order that syd  
‘ment shal be published in wole or fn patio such newspapers  
Winay specify (Para 21°).  
  
XXIL. (1 Intimidation, in the form of 2 theat to commit  
suicide with the object ofcoccing a public avhonty to pursue  
Soume of scion which Is not pally bovad 10 do ehould be  
‘ade am offence.” (Para 22.)  
  
(2) Performing mock Tunera ofa living person with inten to  
‘caus annoyance fo the pubic Oro any potion should be made an  
‘ftece. "(Para 22.5)  
  
XXIIL (1) There should be « chapter ja the Penal Code  
‘dealing wit violation of personal privacy. (Chapter 23)  
  
2) As besinnin. the wc of artifsial nteing or resording  
serene fe eet om Grae comer one wut  
Taking photographs of a person mitbout hs cosant ce agaist  
Nomex and ine pubiaton ef any snformaten gered  
‘eN'methody,sNoul be made anhabe- (Baa 734 and 5.8).  
  
  
  
Page 366:  
sot  
  
XXIV, (1) The principle of limitation for taking cognizance  
‘of fo ofence should be instoduced im Tepard. to bese serious  
‘tienes ponithable under the Code ether Wath fe only OF with  
Imprisonment not eaceedingtheee yeas. (Para 2813).  
  
(2) Detaiedprovisons are recommended. (Para 28.30)  
  
252, A drat ofa bilo amend he tndian Penal Code design  
ed to mapeoent al the recommendations mage by us i sanexcd  
fo tha Reports, We were pratiied (0 note that spec steps were  
taken by the. Government oe our lst Reporton the Cade of  
{Ghminal Procedure. and lepefation 10 replace the existing Code  
‘or 159 by 2 new Code as Fecommended by ws it well on Hs way  
Tt would be inthe Biness of things tthe Penal Code could be  
{evlud und brought up-to-date by the present Parliament and we  
‘Sood. therefore recommend to" Government that equally  
‘hpediious action fay be taken in thy teball  
  
  
Page 367:  
[Note by Mrs. Anna Chandi  
L Amendnent of secon 342  
  
1 cep 1 am unable to agree with the recommendation that  
12 prose beaded to sechon 312 whereby. cauning miscarriage  
‘OUld vox amount 10 an offence were done by a replete  
Tedkal practioner with th consent of thessomaa sho snot  
teem pramant for more than three spomihs (a mv ofcan the  
‘lc ots fccommendation wow be to literatae Wor on  
Soren evan soctllyacesptablehimss  
  
Ri! he Penal avs of mow counties. of  
abortion nan Considered, until gone recent 2 calpabie rie  
xcepe hen such aurtin 1 ecesary ie the eof the  
‘oman, "Following way supported demande for iberatsaton  
(OF then: res. muy courier bave enacted less rosie laws  
‘on ahation Innis foo, there have Been demands for Six  
Ierasation, ad the Government of nia fa 1984, appointed  
4 commitce 10 sty the question of leprdation of abortion  
‘The commitee ender the Charanship. Se Shamtial Shah,  
the then Miniter of Heaith of the Government ot Maharaiea  
conse reescntatves ofthe Cone Soa Welfare Board,  
fnmiy.PonringAvcciation of Indi Asocation of Medics!  
Women in ths Aibindta Women's Conference, Federalon of  
Obsttral A Gyoaccalopeal Sovetes of nts. indian Magia!  
Assocation and fadian Counell of Child. Welle The Com-  
mie aera detailed sty of the suc. submited st cpt  
ie 195 The recommendations mere thatthe provision ecbaré  
Ing abortion in the tndnn Penal Cou mas too" restive  
Should be erased to allow termination of pregnancy by 3 qa  
ile medeal practioner acing i Bod Yueh not only for te  
Ing the preg woman’s hfe bot eo  
  
(a) when the continuance of the prgaancy would invalse  
  
mk tothe fe, oe ave injury tothe health, whether  
  
‘mental. of the pregnant woman, whether before  
the bah oe  
  
1h) when thor sa substantial sk that Uf Ue eb wer  
bra ould sur rom such ply or mental abnor  
Nex asco ho seriowsly handieopped i ies oF  
  
Beran  
  
Shahen the premaney reqs fom rare. iercoune  
wih ‘unmaited gn ander the age OF 16 or infecoue  
Shah ="inonaly-aseetwe woman  
  
11s obsious fom its membership, thatthe commie wus &  
vwideshased expert body with adequate represeaation for Wome  
Sho. aor all ate those primary concarmed wih the Subject  
  
  
  
Page 368:  
363  
  
of ahocton. In iny opinion, the Commite's recommendation  
fas pone us far a One'tay properly go ia Heralising sbertion  
FeesFouhoue doe dsmage (0 or soa and clturat vac,  
  
“Coinedsrmiation of prnancy, at whatever stage of the  
coils SSevcopmene Inthe mother’ wom. amount wally  
Extinguishing» human fie. "One may Go 40 only Tor Good and  
SoniGorressone "hes, resume may change wh changing  
NII cutural ales but there must always be sone demon  
rable getson. Hat one stape society wil accept nly a  
  
ito the mother fig se aulisent jsut He  
‘ime sockiy st another stage of is evolution may consider the  
Ficinorsd can abverse ef on the mers heath 25 00d  
‘cpough roavon fcr permlting abortion." The. receromendauinn  
ofthe Comms spas a eect cha change ot set  
  
tiowever our preset recommendation gue (ar beyond tat  
“The fect the asomaened\_proviea to Sesion 312 would  
Rotten afin wide the  
  
‘moters It abot for Convenience  
  
i would be dificult to josty such latitude unless we consider  
the 12 uecks old fxn the mothers womb potas an incipient  
Ipuman fe bot merly as a “uteise tumour 1 40 not thi  
  
direst fo Roman We: compatible wih ov 1  
  
We Anendient of section 497  
  
1 regret that find myself unable to agree with my learned  
cotleagacs on ther recommendation fearding the amendmen  
ttseetion 497. "This secon which punshes the offence of adul-  
{Sey fa pat of Chapter XX of the Indian Penal Code dealing  
‘sth eenceseeating te marrage.  
  
‘Geoerll speaking he whole chapter is bua onthe postulate  
sat the wie the proerty of the husband ad the wie has  
  
ranspeesion by ar Felatng tothe wifes t0 be punshed. wile  
{heim ant omar midds Borrego the =  
  
“This postales nothing peculiar t India o& to the tedion  
onl Cea buns te wos rsa some time OF  
‘ter, fave relating to propery. socesson, polygamy and ater  
strat iinet Shick abe gute Rank) Ganed a ur of  
the male. This however is 00 fooscr very prevalent. Most  
‘Bhan souter have already done away ih uch debosne  
Serato ado 6 poi Int tne eon  
Sha pntedsee enlightened lepstaion. such ae tose  
kung’ women’ ghts of scetston, prevention Of pol  
  
frm te,” And nom that we ae a the job of unending the Fe  
  
  
  
Page 369:  
Prey  
  
‘Code, think ts she right ue wo consider the question whtber  
the fence of adulery as envisaged im secon 487i tune with  
  
‘orpreent day nouns of woman's satu Mmatrage  
  
“The Commission discuned this section at some length. The  
final decision of the majority of the members ts thatthe section  
  
should be tefl its, afer deleting the provision Wh  
the wife from punishment for adulcry  
  
ln my opinion, the recommended amendment would be a  
  
rade Hep, which would be dificult 10 jst  
  
“To appreciate the effect of the amendment, it woud be wf  
  
to glance briely tthe back ground of the setion  
  
‘Macaulay had, in his Oraft Penal Code  
  
decided not 10 make  
  
adultery un offence’ "One ofthe resons Tor that decision as  
  
‘Been thas!  
  
“Thece is yet  
  
her consideration which we canaot  
  
‘not ee oot” out ev tno te  
Ame tet of te hum ace a col connected  
  
<Conraet. ne cannot but fel that there are some pe  
  
“he hasty of women, and the sacredness ofthe nuptial  
  
{nthe stat of society itis Country hich may well ead  
humane. man to pavse before he determines to punish the  
  
‘ot wise The condition of the women ‘of ths  
  
‘They share the atfention of 4 hosband with several tals  
‘Tomake laws for punishing the inconsaney of the wife while  
the wt the eg af he sand io i hapa  
  
teadopt  
  
‘Weare not so visionary as to think oF atacking by law an  
ut so deeply footed ih the manners of the people ofthis  
‘ovetry as polygamy. We leave i the slow, bub we thst  
  
the certain, operation of education and of time, But  
xs, while contiies to produce ts never fal  
  
‘2idinonal weight of the  
  
cas and respectsbty of women, we "ate NOt  
Tovthow into seule already too much depesson the  
‘We have mien the a  
  
‘Sn which eau fo belle that any enactment om his so  
  
‘Tou be nugatory. And we. ace incined to think  
‘Tot mugatory i would be oppressive.” I would sens  
  
then hands atresdy too strong. Ht would weaken a class  
Meady too weak. til te tte enough to guard the malt  
  
onal con  
owe june ressonatie, and mutwlly beneficial  
  
1 Staasay ra ial Coe (87 Note, Noise 9097  
  
‘by penal sanctions when that contact he  
  
  
Page 370:  
as  
  
‘The Law Commissioners in their scond sepoct! oa the  
{alt Penal Code, didnot tak i advise to eaclge the fence  
‘St uduiery from the ‘Code. but reed on Macau's remarks  
‘Quoted ve ta recommend fhe exerpion ofthe womne [OM  
faniiment for adultery "They gave the reasons thas:  
  
“While we think thatthe ofsace of adultery ought not  
to be omilted trom the Code. we would mit it cognizance  
{6 adultery commited wich @ marred woman, and Consider  
Ing that thre is auch weight Inthe last remaiks vo Rote Q.  
Fegarding the condom of the women of thie county, i  
kre (ne woul end: te mate olen stom at  
bie to, penitiment We would however put the pais  
ised Of" adatery on tral “Nogmier's aad empower the  
‘Conrt sn the eset of ther convitaon fo pronounce 8 decree  
ff wore againn te puity woman ithe husband Sos for  
Ft atthe same te that her paramouirs Seetenced to punish:  
‘ment by imprisonment oF ne By Mr. Livingsione’s Code  
the woman” forfelly her matrimowal gains  
  
Tighe other punshment  
  
‘The prewat Commission's reccmnendatio tha tisexemp-  
tion caine be deleted. The reasoniay behinds 1 that withthe  
oucral advancement in the status of women and especialy thew  
‘Educa they can ao be he esponsible fr thei own actions  
Shi whe no forther need for any artical protection THs  
Sen of equality tetween men and women the fei of Tes  
Domi for thei awn actions progressive and quite Un  
Excepwomatie: ‘bot heresulant reccnmendauon, tai afta.  
‘Snestnot fly reflt the ide tn Tcl. ae from Ghapproving the  
inci pou Beind ihe pee pronnen the recommen  
  
‘he sie Heng con-deved the huss property. the presen  
provisos reerees forthe hasband the night to move the fo for  
omic soy tespats on Feeble not ing the wife any corres  
onding pm to somplnn agains any tramagtessons om the port  
[ST or lating to her husband. Perhaps to make amends for (hs  
fash ‘inert, the presen section pronsdes thatthe ie  
SSould ot he pushes along wath the eespassee. "The renal  
Sits exemption chaine does not cause damage to the base  
lt" The fe eine the Teoperty of the husband. On the  
‘ther han it merely restates the fea, and ads anew dimension  
  
MT ming ot dos the test bu the peoperty also table  
{3 pusshmest The semoted before, sam Rardly Be conser:  
eh progemve se.  
  
1. secon! Resto the Sa Ind Peal Cu (IH ge 2495  
  
  
Page 371:  
2 Secon  
  
Ey  
  
“The Supreme Cour, while dealing with 2 ease! under section  
498, Gbmered=  
  
“The provisions of setion 498, like thoss of section £97  
sre intend 0 protec the rghts ofthe hissed and no ot the  
we Fhe icy nderiying the proviners of section  
"Tk my’ no doubt sound ineamnen th the maderm mony  
‘rise Matas of women and of mutual tight and eit  
dor macnn  
  
1s time nove that we Boga to ook at marriage a an eal  
rutineshi, am not av 2 Transaction giving se (0 propriety  
gs for ne over the other. tha equality sto te eect  
forthe Code, thom selion 497 would have to be either omated  
together ae reframed 90 a8 10 mae ansgresions by eae  
Party equally puna  
  
Speaking for mysei 1 am not for removing the offence of  
adultery Irom the Penal Code” 'No doubt. the teas spreading  
imtoo anced sxc at ae sot arial ee  
‘Gutonis ach wrong. The esample af countries which no loog-  
‘crirent adultery sea cme, no Joubs of persuasive salue.  
{hai no binding on wr 1'da not thik out society sos el  
feady tovtake that step. From ancent ties our sie) as  
  
nod the salty of maciage ad has always coniertd ay  
Vltions of tm highly reprehensible This ste tal sanction  
Inca the punishment for doer. 1 do mot thnk that teres  
{hey change im the popula mind bith regard Uo this Mater  
  
{he min argument against making adultery 9 rime, is hat  
tl moray the pvateconce ofthe husband and wife  
  
ho bases” there, Troe, itis private mate:  
toa sa M's fi inert in  
the preservation of the family. When immorably” goes to the  
SEES Gadangorng we entaence of the tamil, Soekty can  
ay clam to step fr inthe preservation of the Fay ont  
2" Vlamatety the presration of society Hse thi Border  
tine fetecen priate nd sot concern crossed when aaliey  
Fess sm the diolution of the marnage aed the break yp of He  
  
“eld that she State shoal sep in only a his stage noche  
ing new. ts rolected inthe provision on adsery inthe Ger  
mao Penal Code. which yas follows =  
  
“ITD, Ader  
  
1. Af» mariage is dsolved 954 result of adultery. then  
the guilty spouse st wel athe put portner shall be punish  
GU) impeoonment fr a term of not fess thaw si moeths,  
  
2. Prosecution shall be commenced only upon petition.  
  
Sie of iar, ALR. 1989 SE 486 (pr Gaps, 3.)  
tan Poot Co 187.  
  
  
Page 372:  
also femule—ho, Peng mated  
‘assed ntercoune aus fooule-or 8 mabe (an the cae may  
bbe), nol his wr her spouse. mithout the oncant or connivance a  
Siti’spoune commis aduiery, provided that lt shales amet  
to'adulery wales Ibe marge ad Been Usoled By eaten  
  
that offence  
  
ira Ans Chand.  
  
  
Page 373:  
[Note ay Shy RL. Namastinas  
General  
  
“The toga Penal Code 1860, is based om the original date  
echt" ond Mscoy andthe ealeagus in 18ST and  
Foams ily provement positon as one ofthe great Codes of the  
‘Seti "Ps"ooen widely adopted (vith modications) sa  
SRE counties and hs underpone very few amendments during  
‘Sogn or mea et ar ecm  
ah coded as should not by wel, be taken 0 3 20  
  
fia for aot recommending stable amendments and adions  
{Sing imo contormnty sath the madera view 00 PenOlOEy  
Been ih Some sell formed. quarier an exroncods ew sul  
  
Sarr rating changes to some of the  
PSSions wath 2 eo recone conficting devatoms ofthe High  
‘Shursand to gee lepsativerecagition to some ofthe decisions  
GPa Sepeeme Coun he Cos Should not undergo & thorough  
SAn ths Siew overtook the following obvious detects  
From whith the Code Sule  
  
(1) Masala soms fo have ignored some of the principles  
or Hadi irgptadence Shich though tad dow he  
Sota betsten the Istana 6th centures are applicable  
  
(2) Macauley daft the Cade to sil the needs of Unda at  
a clas ima hha mere police ste with purely agricultural  
stay where tndependent fndia ts pow a "Welfare Sate  
Sivan appreciable percentage of indusral Society  
  
63) Maca was.2 Lia lowing he shoal of Bena,  
and JS nad fr bm the pesciple of Larue: fore was alos  
SMiiosancn “Bot indi gow arjacallst sate with extensive  
‘Site pers and control of persona erties and econo Fihis  
SPRUE ase te omer bom) mast be mouibed, especaly  
SNregarde nate porshanen. lassieaion of new imes  
+S nena fa convict eto Suit the prevaling ono  
theory  
(4) Subsequent to Macaulay. the scienge of Poni (rime  
snd Purmtanen) fs undergone a draste change a the hands of  
won oan nm aa av ey cera  
UU R’Chancr ‘and fn the Penal Codes of several foreign  
“The soxsl consciousness of society is generally cefieeed  
in she sing of ibe criminal AG pointed Out by so eminent  
‘Rovricaa author =  
"ye pocpose of the penal law is 10 express 2 formal  
sexist Wndcotnaion oF Corben conduct, buttressed PY  
  
  
  
Page 374:  
30  
  
sanctions cated to prevent (Wechalor “The Cris  
Grima Reapobbag 3 Unery of Cheapo  
a 38)  
  
Social change aflets ceiminal law in. many ways:  
thcough developments im science especialy in Boles) and  
tig, cugh hangin prego ral tnd  
‘Suu gilosoph shough changes sm the sructore of sae)  
‘specially int traniion frm a moral seicontained and  
‘elatvely sparsely populated. toa high) wrbansed and indus:  
‘hatned pattern (Lav in & Changing Sone) by W. Fried  
‘mann p16).  
  
“Ceiminal law has. quite rightly boon called one of the  
‘most fathtul merors of» given sivkation reflecting the fun-  
Samenial values On which the later rests, Whenever these  
Sales change the criminal law mt follow ut (Chm:  
fal law by “Runard Connelly, Joseph Cokisein and  
Richard D. Schwartz, P. 528)  
  
3.\_ By the end ofthe last century. there was striking cha  
i ih gan ime and panen oat abo many  
3y the Haan uns Fern and hs followers. The classe sehoot  
terminology which prevailed il then believed thatthe greatest  
furan ofthe ee numb mane primary tt ot pun  
Use and reprenne func poniuhment. Fer, however  
‘ainined that the rehabilitation aspect Of punishment should  
bs uhe guiding principe in the prevention of criminal behaviour  
din the handing f the criminal, and became the leading ex:  
‘Donen of the postive sehoo! of putishiment. Pers hess have  
Bradualy recived world recognition and. in the recent U.N.  
Einenant “Sdopted "by. the General Assembly of UNO. on  
Ti13:1996, the Fotowingeetotation was enamimotsly paved  
  
Article 10:  
  
(1) All persons deprived of thee liberty shall be weated  
wih humanity und with respect for the inherent ipmity  
ofthe human person,  
  
°  
  
tis now wall ecogaied inal eivilised counties that sentences  
shook be hosed onthe nature ofthe erminal persona od Tot  
‘exslnwely om the nature of the erne com Ta the report  
SF the Study’ Group ‘of the Brith Labour Party” (Crime—A  
{Ctnge 0 u> al) tere this significa passage:  
  
‘Although society may be josifed in demanding a  
case of teebution to eter the rina, this 8 megatve  
3M of 1125  
  
  
  
Page 375:  
“These ar postive aspects of pe  
  
I practice and penal ref  
  
4, By the mide of she 2h century, the term “Wel  
“ hs become the commonly acceped se pion of he 3c  
‘ty sevecal western counties and inthe feet edition of he  
‘Skeoed Dictionary the term has been explained a8""A poly 29  
‘ezansed that evry member ofthe commamty i are of is  
dle maitenance wih the most advantageoss conditions poss  
for aif Soh a sat” Wi recognised that fendamentaly  
Crime is Sign of sickness in the inddoal and sckoese nthe  
sceay fat ees hm ho ota  
lant for wok growing and blossomiog a: they shou  
foe na hme cy colt we he  
nce of ene put the entre  
"shelly innocent ated, ‘The tame idea was conveyed m  
Band, Book ss sok 908:  
  
‘sé eter ma) wwf ore  
ede eet ee Ew  
"A king who (dul) protects (his subjects) receives from  
  
‘each and al the sath pat of thei sintual merit fhe does  
  
‘not prowet them then the stth part of thee demerit (un)  
  
{ho (will ial om him)  
  
Hence according to Manu, the Government (King) shares  
\y6th of the sin committe by 2 criminal. "This shows thatthe  
Government also should shate, to some extent,  
for the prevelence of crime  
close relationship between the King (now Goversment) a  
sles erie in county Fought out whe des  
  
om Rajya:  
  
netegete ueteee oe  
  
(edaha Kanda—Ch, 128, soka 100)  
  
“The subjects folloned the example set up by Rama  
  
(ie Rees an id not Commi cane apa oe soot  
  
5. This change inthe stitode towards crime and punishment  
isrelected in some ofthe Artie ofthe United Natok Organ  
tea hans UN, Carer itma steht oteaih  
rps of the Unie Nations mae 20 promote and encou  
fesret fe Homan nahth im pursuance sf the ogee, the  
Geveral Asembiy ofthe United Navons adopted the Unive.  
siasaon af Human Rights oranimousi on she Nh Bese  
tba. I9ih" Ths Dectaraton has consdenble ngiet eel  
st and is regarded bj some jar as 8 part of the “Law ot  
  
  
  
Page 376:  
which have  
«bearing on the reform ofthe Indvan Penal Code ae even below’  
  
Ants §  
  
No one shall be subjected to torte, or to cra, inhu-  
‘man of degrading Weatment oF punishment  
  
Sections 73 and 74 of the LP.C. which deal with solitary  
confinement wal have to be omit from the Code In pursuaace  
ofthis Ati. Apu, fr he ae extn the pane of  
sipping cannot be provided in the Code suppested fou  
Some sections ofthe Bat and the Jaca. ”  
  
Artile  
  
No one shall be subjected to abitrary interference with  
i pay fy, Home ergo sor fo ak  
‘poh his honour and repulaon Evenone asthe ugh to  
‘he protection of the la apna such imeterece ot ack  
  
For implementing this article new offences dealing with the  
ndutond invasion of peasy have been provided ihe Peal  
{Coes of some coun. Tn he Indian Penal Code ns a ev  
Shapes sealing wth offence alecting the r4ht of pea wi  
  
fave to te provided  
  
ge oh Demi eG Au  
ye ein i ce  
heaita aaa tani mutetoe  
Se fc cna ims cae  
iy, DRA Lee oh  
  
6, The i an unerumate tendency, in some cls, 1  
nore of t9 belle the Hindu criminal jorsprudence onthe  
‘ma ground tht Wt provides for barbarous punstments such at  
iutation for some efences\_ These cries overlook the obvious  
tat the Sits were writen between the Ist and 6th cntures  
‘ALD. and the panthimentsprovised in them were es berbatoas  
‘haa those provided in the crmioal laws of western counts. as  
Sate asthe end ofthe T7th century when pety thet was. punish  
able mth death and burning of witches tad bertiy was sant  
‘one by law.” Hindu cimnal law as more humane jn the West  
‘ment ofofenders than te laws of other countries of the same snd  
ven later period. "Moreover, panishments such a8 extemnmeat  
from a locality: direct payraent of compensation to the viciin  
of the crime, wide publication of the ame ot the offendet  
‘Gotialensie) which are now found inthe penal laws Sf some  
‘tthe Forcgn. countries, fave been proved in the Hindu  
Sinntis. As egards complete socal rehabination of convicts att  
they have’ undergone the sentences, Smite were move liber}  
{as wil be showa tubsequenty) than moders pena lum  
  
  
  
Page 377:  
on  
  
2, In my opinion, white the reform of Penal  
Lavin Inn ow Commision sou appronch ie ‘bet  
‘oh tc elo ep in vie the men ey  
  
Ina wo the adage Say of he word andthe  
‘ots aid down by the UNO. Bropsals for peal lw reform  
Should not be seransed wih the ical burenveraierstont  
St new and experimental schemes nor should undae importance  
‘attached tothe absence of eausiasm for reform se i  
‘Fo fteacal and ather practical difictis that may be antec:  
pated All snd reform’ whetber legal or poital oe soc  
Tree On tea element. Practical eicuten should undo  
(edly be exefly Comsdered and overcome a the ine of imple  
‘eating the reform but they should not be wed as am excuse for  
hot inttaung telorm attopether. There should be no betaton  
In rely borrowing eas fom the Hindu ecmifal jurisprudence  
1 fad own in the Sees of Manu, Narada snd Bahasa  
  
5, (A muy of the Penal Cas of several cout of he  
world (asf ble here) shows that in most of the We  
Tare Sates the penal law provides for  
  
() Several intermedi  
“fine” and impasonmeent  
  
types of punishments between  
  
2) Law of Fimitation for tbe i  
against the offenders  
  
©) Compete rhatiitation of some classes of convicts  
under certain conditions either by judial pardon, expung:  
ing or cenellation of convictions and sentences.  
  
(8) Relaxing the rigour of the old maxim “ignorant  
jrs‘non excuse by providing even for complete ata  
‘Mhere notwithstanding Sve ailgence, the law on particule  
Sutjeet could not be Asean  
  
‘In my opinion all the aforestid subjects should be included  
in the ressed Indian Penal Code and where [have been unable  
To persuade my collegues to apce with my Views, Lave pee>  
por 2 septate rue  
  
have teen ssh unde nny saya the Foci Penal Cod duc the  
homanaiay of comple ad optodte ex. The Commision wat nied an  
Cpporunty francis ou soe ofthe eadhg Welle Sits othe  
Wr forthe purpow of extiming he acu working he Penal Laws in  
{bow cotta.” Hence any Obcrvation in hee sates aout he ena fae of  
Forign snuniice sould Be ten a5 subj othe tation of Being ier ia  
  
  
  
Page 378:  
”  
  
EXTERNMENT  
  
One of the important omissions in the Code i the absence of  
An ste came twee) pont an)  
  
inshment of forfeture of property  
ive fences es secon 136 an and 1S  
  
Indian "Penal Code  
  
The result thet where the court feels thatthe sentence of  
fine may not be witableforan ofende. hes nectar sheete  
Pit fo seine hi to imponnen. The ev chces a  
Imprisonmentespecilly shorcierm. imprisonmsn  
  
own. As pointed out ty ‘Nigel Walker (Reascr in Crimnns  
{ogy at Oxford i his “Sentencing ina Rational Sexk'y” uo  
76, the unwanted by-products of imprisonment are tee,  
  
{2,The prisoner lowes is job, i separated from his  
family and is Compelied to assole wath Babe oes  
  
2) Prison work i szldom more than a way of reducing  
‘te econorve burden which prisoners tepeseat an of wea  
ing them from sdlenes. tis only in eception casey tt  
Tears trade which he aflerwurds takes Ope  
  
£5) Thovgh prisons make effort to palate the effets  
ot separating the prisoner from his wife al fal 6 Shoe  
ing them tows, yet this docs not prevent many mages  
from breaking up duing along or even a medion envane  
  
(3) 10 3 prion there is ample scope for contamina  
of the untoptatcaed tend By the Prteacad  
  
Hence, there ta need for providing for other types of sentences  
For ceain clases of cme a  
  
The teen decison of the Supreme Court of United States  
In Tate's" Storr decid om 2nd March, 197s Wsrcanes  
1 pas hei tha ony lat Sich Ime punishes 2 eee es  
21 Bie for thane nha ate as able to pay tout tomer peat  
{o imprisonment for thoxe unable 10 fay hi ends the San  
Ploetion of the clause ofthe Const, “Fhe earns J  
indicated thatthe Sate was fe 1 choove some ther mere  
16 soil impybaing snide porn fornia tee  
Payment oft fin Tes not ules that an energy fe  
‘1 India ok may challenge the constionel vaidey of anton  
G1, FC as coieavening eel far asitenshke et  
a 2a hes toed pon nhs  
1 ai tthe ne esedesimpesonsent Ths tevetens  
‘he Law Commision to dene see  
intimate punstnent between a hr, nde) imprncnsine  
  
2, The sentence of externment for an offence was sugested  
‘by me, bur asi mas not acceptable to my coleagucs I hess hese  
  
  
  
Page 379:  
am  
  
consained o wie a separate minue onthe subject. The ect  
Soy Ee ch 2 punishment aes fom the fet at -notwitan.  
di sa oad aecedag to Nigel Walker,  
freien in England, ‘e a,  
Re sala, Fae mat othe acount fr 7  
saul a psn pe tthe nk si Cae,  
  
rishment and Cure by Giles Payfar and Dewick Sigton,  
fat \eaned aul pint oat (p20) The satic supped by  
{he sarous counties ebow thatthe great majority of seatences  
EF psoas passed by the Courts are of hort raion  
Sees mn fp on on erage ts  
‘iper ant ofa prison sexiences™  
  
1a India, in the State of Bihar, daring the year 1963, short  
seca prnontoents of fess than ax months amounted t 0%  
‘Sun $0 percent ofthe total convictions. "The conduon i other  
States mist be equally bad"  
  
Ins oun the pra pei fr he ees of  
cexterment irom specif ocalty, as a subantve punishment  
Sherine of orm sdditon footer pontshents  
  
‘Thus in USSR. astice 21 while eoumerating various Kinds  
of punishment for offences includes. “banishment” (Sub-section  
3) Pui ponshment of -banahment sin substance the punih-  
ent of what ts known ae exerament because article 56 says  
"Tfenahmeat shall comsstm the femoral of convicle person  
from’ place of hs Fedence witout pohibtion against ving  
‘cera localities.”  
  
1m the French Penal Code (as amended in 1989) article 44  
provides for restriction of freedom of movement consisting of  
Ale probation to equent certain paces  
  
1 the Columbian Penal Code (as amended upto 1939 article  
«42 proldes proton to reside in a specified place a8 an acces  
foxy punishment  
  
‘In the Austrian Penal Code (as amended up to Sune 1965)  
depouation from a place te one ofthe putshments provided for  
ros and’ petty mademeanours. (See secon 240 cause (1)  
End aso section 249),  
  
In the Norweigien Penal Code also (amended vpto 1961) in  
scion 35 (1) there a provision for forbing certo clases  
(GF convicts from residing in 8 particular pase.  
  
‘also appeaes that snr provisions are found in the Penal  
Codes of Ethiopia, Greece, aly, Portugal, Spain. Swizetland,  
Venezuela, Vupstavia and ‘bt as acuraie texts ofthe  
‘Penal Codes ate wot svatabie here. am unable (0 gv fll part-  
Phin bout this ponsiment as prevalent In these counts  
  
1. See mole a "Daly to Make Amcods forthe Haren Caused” i his fol.  
  
  
Page 380:  
315  
  
In Narada Src (about Sth century A.D.) extecnment fom  
‘he ton ss prescribed at one ofthe pms forthe offence  
of Saha Woke) of the hgh depo" Naade Se  
by Max Male, Sacred Books ofthe Eas, Vol. KX, Chap-  
tee XIV, Sika '7-  
  
a seer gubetemeear  
reermi¢ eget cee aoe mt  
  
(Moreover corporal punshmeat, contsca  
pry, banishment from the town and branding. aswell ar app  
{Sti of that im wth which the ct ted.  
'Sdecared ro be the punishment for Sahasa ofthe highest dears).  
  
This sentence should be distinguibhed from the sentence of  
banishment from the couniry whieh not recommended  
Should tio be distinguished Kom the "preventne. action of eX  
{ernment fom any place provided ia some Ioeal Act or goons  
Sind other undesirable pervoes.  
  
3. My deuiled suggestions as regards this form of paniah-  
ment are ven below  
  
(1) “Externment” should be included at « punishment  
abe Penal Coe. 1 mean the rohan of the con.  
ted perionsfom residing im any peices OF locality  
for Opec pened we  
  
(2) The area fom which the convicted perion is 19 be  
cexerned must 6: within the Jansdiction of the conecting  
  
(3) Such. punishment may be imposed either in iw of or  
  
tn aon tay oer paihment for olen unde  
tons 143. 147 and 148, EPtC sections 188, 189 and 199.  
TPC: sections 379, 380, 381 and 382 TPC. and for aggro:  
‘ated forms of thf! suchas robbery and dscolty and ano Tor  
the offence of criminal espass and is aggravated forms,  
  
(4) The maximum period of externment sbould be 180,  
eh, BE should not exes he masimum period of  
Imprisonment prescribed for the offence  
  
(5) Exleromen as a punishment may te imposed in add-  
tion to oe as an akzrnative to the punishment of tmpason-  
‘nent ‘or fie 1 which the convist may be sntenced.  
  
(@) the convict fails to comply with the order of extern  
meat he shal be lable to imprisonment for period tbe  
sod by the convcing court  
  
(2) The period of imprisonment in default of complying  
withthe ord of exernment sal not eee the ma  
Period of imprisonment resid for the offence  
  
  
  
Page 381:  
a6  
  
(Whenever a pact of the period of extenment has  
teen undergans, the erm of imprisonment fed in defo,  
‘hal be detmed’ to be reduced ty. such numb of days a5  
{ears tothe total aurter of ays in that term the same po  
portion ao the number ol daye for which entemmeat  
[dsrgone peurssa the number o days of exterament ordeted  
  
(9) calulating the reduction, ender proposition  
any Fraction of day fess than one all shal be Itt out of  
Stout und any other fraction shall be counted as one day  
  
4. The main advantages of providing the punishment of  
‘extern for offences Unger the Code are these:  
  
(1) Short-term impesooment can be avid in a Inge  
suber Fic thery thee at of ote ee  
SSS"mentiooed wn para! wil alo be avoided and conges  
Sonim jail removed  
  
2) Wire persons otherwise in respectable sations in  
‘ig commit offences involving defunce of athoniy such 36  
‘floes under sections Pe 19, 190 LEC oe een oflencts  
Ninder scons 14) and U43. st may be. peterable to extern  
thm from the place where here poueniahy Toe mache?  
‘Joe to thi Toot! fence ather thee send ther 4 jl  
  
(3) As this ponsheient can ako be impoted ia addon  
fo se pomshment of ymprisoament wil be more else  
ham ation 106 Cr P-C sn presehlngundeable persons  
for a limted period of course) trom commiting, once  
tiv cals kere they have much infoene. afer  
  
Undergone 2 substantive sentence of Impeisonment  
  
5, There need be no apprehension that wich sentence will  
ie eee sens ih amp  
  
tote a arn Lin aon ston  
In pln terest forthe porpose of clause (3) of Artie 19.  
Ue Memuont “Contato 1965s tl prapaph 1)  
of at's ta hr Sold be Hy of ovement for  
‘Trery one lawfully thin» stale, paragraph 3 excludes from the  
“ope of ths anil howe restncions which are provided by aw  
{o protest pubic order fomitng other particolr)  
  
DUTY TO MAKE AMENDS FOR THE HARM CAUSED.  
  
[As pont ot by me in my note on “Exterent” ne ofthe  
import smsions inthe Feral Coben the abence ofa kind  
Ufone intermediate berwcen (1) impiscement and (2)  
foe htany ety ens scr ty Coe ae commie  
  
rer sestons of soy who-ae not n'a pasion to py 30  
Fee'“ia comequenee the Joie are ctowded sith short-cer  
prsone’s and all tie ev cs of shorter imrioninent  
Flimd oot in my note om "Exemeent™ operate wi al force  
  
  
Page 382:  
an  
  
2 AEDS ln he of sheen iptionment pea  
‘ot n tadia does not appear to have been [lly appresated even  
formed circles A sritiny ofthe Report othe Adminis,  
fon of Criminal Justice inthe Stale of Bihar during the year  
1963 shows thatthe total number of persone. sentenced to ie  
fonment (both rigorous and simple) sx Mapattares Court Jog.  
Hat year was 19038 pow 76066804. OF thee, 980 wes  
vstlenced fo terms of fmprizonment noi exceeding 1S day und  
SORE to irs not exceeding sx months Thast move chan 30  
er Gent of the persons convicts in Maghirater Coon in Bihar  
I'he year 1960 were sentenced to shorter imprisonent ot  
‘iceeig sin months. Tht hgore may be taken a  
‘oly of Bihar. ut of mow of the States of India Te repre  
(See my note on “Externment) that im England the percnioee of  
Drsoners sentenced to shorterm wmprisonment Of stant  
‘Hes amounted to only 73 per com of a psn sentences?  
in Anda the figure is very high ced, and the Law Commasion  
Tare tne degen an othe pena  
"2 view to eradicating ths eu of shoet-term inpescnent  
ss possible "There can be no Soubt that thee ea Lind  
‘i punshient imermedisie hetwecn impelsonment and he  
4 sibstancal mumter of sentences of shorter Hpenonmen  
ould be ade  
  
3, Joists allover the world have been very much conceened  
shins ro, sancs pe of mermedate pansies  
hive been provided in some of the foreign Codes inthe Code  
ol the US.8'R. the punshiment Known seimpostion of dat  
take amends for hatm caused” has been provided a ome ofthe  
‘sépolementary punshmeate. which may be imposed eet te  
only punslinent or as an additonal punishment for cerca cases  
‘toifences, Im Article 334, of that Cede the nature of ths pant  
‘ent has been Tully described a6 follows  
  
“Atcle 32-Inpestion ofthe duty 10 make emends for  
arm ened. Exzeon of the ty io" make amends or  
harm caused shall conn direct elimination by one om  
‘sous fh ar cut or compensation, wth one  
‘extn means, oF material fos orn a pubic apology before  
the’ victim oF before members of the cole a Tors,  
prescibed by the cout  
  
Punishven in the form of imposing the duty of directly  
slimunating. by one's own resources, the harm caused may  
ber assigned in he event thatthe cor, taking into account  
the character ofthe harm caused. deems that the Buily pers  
son fs capable of direclyehiminating Hn the indicated oon  
  
in Sa of iar 90 atop  
Nig Wal, "Sormneing ins Rasonel Sc p18  
  
RSISR, Pon Cok, Arak  
  
RSFSR Peal Cos, rice 3  
  
  
Page 383:  
a8  
  
Punishmeo in the form of imposing the duty 10 come  
pense for materi os maybe aan the amount of the  
caused doesnot exceed one hundred bles  
  
Punishment in the form of posing the duty of publicly  
apotogizng before the Nim oe Members of the cllectve  
‘hay be atigned i thre has been an mfvingement of pesonal  
Integrity of dignity or a violation ef the cules of salt  
‘ommial Tite not causing mara Tost  
  
I the convicted perton fal to Full his duty to, make  
amends forthe harm caused win the period established  
‘bythe court the. court may teplace ths punishment by  
‘orresuonal isks, oF a Be. oF dismissal (rom ofr, oF  
Socal censure. In such event, and also" im the event that  
materia lows is eaesed. ie ah amount of more than one  
IRondeed tubes, compensation for loss caused to the victim  
‘hall Ge elected by way of el proceedings  
  
1 will be novced that the main advantage of this ope of  
jpunbment i that provides forthe dict reparation To be  
Eye offender tothe injured. wctim by compensation either  
‘money ibour or in king, forthe harm caused ot for publi  
Spology where i may Sums  
  
4 One of the important advantages of this type of punish-  
seat i the promot payment of eparatin (othe vt for the  
jury caused. lone, of the jusuoed complains. aginst,  
Repeal ow ah fein ad Int Sia  
roots the jut party generally ‘eget  
Espace andsetece sed on the ofenicr mat Sah  
{Sat which w generally reopomibe fo siating the Pe.  
Secotton’ bu i 8 floor consolation to the innocent victim  
iie"tine. The rent White Papes? "Penal Pracice in a  
‘Ghangng’ Socciy™ points out that “the assumption that the  
Site of he cine surety sated the onder  
funabed by soc Mbecomes tet persuasive  
Eocery nceasngyerophasies the retormative aspects of punish  
iment and sds thew tht the soncept of epartion mit  
{She prewer moral alue to ur pen sem  
  
tn Inia, the victim may ely on section S48. Ctiminal Proce-  
aye Code for puymene of compensation out ofthe Tine impo>  
lone offen Wand when i fealged.-He may have  
fipht of ch schon apni. the conve. person But in View  
Of the dlrs" and cont natore of civil ideation this Hind of  
febet is seldom sought for  
  
  
  
Page 384:  
»  
  
Stn ancient Hindu Lave, the law-ivers were fully aware of  
the necessty of diecty Compensating the victim ofthe crime  
‘Thus, Manu’ in Chapter Vill, verse 287, says —  
  
fa limb, is injured, a sound (is caused ) or blood  
(flows, the asaila) shall be made o pay (othe sere) the  
Expenies of the cur, or the whole (bath the usual amerce=  
‘ant and th expenres ofthe cure ara) fine (the king)  
  
1 Chapter VIM, verse 288, Manu says  
  
“He who damages the goods of another, te it inte  
tionally ot enintentionaly, “shall give satisfaction tot  
owner) and pay to the hibg a fine equal to the (damage)  
  
Man, ie de ent te i  
get a te tg  
eter Ea ae  
sa eh i  
techn Xt see 7. se  
SSA err ne Se  
jose dent aie pt oy  
  
Here aoa distinction made between inostin f fie whch  
  
6, In many other countries the victim is permited to request  
‘the Grosection to include his clin the crminal ease gust  
the cused. "This is provided m Austria, Norway, Swede n  
Spain, Colombia "and "Waly? “fn France, special action  
Inowa a¢"actione civil" can be Started by the inured  
  
party may aster his clam i the  
Droperty rights aising out of the oflence  
  
‘In my opinion, section S45, CrP. C. is wholly unsatisfactory  
forthe fllowing reasons  
  
We seston 38 CFC. compomaton cam een  
nly” in money tO the Snares part There no PO  
‘sion for direct reparation for the harm cuused. \*  
  
1. Tee Lass of Mana “Suceed Books ofa Eas” by Ma Wise Vol 3  
2, Bespin the Sacwed Books ft Es” by Ma Malle. Yo 3  
  
53 “Crime ad Poise — Reparation tthe Vita" 0889) 22 Lae Times  
4 Anis 219 4,85 1091, 7E37S 08 to 46 47 Peach CrP  
  
5. Arte 316 ae, German Code of Conia Press|  
  
  
  
Page 385:  
M0  
  
involved section $48 Criminal Proce  
de Cade etna tory, erpenine and cats mc  
(0 the injured complainant The court i required  
ft to impose in onthe acelald and then teat realsaion  
"Thereafter, the injured party has fo apply for wethdramal of  
compensation awarded to tm and ‘hn procedure. at yall  
Ere ours vee mich day and Bas  
{he saordinate curt sal. Ico se he tend that  
Shy aggrcwed purty can hope to receive the full serount of the  
Sompentation ‘wardee Co hien within easonatie time.  
  
sei uty af amt ies Powe pe  
FUSES Si Pe  
eae pene in,  
ecm  
Satara aetna ring ee  
Scored rh’ ti At  
Sinead eal emus  
ote comer teres ote  
ppt Reg ee east tad  
  
vole eviion of. prson  
  
9. The number of minor offences for which the convicted’  
person may be. directed to make amends directly 10. the tm  
Bien ‘igh in India Than, aking the figures of Bihar for  
1968 ts how "inthe Report a the Adminstration of Crmial  
Junie referred to. above, the nomber of pesos contd. of  
ihe following clases of minor offences isa follows (Table V)  
  
a enc arn inn Bi  
Se cen ak 2  
i i  
es icin 3  
‘Petmaton 36  
..  
  
i °  
  
is  
a  
  
a.  
  
  
  
Page 386:  
381  
  
cod jisinunter oom perio une he faian Peat  
nde during that eat was is the percentage  
persons conicied of minor offences was mare that GO per cet  
For all these offences sentence of direct payment of competsa  
tion to the vicim of the ime could eany have been impos  
‘cS. fly roaliae that even if sach a sentence Is passed many  
‘me convited pessons may not pay such compensation but  
shay 0 ehdero mpeionment in defale“Hence.  
‘ome ate. Sentence of short term imprsonmest cannot be  
‘holly acodes “Hut the number of sentences ca be appre:  
Chaly reduced. Some ofthe persons convicted of thee offen.  
Ses may profer co repair the domage caused to thecomplaicant  
‘ther By heir own Labour or By felacing the ale damaped  
fr lou rather than go to jail” Moreover, the tnjured victim  
ray bo ‘ufiieatly vecompensed without the cicullous Pro-  
‘odure of awWasing\_ the. ealsation of fie and payment of  
‘Compensasion. 14 my opin. ths will be a distinct Improve~  
fenton the existing aw and would advocate this reform not  
‘wibstanding any pessimism that’ may be entertained in some  
‘Quarters about xs\efexcy, Yam sipgeaing below a deat of  
Sections 908 tad 708,  
  
“TOA. (1) tm the case of conviction for an offence  
against the hua "body, and cffence against" propery,  
<Efamavon or am of’ agains pracy. "th court eh  
Siect that the pecson "convicted shall” Pay compensation  
{othe person mentigned in subsection ()  
  
(2) Such compensation need not necessarily be mone  
tary Gnd it may te in any form whieh the court considers  
{abe tulle recompense tothe imjuted pay Bu  
‘while passing the order for compensation, the court shal  
  
mate its monetary valve for the porpose of ‘execution  
‘Si he order  
  
(8) A court shall not, under this section direct payment  
of compensation whose monetary value exceeds the amount  
Sr fne"which it empowered to impose  
  
(4 Ae order une sub-section (1) may bs made--  
  
(2) in addition to any ofher punishment to which  
the percn ‘convieted may have ‘bn sentenced  
  
(©) in substation of fine, where the offence, aot  
tesing @ Capua offence, ome posite: walt foe.  
  
(5) The compensation under this section may be directed  
te be paid  
  
(10 any person who has incurred expenses ia  
  
wosetin, Mor raping epee prose nee  
  
  
Page 387:  
ane  
  
(8) 10 aay person for any lost or injury caused by  
the Silence, when compensation i in the opsion  
the cour recoverable By such persoa in 2 eit court:  
  
(6) in the cave of a conviction of any offence for  
having caused the death of another person of of having  
Abed the commision of sich ap offence. to tpervons  
Who ate under the’ Fatal Agcdents Act 1853,  
‘miedo recover damages from the person sentenced.  
for the lots resulting totem from such death; ot  
  
(2) in the cawe of a. convition for any offence  
which includes theft, criinal misappropriation. crim:  
Fal breach of tus, or cheating. or of having dishonesty  
feted tango of having voluntary sed  
In esposing of, stolen propery knowingor having 1ea-  
ton ta blieve the same'to be stolen, 10 any bona fide  
purchaser of such property. for the iss of the same,  
sock property is festored 19° the. possesion of the  
enon cand thereto.  
  
(6) AL the time of awarding compensation in any subs  
segue hut eating 0 he ime ater he Coat ll  
take ini account any um paid orFecovered as compensa  
om Under this secon  
  
70 B, (1) tm every case in which te offender is semen  
‘ced to payment of compensation unger seuon 70 A. Ht shall  
be competent to the Coutt which senencessuch ofender,  
{© giret bythe sentence, that 10. default of. the. payment  
‘of compensation, the ofender shal suffer imprisonment for &  
‘Seetain term, which, imprisonment shalt be io excess of  
‘ther imprisonment. to which be may have been sentenced or  
{Diwhich he may beable under a commutation ofa ventence.  
  
(2) The provision of sections 65 to 70. (of the Indian  
Penal Code)” shal alter sebnitation of ‘ferences to  
Compensation of 18 moostary equivalent in place of releren~  
esto Be, apply in relation fo imprisonment in default of  
SBymnt cf Smpenetion, they apy elation Lo  
Dmonment ia default of payment of  
  
10. If this suggestion is accepted. conseaventil provisions  
will have {0 be made in the Crinal Procedure Code also for  
{kccation ofthis type of seatence. Section 345 ofthe Criminal  
  
cedure Code may e omitted altogether and new sections  
NOGA. SEND and "J8SC," ge shown’ below, may be inserted 1h  
‘the Criminal Procedure Code.  
  
"SAQA. (1) Whenever sn offender has been sentenc-  
‘ef to pay compensation vader section 70A of the India  
Penal Cove, the Court passing ‘the sentence. shall order  
the payment of compensation to the person concerned with  
  
“a spocicd ponod tthe said compensation isnot paid  
  
  
  
Page 388:  
38  
  
ith tps or within uch te i 8 ay be  
SRSLY EH Eaten, Sa eee we hee  
Sees Lecon bake th ame aioe or okey  
S ccovguemne cl he foro tthe ant  
‘Scio is of he Cae of Cuma recur sand  
ovo of oe 86 and WF of te Cees  
wefan reine compen  
ernest, ay forte pope a ey for  
the eavery of the  
  
©) Procedigs for reaver of companion a8  
ing secre shen op opt cout  
‘Sti"se le Spycation of pero wae oor the  
Stair Tor coegesaton ae pled. Suh at appa  
Sai tice Minne mae he a uo Be ek  
‘Pras for payment of"conpemation auch an ape  
Sieh neonates fad eit Pine  
enon arena he compenaion Sl Se xing  
  
3888. When an offender hasbeen sentence only  
to pay compensation under section 70A ofthe Tndan Penal  
Cole, or 10 pay such compensation apd fine and to impe  
Soameatindefaule of payment of compenstion, andthe  
Compensation is not paid within the date ordered by the  
Cour. the Cour! may suspend etecuion of the sentence  
‘of impeisonment by passing the same orders az itcould under  
Sabssection (1) of section SBS (of the Code oF Criminal Pro-  
‘edu. 1898) the oflender had been sentenced to ine aby  
Sand the provisions of sul-section (1) of that secon shall  
‘her sobstiuion of references tocompessition in place of  
‘erence to fine. apply forthe raporeathey apply ate  
  
S88C. For the purpose. of section, 388. (of the Code  
of Criminal Procedire, 1898) an ollender sentenced to pay  
Compensation under section 70A cf the Tndian Penal Code  
SRST sa deed (0 bean ‘lender no hs ben  
  
ENTRAPMENT  
  
Entrapment is broadly divided into two classes. (1) lei  
mate enicapment, and (2) legitimate eatrapment. 1a the  
Beal law OF USA. the expresion “Entrapment” is used 19  
the narrower sense of ileptimate entrapment  
  
2, It is recognised throughout the would that certain  
‘ffenoes cannot be detected easly without taking belp [rom agent  
Drowoeatcurs ony. cov or trap. wnesses But josilal de  
isons bath in the west a in India have repeatedly lad down  
a'Siarp disuaction between the leguumate etbod. of using  
the serves of such witreses and alegitinate or obstionable  
  
  
  
Page 389:  
oe  
  
‘and unethical method. As poinied out in Perkins “Criminal  
Law" 1957 Edn 1 isnot the entrapment of 8 cminal upon  
whom the fw frowns: bat the seduction of inaocemt people  
Ingrid ae yi fey what conden and  
nl ot be Voleraed = W the authors who are engaged  
the Say of enforcing tw shemeelves. instigate the Sommision|  
‘ot cme by implanting crimioal Meas on innocent minds and  
thereby bring about the commission of offences which cthe=  
Wise woul not have been perpetrited chan entrapment  
Considered as legitimate." As Doe Hodge of the United States  
put ie "Decoys are permisble to ent criminals tot  
Ereate hem (United Staves v- Healy, fefetred to. in Perkins  
‘Criminal Law, page S25, Footnote 12) IMegitimate trap con  
‘Sutein the conception and planing of an ofeace by 4 ln ens  
{oreing offer or his agent and the procucerent of the comm  
‘sion of the offences by person sho mould not have perpetral  
(20h except Tor trickery. persuasion of fraud of the oAcer  
  
erg Ratesheet a  
SLs Perea oan Reta ee  
fea cin A does uaa a  
wtonaichcae mica i ae en  
ea oh es esac  
SASS eee SYS Saat  
SESS SSN ne AES  
  
4 tn US.A. such legitimate traps are now universally  
condemn a conta 18 pubic olny, 3 opraing =  
  
“just as no other planta e entitled to judgement Lex  
‘ept apna his agent) based upon harm of which Ns pent as  
the instigating cae, so" has been held that the ets of Hs  
biicers eno. the Government to prove the offenses"  
Kins ibid page 925). n'a very redeat decsion ‘Coe v. Laut  
‘Hana. (1983) 379 U. 8. page 389, the Supreme Court of the  
‘Unite! Stats reversad the conviction of the lower court in 2  
‘ce where the police offices fst permified demonstrations  
{in the vetlly of the courthouse. and Thersby gave content  
to sch demonstration, but subsequently prosecuted the demons  
ators oe picketing ear a court with intent C9 obstrat  
isle. “The 'Sopreme Court obscrved that such prosecution  
‘was polation of "duc proces" ane that i constituted an “inde-  
Tensile tot of enliapmest by the Sate  
  
S. The leading decision on the doctrine of Entrapment in  
the United States in Sherman v. The Une Sites (386, US.  
‘369 [195K swhere Chief Suatice Warren of the Sapreme Court  
  
  
Page 390:  
sas  
  
of America. after citing with approval Sorrelsv. Unled Seater  
Gar US ps observed  
  
“Hi fucion of tw cafes: th prevent of  
rime and the apprehension of criminals. Manfey that  
flnction dct nt clude the manufacturing of crime. ‘ThovEh  
Heath sod srtcey are mosessary weapons in the arsenal  
fe ols, yf cing cn ce eae  
fbjetionable palie met ‘Comal design ongnates  
Ati the offcers of the Government and is implanted into  
the mind of 29 inaocent person”  
  
“Congress covld not have intended that its statutes  
emis Renee emp ianccer pesos toa  
  
Me, Justice Frankfurter. wi  
the case was remanded) exami  
Sd pointed out  
  
“No mater what the defendant’ (accused persons) past  
record and. pesent inclinations to crminality oF the depths  
{Sati ne has sunk Inthe estimation of the towel certain  
police conduct to ensnre him ito further crime fs not to be  
Taerated" by am advanced sonely The possibity that  
fo matter what he. past crime and general disposition the  
Riendant\_ mine not have commited. the\_ parte  
Chess confronted with ordinate Indcements must  
Tpnored. "Pas crimes Jo-not for ever outlaw the cipal  
Bir open him to police practices lmed ot securing his te-  
peated conviction fom whch the ondinay ctizen fs protect-  
EF 'the" whole ameliortive hopes of modern penoh  
Sha praon adminstraton stconely counsel agains  
Wiile recognising that it is the obligation of the police, t0  
  
detect those et ondoct and ready and ili  
  
{Scoot further crimes, should the oeession arse, Franke  
  
furter I further observed =  
  
“He does not mean that in holding out inducements  
they should act in such a manner a is ikely to induce to  
Uie"commission oF crime only thove persons and not others  
Who would normally avoid come and through sel-arupele  
en ordinary temptations... The. power of Government  
[Sabesed ane directed toan endfor which was not. conse  
edwhen employed to promote rather than detect crime and  
{5 bring about the dota of those who Tet to themselves  
night ell Rave. obeyed the law. Human nature i= weak  
‘ough and suciely beset” by temptations without  
‘Goveroment adding to them and” generating come.  
  
dM of Lawtt= 26  
  
  
  
Page 391:  
86  
  
6. 1 scems to be thas cleat that in USA. entrapment  
1 saficlent ground forthe court to quash the conmtion of 2  
iicosed eventhough Ne. may be guilty of the offence. The  
Siac proses’ cause of rhe Constitution has been applied (06  
{his prpore,cven in those States where there ipo state a  
One bebjece "tn the American’ Model Penal Code also  
Droviion fection 215} has been ade for quashing the cima  
Proveedings intaced against the vic of such, lenis  
Bigspmene. ‘is the New York Penal Law, arucle 35-40, the  
following provision 1s found  
  
In any prosegution for an ofence, itis am\_afirmative  
<etents that The defendant engaged the prescribed con  
‘See ectuse he was induced or encouraged 10 d0 30 BY  
SSpootc sewant or by. petson acting, in conpertion  
SS “ble “lt, oti es  
Tain hie for purpone of erminalprossution, and when  
teepeteds hel ub busin such evidence were 008 8 19  
‘reate a substantial risk thar the ofence would be comm:  
Sa" person not omerwse dapoved to commit Io:  
‘eoewene"or encourapement {o.commat an offence means  
Stine inducement or encouragement. Conduct merely  
iowtng’ 2 person an opportunty 10 commit an offence  
‘oes not Sonstiate entrapment.  
  
7. To Britain though there no stattory law allowing an  
accused to pad sosceaflly that he waste wich of  
Sicgimate hap forthe purpose of quashing a conviction, never  
UE ulead ‘docmions have exproned strong disapproval  
DE ths ype of entrapment T need only refer to the resent  
‘idgmen ofthe Cour of Appeal in Regina v. rls (I Weekly  
  
(Cs dbsered "Its one thing  
iSrination concerning an offence  
{RCS Sieady tard on: fo such a case the police are clearly  
{hac Indesit their dy to stg the consequences of  
She ppowed offences for example 19. proieet the "proposed  
oo ero to that cad tay be perfectly proper fo" them 10  
‘Cecurage the informer 19 take part inthe offence of indeed for  
CTSBNSP Ger hrmaet eo. do sa Bat Its quite another thing.  
sBubmething of which this court thorouthly disapproves. fo  
Be lnauonscr to encourage another to. commit an lence  
1 sel an fence of& more serous character, which he would  
eeiSFRerase coment, sth more so ifthe police themselves  
‘ke par in carrying Wout” ta Brannan. Peek (1947) 2 AML  
Bees where a pote fcr committed a crime with 2 view  
fo detect a crime Codaard G. obs  
  
1 hope the day i far distant, when it will bacome | 4  
common Pracice this countey for police oficers 10 be  
{Sito commit an offence themselves for the purpose of  
feting evidence agaist someone.”  
  
  
Page 392:  
oar  
  
8. In India alo judicial decisions have unanimously con-  
ermed he ose of iegtimate taps fo ere ender against  
‘agvacewied "| may reler 10 A. R. 1938: Mad. p 899 and  
RAR TIS Kerala p60  
  
{In the Supreme Cour this question came up for conse  
tiog in A, UR 1958'S. Cp. 342. To-quote their Lordships a  
oe rit may fetal ti cian aeration may semen  
limes call for the laying of traps, but there fs no” jstieation  
forthe potke authorities to bring about the taking’ of & bribe  
‘by supplying the bribe money to the gives where he has nether  
6" itinor fas the capacny to find i for himself It the dt  
  
(Of the police authorities 10 pectent crime being. commit  
  
{cso part of thar busines To provide the instruments tthe  
  
Having paused sricwees,on the action of the Additional  
Data Magar Uoraps ether sated hat cy would  
empty simnac from comaderaton the evence of ie Alt  
sina Butt Map Shania Aha, who was he Bet  
  
trap witness to prove the iegsimate' ap. in th wel  
Boose fate of omitom Singh ie are Blo ATR  
1986.8. Cp 3) ter Lorin expressed thence re  
  
syorpatbeic tees agar the wing of eptimate tape, Fo  
‘tote thoi Lordships ™  
  
hav this was not a case of laying a tap. in the  
usual ay. for aman who wat demanding bebe but Of  
deliberately tempting a man to his own undoing afer hi  
Suggestion about breaking the Taw had Been finally and con  
  
closely ejeted. with “Considerable emphasis and deci  
  
“Whatever the criminal tendencies of a man may be, he bas  
‘right to expect that he will not be deliberately tempted beyond  
the powers of his ral endurance and provoked into BEeaEing  
‘the law: and more paviculary by those who are the guardians  
1d Keser of the law “However. rept, the ny  
‘f employing agents provocateurs may he relies 10  
the tll dha this unfortunately often inevitable if Corraption  
  
to be detected and bibery samped oot), Wis one thing to  
fempt a suspected fender to overt action when hes doing all  
Ihe ean to commit 2 crime and has every intention of caring  
‘hrongh hit mefrious purpose feom stat to. Bais, and. que  
‘another (0 egg himon od that which thas Been finally and  
Fimly decided shall ot. be" dove  
  
“The very best of men have moments of weakness snd  
temptation ahd een the woe  
  
‘neal Ohought and ere given  
tetind him and If they do, whether  
fof because of thei beter insincts, or because some other  
has shown them citer the fatty or the wickedness of  
  
  
  
Page 393:  
wwrong-doing, it behaves society and the Slate to, protect  
Ahemand belp\_ them in their ood. evolve: ot to place  
Turther"temptaion m\_their way and Sar ates a tra of  
‘Simona thought wbick. had Been Rill Set aside This Is  
the type of case to wiv the stceures of ths Coutt in She  
  
Ba  
19S8'S.C. 122, 334; 1954 SCR. 1098),  
  
In that case they set aside the onder of the High Court ang  
restored be order of the tying. court acquiting the accused,  
Im 1958 SC, p S00, thor Lordships pointed out that asthe law  
Hands i Ind, soch trap witoesses, though they may be cons  
‘deed as parusan or intrested wiiaesses cquld not in law be  
testes accomples Ts as “reterated in AIR 1968 5  
pl  
  
10. The question for comsideraion by the Lay, Commision  
  
‘ow ofthe aforesaid stnctures passed bythe Courts  
  
‘ot egiiate tape, satuiory protection should  
  
ea the ict ofan epitimate tap tn the Penal Code  
  
‘ore wheter the law as laid down by the Supreme Court should  
‘et Yor doe Implementation by authorities concerned,  
  
In my opinion, the Lepitatre should step in and make  
«a spiel provision in the Penal Cose enabling 2 court 10 quash  
tie criminal proceedings against an accused who 1s the vetim  
(OF lepumate traps As the faw now slang, though Courts may  
piss sere tres th thos ey the oie, never  
\* they have no oiher alternative but to convict the accused,  
tren though st may be apparent that be would not have committed  
{he offence but for the taigtion and facies provided by the  
police themsahves. Stcturs passed bj cours even of serOUs  
‘ture remain generally as pis observations which the prsect  
Ting agency tay or may not caro to follow. On the contrary, If  
the law prowdes for guashing. such. proceedings. legimate  
{taps wil isappear altogether frm the country. av fully amare  
that in view the wide prevalence of covrplion especialy  
fmonest pubic offiale laying of traps foc detection of eorupe  
(on cannot be avoided, But t must be done ink manner recoun-  
fed ag proper inal cvizad counts. To quote Mr. Justice  
Hotmes (217 US. p. 438),  
  
“Iti desirable that criminals shouldbe detected and to  
that end that al avaiable evidence should be used. 1 alo  
ie Gesnable that the Government should oot iseif foster  
nd pay Tor other crimes, when they ave the mean by which  
the evidence ts iso to be ablaimed. For my part [think  
Ita tet ell that tore crominals shou escape than that the  
-gotenment shoud plasm ignoble par.”  
  
1 would specially emphasise the words gadertined which should  
be the objet of the Juris and Law Reformers in Ind  
  
  
  
Page 394:  
389  
  
2 gt se at en ne sit  
iti" ipa ge a  
eae oe iy Kea  
‘of the Court will Be ignored and illegitimate traps laid. in such  
Seer chr dices de he a  
‘pndananactenedamsttaa ae  
Sencar ther hats pthc  
Breed peut catia pee  
  
ea  
  
13. therefore, recommend the addition of # new section  
at the end of Chapter & on the nes of the New York Pen.  
Code’ (ie park 3) with suiable drafting modiicatons  
  
PRINCIPLES OF PUNISHMENTS TO BE  
PROVIDED IN THE PENAL. CODE,  
  
In the pew Criminal Proedure Cade recommended by us  
we have spasaly provid forthe arog be atased ot he  
{esto a sentence by» cour before pusing sentence sserding  
nw ste Ga seclons 340) and ag) cea ens  
‘sable to formulate m the Pel Code the mate prises  
{o be borne in mind by scour whe pasingSeotence Sta Com,  
‘ted pron’ The necenty for such Yormulation nese ai  
‘cause notorious tat i tia the Magisracy not fly  
Siverannh fepaef pohen a e  
fences have bret epetedy Ind down by the Hhph Court  
EnrEe Sapeme Court several decom, Ba us be nat  
‘Tube ns comvetent frm forthe beet of th tying Mae  
{its nthe Brat German Penal Cade 1962 se 243 fd  
{SS the various matters fo be contdeed by Cour ng  
the'punshment and they are reproduced bel  
  
"Q) In fixing punishment the court shall weigh against  
  
‘ach other such circumstances, other than definitional cle:  
tenis; a8 speak for and again the perpetator  
  
“Especially thece shall be considered:  
the motives and aims of the perpetrator,  
  
  
  
Page 395:  
390  
  
the state of mind which the at be speals and the exercise  
Bf vottion involved =  
  
the extent of breach of datys  
  
{he manner of perpaton and the wronfel eft of  
  
the prior life of the pecpetrator. is personal and esono-  
mc dcomstances, as well as his condoct er the at, expecta  
{y's codeavour to make resutution  
  
In Argentinian Penal Code alo articles 40 and 4 which ae re  
Jevant'on the subject may be quoted  
  
“A, To effectuate the preceding article, the following. shall  
te caen nto consideration \*  
  
(1) The nature of the deed and the means employed in  
itscommasion. a5 wall asthe exent ofthe Gamage and danger  
‘rete there,  
  
(2) The ag, education, habits and previous conduct of  
th india waar the motel mh adh fo  
omit the crime, especialy hs poverty or his, dict to  
‘bean the necessary sustenance for hime and his family  
the extent of his pardipaion inthe deed, his sximinal and  
his personel recor ay well a8 bs persomal\_ elation, Te  
the Eharacter'of the persoes and the Sreunstanees of time,  
  
ice, ocasion and others, Which may indicate is greater OF  
  
et dangerousness  
  
“Te judge shall ake direct and visual copizance of the  
sulygets the cm andthe facial ecumstanes to the extent  
newer for each cue  
  
“The main advanages of inserting a similar provision in the  
onal Cove ave theses \* “  
  
(1) The tying cour’ atention is prominently drawn tothe  
  
ines of punhment 40.30 0 endl the cout to propery  
Sich they conecred on by Draft Artes 2610) and  
3563) af che Criminal Procedure Code  
  
(2) Bath the prosecutor and the defence counsel std notice  
the matters that wil be taken ito consecration in Wmgosing  
SEatcne and this enables them to oc the ecesay mle  
Fer'Snating their submsions on ths POI  
  
  
  
Page 396:  
vt  
  
1. therefore, recommend that at the end of Chapter dealing  
  
seg Chapter 3, anew section 734 my be iat  
  
SA. fixing & punishment the court shall take ito  
consideration, among other, the folowing malts  
  
(2) The mosives and sims ofthe perpetrator.  
  
(2) The sate of mind ofthe perpetator atthe time  
of the commission of the came  
  
(©) The entent of breach of dat  
  
(4) The manner of commission of he crime and the  
wronglut eects of the crite.  
  
(5) The nate of the deed and the means employed  
  
(6) The age education, habits, previows conduct of  
the potparatoe hie personal and esonomic circus  
tances and the exont OF hs parteipation inthe deed.  
  
() His conduct after the commission ofthe ime,  
capesully hs endeavour to make reitution and 1 help  
the authonty im tracing ot his accomplices”  
  
i any  
  
JUDICIAL PARDON OB EXPUNGING OR  
‘CANCELLATION OF CONVICTION,  
  
“The postive school of cime and punishment hasbeen strongly  
avonilng the pencipe of sorapete rehabilitation of 4 convict  
“der certain conditions. "The necessity for such rehabilitation  
Sis SSmae “Cont, na min! eae cara with  
erin sipma which persist throughout the hfe ofthe person  
‘Sen though he might have tuened rom hi criminal actaty and  
ike tema and ed an exemple a ar  
Fos wih issrain penalves and diab which persis so  
Tact Sere tn ey aren arc  
Shatiad“Crmmal ‘Law in the: Seventies, Some Sugessions”  
{ublahedia'the New York State Bar Journal, Juve. 1970,  
‘Rimes V. Brands who isan Ausistant Distnet Attorney of  
Datehess County, New York, sated  
  
i has teen estimated that atone time or another thic~  
vghout their hves approrimaly 91 pet cent of ov" adult  
Populaion have commited crive for which they could be  
Senet al, We might consger that tose in prison are 10  
an ee ot te sich nes the ter ae the  
  
out money for adequate counse Yn that light, an under-  
Manding that of al those convicted of misdemeanoers he  
‘sho leads 2 ie reef convetions for ve years threater  
Tpoull have his fst conviction dropped from the record.  
  
  
  
Page 397:  
32  
  
‘This should be allowed to the extent that he can answer no  
{o-any question on a Questionnaire asking whetber he has  
been Convicted or areted lor a crime.”  
  
jurist of Norway. Johannes  
‘Apdenaes 18 bis book “The General Par of the Criminal Ca  
{oF Norway’ p78, has commented on this suet as follows:  
  
“According to modern views, the resocizstion of the  
convict must be accorded the feaiest significance. Both  
porely homaniarian and soci! considerations make it cleat  
{hat ane who has served hie sentence shouldbe helped 9 hie  
feet upaia Ofcourse. the tats which be has Teenie by hie  
‘offen may be of sch nature a8 10 require that cera  
‘avtions be takes, Bot within these mits he boul be aliowed  
{o support humscif ia an honest way and to regain hs Tost  
respect  
‘This subject has been dealt within an article “Rule of Law  
  
in Criminal Tustice” by Helen Siving wh has been aclaroed  
  
1 the "fat lay of modern criminal law by G.O.W: Muctier  
  
fa his "Essays in Crna Scence.” She observed at p. 139 id  
  
Reribauon phi ehailiation’, «tnt shold be  
set wo the Fgal and social iabiiies attaching toa "cr  
record" After lapse ofa certain period unless there itr  
‘ence ihe conviton should be erased from the  
‘cord to hat no ene be permited tdiclove the fot of  
Sich comvcdon in any comuat and thatthe person concerned  
‘eed never admit it 10 anyone.  
  
‘Syster}, When rotation is denied on grovnas not connected  
‘Sith actor's gut prowson should be made te afford Rim  
“poropriae rei? aguinw the Gsadvartage of sch denial.  
Frail: epots of erminal cases shoul! not datos the name  
fhe dean. Sick dors parry sal com.  
humic, is highly prey fo che defendant throushout  
Bis We. ic aso adversely affects innocent family meres  
  
ln PG, Fizyerall’s Criminal Law and Punishment, Caren  
on Law Sens, p 204, the learned author posts out  
  
“The howe value im cond the  
setion of eriatton, nary. the dea that the tong er  
‘to hasbeen punmibed an by paying. is, be wipe the  
Sine iar for fea sar: and chs um a wor Pesing  
Tac of pact comsderation which operat to prevent  
(nal aking rsh tar The owe fact that sma  
fas teen conned he spa of apron sentence, foe  
‘Min arour other facto’ make 1 imponsle for heer  
{ote enurely es, ut insofar as Be noon of expaton  
{fvaiverthe demand for a polity for soch a sat go  
ind ny Hand'wih She extnd for rermaton and rehab  
  
  
  
Page 398:  
33  
  
“The Hind jurists alo have lad down that once a person has  
teen punished for an offence he becomes completely pare ike 9  
Snes person. Maou, Chapter 8, Sioa 318 enunetats the pric  
‘ls of rehabilitation of conveis in the following manner:  
aie Greeny ews we a  
Ar, ant atin oe ei  
(But men who have commited crimes and have been  
  
‘punished 2) the King go to heaven Being putelike those who  
Performed mentors desis)  
  
teste er tw  
aaa prom  
CLA ac ten  
SLT See hee  
  
{iawn commiued crime sch, 6 Uhl of gold et  
he criminal after undergoing the punishment ified by the  
‘King Eecomes ure atthe 8 peon who fs one En  
  
(Gaahus) nd goes to heaven. Mts indieated that the  
Durshment porifes the criminal and absolves him from al  
Ein'tn the Same mance se eapution ceremony)  
  
[Again inthe XIth Book, in Sloka 189, Manu says  
  
crea afer 8 Fete eg  
eceteecte ger ater  
  
(Let im not transut any business with unpurified sin.  
ners ‘but f1'him inno Way reproach those who have made  
tonemeot)  
  
While commenting on this, the famous commentator  
Meath (early 10th century) 99  
fgg sheng eee  
ort we Are aes  
screen 4 eet  
(Expution is punfcaton, wiping off ofthe sin. When  
this has been done. one should not despise the men, That  
noone should repreach one wad has duly performed the  
Presrbod expation)  
Kotla Bhatt also says  
(et arent yee en  
sworn Foiq. 1 Fen ate aia  
  
  
Page 399:  
34  
  
Once a person has expiated for his sin, he should never  
tbe desped for his sn, Bathe shuld be treated the same  
‘mane ge he at Tresied before he commited the sn)  
  
Wis thus clear that Manu condemns the action of those pet-  
ons who despise nd. reproach those unfortunate people. who  
“tee having Gommatted chimes have undergone the prescribed  
pPenishoent- Though Manu” Swit! might have been Writen at  
{Rr commencement of the, Christian efa (Ihe exact date 8 not  
howny nevertheless the fact that commentators hike Medhatiht  
(early teh century) and Krlloke Bhatta (1h centory) reiterate  
{fe'view of Manton this point, shows thal the Hindu lavegivers  
{Gok very humane vew of punishment and emphasised that  
‘iter the punfcation esremoay either by expiation of penshe  
‘nent the Cender should be completely renabiated intosocety  
Seihout any stigma attacked (0 him.  
  
“The aforesaid view of distinguished jucists on the principle  
of rehailitnnon of a convict har now been fecognsed tthe  
‘ternational covenant om “Cha a0d Polical Aphis which a  
fussed unanimous by the General Assembly of the United  
‘Ration om the Teh December, 1965. Atti 10.3 ofthe Covenant  
(Cited quoted) sass thatthe primary sim of he weatmest of  
Farag be ee tomoton ond oil ana  
  
otect has thus now pased beyond the sage of mere dis  
cussion OF controversy and the. goestion for law reformes ali  
‘Ser the word (incluaiog the Law Commission ere) sony one  
‘how to implement thes fesaltion.  
  
i il be ef to study the provision inthe Penal Is of  
some othe countries of the Sond where this prncple has been  
ven legate recopnaion,  
  
“Ths in the Califorsia Penal Code, p. 12034  
  
“ven defendant who has fulfilled the conditions of his  
probation, «all st any Sime thereafter be permitted by the  
Roun to widhdraw his pea of gully and enter pe  
  
spot ori he has teen convicied aftr a plea of not gui,  
The out shall set ange the verdict of gully; and in either  
‘cae the cOUr shall theeupon dismiss the accusations oF  
Sifcmation against such defendant. wo shall  
  
leased from ail penalties and dsabitis result  
‘offence or erie of which be hasbeen convicted, proved.  
tha in any subsequent profecaion of such, defendant foe  
try offer efence,sach prior conviction may be pleaded and  
Drovided and shail have the same eect as Hf probation had  
ofa gated othe seaabon or forts" ams  
  
In para, 120s provided that probation, however may not  
intel to ser eh any Slendane °  
  
‘convicted of cobbery, bursary. burlary with ex  
loses. rape wih fore a lence aon, More al  
  
be  
  
  
  
Page 400:  
395  
  
vith got to commit made, commit murder, tn wreck  
ing. Kidnapping. exape from a tate prison, congpiacy 10  
‘commit aay one OF more of the aforementioned felonies  
  
In the Yogoslave Criminal Code {article #72) the court ie  
sven power on the application of the convict after fase of 3  
Specified period (o order the removal of all legal consequences  
sng oWt of his convicon provided the conct har deserved  
by'resson of his behaviour Arte 88 farther says that some  
Sentence maybe expunged from the etimins) record proved  
the coaviet does sot commit a Treh enminal offence within  
five years ofthe date on which the ponishmnt bas been Served  
  
ta the German Penal Code, 187S, section 25, pereits the court  
to pass an order vesting iformation about the conviction of  
{i convet if hig conducts found fo be exemplary. This has been  
Seseribed as “ducal Pardon  
  
In he French Criminal Procedure Code also there is» sepa  
sale ‘chapter entited "Rehabilitation of Convicts” (Book Fe,  
Tale Nine) where detailed provisions for complete reabiliation  
‘ta comet under certain Conditions have been mage and the  
‘tect of such cohabitation i mentioned af follows in artle  
5yp. “The rehabilitation shall wipe out the conviction and cae  
all the icapaciies that result from it to ease for the Tutre  
  
{n the Criminal Law and Procedure of Russian Soviet Fede.  
rated Socialist Republic. article $7 proves for eancallation of  
the record of conviction of certain clases of offenders by 8 court  
tudor cetain conditions. Shnfaly un the Japanese draft Penal  
Code also there isa separate ection (atic 10) dealing with the  
‘object of euunguithment of sentences  
  
tn tna there is no such power with the court of juse 10  
ssipe out the stpm of conviction. es trae that the Criminal  
Precdare Code mon 36pm th unerion ose  
tence n the ease of fist offendern. The probation of Offenders  
‘Act also pets the court to release a person afer convetion  
‘thou sending him io al. But these provisions are of rex  
  
{2d appbcatton and ea! ith the problem of reabiitation n'a  
‘alchtaned way The coor hat'no power fo completely ob  
  
fe the onto ad vnc he amg ing a  
‘Tis power i conferred only onthe execatine bythe ght Pal=  
don Confetred by ance 73 or the Preadent and arte Tol  
{forthe Governors of Sates). Tis power of pardon Ss eoeclly  
terciacd on political or quasepoliveal grounds and cannot be  
lied as ight Hence pecton who tough sud tempts:  
tion commits rime and aerwacds sincerely repeats for the  
‘mes undergoes the Tall penal of fawand thercafe fads 5  
Bema ie anon wget he ig ng Hie  
‘ice by asking for pardon snd depending on the whi  
  
{ecttne. Under Explanation (2) fo secon st ofthe Indian  
Evidence Act, his previons convtioninevdence of bad character  
  
  
  
Page 401:  
395  
  
fad can be brought on record to discredit him. Then again,  
‘ieee areertnn state ach ashe Passport Act, the Representa  
on of People Aet and the Mumipatiies Acts of certain stat  
hc impose statutory Gables for a certain petiod On pe  
Sous who! are convicted and semenced to imprisonment, Apart  
Tom thee satotory disabilities for many public apposntment,  
for Fecal asked to daclove whether he wa  
Decsbeay convicted of aot and the cormnction will abways Be  
eda creomatance for rejecting hs appicaton  
  
tn my opinion, bearing in mind the covenant of the Usited  
[Nate Organon tothe Tag sa party tere should be  
sae oven the Penl Cade al conering 8 right on 8 con  
SE ieee conn are Ae  
Tenge ie judul pardon or cancelation or expen  
sheowon the ee a broad outs may Be 8S  
  
(0 Expunseg of conviction shou be aval weber  
the ieee ne of impesonment or fie or Bt.  
  
(2) The joisiction willbe on the court which pasted  
the Signal convition or is stccesor ia ofce  
  
(0) The right of the convicted person to apply for such  
expect fags ae ear he ea  
Bertie the date of payment of ine or the date of rave  
From imprisonment  
  
Mere fine year  
  
Imprisonment for aot more than one year. 2 yeanK  
  
Imprisonment for not more shan five yeas. 5 years  
Imprisonment for fie years or mace. = 7 YER  
  
(4) tn considering the application for expunction of the  
cameo wine cotderaon owns  
facts and clrcumstances  
  
a) That this the comic's ist convitin:  
() That his previous behaviour has been good,  
() That his characte, the nature aod cicumstances  
‘of de came and the deeeaining motives therefore are  
see tercomeince the Jae that the person 10 en  
  
Reh a SecGen dangerour to society nd that he wi  
  
5) Irae the expuncton of the conviction the conic  
1 co ALAS MSc atence suring one Balt of he xtod  
icon ol) te onder of exponction shall stand  
Cone.  
  
  
Page 402:  
or  
  
(6) The flecof such expunction of the conviction shall  
be ttiows ene  
  
oy authori sal tak, oti of the  
ion expunged otwahatuning section 75 tnd  
‘enol Code and similar provisions ia other laws (See  
Explanation 2 to secon £4 of the Evidence Ach)  
  
(©) Notwithstanding anything tothe contrary in  
any other Ia for the time being is force. the convicted  
person shal wot be bound to daclose his conviction 12  
ny petson oF authority,  
  
Gonequenal provisions wl ave 1 be made nthe Cre  
al Procedure Code also dealing withthe procedure to be fol  
Towed by the Court while dinponng ofan application for expung-  
  
of conviction. There should be Provaion for nsice fo the  
Public Prosecstor and alsa to the Private Prosecbtor. if any,  
‘and to the party aggrieved by the commission of te’ fence  
‘he onder should be made apgealable Article 370 of the Sowet  
Criminal Law and” Procedure may be (aken as 8 guide Tor tit  
arpose.  
  
IGNORANTIA JURIS NON EXCUSAT  
ignorance of Law is no Excuse)  
  
A plea for relaxation of this maxim in special circumstances  
‘in eriminal proceedings  
  
“The Roman maxim that ignorance of law is no excuse seems  
to hold morally mnocent persons ermanally Table relying oan  
‘obvious tion that everyone is presumed (0 Koow the law The  
Teghcrows nature ‘f this Bion wll be apparent nthe well-known  
‘bservaton of Lard’ Mansheld "It would be hard upon: the  
frofesion (i. legal profession) if the law was so certain that  
erybody Kew hc Eminent jurists have Wherefore discarded  
{his fcuge and stated that te tev rule is not tht everyone te  
[resumed to know law but that spnorance of law sll not be  
permitted as an eacuse, The telenesngour ‘with which this  
‘maxim has been generally applied i all eriminab proceedings  
fis. Been jostiied by ‘well Known writers on oripradence  
three pounds  
  
(1 Law, im theory, at any eae, is definite, and know  
able. Hence innocent ‘and’ inewtable ignorance of fam  
impossible  
  
(2) The ground of ecesity—if this maxim is relaxed  
‘every accused ll take the poe that he did not nw the la  
“and ic wil be Slmost imposible for the presecution to show  
AMematively that he ew the law in question. Hence for  
  
1, doce Rona (172) 98 ER pan  
  
  
Page 403:  
28  
  
the sake of any bene derivable from a slaation of ti  
mise Sebo eal aon  
[sige by making habit dependent co wel ph inert  
Londiion touching kaoesdge or means of knoe ot  
ietew.  
  
(2) Criminal law ress on certain mora principles and  
‘nene when person beaks the la though he" may be igno-  
ant of the provision of law he knows very well that be  
Breaking the vale ot right!  
  
2. Though these grounds are undoutsedly valid and weigh  
seyret modem jurbts Topnise “tbat they do not cost  
{Ste an.alogether eat tai for so sent ed vere 9  
fle. "None’of them goes to the full engi of fe ele? Thus,  
{he piscine that law tdi and Knowle i 30 far-fetched  
‘moda Condisons as to be gizouss Again ihe iiely of  
‘Branly roving ihe hee of io he fa  
‘Ziised may Se vrmounted by providing thatthe nets Soule  
ES he burden of exabishing now-negigent gnrance,” Thi  
Sythe open a naa ated cera oral pi  
fits nil be holy Inspplcabe for cerain regulator) ofences  
Epecity ofa semen etre. Ae pred ut by Salmond  
  
at he who break the la ofthe la dsrexards atthe same  
time the pipes of jostce and honesty. fom many stances  
{ar iom the woth. Ip-a complex ipa sytem a man reguires  
ther guidance thn that of commences and @pood coc  
freer" Snon therfore ott ot (mth est ction  
there no sueenjuseenton for apple the maxim sn  
{ofa ate with uncompromning. pity and tbat ean  
‘Schtions toi ave in cour of beg developed.  
  
3, European scholars have therefore reexamined the pto-  
bem arising ott oF the rigorous applcaen of the moaxim  
Sod have. fopgested ‘elaxatons in spesel cxcumetances To  
England, he subject has been dealt wh at gre length by  
{koi Wana bok on Crimi Lam.» The eared  
Stor observes a page 29320 move specie way Of resolving  
{he problem, which i gaining most favour among critics of the  
present rules that a datineton should be dra between crimes  
‘Sting upoa immemoral ides of ugh and wrong. whee 1  
‘he basinesr ofthe citizen to hnow what he may legally do, and  
{nademn regulatory offesces of which the ciiaen would not  
  
‘rally know Unless there is something to put him on enguity  
[Reno comprehenive codied penal law exists in England judges  
  
‘Send ca rovers, TB ea ae 3  
  
Sateond pune 6  
  
Gena Pile of Cminal Law by Ha, Dn Btn, age 38  
‘Shtmond page 96  
  
inal Law by Glawnte Waka, Chap 8, General Pa, 2nd Eon  
  
  
Page 404:  
399  
  
have some diction to relax the rigor ofthis maxim in excep-  
‘onal eaves Thus. nthe veltAnowncaseot Wison nyone ay  
‘Atican who ha ved in Engl fortwo ears eps pct  
43:2 nateropath physcondotorng hse co be NLD MRD.  
B thoagh he was nota repstered medial pacitcner. ‘The  
High Court acquited him of the oflence cdr scion 40 ofthe  
Miia Ac on he round hat fe age fed tat he  
Sas within his tight fn ao\_practhing. South & Hogan! wae  
‘on this decsign obsete: “The mistake wich  
‘Sen a mistake of aw for he Knew  
hgh wav et Gee  
tin England any eros  
tajsice that may aise ou ofthe strat pphenton ef te nasi  
iavoided bythe development ofcase aw. "Nevertheles recently  
the Enginh Law Commonon (which engaged i coaiyng he  
<inuna la) has taken op ths suber and inte Working Paper  
‘as Tormolated cenain questo for ectng opinion,  
  
sein elie ate emacs gaa  
sae, Bea ubactachermc rae  
(ine seer atta ae rs  
  
ese ination ot Gna  
held thet where a mistaen bet a fo the la way based po 8  
Ea Troost mee mama  
leptin with a view fo Fein the gout of his anim fr moor  
Hence spell those ots replsory nature "To quotes hs  
  
1, Won nen, G1) 3 ABER a 3  
  
2 inna Law Suh & Hopi, aca Eon, page 10  
5. ssn 33s Us as  
  
‘aa a Choir  
  
5 China wy Paki, 157, Cpe 9  
  
  
Page 405:  
400  
  
li. defence, are beyond the province of the judicial function,  
the need for lepslation is clear. likely afea would ince  
‘ecent mitdemeanours ponishable only by small es, various  
agraance ad echnical regulations of adm bord  
Here actual knowledge ofthe Wega should be required  
Seems necesary to fetaia the. preamp that thee wes  
sich Knowledge allowing the defends: trintrodace evidence  
Tending to prove ha ignorsnce or msluce of the tse. bet  
placing the inal barden of proving mens re, in the above  
Sense upon the State.”  
  
5. ‘The American Modst Penal Code also contains the fol  
lowing! provisions om the subject  
  
Proposed? Ofc Draft 1962)  
  
(1 Agnorance of misiake as to 2 matter of factor law is  
 belence i  
  
(2) the ignorance or mistake negatives the porpose,  
Aostedae beef, rechisrnes ‘or epience tedued  
nabinhea material element of the Ofte; of  
  
(0) the aw provides thatthe state of mind establish:  
‘ed by Such ignorance oF mstake consieutes a defence  
  
©) Although ignorance of mistake would otherwise  
alford dlenoe "othe ofence charged, the Sect s  
tot avaiable the defendant would be guy of anther  
‘fence had te situathon been 30 e apposed  
  
(2) A baie that conduct does not constitute an oflence  
{sa defence 10-8 prosecution Tor that offence based upon such  
ondict when:  
  
(a) the statute or other enactment. defining  
offence snot known fo the actor and has ot been pub-  
lished or otherwise reasonably made availabe to itm  
prior (othe wondetslleged ot  
  
() he acs in reasonable reliance upon an offciat  
statement of the lam. afterwards determined 10 be. t=  
‘ahaa cromous onion () Sto other  
Snactoent (i). Judea! Scion, opmion or oder  
{ny io admmsirtive order or grant of peemision: of  
titan oil mierpeaton a epee body  
hargud by law with respooubity {or the lmrpretation,  
SSdmnistration or enforcement ot the law dehning the  
tence  
  
(4) The defendant most prove a defence arising under  
subsectign (3) of this section by a preponderance of the  
cvndence"  
  
1. Crna av an frosts, Cpe nd Randings td Eason By Heine Halland)  
(Gerard OW, Made page S38  
  
  
Page 406:  
o  
  
46, In those countries where Penal Law has been codified.  
ther ia fendeney ta event times fo make expres PrOvsions  
Sealing with stake of fa  
  
“Thus in the Draft Geeman Penal Code, 1962, Artie 21 says:  
  
“21, ror abou the Prokibion —Aayboay ho. in  
‘commiting the at erroneously assumes that he aot acting  
tinal, act wishoot pt if Be eaenor be blamed forthe  
on Whe can be Blamed for the eror the punishment  
‘hae be mijsted tn accordance with Aruise 68, paragraph  
r  
  
{nthe Draft Japanese Penal Code, 1961, Article 20 (2) sys:  
  
“20(2) A person who acts without knowing that his acts  
fre not permited by Taw shal aot be punished, if there fs  
(equate reason for his ignorance  
  
mn the Norwopian Penal Code (corrected upto 1961), section  
sv ie 35 follows  
  
57. If 4 person was ignorant of the egal nature of an  
act atthe time of is commission, the court may reduce the  
punument fo lets than the minimum provided fOr such an  
ser to's miger form of” punshment, provided the court  
‘doesnot decide 10 acquit hm for this e800  
  
sol be Colombian Peal Code, 196, Anil 23,0) swf  
  
ocd faith under insuperable fesrance of through  
mistake of the fet law not due to negligence.”  
  
{nthe Aestran Penal Code. 1966, section 2 (@), is as follows :—  
  
“Hence an act of omission is not to be reparded as a  
felony such am eo eaured as 10 prevent recopaion  
Of the feomous character ofthe ach.”  
  
nthe Argentinian Penal Code. 1960, the relevant portion  
of Arce A oy follows re  
  
“The folloning are not criminally Hable: I. Anybody  
who at the tine of the commanion of thecrine could not  
Atppecite the untawfulnes ofthe deed or conto! his acon.  
by reutons of insuficieney of gveased disturbances of his  
Wind or by uacomsciowsne or By ear of fact or Ignorance  
Yer wi hel or reponse"  
  
ta the Korean Penal Code, 1953 aho, mistake of law has been  
eal wth wo article 16 8 follows  
  
“Mfsake of Lax —Where a person commits & crime in  
the bale that his conduct does not contre a crime under  
SMottawnt2T  
  
  
  
Page 407:  
eo  
  
‘exiting la, he shall not be punishable only when hs maake  
hase on resonate groans  
  
“The revised Suse Penal Code (1951 expiily proses that Avie  
TUE om mens nea) i ao apphabi to coneoncns (enc  
Sct sorter cron seine) hat  
Eick enmnalmephpense i: equre fora conicton buted on  
‘tn feral la able wel ofences Aeice 8885).  
  
{In Netherlands also a theory of culpability similar to that  
rectiing im Switerland has been inroduced Ym 1952  
  
Jn Belgiom also after 140 invineible mistake of law is 2 2008  
sefonce for any offence!  
  
«lage te ey Sion an Yon bs ars  
“ n"imeriatonal Cong of Comparative. Cro  
{Swan to have been subaatlly azopes Accord to  
thr tery  
“No punishment without git, no uit witout Fal  
the autho alana Wn contig becaute shen ate he  
Heda could have Keown that he seed wy"?  
  
‘The wet hnown Norweia Ju J Annas? a pine  
‘ou te elasity of section 37 of the Norwegian Penal Code and  
‘ferred 0 various cicamutancs nha am acused May Be com  
fistely aogited for make commuted im fgnerance of lame  
  
1. Te may be itoring wo refer to Coxpust Juris Canonic  
promulgated by Pope Benedict XV in 1917  
  
“Canon 202, 1—Vio  
  
ator, ianoeania foe  
  
“Ths principe,  
  
te lw sf eine  
esa.  
  
“The impuabily of a crime committed thvough ignor-  
  
ance # Setermned by the dice of culpabaty in Ihe enor  
  
is igmoranta allatenvs imput-  
‘nab ”  
  
stated, means that ignorance of  
the ignorance is hot the aul oF the  
  
8, Ie nay, therefore, be stated broadly dat wherever the  
nti Code as bien testy seis ori nthe prowess fe  
‘Som, efforts have been made to flat the rigour of this maxim  
  
|. Poni ks of ote frean cower are not arabs re '  
{ NietRappard, Te Note of Law ae 2 Stee, 26 Temple Lv Quay 261 23)  
5.4 Andon" Ieveeeon Yee 9 Seainvan Cran tan E55 Criminal  
  
SoS Of Sa Mo tt en de Cha  
  
4. Cio Law and Prosar, Cas aed Resins ad Ein, by Jerome Ha, gs  
  
  
  
Page 408:  
0  
  
ap. roe te Ca il xeon came  
Ivete mistake of laymen be a good defence, "The tng  
ih Sac a an En th aren 9 head  
thereby making the maxim, as twere, mere re =  
tion. “Even mm those counties her here eno Sompecbenloe  
onal Code as in Enslod and U.S.A. Judges have had no hese  
tom in acquiting the aecesed in excopiona eases where ignorance  
i would bea good defence. Event those coun co  
‘atom ‘of Pena ta has teen taken up and the authories  
onectned are carctlly considering how this provision would  
te dated.  
  
9. In Ti, the Penal Code of Lord Macaulay, by express  
provision (nsecitous 36a 79) exclodes stake of la fom the  
‘ope of the exceptions "The maxim is therefore apad in all,  
Ite rigowe: but as no minimum puniabmen i provided tthe penal  
Jawsvof India as's general rl, the court has consizerable di  
ration in passing rominal or lenient sentences where these  
sep inal tte a Bia orn  
for penal law refaem in India this gostion has to be prepped  
aden faring mind the te in ter coun The  
‘conservative view ‘ll perhaps be to the effet that the existing  
Provisions should be let undisturbed, ued That where there Te  
‘icepton! hardship lt may be let either tothe dvereton ofthe  
‘court to pass a nominal sentence or to the excative to enrcine  
theie prerogative OF pardoa or remisuon of semtence,  
  
10, The ceormer, however, may not be satisfied with such  
‘ancgative approach tothe whole question. Once itis found  
thatthe Bate grounds on which the mantis based are mo longer  
Applicable forall classes of offences Teglature must fnterene  
‘ith a view fo provide for complete acquittal in proper say.  
‘Ar poges 398-399 of General Pranipes of Criminal Law by Hall  
the earned author has rected to some eases where though the  
sts bigamy was commited uo mua of teas  
Fassed a nominal sentene of one day's imprisonment oF one  
Syeek's imprisonment. But this provided at iteresing @sery  
From a New Zealand Fudge (page 398 ibid) "Why then. should  
the Laplatre be held to have wished to wabjet him push  
nent a a” This observation Ie steygthened si Fement-  
{Berea thatthe comiction in a chiminal eae i ite @ seas  
mia On person, anda mere reduction of sentence may not  
besucent for his complete reatatation. Ths, under Eghin-  
son 2 00 section 84 ofthe Evidence Act the convlcbon iy ev  
‘dence of bad character and may be used 2gninst'an exccootict  
‘iroughout hs Ife. Hence, though tho court's discretion to past  
minal semences ia appropriate cates should remus iy fact,  
severtheless in an propasal for reform ofthe penal eo 1 st  
‘eviern ins of ems une putusbmot Ht seme heceeary to make  
nenpess provision forthe complete sequal of the secused om  
‘the ground of mistake of lawn exceptional ercomstances  
  
  
  
Page 409:  
408  
  
11, According to Hall “recent misdemeanours punishable  
with Snes, opdinances and technical Fepolations of an admins+  
{rave Board” should be separately claniied and\_ actual know:  
eg of the leaiy may’ be med upon. The Durden of  
proving ignorance of mistake of law should however rest wh the  
[ceused. "The broad paneiple of cassifcatfon fs worth adopting  
in Tauia alin. Tat ano been sogested by Olanville  
'm the passage aleady quoted (paragraph 3), The main test for  
‘poses ofclasiation of offences for this purpose may be  
the (est of “knowabihiys ofthe penal provision’ ad Mot Recess  
‘ily the actual kmowldge of the st  
  
{In India there is a marked diflerence beoneen Acts of  
ue onthe one band and the mas of legislation know  
‘ibadiary lepsan’. on the other" Acts of Legiatore are  
\_rnerallyintrodaced inthe form of Bil discussed in te Legit  
{res Widely advertbed in the press aod even after being pused  
by the Lepnlatures are generally svalatie as priced pubbcations  
{fom varicws bookseles, Anyone, Who is vigilant and diligent  
fan wilhout much dificulty know the reevaot prowsion of the  
fav "The test of knowabitty mey. therefore, be sud to be fly  
Sis in respect af Acts Of Lepisature,  
  
13. On the other band, “subsidiary legislation” will not  
satisfy te est of know, Rules, orders bye laws and none  
‘eauigas made uader paren Acts are generally published in the  
Gane, andar nox ey, avaible” Even ated, ook  
Sellers do not have uptodate copies ofthe sane, over.  
‘ment alia do not publish uptodate opie of statutory rues, orders  
Sind sotifeatione’ Some of the aotifeations ate fot sued by  
the Goverament but by the subordinate authoctes, such, 3  
Board of Renee td ca uteri or inane, mute  
‘sed posesiion of any exctable commodity (Ganja, Opium,  
‘Bhang. Liquor ct) above dhe maximum permasbl mit is rade  
momen nde the xc Ae ot the manu of  
Dermasble posession 9 faed fom tie to time By Ul  
‘Sf Revenue by notations andthe Txt may vary from disnct  
to dace parton in unauthorised ponsestion above the  
limit sonitavenes the otscabion, though hes punishable undet  
the parent Act. Simiary,byetaws are sued and amended fom  
Time to tie by foal auihontis and the contravention of the  
hermes puna unger the paren Act Ai, some of  
the notiiendons sued under the Foregn Bachange Repalations  
“and the Sea Customs Act ae nether known not easly Knowable,  
isnot unasual to id even the departzents in charge of am  
tration of tatate not being fully aware ofthe latest amendments  
{o some ofthe notfeatons, especialy where these are chanped  
‘vith hghtning rapidity and the amendments are so drafted a8 (0  
Ee smmtge iboats cartel stn of the cial prove  
‘lone Perhapi. a research scholar digging info ancient gets  
  
7 ie i  
  
  
Page 410:  
as  
  
poutcaos and cain a of al, Beli o one ay be  
ivpostion to know the lates tavron asbjece Bot iwi be  
{Ge anenfst 4 expec even an ordinary rodent and vigilant  
Stent Tesch thst standard. Thee aaa some reported  
Sessions where even High Courts fave been mild by omasion  
tthe Counsel forthe Goveroment (ue to hs own tenons)  
fo place before the Court the lates nodicaion on & Hibect  
‘Fads when jodge inthe ght of tnetex of Keowsty scosk  
chinyegslaiton in dia can be reasonably classed ar separa  
ted om ihe Act of Lepstatures for the prpose ot rela the  
Fizour of the manim fe appears tat te test of “Enowataiy”  
‘vas considered very important cven in Reman times ad hee  
Inisor women, mets soldlers were exempted om the  
‘peration athe maim  
  
14 is true shat whitey the offence committed would  
’be punishable under the pent state but where the esence of  
the offence consists of contravention ofa rule, exer, byestaw ot  
notifcation, the law should permit the accused to show that he  
Could not cven with doe diligence have been avare Of those pro=  
‘sions. By thus casting the borden on the accused the ground  
‘St recesity (ground ne2 in paragraph 2) for retenion ol the  
‘aim wil sl be mainisined in ie elecinencss  
  
15, “The main advantage of such a lw reform may be put  
‘nthe words of Glanville Willams? ay follows:  
  
To recounts delcce would bve the coasiderabie  
advantage of compelling the departments of Government 10  
make a continuous efor t9 brlog regulations to the mosice  
of those acted. It would probably havea Beneficial elect  
‘tthe cfanty with ‘which rules are draied. the frequency  
‘nth which they are feised io thelight of judicial interpret  
tons and the general eflectvencess of legal regulations  
  
2  
  
16, “The following drt is suggested for tis purpose —  
  
“9A. —Notwithstanding anything conned in sexions  
126 and, "nothing 8 am ollence where thet aged  
isis an actined ie contravention Sf a prowon of 4  
ie" byean, order" or notcaton ‘made’ under an Act  
St Lepslvere fa the ime of suc cntevenon the cred  
oulrnot ave with "Soe igonce been sare ot the id  
  
“Ta it pase a  
2 Ghnvie Willan, page 252.  
  
  
Page 411:  
405  
  
AS (o what willbe “Jue dtigence’, no general rule can be sited  
‘ana should be let for case lat to cary the. postion, The  
‘sccined's satus in socket) his educational and meal abies  
ihe recent nature of the ul, the Tat thatthe accused is stan  
fer nd the fact bat the  
  
‘penning doubtful may all amount :0 dat igen  
  
‘nce t  
  
Code amended” as. suggeted above, she High. Court and  
Scpreme Sart ein doe Soon ay dann certain tes oe hs  
pape  
  
17. radical law reformer may perhaps be not sti with  
the aforesaie: proposal on the ground that H dock not po f  
vough He say preer a comprebensve provision on the lines  
‘of the American Model Penal Code (paragraph 3) laying down in  
Ete etal the vations eamtanes is which make ota  
Stil be a good defence. But tis propel is open to the abjec-  
ion that wil be impossible to be exhauntioe sn the enue  
‘on ofthe detalls and that considerable discretion should be let  
‘th the coert “In some of the foreign Codes, this has been  
seheved by tsing phrases such as  
  
be cannot be blamed for the eror" “if there is ade-  
‘quate reason for his ignorance", "insuperable ignorance of  
  
Haw not due to negligence”: "ignorance for which he & not  
  
responitie"; “here his mista ie based "on. veasonaDle  
  
rounds" ete (parageaph 8).  
  
1. The whole question may be foemulaied thus: Should  
the provisions of sections 76 and 79 ofthe Indian Penal Code be  
Fetaed in tei present form? If they ae to be amended, what  
‘Sould be the nature and extent of law relorm.” I would recom’  
rnsnd the suggestion conained in paragroph 1  
  
RL, Narasinba  
  
  
  
Page 412:  
APPENDIX. |  
QUESTIONNAIRE  
  
ON REVISION OF THE INDIAN PENAL CODE  
Application of the cade  
  
1. xtreria operation of the Code in test of  
aliens at present conti 10 oflences commatted on ships oe  
‘Secrat repitcrea in India (section 4), Should this be ealarged  
‘in any manaer.¢¢ 10 offences commited by aliensin the service  
OF Government outside India”  
  
Panishments  
  
2.\_The punishments provided in the Code are death, impr  
sonment for ie rigorous and simple imprisonment, fereture  
‘ot property and fine.” ‘Do you consder it necessary or desirable  
1 BGPny other punishments eg  
  
{@) banishment for a term to a specified laity within  
adit  
  
() exteroment for u term from a spcifed Toca  
  
(©) comesve labours  
  
{@) iposton of a duty to mae arends tothe victim,  
typing the danuge ote by he fee?  
  
{e) publication of name of the offender and details of  
the oRéne and sentence,  
  
(0 confiscation.  
  
In respect of what offences or types of offences would such punish  
‘mens be appropriate?  
  
3.\_ The Code lays down only the maximam punishment for  
cafonces, anno munimam ponibment excep very few eae  
‘re'you in favour of laying down 2 minimum teem oC impeson-  
mcm for any offences? so, Tor what offences?  
  
4. Should imprisonment for life as the panishment prescri-  
‘bed forme offences be replaced by imprisonment fora specified  
Tong terme 9-30 years?  
  
5. Have you any general suggestions to make fora reduction  
or ineease the gudalur of punishment for ¥adous offene=s  
tinder the Code”  
  
  
  
Page 413:  
08  
  
6.\_ Ate you in favour of providing any special form of punish  
rent (uch 3, ordering suspension or winding up of Busnes),  
{ie ponatent violations of the law by Corpora?  
  
7.(a) Where an\_ offence ix conjoinly committed by 9  
oun GF pee, emedie nunershow oe  
eu pai igher than the maxim pres  
  
() For instance, should “gherao™ (wrongful rest  
4 large group of persons) Be made a separate offen  
‘vere punishment?  
  
{o) have you any other additions to. suggest for dealing  
ith) nolent pine commie by rsa eroups “or by  
  
by  
  
When a pesion commits an offence in state of inti  
cation (efinduted), should that Be made a ground for enan=  
  
‘ed punshinent?  
  
9, (a) Do you think that there are too many provisions in the  
‘Code ‘Sealing with auglavated form of partial fences and  
the law should be simplied in this respect?  
  
(0) Would it be preferable to give a list of aggravating  
and\another of stighiag ‘rcumstances and prone. gene  
fy that, case of aggravating circumstances, the “ord  
aly "maximum ponisbment will be doubled, and, in cate Of  
tnigating circumstances, i will be halved?  
  
General Exceptions  
  
10, Woald you allow mistake of law 1 be pleaded ether as  
8 defence or a¢ 4 mitigating crcumstance, fox offences cons  
foie by conteavention of subordinate lepsatio, such at tu  
{ory rus, byetaws orders andthe like?  
  
11, Do you eassider that any increase Is necessary in the  
‘nintoum ae of criminal respoosiity whch is 7 yeas at present  
(Geetion 83)? so, what should i be?  
  
Should the exating provision (section 4) rela:  
  
12.  
ting 10 the detente Of samy Be mode  
iver  
  
(©) Should the test\_be related to the ofenders ocapu-  
ci Snow tha he tte wrong orto incapety (0's  
iia Ses ponaaie®  
  
() Should the defence of insanity be\_avaliabe, in canes  
swhee ‘he'Gtender“aithough aware ofthe wrong ox ten  
Mea mee cinco tonal to Gost foo omng  
  
‘because of hs mental condion?”  
  
  
  
Page 414:  
cy  
  
12, ‘There is at present no right of private defence in cases  
in which theres time (0 have recourse tothe protection of public  
Suthorites (ection 99). Do you think that ths fetacon ts  
FSpSRTY or ta i shoul be emoved o tbat it hot be md  
  
14. In regard to entrapment cases here the law enforce:  
ment oftcers or their agents Gly usigate the commirnon of  
Um oflerce, as distinct from those cases where they merely Pro-  
‘te the opportinsy Yor the comnmusion of the een, wld  
sony  
  
) that the procedure adopted isso unfa and wet  
cal tha the accuted should be deemed otto have commit  
ted any otlence, oF  
  
(©) that, a any ce, leer senence should be  
vided n't Code™ =  
  
Abetment and attempt  
  
13, Where a peri abets an offence by instigating a minor  
so comm should the abetor bet ponshable sth ponte  
‘ent higher than that prescribed for abetment sm penta  
  
16. Are you in favour of introducing the principle of full,  
vcatiouyHabiy of the master for an ofence Commuted by  
Servant in the course of hs employment for the Peneht of the  
  
Offences against tbe State  
  
18, Do you consider that the law resting to sedition should  
be amplified oemodited? I's, an what respects?  
  
Offences affecting the human ody  
  
19, Should euthanasia (or mercy hilig’ a8 i is popslr  
‘al be exempied from ponishiest ete as homed ot 86  
‘heiment of sundae  
  
20. ‘Should there bea provision inthe Code for punishing  
1 person who drives another person by systematic cruel teat  
{nde to commit suxide?  
  
at  
  
(©) Should attempt fo commit suicide be punisbatle at  
  
  
Page 415:  
0  
  
(©) Where a person threatens t9 put an end 10 his tie of  
atiempts 10 Go's with a view to compelling nother person oF  
Suthorisy to-do of ome to do aayihing whch that person ot  
suthonty not Bound toe or. a the case may te om To 40,  
Should Such aet Be made pumshable®  
  
22 The Code comains afew provision fr punishing sexual  
fences (pen unnatural once te). Are any aeons to.  
‘on aerations im thee pronsions every?  
  
Should uantural oleae be pisabl at allor with  
heat stmenes ss pred in soanon SF  
  
(Should exception he made for cases where the offence  
‘comnts a acts dane in private Between consenting adults?  
  
Other ofences  
25. (a) Should adultery be punishable at all?  
  
() If so, should the offence be limited t2 men only, 25 ia  
section 97  
  
25. (a) Should defamation as at present elaborately defined  
secon 499 be purihable at al  
  
(6) Would it be preferable to limit crimina defamation «9  
user where w person delares another person (vag dead)  
‘mending ox knowing sto be key that such act will kad to  
breach oF the pence?  
  
26. In view of Arcl 12 of the Universal Desattion of  
Hck 8) Ge yo hn nthe mba i okt  
  
ize and protec the right of privacy, and so. What  
  
weorence wits ha ight sould you ee Funnbable®  
  
om  
  
Limitation for prosecutions  
  
27. Do you consider that there should bea statutory period  
of limitation Tor prosecution for any olences under the Code,  
nd, ‘iso, for what fences?  
  
  
  
Page 416:  
Nate  
  
sls moa ta ne ey  
fla cae aa Pi  
eagle rer de CAE Taf er  
Sarria va Mee es  
  
‘The definition of particular offences begins with section 12  
‘Renumbering of these subsequent sections 16 Rot proposed  
‘the raft Bil exce™» sere a whole Chapter or & fasccle of see:  
‘ons is replaced ater revision i cadet that faa landmarks  
Ike ettons 134A, 14. 198, 503, 20 ete may not be  
os  
  
5 nesied Gaper To Vi ve Secs oa  
2 Fain Chater 110 VA have EB aot fal  
  
  
  
Page 417:  
Cniion  
  
Sona nee  
  
pee,  
fee  
  
Aprewoox 2  
LAW COMMISSION'S DRAFT  
or  
‘THE INDIAN PENAL CODE  
(AMENDMENT) BILL, 1971  
  
‘Short le and cononencement—(1) This Act may be called  
the Indian Penal Code (Amendment) Act, 1971  
  
2) Teshallcome into force on such ate a the Central Govern  
ment By nian in he Ocal Gare, pectin  
bohalt  
  
2, Section 2 of the Indian Penal Code (hercinafier refered  
to as “he Code") shall Be omited.  
  
3, Section 4 ofthe Code shall be omited, and in ew thereof,  
the folowing section shall be subslsted sv tection 2 namely  
  
2, Beterntorial application of the Code This Code  
shatl apply aio  
(2) 10 any offence commited outside India by 3  
izes of Toda  
(@) to any offence committed by an allen on any  
ship or aieraft registered in India, wherever Wt may  
tefaad  
  
(©) eo any offence commited outside Inia by a  
lien ‘whist in the service of the Goverament. when  
Such offence fs committed in connection with sch  
Service ors punishable unser Chapter Vi, Vitor 1X ot  
of this Cote  
  
Exploration —To tis section, the word “oflence includes  
every act commied outide India which ifcommitied in Todia  
‘ould be punishable under this Code  
  
3, Section 4 ofthe Code shall be ome.  
  
  
Page 418:  
4B  
  
4, For tection 5 of the Cade,  
subsiated ae secon 4, namely  
  
te following sections shal be  
  
“4 Saving Nothing in this Code shall affect the pro-  
visions of any special or Toca Iw”  
  
5. For Chapter th of the Code, the  
‘be ‘subst a oe  
  
‘Chapters  
tuted, namely, me  
  
Ouarnn IL  
General Explanations  
  
5. General Clauses Act co, epply for interpretation The  
Geverah Chee Act, 1897, shal apply for the taerpretation of  
this Code asi applies for the interpretation of an et of Pari  
  
6, Sens of expression onc explained —Every expression which  
explained in any part of this Code fused in every part of  
this Code in conforoty withthe explanation.  
  
1, Debus s Co, nnn contet ter  
vert  
being; ining  
Ppa tac? mew ony fr da  
apg beaten rm attend  
oa ag se  
(anon nh fan ine  
(0 sertey ram tase ty te ey ei  
ns te ns Bae er  
se en ean ae dak  
Thapar yaaa  
pee  
(oye? mee any a yee 8 en  
  
a  
cSaotaee  
  
  
Page 419:  
aia  
  
(i) odge means any person who is copowered by lav  
to give, Inany egal peoceeding cor cma define  
Jima oF 2 Judgment hich snot appesid esse  
soul fe or jodgment whch conned sore  
‘ther authors, Wook! bedetinaive, or who 1s One of body  
‘of ersons whichisempowered by law to ive suchajudpmei,  
Snd inlay 8 magitrate,  
  
(5) “ie means the ie oF «human beng:  
  
(ke) ‘ocal\_law\* means a law applicable to a particule  
part of India:  
  
() “man? means a male human being of any ages  
  
(on) “puti’ incades any class of the public or any  
communi  
  
(6) “pub servant’ cans —  
any petion whois a member of Patiament or of  
a sete Ueilatores  
(8) any prion inthe sevice or pay ofthe Govern  
ment, or remunerated by the Government by (ec oF  
ommsion forthe performance of any publ ys  
  
id) any person who is 2 member, oF i inthe set-  
vice Ge pay, of a toe auihoriy  
  
9) any person in the service or pay of a corpora:  
ton stdin by. or Undet 4 Cental, Prowncal or  
38 define Ym  
section 617 of the Companies. Act, 186;  
() amy iv  
& tse a aghat, whether y Ren rats meer  
a body of pesoas, any auditory functions +  
  
Gi) any. person specially authorised by a. court  
‘of justice 19 perform any duty in conection with the  
Suniitration of janice, including ® guider, feeoe  
‘er'or commistoner appointed by such court  
  
(oi) any arbitrator of otber person to whom any  
‘cau matter fa been referred for dscion 9¢ report  
by a cour of justice orby'a competent pbc wuthonty:  
  
including ary person empowered  
  
sl regen whe ols an lls ip wae  
cot which be is em {2 prepare publah, ain:  
Shin ero eta all ft cond aston  
‘or part ofan election; ot  
  
(2)\_ any person who hott ay offer in vewe  
of whigh he aathorved or requued by Ia to perform,  
Sny pub dy:  
  
  
Page 420:  
415  
  
Exploration. —A pasion falling under any ofthe above  
‘by virioc of any afice oF aeation he fy astaily  
be Servant, whatever egal det thece  
  
his tight 20 hold tht ofiee oF satan:  
  
(0) ‘special fae” means a Law applicable to 4 panticolar  
subject  
  
er  
Holding  
may be  
  
"whereby any legal ight  
Grotto) extended, ancerd, cinted, extinguish oe  
‘elened, or wher) any person acknowledge that he ek  
lindee lest labia hie aut a certain legal gh  
  
(4) ‘woman’ mans a female human being of any  
ape  
  
4 “Coumerfet” (0) A person is said 19 “sountertit who  
‘snes one thing fo resemble another thing. intending By cane  
‘C'thar reemblance to peactve Josiption oF kaowieg Wt to De  
Fiety hot deception il thereby be practised. This ot coche  
til fo countering thi the cescnblance should Be’ exit  
  
12) When w penon canes one thing to rewmble another  
‘hin andthe Shemblance such that's person might Re Ge.  
‘coved thereby. i all be presumed. until the enntary 1 prove,  
that the person causing the resemblance intended thereby 16  
Practise decepion at Krew i 10 be ikely that dovepton suk)  
‘herchy be practi,  
  
9, Pecuwe™ (The word “docmen dente any  
mater fvorded upon any substance by means of ees gees  
‘ce marks or By oe than one of those mean, teed To  
be ted. or wih may be Used a evidence of tht mater  
  
Fplaation It immaterial by what means oF upon what  
substance the kitts, ares marks are formed. whether  
the evalsnee intended for, of may be wed ins cobrt Of  
  
Mtrationt  
  
‘he Following ace documents =  
  
2 map. of plan a caicatue: a vting on a metal plate,  
sions or Wes) En ape a oct once on whl Sd  
Sr mages are retonl  
  
(2) Whatever is expeesed by mam of eter, figures  
br marks as understory merase oe ether sage, shall  
be ‘med to te recorded by such lett, figures oF iar  
Stnbin the mesning Of this sction. although the same may  
ot Be actually expres  
  
  
  
Page 421:  
416  
  
Mbraion  
  
‘A writes his name on the back ofa il of exchange payable  
to his order.”"The meaning of the endorsement as sndertood  
by mevcare usage, that the Bil to be pd to the alder.  
‘The endorsement is 4 document, and most be oirved the  
  
same manner a5 if the words “pay (0\the holder" or words 19  
Gat effect had been wten over the agosture  
  
10, "Dishoneuly".—A. person is said to do a thing “  
honesty" i he does that thing: with the intention of casing  
‘wtongfal goin to one person af wrongful Tow to another pet  
  
1. “Froudulenty"A\_ person is said to doa thing “raudae  
Jenty he does that thing wth Intent to decave another and,  
Dy such deceit, either to cause injury to any person or to induce  
any person tO act to his Gkadvantae.  
  
12 "Good faite” —A thing ig said t0 be done or believed in  
190d fh when donee baeved honey a whe  
  
“egal” —A thing i “egal? if am fence, oF is  
  
13,  
prohiited By law, or feriahes ground fort chil acion-  
  
14, “Legally bound fo do" —A person is “legally bound to  
do" a hing when he ts Dound by lv to do that thing, oF wheo  
is ilegal in en to: omit todo that thing  
  
15. “Ponsession”-—When\_ property i in the possesion of  
12 person's wife cletk of servamt, om account of that petson  
ft ie im that person's postesion within the meaning of this  
Code  
  
Explanaion—A person employed temporarily of 9 &  
  
particular ocasion in the eapacy of 2 clerk or servant Ts &  
Bek or vent within the menmng. of thie seston  
16. “Reason t9helre".—A,peeson is sai 10 have “reason  
  
to Belew thing if he hat saticent cause to Believe hat Thing  
bb not overs  
  
17. "Volateriy"—A\_peevon is said 10 cause an ffct  
velar he au i by ears whereby be inde  
fren he knw ord remon to behveo Re kel} Te tse  
  
  
  
Page 422:  
a  
  
Mstation  
  
|Ajsts fre. by night 10 a inhabited house ina urge tows,  
for the purpose of Macttating 2 robbery” and thes causes the  
Rabo? person. Here. A'may not Rave intended to caine  
death nd may even be sory tha’ death has Been causes  
serie he bnew that he was bey to ease dea  
Shoe" Ueath vate  
  
bys  
he hos  
  
1S. ranged xan” Wrongful gain’ gain by wnlawfod  
means proper owhich the person” gaining mot legally  
Nice and ® penn ie sand to “poin romal when ch  
favs fetans wong, 38 8a ge when such person Seques  
‘rong  
  
19 Weomefal fos Wemgtal oss i Hoss by ont  
anne of prupers 4) which the person losing 1 leglly et  
isd und'y pers ie std tose Srongrully: when Sock  
Sows aghay eps out of any property a well >  
Sieh porsow fh wrongly deprived 6 that propery  
  
bier ns parte act amd paris bx amision.  
‘wreronet ibe Cain of certain effec. ov a temp Lo ae  
Aharelic. by aw et or by sa onsen a ellen. the causing  
a tt ps a at yan mi  
  
Motes  
  
S imgationally came 7's deh. arty by iegally omitting  
wy gues fo, and a ye fog 2. Abas commuted  
  
11, eve dome hy several perso in frtherance of common  
mention 11) Wnere“owe of tore person. wih common  
neni fo commis craminal act do any acto furtherance  
‘sich conan intenion: each of them ible for the emi  
{ued av a at were dome by frm alone,  
  
2) Whenever gn act which, criminal only by reason of  
ing Kg ne with a ctiminal Knosede or inlenton 6 one  
ify Rawr more peroes each sich persons who Jots bt the  
ie th scl knowledge intention. Table for the act in the  
Silat mmanet av i tae ae were dome by him alone wih that  
Thowedae or snenton.  
  
22 Pesan cancered i rninal ac mes be gus of ferent  
anes “Where two or more persons are engage oF  
eed he commnssion of mcm act they may be golly  
SEEieron lene by ens oF tat ac  
  
  
  
Page 423:  
as  
  
aration  
  
1 auacks 2 under sich crcumstances of grave provocation  
sna hs iting SE 2 would he onl culpable amide not sm  
Motung to mersec” Bc havng nw towards 2 and sang  
{eb mannose een ‘jc he proven  
ugh Aad B are Hovh engaged  
  
“SPrarder and & suit ony  
  
Seabee 7's deh. BS  
‘F epasks ome.  
  
2 Conperaion by doing one of several sets contiting  
av oiteme, "when an ofence i commited By means of several  
eee ymeomy coon th comm  
  
a effence by doing any one of those acs. either singly  
Sony thay iber person. coments that cence  
  
Hstrationt  
  
(a) A a0d B ogre to musder 7 by sverlly and at difzent  
tiga ging bit umall Jose of ponon. A aad ® admiter  
ie paron'acivding te the apeeement wi mint 0 marder  
7 Pies trom the eflets of the seneal doves of pun 50  
Zaministered totum. Here ‘© tod B intentionally coo  
  
2s the commision of prder an 3s each them os a 3  
fy ehich the enh cauce sey ate bs gu) ofthe oerce  
thowgh ther Sty ve separate  
  
{bX and B a joi sch, ve the charge  
ot 2 pusoney.aitoately for ik outs ata cine. and By  
Sadnding to cause 2 death. knowinaly cooperate in coasing  
tha fee bs legally mtg each daring. the ime of hy  
raadasce, oy ftrash 2 with food supplied to them Tor that  
pero Zaks ov hoger ooh ard egy the  
ardor of 7  
  
(e) Actor. asthe charge of Za. priser. A. intending  
to cave 2 death, pally omits «© supply Z with food  
  
SGasequcrce of which 2 is uch reduced in strengih, bet the  
Stntnton is not sufcest to chuse his death, Aus diamsted  
Fiam hes office and W succeeds him. Be vinout colluwon oF  
Cooperation seth A. aepaly “omits co sunely. 7. with food  
Sowing thor be likely thereby to caane Zs death,” Z dies  
Sinus ts ety murder, but as A hd not co-operate  
San'BYA ic uly only of am atierpt to Commit murder  
  
  
  
Page 424:  
we SF, Chup oe Code, he Ftowing Cape all Ste.  
cot om rs  
Soi  
‘Coenen HH  
PUNISHMENTS,  
  
34. Panishuents —The punishments co which offenders are  
tle under the piousons of ths Code a  
  
1) deat  
6) imprnomesent for We  
(Gi) tepeioomnent for a term. whieh may be—  
  
1a) rigorous. that iy ih hard laboor, of  
(>) simple, that is. wth i labour:  
  
Forteivre of propery  
(6) fi  
  
Mons nor t0 be sentenced 19 dedth-—The sentence of  
‘dain sal aoe puued ut peron convited of capa ofencem= \*  
ne time of coeomiting the fence hema under eighicen  
  
Tag aE ee tor shine provided PY  
aie ee ‘ony paishinent provides by  
  
254, Contruetion of refevence 0 traréportarion-1) Sub-  
  
> ine provisions of subsection (2) and subsection (3)  
ereneé to transportation for lle any other Taw foc the  
Ine eine te fowce ot an any soaturment oc order having elect  
Ihrsirtue aay th am fof any ensctmen repeated hall Be  
Chests a reference Io “imrisonment for We .  
  
12) tn cvery cise jn which a sentence of uansportation fora  
tewm has Soon passed before the commencement oF the Cod of  
Cciminal Provelue (Amendment) Act 1958, the oflender shall  
  
be dealt with nthe se manner a i sentenced to rigorous  
pPosonment for the sanve term  
  
(2) Any refereace to transportation for 3 term oF 10 transpor-  
taulon for any shorter term (by. whatever name called)  
tthe law for the time Being ia force shall br decmed to base  
ben omued,  
  
(4) Any reference 10 “transportation” in any other taw foe  
the ne Being in foes shall  
  
(a) if the expresion means transportation for fie. be  
comlrued a's ference Io imprisonment or He  
  
  
Page 425:  
0  
  
(0) if the expression means transportation for any  
shorter teri be deemed to have bros omit,  
  
26, Imprisonment for Me 19 be rigorous. —Imnpesonmen for  
eal Be "ngorois.  
  
27. Fractions of toms of punihanent-—In gating factions  
‘of terme of pnshment. imprisonment for fe shall be reckoned  
SS Squvalen to rigorous mpesonment Tor twenty years  
  
2%. Imprisoment of ihe description —n every casein which  
an tiene is ponrsable with imprisoament whch may BE of  
  
ier escriptign, shall be competent to the Covet which seo  
icine ough oflender fo dies nthe semence tha uch impison.  
trent shall be wholly rigorove, or thot such impesonment shal  
ines smple, or ha any rt ot sue mpriaonment sal  
fo Rporos ad the ces Simple  
  
Whenever a person i convted ofan afenee punishable under  
Chumer SU"Chapies RV Or Chapler AAU of th Code oF  
Sfan ahetment of Such office oF of 4 criminal conspiracy 10  
‘hon such ofnce ad sentenced soa fe, whether with OF  
Sruthout inpesonment.  
  
and the Court ix of opinion that compensation ix recoverabe  
ty Sant amy eon for hs ce oi  
  
4 shall be competent to the Court io diveet by the sentence  
th di hole any prt of the fine relied trom the sleneet  
{hal he pad by way of compentstion 1 sich person fr ssid  
iow ory  
  
xplasarion Expenses propery incurred by such person  
inthe praneution of the case shal be dcemed fart 6 te Toss  
hused to lm by the olence  
  
30, Awount of fne-—Where no som ip expres 10 which 9  
fine may extend, the amount of ine to which the fender  
he i unnad, bet shall wot be exceve  
  
1M, Senonre of imprioument for non-parment of fine 40)  
tn ery ane m hich a fender fs sentenced To a fine 1 shall  
hs competent tothe Cour to dct bythe sentence thsi.  
  
Fiatv of papi of the the fencer shall undergo imprison  
  
(2) Hf the edenee be punishable with fine only. such imi  
comment shale simple. Sod eter there shall mot exceed  
  
{a ter months, when the fe does aot exceed one a=  
eo tapes,  
  
  
Page 426:  
a  
() four months, when the fine does not exc 0  
undies rupees, and  
(6) si months, in any other cas.  
  
13) IF the offence te punishable with imprisonment oF fine,  
or With imprisonment an6 fine.  
  
(a) the inmrisoniment in default of payment of the fine  
maybe of amy desertion to which the ofender might have  
Bron Sentenced foe the offence  
  
8) the term of such imprisonment shall not exc ne  
fourth of the maximum tern of imprisonment prxtaed fot  
the offence nd  
  
{ouch impsonmen shall be ia adon iy te  
imprisonmenc. Irany. to which he may Rave heen sent  
Pthe offence, or to which he’ muy’ be hablo cnr  
  
32 Termination of inpetsonnent on payee oF realisation  
of jie {tiepeisonmant smposed mS of payer  
{tne shal tertmnate wbenever teat ine ister pido esas  
by process of awn Tul  
  
) Whenever apart of he fines paid sealed bs provers  
of lw, the term of prisonment fed in default of pay tet shall  
bh deemed to he redoced by toch number of days af bears to the  
{Dual number of aye in Ghat term the same proportion as the  
{moudt of fine pid or raked bears to the mouet Tne ie  
Posed andi hat tae, imprisonment in default of payment  
‘5 bean seri. it shall iertnate onthe expitation of the f=  
duced tern ori the reduced term ay previously expied  
Sha terminate forthe  
  
“43 In calculating the reduction required under suite  
section (21 any faction of'a day lee than oneal shall 5c  
4 cao acu any ater Faction sal be cone  
  
33. Limitgtios for tees of fine No \_procesdings for  
realtation ofthe fine or wf, any part thereof whieh Femans  
Upon, shall be commenced  
  
(4) at any time after the expty of Six years fio,  
the [pasing of the "semence. Or  
  
(6) it under the seatence. the offender i Kable 0  
lnypeindenient for 3 longer peviod ihan sk ears ty  
{doe afer the expiry of that psiod.  
  
SA. Death wot 10, dacharge property from ality.  
The death of the ender does not dreharge from the labny  
for fecovery of fine" any property. which would alot  
leah be legally Mable Toe is debs  
  
  
  
Page 427:  
a  
  
3S. Pomishment of offence male xp of paris—-Where  
anything which tsa ene made up of pet any of whieh  
fri isl a offence of the same Kind. te oflender shall  
Fett wnlen eaproly m0 provided. be punished separately Tor  
Sch parts  
  
Minsrations  
  
(9) A beats Z twenty times with a stck, Mis offence  
sunt causing hort to 2 i made up of the wey  
es even. each of whch evelran fence of voun=  
Shik cduaing Nort, Ass able ony 10 One ponshment  
{tne whole benny.  
  
(8) White A is beating 2. ¥ dnsevenes. and ine  
sentially sie ¥. Sets sm part af Reacts where  
by A voluntary ciunes hurt to.Z. A i table (0 one  
uniinent fo" soluptanly cauving hur (62 and to  
Shother for solusiarlycavsing hurt 1  
  
Sh, Poise of efence sade ap of serra elleves. —  
  
(1) White an act constituss an efflerce under two oF more  
Staetments burt offence are the somes the offender shall,  
‘Sat be punished Tor more than one oF nich offences.  
  
(2) Where ae act consitutes a offence under two oF  
snore einen athe offences are not the sume OF  
  
‘Wihere several act of which one ox more haa one would  
by incl or themachcy comitate an offence, consti  
when combined. a difrent fence.  
  
the offender may be punisded sepvately for each of  
such fences bot Niall be punished the agers  
Sith glinore severe: punishment shat could be. awarded for  
“ny one’ of such alerses  
  
37. Pamishoent sre dewent bs alternanee =e i  
concen which fodpnent “isc gen ih the aterpave  
S's peraon ies of one oF Several ences speed 1  
{ho aodgment sod i the same’ peaisherent not prod  
{allel them, the offender shal he pacshed fr the offence  
For ebien the iomest panshments provided.  
  
1%. Lane pemisinent for certain ofeces fier presious  
consign “thoeer having been convicted by 3 Court in  
India of a offence punishable unde tvs Code Wits mpeson  
iment of enhor deerpon fora rm of tee ears upeatds  
{Ind sentenced to imprsaaiment on such conviction. coma  
  
‘Mihi tree year fromthe date o i al eae om pi  
ier sertng that sentence: ane oflesce.punisbatie under  
this Code wih ike Imprisonment forthe ike fer, shal  
Re tigece Yor every such subsequent offence tempest  
eat fre rt mpronmen fee ition for 3  
  
To Toure sea  
  
  
Page 428:  
a  
  
38. Public censure for certain offences after preview  
consti m(ty When any pers. having been conveted by  
{Cour in toda of an efence specled' m subsection Gk  
‘i Somcta of ike ofence shall be competent 10. he  
Cour ttore ch the convntion orca the  
‘Senders name and piae a regen. the fence aod the  
jamishment posed © be pubs a the fenders  
[Queh newspapers oro uch other manner’ ay the Cour,  
Tar dct  
  
(2) The expemes of such publication shal be recover  
thelofender inthe same’ manner a fine  
  
be  
  
(3) The offences 1 which sub-sction (1) apelis are ans  
snes pumshabe under Chapter XH, Chapter XI sections  
37TH sets IRN AND. neti Ok to 809. sections  
3:5 Yo 420 Or Chapeer VIM oF this Code  
  
For section 16 of the Code. the fllowing section shall Be  
subst ined a8 sections 40 aad 4, namely  
  
0 tt ne br pra halo aid y=  
Nothing ss offence which i done by perc shes Hound  
AyUtwo'do ors jonuied by aw ma deg  
  
4 doe bv person by intake of fac belerog  
ase ound ousted bs fo. Nothing isan offence Which  
‘Sone by pest sh by retson of miiake of fact snd  
Sp rina oF take Of ts good faith Deleves mec  
126 be bound oy tae to do oF jestsed by las tn Sing  
  
itr  
  
(a) A, a0 ofc oa cout of justice. bing ordered  
bat coun (o area. and afer due enguiy. behevn,  
forbe Ye arrests 2A hav committed no once,  
  
(b) A sss Z commit what appears « A to 6» mde  
Ain the exeree to the beat A jdgment caer go  
Jib, ot the poser sich the tases to. all perons. of  
lanprehending murder in the lc, abzesZ-in Ger to ei  
‘Deetore the proper suthories A has cowmitied no offen  
‘gh may tute ut that 2 wes aetng i seedefence  
  
9 Sections 72 aod 78 of the Code salle renumbered 39  
seettone 43 and 43s respectively  
  
10. Section 79 of the Code stl be omits  
  
Onin  
  
  
Page 429:  
44  
  
be  
  
te  
  
a  
  
11, Sexton 39 of the Code shall be re-numbered 2s section  
  
12, For section 81 of the Code, the following section shall  
Ssistitaned a8 section 43. namely —  
  
+45. At likely to vans harm, but done in good faith —  
Nowhund ian ofcnce whch, though done with the knowledge  
That kel tocause htm. Jone in good faith forthe  
Weve of preyenuing of avauing other harm 40 perm  
rerteray povided the ater hat is of such 3 mare and \*>  
Peemich writ ence the sk oF ong the eat with  
Mich Knowledge  
  
strains  
  
(ay A. the captain of seam esa, suldely und witht  
any fae naghgence om hn re ds Rms ch 8  
sie nay ere he cam sop ves he most neably  
ands bo with gwen ty pasnnges > howd  
denn Atoaestie oar et haves a hat chang  
ae mesure he min incor the ok of rust Gown  
Ete wie to pastnges om bond, wh he yo  
  
iy Cis Here. A alters course without ary slenion  
west boa Cad im good fh forte prove of  
‘Soldag the Uanger tothe passengers vo the Boat 8 Be fs  
Sergiy rum oe, though be may run down he Boat  
eeaetam act whch he Roe es ikely to cause tha  
Pine foand gst mtr fae thatthe doze which  
the nk ot sunning down the oat C  
  
13, For section 82 of the Code, the folowing seston shall  
suwinated a pestinon 46, namely  
  
6, Act ofl aler tn —Noibig nam offence which  
i done byt child der en years Of ge.  
  
14 Sestion 49 of the Code shall he omits  
  
  
Page 430:  
as  
  
1S, Seotion 84 of the Code shall be re-aumbered as seston  
".  
  
16, For setion 48 of the Code, the folowing section shal  
bbe besa ay section 4, ‘eamayy  
  
28, At of person who i wtoswated (1) Nothing is  
«an ffence which ie done by a person who, al the time. of  
{ioing it. by person of atoreabon incapable of knowing  
the mature of the at, or that he e doing wit hee  
  
‘oe coatery to Taw  
  
Provided that such  
  
voxietion wa not selfinduced  
  
2) Where am act done by 9 gers in state of inion  
tion hich fe sled sal be ames Hf ome with  
‘articular knowledge he shall be Table to be dealt wit ae  
ithe di the act withthe koowledpe he ovis ase had he  
had mot eon itowiested  
  
8) lotoseation & setinducad in a person if he volo  
larly cuties the state of itontanion in ime  
  
17, Section 86 ofthe Code shall Be omitted  
  
18, Setions M7 10.90 of the Cove salle e-nsanbered as  
sections 491052, respecitely  
  
19, Section 91 of the Code shall be renumbered 26 scion  
53. and i te said Section a so resumbered. Tor the sods and  
iigoen “scctoms 87-44 and 49°, the worde aa Hig ockons  
25°50 and'S) Sait he abate,  
  
20, Section 92 of the Code shall be renumbered as setion  
‘4nd in the said Section wk so fe-numbered inthe Eaplanavony  
for the words and figute “sections 88.89 and 2", the words  
i gures "sections 0. 51 an 34> hall be Not  
  
21, Section 93 of the Code shall bo gesnimbered ay section  
  
te  
  
Revnone  
  
Bete  
Tpenoncnt  
  
fer  
  
  
Page 431:  
pre  
  
426  
  
22, For section 94 of the Code, the following section shall  
bbe Subsite ae secon 36 ‘namely. =  
  
“$6. Canpuion br treats Except murder ad fences  
spi te Ste pale th desi ching va oes  
Rich none byt person wo compelcd to doy thats  
Strch theme of omg it reauongbly extne the apprchen:  
Stat man dain poo ath. ia  
Feson or to any nea relive ofthat person present wht  
{he teats arma wll etbervise be the comequence  
  
Provided the person doing the act did wt. of bis own  
accord oe from a feintmadle appreiension of harm to hint  
<i" short of Instant soho qrevous Bly. harer place  
Thame in the station by hich fe became sabe to uh  
  
Feplanation. 0 this oti  
  
(a) “pear elaive” means purest, spouse, 208 oe  
Atawgiter  
  
18) “riewous bodily rin” steams hurt of the des:  
cipton spocited inthe Brat hwo claus OF section $50  
  
“Nasrarions  
  
(2) A person who, of is oxm accord, of by ron  
‘of that bt being beat. joss pang of dacol. knw  
tne carn ot et oh See  
ftception, onthe ground of his hiving been cosipeled  
fy ins soci fo do anyihing’ thats a offence By  
the  
  
(1 A sth size by a gang of dovoits and. fore.  
by threat of tant death or grievous oly harm 10  
Clk his took and to force the door of = house for he  
tacos vo ener and plunder io ented tothe bench  
STi exception  
  
2%. Sections 95 and 6 ofthe Code shall be e-aumbered a  
sections 37 and 88, respective  
  
24, Section 97 of the Code shall be omit.  
  
2S, Section 98 oF the Code shall be renumbered section  
159 and nthe section eso renumbered. the words "the wanl  
‘matury of understanding” shal be ones  
  
  
Page 432:  
ar  
  
2h, For seston: $910 108 ofthe Code, the following sections  
stil be sobuted as Seton 60 10 64, namely —  
  
“, Reswitions on the righ of peiare defence AV)  
here 0 right of pate defence agains an act which  
ines easonably cause an apprehension of death ot  
ievous hor te acl done or attempted tobe done—  
  
(a) by 2 public servant scing im good faith in pe  
suante of the jodgmem f order OF court of juice,  
though the cour aa have had ne jradition (0 pass  
wselifodurent or ofder. provid the. publi semsnt  
Rison tgood “rank Tha thes court had auch  
Scion =  
  
(8) by 2 public pean acting in good fh under  
colour of hs oes hough sat aet may not Be snes  
Jatiiabic by law or  
  
(6) by the dirstion oF» public servant ating in good  
toi ote Stour oF ap cies though that econ  
fay aot be Sry juste by I  
  
(2) A porson 8 90t deprive of the right of private de  
fence by wie of subsestion (1)  
  
in a cate falling under cause (a) there. lens  
he knows orfug\_feason (0 beleve thatthe person doing  
Teac is 8 pubic servant and f acting n punuance of  
the judgment or oedee ofa court ot justice or less that  
Peron produces, if demanded, the suonty in wating  
Sider which e is acing:  
  
(iy im a case Gling under clan (by thereof, wales  
he knows or has geasos to tive that the penn doi  
the act sa public servant, oF  
  
{na case fling under clause ()tereot vaess  
namo ht ane ee ath en  
ie MGS Setng by the direction of publi servant. oF  
Utes eh person sles the authority under wih he  
St ihe has autho in wring. oelesy he proces  
that authonty. A demanded,  
  
3) The right of private defence in no case enlends 0  
snc causing of anre harm shan st neces 10 caine forthe  
purpose of elence  
  
“Gh. igh of private defence of he ody. <1) Every  
perso hes ight to deluad his own body and the Body  
May ther persomagaisl Avs offence acting the herman Body  
  
  
  
Page 433:  
2  
  
2) tf teolece which ssasions he xe oF the sah  
ight  
  
(2) such an assault as may reasonably cause 30  
anorcheesion that death or grievous hurt misters  
ieMthe vonsequence othe aneul of  
  
(©). assault withthe ination of coming rape  
coc chroal nterwoure agus! the order of ature or  
  
(6) an usaul wth the intention of ideuprig, oF  
  
(3) an assault ia such creumstanes 36 mas Fano  
ably cause an appeehension thit 3 aflence pi tise  
Linder ny of the sections 364 to" 589 of thks Coe  
ing commited oF  
  
sal?) 2 alt nh the nein of wont oe  
ining n person xh cumanees ts may tena,  
aime him an appwchenson Tha Hl not Be pone  
to'have coin fo the pi authontee for hs oe.  
  
the right of peitute defence of the body extends  
Fesiitions mentioned in econ 60 (othe vo  
SF death ‘ort any other harm te the wel  
  
Ne cise, exten, under the same st  
uruary causing to the asst ony haven othe:  
th  
  
3) Wm the exersse of the right of private  
‘guint an salt high reasonably causes the apprcdenvion  
‘St death the dtender be a tuted hate cannot eestualy  
fuceise that emt without vnk of harm to a9 innocent person  
IWeright of private defence eatends tothe ring thal  
rk  
  
62. Commencement and coniimance of right of private  
skfence of body The ight private defence of the bode  
‘Sommences ay soon as 8 ressoanble- apprehension of danger  
{o'the body tracy roan attempt of trent to commit the  
{fence though the peace tay not have eon sommes  
Snd it conlinac as long as Such appethension of Canger  
ihe body conainves.  
  
3 Riple af private defence of peoperts. 11) Every  
reson hata right to defend the property. whethor awatie  
Sr immovable ot hms of any. other person agstat  
Sny"olfence sehich ie or incades robbery. theft. sect  
tcereuinal trespass and any attempt 19 Comet 29 Sh  
ofenee  
  
(2) I he afleace the comming of which, oF auempe  
ing to comm which, osasions the exerche OF the =) Bh  
eee intudes™  
  
(a) eobbess, or  
  
  
Page 434:  
a  
  
(2) thefmiscie or eriminaliespass in such cite  
‘cumstances may ressonably envi um appeehenssn,  
that ‘death or erewos bart wil be the consequence  
the sight of peeve defence not exerci. OF  
(€) mischie by fie or explosive substance comant-  
tol om any Buldig. tent or esol ich building. ten  
Segal Sed ati deny ry ce  
Sonship of 2 plce forthe castody 0 oon  
Inches perry  
the righ of private defence of property extends. wader the  
‘ricions mentioned i scion 0 the voluntary causes  
‘Peal ov anyother harm tothe wrong dee  
in any “other cave. it extends, under the se recs:  
tions to the voluntary cxosing Yo the romgdoet any harm  
‘ier than death  
  
sett Semeenenea and cntanee or of pet  
Tee of proper "The right of pivae deferae of prope  
Sommencel whon a feasonable apprebesson of danger 10  
the peoperty commences” sag i contioves—  
(4) against robbery 95 long asthe ofender causes  
‘ee attempts to cause any person deal of hurt or wrong:  
Tia Fesirain or ae ong asthe fear of stan death 8  
‘instant hart or instant wrongful straint Coane:  
() gins thet tl the offender has fected his  
reveal sith the property. Or ithe property bas been  
‘overed cirierofthe sistance of he pu th  
ites Seen buained eather ti such reovery Of the  
‘ropeniy or the Oianing oF soch asstance: ad  
(6) against misehiel oF criminal espuss as, 0  
ts the olfender Continues" the commasion OF ts  
het or riminal espa,  
  
2. Section 107 of the Code shall be seaumbered 2s secon  
{68 nd inthe sa! weston 35 $0 rermenberea. forthe ain path  
rip he Totoming shal be sabsicted. arch  
  
A person abets the doing of 2 thing, who instigates  
any gerbe to 40 that tog of Stenionaly ai By am  
Sc dP icgal comm, th Goin tat ng.  
  
or sctions 108 and 108A of the Code the flowing  
‘ction Sia be substituted, a section 66, camel.  
  
“io. Aberrng an oe  
nn abets the dong 0  
  
he Since oe ch  
  
Sate  
  
  
  
Page 435:  
0  
  
sould beam oer if done by a person capable by la of  
ommting that oence withthe ae ation o kl  
SSM OF the aetor .  
  
(2) A perton abet an offence. who, in tna. bets the  
doing of amy act cuside Tagan which, sone im India. would  
Comite that fence  
  
{81 A person who aes the abelment of an offence abels  
na oes  
  
(4) To conssiute sbetment of an offence. Ms not esse  
sary  
(a) that the act abetted shoulé be commie: oF  
  
(bth the eet requisite 1 constitute theoznce  
waoutd te coined or  
  
(c) that the person abeved shouldbe capable by  
law 6! commitingun ones. oe chould have any gull  
mention or hnowiedge oF should commit an afer  
  
(3) To constitute abotment of an offence that cot  
fn sepal omisuon of an act x ih noe necessary that the  
Shelton shoud mst be Bound CO Bo tha  
  
Mhesraion 10 subsection (2)  
  
(Gs) A Ina otigates 2 forever ia Nepal 0 com  
sit any fe Ripa App of tbtng ma  
  
ssration 10 subsecion (3)  
  
0) A instigates Bo instigate C to murder ZB aes  
ingly inputs Cand C murders Zim omequense ot B  
‘sexton B hay commited the offence wf abetong murder  
sind in able to be punished with the punishment provided  
fovimurder. and at A instigated Bo commit the offence  
1 in'aho lable (© the same’ ponishen  
  
(6) Msn the foregoing ilasiration. C refuses 29 wnurder  
2, has commited the ofence of abetting murder. and  
ile to be punked with imprecnment which may extend  
{io stven years and with fines and 2A sostigated 8 to comm  
the-ofenee, Aaa hable (othe same ponishment  
  
Mucrations 19 suscetion (8)  
  
(4) A instigates B 10 murder Z. B refuses 0 do se AL  
‘s puity oF ubstung 8 10 comm murder  
  
(e) A instigates B to ouider ZB in pursuance of the  
insigation sate ZZ. recones rom the wound. As goily  
fF ebeting B to commit ures.  
  
  
  
Page 436:  
2  
  
(8) A. jotending to il 2, instigates Be a bid under  
ten year of ape, to 00.40 act Which A knows will cause Z's  
leuk B. ie omequence of the matignion, does the act  
ahd thereby causes death Here B was nol capable by  
its of commtung an olfece, But nce hi ct would be  
‘iurder it had been comtted by person of ull ae with  
‘he same imtentign and Knowledge at that of A. A ts pul  
of abetting murder  
  
(2) A. inending 19 take dishonesty an antic belonging  
to Z.out of he possesion sues Bo believe that the Sc  
tle “peongs to ara insigates fia to takes fom 2  
pposewion, B docs so in goed faith eleving i 0 be” A'S  
(promt), Thoagh Bhan sso fully inenton oF bnowledte  
RE Bungorhabenng tht  
  
29, For section 109 of the Code. the follonsag section shall  
be substituted as section 67” namely  
  
“69, Punishment for aberment where, act aborted is  
commited ut eoueyuence of abertent —Whaever abet any  
Semel, ithe 4t abetted ‘committed im consequence  
Wie atwiment ind no express prownion is ade for the  
punishment sech abetmce be Punished withthe penish-  
ment pronded for the olence  
  
Explonation =A wet o¢ offence i said 10, be commited  
fn coneeguents of abetment when it hecommiied inconse-  
{uence ofthe stlipation or wih the ai. whieh consiutes  
the “Shetment  
  
30, Sectioms 110 10 113 of the Code shall be senumbeved  
os sxtions 10 TL spectively  
  
IM. Section 114 of the Code shall be renumbered us section  
tind the sand recon be 90 feumbered. the Wores "WF  
sient shall be omit  
  
32, For seeton 115 of the Cade, the flowing scion shalt  
be subuituied as section 73. nate  
  
S73. Abesment of copital etence if ffence not coms  
ined = Whores sbes the commision of 8 capa offence  
‘Sha ha ofenee Be net commited Hn consequence ofthe  
  
1 tn casing to 1 Th hae Teoma  
singe eno cues st rene  
  
sebewe  
Se  
SSS.  
  
  
  
Page 437:  
cd  
  
beiment, sod no express provision is made for the punish  
iment oF such absent. be panished with figorous imprison  
‘ment foe ater which may catené 19 beer years an Sha  
sho be Table 10 fine  
  
2nd et or ai he ae able a cone  
  
seoce of the abeiment and which eases Kurt t any person,  
S'GNeine ett shal be Hable rporows hmprsoament  
{or tint hich may extend to fourteen sears and shal 30  
ei toe.  
  
30, Foe section 116 of the Code, the following setion shall  
bbe aotted section 74. namely  
  
Sheets areca  
Eirias Rapa aoimantin  
  
td ifthe aston is public servant, whose: duty iti  
to proton the commit to such oes. the abetor shall  
te Thane with the panishment provised forthe oence,  
  
Muosrations  
  
4) A estigates Bee fake enndence. Her  
‘fan nevertheies:  
  
punisiable accordion  
  
h) A. & police ofcer. whose duty i 10 present  
tobbery. bok tbe cominkuson af” robber. He  
‘hough the robbery be not commited, A's Hable C0 the  
Pronishoent provided or robbery,  
  
1M, Section 117 of the Code shall be remumbered as section  
75, and alte the said secon 86 49. reumbered the following  
‘cn sill be haereds av section 76 namely,  
  
  
Page 438:  
a  
  
fens contd in conten fain  
Punishes sith impasonment ot any Seschpion oe  
{ha offence for‘ em wich may exe tc he  
{erm of impsonment, provided for tha fence, os  
S506 fate te  
  
36, Section 11H of the Code shall be renumbered as section  
17, and im the said section ass re-numibered, for the wor  
“an offence panihatde with death “or impeconmment for hice  
the words "a eapial once” shall be subauted  
  
36. Section 119 of the Code shall be renumbered as section  
178, and inthe sand Jection an 30 rented the four pare  
raph shall be"omited  
  
37 Section 120 of the Code shall be re-numbered as section  
and in the sat Seton a8 a0 revered. ner she wroe  
“offence ponvshable with imprisonment" the words “nok Being  
capital fence” shal be netted,  
  
38, For section 1208 of the Code. the following section shall  
tbe subatitned ae stution 80, named  
  
"80. Definition of criminal conspiracy. —When two. ¢  
‘more persons greet commit an oflente punishable with dea  
imprisonment for life or imprisonment of either description for  
8 term of to years or upwards or to cause such a ose  
fo be commie the aeement is designated’ cimital  
compiniy.  
  
Exploration 2—Yo constiate 2 criminal cons  
ihe mc ht Sn act ie mon  
place In pursuance of the agreement  
  
38. For section 1208 ofthe Code, the fallow  
be substtned as section $1. name)  
  
section shat  
  
“AL. Panishinent of ermine conspiracy —Whoever is  
ary 0 a criminal conspiracy shat, where expres poe  
{in ae fr the poaanen mak eee  
  
{2) i the ofeace which i isthe object ofthe conse  
casy {0 commit or cause tobe commited is committed  
3 Mot ansT1—3,  
  
anes.  
ingore  
  
Sut  
ite  
  
  
  
Page 439:  
on  
  
in pursuance of the conspiracy. be punished with the  
‘Dumshiment provided for that iene and  
  
(1) i the offence i¢\_ not committed in pursuance of  
the conspiracy. be punished wih imprisonment of any  
‘descripion provided for that fence Tor a term which  
may exlend To one-half ofthe loneest ern provided for  
that offence, or with such fine as 3 peoviced for thet  
‘offence cr with both  
  
tion —\_40\_Afier Chanter VA ofthe Code, the following new Chapter  
SE allt ine  
  
CHAPTER VB.  
  
ATTEMPTS  
  
"82\_Dofotion of attempt —A person attempts 10 com  
smi an ofence ponsnalesy th Cove, ben  
  
(a) be, with the ition knowledge seuiste  
fon Shmilng i ots ay" tovard As Co:  
  
(8) the act $0 done is closely connected with, and  
proximate to, the commisson ot the offence; aed  
  
4) that ac ais i its object because of facts, not  
Anew 0 him or fan of ercumanes beyond  
  
Mbraions  
  
‘nul Asimending to murder 2, tas gun and la  
‘sino yeu pity of matte 1 commit murser A hres  
the’ pun at 2"he i guity of Bm attempt to commit murder  
  
(0) A, intending to murder 2. by goin, purchases  
poisson ics he Sat adh ean As  
ing. Ai 00t et gully oan aterm to commit murde  
‘A lace the ood on 2's ae, or Senet to Zoserant fo  
Bake on Zea A pty tan ate fo comme  
  
(2) A, with intent 10 steal another person's box, while  
Lraveling in seni, Takes a box and gets dowa, Te finds  
the box to beh own. As he has mot done any ac towards  
the commisuon of the afence intended by him, he Ts Dot  
uit of aa attempe to commit the  
  
  
  
Page 440:  
85  
  
(4) A, with intent to steal jewels, breaks open 2's box,  
and Binds that there no jewel ini hs At fed in  
‘best because of facts nat known to him, be is gully of  
atiempt to commit theft  
  
83, Prnishment for artompt—Whoever is guilty of an  
attempt to commit an offence punishable by this Code with  
Imprisonment for ie or with wmprsonment for a specibed  
term, shal Where no express provsion 1s made by this Code  
For the puaihment of such atempt, be punahed ith inp.  
SSament of any description provided for the feet, Tor 8  
{erm which may extend to cheshall of the imprisonment for  
Iron 'as the case may te ene-all of the longest ter of  
Impesomment provided for that ffence of with such fine 8  
Isiprovided forthe oflence. or wih both™  
  
41, Section 121A of the Code shail be omited  
  
oc fein 123 of he Cae, or the words “impisonmen  
fither deserpion™ the rove imprisonment” shal  
iS Substituted ne  
  
cq gl ito 12 of the Code, fr the words mo  
ther description” the words “rigorous imprisonment” shal  
‘be subatnited. nero ime  
  
“4, After section 123 of the Code, the flowing sections shall,  
bbe Ime, namely.  
  
“1234. Asstine Inli’s enemies Whoever assis in  
any manner an enemy at war with India, ofthe armed forces  
{T any county against whom the armed forces of India are  
engaged in hostlles, whether oe nota state of way exits  
Seton ht couty and ind, Sal b punted wth ro  
ous imprisonment fora term Which may extend to Yen year,  
Sd shal lo be Table to Be, =  
  
1294. commer te ren the armen, Gorn:  
‘neat of Indo” the Leslee or Government 2 on Sat.  
AWhoeve reonspres 10 overawe, by meant of fore OF shaw  
gic e Fatamene or Government Hn oh  
ure or Government of any State, sal be punished  
  
ihvim prscnment fore or wih igor prisoner fot  
crm wich iy end Cte year 2nd sal ob table  
  
Explanation To consituie @ conspiracy under this  
seein itis not necessary tha any act oe Haga Omston shal  
fake place in pursuance thereat”  
  
raion  
mm  
Ament  
ce  
Sethe  
  
irene of  
Fas  
  
  
Page 441:  
Subeia  
peers  
ig  
  
Sette  
Soetnew  
  
tea  
  
435  
  
45, For section 124 of the Code, the folowing section shall  
be Sobsited namely =  
  
124, assouling Presiden et. with intent 10, compet  
or estan the exercise of ant lawful power —(t) howe,  
Stith the "itenton of inducing” ae competing any ee  
Folder to whom this section applies, to enero of restrain  
from exorcung i any manner any of fis awful powers,  
  
maul, oF wrongly restiains, or overawes by means  
‘of ermal force or the show of ermial force, 408 oie  
holder  
  
stall be punished with rigorous imprsonmest for  
tern shih ay extend Wo even Years and shall also be  
bet fn  
  
©) The offcestolers 19 whom is section applies  
  
(0) the President of India  
(i) the Vice-President of India;  
i the Chief Susie of Ini  
(ir) the Speaker ofthe Howse ofthe People:  
(9) the Governor of any States  
(i) the Chief Justice of any High Courts  
(ul) the Speaker of the Lepjsaive Assembly of  
any Sate; and  
ey Sid Demian oF he Lepiane Count of  
146, For section 124A ofthe Code, the following section shall  
be subsites, namely  
  
“1244. Sediion Whoever by words, ither\_ spoken  
‘or written of by signs. of by nb representation, oc oer:  
cacites, of atiempts to excite, disaffection towaeds the  
CConsitution, or the nt oe Parhament of Ini, 9  
‘Government or Legislature of any State, or the admins  
tration of Josie a8 bylaw established  
  
Imending or knowing it to be likly thereby to endanger  
the amegty of security of nda, o€ Of any Sate, 1 cause  
public esorder,  
  
  
  
Page 442:  
or  
  
‘all te punished with sigorous impeisonment for erm  
which may extend to Seven sears and shall sso bey fable  
  
plasation 1-—The,expresion “nalestion” icles  
‘eelingh of enmiy, hatred or contempt.  
  
explonarion 2 -Convmenis. expressing, ditapprobation  
‘of the pronsons of the Constitution, or of the actions ofthe  
Government. or of the measures off Pariament or 2  
eégsiature ‘of of the prowelons for the sdmunitation  
{slice ith 3 ew to obtain thelr alteration by lawful means  
Without exiing or attempting ro excite divafection, do not  
Consutue an offence under ths section  
  
47. After section 124A of the Cade, the ollowingsecton  
shall be anserted, namely  
  
“124B. psu 40 the Book of the Consiation, notional  
fas, national emote or national anihem.—Whoever dele  
Tetitey isos the book oF the Constitution, the national  
flag. the nauonat emblem ofthe natignal anthem. by butning,  
extcraion or others, shall be punished with iprisonment  
ff ether deception for tm hich may extend to Tece  
ears SF with He, oF oth both ~  
  
48, Foe section 128 ofthe Code, the following section shal  
te Substiuied, namely,  
  
3, gig war ana ony freer mate at pose  
sh ida a ie ee ent  
any Tatign Stange WIR al osteo tape  
Saha of St he agg ouch a a pe  
Sih imprisonment of ether scription for term wh nay  
Send en Jean a Ss Be hale  
  
49. In section 126 of the Code, for the words “any Power  
  
im allance or at peace with the Goveroment of Inga te words  
‘any foreign state at peace with Iodsshall be sated  
  
5D. In section 128 of the Code  
  
a) the words  
() the words “imprisonment fo ie.  
  
prisoner of” shall be omits  
\* shal e omite  
  
In seation 1  
“ball be ome,  
  
of the Code, the words "State prisoner  
  
ene  
  
ed  
  
  
Page 443:  
38  
  
‘Anené. $2, In section 130 ofthe Code, —  
“ (a) the words “State prisoner oc” shall be omited;  
  
(the words “with imprisonment for life ot shall be  
  
‘Sabrtites 53. For Chapter VV of the Code, the following Chapter  
Si amar ca!  
  
‘Cuaeren VIL  
OFFENCES RELATING TO THE ARMED FORCES  
  
131. Defitions-—to this Chapter =  
  
() the expresion “armed forces’ ans the milan,  
naval ands si force, and inctdes any other armed  
{orcis of te Union:  
  
(6) “oftcer means a perion commissioned, ezeted  
or inp a an ofr othe armed oes and clues  
SnPeommsstone olecr, a warrant ofc, a pet  
  
Oise tnd non-commissioned ofc: .  
  
(6) ‘member’ a elation to the wrmed forces, means  
fa posson inthe atmed forces other than an offer,  
  
132, Abemien of mus. Whoever abets the commit  
cing br cui by a0 offer Se member of any of the armed  
forse shal  
  
(a) i mutiny be commited in consequence of such  
xem egies win death fn smo,  
To fl or with govous imp  
tray extend to fourteen yeas,  
Fines ane  
  
(in any oter case be punted with rigorous  
impeach ay ete 1 tn ears  
Say Sala be Table fine  
  
133. Aviempine 10 seduce an officer or member of any  
of the armed ones from hie duty — Whoever attempts  
US Syoicer or member of any of the armed force from  
ogiMhce oe hs ory shall be punished with igorous  
Mafssoment fora term which may extend ten Year,  
Sou shall also Be Hable To fine.  
  
  
Page 444:  
a  
  
M. Abciment of assault on siperor officer Whoever  
shucon ly oir meray fs  
fie shane? Pe  
  
(2) i ch assault to be commited in consequence  
‘of that ‘abetment, be pushed with imprisonment of  
‘ther description foe a erm which may extend to ven  
Yeas, and shal ago be abe to ines and  
  
(6) inany other case, be punished with imprisonment  
‘of etter desiption for & ferm which may exend to  
Uhre yeas, and shall also be Fable to fine.  
  
138. Aberment of desertion from armed forces Who.  
‘yee abs the desertion of any oficer or maiber of any of  
the amed forces shall  
  
(2) the desertion be commited in comequence  
‘ofthe abetment be punished with imprisonment of ether  
‘escrption for term which may extend Yo Ave Jeu  
fr with Re, orth both and  
  
(©) in any oxher case, be punished with imprisonment  
‘of exher"descipton for 2 term which may exeod to  
To years, oF wh fn, oF wih both  
  
136, Harbooring deserter. —Whoevet, knowing or having  
remo to. belies that an offeror member oany ot the  
Armed lores has deserted, harbour such officer or membe  
  
Shall be punished wth pritooment of ether descrip  
fea hich may extn 0 two yar, oF wth es ef  
  
execpt —This provision does not extend to the case  
hic the harbour is given By wife to her husband,  
  
137. -Aberment of an at of tunbordaaion- Whoever  
bets what he knows to be an Set of tnsubordjation By ha  
‘thee or member of any of the armed forces shall  
  
i ue tof innit te comin in  
consequence at betment be panhed wh mesons  
inom of eter descrpuon fe rm ehh ay eter  
{two years, of with ine oF wi Both and  
  
138. Incttemen 10 nin or other act of insiborinae  
tion “Whoever mates or publshet of eclstr any sate  
tent, rumour or report, with inten fo Cause, ol  
  
‘Mey fo cause, any oie or member ef ny of the armed  
Torts fo mutiy of otherwie dared or fll his ay  
  
  
  
Page 445:  
uo  
  
4s sch ofcer oF member, shall be punished with imeivone  
‘eat of ether desenption for term which may exeod to  
{ivee Year or sth dae, oth Doth  
  
Explonurion: A person making, publishing or ctcula  
ting any sch Savemeat,romour or report, who has easonable  
‘grounds for beteving that such statement, rumout or feport  
BS true and makes, peblishes or citculates ft good faith and  
Wwthout say such fmtent as aforesand, does aot coma a  
Offence under thi seton,  
  
139. Dissuasion from elising and intgarion 10 mating  
(or iaubordimatin afer enisiment:—Whoeve  
  
(2) with inant t0 affect adversely the secuisment  
‘of persons to seme inthe acmed forces of the Union,  
Sistoases or anempte to dimtade the pubic. or any  
Deion from entering any such frees, of  
  
(6) without dissunding oF attempring to dissuade  
stom entering such Torcess instigates the public 8 any  
person to. Jo, aller entering any such force. anything  
‘Sinai punhable as mutiny or subordination ander  
‘he law telating to tha armed ore,  
  
Shall be punished with imprisonment of ether description for  
‘term which ay exten to three Years, oF with fn, or WaT  
ott  
  
planation —The\_provisons of cluse (a donot extend  
to comment on or eitcam af, the Pohey ofthe Goverment  
h conection withthe armed Toroes. made in food Fath with-  
‘ut amy stenion of dsuading Irom evlstment, otto alee  
[xen in good faith for the Benefit of the yaivdual to whom  
'S'pten oF of any member of his familys oF oF a05 of hs  
dependants  
  
1304, Peau bjt erin ott pi  
trade the Chaper Noy erson subject ta the Army AC. 1930,  
the Navy ‘Act 195% the: Ave Force Act, 1950 of any other  
law relating tothe armed forces ofthe’ Union ts subj to  
Pumithment under thn Code for any ofthe offences defined  
thn Chapter:  
  
140, Wearing garb or carrying token wed by officer or  
Imenber of the arited forces Whoever not being 3” ofiet  
SP meter of teamed Fre: ear ay Ba oF aes  
‘any token resembling any garb or token wsed by such an  
‘ices oF member. with the snlention that It may be bebeved  
that he's such ap ofet or member shal be punted with  
Impeonment of either deripion for aterm which may  
extend 0-3 months oF with hoe, oF with both.  
  
  
  
Page 446:  
41  
  
4. In seston 141 of the Code,—  
  
{) for clowse third, the following clause shal be substi-  
wld namely —  
“Third —To comet an offence punisbable with  
imprisonment  
(6) The Explanation shall be numbered a5 Explanation  
and after the sand Explanation | a8 30 numbered, the flO  
‘ng’ Explanation shal be added, namely,  
  
“explanation 2  
  
55, After section 147 of the Code, the following section shall  
be ingrteds namely  
  
“IATA. Mating preparation to conunt ating. Whoever  
  
makes any preparation foe. committng roting. shall be  
‘imprisonment of eaher etcrpuion fora term  
  
‘Shc may extend To one Year, of with fe, of with Both  
  
$6, In section 153 of the Code, the words “malignanly of  
wantonly” shal be omite,  
  
51, veto 15 of th Cade, fo he words "vi fn nt  
exceeding ove thousand rupees", the worde with impsisonment  
‘of either description or a term which may extend (0 sk month,  
Sr wlth Soe, of wah oth shall be substuted  
  
58. sections 135 and 156 ofthe Code for the words with,  
Sine, the wordswith inprsonmem of ether deeripuan for 2  
‘erm "which may extend {o's month, 9¢ thf, orth oth,  
shall be'subutted  
  
9 In section 187 of the Code, for the words “harbours,  
receives oy asembles" tbe words “assembles, reseives OF shel  
(es shall be substiuied  
  
60. Section 153A ofthe Code shall be renumbered a seston  
1S8A and inserted ale Secon 138, and-—  
  
(2) in the said section a8 50 re-numbered, in clause (a)  
‘of soesection (0) for, the words "promotes the" words  
intentionally" promotes” shall be substued, aad  
  
  
  
Page 447:  
Seoteen be  
  
“2  
  
4b) after the said section as 50 r-numbered, the fllow-  
ing sexton shall be inserted, namely,  
  
1588. Stormont conducing 10 oftces against public  
samp 4) Whoever make, peso ponte  
(tement rumour or report  
  
(@) with inwnt to create or promote, or which is  
Likely erate o\* promote, on grounds of rlgion. ace,  
place of bath teandence, language, ase or community  
Stay her’ ground whatsoever, elings of emmy.  
fared. or ils between diferent reipiows, racial,  
Tanguage of repional groups oF castes or communities  
  
6) with intent to ince, or which i kel to incite,  
‘any shss of comenunity of persons to commit any fence  
‘glist any other clas or community; cr  
  
ey with nent to cause, oF which ie Hikly to ca  
fear o alarm tothe public o 19 any section ofthe public,  
Unbereby any. person may be induced 10 commie  
Unoftehoe agalet the pable teanguilty,  
  
shall be punished with imprisooment of either description  
fora tom hich may extend Co thice years, or with fine, oF  
‘si Bath  
  
Excetion—A person making, publishing o¢ circlating  
any such/satement! rumour or feport, who has reasonable  
{rounds for beheving that such statement, romove or report  
Fit tnd makes, pablites or cults tn pood filha  
Without any sech fntent a8 aforesaid, does net commie a  
‘flenoe anger this section.  
  
(2) Whoever commis an offence specified in sub--  
section () many place of worship Or 9 any astembly engaged  
ithe perlonmance of igiow: wacsbup or religions cere-  
Tomes) shal be punished “wit “imprisonment “of either  
‘eSripion fora etm which may extend to five years, and shall  
Sls be fable to fine”  
  
{6k Forsgtion 160 of the Code, the following section shal  
fitting, namely  
  
“10, Pishment for commiting afres--Whoever com  
rts an aay shal be puaihed with mprsonment of ether  
‘Gocspton for aterm which may extend fo se mons, oF  
Sth fine, oF eth both.”  
  
  
Page 448:  
43  
  
62. In section 161 of the Code, forthe fourth Explanation,  
the following Explanation shall be substituted, namely.  
  
“A motive or reward for doin”—A person who receives  
4 gratction 2s a motive of Yeward for Going what he does  
‘netted o's not i. postion odo isnt dome, coms  
ihn thee words  
  
{6 In section 166 of the Code, forthe words “one year”  
the words thee eats” shall be subsinuted  
  
Sonik  
64. After section 166 ofthe Code, he following section shall teen  
be serted ntmey— ase  
  
"166A. Public servant ating with intent t9 case  
40 any. person Whoever, being 3 public servant, wily  
‘conducts hime in the performance of his fnetons 2s such  
public servant intending to cae or Knowing 10 be likely  
that 'he will by soch conduct, came injury to any person,  
Stall Be punished wth imprisonment of ether dest pion for  
‘term which may extend to one year, or with ney or with  
beth  
  
68, For secon 167 ofthe Code, the following section shall Sabie  
be sibttted namely ee  
  
sien  
  
16. Poli servant preparing an icoret document  
woo sett cane my Whoever, big spb servant  
td tng Sich pobe eran charged with he peeps,  
tion oF any document preparer that dacamnt n'a age  
‘ich he Enos bles to be core, intending tered  
{orause oF knowing tobe hey that evil Teds ease,  
Injury 0 any person, stall be punhed ‘wth imprconment  
freer pon fra em whch may excnd Totes  
Seat or ih He oF a Both  
  
‘planation —The expresion “preparation of 4 doco  
mot ads preparation 3 ipy ae tasation fs  
  
Awerion  
fon iota  
  
GTA, Public servant knowingly authorising payment  
i respect of contracts when the goods spplied or wor. done  
int n accordance with connactt = Whoever, being public  
Servant competent 12 authorie payment on behalt of the  
  
  
Page 449:  
“4  
  
‘Government or other pubic authority in tespect of any con-  
tract for the supply of any goods, the construction Of any  
Bid ore ection of ether work, ators sch ay  
iment, Knowing:  
(.) in the case ofa contrat forthe supply of goods,  
‘hat the contractor ha supplied goods wich are less in  
{Quality than. of infesor in uality 10, those be  
Satraced 10 sypply"or which ale in\_any “manaet  
whatever, not ia’ accordance with) the ‘contact, of  
  
2) in the case of @ contract forthe construction of.  
4 building or execstion of other werk, thatthe contac  
{or his ed materials, which are lenin quunuty than,  
‘8 inferior in ‘quality fo, those he contracted 0 Use. of  
Sach ae ny manner whan no Im ascordace  
‘Sith the contact  
  
shall, ia the abience of lawful excise, the burden of peo  
Sing which shall be on hie), be poaised with umpesonment  
‘of ether description Tora icem which may extend thice  
Sear and shall ao be able to fe  
Explanation —In this section, “public authority” mean  
(a) a corporation established by of under a Cental  
Provincial or State Acts  
(8) 4 Government company as defined in section  
(617 of the Compares Act, 1986, and  
{) 2 local authonsy  
  
amend 6% Ineetion 171 of the Code,  
eer  
ih (2) for the words “thee months", the words “sie  
  
‘month shall be sbstitted: and  
  
() the words “which may extend to two hundred  
rupees” shal be omited,  
  
Ament, 68, In seton 171A of the Code, fr clause (the following  
BES tase sal be sbstnated. namely —  
  
“(by ‘electoral right” mean the right of 2 perton ut in  
tection to stand of ot to stand 25 a candidate oF 10 ithe  
Straw or not to withdraw his candidature, oF 10 vote oF 10  
‘efraie from voting  
  
Avant: 4®,\_tm soston I7IB of the Cade, after subsection (3). the  
  
Rew oh as folloning shal be added, mamey.—  
  
“(4) Whoever commits the ofence of hal be  
pena wit epetmnmi of cane dacrpoen oe ser  
Sitch may eutend to two years or with fn, or wah Boke  
  
  
Page 450:  
as  
  
Provided that bribery by treating shall be punishable  
wie ee oly.  
  
Faplamasion. “Treating” means hat form of bribery  
sebere the praitieaton consist in food, Sith, enerainment  
Or promsion  
  
20, For section I2IC of the Code, the flowing section  
shail be substituted, samely.—  
  
“TIC. Unde sftuence at elecions 1) Whos  
intent to strfore wih te fee exerowe of any electors  
aandection—  
  
(2) makes we of, oF threatens to make use of, any  
fore, tolence or wrongil reat on any Pesson oF  
  
(0) inet oF theealens t init, ow any person,  
ingory of any kind (incloding Soc csteacism and ex  
Plan or ex-communiation Tem any caste oF como  
igh or  
  
(6) induces oF attempts 10 taduce, any person 10  
tee that he will bosom an objet of divine laplensure  
‘or of spa! censors  
  
wth  
ries  
  
commits the ofence of undue influence at an eetion  
  
Provide that detaration of pablic policy ora promise  
‘of pubic actin thal not be an offence unde this section  
  
(©) Whoever commits the offence of undue influence at  
fan elocson shall be punished with imprisonment of either  
<escipun fora term which may extend Lo two yeas, oF With  
fine. or wih oth: and ifthe offence is committed tn the  
mann spcted in clause (a) of subsection (1). the impriscoe  
tment may extend to three fears”  
  
“1. Section ITID of the Code shal be resnumberes 5 sub-  
section (1) treo, and afte subsection (1). at 0 renurnbates,  
{the folowing subsection shall be insered, namely  
  
(2) Whoever commits the offence of personation at an  
clzcion shal be punished with impresonanent of ether desc  
pion for a term which may extend To two years. o with  
fine or wath bot  
  
72, Sections ITE and ITIF of the Code shall be emitted  
  
stn  
  
coe  
  
  
Page 451:  
286  
  
Sette, 73. Forsction 171G of the Code, te following section shall  
  
Aepeiti be subsites as section 1716, namely.  
ince  
  
1B. False statement in cooneton i am election  
Whoever, mth tet to atthe vel a an econ, make  
publishes any statement purporting to be a statement of  
{act winch i fase and which He ener Kno Belews 10  
be false or doesnot tebeveo be true, in relation to the  
Berton character or conduct of any candidate or tlaion  
{othe candidate ot wibdreval of "candidature Of any  
Sinden salle poised wih peisonment of cer  
  
scription which may eatend {0 840 esr, or with ine. OF  
with oak ° me  
  
‘Qpemion, 74. Sections 17IH{ and 17L of the Code stall be omit,  
wh  
  
‘Ament; 75, tn section 172 of  
see 172 ofthe Code.  
me  
(forthe words “one month, the words “three  
months" shal be subtited,  
the ards “which may exend to five hundeed  
supess” shall be omited  
0, for the words “ix months”, the words “one  
year sha be subsitued: and  
(@) the words “which may extend to one thowsand  
supess” shall Becomes  
Arad, 76 In section 173 of the Code  
  
(2) for the words “one month”, the words “three  
months” shall be substituted;  
  
(6) the words “which may extend to five hundred  
‘eupees” shall Be omitted  
  
(©) afer the words “produce a. document”, the  
words or ether thing shal be inserted  
  
(9) for the words “six months", the words “one  
year" hall be sibsutated? and  
  
(6) the words “which may extend 19 one thousand  
rupees” Shall be omited,  
  
  
  
Page 452:  
a  
  
71, tn section 174 of the Code.  
  
(4) for, the words “one month", of with fine which  
may ettend to fe hundred rupees the words “theee  
‘months, oF with Fine” shall be sebsiuted,  
  
(©) forthe words “six months, of with Sne\_which  
ray extend to one thousand rupees". the words “one  
ear oF wt foe shall be substrate: 408  
  
(6) the illoseations shal be omit  
  
78.\_ For sutions 175, 176 and 177 of the Code, the folowing  
sections shall be substiated, namely,  
  
“17S. Omission 10 produce document of other tong 10  
‘ube servant by person tegally bound to price Whe  
‘Ever, being legally bound to produce or deliver up any doc  
‘meni or other thing to any publi servant, as such, intention:  
aly ote 0 to produce or dehver up the same, sail be punt  
hed with simple imprisonment for terry which may extend  
Uo theoe months, or sith fine, oF with Both,  
  
‘fyi the dacsment or other thing isto be produce or  
delivered up 10-2 Cour of Justice, with Simple imprisoament  
fora term which may extend to one yea, or with Ae, or With  
both  
  
16 San i oe afm oa  
cenit tat ahem, le  
sop its tare a  
sammie eae  
  
Sr oder ke appretenaon fa onde, th  
Bec ee hae, och othe or  
  
{0 ie note ge ncenation eed be en  
ss required by'an or er beon  
fecion 565 of the Cade Of Crinum Procedure I  
Sith impreonment of either deerption fs  
  
‘thn may ettend to one year, oF ith ine of with Both  
  
  
  
Page 453:  
on  
bs  
  
ent  
  
Settite  
lone  
  
are  
  
a8  
  
LUT Fain fate formation topic srcant  
Whoever. being Legally bownd to furmsh tnformation on ny  
subjet to any puble servanu at such, Turishes, as ue  
information on the subject which he knows ot has reason 10  
twieve Tobe fae, shall be punished with simple impr sonment  
fora term which’ may exend f0 ix months, oF mith Bae, OF  
‘wih bom  
  
of. the information which he is legally bound to pve  
respec the commision of an lflence, Of tequite for the  
Purpose of preventing the commision of an offence, oF  
‘reer to fhelupprehcssion of an ollender, wath ionprisonment  
‘ofvciher doscnption for'a term which way extend to two  
Year or With ne. oF wah both  
  
Explanation —ta.secuon 176, and inthis section, the  
word “ence” includes any act committed at anyplace out  
DP india. whieh if Sommied in nda, woold be punshable  
Linder this Cose; andthe word “oflenser”nclldes any person  
‘who fs aloged to have been guy of any such act"  
  
79. In section 178 of the Cede, the words “which may  
extend 19 one thousand rupees” shall be omitted  
  
80. In section 179 ofthe Code the words “which may extend  
to one thousand rupees” stall be omit  
  
81, In section 180.0 the Code, For the words “ahyee month.  
cx with ne which may exlené to fve hundred rupees" the wor  
SG monte or wath Bae” shall be subentuted  
  
82 In section 182 ofthe Code, for the words “sit months.  
‘with ne which may extend © ove thousand rupees, the words  
Some'jear or wth fine” shall be sobstiteted  
  
13, For section 184 of the Code, the fllowing section shall  
tbe substi namely,  
  
“188. Oburucing soe of property offered for sale by  
shorty of public servant “Whoever, voluntary. Obata  
Sng ale of property fered forsale by the lawl authonty  
‘of any public servant as auch. shall be pened wih fine  
‘wih may exznd 40 One housed rupees  
  
88. In section 185 of the Code, for the words “imprison-  
nent ey decrpion for a tem whi may end Toone  
  
ise which may extend to two hundred rupees,  
the words “ine Which may extend to one thousand  
‘opoes™ shall’be substitutes.  
  
  
  
Page 454:  
0  
  
85. Inaction 186 ofthe Code. fr the words“  
cox nth fine wich may exend to fie hundred rupees" the words  
Gx month or mith fine sball be subsites  
  
86, In setion 187 of the Code. —  
  
(2) for the words “simple imprisoament for 3 teem  
‘which may extend fo one month, Sr wath fine which may  
tonto two hundred fupees, or with othe; the words  
  
Tine which may extend to one thousand rupees” shall  
be Subsinated, and  
  
(8) the words “which may extend t0 fe hundred  
cupees" “hall be omits  
  
87. In section 168 of the Code —  
  
(2) the words “which may extend to one thousand  
rupees” Shall Ge omited  
  
in the Explanation, the second sentence shall be  
‘omied: and  
  
(6) the illustration shall be 0  
  
BK. tn section 19 of the Code, for Explastion 2. the fallow  
ing Explanation shall be subsutwted, namely —  
  
“Explanation 2:—For the purposes of this section, it  
is immaterial ‘ether the faboeated evidence ss oF hat  
Fepaly"admissile In the proceeding in Which Ws intended  
tote ued  
  
89. For sections 198 and 195 of the Code, the following  
sections shall be ul  
  
da uttow 730  
  
nen  
ora  
8  
  
Bee foe  
  
  
Page 455:  
0  
  
and if an fanccent person shall be conviced and exge=  
ted in consequence of fuch Tube esilence, the person 3  
tyres of Iabricates sch fate evidence shal Be pursed ith  
Seath or mprsanment fee Ife or the punsfiment hee  
before Souribed "  
  
198. Giving wr fbrcuing fle exdenceo procure conve  
visa Of fence punishable with imprisonment for Heo” apr  
Sonmont for Seren urs. or upmanc Whoever gives fae  
evidence in any Wal before a/Court of Justoe or fabrieates  
Fale evidence forthe purpose ef being used in any suck wil,  
Intending thciedy to cause, or Raowtng tt Be Masi that he  
‘sit theres cause, any perion te be convicted ofan ofene  
‘Shh St mot cpa, but punishable with mpesonmest or  
\Nism or even fears or win a more severe sohtenc. shal be  
unished asa person convicted ofthat ofence Would be lable  
0” be panied  
  
50, Alter sectio 198 of the Coe. the flowing sections shal  
  
be inet sels —  
  
OKA. Jswing\_ ov signing fle medical cerieate—  
‘Whoever being 2 medical pesctioner sees stems any  
megeal cenfeats or certieate of hine, Keow ing that sch  
ate ase in any Material pertcula. sal he pois  
"ts impetsonment of ether decrption for 3 frm which  
‘uy extend To one year, or With fine, oF ith oth  
jf fe ows that the cert infeed be  
used iy Stage jail proceeding, e shall be pune  
Able with mprsonmest of ether deseuption for a tm which  
nay extend to thre ears, ce ith ine, se with Both  
  
VORB. Uline as true o redial cervfcate kaowe to be  
{alae Whoever corrapaly anes or attemps 1 se ny eh  
{ercate ss @ tue certeste, knowing the same tobe fae  
invany material pot shall Be punishable wah mpesonment  
‘ot ether desription for term which may extend to OMe  
Sear OF with fine. or With Both  
  
fad, if he so uses or attempts to we iin any stage of &  
jugiial procoedig, he shall be punishable ith tmpesonement  
St etch descriplon for ater which may extend 10 thee  
Year or with feo with both  
  
9h, For sections 202 and 203 of the Code, the following  
  
sections Shall be substituted, namely: ~  
  
202, Giving fae formation respecting an offence  
committed. Whoever, koowing oF having 34800 to beieve  
  
  
  
Page 456:  
4st  
  
‘hat am offence has been commited. gives any information  
Fespecting that offence which he knows or bres to be false,  
Shall be punished wth imprsomment of either description (0:  
  
aterm wich may ext fo two Years. with Heo wth  
ton "  
  
20% Inenional cmision 4 sie information of ofece  
ty peso hora to inform. -WhsevenKoowing of. Sasing  
feafon to Pie thats ence hae been commited, ine  
ral gris oe a norman peng at ee  
sh young 0 Biv. shall be punted wih  
Iingnsonment ‘eur aescigton fara teh eheek mst  
extend tos mont cr mith fe, or with both  
  
Fxplonarion. tn setions 201 and 202 and in this see-  
tion. the mera “fen” inclades any act committed at ny  
place out DY Indi, hich Hf commited in Inds would Be  
  
following sections, samely. 302,  
98 104 395, 396, 397. 398, 39, 0, ABS,  
487,488,499 and igh”  
  
D2. ta setion 20 of the Coe. afer the word “coment”  
ssherever secur. ihe words “or ciberthinp” shal be mserted.  
  
DR. After ection 207 ofthe Code the following section shal  
tbe meted namely  
  
207%. Remora of ata propett>—Wheever, now  
{25 gL ion seo to ehne ta amy movable propery  
Tas been tally tached bythe ose of 2 Cour of fstice.  
Temones of iyferes wilt such propery otherese than 8  
‘cordance with las shall. heber Ge Not he way 8 party {0  
the prowsedings in hich the ceder was made, te punished  
‘vi imprisonmem of ether. description for term which  
may extend to tuo yee. of wth ne: OF with Both  
  
194. For section 211 of the Code, the folloming section shall  
be subset namely =  
  
S211. Rabe chore of offence made with ite 10 ire. —  
Whoever, with iment 10 cause nury to any person-—  
  
(2) institutes or causes to be insted in Court of  
Justice any criminal. proceeding ‘guia tha person,  
Knowing tat tore eo jut of uta ground for sch  
ocecing asst that fern:  
  
(8) falsely charges that person in 2 Court of Justice  
wih having commited an fence, knowing ta the  
  
Sion  
  
  
  
Page 457:  
Amd  
pe  
  
a2  
  
1 mo justo lawful ground for such charge agains that  
fetson. shall be punmibed with imprsonmeat of either  
<Sesrption fora frm which may extend to three Seats.  
fF with fine, or Sith hath  
  
and if such criminal proceeding be insted on =  
false charge of an offence ponihable wi imprisonment  
for seven "years of a more severe semenot. he shall be  
punished with imprisonment of ether description for 9  
{om which may extend to seven sears, and sal aso be  
lable Yo fe  
  
95. To section 213 ofthe C  
and Exception shall he addees  
  
the following. Explanation  
mel  
  
“Explanation — Wis nok necessary 10 the commbsion  
‘of an offence ‘under this sctgn that the OMeader should  
hhve done. or desised free doing. what he undertook to Go  
OF to dest from ain  
  
Excepion-~ The provisions of this setion do Hote  
fend (0 any cae in which the ofence may tail be com  
pounded:  
  
96. section 214 of the Code  
  
(a) the following Explanation shall be added before  
the Exception, namely  
  
“Esplonition I wot necessary \o the commision of  
fan fence under this section thatthe other person show  
have done. or desistedifom doing. what he wnderiouk todo.  
OF to dest from seine  
  
() for the Exception, the following shal be su  
stituted, namely  
  
“Exreption—Uhe\_ provisions of this stction do. not  
‘extend to sy case in which the offence may lawfully be com  
pounded  
  
97. In seston 2160 of the Cod.  
  
12) forthe words “or have recently commited rob-  
beay or dacoity™ the words "ihe offence of kadnappiny,  
ction. robbery or Uacoit” shal be sbstauteds amd  
  
(©) for the words "such robbery or dacity or of  
screening them Ge ay of them trom punishment’: the  
‘words "Suck oflence™ all be sited  
  
  
  
Page 458:  
3  
  
9R. In section 217 aad in section 218 of the Code, fr the  
‘onde “lepal punishment the words “punishment for an of  
nce” shall BE ssttaea  
  
99, For sections 221 to 2288 of the Coe, the following se  
tions shall be subsitursd, namely  
  
“221. Pubic servant invention omiting to arrest or  
ermine escape. Whoser, being 2 pbc servant legally  
Sota 29 rest any person’ to keep hm in custody te  
Aeottonally omits arrest him or ane him in escaping  
temple to escape from’ sch cstody. "or satenaonal  
persis fim to escape Tom such costo, shall  
  
(3) i hat person isto be atrested oF kept in evs.  
ody By reason! of 2 sonvcsion et charge oF suspicion  
O18 capa offence be punished’ wath igoraut bmp  
Stoment Tor a tert whith may” extend 40 ten ears  
Sind shal aka fe Fable to" Anes  
  
{ty at reo to fe aed ket in nod  
by season of aconvcton or charge or suc of Ry  
her fee pannabe sith prisonment for eo  
for ten yeas "upwards be panied wh rigorous  
Iimprsoament Tor term which may ented 10 Bve  
Sehr and shal iso be habe fo fine  
  
(6) in any olor ease, be punisbed with ipeiso  
senso exher description for a stm hich may ech  
To thee Jear, oF wah fie. or with Bath  
  
222. Public secon negligently onaiting to arvet ov suffer  
neo escepe.—Whocrer being 2 pubic sefvantegally bound  
to arrest any person of 19 keep him in cstady. neghgenthy  
tity to arrest him of negligently sue him (escape rom  
Such cusiody. shal be pomtable th of  
either dscripion fox term which may extend to two Yea  
Srtanth fines oF wath bow  
  
223 Kee from lw cuted Whaee eis  
for attempts to rescue any ther person fom lawiul custody,  
De pe ,  
  
sal) Gh tenn ty ty eto oa cone  
viewon or chatge ‘er supicon of aay ‘other tence  
Prmshable Witsimprsonment for life or for ten years  
  
  
Page 459:  
nee  
  
Sete.  
tration  
ieStoo  
  
86  
  
fr upwards, be punished with egorous imprison  
or 2 term which may extend (0 five year and  
Sito" be able 10 fine  
  
sm any other ease. be punished with imprison:  
‘vent of either description Tor teem which may extend  
{two years. or with fine, oF with oth  
  
Resisance 10 arrest af another persox. Whoever  
coffers resistance OF legal ebstrtion 10 the Lanful arent  
‘of another person shall be punished with the punsshinens  
provided in section 223.  
  
Escape from laxful cstade—hoover. berg in  
Jawful cstody. imestionally escapes or alainps 1 ec  
fom such casi) = " m  
  
@) ifthe is in\_ comedy by reanon of conviction  
oy Share 0 Spin fo eee. be pened ih  
Imprisonment of either description for firm hich  
iu extend to tao years oF ah fine or with oth  
  
(in any other case, be punished with imprison:  
ment uf ether devcrpton for term sebich may extend  
fo tx months, or wth fine, or with Doth  
  
Explanation —The\_pusisheent ia this setion is in  
addition to the punishment for hich the person in cxstody  
‘was llabe forte offence of which he wat canticied. er WOuld  
hate been Hable on conviction for the oflence with = hich  
hey charged or of whch hes psd ab IR ce  
  
226. Resistance ro arces-Whoewer intentionally offers  
  
100. tn section 228 of the Code  
  
a) for the words “st mont’, the words “two years”  
shall be Substuted  
  
(8) the words “which may extend to one thowsand  
rupets” Stall'be omitted  
  
OL, For section 229 of he Cade, the following sctions  
shall Be substitute namely  
  
229. Inerferene with witnesses. Whoever, by thea  
Inites oF other sorrapt means, sinsoadey or aero a  
Sade any person fom gluing endence before a publi se  
‘ant legally competent 16 xatrine him aa witnes, ball  
  
  
  
Page 460:  
455  
  
pnishes with imprisonment of either description for aterm  
‘winch may extend Yo six month, oF sith fae, oF with both  
  
20 fae yr en fale  
  
Explanation ——The ponishment i this section =  
  
(a) te uddiion to the punnivment to which the  
olfesder would be lable on. eonsction forthe aence  
‘skh which he charged and  
  
(6) without preiice to the per of the court to  
ovat forfedute of the oad  
  
231, Vesariou sare without reasonable prowl: -Who-  
ever ing empowered by law to order or conduct search of  
Sint place: vetatiowsy, and wahouthavieg 2 tewsonable  
iron foe so doung orders or conducts such earch shall be  
ured uth imprnmet fetes deseption for = try  
‘Sih ay ettend to te sear, oF ith fine oF with both”  
  
102. Foe Chapter XU of the Code, the flowing Chapter Subsite  
  
salt Be sobbed. namely irae  
pine of  
Beene  
see  
Conoren XU  
  
OFFENCES RELATING TO CURRENCY NOTES,  
COINS AND STAMPS:  
  
2 Comore carne mee Whore son  
tevfets oe Koowingly perform any part of the process oF  
SmertGhing:anyeee ey Nese al fe panes wit  
fiporous mpesonmsst for aietm which. may extend 10  
Foonsen jeare and shall abo fe Hable tone  
  
Explonarion The expsssion “currency noes means—  
i any currency sotes of the Government of Indi:  
  
any bank notes issued by the Reserve Baok of  
Indias and  
  
  
  
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486  
  
(i) any notes. toy whatever name called) fue  
by or on behalf of the Government of any. country  
‘luside India which are legal tender in that county.  
  
223. Using as genuine coumterfet utrencysote—Who-  
fever sls 0, buts or receives {fom, any other person OF  
‘therwise tats in oF ses th genine, any eounerfen cur  
Feneyonces, knowing of having reason to bliss the sme  
tobe forged or courtsret. shall be punished wth rigorous  
Ingisoumeat Tora term sich may extend to fourteen years  
nd salle able fins  
  
234. Possession of forged or couseret eurreney-nates.  
‘whoever his in his posession any coumterfetcorrency- note,  
Knowing or haning Zeason to belive the same to te count  
Fei and intending to uve the same ns enine. or that ay  
theresed as genuine. shal be punished wih wpsonment of  
chet assciption for’ 2 term which may exterd 12 seve0  
Sears, or ith fine, or wah both  
  
235, Making or posessing struments or materials for  
comierfeing currencies" Whoever Maker. Or Bato  
Sy pat of the process of making or Buys or seth or ae  
Doe! of + hs hs porn any machiaens nsrument  
fr matenal for the purpose of being wed. of knowing or  
‘ivingeaton to Deo that i mended to te ured for  
Sontiistng ty crepe Sal be phe th  
Figorous imprisonment foe serm which may” vend. 10  
{emean years and shall as be hab ne  
  
236, Making. or ing documents resembling \_cncencs-  
rt) What mak, 01 eae (Be md, In  
{or any purpose whatioryer, or delivers f0 an) peton, ny  
‘document puspoctiag to be, of ia any way resembling, OF 50  
neatly resembling. a 10, be calla to dace, ay ch  
‘eey.ote shall be punished with ne which tay extend 10  
‘slo hundesd rupee  
  
(2) At any prion whone mame appears on 2 dace  
"a ohieh is an offence ander subssscvion (1),  
fei thou awl excise, to Uo ta poice abet  
  
Fup.  
  
oer: the same of ay paon appears 08 any  
ince under subsection). ‘document  
  
that document ms).  
Unt ‘he contrary i proved, be presumed that that Peron  
fiased the document to be made  
  
  
  
Page 462:  
“7  
  
DL co to at  
  
\_Explonaion.—Metal which hus been samped and issued  
ty Auton of the Goverment of Taian ner 10 fe  
‘as money shall contsue to be coin for the purposes  
this Chapter. otwhstnating that it may have” ceed  
wed ah omy,  
  
28S, Courting eolns. Whoever counterfeits, or  
hnowingly performs any part of the” procee of count:  
feting, any" coum. shall” be panied ‘ws imprisonment  
‘of iter description far a term whch muy extend to seven  
Years. and shall alco he fable foe  
  
29. Usain as semine comlerfet sin—Whotver sls  
{oof bays or seein from any ther pono sere  
Wali 'oF nes genuine ay countereat om, Know  
tr hing reason to belie the same toe couneyiet. shall  
Be puinshed ath mprionment of her dssnpjon es  
term Which may extend Yo seven yeas: an Shall sho be  
Hable Yo fie  
  
‘isan to baheve the te  
Shale pured  
‘eva (em whch muy extend to he ears oF wth io  
  
241. Making or possecring instrament o7 materials fe  
‘onnerfeting com.” Whoever maken. or pstforms any pa  
of the proces of making. or buys oF sel oF dispose a  
‘ras fn hip possession any machinery, matrument or mae:  
"a for the purpow of Being eed. of kaowing oT having  
reason to bsheve that Ili intended 49 be wea for coun  
Fetomg any"com. shall be pushed with omprnonmen oF  
‘ther description fora term sich ay exer to five Years  
Sind shall aloe able tone.  
  
Inport ar expoct of outefet «oins— Whoever  
iit india Gt exports thercrom an), counter  
Knowing or having reason to tefeve thatthe same i  
' "counterfeit coin. shall ‘be pucished. with iniprsonment  
of either description for a term whieh may extem to veven  
Year 'and shall aso be Hable tO. ie,  
  
283, Person emploved in ment cars con tobe of difer=  
{ut weight Or compsutin from that iced be fan Whoever,  
being employed in any mint lawfully exabithed tm Yad:  
  
  
Page 463:  
458  
  
does any\_ sc. oF omits what hes legally Bound to do, Wi  
the intemon of eaoung any coin ised from that mot  
bieaf diferent weight or compostion from the. weight  
fr composition fed by law shall be punished ‘ith  
Dsonmene of either description for term which Yasy ex  
{end to seven yeas and shall aso be Hable’ (0 fine  
  
244 Unlefull: raking comune serument from iat —  
Whoever. without lawful authority, takes oUt oF aay Mint  
Inf sstabtahed in tdi, any coining Tool oF gstrament  
Shall be punihed ith amprnsnmest of either Sesception  
fora term whseh nay extend to seven year and hall ho  
be dale to ne  
  
245, Dishonest we of shies in vosding machines —Whe-  
‘ever dishoncallymsrts or ues ina machine which sells gods  
fr aerice or calles ares or ts, unsung that i mended  
{Sort ot. the mo the keno ae ht the  
Imachine designed to receive in exchange for the goods.  
{Sines ave or Wl as the cise may ber shall be pursed  
‘Sih impetsonment of eile eicription Tor term Shieh  
extend to one year, OF Sih ae of with Both  
  
ene Coates  
fits ‘or Anowinay. performs  
Suoterfeting any fevense  
  
Stapesonment of ether ssc  
xd to fen jeareand shall also be hale to fie  
  
Explanation. ~The expression “revenue stamp’ means &  
samp tosued by Government Tor the purpose of revenue  
  
247 Meine or possesion or ale of eirunents oma  
terial for Counterfeiting revenue san" Whoever Mikey” ot  
perform any part ofthe process oF aking O, buys ox sll.  
{pote fora ia Ripracson any mache ny:  
tment or material for the purpes of being wed. of Knowing  
Teawon to bee tht It Intended to be uses  
:feting say Tevenue stamp. shall be punished wih  
inmprzonment of exher aeseripion for 2 term which may  
hlond to seves years and shall ato be Hable 10 fe  
  
248. Sole, we amd posesnon of reveme stamp.—Who-  
  
(2) so, or fers forsale, any sump. which be  
» Seow cr has reason 10 believe to be acountrfet  
eens simp. or  
  
(6) has in is poweson any stamp which he bnows  
to bela ceumedet revenoe stm, itending >  
West spose "the same "asa eating  
Simo  
  
  
Page 464:  
+ a9  
  
(6) uses a8 genuine any stamp, knowing i 10 be a  
‘ourverert revenve stage  
Stall be punished with imprisonment of ether description  
  
Tora (erm won may eatend to seven years, 0 With,  
for with th  
  
249. Elling iting. or removing revenue stamp ised  
for it wth stent to canes to. Gotermet=- Whoever  
Fraudotinly with intent to cause fo to the Government  
Tomoves of eifwces sm any substance bearing 2 revenae  
Samp. any ‘tng o--dochment fOr which seh stamp  
thar Been "Uso or semones from any wehng. oF document  
dt rescnue samp which as been sal fe such sing of  
‘ocumet se thal soch Stim may be une for dere  
  
ring er daca hell 52 ponished with imprison:  
tnvet of liber dcwrpuon fot a erm seh may evens  
fo thrSe Years. oF wit fie, or With Both  
  
240. Usine reveme,stinp known 10 have been before  
sed whore, "raadley ot wih ent to ane se  
{e the Government. ses for any purpose a revenve stamp  
‘sin he knoe to have osen before sed. shell Be punishes  
Sith impesonme' either eescrpion for a term which  
mus enend tw tow years of Sit Bea, with both  
  
il et a ar dein a tabs  
cof ih nn 1 ge to  
  
timp, any mark, put. or imesed “upon it  
for is purpose of denoting that he tame  
ee  
  
(0 kaon gs an i ht pomeson oF sl i  
Prost "Sanit stamp. trom ‘which atch  
ESE sn o0S te Go elo  
  
(ose or dng of ay sah snp hich, be  
Knows 10 have boen Used shall be’ panic  
  
swith imprisonment of either description for a term which  
may extend to thes years or Mitt fe, oF wth Hot,  
  
252. Application of preceding sections 10 orcigspastoxe  
  
stant-—The rovcions ot nevtnns Hb to 961 BOI I  
Sepals teats wo pose stamps nse By tae Go-  
ernment of ioe gn constes a8 they apply om relation 10  
  
3 (1) Profirion of front posage samy. Whe  
  
(4) makes. Kaowingly ters, deals in. sels any  
Attlee poscige stamp. or knowingly uses foe  
ny posal puipose any sueh stamp.  
  
  
Page 465:  
460  
  
(@) fas in hie posession, without lawful excuse,  
  
any foch stm, OF  
  
(6) makes of, without lawful excuse. has in his  
possession any de,  
‘ater Tor  
  
stall be punished with fine which may extend t0 two hund-  
red rape.  
  
(2) Aug. sgh samp’ de, late. nstrument or material  
in uke possesion of hy pefion for makingany Retious  
postage stamp may be seided and, Sail be Tor.  
Reve  
  
(3) In this sowion, “etitony postage stamp" means  
  
imp falsely purporting to. bs sued by the Govern  
St of hada oF of forege couney for the purpose of  
‘noting rate of postage, oF any fachimnle OF smitmson OF  
fepresoniation, wher on paper or otherwise. of 388 Stamp  
Fiiued by auch Governmer. for thal purpose  
  
103, tn each of sestions 268 40 267 of the Cade, for the  
swore “one year's the nts "wo shall be subsuted  
  
104, For section 286 of te Gods, the following wetion  
shalt Be bated, aml  
  
°268. Public maisane —(l) Whoever does any act oF  
ix guy of am egal Smiscise Wh  
(a) causes any common injury, danger of aenoye  
  
Stce tothe puble or (0 the poopie in, gnc  
‘tho dello occopy propery in the iy  
  
o) mist nocssrily cause injury, obstretion,  
danger or annoyance wo persons sho tay have ecasion|  
  
tose any public righ  
commits & public nuisance  
  
explanation. Any such set oF illesal omission i, not  
cexcwle onthe ground that Heauses some, convenience  
Gr advange  
  
2) Whoever commis a public nuisance io any case  
se terme pune by fm Code al Be Pes  
an Bie  
  
  
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“or  
  
108. For sections 269 and 279 of the Code. the following  
section shall Be subaitued, namely  
  
260, Aer kel 1 spread ifesion of seas dangerous  
tw fe. “Whoever does amy ac whichis and which fe knows  
‘his feaon to bsieve to be, likely spread the wfecon  
‘oF any sare dangerous to ies stall be punished —  
  
(a ie ces such at nogligety, with imprison  
iment of either desripion fora term which may «tend  
{Drone years o with fine, or with both  
  
(b) if he does such act intentionally. with is  
mont ether desertion for aterm hich Te  
{thee years ov with ine. or wah both  
  
‘end  
  
106, te each of the sections 272 to 276 of the Code. for  
the words “k\_monihe, of With fins which may extend 10 one  
theauand cupeen ee with both", the words "ives ears. OF  
‘Sith fine OF with oth” shal be sobstted  
  
107, For sccton 2/7 of the Code, the following section  
  
stall be subsrcuted. sumely =  
  
277, Fouling water of public spring, well or reser  
Whoever voluntary foul the water 8  
  
well or reervo, 30  
Borst  
  
pesca  
Bond os month. oF wt  
  
JOR. tn scion 278 of the Code, forthe words “with fine  
wich may cxend 10, five hundred rapes", the words “im  
Prsonmont A ithe description for 2 gem which fay exe  
Rowse month, or with fie. or with both shal be st  
  
10, For tion 279 of the Code. the following two sections  
sal Be Sobsituted namely  
  
219, Rash dive oF ring mo public way.—Whoever  
drives ams seh oF sides omany pene way io a mannet  
ovrash or nepagest as to endanger human fle. oF 10. Be  
Iikely to cane: hort or injury to af ouber petton shall be  
Dunnhed ith imprisonment of eter deseripuon for term  
Sich may extend t ak months or wath fine OF wit both  
  
Bisco  
  
Somes  
  
Sut  
Sonne  
sic  
  
  
  
Page 467:  
Pine  
  
Sei  
  
a  
  
2TPA. Dring uesafe or overloaded vehicle on a public  
Whoever Knowingly ‘or saghgenily drives any vehicle  
fon public way when that "sehen sacha sate 39  
Toated as to endanger if. shall be punished sath mpriton.  
iment of either descpign for asin which may "extend  
oti morthn, or with Sn, oF with oul  
110. tn cach ofthe sectoas 25, 252 24, 285, 286,257, 268,  
and 249 oF the Code, the worse “which may tend 10 One  
‘thousand Tupses tall Be aed  
  
114, Sesion 290 oF the Code shal be omit  
  
2 Section 292 of the Covle shall be semuimbered a6 sub  
CD threat, ant  
  
(2) in the Exception to subvszction (1) of section 292  
vy esnumbored for the woude "This set”, The words  
“This 'Subssoaion™ shall be sabstnsted:  
  
(€9 ales subsection (Hof section 292 as se re-nume  
eve “he Tbing s0b-eeion shall Be rsced, namely  
  
42) Where: in any proseution under this section, the  
question is whether the publiation of any bors, pamphlet  
Paper, wing. drawing. pamimg. sepreotation or figure  
Fitter of ment rte a oe erg or ahr  
‘jects ot penal soncera, the opinion of experts a8.  
Stel Teeray: arte suadom or oe  
beaded in erence  
  
Sn section 204 of the Code, for the words “imprison:  
ment ier description fOr teem which tay extend to three  
‘ont. or with fine oF with ouh the words “ine which  
tmoy ciend to-ene thetsand rupees” shal Be subsite,  
  
14, For section 294A of the Cods, the following section  
so be tied, mame  
  
“204A. Offences in connection with loteie: (1) Whee  
set\_in connection with any lllery promoted oF proposed  
10 be promoted, ehether tm India a ehewhere  
  
(4) prints any tickets forse in the Jotery: oF  
4) sells dintibutes, of oflers or advertises for  
sale ‘or diatribonon, or has Im hit possession for the  
  
purpose of sale or distribution, any Fckels or chances  
inihe lottery: oF  
  
  
  
Page 468:  
“63  
  
(6) prints. pulses oF divbutes, oF has in his  
pesssion Tor "he purpose “al pubiation of Sst  
Boston  
  
(0 any advertisement of the lotery: or  
  
way Hist, whether complete oF not oF pine  
‘winners OF wining tekets im the htlery: oF  
  
(i) my, such. matter descrpsive of the draw  
ing or niche drawing of the loutery. or otherwise  
‘lating to the lotery” ass caleulaed to act a8 a9  
sleet 19 person (0 partipate i that Kets  
  
(a) brings or imies any person 19 send into tain  
fo the purpose of le oF distribution any ticket, OF  
Svenement ofthe lottery: OF  
  
(6) sends or tempt 0 send out oF Hoi any money  
‘or walle thing Faced Jp respect the sale d=  
{eietion. or ane document eecording te male or Sh  
Irion ot dhe wntity of the bolder of any eke OF  
hance is the lolteys oF  
  
ssi ony proait tts wad. fap ppt eben  
Ith the romovon or conduct of the Toner: er  
  
G) couse procures of attempts 10 procure any  
pent 10 do any of the abovementioned set,  
  
shall be punished with impeisoament of either description  
  
for term whch may extend Tosi montis or with fine  
‘orth both  
  
£2). Nothing i his ston apis in relation 4 a tery  
wich fs Slat ony er authorised the State Se  
  
(2) The State Goserament a  
fefernce to this section, where  
  
thorse a fonery with  
sated ha  
  
2) the profits of the fuer ate 10 be appropriated  
toward tay charitable purposes, of  
  
(0) participation in the fouery is confined 10 the  
members of 3 sovely or other Broup of persons, ands  
mo open #0 the pubic, or  
  
(6) the tovery is ineidental to an entertainment:  
  
4) it otherwive in the pubic intrest to authorise  
the fotter  
  
  
Page 469:  
68  
  
For section 2954 of the Code, the following secon  
‘all be subattutd, namely-—  
  
9A. Deliberate acts Intended 19 wound relipiou fol  
Ans of any class by insulting ts religion oF relics belies  
Whoever sith the deliberate mention of sounding thee  
Higtousfeaings of any class of etizens of India, UY words.  
‘either spoken or writen, or by signs or by vibe representa  
tions or otherene, suis of atempts to insult the religion  
br the religous bei ofthat cas, shall be punshod sith  
  
impetonment of either description Tor term hich  
‘lend to wo ears. or wi Be, with bathe  
  
fete 116 For sections 299 and 300 of the Code, the following  
Beret set shal be sobs. meh  
  
Sond  
  
299. Murder.-Whoewer causes death by doing an  
  
(2) with the intenion of causing death, oF  
  
(©) withthe atention of causing such bodily injury  
as is sufcent ithe ordinary coure of nature f0 cause  
eath'or as the offender ows to be Iikly to cause the  
‘Seah Sf the person to whom the hare caused. ot  
  
(6) withthe knowledge thatthe act sso imminent  
danger tht st must, ill pobabsity. cause death  
‘Se tech body. injury iy to eau death  
Stihowt iy excuse for tacrcing such sk  
  
commits, murder, exces in the crcomstances specited in  
sccuon 0,  
  
Eyplonation For the purposes ofthis section and see-  
ion 500  
  
(0) enwsing the death of a child inthe mosher  
womb i'ma famning the death of 8 human beg: But  
iting ie enh fig ch fer amy par of  
Ais emrpas from the wom, easing the death Of &  
Iman ing showgh the shld may mt have breathed  
rien’ somplet brn:  
  
(3) a person who causes Bodily inary to athe who  
Js Adbguting under disorder disease or bodily infemity,  
Sd thereby aoclerates the death of that othe, shall Be  
‘eemed to have cavied his death,  
  
  
Page 470:  
465  
  
(a ere eth cased yoy ing the  
pram ch Si ny aed  
  
reeled ae ahaa Bf Ete pgs  
tenednd a sen a mig anes  
fener  
  
Mustravons  
  
(@) A shoots Z with the intention of killing him. Z dies  
in comequence. A" commits: mutder.  
  
(A intentionally gives Z a swordeat of club-wound  
sufficient to cause the death of an inthe ordinary course  
of natore Z dies in consequence A's fay of murder  
‘ltiouph he may not have intended to cause 2's death  
  
(6 A booming that Z bas an enlarged spleen a blow  
st mich ely to cat hs Sete sks im tose  
‘ithe inten of esing hr och Boy injury "2 Ges  
  
omeduence ofthe Blow: As ult) of murde,aough  
ie blow mig not have been sient inthe ordinary core  
nator wtcause the death ofa ern wih sun specs  
  
(2) A, without any excuse, fires a foaded cannon into a  
‘gow of persons and kilt one of them, A is gully of mer  
5; abo he may not have devgnd ol ay particu,  
  
hn hi a mt  
  
300. Cunable homicide, nt omsinting 1» merder—  
uN en Sah, na ie  
trenen of using sch boy inj ani Maye ats  
EAI id te Rnowedge that By nich che key  
{Sun death tnd soca shoe murder ander ese  
‘came ) of secon 9, he Commis elpabe emis  
‘or mouning to murder  
  
Maran  
  
A lav sticks and tur over a pit with the Knowledge that  
eat ig hikely to be thereby exosed. Z treads tls 2  
tnd is killed. A has commited culpable homicide not  
‘mound to monde.  
  
2) Whoever causes death by doing at sct with the  
intention or knowledge specie in section 299, but inthe  
SM ofLw/71—31  
  
  
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6  
  
exceptional circumstances. heteiafter\_speifed, coamits  
ulpobie homoge not amounting to murder, nanel.—  
  
le ee, wit deprived a he power  
  
neo hy grave ad sen provecstion, fuss  
  
("prove the provoeaton=  
  
(2 ne sug oF voll provoked  
the sfladel as bo Sess for Rtg of Song hats  
  
(any person, oF  
  
() isnot given by 2 public servant inthe lawfut  
exercie Of the powers of Such public servant. or  
  
(6) isnot given by anything done in the lao  
cersst ofthe dato nate de  
  
):90 en by anything dove ia ateiene  
  
4) when the ofender in the exercise in good faith  
of therigt of pate dtece of erin. prope.  
iceeds'the power gives to him by faw and causes the  
‘Seath of the person against whom be is exercising such  
Fant of defence without premeditation and withovt  
ny intention of doing moce harm than is neces) TOF  
the porpote of selfdetence:  
  
(Ui) when the offender, not being a public servant  
cor aiding public servant acing forthe advancement of  
poblic justice exceed rs given to him by la  
  
‘by doing an act which he. n pod ith  
tehees to be lawfol nd necessary for the Jue ochre  
of his duties a5 soch pobhe servant and without Mell  
Sesto 8 person mhote death caused  
  
(ir) where the offender causes death without pees  
mediation i a sodden ght inthe beat of passion upon  
sudden quarrel and without having taken uodue 2d  
Santage oF acted in a erie! muatal mamoer: i h  
immetral im cach cases which pacty lets “the  
Drovecation ot commis the fst asa  
  
() whore the person whose death is caused. tons  
above the age of eigen yeas. consent to sufer death  
orto take the rst of death  
  
Maraiont  
  
(2) Y ives grave and sudden provocation to A. Aon  
this provocation. hres, 4 pistol at ¥, nether intending nor  
mowing bins tobe ikly to tll Z, who 8 neat hi. but  
‘out of ught. A kilt 2. Here A has sot commuted murder,  
But merely culpable homiciée net amounting t0 murder.  
  
  
Page 472:  
ca  
  
(9) A, ander the influenes of passion excited ty a provo-  
cation in by Vie Vs ca sanag meee Ths  
  
‘murder inasmuch ss the provocation was not given by  
the eh  
  
(0) A lawfully arcested by Z. a bali, A. excited  
to.udden and violent passion by the arrest, and kil 2. This  
' murder, nasmach as the eovocation was piven by a Un  
done by pubic servant in the lawl exercise of ix powers  
  
(a) 4 sstempts to pall 2's nose. Z, in the exercise of  
the HM of private defence, lays hold of @ A to prevent him  
from doing 0.”'A is moved wo sudden and vist passion fa  
consequence and kills 2, This is murder, inasmuch as the  
  
cavocation was given by a thing done tn ihe exercise ofthe  
WghUot private defence.  
  
(0) Z suikcs B. Bis by this provocation excited to  
violent rage. A. a bystander, intending to tate advantage OF  
Bis rage-rand to cause him to Ki'Z. puts 4 kaile i  
BB hand for the purpose. B Kills 2 wil the knde. Here  
'B may have commited only culpable homicide nat mount  
tolmurder, but Ais pully of murder  
  
(DZ attempts to horsewhip A, not in such a manner as  
to cause grievous hurt fo A. A draws out a pstol. Z pers  
inthe asa Aten goed Tah Wt he cay no  
‘ther means prevent himsel from being horsewhipped. soos  
Z ead, A has nou commited. murder, but ony culpable  
homicide ot amsunuing to murder"  
  
112, For section 308 of the Code the following vstion shal  
be subsitted, namely  
  
304, Pnishent for culpable homicile oY amounting 10  
imrer=-Whoever Commis culpable homicide not amount.  
ing to murder. shall be punished with imprisonment of  
description for a term which may extend to ten years  
Shall 3 be Table to fin  
  
118, ta section 304A of the Code, for the words, “two years”,  
the words “tive years” shall be subsites  
  
119. For section 307 and 308 of the Cade, the flowing  
sections Shall be substituted namely,  
  
307. Auenpr to murder-—Whoever attempts t0 coe:  
rit murder shall be punished with rigorous imprisonment  
  
ee  
Setion 0.  
  
2S,  
  
  
Page 473:  
468  
  
for a term which may extend to ten years, and shal also be  
  
Hable to fine, and i hurts cause to any pero by sach act  
the ofender may » rernen By seh  
  
(2) if under semence of imprisonment for  
ponshed with deaths and  
  
2) in any other case, be punished with imprison:  
ment Tori ~ "  
  
“308. Atiempi to commit culpable homicide Whoever  
uipable hommicide not amounting. {0  
‘urder shall be pusished  
  
sph a "shale punted  
iption for a teem wbych may extend to seven Sear OF  
‘sth he, oF with oth \* =  
  
Msration  
  
‘A, on grave and sodden provocation, fires a pistol at  
% ue Clie be tey ated eh  
Murder A's Site the Ofc 2nd nt Se  
  
Subs. 120 Forscton 309 ofthe Code, the fllowing section shall  
ESS be cob my  
sie,  
“30, Driving member of fay 19 mide Whowve,  
ty penton tt of Sly” irs incr of he ay  
fei him vo corm said, shal be panel wit  
ipticomt oer dst 8  
SREnI es yea hn sil so Gale Be?  
rion, 421, Section 310 and 311 ofthe Cade sl be omits  
  
Ament: 122. tn section 312 of the Code. —  
  
(@ the following proviso shal be inserted, namely.  
Provided that it shall not be an ofence under this  
seston the macarrge cased within trees.  
‘Sf the commencemoot of prepaaacy by a. reps  
‘medial practioner with the coment of the woo 20-  
  
  
  
Page 474:  
“9  
  
{2 fe he Explanation the fowing Explanation shan  
be abel a 7  
  
Exploration —A woman who causes terse to  
rltcary when ae as been pean for more tee ie  
‘month within he meanog ace  
  
124 ln section 313 ofthe Code, forthe words “imprison-  
meat foc hie or with imprisonment of ether decay fees  
{61m whch may extend 1 tn years” the words “Tigcoooe ieee  
  
onment For a term which may extend to ten Jeasee shal be  
  
124 For section 317 of the Code, the fllowing section shall  
be substitted. masiely,c+  
  
PUT. Espoune and abandowent of child ander fire  
IRIE, bY Parent operon faving care of t—“Whoees  
{he father or mother of a child under the age ol'Re se  
Sf hasing the cate oF such Chit, shal expose of lene ae  
ShIG an any place with the intention of why abaeloed  
  
2S. For section 318 ofthe Code, the folowing section shal  
be substituted, named  
  
318. Foitae to. provide mecesaries of hfe-Whoeer,  
Seing laa bound to provi the neces oF eo ey  
iP cena 0, Know at  
AEH ilce wl endanger the ie, be Sect ee  
Seal ofthat evan, sail e punted wih imprint  
  
‘desertion for aterm which may ‘extend to hg  
Deas, oF with fn, OF wi bath  
  
12, For section 320 of the Code, the following section stat  
be sbsuteds namely  
  
"320, Grievous, hurt-—The folowing kinds of burt  
only are designated a grievous  
  
(1) Sepvivation or impairment of the sight of citer  
coe OP hing ee  
  
ee 13  
  
ten we  
‘tien 3  
  
geen  
  
  
  
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are  
  
sos  
  
free  
ca  
  
cy  
  
(2) deprivation oF destruction of any organ, member  
cr  
  
(3) permanent impairment of the powers of way  
crgom, member oF unt  
  
(4) permanent distiguration of the head oF faces  
  
(6) fractare or dislocation of a bone:  
  
(any burt which endangers if or which enue  
se sere to be in severe belly pain for tea days:  
  
127, tn. seston 323. of the Code, the words “which may  
‘extend 10" one thousand rupees” shall be ome.  
  
126, tn section 326 of the Code, the word, “with impriton-  
ment for Me of shall be ond  
  
Code, for the words “ten years”  
it be sabre  
  
129, In section 327 of  
the words “even years”  
  
130, For section 328 of the Code, the folowing section shal  
be Substituted, namely.  
  
+328, Administering pot ere. with intent 10 commit an  
ofence-=Whacver doer 0, oF exits 1 be la 3,  
hy peson any. poiton of any stupsfying, sotoxcating OF  
‘inwfolesome substance with anton to commit orto factbate  
‘he tommsnon ofan ofence, shall be ponithed with rigorous  
proscument fora tem which may extend (o ten years and  
SRaN'sso be able vo ine  
  
131, tn section 329 of the Code, the words “imprivonment  
for life Ge" shall be omted  
  
132, In each of the setions 332 and 333 of the Code, the  
words “awful shall be omited  
  
133, tn setion 334 of the Cae, for the words \*  
pvisoninest of eter description for 2 tezm which may extend  
Toone nonin or wih fine which may extend to five bunGeed  
fopses or with bath the words wath fine which may" exe  
fond to one thousand. Topees” shall be substiued  
  
134, fe section 335 of the Code —  
  
(@) forthe words “Tour yeas? the words “three yeas”  
shalt be Substeated = nee  
  
  
  
Page 476:  
am  
  
(@)the words “which may extend to two thowsand rupees”  
Shalfteomited. me  
  
185, tn section 336 of the Code, —  
  
(@) for the words “tree months” the words “sx months"  
stall be substituted:  
  
(6) for the words “Ho hundred and filly rupess™ the  
words “five hundred rupess® shall be subsitated.  
  
13o. In section 337 of the Code—  
  
“a for the words “six months", the words “one year”  
shall be bub  
  
(0) the words “which may extend to fie hundred rupees  
shail Be omite ‘pes  
  
131, In section 338 of the Code, —  
  
2) for the words “two years” the words “three years”  
sul Be subst. \*  
  
() the wouds “which may extend to one thousand rupees”  
stall be omiies.  
  
158, For sections 341 wo 344 ofthe Code, the fllowing sec-  
‘ions shal be substiued. namely.  
  
“341, Panishment for, wrontfel restraint —Whoevec  
ssongtlly retain 4 pert, Shalt be panied wi foe  
Sshich may exiend to ove thousand rupees  
  
snd if te fers iy commited ye oe more  
‘psesons, every one of them tall be punibed th impeone  
Irent of ether dexsipion fora ter wiveh may extend [0  
‘ee Year oF wilh fine, oF with both  
  
“342. Paishment for wrong. confenent — Whoever  
softy cin apr shal Se ped a pe  
‘ment of ethersxapon fora fem nik ay eid  
{o'one ear, orth ine or mth Boy  
  
and. ifthe offence is joinaly commited by fen of more  
persons every one of them shall be punished with impelton-  
Inn for ether deseripton fora term which may end  
‘hee yeas, gd Shall abo be habe to ne  
  
  
Page 477:  
nm  
  
33. Wranghal contnement for five days or more.—Who-  
ever wrongly conhoes any person for Rive days or more,  
“hall be ponished with impdsonment of eher description  
fora term which may exten tothe years, and shal also be  
table Fre  
  
Subwuyu 199, For the heading “OF criminal force and Assault” above  
  
iBeitiee scion 39; he Resaing “asset” shall be abated  
  
‘Amd; 140, For sections 349 t 385 of the Code, the folowing ste-  
oF jogs tall be subsuuted,samelyo—  
  
9390, Astaut.—Aporion is said to assault another  
when be wahoo that petions consent —  
  
(6) applies force direty ot inet, to hat person  
in ose tthe coring a once, or intending ot  
towing ito be tly that he wil thereby cause injry  
Erorunnoyance 10 that person, O°  
  
(oy threatens. by. any\_eatute ot preparatory act  
to apply such forces soresad to that son, ending  
Se‘Wouing to be fey thatthe peste or act wil  
‘huts him to apprehend that sch force 8 about to be  
spl  
‘Explanation —Mote words donot amount to an assault;  
  
but the. merge winch a person. uses may Be, 10, HE  
eres or preparations suc meaning at may'make hove  
[Stee or preperation: amount to an saul  
  
rations  
  
{e) Z i siting in a, oored boat, on 2 vives. A un  
fut the moorings ai ay etal ee he Boa  
{0a own the scam. "Here A has tic appied  
force 0 Z  
  
16) 2: sidag in a horsecaiage. A lashes the hors,  
and thereby canes them to guckenthex pace. Here A'bas  
Indiewtly apphed force to 2  
  
{oA pulls up 2 woman's veil  
intenling ce knowing #40 be the  
fiighten or anpoy hee He has asa  
  
GA incites « dog t0 spring upon Z, without 2's com  
sent Yiee"A hat apple Port 0 Z and i he intends fo  
‘ise injury ear or annoyance Lo Z, he has assaulted Z  
  
thout her consent  
ie ih there  
  
  
  
Page 478:  
”  
  
{0A benno walose the mul of hs doe. niending  
or knowing It to be likely that be may thereby Cause 2 16  
brie that he s about to cause the dog to attack ZA hes  
assaulied 2  
  
(J) A shaes his fs 2 intend or knowing to be  
key at be may thereby cae Zo thee tat Mk abot  
to'stke 2""A"has ssa  
  
‘A takes up a stich, saying to Z, “will sve you a  
tealight ihe ods dt Both Sno  
ise amount fan sssabt, and though the mere. peur,  
tinacompanied by any othe itcumatanges, might nt srouni  
iol arnt he geste expand by te weds ay amount  
  
381. Punishment fr exsault—(1) Whoever assaults any  
person, "otherwise thas’ o grave nd sudden provocation  
  
ven by that person, sbll be punished with imprisonment of  
ihr description for a term which may extend fo ss month,  
‘or wid Bae or with both  
  
() Whoever asaulis any perio on pave ond sun  
provocation given By that person shall be ponished with ne  
ot excending five hundred tps,  
  
{@) Grave and sudden provocation wil not mitigate the  
pnthment for assault if fhe provoction-=  
  
(@) is sought or voluntarily provoked by the oflen-  
"ik ec fr the ten oe  
(©) is given by anything done in obedience tothe  
Inv, by 5 publ sera the faker of te  
powers of such pubic servant, oF  
(0s piven by anything done in the lawl exerise  
of the right oF private defence  
  
$2 A ose oe a fd of  
ayn Ai ae eo  
So Renee oer craen o  
S mankg iatarnet ora ccee at  
SECM ae ele eek  
  
°353, Assit on woman with intent 10 outrage her  
modety--Whoeverasauls any woman, intending to Ourage  
‘or knowing if to be huely that he wil teredy outrage, ber  
‘poy, Shailesh vith impruonnent fy cher  
‘eserpton for a tm which may extend to two year o wi  
fine or with both  
  
er  
  
  
  
Page 479:  
en,  
  
-  
  
35s, degen aud on minor Whee, ats  
any minot under sateen years of agen an indesent, lascivious  
‘or abuseae manner. shall be punisbed wih imprisonment of  
fier description for a term Which may extend three  
Sear. SF with Be, or with both  
  
355. Assault with intent r9dichoour person, otherwie  
than a grave. provocation -Whoerer assaults any. Person  
iid thy te shonoxr tat pen there thn  
fon grave and sudden provocation given by that person  
be pasted with imprsonment of ether dessnption for a  
{em which may extend a wo year, OF with Ae, or With  
both."  
  
N41 In section 256 of the Cose,—  
  
(@) the words “or uses criminal force fo shall be omitted:  
) forthe words “on any property”, the words “of any  
property shal be substiutaa  
  
In seston 387 of the Code, the words “or uss eiinal  
‘pail'be ome.  
  
1,  
force  
  
1, Section 388 of the Code shall be omited,  
  
144, Sections 389 aed 360 of the Code shall be omied  
  
14S, For sections 36 to 363 of the Code, the following se=  
  
onan vions shall be substituted, namely.  
  
364, Kideapping.—Whoever takes or entices any per-  
son whol ner iin years to umnund min  
ot of the Keeping of the lawiat Beardian of such person  
Setnout the convent of such guardian, is sid To Kidnap hat  
non  
  
Explanation ta this. section,  
  
arian” codes any person who has fel eastody of 4  
{sor or ols person of onsound mind  
  
Smmoral purpose.  
  
  
Page 480:  
cf  
  
362. Abduction —Whowser  
{) by force 0: show of force compels, or by any  
tsp eas induces ny eon og om any  
  
(6) takes any person away from any place without  
  
"he consent of tha peson some perso! egal tho=  
  
‘sed 10 consent on behalf of that peton, said t0  
  
Suet "ual person  
  
“20 nen fr\_ binging Whew  
any pes who neem yea fag shall be puced  
“i prioument o eter design fa term which may  
‘tend’ even pears and shal ao be hablo ey  
  
and whoever tkdngps any perton who isnot under een  
cats Of ape shall be punished wih imprisonment cf either  
Sesripion for a term which may extend to thee yea, sd  
SiN Bao be hale 0 fines”  
  
146, In yeotion 363A of the Code, —  
  
(2) 0 sobsection  
  
0) for the words “imprisonment of either descrip-  
  
sion? the ‘wonds “tigen impesonmeat™ shall  
oboe ee  
  
(i) alter the words “en yeas”, the words “but  
‘which shall ot be fess than thee Year Shall be inverted,  
  
{for subset (, the Following shall substitutes,  
  
<4) In this sexton, minor” means & person under  
eighteen years of ag  
  
147, For yection 364 of the Code, the following section shal  
sobstinuted, mame  
  
"364, Kidnoring or obduting in order t0 murder or 10  
‘eno Whoever kidnaps ot abducts any person i Ser  
that Soc person —  
  
(@) may be mucdered, or  
  
() may te so disposed of a8 Lo Be putin danger o¢  
twin deh oe -  
  
(©) may be eld to ransom.  
  
Sense  
ioe  
  
Set new  
Es  
  
  
Page 481:  
46  
  
Stall be punished with rigorous imprisonment for. tem  
which may extend (0 fouteen Years, and shall aso be Ube  
  
ie!  
  
Sutin 48. For section 365 ofthe Cade the flowing setion shal  
  
ono nes be substituted, namely, — “ss st  
  
“368. Kidnsppig or abducing vith intent 10 comes  
  
au of Inn oF terely confine person-~Whoeer Kidnap  
Se" abaact any’ person with nem tau tha person fo  
Be conveyed oof india or to be secretly and wrongly  
‘Solna shal te punubed with ngoroehmpasoanctt for  
Perm whch may" extend to seven Yar, and shal ao BE  
iat”  
  
faye 149, For etions 366 and 366A of the Code, the fllowing  
  
So econ shat Be subsatned mance  
  
Sean  
  
366. Kidnapping or ahdcting woman 10 compel  
fer mortage ee Whoever nape Se abducts an) moma  
(e) with intent that she may be compelled oF know  
io"be ely that she all Be complies 10 arty  
ny" peson “against her wil Se "oe  
  
AP tent tat se ay be fred ede  
to ie intercourse, ot knowing i to be key that she  
‘wi be forced or seed t0 HR intercourse  
  
tlle und with gorousimprionment fay tm  
shih may extend to ten Year, and shall 0 be Hable to fe  
  
MEGA. Prociation of woman or minor girl—(I) Who=  
‘vee, by means of criminal lvimidstion or of Sbuse St ath:  
[iy or any other method of compulsion, induces any woman  
{9 from ny place wth iment that she may te, oF Knowing  
that ei Tely that she Wil be, forced seduced to ih  
  
 iesoure wth aneier peon shal be pnd th  
igofous imprisonment which may extent (6 len Yeas, and  
Shall so be Hable to fie.  
  
(2) Whoever, by any means whatsoever, induces suy  
  
minor a der the ape of pee pers C0 rom. any  
pace or todo any act with tent hat. Such piel may” be  
Er Knowing ito be likely that she wil be, forced or Seduced  
  
ict Tmcrcoure another perso’ shal be panied  
Sich rigorous imprtsonment which may extend (9 ten years  
rsa ao be table to fine  
  
  
  
Page 482:  
a”  
  
159, In section 3668 of the Code, for the word “imprison:  
ment" the words “rigorous imprisonment” shall be svbttted,  
  
1S, n sccon 367 of th Code, oF the words “imprison.  
sent of either description”, the words rigorous imprionment=  
shat Be Scbscted worous  
  
152. For sections 368 and 369 of the Code, the following  
sections shall be subsutoed, namely.  
  
"368, Wroneflly conceling or keeping in confinement,  
Autnapped ov abdeted person“ Whoever, Knowing iat Sa  
spon, hasbeen dapped o abducted, wo  
“mprisonment fora term which may extend to sven years  
tnd shall aso be fable to fe  
  
3. Kuinappiog or abiucting. child under. tm yeors  
sth nia sel ros the person Whoever Knap ot  
oducts any Child wader the ag> of ton. years withthe iene  
ton of taking dishonesty any movable propery from the  
Peon of sch Sa al be pie hoon mp  
Scnment for aterm which may extend to seven yearr bot  
sth shal ot Beli tan eo yas and sal aso be ible  
tne  
  
13.\_ fn section 390 of the Code, for the words “imprison:  
‘ent of either deseripuon” the words “rigorous imprisonment  
Shall be substusted  
  
154. Section 371 ofthe Code shal be omited,  
  
155. tn section 372 of the Cade, for the words “imprison:  
spent of ether descripsion™, the words “rigorous impriscument>  
Be Subsite  
  
156, To setion 373 of the Code, the following Explanation  
shall Se added, namely,  
  
“Explanation IM-—For the purposes of this setion,  
Wt is not necessary that the posselon of the minor should  
bine ‘teem obsained from a hind person”  
  
  
  
Page 483:  
”  
  
m9 378 19377 of  
all be sbsi=  
  
"Sexual Offences  
  
375, Rapes “Aman is said 10, coment rape who has  
sexual intercourse wh woman, othr han his wife  
  
(0) against her wil,  
(©) withoot her consent, oF  
  
(6) with ee consent when i has been obtained by  
putting het in eat of death or oF hue, eer to herself  
Srto anyone else present al the place or  
  
(3) with her consent, knowing  
sband!  
  
the behet that he i het me evens  
  
“Explonaion [Penetration is sulkient to constitate  
the seal iniereourse necessary to the oflence of rape  
  
Explanation IA woman living separately from hes  
Inosband tinder decree of jadi separation of by mtoal  
Egrecment shall be deemed to be a’ woman other than hs  
‘Ste foc the purpose of this section.  
  
316, Punishment for rape —Whoever compits rape shall  
bbe punshed with rigorous imprisonment Ter a ler whch  
‘may eutend {0 fourteen yearn and shall also te hable tO  
foe  
  
ST6A. Sexual smercourse with child wife. Whoever  
has sexual ntercoure. with. Bis wife the wife being under  
fifteen years of ape soll be ponished  
  
(4) she is under weve years of age with Figorous  
mperscament for'a term wtich may ehiend 10 sexe  
Years, and shall ao be hale to fine: and  
  
308, lis eros wih a Between nce on  
sustoen-=Whoever has ict aexual nleicourse with a gil  
Linder sateen yeacs, bat not under twelve years of ag, wh  
tee coment shall be panied with Impidonment tea  
  
seit for tetm which may extend (0 seven Year a  
Shall also be Table to ne  
  
  
  
Page 484:  
”  
  
ve Beta Be Seene to chars ander his eto for  
the accued to prove that he, in pood faith, Believed the Bi  
{abe above skeen years of ae.  
  
376C, ht wrercurgof peligro! nih, roman  
sn ig eustady Whoever, being a pube servant, compels  
‘or sedsces 10 ili seal alercautse any woman WHO 1  
fn his custody ae such pub vervant, shal be punnhed with  
Utmprionmest of either deseripion for a “erm abieh way  
‘extend to tuo Sea, OF With Be oF woh Bot  
  
316 D. Mics tercourse of superintendent etc. with  
‘inmate of women's or children’s ingituon Whoever, Df  
the superintendent or manager ofa women's or ciklen's  
{stitution of eiding any other fee fn such istution by  
‘vntue of which he can exten any authority or control over  
ics Inmates compels oe seduces to iat Sexual intercourse  
Siny femate imate of the sittin shall be punished ith  
Smpisonment of ether "description for a term whch may  
‘extend fo tao years th Ae wit Both  
  
ExploatonIo thi section, “women's or chlder's  
smal aiton hei can Span:  
ger ome for negicted women or chigren, mows ome  
St‘by'any other save which exabisbed and mane  
ie thettpon ane of women cen, tS  
sot inde  
  
(any hostel or boarding house attached to. of  
contoied or recognized by, a educatonsh tnstituion  
  
() any seformatory, ceried or other school, or  
any home or worthouse, governed by dey enactment  
{ot the time being tn force  
  
276E. Mit nercourse of manager ete. of @ hospital  
sith mentally disordered paten:--Wheere, being concerned  
‘nth the management ofa hospital or being on the staff of  
hospital, hat cit sexe intercourse with 2 woman wo  
Ss tecetng weatment for a mental disorder in that hospi,  
Shall be punished wilh imprBonment of ether" desripuon  
{ofa teh which ay extend 10 two Year ot With fe oF  
sith boa  
  
-splanayion.—M shall be a defence 19 a charge under  
thin scion forthe aceased f9 prove that he ded not know,  
find tad'no retson to beet, thatthe woman was a mesial  
IY" disordered patient.  
  
  
  
Page 485:  
80  
  
377. Buggery-—-Whoever volunatly has carnal inter:  
‘courte apni the order of nature wath any man or woman  
Shall'be punished with imprisoament of ether" desripion  
fora tm which may extent two yen oF wih ine oF  
  
and where such offence is committed by a person over  
cighten years of age with a person under that age, the fm  
Disonment may extend to seven Seas,  
  
Fsplanation.—Penetration is suficient 10 | constitute  
  
the cara inercowse necessary the offence described  
bse. 158, For sections 380 and 381 of the Code the folowing  
‘ivtiew sections shall be subsutuied, namely.  
  
80, Tet ning, eile o temple ee—Whowre  
  
(a) im any building or tent used as a human dwel- \  
ling oF forthe eased) ot property,  
  
(i, oF in respect of, any vehicle, vessel or air  
crafted (oF the teapot of od OF potest OF  
  
(0) in a temple, mosque, church, guardwara or  
‘other pce of worship open to the public, in respect,  
any propa wick Dang fo, ot pal of ch  
lace of warship, oF  
  
(4) in respect of any property of the Goveenmeat  
or oft eal aathoniy. OP  
  
shall be punished with imprisonment of either description  
fora txm which may extend to seven years, and thal alsa be  
Table to Fie  
  
"SSOA. Theft of property affeced by accident. fie flood  
cre —Whowver, taking advantage of the occurrence of 3  
Scent ina public place or offre loos, rit, earthquake  
‘Or suit ealamity, commits theft i texpect of any proper  
‘tected by such accident or calamiy, sal be punted wi  
  
imprisonment of ether’ escription for a term Which may  
‘ile to seven yeas, td shall alo be habe to Boe  
  
2 Pet ty pine hoe hy ep  
aattremrpceaearcns cattle  
Seay ackwinn Sorc ne ase  
  
  
  
Page 486:  
48  
  
159, In seston 382 of the Code, for whe words “ten yeas",  
the words “seven years” shall be Substituted  
  
140. After section 385 of the Code the following section  
shall be nseied. nassely,  
  
385A. Blckmll—Whoeer dsbooety threatens  
any pon, ih te ang o ubatin of any tn,  
ia Rich is ely to harm bis patton oy the repettion  
‘Stay er person, shal be punted. wih imprisonment  
‘Stether descpion fora term whic may extend to seven  
Sears and shal alo be able to ne  
  
16, In section 386 ofthe Code, the words “and, if the oflence  
bbs ome ponsihable under secuos 397 of this Code, “may be  
‘punished ith Imprisonment for hie” stall’ be onite.  
  
162. tn section 389 ofthe Code, the words “and, if the offence  
‘be ponishable under section 377 ef his Code, may be punished  
Sich imprsonment for” Ie” shal! be omitted  
  
163 Tn section 394 of the Code, for the words “imprion-  
‘ment for Iie or wit rigorous Iroprisoneent for‘ term which  
fray extend to ten years, the words "rigorous \mpruooment  
{Gear teh may end to Youre Yas shal be Sse  
  
168. For sections 396 to 402 ofthe Code, the fllowies sec  
tion shall be “subatnated, namely.—  
  
"396, Rohbery or docoty with murder —Hf any one of  
‘oof more pry wo ae cot commuting eae  
‘Commute musder in 0 commitung robbery. oF any one of  
  
thot pon shal be pod with ato impart  
  
ot rigorous dmpegonment for 4 eth which Ty  
‘exiend io te0 Seats and shall aso be able to ie”  
  
165. In section 397 of the Code the words “uses any deadly  
‘weapon, 01" sll be omited.  
  
3 Mec Lanrtns  
  
olor se  
eos  
  
  
  
Page 487:  
2  
  
166. tn section 398 of the Code  
  
(2), afer the words “atthe time of” the words “commite  
ting OPS Be nsvte and  
  
() forthe words "seven years the wor “irew year  
shat! Be ated i.  
  
167. In section 399 of the Code, for the words  
the words "Seven ears shal be substituted  
  
seas"  
  
168, For sections 400, 401 and 402 of the Code, the follow:  
Scitons shall be subsite, namely  
  
400. Belonging 10 gave of dacots- Whoever betonss  
to. gang of perons assoaated forthe purpose of habually  
‘commiting dacory, shall be punished wih imprisonment  
forte of with rigorous imprisoament fora term which ma)  
‘extend totem years and shal also be abe 19 fie  
  
401, Beloneing 10 gang of thieves or robbers —Whoesee  
holomgs to any wandering or otber pang of persons associa  
{cd forthe purpose of habitually commiting het or obbery,  
sind not being a ane of dacois, shall be puoished with Ie  
Drisoament fora erm which may eXtebd to seven Sears and  
fall algo be Table to fine  
  
$402. Assembling for pupose of commiting robbers  
or dace Woe a  
(2) is one of thzee or more persons assembled for  
ube perp of commiting sobber OF  
(©) is one of five or more persons assembled for  
the ‘purpose of commiting ficou,  
shall be punished with rigorous imprisonment for 3 tem  
sien exend Yo seven en and sl ao be able  
  
169, tn section 403 of the Code.~  
  
{4) afer asteaton (2) to the main section, the fllow-  
ng ration shal be seed, namely  
  
(4) A and B are porters ina frm which crses on the  
bousincy of jelly A takes jewel which isthe property  
cof the fra, ntending {0 Show it toa prospective cistomer,  
  
  
Page 488:  
485  
  
Hore as A has a “right 10 0 50. A does not dishonesty  
imosipproprate." But it A ss the joes and. appropriotes  
Ihe hore proteeds to hs ou use wnthoutauthey Io do  
‘Sunder the partseshipagrecent he ful OF am offence  
‘ner this seston:  
(©) for Explanation 2 Gosling 3h thee parearephs)  
the lowing Explanation shal be sebiuted, nately  
~Esplanrion 2—W is oot dishovest misappropriation  
foc pra ah as ors ie om  
‘ther person. Yo Uke Tok the purpese of protecting For.  
So'St atormg tothe owner but tk such miapprop=  
Uni he approprates To Rs ew Se  
(a) whea Re knows. of has the means of dizovering  
the oom  
(8) when he does no in good faith Bteve tha the  
‘ouner canmot be dicovered, &  
Wo) before he has wed reasonable means 10 doe  
tind pre novice tothe owner. and allowed 91a  
  
Somabie um Tor the wwner to aim tbe property.  
170. ta scetign 408 ofthe Cou before the word “peoperty", Amend  
the coed ny sll be sree ses  
  
In sction 408 ofthe Code. forthe words “being a clerk Amend.  
for svt or employed ast fork tenant =the words “being  
‘Spy im ay capacity” shall be seated  
  
172 ta seston 409 of the Cove —  
  
(4 the word “Fast” shall be omitted  
  
1h for the words “iprisonment For life or with imps  
  
er deswhpuon Tor a tsk which may extend  
‘Srfen sears the wonds “rigorounsmprsgameat Tor 3 tert  
‘sich fy exten tot Years the words. igoroos.  
  
Prtnaen fort term hash may extend 40 fourtcen yea”  
Phe vabuitted  
For section $10 of the Cove, te folowing section shall Sait  
he saaiteted. nately Sioa  
  
410, Stoll propere-—Properts. the poweoion where  
‘of ts hoe amr by tate extortion, Noble or ches  
fag ine props hich has een ctiminalymaepproptated  
  
  
  
Page 489:  
Ant  
  
as  
  
rin espet of which criminal reach of trust hus Béen com  
Inuited,frdesignated "stolen peopsty" wether the tas:  
Fer as been muse. o° the misappropriation or beach of ust  
has been commited. within without India. Bat Sf such  
propery subveqoently comes into the possession of 3 person  
lepally ented to the possesion there, i then cease to be  
olen property  
  
Toph pray a  
eased by an ctw a other the oti  
  
Mstration,  
  
[Ac cil, six years of age, snatches away 2 necklace  
from another chil, voluntary causing hury fa Thi hid  
Zr knowing this faci, Gahonetly rect. the neckice fom  
A hough XI Ses nt Tob By sa aon A  
the necklace i stolen property, and Z has commited the  
fflonce dened in sect Sil  
  
‘of the Code, the folowing shall be added,  
  
174. To scion 4  
amely  
  
“and i he solen property isthe propery of the Govecn=  
mentor of local author. shal be punished with rigorous  
impesonient for a tem wih may extend 10 seven Sear,  
Sind shal 30 be able to fives"  
  
175, In scion 412 of the Cade,  
  
(2) the words "wth imprisonment for fife or” shall be  
comiteds  
  
176. tn section 413 of the Code, forthe words “vith impr  
sonment for ie or with imprisonment ef either dessrption for  
{Term which may exend to fen years the words “igorogs ime  
pesctment (rt ee whch Mah ened toute sear sa  
 subate,  
  
177, To section 14 ofthe Code, ths following shall be added,  
namely.  
  
~and ithe stolen property i the property ofthe Govern  
rent or ofa toal autor. shal be Pontahed with igorous  
Imprvonmcot fora term which may extend 10 seven ears,  
and shal ss eet ie  
  
  
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485  
  
17% or ection 415 ofthe Code, the following section shalt  
be substiaied, mares =  
  
“45, Chearng. Whoever, by doeiving any person,—  
  
(2) fravdeleuly oF dishonesty induces the person  
9 deeticd to deiser any property 10 any person tt to  
consent that any” person shall retain an), propery., oe  
  
5) intentionally Indes. the p rsom so. deccived  
{9.49 or omit to do anvthing which he woul wet do et  
onthe Wate nota dtl und whch at or  
ymission cates of likly to cause damage of harm  
ion rn uy. mind Sepsiton popes  
  
Explanation —N dishonest concealment of faci os,  
Jie there i Tegal day to disclose paracular facta  
  
hones omiaton to disclose those facta 8 deception  
Snthe: meaning of ths section,  
  
179. For secon 430 ofthe Code. the following seiion shall  
be Substieted, namely,  
  
$2.) Chewing ond dishonest inducing deers of  
egrets U0) Whoever chats and then Shouse  
Tales the! person deve  
  
(20 delner way property 10 any person, oF  
  
(©) 0 vonsent that any person shall retain any  
property:  
  
(6) 10 take, ater oF destcy the whole oF a  
rart'of a aluableSxuriy, "  
  
{91 19 make. aker or destroy anything which  
  
‘iene or sealed and whichis capable of being. converted  
fimo” a valuable security,  
  
shall be punished sith imprisonment of ether description  
  
fora term which may extend to seven years. ond sal a  
be Tai ie  
  
I. Afier section 430 of the Code, the following ston  
shall be Imeried. nurs  
  
"1204, Civatieg guile auoriies we perform.nce of  
certain coneacss- Whose, in performance BF fay cana  
  
sai:  
mtew  
=  
  
Istion  
age  
30 3.  
  
  
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with the Gosernment oF other peblic authority. for the  
Mipniy of any poods the contraction of any buiding or  
etzution ol other work—  
  
(a) nthe case of contact for the yoppy of good.  
ishonestysepnlice goods which. are es in quan  
than or ANeror i Quaity 10. shose he, contracted  
{b supply, or whieh are, ia any’ manner whatever, Pot  
in accordance with the contact, oF  
  
(b) inthe cate of contract for the contruction  
‘of a tulding oF exscution ot other Work. dishonest  
lek materials whic are ess quality tha, ox terior  
inqlity to those he contracied to Uso whic ae  
In Gny:manser watever, not i ‘accordance with the  
  
all be poinhed with imprisonment of either devcription  
  
scm ih may extend 10 faa 08 sl Re ao  
  
-Explanasinn —In this section. “public authority” means =  
  
(2) 2 corporation established by or under # Central  
Provincal or tte AC  
  
{bY a Government company as defined in section  
67 OF ths Company At. 1986, and  
  
{e) a lead authority  
  
“208, Enplvee taking bribe in respect af eploner’s  
airs or hanes. -Whoevse, bee emplosed by another,  
sreiisor ata or agres to acept oratempts to obtn,  
irony pes fo en on fran ther reson. 2)  
fateaton: oir than fyal feownetaion. 29 a moxie OF  
ad .  
(4) for doing ofr b  
to nis employers ans  
  
() for showing of for bearing o show. inthe exer  
‘cst of hn fanctions, favour or disfevour (9 any person  
Sorelation to a employers affairs o- busines  
  
‘hall be pusished with imprisonment of either description  
  
Fora ern which extend to tee year, oF wih ie. of  
  
‘sh bo,  
  
Explanations (1) The word “gratfeaton™ is wot  
resttcigd to pecuniary gratileation, "or te. graifeauons  
‘Stimable in mone  
(2) The words. “egal remuneration” ate not rstited  
reamncration which any employee can awfully “dma  
‘SoCinclage all somneration whee he permed By Bs  
ployer to accept  
  
ng 9 do any at imesation  
sins oe  
  
  
  
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47  
  
(3) “A motive of reward for doing”—A person who  
receives a gratification as a motive or reward for doing what  
Ine does no intend oes not i's ponion todo or has not dome,  
comes within these words  
  
Exception. —This provision does not extend t0.acase in  
Uwhich the employee 1s pubis servant acting a6 such."  
  
SL, For sections 426 to 432 ofthe Code, the fofowing sec  
tions shal "be subwituted, namely  
  
tered wi impoament ote dx  
‘ero which may extend 10 ove year. of With ine  
‘rm oth \* =  
  
42. Michiel causing damage, to pbc ragerty or  
nachos aos of de hed Popes Ree  
  
rvs ‘chin rennet of ay propery the Gone  
  
item ore oa seory orn epee any sche  
nd heeby cases os oe damage ta the sino Co  
ini es apr ha We punted wih ps  
thant ot tthe seseipion fora term whch may edt  
three Sear or with Rot wth Boh  
  
225 Moi bite or maining inal —Whoeve  
omits mischiet by king. poisoning. maiming. or renin.  
uncles, any elephent came honey mle baal, bull Sow  
‘oF 04, whateer maybe the val theres, or any cir soma  
‘ofthe value of two hundred rupes or ypwards thal be pom  
hed with iprsonment of ether desenption for aterm which  
may extend to three ears, ot wih, or wih bot  
  
429, Miscieh by causing domination of supply of water  
e+ snindton of bir Ih ple duage Water  
‘Commits misciet by doing any act which cautes. or which  
fhe knows to be hkely to cae —  
  
.@) a Siminution ofthe supply of water tothe public  
cor 19 any petson fot any" purpose ot  
  
©) an inundation of, of obstruction to, any. pub  
ic drainage,  
  
shall be punished with impisonment of ites description for  
{erm Which mat extend fo thre pears mh eo with  
tot  
  
80. Misclief by in 10 public road. ridge, veer or  
hone! —Woeser commis machie by dome. any At stich  
Tenders any pubive road. bldpe, navigable change, natural  
‘or ati, tnpassable ox tes sa for traveling orang  
  
oe  
  
  
Page 493:  
288  
  
property shall be punished with imprisonment of ther des  
PigRion fora crm which may etend 0 thre yeas, oF With  
fine, of with both. mm  
  
“21, Michlef commited after prapration mae for  
cash ether hur ot wronged res —Whowre cM  
‘la'ache, having mage preparation for causing to any  
ra eho hur, or wrongietresuain,o er Of death,  
  
er hao mone lb pcre th  
opnsonmeat of exer description for rm which  
ae dng shal se ete (0 Rae  
  
432. Misclief by deviroying, mong or rendering tes  
seal ainroute beacon ete—-Whosvet commits. mschiel  
ee Gestosing oe moving. or rendering Ass Uslul any ai  
Oy gerezcon or aerodrome ip, OF any light at or the  
Reibtiommocd of am aieroute or aerodrome provided in  
cera pce with a, or any oter thing exhibited or wsed for  
Fprnidtace ot urran shall be punied wath iprionment  
tf eer desgon fora tm ech my etn 10  
Searh oF ith ne, of with both.”  
  
182. For sections 434 to 480 of the Code, the following  
sections shall be sebsited, namely. —  
  
$3. Mice tnt dro, oc ah ee  
circuit or nessel Whoever commits miscel 0, any ai  
aio any decked vere oe to any veel of & butden of  
Sra ot pal or upwards, intending 10. destoy oF fender  
EY (GPS coming i toe hkl that he ll thereby destroy  
wunsae ogra tha acta oc vessel, shall be punished  
  
xpiosve subaanc  
Taeoe oh the punshiment aforesaid  
  
435, Mischief by fire or explosive substance with intent  
0 cone damage f9 amount of ove hired npees-Whoevet  
Fe eck by fe oF any exphonve substance, inten-  
Sora tse, or knowing i (0 be nly that he wil eer  
so cag to amy precy to the amount of one hundred  
Sau Sorbeardes shall be punished with imprsonment of  
Tapees oe pin fora term which may extend Wo seven es  
hth also be able to Be  
  
1336, Mischie hy Jive or expose suhuance with nt  
Jo daa Mcriphouse ete=-Whoever commats michel  
1 Hace aa explsive substance, intending to cause, OF  
  
  
  
Page 494:  
489  
  
owing 0 be ey that he wil hereby cae the ests  
  
(6) any building whichis ordinarily wed 25 place  
‘of worship or as a human dweling cr 383 pace for the  
usiody of propery: OF  
  
1b) ay objet  
clas 0 penn,  
shall be panished with imprisonment fr lf, or with mpc  
  
Soniment ‘of ether description for's term which may extend  
  
{olen years, and sal ho be able to fine  
  
113, For section 4 ofthe Code, the following section shall  
be subsite namely  
  
in whichis held sacred by any  
  
HN, Criminal trespass —Whever—  
  
(a) eaters ito ot upon property in the posession  
ot anater with inet 10 Sma ence otto ti  
  
‘acyissicorannoyany person in posesion of sich  
(©) faving cotered  
ino Sch  
  
is said 10 coms  
  
Into of upon, sich  
inlaw lly temas there wah ack  
  
criminal trespass.”  
  
184, For sections 443 t0 460 of the Code, the following  
sections shall be subuituted namely  
  
“483, BurglaryA person commits burglary, if—  
  
(a) he commits house-trespass in order to commit  
theft or any offence punishable with impesonient Tor  
‘sen Yeats oF with a'more severe punishment oF  
  
() having committed housetrespass, he commits  
thet or any such offence as aforesaa  
  
“84, Pismo fr rnin espa Whers com  
  
Teespns, shall be punched with imprisonment  
‘ither description for term which may extend (05  
tmonths- or sill Se, or with och”  
  
"445. Penishoent for hows trespass Whoever comms  
‘house rexpou, sal be ponibed wth imprisonment of ether  
Sescrption for 8 term hich may extend to three sera, oF  
‘Sth ha, or with both”  
  
Sette  
Soren  
Slonete  
  
0%,  
  
  
Page 495:  
fo see  
  
“46. Housesrespass after preparation foc hurt, axsoult  
for wrongful resin —-Whoeser commits howeirespase,  
Raving made prepara  
  
(4) for causing burt to, assauking. oF wronsfelly  
resesining Say" penom: OF  
  
(6) for putting any person in fear of hon  
or wrongful retain,  
  
seat oh taro es tacrs  
pa  
  
8. Grou rt cad i commating bay. —  
‘Whoever, whilst committing burgi “  
  
(@) causes grievous hurt to any person, oF  
  
(6) attempt to cause death or grievous hurt 10 any  
rersor  
  
‘hall be punished with igorous imprisonment for a term whicl  
‘may extend to Fourteen year, and shall also be liable to fe.”  
  
“9, All persons jointly concerned in burglary punish  
‘able where death or grievous hurt caused by one of them  
ifar the ime of commiting burglary. 209 person gully of  
‘uch offence shall voluntarily cause oratempe to cause death  
‘or grevous burt to any person, every person Jontly concerned  
in Cemonting such bargury shall be pushed with rigorous  
Tinprsonment for a term. which may extend to fouteen  
eure and shall aso be habe te ne  
  
INS. For sections 463 19477 ofthe Code, the following sec-  
sions shall be subaststed. namely,  
  
“463. Forgers-—A person is said to commit forgery  
who, dishonesty oc fawdutestly or with intent tha fraud may  
te Committed on the publi or on any persou~  
  
(4) mates signs or executes a document or part  
cof a osumeni with the intention of causing i 12 be  
Scieved that such docoment or pat of docement was  
inde, signed "or execute  
  
0) ob the autora peson by whom:  
fo by’ whose authority, he knows that it Was MOL  
‘ade, Signed or executed. oF  
  
  
  
Page 496:  
1  
  
4a) (when the ime of place is material) at &  
time place at which he knows that i ws ROL  
nade, signed or executed” of  
  
{by canceltation. addin. obliteration or other  
wing lees 2 document many pateral part threo,  
hse thas been made signed of executed elther by him=  
SEor by any’ ether getson. whether sech person be  
Sing or dead at the tie of such alteration; oF  
  
() caver any persion w sign. ensue or alle a  
iocoment. knowing that such pen. by reason of un  
Sendbes Pinna or muoieuloneaimar, or by reason  
GF decption practised upon him does ot, know the  
Santen othe document or the nature ofthe alteration  
  
Explanation. (1) Wn this section, “exccute™ intodes  
sealing tad making sy! matk denoting excction of docu  
  
(2) A man’s signature of his own mame may amoust to  
freee:  
  
(2) The making ofa document inthe name of fious  
penson inning ito be believed that was  
rade by real person, or i the name of a deceased Penson,  
‘inending to be believed thatthe document was made by the  
porson hs etme, may amount to forgery  
  
464, Forged dociment.A docament in respect of which  
a ay ar lw orgy has ben commited I  
  
465, nist for forgerr—Whoever commits for~  
ery sil be panshed wide imprisonment of ether dese  
{ioe oe aterm’ which may extend fo the years. of with in,  
si both,  
  
“66, Forgrs of court record, pub register, wil,  
rate etn cles -Whcever commas forgery iN Fespect  
OF 3 Gocuiment which Hs oe purports to be  
  
0 a record or prooseding of ot ia x Court of us  
  
(i) a sister ept, or document made, by a public  
servant 40 Bs Cal capa:  
  
sy a regisier of Bvt, Baptism. marriage or basil  
(ie) a wil.  
(6) & vahuble secarity  
  
(oi) am authority to raake or transee any valuable  
  
  
Page 497:  
an  
  
(it) an authority 1 reoeive or deliver any valuable  
secenty, movable property or money.  
  
(i) am acquittance of receipt for the delivery of  
any Saluable ‘secutity oF movable: property or Tor the  
payment of any money.  
  
) an authoriy 10 insite oF defend any suit  
for to take any proceedings therein or to confess jee  
tent, or  
  
(8) 4 power of attorney.  
  
hall be punished with rigorous imprisonment wh  
‘hiend totem yeats, nd Shall abo Be table 10 fne  
  
469. Using at, gemuine @ forged documnent:—Whoeve  
fraudulently or dishonesty uses a6 genuine amy document  
‘wich he knows or has feazon 19 Beer, to be forged dot  
  
(a) shall, the document is one of the description  
rmenbons 1 action 46, be punted th rps  
Imprsonment fora term sbch ay exend to ton Yeah,  
{indshal aso be Hable to Bact aaa  
  
(&) shall a any other case, be panied with inpe-  
sonment of either deszipion fora erm which may ek:  
fend to thre year, or with fine  
  
A68. Maing or pssesing compere soc. ith  
inet comma frgrk pani de ro 4 Whor  
sesrmate ov cote ay Seal, Bale other semen  
is min Imes, nding the Se al  
{ied eke rpc comming Sy for hich ou  
‘purse ener secon ser or eith Sih intent at  
RisPouteston ny such sepa orator stroma: Eaous  
Ine the same tobe countess De punted wh gory  
{Meter nich may eaend to fn ets and wal sho  
rae ine  
  
49. osesing a fed dcanent denied sion  
  
Sinton evn inate 1. Rg  
{Ses and sntending thatthe same al  
‘br sukbesly be ted pene, shall be punished wt  
  
is imprisonment foe & term which may extend to se.e8  
Sean and shal alo be habe f fine  
  
‘470. Counterfeiting device or marks sed for  
awhenicaing docunens “described tn tection a6  
or possessing ‘couerfit “marked atria Whoeses  
Soumterfats epon or in the substance ofan material any  
SSevee or mark used or the purpose of autheneatine any  
  
  
Page 498:  
3  
  
Socument described in section 466, intending that such de-  
‘ice o mark sal be wed forthe pape of eving the apes  
ance of authenticity to any doctment then forged thete=  
fer to be forged om such materia ox who, with 30h tent  
has‘ his posesion any material upon ot in the substance  
‘or which any sich device of make bas been counterfeited.  
shal be’ punished with rigorous impeizonment which ma)  
‘extend Yo fen years, and shall also be lable to foe”  
  
41, Frauddent cancelation, description ete. of valuable  
secarity or will-=Whoever fraudulently of dishonesty. ot with  
Fen to cause damage or injuy tothe puble or 10 any per  
  
(2) cancels, destroys or defaces. or attempts to cane  
cl, desiroy or deface, of secretes oF arene 10 sect  
‘ny valuable security oe any document which i or put  
ports 0 bea wil  
  
1b) commits mischief in respect of such valuable  
secuniy or dacoment.  
  
shal bepoashed wih rigorous imprisonment for aterm which  
tay ended ote joa and sale be fable fo he  
  
86. Section 4774 of the Code shll be renumbered section  
  
187. Sections 489A to 489E of the Cade shall te omited  
  
488. For Chapter XIX of the Code, the fllowing Chapter  
stall be substituted, namely —  
  
‘Curren XIX,  
OFFENCES AGAINST PRIVACY  
  
490. Use of atcit listening oF recording. opparanis—  
(1) Whoever. Knowing that any sei Uatening or rey  
‘ding apparatus has been incodced tnto any premises with  
‘ut the Knowledge or consent of the person fn posession  
the rom iy conversio wit the ch  
Apparatus of uses sock apparatus Tor the purposes of recor:  
ding any convertion, shat be penitbed Gi ipesonesen  
‘of euher desertion ior’ term which may extesd 10 sit  
month of with fine, or with Both  
  
Rem,  
tebe ot  
  
onion  
  
Satta  
ena ew  
  
Ei  
fer Ci.  
hor SI,  
  
  
Page 499:  
al ew  
  
44  
  
2) Whoever publishes any conversation or 9 secon!  
Ahorat, Knowing that it wa Itenedfo.or recorded Wich the  
sida any ariel tien  
  
nfo any premises without  
Person in possession of the premises. shall be posiched with  
Imprisonment of ether desertion for a term which tay  
fttend to dneJear oth Ane: oF th Both  
  
491. Unonthord\_ photography) Whoever ion:  
ding to cane oF knowing sob aly tha he wil he.  
Simoyance to any person, kes a photograph ofthat person  
tints eet syne hana pepe oP  
[hs photograph in’ pbc pce hen tht pestom hes pro  
Unie sh taking. sal pushed wath imple iso  
‘ment fora teem such may fiend tot monte ox wl ne,  
emt bah  
  
2) Whoever. intending 10 cause, oF knowing it fo be  
icy that he wil uae, annoyance to any person. pubis  
{ny photograph ofthat person taken in contravention of sub:  
Sccuion (1) shal be panhed wth simple imprisonment for 3  
{erin which may extn to ane year, or wit ine. oF th Bath  
  
492. Exception regarding certain act of public servant  
and evs acting sur the sections: Nothing in 3  
{ton 090 "or Section 491 appies—  
  
4) 10 6 public servant ucting in good faith in the  
course of is dunes connected wth the scarf Sie.  
the provention, detection or-imestization of ellences  
the admimstration of juste, oF the mantenance of pub=  
Iie onde oe  
  
(6) 10 persons acting under he girectons oF such  
pti sera  
  
199. For sections 494 and 49S of the Code, the following  
sections shall be subsutued, namely  
  
498, Bigany Whoever, being married, contrsts 2  
couher marviage in any case i hich such matriage 5 vond  
Fy'teanon ols taking place during the. suistaee of the  
irker mariage, commits Digan  
  
‘chon, the marge Shall noweibsendiog’ We sistem,  
  
  
  
Page 500:  
ws  
  
Excepron:—The offence is not commilied by any per-  
som ho" conacs ie ae mariage dong he ie othe  
Spout by carey artige, if atthe tmpe oF theater marriage  
‘teh spouse shal have been continvally absent from such pe  
fon for seven yeas ind shall not, within that period. Mave  
en ad ot by Sch person a8 eng lve, proms he  
Person contracting the tte macriage mforms the person with  
SStom i contracted ofthe veal state of face 20 Ta 38 the  
Shove are within iv oF er Koleos.  
  
495. Panisiment fr bigamy-—Whowver commits bigamy  
hall be punished sith imprisonment of either deserption for  
erm hich may extend to three yeaa, and shall 380 Be  
iisbie to ne  
  
™@) Whoever commits bigamy, having concealed. fom  
‘he person with whom the Ite marnage is contracted the  
fact Of the carlerrarrage shall be punted wth impugn  
ment of either descipion fora term which may exend $0  
Seven Sears, and shall soe hable to ine =  
  
190, Tn section 496 ofthe Code forthe words “seven years  
‘the words "three years shall be substituted.  
  
191. For section 497 ofthe Code, the Following section shat  
be substited, namely  
  
497. Adultery <I 2 man has sexual intercourse witha  
‘woman whos and whom he kews or ha reason to believe  
ISG the Sito another man-wthow he cone a en  
lance of that man, such sexbai vatercourse not amounting 10  
i olence of rape, the man aha the woman are gully ofthe  
offence of adultery ad shal be punished wih samprisoament  
‘ferther deverption fora tex whch may extend 1 to ea  
Orth fine, or wih box  
  
192. For section 498 ofthe Code, the Following section shall  
he Subsieted, namely —  
  
"498. Tuking or enticing axov- or concealing with erin  
tel ine a mervied vornan Whoever kes or entices  
onceais any woman who and whom heknows of bas too  
Son to believe to te the wife of anyother: man, Irom that  
‘ham Or from any person having the care of her om behalf of  
That ann, with anc that She may hae ie ltercourse With  
“any person, shall be punshed ith imprnonment of either  
‘eseripion for term hich may extend ho two Seas, OF with  
ioe or wath both  
  
Sota  
incon of  
  
ie  
  
  
Page 501:  
Shion for  
  
eee  
ah  
  
96  
  
193. In section 499 of the Code,  
  
@) in the Firgt Exception, the second sentence, that is  
4 say, the words "Whether or nat it forthe public good  
1S auestion of fact shall be omitted,  
  
() im the Fourth Exception  
  
(0 afer the words “report of the proceedioas  
the Woedh im open court” shal be nse  
  
(i) the Explanation shall be omits  
  
194. For section 500 of the Cade, the fllowing section  
shalt Be subsites. namely—  
  
00, Pnisonent for, dfomaion 40) Whoever de  
ames another shall be punished with impeonment of eiher  
‘Gesrption for atm which may extend 1 #40 Yeas, oF #1  
fine or wath both.  
  
2, Whee he once has teen, commie pubis  
ing a imputation in' newspaper, the Court convicting the  
‘offender may farther order tet its judgment shales publish  
‘38 in whole ‘oro pst in such aewpaper a Cay speci)  
  
) The costs of such pubation shall be recoverable  
from the snc peson 368 fas  
  
195, In sections SOI and $02 of the Code, forthe words  
“simple. imprisonment’ the words “imprisonment of either  
‘deeiption™ shall be “subsuiuted.  
  
196. In Chapter XXM of the Code:—  
  
(ction S08 and $06 sal be oni and ns  
so Sn Si lb remus BF, 3 a 38  
respectively;  
  
  
Page 502:  
“7  
  
() afer section 506, a8 90 e-mumbers, the following  
sections shall be ieee  
  
SOT, Thveat of suicide with intent to concern @  
pubic aborts —Whever holes out threat of srcide  
{0- pubbe authority. with iment to cause that authority  
{0 do any act which i not lealy bound to do, ort  
‘mit to do any act which i egal ented {0 40,8  
the mears of aoding the execution of atch threat, ad  
‘doce any act towards the execution of such thes shal  
be punished with impeisonment of euher description for  
aU term which way extend to three Jats, or With fin,  
or sit bt  
  
no 2 ena nove etna n  
sults any person. intending oF knowing 10 e kely  
that such Insult "will provoke that person to Break the  
puble peace or to commu any oder offence, shall be  
Ponished with imprisonment of ether desenpiion for a  
{rm which may extend to tWo Jeary, oF wh hey or  
‘with Both  
  
500. Pevorming mack fara of \_  
ose i ae nice 1 Ge pbc  
Flo any person of eth the krwledge tht anya  
iiey tbe cous tothe publi o te any person pots  
Forms or takes pat in the performance of any mock  
funeral associated wth referable Yo, hung person  
shal be pisbed wih impesonment of either deer  
Alon or term which may extend foto Jars oF Wh  
fine, ot wih both  
  
{) section 510 shall be omitted, and the ensingsstion  
00 shal be re-sumbered a5 section 30  
  
197, Foe Chapter XXIII of the Code, the fllowing Chapter Suan  
shall te subsite, namely Pe Sot  
  
fr  
fer  
  
Cunpren 23  
LIMITATION FOR TAKING COGNIZANCE OF  
OFFENCES  
  
SU. Defiions, For the purpose of ths. Chapter,  
votes the content otherwise euler mre  
  
{2} “pvod of tintin” means the pid of i  
tao for taking copmeanse of an oes, pes  
  
3M ottaw7I—33  
  
  
Page 503:  
(©) “preserited period” means the peri of limita  
tion, compoted In aetordance with the provions of this  
Chair  
  
ee ating comin frp of tine {0  
Suet he ce pve tis Capers court al  
tne coarse anos pms sade i Code  
1s Sar hem ces an  
  
2) The peri of imitation for taking cognizance of am  
nts sha Seo eee  
  
(2) six mooths, iF he ofence is punishable with  
fn Say  
  
(©) one yea. iF the offence is punishable with impri  
sonoten Tora etm not excecding one seas ond  
  
(c) thee years, ifthe offece i punishable with  
lonprisonment Fora ttm not exceeding tees sea  
  
S13. Commencement of the period of ination —(1)  
The period of hmitaton commences. i reaton to any een:  
der, From the day whch hs parncipation in the ollence fits  
  
ove 10 the knowledge of = person agarieved by the ofc  
Sof an oler investigating the ofence  
  
(2) Io computing the said period, the day teem which  
such period toe Feckonod, shall be etude  
  
S14, Exchuign of te n certain coses—40) In vompa  
‘ing the period of vation. thsi daring winch any "Pers  
‘or hts Beem pronecuing: wh de dilgnce anther rose.  
tioo.wircr ing cour a fest stance oe ina court Of sppeal  
‘orrevsion agains te ofendor. shall be excluded. whee the  
frosettion reaty to the ame fact nda pronecued in good  
Fh n'a court whub. from defect of joredetiem oF other  
‘che of ke sate,  
  
(2) Whee the insttion of the poss a tenet of  
an ls ts age an union ea  
{sats made" th Woy om which wasn shall  
ie esctade  
  
(2) Where notice of poseesion foram offence hasbeen  
tiven, of wire for prosecation for an offence the previous  
Eat nein of the Caernment or am theory  
Fe requied im accordance withthe requirements of any law  
fore tame being tn fore, then in computing the period of  
imitation for ‘aking counsance of the offence, the pened of  
Senate or the cave may’ be, the time requed for ob-  
{aiming sch coment or sanction, shal  
  
  
  
Page 504:  
Explanation: tn excluding the tne required for obtain  
  
Jing ibs consent oe sanction of the Governinent or any other  
  
{uthoriye the dste on winch the appliation wa made for  
  
‘Stung the consent or sanction and the date of fceie af  
  
theese Goverment other whan sa oth  
3S counted  
  
(3) to computing the period of gimitation,  
‘which the oflendee—  
  
(2) has bec absent from India and fom the teri  
toriy butside nda uoder the administralvon of the  
Conrad Government, or  
  
() has avonad arvest by abscondiag ox conce  
ating bine  
  
Stal be excludes.  
S15. Exclusion of dare om hich coun i loge. Where  
thee peo Tr aking cogmance of an fest  
  
‘expire om day when th court elo. the court may ke  
‘ogitzance on she day thon the court re-open.  
  
Esplanayow.—A. cout shall be deemed to be closed on  
  
the time  
  
any day mihin the mcming of this secon. i ering 29y  
ga oP nova woking Boers reas lowed om that  
  
S16, Coming offences.  
‘offence, Tres petied of i  
  
lathe case of a continuing  
ins to run at er  
he once contns.  
  
  
  
Page 505:  
COMPARATIVE TABLE,  
  
“Code Reed Esiung Cole Cea Renae  
‘soon  
euarrer 1  
2 ‘ 2 Oita  
Fi 3 FS 3  
4 5 4 2  
curren  
5 Rew  
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nu) “  
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on 6  
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Pay i  
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: ES © onites  
> 5 Ont  
Fs 1»  
Ey Onis  
3 rae)  
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ina te Ones  
2 15 deaf rete  
  
  
  
Page 506:  
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